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**United Nations
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**Intergovernmental negotiating committee
to prepare a global legally binding instrument
on mercury
Fifth session**

Geneva, 13– 18 January 2013
Item 3 of the provisional agenda*

**Preparation of a global legally binding instrument
on mercury**

Draft text for a global legally binding instrument on mercury

Chair's draft text

Note by the secretariat

1. At its fourth session, held in Punta del Este, Uruguay, from 27 June to 2 July 2012, the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury requested the Chair of the committee to prepare, for consideration by the Committee at its fifth session, a Chair's draft of the global legally binding instrument on mercury called for by the Governing Council of the United Nations Environment Programme in its decision 25/5. In his draft the Chair would propose compromise text in an effort to bridge the differences between some of the positions espoused by the parties during the fourth session. He would also seek to harmonize style and terminology and achieve editorial consistency in the draft instrument.

2. The secretariat has the honour to provide, in annex II to the present note, the draft text prepared by the Chair. As a preface to the draft, the Chair has prepared the commentary set out in annex I to the present note.

* UNEP(DTIE)/Hg/INC.5/1.

Annex I

Commentary to accompany the Chair's draft global legally binding instrument on mercury

Background

1. As requested by the Intergovernmental Negotiating Committee to prepare a global legally binding instrument on mercury at its fourth session, I reviewed the draft convention text annexed to the report of that session (UNEP(DTIE)/Hg/INC.4/8, annex I) (hereinafter referred to as "the fourth session draft text") as well as the session report itself to prepare a Chair's draft text for consideration at the Committee's fifth session. In preparing this draft text, I have also drawn on discussions at previous sessions of the committee, as well as on consultations with the co-chairs of contact groups and other stakeholders. My draft text is set out in annex II to the present document.
2. The purpose of the present commentary is to explain the changes that I have made to the fourth session draft text and the reasons for those changes. I have also highlighted issues that I believe will be key in developing a final text successfully at our fifth session, set to take place in Geneva from 13 to 18 January 2013.
3. To further facilitate your reading of my draft text I have included a table in the appendix to this commentary listing the changes that I have made to each article and annex.

General presentation of the text

4. In presenting my text, I have retained the numbering (and lettering in the case of annexes) of articles and annexes from our previous session. This means that in places there are gaps where I omitted in my draft text articles and annexes that were in the fourth session draft text. Within each article and annex, however, the paragraph numbering is consecutive. I have included, for ease of reference, a table of contents.

Articles that were not changed

5. I made no changes of any sort to the preamble or Articles 8 bis (Special situation of developing countries), 14 (Contaminated sites), 16 bis (Transfer of technology), 20 bis (Health aspects), 21 (Implementation plans), 26 (Settlement of disputes), 28 (Adoption and amendment of annexes), 29 (Right to vote), 30 (Signature), 31 (Ratification, acceptance, approval or accession), 35 (Depositary) or 36 (Authentic texts) or Annex J (Arbitration and conciliation procedure).
6. Some of these unchanged articles include text that was introduced at our fourth session but not considered in detail. One such is Article 20 bis, which was the subject of intersessional work by the secretariat in consultation with WHO, as discussed in document UNEP(DTIE)/Hg/INC.5/5. Another such article is Article 16 bis, which we considered along with Article 16 on Technical assistance [and capacity-building], but did not discuss extensively.
7. Some articles raise policy issues that have not been resolved. These include the Preamble and Articles 8 bis, 14, 21 and 31.
8. In our discussions to date, we have not had an opportunity to consider the Preamble. I recognize that not all parties have provided formal input regarding the Preamble and that many have indicated that they wish to do so. In the light of this I have not proposed new text, and have instead included the text as it stood at the end of our fourth session. This section will need discussion ab initio during our fifth session. Such discussion could include the text as it stands now, which may also integrate additional text to reflect issues arising in other sections of the draft instrument.
9. There are a few articles that contain references that are contingent on the resolution of issues pertaining to other parts of the instrument. These articles may not need to be discussed in plenary, but the consequential changes to them upon the resolution of those issues will need to be noted. For example, Article 30 can be finalized when the dates and location of the conference of plenipotentiaries are decided, and Article 28 can be finalized when agreement is reached on Articles 27 (Amendments to the Convention) and 31 (Ratification, acceptance, approval or accession).
10. Finally, there are provisions of the draft instrument that have no square brackets and have been reviewed by the legal group. These include Articles 26, 29, 35 and 36 and Annex J. I made no changes to these provisions.

Minor editorial changes

11. I have made minor editorial changes to a number of articles throughout the draft text. By “minor editorial changes” I mean the correction of minor inconsistencies in style, terminology or presentation. As examples, whenever certain words such as Party, Parties, Depositary, Convention, Secretariat, etc., are used, they are capitalized, and whenever a specific article of the convention is referred to in the text, the style adopted is to capitalize the word “article” (e.g., Article 6). In other cases, I made changes to ensure the consistent use of terms, to correct grammar or composition or to adjust the style used in making references to parts of the Convention such as “paragraph X” or “Article Y”.

12. It has not been my intention in making these changes to alter the meaning or intent of the text, and I trust that any issue about whether I have done so can be drawn to my attention during the intersessional period.

Changes warranting some explanation

13. Below are those articles and annexes for which some explanation of the changes is warranted.

Article 1: Objective

14. I have developed a short statement of the objective of the mercury instrument that sets out the core goal of the Convention. I limited the text of the objective to this short statement, based on the idea that the main principles underpinning the instrument should be stated in the Preamble and that statements on how the work is to be carried out under the instrument should be included in its substantive provisions. I believe that the short statement set out in my text best and sufficiently expresses our intentions for the instrument.

Article 1 bis: Relationship with other international agreements

15. I have made minor changes to paragraphs 1 and 2. I have also relocated a paragraph previously proposed for Article 6, on mercury-added products, to paragraph 3 of this article, as it is of general applicability and is not limited to products.

Article 2: Definitions

16. I have deleted the text previously presented in strikethrough, as there were objections to this proposal when it was made previously. I have included a proposal that addresses the questions raised by the legal group on the definition of best available techniques and best environmental practices and that results in unbracketed text. I have also proposed simplified definitions for “mercury compounds” and “uses allowed”.

Article 3: Supply and trade

17. The text produced by the contact group at our fourth session reflects all the policy views expressed during the group’s discussions, but it was not possible for the group to refine the text. In preparing my version, therefore, I have sought to capture the major policy views expressed, while producing a text that is more focused. The article contains a paragraph on the definition of mercury and mercury compounds for the purposes of the article, as well as exclusions for de minimis quantities. It then moves on to paragraphs on primary mercury mining, control of mercury from primary mining, mercury from other sources, export, import and reporting. Where similar views were presented in a number of alternative paragraphs proposed by parties, I have merged them. I have also removed some detail, particularly with regard to import and export, but believe that the remaining text retains the policy principles and allows the Conference of the Parties, should it wish on the basis of experience, to elaborate further on some aspects and have allowed for this through a specific provision to that effect in paragraph 9. I have also introduced some concepts from former Article 4 on Stocks into Article 3. Hence, I have changed the heading of the article, which now reads “Mercury supply sources and trade”.

Article 4: Stocks

18. Article 4 was introduced at our fourth session but was not discussed. In reviewing Article 4 together with Article 3, I concluded that the key concepts relating to Stocks could be captured in the provisions of Article 3 relating to supply and trade. I therefore incorporated Article 4 into Article 3 and omitted a separate Article 4 in my text.

Article 6: Mercury-added products

19. The principle that I have followed for Articles 6 and 7 is that they both deal with identifying products and processes that should be subject to phase-out and restriction, along with measures to

identify and list such products and processes. Issues relating to the environmental contamination resulting from the manufacture of such products or the use of mercury in processes are dealt with in Articles 10 and 11, while issues relating to wastes are dealt with in Article 13.

20. Using the outcome of our fourth session, I have worked on Article 6 with the aim of focusing it on the phase-out of products. I edited some paragraphs to clarify their meaning, changed passive obligations into active ones in others and addressed the footnotes in the draft instrument annexed to the report of our fourth session to produce clean text. There are a number of cross-references in this article, including to Article 8 on exemptions, Article 22 on reporting and Article 28 on amendment of annexes. Such cross-references limit the need for extensive text describing processes covered by those articles. My proposed text on the process for reviewing the listing in the Annex would provide for review initiated by a party or by the Conference of the Parties, and is consistent with the concept of the Convention's being dynamic and evolving.

21. I note that one outcome of the discussions in the contact group on products and processes at our fourth session was an understanding that the products listed in Part III of Annex C to the fourth session draft text would be reflected in the register to be established under Paragraph 3 of Article 6. I believe that this understanding should be reflected in the meeting report of our fifth session, so as to provide future guidance.

22. An issue that I recognize has engendered some discussion is that of dental amalgam. I propose a new approach to this in my draft text, which is to include a new Part II of Annex C, listing products that parties, under a new paragraph 2 of Article 6, would be obliged to restrict. This is similar to the approach to DDT under the Stockholm Convention on Persistent Organic Pollutants, and involves the inclusion of measures to reduce and manage dental amalgam while allowing for its continued use. By referring to dental amalgam explicitly only in the annex it also avoids the need to amend the Convention to accommodate progress in this area. I believe that this approach best addresses the continuing discussion on dental amalgam. I also propose that exclusions be dealt with in the annex to enable the individual categories proposed for exclusion to be aligned more closely with specific products.

23. On the basis of the close relationship between the concepts presented in Article 6 and the listings included in Annex C, I advise stakeholders to read these two parts of my draft text together.

Annex C: Mercury-added products

24. Changes to Annex C include those made necessary by changes to Article 6, including the introduction of a Part II of the annex for products to be restricted in accordance with the provisions of paragraph 2 of Article 6. I have included a list of exclusions in the phase-out section, as well as phase-out dates. I have populated the list in Part I based on the discussions at our fourth session, as reflected in the report of the session, and note that it should not be considered either closed or definitive. I am proposing set phase-out dates because they provide more certainty for parties and industry.

Article 7: Manufacturing processes in which mercury is used

25. A number of the changes in this article are editorial in nature, allowing simplification of the text; others bring this article into line, where appropriate, with Article 6. I have also included text reflecting some policy proposals. These include, in Annex D, a new part II, listing processes that parties, under a new paragraph 3 of Article 7, would be obliged to restrict. This approach is analogous to that described above in respect of Article 6 and Annex C, and would result in vinyl chloride monomer (VCM) production being mentioned explicitly in the annex instead of the article. My aim with this approach is to retain the idea that VCM should be treated separately in recognition of its role in some economies.

26. I have also simplified the language with regard to the reduction of emissions and releases from facilities using mercury and inserted text establishing a clear link with the articles on emissions and releases and the identification of facilities that employ processes using mercury. I have retained the two options for new facilities from the fourth session draft text. For the paragraphs on amendments to Annex D, I have included text that is analogous to that for Article 6 and that explicitly allows the option of party proposals for amendments, as well as establishing a time frame for the first review of the annex following entry into force.

Annex D: Manufacturing processes in which mercury or mercury compounds are used

27. Changes to Annex D include those made necessary by changes to Article 7, including the introduction of a part II of the annex for processes to be restricted in accordance with the provisions of paragraph 3 of Article 7. I have populated the list with reference to the discussions at our fourth session, as reflected in the report of the session (UNEP(DTIE)/Hg/INC.4/8). I have also proposed the use of set phase-out dates.

Article 8: Exemptions

28. The fourth session draft text includes two options in respect of exemptions that were carried forward from the earlier drafts of the mercury instrument. The second of these was framed around control measures for products and processes contemplated by option 4 for Article 6 of the draft instrument set out in document UNEP(DTIE)/Hg/INC.4/3. The contact group on products and processes established at our fourth session elected to omit option 4 from the draft text that it produced for Articles 6 and 7. As option 4 for Article 6 is thus no longer under consideration, I have not carried forward the second option for Article 8 in my draft text. In addition, certain elements in the remaining option for Article 8 reflect the “negative list” approach for Articles 6 and 7; as the negative list approach was not carried forward in the draft text set out in the conference room paper prepared by the contact group on products and processes at our fourth session (UNEP(DTIE)/Hg/INC.4/8, annex II), I have set those elements aside as well.

29. To reflect the direction of Articles 6 and 7, the focus of Article 8 is on exemptions from a phase-out date. With regard to the review and possible extension of exemptions, I have proposed more concise language that is intended to include the policy elements from option 1 in the fourth session draft text. I have not included the paragraphs relating to what happens when no parties are registered for an exemption or the paragraph defining acceptable use, as in the new formulation of the article these paragraphs are not required. I have changed the heading of the article to read “Exemption available to a party upon request”.

Article 9: Artisanal and small-scale gold mining

30. A number of questions had been raised by the legal group in relations to the definition of the term “processing” and the timing of party reporting to the secretariat. In paragraph 1, I am satisfied that the text reflects the intent of the group in relation to processing. In paragraph 3, I have amended the language to clarify the occasions on which parties are to report to the secretariat.

31. Paragraph 5 of the fourth session draft text included a number of options for dealing with the import of mercury for artisanal and small-scale gold mining. I present a single paragraph that I believe captures the main intent and elements of those options, which I hope will provide a sound basis for progress. The paragraph should be read in conjunction with Article 3, which provides explicitly that mercury may be imported and exported, inter alia, only for uses allowed under the mercury instrument. Article 9 sets out the conditions of use, including a requirement that a party with artisanal and small-scale gold mining reports on its progress in implementing its national action plan. I do not believe that there is a need for additional reference to artisanal and small-scale gold mining in Article 3.

32. Paragraph 6 refers to the need for financial resources and technical and implementation assistance. I have left this paragraph unchanged. I would note, however, that paragraphs relating to financial resources and technical assistance in respect of this and other topics throughout the instrument may be addressed once negotiations on Articles 15 and 16 are concluded.

Article 10: Atmospheric emissions and Article 11: releases to land and water

33. I have based my proposed text for Articles 10 and 11 on the material set out in the report prepared by the co-chair of the contact group on emissions and releases established at our fourth session on the work of that group (UNEP(DTIE)/Hg/INC.4/8, annex II). For both these articles, the approach is to deal generally with emissions and releases from a range of source categories.

34. For simplicity, I have set out in my draft text two separate articles containing provisions related to potential sources of emissions to the atmosphere (i.e., those source categories listed in Annex F) and to potential sources of releases to land and water (i.e., those source categories listed in Annex G).

35. I would note that there have been proposals for a single article to cover both emissions and releases. Since this policy decision has not been taken by the committee at this stage, in my text I have chosen to present the provisions on emissions and releases in separate articles. This is not intended to give one issue prominence over another, and of course does not preclude the combining of the two articles should the committee choose to do so.

36. Provisions relating to initial assessments, monitoring and reporting have been drafted to apply equally to all potential sources of emissions and releases.

37. The provisions relating to substantive control measures for emissions and releases are identical. The Committee may wish to consider whether to adopt identical or different provisions. Regarding the possible approach to control measures, this is one of the areas where policy choices remain to be made at our fifth session. I have presented the main elements of the options that were presented at our fourth session in my text for both of these articles. I have simplified the previous headings, which now read "Emissions" and "Releases".

Annex F: Emissions

38. I have modified the entries in Annex F slightly from those considered at our fourth session, in particular by separating non-ferrous metals further than had been proposed previously. I have maintained the brackets included by the contact group around the entries for manganese, iron and steel manufacture and oil and gas production and processing facilities. Additionally, following the revision of Articles 6 and 7, which resulted in the removal of any control measures for emissions from such manufacturing processes, and in line with the proposed entries in Annex G, I have included two additional source categories in Annex F. These are the manufacturing processes for mercury-added products and manufacturing processes utilizing mercury that are listed in Annex D. I have revised the heading of the annex to read "List of sources of emissions of mercury and its compounds to the atmosphere".

Annex G: Releases

39. I have proposed slightly modified entries for Annex G. These reflect the progress made on Article 13. Two of the previous entries in Annex G are now covered by the concept of disposal and hence are subject to Article 13, which would require the environmentally sound management of mercury wastes, including for recycling, recovery and valorization. I have revised the heading of the Annex to read "Sources of mercury releases to land and water".

Article 12: Storage

40. I note that a difference of approach remaining at the end of our fourth session and reflected in the fourth session draft text relates to whether the Conference of the Parties should adopt requirements on environmentally sound storage in the form of an additional annex or in the form of guidance. Both options call for relevant guidelines under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal to be taken into account.

41. I am proposing a similar approach for both Articles 12 and 13, i.e., that parties take measures that take into account relevant guidance and are in accordance with any requirements that the Conference of the Parties may adopt in an additional annex. I believe that this is an approach that preserves all positions.

Article 13: Mercury wastes

42. Article 13 is another article that has been considered extensively at previous sessions and has also been considered by the legal group. I have made some amendments to provide clarification in response to questions raised by the legal group.

43. The intention of the first paragraph is to establish the use of definitions under the Basel Convention for wastes issues specific to mercury. The second paragraph establishes specific definitions relating to mercury wastes under the mercury instrument. These are included as a supplement to the general definitions of mercury as a hazardous waste under the Basel Convention. I have edited paragraph 3 to improve its readability, and I also propose text to capture the intention of ensuring environmentally sound wastes management.

44. I have not prepared proposed text to resolve the issue (and therefore replace the bracketed text) relating to trade between non-parties to the Basel Convention.

Article 15: Financial resources and mechanisms

45. The rich discussions at our fourth session resulted in provisions on financial resources that reflected the wide range of views expressed. In preparing my text, I have attempted to consolidate the various proposals and edit the text to include all the main policy requirements articulated during the discussion while presenting a clearer and more concise text on which to base negotiations at our fifth session.

46. Article 15 begins with an acknowledgement, drawn from decision 25/5 of the United Nations Environment Programme Governing Council, of the importance of capacity-building and financial and

technical assistance to the successful implementation of the Convention. It then acknowledges that all parties will contribute to the successful implementation of the mercury instrument by undertaking activities at the national level. The article establishes a financial mechanism, and then indicates that funds will be provided for activities as agreed by the Conference of the Parties. It then sets out choices with regard to the inclusion of a fund and the entity or entities that might operate the mechanism. As this is one of the issues where policy choices remain to be made at our fifth session, I have retained all the main elements of the options that were presented at our fourth session. To facilitate the debate, however, I have edited the proposals to make them simpler. Following this, the article establishes a process for the review of the level of funding and effectiveness of the financial mechanism by the Conference of the Parties and, finally, sets out the basis for contributions to the funding of the mechanism.

47. I note that financing for the interim period between the signing of the mercury instrument at the planned diplomatic conference in Japan and its entry into force cannot be covered in the text of the Convention, but may need to be covered by resolutions to be adopted at the diplomatic conference. I draw your attention to the draft resolutions that have been prepared by the secretariat based on our request at the end of our fourth session, which are set out in document UNEP(DTIE)/Hg/INC.5/6.

Article 16: Technical assistance and capacity-building

48. In the text for this article that had been developed by the end of our fourth session there were two preambular paragraphs. As the substance of these paragraphs is reflected in a paragraph in Article 15, and might also be reflected in the preamble depending on what the parties agree for the preamble, I have not included these paragraphs in my draft text.

49. I have retained from the fourth session draft text the options relating to the provision of technical assistance and technology transfer. In paragraph 2, I have proposed a link to Article 15, as well as text setting out how such assistance would be provided, while in paragraph 3 I have included an option for further guidance in this regard being provided by the Conference of the Parties. I have proposed that “and capacity-building” in the heading be put into square brackets for the time being.

Article 23: Effectiveness evaluation

50. In Article 23 I propose that the effectiveness evaluation be carried out no later than six years after entry into force of the mercury instrument. I have also made editorial changes to improve the consistency of the language and structure of the article. I have amended the language to refer to the Conference of the Parties establishing “arrangements” to comprehend the issues identified in the fourth session draft text. I have revised the heading to read “Effectiveness evaluations” to cover more than one evaluation of the Convention.

Article 25: Secretariat

51. Most of the proposed changes to Article 25 are editorial. The fourth session draft text for the article includes bracketed text in paragraph 4, on synergies with the Basel Convention, 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. The brackets reflect the view expressed by many, at our fourth and earlier sessions, that it is premature to prejudge the outcome of the synergies process for those conventions. I propose, however, that the secretariat include in the draft resolutions for the interim period proposals for exploring enhanced cooperation and coordination. I believe that this will leave the scope of the mercury instrument more open to opportunities for synergies in the future.

Article 25 bis: Expert bodies

52. The fourth session draft text contained two options for Article 25 bis that represented different approaches to the establishment of an expert body. I note that the Conference of the Parties would have the mandate under Article 24 to establish such subsidiary bodies as it deemed necessary. I am mindful also of the fact that the need and possible role for an expert body would only emerge after other articles were agreed upon, presumably well into our fifth session. I believe that we will therefore not have sufficient time for adequate consideration of the issue at that session. Consequently, and in the light of the fact that Article 24 already covers the establishment of subsidiary bodies, I have not included Article 25 bis in my draft text. I propose, however, that a resolution be prepared for possible adoption by the conference of plenipotentiaries that would mandate the committee, in the interim period, to review the text of and experience under other multilateral environmental agreements with a view to providing a recommendation on the matter for consideration by the Conference of the Parties at its first meeting.

Article 27: Amendments to the Convention

53. Much of Article 27 contains standard text that is common to many multilateral environmental agreements. In paragraph 5 of the article in the fourth session draft text, however, the provisions relating to which ratifying parties are counted in determining when an amendment enters into force were enclosed in brackets with the intent of preventing problems of the kind that have arisen in connection with the adoption of amendments to another agreement. In my draft text I have lifted the brackets and I propose that the article be adopted, noting that “three fourths” is still in square brackets because the number of ratifying parties still needs to be agreed.

Article 32: Entry into force

54. I have decided to present a single option in Article 32 for the number of ratifications required for entry into force of the mercury instrument. My proposal is based on the provisions of the Rotterdam and Stockholm conventions.

Article 33: Reservations

55. The formulation of Article 33 in the fourth session draft text presents two options regarding reservations: one would allow them and the other would not. Under international law if a treaty is silent regarding reservations then they are allowed, subject to the rule that reservations may not be contrary to the objective of a treaty. On the basis of this rule, I have simplified the article to read: “No reservations may be made to this Convention.” The entire article is in square brackets.

Article 34: Withdrawal

56. In my draft text I have not included the option in the fourth session draft text that would permit withdrawal from the mercury instrument after one year. I have provided for three years instead, based on the precedent of other multilateral environmental agreements and the belief that one year is insufficient for a party to assess its commitment to the mercury instrument.

Appendix

Changes to the fourth session draft text, by article and annex

Article	Annex	Title	Changes
		Preamble	I included the preamble unchanged from document UNEP(DTIE)/Hg/INC.4/8
1		Objective	I propose new text
1 bis		Relationship with other international agreements	I edited paragraphs 1 and 2 to clarify their relationship with other international agreements I relocated paragraph 3 from paragraph 10 of Article 6 and edited as it is a general obligation rather than one specific to products
2		Definitions	I removed text previously presented in strikethrough I addressed the questions raised by the legal group in regard to the definition of best available techniques, and I cleaned the bracketed text to present a single option I deleted the bracketed qualification from the definition of “mercury-added product” I simplified the definition of “mercury compounds” I deleted previously included explanatory notes In the definition of “use allowed” I deleted the reference to “to the Party under this Convention”
3		Mercury supply sources and trade	Paragraph 2 – I included both exemptions previously included in the annex Paragraphs 3 and 4, relating to primary mining – I amended them to prohibit new mining and limit production of mercury from existing mines to uses allowed in Annex D or for disposal Paragraphs 2/3 alt, 4 – deleted Paragraph 5 – I amended the paragraph to include an obligation of Parties to identify stocks, require disposal of mercury from decommissioned chlor-alkali plants and require mercury from other sources to be limited to approved use, disposal or export in an approved way, as well as to be stored in an environmentally sound manner Paragraphs 5 alt, 6, 7 – deleted Paragraph 7 alt (now 6) – I amended the paragraph to include elements to control exports to both Parties and non-Parties Paragraphs 8 and 9 - deleted Paragraph 10 (now 7) – I amended the paragraph in a similar manner to paragraph 7 alt to include elements to control imports from both Parties and non-Parties Paragraph 11 - deleted Paragraph 12 (now 8) – I simplified the paragraph to reference Article 22 rather than “appropriate documentation showing that the requirements of this article have been met”
			Paragraph 9 – I included a new paragraph 9 to provide for guidance from the Conference of the Parties. This is intended to allow an opportunity for details, such as those deleted from paragraphs 8, 9 and 11, to be developed at a later stage
4		Stocks	Not included in the Chair’s draft text
5			Not included in document UNEP(DTIE)/Hg/INC.4/8
6		Mercury-added products	Paragraph 1 – I retained the language to not allow products listed in part I of Annex C after the phase-out date

Article	Annex	Title	Changes
			<p>Paragraph 2 – I introduced new language relating to a new Part II of Annex C, which lists products whose use is restricted</p> <p>The register in paragraph 1 bis (now 3) is intended to include initially the products formerly listed in Part III of Annex C as indicated in Annex I of the fourth session draft text (UNEP(DTIE)/Hg/INC.4/8)</p> <p>I introduced a new paragraph 9 to establish the criteria for the review of Annex C. These criteria are drawn from paragraphs 5–7 of the fourth session draft text as well as a proposal that was considered by the fourth session on access to alternatives</p> <p>I did not include paragraphs on exclusions, reporting or dental amalgam</p> <p>The process for the review of Annex C no longer references the expert body or regular reviews. Should the Conference of the Parties wish to use an expert body or sees the necessity for periodic reviews, however, it is within the provisions of Article 24 for it to do so</p>
7		Manufacturing processes in which mercury is used	<p>New heading</p> <p>Paragraph 1 – contains the definition of manufacturing processes that was previously in paragraph 7</p> <p>Paragraph 2 – I simplified the language previously presented as paragraph 1 and improved consistency with other articles</p> <p>Paragraph 3 – I introduced new language relating to a new Part II of Annex D, which lists processes whose use is restricted</p> <p>Paragraph 4 (a) – I simplified the language and linked Article 7 with the articles on emissions and releases</p> <p>Paragraph 4 (c) – I clarified the language on identifying facilities, proposing a single approach to this requirement</p> <p>Paragraph 5 – I retained two options for new facilities</p> <p>I propose a process for amending the listing in Annex D that is analogous to that proposed under Article 6 for amending the lists in Annex C</p>
8		Exemptions available to a Party upon request	<p>New heading</p> <p>Paragraph 1 – Throughout the article I modified the references to allowable use exemptions to refer to exemptions from the phase-out dates indicated in Annex C and Annex D</p> <p>Paragraphs 2 and 3 – I simplified the language on establishing a register of Parties with exemptions</p> <p>Paragraph 4 – I made editorial changes to clarify the text</p> <p>Paragraphs 5 – I present a concise Chair’s option</p>
[8 bis		Special situation of developing countries]	None
9		Artisanal and small-scale gold mining	<p>Paragraph 1 – I removed the footnote by the legal group after considering the intended meaning of the term “processing”</p> <p>Paragraph 2 – I removed the footnote</p> <p>Paragraph 3 – I provided clarifying language to define clearly when a Party is required to report to the secretariat</p> <p>Paragraph 5 – I provided a single option capturing the key policy issues previously set out in a number of options</p> <p>Paragraph 6 – I retained paragraph 6 unchanged, pending agreement on Articles 15 and 16</p>

Article	Annex	Title	Changes
10		Emissions	New heading I propose entirely new text for this article, which builds on discussions at the fourth session and the proposals included in the report of that session
11		Releases	New heading I propose entirely new text for this article, which builds on discussions at the fourth session and the proposals included in the report of that session
11.alt		Unintentional emissions and releases	Deleted
12		Environmentally sound interim storage of mercury, other than waste mercury	Paragraph 2 – I amended this paragraph to establish a link with Article 13
13		Mercury wastes	Paragraph 1 – I removed the brackets from the paragraph and deleted reference to “and provisions” Paragraph 2 – I specified that the definition of mercury waste provided was for the purposes of the mercury instrument and that it applies to substances or objects Paragraph 3 (a) – I propose the reformulation of “in accordance with any requirements”, as well as some minor editorial changes. This makes explicit the right of the Conference of the Parties to establish such requirements and the need for Parties to observe them
14		Contaminated sites	None
15		Financial resources and mechanisms	I replaced paragraphs pre 1 and 1 with language drawn from decision 25/5 I deleted paragraphs 2 and 2 alt. 1 and incorporated elements of them into paragraph 2 I propose the use of paragraph 3 alt. 1 I propose incorporating elements of all options from paragraphs 4 and 5 in a revised paragraph 4. In addition, I have imported here the concept of the capacity of Parties from former paragraph 8 bis Paragraph 6 – I retained the option of a fund. The special needs of small-island developing States and the least developed countries are recognized in this paragraph Paragraph 8 – I retained the concept of review of the level of funding and the effectiveness of the financial mechanism Paragraph 9 sets out the basis for contributions to the fund
16		Technical assistance [and capacity-building]	New heading Paragraph 2 includes a direct link to the mechanism established under Article 15. I made changes to improve clarity and readability
16 bis		Transfer of technology	None
17		[Implementation] [Compliance] [Implementation and compliance] committee	Title – I made the title more succinct to better reflect the proposed content of the article Paragraph 2 – I deleted bracketed text [shall][may]and retained other brackets Paragraph 3 – I retained two options
18		Information exchange	Paragraphs 2 and 3 – I amended the text for consistency in its reference to other organizations
19		Public information, awareness and education	I made amendments to improve consistency with other articles, including language relating to vulnerable populations. I lifted brackets in paragraph 1 (a) (v) to reflect the discussion on Article 20

Article	Annex	Title	Changes
20		Research, development and monitoring	I made minor editorial changes to clarify the obligations on Parties. I split the article into two paragraphs and amended some language to improve consistency
20 bis		Health aspects	None
21		Implementation plans	None
22		Reporting	Paragraph 1 – I retained brackets pending resolution of Article 21 Paragraph 2 – I retained brackets pending resolution of substantive articles Paragraph 3 – I made a minor wording change in reference to Parties
23		Effectiveness evaluations	New heading Paragraph 1 – I propose timing for the evaluation Paragraph 2 – I relocated paragraph 3 and amended text to reference the need to collect data to allow the effectiveness evaluation to be done and to leave the specifics of the activity to the Conference of the Parties Paragraph 3 – I removed brackets around reference to financial information and made minor editorial changes to improve consistency
24		Conference of the Parties	Paragraph 5 (d) – I have included the proposed name for the implementation and compliance committee Paragraph 5 (f) – I have simplified the reference to Articles 6 and 7 taking into account the changes in these two articles in the revised text Note that 5 (c bis) will need consideration after resolution of Article 21
25		Secretariat	Paragraphs 1–3 – I made minor editorial changes Paragraph 4 – I removed specific references to synergies with the Basel, Rotterdam and Stockholm conventions and retained a more general reference to enhancing cooperation and coordination with chemicals and wastes conventions
25 bis		Expert bodies	Deleted
26		Settlement of disputes	None
27		Amendments to the Convention	Paragraph 5 – I have lifted the square brackets around the text relating to which parties are counted to determine entry into force of amendments
28		Adoption and amendment of annexes	None
29		Right to vote	None
30		Signature	None
31		Ratification, acceptance, approval or accession	None
32		Entry into force	Paragraph 1 – I lifted the brackets around “fiftieth” and deleted “thirtieth” as an option Paragraph 4 – I retained the brackets around the text
33		Reservations	I deleted the bracketed text “No reservation” but placed brackets around the entire article
34		Withdrawal	Paragraph 1 – I lifted the brackets around “three” and deleted “one” as an option
35		Depositary	None
36		Authentic texts	None
	A	Sources of mercury supply	Not included in the fourth session draft text (UNEP(DTIE)/Hg/INC.4/8)
	B	Mercury and mercury compounds subject to international trade measures	Not included in the fourth session draft text (UNEP(DTIE)/Hg/INC.4/8)

Article	Annex	Title	Changes
	C	Mercury-added products	<p>I separated the list into two parts, part I listing products subject to phase-out and part II listing products subject to restriction, where phase-out is currently not considered feasible</p> <p>I compiled a provisional list of products in the annex based on the examples given in part I of appendix A to the annex in the fourth session draft text (UNEP(DTIE)/Hg/INC.4/8), and I also included the exemptions as previously included</p>
	D	Manufacturing processes in which mercury or mercury compounds are used	<p>I separated the list of processes in the annex into two parts, part I listing processes subject to phase-out and part II listing processes subject to restriction</p> <p>I included proposed phase-out dates in brackets and moved vinyl chloride monomer production from Part I to part II</p> <p>I revised the language for other processes that might be included, based on language proposed at our fourth session</p>
	E	Artisanal and small-scale gold mining	In paragraph 1 (f) I deleted the bracketed text “import and”, with the result that the text now refers to diversion
	F	List of sources of emissions of mercury and its compounds to the atmosphere	<p>New heading</p> <p>I revised the list in the annex based on the text proposed by the contact group at our fourth session, but also included additional categories following the revision of Article 6 and Article 7</p>
	G	Sources of mercury releases to land and water	<p>New heading</p> <p>I revised the list in the annex based on the text proposed by the contact group at our fourth session.</p>
	G. alt	Unintentional emissions and releases	Deleted
	H	[Guidance] [Development of requirements] on environmentally sound storage	Not included in the fourth session draft text (UNEP(DTIE)/Hg/INC.4/8)
	J	Arbitration and conciliation procedures	None

Annex II

Chair's text for a global legally binding instrument on mercury

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A. Preamble

The Parties to this Convention,

[*Reaffirming* the principles of the Rio Declaration on Environment and Development, in particular principles 6, 7, 15 and 16,

Recognizing the importance of common but differentiated responsibilities in addressing environmental and human-health problems associated with the improper handling of mercury,

Recognizing also that the improper handling of mercury has adverse impacts on the environment and human health and that international cooperation through the mobilization of sufficient, predictable and appropriate financial resources and transfer of technology to developing countries and countries with economies in transition is essential to ensure that they are in a position to meet their obligations under this Convention,

Reaffirming the urgent need to adopt special measures to meet the needs of developing countries and countries with economies in transition, including the provision of additional financial resources,

Recognizing that the provision of timely and sufficient technical cooperation and the transfer of technologies to address the needs and priorities of developing-country Parties and Parties with economies in transition are necessary for the effective implementation of this Convention,

Reaffirming that it is necessary to provide for the mobilization of sufficient funds for the implementation of the provisions of this Convention by all Parties,

Having agreed that the financial mechanism shall be funded by contributions from developed countries to support capacity-building and the requirements of developing countries regarding compliance with the provisions of this Convention, including by means of technology transfer,

Taking account of Parties' obligation to protect human health and the environment against damage caused by mercury and acknowledging the work of the World Health Organization to cooperate with Parties on mercury control and to promote a gradual reduction in its use in the health sector,

Recognizing the activities of the World Health Organization on the protection of human health in relation to the adverse effects associated with the improper handling of mercury and the role of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal in relation to transboundary movements of mercury wastes and their final disposal, and that the contribution of both must be taken into account to achieve the objective and apply the provisions of this Convention,

Recognizing also the underlying synergies between the measures intended in this Convention relating to the reduction of the use of mercury in artisanal and small-scale gold mining and the policies and actions oriented towards the eradication of extreme poverty and hunger, both at the national and global levels, in accordance with the Millennium Development Goals and principles 5 and 6 of the Rio Declaration on Environment and Development,]

Have agreed as follows:

B. Introduction

1. Objective

The objective of this convention is to protect human health and the environment from anthropogenic releases of mercury and mercury compounds.

1 bis. Relationship with other international agreements

1. The provisions of this Convention shall not affect the rights and obligations of any Party deriving from any existing international agreement.
2. This Convention shall be implemented in a mutually supportive manner with other relevant international agreements that do not conflict with its objective, as set out in Article 1.
3. Nothing in this Article shall prevent a Party from imposing additional requirements in an effort to protect human health and the environment from exposure to mercury.

2. Definitions

For the purposes of this Convention:

- (a) “Artisanal and small-scale gold mining” means gold mining conducted by individual miners or small enterprises with limited capital investment and production;
 - (b) “Best available techniques” means those techniques that are the most effective to prevent and, where that is not practicable, to reduce emissions and releases of mercury to air, water and land and the impact of such emissions and releases on the environment as a whole, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party. In this context:
 - (i) “Best” means most effective in achieving a high general level of protection of the environment as a whole;
 - (ii) “Available techniques” means, in respect of a given Party and a given facility within the territory of that Party, those techniques developed on a scale that allows implementation in a relevant industrial sector under economically and technically viable conditions, taking into consideration the costs and benefits, whether or not those techniques are used or developed within the territory of that Party, provided that they are accessible to the operator of the facility as determined by that Party; and
 - (iii) “Techniques” means technologies used, operational practices and the ways in which installations are designed, built, maintained, operated and decommissioned;
 - (c) “Best environmental practices” means the application of the most appropriate combination of environmental control measures and strategies;
 - (d) “Mercury” means elemental mercury (Hg(0), CAS No. 7439-97-6);
 - (e) “Mercury compounds” means any substance consisting of identical molecules of mercury and one or more other chemical elements;
 - (f) “Mercury-added product” means a product or product component that contains mercury or a mercury compound that was intentionally added;
 - (g) “Party” means a State or regional economic integration organization that has consented to be bound by this Convention and for which the Convention is in force;
 - (h) “Parties present and voting” means Parties present and casting an affirmative or negative vote at a meeting of the Parties;
 - (i) “Primary mercury mining” means mining in which the principal material sought is mercury;
 - (j) “Regional economic integration organization” means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention; and
 - (k) “Use allowed” means any use by a Party of mercury or mercury compounds:
 - (i) In a mercury-added product that is not listed in Annex C;
 - (ii) For a manufacturing process that is not listed in Annex D;
 - (iii) Listed in Annex C or Annex D for which the Party is registered for an exemption, pursuant to Article 8; or
 - (iv) For laboratory-scale research or as a reference standard;
- [(k) alt “Use allowed to the Party under this Convention” means any use of mercury or mercury compounds that is generally accepted and would take into consideration the specific needs of the Party and the availability of alternative products and processes.]

C. Supply and trade

3. Mercury supply sources and trade

1. For the purpose of this Article:
 - (a) References to “mercury” include mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight; and
 - (b) “Mercury compounds” means mercury (I) chloride (known also as calomel), mercury (II) oxide, mercury (II) sulphate, mercury (II) nitrate, cinnabar ore and mercury sulphide.
2. The provisions of this Article shall not apply to:
 - (a) Quantities of mercury or mercury compounds to be used for laboratory-scale research or as a reference standard; or
 - (b) Naturally occurring trace quantities of mercury or mercury compounds present in mineral products.
3. Each Party shall not allow primary mercury mining that was not being conducted within its territory at the date of entry into force of the Convention for it.
4. Each Party with primary mercury mining within its territory prior to the date of entry into force of this Convention shall not allow the export, sale or distribution in commerce of mercury or mercury compounds produced from this supply source except for:
 - (a) Uses listed in Part II of Annex D; or
 - (b) Disposal in accordance with Article 13.
5. Each Party shall:
 - (a) Identify individual stocks of mercury or mercury compounds exceeding [x] metric tons, as well as sources of mercury supply-generating stocks exceeding [y] metric tons per year that are located within its territory;
 - (b) Require that mercury or mercury compounds produced from decommissioned chlor-alkali production facilities are disposed of in accordance with Article 13;
 - (c) Require that all mercury or mercury compounds from supply sources other than those identified in paragraph 5 (b) are:
 - (i) Disposed of in accordance with Article 13; or
 - (ii) Used for the purpose of a use allowed to the Party under this Convention; or
 - (iii) Exported only in accordance with paragraph 6; and
 - (iv) Stored in an environmentally sound manner as set out in Article 12 if intended to be used or exported for the purposes of a use allowed to a Party under this Convention before such use or export.
6. Each Party shall not allow the export of mercury or mercury compounds except:
 - (a) To a Party that has provided the exporting Party with its written consent, and only for the purpose of:
 - (i) A use allowed to the importing Party under this Convention; or
 - (ii) Environmentally sound disposal as set out in Article 13; or
 - (b) To a State non-Party that has provided the exporting Party with its written consent including certification demonstrating that:
 - (i) The State has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 12 and 13;
 - (ii) Such mercury or mercury compounds will be used only for a use allowed to all Parties under this Convention.
7. Each Party shall not allow the import of mercury or mercury compounds except:
 - (a) From a Party to whom it has provided its written consent and for the purpose of:

- (i) Environmentally sound disposal in accordance with Article 13; or
 - (ii) A use allowed to the Party under this Convention;
- (b) From a State non-Party to whom it has provided its written consent and that has provided certification that the mercury or mercury compounds are not from sources identified in paragraph 3 or paragraph 5 (b) of this Article, and only for the purpose of:
- (i) Environmentally sound disposal in accordance with Article 13; or
 - (ii) A use allowed to the Party under this Convention;
8. Each Party shall include in its reports submitted pursuant to Article 22 information showing that the requirements of this Article have been met.
9. The Conference of the Parties may provide further guidance in regard to this Article, particularly in regard to paragraphs 5 (a), 6 and 7.

E. Products and processes

6. Mercury-added products

Restriction of production, import and export

1. Each Party shall not allow the manufacture, import or export of mercury-added products listed in Annex C after the phase-out date specified for that product, except where the Party has a registered exemption pursuant to Article 8.
2. Each Party shall take measures to restrict the use of the mercury-added products listed in Part II of Annex C in accordance with the provisions set out therein.
3. The Secretariat shall, on the basis of information provided by Parties, establish and maintain a register of information on mercury-added products and their alternatives, and shall make such information publicly available. Other relevant information may also be submitted by Parties and shall be made publicly available by the Secretariat.

Assembled products

4. Each Party shall take measures to prevent the incorporation into assembled products of mercury-added products the manufacture, import and export of which are not allowed under this Article.

New products

5. Each Party shall discourage the manufacture of mercury-added products for uses not covered by any known use of mercury-added products prior to the date of entry into force of this Convention for the Party. Each Party shall not allow the distribution in commerce of such a product except if an assessment of the risks and benefits of the product demonstrates compensating environmental or human health benefits.
6. The Party shall provide to the Secretariat, as appropriate, information on any such product, including any information on the environmental and health impacts of the product. The Secretariat shall make such information publicly available through the register established under paragraph 3 of this Article.

Listing of products in Annex C

7. Any Party may submit a proposal to the Secretariat for listing a mercury-added product in Annex C, which shall include information related to the availability, technical and economic feasibility of the non-mercury alternatives to the product, taking into account the register and information pursuant to paragraph 3.

Review of Annex C

8. No later than five years after the entry into force of the Convention, the Conference of the Parties shall review and may amend Annex C.
9. In any review of Annex C pursuant to paragraph 7 or paragraph 8 of this Article the Conference of the Parties shall take into account at least:
 - (a) Any proposal submitted under paragraph 7;
 - (b) The information from the register established under paragraph 3; and

(c) The need for Parties to obtain mercury-free alternatives that are globally accessible as well as economically and technically feasible.

10. The rules governing the amendment of this Annex shall be subject to the procedures specified in Article 28.

7. Manufacturing processes in which mercury is used

Clarification of definition

1. For the purposes of this Article and Annex D, “Manufacturing processes in which mercury or mercury compounds are used” shall not include processes using mercury-added products, processes for manufacturing mercury-added products or processes that process mercury-containing waste.

Restriction of use

2. Each Party shall not allow the use of mercury or mercury compounds in the manufacturing processes listed in Annex D after the phase-out date specified in that Annex for the individual processes, except where the Party has a registered exemption pursuant to Article 8.

3. Each Party shall take measures to restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex D in accordance with the provisions set out therein.

Measures for facilities

4. Each Party with one or more facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D shall:

(a) Take measures to address emissions and releases of mercury and mercury compounds from those facilities in accordance with Articles 10 and Article 11, respectively; and

[(b) Include in its reports submitted pursuant to Article 22 information on the measures taken pursuant to this paragraph];

[(c) Identify facilities within its territory that use mercury or mercury compounds for processes listed in Annex D and submit to the Secretariat no later than [X] years after the entry into force of the Convention for it information on the number and types of such facilities and the estimated annual amount of mercury or mercury compounds used in those facilities. The Secretariat shall make such information publicly available.]

New facilities

[5. Each Party shall not allow the use of mercury or mercury compounds at new facilities using the manufacturing processes listed in Annex D. Such facilities shall not be eligible for exemptions.]

[5.alt Each Party shall not allow a new facility using the processes listed in Annex D without exception, or any new facility using any other manufacturing process in which mercury or mercury compounds are intentionally added except where the Party can demonstrate to the satisfaction of the Conference of the Parties that the manufacturing process provides an important societal benefit and that there are no economically viable mercury-free alternatives available to provide such benefit, taking into account the national and economic circumstances of that Party.]

Information exchange

6. Parties are encouraged to exchange information on technology transfer, economically and technically feasible mercury-free alternatives, and possible measures and techniques to reduce and where feasible to eliminate the use of mercury and mercury compounds in, and emissions and releases of mercury and mercury compounds from, the manufacturing processes listed in Annex D.

Listing of processes in Annex D

7. Any Party may submit a proposal to the Secretariat for the listing of a process in Annex D. The Party shall include in any such proposal information related to the availability and technical and economic feasibility of the non-mercury alternatives.

Review of Annex D

8. No later than five years after the entry into force of the Convention, the Conference of the Parties shall review and may amend Annex D.

9. In any review of Annex D pursuant to paragraph 7 or 8 of this Article, the Conference of the Parties shall take into account at least:

(a) Any proposal submitted under paragraph 7;

- (b) Information exchanged under paragraph 6;
- (c) Relevant technical and economic developments; and
- (d) The need for Parties to obtain mercury-free alternatives that are globally accessible as well as economically and technically feasible.

8. Exemptions available to a Party upon request

1. Any State or regional economic integration organization may register for one or more exemptions from the phase-out dates listed in Annex C or Annex D, hereafter referred to as “an exemption”, by notifying the Secretariat in writing:

(a) On becoming a Party to this Convention; or

(b) In the case of any mercury-added product that is added by an amendment to Annex C or any manufacturing process in which mercury is used that is added by an amendment to Annex D, no later than the date upon which the applicable amendment enters into force for the Party.

[Any such registration shall be accompanied by a statement explaining the Party’s need for the exemption.]

2. Each Party that has an exemption or exemptions shall be identified in a register. The Secretariat shall maintain the register and make it available to the public.

3. The register shall include:

(a) A list of the Parties that have an exemption or exemptions;

(b) The exemption or exemptions registered for each Party; and

(c) The expiration date of each exemption.

4. Unless a shorter period is indicated in the register by a Party, or is decided upon by the Conference of the Parties, all exemptions shall expire after [five] years.

5. The Conference of the Parties may, at the request of a Party, decide to extend an exemption for up to [five] years. In making its decision, the Conference of the Parties shall take due account of:

(a) A report from the Party justifying the need for the extension of the exemption and outlining activities undertaken and planned to eliminate the need for the exemption as soon as feasible;

(b) Available information, including in respect of the availability of alternative products and processes that are free of mercury or that involve the consumption of less mercury than does the exempt use;

(c) The special circumstances of developing-country Parties, especially least-developed-country Parties, and Parties with economies in transition; and

(d) Activities planned or under way to provide environmentally sound storage of mercury and disposal of mercury wastes.

6. A Party may at any time withdraw an exemption upon written notification to the Secretariat. The withdrawal of an exemption shall take effect on the date specified in the notification.

[8 bis. Special situation of developing countries]

[Any Party that is a developing country shall be entitled to delay for ten years its compliance with the control measures set out in Articles 3–14 of this Convention.]

F. Artisanal and small-scale gold mining

9. Artisanal and small-scale gold mining

1. The measures in this Article and in Annex E shall apply to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.

2. Each Party that has artisanal and small-scale gold mining and processing subject to this Article within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the releases to the environment of mercury from, such mining and processing.

3. Each Party shall report to the Secretariat if at any time it determines that artisanal and small-scale gold mining and processing in its territory is more than insignificant. If it so determines the Party shall:
- (a) Develop and implement a national action plan in accordance with Annex E;
 - (b) Submit its national action plan to the Secretariat no later than three years after entry into force of the Convention for it; and
 - (c) Thereafter, provide a review every three years of the progress made in meeting its obligations under Article 9 and include such reviews in its reports submitted pursuant to Article 22.
4. Parties may cooperate with each other and with relevant intergovernmental organizations and other entities, as appropriate, to achieve the objectives of this Article. Such cooperation may include:
- (a) Development of strategies to prevent the diversion of mercury or mercury compounds for use in artisanal and small-scale gold mining and processing;
 - (b) Education, outreach and capacity-building initiatives;
 - (c) Promotion of research into sustainable non-mercury alternative practices;
 - (d) Provision of technical and financial assistance;
 - (e) Partnerships to assist in the implementation of their commitments under this Article; and
 - (f) Use of existing information exchange mechanisms to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.
5. Each Party that is subject to the provisions of paragraph 3 of this Article and determines that domestic sources of mercury are not available:
- (a) May import mercury for use in artisanal and small-scale mining consistent with its action plan developed in accordance with paragraph 3 of this Article; and
 - (b) Shall include in its reports submitted pursuant to Article 22 the quantity of mercury imported.
- [6. The implementation of measures under this Article and Annex E shall be subject to the provisions of the articles of this Convention on financial resources and technical and implementation assistance.]

G. Emissions and releases

10. Emissions

1. This Article is about measures to control emissions of mercury or mercury compounds to the atmosphere from the sources falling within the source categories listed in Annex F.
2. The following definitions apply for the purposes of this Article:
 - (a) "Emissions" means emissions of mercury or mercury compounds to the atmosphere;
 - (b) "Relevant source" means a source falling within one of the source categories listed in column 1 of Annex F and exceeding the threshold specified in column 2 of Annex F;
 - (c) "New source" means any relevant source the construction or substantial modification of which is commenced at least one year after the date of:
 - (i) Entry into force of this Convention for the Party concerned; or
 - (ii) Entry into force for the Party concerned of an amendment to Annex F where the source becomes subject to the provisions of this Convention only by virtue of that amendment;
 - (d) "Existing source" means any relevant source that is not a new source;
 - (e) "Emission limit value" means a limit on the concentration of mercury or mercury compounds from a point source of emissions, normally expressed as a maximum permissible concentration of a specified substance;

(f) “Goal” means a quantified objective for a reduction in emissions to be achieved by a specified time;

(g) “Multi-pollutant control strategy” means a regulatory regime of a Party requiring measures to reduce emissions of more than one harmful substance, in which the objective is to control the aggregate impact of such emissions from all substances subject to the strategy, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party.

3. Each Party shall, no later than one year after entry into force for it of the Convention or of an amendment to Annex F to the Convention, and on a regular basis thereafter, determine whether it has relevant sources within its territory.

Option 1 (paragraphs 4–8)

4. For new sources, each Party shall require the use of best available techniques and best environmental practices to control emissions.

5. For existing sources, each Party shall require the control of emissions by implementing at least one of the following measures:

(a) Adopt a goal for reducing emissions;

(b) Establish and require compliance with emission limit values, or equivalent technical measures;

(c) Require the use of best available techniques and best environmental practices.

6. Parties may apply the same measures to all source categories, or may adopt different measures in respect of different source categories. The measures applied should achieve outcomes over time comparable with those achievable with the application of best available techniques and best available practices.

7. Where a Party has in place a multi-pollutant strategy in respect of any source, it may determine the best available techniques and best environmental practices for controlling emissions from that source, or apply goals or emission limits, taking account of the wider objectives of that strategy, in order to optimize environmental benefits and the use of financial resources.

8. Each Party [shall][may] include information on the measures it is taking in accordance with paragraphs 4–7 in [its national implementation plan developed in accordance with Article 21][an action plan to be submitted to the Conference of the Parties within [X] years of entry into force of the Convention for that Party].

Option 2 (Paragraphs 9 and 10)

9. [Each Party shall prepare within [X] years of the entry into force of the Convention for it a national plan setting out the measures to be undertaken to control emissions of mercury and mercury compounds and its expected targets, goals and outcomes. The plan shall be submitted to the Conference of the Parties.][Each Party shall include in its national implementation plan prepared in accordance with Article 21 the measures to be taken to control emissions of mercury and mercury compounds and its expected targets, goals and outcomes.]

10. The plan shall include one or more of the following measures:

(a) Adopting a national goal for controlling emissions from all source categories of atmospheric emissions;

(b) Establishing emission limit values for mercury or equivalent technical measures to control mercury emissions from all source categories;

(c) Requiring the use of best available techniques and best environmental practices to control emissions from new sources;

(d) Encouraging the adoption, for existing sources, of measures to control/reduce atmospheric emissions of mercury, depending upon their economic and technical feasibility, affordability and national circumstances;

(e) Adopting multi-pollutant control strategies in order to optimise environmental benefits and financial resources. Where a Party has in place a multi-pollutant strategy in respect of any source, it may determine the best available techniques and best environmental practices for controlling emissions and releases of mercury and its compounds from that source, or apply goals or emission

limits, taking account of the wider objectives of that strategy, in order to optimise environmental benefits and the use of financial resources.

11. The Conference of the Parties shall at its first meeting adopt guidance on determining best available techniques and on best environmental practices, and may revise the guidance thereafter as necessary. Parties shall take such guidance into account in implementing the provisions of this Article.

12. The Conference of the Parties may also adopt, and subsequently revise, guidance on goals and on emission limit values.

13. Each Party shall establish, within five years of the entry into force of the Convention for it, and maintain thereafter, an inventory of emissions from relevant sources. The Conference of the Parties shall adopt guidance on the methodology for preparing inventories, and Parties shall take account of this guidance. Until such guidelines are adopted, Parties shall endeavour to use internationally recognized methodologies where possible.

14. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this Article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

11. Releases

1. This Article is about measures to control releases of mercury or mercury compounds to land and water from the sources falling with the source categories listed in Annex G.

2. The following definitions apply for the purposes of this Article:

(a) "Releases" means releases of mercury or mercury compounds to land and water;

(b) "Relevant source" means a source falling within one of the source categories listed in Annex G;

(c) "New source" means any relevant source the construction or substantial modification of which is commenced at least one year after the date of:

(i) Entry into force of this Convention for the Party concerned; or

(ii) Entry into force for the Party concerned of an amendment to Annex G where the source becomes subject to the provisions of this Convention only by virtue of that amendment;

(d) "Existing source" means any relevant source that is not a new source;

(e) "Release limit value" means a limit on the concentration of mercury or mercury compounds from a point source of releases, normally expressed as a maximum permissible concentration of a specified substance;

(f) "Goal" means a quantified objective for a reduction in releases to be achieved by a specified time;

(g) "Multi-pollutant control strategy" means a regulatory regime requiring measures to reduce releases of more than one harmful substance, in which the objective is to control the aggregate impact of such releases from all substances subject to the strategy, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party.

3. Each Party shall, no later than one year after entry into force for it of the Convention or of an amendment to Annex G to the Convention and on a regular basis thereafter, determine whether it has relevant sources within its territory.

Option 1 (paragraphs 4–8)

4. For new sources, each Party shall require the use of best available techniques and best environmental practices to control releases.

5. For existing sources, each Party shall require the control of releases by implementing at least one of the following measures:

(a) Adopt a goal for reducing releases;

(b) Establish and require compliance with release limit values, or equivalent technical measures;

(c) Require the use of best available techniques and best environmental practices.

6. Parties may apply the same measures to all source categories, or may adopt different measures in respect of different source categories. The measures applied should achieve outcomes over time comparable with those achievable with the application of best available techniques and best available practices.

7. Where a Party has in place a multi-pollutant strategy in respect of any source, it may determine the best available techniques and best environmental practices for controlling releases of mercury or mercury compounds from that source, or apply goals or release limits, taking account of the wider objectives of that strategy, in order to optimize environmental benefits and the use of financial resources.

8. Each Party [shall][may] include information on the measures it is taking in accordance with paragraphs 4–7 in [its national implementation plan developed in accordance with Article 21][an action plan to be submitted to the Conference of the Parties within [X] years of entry into force of the Convention for that Party].

Option 2 (Paragraphs 10 and 11)

9. [Each Party shall prepare within [X] years of the entry into force of the Convention for that Party a national plan setting out the measures to be undertaken to control releases of mercury and mercury compounds and its expected targets, goals and outcomes. The plan shall be submitted to the Conference of the Parties.][Each Party shall include in its national implementation plan prepared in accordance with Article 21 the measures to be taken to control releases of mercury and mercury compounds and its expected targets, goals and outcomes.]

10. The plan shall include one or more of the following measures:

(a) Adopting a national goal for controlling releases from all source categories of releases in Annex G;

(b) Establishing release limit values for mercury or equivalent technical measures to control releases from all source categories;

(c) Requiring the use of best available techniques and best environmental practices to control releases from new sources;

(d) Encouraging the adoption, for existing sources, of measures to control/reduce releases, depending upon their economic and technical feasibility, affordability and the national circumstances;

(e) Adopting multi-pollutant control strategies in order to optimize environmental benefits and financial resources. Where a Party has in place a multi-pollutant strategy in respect of any source, it may determine the best available techniques and best environmental practices for controlling releases from that source, or apply goals or release limits, taking account of the wider objectives of that strategy, in order to optimize environmental benefits and the use of financial resources.

11. The Conference of the Parties shall at its first meeting adopt guidance on determining best available techniques and on best environmental practices, and may revise the guidance thereafter as necessary. Parties shall take such guidance into account in implementing the provisions of this Article.

12. The Conference of the Parties may also adopt, and subsequently revise, guidance on goals and on release limit values.

13. Each Party shall establish, within five years of the entry into force of the Convention for it, and maintain thereafter, an inventory of releases from relevant sources. The Conference of the Parties shall adopt guidance on the methodology for preparing inventories, and Parties shall take account of this guidance. Until such guidelines are adopted, Parties shall endeavour to use internationally recognized methodologies where possible.

14. Each Party shall include in its reports submitted pursuant to Article 22 information sufficient to demonstrate its compliance with the provisions of this Article. The scope and format of such information shall be decided by the Conference of the Parties at its first meeting.

H. Storage, wastes and contaminated sites

12. Environmentally sound interim storage of mercury, other than waste mercury

1. This Article shall apply to the storage of mercury and mercury compounds that do not fall within the meaning of the definition of mercury wastes set out in Article 13.

2. Each Party shall take measures to ensure that the storage of such mercury and mercury compounds intended for a use allowed to a Party under this Convention is undertaken in an environmentally sound manner taking account of any guidelines, and in accordance with any requirements, adopted pursuant to Article 13. The storage of such mercury and mercury compounds shall be on an interim basis only.
3. The Conference of the Parties shall adopt guidelines on the environmentally sound storage of such mercury and mercury compounds, taking into account any relevant guidelines developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and other relevant guidance. The Conference of the Parties may adopt requirements for storage in an additional annex to this Convention.
4. Parties shall cooperate, as appropriate, with each other and with relevant intergovernmental organizations and other entities, to enhance capacity-building for the environmentally sound storage of such mercury and mercury compounds.

13. Mercury wastes

1. The relevant definitions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal shall apply to wastes covered under this Convention.
2. For the purposes of this Convention, mercury waste means substances or objects:
 - (a) Consisting of mercury or mercury compounds;
 - (b) Containing mercury or mercury compounds; or
 - (c) Contaminated with mercury or mercury compounds,

that are disposed of or are intended to be disposed of or are required to be disposed of by provisions of national law or this Convention.

3. Each Party shall take appropriate measures so that mercury waste is:
 - (a) Managed in an environmentally sound manner, taking into account the guidelines developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and in accordance with requirements that the Conference of the Parties may adopt in an additional annex such as those related to wastes facility location, design and operation, and adequate treatment before final disposal;
 - (b) Only recovered, recycled, reclaimed or directly re-used for a use allowed to a Party under this Convention or for environmentally sound disposal pursuant to paragraph 3 (a);
 - (c) Not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with this Article and, if it is a Party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, in conformity with that Convention. [In circumstances where the Basel Convention does not apply to transport across international boundaries, a Party shall allow such transport only where an equivalent control to that laid down in the Basel Convention, in particular regarding prior informed consent and take-back obligations, applies.]
4. The Conference of the Parties shall seek to cooperate closely with the relevant bodies of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal in the review and update, as appropriate, of the guidelines referred to in paragraph 3 (a).
5. Parties are encouraged to cooperate with each other and with relevant intergovernmental organizations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the management of mercury wastes in an environmentally sound manner.

14. Contaminated sites

1. Each Party shall endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds.
2. Any actions to reduce the risks posed by such sites shall be performed in an environmentally sound manner incorporating, where appropriate, an assessment of the risks to human health and the environment from the mercury or mercury compounds they contain.
3. The Conference of the Parties shall adopt guidance on managing contaminated sites that may include methods and approaches for:
 - (a) Site identification and characterization;

- (b) Engaging the public;
- (c) Human health and environmental risk assessments;
- (d) Options for managing the risks posed by contaminated sites;
- (e) Evaluation of benefits and costs; and
- (f) Validation of outcomes.

4. Parties are encouraged to cooperate in developing strategies and implementing activities for identifying, assessing, prioritizing, managing and, as appropriate, remediating contaminated sites [, including through the provision of capacity-building and financial and technical assistance].

I. Financial resources and technical and implementation assistance

15. Financial resources and mechanisms

1. The Parties recognize that some legal obligations arising out of this Convention will require capacity-building, [technology transfer] and technical and financial assistance in order to be implemented effectively by developing country Parties and Parties with economies in transition.
2. Each Party undertakes to provide within its capabilities and in accordance with its national policies, priorities, plans and programmes, resources in respect of those national activities that are intended to implement this Convention. Such resources may include domestic, bilateral and multilateral funding, [mainstreaming][inclusion] in national budgets, development strategies and private sector involvement.
3. A mechanism for the provision of capacity-building [, technology transfer] and financial and technical assistance is hereby established to support developing country Parties and Parties with economies in transition in meeting their obligations under this Convention.
4. The mechanism [shall include] [a fund][an independent fund] [and] [may include] entities providing multilateral, regional and bilateral financial and technical assistance as well as capacity-building [and technology transfer].
5. The fund shall provide [predictable, sufficient and timely] funds to meet those costs of implementation of the Convention as are agreed by the Conference of the Parties. The operation of the fund shall be entrusted to [the Global Environment Facility] [one or more entities].
6. The Conference of the Parties shall, at its first meeting, decide on [the overall policies and procedures,] an indicative list of categories of activities to receive support and funding from the mechanism, including which activities would be entitled to full or incremental funding as agreed, and a timetable for fund allocations to specific activities. The Conference of the Parties shall take full account of the specific needs and special situations of Parties that are small island developing States or least developed countries in developing the list, as well as an activity's potential for mercury reductions. The Conference of the Parties shall include a review of the list in its review of the mechanism pursuant to paragraph 8 of this Article.
7. The Conference of the Parties and the entity or entities comprising the mechanism shall agree upon arrangements to give effect to the above paragraphs.
8. The Conference of the Parties shall review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, the effectiveness of the mechanism established under this Article and its ability to address effectively the needs of developing country Parties and Parties with economies in transition. It shall, based on such review, take appropriate action, if necessary, to improve the effectiveness of the mechanism.
9. Developed country Parties shall provide funding to the mechanism. Other Parties, on a voluntary basis and in accordance with their capabilities, may also contribute to the mechanism. The mechanism shall encourage the provision of resources on a complementary basis from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports.

16. Technical assistance [and capacity-building]

1. [Developed country Parties and other Parties within their capabilities][Parties] shall [cooperate to] [provide transfer of technology][promote transfer of technology][as mutually agreed] [and] provide [timely and appropriate] technical assistance and capacity-building to developing country Parties, in particular Parties that are least developed countries or small island developing States, and Parties with economies in transition to assist them in implementing their obligations under this Convention.

2. Technical assistance[, technology transfer] and capacity-building pursuant to paragraph 1 and Article 15 may be delivered through regional, subregional and national arrangements, through other multilateral and bilateral means, and through partnerships, including partnerships involving the private sector. Cooperation and coordination with other multilateral environmental agreements in the field of chemicals and wastes should be sought to increase the effectiveness of technical assistance and its delivery.
3. Further guidance in regard to this Article shall be provided by the Conference of the Parties.

16 bis. Transfer of technology

- [1. The Conference of the Parties in its first meeting shall create a mechanism under the Convention for the purpose of transfer of technology to developing countries, in particular Least Developed Countries, and Small States Developing Countries and countries with economies in transition, in order to enhance their capacity in implementing this convention, under which the secretariat will:
 - (a) assess the contribution of existing activities in transfer of technology and know-how and assess the means of improving the quality of international transfer of technology and know-how for that purpose;
 - (b) review the status of technology transfer and the need for technology transfer of the mentioned countries;
 - (c) develop arrangements to overcome the barriers and obstacles to technology transfer;
 - (d) present the best practices for transfer of environmentally sound technologies;
 - (e) establish a procedure for the acceleration of technology transfer.
2. The developed country parties shall:
 - (a) establish arrangements for the purpose of transfer of technology to developing country Parties, in particular LDCs and SIDS and Parties with economies in transition relating to the implementation of this Convention;
 - (b) provide access to and transfer of environmentally sound technologies on a concessional or preferential basis to developing country Parties, in particular LDCs and SIDS and Parties with economies in transition;
 - (c) provide substitute, relevant and updated technologies to mercury with an urgency to developing country Parties, in particular LDCs and SIDS and Parties with economies in transition.
3. To achieve the objectives of the Convention, the obligations of the concerned parties under this Article shall be examined by the compliance mechanism.]

[16 bis. alt. The conference of the parties at its first meeting shall consider the technology challenges of developing country parties [in particular LDCs and SIDS] with a view to identify activities to improve the capacity and urgently promote the development of substitutes of relevant and updated technologies to mercury, and identify options and opportunities for parties to cooperate to promote technology transfer[as mutually agreed] [to LDCs].]

17. [Implementation] [Compliance] [Implementation and compliance] committee

Option 1

1. [A mechanism, including a committee as a subsidiary body of the Conference of the Parties, to promote [implementation of] and review [compliance with] all provisions of the Convention is hereby established.
2. The mechanism shall be facilitative in nature. [The Committee shall review the implementation of and compliance with all the provisions of the Convention.] The Committee may examine both individual and systemic issues of compliance and make recommendations as appropriate to the Conference of the Parties.
3. The Conference of the Parties at its first meeting shall adopt the terms of reference for the Committee.]

Option 2

1. [A mechanism, including a committee as a subsidiary body of the Conference of the Parties, to promote [implementation of] and review [compliance with] all provisions of the Convention is hereby established.

2. The mechanism shall be facilitative in nature. [The Committee shall review the implementation of and compliance with all the provisions of the Convention.] The Committee may examine both individual and systemic issues of compliance and make recommendations as appropriate to the Conference of the Parties.]

[3. Unless otherwise decided by the Conference of the Parties:

(a) The Committee shall consist of 10 members nominated by Parties and elected by the Conference of the Parties with due consideration to equitable geographical representation; the first members shall be elected at the first meeting of the Conference of the Parties;

[(a alt) The Committee shall consist of 10 members with competence in the field of mercury or other relevant fields nominated by Parties and elected by the Conference of the Parties on the basis of equitable geographical representation of the five regional groups of the United Nations;]

(b) The Committee shall reflect an appropriate balance of legal and technical expertise;

(c) The Committee may consider issues on the basis of:

(i) Written submissions from any Party;

(ii) National reports and reporting requirements; and

(iii) Requests from the Conference of the Parties;

(d) A Party shall be entitled to participate in the consideration by the Committee of issues relating to its compliance with the Convention, but shall not take part in the consideration of any recommendations relating to such issues;

[(d bis) A Party shall not be entitled to participate in voting if the case which is under consideration of the committee relates to that Party;]

(e) The Committee may elaborate rules of procedure, which shall be subject to approval by the Conference of the Parties; the Conference of the Parties may adopt from time to time any further terms of reference for the Committee that it deems appropriate; and

(f) The Committee shall report at each ordinary meeting of the Conference of the Parties on the work that it has carried out since the last such meeting.

[(f bis) The Committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a three-fourths majority vote of the members present and voting.]]

J. Awareness-raising, research and monitoring, and communication of information

18. Information exchange

1. Each Party shall facilitate the exchange of:

(a) Scientific, technical, economic and legal information concerning mercury and mercury compounds, including toxicological, ecotoxicological and safety information;

(b) Information on the reduction or elimination of the production, use, [trade,] emissions and release of mercury and mercury compounds;

(c) Information on technically and economically viable alternatives to:

(i) Mercury-added products;

(ii) Manufacturing processes in which mercury or mercury compounds are used; and

(iii) Activities and processes that emit or release mercury or mercury compounds;

including information on the health and environmental risks and economic and social costs and benefits of such alternatives; and

(d) Epidemiological information concerning health impacts associated with exposure to mercury and mercury compounds, in close cooperation with the World Health Organization and other relevant organizations, as appropriate.

2. Parties may exchange the information referred to in paragraph 1 directly, through the Secretariat, or in cooperation with other relevant organizations, including the secretariats of chemicals and wastes conventions, as appropriate.

3. The Secretariat shall facilitate cooperation in the exchange of information referred to in this Article, as well as with relevant organizations, including the secretariats of multilateral environmental agreements and other international initiatives. In addition to information from Parties, this information shall include information from intergovernmental and non-governmental organizations with expertise in the area of mercury, and from national and international institutions with such expertise.

4. Each Party shall designate a national focal point for the exchange of information under this Convention, including with regard to the consent of importing Parties under Article 3.

5. For the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential, subject to the national laws of each country. Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.

19. Public information, awareness and education

1. Each Party shall, within its capabilities, promote and facilitate:

(a) Provision to the public of available information on:

(i) The health and environmental effects of mercury and mercury compounds;

(ii) Alternatives to mercury and mercury compounds;

(iii) The topics identified in paragraph 1 of Article 18;

(iv) The results of its research, development and monitoring activities under Article 20; and

(v) Activities to meet its obligations under this Convention;

(b) Education, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health and the environment in collaboration with relevant intergovernmental and non-governmental organizations and vulnerable populations, as appropriate.

2. Each Party shall use existing mechanisms or give consideration to the development of mechanisms, such as pollutant release and transfer registers where applicable, for the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are released or disposed of through human activities.

20. Research, development and monitoring

1. Parties shall cooperate to develop and improve:

(a) Inventories of use, consumption, and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds;

(b) Modelling and geographically representative monitoring of levels of mercury and mercury compounds in vulnerable populations and environmental media, including biotic media such as fish, marine mammals, sea turtles and birds, as well as collaboration in the collection and exchange of relevant and appropriate samples;

(c) Assessments of the impact of mercury and mercury compounds on human health and the environment, in addition to social, economic and cultural impacts, particularly in respect of vulnerable populations;

(d) Harmonized methodologies for the activities undertaken under subparagraphs (a), (b) and (c);

(e) Information on the environmental cycle, transport (including long-range transport and deposition), transformation and fate of mercury and mercury compounds in a range of ecosystems, taking appropriate account of the distinction between anthropogenic and natural releases of mercury and of remobilization of mercury from historic deposition; [and]

[(f) Information on commerce and trade in mercury and mercury compounds and mercury-added products; and]

(g) Information and research on the technical and economic availability of mercury-free products and processes and on best available techniques and best environmental practices to reduce and monitor releases of mercury and mercury compounds.

2. Parties should, where appropriate, build on existing monitoring networks and research programmes in undertaking the actions identified in paragraph 1.

[20 bis. Health aspects

1. Each Party shall:

(a) Establish and implement programmes to identify vulnerable populations and/or populations at risk from the exposure of mercury and its compounds;

(b) Develop and implement strategies and programmes to protect the above-mentioned identified populations from risk, which may include, inter alia, adopting health-based guidelines relating to the exposure of mercury and mercury compounds, setting targets for mercury exposure reduction and public and worker education, with the participation of health and other involved sectors;

(c) Apply the programmes, recommendations and guidelines at national level to inform and communicate the risks, as well as to monitor, review and verify that risk prevention and mitigation measures are achieving the intended results, including, where appropriate and feasible, through the use of biomonitoring;

(d) Implement programmes, recommendations and guidelines on the prevention of occupational exposure relating to permitted uses where potential exposures are of concern;

(e) Facilitate and assure proper access to health care to populations affected by the exposure to mercury or its compounds;

(f) Establish the scientific, technical and analytical capacity and strengthening of health professional capacity for the prevention, diagnosis, monitoring and treatment of the exposure of mercury and its compounds.

2. The Conference of the Parties shall:

(a) Adopt decisions, recommendations and guidelines for the implementation of the activities mentioned in the paragraph 1 supra. These recommendations and guidelines shall be prepared by the Parties, if necessary, with the assistance of international organizations, such as the World Health Organization or the International Labour Organization;

(b) Assure the flow of scientific, technical and financing resources under this Convention, in order to support the activities mentioned in paragraph 1 supra.]

21. Implementation plans

[0./ The Conference of the Parties at its [first] meeting shall develop a menu-based template to which Parties may refer in their development of implementation plans under this Article.]

1. Each Party [in a position to do so] [may] [shall]:

(a) Develop and execute a plan for meeting its obligations under this Convention[, based on the template developed under paragraph 0,/ and according to its specific situation];

(b) Declare its intentions in respect of the plan referred to in subparagraph (a) by submitting a notification to the Secretariat not later than [two years after] the date of entry into force of this Convention for it;

(c) Transmit its implementation plan to the Conference of the Parties within [one] [three] year[s] of the date on which [this Convention enters into force for it] [it submits its notification to the Secretariat];

(d) Review and update its implementation plan periodically and in a manner to be specified by a decision of the Conference of the Parties; and

(e) Include its reviews under subparagraph (d) in its reports submitted pursuant to Article 22.

2. Parties shall, where appropriate, consult their national stakeholders to facilitate the development, implementation, review and updating of their implementation plans, and may cooperate directly or through global, regional and subregional organizations.

[3. The Conference of the Parties shall review and evaluate implementation plans transmitted by developing country Parties pursuant to subparagraph (c) of paragraph 1 and shall endorse the provision of financial resources through the financial mechanism of this Convention sufficient to fund those activities set out in such implementation plans that are aimed at compliance with the obligations established under this Convention. Such implementation plans may include any national action plans required under Annex D[, E] or [F] [G.alt].]

Article 21, option 2

1. No later than five years after the entry into force of this instrument Parties shall devise implementation plans with a view to complying with their obligations under this Convention;

2. Parties shall consider updating their implementation plans taking into account, among other things, the findings of studies and scientific and technical developments;

3. The Conference of the Parties at its [X] meeting shall determine the criteria for drafting and updating implementation plans; and

4. The measures envisaged in the preceding paragraphs shall be implemented taking into account Parties' social and economic conditions, and compliance shall be subject to the mobilization of sufficient, predictable and appropriate financial resources, technology transfer and the provision of cooperation as required for capacity-building in Parties in accordance with their own assessments of their needs and priorities.

22. Reporting

1. Each Party shall report to the Conference of the Parties, through the Secretariat, on the measures it has taken to implement the provisions of this Convention and on the effectiveness of such measures in meeting the objectives of the Convention[, taking into account the contents of its implementation plan].

2. Each Party shall include in its reporting the information called for in Articles [X, Y, Z] of this Convention.

3. The Conference of the Parties shall, at its first meeting, decide upon the timing and format of the reporting to be followed by the Parties, taking into account the desirability of coordinating reporting with other relevant chemicals and wastes conventions [, recognizing that the ability of developing country Parties and Parties with economies in transition to implement this provision [may][shall] be dependent on the availability of capacity-building, and adequate financial and technical assistance].

23. Effectiveness evaluations

1. The Conference of the Parties shall evaluate the effectiveness of this Convention, beginning no later than six years after the date of entry into force of the Convention and periodically thereafter at intervals to be decided by it.

2. To facilitate the evaluation, the Conference of the Parties shall, at its first meeting, initiate the establishment of arrangements for providing itself with comparable monitoring data on the presence and movement of mercury and mercury compounds in the environment.

3. The evaluation shall be conducted on the basis of available scientific, environmental, technical, financial and economic information, including:

(a) Reports and other monitoring information provided to the Conference of the Parties pursuant to paragraph 2, including trends in levels of mercury and mercury compounds observed in biotic media and vulnerable populations;

(b) Reports submitted pursuant to Article 22;

(c) Information and recommendations provided pursuant to Article 17; and

(d) Reports and other relevant information on the operation of the financial assistance, technology transfer and capacity-building arrangements put in place under this Convention.

K. Institutional arrangements

24. Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme no later than one year after the entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be decided by the Conference.
3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.
4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any of its subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.
5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by this Convention and, to that end, shall:
 - (a) Establish such subsidiary bodies as it considers necessary for the implementation of this Convention;
 - (b) Cooperate, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies;
 - (c) Regularly review all information made available to it and to the Secretariat pursuant to Article 22;
 - [(c) bis Review, evaluate and endorse the national implementation plans submitted by Parties pursuant to Article 21;]
 - (d) Consider any recommendations submitted to it by the [Implementation] [Compliance] [Implementation and Compliance] Committee;
 - (e) Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention; and]
 - (f) Review Annexes C and D pursuant to Article 6 and Article 7.
6. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not a Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Convention and has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

25. Secretariat

1. A Secretariat is hereby established.
2. The functions of the Secretariat shall be:
 - (a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;
 - (b) To facilitate assistance to Parties, particularly developing country Parties and Parties with economies in transition, on request, in the implementation of this Convention;
 - (c) To coordinate, as appropriate, with the secretariats of relevant international bodies, particularly other chemicals and waste conventions;
 - (d) To assist Parties in the exchange of information related to the implementation of this Convention;
 - (e) To prepare and make available to the Parties periodic reports based on information received pursuant to Articles [17 and 22] and other available information;

(f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

3. The secretariat functions for this Convention shall be performed by the Executive Director of the United Nations Environment Programme, unless the Conference of the Parties decides, by a three-fourths majority of the Parties present and voting, to entrust the secretariat functions to one or more other international organizations.

4. The Conference of the Parties, in consultation with appropriate international bodies, may provide for enhanced cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions. The Conference of the Parties, in consultation with appropriate international bodies, may provide further guidance on this matter.

L. Settlement of disputes

26. Settlement of disputes

1. Parties shall seek to settle any dispute between them concerning the interpretation or application of this Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organization may declare in a written instrument submitted to the Depositary that, with regard to any dispute concerning the interpretation or application of this Convention, it recognizes one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

- (a) Arbitration in accordance with the procedure set out in Part I of Annex J;
- (b) Submission of the dispute to the International Court of Justice.

3. A Party that is a regional economic integration organization may make a declaration with like effect in relation to arbitration in accordance with paragraph 2.

4. A declaration made pursuant to paragraph 2 or 3 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall in no way affect proceedings pending before an arbitral tribunal or the International Court of Justice, unless the parties to the dispute otherwise agree.

6. If the parties to a dispute have not accepted the same means of dispute settlement pursuant to paragraph 2 or 3, and if they have not been able to settle their dispute through the means mentioned in paragraph 1 within twelve months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The procedure set out in Part II of Annex J shall apply to conciliation under this Article.

M. Further development of the Convention

27. Amendments to the Convention

1. Amendments to this Convention may be proposed by any Party.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to this Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. [If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a X majority vote of the Parties present and voting at the meeting.]

4. An adopted amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.

5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 shall enter into force for the Parties having consented to be bound by it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least [three-fourths] of the number of Parties that were Parties at the time at which the amendment was adopted. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

28. Adoption and amendment of annexes

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Any additional annexes adopted after the entry into force of this Convention shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in [paragraphs 1–3 of Article 27];

(b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication by the Depositary of the adoption of such annex. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time notify the Depositary, in writing, that it withdraws a previous notification of non-acceptance in respect of an additional annex, and the annex shall thereupon enter into force for that Party subject to subparagraph (c); and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification of non-acceptance in accordance with the provisions of subparagraph (b).

4. The proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention[, except that an amendment to [Annex X] shall not enter into force with regard to any Party that has made a declaration with regard to amendment of [that Annex] [those Annexes] in accordance with paragraph 5 of Article 31, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date it has deposited with the Depositary its instrument of ratification, acceptance, approval or accession with respect to such amendment.]

5. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

N. Final provisions

29. Right to vote

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2.

2. A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

30. Signature

This Convention shall be open for signature at ___ by all States and regional economic integration organizations from ___ to ___, and at the United Nations Headquarters in New York from ___ to ___.

31. Ratification, acceptance, approval or accession

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. It shall be open for accession by States and by regional economic integration organizations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organization that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organizations, one or more of whose member States is a Party to this Convention, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organization and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organization shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organization shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.

[4. States and regional economic integration organizations shall include in their instruments of ratification, acceptance, approval or accession a declaration identifying the legislation or other measures that permit them to implement the obligations set forth in Articles 3–14 of this Convention.]

[5. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with regard to it, any amendment to [Annex X] shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.]

32. Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organization that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.

[4. All legal obligations under this Convention shall be applicable to developing country Parties on the condition that the standalone multilateral fund has been established and provides substantial assistance.]

[33. Reservations

No reservation may be made to this Convention.]

34. Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

35. Depositary

The Secretary-General of the United Nations shall be the Depositary of this Convention.

36. Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary.

Annex C

Mercury-added products

Part I: Products subject to Article 6, paragraph 1

NOTE: the list of products included in this table has not yet been subject to discussion and should therefore not be considered as a closed or definitive list. It is drawn from the fourth session draft text UNEP(DTIE)/Hg/INC.4/8, annex I) and is for illustrative purposes only.

Mercury-added products ^a	Phase-out date
Batteries [except button batteries with a mercury content less than 2% wt]	20XX
Switches and relays except switches and relays exclusively for maintenance purposes	20XX
Compact fluorescent lamps below 30 watts with a mercury content exceeding [3.5] mg	20XX
Linear fluorescent lamps - triband phosphor - T2, T5, T8, T10 and T12 and long life > 25,000 hours with a mercury content exceeding [5] mg	20XX
General purpose high pressure mercury (vapor) lamps with a mercury content exceeding [X] mg	20XX
Soaps and cosmetics	20XX
Pesticides and biocides	20XX
Sphygmomanometers	20XX
Thermometers for medical use	20XX

^a The following categories of products are excluded from Part I:

- (a) Products for essential military uses;
- (b) Products for scientific research; and
- (c) Products for cultural/heritage uses.

Part II: Products subject to Article 6, paragraph 2

Mercury-added products	Provisions of use ^a
Dental amalgam	Measures to be taken by a Party to reduce the use of dental amalgam shall take into account the Party's domestic circumstances and relevant international guidance, and shall include but not be limited to: <ul style="list-style-type: none"> (i) Promoting the use of available and effective mercury-free dental filling alternatives; (ii) Educating consumers and training dental professionals and students on the use of mercury-free dental filling alternatives; (iii) Discouraging insurance policies, programmes and mandates that favour dental amalgam use over mercury-free dental filling alternatives; (iv) Discouraging the use of dental amalgam in children, pregnant women and other sensitive populations; (v) Restricting the use of dental amalgam to its encapsulated form. (vi) Ascertaining baseline data on quantities of dental amalgam used, and reporting every three years to the Conference of the Parties on the amount of mercury manufactured, imported, or used in dental amalgam, and the progress made to meet the Party's obligations under this paragraph and reduce mercury use over this period.
[Other products not listed in Part I and subject to restriction]	

^a These provisions of use are examples based on a conference room paper (UNEP(DTIE)/Hg/INC.4/CRP.3) presented at the fourth session.

Annex D

Manufacturing processes in which mercury or mercury compounds are used

Part I: Processes subject to Article 7, paragraph 2

Manufacturing process using mercury or mercury compounds	[Phase-out date]
Chlor-alkali production	[2020][2025]
Processes other than those listed in Part II of this Annex that use a large volume of mercury or mercury compounds as [catalysts] [electrodes or catalysts] and for which there is a widely available non mercury alternative technology	[20XX]

Part II: Processes subject to Article 7, paragraph 3

Mercury-using process	Provisions of use
Vinyl chloride monomer production	Measures to be taken by the Parties shall include but not be limited to: <ol style="list-style-type: none"> (i) Promoting measures to reduce the use of mercury; (ii) Promoting measures to reduce the reliance on mercury from primary mining; (iii) Controlling emissions and releases pursuant to Articles 10 and 11; (iv) Supporting research and development in respect of mercury-free catalysts and processes; (v) Not allowing the use of mercury [five years] after the Conference of the Parties has established that alternatives have become globally accessible and socio-economically and technically feasible.
Other process not listed in Part I and subject to restriction	Measures to be taken by Parties

Annex E

Artisanal and small-scale gold mining

National action plans

1. Each Party that is subject to the provisions of paragraph 3 of Article 9 shall include in its national action plan:
 - (a) National objectives and reduction targets;
 - (b) **Actions to eliminate:**
 - (i) Whole ore amalgamation;
 - (ii) **Open burning of amalgam or processed amalgam;**
 - (iii) **Burning of amalgam in residential areas; and**
 - (iv) Cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury;
 - (c) Steps to facilitate the formalization or regulation of the artisanal and small-scale gold mining sector;
 - (d) Baseline estimates of the quantities of mercury used and the practices employed in artisanal and small-scale gold mining and processing within its territory;
 - (e) **Strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in artisanal and small-scale gold mining and processing, including mercury-free methods;**
 - (f) Strategies for managing or preventing the diversion of mercury and mercury compounds to use in artisanal and small-scale gold mining and processing;
 - (g) Strategies for involving stakeholders in the implementation and continuing development of the national action plan;
 - (h) **A public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury. Such a strategy should include, inter alia, the gathering of health data, training for health-care workers and awareness-raising through health facilities;**
 - (i) Strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining;
 - (j) Strategies for providing information to artisanal and small-scale gold miners and affected communities; and
 - (k) **A schedule for the implementation of the national action plan.**
2. Each Party may include in its national action plan additional strategies to achieve its objectives, including the use or introduction of standards for mercury-free artisanal and small-scale gold mining and market-based mechanisms or marketing tools.

Annex F**List of sources of emissions of mercury and its compounds to the atmosphere**

Source category	Threshold
Coal-fired power plants	Rated thermal input of [X] MW
Coal-fired industrial boilers	Rated thermal input of [X] MW
Lead production facilities	[X] metric tons per day
Zinc production facilities	[X] metric tons per day
Copper production facilities	[X] metric tons per day
Industrial gold production facilities	[X] metric tons per day
[Manganese production facilities]	[X] metric tons per day
Waste incineration facilities	[X] metric tons per day
Cement production facilities	[X] metric tons per day
[Iron and steel manufacturing facilities] [, including secondary steel plants]	[X] metric tons per day
[Oil and gas production and processing facilities]	No proposal at this time
[Facilities in which mercury-added products are manufactured]	No proposal at this time
[Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D]	No proposal at this time

Annex G

Sources of mercury releases to land and water

Source categories of releases of mercury and mercury compounds to land and water

Source category
Facilities in which mercury-added products are manufactured
Facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex D
Facilities in which mercury is produced as a by-product of non-ferrous metals mining and smelting

Annex J

Arbitration and conciliation procedures

Part I: Arbitration procedure

The arbitration procedure for purposes of paragraph 2 (a) of Article 26 of this Convention shall be as follows:

Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 26 of this Convention by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of claim, together with any supporting documents. Such notification shall state the subject matter of arbitration and include, in particular, the Articles of this Convention the interpretation or application of which are at issue.

2. The claimant party shall notify the Secretariat that it is referring a dispute to arbitration pursuant to Article 26 of this Convention. The notification shall be accompanied by the written notification of the claimant party, the statement of claim, and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

Article 2

1. If a dispute is referred to arbitration in accordance with Article 1 above, an arbitral tribunal shall be established. It shall consist of three members.

2. Each party to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by agreement the third arbitrator, who shall be the President of the tribunal. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement. The President of the tribunal shall not be a national of any of the parties to the dispute, nor have his or her usual place of residence in the territory of any of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the United Nations, who shall make the designation within a further two-month period.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information or documents that they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs and shall furnish a final statement thereof to the parties.

Article 10

A Party that has an interest of a legal nature in the subject matter of the dispute that may be affected by the decision may intervene in the proceedings with the consent of the arbitral tribunal.

Article 11

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions of the arbitral tribunal on both procedure and substance shall be taken by a majority vote of its members.

Article 13

1. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its decision. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings.
2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The arbitral tribunal shall render its final decision within five months of the date on which it is fully constituted, unless it finds it necessary to extend the time limit for a period that should not exceed five more months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The final decision shall be binding on the parties to the dispute. The interpretation of this Convention given by the final decision shall also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. The final decision shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any disagreement that may arise between those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that final decision, may be submitted by any of them for decision to the arbitral tribunal that rendered it.

Part II: Conciliation procedure

The conciliation procedure for purposes of paragraph 6 of Article 26 of this Convention shall be as follows:

Article 1

A request by a party to a dispute to establish a conciliation commission pursuant to paragraph 6 of Article 26 of this Convention shall be addressed in writing to the Secretariat, with a copy to the other party or parties to the dispute. The Secretariat shall forthwith inform all Parties accordingly.

Article 2

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, comprise three members, one appointed by each party concerned and a President chosen jointly by those members.
2. In disputes between more than two parties, parties in the same interest shall appoint their member of the commission jointly by agreement.

Article 3

If any appointment by the parties to the dispute is not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1 above, the Secretary-General of the United Nations shall, upon request by any party, make such appointment within a further two-month period.

Article 4

If the President of the conciliation commission has not been chosen within two months of the appointment of the second member of the commission, the Secretary-General of the United Nations shall, upon request by any party to the dispute, designate the President within a further two-month period.

Article 5

The conciliation commission shall assist the parties to the dispute in an independent and impartial manner in their attempt to reach an amicable resolution.

Article 6

1. The conciliation commission may conduct the conciliation proceedings in such a manner as it considers appropriate, taking fully into account the circumstances of the case and the views the parties to the dispute may express, including any request for a swift resolution. It may adopt its own rules of procedure as necessary, unless the parties otherwise agree.
2. The conciliation commission may, at any time during the proceedings, make proposals or recommendations for a resolution of the dispute.

Article 7

The parties to the dispute shall cooperate with the conciliation commission. In particular, they shall endeavour to comply with requests by the commission to submit written materials, provide evidence and attend meetings. The parties and the members of the conciliation commission are under an obligation to protect the confidentiality of any information or documents they receive in confidence during the proceedings of the commission.

Article 8

The conciliation commission shall take its decisions by a majority vote of its members.

Article 9

Unless the dispute has already been resolved, the conciliation commission shall render a report with recommendations for resolution of the dispute no later than twelve months of being fully constituted, which the parties to the dispute shall consider in good faith.

Article 10

Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

Article 11

The costs of the conciliation commission shall be borne by the parties to the dispute in equal shares, unless they agree otherwise. The commission shall keep a record of all its costs and shall furnish a final statement thereof to the parties.
