



Distr.: General
10 April 2012

Original: English



**United Nations
Environment
Programme**

**Intergovernmental negotiating committee
to prepare a global legally binding instrument
on mercury**

Fourth session

Punta del Este, Uruguay, 27 June–2 July 2012

Item 2 (b) of the provisional agenda*

Organizational matters: organization of work

**Scenario note for the fourth session of the intergovernmental
negotiating committee on mercury**

Note by the Chair

1. The present scenario note, which I have prepared in consultation with the Bureau, sets out our plans and general expectations for the fourth session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury. I hope that it will assist parties and other participants in preparing for and achieving significant progress in a number of areas at the session.

Timing and format of the fourth session

2. I draw your attention to the dates for the fourth session. We will start the session on Wednesday, 27 June 2012, and close on Monday, 2 July 2012. The session has been postponed from the original session dates of 25–29 June to accommodate a change in the dates of the United Nations Conference on Sustainable Development. In addition, the Bureau has decided to increase the length of our fourth session to six days to allow more time for negotiations, with the expectation that this will allow for the resolution of more issues and facilitate our reaching our goal of completing the negotiations prior to the twenty-seventh session of the Governing Council of the United Nations Environment Programme, in 2013.

3. As we have had ample opportunity to consider technical information at our previous sessions and recognizing that we need to enhance our focus on the negotiation of the draft text, the Bureau and I have decided that there will be no technical briefing session preceding the committee's fourth session. Some displays relating to technical issues will, however, be available in an exhibition area. Delegates are invited to use the full day of Tuesday, 26 June, for regional and interregional discussions to prepare for the continuation of the negotiations on Wednesday, 27 June.

* UNEP(DTIE)/Hg/INC.4/1.

Progress made at the third session

4. At our third session, held in Nairobi in October and November 2011, we had the opportunity to consider a draft text reflecting the full range of party views on the possible content of the mercury instrument expressed during the second session and submitted to the secretariat after that session. I am pleased that the discussions at the third session demonstrated a strong feeling of ownership of the draft text among parties and a clear recognition of the committee's responsibility to reach an agreement on the instrument within its mandate. We made important progress in a number of areas, especially on artisanal and small-scale gold mining and on storage, wastes and contaminated sites. In other areas, however, substantial work is still needed before we can finalize our convention.

5. We have for the fourth session a revised version of the draft mercury instrument (UNEP(DTIE)/Hg/INC.4/3, annex I). This version includes new text for a number of articles that came out of contact groups and was presented to the committee in plenary in conference room papers. Other articles, which were either discussed in contact groups but did not result in the presentation of revised text in plenary or were not referred to a contact group, remain unchanged from how they were presented at the third session (see UNEP(DTIE)/Hg/INC.3/3). Under my guidance, however, and in consultation with Bureau members, the secretariat has further sought to enhance the readability of the revised version of the draft text by deleting obsolete comments and footnotes from these articles.

Preparing for the fourth session

6. I would like to emphasize the need for delegations to prepare carefully for the committee's fourth session, including by reviewing the report of the discussions at the third session (including the reports from the contact group discussions) and other meeting documents for the fourth session, especially those that present the results of intersessional work.

7. I draw your attention to the intersessional work on financial resources and technical and implementation assistance. Although this work has yet to be completed (at the time of writing the present note), it is my expectation that the co-chairs, with advice from the expert group, will be able, in accordance with the mandate that we gave them at the third session, to present us with a proposal for articles 15 and 16 of the draft text, consisting of a conceptual approach followed by possible text, that we can use as a new basis for our continued discussions on these issues at the fourth session, thus moving us forward from the "multiple option" text on which we made little progress at the third session.

8. You will also recall that at our third session we requested the co-chairs of the contact group on emissions and releases to develop an approach to possible elements of articles 10 and 11 of the draft text for the fourth session. I am confident that the intersessional work undertaken in response to that request will also enable us to progress on this issue at the current session as we move towards new consolidated text.

9. As always, I encourage you to keep in mind the wealth of other information and documentation that has been made available prior to and during the negotiation process. To facilitate this, the secretariat will provide, as has been the case for previous sessions, an updated overview of this information and how it relates to the substantive issues and sections of the revised draft text (UNEP(DTIE)/Hg/INC.4/INF/2). It is my expectation that we will be able to move on from where we concluded in Nairobi and make rapid progress in Punta del Este.

10. I also encourage all Governments to make good use of the opportunity for preparatory discussions in the regional group meetings that will precede our fourth session. I would also like to underline the importance of interregional consultations and enhancing understanding among regions of the various negotiation challenges. I welcome the secretariat's efforts in organizing these regional and interregional meetings, including those on the day preceding the fourth session, as such meetings have played an important role in the negotiations to date. I have been encouraged by the cooperative and facilitative approach that we have taken in our discussions thus far. It is essential that this spirit and approach be maintained and further strengthened and that we work towards agreement on text during our fourth session, particularly as, after this session, we have only one session remaining.

Organizing our work at the fourth session

11. Turning to the substance of our work, I would like to remind you that by the end of our third session we had made significant progress on some areas of the draft text. Many areas, however, remain to be considered. It is essential at our fourth session to move swiftly into detailed discussions to resolve areas of difference and to work to agree on suitable language to capture common views. When doing so, remarks should be delivered, as far as possible, on a regional basis rather than by individual

Governments. At our third session, I encouraged all parties to avoid making extensive opening remarks of a general nature to enable us to turn speedily to the substance of our work. For our fourth session, I reiterate this even more strongly. As a representative of the host country, I would appreciate your kind remarks with regard to the host country. As the Chair of the Intergovernmental Negotiating Committee, however, I have a greater appreciation for the additional time in plenary for substantive discussions. I would therefore again stress that any opening remarks be limited to issues that will contribute directly to progress in the negotiations.

12. In structuring our discussions I would like us to strike a balance between the need to finalize sections of the text on which there have already been extensive discussions, the need to give sufficient time for discussions on areas that have already been considered but where no consensus has yet been reached, and the need to tackle sections that have not yet been considered in detail. I plan, therefore, to consult the Bureau throughout the session to assess progress and maintain a balance between these considerations during the session.

13. There are still many sections of the draft text where multiple options are presented. A number of parties submitted additional input and views on specific issues through conference room papers at the third session. If we are to move the negotiations forward at the fourth session, we need to avoid repeating the same ideas and views and to reduce the number of options, as far as possible, to a single, agreed approach. I encourage all delegates to use the period remaining before the fourth session to consider carefully the options that their Governments could accept and to seize all opportunities to discuss outstanding issues with other representatives with differing views to identify areas of convergence and possible ways forward. Such discussions could yield possible new approaches that bridge the gaps between options in the current draft text. I encourage representatives to submit any such approaches to the secretariat without delay, along with information on what parties support them, so that they can be considered by the committee as early as possible in Punta del Este. If the committee agreed it might be possible to use any such approaches as a starting point for discussions at our fourth session.

14. It would be even better if countries or groups of countries that intend to submit such approaches were to share them informally before our fourth session and, ideally, before or during the planned regional meetings. This would further facilitate effective preparations and kick-start our discussions at the fourth session. The Bureau members could assist in facilitating this sharing of approaches.

15. At this stage I think that we are all very familiar with the draft text and that no reading of the entire text will be required in plenary at the fourth session. The final plan for the organization and flow of the session that will be proposed for the committee's endorsement will be decided on by the Bureau at its last meeting prior to the session, on the basis of input from the regional and other consultations. At the time of the drafting of the present note, however, the Bureau and I envisage that the following sections of the draft text would be of priority for the fourth session: supply; trade; products and processes; emissions and releases; storage, wastes and contaminated sites; financial resources and technical and implementation assistance; compliance; awareness-raising, research and monitoring, and communication of information; and remaining articles or paragraphs of the final clauses not yet referred to the legal group for consideration. The preamble and objective may be best deferred to the fifth session, although it has been noted that the level of ambition of the objective might influence other substantive articles. We consider that the definitions would be best addressed in the contact groups on the relevant substantive issues rather than as a group, with consideration in each case given first to the need for a definition. As mentioned earlier, the Bureau may make some adjustments to the planned organization of work at the last Bureau meeting immediately before the fourth session based on our understanding of the discussions at the various planned regional consultations.

Using smaller groups to allow for more detailed discussions and ensure progress

16. I recognize that there will be a need to refer outstanding issues for more detailed consideration in smaller groups, where, I hope, further agreement on the most suitable approaches can be reached. The results of the small groups' deliberations would of course be presented for consideration by the committee. I will continue to give any small groups narrow mandates and to limit the time for their work. However, I will also give the co-chairs of any such groups as much flexibility as possible to approach their tasks in the most efficient and effective manner.

17. We still have to resolve a number of significant policy questions within the instrument, and it is not feasible to prepare new draft text for certain sections until such issues have been resolved. Building on the progress made on these policy questions during the third session and in the intersessional period, I expect that rapid progress can be made. I am conscious of the challenges faced

by many delegations in covering a broad set of simultaneous discussions, but our time is short. I will naturally continue to try to limit the number of small groups that meet simultaneously, but I encourage all delegations to explore options for prioritizing issues and covering the various discussions through like-minded Governments, as this would greatly facilitate negotiation and allow more groups to work in parallel. At the third session in Nairobi, six contact groups were convened during the session, in addition to the legal group and the committee meeting in plenary. I expect that there will be a need for a greater number of groups at the fourth session, particularly as there are a number of issues that have not yet been discussed in detail. Following my discussions with the Bureau and interaction with the co-chairs of the contact groups at the third session, I consider that it may be necessary, at this session, to allow three small negotiating groups and the legal group to meet simultaneously.

18. What contact groups will be needed and when they will meet will be based on a plan by the Bureau but ultimately determined on a running basis during the fourth session. The Bureau will discuss the matter at its last meeting before the fourth session. To move the text forward as far as possible it might be most effective first to tackle sections and articles where little progress was made at the third session. On the other hand, to “pick the low-hanging fruit” and ensure rapid success we might consider asking those contact groups that made substantial progress at the third session, such as the group on artisanal and small-scale gold mining, to meet early on for a limited time to conclude their discussions and finalize any outstanding text revisions.

19. Upon the recommendation of the representatives that co-chaired the contact groups at the third session, I will encourage the co-chairs of the various contact groups to meet regularly during the fourth session, as this will assist in further promoting coherence within the negotiations and the text under development. I will also encourage delegates to ensure that they keep themselves informed of the issues discussed and progress made in the various contact groups.

20. At our second session we established a legal group to assist the committee, as reflected in paragraph 251 of the report of that session (UNEP(DTIE)/Hg/INC.2/20). The legal group worked extensively during the third session, was able to consider all material submitted to it and produced revised text that was presented to the committee in plenary in conference room papers. The text in those conference room papers is reproduced in the current version of the draft mercury instrument, and I expect that we will be able to refer additional text to the legal group for consideration early in our fourth session. The text for some sections or articles under discussion is mostly agreed, with text relating to only a few outstanding issues enclosed in square brackets because it is dependent on the outcome of discussions on other sections of the text. It is my intention to forward such text to the legal group for its consideration to ensure that we have by the end of the fourth session a text that, as far as possible, has been through a first legal review. This will greatly facilitate the finalization of the text during our final session. Should any questions arise during the current session that would benefit from legal clarification, we should also be able to refer these from plenary and contact group meetings to the legal group for advice.

21. One aspect of flexibility for contact group co-chairs to consider is how to develop draft text in their respective contact groups. Our discussion time is limited, and I will therefore encourage contact group co-chairs to focus on substantive discussions to reach broad agreement on policy approaches. The co-chairs themselves might then develop draft text reflecting such agreement, to be discussed further in their contact groups prior to presentation to the committee in plenary, after which it could either be passed to the legal group for review or referred to small groups for further discussion of any outstanding technical or policy questions.

22. The Bureau and I have been working intersessionally in preparation for the fourth session, including through conference calls and meetings, and this close coordination will continue before and during the session. We are strongly aware that this scenario note calls for all of us to step up the pace, and our fourth session will definitely be work-intensive. We also recognize, however, that we are not machines. Given the larger number of working groups and longer duration of the session, we plan to suggest some longer dinner breaks on several evenings, especially over the weekend, to allow for some breathing space and the possibility of informal consultations and discussions.

Desired outcomes of the fourth session

23. Having set out how we may wish to work during the fourth session, I would like to close by discussing what we might hope to accomplish by the end of the session. I expect that we will have reached agreement on most sections of the text where only minor issues need to be resolved, to the extent that by the end of the session draft text on those issues will have been considered by the legal group and returned for further consideration by the committee. For a few issues on which we still have important differences to resolve, I should like to have significantly narrowed the options available and, where possible, have reached consensus on the way forward. Any revised text reflecting this consensus would be a great additional achievement.

24. Lastly, I should like us to be able to move forward at the end of the session with the preparation of a revised draft text with limited outstanding issues for consideration at our fifth and final session. If possible, I would prefer that we group any outstanding options into proposed packages of agreed text, in the hope that this might facilitate reaching consensus on the best way forward at the fifth session.
