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Item 4 (a) of the provisional agenda*

Policy issues: state of the environment

Full report of the Ad Hoc Open-ended Working Group on Mercury on the work of its second meeting

Note by the Executive Director

Summary

The Executive Director has the honour to provide, in the annex to the present note, the full report of the second meeting of the Ad Hoc Open-ended Working Group on Mercury, held in Nairobi from 6 to 10 October 2008. The report was originally issued as document UNEP(DTIE)/Hg/OEWG.2/13.

* UNEP/GC.25/1.

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Annex

Report of the Ad Hoc Open-ended Working Group on Mercury on the work of its second meeting

Background

1. At its twenty-fourth session, in February 2007, the Governing Council of the United Nations Environment Programme (UNEP) adopted decision 24/3 IV, the latest in a series of decisions on mercury. In that decision, the Governing Council concluded that, notwithstanding progress made since 2005 within the UNEP mercury programme, further long-term international action was required to reduce the risks posed by mercury to human health and the environment and that it was therefore necessary to review possible enhanced voluntary measures and new or existing international legal instruments as options for responding to the challenge posed by mercury.

2. By the same decision the Council established an ad hoc open-ended working group of Governments, regional economic integration organizations and stakeholder representatives that, subject to the terms of reference set out in paragraph 30 of the decision and guided by the priorities for reducing the risks posed by releases of mercury listed in paragraph 19 of the decision, would review and assess options for enhanced voluntary measures and new or existing international legal instruments. The decision required the working group to meet twice: once prior to the tenth special session of the UNEP Governing Council/Global Ministerial Environment Forum in February 2008 and once prior to the Council/Forum's twenty-fifth regular session, to take place in February 2009. The working group was also required to provide a progress report to the Council/Forum at its tenth special session and a final report reflecting all views expressed and presenting options and any consensus recommendations to the Council/Forum at its twenty-fifth regular session. The decision also called on the Chemicals Branch of the UNEP Division of Technology, Industry and Economics (UNEP Chemicals) to serve the Ad Hoc Working Group as secretariat and to prepare the analytical and summary reports necessary for its work.

3. At its first meeting the Working Group focused its work on a study on options for the global control of mercury (UNEP(DTIE)/Hg/OEWG.1/2), which the secretariat had commissioned in order to facilitate the work of the Working Group. The Working Group structured its consideration of the study in accordance with a proposal from the Chair: for each priority area set out in paragraph 19 of decision 24/3 IV, the Working Group considered whether the study served as a good basis for discussion, whether it provided a good overview of possible response measures for the various strategic objectives and whether any additional options not identified in the study should be considered. It also discussed the framework in which the options under each priority area might best be implemented, including the extent to which various kinds of legally binding and voluntary measures would be suitable. The Working Group's discussions are summarized in the report of its first meeting (UNEP(DTIE)/Hg/OEWG.1/6).

I. Opening of the meeting

4. The second meeting of the Ad Hoc Open-ended Working Group on Mercury was held at the United Nations Office at Nairobi from 6 to 10 October 2008. The purpose of the meeting was to finalize the report required by decision 24/3 IV "reflecting all views expressed and presenting options and any consensus recommendations" on how to respond to the challenges presented by mercury, which would be presented to the UNEP Governing Council/Global Ministerial Environment Forum at its twenty-fifth regular session, in February 2009.

5. Mr. John Roberts, Chair of the Open-ended Working Group, declared the meeting open at 10.10 a.m. on Monday, 6 October 2008, welcoming the meeting participants and thanking the various donor countries for their support in facilitating the meeting. Ms. Alice Kaudia, Environment Secretary, Ministry of Environment and Mineral Resources of Kenya, also welcomed the participants. Ms. Angela Cropper, Deputy Executive Director of UNEP, made opening remarks.

6. Ms. Kaudia expressed her great pleasure at welcoming the participants to her country on behalf of her Government. She thanked the secretariat and participants for their contributions to the current meeting, observing that they faced a significant task. Kenya subscribed to the position taken by the

African region that a legally binding instrument was required to respond to the global challenges posed by mercury. She described the actions taken in her country to reduce the use of mercury, which included recovery, reclamation and recycling and the removal of skin lightening products that contained mercury from the market. Her country had undertaken systematic monitoring of aquatic emissions, particularly discharges into Lake Victoria, which had demonstrated that the fish and water there did not contain significant levels of mercury. She urged the Working Group to produce clear guidance on decisions to be taken at the global level.

7. Ms. Cropper, welcoming the participants, conveyed the best wishes of Mr. Achim Steiner, Executive Director of UNEP, along with his high expectations for the outcome of their deliberations. The continuing presence of mercury in the environment, she said, posed a threat to global health, as it moved through the human food chain, exposing the most vulnerable – children and infants – to lasting effects. Such effects transcended boundaries but were most pronounced in developing countries, many of which lacked the capacities to create awareness and implement preventive measures. A global response was therefore required and Governments had to make a universal commitment to put in place effective global arrangements for responding to the challenges posed by mercury.

8. National and regional actions taken thus far to limit the release of mercury had been impressive, she said. Such actions could be part of a global solution but if they involved only some countries they would be insufficient. Unless all sources of mercury were reduced, supply chains could simply shift from one country to another. Mechanisms to assist countries lagging behind to explore ways and means to implement reductions in emissions of mercury into the environment, including through the use of existing technologies, were needed.

9. She stressed that the UNEP Governing Council expected to receive a clear proposal, or clearly defined options, for consideration at its twenty-fifth session. The current meeting represented a unique opportunity to guide collective policy on mercury for the coming years, an opportunity that should not be lost in spite of the divergence in views with respect to the framework within which the problem might be tackled. Given that there was consensus about the magnitude and urgency of the problem, there had to be ways, she suggested, to take urgent action while continuing, if necessary, to think through the longer-term approach. The costs of inaction in ecological, human and economic terms, she said, far exceeded the cost of action. Viable alternatives did exist for those uses of mercury that remained essential; where they did not, industry had to be challenged to find them. A two-track approach, including options for both voluntary and legally binding approaches, could be presented to the Governing Council. The Council, she said in closing, was entitled to the best possible technical guidance and greatly needed the input of the Working Group on a policy framework, priority elements and options for effective implementation.

II. Organizational matters

A. Election of officers

10. The Chair recalled that at its first meeting the Working Group had elected the members of the Bureau. He reported, however, that Ms. Irina Zastenskaya (Belarus) was unable to continue in her role as Vice-Chair and that it would therefore be necessary for the Working Group to elect a new Vice-Chair. Following a nomination from the group of Central and Eastern European countries, the Working Group accordingly elected Ms. Ivana Vrhovac (Croatia) as Vice-Chair to replace Ms. Zastenskaya.

11. With the election of Ms. Vrhovac the members of the Bureau were as follows:

Chair:	Mr. John Roberts (United Kingdom of Great Britain and Northern Ireland)
Vice-Chairs:	Ms. Ivana Vrhovac (Croatia)
	Ms. Keiko Segawa (Japan)
	Mr. Gustavo Solórzano Ochoa (Mexico)
Rapporteur:	Ms. Abiola Olanipekun (Nigeria)

B. Adoption of the agenda

12. The Working Group adopted the agenda set out below on the basis of the provisional agenda which had been circulated as document UNEP(DTIE)/Hg/OEWG.2/1:

1. Opening of the meeting.
2. Organizational matters:
   (a) Adoption of the agenda;
   (b) Organization of work.
3. Review and assessment of options for enhanced voluntary measures and new or existing international legal instruments.
4. Report on activities under the UNEP mercury programme.
5. Other matters.
6. Adoption of the report.
7. Closure of the meeting.

C. Organization of work

13. The Working Group decided that it would meet from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m. each day, that it would seek to conclude as much work as possible in plenary sessions and that it would establish such working groups as it deemed necessary, bearing in mind that for budgetary reasons such groups would not have the benefit of interpretation.

D. Attendance

14. Representatives of the following States participated in the meeting: Argentina, Australia, Austria, Bangladesh, Belgium, Bhutan, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Chad, Chile, China, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, Ethiopia, Finland, France, Gambia, Germany, Ghana, Guinea, Guinea-Bissau, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Italy, Jamaica, Japan, Jordan, Kenya, Kiribati, Kyrgyzstan, Madagascar, Mali, Mauritania, Mauritius, Mexico, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Qatar, Russian Federation, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Serbia, Seychelles, Slovenia, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Thailand, Togo, Tunisia, Turkey, Tuvalu, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Yemen and Zimbabwe.

15. The following United Nations bodies and specialized agencies were represented: Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and Stockholm Convention on Persistent Organic Pollutants, United Nations Institute for Training and Research.

16. The following intergovernmental organizations were represented: European Community, International Energy Agency – Clean Coal Centre.

17. The following non-governmental organizations were represented: Arnika – Toxics and Waste Programme, Associação de Proteção ao Meio Ambiente de Cianorte (Association for the Protection of the Environment of Cianorte), Basel Action Network – Asia Pacific Region, Ecologistas en Acción (Environmentalists in Action), Environmental Health Fund, European Environmental Bureau, FDI World Dental Federation, Ground Work – Friends of the Earth, iLima Kenya, Independent Ecological Expertise, International Council on Mining and Metals, Inuit Circumpolar Council, IVL Swedish Environmental Research Institute, Natural Resources Defence Council, Norwegian Institute for Air Research, Pesticide Action Network, Physicians for Social Responsibility (Kenya), Sierra Club – United States of America, Toxics Link, World Chlorine Council, World Wild Fund for Nature (Guyana).

III. Review and assessment of options for enhanced voluntary measures and new or existing international legal instruments

18. Following an introduction to the item, the Working Group agreed to take up agenda item 4, on activities under the UNEP mercury programme and other matters. A summary of the presentations given under agenda item 4 can be found in chapter V of the present report. Following those presentations, agenda item 4 was suspended and discussion of agenda item 3 resumed.

A. Opening statements

19. There was general agreement among those who made opening statements that the secretariat's note on common elements of a mercury framework (UNEP(DTIE)/Hg/OEWG.2/8) was a good basis for the discussions at the current meeting. There was also general agreement that any action on mercury should take into account the decisions reached at previous sessions of the Governing Council. There was further broad agreement that it was incumbent on the Working Group to provide clear information to the Governing Council.

20. Some representatives said that mercury should be tackled through a mix of voluntary and legally binding measures, while others differed as to which approach would be the best to combat the problem. Representatives advocating a voluntary framework argued, among other things, that it would be flexible and adaptable, that it could be put in place quickly without the need for a lengthy negotiation and ratification process and that it would require a relatively minimal infrastructure. Proponents of a legally binding framework, on the other hand, while acknowledging the need to avoid the proliferation of international agreements, argued that a legally binding framework would be transparent and non-discriminatory and could encompass related trade issues. It was also said that while voluntary approaches had a part to play only a legally binding instrument could provide an effective and long-term solution to the risks posed by mercury.

21. Several representatives stressed the necessity of taking account of the individual circumstances of countries, including their varying stages of development. Many representatives concurred that there was a need for capacity-building, technology transfer and sustainable resources to be considered as part of the wider issue, particularly with regard to providing assistance to developing countries.

22. The representative of the United States of America drew attention to a programmatic and organizational structure on mercury developed by his Government, which was described in an information document available to the Working Group (UNEP(DTIE)/Hg/OEWG.2/INF/6). He urged the Working Group to consider the structure in detail, saying that as a comprehensive and strategic voluntary approach it offered many advantages that could be of use in tackling the problem of mercury. Several other representatives drew attention to measures that had been implemented in recent years in their countries and at the subregional and regional levels to deal with mercury-related risks and to phase out the use of mercury.

23. A number of representatives urged caution about moving too quickly and suggested that more information was required. The Working Group, they said, would do well to analyse the issue further and move forward in a measured manner rather than rush to adopt a position that could prove problematic. Some representatives, however, stressed the need for urgent action, given the harmful effects of mercury on human health and the environment.

B. Intersessional documentation

24. Following the opening statements the representative of the secretariat outlined the documents that were before the Working Group for its consideration under items 3 and 4 of the agenda. At its first meeting the Working Group had agreed on a programme of intersessional work to be carried out by the secretariat to provide the Group with the information it needed to finalize its work at the current meeting. The secretariat had prepared the documents (UNEP(DTIE)/Hg/OEWG.2/3–12) in accordance with that programme of work. They covered among other things technical issues such as the current demand for and supply of mercury (UNEP(DTIE)/Hg/OEWG.2/6/Add.1 and 7/Add.1); financial considerations, including an analysis of possible sources of funding (UNEP(DTIE)/Hg/OEWG.2/3 and 12), and technology transfer (UNEP(DTIE)/Hg/OEWG.2/10); options for dealing with mercury, including legally binding and voluntary approaches (UNEP(DTIE)/Hg/OEWG.2/4); and the secretariat's efforts to restructure the response measures set out in the annex to the report of the

Working Group's first meeting into five clusters as requested by the Working Group in the programme of intersessional work (UNEP(DTIE)/Hg/OEWG.2/11).

25. The representative of the secretariat thanked Canada, Germany, Norway and Switzerland, countries which had provided funding for the preparation of the documents, and others which had provided information needed to prepare them, in particular the reports on cost-benefit analysis, assessment of supply and demand and mercury-containing products and processes.

26. Following the secretariat's presentation the representative of the Nordic Council of Ministers informed the Working Group of a seminar, on 4 October 2008, on the social and economic costs of continuing the status quo regarding mercury pollution. A new study on the matter, introduced at the seminar and available to the meeting as document UNEP(DTIE)/Hg/OEWG.2/INF/7, was intended to complement the secretariat's cost-benefit analysis report. The study was available on the website of the Nordic Council of Ministers. In addition, one representative said that the documents presenting the outcomes of the intersessional work were of sufficient value that their lifespan should be extended beyond the current meeting.

27. The representative of the Islamic Republic of Iran informed the Working Group that document UNEP(DTIE)/Hg/OEWG.2/6/Add.1, which referred in paragraph 5 on page 36 to the expansion of a mercury cell room in the Bandahar facility in his country, was incorrect in that no such facility in fact existed. He asked that the entry be corrected in subsequent versions of the report.

C. Common elements of a mercury framework

28. The representative of the secretariat introduced document UNEP(DTIE)/Hg/OEWG.2/8, which set forth possible elements of a mercury framework for consideration by the Working Group. He informed the Group that the secretariat had prepared it based on the priorities identified in paragraph 19 of Governing Council decision 24/3 and on the response measures set out in document UNEP(DTIE)/Hg/OEWG.2/11. He suggested that there would be benefit in using the elements as the basis of a policy framework. The proposed elements had been developed without prejudice to a legal or voluntary approach to implementation.

29. A number of representatives congratulated the secretariat on the document produced. There was broad agreement that the common elements identified by the secretariat reflected and encapsulated the measures identified by the Working Group at its first meeting; that they covered all the priority areas contained in paragraph 19 of decision 24/3 IV; and that the logical manner in which they were presented formed a sound basis for a possible framework to address the global challenges of mercury.

30. There was some discussion of the form in which the outcomes would be presented to the Governing Council. There was general agreement that the Working Group should present the outcomes as a broad recommendation, with the intent and status of the recommendation clearly laid out in an introductory chapeau that would replace the introductory paragraphs of the document. One representative suggested that the views emerging from the current discussion could be laid out in some detail in an annex to the document to be forwarded to the Governing Council.

31. As for the elements themselves, several representatives said that the Working Group should avoid being too prescriptive in its recommendations and should aim rather at providing an overview that would allow the Governing Council to decide how best to proceed regarding implementation. One representative said that discussion of the elements was closely linked with a number of other factors such as whether a mandatory or voluntary approach was adopted; the level and type of funding required; the national, regional or global applicability of the proposed measures; and the priority of actions. The level of uncertainty involved meant that elements could not be defined too specifically. Another representative suggested that some attempt be made to prioritize the elements, eliminating those that were of lower priority or were adequately covered by existing measures.

32. Some representatives proposed that the principle of common but differentiated responsibility should be recognized in the document. One questioned the use of the word "elements", which was defined in the document as representing "specific actions"; a closer linkage to implementation could be formulated.

33. The question of whether trade should be addressed as part of the proposed mercury framework saw a range of views expressed. There were two distinct issues: first, whether it was possible or necessary to control elemental mercury as part of efforts to influence the use of mercury through supply-side measures; and, second, the control of mercury in products, with a number of representatives arguing that many countries lacked the capacity to manage the waste streams of such products.

34. Arguing against the inclusion of references to trade, several representatives noted that there were other relevant multilateral environmental agreements such as the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants, together with other international bodies such as the World Trade Organization, which would be more appropriate forums for introducing controls, whether at the national or global levels. That view was refuted by other representatives, however, who pointed out, among other things, that some less developed countries were not represented in the World Trade Organization but nevertheless deserved to have their voices heard.

35. Numerous representatives argued in favour of including trade provisions, however, noting for example that they would help to create a level playing field for trade. One representative pointed out that the only way to ensure mercury reductions in domestic markets was via trade restrictions. Another noted the problems faced by small island States and other developing countries, such as his own, and called for action to be taken on both the supply and demand sides. One representative called for the producers of mercury-containing products to take responsibility for them, while another cautioned against attempting to appropriate the framework for any one country, urging the representatives to take an overview of the issue. It was noted that, even if controls were introduced, there could still be good reasons for mercury to cross boundaries – for example, if it were being taken for secure storage or to meet essential demands in areas in which no alternatives to mercury had been found.

36. There was discussion of the implications for mercury control of the energy needs of rapidly developing countries, which were often met by power plants fuelled by coal and other fossil fuels. Some representatives said that mercury emissions from such sources were of lower priority than emissions of other common pollutants , that complete elimination of such unintentional releases of mercury was not feasible and that it was therefore more appropriate to focus attention on intentional releases. Other representatives said that elimination was feasible in some instances and argued for retaining the concept of elimination as a topic for discussion. It was agreed that the text would be amended to indicate clearly that elimination was only considered in circumstances in which it was feasible, whereas for other circumstances minimization was the goal. The representative of the International Energy Agency Clean Coal Centre, lead for the mercury releases from coal combustion partnership area, said that effective options existed for limiting mercury emissions from coal-fired power stations in conjunction with measures for controlling particulate emissions. Some representatives urged adoption of wider approaches, including multi-pollutant approaches, which had co-benefits reflecting a range of national priorities such as human health and the environment.

37. There was a broad discussion on conservation, use of natural resources, protection of shared water bodies and climate change. General agreement was reached that those issues were best considered under the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme IV).

38. Several representatives drew attention to the importance of promoting the technical guidelines of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, including those on the environmentally sound management of mercury waste. Several representatives of developing countries said that their countries needed additional assistance in respect of the guidelines.

39. A number of representatives said that responsibility for the environmentally sound management of mercury waste had to be shared. Some suggested that responsibility for storage and disposal should be borne by producers; some that it should be shared between producers and users; others that producers should help developing countries to tackle mercury waste; and still others that the public and private sector should work together to manage mercury waste more effectively.

40. Other points made by individual representatives were that the notion of common but differentiated responsibilities should inform the framework; that the supply of mercury would be reduced by long-term storage and would thus affect demand; that mercury continued to be used in traditional medicines in a number of countries; that it was unrealistic to think that the risk from mercury could be eliminated; that there was a need to deal with near-end-of-life products imported to developing countries; that small island developing States with limited land area faced particular problems with respect to the storage and disposal of hazardous wastes; that information exchange between countries, including on successful experiences in dealing with contaminated sites, was vital; and that there was a need to produce guidelines on surveying possible contaminated sites and guidance on best available techniques and best environmental practices.

41. Various representatives highlighted the interlinkages between the elements of the framework, the relationship between activities on supply, demand and trade being a particular example.

42. A number of representatives pointed to the need for cooperation and collaboration between chemicals-related multilateral environmental agreements, intergovernmental bodies and other stakeholders in addressing mercury.

43. Following the discussions under the sub-item, the Working Group recommended that the Governing Council consider the list of elements contained in the appendix to the final report of the Working Group to the Governing Council of UNEP. As discussed in section F, below, that report is set out in annex I to the present report.

D. Options for a mercury framework

1. Discussion

44. Introducing the discussion on options for a mercury framework, the Chair stressed that while the Working Group might not reach consensus on the modality of implementation to be employed it should focus on putting forward options and their advantages and disadvantages for consideration by the Governing Council at its twenty-fifth session. He noted that following the discussion the secretariat would endeavour to prepare a synthesis paper on the matter for the Working Group's consideration.

45. Several representatives said that, although no consensus existed on the modality for implementing mercury control, there was agreement that the threat posed by mercury was an issue of global concern requiring action and broad consensus on the actions required for its management and control. One representative emphasized the importance of not prejudging the outcome of the Governing Council's consideration of the matter.

46. Several representatives said that only a legally binding instrument would deliver the substantial reduction in mercury emissions that was required and that harmonization between States was necessary for effectiveness, including on trade-related measures. A legally binding instrument, they said, would be the strongest expression of common commitment and would ensure transparency, oversight, coherence and a comprehensive and non-discriminatory approach. It was best suited to address issues of supply, including primary mining, and technology transfer and capacity-building support to developing countries and countries with economies in transition. The obligations of parties would be clear, participation would be broad and countries would be more likely to introduce national measures and legislation than they would under a voluntary regime. Voluntary approaches, they said, were too ad hoc in nature and could not promote the comprehensive, sustainable, predictable and efficient solution that was required to respond to the global and complex problems of mercury, including the provision of sustainable funding. Voluntary approaches could, however, complement a legally binding instrument. Lessons in that regard could be learned from existing multilateral environmental agreements, such as the Basel and Stockholm conventions, where voluntary cooperation such as partnerships did play a supportive role.

47. A number of representatives speaking on behalf of a number of regions spoke in favour of a new legally binding multilateral framework that could include all of the elements set out in document UNEP(DTIE)/Hg/OEWG.2/8 and comprise both legally binding and voluntary measures. Binding measures could be introduced at the global level, as well as discretionary measures that allowed flexibility. Discretionary measures could be employed at the national level and other provisional voluntary measures could be decided upon by countries according to their particular national situations. The measures could be implemented in their entirety or in part or progressively in line with national priorities and capacities. One representative stressed that a framework agreement would allow for a consistent international approach and trade measures by countries to control mercury in a way that was multilateral, transparent and non-discriminatory in line with the rules of the World Trade Organization and article 20 of the General Agreement on Tariffs and Trade.

48. Several other representatives suggested that a framework combining binding and voluntary approaches should be employed. They argued for further analysis to identify, evaluate and classify elements based on whether they would be best dealt with under a mandatory or voluntary approach. Measures to control supply and trade in elemental mercury, for example, would be difficult to implement on a voluntary basis alone and might require the support of international controls. Alternatively, decisions and actions on site rehabilitation, phase-out of stockpiles and control of residues and waste from products containing mercury could be voluntary.

49. Several representatives expressed support for dealing with mercury under existing conventions. One suggested that activities on mercury residue should be enhanced to promote the inclusion in annex III of the Basel Convention of elemental mercury and mercury-containing compounds and in annex C of the Stockholm Convention of methyl mercury, which by its organic nature allowed for its treatment under that Convention. Another representative, however, suggested that the Stockholm Convention might not be able to accommodate all of the elements set out in a strengthened framework on mercury and that it would be difficult to explain from a political perspective why that convention should encompass mercury. They also cautioned that giving special consideration to developing countries and countries with economies in transition would also be more problematic were that approach adopted and that the Convention might be overburdened if required to act on mercury. In the end there was general agreement that the option to deal with mercury under a protocol within the Stockholm Convention should be not considered further.

50. One representative said that a compelling case could not be made at that time for a legally binding approach. The principal need was for increased coordination of action, and several of the elements under discussion, including action at the national level and application of best available techniques and best environmental practices, could be pursued under a voluntary approach, at least initially. Should such an approach prove ineffective, the case for a legally binding option would be strengthened. A graduated approach with an initial focus on a voluntary framework offered several advantages, including speed of implementation; reduction of the opportunity cost involved in applying resources to the development of a legally binding framework; the potential to refine such an approach as it was developed; and the merits of using, as appropriate, pre-existing frameworks such as the Strategic Approach to International Chemicals Management.

51. A number of representatives pointed out that a legally binding instrument would only prove effective for those countries that became parties to it; there was no guarantee that countries would join such an instrument or contribute to it financially. They also suggested that concluding a legally binding instrument would take considerable time and resources and might involve cumbersome procedures.

52. A number of representatives spoke in favour of continuing with existing voluntary approaches to mercury such as the UNEP Global Mercury Partnership. Several others underlined their support for a new voluntary approach, stressing that the development of such an approach would be less time-consuming than other modalities and would therefore ensure that practical actions would be undertaken more quickly. In addition, it could react to new information and would have a lighter infrastructure, ensuring relative cost-effectiveness.

53. The representative of the United States gave further information on the Programmatic and Organizational Structure on Mercury proposed by his country, which he had briefly introduced during the preliminary statements under the agenda item and details of which were summarized in a conference room paper. He expressed his willingness to discuss and amend the proposal but requested that it be forwarded to the Governing Council at its twenty-fifth session for its consideration. He said that the proposed structure would establish the scope of work on mercury and identify agreed priority areas for cooperation on the basis of Governing Council decision 24/3 IV in a flexible manner. Through the instrument, an invitation could be extended to the Conference of the Parties to the Rotterdam Convention to extend the prior informed consent procedure to elemental mercury. It would ensure a concerted strategic approach around the globe, allowing flexibility so that countries could develop their own priorities. Countries would report on their national plans and activities in regular progress reports responding to the need for transparency. He said that the Structure would establish a new dedicated fund for mercury and he asked representatives to consider whether other approaches, including leveraging funding from other areas with identified co-benefits, could ensure dedicated resources to address mercury. The Structure would include a governing body, which would be open to all interested countries and would meet biennially, as well as a subsidiary body to manage the Structure, its fund and the approval of projects and project guidelines. It would also establish technical groups to develop best practices and review national plans. He suggested that the Structure would be the most effective approach to tackling the issue of mercury: it could be established quickly, would not require protracted negotiations and would enable broad global participation.

54. One representative proposed the inclusion of wording in the Working Group’s final report to the UNEP Governing Council to explain that a legally binding instrument could include hard and soft commitments that were not necessarily discretionary or voluntary in nature. The Working Group did not adopt that suggestion but agreed that it should be noted in the present report.

55. A representative introduced a conference room paper on behalf of small island developing States and countries with small economies, saying that it outlined the concerns and special challenges faced by such countries, as well as their position in favour of a legally binding instrument. She noted that States' support for the paper did not preclude them from re-examining their positions at a later date, as and when more information became available.

56. In concluding the discussion the Chair noted that regional and national positions that had been submitted in the form of conference room papers would be reproduced in an annex to the present report. They are set out in annex II to the present report.

2. Statement by the Executive Director of UNEP

57. Mr. Achim Steiner, Executive Director of UNEP, addressed the Working Group on the afternoon of Thursday, 9 October 2008, on the progress of the meeting to that point. He commended the Working Group on the progress it had made thus far and urged it to take advantage of the significant consensus that existed, so as to present to the UNEP Governing Council clear guidance on how to move forward rather than a juxtaposition of options that might give rise to further dissension and delay and would not be in line with its mandate from the Governing Council. He advised the Working Group to use the principle of sufficient consensus to reach agreement where possible and to accommodate, or at least bracket, issues on which agreement could not be reached. Both UNEP and ministers for the environment attending the Global Ministerial Environment Forum needed to show the public, through progress on mercury, that accelerated action on key health and environment issues was possible.

58. There were many favouring a legally binding instrument, he observed, but putting such an instrument in place would take years; the urgency of the problem therefore required an accommodating approach. On the other hand, the urgency and scope of the problem required a global programme of action with timebound targets, associated financing and a review and oversight mechanism that went beyond a default option in which voluntarism was the only means of addressing the mercury challenge. He stressed that, in making his comments, he was not taking any position regarding legally binding, voluntary or other options; his intention was rather to identify where there was room for convergence during a negotiating process in which there might have been some hardening of positions. In summary, he said that it was vital to provide the Governing Council with a recommendation that would not present it with a dilemma but with a means of taking action that would signal to the international community its commitment to dealing effectively with the issue of mercury.

59. Several representatives thanked Mr. Steiner for his encouragement and advice, saying that they considered that the Working Group should focus on what could be achieved at the current time. Some noted that mercury emissions had already been reduced considerably and expressed optimism that progress could be maintained through coordinated action. Several representatives praised UNEP Chemicals for its role in the process, including the preparations for the current meeting, which had enabled significant progress to be made in a constructive atmosphere and had assisted in promoting a willingness to move forward. Several representatives called on UNEP to continue to provide material support for programmatic work on mercury.

E. Capacity-building and technology transfer considerations

60. In the discussion on capacity-building and financial mechanisms for the mercury framework, most representatives said that there was a need for capacity-building and sustainable funding to achieve the objectives of mercury management. Opinions varied, however, about how that might best be achieved. There was general agreement that most of the elements necessary to deal with mercury had been captured in the revised elements of a comprehensive mercury framework that the Working Group had agreed thus far. One representative suggested that those activities aimed at reducing mercury emissions and waste product management should have priority in attracting technical and financial support.

61. With regard to the most appropriate mechanism to deliver funding, one representative noted that the Strategic Approach Quick Start Programme was timebound and therefore could not function as a continuing mechanism. Several representatives said that a dedicated fund established under a legally binding instrument was the best alternative, citing the Multilateral Fund for the Implementation of the Montreal Protocol as a good example. Various representatives said that a legally binding multilateral agreement supported by the Global Environment Facility was the best way to deliver funding, adding that it would allay concerns about the proliferation of multilateral funding mechanisms and create economies of scale. A number of representatives expressed qualified agreement, noting, however, that

such an approach would mean that measures to deal with mercury would be subject to the Facility's project evaluation process and final approval by the Global Environment Facility Council rather than the parties to the agreement.

62. Various representatives supported a voluntary fund established under some form of a cooperative implementation framework as the most flexible arrangement. Two representatives supported such an approach in order to maintain the momentum of the current voluntary programme pending the negotiation of a legally binding instrument. A number of representatives pointed out that as capacity-building and technology transfer were important they should have multiple sources of funding. Several representatives pointed out that funds could be secured from sources supporting complementary activities relating to human health and protection of the environment, together with general development assistance.

F. Modalities for the report of the Working Group to the Governing Council

63. The representative of the secretariat set out two proposals on the preparation of the Working Group's final report to the Governing Council called for by decision 24/3 IV: the work could be undertaken either by the secretariat or by a drafting group established for that purpose. The Working Group agreed that the secretariat would prepare a draft of the Working Group's final report to the Governing Council called for by decision 24/3 IV.

64. The representative of the secretariat subsequently presented a draft of the report in a conference room paper. Following discussion resulting in a number of amendments, the Working Group adopted the report set out in annex I to the present report.

65. With regard to the presentation of the Working Group's final report to the Governing Council at its twenty-fifth session, as called for in decision 24/3 IV, the representative of the secretariat explained that it would form part of the report of the Executive Director of UNEP requested by the Governing Council in decision 24/3 IV and would be circulated in the six official languages of the United Nations. The elements of a mercury framework recommended by the Working Group for consideration by the Governing Council would be attached to the report. The text of the report would not be altered from that which the Working Group had agreed at the current meeting.

66. In addition, he noted, the present report, including an annex setting out statements submitted by Governments and regional groups at the current meeting, would be available at the twenty-fifth session of the Governing Council as an information document.

67. During the discussion of the report to the Governing Council one representative suggested that the report include text encouraging UNEP to continue and enhance its work on the mercury programme and the Global Mercury Partnership. The Working Group did not adopt that suggestion but agreed that it should be noted in the present report.

IV. Report on activities under the UNEP mercury programme

68. The representative of the secretariat explained that there were two matters to report on under the item: progress in developing a study on atmospheric emissions of mercury and progress in strengthening the UNEP Global Mercury Partnership, both of which were called for by the UNEP Governing Council in decision 23/4 IV.

A. Report on atmospheric emissions

69. The representative of the secretariat reported that the secretariat was developing the report on atmospheric emissions of mercury in cooperation with the Arctic Monitoring and Assessment Programme working group under the Arctic Council, with input from the mercury air transport and fate research partnership. A draft of the report had been circulated for review and comments had been received. The final report would be submitted to the Governing Council at its twenty-fifth meeting. Further information on the status of the report was set out in document UNEP(DTIE)/Hg/OEWG.2/INF/1.

70. Following the secretariat's introduction Mr. Jozef Pacyna of the Norwegian Institute for Air Research, one of the lead authors of the report, presented some of its key findings. He focused on anthropogenic emissions, which accounted for approximately 50 per cent of the emissions to air and were estimated to total 1,930 tonnes in 2005. Looking at 2005 emissions by sector, he said that

combustion of fossil fuels accounted for about 45 per cent, with artisanal and small-scale gold-mining at about 20 per cent. Waste and other figures were conservative estimates and were highly uncertain. By region, two-thirds of emissions were from certain Asian countries, mainly China and India, with a decrease in emissions in Europe, North America and Japan due to the introduction of control technologies. With regard to emissions trends he urged caution when comparing older inventories with newer ones that had been compiled using improved methods.

71. He considered the implications of three possible scenarios based on different degrees of action: a status quo scenario, in which no action was taken; an extended emissions controls scenario, in which the controls currently implemented or planned for the European Union were extended to all countries; and a maximum feasible technological reductions scenario, which assumed the use in all countries of the best technology currently available. Estimates for 2020 of emissions from the main by-product sectors varied from 1,850 tonnes (first scenario) to 679 tonnes (third scenario). There was considerable uncertainty in the projections, although modelling had the potential to fill the gaps in areas of the world where measurements were sparse. Future assessments could be improved through application of better information-gathering techniques, including use of the UNEP toolkit on the identification and quantification of mercury.

72. In the ensuing discussion, one representative sought clarification on whether any effort had been made to validate data obtained through modelling to ensure the accuracy of conclusions reached and on the link between theoretical assumptions and depositions. Mr. Pacyna explained that validation was important and was achieved by comparing measured emissions with theoretically projected emissions. On the global or regional scale, emissions data and models, including models of transport of atmospheric concentrations, were used for comparison with depositions. Where measurements and estimates of depositions were in agreement emissions data were viewed as correct.

73. Emissions estimates were employed in the analysis of emissions, including where they were transported, for example in air masses to the Pacific or the Arctic region, and how much mercury was deposited from them. The Arctic Monitoring and Assessment Programme (AMAP) used models to learn more about emissions that were transported from one country and deposited in another and undertook biotic monitoring to find out where emissions were deposited. One thing that might be determined was why inhabitants of the Arctic region had such high concentrations of mercury in their blood.

74. Answering another question Mr. Pacyna said that data generated by two monitoring projects under the North American Free Trade Agreement had in all likelihood been used by the modellers working on the report.

75. Responding to a question on whether mercury levels in the air and mercury emissions per capita, per country or per region had been measured, Mr. Pacyna said that concentrations of mercury in the air and in depositions had been measured. Extensive work had been undertaken by the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP), for which the Norwegian Institute for Air Research was the Chemicals Coordinating Centre, to collect information on atmospheric deposition and to assess the quality of that information, including through comparisons of equipment and sampling procedures. He noted that some measurements were being gathered in North America, as part of the World Meteorological Organization’s Global Atmosphere Watch, and in South Africa and other countries. Although information was available by country and by category, per capita information was not available as yet.

76. On the practical achievability and cost implications of scenarios outlined in the report, he said his personal view was that the extended emissions controls scenario was achievable and clarified that the third scenario was based on the availability of unlimited financial resources.

77. Responding to a question on emissions projections for Asia, he said that scenarios on a country-by-country basis did exist but noted that the report represented a first step in work on scenarios that would be refined and improved for greater transparency and accountability.

78. One representative from a developing country drew attention to difficulties experienced in using the UNEP draft toolkit for the identification and quantification of mercury and suggested that it was more appropriate for use in developed countries. Mr. Pacyna noted that he had participated in the development of the United Nations Economic Commission for Europe Atmospheric Emission Inventory Guidebook, which might prove useful for countries. The representative of the secretariat stressed that the UNEP toolkit had been disseminated for pilot testing and that feedback was vital to ensure that it could be made more user-friendly. Wide use of the toolkit, he said, would allow for the development of a harmonized approach across countries.

79. Responding to a question on natural sources of mercury emissions, such as volcanoes and forest fires, Mr. Pacyna explained that a very interesting assessment on such emissions had been carried out in the context of the partnership on mercury air transport and fate research.

80. One representative sought clarification of whether the current understanding of the atmospheric transportation and deposition of mercury was sufficiently reliable to provide a solid basis upon which the Governing Council of UNEP could take decisions on mercury. In his response, Mr. Pacyna expressed confidence in the estimates and models developed; the Institute had a history of developing similar models and chemicals schemes and undertook regular comparisons on persistent organic pollutants to ensure that information derived from models was correct.

81. Two representatives, while welcoming the progress that had been made in the mercury field over the past years, expressed concern at the inadequate funding allocated to UNEP Chemicals and, in particular, the mercury programme. They said that mercury was an extremely important issue that required more support in terms of both financial and human resources.

B. Partnership activities

82. The representative of the secretariat introduced the report on activities carried out under the partnership programme as set out in document UNEP(DTIE)/Hg/OEWG.2/INF/2. Governing Council decision 24/3 IV had requested the Executive Director to seek adequate funds for Global Mercury Partnership efforts; to that end a fundraising letter had been sent by the Executive Director to UNEP focal points in April 2007. The Government of the United States had responded promptly, he said, with a pledge of $1 million, but no other contributions had been received. At the ninth meeting of the Conference of the Parties to the Basel Convention, the Executive Director of UNEP had announced a $1 million initiative to examine the storage of mercury and managing it in the waste stream, among other things.

83. The representative of the United Nations Institute for Training and Research (UNITAR) noted that in the context of the mercury supply and storage partnership, a project to develop an action plan to address primary mercury mining in Kyrgyzstan was under way. The project was a partnership activity between UNITAR, UNEP Chemicals and UNEP GRID-Arendal with financial support from the Governments of Switzerland and the United States. He noted that further information was contained in the note by the secretariat on the matter (UNEP(DTIE)/Hg/OEWG.2/INF/9).

84. The representative of Kyrgyzstan noted that the above-mentioned project in her country aimed to reduce the negative impacts of primary mercury mining in the Khaidarkan area of Kyrgyzstan by assessing the mercury mine and smelter industry, including environmental, technical and social and economic considerations, and by developing an action plan to address identified gaps and challenges. She stressed the growing threat posed to human health and the environment by the manufacture and consumption of mercury and the importance of mercury-free technologies. She thanked the Government of Switzerland and UNEP for enabling her Government to participate at the present meeting.

85. Presentations were then made by the partnership leads in the six partnership areas of the Global Mercury Partnership (artisanal and small-scale gold mining; mercury cell chlor-alkali production; mercury air transport and fate research; mercury-containing products; mercury releases from coal combustion and mercury waste management). The presentations highlighted progress made in the partnership area since the Working Group’s first meeting.

86. Mr. Nicola Pirrone, National Research Council for Atmospheric Pollution, Italy, described activities that had been under way in the partnership area on mercury air transport and fate since the twenty-fourth session of the Governing Council. Those activities included compiling state-of-the-art information on mercury emissions, mercury in ecosystems and the atmosphere and water and modelling activities.

87. Ms. Marianne Bailey of the United States Environmental Protection Agency described activities in the mercury cell chlor-alkali production partnership area. The World Chlorine Council, representing industries that were responsible for 85 per cent of global chlorine production, had submitted data which demonstrated a reduction in emissions from 23 metric tonnes per year in 2002 to 9 metric tonnes in 2008. She noted that the Executive Director of UNEP had announced an initiative to build mercury storage capacity in Asia and South America for the retirement of mercury stocks, including from the chlor-alkali sector.

88. Ms. Wendy Hamnett, of the United States Environmental Protection Agency, described activities in the mercury-containing products partnership area, including a healthcare initiative, which had evolved on the basis of successful pilot mercury reduction projects undertaken in Latin America and Asia. Several new projects on healthcare product inventories and risk management plans were under way and a cooperative agreement had been signed with the Basel Convention for waste management plans in Latin America. She invited new partners with an interest in phasing out mercury in products, manufacturing and industrial processes to expand the partnership's membership.

89. Ms. Keiko Segawa, on behalf of the Government of Japan, said that the first task for the mercury waste management partnership area had been the development of the business plan, which was now on the UNEP website for comment. A key initial work area would be finalization of the draft Basel Convention technical guidelines on the environmentally sound management of mercury waste.

90. Ms. Leslie Sloss gave a presentation on the mercury releases from coal combustion partnership area on behalf of the lead organization, the International Energy Agency Clean Coal Centre. She said that the partnership was relatively new and that additional partners were being sought, particularly from developing countries. Greater reductions in emissions were possible in many areas and the partnership was developing guidelines on best available practices and best environmental techniques but there was an urgent need for more data.

91. A representative of the secretariat, speaking on behalf of the United Nations Industrial Development Organization, reported that the artisanal and small-scale gold mining partnership area had developed its business plan and set the challenging target of reducing demand 50 per cent by 2017. A UNEP country strategic plan project focusing on Cambodia and the Philippines was being implemented with funding from the Quick Start Programme of the Strategic Approach to International Chemicals Management. Other projects were under way in West Africa and South America, the latter involving the development of low-cost technology for capturing mercury vapour released during gold processing. The United States of America had been very active in supporting the partnership area.

92. A representative of the World Dental Federation then spoke, stressing that the global dental community took its responsibility with regard to mercury and dental amalgams extremely seriously. At a recent congress in Stockholm, dental practitioners had said that even with an approach that stressed preventing oral disease and thereby the use of dental fillings there was still a great need for safe and affordable dental filling materials. The Federation echoed comments from member States to the effect that restricting mercury should be done in parallel with the development of safe and affordable alternatives. He said that the Federation wished to join the global mercury partnership and looked forward to engaging with other stakeholders to develop collaborative solutions based on science and evidence.

93. Following those presentations the representative of the Basel Convention drew attention to an information note by the Secretariat of the Basel Convention (UNEP(DTIE)Hg/OEWG.2/INF/10), which summarized the treatment of mercury under the Convention and considered the relevance of the Convention in addressing the priority areas for action identified in UNEP Governing Council decision 24/3 IV. He noted in particular the Basel Convention technical guidelines on the environmentally sound management of mercury waste, the final draft of which would be considered at the tenth meeting of the Conference of the Parties. The Basel Convention Secretariat had signed an agreement with the United States Environmental Protection Agency for a maximum of $2 million funding over a four-year period for mercury-related projects. The first tranche, with supplementary funding from Norway, would help initiate mercury waste management plans in the health sector in three countries.

94. The representative of the United States said that her country was proud to contribute to the Global Mercury Partnership, which had made real on-the-ground progress through the activities of a diverse group of stakeholders and had the potential to achieve global mercury reductions. She encouraged other donors to support the partnership process.

V. Other matters

A. Regional meeting in Santiago

95. The representative of the Bolivarian Republic of Venezuela, speaking on behalf of the group of Latin American and Caribbean countries, outlined efforts in those countries to deal with mercury, saying that the group recognized the need for additional measures in line with national priorities and the notion of common but differentiated responsibilities. To that end she announced that, in addition to

planned regional consultations, a regional meeting would be held in Chile in December 2008 in preparation for the twenty-fifth session of the Governing Council. The Government of Chile had offered to pay a portion of the costs for that meeting and she asked that UNEP provide additional resources and support.

B. Tribute to Mr. John Whitelaw

96. The Chair paid tribute to Mr. John Whitelaw, UNEP Chemicals, who would be retiring shortly after the current meeting. He acknowledged Mr. Whitelaw's tireless work over the years on a range of environmental conventions and his skill in helping to set those conventions on a firm footing. A number of representatives, some also speaking on behalf of regional groups, made their own statements in which they echoed the praise offered by the Chair.

VI. Adoption of the report

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

VII. Closure of the meeting

98. Following the customary exchange of courtesies the Chair declared the meeting closed at 6.35 p.m. on Friday, 10 October 2008.

Annex I

Final report of the Ad Hoc Open-ended Working Group on Mercury to the Governing Council of the United Nations Environment Programme

I. Introduction

1. In its decision 24/3 IV, the Governing Council of the United Nations Environment Programme (UNEP) established an ad hoc open-ended working group to review and assess options for enhanced voluntary measures and new or existing international legal instruments required to make progress in addressing the global challenges posed by mercury. The Governing Council requested the working group to provide a final report reflecting all views expressed and presenting options and any consensus recommendations.

2. The Ad Hoc Open-ended Working Group on Mercury is pleased to offer the present report in response to the request of the Governing Council in decision 24/3 IV.

II. Policy framework for addressing the global challenges posed by mercury

3. The Ad Hoc Open-ended Working Group recommends that the Governing Council consider adopting at its twenty-fifth session a policy framework for addressing the global challenges posed by mercury. Possible elements of such a framework are outlined in the appendix to the present report. Although the elements were not agreed in detail, they attracted broad support and the Working Group recommends them to the Governing Council for its consideration. The elements collectively constitute a comprehensive approach that may be needed to address, and resolve, the global challenge of mercury. They could provide guidance for action at the national, regional and global levels.

4. The proposed elements include the priorities identified by the Governing Council in paragraph 19 of decision 24/3 IV; the range of possible response measures identified by the Working Group during the course of its discussions; and other actions related to the implementation and administration of the proposed framework. The elements reflect the special needs and situations of developing countries and countries with economies in transition, including the need for enhanced knowledge and additional financial and technical support. The sequence in which the elements are listed is not intended to imply any priority in their application.

5. The Working Group noted that the elements were independent of the possible modalities for their implementation and made no judgment as to whether those modalities should be legally binding or voluntary. The Working Group recognized that the ultimate inclusion in the framework and implementation of the elements might vary in regard to the legally binding or voluntary nature of their implementation modalities, their financial implications and the availability of financial resources, their prioritization and time frame for implementation and whether they could be implemented at the local, national or global level.

III. Options for implementation modalities

6. The Working Group explored possible ways to implement the elements of the mercury policy framework. Two basic options were identified. While each of the options received significant support from different government participants, the Working Group did not reach consensus on them. The basic options are:

(a) A new free-standing, legally binding mercury convention;

(b) Enhanced voluntary measures.

7. The following sections of the present report describe each of these basic options, including possible variations identified by some Working Group participants. The sections include an outline of advantages and disadvantages of each option.

A. New free-standing, legally binding mercury convention

8. Under this option, Governments would develop and adopt a free-standing, legally binding mercury convention. The convention could cover all of the action elements defined in the policy framework for addressing the global challenges posed by mercury. Some of those action elements might require mandatory "hard" commitments, while other actions under the convention might have "soft" commitments that would give countries latitude in their implementation at the national level; another group of actions could be voluntary. The balance between the hard and soft commitments will need to be negotiated at a later date.

9. A free-standing mercury convention could be prepared in such a way as to complement and enhance cooperation and coordination among existing legally binding instruments, especially the Basel Convention on Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants. Voluntary actions such as those undertaken through the UNEP Mercury Programme, the Strategic Approach to International Chemicals Management, the United Nations Institute for Training and Research, the United Nations Industrial Development Organization and others could help to achieve the objective of addressing the global challenges posed by mercury during the interim period.

10. A free-standing mercury convention could include provisions for financial and technical assistance to support its implementation by eligible Parties, especially from developing countries and countries with economies in transition. Options for such assistance might include a financial mechanism or other arrangements.

11. Potential advantages of a free-standing mercury convention option as identified by proponents of this option include the following, namely, that it would:

(a) Provide the strongest possible expression by Governments of a common commitment to a long-term solution for addressing the challenges posed by mercury;

(b) Enable Governments to implement trade-related measures to reduce mercury emissions in a transparent, multilaterally agreed, non-discriminatory way;

(c) Effectively prohibit new undesired uses and supplies of mercury, including primary mining;

(d) Create a level playing field for all stakeholders and ensure that the efforts of one country are not undercut by another, thereby establishing incentives for developing and applying environmentally friendly technologies and alternatives to mercury;

(e) Support the ability of Governments to include sustainable policies related to mercury in their national and regional priorities, development strategies and resource mobilization efforts;

(f) Ensure broad participation of developing countries and countries with economies in transition through the increased likelihood of sustained, predictable access to technical assistance and new and additional financial resources, taking into consideration the principle of common but differentiated responsibilities;

(g) Offer the best option to establish different compliance timetables for developed and developing countries;

(h) Ensure that implementation is comprehensive, global, not isolated or ad-hoc and contracts all Parties in a balanced way;

12. Potential disadvantages of a free-standing mercury convention option as identified by opponents of this option include the following, namely, that it would:

(a) Require a large amount of time and financial resources to negotiate, representing an opportunity cost in that such resources could otherwise be allocated to implementation activities;

(b) Be less flexible than a voluntary mechanism, due to its potentially extensive ratification and amendment procedures;

(c) Be less cost-effective because of its heavier administrative and institutional structure and more expensive overhead;

(d) Provide financial assistance to, and receive contributions from, only convention Parties;

(e) Fail to include countries that would not accept all provisions of a legally binding instrument;

(f) Based on experience with other legally binding instruments, not automatically guarantee adequate funding for implementation;

(g) Create an uneven playing field for Parties to the convention, given the large disparity between countries, especially developed and developing country Parties in terms of their economic and technical development levels and environmental management capacities.

B. Enhanced voluntary measures

13. The proponents of enhanced voluntary measures argue that the global challenges of mercury are extremely complex and involve many aspects. They state that the modalities for implementing the elements of the mercury policy framework have a strong, case-specific nature and depend on the particular circumstances of the individual country, location, sector, process and products concerned. Three possible components of enhanced voluntary measures were identified. These would build upon existing activities such as the UNEP mercury programme and Global Mercury Partnership, existing legal instruments, the Strategic Approach to International Chemicals Management and a proposed new voluntary instrument, the "Programmatic and Organizational Structure on Mercury" (POSM).

14. POSM is a strategic and comprehensive voluntary framework for global action to achieve specific agreed targets and goals through national implementation plans, financing, and a reporting and review mechanism. POSM would be open to all Governments which would agree to global mercury reduction goals, develop guidelines on best available techniques and best environmental practices, and establish national plans. The POSM governing body, the Strategic Mercury Advisory Council, would be open to all Governments with participation by industries, non-governmental organizations and other observers and would support and expand the new framework, such as by a political statement, terms of reference, and a program of work to address the need for enhanced capacity- building and financing. POSM would establish the Mercury Fund, an independent dedicated fund overseen by the governing body, to provide financing to projects in developing countries that could address all of the action elements defined in the policy framework for responding to the global challenges posed by mercury. In addition to continuing with its ongoing work, the UNEP Global Mercury Partnership and other international institutions would serve as an implementing arm that would develop projects with resources from the Mercury Fund. Other sources such as the Global Environment Facility or climate-related institutions would also be accessible to support cross-cutting efforts. Mercury trade would be addressed by an invitation to the Rotterdam Convention to initiate a process for establishing prior informed consent procedures for elemental mercury. The Strategic Mercury Advisory Council would establish a subsidiary body balanced between donor and recipient countries to meet twice per year to advise the Council on a regular basis, manage the Mercury Fund, develop, review and approve project guidelines under the fund, create technical groups to develop best practices, and review the national plans and their progress toward the POSM goals.

15. It was suggested that the Strategic Approach to International Chemicals Management could also serve as the structure under which an enhanced voluntary framework for mercury, or components of it, might be implemented. A further component could be the elaboration and coordination of existing processes, programmes and agreements to address the challenges posed by mercury. In particular, these would include significantly strengthening the UNEP mercury programme and implementing the overarching framework for the UNEP Global Mercury Partnership. This approach could also address specific elements of the mercury policy framework by using existing legal instruments, namely, the Basel Convention for mercury-containing wastes, the Rotterdam Convention for international trade in elemental mercury and possibly mercury-containing compounds and the Stockholm Convention for methyl mercury.

16. Potential advantages of the enhanced voluntary measures option as identified by proponents of this option include the following, namely, that it would:

(a) Be developed more quickly and at less cost than a legally binding instrument;

(b) Evoke broad participation because of its flexibility and non-legally binding nature, and because national plans would target specific needs of countries;

(c) Be readily adaptable to changes in the mercury problem without requiring extensive ratification and amendment procedures;

(d) Be cost-effective to implement due to its light administrative and institutional infrastructure, which would allow more funding to be directed to implementation;

(e) Allow a gradual approach in which participants could decide over time, in the light of experience and lessons learned, whether additional or legal instruments might be desirable;

(f) Facilitate mercury reductions in an economically efficient and participatory manner for industry and society;

(g) Promote immediate global actions for most of the elements in the mercury policy framework by motivating governments and other stakeholders to find solutions that are most suitable and cost-effective for their specific circumstances.

17. Potential disadvantages of the enhanced voluntary measures option as identified by opponents of this option include the following, namely, that it would:

(a) Be unable to address effectively several of the elements of the mercury policy framework, and thus not be able to promote a comprehensive, sustained, predictable and effective solution to the complex, global problem of mercury;

(b) Based on experience with other voluntary measures, fail to attract sustained and adequate financial resources to assist developing countries and countries with economies in transition;

(c) Fail to take into account the need for enforcement measures and ensure commitment or attract broad participation;

(d) Raise the possibility that the efforts of countries that fully implement their commitments may be jeopardized by others that fail to do so due to lack of support;

(e) Fail to protect effectively against potential challenges under the World Trade Organization to actions undertaken by Governments related to mercury supply and trade;

(f) Result in overall fragmentation and an uncoordinated approach for addressing the mercury problem on a global, long-term basis;

(g) Result in administrative costs for operating the voluntary framework, such as POSM, that are similar to, or even larger than, those that a legally binding instrument would require.

Appendix

Elements of a comprehensive mercury framework

A. Elements that frame the issue

1. The elements could provide a context for responding to the challenges posed by mercury and confirm the intent of participants to confront them. They include:

An expression of political commitment;

A list of the principles including the relevant Rio Declarations, in particular the principle of common but differentiated responsibilities as reflected in Principle 7 of the Rio Declaration on Environment and Development, underlying the framework and a description of its scope;

A statement of the framework's objective (e.g., "to protect human health and the global environment from the release of mercury and its compounds throughout their life-cycles by minimizing and, where feasible, ultimately eliminating global, anthropogenic mercury releases to air, water and land").

B. Specific actions to address the challenges posed by mercury

2. The elements listed in the present section represent specific commitments or actions that countries and other stakeholders might wish undertake to accomplish the overall objective of the framework.

1. Reduce the supply of mercury

3. One aim of whatever framework is adopted might be to minimize the release of mercury to the biosphere by reducing the global supply of mercury. This could be accomplished by using goals, targets or timetables to reduce or eliminate the supply of mercury which comes from a variety of sources including:

(a) Primary mining;

(b) Decommissioned chlor-alkali cells;

(c) Mercury stockpiles;

(d) Mercury produced as a by-product of mining;

(e) Mercury derived from recycling and other sources.

4. Reducing global supply could be accomplished by using goals, targets or timetables to reduce or eliminate where feasible sources of supply of mercury, recognizing the need for ongoing use where alternatives are not readily available according to a hierarchy of sources. Consideration could be given to the prohibition on new primary mining and a phase out of existing primary mining, taking into account the circumstances of countries.

2. Reduce the demand for mercury in products and processes

5. Industrial and other processes that use mercury can result in significant human exposures and releases of mercury to the environment. Mercury-containing products increase the amount of mercury in waste streams and thereby increase the likelihood of eventual mercury releases. The aim of the actions in this section is to minimize such exposures and releases by reducing demand for mercury in products and processes. This could be accomplished by developing and using, where feasible, such actions as:

(a) Country-specific, sectoral or global demand reduction goals, targets or timetables relating, for example:

(i) To prohibiting the construction of new production facilities or the expansion of existing facilities;

(ii) To phasing out mercury use in products and processes by specified dates for each significant product or process;

(iii) To developing mercury content standards for lamps and other products where non-mercury alternatives are not available;

(b) Information tools or policies to promote the development and use of substitute or modified materials, products and processes;

(c) Best available techniques, best environmental practices (including use of non-mercury alternatives) or use of equivalent measures for demand reduction in sectors such as:

(i) Artisanal and small-scale gold mining;

(ii) Vinyl chloride monomer and chlor-alkali production;

(iii) Products and packaging;

(iv) Dental practice.

3. Reduce international trade in mercury

6. The aim of the actions in this section is to minimize the harmful effects of mercury through reducing international trade in mercury while recognizing that trade may be necessary, for example, for essential products or processes for which no suitable alternatives exist and to facilitate environmentally sound management of mercury. Trade in mercury facilitates its ready supply in many domestic markets, keeping prices low and demand high. Such trade, as well as trade in mercury-containing compounds and products, distributes mercury widely, including to locations where environmentally sound management of mercury and mercury wastes is not practised. Actions should be taken in concert with supply and demand reduction measures and could include:

(a) Restricting or phasing out trade in elemental mercury and, where appropriate, considering similar measures for mercury compounds;

(b) Reducing trade in mercury-containing products;

(c) Operating a prior informed consent procedure for trade in mercury;

(d) Developing a data reporting system to monitor mercury trade.

4. Reduce atmospheric emissions of mercury

7. The aim of the actions in this section is to reduce, minimize and, in circumstances where it is feasible, eliminate atmospheric emissions of mercury derived from anthropogenic sources in key sectors. Consideration should be given to multi-pollutant approaches that have co-benefits that reflect other national and global human health and environmental priorities. This could be accomplished by:

(a) Development of national implementation strategies or, where appropriate, regional or subregional strategies, which could include:

(i) Evaluation of current and projected emissions;

(ii) Evaluation of the efficacy of laws and policies relating to management of emissions;

(iii) Actions to reduce, and where feasible eliminate, emissions from intentional use and minimize unintentional emissions;

(iv) Periodic review of strategies and actions;

(v) Schedule for implementation of the strategy;

(b) Global, national and sectoral implementation strategies for key emission sources, reduction goals, targets and timetables. In some sectors, and in particular the artisanal and small-scale gold mining sector, it will be vital to consider the integrated development activities that will lead to the reduction or elimination of emissions;

(c) Promoting the development and use of substitute or modified materials, products and processes;

(d) For new sources:

(i) Phasing in the use of best available techniques or equivalent measures for identified sectors and promoting the use of best environmental practices;

(ii) Promoting the use of best available techniques or equivalent measures and best environmental practices for other key sectors;

(e) For existing sources, promoting the use of best available techniques, best environmental practices, environmentally sound technology, or equivalent measures within key sectors in accordance with national implementation strategies, keeping in view the global scenario to the extent possible and within key sectors, in accordance with an implementation strategy.

5. Achieve environmentally sound management of mercury-containing wastes

8. The aim of the actions in this section is to reduce anthropogenic releases of mercury by managing mercury-containing wastes in an environmentally sound manner. This could be accomplished by:

(a) Developing and promoting guidance on best available techniques and best environmental practices, using a life-cycle approach, in order:

(i) To reduce generation of mercury-containing wastes;

(ii) To promote separate collection, separation, transport and environmentally sound treatment of mercury-containing wastes;

(iii) To reduce mercury releases from incinerators and landfills;

(b) Cooperating closely with the appropriate bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal:

(i) To restrict or phase out trade in wastes containing mercury or mercury compounds, except for the purpose of environmentally sound management, particularly when there is no environmentally sound facility in the exporting country;

(ii) To develop further and implement the Basel Convention technical guidelines on the environmentally sound management of mercury-containing wastes, and to assist developing countries and countries with economies in transition in the implementation of those guidelines.

6. Find environmentally sound storage solutions for mercury

9. Mercury is a constituent element of the earth that cannot be destroyed. Mercury derived from anthropogenic sources must be managed in a manner that reduces the possibility of release into the environment. The aim of the actions in this section is to reduce or eliminate mercury releases from mercury stockpiles and wastes by developing and using environmentally sound, long-term national, regional, and subregional storage solutions. This could be accomplished by:

(a) Developing and promoting guidance on best available techniques and best environmental practices, and roles and shared responsibilities of different stakeholders, including the consumer and producer, for:

(i) Terminal, long-term or short-term storage;

(ii) Management of existing stockpiles;

(b) Cooperating closely with the appropriate bodies of the Basel Convention regarding the management and transport of mercury-containing wastes.

7. Address remediation of existing contaminated sites

10. Owing to the significant use of mercury in the modern era, large amounts of mercury exist in mine tailings, landfills, highly contaminated industrial sites and other locations. Such sites present a constant threat of future release. The aim of the actions in this section is to reduce mercury releases and the potential for future releases by remediating existing contaminated sites. This could be accomplished by:

(a) Developing and implementing strategies and methodologies for identifying, assessing, prioritizing and remediating contaminated sites;

(b) Developing and promoting guidelines for the identification of mercury-contaminated sites and guidance on best available techniques and best environmental practices:

(i) For preventing mercury contamination from spreading;

(ii) For managing and, if feasible, remediating and rehabilitating contaminated sites.

8. Increase knowledge

11. Data, information and research on mercury would help to develop and improve understanding and coordination and facilitate improved risk assessment and risk management in respect of the challenges posed by mercury. For many countries, improving the knowledge base and the availability of relevant information is an essential precursor to the actions in sections 1–7 above. The aim of the actions in this section is to increase knowledge by addressing data and information gaps on mercury. This could be accomplished by developing and improving:

(a) Inventories of national use, consumption and environmental releases;

(b) Monitoring of current levels of mercury in various media;

(c) Assessments of the impact of mercury and mercury containing compounds, on human health, particularly for vulnerable communities, and the environment and dissemination of that information;

(d) Information on transport, transformation, the environmental cycle and fate of mercury;

(e) Information on commerce and trade in mercury and mercury-containing products;

(f) Enhanced collection and sharing of existing information.

C. Cross-cutting issues related to implementation

12. The elements listed in the present section include measures that Governments might wish to implement to increase the likelihood that their efforts to address the challenges posed by mercury under any framework that is adopted are effective. They could include the following steps or any variation of them:

(a) Information exchange , by using existing or establishing new procedures, practices and mechanisms for information exchange related to mercury control, including, where appropriate:

(i) Identifying national focal points;

(ii) A clearing-house mechanism;

(b) Public awareness-raising by using existing or establishing new procedures, practices and mechanisms;

(c) Implementation strategies that are:

(i) Developed and implemented at the national, regional or subregional levels;

(ii) Publicly available;

(iii) Periodically reviewed and updated;

(d) Monitoring, reporting and review, including:

(i) Self-monitoring of implementation of strategies;

(ii) Reporting on implementation;

(e) Recognition of the special needs of developing countries and countries with economies in transition for adequate and sufficient financial and technical assistance, taking into account the Bali Strategic Plan for Technology Support and Capacity-building:

(i) That provide~~s~~ new and additional financial resources and environmentally appropriate technical assistance and technology support to develop and strengthen capacity of developing countries and countries with economies in transition to implement environmentally appropriate actions consistent with their poverty reduction strategies;

(ii) That use~~s~~ new or existing facilities and processes to facilitate provision of resources and assistance including through for example, the UNEP mercury partnership programme;

(iii) That is periodically reviewed for effectiveness;

(f) Effectiveness evaluation and review of commitments, including:

(i) Periodic evaluation of the effectiveness of the mercury framework in achieving its objectives;

(ii) Determining whether the actions and commitments under the framework are sufficient or need to be revised.

D. Policy guidance and administration

13. The elements in the present section relate to overall policy guidance, oversight and administration of the framework. They could include policy guidance or oversight processes and administrative support, and should recognize the need for enhanced cooperation and coordination with the Basel, Rotterdam and Stockholm conventions, and with competent international organizations and intergovernmental and non-governmental bodies.

Annex II

National and regional position statements[1]

I. African region: views on an overarching legal framework to address the global challenges presented by mercury

A. Background

1. Hazards caused by mercury through handling and releases into the environment are worst for the African populace that have little chance of avoiding risk exposure and protecting themselves. In addition, due to poor education and lack of information, Africans are generally unaware of existing hazards and have little access to timely and proper medical care. This situation is exacerbated by rapid population growth, which has implications for infrastructure requirements on the continent.

2. The potential socioeconomic impacts and environmental costs of mercury pollution from use and abuse are large and are borne disproportionately by poor communities. Furthermore, African communities exposed to mercury pollution through activities such as ASM, chlor-alkali plants etc. are shown to experience adverse health effects e.g. neurological damage, lowered fertility, and heart disease (WHO/UNIDO).

3. Exports of substandard or near end of lifecycle products is a major concern for Africa. In addition, mercury-containing wastes are being generated in increasingly large quantities, and as environmental laws become more stringent in industrialized countries, mercury producing and waste-generating industries tend to frantically search for a “path of least resistance” for uses of mercury and the disposal of associated wastes. This search has led industries and the governments of developed and industrialized nations to focus on exporting mercury, mercury products and wastes to developing countries especially sub-Sahara African countries. This trend serves to compound Africa’s problems with regard to mercury management. Africa also does not have adequate technical, technological and institutional capacities to manage mercury in an environmentally sound manner. (Basel Secretariat, 2004).

B. Challenges

4. The lack of capacity for full lifecycle chemicals management and integration results in poor sustainable development strategies and poor synergies with priority sectors such as health, mining, industry and agriculture. Constraints include limited resources and capacity to ensure appropriate government action in effective chemicals management, facilitation of necessary regulatory reforms, effective enforcement of legislation and monitoring the use of mercury and mercury containing products.

5. As chemical use and production increases globally, Africa’s chemical management institutions, which already have limited resources and capacity, will be further constrained and overburdened. Measures and systems such as an LBI for mercury need to be developed to reduce exposure to negative impacts and to reduce human vulnerability, while examining the significant gaps in policy integration and institutional coordination related to implementation of chemicals-related MEAs at the regional, national and local levels.

6. Capacity building/enhancement is needed for development and enforcement of legislation, information gathering and dissemination, emergency response plans, establishment of risk management policy, implementation and enforcement, rehabilitation of contaminated sites, treating poisoned persons and implementing effective educational programs.

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1 The national and regional submissions are being inserted as provided by the submitting countries, and have not been formally edited.

C. Justification

7. The African region in considering the need for a legally binding instrument to address the global challenge posed by mercury recognises that mercury is a global pollutant, with grave health and environment effects. The LBI will provide adequate measures on all global priorities and address the special needs and situations of developing countries, and therefore notes that:

- There is a need for a broad comprehensive legally binding instrument to address the full life cycle of mercury in all its forms, including the need for long-term action and commitments in the global control of mercury, with high level political authority and commitment.
- Binding commitments are more just and create a more level playing field for all countries with regard to the commitments that are met and the assistance provided, taking into consideration the principle of common but differentiated responsibilities.
- The global trade of mercury can only be effectively regulated within a legally binding framework.
- Trade-related environmental measures established by a multilateral environmental agreement on Mercury would allow Parties to develop national trade rules addressing the global concern of mercury without being judged as discriminatory and/or protectionist.
- Access to international financial mechanisms will be facilitated by a legally binding agreement. The increased likelihood of the provision of new and additional financial resources will enable countries to effectively reduce mercury sources without affecting trade, poverty reduction goals or other development goals. The most appropriate way to promote technical assistance is within a legal framework
- The partnerships are not an adequate sustainable substitute for binding international commitments. They may provide an important complimentary interim contribution towards control of mercury.
- Legally binding instruments offer the best option to establish different compliance timetables for developed and developing countries. An LBI also provides the possibility of future addition for other toxic metals e.g. lead and cadmium
- It will ensure implementation is not isolated and ad-hoc but comprehensive and global, furthermore it will contract all parties in the long term in a balanced way
- Governments adopting such a framework will be supported to include mercury in their national and regional priorities and in taking action to implement such action.

D. Free standing Convention for mercury

8. The African position supports a free standing Convention which will include elements related to the overall policy guidance, oversight, and administration of the legal framework. The framework will contain a mixture of “hard” (mandatory) and “soft” (discretionary) commitments that, together, could comprehensively address the full scope of the global mercury problem, as below:

A. Elements that Frame the Issue	(a) Expression of political commitment (b) Principles, scope of framework (c) Objective
B. Specific Actions to Address the Challenges Posed by Mercury	(a) Reduce supply of mercury (b) Reduce demand for mercury in products and processes (c) Reduce international trade of mercury (d) Reduce or eliminate atmospheric emissions of mercury (e) Achieve environmentally sound management of

	mercury-containing wastes (f) Find environmentally sound storage solutions for mercury (g) Remediate existing contaminated sites (h) Increase knowledge
C. Arrangements Related to Implementation	(a) Information exchange and public awareness (b) Implementation strategies (c) Monitoring, reporting, and review (d) Financial resources and technical assistance (e) Effectiveness evaluation and review of commitments
D. Policy Guidance and Administration	(a) Policy guidance or oversight process (b) Administrative services

II. Position of the group of Central and Eastern European countries on a possible instrument for global mercury regulation

9. The countries of CEE Region present at the regional consultation in Bucharest discussed on which instrument seems to be the most effective for mercury control at global, regional and national level on 11th of September, 2008, in Bucharest (Romania) and developed this document for consideration as a regional position to be presented at second session of the OEWG (Nairobi, 06-10 October, 2008). EU Member States of the CEE region fully support the statement made by the French Presidency.

10. CEE countries consider that there is scientific evidence that mercury and its compounds are pollutants of global concern, persist in the environment, accumulate in the food chain, and pose significant adverse effect on human health, especially most vulnerable groups such as children, pregnant women, and the biota.

11. Specific problems experienced in the region include, among others, mercury contaminations or spill-over, inappropriate waste management practices, existing and decommissioned industrial processes resulting in mercury releases and use of medical instruments and other products containing mercury.

12. Countries within the region have taken steps to address the problem, and some of them, who are Parties to the LRTAP Protocol on Heavy Metals, intended LRTAP to deal with such a problem. However, the countries are of the view that LRTAP is not a final solution to the mercury problem, and that urgent actions should be taken at global, regional and national level to prevent negative effects posed by mercury and its compounds. CEE countries therefore agreed to have a legally binding instrument to deal with mercury.

13. Taking into account previous experience (implementation of Stockholm, Rotterdam, Basel and other conventions and Protocols) countries consider that, while recognizing the important contributions of voluntary approaches, a legally binding instrument is requested to offer effective and long term solution for elimination of the risk from mercury .

14. Based on analysis of effectiveness of voluntary and legally binding instruments in addressing the seven global priorities for mercury identified in GC decision 24/3 we consider that LBI will be more effective for mercury risk elimination as compared to the other options . The CEE region is of the view that, to address the particular problems in the region any agreement should have the following characteristics:

- A broad scope that includes all human activities that release mercury and addresses the entire lifecycle
- Address the issue of mercury containing products, including medical equipment, in particular the development and promotion of suitable alternatives
- Provide tools for effective remediation of contaminated sites

- Provide environmentally sound management solutions for waste containing mercury, including environmentally sound storage.
- Establish sufficient new and additional financial resources to enable developing and transition countries to control mercury sources effectively, including mechanisms for technology transfer.
- Should encourage the use of BAT/BEP for existing plants using or emitting mercury,
- Increase knowledge sharing in areas related to mercury
- Provisions to allow the expansion of the instrument to cover other substances of global concern

A legally binding instrument may be more effective because it:

- assists with a long-term solution to solve the mercury issue and can serve as an overarching framework for voluntary cooperation in this area
- provides world-wide participation of countries (several countries participate in partnership projects on voluntary basis and more than a hundred are implementing "chemical" conventions);
- opens possibility for high-level agreement and commitment (decision of LBI implementation at international and national level are made at a very high level that is a guarantee of political support of implementation);
- provides for a durable financial mechanism to support implementation process (the implementation of risk reduction measures in CEE countries with economy in transition strongly depends on financial support);
- facilitates BAT/BEP transfer;
- promotes development of national legislation and implementation of new regulatory instruments at national level;
- provides opportunities for different stakeholders involvement in implementation process;
- determines time-frame for risk elimination;
- allows/provides for the effective reduction of the mercury use in products and trade, including illegal trade in mercury at the international level
- can effectively reduce emissions resulting from industrial processes

A. The possible options for legally binding instruments

15. This region prefers a legally binding instrument.[2]

Free standing Convention

Advantages:

- the decision could be taken by GC in 2009;
- possibility to establish measures on all global priorities;
- possibility to either implement a new financial instrument or to use existing financial instruments;
- possibility for future expansion to a broader scope (other heavy metals, non-organic PBTs) ……
- more governments may be involved in the negotiating process, resulting in broader consideration of issues

Disadvantages:

- May require new infrastructure (could be established in synergy with other chemical conventions)
- May require new financial mechanism

Protocol for Stockholm Convention

Advantages:

- based on instrument that is in place and has necessary infrastructure;

Disadvantages:

2 The regional discussion did not lead to conclusion what form is preferable and therefore the region decided to collect some views regarding the two LBI forms under consideration.

- Timing for negotiations dependent on COP decision rather than UNEP GC,
- Decision of the COP to establish a negotiation must be taken by consensus
- Could limit scope only to a substance with POPs like characteristics
- Legal framework not entirely clear

III. European Union: Why choose a multilateral environmental agreement for mercury? Possible structure of a multilateral environmental agreement on mercury

16. This paper presents the EU proposal with regard to reviewing and assessing options for an effective global control of mercury, and contributing to clear recommendations as input for decision-making at the next session of the UNEP Governing Council.

17. The following lays out the advantages of creating legal authority to internationally coordinated action on mercury and suggests a possible structure of a Multilateral Environmental Agreement (MEA). Its overall goal would be to protect human health and the environment from the release of mercury and its compounds by minimising and, where feasible, ultimately eliminating global, anthropogenic mercury releases to air, water and land.

Why choose a Multilateral Environmental Agreement for mercury?

18. Having thoroughly and carefully analysed different options, the EU calls for an MEA on mercury because an MEA is able to:

- flexibly cover all phases of the mercury life cycle, from production (intentional and unintentional) and uses to releases, stockpiles and wastes. Therefore, an MEA could lead to a significant reduction of demand at a global level, as mercury's price increases;
- enable countries to implement trade-related measures to reduce mercury emissions in a multilaterally, transparently agreed, non discriminatory way, in compliance with Article XX of the GATT and other relevant WTO rules;
- provide coherent international approach since mercury, like Persistent Organic Pollutants, is a persistent, bioaccumulative and eco and human toxic substance, with long range transport properties;
- provide for a globally binding steering process to trans-boundary environmental problems based on consensus of all countries and in accordance with international law, thus creating legislative authority in the long-term in a balanced way together with global monitoring and effective compliance;
- create a level playing field for all stakeholders and thereby establish incentives for sustainable development and application of environmentally friendly technologies and alternatives to mercury. Only within a globally agreed legal framework, all partners, in particular the private sector, could rely on a stable and longer term demand for those developments;
- support governments adopting such a framework to include mercury in their national priorities and in taking further action to meet the framework obligation. An MEA would therefore ensure broad participation also of developing countries (DC)/countries in transition (CiT) together with the setting of incentives for ownership and capacity building, thus helping to control the global mercury problem;
- enhance cooperation and coordination between an MEA on mercury and other existing international chemical management approaches, benefiting from any ultimate outcome of the process currently taking place under the Basel, Rotterdam and Stockholm Conventions;
- effectively prohibit new undesired uses of mercury;
- encourage a long-lasting donors' financial commitment to reduce mercury emissions on a global level. Due to scarce financial resources, the readiness to offer financial support to eligible DC/CiTs would not depend on daily policy on the side of donor governments.

19. While we acknowledge good outcomes from voluntary partnerships and other voluntary initiatives, experience has shown that MEAs are appropriate instruments to cover long-term questions, that need to be tackled on multiple ways to ensure a successful implementation, involving many governments, regional economic integration organizations, intergovernmental organizations, NGOs and other stakeholders.

Possible structure of an MEA on mercury

20. Without pre-empting further consideration about the detailed content of an MEA on mercury, the European Union would express its support to the following structure (based on the document 2/4 p. 10).

21. An MEA would contain different levels of commitment for the Parties to such an agreement with regard to specific actions to address the global challenges posed by mercury. There would be agreed mandatory measures (e.g. "Parties shall…"), set up at the global level, discretionary measures that would give States latitude in their implementation at the national level (e.g. "shall endeavour to", "shall, to the extent possible", "should" etc.), and voluntary measures (e.g. "may…") to take into account the special concerns and situations of Parties.

22. Finally, an MEA on mercury would be prepared in a way to enhance cooperation and coordination among Secretariats and existing instruments in the chemicals and waste area, based on any ultimate outcome of the process currently taking place under the Basel, Rotterdam and Stockholm Conventions.

A. **Elements that Frame the Issue**	1. Expression of political commitment 2. Principles, scope of framework 3. Objective: "*To protect human health and the environment from the release of mercury and its compounds by minimising and, where feasible, ultimately eliminating global, anthropogenic mercury releases to air, water and land*".
B. **Specific Actions to Address the Challenges Posed by Mercury**	1. Reduce supply of mercury 2. Reduce demand for mercury in products and processes 3. Reduce international trade of mercury 4. Reduce or eliminate atmospheric emissions of mercury 5. Achieve environmentally sound management of mercury-containing wastes 6. Find environmentally sound storage solutions for mercury 7. Remediate existing contaminated sites 8. Increase knowledge
C. **Arrangements Related to Implementation**	1. Information exchange and public awareness 2. Implementation strategies 3. Monitoring, reporting, and review 4. Financial resources and technical assistance 5. Effectiveness evaluation and review of commitments
D. **Policy Guidance and Administration**	1. Policy guidance or oversight process 2. Administrative services

IV. Comoros, Dominican Republic, Haiti, Jamaica, Kiribati, Madagascar, Mauritius, Seychelles, Suriname, St. Lucia, St. Vincent and the Grenadines and Tuvalu

23. On this occasion of the 2nd meeting of the Ad Hoc Open-ended Working Group on Mercury in Nairobi, Kenya, October 6 - 10, 2008

24. We, small island developing states (SIDS) and small economies share the international community's concern regarding the adverse impacts of mercury on human health, particularly vulnerable communities, and the environment.

25. Recognizing that the global mercury situation can only be effectively addressed if it is tackled at all levels, that is, local, national, sub-regional, regional and international.

26. Recognizing also the important role that all stakeholders, including governments, private sector, non-governmental organizations, academia and inter-governmental organizations, play in effectively addressing the mercury situation, and, in this regard, support the need for all stakeholders to collaborate to facilitate an integrated and coordinated approach to address mercury.

27. Welcome the development of the elements of the Global Mercury Framework as outlined in UNEP (DTIE)/Hg/OEWG. 2/8.

28. Commit to continued active participation in the discussions and actions at the global level in formulating an effective approach to the global mercury situation.

29. Highlight the special challenges, constraints and needs of SIDS in the achievement of sustainable development as outlined in the Barbados Programme of Action for the Sustainable Development of Small Island Developing States and Mauritius Strategy for the Further Implementation of the Plan for the Sustainable Development of SIDS.

30. Note with great concern the potential mercury contamination of the diet, primarily fish, of the populations of many SIDS and small economies due to pollution from domestic and international anthropogenic sources.

31. Note also the potential negative economic impact on the fishing industry of those SIDS and small economies which depend on the international trade of marine products, if contaminated by mercury

32. Request the assistance of the international community in further enhancing our border safeguards from any unwanted imports of mercury and/or mercury-containing products which may occur as a result of any phase-out programme instituted to address the global mercury situation

33. Recognize the economic diversity within SIDS and small economies and the varied capacity and capabilities of individual States to effectively respond to the mercury situation

34. Recognize that any approach developed at the international level to deal with mercury must coordinate and collaborate with existing chemical-related Conventions, namely the Basel, Rotterdam and Stockholm Conventions and the Montreal Protocol as well as the UNEP Global Mercury Partnership and related initiatives by Inter-Governmental Organizations.

35. Allow for special consideration to be given to SIDS to assist them in undertaking risk assessments and risk management - taking into account their inherent limitations of small land area and finite technical, financial and human capacities.

36. Call for the broader participation of SIDS and small economies in future discussions and actions on mercury at all levels.

37. We, SIDS and small economies call for:

(a) The application of the principle of common-but-differentiated responsibility as outlined in Principle 7 of the Rio Declaration as well as the other relevant Rio Declaration Principles, including the precautionary approach, the polluter-pays-principle and the community-right-to-know in the implementation of activities related to mercury;

(b) Adoption of concepts such as product stewardship and extended-producer-responsibility in addressing the global mercury situation;

(c) Shared technical responsibility in the management of hazardous wastes, including wastes containing mercury and mercury compounds, and mercury-based products. In this regard, we highlight the challenge that SIDS face in the medium and long-term environmentally sound storage as well as the disposal of mercury and mercury wastes;

(d) Access to affordable environmentally safe alternatives to mercury-containing products and processes;

(e) The institution of adequate, accessible and sustainable financial arrangements dedicated to implementation of activities related to mercury. The Multilateral Fund under the Montreal Protocol is instructive in this regard;

(f) Capacity building programmes for the public and private sectors, NGOs and community-based organizations, and

(g) Develop, where necessary, and improve and strengthen the education and awareness mechanisms and networks on issues related to mercury.

38. We, SIDS and countries with small economies recognize the need for urgent, focused and coordinated action at the international level to address the issues related to mercury.

39. It is our view that those priorities outlined in UNEP GC 24/3 whose response measures include the institution of:

(i) Reduction targets and timetables

(ii) Product standards/restrictions

(iii) Phase-out deadlines and schedules

(iv) Implementation strategies, and

(v) Operation of a prior informed consent procedure warrant focused and coordinated global action which would best be delivered through a legally-binding instrument (LBI) as opposed to voluntary arrangements.

40. We therefore recommend that an international free standing LBI be developed and implemented to address the global mercury situation. During the interim phase of the negotiation of the LBI, we recommend that voluntary measures be pursued, including bilateral and multi-lateral arrangements and national initiatives. The outcomes of these measures could help to inform the negotiation for the development of the LBI. The LBI should include provisions which could accommodate other similar pollutants in the future, if necessary.

41. We recognize that partnership arrangements can be formulated and implemented under an LBI. Both the LBI and its partnership arrangements should be mutually supportive.

42. We also recognize that the successful development and implementation of any LBI to address the global mercury situation will require the full and continued support of all stakeholders.

V. Submission by the United States of America: Programmatic and Organizational Structure on Mercury (POSM)

A. Comprehensive and Strategic Voluntary Instrument

43. The United States proposes the following enhanced voluntary framework, the Programmatic and Organizational Structure on Mercury (POSM), be forwarded to the UNEP Governing Council (GC) in February 2009 for consideration. If adopted, implementation could begin immediately, allowing for quick, focused international cooperation and capacity building, funding, and meaningful commitments toward mercury reductions.

44. The POSM would establish a scope of work and request UNEP Chemicals to function as the POSM Secretariat. Participants would identify priority areas for international cooperation and assistance, such as emissions, use in products and processes, and supply, using GC Decision 24/3 as the basis. Additional areas with potential mercury reductions could also be identified for technical assistance and sharing of best practices, and an invitation to the Rotterdam Convention Parties could be

issued to initiate the process for establishing prior informed consent procedures for elemental mercury.

1. Mercury Reduction Goals

45. The POSM would develop global demand and emission reduction goals and timeframes, potentially on a sectoral basis, and be informed to the extent appropriate by existing goals and objectives developed through the UNEP Mercury Partnership or other relevant efforts. Governments would identify domestic priority actions to contribute to global reduction goals in specific sectors. These actions could then be implemented through National Plans, with annual progress reports.

2. National Plans

46. Participants would agree to develop National Plans which contribute to the global mercury reduction goals. Best practices or equivalent technologies could be identified in the National Plan and adopted with due consideration for specific national circumstances. Such plans would be provided to the Secretariat and information on efforts to implement national plans would be updated and communicated regularly.

3. The Mercury Fund

47. Participants would agree to annual funding of approximately $20 million per year for the first four years, to be reviewed thereafter every four years. Contributors to the Fund could include major emerging economies. A country seeking assistance could submit projects to the Mercury Fund for implementation. Projects would identify local government in-kind and direct support (at least 50%) for the project and plans for sustaining the progress achieved. Projects could also be brought forward by countries through international institutions such as UNEP, UNIDO, UNDP, and the World Bank, or through the Mercury Partnership, which would serve as one implementing agency under the Fund.

4. Governing Body – the Strategic Mercury Advisory Council

48. The POSM would establish a Strategic Mercury Advisory Council (SMAC) as a governing body. The SMAC would be open to all interested governments, would meet biennially concurrent with GMEF, and would adopt rules of procedure by consensus of governments at its first meeting.

49. The SMAC would establish a subsidiary body, balanced between 10 donor and 10 recipient countries, to meet twice a year with the following responsibilities: advise the SMAC on a regular basis; manage the POSM fund; develop, review, and approve project guidelines under the Fund; create technical groups to develop best practices, and review National Plans and their progress toward POSM goals. The subsidiary body would be informed by the work of the Partnership and the Partnership Advisory Group, and other relevant institutions.

5. Contribution of UNEP Mercury Partnership and Partnership Advisory Group (PAG)

50. The UNEP Mercury Partnership would serve as an implementing arm to develop projects with funding from the Mercury Fund or other sources. Projects already underway or in the partnership areas business plans of the Mercury Partnership would continue. The ongoing role of the PAG would be recognized in administering the work of the Partnership, including: review of progress toward goals and implementation of the business plans; assure consistency in applying operational guidelines; and report on activities.