



Briefing Note on the Mercury OEWG

Published by the International Institute for Sustainable Development (IISD)

Online at <http://www.iisd.ca/chemical/wginc1/>

AD HOC OPEN-ENDED WORKING GROUP TO PREPARE FOR THE INTERGOVERNMENTAL NEGOTIATING COMMITTEE ON MERCURY: 19-23 OCTOBER 2009

The *Ad hoc* Open-ended Working Group (OEWG) to Prepare for the Intergovernmental Negotiating Committee (INC) on Mercury was held from 19-23 October 2009, in Bangkok, Thailand. The meeting, convened by the United Nations Environment Programme (UNEP), was attended by over 200 participants, representing governments, UN agencies, and intergovernmental and non-governmental organizations.

The OEWG agreed to recommend rules of procedure to the INC, as well as intersessional work for the Secretariat to prepare documentation for the INC, to be held in Stockholm, Sweden from 7-11 June 2010, including options for structure of the instrument and a description of options for substantive provisions. Delegates also took part in information sessions on supply and storage of mercury, artisanal and small-scale gold mining, and products and process.

OPENING SESSION

On Monday morning, 19 October, Per Baaken, UNEP Chemicals, welcomed delegates, thanked donors, and remarked on the significant amount of work ahead. Baaken proposed, and delegates agreed, to retain the OEWG-1 and OEWG-2 Bureau, chaired by John Roberts (UK), for the meeting. Sitting OEWG Bureau members included: Irina Zastenskaya (Belarus), Takeshi Sekiya (Japan), and Abiola Olanipekun (Nigeria). Brazil, on behalf of the Latin America and Caribbean Group (GRULAC), nominated Fernando Lugris (Uruguay) to the OEWG Bureau.

Delegates adopted the Governing Council rules of procedure *mutatis mutandis*, and the agenda (UNEP(DTIE)/Hg/WG.Prep/1/1) and organization of work without amendment.

Throughout the week, delegates met in plenary to discuss preparations for the work of the INC and to participate in information sessions on various elements of a mercury framework. The following report provides a brief summary of these discussions.

PREPARATIONS FOR THE WORK OF THE INC TO PREPARE A GLOBAL LEGALLY BINDING INSTRUMENT ON MERCURY

On Monday, Chair Roberts introduced discussion on the preparation of a legally binding instrument on mercury. In their opening statements, delegates restated their commitment to work

together to develop an instrument on mercury. The US noted the need for flexibility and to build on sector specific approaches. Nigeria, on behalf of the African Group, stressed the importance of the provision of new and additional financial resources to developing countries and countries with economies in transition. Sweden, for the European Union (EU), noted the need to provide the INC with clear recommendations on rules of procedure and on a timetable for its work. Switzerland stressed that discussion on important issues should not be postponed in the INC process. GRULAC looked forward to an inclusive and comprehensive INC process. China highlighted its concern about the lack of available data and choices of policies. Belarus, on behalf of the Central and Eastern European Group (CEE), said the OEWG would provide essential background for the INC process.

Chair Roberts summarized the discussion and noted that UNEP Governing Council decision 25/5 provides the OEWG a clear framework to prepare for a comprehensive, flexible, transparent and science-based legally binding instrument on mercury.

TIMETABLE AND ORGANIZATION OF WORK

OF THE INC: Possible rules of procedure for the

Committee: Chair Roberts introduced this matter on Monday and the Secretariat introduced the draft rules of procedure (UNEP(DTIE)/Hg/WG.Prep/1/3).

On Rule 8, pertaining to the INC Bureau, delegates agreed to an expanded Bureau comprising of one Chair and nine Vice-Chairs.

On Rule 37, pertaining to decision making, China objected to the reference to “if all efforts to reach consensus have been exhausted” then a decision shall be taken by a two-thirds majority vote, and proposed bracketing this clause. Preferring an imminent decision, Mexico proposed deleting reference to a vote.

The US, Switzerland, GRULAC, Australia and others stressed the need for consensus on substantive issues. The African Group said a voting provision was necessary if all efforts at consensus have been exhausted, with Senegal noting that the Rotterdam Convention has been paralyzed by the lack of such a provision. The EU, supported by Japan, Switzerland and the US, explained that the outcome of the INC is not binding to any party, as ratification occurs after the completion of the instrument and suggested a further day of reflection on the matter. Switzerland and Norway added that this provision had been used in the Stockholm and Rotterdam processes, and cautioned delegates on the danger of changing a successful precedent.

Returning to the discussion on Friday, GRULAC noted they had confirmed that the rules of procedure language is consistent with the Stockholm Convention and Rotterdam Convention, and that this was acceptable, providing the strong recommendation that voting is a last resort was included in the report of the meeting. Explaining that all delegates placed a high degree of importance on achieving consensus, Chair Roberts elaborated that consensus on substantive matters was necessary to produce an instrument that countries could ratify. China, Indonesia and Qatar also indicated their agreement and Chair Roberts concluded that the draft rules of procedure would be recommended to the INC for adoption.

Timetable for the negotiations and issues under consideration in other international forums: Chair Roberts introduced this matter on Monday and the Secretariat introduced the Secretariat's proposed timetable for negotiations (UNEP(DTIE)/Hg/WG.Prep/1/4) and relevant issues being considered in international forums and their impact on the negotiation process (UNEP(DTIE)/Hg/WG.Prep/1/7). The Secretariat proposed five INC meetings for June 2010, January 2011, October 2011, June 2012 and January 2013. The Secretariat explained that while Sweden had offered to host the first INC, hosts were required for the remaining meetings. The Secretariat also noted that the document sets out four factors governing timing of discussions, including: availability of knowledge, complexity, sensitivity or relevant importance of the issues, and cross-cutting issues.

In the ensuing discussion, delegates generally supported the Secretariat's proposal. Norway, Japan, Sweden, CEE, Switzerland and the African Group proposed all issues should be discussed at the first INC, to ensure adequate opportunity for issue linkage. The US proposed addressing complex and cross-cutting issues that would require repeated consideration. Canada stressed the importance of allowing enough time to deal with atmospheric emissions and favored early consideration of this issue. Australia supported the development of a project plan to establish sequencing of events. China and GRULAC said that discussion at INC-1 should focus on relevance and favored an "organic" agreement. Mexico highlighted the need to consider means of implementation.

Switzerland and Burkina Faso offered to host INC meetings and agreed to consult directly with the Secretariat on this.

Options for the structure and provisions for the instrument: This agenda item was introduced on Monday. The Natural Resources Defense Council (NRDC) discussed the recommendations in the Secretariat's timetable for negotiations (UNEP(DTIE)/Hg/WG.Prep/1/4) and suggested delegates consider tasking the Secretariat to prepare draft elements of, and options for, the text of a globally legally binding instrument for consideration at the first INC.

In the ensuing discussion, several delegates supported intersessional work by the Secretariat, with Switzerland supporting draft elements, as opposed to a draft of elements, thereby not prejudging the negotiations at the outset. The US,

supported by Australia, favored the Secretariat preparing those standard provisions not requiring discussion, and preferred to first have a conceptual discussion on substantive elements at INC-1. China highlighted the complexity of this task and preferred to reach consensus on basic elements, before tasking the Secretariat. GRULAC requested time to consult internally.

On Thursday afternoon, plenary considered three conference room papers (CRPs). The Secretariat introduced CRP.8, which included a list of papers or reports that might be made available to the INC, including a proposal related to options for the structure and standard provisions.

GRULAC introduced CRP.7, explaining that it was produced in acknowledgement that the process of defining the scope of the INC should occur concurrently with defining needs for implementation. He said the document was proposed as a guidance tool for the INC, that it was complimentary to the Secretariat's paper, and that the two documents should be merged.

Switzerland introduced CRP.9, proposing the Secretariat prepare an options paper outlining how the instrument could build in synergies with other relevant multilateral environmental agreements (MEAs) and policies, including climate change and energy policy.

In the subsequent discussion, the African Group and China supported the GRULAC paper, stating that need and means to comply should be at the forefront of the negotiations. The EU noted the need to discuss substantive and horizontal issues concurrently and, with CEE, agreed in principle with the GRULAC paper. Switzerland suggested the most innovative part of the GRULAC proposal is the table linking substantive and horizontal issues, which could form a tool to ensure balance between commitment to policy measures, and commitment specifically to providing technical and financial support, and suggested compliance should also be included in this tool. GRULAC highlighted that the table was perceived as a living document to guide the negotiating process. Jamaica added this tool could be used by individual governments during their preparations.

CEE, Indonesia, Colombia and Jordan supported the Swiss proposal on synergies. China and India stressed that mercury has to be a stand-alone instrument and cautioned that such a proposal could confine discussions.

It was generally agreed that the Secretariat's paper (CRP.8) provided a good basis for identifying work required by INC-1.

Mexico proposed, and delegates agreed, to merge the three documents and consider them as a whole. The Secretariat was tasked with collating these documents, taking into account the interventions in the plenary discussion, and presenting the collation for consideration.

On Friday, the Secretariat introduced a revised document on documentation to be made available to the INC at its first session (CRP.10), noting it represented a collation of CRP.7, 8 and 9 and that language perceived to pre-empt political decisions had

been omitted. Chair Roberts stated that the document represented guidance to the Secretariat and requested delegates consider the document in a spirit of compromise.

In the ensuing discussion, GRULAC congratulated the Secretariat, said the concerns of all delegations were taken into account and that the Secretariat had opened the door to consensus. After a short exchange delegates agreed to the intersessional work for the Secretariat and that CRP.10 would be annexed to the meeting report.

UPDATE ON PREPARATIONS FOR THE STUDY ON VARIOUS TYPES OF MERCURY-EMITTING SOURCES REQUESTED BY GC 25/5 (PARAGRAPH 29 STUDY):

On Monday, Chair Roberts introduced this item on a study on various types of mercury-emitting sources, as mandated by Paragraph 29 of GC decision 25/5. The Secretariat introduced the proposed outline (UNEP(DTIE)/Hg/WG.Prep/1/5) and noted that the study is likely to be available by INC-2. In the ensuing discussions several delegations pointed to the need for this study to be made available as soon as possible.

Delegates returned to this item on Thursday morning and John Munthe, Swedish Environmental Research Institute, described the proposed content of the study including: analysis of technical characteristics of various types of mercury-emitting sources; current and future trends of mercury emissions; and analysis of the cost and effectiveness of alternative control technologies and measures. He said the study would be focused on four sectors: coal fire power plants and industrial boilers; industrial metal production; waste incineration; and cement factories. Munthe explained that the countries selected for the study included the US, China, India, South Africa, the EU, Brazil and the Russian Federation. On the methodology, Munthe said data would be collected via survey, preferably at the plant level, but that aggregated data would also be used. Regarding the timeline for the study, he said a Zero draft (containing existing information) would be finalized by the end of 2009, and the final report will be produced by October 2010 and presented to INC-2, at the beginning of 2011.

In the subsequent discussion, Chair Roberts encouraged delegates to focus on strategic questions and on how information from the Paragraph 29 study might be used in the INC process. Switzerland, supported by Norway and GRULAC, highlighted the need to consider mercury-containing equipment and suggested that the risk management of mercury emissions should be negotiated at INC-1, in parallel with the study's completion.

Indonesia, supported by India, stressed that emissions from the coal and gas industries, as well as emissions to other media, should also be included. The US said the study is focused on air emissions as these have the most direct impact on a global basis. Explaining that waste incineration is not a common waste disposal technique in developing countries, and that dump sites and landfills are more common, Japan said the study should target waste disposal practices more broadly and, with Brazil and India, said emissions to other media should also be considered.

China and Brazil cautioned against sacrificing the quality of the report for the sake of the deadline. China also said emissions post-2005 should be considered, as there is more available data. The EU encouraged the engagement of all stakeholders and highlighted the need to consider costs of inaction.

INFORMATION THAT MAY ASSIST THE WORK OF INC:

Chair Roberts introduced this item on Monday and the Secretariat introduced the document on information that may assist the work of the INC (UNEP(DTIE)/Hg/WG.Prep/1/9), noting it provides a summary of all major studies and documents available on mercury and that the Secretariat was seeking additional guidance on information required by the INC. Several delegates called for updating the various existing reports. Jamaica requested a study on compliance mechanisms and an assessment of effectiveness. Japan requested a study on essential use criteria. The Secretariat agreed to prepare a CRP recording the requests of countries to present to plenary. CRP.8 was introduced on Thursday and delegates agreed to consider the paper along with CRP.9, submitted by Switzerland, on achieving synergies, and CRP.7, submitted by GRULAC, on the timetable and organization of work of the INC, under the agenda item on timetable and organization of work for the INC (see page 2).

Supply and Storage of Mercury: Chair Roberts introduced this item on Tuesday (UNEP(DTIE)/Hg/WG.Prep/1/INF/3). Peter Maxon, UNEP Consultant, discussed global mercury supply and trade. Highlighting that there are a small number of major mercury suppliers and traders, compared to widely dispersed consumption, Maxon advocated controlling mercury supply as a key policy option. He also observed that the general direction of trade is from wealthy to less wealthy countries. Maxon highlighted key measures to control the supply of mercury, including mercury export bans, a ban on new primary mercury mining, phase-out of existing mining, and collection of mercury from major sources (e.g., chlor-alkali decommissioning). He said the EU and US mercury export bans were helpful, described plans for safe storage, and highlighted that full transparency was critical to reduce mercury flows.

Brenda Koekkoek, UNEP Chemicals, discussed the International Forum on the Kyrgyzstan Primary Mercury Mining Project, which convened immediately prior to the OEWG. She explained that UNEP and the United Nations Institute for Training and Research (UNITAR) had been working with the Government of Kyrgyzstan and other development partners to develop plans to move away from primary mercury production in the near term. Koekkoek explained that the Forum concluded with three areas for action in Kyrgyzstan, including remediation and decommissioning of the mercury mine, local alternative development, and promotion of investment in other activities. She also noted that phasing out primary mining in Kyrgyzstan provides an opportunity to undertake near-term activities while negotiations on the mercury convention are ongoing.

Michael Bender, Mercury Policy Project/Zero Mercury Working Group, discussed the mercury storage-supply partnership and related initiatives and presented the draft business plan for near-term priority activities (UNEP(DTIE)/Hg/WG.Prep/1/CRP.5). He said the goal of the partnership was to reduce mercury supply by 50% by 2013. Bender described regional projects in the Asia Pacific and Latin America and the Caribbean, and said the next steps included the comparative analysis of subregions, analysis of stabilization techniques, and a feasibility study on storage options. He concluded by stating that storage options for large quantities of mercury should be accessible globally, but that national and regional regulatory measures were necessary.

In the subsequent discussion, the EU introduced a CRP presenting the legal situation of mercury supply and storage and mercury-containing products in the EU (UNEP(DTIE)/Hg/WG.Prep/1/CRP.2) and noted that the EU is developing detailed safety storage criteria, which may be useful to other countries.

Germany introduced a report on technologies for the stabilization of elemental mercury and mercury-containing wastes (UNEP(DTIE)/Hg/WG.Prep/1/CRP.4), noting the report reviews existing techniques for chemically and physically stabilizing mercury through lowering the volatility and solubility.

The US highlighted that under its domestic ban on mercury export it had also committed to opening a mercury storage facility. Japan highlighted the need to consider how to share the responsibilities among waste generators and product producers. Tanzania praised the US and EU bans on mercury export and expressed hope that this would lead to less mercury exported to developing countries.

Artisanal and Small-Scale Gold Mining (ASGM): Kevin Telmer, Artisanal Gold Council, discussed the need for a profitable transition away from isolation and mercury use in ASGM. Noting that ASGM miners receive 70% or more of the international gold price, Telmer highlighted that ASGM presents an excellent development opportunity, as it is efficient at transferring wealth from rich to poor countries. He stressed that improved practices are needed to reduce mercury use and to make this activity sustainable. Telmer said ASGM produces 12% of the world's gold and results in at least 1,000 tonnes of mercury being released to the environment annually, approximately one third of all anthropogenic releases. He outlined several emission control measures including fume traps and retorts, and pollution prevention measures including the reactivation of mercury to allow continued reuse. Telmer noted a mercury treaty alone would not solve the problems caused by ASGM, but that the treaty would allow for global coordination of supply restriction actions.

Vilma Morales, Peru and Regional Representative to the Quick Start Programme (QSP) Board, provided an overview of mercury projects under the QSP, the financial mechanism for the Strategic Approach to International Chemicals Management (SAICM), and discussed experiences at the national level. She described regional projects in south-east Asia and South

America and said both projects were working to build national government commitment for addressing ASGM, to create multi-stakeholder strategic plans for mercury reduction and to enhance regional coordination and collaboration. Describing the limitations of the projects, she said project activities had been limited to pilot cities in Peru, Bolivia, Cambodia and the Philippines, but that ASGM activities are widely dispersed, and that further work is necessary. Morales also noted that the projects did not include the participation of the health sector and stressed the need to tackle health impacts.

Ludovic Bernaudat, UNIDO, discussed the Global Mercury Partnership on ASGM and noted that UNIDO and the Natural Resources Defense Council were jointly leading the project. Bernaudat said the overall goal of the project was to reduce mercury use and emissions from ASGM by 50% by 2017. He underscored the urgent need to: restrict the supply of mercury to provide a price signal to miners to conserve mercury; integrate miners into the formal economy to enable the implementation of programmes to raise awareness and educate miners; and to develop successful models of transition to low and non-mercury ASGM. Bernaudat said priorities for the partnership include eliminating the most damaging practices including whole-ore mining and the use of mercury with cyanide, which he said leads to increased mobility and bioavailability of mercury. He also outlined ongoing work to establish a fair-mined/fair-traded labeling system. Bernaudat invited additional partners to join the project.

In the ensuing discussion, Suriname highlighted that in his country many of the mining practices using mercury are medium-sized enterprises and don't fit under the category of ASGM. Nigeria stressed the adverse health impacts associated with ASGM and encouraged UNIDO to extend its activities to additional African countries. The US stressed the urgency of the ASGM issue and questioned the availability of suitable non-mercury technologies. Pakistan called for a database of miners affected by mercury exposure. The EU highlighted that one intended benefit of the export ban on mercury is the reduction of mercury availability for ASGM.

Products and wastes: David Lennett, NRDC, discussed the transition to mercury-free products. He said successful transitions from mercury-containing to mercury-free products had been demonstrated in several product types including switches/relays, thermometers and batteries (excluding button cells). Lennett explained that obstacles remained for button cell batteries, dental amalgam and various types of lamps. Highlighting that for most mercury products alternative solutions exist, Lennett said that issues of production capacity, quality control and cost may still arise in some areas across the world. He noted a global instrument on mercury may begin to address these issues.

Ibrahim Shafii, Secretariat of the Basel Convention, discussed mercury waste in the context of the INC. Explaining that mercury cannot be destroyed and that it is highly dispersive, Shafii said removing mercury from the waste stream is the most effective way of containing waste. He noted the Basel

Convention provided a framework for managing waste containing mercury, described the development of technical guidelines on the environmentally sound management of mercury waste, and said other conventions invoke the Basel Convention for waste management rather than developing separate regimes.

In the subsequent discussion, Germany informed delegates of a report on a market analysis of some mercury-containing products and their mercury-free alternatives in selected regions, and said the results shed some light on the variable knowledge of risks posed by mercury. The EU noted it has successfully restricted mercury content in batteries and electronic equipment and that alternatives have proven to be economically feasible.

The European Commission introduced CRP.2 describing the legal situation on mercury-containing products in the EU and said the underlying principles included: assessing if alternatives exist, and, if so, legislate to ban the sale of the mercury product; and, if clear alternatives are not available, restrict maximum mercury content and set obligations for recycling.

The United Nations Institute for Training and Research (UNITAR) described its work providing assistance in mercury inventories, risk management decision making on mercury, and national pollution information systems. The International POPs Elimination Network stressed that consumer knowledge parallels regulatory policy and suggested that Extended Producer Responsibility would be applicable to mercury-containing products.

REPORT ON ACTIVITIES UNDER THE UNEP MERCURY PROGRAMME

Chair Roberts introduced discussion on this issue on Tuesday and the Secretariat introduced the report on activities of the Global Mercury Partnership (GMP) (UNEP(DTIE)/Hg/WG.Prep/1/8 and UNEP(DTIE)/Hg/WG.Prep/1/INF/1). She highlighted that several new partners had joined the GMP, reported a growth in activities, and noted progress in several projects.

The International Energy Agency Clean Coal Centre summarized the activities of the Clean Coal Partnership, noting the partnership has produced a report on the economics of mercury control, promoted clean coal combustion in four target areas, and developed a process optimization document.

Canada described the activities of the Fate and Transport Partnership. She noted the group has agreed to update its business plan, as well as increase coordination with other partners, including the Coal Partnership.

The US presented an update on the Chlor-Alkali Partnership. She noted partners have recently provided additional information on best practices and that some partners are planning additional facility inventory work. The US also highlighted the plan to further expand linkages with the Mercury Storage Project.

In the ensuing discussion, the CEE praised partners for the important work being completed in parallel with the development of a legally binding instrument on mercury. The US, supported by Japan, said partnership activities should continue and expand

with robust support and sound guidance, said these partnerships would inform the INC process, and urged the engagement of all donors. Nigeria encouraged other developing countries to join the GMP, highlighting that partnerships represented critical immediate-term action. Switzerland thanked the leadership of the US and highlighted it had recently joined the GMP. Canada and Jordan announced that they were considering joining the GMP.

The Secretariat introduced a document on updating the study of mercury emissions prepared by UNEP (UNEP(DTIE)/Hg/WG.Prep/1/6). He noted that a number of data gaps had been identified by experts and that in early 2010 UNEP would request information from governments. Chair Roberts noted that governments should consider the data gaps in their responses.

OTHER MATTERS

PREPARATIONS FOR INC-1: On Tuesday, Sweden, on behalf of the Nordic Council of Ministers, outlined its preparation for INC-1, scheduled to convene from 7-11 June 2010 in Stockholm. Sweden highlighted that in 2010, Stockholm has been designated as the European Green Capital, and encouraged delegates to visit the INC-1 dedicated website <http://www.respoint.se/itp/event/inc1>

RECOMMENDED BUREAU MEMBERS FOR THE INC: On Friday afternoon several regional groups announced recommended Bureau candidates for the INC process. Nominations included: Abiola Olanipekun (Nigeria), Oumar Cissé (Mali), Katerina Sebkova (Czech Republic), Alexander Romonov (Russian Federation), Nina Cromnier (Sweden), John Thompson (US), Fernando Lugris (Uruguay), and Gillian Guthrie (Jamaica).

The Asia Pacific region explained they were still consulting and would contact the Secretariat once the two nominations had been agreed.

CLOSURE OF THE MEETING

On Friday afternoon, the report of the meeting (UNEP(DTIE)/Hg/WG.Prep/1/L.1 and Add.1) was presented by rapporteur Abiola Olanipekun, and adopted with minor amendments.

In his closing remarks, Chair Roberts thanked everyone for their hard work, concluded that sufficient ground had been covered to make a good start at INC-1, and expressed confidence in those that would take the negotiations forward. Many delegations thanked Chair Roberts for his efficient leadership, dedication, patience, humor and modesty throughout the OEWG process.

Chair Roberts gavelled the meeting to a close at 5:14 pm.