

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

Date: 2 February 2012
Time: 9.30 a.m. to 1.00 p.m.
Venue: Best Western Hotel Chavannes-de-Bogis, Geneva, Switzerland
Participants: INC Bureau members and UNEP Secretariat
Observers: Ms Pauline Davies (Uruguay), Mr Gabriel Esquiera (Uruguay)
Apologies: Ms Abiola Olanipekun (Africa)

I. Opening of the meeting;

1. The meeting was opened by the Chair of the INC at 9.45 am. The Chair, in his opening remarks, complimented the Bureau on their cooperative and collaborative approach, as well as their general willingness to undertake outreach with their region. He felt this was reflected well in the ability of delegates to participate effectively in the INCs, and encouraged the Bureau members to continue with their strong support of the negotiating process. He thanked the secretariat for their good preparation for the bureau meeting and preceding informal consultations, welcomed Jacob Duer to his new role as the UNEP coordinator of the mercury negotiations, and further indicated that the meeting of the bureau would formally consider the recommendations and outcomes of the informal consultations held on 31 January and 1 February 2012 between the bureau and the co-chairs of the contact groups at INC3 and others.

II. Adoption of the agenda;

2. The agenda for the meeting was adopted.

III. Review of the outcomes of the third session of the INC;

3. The outcomes of the third session had been discussed extensively during the previous two days at the informal consultations, and the Chair highlighted a number of points he considered important from the discussions.

4. He was pleased that the third session had led to a general feeling of ownership of the draft text by Governments, and that the process had moved strongly to a country-led negotiation. A number of points of difficulty had been highlighted, including products, emissions, finance and a number of emerging issues such as National Implementation Plans (NIPs) and the new health article. It was recognized that other issues, such as the objective and preambular text, may also present challenges, and also that, within this list, the level of complexity of the issues differs, with some potentially able to be resolved quickly and easily, while others may require a lot of additional work. A common feature is that all require dialogue between delegations. Further intersessional discussion on NIPs is required, particularly consideration of how it can be used to advance the negotiations at INC4, with the links to financial resources and identification and consideration of the national differences of what a NIP should be. It was also highlighted that the revised draft text for consideration at INC4 will include amended text which was presented to plenary as a conference room paper. For other sections, where there were extensive discussions which reached some conclusions, but where no specific text was submitted to plenary, the consequent amendments to the text were not able to be captured. The revised draft text should clearly reflect the different status of each article, as to whether it has been negotiated at INC3 or whether it is reproduced as presented to the third session. In preparing for INC4, it is essential that Governments consider the report of INC3 (which includes reports

on the contact group discussions from contact group co-chairs) and the other documents for the meeting, as well as the revised draft text. The scenario note for INC4 would highlight these points.

5. The issue of a need for increased communication and information sharing arose frequently in consideration of the outcomes of the third session. Governments were encouraged to share relevant ideas for possible discussion at INC4 as early in the process as possible including at regional meetings. Should they feel that the ideas are best presented to the fourth session in a conference room paper, this should be submitted as early in the meeting as possible, with it preferably having been discussed with a number of 'friends of the friends' to determine in advance the level of support and to work towards common ground. Such advance preparations should focus particularly on consultation between regions, as well as within single regions. While encouraging Governments to develop new approaches where needed, he noted that the informal consultations had cautioned against opening up discussions on areas which have been previously agreed. The focus should be on moving on to other areas, while being positive about the progress made to date. It was also noted that where ideas had been presented to the third session through conference room papers, in order for these ideas to be reconsidered at the fourth session they would need to be submitted again. However, it would be productive not to see the same idea coming forward a number of times, and Governments should consider where it is possible to narrow options and move towards consensus.

6. Reflecting on the structure and function of the third session, the informal consultations had discussed the need to develop a timetable for discussions at INC4, including a draft proposal for contact groups. They highlighted that all issues will need time for discussion in contact groups, not only difficult issues. The Chair asked the Bureau to reflect on the possible timetable, as he would be looking to present a clear approach by the next bureau meeting. In the interest of advancing the negotiations, he also noted the proposal to convene three simultaneous groups during INC4, and the possibility of more negotiations occurring in plenary. The wish for interpretation in all negotiation groups was noted, however, the practical issues, including additional costs, were recognized. It was noted by a number of participants that, for many issues, there is potential for a common view of a group of countries or a region to be presented by one government on their behalf in a group. This facilitates negotiation and allows more groups to work in parallel. There was recognition of the need to move towards negotiation of actual text instead of presenting views. However, the need to first agree on concepts before detailed text negotiation was seen as essential. It was also recognized that, in undertaking negotiation of text, it is important to have a representative group which is limited in number, as developing text is not feasible in large groups. By some, the fourth session was seen as the first opportunity for real negotiation, and it is important to develop consolidated text. This will be the challenging task of the co-chairs, and it was agreed that a certain degree of flexibility will need to be given to the co-chairs in how to conduct their work in the most efficient way.

7. When considering how to make progress on interlinked issues, the benefit of having discussions between co-chairs of the various contact groups both before and during the next session was noted, as this would assist in promoting coherence within the negotiations and the text under development. It was also noted that during the fourth session, more text, and any questions that would benefit from legal clarification, should be able to be referred from plenary and the contact groups to the legal group.

8. In planning for INC4, the Chair noted that it was essential to develop a good concept of what should be achieved by the end of the fourth session, and the amount of work remaining for the final session. He noted that increased, and higher level, political involvement is needed, and the opportunities presented by Rio+20 and Stockholm+40 as well as the 12th special session of the UNEP Governing Council should be utilized. The importance of regional meetings, to assist Governments to prepare for the fourth session was also highlighted and confirmed by the bureau members.

IV. Inter-sessional work requested at the third session:

(a) Preparation of documents to be developed by the secretariat:

- **Preparation of the revised draft text of the instrument for the next session;**

- **Compilation of reporting obligations and action plans envisaged in the draft negotiating text and a survey of reporting obligations and action plans under other relevant MEAs;**
 - **Information on possible transitional arrangements pending phase-out of mercury-added products and manufacturing processes in which mercury was used;**
- (b) **Preparation of an approach to possible elements of articles 10 and 11, to be developed by the co-chairs of the contact group on emissions and releases, with the support of the secretariat;**
- (c) **Preparation of a proposal for articles 15 and 16 of the draft text, consisting of a conceptual approach followed by possible text, to be developed by the co-chairs of the contact group on financial resources and technical and implementation assistance, with the support of the secretariat;**

9. Following consideration of the presentation of the first version of the revised draft text to the informal consultations, the bureau requested the secretariat to amend the document to improve readability. The changes requested included the removal of some comments from the original text if no longer considered relevant, the removal of some footnotes which had been presented for information by co-chairs submitting text, and ensuring there is clear distinction between negotiated text from INC3 and text which has been reproduced from the text discussed at the third session. It was also agreed that textual changes proposed during the third session, but not captured in conference room papers by the co-chairs of a contact group as the outcome of discussions in that contact group, would not be reflected in the new draft text.

10. The bureau considered the discussion of the revised draft text during the informal consultations, and agreed with the following summary set out below.

11. In considering the preamble, it was agreed that this should be considered at the fifth session. Similarly, it was agreed that the objective should be deferred to the fifth session, although it was noted that the level of ambition of the objective may influence other substantive articles. For definitions, it was agreed that these would be addressed in the contact group on the relevant substantive issues, as appropriate, with consideration given first to the need for a definition. It was noted that negotiating text of a definition would be difficult within a contact group, and should be the responsibility of the co-chairs. The secretariat was requested to prepare an overview of the definitions contained in the draft text, which would also indicate which contact group should consider them. It was also noted that the legal group would provide advice as to whether the definition should be part of the substantive article, or included in the article on definitions. The overall aim should be to have as few definitions as possible with a view to having those included in the articles as such.

12. For supply and trade, the interlinkages with other articles, particularly artisanal and small-scale gold mining and products and process, were noted. It was agreed that the articles on supply and trade should be considered at the fourth session. For products and processes, the benefits of including those considering supply and trade were noted. The active discussions and keen interest in making progress during the intersessional period was noted, however, the need to ensure extensive consultation prior to the introduction of new text was also highlighted as important.

13. For the article on artisanal and small-scale gold mining, the good progress made at INC3 was appreciated. The report of the co-chair had indicated that the contact group had limited the discussions to the issue of mercury use in small-scale gold mining, rather than trying to tackle the whole problem. His report had indicated that, with one further session of the contact group, all outstanding issues, other than those which relied on other sections of the draft text, could be resolved, and the text would then be able to be referred to the legal group. The interlinkages would likely only be resolved at the fifth session.

14. On emissions and releases, the bureau considered the report of the co-chairs, along with their plan for intersessional work, which had been presented to the informal consultation. It was clear that BAT/BEP (Best Available Techniques/Best Environmental Practices) was a challenging concept, which may benefit

from additional information that could be provided at a technical briefing. The document to be developed intersessionally will cover a number of outstanding issues, however, further consultation during the intersessional period will be key to presenting an approach that may bring the discussions forward at INC4. The value of having one of the co-chairs attending regional consultations to brief the participants on progress and considerations for INC4 was noted.

15. Good progress had been made on the section on storage, waste and contaminated sites during the third session. The co-chair had indicated during the informal consultations that with an additional three sessions at the fourth session the outstanding issues could be resolved for presentation to plenary and forwarding to the legal group.

16. The work on financial resources and technical and implementation assistance was considered an important area of intersessional work, with the co-chairs of the contact group having the mandate of bringing forward possible new draft text of article 15 and 16 for consideration at the fourth session. It was recognized as important that this possible new draft text for those two articles should be the basis of further negotiation at INC4. The need for consideration of compliance (article 17) at the next session was highlighted, as this section was not considered in detail at INC3. The approach to this issue was further considered by the bureau, with a suggestion to split the contact group with the possibility of having the considerations of financial resources and technical and implementation assistance in different groups.

17. The progress on the last four sections of the draft text by the legal group was noted. It was also agreed that it would be preferable to have an initial consideration of the outstanding issues in these sections at INC4, rather than deferring these to the fifth session.

18. There was general support for the proposed approach by the secretariat to the other documents requested by INC3. The need for preparation of a number of documents requested by INC1 was noted, and the secretariat agreed to advise the Chair as to whether it was feasible to prepare any of these for INC4, or if they were more suitable for INC5.

V. Consultations during the inter-sessional period leading up to INC4;

19. It was noted that the informal consultations had strongly supported the need for regional group meetings in the lead up to INC4, with the Asia Pacific group noting a difficulty with the proposed dates. The secretariat highlighted the resource requirements for the regional consultations in advance of INC4 and INC5, and INC4 and INC5 itself, drawing attention to the fact that, as the fifth session was scheduled early in 2013, the majority of the funds were needed during 2012. Currently, there was a shortfall of around 700,000 USD for the regional consultations in advance of INC4 and for INC4 itself. The bureau also considered the dates for INC5. The initial proposed dates of 4 to 8 February 2013 were considered, with two delegations noting possible overlap with important national events. The Secretariat, supported by the INC Chair, invited donors and others to continue to explore the possibility to provide financial support to the regional consultations and INC4. The Secretariat further said that it would continue its efforts to mobilize the necessary funding for the negotiation process.

20. It was agreed that there would be a further opportunity for regional consultations on 26 June, immediately prior to INC4. The need for a technical briefing was discussed, with a key issue being to ensure that the briefing was relevant to the negotiations. The usefulness of these briefings in bringing delegates together to be briefed on issues outside the normal negotiating framework was noted, however, the time and cost of technical briefings was also highlighted. The need to set aside time for the co-chairs of the various contact groups to meet both before and during INC4 was agreed.

VI. Possible flow of the negotiations, including an initial exchange of views on the scenario for the next session, and updates on planning for the fourth and fifth sessions;

21. As had been the case for the previous INCs, it was agreed that the scenario note for INC4 would be prepared by the Secretariat in consultation with the INC Chair and circulated to the Bureau for

consideration. A teleconference of the INC bureau would be scheduled to discuss and clear the scenario note.

22. The bureau also considered the dates for INC5. The initial proposed dates of 4 to 8 February 2013 were considered, with two delegations noting possible overlap with important national events.

VII. Other matters;

23. The chair raised the issue of a number of important upcoming international meetings prior to INC4, in particular the Rio+20 and the Stockholm+40 meetings. He presented the view that the work on mercury should be reflected in the outcome of Rio+20, whereas currently there was no reference to the negotiations in the zero draft. There was also a brief presentation on the intended discussions at the Stockholm+40 meeting. Bureau members were encouraged to work with their Governments on the input to these meetings.

24. Ms Katerina Sebhova indicated that she was exploring options to host the bureau meeting anticipated for early June in the Czech Republic. Participation in this meeting was discussed, and it was agreed it should be purely a meeting of the Bureau, with the possibility of inviting the co-chairs of the contact group on financial resources and technical and implementation assistance to attend early in the meeting to provide an update.

25. The representative of the Government of Uruguay provided a brief update on preparations for INC4. In particular, she emphasized the need for participants to obtain a visa in advance, as it was not possible to obtain a visa on arrival in Uruguay.

VIII. Closing of the meeting.

26. The meeting closed at 1pm.