

**SUMMARY OF THE THIRD MEETING  
OF THE INTERGOVERNMENTAL  
NEGOTIATING COMMITTEE TO  
PREPARE A GLOBAL LEGALLY BINDING  
INSTRUMENT ON MERCURY:  
31 OCTOBER - 4 NOVEMBER 2011**

The third meeting of the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury (INC3) was held from 31 October - 4 November 2011 in Nairobi, Kenya. Over 500 participants representing governments, UN agencies, and intergovernmental and non-governmental organizations attended the meeting.

INC3 was the third 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/GMEF) in 2013, where the negotiations are supposed to be concluded. During the week, delegates conducted negotiations on the new draft text (UNEP(DTIE)/Hg.INC.3/3) that was compiled by the Secretariat, based on the views submitted by parties during INC2 and the intersessional period. Using this text as the basis for negotiation, INC3 completed a comprehensive review of the text 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.

A spirit of enthusiasm and good humor reigned at INC3. Chair Fernando Luján (Uruguay) set a demanding pace, and delegates worked late into the evening throughout the week. Despite the emergence of clear divisions on critical issues and concerns among many delegates about whether compromise can be achieved, INC3 closed on a positive note. In their closing statements, many delegates cited the meeting's accomplishments, emphasizing the "determination and positive spirit" that characterized the week, and underscored their commitment to constructive participation in the next stage of negotiations.

**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.

The United Nations Environment Programme's Governing Council/Global Ministerial Environment Forum (GC/GMEF) has regularly discussed the need to protect human health and the environment from the releases of mercury and its compounds since 2001.

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**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 that ranged from an immediate negotiating process towards a legally-binding instrument, 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 to review and assess options for enhanced voluntary measures and new or existing international legal instruments for addressing the global challenges posed by mercury was established.

Decision 24/3 IV provides 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 with effective substitutes; 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 the 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:** The 25th session of the 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 the 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 work 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 decisions of the GC.

**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):** This meeting 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 (INC2):** This meeting convened from 24-28 January 2011 in Chiba, Japan. INC2 marked the first opportunity for delegates to start negotiations on actual text. Using the elements paper prepared by the Secretariat as a basis for discussions, 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 REPORT**

On Monday, 31 October 2011, Intergovernmental Negotiating Committee (INC) Chair Fernando Lugris (Uruguay) opened the session and noted several intersessional meetings and workshops had been held in the intersessional period since INC2.

Welcoming participants to the meeting, UN Environment Programme (UNEP) Executive Director Achim Steiner said that the objective of the mercury instrument is to reduce and eliminate the threat of mercury to human lives. Noting that INC3 marks the halfway point of the process to prepare a legally binding instrument on mercury, Steiner urged delegates to work together to produce a formal draft negotiating text. He emphasized the importance of the mercury negotiations in the

run-up to Rio+20, expressed thanks to Per Bakken, former Head of the UNEP Chemicals Branch, and welcomed his successor, Tim Kasten, to the mercury process.

Paul Olando, on behalf of Minister John Michuki, Ministry of Environment and Mineral Resources, Kenya, supported development of a legally binding instrument to minimize mercury emissions and to prohibit production and use of mercury and mercury-containing products, with the exception of essential uses, and called for establishment of a sustainable and reliable financial mechanism.

Chair Lugris introduced the provisional agenda (UNEP(DTIE)/Hg/INC.3/1 and UNEP(DTIE)/Hg/INC.3/1/Add.1), noting the large number of intersessional activities undertaken, including regional consultations, preparatory meetings and bureau meetings leading up to INC3. Delegates adopted the agenda with no amendments.

Chair Lugris introduced the Chair's scenario note (UNEP(DTIE)/Hg/INC.3/2). He suggested, and delegates agreed, to work largely in plenary, and using the new draft text prepared by the Secretariat (UNEP(DTIE)/Hg/INC.3/3) as the basis for discussions. He noted that the draft text has the support of all the regional groups. Chair Lugris praised the Secretariat for the comprehensive document and called on delegates to work toward limiting the options presented, focus on areas requiring significant attention, and identify ways to overcome divisions.

Nigeria, on behalf of the African Group, welcomed the introduction of provisions on human health in the new draft, called for phasing out use of thimerosal in vaccines and mercury in dental amalgam, called for restriction of mercury trade and prohibition of dumping mercury waste in developing countries, and emphasized the need for financial and technical assistance for developing countries.

The European Union (EU) expressed hope that by the end of the week agreement could be reached on some issues, pending agreement on the instrument as a whole, and emphasized the importance of establishing legally binding, rather than voluntary, provisions.

Japan, on behalf of the Asia-Pacific Group, said the instrument should protect human health and the environment in a practical and implementable manner, called for consideration of lack of funding and available technology in developing countries, and suggested prioritizing the issues of products and processes.

Ecuador, on behalf of the Group of Latin American and Caribbean States (GRULAC), and Russia, on behalf of the Central and Eastern European Group, supported taking the new draft text as the basis for negotiation. GRULAC highlighted importance of viable actions and control measures, and called for establishing a financial mechanism like the Montreal Protocol's Multilateral Fund (MLF).

The US suggested focusing on, *inter alia*, demand and supply, products and processes, emissions and releases, and artisanal and small-scale gold mining (ASGM).

China said the principles set out in UNEP decision GC25/5 should guide negotiations and highlighted the importance of capacity building, technology transfer and a financial mechanism.

Egypt, on behalf of the Arab Group and supported by Indonesia, highlighted the principle of common but differentiated responsibilities and supported establishing a financial mechanism. India said the financial mechanism should be linked to the provision of financial and technical assistance to developing countries. Jordan highlighted the need for financial and technical assistance to enable developing countries to implement any agreed commitments. Brazil said that provision of predictable and adequate resources should be legally-binding.

Sweden, on behalf of the Arctic Council, highlighted the increasing concentration of mercury in the Arctic and emphasized the importance of urgent global action to address the issue. Seychelles called for legal control measures to address mercury in both air and soil. Nigeria prioritized the issue of mercury in ASGM and lauded the UNEP Mercury Partnership for addressing this issue.

Algeria called for flexibility, responsibility and fairness in crafting the agreement and said compliance should be subject to provision of adequate financial resources and technology transfer. Pakistan called for a flexible approach to implementation, including both binding and voluntary approaches that account for differing country capacities.

Switzerland lauded the Secretariat for providing a comprehensive text that provides a good starting point for deliberations, and noted that contact groups are "the most effective means" for achieving progress on a legally binding agreement on mercury.

The Philippines highlighted the "success of multilateralism" experienced at the recent Basel Convention Conference of the Parties (COP), and called on delegates to learn lessons from that process. Iraq emphasized its support for the mercury negotiations, saying it would work shoulder-to-shoulder with other countries to establish an agreement.

Noting that there are information gaps regarding mercury, Mexico cautioned the INC against crafting a non-facts-based instrument. Norway emphasized that the instrument will only succeed if it achieves rapid, substantial reductions in mercury emissions from all sources. Japan called for acceleration of negotiations at INC3, noting that a legally binding instrument must be completed within a year and a half.

The World Health Organization (WHO) said the greatest gains can be achieved by addressing emissions and ASGM, and called for retention of access to mercury for uses essential to public health. Zero Mercury Working Group called for aggressive, binding control measures, provision of financial assistance as needed, and inclusion of compliance mechanisms in the treaty text. International POPs Elimination Network (IPEN) emphasized that "flexibility" is often used as a cover word for half-hearted measures, allowable use exemptions often lead to business-as-usual scenarios, and voluntary measures invite noncompliance and offer no financial assistance. The Global Indigenous Peoples' Caucus called on delegates to remember the human rights dimensions of mercury contamination, noting that indigenous peoples are disproportionately affected.

The Island Sustainability Alliance called for including all the control measures within a single instrument. The Coalition for Mercury Free Drugs (CoMeD) highlighted health effects of mercury-containing vaccines, especially to children, and

appealed for eliminating such vaccines through the mercury instrument. The Alliance for Responsible Mining advocated responsible mining in ASGM, noting that 6 million people depend on ASGM for a living.

### **PREPARATION OF A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY**

On Monday morning, Chair Lugris invited delegates to begin substantive negotiation on the instrument, and Tim Kasten, Head of UNEP Chemicals Branch, provided an overview of the documents prepared for this session (UNEP(DTIE)/Hg/INC.3/1-7 and UNEP(DTIE)/Hg/INC.3/INF/1-4). He introduced the new draft text, explaining that submissions containing similar concepts have been merged, while those that are fundamentally different have been included as stand-alone proposals.

Unless otherwise indicated, the Secretariat took note of the comments on each section of the draft text, and discussions will continue on a revised draft text at INC4.

**SECTION A. PREAMBLE:** GRULAC called for broadening the views contained in the preamble and requested those delegations that had not done so to submit relevant ideas to the Secretariat. Haiti emphasized the need for clarity in the preamble.

The EU, the African Group, Switzerland, Norway, Algeria, the US, Japan, Canada, China, India, Indonesia and Malaysia said that discussion on the preamble should be deferred until after discussion of the instrument's articles. The African Group expressed willingness to defer discussion.

Chile called for discussion of the preamble either in plenary or in informal consultations. Brazil, supported by Mexico, emphasized that a preamble is fundamental in clarifying the ethical principles that create the framework for the negotiations on obligations.

**SECTION B. INTRODUCTION:** On Monday, Kasten introduced this section, highlighting a new section on the relationship of the mercury instrument with other international agreements.

**Article 1. Objective:** On the objective, Switzerland, Japan, Canada, India, Indonesia and Malaysia suggested postponing discussions of text to a future meeting, and Switzerland said the options under this section should be seen as "placeholders only."

Brazil, the US, Nigeria, Australia and Canada expressed support for Option 1, which calls for the protection of human health and the environment from anthropogenic releases of mercury and its compounds.

Algeria, Chile, China, India, Mexico, Indonesia and Malaysia supported Option 2, which states that the objective of the convention is to minimize, and ultimately prevent, any potential adverse effects on human health and the environment from exposure to the release of mercury and its compounds by facilitating information dissemination and exchange and the employment of risk reduction strategies through technical and financial cooperation. Chile emphasized that Option 2 would strengthen the instrument, and China stressed that the goals of the instrument can only be achieved through establishment of a financial mechanism.

Iran proposed merging the two options, and suggested discussing the issue in a contact group. Iraq expressed hope that the objective would be global and include all risks.

**Article 1 bis. Relationship with other environmental agreements:** Brazil, Chile and Mexico called for further discussion on the appropriate location of this paragraph, which stipulates, *inter alia*, that the provisions of the instrument shall not affect the rights and obligations of any party deriving from any existing international agreement, and this article is not intended to create a hierarchy between this convention and other international agreements.

Switzerland, supported by Norway and the US, did not support inclusion of this paragraph, noting that it "brings more confusion" to the section.

Australia expressed doubt about the usefulness of this paragraph but, along with Indonesia, said it was willing to discuss its inclusion. India also expressed doubt about the need for the paragraph, noting that there is no hierarchy among multilateral environmental agreements (MEAs). Iraq said there should neither be conflict nor overlap among MEAs.

Canada noted this echoes a provision of the Stockholm Convention, and said discussion of this paragraph should be deferred until the text of the agreement is more mature.

**Article 2. Definitions:** Several countries highlighted the need for precise definitions of concepts such as low-mercury content, anthropogenic uses, contaminated sites, and mercury-added products, and Australia noted that extensive work on this issue would be required. Canada said that while less is often more with respect to definitions, and that sometimes it is best not to define things, certain definitions will be critical and should be discussed.

Canada and the Czech Republic, on behalf of the Central and Eastern European countries, noted that definitions should be discussed in conjunction with the relevant articles. Switzerland noted that they had introduced additional definitions in UNEP(DTIE)/Hg/INC.3/CRP.1, and called for further discussion.

**SECTION C. SUPPLY: Article 3. Mercury supply sources:** On Monday afternoon, Chair Lugris opened discussion on mercury supply sources and international trade in mercury, noting that this article contains two options. Option 1 calls for each party with primary mercury mining within its territory, *inter alia*, to prohibit the export of any mercury or mercury compounds produced from primary mercury mining, and not allow the sale, distribution in commerce or use of mercury or mercury compounds from primary mining. Option 2 proposes that parties with primary mercury mining within their territory allow the export of mercury or mercury compounds produced from primary mercury mining in accordance with the provisions of the instrument.

The EU, the African Group, the Republic of Korea, the Philippines and Switzerland expressed support for Option 1. The African Group noted that this option should also include provisions for financial and technical assistance for developing countries to facilitate implementation of obligations.

Chile and India supported Option 2. Chile, supported by Algeria, stressed that exports should be allowed where there is demand, and where there are no economically viable alternatives. Algeria noted that support for Option 1 could set a dangerous precedent, as it prohibits the production of mercury in a sovereign territory.

China noted that “demand determines supply” and called for regulation of primary mining. Zero Mercury Working Group stated that primary mercury mining should be stopped, and said trade in mercury should be allowed only for limited uses. IPEN supported elimination of primary mercury production and export.

**SECTION D. INTERNATIONAL TRADE IN MERCURY:**

**Articles 4 and 5. International trade in mercury; and International trade with non-Parties in mercury:**

Chile called for the incorporation of guiding principles to the articles on international trade, including common but differentiated responsibilities, and consideration of developing country circumstances.

Stating that they have a “broad view on export issues,” the US called for the deletion of Articles 4 and 5. The African Group favored retaining the articles, while Switzerland saw “potential for streamlining” these articles.

China opposed the elimination of trade in mercury. India supported the use of the prior informed consent (PIC) procedure in international trade in mercury.

**SECTION E. PRODUCTS AND PROCESSES:** On Tuesday, the Secretariat introduced the section, noting that it includes three articles. Article 6 addresses mercury-added products and contains four options; Article 7 addresses manufacturing processes in which mercury is used; Article 8 addresses allowable-use exemptions; and newly proposed Article 8 *bis* addresses the special situation of developing countries. Chair Lugris suggested considering products and processes separately.

**Article 6. Mercury-added products:** The EU stressed that the instrument should give a strong signal to the market that mercury products should be phased out and alternatives introduced. The Asia-Pacific Group said additional information on mercury-containing products may be needed and called for consideration of the needs of developing countries.

The Republic of Korea, the US, Indonesia, Oman and Australia favored the positive list approach outlined in Option 1, which stipulates that each party shall not allow manufacture or production of mercury-added products or import of mercury-added products listed in Annex C, except as provided in the instrument, and may allow export of mercury-added products listed in Annex C only for certain purposes.

Switzerland, Norway and the African Group favored the negative list approach outlined in Option 2, which stipulates a general ban on mercury and mercury-containing products, with allowable-use exemptions listed in Annex C.

Noting the importance of mercury in vaccines, Brazil supported Option 3, which, *inter alia*, stipulates a transition period for developing countries and countries with economies in transition to phase-out their use, and provides an “essential use” category for products for which non-mercury alternatives are not globally affordable or are unavailable.

Algeria, Chile, India, China and Pakistan supported Option 4, which stipulates, *inter alia*, that parties shall limit mercury content in mercury-added products and processes that use mercury or mercury compounds, and within a stipulated number of years of the entry into force of the instrument, parties may introduce measures to prohibit or restrict the import of mercury-added products from non-parties. India said parties should

adopt voluntary measures to limit mercury content in products and processes and emphasized the need for financial resources, technology transfer and capacity building. China expressed willingness to consider other options, except Option 2.

WHO offered to share additional information on health sector uses of mercury.

SafeMinds said there is insufficient data on mercury in vaccines, offered to work with WHO, relevant manufacturers and others to draft guidance for review at INC4, and with the Zero Mercury Working Group and Healthcare without Harm, expressed support for Option 2. CoMeD urged a ban on use of mercury-containing thimerosal in vaccines, saying alternatives are available.

World Alliance for Mercury-Free Dentistry supported development of a legally-binding instrument on mercury.

The World Dental Federation supported a phase-down approach to the use of mercury in dental restoration. The International Association for Dental Research highlighted a WHO report concluding that existing alternatives to dental amalgam are not ideal and called for further research.

The World Alliance for Mercury-Free Dentistry called for an end to the “amalgam era” of dentistry, saying that contrary to WHO claims, economically viable alternatives for developing countries are available.

The European Lamp Companies Federation recommended regulating lamps according to Option 3, emphasizing that this alternative offers a flexible, harmonized approach.

**Article 7. Manufacturing processes in which mercury is used:** The EU called for a dynamic process that will strongly signal to the market that mercury should not be used in manufacturing processes, and cited chlor-alkali and vinyl chloride monomer (VCM) production as priorities. Norway said that use of mercury in industrial processes should be phased out, and, supported by Japan, said that the use of mercury as a catalyst in industrial processes should be added to Annex D. Japan said it is essential to regulate use of mercury in industrial processes and supported prohibiting mercury use in chlor-alkali and VCM production. The World Chlorine Council informed delegates that chlor-alkali facilities are in the process of transitioning from mercury-use to mercury-free production, and suggested that the convention allow voluntary mercury phase-out.

China said that mercury-free alternatives are not readily available for acetylene-based VCM production and called for an allowable-use exemption for this process.

Switzerland and the Republic of Korea favored Option 2, calling for a general ban of mercury use in manufacturing processes except in accordance with allowable-use exemptions.

Thailand preferred Option 1, which calls for a general ban on mercury in manufacturing processes except in accordance with an acceptable-use or allowable-use exemption. She said that it is an “unambiguous approach” that clearly states which industries would be targeted. Morocco suggested that Annex D should be broadened to include all veterinary and medical devices.

The European Lamp Companies Federation supported Option 1, noting that Option 2 would be detrimental to lamp manufacturers.

**Article 8 bis. Special situation of developing countries:**

Chair Lugris suggested postponing discussion of Article 8 *bis* on the special situation of developing countries. The EU, supported by Japan, objected to the inclusion of this article, saying they could not support the establishment of a separate regime for some countries. China expressed its support for the proposed article but agreed to postpone discussion.

On Wednesday morning, Chair Lugris established a contact group on products and processes, appointing Katerina Sebkova (Czech Republic) and Mohammed Khashashneh (Jordan) as Co-Chairs. The group met on Wednesday and Thursday. On Friday, INC3 requested the Secretariat to prepare, during the intersessional period, factual information on possible transitional arrangements pending phase-out of mercury-added products and processes in which mercury is used. Chair Lugris explained that this information will include ideas expressed during the INC and experiences under other MEAs, including the Montreal Protocol and the Stockholm Convention. Chair Lugris emphasized that this will not be a new legal text, but will “provide ideas for transitional possibilities.”

**SECTION F. ARTISANAL AND SMALL-SCALE GOLD MINING: Article 9. Artisanal and small-scale gold mining:**

Ecuador, on behalf of GRULAC, stressed the need to focus on environmental, economic and social consequences of ASGM and its regulation, and reduction of mercury use in this sector should depend on capacity building, technology transfer and financial resources.

Japan called for further elaboration of the definition of ASGM.

On measures to be taken, Norway expressed support for Alternative 1, which stipulates, *inter alia*, measures that prevent import or recovery, recycling or reclamation of mercury or mercury compounds for ASGM; development of national action plans (NAPs); prohibition of specific practices; promotion of practices that reduce releases of and exposure to mercury in ASGM; and introduction of standards for mercury-free gold mining. The EU noted that a general ban on medical use of mercury is not effective enough to control mercury use in ASGM and stressed the need to reduce the size of the global mercury market.

The African Group supported Alternative 2, which calls for development and implementation of a NAP. Brazil highlighted the positive role of voluntary provisions regarding mercury regulations in ASGM associated with the provision of international financial assistance, and suggested phasing out mercury use in ASGM within 15 years after the entry into force of the instrument.

The US recognized the economic importance of the sector, and expressed support for mandatory control measures and NAPs. Switzerland supported a combination of voluntary and mandatory measures and stressed the importance of formalization and organization of the sector. UNIDO suggested incorporating all issues related to ASGM into Article 9.

IPEN said mandatory provisions are needed to protect human health, especially for women and children. Zero Mercury Working Group said development of NAPs is a vital component

of a mercury instrument. The World Federation of Public Health Associations suggested making specific mention of the health effects of mercury use in ASGM in the instrument.

Chair Lugris proposed, and delegates agreed, to establish a contact group on ASGM, co-chaired by Donald Hannah (New Zealand) and Antonio Ricarte (Brazil). The contact group met on Monday, Tuesday, Wednesday and Thursday.

On Thursday evening, ASGM Contact Group Co-Chair Hannah introduced UNEP(DTIE)/Hg/INC.3/CRP.15, which contains text that can be forwarded to INC4 for further negotiation. He noted some unresolved differences among party preferences and encouraged the relevant parties to work intersessionally to address these concerns. He emphasized that the text focuses on mercury, not ASGM, and it provides a mechanism to exempt parties where use of mercury is an insignificant activity. Hannah said the article creates an obligation for parties to develop NAPs and said Annex E contains the negotiated text on what should be included in the NAPs. Hannah concluded that the contact group recommends that this text be the Article 9 text in the draft treaty, replacing the former article and its annex. Delegates agreed to this recommendation.

**SECTION G. EMISSIONS AND RELEASES: Articles 10, 11 and 11 alt: Atmospheric emissions; Releases to water and land; and Unintentional emissions and releases:** The Secretariat introduced this section on Tuesday, noting that it includes two options: Option 1, separating atmospheric emissions and releases to water and land into two articles (Articles 10 and 11), and Option 2, addressing both emissions and releases in one article (Article 11 alt.).

The EU said Option 1 provides the best basis for discussion. She also supported focusing on atmospheric emissions, emphasizing that binding measures are necessary and voluntary measures are not sufficient for controlling unintentional releases. The US supported using Option 1 as a basis for negotiations, noting that emissions and releases are distinct issues and should be considered separately.

The African Group requested clarification of the definition of “significant aggregate mercury emissions,” and Brazil, India, Iran and China emphasized that categorizing countries when addressing aggregate atmospheric mercury emissions could penalize countries with large populations.

GRULAC, supported by Brazil, Mexico, Haiti and the Dominican Republic, expressed support for Option 2 (merging Articles 10 and 11). Haiti and Chile called for better definition of “unintentional emissions.”

The Asia-Pacific Group highlighted the need for guidelines on best available techniques (BAT) and best environmental practices (BEP) and underscored the importance of financial assistance and technology transfer. Indonesia called on delegates to consider the socio-economic impacts of implementing Articles 10 and 11. Cuba favored a flexible strategy to address emissions and releases and stressed the need for financial assistance.

Norway stated that it does not have a clear preference for either option, and supported including BAT/BEP guidelines in an annex.

Japan expressed support for Option 1, stated that conventional air control measures should be part of the BAT guidelines, suggested using aggregated mercury emissions per unit of gross domestic product, and highlighted emission limit values as one of the tools for controlling emissions.

India, the Republic of Korea, Canada and Switzerland supported Option 1. India noted that the provisions in Article 10 should be based on BAT/BEP principles and cautioned delegates to avoid encroaching upon the climate change regime when addressing aggregate mercury emissions. The Republic of Korea stressed that the BAT/BEP guidelines should be applicable to new, not existing, source categories.

Iraq, Algeria, Malaysia, Iran and Venezuela called for the deletion of references to the oil and gas sector's production and processing facilities, saying emissions from these facilities are insignificant in the aggregate.

China called for a gradual approach to including sources of mercury in Annex F (atmospheric emissions); emphasized the need for flexible systems to encourage reduction of emissions, noting that voluntary approaches can be successful; and said consideration of the global and local implications of particular emissions should guide discussions.

Zero Mercury Working Group emphasized that both new and existing facilities must be subjected to mandatory controls as soon as possible.

IPEN emphasized that the impacts of mercury pollution need to be addressed in a holistic, obligatory manner and said all countries should prepare a NAP. The Inuit Circumpolar Council and the Indigenous Global Peoples' Caucus urged delegates to: define and include BAT/BEP as requirements for new and existing emissions sources; set low emissions limits; and require countries to submit NAPs outlining financial and technical assistance needs.

On Tuesday, delegates established a contact group, co-chaired by Rina Soemarno (Indonesia) and John Roberts (UK), to work on this issue. The group met on Tuesday, Wednesday and Thursday. On Friday, Chair Lugris explained that the Co-Chairs would work intersessionally to develop approaches for possible elements of Articles 10 and 11.

**SECTION H. STORAGE, WASTES AND CONTAMINATED SITES:** The Secretariat introduced this section, explaining that it contains Article 12 on environmentally sound storage, Article 13 on mercury wastes, and Article 14 on contaminated sites.

**Article 12. Storage:** The Secretariat noted that Article 12 on storage includes two proposed options: Option 1, which calls for inclusion of an annex on environmentally sound storage of mercury, with emphasis on mercury from the supply sources; and Option 2, which would not include an annex.

Japan stressed the need for the application of BAT/BEP guidelines in storage and, with the African Group, expressed a preference for Option 1.

The EU, Norway, and the US emphasized the need to make a clear distinction between commodity mercury and waste mercury. The US said that Article 13 should govern the storage, treatment and disposal of mercury waste, called for a separate storage article to address commodity mercury, and emphasized that storage capacity is essential to the effectiveness of the

instrument. Canada called for separate initial discussions of storage and waste, but said it would be open to combining the issues after the scope of the individual provisions had been determined.

Norway stressed the need to develop NAPs and establish basic standards for environmentally sound storage of mercury and mercury wastes, and the EU highlighted the importance of ensuring environmentally sound storage of mercury and mercury wastes while avoiding duplication with the Basel Convention. The Asia-Pacific Group stressed the importance of consistency with the Basel Convention, and emphasized the need for capacity for storage.

Jamaica expressed support for Option 2, emphasizing that the environmentally sound storage of mercury waste is the remit of the Basel Convention. Chile expressed concern about temporary and interim storage of mercury, and said that the Basel Convention should be used to address residual mercury. The Philippines emphasized the need to streamline the future mercury convention with the Basel Convention provisions regarding storage of mercury wastes, but noted that the future convention will also have to fill any gaps left by the Basel Convention.

China noted that regional plans for management of surplus mercury might conflict with the sovereign rights of countries, and called for consideration of the different circumstances of developed and developing countries.

The Zero Mercury Working Group and IPEN supported the environmentally sound storage of mercury, called for developing storage guidelines under the mercury instrument, and underscored the need for international and regional coordination and cooperation.

**Article 13. Mercury wastes:** The African Group stressed the need to restrict mercury trade and dumping of mercury-containing products in developing countries, and supported measures to ensure that mercury wastes are, *inter alia*, collected, transported and disposed of in an environmentally sound manner and are not transported across international boundaries except for the purpose of environmentally sound disposal. They expressed support for paragraph 2, alternative 2, which calls for the Conference of the Parties to develop guidelines describing methods that constitute environmentally sound management of mercury wastes and mercury-added products upon becoming wastes.

Norway highlighted the need for the requirement on environmentally sound management of mercury wastes to be in line with Basel Convention guidelines. Uruguay highlighted the challenges associated with temporary storage of mercury wastes in developing countries. Japan suggested that the Basel Convention undertake the environmentally sound management of wastes from mercury.

**Article 14. Contaminated sites:** The EU, Peru, the US, the African Group, Argentina and Japan favored Option 1, which calls on parties to, *inter alia*, remediate contaminated sites in an environmentally sound manner; calls for cooperation in developing and implementing strategies for remediation, including through the provision of financial and technical assistance, and calls on the COP to develop guidelines to identify and assess contaminated sites, prevent mercury contamination, and manage contaminated sites.

Japan said that remediation, rehabilitation, containment, or “management” of contaminated sites should be done on a case-by-case basis. Haiti prioritized identification of marine contaminated sites.

Iraq, supported by Jordan, called for an inventory of contaminated sites and emphasized the need for financial and technical assistance to facilitate development of these inventories. The Asia-Pacific Group underscored that financial and technical assistance is needed to address the issue of contaminated sites.

The US called for regulation at the national level for contaminated sites, noting that any proposals for mandatory remediation of sites may be too costly to implement and would draw resources away from other important areas, particularly atmospheric emissions.

Recalling the “polluter pays principle,” Guinea informed delegates that, in some developing countries, the polluter has left the country and is no longer accountable for contaminated sites. Citizens Against Chemicals Pollution, Japan, called on delegates to apply lessons learned from the Minamata tragedy, including the need to apply the “polluter pays principle” when dealing with wastes and contaminated sites.

Chair Lugris established a contact group on storage, wastes and contaminated sites, appointing Anne Daniel (Canada) and Abiola Olanipekun (Nigeria) as Co-Chairs. The contact group met on Tuesday, Wednesday and Thursday. On Friday, Co-Chair Daniel presented the group’s work, which is contained an annex to a submission by the Co-Chairs (UNEP(DTIE)/Hg/INC.3/CRP.21), highlighting that the group had used a Co-Chairs’ text as a basis for discussions. She noted outstanding issues to be addressed after INC3 include not duplicating efforts of or working against the Basel Convention; defining the term “disposal”; and reconsidering the phrase “mercury, other than waste mercury.” She expressed hope that these issues will be resolved at INC4. Co-Chair Olanipekun thanked delegates for the cooperative manner in which they worked in the contact group, noting that significant progress had been made.

Chair Lugris proposed, and delegates agreed, that the new text presented in the annex should replace the current text in the draft document.

#### **SECTION I. FINANCIAL RESOURCES AND TECHNICAL AND IMPLEMENTATION ASSISTANCE:**

The Secretariat introduced the section and the document on further comparative analysis of options for financial mechanisms to support the global legally binding instrument on mercury (UNEP(DTIE)/Hg/INC.3/4). He drew attention to proposals for the financial mechanism to include a general purpose fund, a short-term fund for enabling activities, and a special fund for larger scale projects.

The UNEP Secretariat outlined the outcome of the consultative process on financing options for chemicals and wastes (UNEP(DTIE)/Hg/INC.3/INF/3), noting that participants at the fifth and final meeting of the process recognized an integrated approach, combining four financing tracks (mainstreaming sound management of chemicals and hazardous wastes; industry involvement; a new trust fund based on the Multilateral Fund for Implementation of the Montreal Protocol; and, under the Global Environment Facility (GEF), introduction

of a new focal area, expansion of the existing focal area on persistent organic pollutants, or establishment of a trust fund as most suitable.

The GEF highlighted the availability of US\$20 million for implementation of pilot projects during the mercury negotiations process.

**Article 15. Financial resources and mechanisms:** The Secretariat outlined the two options under Article 15, noting that, *inter alia*, Option 1: stipulates a financial mechanism including one or more funds and may be operated by one or more entities, including existing international entities; and encourages contributions from other sources. Option 2 stipulates the establishment of a stand-alone mechanism to be funded by developed country parties and others, and declares that it will cover all costs incurred by developing country parties and parties with economies in transition, to enable compliance with the control measures set forth in the convention.

The EU expressed support for Option 1, emphasizing the need for an integrated approach that would enable developing countries to comply with aspects of the convention that would otherwise exceed their capacity. Canada preferred Option 1, but called for a fundamental understanding of the criteria for the financial mechanism instead of a premature discussion of options. She said that states must take on legally-binding obligations, stressed that finance should not be linked to taking on these obligations, and underscored that discussions on a financial mechanism must go at the same pace as discussions on compliance. Japan stressed that discussions on financial resources should not be tied to obligations to comply with the convention.

Switzerland supported Option 1, calling for further discussions of criteria when considering the best mechanism for the convention. He also cautioned against precluding on-going discussions on financing for chemicals.

The African Group expressed support for Option 2, emphasizing that compliance should be contingent upon financing, not vice versa. Algeria said the financial mechanism must compensate mercury producers for the financial costs resulting from compliance with the instrument. Malaysia emphasized that the success of the mercury instrument depends on the financial mechanism and, with Iran and Iraq, supported Option 2. Iran stressed that the ability of a financial mechanism to address the concerns of developing countries will shape discussions on compliance. GRULAC, supported by Cuba, also supported Option 2, emphasizing that each country should set its own timeline and priorities.

Indonesia and Mexico supported Option 2, highlighting the success of the Multilateral Fund. India and Pakistan also supported Option 2, emphasizing the need for a dedicated, robust and predictable financial instrument. Pakistan highlighted the principle of common but differentiated responsibilities and called for developed countries to be the first to phase out mercury.

The Asia-Pacific Group called for consideration of both a stand-alone mechanism and the outcomes of the consultative process on financing options for chemicals and wastes. Johanna Lissinger Peitz (Sweden), Co-Chair of the UNEP consultative process, noted that the outcome of the process is not intended to limit discussions on financing.

The US called for a more general discussion on a financial mechanism and expressed support for a mechanism that includes a private sector component and is able to draw from a broad donor base. He joined others in reiterating that finances should not be a reason for failing to meet obligations to the convention, as mercury is a global problem that all country delegates have agreed to address. New Zealand called for the use of an existing financial framework, but also preferred to discuss the issue of financial resources in more general terms.

Brazil stressed that negotiations on the legally binding aspects of the instrument must proceed hand-in-hand with negotiations on financial resources, urging developed countries to “come to these negotiations in a spirit of good faith.” Emphasizing that none of the delegations are “beggars,” China reminded delegates that GC Decision 25/5 stipulates that fulfillment of obligations depends on the provision of financial resources. He stressed that control measures cannot be addressed outside financing discussions.

Underscoring the importance of financial resources, technical assistance, inventory of mercury sources, and compliance, Zero Mercury Working Group said that compliance should not be contingent on the financial mechanism. IPEN said that while financial resources and technical assistance are important, criteria for a financial mechanism should be developed before making any decisions.

**Article 16. Technical assistance:** The African Group supported combining Options 1 and 2. Under Option 1, there are two alternatives: either “developed country parties shall” or “the parties should cooperate to” provide technical assistance to developing country parties and parties with economies in transition. Option 2 stipulates that developed country parties shall provide timely and sufficient technical assistance to developing country parties and parties with economies in transition.

Highlighting the importance of technical assistance, the EU called for a realistic view on this issue and said the GEF has an important role to play. The US recognized the value of technical assistance for implementation of the convention and supported Option 1 as the basis for discussion.

Chile expressed support for Option 2. India said implementation of the legally binding obligations by the developing countries will be contingent upon the availability of adequate resources and technical assistance, and noted that, broadly speaking, obligations to provide technical assistance could not be shifted to the private sector.

Japan said technical assistance should not be limited to assistance from developed countries to developing countries, and noted that technology transfer involves issues of intellectual property rights.

**Article 16 bis. Partnerships:** Recognizing the importance of partnerships, Switzerland, the EU and the African Group supported this proposed article. The EU highlighted the need to assess its legal and financial implications.

Stating that the legal basis for this article is not clear, China objected to its inclusion. Canada suggested reflecting the need for partnerships in a preamble.

**Article 17. Implementation:** The EU, the US, Japan, Canada and Norway supported Option 1, which stipulates the establishment of a committee to promote compliance with the provisions of the Convention. The African Group also supported Option 1, and suggested the proposed committee consist of 15 members.

China and Chile supported Option 2, which includes two alternatives. Alternative 1 stipulates that the Conference of the Parties shall establish a financial assistance, technical support, capacity-building, and implementation committee. Alternative 2 stipulates that the Conference of the Parties shall, at its first meeting, establish a financial assistance, technical support and capacity-building committee as well as an implementation committee.

Switzerland supported Alternative 2 in Option 2. Chile said an implementation committee should have limited terms of reference, and highlighted the need for a flexible mechanism taking into consideration the principle of common but differentiated responsibilities.

On Wednesday, Chair Lugris established a contact group on financial resources, technical assistance and implementation, and appointed Johanna Lissinger Peitz (Sweden) and Adel Shafei Osman (Egypt) as Co-Chairs. The group met on Wednesday and Thursday. On Friday, Chair Lugris summarized the intersessional work to be done on this issue, explaining that the Co-Chairs of the contact group will prepare a proposal for Articles 15 and 16 of the draft text. He said they will develop a conceptual approach followed by possible text, which will take into account views submitted by delegates prior to 31 December 2011, as well as the outcomes of the UNEP consultative process on financing of chemicals and wastes. Chair Lugris highlighted that experts nominated by each of the five UN regions will meet to produce a Co-Chairs’ document on this issue that will be circulated to all parties for consideration at INC4.

**SECTION J. AWARENESS-RAISING, RESEARCH AND MONITORING AND COMMUNICATION OF INFORMATION:** The Secretariat introduced the section, noting it consists of Articles 18-23. He also introduced Article 20 *bis*, a new proposal on health aspects (UNEP(DTIE/Hg/INC.3/6) suggested by Chile. Delegates discussed Articles 18-20 together, and discussed 20 *bis* separately on Thursday.

**Article 18. Information exchange; Article 19. Public information, awareness and education; and Article 20. Research, development and monitoring:** The EU supported the general approach of Section J, stated that many of the articles depend on the results of the negotiations on other parts of the convention, and stressed the need for cooperation and coordination with existing chemical and waste conventions and the Strategic Approach to International Chemicals Management (SAICM). The EU suggested adding one paragraph to Article 19 on public access to information on mercury, including emissions, releases and storage. China said the information requested in Article 19 is too broad.

Canada supported Articles 18 and 19, and on Article 20, said human health impacts should be a priority.

The African Group highlighted: the importance of free flowing, publicly accessible information; the need for an inventory of mercury; and the need for methodologies and tools

for research, development and monitoring. Highlighting the importance of information on health impacts of mercury, Japan proposed adding a new paragraph on information on epidemics related to mercury, and said that each country should prepare an inventory of mercury. Switzerland stressed the importance of facilitating information exchange among all stakeholders, including non-governmental organizations (NGOs). The US said NGOs could play an important role in facilitating information exchange, and said it did not support establishing a new infrastructure for this purpose.

Island Sustainability Alliance said that information on mercury should be made publicly available and easily accessible, and should include: experiences; scientific, technical, and financial information; and information on non-mercury substitutes. He suggested establishing a regional cooperation group on research, development and monitoring.

Emphasizing that 70% of consumers do not know that amalgam contains mercury, the World Alliance for Mercury-Free Dentistry appealed for the instrument to prioritize information exchange and public education on this issue. Zero Mercury Working Group highlighted the need to involve civil society organizations in information exchange and monitoring. The International Association for Dental Research highlighted the need for information on effective mercury-free alternatives and called for further research in this area.

**Article 20 bis. Health Aspects:** On Thursday evening, delegates discussed this article, which stipulates that parties shall take measures to protect those most vulnerable to the health impacts of mercury by, *inter alia*, promoting access to health care and requiring developed countries to provide technical and financial resources to support activities listed in the article.

The EU, Japan and the US recognized the importance of health aspects related to mercury exposure, but said most aspects in this article could be incorporated into other articles. Japan welcomed discussion to avoid duplication with other articles and said the article should not be limited to vulnerable populations, noting that mercury-related health damage can affect anyone.

GRULAC, supported by Brazil, said it was delighted with the text and highlighted a proposal on the exchange of information, public awareness, research, monitoring and health promotion (UNEP(DTIE)/Hg/INC.3/CRP.19).

Canada emphasized that provisions promoting access to health care exceed UNEP's mandate and said concerns relating to direct or occupational exposure to mercury should be addressed through national governments.

Chile, supported by Brazil, emphasized that the aim of MEAs is to protect human health and the environment and said topics addressing health should be dotted throughout the text of the treaty.

Argentina emphasized that with the passing of time and implementation, the health aspects of the objectives of other MEAs, such as the Stockholm Convention, have been diluted by environmental issues.

The African Group, supported by Algeria, expressed support for the provision on access to health care and said it should be separated from contaminated sites.

Iran supported the article and called for support for occupational health services for workers in developing countries.

WHO offered to provide information to assist the contact group with its work. The International Society of Doctors for the Environment highlighted the importance of establishing biological environmental markers as indicators of implementation of the instrument and called for monitoring the health of workers exposed to mercury.

The Global Indigenous Peoples' Caucus expressed support for Article 20 *bis* and highlighted the need for databases in all countries on environmental mercury releases in all environmental media.

**Article 21. Implementation Plans:** The EU supported discretionary implementation plans as listed in Option 1, which stipulates that, *inter alia*, parties in a position to do so "may" or "shall" develop and execute a plan for meeting their obligations, and transmit these implementation plans to the COP within three years of the convention's entry into force. The US suggested that execution of these plans be required at the time countries become parties to the convention.

Option 2 stipulates that no later than five years after the entry into force of the instrument, parties shall devise implementation plans with a view to complying with their obligations. China called for flexible measures to ensure that developing countries fulfill their obligations.

Canada, supported by the US, suggested postponing discussion on this article until the number and type of implementation plans are known. Highlighting the importance of national implementation plans (NIPs), Japan requested parties to further discuss whether these NIPs should be voluntary or mandatory. IPEN, on behalf of six other NGOs, emphasized that NIPs are "essential to ensuring compliance" and called on delegates to learn best practices on these plans from the Stockholm Convention on Persistent Organic Pollutants.

**Article 22. Reporting:** The EU, Switzerland, Australia, Nigeria, the US, Japan and IPEN supported Option 1, which stipulates that parties shall report to the COP measures taken to implement the provisions of the convention, and the effectiveness of these measures in meeting the convention's objectives. Japan, supported by Canada, reiterated that financial assistance should not be tied to reporting obligations. Nigeria called for capacity building to enable developing countries to meet their reporting obligations.

Australia noted duplication of elements to be provided to the Secretariat by the parties, and, supported by Canada, suggested that discussions on this issue be postponed until INC4.

China, Chile and Algeria supported Option 2, which stipulates that parties shall prepare national reports on their progress in applying the provisions of the convention, taking into account the contents of their NIPs. Chile said that consideration of this issue could be postponed to a future meeting. IPEN emphasized that this option is "unclear and may delay the process."

**Article 23. Effectiveness evaluation:** The EU and Canada supported the approach put forward in the draft text, but suggested the first evaluation should take place three years after the convention's entry into force. Canada emphasized that monitoring of mercury in the environment and vulnerable populations is key. Japan stressed that provision of financial

assistance should not be a condition for compliance and called for careful delineation of the relationship between these two issues in this article.

Japan and IPEN called for the inclusion of a paragraph referencing trends in mercury levels observed in biotic media and vulnerable populations.

China suggested that, because many developing countries lack the capacity to generate the reporting and monitoring information required for effectiveness evaluation, this evaluation should be conducted four years after the convention's entry into force.

Chair Lugris then established a contact group on awareness-raising, research and monitoring, and communication of information, and appointed Daniel Ziegerer (Switzerland) and Alejandro Riviera Becerra (Mexico) as Co-Chairs. This group met on Thursday.

On Friday, Chair Lugris invited delegates to consider the text submitted by the Co-Chairs of the contact group on awareness-raising, research and monitoring, and communication of information (UNEP (DTIE)/Hg/INC.3/CRP.22/Rev.1). No comments were made and the INC decided to replace this part of the draft text with this new text.

Additionally, INC3 requested the Secretariat to prepare a compilation of reporting obligations and action plans envisaged in the draft negotiating text for consideration at INC4.

**SECTION K. INSTITUTIONAL ARRANGEMENTS:**

The Secretariat introduced the document, noting that Article 24 contains provisions for a COP, Article 25 contains provisions for a secretariat, and Article 25 *bis* contains provisions for expert bodies.

**Article 24. Conference of the Parties:** The EU, Australia, and Canada did not support a paragraph that calls for the COP to review, evaluate and endorse NIPs submitted by parties, with Canada noting that an implementation mechanism must be in place before the COP can perform this task. Canada also requested that text referencing an implementation committee be addressed after the details of the article on implementation plans are finalized.

Japan requested that language on rules of procedure and financial rules to be standardized with language from the Stockholm Convention. Australia called for deletion of text calling on the COP to review Annexes C and D (mercury-added products and processes).

**Article 25. Secretariat:** The EU supported language referencing synergies between the secretariats of the chemicals convention and the future mercury convention secretariat. Switzerland suggested this text be streamlined to reflect the recent discussions on synergies within the chemicals conventions. Chile requested that this paragraph be made into a separate article. Canada proposed removing this language from the article.

Canada and Australia suggested requiring a three-quarters majority to vote on the functions of the secretariat.

**Article 25 bis. Expert bodies:** This article contains two options for expert bodies. Option 1 calls for establishment of a committee on technological progress, and Option 2 calls for establishment of an expert body for scientific, environmental, technical and economic issues.

The EU supported Option 2, but noted that they were amenable to Option 1. Burkina Faso and the US supported Option 2. Norway expressed flexibility on either of the two options. Switzerland, with the African Group, supported Option 1, but noted that aspects of Option 2 were also favorable.

Japan called for careful consideration of this article to avoid additional administrative costs. Australia, Canada and Chile said that it was premature to negotiate the terms of reference for these groups. Canada highlighted a preference for an expert group on compliance and called on delegates to consider the examples from the Montreal Protocol and the chemicals conventions.

Chair Lugris noted convergence on a number of paragraphs, proposed to send the agreed paragraphs on Article 24 to the Legal Group for consideration, and suggested further consideration of this section be deferred to INC4.

**SECTION L. SETTLEMENT OF DISPUTES: Article 26.**

**Settlement of disputes:** On Wednesday, Chair Lugris informed delegates that the Legal Group would consider Article 26 on settlement of disputes and Annex J on arbitration and conciliation procedures. On Friday, Legal Group Chair Susan Biniaz (US) explained the group's work on this section (UNEP(DTIE)/Hg/INC.3/CRP.20), and delegates agreed to use the new text in the revised draft text for negotiation at INC4.

**SECTION M. FURTHER DEVELOPMENT OF THE CONVENTION: Article 27. Amendments to the Convention:**

The EU said that inclusion of a provision for voting is essential, and Switzerland said decision by a majority vote is necessary when all efforts to achieve consensus have failed.

India, New Zealand, Nigeria and Egypt supported reaching agreement on any proposed amendment by consensus, and suggested deleting the bracketed text in paragraph 3 of Article 27, which allows for a majority vote when all efforts to reach consensus have been exhausted. Canada said it needs some time to consider removing the brackets in this paragraph.

Australia and the US expressed support for the principle of reaching agreement by consensus. Australia said it was puzzled by bracketed text in paragraph 1, which states that "such amendments shall not prejudice the interests of any party to this convention," and suggested keeping it in brackets. The US said the bracketed text on the timeframe for proposing amendments is useful, and agreed with the EU that a procedure for making amendments will be necessary eventually, but does not need to be established now.

On paragraph 5, Article 27, New Zealand supported a "three-fourths procedure," which stipulates that an amendment shall enter into force for those parties having accepted it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the parties.

Chair Lugris concluded no consensus could be reached on Article 27 during this meeting, and delegates agreed to defer further discussion to INC4.

**Article 28. Adoption and amendment of annexes:** There were no substantive interventions on this article. INC3 decided to refer paragraphs 1, 2, 3 and 5 to the Legal Group for review, and to postpone the discussion of paragraph 4.

**SECTION N. FINAL PROVISIONS: Articles 29, 30, 31, 32, 33, 34, 35 and 36. Right to vote; Signature; Ratification, acceptance, approval or accession; Entry into force; Reservations; Withdrawal; Depositary; and Authentic texts:** Chair Lugris suggested forwarding to the Legal Group some elements of the final provisions, including: Article 29 on right to vote; Article 30 on signature; the three unbracketed paragraphs in Article 31 on ratification, acceptance, approval or accession; Article 35 on depositary; and Article 36 on authentic texts. Delegates expressed support for this proposal.

On Friday, Legal Group Chair Biniaz outlined the draft text on final provisions (UNEP(DTIE)/Hg/INC.3/CRP.13), which includes provisions on signature, right to vote, depositary, and authentic texts. Delegates agreed the new text should replace the current text in the draft document.

#### **OTHER MATTERS**

**FUTURE INC3:** The Secretariat informed plenary that INC4 will be held in Punta del Este, Uruguay, from 25-29 June 2012.

#### **CLOSING PLENARY**

On Friday afternoon, INC3 decided to replace parts of the draft text with new text on articles related to: ASGM; storage, wastes and contaminated sites; and awareness-raising, research and monitoring, and communication of information. This text will be discussed at INC4. Delegates also agreed to commence a range of intersessional work, including requesting the Secretariat to prepare a revised version of the draft text contained in UNEP(DTIE)/Hg/INC.3/3, which will include the revised text agreed during INC3, changes presented by Contact Group Co-Chairs and the Legal Group, and submissions received during the intersessional period.

Delegates reviewed the draft report (UNEP(DTIE)/Hg/INC.3/L.1 and Add.1), which was adopted with minor amendments.

UNEP Executive Director Achim Steiner noted that delegates had now passed the halfway point in the mercury negotiations process, and he commended them for their hard work and commitment to global environmental negotiations.

Chair Lugris congratulated delegates for the progress made, and emphasized the transparent procedures and establishment of a negotiating text demonstrate that the INC negotiating process “is working well.” He gavelled the session to a close at 6:35 pm.

### **A BRIEF ANALYSIS OF INC3**

Expectations were high for the third session of the Intergovernmental Negotiating Committee to establish a legally binding instrument on mercury (INC3), especially since it represented the midpoint of the five-session negotiating process. At INC1, delegates exchanged ideas and set goals for the convention, and at INC2, participants discussed their views on what should be included in the agreement (the “elements” of the instrument). Delegates at INC3 had the task of taking the vision set out during the first two meetings and turning it into the text that will comprise this legally-binding instrument.

According to veteran policymakers, the third session of a five-meeting negotiating process should accomplish three things: 1) delegates must start paring down the draft text to craft a focused instrument with goals that are realistic, implementable,

and appropriate to the objectives of a multilateral environmental agreement; 2) parties must clearly state their preferences, so that “fault lines” between country positions are explicit and parties are able to begin negotiating in earnest; and 3) delegates must take ownership of the instrument and drive the process forward.

INC3 demonstrated mixed success on these points. While delegates made demonstrable progress in some areas, the divisions at INC3 and the lack of emerging “champions” of the process indicated that the successful conclusion of this process is not a foregone conclusion.

#### **PARING DOWN THE INSTRUMENT**

A key aim of INC3 was to narrow down the options and alternatives in order to produce a draft convention text that could be refined at the next sessions. The marked success in this area at INC3 was the issue of artisanal small-scale gold mining (ASGM).

INC3 agreed on most of the major issues on ASGM, and succeeded in producing a single text with just a few square brackets. Some delegates attributed this progress to the successful “delinking” of ASGM from other articles in the draft negotiating text, including, *inter alia*, those on: mercury supply sources (Article 3); mercury wastes (Article 13); and contaminated sites (Article 14). They noted that political will to achieve progress on this issue is motivated by the serious impact of ASGM on the environment and public health, as well as consideration of the socio-economic aspects of this sector, on which millions of people depend for a living. Furthermore, many delegates were pleased that the text links the largely informal ASGM sector to economic development, thus nudging countries to formally recognize this sector in order to prepare for compliance with the obligations that will be imposed by the entry into force of the convention. These delegates emphasized that this outcome would represent a success not only for the objective of protecting human health and the environment, but also for the broader goals of poverty alleviation and economic development.

Delegates also succeeded in other areas, such as on the issues of storage, wastes and contaminated sites, and on awareness-raising. On both issues, contact groups succeeded in drafting a single text to forward for further negotiation at INC4. Some brackets remain in the text, but the options and alternatives have been significantly limited. INC4 delegates will try to build on this success as they refine the text and clear the way for work on the most difficult issues.

#### **FAULT LINES**

In negotiations, parties must draw clear fault lines in order to clarify their positions and provide a basis for compromise. This is critical prior to INC4, as it enables delegates to work toward resolving as many of the smaller issues as possible, and to clear the way for efficient work on the most complex and difficult issues, which must be resolved by the close of INC5. During INC3, clear fault lines emerged on two critical issues: voluntary versus mandatory control measures, and the selection of a financial mechanism to support parties’ implementation of their obligations.

Invoking the principle of common but differentiated responsibilities, several developing countries argued that mandatory control measures failed to account for socio-economic realities, and were thus both inappropriate and unrealistic. In contrast, many developed countries argued that this instrument is intended to be legally-binding, and that voluntary measures will undermine the success of the convention in critical areas, such as reducing atmospheric emissions of mercury. The main sources of atmospheric emissions are coal-fired power plants, which many developing countries consider to be the biggest drivers of industrial development.

The second serious fault line emerged around the issue of the financial mechanism. The link between financial and technical assistance and compliance represented a significant sticking point for developing countries, as they argued that their capacity to meet their obligations depends on the financial assistance afforded to them. However, many developed countries were unwilling to agree that compliance should be contingent upon provision of financing. Furthermore, many developed countries favored the use of an existing mechanism, such as the Global Environment Facility (GEF), with many explaining that creation of a new, stand-alone mechanism such as the Montreal Protocol's Multilateral Fund would require a level of funding that would be difficult for developed countries to bear in the current economic climate. In contrast, many developing countries expressed concern that the GEF is not very efficient and highlighted frustrations in trying to meet what they characterized as the overly stringent requirements for financing.

Country positions on both of these issues were stated more clearly and, in many cases, more forcefully than at previous INCs, and indicated little room for compromise. Further complicating this issue is the difficulty of advancing discussions on a financial mechanism without a clear understanding of which control measures will be mandatory and which will be voluntary, because delegates do not know what level or type of financial support will be needed. The financial mechanism is a key issue, and likely will not be decided until the last meeting. However, the strong, seemingly inflexible statements and the inability of the contact group to achieve any degree of compromise concerned many, who wondered if delegates will be willing to compromise later. If not, this could preclude progress and eventual successful conclusion of negotiations.

#### **OWNERSHIP**

The final expectation for the third meeting of the INC process is that some parties will take ownership of the process, demonstrating their commitment to successful completion of the negotiations and establishment of the instrument by taking action to drive the process forward. By the conclusion of INC3, however, there was scant evidence that any parties were emerging as champions of this instrument.

Perhaps the clearest indication of parties' commitment to the process was demonstrated by the willingness of some developed countries to work intersessionally on issues related to financial and technical assistance without reciprocal support for work on a compliance mechanism. As some parties noted in their closing statements, their willingness to support work on

financial assistance was predicated on explicit expectations that other countries would be equally willing to move forward on discussions of a compliance mechanism at INC4.

The lack of evidence of parties taking ownership at this meeting could be attributed to the deep divisions on key issues such as control measures and the financial mechanism. For many delegates, decisions on these crucial provisions will determine the success of the treaty, and their importance may have motivated delegates to present their views forcefully and inflexibly at INC3, in order to establish a strong initial stance from which to begin negotiations. If so, perhaps champions will emerge in the next stage of the process, when parties will be expected to take concrete steps toward establishing agreement on the draft text.

#### **WHERE DO WE GO FROM HERE?**

Delegates will now carry the fruits of their labor in the form of a revised negotiating text forward to INC4. While INC3 celebrated some success, the deep divisions on issues such as financing and control measures underscored the need for flexibility and serious compromise. Otherwise, a successful outcome may be at risk.

Is there hope for resolution? Some delegates expressed confidence that solutions may be within reach, citing, for example, the possibility that UNEP's consultative process on financing options for chemicals and waste could provide the compromise solution parties are seeking on the issue of a financial mechanism. Despite the apparently intractable positions expressed during INC3, many veteran participants suggested that comparatively hard line positions are always taken at this stage of a negotiating process in order to set the parameters for bargaining during INCs 4 and 5. Thus, at the midpoint of the INC process, the negotiations may be precisely where they should be.

### **UPCOMING MEETINGS**

**OEWG for the International Conference on Chemicals Management:** The first meeting of the Open-ended Working Group (OEWG) is scheduled to take place to consider the implementation, development and enhancement of the Strategic Approach to International Chemicals Management. The meeting will be preceded by technical briefings and regional groups meetings on 14 November 2011. **dates:** 15-18 November 2011 **location:** Belgrade, Serbia **contact:** SAICM Secretariat **phone:** +41-22-917-8532 **fax:** +41-22-797-3460 **email:** saicm@unep.org **www:** <http://www.saicm.org>

**Joint 9th Conference of the Parties to the Vienna Convention and 23rd Meeting of the Parties to the Montreal Protocol:** The 23rd session of the Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (MOP 23) and ninth meeting of the Conference of the Parties to the Vienna Convention for the Protection of the Ozone Layer (COP 9) are scheduled to take place in November. **dates:** 21-25 November 2011 **location:** Bali, Indonesia **contact:** Ozone Secretariat **phone:** +254-20-762-3851 **fax:** +254-20-762-4691 **email:** [ozoneinfo@unep.org](mailto:ozoneinfo@unep.org) **www:** <http://montreal-protocol.org/>

**12th Meeting of the Quick Start Programme Trust Fund Implementation Committee of the International Conference on Chemicals Management:** This meeting of the Trust Fund Implementation Committee, which reviews and appraises project proposals seeking funding through the Trust Fund, and makes recommendations on the Trust Fund application procedures and project management to the Executive Board, will take place in November 2011. **dates:** 22-23 November 2011 **location:** Paris, France **contact:** SAICM Secretariat **phone:** +41-22-917-8532 **fax:** +41-22-797-3460 **email:** saicm@unep.org **www:** <http://www.saicm.org/index.php?menuid=26&pageid=257>

**UNCSD Regional Preparatory Meeting for the ECE Region:** This meeting will be convened by the UN Economic Commission for Europe (ECE) and the UN Conference on Sustainable Development (UNCSD) Secretariat. The PrepCom will be preceded by a one-day training, on 30 November 2011, offered by the UNCSD Secretariat, ECE, and the Stakeholder Forum, for regional Major Groups and other partners, to build capacity to engage with the Rio+20 process. **dates:** 1-2 December 2011 **location:** Geneva, Switzerland **contact:** Monika Linn, ECE **phone:** +41-22-917-13-15 **fax:** +41-22-917-0107 **email:** sd@unece.org **www:** <http://www.unece.org/env/SustainableDevelopment/RPM2011/RPM2011.html>

**Second Intersessional Meeting for the UNCSD:** The second intersessional meeting for the UNCSD will be convened in late 2011. **dates:** 15-16 December 2011 **location:** UN Headquarters, New York **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/>

**First International Exhibition on Waste Management, Recycling and Biomass:** This international exhibition, organized with the cooperation of the regional centres of the Basel and Stockholm conventions in Tehran, will take place in January 2012. **dates:** 8-11 January 2012 **location:** Tehran, Iran **contact:** Simatin Management Service Institute **phone:** +98-21-882-33209 **fax:** +98-21-882-33144 **email:** wastemanagement@simatin.ir **www:** [www.wastemanagement.simatin.ir](http://www.wastemanagement.simatin.ir)

**UNCSD Informal Consultations:** The UNCSD Preparatory Committee will hold a series of informal consultations on the zero draft of the outcome document in January, February, March and April 2012. **dates:** 16-18 January 2012; 13-17 February 2012; 19-23 March 2012 and 30 April - 4 May 2012 **location:** UN Headquarters, New York **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/rio20/>

**Eighth Meeting of the Chemicals Review Committee:** The next meeting of the Rotterdam Convention Chemicals Review Committee will take place in March 2012. **dates:** 18-23 March 2012 **location:** Geneva, Switzerland **contact:** Rotterdam Convention Secretariat **phone:** +41-22-917-8296 **fax:** +41-22-917-8082 **email:** pic@pic.int **www:** <http://www.pic.int/>

**Third Intersessional Meeting for UNCSD:** The final intersessional meeting for the UNCSD will be convened in March 2012. **dates:** 26-27 March 2012 **location:** UN Headquarters, New York **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/rio20/>

**GEF 42nd Council Meeting:** The Global Environment Facility (GEF) Council is the main governing body of the GEF. It functions as an independent board of directors, with

primary responsibility for developing, adopting, and evaluating GEF programmes and meets twice each year. **dates:** 11-14 June **location:** Washington, DC, United States **contact:** GEF Secretariat **phone:** +1-202-473-0508 **fax:** +1-202-522-3240 **email:** secretariat@thegef.org **www:** <http://www.thegef.org/>

**Third PrepCom for UNCSD:** The third meeting of the Preparatory Committee for the UNCSD will take place in Brazil just prior to the conference. **dates:** 13-15 June 2012 (tentative new dates) **location:** Rio de Janeiro, Brazil **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/>

**UN Conference on Sustainable Development:** The UNCSD will mark the 20th anniversary of the UN Conference on Environment and Development, which convened in Rio de Janeiro, Brazil. **dates:** 20-22 June 2012 (tentative new dates) **location:** Rio de Janeiro, Brazil **contact:** UNCSD Secretariat **email:** uncsd2012@un.org **www:** <http://www.uncsd2012.org/>

**Fourth Session of the INC to Prepare a Global Legally Binding Instrument on Mercury:** This meeting is scheduled to be the fourth of five INC meetings to negotiate a legally binding instrument on mercury. **dates:** 25-29 June 2012 **location:** Punta del Este, Uruguay **phone:** +41-22-917-8192 **fax:** +41-22-797-3460 **email:** mercury.chemicals@unep.org **www:** <http://www.unep.org/hazardoussubstances/Mercury/Negotiations/tabid/3320/Default.aspx>

## GLOSSARY

ASGM	Artisanal and small-scale gold mining
BAT	Best available technologies
BEP	Best environmental practices
CoMeD	Coalition for Mercury Free Drugs
COP	Conference of the Parties
GC	Governing Council
GC/GMEF	Governing Council/Global Ministerial Environment Forum
GEF	Global Environment Facility
GRULAC	Group of Latin American and Caribbean countries
INC	Intergovernmental Negotiating Committee
IPEN	International POPs Elimination Network
MEA	Multilateral environmental agreement
MLF	Multilateral Fund
NAPs	National action plans
NGO	Non-governmental organization
NIP	National implementation plan
UNEP	UN Environment Programme
VCM	Vinyl chloride monometer
WHO	World Health Organization