國際化學品與汞2019
8/7~8/9 管理研討會
International Chemical and Mercury Management Conference
無毒家園 Toxic-free Environment
綠色首都 Green Community
永續社會 Sustainable Society

The international legal regime on mercury management: The Minamata, Basel and Rotterdam Conventions

Katharina Kummer Peiry, MLaw, Ph.D.

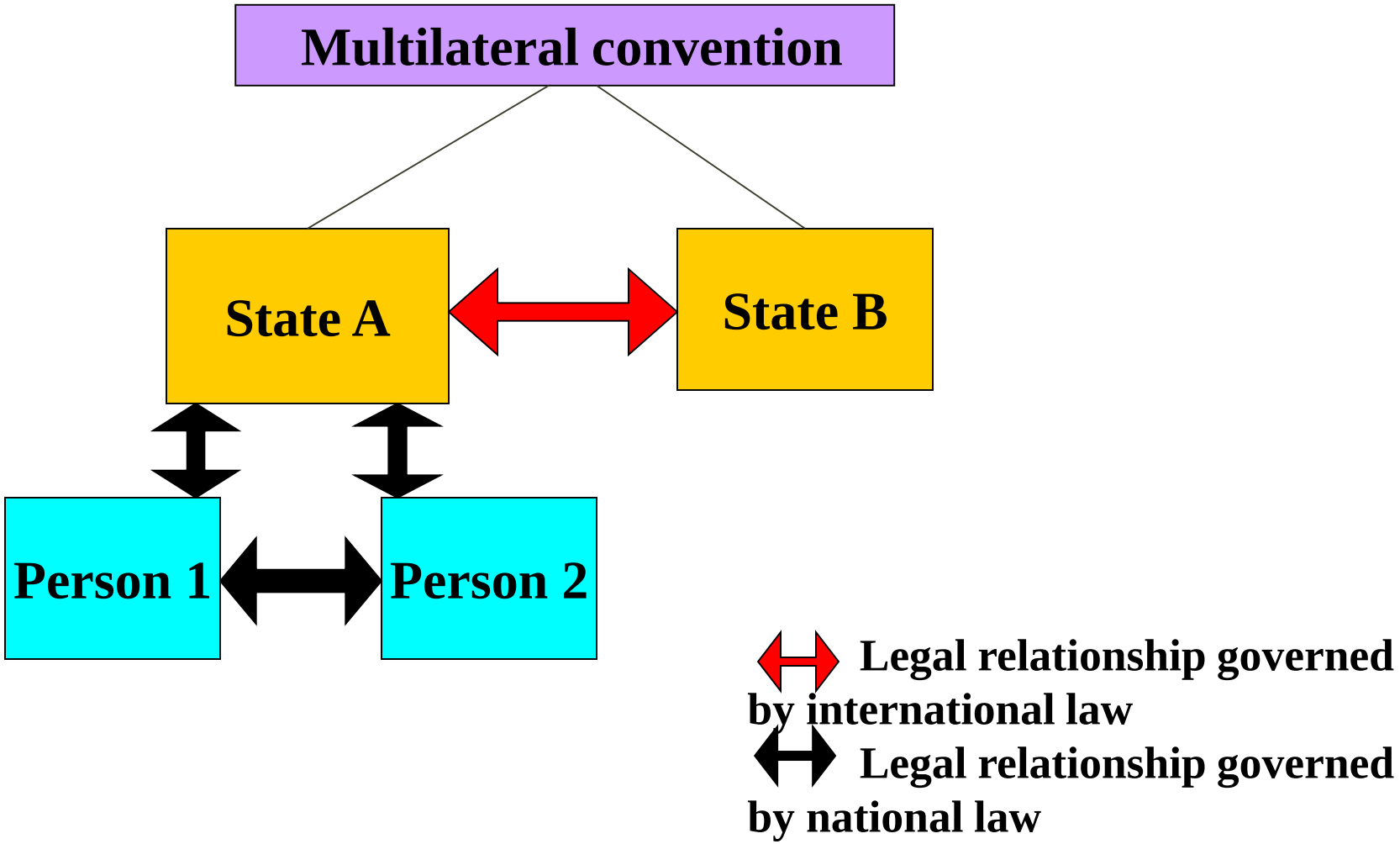
Director, Kummer EcoConsult, Switzerland

8/8/2019

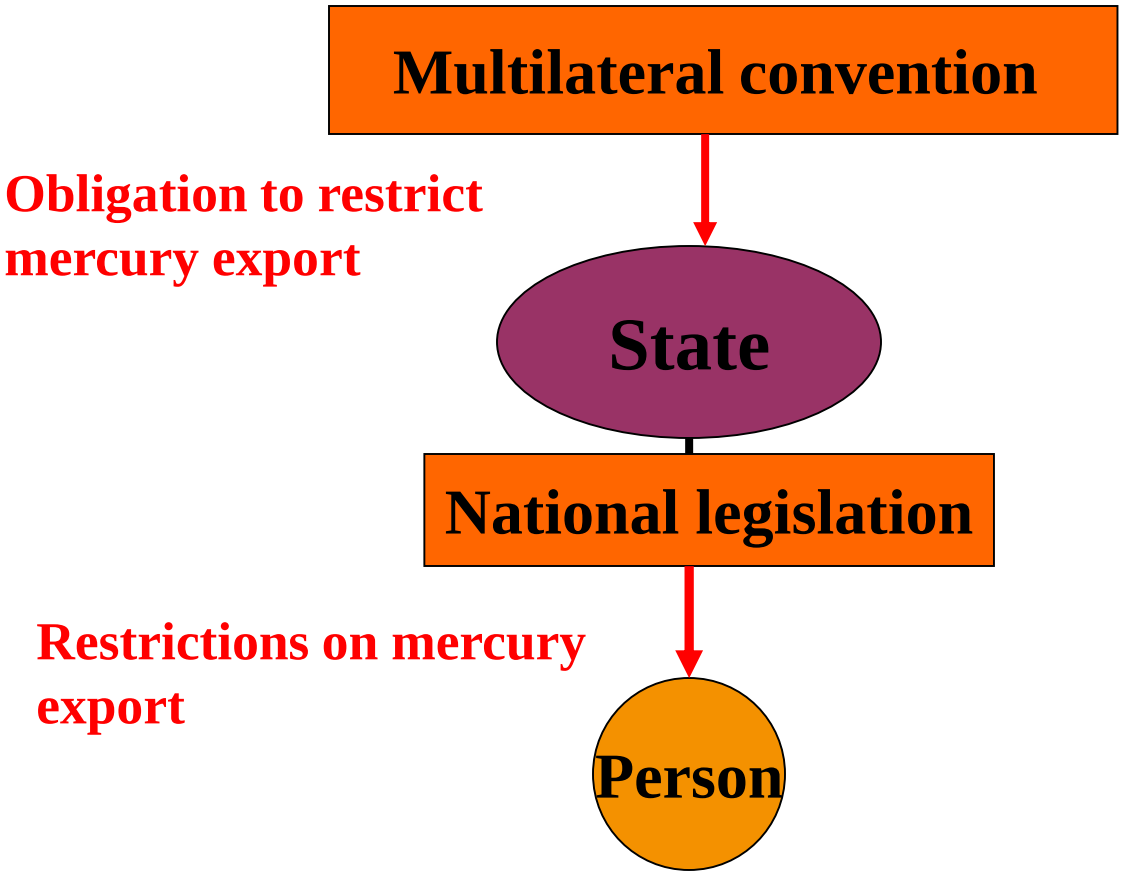
CONTENTS

1 The functioning of multilateral conventions

Interplay of international and national law



Obligations to states and to persons



Becoming a party and entry into force
(dates from Minamata Convention)

Signature
(until 10 October 2014)

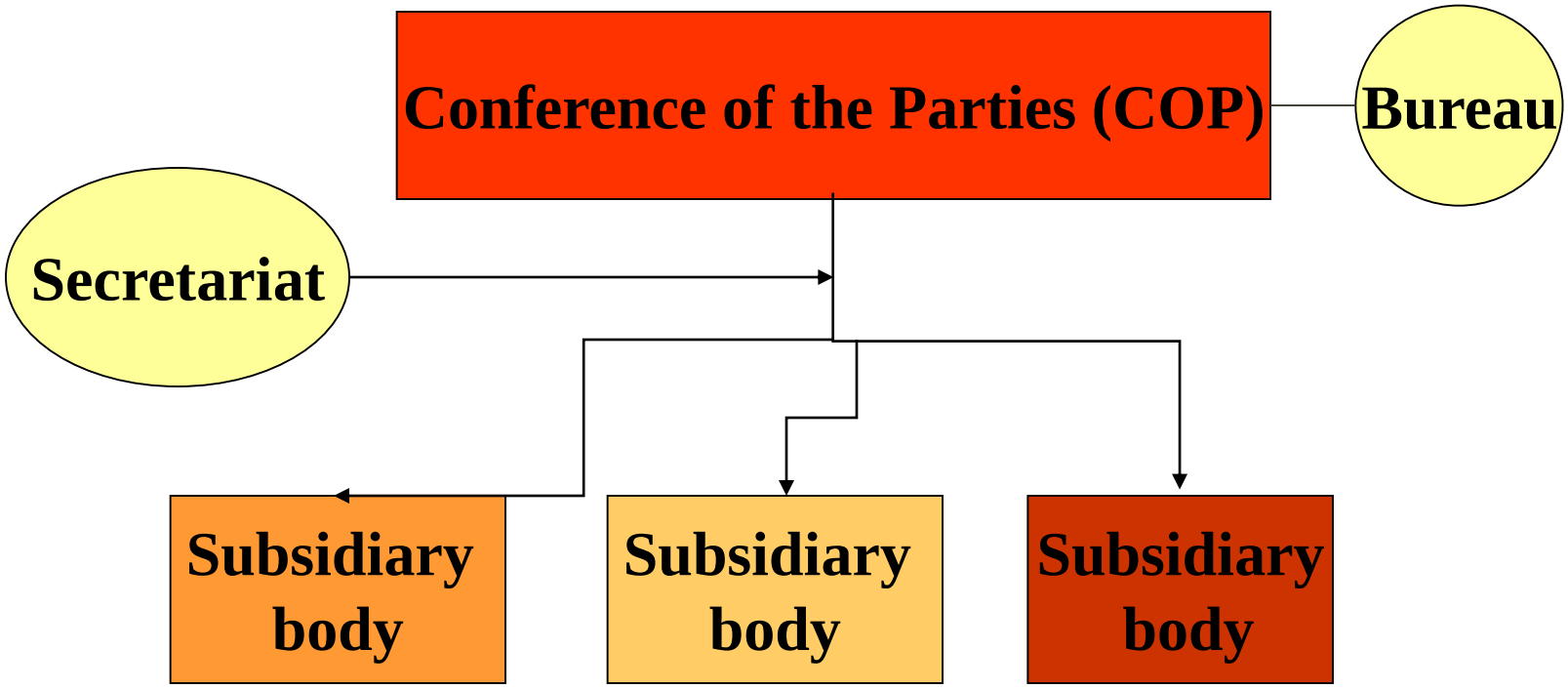
Ratification (acceptance, approval)
1. Domestic prep. process
2. Deposit of instrument of ratification (acc./ appr.)

Accession
(from 10 October 2014)
1. Domestic prep. process
2. Deposit of instrument of accession

Entry into force -> binding international law
States -> Parties

- General: 90 days after deposit of 50th instrument of ratification / accession – 16 August 2017
- For each additional state: 90 days after deposit of instrument of ratification / accession

Governance of a modern global environmental convention



2 The Minamata Convention on Mercury

Facts and figures

- Newest global environmental convention
- Basis: UNEP Global Mercury Assessment, 2002
- Negotiated under UNEP auspices, 2010-2013
- Adoption: Minamata, Japan, 11 October 2013
- Entry into force: 16 August 2017
- Number of Parties as of July 2019: 111
- Meetings of the COP in Geneva:
  - 1st: 24 to 29 September 2017
  - 2nd: 19 to 23 November 2018
  - 3rd: 25 to 29 November 2019

Characteristics

- Principal global convention on mercury
- Addresses one substance only
- “Cradle-to-grave” approach to mercury, addressing all stages of its life cycle, from mining to disposal and management of contaminated sites
- Concrete and detailed obligations to Parties; time limits; practical implementation guidance (e.g. use of BAT/BEP for emissions control)
- Some open-ended provisions requiring further elaboration by the COP and its subsidiary bodies (e.g. technical working groups)

Objective

- To protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds (Article 1)
  - Ultimate goal is to reduce mercury use
  - Implementation of the Convention protects each Party's own environment and population as well as those of other states!

Key obligations to Parties

- Restrictions on mercury supply sources and trade (Article 3)
  - No new primary mining after entry into force of the Convention
  - Phase-out of primary mining within 15 years following entry into force; restrictions on uses of mercury mined during this period
  - Identification of
    - ✓ mercury stocks > 50 t
    - ✓ sources of mercury supply generating stocks > 10 t / year
  - Export
    - ✓ to a Party only with prior written consent if for use allowed under the Convention or for interim storage
    - ✓ to a non-Party only with prior written consent and certification of protective measures, for use allowed under the Convention or for interim storage
  - Import
    - ✓ from a non-Party only subject to certification of provenance from a source compatible with the Convention

Key obligations to Parties

- Phase-out of manufacture of and international trade in specified mercury-added products by 2020 (Article 4 and Annex A)
- Phase-out of use of mercury and mercury compounds in specified manufacturing processes by 2018 / 2025 (Article 5 and Annex B)
- Exemptions to phase-out obligations may be registered by Parties, valid for 5 years (Article 6)
- Reduction or elimination of use of mercury and mercury compounds in artisanal and small-scale gold mining, and of mercury emissions from such mining; establishment of a national action plan if significant mining (Article 7 and Annex C)

Key obligations to Parties

- Control and where feasible reduction of mercury emissions from specified sources into the atmosphere; inventory of emissions within 5 years of entry into force (Article 8, Annex D)
- Control and where feasible reduction of mercury release from specified sources onto land and into water; inventory of emissions within 5 years of entry into force (Article 9)
- Environmentally sound
  - interim storage of mercury and mercury compounds allowed for use (Article 10)
  - management of mercury wastes; transboundary movement in accordance with the Basel Convention (Article 11)
  - management of contaminated sites (Article 12)

Key governance provisions

- Financial mechanism for implementation by developing and transition countries (Article 13)
  - Global Environment Facility Trust Fund
  - Specific International Programme to support capacity building and technical assistance (UNEP)
- Capacity building and technical assistance to developing and transition countries (Article 14)
- Implementation and Compliance Committee (Article 15)
- Periodical effectiveness evaluation of the Convention by the COP (Article 22)

Guidance tools for implementation

- Purpose: to assist Parties in adopting national policies and legislation in accordance with the Convention
- Adoption by the COP as mandated by the Convention
- Guidance tools thus far adopted on:
  - Identification of stocks and sources of mercury supply, and on the written consent procedure for export (Article 3.12)
  - Certification required for mercury import from non-Parties (Article 3.12)
  - Best available techniques and best environmental practices (BAT/BEP) in relation to mercury emissions (Article 8.8(a))
  - Access to funding from the Global Environment Facility (Article 13.7)
  - Preparation of national action plans for artisanal and small-scale gold mining
  - Methodology for preparing inventories of mercury emissions (Article 9.9(b))
  - Interim storage (Article 10.4)
- Formats for registering an exemption from phase-out dates (Article 6)

Intersessional working groups

- Technical working groups and processes established by the COP to elaborate further guidance materials as mandated by the Convention, including on:
  - Establishment of thresholds of concentration triggering definition as mercury waste (Article 11.2)
  - Management of contaminated sites (Article 12.3)
  - Best available techniques and best environmental practices (BAT/BEP) in relation to mercury release (Article 9.7(a))
  - Evaluation of the effectiveness of the Convention (Article 22.2)

3 The Basel and Rotterdam Conventions

Rotterdam Convention (1998)

- Covers hazardous industrial chemicals and pesticides listed in Annex III ("PIC List")
- The PIC list includes mercury compounds, including
  - Inorganic mercury compounds
  - Alkyl mercury compounds
  - Alkyloxyalkyl and aryl mercury compounds
- Prior Informed Consent (PIC) Procedure:
  - Each Party notifies the Secretariat of its decision on import of all chemicals on the PIC list ("to ban or not to ban")
  - The Secretariat regularly communicates these decisions to all Parties
  - A chemical may not be sent to a Party having banned it

Significance for Minamata Convention

- Independently of the provisions of the Minamata Convention on import and export of mercury, a state can decide to ban all imports of mercury compounds under the Rotterdam Convention

Basel Convention (1989)

- Sole global convention on waste management
- Covers waste defined as hazardous, including waste mercury and mercury compounds
- Key provisions
  - Reduction of hazardous waste generation; environmentally sound management of unavoidable hazardous waste wherever the place of disposal
  - Export only subject to Prior Informed Consent of importing and transit states for each movement
  - Ban on export to non-Parties except subject to a separate agreement, and to Parties with a national import ban
  - Ban on export from OECD to non-OECD countries (amendment, not yet in force)
- Large body of Technical Guidelines adopted, including on ESM of mercury waste

Significance for Minamata Convention

- Minamata Guidance on interim storage takes into account Basel Guidelines on ESM of mercury waste (Article 10.3)
- Basel Convention definition of mercury waste applies under Minamata Convention for Parties that are also Parties to Basel, others to use them as guidance (Article 11.1.)
- Basel Convention PIC Procedure for transboundary movement of mercury wastes applies under Minamata Convention for Parties that are also Parties to Basel (Article 11.3(c))
- Basel Convention guidelines on ESM of mercury waste updated in 2015 to take into account Minamata Convention; to be used by Minamata Parties (Article 11.4)

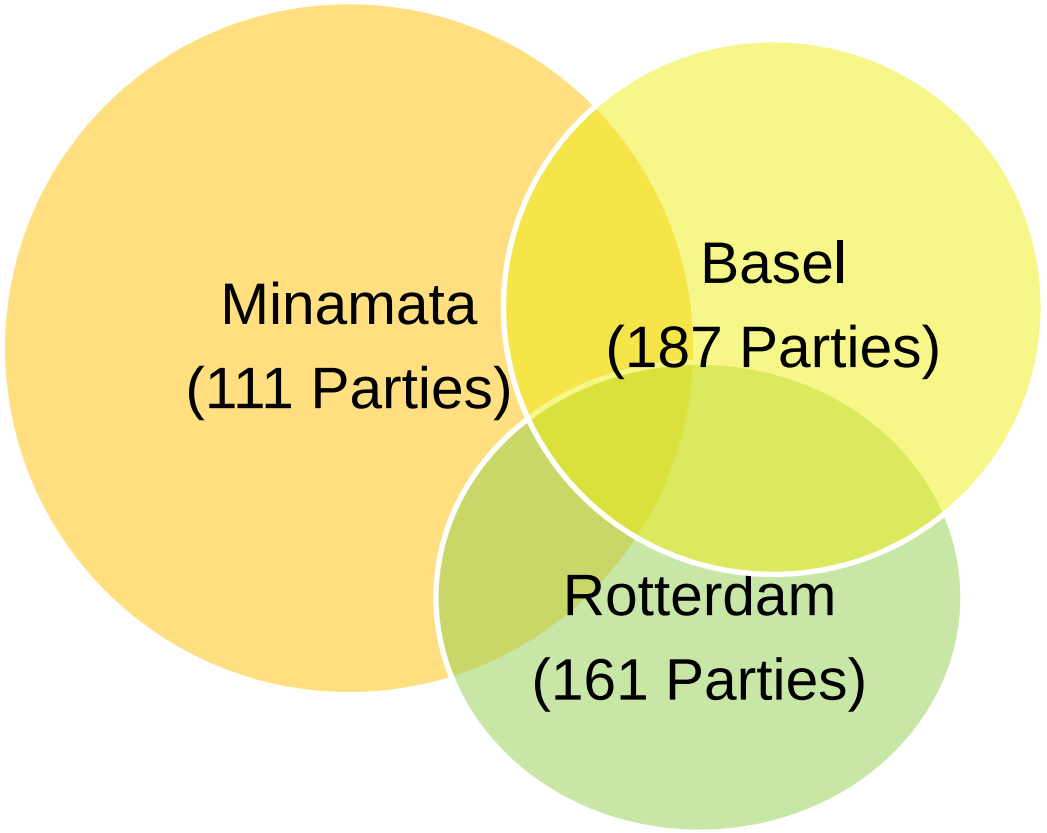
4 A global international legal framework for mercury management

Global legal framework

- The Minamata Convention together with the Rotterdam and Basel Conventions provides a global legal framework for mercury management
- The Minamata Convention and other conventions in the field of the environment and trade are mutually supportive (Preamble) – includes specifically Basel and Rotterdam Conventions
- Strategic Approach to International Chemicals Management (SAICM): Quick Start Programme includes mercury projects

Parties to the 3 Conventions

Each state is bound by those Conventions to which it is a Party



Cooperation

- Secretariat of Basel, Rotterdam and Stockholm Conventions cooperates with Secretariat of Minamata Convention on
  - Substantive issues:
    - ✓ ESM of mercury wastes and interim storage
    - ✓ Provision of technical assistance
    - ✓ Financial resources
    - ✓ Compliance
    - ✓ Legal issues
    - ✓ Effectiveness evaluation
  - Organizational issues:
    - ✓ Organization and servicing of meetings
    - ✓ Outreach and awareness raising
    - ✓ Knowledge and information management
- Minamata Secretariat benefits from the experience of the older conventions

國際化學品與汞2019
8/7~8/9 管理研討會
International Chemical and Mercury Management Conference
無毒家園 Toxic-free Environment
綠色首都 Green Community
永續社會 Sustainable Society

THANK YOU