

Zero Mercury Working Group (ZMWG) Observations Regarding UNEP Documents Prepared for INC 1

June 2010

ZMWG greatly appreciates and welcomes the meeting preparation documents as valuable contributions toward making INC 1 a successful meeting. The documents are both generally responsive to the requests made at the ad hoc open-ended working group meeting in Bangkok last year and contain useful information on many of the issues awaiting INC consideration.

However, in some cases, because the documents were by mandate limited in scope, they do not present all the options warranting consideration by INC 1. Through this document, ZMWG identifies those areas, for the purpose of encouraging INC 1 consideration of additional information and approaches, as discussed below. Brief observations of other INC documents and related issue areas are also provided.

- INC 1/2 Scenario Note: Paragraph 9 indicates the INC may wish to utilize INC Document 1/5 as a “starting point” for discussions of the substantive provisions of the treaty. However, because INC 1/5 is limited to precedents from existing agreements, it does not represent a satisfactory inventory of options in some areas (see discussion below). When the INC begins its discussion of substantive provisions, care must be taken to identify and discuss other options beyond those embodied in INC 1/5.

As contemplated in Paragraph 11 of the Scenario Note, which encourages further consideration and progress on some substantive provisions after the initial round of treaty discussions, ZMWG recommends supply and trade be made areas where further progress can be made. As a follow-up to those discussions, as part of identifying work that should be carried out in preparation for INC 2, preparation of detailed options or draft treaty text should be requested as a basis for starting deliberations at INC 2.

- INC 1/3 INC Rules of Procedure: The proposed rules are those recommended by OEWG 3 and thus are the outcome of extended deliberations already conducted on this matter. They should be adopted promptly at the outset of INC 1, so the INC can devote itself to treaty content areas.
- INC 1/4 Treaty Structure Options: This document provides a good summary of the structural options. ZMWG’s proposed partial draft concept text reflects the “control measures plus annexes” option.¹ ZMWG would

¹http://www.zeromercury.org/UNEP_developments/Hg_Treaty_ZMWG_Working_Draft_Conceptual_Text_March_2010_Working_Draft-final.pdf.

not favor the “convention plus protocol” option if the result is mercury control measures and other mercury-related provisions are not adopted by governments in their entirety. Treaty effectiveness will be seriously undermined without global coordination and participation in areas such as supply and trade, and the phase out of mercury products and processes.

- INC 1/5 Treaty Substantive Provision Options: As indicated in Paragraph 7, this document relies significantly upon options which already appear in other MEAs, and acknowledges that other options may exist which could be especially suitable for a mercury instrument. The INC would particularly benefit from considering additional and more simplified options on supply and trade. For example, in its proposed partial draft concept text (Sections I and II), ZMWG proposes a simplified set of control measures which phase out primary mercury mining and impose export prohibitions on elemental mercury and certain mercury compounds. We urge consideration of the ZMWG proposal by the INC as it considers treaty supply and trade control measures at its first meeting.
- INC 1/8 Treaty Financial Assistance Arrangement Options: This document provides a good summary of the possible financial assistance arrangements. ZMWG’s partial draft concept text (Section IX) proposes a dedicated account reflective of the Montreal Protocol’s Multilateral Fund, because this option can provide consistent and adequate financial support, and the operation of the dedicated fund is governed by the Parties according to Treaty priorities. In addition, funds disbursement can be conducted in a manner which encourages compliance and discourages non-compliance. To facilitate this critical compliance linkage, ZMWG urges the INC to adopt both the financial assistance and the compliance mechanisms in the initial treaty text.²
- INC 1/12 Effectiveness Evaluation: The ZMWG partial draft concept text (Section VIII) contains various measures aimed at determining the effectiveness of the Treaty, including but not limited to timely and consistent data reporting using standardized formats and the development of publicly accessible data bases. In addition, since the most prevalent form of human exposure is the consumption of fish and other aquatic food sources, ZMWG proposes establishing a global aquatic food monitoring network which can be used to monitor the treaty’s effectiveness in reducing mercury levels in marine food sources over time. We urge consideration of the ZMWG proposal by the INC as it considers treaty effectiveness assessment options.

² See Paragraphs 40-41 of INC 1/8 and 63-68 of INC 1/11 for additional discussion of the linkage between financial assistance and compliance.

- INC 1/13 Essential Use Exemptions: INC 1 should consider Section VI of the ZMWG partial draft concept text as it considers options for designing a control measures exemption process. The process must be open to all stakeholders, transparent, time and quantity limited, contain protective terms and conditions, and require meaningful demonstrations that the exemption requested is necessary and appropriate under the circumstances.
- INC 1/14 Glossary of Terms: The glossary of terms relevant to mercury appears incomplete, and will need further expansion and elaboration as INC continues its deliberations. For example, treaty definitions will likely be required for “primary mercury mining”, “byproduct mercury”, and other terms to craft the treaty supply provisions.
- INC 1/17 Synergies: In its consideration of potential synergy opportunities with related MEAs, the INC should carefully consider whether the related MEAs can effectively accomplish the desired outcomes for the mercury instrument. For example, since the Basel Convention targets the global movement of “waste”, it is not an appropriate vehicle for controlling elemental mercury supply and trade, since critical control measures such as trade restrictions, licensing, and reporting must apply irrespective of whether the mercury is legally categorized as a waste. Accordingly, as noted in Paragraph 8, the mercury instrument will still need to include provisions restricting the global supply and trade of elemental mercury, notwithstanding the provisions of the Basel Convention. The mercury treaty COP can then explore synergy opportunities with the Basel Convention as an implementation matter, as noted in Paragraph 6.
- INC 1/20 Update on Supply and Trade: This document provides updates on the Asia and LAC regional storage projects. In reviewing this information, it is important that the INC recognize elemental mercury trade restrictions and the associated need for mercury sequestration and storage capabilities are critical elements of a near-term mercury demand reduction strategy aimed particularly at small-scale gold mining but impacting other sectors as well. In both Asia and Latin America, small-scale gold mining is currently a large portion of regional mercury demand. Anticipated efforts in the mercury treaty to reduce small-scale gold mining mercury emissions through restricting the mercury supply will significantly change the status quo and expedite the need for mercury storage capability and global coordination.