



**REPORT OF THE MEETING OF THE BUREAU OF
THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE (INC)
TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY**

Washington D.C., 7 to 8 June 2012

I. Opening of the meeting

1. The bureau meeting was opened at 9.40 a.m. on Thursday 7 June 2012. Opening remarks were made by Mr. Fernando Lugris, the chair of the intergovernmental negotiating committee, Mr. Tim Kasten, Head, Chemicals Branch, Division of Technology Industry and Economics, UNEP and Mr. William Ehlers, Team Leader, External Affairs, the representative of the secretariat of the Global Environment Facility (GEF).

2. Mr. Lugris welcomed the participation of the bureau, and said he was looking forward to the negotiations in Punta del Este and to the conclusion of the negotiations in Geneva in January 2013 at INC5. He thanked the secretariat of the GEF for their support for the bureau meeting and other support provided during the intersessional period.

3. Mr. Ehlers, speaking on behalf of the Chief Executive Officer of the GEF secretariat welcomed the bureau, and recalled the strong support the GEF had for work on mercury. He noted a number of mercury projects had been approved, particularly projects on the reduction of mercury use in ASGM in West Africa, mercury reduction in zinc smelting in China, and mercury reduction in the health sector in 12 countries, with a number of other projects anticipated. He also welcomed the use of the GEF secretariat as a resource given their expertise on funding issues and reiterated the continued support of the GEF secretariat to the negotiation process. Mr. Ehlers left the meeting on the conclusion of his opening remarks.

4. Mr. Kasten also thanked the GEF secretariat for assisting in organizing the bureau meeting, as well as the bureau for their continued dedication to the process. He noted the need for negotiations to accelerate at the fourth session, building on the progress made at INC3. He thanked those who had led the intersessional work, both formally and informally, and noted that the secretariat was prepared to assist further work in whatever way possible.

II. Adoption of the agenda

5. The agenda was adopted without amendment.

III. Short update from the Secretariat on logistics and documents for the fourth session of the INC

6. The secretariat provided an update on the preparations for the fourth session, including the number of registered participants (135 countries, total of 540 delegates) as at 7 June 2012. The secretariat added that some countries, who do not require financial support, may register late and it was therefore expected that both the number of countries and delegates would increase further. Fully recognizing the excellent visa support provided by Uruguay, including during regional consultations, the secretariat reminded bureau members that many participants may also need transit visas, and requested that they remind delegates from their region to obtain both the necessary entry visa to Uruguay as well as the correct transit visas. The secretariat also provided an update on the possible logistic schedule for the week, including registration, payment of DSA and anticipated events on 26 June. He also reiterated the need for photo IDs for headsets, DSA and for borrowing a laptop.

7. Turning to the programme for first day of the INC, the secretariat provided some details of the opening ceremony and the lunchtime reception, provided by the Government of Uruguay, which would include the mercury awards ceremony. He said there would be no side events during the week given contact groups were expected to work during lunchtime and in the evenings. There was no anticipation of night sessions of plenary and therefore no provision of interpretation for any evening sessions. On Friday and Saturday night, the Government of Switzerland was offering short breaks between 6 and 8 p.m., which would provide an opportunity both for relaxation and also for informal discussions between delegations. As for previous INCs, it is anticipated that regional meetings will be held daily between 9

and 10 a.m.; additionally requests have also been received from the G77 and the Arab league for facilities for daily meetings.

8. He noted that all meeting documents are available, although the document on reporting is currently available only in advance English, with the translated versions expected shortly.

9. Bureau members indicated their appreciation for the support for obtaining visas. In response to a query on the need for transit visas, the UNEP secretariat indicated that, as the requirements for transit visas were dependent on a number of factors, individuals should verify the need directly with the transit country before embarking on the journey.

IV. Outcomes of the regional consultations held in preparation for INC4

10. The Bureau members reported on the discussions at their respective regional consultations. All regions had voiced their appreciation for the intersessional work, and bureau members indicated that the regions had agreed to use the documents produced during the intersessional period as a basis for discussions at the fourth session. These documents included the INC4 documents prepared by the co-chairs on emissions and releases and on financial resources and technical assistance as well as the expected Conference Room Paper (CRP) on products and processes. They noted that there would be a number of comments on the documents, and a need for significant discussions at INC4; however the papers were welcomed as a substantial step forward for discussions on those issues. One region raised a concern about the informal process used for products and processes, indicating, however, that they were still willing to commence work using the CRP that was being developed as a basis. In relation to the revised draft text, two regions identified possible issues with the language versions, and indicated they would raise these with the secretariat.

11. The members from the Asia Pacific region indicated that they would prefer to deal with trade and supply issues as a package, rather than dealing with them under each substantive issue. That position was supported by another bureau member who noted also that Ms. Rina Soemarno (Indonesia) who had co-chaired the work on emissions and releases would not be available for INC4. The region was consulting to identify a possible replacement.

12. One member from the Central and Eastern European region noted particular concerns about the need to reference countries with economies in transition in relation to the document on financial resources and technical assistance issues, and also noted the benefit of working in smaller groups during the meeting for effective negotiations.

13. One member from Africa indicated that one country in the region had a specific issue related to primary mercury mining in the context of the discussions on supply.

14. The Chair expressed his appreciation for the important and hard work undertaken during the intersessional period. He indicated that it is a very positive result that work can be initiated in Punta del Este on the basis of the new documents developed in this period, and underlined that this will contribute greatly to the results able to be achieved at this session. He noted that it is essential to make extensive progress at INC4 to allow completion of negotiations at INC5 in January 2013.

V. Preparations for INC4, in particular the possible flow of the negotiations, including: a. Priority policy questions for the negotiations, including possibly challenging issues and including consideration of the order in which to take issues

15. The key issues were identified as those on which there had been intersessional work (financial resources and technical assistance, emissions and releases, and products and processes) as well as issues which have not yet been considered in detail, such as supply and trade and implementation assistance (compliance). It was noted that work in contact groups will commence very early in the session and that all elements of the revised draft text also would be considered in plenary (however briefly) to ensure all delegates were aware of the status of the text and involved in the progress of the negotiation.

16. Following productive and detailed discussions on the timing of raising issues in plenary it was agreed that issues which were expected to be close to completion should be raised as a priority on the first day of the session, so they could be forwarded to the Legal Group without delay. It was further agreed that there needed to be a balance between raising issues on which there had been no or limited discussions, and tackling matters where significant issues remained outstanding to allow sufficient time for discussion. A broad overall plan for the week was elaborated and provisionally agreed upon, while it

was recalled that this would be considered on a daily basis during the bureau meetings in Punta del Este as issues arose.

17. It was agreed that, on 26 June 2012, regional meetings would be convened from 9 a.m. until 3 p.m. Interpretation would be provided to both the African Group and GRULAC, respectively in French and English and in Spanish and English.

18. Detailed considerations were given to managing the inter-regional discussions in the afternoon of 26 June 2012 from 3.30 p.m. to 5.30 p.m. These discussions were recognized as a useful way to tackle some of the challenging issues in an informal manner. The main section of the inter-regional discussions would be centered around the exhibition space, where there would be an opportunity for an open exchange of views, interaction with governments and among the exhibitors and discussions with NGOs and others. This would facilitate both inter-regional and inter-sectoral discussions, allowing open interaction between the full range of stakeholders on important issues for the negotiations. The exhibition space is available throughout the afternoon.

19. In addition to this discussion space, there would be a number of smaller groups established to consider priority issues. These would be attended by a smaller number of government delegates from each region, as nominated by their respective regions, with the intention to have no more than approximately 20 government delegates per group. It was noted that the inter-regional discussions should be open to government delegates only. Attempts would be made to give the rooms an informal feel in order to encourage a frank exchange of views, without the intention of undertaking negotiations. The inter-regional discussions would be held in the regional group rooms from 3.30 p.m. A meeting of the Bureau would take place from 1 p.m. to 3 p.m.

20. Discussions on each section of the revised draft text took place as reflected below:

21. In considering the plans for discussions at INC4, it was agreed that the Preamble and the Objective would be deferred for further consideration at INC5. In relation to Article 1bis (“Relationship with other international agreements”) it was agreed that advice would be sought from the Legal Group. The Chair noted that during the negotiations of the Rotterdam Convention, a paper on the relationship with other international agreements had been requested and provided by the secretariat for the information of the intergovernmental negotiating committee.

22. For Article 2 - Definitions, it was agreed that each substantive contact group would develop suitable definitions as needed, but that it would be necessary for an overall review of all definitions for consistency, and also to identify where they should be located in the text. The possibility of referring some definitions to the Legal Group for clarification early in a contact group discussion was highlighted by one member. It was further noted that the Legal Group would be requested to contribute to the consideration of the definitions, in particular looking for consistency between definitions developed in different sections of the text, as well as the placement of definitions, either in an article on definitions or in the substantive article to which they refer.

23. For the articles on supply and trade, it was noted that they had not been considered at INC3. Under supply, one member indicated that one country had a particular issue relating to primary mining, which had been raised at the regional consultations. Discussions focused on the current surplus of mercury, as well as the balance between provisions on supply and demand, and the possibility of market forces driving decreased mining activities. Concerns were raised about other potential sources of supply, including mercury captured from other mining activities and recycled mercury. It was noted that, in comparison to primary mining, these mercury sources are related to a decrease in environmental releases of mercury. It was also noted, however that it is not possible to identify mercury in trade by source but that this might be addressed through a robust licensing process. The need for a stepwise approach for trade was highlighted again by one member, who highlighted the need for discussions to be advanced on mercury-added products and processes that use mercury prior to consideration of issues of supply and trade in particular in a contact group. As a number of bureau members indicated the likelihood of submission of a CRP on these provisions, the Chair reiterated the possibility of documents on those issues being informally addressed at the inter-regional consultations on 26 June.

24. On mercury-added products and processes that use mercury, the intersessional work was welcomed although no formal intersessional mandate for the work had been provided by INC3. Some bureau members expressed the need to manage the informal nature of the process transparently in the introduction of the item in plenary to allow the process and the outcome to be introduced as a CRP and for the plenary to formally agree to using the output of the work. It was agreed that, given the general

endorsement of the work during the regional consultations, as well as the encouragement for undertaking the work provided at the previous bureau meeting in February 2012, that this endorsement should be anticipated. It was noted that the text which will come forward to INC4, in the form as a CRP, will be the same as that made available at the regional consultations as the comments on the text were very diverse and it was not considered feasible to incorporate them. It was considered that, while a brief discussion in plenary was needed, detailed discussions of the text should be referred to a contact group.

25. For emissions and releases, it was agreed that a contact group should be established to reach agreement on a conceptual approach, after which new text would be developed for further consideration in the group. It was noted that the co-chairs, upon agreement of the approach to use, could be requested to prepare draft text for consideration by the contact group.

26. It was recognized that good progress had been made both on storage, waste and contaminated sites, and on artisanal and small-scale gold mining, and these issues should be referred to contact groups on the first day. These contact groups would focus on finalizing bracketed text, and would not reopen negotiation on matters which had been agreed previously. The groups would be given a short time frame for their discussions, with the intention of completing discussion and referring the text to the Legal Group also on the first day.

27. Extensive intersessional work had been done on financial resources (article 15) and technical assistance (article 16), however it was noted that article 17 on implementation/compliance was not considered either at INC3 or during the intersessional period. In line with expectations expressed by delegates at INC3, it was agreed that article 17 would be introduced in plenary before articles 15 and 16. It was also agreed that there would be two contact groups established, one which would consider articles 15 and 16, and the other which would consider article 17. It was noted that compliance was a priority issue for a number of governments, while the need for completing discussions on the financial resources and technical assistance issues was highlighted by others. One member highlighted that co-chairs should be ready to consider and explore the use of agreed language from other conventions in this area. Consideration was given to the need for providing financial support during the interim period prior to entry into force, however it was recognized that this would not be covered in the text of the instrument.

28. In relation to article 16bis on partnerships, while the contribution of partnerships to the work on mercury was recognized as being crucial, it was not clear whether specific text was needed in the instrument.

29. Extensive discussions on articles 18 (Information exchange) and 19 (Public information, awareness and education) were held at INC3, and it was hoped that a contact group could further consider these and resolve outstanding issues relatively quickly on day 1. The same group may be able to further consider Articles 20 (Research, development and monitoring) and 23 (Effectiveness evaluation) on day 2.

30. Article 20bis on Health Aspects will require further discussions, with the possibility of new proposals coming forward at the meeting. The bureau members informed of different views expressed during the consultations with some noting that the article would require a discussion in plenary while some expressed the view that this article would not be required.

31. On articles 21 (Implementation plans) and 22 (Reporting), there was recognition that the use of national implementation plans may have an increasing importance linked to the discussion on financial resources. It was noted that these articles would need to be discussed in plenary prior to referral to a contact group.

32. It was expected that the outstanding issues in the final provisions could be resolved quickly and sent to the Legal Group.

33. In considering the ordering of the issues, the bureau agreed with the proposal that the meeting would commence with the Preamble and articles 1, 1bis and 2, which would be deferred to later discussions. Discussions would then turn to the articles on Artisanal and small-scale gold mining; Storage, waste and contaminated sites; and Awareness raising and Information exchange, with the intention of these articles being considered by contact groups on day 1, with text then available for referral to plenary for its consideration on day 2, followed by referral to the Legal Group. The next area to be discussed would be Emissions and releases and Research and Evaluation, followed on day 2 with Implementation/compliance and Financial resources and technical assistance. These would be followed by discussions on Products and processes, and the provisions on Institutional arrangements, Further

developments of the convention and Final provisions. Discussions would then turn to Supply and trade on the morning of day 4, followed by Health aspects, National implementation plans and Reporting. After the first day, each plenary session would open with reporting back from contact groups on the progress made to date. Plenary sessions would be suspended as necessary to allow additional time for discussions in contact groups.

b. Possible contact groups for various topics

34. In discussing contact groups, the Chair highlighted his interest, in the fourth session, for the Bureau members to play a different role from previously. Rather than bureau members being tied to individual contact groups as co-chairs, he highlighted the importance for them to have the broadest possible awareness of ongoing discussions, and to participate actively in the work of contact groups, either through interventions, or by working with delegations from their region to address complex issues in order to contribute to overall progress. The bureau members would also be responsible for highlighting challenging areas to the co-chairs, and proposing possible compromises or ways forward, particularly through the “indaba format”¹. This will also provide a key opportunity for consultations between co-chairs and the identification of ‘horizontal’ or cross-cutting issues which need to be kept in mind by a number of co-chairs, as well as the identification of issues which may arise in later contact groups on related issues.

35. An information note would be provided to the co-chairs of all contact groups to inform them of this approach, and assist them in preparing for their work. This would include a description of the functioning of the ‘indaba’ format, and its contribution to the information sharing and facilitation of discussions. In addition to this, co-chairs would be provided with a clear mandate for their work, along with some indicators or measures for success and a time frame. Co-chairs would be asked to indicate progress in relation to the indicators, and provide guidance on whether they were within the agreed timeframe. Should challenges be identified, there is the possibility to refer these back to plenary for further clarification or discussion, to facilitate completing discussions in a timely manner.

36. Although the potential for 3 consecutive contact groups had been identified in the scenario note, this was a cause for concern for some regions. It was agreed that, as far as possible, only two contact groups would work in parallel (in addition to the Legal Group), and that efforts would be made to limit the simultaneous timing of issues of global interest. Splitting the issues into two streams (technical issues and implementation issues) was discussed. In order to allow for more time in contact groups, it was agreed that a contact group could be established in parallel to plenary. In addition to this, consideration would be given to suspending plenary and giving priority to contact groups, where this was seen to be beneficial, although plenary would still reconvene regularly to allow reporting back by the contact group co-chairs and also identification of any cross-cutting issues. The need for contact groups to be a manageable size for effective negotiations was highlighted.

c. Functioning of the Legal Group – how to ensure that this group is set to work as soon as possible at the fourth session

37. The functioning of the Legal Group was discussed and the mandate agreed at INC2, and reaffirmed at INC3 was further reaffirmed. It was agreed that it was crucial to forward text to them as soon as possible to avoid a backlog of text either later in the week or at INC5. It was further agreed that text containing brackets could be forwarded for legal scrubbing, particularly where the brackets are either consequential on discussions on other areas of the text, or are considered to be elements of a larger package to be finalized later in the negotiations. The need for the contact group co-chairs, or secretariat servicing the contact group to be available to address any issues where were unclear to the Legal Group was highlighted.

38. The need to have representatives fluent in the six UN languages taking part in the Legal Group discussions was highlighted, as this would assist to ensure that all language versions of the draft text are clearly understood and have the same meaning.

39. It was noted that there may be a need to have lawyers present in some of the contact groups, e.g. in discussions on compliance. This would then influence when the Legal Group could meet. It was also

¹ The “indaba format” intends to provide an informal opportunity for the co-chairs and the bureau members to meet daily at 6 p.m. to share progress and challenges in the different contact groups.

noted that it might not be necessary for lawyers to be present at all plenary discussions, depending on the matter under consideration. It was agreed that the timing for meetings of the Legal Group would be at the discretion of the Chair of the Legal Group.

40. It was further agreed that there may be questions which could be referred to the Legal Group for advice and interpretation, and that this was within the scope of the current mandate of the group. Examples included article 1bis, and some of the trade provisions within the waste article.

41. The chair of the Legal Group attended part of the bureau meeting, and agreed with the above-mentioned proposal for the work of the Legal Group. She further noted that, in negotiating the text, Governments were free to develop whatever provisions they considered necessary, however she highlighted that it was preferable to be consistent with measures in place under other agreements. She advised that, where issues were referred for the decision of the COP, governments should be satisfied with the decision making processes which would apply at the COP. In considering draft resolutions for the Final Act, she indicated that the Legal Group would welcome the opportunity to review them.

42. UNEP provided an update to the Bureau meeting on the process of preparation for the resolutions to be included in the Final Acts for the negotiations of both the Rotterdam and Stockholm Conventions. This included the drafting of resolutions for consideration at INC5, and highlighted that more progress was made on these draft resolutions during the INC5 of the Rotterdam negotiations, while, for the Stockholm negotiations, significant negotiations were left until the preparatory conference immediately prior to the Diplomatic Conference. The chair noted that the process under the Rotterdam negotiations was preferable.

V. Expectations regarding possible outcomes of the session, including any potential intersessional work

43. It was agreed that, by the end of INC4, there should be many more sections of the draft text which are clean and have been through the Legal Group, as well as significant narrowing of options. It was noted that countries would have limited time for internal considerations and development of new positions between INC4 and INC5 and this should be taken into consideration. The question of developing a chair's text for consideration at INC5 on outstanding issues was raised by one member, who made reference to the previous INC processes.

44. It was agreed that it would be useful for INC5 to be able to consider draft resolutions for the Final Act, time permitting, and that therefore it may be necessary to request the secretariat to prepare such drafts possibly in cooperation with the INC Chair.

45. There was general agreement that the intersessional period was very short, and there were limited opportunities for further work. In particular, it was not considered feasible for detailed technical documents to be developed within the time available. It was also indicated that only documents which were vital to the negotiations at INC5 should be requested. It was agreed that it was premature to consider which documents may be needed at the end of INC4, and this should be decided during the course of discussions.

46. It was agreed that informal consultations between contact group co-chairs and the bureau as well as a bureau meeting could be convened in the months after INC4. It was also agreed that regional consultations would be useful in the intersessional period. An offer to host a meeting of the bureau members and co-chairs as required in September was made by the Czech Republic, and an offer to host the December bureau meeting was made by Jamaica. Both offers were welcomed by the meeting.

VI. Short update on planning for the fifth session of the INC and the Diplomatic Conference

47. The secretariat informed the meeting that the CICG facility in Geneva was booked from 12 to 20 January 2013. It is anticipated that set up activities will occur on 12 January, with registration able to open in the afternoon. There would be the possibility for regional meetings and inter-regional consultations on Sunday 13 January. INC5 could therefore start on 14 January, and run to either the 18th (5 days) or the 19th (6 days) as needed.

48. Tentative dates have also been considered for the inter-sessional meetings, with the week of 10 September flagged for the expanded bureau meeting. Regional meetings could be held from the end of October through November. The order, days and dates could be considered after the INC. The final bureau meeting could be held in the week of 10 December. It was noted that this would be a busy period, and other meetings will need to be accommodated in the planning.

49. A brief update was also provided on the Diplomatic Conference, noting that it was being planned by the Government of Japan for late 2013, although the exact dates are under still to be confirmed.

VII. Any other business

50. The secretariat provided a brief update on the financial situation, indicating that contributions are still being received for INC4, although there is still a slight shortfall of funding. While some funds have been received for INC5, significant fundraising activities will need to be undertaken. The contributions will be recognized, as always, in the mercury awards ceremony.

51. The meeting closed with the customary exchange of formalities at 12.30 p.m.