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**Intergovernmental negotiating committee
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on mercury
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**Preparation of a global legally binding instrument
on mercury**

**Relationship between the future mercury instrument and the
Basel Convention on the Control of Transboundary Movements
of Hazardous Wastes and Their Disposal**

Note by the secretariat

1. At its second session, held in Chiba, Japan, from 24 to 28 January 2011, the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury agreed on a list of information that the secretariat would provide to the committee at its third session to support its further deliberations. Among other things, the secretariat was requested to provide a revised version of document UNEP(DTIE)/Hg/INC.2/16, entitled “Relationship between the future mercury instrument and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal”. The secretariat has prepared the present note in response to that request.

Introduction

2. In mandating the development of a global legally binding instrument on mercury, the Governing Council of the United Nations Environment Programme (UNEP), in paragraph 27 (f) of its decision 25/5, agreed that the intergovernmental negotiating committee was to include in the instrument provisions to address mercury-containing waste and the remediation of contaminated sites. In paragraph 28 (d) of the same decision, the Governing Council agreed that the committee should consider the need to achieve cooperation and coordination and to avoid the unnecessary duplication of proposed actions with relevant provisions contained in other international agreements and processes. The global legally binding instrument on mercury should therefore be mutually supportive of and complement other multilateral environmental agreements. At the committee’s first and second sessions, numerous Governments called for the provisions of the instrument to be coordinated with those of other instruments, particularly the Basel Convention and the Stockholm Convention on Persistent Organic Pollutants, so as to avoid regulatory duplication and confusion and to ensure legal certainty.

3. For the committee’s first session, the Secretariat of the Basel Convention provided its views on how mercury and mercury compounds were covered under the scope of the Convention and on how the Convention could contribute to any international effort to tackle the global challenges posed by mercury (UNEP(DTIE)/Hg/INC.1/INF/3). During that session representatives underlined the need for

* UNEP(DTIE)/Hg/INC.3/1.

coordination with the Basel Convention, and some noted the existence of gaps and overlaps between the future mercury instrument and the Convention that would require further analysis. The secretariat was accordingly requested to provide further information and clarification to the committee at its second session on such gaps and the applicability of the Basel Convention to the environmentally sound management of mercury waste; in response the secretariat produced document UNEP(DTIE)/Hg/INC.2/16. At the committee's second session, the secretariat was requested to revise the document.

4. The present note responds to that request. In preparing it the secretariat retained the structure of the document UNEP(DTIE)/Hg/INC.2/16, which takes as a starting point the default options described in document UNEP(DTIE)/Hg/INC.1/5 for substantive provisions that might be included in the mercury instrument to reduce the supply of mercury, to enhance capacity for environmentally sound storage, to reduce international trade in mercury, to reduce atmospheric emissions of mercury and to address mercury-containing waste. The secretariat then built upon that structure by incorporating information provided by the Secretariat of the Basel Convention in document UNEP(DTIE)/Hg/INC.1/INF/3 and through consultations, elements put forward by parties at the committee's first and second sessions and, where possible, in writing.

5. Chapter I of the present note identifies possible gaps and overlaps in relation to the future instrument on mercury and the Basel Convention; chapter II provides elements for a possible approach based on examples from other agreements.

I. Possible gaps and overlaps in relation to the future instrument on mercury and the Basel Convention

A. Parties

6. There is no guarantee that the parties to the mercury instrument will be identical to those to the Basel Convention. Consequently, when contemplating the Convention's applicability and the adoption of provisions under the mercury instrument that could lead to some mercury waste issues being directly dealt with under provisions of the Basel Convention, the committee may wish to consider an approach that establishes linkages between the two instruments while respecting their legal autonomy and the sovereignty of individual States that might not be parties to both instruments. Some examples of such linkages between the two instruments are provided in chapter II.

B. Scope

7. The successful implementation of any international agreement depends on a clear and shared understanding of its scope and provisions. While the objective of the future mercury instrument has not yet been discussed in detail, both it and the Basel Convention could share a common objective of protecting human health and the environment from the adverse effects of certain hazardous chemicals. The two instruments are expected to differ, however, in that the future mercury instrument is expected to address one specific substance (mercury) from a life-cycle perspective, whereas the Basel Convention addresses a range of substances or objects, including mercury, when they become waste. While the future mercury instrument is expected to take a life-cycle approach to mercury control, the Basel Convention addresses the end-of-life of substances or objects. Consequently, the relevant provisions of the Convention apply to mercury only when it is classified as waste. The committee may therefore wish to consider how to achieve appropriate cooperation and coordination between the instruments so as to avoid unnecessary duplication and ensure adequate control of mercury at all stages of its life cycle. Examples of how such cooperation and coordination with the Basel Convention are provided for under the Stockholm Convention are set out in chapter II below.

C. Definition and classification of mercury waste

8. The provisions and control procedures of the Convention apply to hazardous wastes and other wastes. Paragraph 1 of article 2 defines "waste" as substances or objects that are disposed of, are intended to be disposed of or are required to be disposed of under national law. Paragraph 4 of article 2 defines "disposal" as any operation specified in Annex IV to the Convention. Section A of that Annex lists operations that do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses, while section B lists operations that may lead to such activities. Consequently, disposal under the Basel Convention embraces a wide range of treatment options, including recycling, and is not restricted to final disposal operations. Given the intrinsic properties of mercury and the recognized need to remove it from the supply chain, only a limited range of disposal options are suitable for mercury. The committee may therefore wish to restrict the disposal options to those deemed appropriate.

9. “Hazardous wastes” are defined in the Convention to include wastes and waste streams that are:
- (a) Listed in any of the categories in Annex I, unless they do not possess any of the hazardous characteristics defined in Annex III to the Convention;
 - (b) Not covered under the above-mentioned description, but are defined as or considered to be hazardous wastes under the domestic legislation of the party of export, import or transit.
10. The wastes regulated by the Convention are further clarified by the lists of wastes contained in Annexes VIII and IX to the Convention. To be considered hazardous, therefore, a waste must be listed in Annex I and must possess some hazardous characteristics. In addition, any waste defined as or considered to be hazardous under the law of an exporting, importing or transit country is considered to be hazardous waste under the Convention.
11. “Other wastes” are those wastes listed in Annex II to the Basel Convention (Y46 and Y47). Such wastes may consist of mercury-containing substances or objects.
12. The classification of hazardous wastes, therefore, is to some extent the same for all parties to the Basel Convention. In respect of mercury, as stated by the Secretariat of the Convention in document UNEP(DTIE)/Hg/INC.1/INF/3, this means that for all parties wastes having as constituents mercury or mercury compounds are defined as hazardous wastes and are covered by the Convention (article 1, paragraph 1 (a), category Y29 of annex I and categories A1010, A1030 and A1180 of annex VIII). Such wastes include flue gas cleaning residues, smelting residues and a range of end-of-life mercury-containing products.
13. As well as the hazardous wastes within the Annexes to the Basel Convention, Parties may define additional wastes as hazardous by their domestic legislation. For example, by designating a limit value for mercury content consistent with the provisions of the Basel Convention and the rules of international law (article 4, paragraph 11). This may lead to differing national or regional understandings.¹ For example, mercury contained in a certain product might be treated as household rather than hazardous waste by some parties. Such variation may also arise in the case of recycled or reclaimed materials, which are considered or defined by national legislation in many countries to be hazardous only if they contain hazardous impurities above a certain threshold. In that context, however, the Basel Convention defines the hazardousness of mercury waste on the basis of intrinsic properties rather than a threshold of mercury content.
14. In the light of the national classifications allowed under the Basel Convention, the committee may wish, as proposed in document UNEP(DTIE)/Hg/INC.1/5, to establish threshold values for mercury and its compounds in the overall waste stream that would render such waste subject to the instrument’s mercury waste provisions. To allow for a common and shared approach to what is to be defined as mercury waste, the committee may also wish to make provision in the instrument for the Conference of the Parties to the mercury instrument to develop standard analytic or sampling methodologies. Such methodologies could take into account and be linked to existing initiatives such as the Basel Convention draft technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury, and the Toolkit for Identification and Quantification of Mercury Releases developed by the Chemicals Branch of the UNEP Division of Technology, Industry and Economics. It might also be useful to specify in the instrument when mercury, whether or not intentionally added to products or used in a process, is required to be disposed of.
15. Lastly, some representatives at the committee’s first and second sessions called for clear definitions of terms used in the mercury instrument, saying that such terms should be consistent with the provisions of the Basel Convention. Indeed, various terms related to waste have been used in the committee’s sessions, such as “mercury wastes”, “mercury-containing waste” and “elemental mercury waste”, while the term “waste consisting of elemental mercury and wastes containing or contaminated

¹ These differing understandings are a result of parties' choices as to how they implement the Convention in their national legislation, rather than a direct result of the provisions of the Convention. Parties have the sovereign right to impose requirements additional to those within the Convention. Paragraph 5 of article 6 of the Convention nonetheless requires parties to apply the Convention’s provisions *mutatis mutandis* in the event of differing understandings of wastes legally defined as or considered to be hazardous.

with mercury” appears in the current draft of the Basel Convention technical guidelines to include all mercury-related waste.²

16. Discussions at the committee’s first session and at preparatory meetings revealed that some terms related to mercury waste management were not universally understood, but instead encompassed varying concepts and legal features. The UNEP mercury supply and storage partnership area is helping to tackle this by preparing a glossary of terms and definitions used in UNEP and Basel Convention documents to describe various aspects of the storage and disposal of mercury and mercury-containing waste. This work aims to achieve a common understanding of these terms and could contribute to the negotiations at a later stage.

17. In this respect, the committee may consider it useful to differentiate in the instrument between “mercury waste” and “commodity mercury”. The term “mercury waste” could, for example, encompass waste consisting of mercury and waste containing or contaminated with mercury above a certain threshold value, in addition to mercury-containing substances or objects that are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law. “Commodity mercury” could be understood to mean substances or objects consisting of or containing mercury that are intended or destined for an allowable use under the mercury instrument. In addition, at the committee’s second session, several representatives put forward the origin of mercury as a criterion for classifying mercury as a waste, suggesting that mercury derived from banned sources should be considered waste to be disposed of in an environmentally sound manner.

D. Management of mercury waste

18. The UNEP Governing Council, by its decision 25/5, agreed that in developing the mercury instrument the intergovernmental negotiating committee should include provisions to address mercury-containing waste and recognized the need to facilitate the environmentally sound management of mercury.

19. A central goal of the Basel Convention is the environmentally sound management of hazardous wastes and other wastes. This is defined in article 2 of the Convention as “taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes”. As stated by the Secretariat of the Convention, environmentally sound management means taking on waste management through an integrated life-cycle approach, which involves the application of strong controls from the generation of a hazardous waste to its storage, transport, treatment, reuse, recycling, recovery and final disposal.³

20. While the concept of environmentally sound management finds its origin in the Basel Convention and is obligatory for parties to the Convention, the committee may wish to clarify the application of the concept to mercury, for example regarding the way in which an exporting country could verify an importing State’s waste management practices to allow for an informed export decision. Such an approach might build on the current provisions of articles 4 and 6 of the Basel Convention, and might also address situations in which either the importing or exporting State is not party to the Basel Convention.⁴

21. By its decision VIII/33, the Conference of the Parties to the Basel Convention agreed to include in the Strategic Plan for the Implementation of the Basel Convention a new focus area on mercury wastes. The Conference of the Parties instructed the Secretariat, among other things, to develop guidelines on the environmentally sound management of mercury wastes, with emphasis on the development of sound disposal and remediation practices. Those guidelines, covering all forms of

2 Draft technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury, seventh draft, 26 July 2011, available at <http://www.basel.int/techmatters/index.html>.

3 www.basel.int/convention/basics.html.

4 For example, paragraph 2 (g) of article 4 states that each party shall take the appropriate measures to “prevent the import of hazardous wastes and other wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner”. Paragraph 9 of article 6 states: “The parties shall require that each person who takes charge of a transboundary movement of hazardous wastes or other wastes sign the movement document either upon delivery or receipt of the wastes in question. They shall also require that the disposer inform both the exporter and the competent authority of the State of export of receipt by the disposer of the wastes in question and, in due course, of the completion of disposal as specified in the notification. If no such information is received within the State of export, the competent authority of the State of export or the exporter shall so notify the State of import.”

mercury waste, including elemental mercury, are being developed and will be presented to the Conference of the Parties at its tenth meeting, in October 2011, for possible adoption.

22. The committee may wish to consider whether the mercury instrument should specify which treatment methods parties should require. The Basel Convention's draft guidelines on environmentally sound management embrace most (if not all) aspects of mercury waste treatment and in doing so address best available techniques, best environmental practices and emissions control. The draft guidelines will be normative and not internationally legally binding. The draft guidelines also recommend labeling for "mercury-added products", in addition to public awareness and participation in the implementation of environmentally sound management of mercury waste. Again the committee may wish to create legal requirements for such practices. Furthermore, in conjunction with the various steps in the waste treatment hierarchy, these draft guidelines consider, for example, recovery and recycling, but do not tackle the marketing of reclaimed mercury, as this falls outside the scope of the Basel Convention. The Basel Convention and its technical guidelines thus neither favour nor prohibit a specific treatment method as long as it is environmentally sound, and the committee may therefore wish to do otherwise in the mercury instrument. The committee may also wish to distinguish clearly between treatment requirements for elemental mercury and those for mercury-containing wastes. The Convention does not limit mercury to specified uses where it is produced as a result of recycling; the committee may wish to do so in the mercury instrument.

E. Storage of mercury

23. At the committee's first and second sessions, many representatives stated that provisions on the environmentally sound storage of mercury would be a key feature of the mercury instrument. Several representatives highlighted the importance of environmentally sound storage of mercury from stockpiles, wastes and anthropogenic sources to prevent the re-entry of mercury into the global marketplace and the possibility of future releases to the environment.

24. Consequently, the committee may wish to include provisions in the mercury instrument requiring the Conference of the Parties to develop guidance for both the purposes of transboundary movement and for the environmentally sound management of mercury. Such guidance could include recommendations or requirements on best available techniques and best environmental practices for storage that are considered environmentally sound, and could complement existing provisions and those being developed under the Basel Convention. The guidance could specify when elemental mercury must be accepted in an environmentally sound storage facility based on the form of the mercury, whether and how it should be stabilized, its level of purity, level and nature of impurities, radioactivity and other considerations; acceptance procedures, including verification, container specifications, certifications and other matters; and facility-related requirements for permanent or temporary underground or above-ground storage, including time limits for temporary storage, retrievability of stocks; monitoring, inspection, emergencies and record keeping.

25. Permanent and temporary storage of waste are identified under the Basel Convention as disposal operations D12 and D155, respectively, in section A of annex IV. As previously stated, however, when considering the applicability of the Convention to a material, one should keep in mind that there may be regional, national and even local differences if a party has implemented additional provisions as to what is defined as or considered to be waste. This issue is particularly relevant in the case of the environmentally sound storage of mercury: while permanent or temporary storage are defined as disposal operations under the Convention, the related provisions apply only to waste. The environmentally sound storage of mercury not classified as waste (e.g., commodity mercury) would therefore not fall under the scope of the Basel Convention. If the committee wishes to address storage of mercury that is not classified as waste, it will need to do so under provisions in the mercury instrument. When the stored elemental mercury or its compounds are destined for final disposal, however, the mercury should be handled as waste.

26. The Basel Convention draft technical guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury, include specific sections on environmentally sound techniques and technologies for storage. As mentioned previously, given that these guidelines will be normative and not internationally legally binding, the committee may wish to consider the inclusion of legally binding provisions in the mercury instrument.

27. The committee may also wish to make provision for parties to develop national action plans for safe storage, in close cooperation with the Basel Convention, or to cooperate in developing

5 The reference in Annex IV to the Basel Convention is to "storage pending any of the operations in section A". For the purposes of the present note, the term "temporary storage" is used to cover these and other situations.

arrangements to enhance capacity for domestically and regionally sited environmentally sound storage, including through regional or subregional storage sites. Two regional projects funded by the Government of Norway are being executed by the Chemicals Branch of the UNEP Division of Technology, Industry and Economics in Asia and the Pacific and Latin America to identify suitable options for mercury storage. These projects will contribute to enhancing knowledge about environmentally sound storage of mercury, which is of critical importance for its environmentally sound management.

F. Transboundary movement of mercury

28. The control of transboundary movements of hazardous and other wastes, which are to be minimized consistent with their environmentally sound management, is the primary focus of the Basel Convention. The relevant provisions of the Convention govern only movements of mercury considered to be waste. Furthermore, they apply to both operations for “final disposal” and operations that may lead to re-use, recycling or recovery.⁶ Under the Convention, parties must take appropriate measures to ensure that transboundary movements of wastes are allowed only under specific conditions, including that the hazardous wastes and other wastes are required as raw material for recycling or recovery in the State of import. The movements are subject to the relevant procedures and requirements under the Basel Convention and any potential requirements under national legislative or other measures.

29. Consequently, the committee may wish further to restrict the transboundary movement of mercury waste to environmentally sound storage and/or allowed uses. The committee may wish to make provision for parties to permit the export of elemental mercury and specified mercury compounds only for a use allowed for the importing party under the mercury instrument or for the purpose of environmentally sound storage when, as stated by several representatives at the committee’s first and second sessions, safe storage facilities do not exist in the exporting country.

30. Parties to the Basel Convention are precluded, by paragraph 5 of article 4, and by article 11, from exporting hazardous wastes or other wastes to and importing wastes from non-parties, unless an agreement is in place that does not derogate from the environmentally sound management requirements of the Convention. The committee may wish to consider the impact such a provision might have on the mercury instrument, especially when different States may be party to one agreement but not another.

31. The Ban Amendment to the Basel Convention, adopted in 1995 by decision III/1 of the Conference of the Parties, is intended to prohibit transboundary movements of hazardous wastes destined for final disposal or recovery from States listed in annex VII to the Convention (i.e., member States of the Organization for Economic Cooperation and Development, the European Union and Liechtenstein) to non-annex VII States. This amendment has not yet entered into force. The committee may nonetheless want to take into account the potential effects on the mercury instrument of entry into force of this amendment. In addition, if it wishes to prohibit exchanges of mercury to or from a specific group of countries, the committee may wish to consider the fact that the parties to each instrument might not be exactly the same.

32. Lastly, the committee may wish to consider whether to complement further the provisions on illegal traffic set out under article 9 of the Basel Convention, such as making provision for damages for compensation or address illegal traffic of mercury that is not classified as a waste or that occurs with non-parties to the Basel Convention.

33. The Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal, adopted in 1999 by decision V/29 of the Conference of the Parties to the Basel Convention, once it enters into force, will provide a regime for liability and compensation for damage resulting from transboundary movements of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes. The Protocol does not apply to damages resulting from the transboundary movement of mercury not classified as waste. The committee may want to take into account the potential effects of the entry into force of this Protocol on the mercury instrument, or assess whether it wishes to complement it.

⁶ See paragraph 8 of the present note. Paragraph 4 of article 2 of the Basel Convention defines “disposal” as any operation specified in Annex IV to the Convention. Section A of that annex includes operations that do not lead to the possibility of resource recovery, recycling, reclamation, direct re-use or alternative uses, while section B includes operations that may do so.

G. Capacity-building, financial and technical assistance

34. At the committee's first session, representatives identified several challenges that developing countries and countries with economies in transition had to face when dealing with mercury wastes. Most of these countries lack the resources, staff, expertise and infrastructure to ensure sound mercury waste management.

35. The Basel Convention includes provisions on technology transfer and capacity-building, such as paragraph 1 of article 14, on the establishment of regional or subregional centres for training and technology transfer regarding the management and minimization of hazardous and other wastes. As highlighted in the note by the secretariat on options for the delivery of technical assistance and capacity-building (UNEP(DTIE)/Hg/INC.1/9), however, the regional centres have had difficulty fulfilling their mandates, largely because of their reliance on funding from the voluntary technical cooperation trust fund of the Convention and other mainly voluntary sources.

36. Bearing in mind the potentially high costs associated with mercury waste management and the need to support some countries in tackling the issue, the committee may wish to consider these issues under the provisions related to a financial mechanism within the mercury instrument and to consider whether regional centres established under the Basel and Stockholm conventions could be of assistance.

37. At the committee's first and second sessions, some representatives advocated the principle of common but differentiated responsibilities in the implementation of commitments under the future mercury instrument. Many favoured the implementation of the "polluter pays" principle, with costs being shared by responsible stakeholders, including the private sector. Some also favoured linking compliance to the provision of financial and technical assistance. Such an interlinked arrangement could probably be used under various institutional and operational approaches to a financial mechanism.

H. Reporting

38. When considering reporting under the mercury instrument, the committee may wish to take into account the reporting requirements set out under paragraph 3 of articles 13 and article 16 of the Basel Convention. This would assist in achieving cooperation and coordination and in avoiding the unnecessary duplication of proposed actions with relevant provisions contained in other international agreements and processes, and would be in line with paragraph 28 (d) of decision 25/5 of the UNEP Governing Council.

II. Possible approaches

39. There are a number of potentially relevant precedents for the possible interaction of the Basel Convention with the future mercury instrument. These include approaches under the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention, which were adopted in 1998 and 2001, respectively. The Rotterdam Convention explicitly excludes waste from its scope, while the approach and scope of the Stockholm Convention are comparable to the substance life-cycle approach considered by the Governing Council for a legally binding instrument on mercury.

40. The Stockholm Convention, in its article 6, provides for cooperation with the Basel Convention. First, to avoid any legal vacuum, it considers together stockpiles, wastes and products and articles upon becoming wastes, consisting of, containing or contaminated with listed chemicals and makes provision for their identification. It specifies when stockpiles of listed chemicals shall be deemed to be waste (when they are no longer allowed to be used). It then tackles the management of such wastes, and establishes an obligation to take appropriate measures so that such wastes (including products and articles upon becoming wastes) are disposed of in such a way that their persistent organic pollutant content is destroyed or irreversibly transformed⁷, explicitly banning operations that might lead to recovery, recycling, reclamation, direct reuse or alternative uses, which are considered as disposal options under the Basel Convention.

41. Second, when dealing with transportation across boundaries, the Stockholm Convention, in its article 3, requires parties prohibit and/or take measures to eliminate exports and imports. Parties further need to take measures to restrict imports and exports to certain purposes, namely to a use or purpose allowed to the importing party or to environmentally sound disposal under specific conditions.

⁷ Paragraph 1 (d) (i) of article 6 also provides for appropriate measures to be taken so that such wastes are handled, collected, transported and stored in an environmentally sound manner.

The Convention also requires relevant international rules, standards and guidelines to be taken into account. In paragraph 2 of article 6, it also calls for close cooperation between the Conference of the Parties and the appropriate bodies of the Basel Convention in respect of, among other things, establishing the levels of destruction and irreversible transformation necessary to ensure that persistent organic pollutant characteristics are not exhibited; determining the methods that constitute environmentally sound disposal; and establishing, as appropriate, the concentration levels of chemicals listed in Annexes A, B and C to define low persistent organic pollutant content as referred to in paragraph 1 (d) (ii) of article 6.

42. Article 6 of the Stockholm Convention establishes the basic obligations for parties in respect of persistent organic pollutant wastes, including that parties should take into account relevant international rules, standards and guidelines in respect of the international transport of such wastes. While the Stockholm Convention vests its Conference of the Parties with final decision-making authority regarding persistent organic pollutant wastes, it requires the Conference to cooperate closely with the appropriate bodies of the Basel Convention when considering aspects of persistent organic pollutant waste management in which those bodies may have expertise. That approach might be useful for the committee to consider as it develops provisions to deal with mercury wastes under the new instrument and in its consideration of the relationship between the instrument and the Basel Convention.

43. In support of the above, attention is drawn to the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, adopted in 2009 under the auspices of the International Maritime Organization. While not yet entered into force, the Hong Kong Convention aims to provide globally applicable ship-recycling regulations for international shipping and for ship-recycling activities. The Hong Kong Convention clearly interacts with the Basel Convention, whose parties adopted in 2002 technical guidelines for the environmentally sound management of the full and partial dismantling of ships. While the Hong Kong Convention defines “ship recycling”, “ship recycling facility” and “recycling company” that fall under its scope, it also, under its regulation 3, urges parties to take into account “the relevant and technical standards, recommendations and guidance developed under the Basel Convention” when developing measures for implementation.

III. Conclusion

44. When considering the relationship between the future mercury instrument and the Basel Convention, the committee may wish to keep a number of key issues in mind. First, parties to the Basel Convention and to the future mercury instrument will probably not be exactly the same, so it cannot be presumed that all States will be bound by the same legal commitments that are relevant to mercury wastes. Second, consistency with the definitions used under the Basel Convention will be important, although the committee may still wish to define some terms related to mercury more precisely than they are currently defined within the context of the Basel Convention. The committee may wish to address and clarify in the future mercury instrument when elemental mercury or a mercury-containing substance or object is a waste or is classified as hazardous waste. This could further clarify the relationship between the instruments and when each instrument would apply. Third, the legal force of the mercury-related provisions of the Basel Convention may need to be supplemented by provisions in the mercury instrument to meet the committee’s objectives in developing a comprehensive, legally binding instrument on mercury. Environmentally sound management, best available techniques, best environmental practices and emissions controls for example are addressed in the draft technical guidelines on the environmentally sound management of elemental mercury and wastes containing or contaminated with mercury that are currently being developed under the Basel Convention. The committee may wish to consider mandatory provisions on these issues.
