

Open-ended Working Group on Mercury, Nairobi

Statement by Mr. Achim Steiner

Excellencies

Ladies and Gentlemen

Thank you very much for inviting me to address this important meeting of the Open-ended Working Group (OEWG) on Mercury. I have only just arrived so am addressing you more than halfway through the meeting, but UNEP's Deputy Executive Director already provided you with a Secretariat input at the beginning of this meeting. The OEWG process focused on a key date, the Governing Council in February 2009, where the world's environment ministers will meet to provide direction, but also to take decisions. More than anyone you know how the issue of mercury has been hovering as we search for a way forward both practically and politically, taking action that recognizes that there is much agreement on the nature of the issue, the kinds of action that need addressing, and how to move forward.

From the briefings I had I learn that significant progress has been made, especially in capturing in the policy framework a synthesis of the state of knowledge, options for action, and pathways in which States can cooperate in addressing the issue. In many discussions with ministers I have raised the issue of mercury and repeat here that at the behest of ministers and from our Governing Council in Nairobi and Monaco, it is clear that the expectation of the vast majority of ministers is that the Governing Council in February is not a parking lot along the motorway to the future, but a key milestone, with Governments looking for a direction in which to proceed in order to enable concrete action.

I have taken the challenge of the ministers very seriously. I believe that UNEP, and the ministers of environment under the Governing Council/Global Ministerial Environment Forum, are under scrutiny by the world and the public on whether we can offer practical, constructive forums to move forward on issues such as mercury. If we can't achieve agreement on mercury, we will have some difficulty explaining how our process can help accelerate action on key environmental issues that require concerted effort. You know the intricacies of what is at hand, and what is holding us back.

You may recall that when I first became Executive Director, within a few months I had asked Donald Hannah from New Zealand to act as "mercury ambassador". His consultations helped us in Nairobi to have a climate for discussion, and a commitment by all in the Governing Council to not simply address the issue, but to take the next step forward. The fact that you are here in Nairobi is part of the cooperative, trusting mandate you gave to UNEP.

I hope we won't face, in the Governing Council, a situation where the assembled ministers are presented with an either/or option. I do not believe that is in the interest of addressing the issue of mercury, nor was it the intention of the ministers

who gave us all a mandate to make progress on the issue. I have tried to understand how best to take advantage of the significant consensus around the nature of the problems related to mercury, and the priorities for common actions we can address in order to make progress.

I understand that for different nations there are very specific circumstances that do not allow them to just sign on an average action formula. Looking at the experience in intergovernmental negotiations over the last few years, there were occasions when we were held back from making progress because we were unable to accommodate exceptional circumstances within a shared objective. That is as true for mercury as for other issues. I urge you to help the ministers understand how we can address the particular concerns of individual nations while making progress on the other 80 per cent we can agree on. It is the only formula for progress with 190 nations – the principle of sufficient consensus, which allows us to agree where there is consensus, and accommodate those issues, or put them in another bracket, where there is disagreement. The issues on which we disagree are only a fraction of those on which there is broad consensus.

So it is my preoccupation to find a way that we don't approach the Governing Council with options that are juxtaposed because on the other side there are issues that will compromise the interests of a particular nation. We have the privilege of these Working Group meetings to work on that formula. From my perspective there is no reason why we cannot reach agreement in February on a framework through which we can move forward, which accepts the actionable elements that the world is ready to move forward on, to commit on, and to finance. That is what I would call responding with action, not with further debate, to an issue that requires urgent action. But it also needs to be a framework that accommodates the intent of many countries who regard a legally binding instrument as the ultimate conclusion to an international process of consensus building. How can we accommodate the fact that this is the view of the majority, but is not unanimous? Can we have a targeted, financed programme of action that has built within it the ability to continue developing a consensus to move towards a legally binding instrument without pre-empting the sovereign right of any country that cannot be party to such an instrument?

Even if, in February, there was agreement on a legally binding instrument - and this is by no means a foregone conclusion - years of further work would be needed before such an instrument was in place and ratified. The process of working towards that possible destination can be enabled by the Governing Council, perhaps in two phases – more preparatory work to see if there is sufficient consensus to launch an Intergovernmental Negotiating Committee, then putting it in motion. Such an approach does not preempt us from agreeing on a global programme of action with de facto, specific, timebound targets, with financing associated to it, and a review or oversight mechanism as part of it, allowing us to do more than just maintain the default option, where voluntarism is the only element in addressing the challenge of mercury. I am not proposing anything of a firm nature but urge you not to limit your proposal to the ministers of the environment to an alternative pathway – either this or that. I believe we have the ability and sufficient consensus to look at a pathway

that brings together the elements that countries are ready to address in a more specific, timebound, targeted, supportive framework for action while accommodating further processes to explore the viability of a legally binding instrument.

It is risky for me to suggest this in the middle of the final phase, and sometimes Governments don't appreciate the Secretariat intervening. But I am taking my role as the Executive Director of UNEP, to which you have elected me, very seriously. I believe I have a responsibility, alongside you, to support an outcome that our ministers do not have to stand before the international community in February and say that we cannot reach agreement on anything that could be considered as progress on the issue of mercury, that seriously affects human health and is becoming more serious, and will affect more and more people. It is a classic issue of an industrialized world affecting human health, and on which environment ministers have the ability to take the action that many are calling for – the medical professions, civil society, scientific bodies and others.

Our task must be to identify where there is room for convergence in the middle of a negotiating process where positions may be hardened by negotiation. I appeal to you to allow us to find a framework within which we are not bound by default to present the ministers with options that will divide us rather than unite us in the ability to act on mercury. In doing so I cannot and do not wish to take a position on a legally binding versus a voluntary approach. But further progress does not have to be held back by the juxtaposition of these two options, at least in the short term. We can do a great deal in the next three or four years to help the world make progress on mercury while continuing to engage in discussions and negotiations as regards a legally binding instrument if consensus exists. But if one prevents the other and vice versa, and if such a juxtaposition sends us back to square one, it would be a step backwards in terms of what the intergovernmental platform of the Governing Council/Global Ministerial Environment Forum has tasked us to do.

I conclude my remarks with an offer to provide further input in this matter and look forward to receiving guidance from this meeting on how we can help to firm up and shape a decision that would not present the Governing Council with a renewed dilemma but will send to the international community a signal that we are capable of resolving this issue.

Achim Steiner, Executive Director of UNEP