

**Informal consultations in follow-up to the third session of the intergovernmental
negotiating committee on a global legally binding instrument on mercury,
31 January to 1 February 2012**

**Meeting of the Bureau of the Intergovernmental Negotiating Committee
to prepare a global legally binding instrument on mercury,
2 February 2012**

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NOTE BY THE SECRETARIAT ON THE FLOW OF THE NEGOTIATIONS

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Progress so far

1. After several years of considering options for international action on mercury issues, the Governing Council of UNEP agreed in February 2009, in its decision 25/5, to mandate negotiations for a global legally binding instrument on mercury, supplementing the work already being undertaken through UNEP's voluntary partnership programme. The mandate contained a list of provisions to be included in a "comprehensive and suitable approach to mercury." An open-ended working group met in Bangkok in October 2009 to prepare for the negotiations.
2. The intergovernmental negotiation committee held its first session (**INC1**) in Stockholm in June 2010, marking the formal launch of negotiations under the chairmanship of Mr. Fernando Lugris (Uruguay). During the session, delegations presented initial views on each of the provisions listed in the negotiating mandate. The committee requested the secretariat to prepare additional documents to support discussion at its next session, including a paper containing possible "draft elements" for the mercury instrument based on views expressed during the session and in subsequent written submissions.
3. At the committee's second session (**INC2**), held in Chiba, Japan, in January 2011, delegates agreed to use the secretariat's elements paper as a starting point for their negotiations. The committee completed a first reading of the elements paper and convened contact groups in which detailed discussions took place on possible approaches to waste, storage and contaminated sites, artisanal and small-scale gold mining and emissions and releases of mercury. Facilitators also gathered views on a possible preamble for the instrument; the issue of primary mining; control measures for products and processes using mercury; financial resources and technical and implementation assistance; and awareness-raising, research and monitoring, and communication of information. The committee concluded by requesting the secretariat to prepare a new draft text to reflect the views of parties expressed during the session and in submissions to be made after the session.
4. At the third session (**INC3**), the committee commenced detailed discussions and negotiations of the new draft text prepared by the secretariat based on the request by the committee at its second session. The committee discussed the whole text, with some sections considered only briefly before being set aside for later consideration. Detailed substantive discussions, including extensive work in contact groups, were held on the sections relating to: Artisanal and small-scale gold mining; Emissions and releases; Storage, wastes and contaminated sites; Products and processes; Financial resources and technical and implementation assistance;

and Awareness-raising, research and monitoring, and communication of information. Three of the contact groups (Artisanal and small-scale gold mining; Storage, wastes and contaminated sites; and Awareness-raising, research and monitoring, and communication of information) prepared text which the committee agreed would be presented to the fourth session (INC4) as part of a revised draft text. The contact groups on Products and processes and Emissions and releases made progress on the underlying policy issues, and did some limited work on textual changes, but did not produce a revised version of the draft text. The contact group on Finance and technical and implementation assistance discussed the issues extensively, including the linkages to the outcome of the consultative process on financing options for chemicals and wastes. In addition to the substantive discussions, a number of articles in the draft text were referred to the legal group for their consideration. The revised articles were subsequently presented for consideration by the committee, and incorporation in the revised version of the draft text for the fourth session.

5. The committee agreed on intersessional work to be carried with the support of the secretariat, including the development of a number of documents for submission to INC4. The secretariat would prepare a revised version of the draft text considered by INC3, including any changes agreed during the session whose text is annexed to the report of the third session. The co-chairs of the contact group on financial resources and technical and implementation assistance, with the support of the secretariat, would prepare a proposal for articles 15 and 16 of the draft text, consisting of a conceptual approach followed by possible text. The proposal would take into account the views expressed by parties at the third session and views submitted in writing to the secretariat by 31 December 2011. Parties were encouraged to focus their submissions, which would be posted on the UNEP mercury programme website, on new approaches. The proposal would also take into account the possible approaches to financial mechanisms set out in document UNEP(DTIE)/Hg/INC.3/4 and the outcomes of the consultative process on financing options for chemicals and wastes.

6. The co-chairs of the contact group on emissions and releases, with the support of the secretariat, would set out an approach to the possible elements of articles 10 and 11. In addition, the secretariat would prepare two documents for the consideration of INC4. The first of these would include information on possible transitional arrangements pending phase-out of mercury-added products and manufacturing processes in which mercury was used including ideas expressed at INC3 and experiences under other multilateral environmental agreements. The second would include a compilation of reporting obligations and action plans envisaged in the draft negotiating text, accompanied by a survey of such obligations and plans under other relevant multilateral agreements.

7. Regional meetings were highlighted as important, and the secretariat was encouraged to facilitate these meetings subject to availability of funding. Other intersessional meetings to be convened include meetings of the Bureau, informal consultations in follow-up to INC3, and bilateral consultations as considered necessary. The committee agreed that the fourth session of the committee would be held in Punta del Este, Uruguay in late June 2012. In order to undertake these activities, additional funding is required.

INC4, Uruguay, 27 June to 2 July 2012 (dates to be finalized)

8. The committee will enter its fourth session in the strong position of having a revised draft text considered initially by the committee at its third session. The version of the draft text to be presented to the fourth session will include some sections which have been negotiated extensively in contact groups at INC3, as well as other sections which only have been discussed initially in plenary meetings. The intersessional work on financial resources and technical and implementation assistance will have prepared a proposal for articles 15 and 16 of the draft text, consisting of a conceptual approach followed by possible text. Debate on some key issues such as emissions, finance and compliance is still at early stages. Therefore it has been proposed by some Governments to consider extending the fourth session to 6 days, from the original planned 5 days, allows a further 6 hours of plenary time for discussions during INC4. It should be noted that, allowing for opening ceremonies, organization of work, delivery of general statements, adoption of reports and other such requirements, the committee would thus have approximately 54 hours of plenary time in its remaining sessions (INC 4 and INC 5) in which to complete its negotiations.

9. It will be essential for the committee, at its fourth session, to continue the work to consolidate as many provisions as possible, by either reaching consensus on the approach to be used to manage the issue, or by narrowing the options significantly. There are limited opportunities for intersessional work between the fourth and fifth session, except to focus potentially on possible packages which will enable consensus to be reached on all outstanding issues. The development of significant new text options late in the process may not be useful to the process. It would therefore be critical and expected that the committee reaches agreement at its fourth session on the main policy choices that will determine the structure of several provisions, such as whether to use “positive” or “negative” lists or any other approach as the basis for controlling products and processes and whether to differentiate between large and small emitters of mercury. Furthermore, it is important for the committee to make progress in reflecting such policy choices in concrete proposals presented in the form of negotiated draft text. Should there be agreement on policy approaches, but no agreed text, the committee may decide to request the Chair to produce a draft for the fifth session which seeks to encompass the supported options.

10. In order to advance the negotiations at the third session, the bureau considered it advisable to make more extensive use of contact groups, while still minimizing parallel meetings. The generally accepted procedure of having no more than two groups, including plenary, working at any time was followed. The bureau may also wish to follow this approach at the fourth session, with contact groups strongly encouraged to move beyond continued detailed exploration of issues with the specific aim to report back to plenary with consensus proposals, including draft text. Individual contact groups may be invited by the Chair to revisit an issue after an initial report back to plenary in order to follow up on particular points where it appears further clarifications or the resolution of differences may be achievable. However, it should be noted that the time available for each contact group will be limited and the efficient and focussed working of each of the contact groups is critical. The contact groups which made significant progress at the third session did so only after a significant number of meetings (most groups met at least three times). While this will be essential in some cases, it may not be possible at the fourth session for all groups to reconvene a number of times, while still maintaining a minimum number of parallel meetings. The Chair may wish to order plenary discussion so that issues on which extensive contact group work may be required are taken up early in the session, and co-chairs of contact groups may need to be flexible if they wish to reconvene to ensure they do not impact the work of other groups.

11. The outcomes from the legal group will also be an indicator of progress at the fourth session as provisions are progressively referred to the group for review and “polishing” once the plenary has agreed on policy approaches for each one. Given its specialist nature, the legal group will not be bound by the restriction on the number of simultaneous groups, but may work in parallel with two other groups. As a general rule, the legal group will avoid working during meetings of plenary, to allow legal experts to hear the policy discussions and agreements. It is likely there will be considerable evening work, particularly as agreement on policy approaches and corresponding revised text is needed.

Beyond INC4

12. The successful conclusion of negotiations at the committee’s fifth session in February 2013 will depend on the number of outstanding issues having been reduced to a group capable of resolution in the final five days of negotiation. This implies that the bulk of the drafting work will have been completed by the end of the fourth session. At the fifth session, the focus should be on resolving textual differences and work to finalize the packages of obligations and support which are agreeable to all. The text will then be agreed at the fifth session. It will also be important at the fifth session that the draft text of the Final Act be considered, should time permit. The Final Act will direct the work to be undertaken during the interim period, and may make provisions for financial support and for the activities of the interim secretariat. The Final Act will be signed at the Diplomatic Conference. Work at the fourth and fifth sessions is likely to follow a similar pattern to that at the third session, with intensifying use of contact groups and other tools to resolve a narrowing list of outstanding issues. The twenty seventh session of the UNEP Governing Council will be held between the fifth session and the Diplomatic Conference, and may wish to note the outcome of the negotiating process.

13. Work by the committee may be supplemented by additional intersessional processes after its fourth session. These could include further regional meetings, issue-specific working groups and consultations at a higher political level if there are any particularly intractable negotiating issues to resolve. However, the limited time available between the sessions should be taken into consideration, as should the limited secretariat resources. Consideration should be given to maximizing efficiencies where possible.

14. The Diplomatic Conference in the latter half of 2013 will, first and foremost, be an occasion for high-level representatives to adopt formally and commence signature of the mercury instrument agreed by the intergovernmental negotiating committee. It will also be an opportunity to address, through conference resolutions, certain issues that require formal consideration but were not suitable for inclusion in the instrument itself. Typically such resolutions might cover matters such as interim secretariat and other arrangements. If necessary, a pre-meeting may be convened to finalize negotiations on such resolutions, should this not be achieved by the end of the fifth session.

15. The Diplomatic Conference will be followed by an interim period when the instrument has been adopted but has not yet entered into force. The length of this interim period, which was three years and six years respectively in the case of the Stockholm and Rotterdam Conventions, will be influenced by factors such as the degree of political support for the new instrument, the number of ratifications required for entry into force and the availability of resources to facilitate preparations for ratification by individual States. The interim period may provide a further opportunity to address issues that require attention prior to the instrument’s entry into force but were either inappropriate or not possible to deal with in the negotiation of the instrument itself. Examples could include detailed technical work on guidelines for best available techniques and

best environmental practices, establishing maximum contamination or emission levels and the elaboration of operational arrangements for financial and technical assistance. Such interim work would be carried out under the auspices of the intergovernmental negotiating committee which would continue to function, pending entry into force and the convening of the first meeting of the governing body of the instrument. It should be noted that, given the volume of work to be undertaken, both the Rotterdam and Stockholm Conventions had annual meetings of the intergovernmental negotiating committee between the Diplomatic Conference and the first session of the Conference of the Parties, with the Rotterdam Convention holding six additional sessions of the committee, and the Stockholm Convention holding two additional sessions.

16. The Convention will enter into force after the deposition of an agreed number of instruments of ratification, acceptance, approval or accession.
