

FOURTH MEETING OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY: 27 JUNE-2 JULY 2012

The fourth session of the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury (INC4) will meet from Wednesday, 27 June, to Tuesday, 2 July 2012, in Punta del Este, Uruguay and continue to negotiate the text of a treaty to regulate mercury use at a global scale. INC4 is the fourth of five meetings that are scheduled to convene prior to the 27th session of the United Nations Environment Programme Governing Council/Global Ministerial Environment Forum (UNEP GC-27/GMEF), to be held in 2013, where the negotiations are expected to conclude with the adoption of an international treaty.

During the week, delegates will negotiate on the basis of a text compiled by the Secretariat with a view to finishing substantive discussions on key items, to allow for conclusion of negotiations at INC5.

A BRIEF HISTORY OF THE GLOBAL ISSUE OF MERCURY

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

Since 2001, the UNEP GC/GMEF has regularly discussed the need to protect human health and the environment from the releases of mercury and its compounds.

24TH SESSION OF THE UNEP GOVERNING COUNCIL/GMEF:

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

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

FIRST MEETING OF THE OEWG ON MERCURY:

The first meeting of the OEWG to Review and Assess Measures to Address the Global Issue of Mercury was held from 12-16 November 2007 in Bangkok, Thailand. The OEWG discussed options for enhanced voluntary measures, and new or existing international legal instruments on mercury. Delegates agreed on

seven intersessional tasks to be undertaken by the Secretariat, including analyses of, *inter alia*: financial considerations of a free-standing convention, a new protocol to the Stockholm Convention and voluntary measures; sustainable technology transfer and support; implementation options; organization of response measures; costs and benefits for each of the strategic objectives; meeting demand for mercury if primary production is phased out; major mercury-containing products and processes for which effective substitutes exist; and funding available through the Global Environment Facility and the Strategic Approach to International Chemicals Management.

SECOND MEETING OF THE OEWG ON MERCURY:

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

25TH SESSION OF THE UNEP GOVERNING

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

AD HOC OEWG TO PREPARE FOR THE INC ON

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

FIRST SESSION OF THE INC TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON

MERCURY: INC1 convened from 7-11 June 2010 in Stockholm, Sweden. Delegates exchanged views on key elements of a convention, including: objectives; structure of the instrument; capacity building and technical and financial assistance; compliance; issues of supply, demand, trade, waste and storage; atmospheric emissions of mercury; and awareness raising and information exchange. The key outcome of INC1 was

a request to the Secretariat to draft “elements of a comprehensive and suitable approach” to a legally binding instrument, which would serve as a basis for negotiation at INC2.

SECOND SESSION OF THE INC TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON

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

THIRD SESSION OF THE INC TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON

MERCURY: This meeting convened from 31 October – 4 November 2011 in Nairobi, Kenya. INC3 completed a comprehensive review of the text of the draft instrument and requested the Secretariat to compile a revised draft text based on the plenary negotiations, the reports of the INC3 contact groups, and the work of the Legal Group.

INTERSESSIONAL HIGHLIGHTS

EXPERT MEETING ON FINANCIAL RESOURCES:

Following a request by INC3, the Co-Chairs of the contact group on financial resources and technical and implementation assistance, Adel Shafei Osman (Egypt) and Johanna Lissinger Peitz (Sweden), prepared a proposal for articles 15 and 16 of the draft text on those two issues. A meeting of experts was held in Inárcs, Hungary, from 11-13 April 2012. The advice given by experts at this meeting provided the background for the conceptual approach to financial resources, and technical assistance for the mercury instrument and possible text for articles 15 and 16 submitted by the Co-Chairs to INC4 (UNEP(DTIE)/Hg/INC.4/4).

REGIONAL CONSULTATIONS: Regional consultations in preparation for INC4 were held in Pretoria, South Africa, from 8-10 May 2012 for the African Group; Kuala Lumpur, Malaysia, from 15-17 May 2012 for the Asia and Pacific Group; Brasilia, Brazil, from 21-25 May 2012 for the Latin America and the Caribbean Group; and in Lodz, Poland, from 29-30 May 2012 for the Central and Eastern Europe Group.

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

MERCURY INC4 HIGHLIGHTS: WEDNESDAY, 27 JUNE 2012

The Fourth Session of the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury (INC4) opened on Wednesday, 27 June 2012 at the Conrad Resort in Punta del Este, Uruguay, to continue negotiations on a treaty to regulate mercury use at a global scale. Plenary meetings were held in the morning and afternoon, with contact groups meeting in the afternoon and evening to finalize their consideration of items outstanding from INC3, including artisanal small-scale gold mining (ASGM), wastes and storage, and information and awareness raising.

OPENING CEREMONY

Following a short cartoon on mercury and a performance by a children's choir, Fernando Lujaris, INC Chair, Uruguay, opened the meeting, underscoring that mercury is a global problem warranting a global solution adapted to everyone's reality. Monique Barbut, CEO of the Global Environment Facility (GEF), detailed several GEF mercury projects, noted that the INC negotiations will conclude as the negotiations for the GEF's 6th replenishment are underway, and called on the INC to consider conveying a message to the GEF on resources needed for a mercury convention. Achim Steiner, Executive Director of UNEP, speaking via a video-message, called on negotiators to move beyond initial positions and "reach across the table." Luis Almagro, Minister of Foreign Affairs, Uruguay, called on participants to take big strides towards the fifth and final session of the INC so as to establish a sound, dynamic regime to protect the environment and human health from mercury risks. A video was projected on the risks of ASGM and best practices promoted by UNEP in small gold-producing communities around the world.

PLENARY

ORGANIZATIONAL MATTERS: Participants adopted the agenda and organization of work for the meeting (UNEP(DTIE)/Hg/INC.4/1 and 4/2).

GENERAL STATEMENTS: Guatemala, for the LATIN AMERICA AND CARIBBEAN GROUP (GRULAC), expressed support for a treaty that includes, *inter alia*: the common but differentiated responsibilities (CBDR) and polluter pays principles; both binding and voluntary approaches; a realistic approach so that control measures come with means to implement them, including through viable alternatives to mercury use; and an appropriate financial mechanism to enable compliance by all developing countries.

The European Union (EU) said it would present for consideration proposals on atmospheric emissions, storage and waste, and compliance.

Japan, for the ASIA-PACIFIC GROUP, called for an instrument that is both effective and practical, and which embraces both voluntary and mandatory approaches to reflect the different capacities of countries, and in particular developing countries and small island developing states (SIDS).

Zambia, on behalf of the AFRICAN GROUP, *inter alia*: supported retaining text on health aspects (Article 20bis); called for better international efforts to control exports of mercury-containing wastes to prevent Africa from becoming a "dumping ground;" and supported mandatory obligations for specific reduction targets.

The Russian Federation, on behalf of the EASTERN EUROPEAN GROUP, welcomed the results of intersessional work and expressed hope that these would be taken as a basis for discussion at INC4.

Iraq, on behalf of the ARAB GROUP, said oil and gas cannot be considered a significant source of mercury emissions and called for discussion on this point to be finalized at INC4.

The US said air emissions from all sources must be reduced if the convention is to achieve participants' shared objectives.

MEXICO emphasized the need for clarity on means of implementation and, with CHILE, supported inclusion of explicit references to human health.

SWITZERLAND emphasized the need for countries to move beyond initial expectations by looking for creative solutions that can accommodate all interests, while keeping collective ambition high. INDONESIA underscored the importance of finalizing the text on ASGM. JORDAN emphasized the need to seek creative solutions and flexibility on remaining issues.

CHINA stressed the importance of the principle of CBDR and highlighted the significance of the financial mechanism to all developing countries, including China.

INDIA called for a coherent yet flexible approach to the different mercury sources that balances the needs of job creation with health and environmental protection. With INDONESIA and CUBA, he called for an independent financial mechanism.

CHILE proposed defining the objective of the treaty at INC4; promoting mercury labeling, and accessible and economically-viable best available techniques and best environmental practices (BAT/BEP), including for storage; as well as flexible control measures.

JAMAICA, supported by CUBA, underscored the need to accommodate the needs of SIDS and least developed countries (LDCs) in different sections of the text.

Stressing that trade in mercury-containing products had nearly tripled since the last INC, the PHILIPPINES called for trade control measures that make traders accountable and require them to include waste disposal in pricing structures.

Noting Colombia is home to one of the most contaminated mercury sites in the world, COLOMBIA urged, *inter alia*, adoption of a strong compliance mechanism, and banning trade with non-parties to encourage ratification.

NIGERIA highlighted its efforts to raise public awareness around mercury, and called for promotion of mercury-free products and take-back schemes for mercury-containing products. SRI LANKA stressed the importance of sound technology transfer and appropriate financial assistance.

WHO drew attention to documents on regulatory perspectives on thimerosal in vaccines, and on informal consultations held in April 2012 to develop further guidance on vaccines. A member of the Chilean legislature discussed a new law seeking to phase out thimerosal in vaccines, which she said embraced a precautionary approach to protect vulnerable groups, and asked WHO not to be an "obstacle to risk-free vaccines." The INTERNATIONAL PEDIATRIC ASSOCIATION called on governments to support allowable-use exemptions for vaccines. SAFEMINDS, underscoring that mercury exposure can have a cumulative impact, supported inclusion of text on health aspects.

ZERO MERCURY WORKING GROUP called for, *inter alia*, "ending toxic trade" in mercury and phasing out primary mercury mining. With IPEN, it supported including the precautionary and polluter pays principles in the mercury treaty. IPEN called for addressing mercury releases in all media, not only the atmosphere, and supporting safer alternatives to mercury-containing products.

HUMAN RIGHTS WATCH called for mandatory national implementation plans and inclusion of both environmental and public health strategies.

The INTERNATIONAL FEDERATION FOR ANIMAL HEALTH urged consideration of the implications of the mercury treaty on veterinary vaccination programs, which she said were essential to ensure animal welfare. The GLOBAL INDIGENOUS PEOPLES CAUCUS requested that references to vulnerable populations include the phrase "and Indigenous Peoples".

A number of dental organizations intervened. Some warned that suitable alternatives to dental amalgam are not yet available, while others highlighted the effectiveness and efficiency of alternatives and called for a ban of mercury in dentistry.

PREPARATION OF A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY: On Wednesday afternoon, the Secretariat introduced the documents that will serve as the basis for negotiations, and the revised draft text (UNEP(DTIE)/Hg/INC.4/3 Annex I).

ASGM: Chair Lugris introduced Section F on ASGM and re-established a contact group to finalize the draft text, co-chaired by Donald Hannah, New Zealand, and Felipe Ferreira, Brazil.

Wastes and storage: Chair Lugris introduced Section H (storage, wastes and contaminated sites). The EU presented a proposal to clarify aspects of this issue (CRP.6). CHILE suggested that definitions be included in a separate chapter at the beginning of the treaty. IRAQ called for special attention to be paid to the issue of contaminated sites. JAPAN and AUSTRALIA underscored the need for consistency with the Basel Convention, while NORWAY noted that Basel does not have specific requirements for mercury-contaminated sites. SWITZERLAND suggested taking a lifecycle approach to wastes and storage, and called for the contact group to define storage.

The US, with the AFRICAN GROUP, said the guidance on commodity mercury is an outstanding issue and noted the importance of regional cooperation on storage. The AFRICAN GROUP called for the inclusion of mandatory inventory and site characterization requirements, and for awareness raising for local communities. The PHILIPPINES called on the INC to address non-party transfers of mercury. IPEN, with the ZERO MERCURY WORKING GROUP, supported including the polluter pays principle, with IPEN calling on the INC to create

an inventory of contaminated sites. Chair Lugris established a contact group chaired by Anne Daniel, Canada, and Adel Shafei Osman, Egypt.

Information Sharing: Chair Lugris invited comments on Section J, articles 18-19 (information exchange, and public information, awareness and education). The EU, supported by IPEN and ZERO MERCURY WORKING GROUP, favored deleting text qualifying public information, emphasizing that information related to mercury-related health risks should never be confidential, and proposed incorporating text on cooperation with other chemicals-related agreements and the Strategic Approach to International Chemicals Management (SAICM). JAPAN favored retaining text on immediately sharing information on chemical health hazards with the international community, and the AFRICAN GROUP highlighted a broad information sharing approach, with TANZANIA focusing on labeling requirements. A contact group co-chaired by Alejandro Rivera, Mexico, and Daniel Ziegerer, Switzerland, was established.

CONTACT GROUPS

ASGM: The contact group met in the afternoon to develop cleaner text for consideration by the INC. Participants looked at article 9 on ASGM and annex E on elements for national action plans (NAPs) on ASGM, starting with sections in the annex where agreement would be easier to reach. Among other things, participants agreed that ASGM NAPs "shall" include strategies to prevent mercury exposure by vulnerable populations, including children and women of child-bearing age, "especially" pregnant women. They also agreed that parties "shall" take steps to reduce, and where feasible eliminate, mercury use in ASGM. The group continued discussions into the evening.

STORAGE, WASTE AND CONTAMINATED SITES: The contact group addressed contaminated sites, discussing the need to carry out risk assessments on mercury-contaminated sites "where appropriate." The group also debated whether or not the Conference of the Parties (COP) will develop, and/or adopt guidance on principles of contaminated site management. Some countries preferred that the COP adopt specifically defined guidelines, with others preferring open-ended guidelines. One country proposed that the COP "take into account" the list of issues to be included in the guidance. The group also discussed mercury wastes, specifically text referring to the definition and provisions of the Basel Convention, and continued discussions into the night.

AWARENESS RAISING: The contact group met to start streamlining the text on information and awareness raising and continued discussions into the night.

IN THE CORRIDORS

Energy and enthusiasm suffused the first day of INC4, with participants preparing to tackle the penultimate round of negotiations to prepare a global instrument on mercury and bracing for long hours of hard work. Indeed, as three contact groups were challenged to finalize their work by the second day of this six-day meeting, many delegates commented that the unorthodox lunchtime scheduling of the host country reception, attested to the marathon ahead.

One veteran participant said the progress achieved intersessionally placed INC4 much further along the road to achieving its goals than it was at the conclusion of its work in Nairobi. Indeed, while the latter days of INC3 saw many delegates taking hard lines on a range of complex and interconnected issues, delegates found in Punta del Este evidence of a renewed sense of common purpose and signals of movement in key delegations towards more flexibility and compromise within the INC process.

MERCURY INC4 HIGHLIGHTS: THURSDAY, 28 JUNE 2012

INC4 met in Plenary throughout the day to deal with reports from contact groups, as well as emissions and releases, financial and technical assistance, and compliance matters. Contact groups also met throughout the day to discuss: technical assistance; storage, wastes and contaminated sites; emissions and releases; and research, development and monitoring.

PLENARY

PREPARATION OF A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY: Storage, wastes and contaminated sites:

Reporting back to Plenary, contact group Co-Chair Anne Daniel noted that the group had addressed outstanding issues on contaminated sites and made progress on the definitional aspects of wastes. She said that the transboundary movement of mercury-containing waste and storage were yet to be discussed. Delegates agreed to continue discussions in the contact group. In the afternoon, Co-Chair Daniels reported that text on contaminated sites had been finalized (CRP.16) and delegates agreed to forward it to the legal drafting group (LDG), and that the contact group continue considering text on wastes and storage.

ASGM: Contact group Co-Chair Donald Hannah reported on the deliberations on Article 9 (Artisanal small-scale gold mining (ASGM)), noting CRP.10 reflects an agreed text for Article 9 as well elements to be included in national action plans (NAPs) on ASGM (Annex E). He said outstanding issues with brackets refer to: import and export of mercury for use in ASGM; a related provision on imports in the annex; and financial and technical assistance. NIGERIA urged further discussion on whether criteria should be developed to determine when ASGM was “more than insignificant,” noting that the obligation to produce NAPs on ASGM depended on this determination. Delegates referred CRP.10 to the LDG for final refinement.

Information Exchange, Public Information Awareness and Education: Contact group Co-Chair Daniel Ziegerer introduced CRP.9 on Section J, Articles 18-19, noting brackets remain on whether information on the health and safety of humans and the environment could be regarded as confidential according to the national laws of each country. He explained outstanding issues depend on the resolution of related sections on: trade; products and processes; research, development and monitoring; and health aspects. The Committee agreed to forward CRP.9 to the LDG.

Research, Development and Monitoring: Participants addressed this topic (Article 20), agreeing to forward it to the contact group on Section J. The EU said provisions for research and monitoring should build on existing programmes. IPEN stressed that monitoring should address all populations at risk

and consider diets and contaminated sites. WHO suggested avoiding duplication of monitoring methodologies. After the contact group’s lunchtime meeting, Co-Chair Alejandro Rivera reported that the group had reached agreement on all provisions, except for a reference to information on commerce and trade in mercury and mercury-added products that remains bracketed pending resolution of other sections.

Emissions and Releases: INC3 contact group Co-Chair John Roberts (UK) introduced a paper prepared intersessionally on this item with two possible approaches to addressing Articles 10-11 (UNEP(DTIE)/Hg/INC.4/5): “Approach A” would commit parties to taking particular measures to control and/or reduce emissions but allow flexibility to reflect national circumstances, and “Approach B” would commit parties to creating national plans for reducing and controlling releases of mercury. The EU noted its proposal to enact the ideas in the Co-Chairs’ paper, with best available techniques (BAT) as a main element (CRP.4). INDIA said its submission prepared jointly with China (CRP.11), emphasizes the importance of flexibility and common but differentiated responsibilities, and noted that coal-based electricity generation is crucial for development.

The AFRICAN GROUP supported Approach A, said these articles should not be barriers to economic growth and development, and called for new financial resources and technical support for implementation.

Japan, on behalf of the ASIA-PACIFIC GROUP, said many countries in the region prefer Approach A, and called for consideration of elements not included in the Co-Chairs’ paper, including Annex F on “[unintentional] atmospheric emissions.”

JAPAN and SWITZERLAND emphasized focusing on major releases to water and land, while the US said all parties should be required to reduce emissions from all sources. The US added that a flexible approach relies on the use of BAT for new sources and thus does not require closure of existing plants.

IRAQ emphasized the need for assistance to developing countries for implementation of BAT and, supported by SAUDI ARABIA and VENEZUELA, called for exclusion of the oil and gas sectors from control measures.

CANADA called for robust articles outlining actions to reduce atmospheric emissions and stressed the need for a baseline against which to measure reductions. NEW ZEALAND called for flexible, binding commitments for all parties. NORWAY recognized parties’ need for electricity and said BAT is an important means of achieving substantial emissions reductions.

GRULAC highlighted their proposal to combine both articles into one dealing with emissions and releases in an integral manner (CRP.12).

WHO called for a solution that delivers health benefits. IPEN said releases to all media should be addressed. ZERO MERCURY WORKING GROUP said transfers from one media to another must be controlled, and thresholds, if included, need to be developed. The INUIT CIRCUMPOLAR COUNCIL highlighted that Arctic populations are exposed to mercury from global emissions, fish, and, as a result of climate change, releases of mercury from thawing permafrost.

A contact group, co-chaired by John Roberts (UK) and Juan Miguel Cuna (the Philippines), was established. In the afternoon, Co-Chair Roberts reported that the group had discussed common issues that do not depend on the choice of approach, and was unable to agree on whether oil and gas should be included in the list of sources for atmospheric emissions. He explained that the Co-Chairs had drafted a text to serve as the basis of further discussions (CRP.17) in the contact group, which continued to meet in the evening.

Compliance and Implementation: The Secretariat presented two options on Article 17, namely, "Option 1" establishing an implementation or compliance committee, and "Option 2" establishing one or more committees to deal with compliance in control measures, as well as financial and technical support obligations.

Supporting Option 1, the EU said equal weight should be given to a compliance committee and a financial mechanism in the text of the convention. JAPAN said the compliance committee should be established promptly, and SWITZERLAND and the US said it should focus on implementation.

Supporting Option 2, CHINA emphasized that the context of a compliance mechanism will determine its effectiveness and, with INDIA, BRAZIL and CUBA, underscored the link between compliance and commitments on financial and technical assistance and technology transfer. ARGENTINA also said it may be premature to discuss compliance before obligations and required financial resources are agreed upon.

CANADA called on delegates to consider the underlying reasons for the establishment of a compliance mechanism. GRULAC, COLOMBIA and CHINA emphasized the need for a facilitative, non-punitive, and non-confrontational approach. Many countries called for discussions on the mechanism to take into account lessons learned from other MEAs, particularly in the chemicals and wastes cluster.

Chair Lugris established a contact group on compliance and implementation co-chaired by Tuomas Kuokkanen (Finland) and Jimena Nieto (Colombia).

Financial Resources and Mechanism, and Technical Assistance: Intersessional Co-Chairs Adel Shafei Osman and Johanna Peitz reported on intersessional work and introduced their proposal for a conceptual approach and possible text for Articles 15-16 (UNEP(DTIE)/Hg/INC.4/4). Delegates agreed to use this text as a basis for discussion.

IRAN introduced a proposal, submitted with several other countries, calling for establishment of a technology transfer mechanism under the convention (CRP.13). GRULAC introduced a proposal (CRP.14) that, *inter alia*, calls for a stand-alone financial mechanism. The AFRICAN GROUP, CHINA, JAMAICA, THE PHILIPPINES, JORDAN and ZERO MERCURY WORKING GROUP also supported a dedicated fund.

JAPAN opposed a stand-alone mechanism, and the US, the EU and NORWAY favored using GEF. JAPAN added that all member states should contribute to the fund, while JAMAICA and NEPAL underscored that SIDS and LDCs would not be in a position to contribute. The US stressed the need to include voluntary contributions from all parties, and, with JORDAN and the ASIA PACIFIC GROUP, highlighted the importance

of mobilizing private sector contributions. The ASIA PACIFIC GROUP also called for resources to be accessible before entry into force.

The US and SWITZERLAND opposed making implementation of obligations conditional upon availability of funding.

ALGERIA called for capacity-building assistance and technology transfer for mercury-producing developing countries to offset the costs of implementation. ZERO MERCURY WORKING GROUP and IPEN urged private sector involvement, citing the polluter pays and extended producer responsibility principles.

A contact group, co-chaired by Felipe Ferreira (Brazil) and Johanna Peitz (Sweden) was established to discuss Articles 15-16, using the Co-Chairs' document as a basis for deliberations (UNEP(DTIE)/Hg/INC.4/4).

Partnerships: The Secretariat introduced article 16bis that provides for the establishment of partnerships by parties, COP guidance, and a partnership framework. This issue was referred to the contact group on finance.

CONTACT GROUPS

STORAGE, WASTES AND CONTAMINATED SITES:

The contact group reconvened in the evening and discussed guidelines, guidance and requirements for the environmentally sound management (ESM) of mercury wastes, and an EU proposal on specific requirements for storage sites and ESM of elemental mercury and mercury compounds that are wastes. Delegates agreed to delete references to "guidance" and retain "guidelines developed under the Basel Convention."

Some delegates objected to the inclusion of text referencing "requirements," saying that these may cause countries without storage sites to be in non-compliance. Others suggested that binding requirements would spur parties to take tangible steps to address mercury storage, and pushed for inclusion of an annex describing specific requirements for action. In the evening, delegates continued discussing outstanding issues on wastes and storage.

Emissions and Releases: The contact group on Section G met during lunch and reconvened in the evening to exchange general views on the Co-Chairs' text presented in Plenary.

Financial Resources and Technical Assistance: The group began consideration of technical assistance and proposed the inclusion of additional elements to the text, including on synergies with other conventions, guidelines for the diversity and specificity of technical assistance related to mercury, and the importance of technology transfer. The group also began consideration of financial resources.

IN THE CORRIDORS

As delegates dug into their second day of work, many commented that the "gentle pressure" exerted by Chair Lugris is paying off as delegates work cooperatively and purposefully to move through INC4's agenda. A few participants cautioned that contact group discussions on seemingly uncontroversial issues were taking considerable time. One delegate noted, "We have seen progress in the group on contaminated sites, but we keep going in circles on storage and wastes." Another emphasized that strong commitment to cooperation will be required to reach compromise on "thornier" issues, such as finance and emissions. Most, however, said it is unrealistic to expect agreement on the most challenging issues before the final round of negotiations at INC5. They expressed both satisfaction with the amount of work completed so early in the meeting and optimism about the days ahead, pointing to several sections of draft text that have already been submitted to the legal group as evidence of progress.

MERCURY INC4 HIGHLIGHTS: FRIDAY, 29 JUNE 2012

The Fourth Session of the Intergovernmental Negotiating Committee to Prepare a Global Legally-binding Instrument on Mercury (INC4) met in Plenary in the morning to hear reports from contact groups, and to discuss how to regulate mercury in products and processes. Contact groups met throughout the day and into the night on compliance matters, emissions and releases, products and processes, financial resources and technical assistance, and Section J (Awareness raising, research and monitoring, and communication of information). A “Swiss break” was also held in the evening to allow for delegates to interact informally and seek solutions to outstanding issues.

PLENARY

PREPARATION OF A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY:

Emissions and releases: Contact group Co-Chair Cuna reported that the group considered a non-paper integrating various submissions on the issue, but since several parties requested the inclusion of other key issues, a revised non-paper would be available for consideration by the contact group in the afternoon.

Storage, wastes and contaminated sites: Contact group Co-Chair Daniel reported that the outstanding issue in discussions of both storage and wastes was on the necessity of guidance or requirements for action to be taken. She requested delegates to meet informally to try to resolve this issue, contained in a non-paper, and said that if no resolution is reached, the issue should be taken up at INC5. She noted that the group “for the moment” agreed to use the Basel Convention’s definitions of wastes. Expressing hope that this matter would be an “early harvest” for the Committee, Chair Lugris called on members of the contact group to meet informally to seek a solution.

Financial resources and technical assistance: Contact group Co-Chair Ferreira reported that: the group had gone through a preliminary discussion on technical assistance, many delegates had requested a separate article on technology transfer, and the group would meet again in the afternoon.

Products and processes: JAPAN introduced its joint submission with Jamaica and the Russian Federation (CRP.1), which summarizes intersessional work and combines “positive list” and “negative list” approaches to dealing with products and processes. The INC agreed to base discussions on this submission, and also consider the document on transitional arrangements presented by the Secretariat (UNEP(DTIE)/Hg/INC.4/6).

SWITZERLAND introduced its submission with Norway (CRP.15), and together with the AFRICAN GROUP, IPEN, and SAFEMINDS supported a “negative list” approach, whereby mercury use in specific products and processes would be allowed under a general ban.

The US and CANADA said a “positive list” approach that targets only the major mercury uses is more effective. The ASIA-PACIFIC GROUP said many countries in the region prefer the positive-list approach, with a grace period, called for clarification of the definition of “new” products, and supported the phasing-out of mercury in chlor-alkali production.

The AFRICAN GROUP presented its submission on products and processes (CRP.3) and emphasized, *inter alia*, the need to ensure mercury-added products are not exported to Africa. The WORLD ALLIANCE ON MERCURY-FREE DENTISTRY supported the African Group’s proposal and highlighted the importance of alternatives, consumer education and protecting children.

The EU said the instrument should not include exemptions, and, with the PHILIPPINES, said any allowable use exemptions should be restricted in number and time and subject to a robust review and control mechanism.

JAPAN strongly supported a general ban on mercury in industrial processes, while CHINA stressed the need for flexibility and awareness of China’s realities. He warned that while other countries are on a fast train to leaving behind mercury products and processes, China is still “on an ox-driven cart.” He highlighted China’s aim to halve mercury in vinyl chloride monomer (VCM) production, and with Sri Lanka, said control measures should exclude ingredients used in traditional medicines.

The REPUBLIC OF KOREA supported a “hybrid approach” based on a positive list and said transitional arrangements would help prevent non-compliance.

GRULAC and NEW ZEALAND called for a gradual phase-out as alternatives are developed and made available, with NEW ZEALAND calling for a practicable, workable import and export regime that is not burdensome and is adaptable to national approaches. JAMAICA called for a comprehensive regime applicable to all parties, but highlighted the need to clearly define the scope of products addressed and include a review mechanism to keep up with changes in products and processes.

Several developing countries emphasized the need for special consideration for countries with lower capacity to adopt mercury-free processes.

WHO presented the organization’s views on the use of mercury in dental amalgam and thimerosal in vaccines, and with the INTERNATIONAL PEDIATRIC ASSOCIATION, noted

that alternatives to multiviral vaccines entail higher costs and refrigeration, and are not viable alternatives for many developing countries. Stating that thimerosal is a “sinking ship” and calling access to “non-toxic vaccines” a human right, the COALITION FOR MERCURY-FREE DRUGS called on the INC to take action to ensure that the most vulnerable are not exposed to mercury poisoning. The WORLD DENTAL FEDERATION and the INTERNATIONAL FEDERATION FOR DENTAL RESEARCH supported the reduction of dental amalgam use, provided that individual country circumstances are taken into consideration.

ZERO MERCURY WORKING GROUP called for a ban on products and processes containing mercury. The EUROPEAN LAMP COMPANIES FEDERATION noted that it is possible to limit mercury content in mainstream lamps. SAFEMINDS called for a ban on mercury use in the health sector, particularly in the pharmaceutical and dental industries, and supported a phase-down approach. The INC established a contact group on products and processes and exemptions, co-chaired by Barry Reville (Australia) and David Kapindula (Zambia).

Section J: The INC agreed to send a paper on awareness-raising, research and monitoring, and communication of information (CRP.18) to the LDG. On effectiveness evaluation (Article 23), GUATEMALA, the EU and CANADA expressed support for the provisions contained in Article 23. The EU supported adoption of evaluation criteria and indicators, and called for the INC to take lessons from other MEAs on effectiveness evaluation, citing the Stockholm Convention as a good example. CANADA stressed that research and development are inputs to effectiveness evaluation and should not be viewed as substitutes for action. She also called for synergies between the Stockholm Convention and a future mercury convention. This issue was referred to the contact group on Section J.

CONTACT GROUPS

COMPLIANCE AND IMPLEMENTATION: The contact group began deliberations with a general discussion of the relationship between implementation and compliance, and of the characteristics, objective and purpose of an implementation/compliance mechanism, drawing on lessons learned from other MEAs. There was broad support for a facilitative approach, and for establishing a mechanism in the treaty text. Participants discussed whether provisions on triggers, composition, decision-making and measures were best elaborated in treaty text, in terms of reference, or in rules of procedure. Views diverged on whether it was premature to engage in these discussions prior to finalizing obligations under the treaty. In the evening, Co-Chair Nieto introduced a “non non-paper” that set out issues of convergence as “building blocks” and of divergence as “bullets.” Co-Chair Kuokkanen led participants through an exercise where delegates discussed those elements and the group then moved to identify the elements that could be included in the treaty text by consensus. Negotiations continued into the night.

PRODUCTS AND PROCESSES AND EXEMPTIONS: The products and processes contact group convened in the afternoon and reviewed CRP.1, heard presentations about the operation of the negative list approach, and discussed the experiences of some countries with negative and positive listing approaches. In the evening, the group reconvened to begin work on the convention text and architecture and continued discussions into the night.

SECTION J: The contact group discussed the information that would be considered within a periodic effectiveness evaluation of the treaty, discussing whether financial information and information on compliance and implementation would be considered in the evaluation.

EMISSIONS AND RELEASES: The contact group met to discuss a non-paper compiling the various country submissions on emissions and releases (Non-Paper 3). Participants considered, *inter alia*: whether parties should “reduce” or “control” atmospheric emissions; whether the development of inventories should be mandatory and, if so, subject to financial and technical assistance; whether best available techniques (BAT) should be mandatory for new air emissions sources above a certain threshold, or if some flexibility should be allowed; and whether atmospheric emissions should be dealt with in conjunction with, or separate from, releases to land and water.

FINANCIAL RESOURCES AND TECHNICAL ASSISTANCE: Contact group Co-Chair Ferreira introduced the non-paper, which addresses technical assistance and partnerships, reminding delegates of requests to create a stand-alone paragraph on technology transfer. Some delegates expressed their preference for addressing technology transfer under the broader theme of technical assistance, referring to similar practices under other MEAs. One delegation expressed its reservations about addressing technology transfer at all.

Delegates cleared text recognizing the provision of timely and appropriate technical assistance, but were unable to agree on whether this was “the condition for,” or “is essential to,” the success of the convention.

Discussing the obligation of parties to cooperate on capacity building, and technical assistance, delegates were unable to agree on whether the obligation applied to all parties, or just to developed countries. Views also diverged on whether technology transfer should be “promoted” or “provided,” with some stressing that the provision of technology transfer would raise intellectual property concerns, as the patents to these technologies are usually held by private entities and not governments.

On the means of providing technical assistance, the group discussed the scale of provision through arrangements or delivery mechanisms at the regional, subregional and national level, as well as cooperation and coordination with other MEAs in the field of chemicals and wastes.

IN THE CORRIDORS

Participants continued working in high gear on Thursday, shifting their work from plenary to a myriad of contact group discussions, including standing-room only sessions on emissions and products and processes. Spirits were boosted in an innovative “Swiss Break” – two hours dedicated to tango, food and conversation. Chair Lugris instructed all participants to set aside formal meetings and enjoy themselves during this time, and the reception proved to be a fertile ground for more relaxed discussions on difficult issues.

Many remarked on how hard participants are working, expressing satisfaction with progress thus far. However, China’s comment in plenary about the difference between those countries advancing towards mercury control in “high-speed trains” while others are riding in “ox-driven carts” provides an interesting image of challenges ahead: delegates in groups addressing information and effectiveness evaluation steadily advance in cleaning up text, while those discussing finance and emissions are still trying to identify common ground to ne the scope of this treaty, and some in the compliance group are tugging the reins in an effort to wait for progress in finance. Some delegates emphasized that the work of INC4 will be “end-loaded” and will require sustained energy over the remaining days.

MERCURY INC4 HIGHLIGHTS: SATURDAY, 30 JUNE 2012

INC4 met in Plenary to hear reports from contact groups, and to discuss: how to regulate trade and supply of mercury products; final provisions of the treaty; institutional arrangements; health aspects; and national implementation plans. Contact groups met throughout the day and into the night seeking common ground on the most complex issues. A “Swiss Break” was also held in the evening.

PLENARY

PRODUCTS AND PROCESSES: Contact group Co-Chair Reville said the group: discussed the structure of relevant annexes, specifically whether to use a negative, positive or hybrid list approach; and started to review operative articles. The INC asked the contact group to continue its work.

IMPLEMENTATION AND COMPLIANCE: Contact group Co-Chair Nieto reported the group had drawn up a list of issues of agreement and disagreement, and the INC asked the contact group to reconvene to consider new text based on that list.

EMISSIONS AND RELEASES: Contact group Co-Chair Roberts reported that the group worked through the non-paper reflecting text from various CRPs, discussing the aim of Section G and the role of inventories. He said definitions of BAT/BEP will be crucial to reaching agreement, and greater clarity is needed about the sources that will be set out in Annex F (Air emissions) and potentially Annex G (Releases to land and water). The INC asked the group to continue its work.

LEGAL GROUP: Co-Chair Susan Biniac (US) informed plenary that they had concluded consideration of the agreed text in Articles 9 (ASGM), 14 (Contaminated sites), and 18-20 of Section J (Awareness-raising, research and monitoring, and communication of information) (CRP.20). She noted the need to define the scope of words like “processing” and “use and consumption,” as well as to determine timing of reporting obligations.

SUPPLY AND TRADE: The Secretariat presented text on Sections C (Supply) and D (International trade in mercury [and mercury compounds]). The US highlighted its submission (CRP.2), emphasizing that major sources of mercury should be removed from circulation where possible. The EU reiterated the need for strong provisions on primary mining and all significant sources, as reflected in its submission (CRP.7).

SWITZERLAND, the PHILIPPINES, the AFRICAN GROUP and AUSTRALIA supported phasing out primary mining. The AFRICAN GROUP called for measures to create alternative employment, and financial and technical assistance for parties with mercury stocks.

NORWAY and JAPAN said primary mercury mining should be prohibited. NORWAY said supply of mercury from several other sources should be phased out, and that a PIC procedure could be a possible solution for trade, while JAPAN called for maintaining controlled supply for specific purposes, and clear definitions of mercury and mercury compounds.

CHILE cautioned against using an MEA to ban mining, and, as an alternative, proposed restrictions on mercury resulting from primary mining. She urged introduction of a reference to “mercury” mining, noting other types of mining may produce trace mercury with negligible environmental and health impacts. CHINA called for flexibility regarding new and existing mines, stressing the need to ensure mercury supply for existing products and VCM production. IRAQ said the article should allow: extraction of mercury from other sources without limitations; and a clear mechanism for prior notification in trade.

Regarding trade, the PHILIPPINES, supported by IPEN and opposed by CHINA, called for trade licensing systems, with publicly available records maintained by the Secretariat. CANADA said it did not support a PIC procedure, but preferred the approach used under the Stockholm Convention. AUSTRALIA and CANADA urged consistency between the new instrument and WTO rules. IPEN stressed the need to consider illegal trade. The INC agreed to establish a contact group on the issue chaired by Karel Blaha (Czech Republic) and Abdullah Al-Rasheed (Saudi Arabia).

INSTITUTIONAL ARRANGEMENTS: On the functions of the COP, the Committee agreed to forward the text to the legal group with brackets on issues linked to ongoing negotiations. On the secretariat, SWITZERLAND, the EU and NORWAY supported, and the US, the AFRICAN GROUP, CANADA, AUSTRALIA, and MEXICO opposed, a reference to building on the enhanced cooperation and coordination between the Basel, Rotterdam and Stockholm conventions’ secretariats.

FURTHER DEVELOPMENT OF THE CONVENTION: On amendments to the convention, the INC agreed that thresholds for entry into force be based on the number of parties at the time at which an amendment was adopted, forwarding the text, with brackets on voting procedures, to the legal group.

FINAL PROVISIONS: Ratification: Chair Luginer noted brackets on a provision that requires parties to identify the legislation or other measures that permit them to implement their obligations upon ratification. COLOMBIA, AUSTRALIA and JAPAN supported deleting this paragraph and KENYA, CHILE and IRAN added that ratification often precedes the internal legislative processes to fully implement a treaty. The US called for retaining the paragraph, and CANADA and the EU said it requires further work. The paragraph will be further addressed during INC5.

Entry Into Force: Chair Lugris noted that in Article 32 text on the number of ratifications required for entry into force remains bracketed. JAPAN preferred postponing discussion of this article pending resolution on control measures. SWITZERLAND noted that the Basel Convention entered into force after the deposit of 20 instruments, and expressed a preference for 30 instruments for a mercury convention. AUSTRALIA, based on “past experience” supported a threshold of 50 instruments. The EU opposed, and MEXICO and the AFRICAN GROUP supported, inclusion of a paragraph stating legal obligations for developing countries are conditional upon establishment of a stand-alone multilateral fund. The text was forwarded to the legal group with these brackets remaining.

Reservations: Presenting Article 33, UNEP Legal Officer Masa Nagai noted that the current text includes two options, one allowing and one prohibiting reservations to the convention. NORWAY, COLOMBIA, the EU and SWITZERLAND opposed allowing reservations. The US, CUBA and MEXICO recommended, and INC agreed, to postpone this discussion to INC5.

Withdrawal: Chair Lugris noted brackets in Article 34(1) refer to the number of years after entry into force that a party may withdraw from the convention. The EU supported allowing withdrawals after three years, while the US supported a one-year withdrawal period. The text was forwarded to the legal group.

SECTION J: In the morning, contact group Co-Chair Riviera presented the report on discussions on Article 23 (Effectiveness evaluation), noting there is disagreement among delegates regarding the final form of reporting obligations (Article 22) and the relationship of these with the convention’s effectiveness evaluation.

In the afternoon, GRULAC presented a proposal on Article 20bis (Health aspects) (CRP.19), under which parties shall, *inter alia*, implement programmes on the prevention of occupational exposure and facilitate and assure proper access to health care to populations affected by mercury exposure. The AFRICAN GROUP and several countries and NGOs supported the proposal. IPEN urged referring to “vulnerable populations” and, with the INTERNATIONAL INDIAN TREATY COUNCIL and others, called for specific references to indigenous peoples.

NEW ZEALAND, MOLDOVA, the US and the EU said a stand-alone article on health aspects was not needed and preferred addressing health aspects in various sections of the convention. CANADA stressed that the convention should not be a substitute for the responsibility of national governments on human health, and with SWITZERLAND, underlined that the proposal exceeds the scope of the convention. JAPAN said overlap exists between this proposal and other articles, and with the work of WHO. WHO said any of its member states can request the type of assistance described in the GRULAC proposal.

On Article 21 (Implementation plans), the US emphasized the need to put in place national implementation plans (NIPs) prior to ratification. The EU and CANADA noted NIPs should be discretionary. MEXICO, CHILE, and others, said NIPs are key to diagnosing the state of mercury use in a country and defining actions to address hazards, while NEW ZEALAND highlighted national action plans (NAPs) are already in the text of the convention. ARGENTINA, BRAZIL, the AFRICAN GROUP, CHILE and IPEN highlighted the need for financial support for developing NIPs.

Chair Lugris opened discussions on Article 22 (Reporting), noting its dependence on progress on other issues.

Delegates decided to forward articles 20bis, 21 and 22 to the contact group on Section J.

FINANCIAL RESOURCES AND TECHNICAL

ASSISTANCE: Contact group Co-Chair Ferreira reported on progress discussing Article 16 (Technical assistance) in the morning, and Co-Chair Peitz reported on Article 15 (Financial resources and mechanisms) in the afternoon, noting the group had incorporated new proposals into a document and will need to continue work to finalize the first reading.

CONTACT GROUPS

FINANCIAL RESOURCES AND TECHNICAL

ASSISTANCE: The contact group discussed Article 15 on financial resources and mechanisms, and considered: whether or not to finance the “full” incremental costs of implementation; priorities for funding; and whether the financial mechanism should be a stand-alone mechanism, “an existing mechanism,” or the GEF. One developing country stressed the need for the INC to establish a timetable for the allocation of funds, and another called for text describing funding arrangements for the interim period. In the afternoon, the contact group met to finalize a first consideration of the text, with one developing country proposing that all parties contribute to the fund, and another urging the inclusion of reference to “the entity or entities operating the mechanism” in a paragraph concerning the leveraging of finances.

SUPPLY AND TRADE: The contact group used CRP.7 as a basis for discussion. A few participants expressed concern at the difficulty of implementing primary mining bans in some developing countries and delegates discussed whether and how to provide flexibility to these countries. Regarding a requirement to dispose of mercury and mercury compounds released as by-products in specific activities, some countries favored deleting the whole section, while others opposed listing of “non-ferrous mining and smelting operations,” stressing it could affect some recycling activities. One participant urged retention of the paragraph, noting the activities listed are significant sources of mercury and parties should work to prevent an over-supply to achieve the convention’s objectives.

PRODUCTS AND PROCESSES: The contact group met in the afternoon, identified major issues relating to both products and processes, and reconvened in the evening to begin revision of text.

IMPLEMENTATION AND COMPLIANCE: The contact group met to consider a non paper developed by the Co-Chairs based on the group’s identification of consensus elements for treaty text. Views diverged on, *inter alia*, whether the treaty should establish a mechanism and a committee, or a mechanism consisting of a committee and whether the mechanism should promote compliance or also facilitate implementation.

EMISSIONS AND RELEASES: Delegates considered three non-papers prepared by technical sub-groups on: BAT, atmospheric mercury emissions source categories (Annex F), and sources of releases to water and land (Annex E).

IN THE CORRIDORS

In contrast to the rapid pace set early in the week as delegates harvested “low-hanging fruit,” the fourth day of INC4 delivered a lower yield. Disappointment over the lack of progress in the finance contact group spilled over to other areas, including to the contact group on compliance, where participants started to “plant” brackets in a text intended to reflect areas of consensus.

Yet, seasoned delegates recalled where the text stood at this stage in the negotiations of the Stockholm Convention and reasoned that most difficult issues, like compliance and finance, require these back and forth exercises to mature, and at the current pace are still likely to be ripe for harvest by INC5.

MERCURY INC4 HIGHLIGHTS: SUNDAY, 1 JULY 2012

INC4 met briefly in Plenary in the morning and afternoon to hear reports from contact groups. Contact groups met throughout the day and into the night seeking common ground on the most complex issues, namely, financial resources and technical assistance, supply and trade, implementation and compliance, products and processes, emissions and releases, storage and wastes, and Section J. The legal group met as well to consider text forwarded by Plenary.

PLENARY

FINANCIAL RESOURCES AND TECHNICAL ASSISTANCE: Contact group Co-Chair Peitz reported that the group had concluded a first reading of the text of Article 15 (Financial resources and mechanisms), and requested additional time to finalize a first reading of Article 16 (Technical assistance), Article 16bis (Partnerships) and the proposed new article on technology transfer.

SUPPLY AND TRADE: In the morning, Co-Chair Blaha said the group based its discussion on CRP.7 and focused on mercury supply sources, with views differing on, *inter alia*, how to categorize and tackle primary mining and other major sources. He said more time was needed to deal with trade and other linked issues, such as ASGM, storage and wastes, and products and processes. IRAQ urged the group to consider CRP.21, which outlines Iraq's concerns on trade and supply. The committee agreed the contact group would continue its deliberations.

IMPLEMENTATION AND COMPLIANCE: Contact group Co-Chair Kuokkanen indicated the contact group's progress was summarized in a non-paper drafted by the Co-Chairs. The group was asked to reconvene in the afternoon to clear text and finalize its work.

PRODUCTS AND PROCESSES: Contact group Co-Chair Reville reported that the group met Saturday afternoon to review all documentation related to Articles 6 and 7 in order to understand key issues, and in the evening began working to produce a clean text. He described the process as "fairly frustrating," but said the group would try to strike a balance between clearing as much text as possible and resolving issues.

EMISSIONS AND RELEASES: In the morning, contact group Co-Chair Roberts reported the group had discussed the potential list of emissions and releases sources, and a BAT definition text on which agreement was close. Outstanding issues included: the scope of the article(s) on emissions and releases, with one regional group calling for a joint approach to emissions and releases; and possible inclusion of references to financial

assistance, technology transfer and capacity building. He said the group had identified the need for possible intersessional technical work to define thresholds for identified sources, and for guidance on BAT between the diplomatic conference and entry into force of the treaty. In the afternoon, Co-Chair Cuna drew attention to CRP.22, developed by an informal group, which provides a definition on BAT that addresses emissions and releases of mercury to air, water and land holistically. He said the text contains three remaining brackets. The INC forwarded the CRP to the legal group for review of non-bracketed text.

LEGAL GROUP: Contact group Co-Chair Susan Biniaz presented CRP.22 consolidating the review of paragraphs analyzed by the group, noting Article 27 (Amendments to the convention) presents several options that are essentially a political decision, but also highlighting the drafting should be clear to prevent the problems faced by the Basel Convention with unclear majorities for the adoption of amendments. The INC adopted the proposed paragraphs (CRP.22), which will be appended to the INC4 report.

GENERAL COMMENTS: MEXICO underscored the need for a balanced treaty, stressing that the direction that negotiations are taking, focusing on emissions, is not incorporating the views of a large group of countries which may not find justification to ratify the final treaty.

STORAGE WASTES AND CONTAMINATED SITES: INC Chair Lugris said informal consultations had been held on this issue and the INC agreed the group would continue its deliberations.

SECTION J: Contact group Co-Chair Ziegerer reported the group had discussed the article on effectiveness evaluation, holding discussions on conceptual issues, including methodologies to use and means to implement the evaluations, and would continue discussions to produce revised text.

CONTACT GROUPS

FINANCIAL RESOURCES AND TECHNICAL ASSISTANCE: Co-Chair Ferreira led the group in discussing two proposals under Article 16 (Technical assistance): partnerships, and technology transfer. On partnerships, many delegates felt that the language could be reflected in text on technical assistance, as opposed to a separate article. Delegates agreed to this suggestion and added language noting the importance of partnerships, including with the private sector, for implementation. On technology transfer, the group considered the creation of a technology transfer mechanism. Several developing countries preferred having the proposal included as a separate article, stressing that this was a precedent that had been set in other conventions. Differing, a number of developed

countries underlined the common practice of treating technology transfer under technical assistance. The contact group also considered alternative language to this, which would call on the COP to consider the technological challenges faced by developing countries. No agreement was reached on this issue. The group agreed to prepare the non-papers on Articles 15 and 16 as conference room papers, which will form the basis of work on this issue at INC5.

STORAGE, WASTES AND CONTAMINATED SITES:

Participants discussed whether to incorporate the definition of wastes from the guidelines developed under the Basel Convention, noting these had been adopted in the intersessional period since INC3, and some called for additional clarity regarding elemental mercury, mercury-containing substances and mercury-contaminated objects within the definition of wastes. A CRP reflecting these options will be presented to plenary on Monday morning.

IMPLEMENTATION AND COMPLIANCE: The contact group met in the afternoon to complete its work. Delegates continued their consideration of a non-paper reflecting areas of agreement in their earlier discussions. The group then addressed a list of elements that might be included, but on which no agreement had been reached, including: the nature of the mechanism, membership and qualifications of the committee, triggers, procedures, decision-making, facilitation of implementation, meetings, and secretariat support. Participants debated whether to negotiate on the basis of text proposed by one delegate to reflect some of those elements.

The group agreed to forward to INC5 two options for Article 17: the first includes a paragraph, still containing brackets, that would establish, in the treaty text, a mechanism, including a committee as a subsidiary body to the conference of the parties (COP), and task the first COP meeting with developing its terms of reference; the second includes a similar paragraph establishing a mechanism and subsidiary committee, and also includes a paragraph that, unless otherwise decided by the COP, provides elements of the committee's membership, triggers, and procedures. Several sections of the text include footnotes noting that they have not been negotiated by the group.

SUPPLY AND TRADE: In the contact group discussions, views differed on, *inter alia*, whether a PIC procedure should apply to control trade; how to deal with trade with non-parties; and the extent to which trade with non-parties should be allowed. Many participants said that trade with non-parties should be exceptional and strictly controlled, while a few others stressed they could not support a general principle banning trade with non-parties even if exceptions to that principle are established. Several participants stressed that the treaty provisions must be consistent with party obligations under WTO law.

In the afternoon, delegates discussed whether ASGM may be included within the "allowable use" exemptions, and moved through the text streamlining options on the disposal of mercury upon the treaty's entry into force, the identification of industrial sources of mercury supply, and the reporting on mercury imports and exports to the secretariat. A CRP reflecting these options will be presented to Plenary on Monday.

EMISSIONS AND RELEASES: Co-Chair Roberts presented a non-paper that summarized discussions and included areas of consensus, to be refined by the Co-Chairs for consideration at INC5. Many expressed concern about references in the document to areas of consensus, agreeing to refer to areas of "convergence" and to clarify that the text does not represent negotiated text. Regarding text requesting parties to "control or reduce" emissions and releases as the treaty's "ambition," some countries expressed concern about using the word "shall," and called for

inclusion of a reference to national implementation plans (NIPs) as the main vehicle through which control measures would be implemented.

On BAT, a few countries expressed concern about references to requirements to implement BAT in new installations to reduce air mercury emissions, and text was introduced clarifying there are two approaches, namely, a "direct" approach with obligations to implement BAT, and an "indirect" approach to determine actions through NIPs. One country stressed that if a more flexible approach is used, references should be made to environmental benefits as a key outcome of NIPs.

PRODUCTS AND PROCESSES: The contact group convened in the afternoon to review and clean Article 7 text on processes, including issues associated with: restriction of use; measures for facilities; VCM; new facilities; and information exchange. On new facilities, one country suggested that countries without existing facilities using manufacturing processes listed in Annex D upon entry into force of the convention be prohibited from building such facilities. The contact group reconvened in the evening to finish its review of Article 7 text and Annex D on processes, and then returned to its review of Article 6 on products. On Article 7, Chair Reville noted that the group had not cleared any paragraphs of square brackets entirely, but pointed out that many issues could not be resolved without first considering other articles.

SECTION J: On effectiveness evaluation (Article 23), the group discussed the timing of the evaluation, and the type of information on the basis of which to conduct it. The group considered text that provides for the COP to adopt criteria and a methodology for the evaluation, and discussed the role of monitoring data.

On reporting (Article 22), delegates debated a reference to the COP recognizing, when deciding on modalities for reporting, that the ability of developing countries and countries with economies in transition to implement the provisions on reporting be dependent on the availability of capacity building and adequate financial and technical assistance. The contact group continued its work into the night.

IN THE CORRIDORS

On the penultimate day of INC4, the lack of a common view on what could be the treaty's scope had delegates asking whether the draft, as it stands, contains a wide-enough range to justify a global treaty. In Plenary, Mexico reflected ironically on the inconvenience of a limited scope, proposing that the convention title be changed to: "atmospheric controls on emissions from certain countries that affect certain other countries."

Yet, as a multitude of contact groups sought to finish their work and set up a successful INC5, even the final of the UEFA Euro 2012 football championship was not enough to distract delegates from their sustained work. Regional groups were seen deep in consultations throughout the venue, evaluating progress along different streams of the negotiations, and making sure to retain enough "bargaining chips" for the final stage of negotiations at INC5.

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of the mercury INC4 will be available on Thursday, 5 July 2012 online at: <http://www.iisd.ca/mercury/inc4/>

SUMMARY OF THE FOURTH MEETING OF THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY: 27 JUNE - 2 JULY 2012

The fourth session of the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury (INC4) met from Wednesday, 27 June, to Monday, 2 July, in Punta del Este, Uruguay, to continue to negotiate the text of a treaty to regulate mercury use at a global scale. The session was attended by over 500 participants, including government representatives, and representatives of inter-governmental organizations, non-governmental organizations (NGOs), and medical and industry organizations. During the six-day negotiation, delegates discussed a draft text reflecting work at INC3, the result of work during the intersessional period, and several proposals by countries.

INC4 was the fourth of five meetings that are scheduled to convene prior to the 27th session of the UN Environment Programme's Governing Council/Global Ministerial Environment Forum (UNEP GC/GMEF) in February 2013, where the negotiations are expected to conclude in time for adoption of the treaty at a Diplomatic Conference to be held in Minamata, Japan, in October 2013.

INC4 fulfilled many delegates' expectations expressed on arrival in Punta del Este. Clear progress was made swiftly on some issues like storage, wastes and contaminated sites, and narrowing options on other issues, such as articles related to information and reporting. Yet on the most crucial issues, compliance, finance and control measures for products and processes, divergent views prevailed, with discussions focusing on laying out the range of positions. Delegates met non-stop during the six-day meeting in both plenary sessions and contact groups. A full reading of the text, and division of work into several contact groups addressing key sections of the treaty, allowed delegates to advance towards a "cleaner" version of a convention text on some issues, leaving brackets around topics that require political resolution for consideration at the next, and last, session of the INC in January 2013.

A BRIEF HISTORY OF THE GLOBAL ISSUE OF MERCURY

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

Since 2001, the UNEP GC/GMEF has regularly discussed the need to protect human health and the environment from releases of mercury and its compounds.

24TH SESSION OF THE UNEP GOVERNING COUNCIL/GMEF: In February 2007, GC-24/GMEF discussed the issue of mercury. Participants' preferences for international cooperation on mercury ranged from starting a negotiating process for a legally binding instrument to incorporating

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mercury into existing agreements, to concentrating on voluntary actions, especially through partnerships. Delegates agreed in Decision 24/3 IV that a “two-track” approach could be employed to take forward actions on mercury, while keeping open the path to a binding instrument in the future. The UNEP Executive Director was requested to prepare a report on mercury emissions and strengthen the UNEP mercury partnerships. An *ad hoc* open-ended working group (OEWG) of government and stakeholder representatives was established to review and assess options for enhanced voluntary measures and new or existing international legal instruments for addressing the global challenges posed by mercury.

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

FIRST MEETING OF THE OEWG ON MERCURY:

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

SECOND MEETING OF THE OEWG ON MERCURY:

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

25TH SESSION OF THE UNEP GOVERNING

COUNCIL/GMEF: UNEP GC25/GMEF took place from 16-20 February 2009 in Nairobi, Kenya. Decision GC 25/5 agreed to further international action on mercury through the elaboration of a legally binding instrument, which could include both binding and voluntary approaches, and interim activities, to reduce risks to human health and the environment. It also requested the Executive Director to convene one OEWG meeting in 2009, and an intergovernmental negotiating committee (INC) commencing

its deliberations in 2010 with the goal of completing its work by GC27/GMEF in 2013. Agreement could not be reached on “leaving the door open” to consider other heavy metals, but the decision does recognize that the mandate of the INC may be supplemented by future GC decisions.

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

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

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

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

INC4 REPORT

After a short cartoon on mercury for Uruguay’s one-laptop-per-child programme and a performance by a local children’s choir, INC Chair Fernando Lugris (Uruguay) opened the meeting on Wednesday emphasizing that mercury is a global problem warranting a global solution adapted to everyone’s reality. Monique Barbut, Chief Executive Officer (CEO) and Chairperson of the Global Environment Facility (GEF), detailed several GEF mercury projects, noted that the INC negotiations will conclude as the negotiations for the GEF’s 6th replenishment are underway, and called on the INC to consider conveying a message to the GEF on resources needed for a mercury convention. UNEP Executive Director Achim Steiner, speaking via video-message, called on negotiators to move beyond initial positions and “reach across the table.” Luis Almagro, Minister of Foreign Affairs, Uruguay, called on participants to take big strides toward the fifth and final session of the INC so as to establish a sound, dynamic regime to protect the environment and human health from mercury risks.

Participants then adopted the agenda and organization of work for the meeting (UNEP(DTIE)/Hg/INC.4/1 and 4/2).

Regional groups then addressed the meeting, with the Latin America and Caribbean Group (GRULAC) supporting a treaty that includes, *inter alia*: binding and voluntary approaches; a realistic approach so that control measures go hand in hand with means of implementation, including through viable alternatives to mercury use; and an appropriate financial mechanism to enable compliance by all developing countries. Together with China, GRULAC called for the inclusion of the principle of common but differentiated responsibilities, and, with the International POPs Elimination Network (IPEN) and the Zero Mercury Working Group, the polluter pays principle.

The European Union (EU) said it would present proposals on atmospheric emissions, storage and wastes, and compliance. The Asia-Pacific Group called for an instrument that is both effective and practical, and embraces both voluntary and mandatory approaches to reflect the different capacities of countries, in particular developing countries and small island developing states (SIDS). Jamaica, supported by Cuba, underscored the need to accommodate the needs of SIDS and least developed countries (LDCs) in different sections of the text.

The African Group, *inter alia*, supported retaining text on health aspects (Article 20bis), called for better international efforts to control exports of mercury-containing wastes to prevent Africa from becoming a “dumping ground,” and supported mandatory obligations for specific reduction targets.

The Eastern European Group welcomed the results of intersessional work and expressed hope that these would be taken as a basis for discussion at INC4.

The Arab Group said oil and gas cannot be considered significant sources of mercury emissions and called for discussion on this point to be finalized at INC4.

Country delegations and NGOs also highlighted main issues of concern. The US called for including air emissions from all sources within the scope of the treaty. IPEN called for addressing mercury releases in all media, not only the atmosphere, and for supporting safer alternatives to mercury-containing products. India called for a coherent yet flexible approach to the different mercury sources that balances the needs of job creation with health and environmental protection.

Mexico emphasized the need for clarity on means of implementation. China highlighted the significance of the financial mechanism to all developing countries, and Sri Lanka stressed the importance of sound technology transfer and appropriate financial assistance. China, Indonesia and Cuba called for an independent financial mechanism.

Stressing that trade in mercury-containing products had nearly tripled since the last INC, the Philippines called for trade control measures that make traders accountable and require them to include waste disposal in pricing structures. Nigeria called for promotion of mercury-free products and take-back schemes for mercury-containing products. Chile supported accessible and economically-viable best available techniques and best environmental practices (BAT/BEP), including for storage, as well as flexible control measures. Zero Mercury Working Group called for, *inter alia*, “ending toxic trade” in mercury and phasing out primary mercury mining.

Noting that Colombia is home to one of the most contaminated mercury sites in the world, Colombia urged, *inter alia*, adoption of a strong compliance mechanism, and banning trade with non-parties to encourage ratification.

On health-related issues, Mexico and Chile supported inclusion of explicit references to human health. The World Health Organization (WHO) drew attention to documents regarding regulatory perspectives on thimerosal in vaccines, a use that was debated in plenary, with views divided among organizations emphasizing the value of thimerosal-containing vaccines for key public health campaigns, particularly in countries without the capacity to refrigerate vaccines, versus others calling for recognition of the right of vulnerable populations to mercury-free vaccines. Regarding dental amalgam, the World Dental Federation warned that without a suitable alternative, a ban in the short term would have long term health implications. The International Association for Dental Research highlighted shortcomings of current alternatives. On the other side of the debate, the World Alliance for Mercury-free Dentistry highlighted the availability of amalgam alternatives, and the International Academy of Oral Medicine and Toxicology said amalgam alternatives present the same costs for end-users. The Association of International Dental Manufacturers, in turn, underscored its experience in the environmentally-sound life-cycle management of dental materials.

PREPARATION OF A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY

INC4 completed a full reading of the draft treaty provisions (UNEP(DTIE)/Hg/INC.4/3) in plenary and contact groups, detailed below in the order of the relevant treaty sections. The following summary describes the deliberations and summarizes each draft article as it stood at the conclusion of INC4.

SECTION A. PREAMBLE: On Wednesday, Chair Lugris proposed, and the INC agreed, to leave the preamble for discussion at INC5. The preamble is bracketed in its entirety and contains references to the principle of common but differentiated responsibilities, and to health and technology transfer.

SECTION B. INTRODUCTION: On Wednesday, Chair Lugris proposed, and the INC agreed, to leave this section for discussion at INC5. He said contact groups would address definitions related to their work but Article 2 (Definitions) would be discussed at INC5.

Article 1. Objective: This draft article (UNEP(DTIE)/Hg/INC.4/3) contains two options, one calling to protect human health and the environment from anthropogenic mercury releases, with a bracketed reference to minimizing, and where feasible, ultimately eliminating global anthropogenic mercury releases to air, water and land. The other option proposes preventing adverse effects on human health and the environment as a result of mercury exposure, by facilitating information dissemination of risk reduction strategies, through financial and technical cooperation.

Article 1bis. Relationship with other international agreements: This draft article (UNEP(DTIE)/Hg/INC.4/3) is in brackets and refers to mutual supportiveness among the mercury convention and other related conventions.

Article 2. Definitions: This draft article (UNEP(DTIE)/Hg/INC.4/3) addresses the main technical terms in the convention and contains brackets around the definitions of: best available techniques (BAT); best environmental practices (BEP); environmentally-sound storage of mercury, mercury compounds and mercury-added products; and contains two options on the definition of allowable use to parties under the convention.

SECTION C. SUPPLY: This section was addressed in conjunction with Section D (International trade), discussed below.

SECTION D. INTERNATIONAL TRADE IN MERCURY [AND MERCURY COMPOUNDS]: The sections on mercury supply and international trade were introduced in plenary on Saturday and taken up in a contact group co-chaired by Karel Blaha (Czech Republic) and Abdullah Al-Rasheed (Saudi Arabia). The group met on Saturday and Sunday, and based its deliberations on an EU conference room paper (CRP) with draft legal text for supply and trade.

The Secretariat presented Sections C and D in the draft convention text (UNEP(DTIE)/Hg/INC.4/3), noting it contained different options for Articles 3 (Mercury supply sources), 4 and 5 (International trade), and Annexes A (Sources of mercury supply) and B (Mercury and mercury compounds subject to international trade measures). The EU drew attention to its proposal on supply and trade (UNEP(DTIE)/Hg/INC.4/CRP.7), which merged Articles 3, 4 and 5 into a single article, deleted Annexes A and B, and, *inter alia*, requested that each party “shall not allow” primary mercury mining. It also presents a new Article 4 on national inventories of mercury stocks.

The US outlined its own proposal, which contained simplified text, including a prohibition on primary mining.

During discussions, the African Group, Switzerland, the Philippines, Norway, Japan and Australia supported phasing out primary mining. The US supported the elimination of existing and new primary mining, and supported identification of other sources to ensure their environmentally-sound management and disposal, while adopting a flexible approach to ensure parties can access mercury for allowed uses. The African Group called for measures to create alternative employment, and financial and technical assistance for parties with mercury stocks. Chile cautioned against using an MEA to ban mining and instead proposed adoption of restrictions on mercury resulting from primary mining. China called for flexibility regarding mining, in particular for existing mines, stressing the need to ensure mercury supply for allowed products and processes such as vinyl chloride monomer (VCM) production. In the contact group discussions, a few delegates expressed concern over the difficulty of implementing primary mining bans in some developing countries, and considered providing flexibility to these countries.

Regarding other major mercury sources, Norway said supply should be phased out, while Japan called for maintaining controlled supply for specific purposes, and for clear definitions of mercury and mercury compounds. Norway and Iraq supported a PIC procedure to control international trade in mercury and mercury compounds, while Canada did not, stating he preferred the “less burdensome” approach used under the Stockholm Convention. The Philippines, supported by IPEN but opposed by China, called for trade licensing systems for brokers and other actors, with publicly available records maintained by the future convention secretariat. IPEN urged consideration of illegal trade.

Regarding a requirement to dispose of mercury and mercury compounds released as by-products in specific activities, some countries favored deleting the entire section, while others opposed listing of “non-ferrous mining and smelting operations,” stressing this could affect some recycling activities. One participant urged retention of the paragraph, noting the activities

listed are significant sources of mercury and that parties should work to prevent an over-supply to achieve the convention’s objectives.

Regarding trade with non-parties, many delegates supported a provision stating that such trade should be prohibited in principle, and strictly controlled under the treaty. A few others said they could not support a general principle banning trade with non-parties. Australia, Canada and others said the treaty must be consistent with party obligations under WTO law.

The group also considered the trade-related aspects of artisanal and small-scale gold mining (ASGM) and discussed three options on trade in mercury for use in ASGM contained in the text prepared by the ASGM contact group. The discussion focused on whether mercury trade for use in ASGM should be allowed and, if so, under what conditions. One regional group highlighted the difficulty of controlling mercury supply in ASGM and, with another regional group, supported a ban on mercury for ASGM unless conducted in accordance with an allowable use exemption for the party in question. The group left the bracketed text as presented by the ASGM group (see ASGM outcome under Section F, Article 9, below).

On Monday in plenary, the Committee considered a conference room paper produced by the contact group Co-Chairs summarizing the group’s discussions. Co-Chair Blaha said the report contained simplified text on Articles 3, 4 and 5, and deleted Annexes A and B. He said brackets remained in nearly every paragraph, stressing this was expected because it was the first time the Committee had discussed the text. The INC decided this revised text will replace Sections C and D in the draft text, and be attached to the INC4 final report for further discussion at INC5.

Article 3. Supply: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.28) is bracketed entirely and contains, *inter alia*:

- options for definitions of “mercury” and “mercury compounds;”
- options for control measures on primary mining, including a requirement to prohibit primary mercury mining, or to “adopt measures to regulate” primary mercury mining with a view to prohibiting the production of elemental mercury, or to prohibit the export, sale or distribution of mercury or mercury compounds from primary mercury mining “[except for allowable uses];”
- a requirement to identify major sources of mercury supply and ensure all mercury from those sources is disposed of in an environmentally-sound manner or, if intended to be used or exported for an allowed use, stored in an environmentally-sound manner.

The text also contains alternative options to control trade between parties and with non-parties, including through a PIC procedure.

Article 4. National inventories of mercury stocks: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.28) was not discussed by the group and is also bracketed entirely, and provides that a party with individual stocks of mercury, mercury compounds or stabilized mercury exceeding 50 metric tons at one or more sites on its territory shall establish a national inventory for the purposes of recording and monitoring these stocks. The inventories would have to be presented upon the entry into force of the convention, with the first inventory to include information

on, *inter alia*, the location and total amount (expressed in metric tons) of stocks. Inventories would be updated regularly and made available to the public.

Article 5. This article was merged with Article 3 (see above).

SECTION E. PRODUCTS AND PROCESSES: Section E was introduced in plenary on Friday, and a contact group co-chaired by Barry Reville (Australia) and David Kapindula (Zambia) was established to address Articles 6 (Mercury-added products), 7 (Manufacturing processes in which mercury is used), 8 (Allowable-use exemptions and acceptable use), and 8bis (Special situation of developing countries). The contact group met throughout the week, concentrating on Articles 6 and 7, based on a submission by Japan, Jamaica and the Russian Federation, which summarized intersessional work between INC3 and INC4 and combines “positive list” and “negative list” approaches (UNEP(DTIE)/Hg/INC.4/CRP.1), and to also consider the document on possible transitional arrangements presented by the Secretariat (UNEP(DTIE)/Hg/INC.4/6).

In general comments on the approach in this section, Jamaica called for a comprehensive regime applicable to all parties, but highlighted the need to clearly define the scope of products addressed and to include a review mechanism to keep up with changes in products and processes. GRULAC and New Zealand called for a gradual phase-out of mercury-added products as alternatives are developed and made available. New Zealand emphasized the need for a practicable, workable import/export regime that is not burdensome and is adaptable to national approaches. China stressed the need for flexibility and awareness of its realities, warning that while other countries are on a “high-speed train” to leaving behind mercury products and processes, China is still “on an ox-driven cart.” He highlighted China’s aim to halve mercury in VCM production and, with Sri Lanka, said control measures should exclude ingredients used in traditional medicines. Several developing countries emphasized the need for special consideration for countries with less capacity to adopt mercury-free processes. Zero Mercury Working Group called for a ban on products with and processes using mercury. The African Group presented a submission on products and processes and, supported by the World Alliance for Mercury-Free Dentistry, emphasized the need to ensure that mercury-added products are not exported to Africa.

A key issue in discussions centered was whether to include products and processes subject to control measures in a “positive list” addressing only major mercury uses, or a “negative” list that would impose a general ban on mercury use in products and processes, while possibly allowing specific uses.

Switzerland introduced its joint submission with Norway resulting from an intersessional meeting held in Tokyo in April 2012, and, together with the African Group, IPEN and SafeMinds, supported a “negative list” approach, which would implement a general ban on mercury use in products and processes, but would allow specific uses. The US and Canada supported a “positive list” approach targeting only major mercury uses. The Asia-Pacific Group said many countries in the region prefer the positive list approach with a grace period, called for clarification of the definition of “new” products, and supported phasing out mercury in chlor-alkali production. The Republic of Korea supported a “hybrid approach” based on a positive list, and said transitional arrangements would help

prevent non-compliance. Japan strongly supported a general ban on mercury in industrial processes.

The EU said the mercury instrument should not include exemptions and, with the Philippines, said any allowable-use exemptions should be restricted in number and time, and subject to a robust review and control mechanism.

Delegates also discussed the use of mercury for specific products. The WHO shared its views on the use of mercury in dental amalgam and thimerosal in vaccines and, with the International Pediatric Association, noted that alternatives to multi-viral vaccines require refrigeration and are more expensive, and thus are not viable for many developing countries. Calling thimerosal a “sinking ship” and access to “non-toxic vaccines” a human right, the Coalition for Mercury-Free Drugs called on the INC to take action to prevent exposure of vulnerable populations to mercury poisoning.

The World Dental Federation and the International Association for Dental Research supported the reduction of dental amalgam use, provided that individual country circumstances are taken into consideration. SafeMinds called for a ban on mercury use in the health sector, particularly in the pharmaceutical and dental industries, and supported a phase-down approach. The European Lamp Companies Federation said it is possible to limit mercury in “mainstream” lamps.

On the final day of INC4, contact group Co-Chair Reville noted the group had not had time to address Articles 8 or 8bis and suggested the Secretariat condense and simplify the relevant documentation intersessionally to facilitate work at INC5. Co-Chair Reville noted that the “biggest challenge” for the group was the significant number of unresolved policy issues at the start of INC4, which required extensive discussion before progress could be made in removing brackets from the text. He noted that a number of policy challenges remain, but said a spirit of compromise had enabled the group to concentrate on one approach to listing products.

On Article 7, Co-Chair Reville noted the group had not reached consensus on which processes should be included in Annex D or the appropriate level of specificity within categories, citing as an example the amount of mercury in catalysts.

On Monday, the revised text for Section E, including Articles 6 and 7 and Annexes C and D (UNEP(DTIE)/Hg/INC.4/CRP.31) was presented to plenary and the INC agreed to append it to the meeting report.

Article 6. Mercury-added products: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.31) is heavily bracketed and contains a chapeau indicating the INC will draft text on the notions of global accessibility, affordability and technical feasibility, and taking into account country-specific needs. The draft article includes sections on restriction of production, import and export; assembled products; new products; listing of products in Annex C (Products subject to Article 6 paragraph 1); reporting; further efforts by parties; exclusions; and dental amalgam. Annex C also remains bracketed, pending further discussion of an approach to listing products.

Article 7. Manufacturing processes in which mercury or mercury compounds are used: This draft (UNEP(DTIE)/Hg/INC.4/CRP.31) is bracketed throughout and is organized with sections on: restriction of use; measures for facilities; VCM; new facilities; information exchange; review of Annex D (Manufacturing processes in which mercury or mercury

compounds are used); and clarification of definitions. Within Annex D, brackets remain on the manufacturing processes not allowed under Article 7, the possibility of allowable-use exemptions, and phase-out dates.

Article 8. Allowable-use exemptions [and acceptable use]: This draft article (UNEP(DTIE)/Hg/INC.4/3) was not considered by INC4 and includes two options, one of which provides a process by which parties may register for “allowable-use” exemptions, and the other which provides for “essential-use exemptions” designed to allow reasonable times for adoption of alternatives to mercury use.

Article 8bis. Special situation of developing countries: This draft article (UNEP(DTIE)/Hg/INC.4/3) was not considered by INC4 and includes bracketed text giving any developing country party entitlement to delay compliance with control measures for ten years.

SECTION F. ARTISANAL AND SMALL-SCALE GOLD MINING (ASGM): On Wednesday, Chair Lugris introduced Section F (Artisanal and small-scale gold mining) and the INC re-established the contact group from INC3 to finalize the draft text, co-chaired by Donald Hannah (New Zealand) and Felipe Ferreira (Brazil). The contact group met on Wednesday and Thursday, producing a revised Article 9 (ASGM) and Annex E (ASGM), which were presented to plenary on Thursday and sent to the legal group for refinement.

During discussions in the contact group, delegates analyzed the text of Article 9 and discussed elements to be included in national action plans (NAPs) on ASGM (Annex E), starting with sections in the annex where agreement would be easier to reach. Among other things, participants agreed that ASGM NAPs shall include strategies to prevent mercury exposure by vulnerable populations, including children and women of child-bearing age, especially pregnant women. They also agreed that parties shall take steps to reduce and where feasible, eliminate mercury use in ASGM. In plenary, Nigeria urged further discussion on whether criteria should be developed to determine when ASGM was “more than insignificant,” noting that the obligation to produce NAPs on ASGM depend on this determination.

On Saturday, the legal group presented text on Article 9 and Annex E. Co-Chair Susan Biniac (US) noted the need to define the scope of words like “processing” and “use and consumption,” as well as to determine timing of reporting obligations. The INC agreed to append the revised text to the final report of the Conference.

Article 9. Artisanal and small scale gold mining: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.20) identifies the measures that parties shall apply to reduce and, where feasible, eliminate the use of mercury and mercury compounds for ASGM and processing in which mercury amalgamation is used to extract gold from ore. Those parties where ASGM is “more than insignificant” will need to develop and implement NAPs and inform on progress on their implementation.

The article has three options, all of them in brackets, regarding international trade in mercury for use in ASGM. The first prohibits trade in mercury for use in ASGM, with internal bracketed text classifying ASGM as an allowable-use exemption that would enable such trade as an exception. The second allows such trade if actions are being taken to eliminate whole ore amalgamation and other practices in ASGM. The third bans trade with parties that have voluntarily imposed a ban for mercury

used in ASGM. A paragraph conditioning the implementation of measures under this article and Annex E to provisions on financial resources and technical and implementation assistance is also bracketed.

Annex E. Elements to be included in national action plans (NAPs) on ASGM: Annex E on NAPs for ASGM (UNEP(DTIE)/Hg/INC.4/CRP.20) establishes activities to be included in NAPs, including: national objectives and reduction targets; a public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury; and, strategies to prevent exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in ASGM. A bracket remains regarding whether strategies for managing or preventing the diversion of mercury and mercury compounds for use in ASGM and processing also apply to the import of such mercury.

SECTION G. EMISSIONS AND RELEASES: The issue of mercury air emissions and mercury releases to land and water was introduced in plenary on Thursday, and taken up in a contact group co-chaired by John Roberts (UK) and Juan Miguel Cuna (Philippines). The group met from Thursday through Sunday and considered two options, the first with separate Articles 10 ([Unintentional] atmospheric emissions) and 11 (Releases to water and land); and the second with a consolidated Article 11alt (Unintentional emissions and releases) and Annex F ([unintentional] atmospheric emissions).

On Thursday, INC3 contact group Co-Chair Roberts introduced a paper produced intersessionally with two possible approaches to addressing emissions and mercury releases (UNEP(DTIE)/Hg/INC.4/5). He said “Approach A” would commit parties to taking particular measures to control and/or reduce emissions, while allowing flexibility to reflect national circumstances, and “Approach B” would commit parties to developing nationally determined measures to control and/or reduce emissions.

The EU outlined its proposal to enact the ideas in the Co-Chairs’ paper, which adopted BAT as a main element and proposed new draft text for Article 10 and Annex F. India emphasized its joint submission with China on Article 10, which embraced Approach B and emphasized flexibility and common but differentiated responsibilities. He stressed coal-based electricity generation is crucial for development. The African Group supported Approach A, and called for new financial resources and technical support for implementation of control measures. The Asia-Pacific Group said many countries in the region preferred Approach A, and called for consideration of elements not included in the Co-Chairs’ paper, including Annex F on “[unintentional] atmospheric emissions.” GRULAC introduced a submission combining both articles into one in order to tackle air emissions and releases to land and water in a holistic manner.

On mercury emissions and BAT, the US said the use of BAT for new sources reflects a flexible approach, and does not require closure of existing coal plants. Norway recognized parties’ need for electricity and stated that BAT is an important means of achieving substantial emissions reductions. Canada supported robust articles outlining actions to reduce atmospheric emissions, and stressed the need for a baseline against which to measure reductions. Iraq emphasized the need for assistance to developing

countries for implementation of BAT and, with Saudi Arabia and Venezuela, called for exclusion of the oil and gas sector as a source of mercury emissions to be regulated under the treaty.

On mercury releases, Japan and Switzerland urged focusing on major releases to water and land, while the US said all parties should be required to reduce air emissions from all sources. IPEN said emissions and releases to all media should be addressed. Zero Mercury Working Group said transfers from one medium to another must be controlled, and thresholds, if included, need to be developed. The Inuit Circumpolar Council highlighted that Arctic populations are exposed to mercury from global emissions and fish, and urged delegates to adopt strong control measures to reduce mercury emissions and releases.

In the contact group, discussions focused on whether: parties should “reduce” or “control” atmospheric emissions; the development of inventories should be mandatory and, if so, subject to financial and technical assistance; BAT should be mandatory for new air emissions sources above a certain threshold, or if some flexibility should be allowed; and atmospheric emissions should be addressed in conjunction with, or separately from, releases to land and water. The group identified the need to define BAT to facilitate agreement, and to provide greater clarity about the sources that will be set out in Annex F ([unintentional] atmospheric emissions) and potentially Annex G (Source of mercury releases to land and water).

Small technical sub-groups agreed to produce draft text on these issues, and presented three non-papers to the group, on: BAT, Annex F and Annex G. The group reached agreement on a definition for BAT, except for a few outstanding issues, and identified information gaps on sources of mercury releases to land and water.

Regarding control measures, some countries expressed concern that parties should be requested to “control or reduce” emissions and releases as the treaty’s “ambition.” On BAT, a few countries expressed concern about references to requirements to implement BAT in new installations to reduce air mercury emissions, and text was introduced clarifying there are two approaches, namely, a “direct” approach with obligations to implement BAT, and an “indirect” approach to determine actions through national implementation plans (NIPs). One country stressed that if a more flexible approach is used, references should be made to environmental benefits as a key outcome of NIPs. Participants also discussed possible inclusion of references to financial assistance, technology transfer and capacity building.

On Sunday in plenary, Co-Chair Cuna drew attention to a proposal with a definition for BAT, which he said addressed emissions and releases of mercury to air, water and land holistically, and contained three remaining brackets. The INC forwarded the document to the legal group for review of non-bracketed text. In Monday’s plenary, the Committee considered: a proposal produced by the contact group Co-Chairs summarizing the discussions of the group on emissions and releases, and a proposal with a definition for BAT, as reviewed by the legal group.

Chile, with Mexico and Argentina, requested clarification in the Co-Chairs’ summary of GRULAC’s position that new and existing air emissions sources must be dealt with differently, and that each non-ferrous source identified in Annex A (Emissions) be listed individually. The INC decided that these proposals, as amended by Chile, will be attached to the INC4 report for further

discussion at INC5. Algeria urged inclusion in the proposal of a provision on compensation for parties with mercury stocks that renounce exploitation of their resources, contained in the draft convention text (UNEP(DTIE)/Hg/INC.4/3). Chair Lugris said Algeria’s comment will be included in the INC4 report.

On Monday in plenary, Co-Chair Roberts said the contact group also identified the need for information on thresholds for sources, and on sources of emissions and releases, in preparation for INC5. At the Co-Chair’s suggestion, the Committee requested the Secretariat to send an invitation to governments and other parties to provide, in the intersessional period, information on: criteria for, and/or experiences with, setting thresholds for sources of mercury air emissions; and technical information and sources of emissions and releases to facilitate the work of INC5. The Secretariat indicated invitations will be sent requesting submission of the referenced information by 31 August 2012.

Definition of BAT: The definition of BAT (UNEP(DTIE)/Hg/INC.4/CRP.27), which contains a number of brackets, states that BAT means those techniques that most effectively “prevent” or “reduce” and, where that is not practicable, “reduce” or “control” emissions and releases of mercury to air, water and land and the impact of such emissions and releases on the environment as a whole, taking into account economic and technical considerations for a given party or a given facility within the territory of that party. The text also defines the terms “best,” “available” and “techniques.” Once agreed by the INC, the definition of BAT will be included in Article 2 (Definitions).

Articles 10 and 11. Emissions and releases: The Co-Chairs report on this issue (UNEP(DTIE)/Hg/INC.4/CRP.29) is meant to facilitate further negotiation at INC5 and provides a summary of INC4 discussions on emissions and releases. It contains sections on:

- provisions that could cover both emissions and releases;
- control measures for emissions to the atmosphere;
- control measures for releases to land and water;
- further provisions covering both emissions and releases, namely inventories, reporting, financial resources, transfer of technology, and technical assistance;
- a compilation of proposals submitted by countries on convention text for emissions and releases, including direct approaches and NIP-based approaches;
- a list of definitions that may be required, including for BAT; and
- a list of possible intersessional work to facilitate agreement at INC5.

The document includes joint text for emissions and releases in areas where provisions are likely to be common and separate text for control measures and other provisions where provisions may differ, without prejudice to any future INC decision on whether to have joint or separate articles in the instrument.

SECTION H. STORAGE, WASTES AND CONTAMINATED SITES: This section was discussed in plenary on Wednesday, and in a contact group chaired by Anne Daniel (Canada), and Adel Shafei Osman (Egypt), on Wednesday, Thursday and Sunday. The contact group based its discussions on the draft convention text (UNEP(DTIE)/Hg/INC.4/3).

On Article 12 (Environmentally sound [interim] storage of mercury, other than waste mercury), the EU presented a proposal suggesting specific areas for which parties could

agree on requirements for the environmentally-sound storage of mercury-containing wastes. The African Group called for the inclusion of mandatory inventory and site characterization requirements and for awareness-raising for local communities. On definitions, Chile suggested that definitions be included in a separate article at the beginning of the treaty, while Japan and Australia underscored the need for consistency with the Basel Convention. Switzerland called for the contact group to define storage. On text referencing “guidance” or “requirements” for the environmentally-sound storage of non-waste mercury, one developing country group objected to the adoption of “requirements,” saying that these may cause countries without storage sites to be in non-compliance. Others suggested that binding requirements would spur parties to take tangible steps to address mercury storage, and pushed for inclusion of an annex describing specific requirements for action.

The US, with the African Group, said the guidance on commodity mercury is still an outstanding issue and noted the importance of regional cooperation on storage. The Philippines called on the INC to address non-party transfers of mercury. IPEN, with the Zero Mercury Working Group, supported including the polluter pays principle.

On Article 13 (Mercury wastes), delegates were unable to reach consensus on definitional matters, but agreed to: take into account the guidelines developed under the Basel Convention, and use the definitions of wastes from these guidelines, which had been adopted during the intersessional period since INC3.

On Article 14 (Contaminated sites), Iraq called for special attention to be paid to this issue, with IPEN calling on the INC to create an inventory of contaminated sites. Delegates debated whether or not the Conference of the Parties (COP) will develop and/or adopt guidance on principles of contaminated site management. Some countries preferred that the COP adopt defined guidelines, with others preferring open-ended guidelines.

The work of the contact group was forwarded to the legal group, who presented the final text on Section H to plenary on Monday. Chair Lugris proposed, and the INC agreed, to annex the draft articles to the meeting report.

Article 12. Environmentally sound interim storage of mercury, other than waste mercury: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.32) sets out the definitional scope of mercury waste and contains language on the measures to be taken by parties in the storage of non-waste mercury and non-waste mercury compounds intended for allowable use under the convention. It provides for parties to cooperate, as appropriate, with each other and with relevant intergovernmental organizations and other entities, to enhance capacity building for the environmentally-sound storage of non-waste mercury and non-waste mercury compounds. Text referring to the adoption of guidance or requirements on the environmentally-sound storage of such mercury and mercury compounds remains bracketed.

Article 13. Mercury wastes: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.32) contains bracketed text on whether definitions under the Basel Convention apply. It also contains language on the responsibility of parties in the environmentally sound management of mercury wastes, taking into account the guidelines developed under the Basel Convention, and bracketed text that may be adopted by the COP referring to requirements related to waste facility location, design and operation, and adequate treatment before final disposal.

Article 14. Contaminated sites: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.20) calls on: parties to endeavor to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds; and the COP to adopt guidance on managing contaminated sites, including approaches on, *inter alia*, site identification and characterization; engaging the public; and human health and environmental risk assessments. On language encouraging parties to cooperate in developing strategies and implementing activities for identifying, assessing, prioritizing, managing and, as appropriate, remediating contaminated sites, brackets remain on text referring to these activities, including the provision of capacity building, and financial and technical assistance.

SECTION I. FINANCIAL RESOURCES AND TECHNICAL AND IMPLEMENTATION ASSISTANCE: Section I was introduced in plenary on Thursday and divided into two streams of work, one on financial resources and technical assistance, and another on implementation and compliance.

Financial resources and technical assistance: This item was introduced in plenary on Thursday, and then considered in a contact group co-chaired by Felipe Ferreira (Brazil) and Johanna Peitz (Sweden) from Thursday to Sunday. The contact group based its discussions on Articles 15 (Financial resources and mechanisms), 16 (Technical assistance), and 16bis (Partnerships) of the draft revised text, and the proposal for a conceptual approach and possible text on financial resources and technical assistance (UNEP(DTIE)/Hg/INC.4/3 and 4). They also discussed a proposal by Iran calling for a separate article on technology transfer.

Intersessional Co-Chairs Adel Shafei Osman (Egypt), and Peitz reported to plenary on intersessional work on this topic and introduced their proposal for a conceptual approach and possible text for Articles 15-16 (UNEP(DTIE)/Hg/INC.4/4).

Following work in the contact group, a revised version of the articles (UNEP(DTIE)/Hg/INC.4/CRP.24) was presented to plenary containing agreed and bracketed text, as well a proposal for a separate article on technology transfer. In plenary on Monday, Chair Lugris proposed, and delegates agreed, to attach the articles prepared by the contact group to the meeting report.

On Article 15 (Financial resources and mechanisms), delegates discussed whether the financial mechanism should be stand-alone or rely on existing institutional arrangements. GRULAC introduced a proposal that called for a stand-alone financial mechanism. The African Group, China, Jamaica, the Philippines, Jordan and Zero Mercury Working Group also supported a dedicated fund. Japan opposed a stand-alone mechanism, and the US, the EU, Norway and some other developed countries favored using the GEF, while others preferred reference to “an existing mechanism.”

On contributions to a potential fund or mechanism, Japan and others said all member states should contribute to the fund, while Jamaica, Nepal, and others underscored that SIDS and LDCs would not be in a position to contribute. The US stressed the need to include voluntary contributions from all parties, and, with Jordan and the Asia-Pacific Group, highlighted the importance of mobilizing private sector contributions. One developing country stressed the need for the INC to establish a timetable for allocation of funds. The Asia-Pacific Group and the African Group also called for resources to be accessible before entry into force. The US and Switzerland opposed making

implementation of obligations conditional upon availability of funding. Zero Mercury Working Group and IPEN also urged private sector involvement, citing the polluter pays and extended producer responsibility principles.

On Article 16 (Technical assistance), Algeria called for capacity-building assistance and technology transfer for mercury-producing developing countries to offset the costs of implementation of control measures. In the contact group, discussing the obligation of parties to cooperate on capacity building and technical assistance, delegates were unable to agree whether the obligation applied to all parties or just developed countries. Views also diverged on whether technology transfer should be “promoted” or “provided,” with some stressing that the provision of technology transfer would raise intellectual property concerns, as the patents to these technologies are usually held by private entities and not governments. On the means of providing technical assistance, delegates discussed the scale of provision through arrangements or delivery mechanisms at the regional, sub-regional and national levels, as well as cooperation and coordination with other multilateral environmental agreements (MEAs) in the field of chemicals and wastes.

Article 16bis (partnerships) provides for the establishment of partnerships by parties, COP guidance on partnerships, and a partnership framework. In the contact group, many delegates noted that this article could be reflected in text on technical assistance, as opposed to a separate article. Delegates agreed to this suggestion and added language to Article 16 noting the importance of partnerships, including with the private sector, for treaty implementation.

On technology transfer, several developing countries supported Iran’s proposal for a separate article establishing a technology transfer mechanism under the convention, stressing that this was a precedent that had been set in other conventions. Differing, a number of developed countries underlined the common practice of treating technology transfer under technical assistance. The contact group also considered alternative language to the original proposal, which calls on the COP to consider the technological challenges faced by developing countries and to act urgently to promote technology transfer. One developed country expressed its reservations about addressing technology transfer at all. No agreement was reached on this issue and it remained bracketed. Delegates agreed to attach a report of the contact group’s discussions reflecting Articles 15 and 16 to the INC4 report for further discussion at INC5.

Article 15. Financial resources and mechanisms: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.24) contains heavily bracketed text on the form that a financial mechanism on mercury could take, as well as on the sources of financial resources, noting the importance of such resources for the implementation of legal obligations under the convention. The article also addresses: contributions to the financial mechanism, with bracketed text referencing the contribution of developing country parties; text on the function of the mechanism, with the provision of funds related to the “incremental costs of activities which enable compliance,” and “agreed costs for the implementation of some legal obligations.” It also contains options on the structure of the mechanism in relation to the convention, for example, that it: be accountable to and operate under the authority of the COP; include an independent fund; and/or be entrusted to the GEF or one or more existing entities.

Article 16. Technical assistance: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.24) contains brackets on whether all parties or only developed country parties should promote or provide technology transfer/technical assistance and capacity building to developing countries. Brackets also remain on the provision of technical assistance through regional, sub-regional and/or national level arrangements, and/or delivery mechanisms. The article also contains a bracketed reference to the importance of partnerships (former Article 16bis).

Article 16bis. Technology transfer: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.24) is bracketed in its entirety and contains a proposal on the creation of a mechanism under the convention for transfer of technology to developing countries, in order to enhance their implementation capacity. It also contains alternative language calling for the development of substitutes for mercury-related technologies, and identification of options and opportunities for parties to cooperate to promote technology transfer.

Implementation and compliance: This issue was discussed in plenary on Thursday, and in a contact group co-chaired by Tuomas Kuokkanen (Finland) and Jimena Nieto (Colombia) from Friday to Sunday. The contact group based its discussions on the draft convention text (UNEP(DTIE)/Hg/INC.4/3).

In plenary on Thursday, the Secretariat presented two options on Article 17, namely, “Option 1” establishing an implementation or compliance committee, and “Option 2” establishing one or more committees on financial assistance, technical support, capacity building and implementation. Supporting Option 1, the EU said equal weight should be given to a compliance committee and a financial mechanism in the text of the convention. Japan said the compliance committee should be established promptly, and Switzerland and the US said it should focus on implementation. Supporting Option 2, China emphasized that the context of a compliance mechanism will determine its effectiveness and, with India, Brazil and Cuba, underscored the link between compliance and commitments on financial and technical assistance and technology transfer. Argentina said it may be premature to discuss compliance before obligations and required financial resources are agreed upon. Canada called on delegates to consider the underlying reasons for the establishment of a compliance mechanism.

GRULAC, Colombia and China emphasized the need for a facilitative, non-punitive, and non-confrontational approach. Many countries called for discussions on the mechanism to take into account lessons learned from other MEAs, particularly in the chemicals and wastes cluster. Delegates discussed whether provisions on triggers, composition, decision-making and measures that might be taken were best elaborated in treaty text, in terms of reference, or in rules of procedure. Views diverged on whether it was premature to engage in these discussions prior to finalizing obligations under the treaty.

In the contact group, delegates were unable to agree on, *inter alia*, whether the treaty should establish a mechanism and a committee, or a mechanism consisting of a committee, and whether the mechanism should promote compliance or also facilitate implementation. Delegates also discussed a “non non-paper” that set out issues of convergence as “building blocks” and of divergence as “bullets,” striving to identify the elements that could be included in the treaty text by consensus. Building blocks included the establishment of an implementation/

compliance mechanism in the treaty text, and that it should be of a facilitative nature. They then addressed a list of elements that might be included, but on which no agreement was reached, including: the nature of the mechanism, membership and qualifications of the committee, triggers, procedures, decision-making, facilitation of implementation, meetings, and secretariat support. The contact group then worked on the basis of a Co-Chairs text to draft a new Article 17 based on their discussions.

In plenary on Monday, the INC agreed that the work of the contact group on compliance (UNEP(DTIE)/Hg/INC.4/CRP.26) would be annexed to the meeting report.

Article 17. Implementation/compliance: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.26) contains two bracketed options. The first includes heavily bracketed language establishing a mechanism, including a committee as a subsidiary body to the COP, and tasking the first COP meeting with adopting its terms of reference. The second includes a similar paragraph establishing a mechanism and subsidiary committee, as well as a bracketed paragraph that, unless otherwise decided by the COP, provides elements of the committee's membership, triggers, and procedures. Bracketed text also remains on the composition of the committee, and on the procedures for the adoption of the committee's recommendations. Several sections of the text include footnotes noting that they were not negotiated by the contact group.

SECTION J. AWARENESS-RAISING, RESEARCH AND MONITORING, AND COMMUNICATION OF INFORMATION: This section of the draft treaty text includes Articles 18 (Information exchange), 19 (Public information, awareness and education), 20 (Research, development and monitoring), 20bis (Health aspects), 21 (Implementation plans), 22 (Reporting) and 23 (Effectiveness evaluation) contained in the draft convention text (UNEP(DTIE)/Hg/INC.4/3). Plenary considered these issues throughout the week. A contact group on Section J, co-chaired by Alejandro Rivera (Mexico) and Daniel Ziegerer (Switzerland) was established on Wednesday and met throughout the session. The text of articles that were considered by the contact group was forwarded to the legal group for further refinement throughout the week. In plenary on Monday, delegates adopted a new version of Section J, resulting from the contact group's work, which will be appended to the final report of INC4.

Delegates addressed Articles 18 and 19 together. The EU, supported by IPEN and Zero Mercury Working Group, emphasized that information related to mercury-related health risks should never be confidential, and proposed incorporating text on cooperation with other chemicals-related agreements and the Strategic Approach to International Chemicals Management (SAICM). Japan favored retaining text on immediately sharing information on chemical health hazards with the international community, and the African Group highlighted a broad information-sharing approach, with Tanzania focusing on labeling requirements. Following discussions, the INC agreed to forward revised text on Articles 18 and 19 to the legal group. The legal group presented a revised text (UNEP(DTIE)/Hg/INC.4/CRP.20) to plenary, which INC agreed to attach to the report of the meeting.

On Article 20 (research, development and monitoring), the EU said provisions for research and monitoring should

build on existing programmes. IPEN stressed that monitoring should address all populations at risk and consider diets and contaminated sites. The WHO suggested avoiding duplication of monitoring methodologies. Following discussions, the INC agreed to forward revised text on Article 20 to the legal group. The legal group presented a revised text (UNEP(DTIE)/Hg/INC.4/CRP.18) to plenary, which the INC agreed to attach to the report of the meeting.

GRULAC presented a proposal on Article 20bis (health aspects) under which parties shall, *inter alia*, implement programmes on the prevention of occupational exposure and facilitate and assure proper access to health care to populations affected by mercury exposure. The African Group and several countries and NGOs supported the proposal. IPEN urged referring to "vulnerable populations" and, with the International Indian Treaty Council and others, also called for making specific reference to Indigenous Peoples.

New Zealand, Moldova, the US and the EU said a stand-alone article on health aspects was not needed and preferred addressing health aspects in various sections of the convention. Canada stressed that the convention should not be a substitute for the responsibility of national governments on human health and, with Switzerland, said that the proposal exceeds the scope of the convention. Japan said overlap exists between this proposal and other articles, and with the work of the WHO. The WHO said any of its member states can request the type of national-level assistance described in the GRULAC proposal.

In the contact group, delegates engaged in a general discussion on Article 20bis and views diverged on the necessity of a stand-alone article on health aspects. Some developed countries argued that health aspects are best addressed under other paragraphs, such as Annex E on ASGM, and proposed emphasizing in the preamble cooperation with the WHO and International Labor Organization (ILO). Many developing countries argued a stand-alone article on health aspects prioritizes the implementation of health provisions and would ensure a more comprehensive approach to the environmentally-sound management of mercury. Responding to concerns over sovereignty implications of such an article, they underscored the proposed text does not contain hard obligations but rather promotes dialogue.

The INC agreed to refer the bracketed text from the GRULAC proposal (UNEP(DTIE)/Hg/INC.4/CRP.19) for consideration at INC5, along with a note that explains the Committee has only held initial discussions on the issue and has not negotiated the text nor reached agreement on the inclusion of the text as a separate article. INC4 also supported holding informal intersessional consultations on this matter and agreed to ask the Secretariat to prepare a document, in cooperation with the WHO, to identify those provisions that appear in the new draft article that also appear in other parts of the draft treaty.

On Article 21 (implementation plans), the US emphasized the need to put in place implementation plans prior to ratification, while the EU and Canada noted NIPs should be discretionary. Mexico, Chile and others said NIPs are key to diagnosing the state of mercury use in a country and defining actions to address hazards, while New Zealand highlighted NAPs are already in the text of the convention. Argentina, Brazil, the African Group, Chile and IPEN also highlighted the need for financial support for developing NIPs.

In the contact group, Co-Chairs Rivera and Ziegerer led an exchange of views on the role of implementation plans under the convention. Several developing countries emphasized that the preparation of implementation plans is an essential exercise that sets priorities for implementation and can bring together key entities, including, for example, health and environment ministries and the private sector and civil society, and that NIPs are a key step in securing financial assistance and are also used by donors in setting priorities. Participants also discussed whether NIPs should be binding on all parties, and the timing of NIPs, notably the feasibility for developing countries of completing NIPs prior to ratification. The exchange also addressed the requirement for NAPs under specific articles and how these might relate to the NIP process.

The Co-Chairs introduced new text that retained the text from the two options listed under Article 21 in UNEP(DTIE)/Hg/INC.4/3 and clustered them according to common elements, namely: development of plans; declaring intentions; template and criteria for drafting, updating and reviewing of plans; transmission of implementation plans; consultation of national stakeholders; the role of the COP; and taking into account parties' social and economic conditions. Following discussions on this text compiled by the Co-Chairs, the group preferred forwarding to INC5 the original version of Article 21 in the draft convention text (UNEP(DTIE)/Hg/INC.4/3).

On Article 22 (reporting), delegates worked on the basis of a Co-Chairs' text that eliminated the two options for Article 22 in the draft convention text, and debated a reference to the COP recognizing, when deciding on modalities for reporting, that the ability of developing countries and countries with economies in transition to implement the provisions on reporting be dependent on the availability of capacity building and adequate financial and technical assistance. A revised text for Article 22 resulting from discussions, including several footnotes and brackets, was forwarded to the legal group for final refinement, and on Monday the INC agreed to append the text (UNEP(DTIE)/Hg/INC.4/CRP.33) to the report of the meeting for consideration at INC5.

In plenary, Guatemala, the EU and Canada expressed support for the provisions contained in Article 23 (effectiveness evaluation). The EU supported adoption of evaluation criteria and indicators, and called on the INC to take lessons from other MEAs on effectiveness evaluation, citing the Stockholm Convention as a good example. Canada stressed that research and development are inputs to effectiveness evaluation and should not be viewed as substitutes for action.

In contact group discussions on Articles 22 and 23, delegates discussed the information that would be considered in periodic effectiveness evaluations of the treaty. Participants disagreed on whether financial information and information on compliance and implementation would be considered in the evaluation. The group discussed conceptual issues, including methodologies to use and means to implement the evaluations, and the timing of the evaluation. The group also discussed the criteria and methodology for the evaluation, including the role of monitoring data, and developed text that, rather than develop arrangements for the effectiveness evaluation, provides for the COP to adopt criteria and a methodology for the evaluation, taking into account effectiveness evaluations under related MEAs.

A revised text for Articles 22 and 23 resulting from discussions, including several footnotes and brackets, was forwarded to the legal group for refinement, and on Monday the INC agreed to append the text (UNEP(DTIE)/Hg/INC.4/CRP.33) to the report of the meeting for consideration at INC5.

Article 18. Information exchange: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.20) provides for parties to facilitate the exchange of, *inter alia*:

- scientific, technical, economic and legal information concerning mercury and its compounds, including toxicological, ecotoxicological and safety information;
- information on the reduction or elimination of the production, use, emissions and release of mercury and mercury compounds;
- information on technically and economically viable alternatives to mercury-added products, manufacturing processes in which mercury is used and activities and processes that emit or release mercury or mercury compounds, including information on the health and environmental risks and economic and social costs and benefits of such alternatives; and
- in close cooperation with the WHO, epidemiological information concerning health impacts associated with exposure to mercury and mercury compounds.

Brackets remain on whether information on the health and safety of humans and the environment could be regarded as confidential according to the national laws of each country, and on paragraphs pertaining to related unresolved issues in other sections of the treaty, including trade, products and processes, research, development and monitoring and health aspects.

Article 19. Public information, awareness and education: The draft (UNEP(DTIE)/Hg/INC.4/CRP.20) provides for each party to promote and facilitate, *inter alia*, provision to the public of available information, health and environmental effects of mercury and alternatives to mercury; and to collect and disseminate information on estimates of the annual quantities of mercury and mercury compounds that are released or disposed of through human activities.

Brackets remain on sections of the text pending resolution of related sections on: trade; products and processes; research, development and monitoring; and health aspects, as well as on the designation of vulnerable populations/populations at risk in a reference to education, training and public awareness on effects of mercury exposure.

Article 20. Research, development and monitoring: The draft (UNEP(DTIE)/Hg/INC.4/CRP.20) states that parties should build on existing networks and cooperate on, *inter alia*: inventories of use, consumption and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds; modeling and geographically representative monitoring of mercury levels in vulnerable populations and environmental media; and information on the environmental cycle, transport and remobilization of mercury from historic deposition. A reference to information on commerce and trade remains bracketed pending resolution of other sections of the draft treaty.

Article 20bis. Health aspects: The draft (UNEP(DTIE)/Hg/INC.4/CRP.19) includes a note that the INC has not held initial discussions on the issue and has not negotiated the text, nor reached agreement on inclusion of the text as a separate

article. It provides for parties to, *inter alia*: establish and implement programmes to identify vulnerable populations and/or populations at risk from the exposure of mercury and its compounds; implement programmes, recommendations and guidelines on the prevention of occupational exposures; and facilitate and assure proper access to health care to populations affected by the exposure to mercury or its compounds. It also provides for the COP to assure the flow of scientific, technical and financing resources under the convention.

Article 21. National implementation plans: The draft (UNEP(DTIE)/Hg/INC.4/3) presents two options. Option 1 contains several bracketed components, including on the deadlines for submitting implementation plans to the COP, and whether:

- the COP shall develop a menu-based template for developing implementation plans;
- parties may or shall develop and execute a plan for meeting their obligations under the convention; and
- the COP shall review and evaluate implementation plans from developing country parties and endorse the provision of financial resources through the financial mechanism sufficient to fund activities set out in the plans.

Option 2 provides for parties to devise implementation plans no later than five years after entry into force and to consider updating their plans, taking into account the findings of studies and scientific and technical developments. Option 2 also calls for the COP to determine the criteria for drafting implementation plans and states that the measures detailed shall be implemented, taking into account parties' social and economic conditions, and compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity building in parties in accordance with their own assessments of their needs and priorities.

Article 22. Reporting: The draft (UNEP(DTIE)/Hg/INC.4/CRP.33) establishes that parties shall report to the COP on measures taken to implement the Convention. A reference providing for these reports to take into account the contents of implementation plans remains bracketed. The article also includes a bracketed placeholder that would list the articles that include reporting obligations and calls for the COP, at its first meeting, to decide on the timing and format of reporting, taking into account the desirability of coordinating with other relevant chemicals and wastes conventions. A reference recognizing that the ability of developing countries and countries with economies in transition to implement this provision is or may be dependent on the availability of capacity building and adequate financial and technical assistance, remains bracketed.

Article 23. Effectiveness evaluation: The draft (UNEP(DTIE)/Hg/INC.4/CRP.33) provides for the COP to evaluate the effectiveness of the convention on a periodic basis. Brackets remain relating to whether that evaluation should begin three, four or eight years after the convention's entry into force. The article also provides for the evaluation to be conducted on the basis of available scientific, environmental, technical and economic information. Brackets remain around a provision for it to also be conducted on the basis of financial information. It also lists some of the information to include, and brackets remain around a reference providing for that information to include

reports and other relevant information on the operation of the financial assistance, technology transfer and capacity-building arrangements put in place under the convention.

On the adoption by the COP of criteria and a methodology for this purpose, brackets remain relating to whether these should be adopted at the COP's first or second meeting and as to whether the criteria and methodology should include the gathering of monitoring data.

SECTION K. INSTITUTIONAL ARRANGEMENTS: On Saturday, Chair Lugris introduced Section K (Institutional arrangements), which includes draft articles on the COP (Article 24), the secretariat (Article 25) and expert bodies (Article 25bis). These articles were forwarded to the legal group with brackets around issues that are linked to other ongoing negotiations.

Regarding the Secretariat, Switzerland, the EU and Norway supported a reference to building on the enhanced cooperation and coordination between the Basel, Rotterdam and Stockholm Conventions' Secretariats. The US, the African Group, Canada, Australia and Mexico opposed, arguing it was superfluous.

The legal group presented to plenary on Sunday, a compilation of their suggested texts for Section K, which the INC agreed to append to the report of the meeting.

Article 24. Conference of the Parties: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) sets out the functions of the COP, with brackets remaining on references to NIPs, the implementation/compliance committee, and the review of exemptions included in the annexes to the convention.

Article 25. Secretariat: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) sets out the functions of the secretariat, with brackets remaining on the review of information received from national reports and the implementation/compliance committee, the number of parties to vote to entrust secretariat functions to an organization other than UNEP, as well as references to cooperation with other conventions in the chemicals and wastes cluster.

Article 25bis. Expert bodies: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) is bracketed and presents two options: the establishment of a committee on technological progress as a subsidiary body in the treaty text or a provision for the COP to decide on an appropriate body of experts for scientific, environmental, technical and economic issues.

SECTION L. SETTLEMENT OF DISPUTES: On Saturday, Chair Lugris noted there are no outstanding issues on this section, and forwarded the text directly to the legal group for refinement. The legal group presented to plenary on Sunday a compilation of their suggested texts for Section L, which the INC agreed to append to the report of the meeting.

Article 26. Settlement of disputes: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) establishes a procedure for the settlement of disputes among parties and includes an Annex J on arbitration and conciliation procedures.

SECTION M. FURTHER DEVELOPMENT OF THE CONVENTION: On Saturday, Chair Lugris introduced Section M with articles on amendments to the convention (Article 27) and adoption and amendment of annexes (Article 28). On amendments, the INC agreed to delete reference to time constraints on the proposal of amendments, that thresholds for the entry into force of amendments be based on the number of

parties at the time of adoption of the amendment. These articles were forwarded to the legal group with brackets around issues relating to voting procedures.

On Sunday, legal group Co-Chair Susan Biniiaz addressed plenary, noting Article 27 presents several options that are essentially a political decision, but also highlighting the drafting should be clear to prevent the problems faced by the Basel Convention with unclear majorities for the adoption of amendments. The INC agreed to append the reviewed articles to the INC4 report.

Article 27. Amendments: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) sets out the procedure to adopt amendments, with brackets around using a qualified majority as a last resort to adopt amendments, and brackets on the number of ratifications needed for an amendment to enter into force.

Article 28. Adoption and amendment of annexes: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) sets out the procedure for the adoption and amendment of annexes, with brackets on the possibility for parties making a declaration about the amendment of an annex not to be bound by the amended annex unless expressly agreeing to it.

SECTION N. FINAL PROVISIONS: On Saturday, INC4 considered Articles 29 (Right to vote), 30 (Signature), 31 (Ratification, acceptance, approval or accession), 32 (Entry into force), 33 (Reservations), 34 (Withdrawal), and 35 (Depositary). Further to comments in plenary, all of these articles were sent to the Legal Group to refine unbracketed text. On Sunday, legal group Co-Chair Biniiaz presented the group's reviewed text. The INC agreed to append the proposed paragraphs (UNEP(DTIE)/Hg/INC.4/CRP.22) to the INC4 report.

On Article 31, Chair Lugris noted brackets on a provision that requires parties to identify the legislation or other measures that permit them to implement their obligations upon ratification. Colombia, Australia and Japan supported deleting this paragraph, and Kenya, Chile and Iran added that ratification often precedes domestic legislative processes to fully implement a treaty. The US called for retaining the paragraph, and Canada and the EU said further work on the wording is required.

Chair Lugris noted that in Article 32 text on the number of ratifications required for entry into force remains bracketed. Japan preferred to postpone discussion of this article pending resolution on control measures. Switzerland noted that the Basel Convention entered into force after the deposit of 20 instruments, and expressed a preference for 30 instruments for a mercury convention. Australia, citing "past experience," supported a threshold of 50 instruments. The EU opposed, and Mexico and the African Group supported, inclusion of a paragraph stating that legal obligations for developing countries are conditional upon establishment of a stand-alone multilateral fund.

Presenting Article 33, UNEP Legal Officer Masa Nagai noted that the current text includes two options, one allowing and one prohibiting reservations to the convention. Norway, Colombia, the EU and Switzerland opposed allowing reservations. The US, Cuba and Mexico recommended postponing this discussion to INC5, and the INC agreed.

Chair Lugris noted brackets in Article 34(1) refer to the number of years after entry into force that a party may withdraw from the convention. The EU supported allowing withdrawals after three years, while the US supported a one-year withdrawal period.

Article 29. Right to vote: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) states that each party shall have one vote, and regional economic integration organizations shall exercise their right to vote with a number of votes equal to the number of their member states that are parties to the convention.

Article 30. Signature: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) provides that the convention shall be open for signature at UN Headquarters in New York, with the relevant time period left blank.

Article 31. Ratification, acceptance, approval or accession: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) provides, *inter alia*, that the convention shall be subject to ratification, acceptance or approval by states and by regional economic integration organizations, and brackets text requesting parties to include in their instruments of ratification a declaration identifying the legislation that will permit them to implement their obligations under the treaty, and enabling them to declare that any amendment to annexes shall enter into force only upon their ratification of the amendment.

Article 32. Entry into force: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) provides, *inter alia*, that the convention will enter into force 90 days after 30 or 50 instrument of ratification have been deposited, with the number of ratifications required left in brackets.

Article 33. Reservations: This draft article contains two alternative options, which either allow or do not allow reservations to be made to the convention.

Article 34. Withdrawal: This draft article (UNEP(DTIE)/Hg/INC.4/CRP.22) contains brackets on text specifying the number of years after entry into force that parties may withdraw from the convention.

CLOSING PLENARY

On Monday, the plenary convened in the morning to hear reports of contact groups and the legal group. The INC agreed to append the conference room papers developed by each contact group, as well as those agreed texts that were reviewed by the legal group, to the INC4 report.

Resuming the plenary meeting at 3:00 pm, Chair Lugris presented, and delegates adopted, the report for the meeting (UNEP(DTIE)/Hg/INC.4/L.1 and Add.1).

Japan announced it will host a Diplomatic Conference further to INC5 for the adoption of the mercury treaty, scheduled for October 2013.

The Secretariat announced that INC5 will take place on the week of 14 January 2013 in Geneva, with exact dates to be determined by the Bureau.

The steering committee for the 11th International Conference on Mercury as a Global Pollutant invited participants to the scientific conference that will take place in Edinburgh, Scotland, from 28 July - 2 August 2013.

Chair Lugris then turned to other business, and the EU, supported by Nigeria, proposed that the Chair prepare a Chair's text to clean up minor inconsistencies and grammatical changes and that he work with Co-Chairs of the different contact groups to present possible compromise articles where there are areas of divergence among countries in preparation for INC5.

Regarding the intersessional period, China proposed, and the INC agreed, that the Secretariat present a draft of the "final act" for consideration by INC5, to determine provisions on how to work from the moment of the signature of the instrument until

its entry into force. Intersessional work required by the contact groups on emissions and releases, as well as the contact group on Section J, was also approved by the INC.

Chile and Argentina requested that intersessional consultations be held in Geneva, where most countries have standing delegations that can follow up on progress, as well as a compilation treaty text with all proposals forwarded by INC4. Tim Kasten, Head of UNEP Chemicals, highlighted the tremendous amount of work achieved during the week, and Chair Lugris closed the meeting at 5:53 pm.

A BRIEF ANALYSIS OF INC4

Entering the fourth and penultimate session of negotiations to establish a global, legally binding instrument on mercury, many veteran delegates drew comparisons to the negotiations of the Stockholm Convention on Persistent Organic Pollutants (POPs) over a decade ago. Reflecting on the challenges that arose during the POPs negotiations, several predicted that progress would be made on smaller issues at INC4, while the most significant challenges to be overcome prior to the conclusion of the negotiating process at INC5 in January 2013 would be revealed. Indeed, the proceedings of INC4 fulfilled many of these expectations: progress was made, swiftly in some cases, as contact groups “scrubbed” text, successfully removing brackets and narrowing options under several articles. But INC4 also involved many protracted, difficult discussions that illuminated a range of strongly held viewpoints and interests.

At the conclusion of INC4, the most contentious issues were bound together in a tight knot with three substantial threads: the mechanism on implementation and compliance, provisions for finance and technical assistance and transfer, and the range of control measures that will be included in the final treaty text. In turn, all of these threads are intricately connected to questions regarding the eventual scope of the instrument, requiring delegates to determine whether this instrument will be a comprehensive treaty that addresses all forms and effects of mercury pollutants, or will focus on an approach that captures only the sources of mercury pollution with the most significant global impacts. Perhaps reflecting the difficulty of determining the scope of the treaty prior to substantial consideration of the core issues, the Committee agreed to defer negotiations on the objectives and definitions until the final round of negotiations. This made it clear from the outset that issue of scope would not be resolved at INC4.

This brief analysis will examine how this question of scope, which looms in the background of discussions of core issues, is affecting the negotiations to establish a legally-binding instrument on mercury. It will then discuss the matters that must be addressed in order to untie this knot and allow consensus on a final treaty text at INC5.

THE KNOT OF CORE ISSUES

The interconnections among implementation and compliance, financial and technical assistance, and control measures mean that progress on any one issue is dependent on progress in the others—and indeed, participants were repeatedly heard invoking the axiom that “nothing is agreed until everything is agreed.” A packed schedule of contact groups made maximum use of the six-day meeting, and facilitated dialogue among participants. In many cases, the complexity of the issues led to

a tangle of text, brackets, options, and ideas as delegates sought to ensure that they were getting to the heart of the issues and fully understanding each other’s positions. Many delegates commented they did not envy INC Chair Fernando Lugris, who was entrusted with the unwieldy task of producing a Chair’s text on core issues. Intersessional work, along with consultations among countries and with contact group co-chairs and regional groups, will be essential to enable delegates to loosen this knot.

IMPLEMENTATION AND COMPLIANCE

The contact group on implementation and compliance brought together delegates with extensive experience developing approaches to these issues under other global treaties. In particular, repeated references were made to the Stockholm Convention and the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for certain hazardous Chemicals and Pesticides in international trade, under which parties have yet to agree on non-compliance procedures, and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, under which parties did not reach agreement to establish a mechanism to promote implementation and compliance until the sixth meeting of the Conference of the Parties, 13 years after the treaty’s adoption.

Such experience with related conventions enabled swift agreement on the concept of establishing a facilitative implementation/compliance mechanism in the treaty text itself. Beyond this basic agreement, however, the interconnections of this thread to others in the larger knot of issues impeded convergence. While some argued that other eventual provisions of the treaty are irrelevant to establishing a strong and effective compliance mechanism, many others disagreed. There was agreement that such a mechanism would deal with all obligations under the eventual scope of the convention, but the role of finance was divisive, particularly as a result of the argument being made by developing countries that their compliance with obligations relating to control measures must be contingent upon developed countries’ compliance with obligations relating to the provision of financial and technical assistance as well as technological transfer. Like a well-rehearsed dance, the wealth of experience of several participants in designing compliance systems for other multilateral environmental treaties led to relatively efficient work in the contact group. However, overt references to slow progress being made in the groups on finance and control measures made it clear that some view the issue of compliance as an important bargaining chip that could be used to influence any final package that might be agreed upon at INC5.

FINANCIAL AND TECHNICAL ASSISTANCE

The negotiations of this multilateral environmental agreement are certainly not the first in which financial and technical assistance and compliance are key issues, and just as negotiators in the compliance contact group were looking to avoid challenges encountered under the Stockholm and Rotterdam Conventions, the discussion on financial and technical assistance was clearly influenced by precedents established in other international agreements. At INC4, no one was surprised by the familiar divide between developing and developed countries: while developing countries called for establishment of a stand-alone financial mechanism under the COP’s authority, following the model of the Multilateral Fund under the Montreal Protocol on Substances that Deplete the Ozone Layer, developed countries

avored an arrangement utilizing the Global Environment Facility. Despite this division, the contact group on financial and technical assistance was able to start its work building upon a conceptual approach prepared by the intersessional meeting of experts on financial resources and technical assistance held in Inárcs, Hungary, in April 2012.

It was also broadly recognized that the scale of financial assistance and the technologies at play will depend on delegates' decisions regarding the scope of the treaty, and the nature and timing of agreed control measures. In this context, technology transfer was the focus of intense discussions. Delegates linked debates on limits to mercury-related emissions with discussions on best available techniques (BAT), and the role of the public and private sectors in developing new technologies and making them accessible to other countries.

As informal consultations continue on this issue, it is evident that countries will need to come to INC5 with much more concrete information to answer key questions such as: How much would proposed measures and techniques cost? How might incremental costs be calculated? What commitments might be required for enabling activities prior to entry into force? What will be the co-benefits of the measures to be taken under the mercury treaty including on local health and the global environment, and how should they be accounted for, both in the financial mechanism and in defining measures?

The answers that delegates bring to INC5 will play a crucial role in determining the scope of the convention, not least with regard to choices of control measures. Such control measures could range from phasing out mercury amalgam for dental fillings, for which, some dental associations argue, substitutes are available at no additional cost, to retrofitting industrial plants at a much higher cost. To achieve common ground, some argue it may be necessary for countries to rethink their positions not just considering the costs of mercury controls, but also the co-benefits brought about by the implementation of mercury-reducing technologies, such as reduced particulate matter and air pollution, and the averted health and environmental costs of mercury pollution.

CONTROL MEASURES AND COVERED ACTIVITIES

Similarly, how control measures are translated into obligations will be heavily influenced by decisions on finance, and will also determine the extent to which this treaty successfully protects human health and the environment from risks associated with mercury. Control measures and covered activities are addressed in a multitude of articles of the draft treaty, including some specific activities and obligations related to artisanal and small-scale gold mining (ASGM) and storage and transport of wastes, which are closer than many other issues to resolution.

The discussions of health aspects, and the debate on whether to weave health-related concerns through the text, or include a stand-alone article on the implementation of national programmes on mercury-related health promotion for vulnerable populations, was particularly emotional at INC4. Control measures related to health impacts can be divided into two distinct dimensions. First, control measures may apply to health sectors that rely on mercury in products, such as thermometers and other mercury-containing instruments, and vaccines that use mercury-containing thimerosal as a preservative. Second, the stringency and timeline for control measures will have impacts on both local and global impacts of mercury emissions on human

health. Both of these dimensions are intertwined with compliance and finance issues. In the first, the availability and affordability of alternative vaccine preservatives, in particular, will be essential to addressing this relatively minor source of mercury without exposing populations to increased risks of disease. In the second, the extent to which the treaty will address already occurring health impacts of mercury exposure, especially among vulnerable populations (pregnant women, children, workers in certain sectors, and indigenous peoples) will potentially bear a significant price tag. In both of these dimensions, cooperation with other intergovernmental organizations will likely be key, and the outcome of intersessional work on these aspects, including ongoing activities by the WHO, may provide information that clarifies the implications of various decisions on these issues, thereby helping participants decide which actions warrant inclusion in the treaty.

THE WAY FORWARD – LOOSENING THE KNOT?

As delegates left the halls of the Conrad Hotel in Punta del Este, many expressed satisfaction at having engaged in a week of intense and productive work. Yet at the same time, they acknowledged the pressure to “do their homework” in preparation for the final meeting. Several participants highlighted the importance of continuing informal conversations, conducting intersessional work, and engaging in regional and inter-regional consultations prior to reconvening for the final round of negotiations in mid-January 2013 in Geneva.

With the INC's original mandate requiring it to present the results of its negotiations to the 27th session of the UNEP Governing Council/Global Ministerial Environment Forum (GC27/GMEF) in February 2013, delegates will be challenged to craft a package that sufficiently addresses all countries' needs, presents clear objectives with coherent measures to meet them, adds value to existing institutions, initiatives and mechanisms, delivers meaningful environmental and health benefits, and puts in place the institutional framework to facilitate implementation and compliance. They will also have on their slate the establishment of mechanisms and activities, such as interim financial arrangements and technical work, necessary for countries to prepare for the convention's entry into force. It is only as participants refine answers to key questions around finance, control measures, health and other core issues, that the scope of the treaty will finally emerge and provide the denouement of this negotiation process.

UPCOMING MEETINGS

32nd Meeting of the Open-Ended Working Group of the Parties to the Montreal Protocol (OEWG-32): The meeting will, *inter alia*, consider proposed amendments to the Montreal Protocol and prepare decisions for consideration at the 24th session of the Meeting of the Parties to the Montreal Protocol. **dates:** 23-27 July 2012 **location:** Bangkok, Thailand **contact:** Ozone Secretariat **phone:** +254-20-762-3851 **fax:** +254-20-762-4691 **email:** ozoneinfo@unep.org **www:** <http://conf.montreal-protocol.org/meeting/oewg/oewg-32/>

Third Session of the International Conference on Chemicals Management (ICCM3): This meeting is expected to consider, *inter alia*: adding nanotechnology and hazardous substances within the lifecycle of electrical and electronic products to the SAICM Global Plan of Action (GPA); adding

endocrine disruptors and persistent pharmaceutical pollutants to the emerging issues; and the future of financing SAICM implementation after the expiration of the Quick Start Programme (QSP). **dates:** 17-21 September 2012 **location:** Nairobi, Kenya **contact:** SAICM Secretariat **phone:** +41-22-917-8532 **fax:** +41-22-797-3460 **email:** saicm@chemicals.unep.org **www:** <http://www.saicm.org>

16th International Conference on Heavy Metals in the Environment: This meeting will focus on applying a multidisciplinary approach to developing and validating new and current environmental policies that help reduce the impact of heavy metals on both human health and the broader environment. **dates:** 23-27 September 2012 **location:** Rome, Italy **contact:** Nicola Pirrone, CNR - Institute of Atmospheric Pollution Research **phone:** +39-06-9067-2694 **fax:** +39-06-9067-2472 **email:** pirrone@iia.cnr.it **www:** <http://ichmet16.iia.cnr.it/>

Eighth Session of the Open-ended Working Group (OEWG 8) of the Basel Convention: The Open-ended Working Group (OEWG) assists the Conference of the Parties in promoting the implementation of the Convention. **dates:** 25-28 September 2012 **location:** Geneva, Switzerland **contact:** Secretariat **phone:** +41-22-917-8218 **fax:** +41-22-797-3454 **email:** sbc@unep.org **www:** <http://www.basel.int/>

Fourth Meeting of the UNEP Global Mercury Partnership Advisory Group: The Partnership Advisory Group, composed of up to 25 members, was established through the Overarching Framework of the Global Mercury Partnership to serve the Partnership. Its membership includes partnership area leads, partners nominated by the partnership areas and other representatives. **dates:** 27-28 September 2012 **location:** Rome, Italy **phone:** +41-22-917-8192 **fax:** +41-22-797-3460 **email:** mercury.chemicals@unep.org **www:** <http://www.unep.org/hazardoussubstances/Mercury/GlobalMercuryPartnership/PartnershipAdvisoryGroup/FourthmeetingofthePartnershipAdvisoryGroup/tabid/104123/Default.aspx>

POPRC 8: The Persistent Organic Pollutants Review Committee (POPRC) is a subsidiary body to the Stockholm Convention established for reviewing chemicals proposed for listing in Annex A, Annex B, and/or Annex C. **dates:** 15-19 October 2012 **location:** Geneva, Switzerland **contact:** Stockholm Convention Secretariat **phone:** +41-22-917-8729 **fax:** +41-22-917-8098 **email:** pops@pops.int **www:** http://chm.pops.int/Convention/POPs_Review_Committee/About_POPRC/tabid/221/Default.aspx

LBS Protocol COP 1: The first session of the Conference of Parties (COP 1) to the Protocol on Pollution from Land-Based Sources and Activities (LBS Protocol) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention) will take measures to commence implementation of the Convention. **date:** 24 October 2012 **location:** Punta Cana, Dominican Republic **contact:** UNEP-CAR/RCU **phone:** +876-922-9267 **fax:** +876-922-9292 **email:** rcu@cep.unep.org **www:** <http://www.cep.unep.org/meetings-events/1st-lbs-cop>

IGM 15 on the Action Plan for the CEP and Cartagena Convention COP 12: The biennial Intergovernmental Meeting (IGM) of the UN Environment Programme's (UNEP) Caribbean Environment Programme (CEP) and the 12th session of the Conference of the Parties (COP 12) to the Cartagena Convention

will be held jointly to adopt a work plan and activities and review and promote implementation of the decisions of IGM 14 and Cartagena Convention COP 11. **dates:** 25-27 October 2012 **location:** Punta Cana, Dominican Republic **contact:** UNEP-CAR/RCU **phone:** +876-922-9267 **fax:** +876-922-9292 **email:** rcu@cep.unep.org **www:** <http://www.cep.unep.org/meetings-events/igm-15>

24th Meeting of the Parties to the Montreal Protocol: This meeting will adopt decisions on control measures and compliance to protect the ozone layer. **dates:** 12-16 November 2012 **location:** Geneva, Switzerland **contact:** Ozone Secretariat **phone:** +254-20-762-3851 **fax:** +254-20-762-4691 **email:** ozoneinfo@unep.org **www:** http://ozone.unep.org/new_site/en/historical_meetings.php?indicative

Fifth Session of the INC to Prepare a Legally Binding Instrument on Mercury: This meeting is scheduled to be the final of five Intergovernmental Negotiating Committee meetings to negotiate a legally binding instrument on mercury. The meeting will take place the week of 14 January 2013, with the decision on exact dates to be determined by the Bureau. **dates:** 14-18 January 2013 (tentative) **location:** Geneva, Switzerland **phone:** +41-22-917-8192 **fax:** +41-22-797-3460 **email:** mercury@chemicals.unep.ch **www:** <http://www.unep.org/hazardoussubstances/Mercury/Negotiations/tabid/3320/Default.aspx>

GLOSSARY

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| ASGM | Artisanal small-scale gold mining |
| BAT | Best available techniques |
| BEP | Best environmental practices |
| COP | Conference of the Parties |
| CRP | Conference room paper |
| GEF | Global Environment Facility |
| GRULAC | Latin American and Caribbean Group |
| INC | Intergovernmental Negotiating Committee |
| IPEN | International POPs Elimination Network |
| LDCs | Least developed countries |
| NAPs | National action plans |
| NIPs | National implementation plans |
| OEWG | Open-ended Working Group |
| PIC | Prior informed consent |
| SAICM | Strategic Approach to International Chemicals Management |
| SIDS | Small island developing states |
| UNEP GC/GMEF | UNEP Governing Council/Global Ministerial Environment Forum |
| VCM | Vinyl chloride monomer |
| WHO | World Health Organization |