



**United Nations
Environment
Programme**

Distr.: General
20 December 2010

Original: English



**Intergovernmental negotiating committee
to prepare a global legally binding instrument
on mercury
Second session**

Chiba, Japan, 24–28 January 2011
Item 3 of the provisional agenda*

**Preparation of a global legally binding instrument on
mercury**

**Analysis of possible options for using partnerships to help achieve
the goals of the future instrument on mercury**

Note by the secretariat

1. At its first session, held from 7 to 11 June 2010, the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury requested the secretariat to prepare an analysis of possible options for using partnerships to help achieve the goals of the future instrument on mercury, including the option of integrating partnerships into the instrument.
2. By paragraph 25 of its decision 25/5, the Governing Council of the United Nations Environment Programme (UNEP) agreed that the future mercury instrument could include both binding and voluntary approaches, together with interim activities, to reduce risks to human health and the environment.
3. The annex to the present note contains a report developed by UNEP on possible options for using partnerships to help achieve the goals of the future instrument on mercury, in response to the committee's request. The analysis builds upon a document entitled "Review of Global Multi-stakeholder Partnerships" (UNEP(DTIE)/Hg/Partnership.1/INF/7), which was prepared in March 2008 to support the development of the Overarching Framework for the UNEP Global Mercury Partnership. In addition, input was sought from the Global Mercury Partnership Advisory Group at its meeting on 21 and 22 September 2010 in Geneva. The Advisory Group noted that the Partnership was viewed as a vehicle for immediate action on mercury while the negotiations on the future instrument were under way and anticipated a long-term role for voluntary initiatives on mercury once the instrument had entered in force. The Advisory Group also indicated that progress towards the overall goal of the Partnership was needed while negotiations were under way.
4. The following observations may be drawn from the report:
 - (a) Partnerships are a technical and delivery tool that could:
 - (i) Mobilize efforts to reduce the use of mercury and mercury releases at all levels of society;
 - (ii) Support parties in their implementation of the future instrument;

* UNEP(DTIE)/Hg/INC.2/1.

(iii) Act as a mechanism for providing information to meet specific needs arising under the future instrument;

(b) Most existing multilateral environmental agreements neither specify implementation arrangements nor explicitly refer to partnership activities. Most, however, were established before the value of multi-stakeholder engagement was formally recognized at the global level and, since their adoption, partnership mechanisms have been developed in response to specific implementation needs;

(c) Partnerships could be explicitly referenced in the mercury instrument as discretionary activities or as a support mechanism for specific aspects of its implementation. Partnerships could also operate outside the instrument, such as through the existing Global Mercury Partnership;

(d) Any partnership initiative will require resources. Consideration will need to be given to how partnership activities would be eligible for funding from the instrument's financial mechanism and from other means;

(e) Some areas where partnership efforts could contribute after the entry into force of the mercury instrument include information exchange and clearing-house activities; technical assistance; a platform for addressing artisanal and small-scale gold mining activities; identification and promotion of alternatives to mercury in products and processes; and the provision of information and assistance related to monitoring performance;

(f) The Global Mercury Partnership is an established mechanism with over 70 partners that is already mobilizing a wide range of stakeholders and has potential to mobilize still more. Regardless of whether partnerships are explicitly referenced in the instrument, the established networks within the Partnership are likely to prove useful in supporting its implementation.

5. The committee may wish to take note of the information contained in the annex to the present note when developing the global legally binding instrument on mercury.

6. Furthermore, the committee may wish to suggest near-term priority areas for interim work for consideration by the Partnership Advisory Group, in line with Governing Council decision 25/5, in order to facilitate the implementation of the instrument. Such work might include the development of baseline information and guidance materials and the identification of priority projects to be undertaken on an accelerated basis during the negotiation process.

Annex

Analysis of possible options for using partnerships to help achieve the goals of the future instrument on mercury

I. Background

1. Multi-stakeholder (or cross-sectoral) partnerships¹ for sustainable development began to emerge in the late 1980s and early 1990s when various environmental non-governmental organizations initiated dialogue with private-sector companies and industry associations to develop collaborative responses to local, national and international environmental challenges. Such responses included initiatives related to waste minimization, sustainable natural resource management and the development of environmental certification and labelling schemes. The focus of many of these partnerships was on the development of new, market-based solutions to environmental sustainability challenges and they were largely seen as complementary to national and international regulatory measures.
2. Multi-stakeholder partnerships bring together stakeholders from three main sectors: public or government, private industry or business, and civil society or non-governmental organization, in addition to others such as labour, media or academia that may be defined as separate sectors depending on political, geographic or cultural contexts.
3. Partnership governance and management range from decentralized arrangements shared between partners to the establishment of new, stand-alone membership organizations with their own full-time staff and infrastructure.
4. The value of involving a wide range of stakeholders in tackling global environmental issues has become increasingly apparent over the past 20 years. During the period between the 1992 United Nations Conference on Environment and Development and the 2002 World Summit on Sustainable Development and beyond, various United Nations agencies have played key roles in brokering new partnerships to strengthen the efforts of the United Nations system. Since 1992, the United Nations Environment Programme (UNEP) has been actively involved with the private sector through partnership-type initiatives. The Partnership for Cleaner Vehicles and Fuels, for example, was launched at the World Summit on Sustainable Development in 2002 and the multi-stakeholder Strategic Approach to International Chemicals Management in 2006.

II. Global Mercury Partnership

A. Background

5. The Global Mercury Partnership emerged from pre-existing collaborative arrangements between groups of organizations and individuals. The Partnership has provided, and continues to provide, a means for voluntary international cooperation and action on mercury through mandates from the UNEP Governing Council.
6. Currently the Partnership sets its own priorities. Its Overarching Framework was established in 2008 and governs its operation. The Overarching Framework includes:
 - (a) An overall goal to protect human health and the global environment from the release of mercury and its compounds by minimizing and, where feasible, eliminating global, anthropogenic mercury releases to air, water and land;
 - (b) Seven partnership areas: artisanal and small-scale gold mining; mercury cell chlor-alkali production; mercury air transport and fate research; mercury in products; mercury releases from coal combustion; mercury waste management; and mercury supply and storage;
 - (c) A partnership advisory group that provides guidance to the partnership areas;
 - (d) Multi-stakeholder participation, with some 70 partners, including a number of associations representing numerous other entities.

¹ Defined in United Nations General Assembly resolution 60/215 of 22 December 2005 as “voluntary and collaborative relationships between various parties, both public and non-public, in which all participants agree to work together to achieve a common purpose or undertake a specific task and, as mutually agreed, to share risks and responsibilities, resources and benefits”.

7. The Partnership delivers on its goal by working to strengthen the capacity of developing countries and countries with economies in transition and through sharing and exchanging relevant information. UNEP is responsible for information-exchange activities under the Partnership.
8. Some of the Partnership's strengths lie in its ability:
 - (a) To undertake interim activities such as the development of a process optimization guidance document for reducing mercury emissions from coal combustion in power plants and regional storage projects in Asia and Latin America, which can inform decision-making for the implementation of the future mercury instrument;
 - (b) To provide a platform for collaboration on artisanal and small-scale gold mining as a global development issue (rather than discussing it only in the context of mercury);
 - (c) To provide a mechanism for tackling highly relevant and unique priority issues such as those covered by the project on primary mercury mining in Kyrgyzstan;
 - (d) To respond swiftly to issues that may arise during sessions of the intergovernmental negotiating committee. Given that the current Partnership areas cover a wide range of issues, the Partnership has considerable multi-stakeholder expertise on which it can draw to contribute to documentation and can provide responses to questions and serve as a resource for the secretariat;
 - (e) To contribute to technical briefings for sessions of the intergovernmental negotiating committee.

B. Current status

9. The Global Mercury Partnership is established and already mobilizing a wide range of stakeholders to take on the challenges of mercury. By its decision 25/5, the Governing Council recognized the achievements of the Partnership to date and its continuing role.²
10. While the Partnership operates outside the continuing mercury instrument negotiations, the mandates for the intergovernmental negotiating committee and the Partnership both stem from Governing Council decisions and the functions necessary to the operation of both are performed by the Chemicals Branch of the UNEP Division of Technology, Industry and Economics.
11. The members of the Partnership Advisory Group are generally well informed about the progress of the mercury negotiations and help guide the Partnership in a direction that takes them into account. This mode of operation is expected to continue during the negotiations. For example, Partnership experts have supported responses by the secretariat to some of the committee's requests for information, such as in the preparation of inventories of chlor-alkali facilities and of artisanal and small-scale gold mining activities.
12. Since its launch in 2008, the Partnership's overall contribution has yet to be maximized and some uncertainties exist. Overall, a common weakness identified by the Partnership Advisory Group includes a lack of funding for partnership area activities. Additional funding is required to implement activities in line with the priority actions established in the partnership area business plans. Although participation by developing countries is growing, their overall participation to date has been low, which may reflect a lack of capacity.

III. Other examples of interactions between partnerships and multilateral environmental agreements

13. Most multilateral environmental agreements do not explicitly reference partnership activities, and there are limited examples in the global chemicals area to inform the development of the mercury instrument. This could be because most multilateral environmental agreements were concluded before global partnerships were recognized as valuable complementary mechanisms. Once that value was recognized following their entry into force, however, global chemicals treaties began to undertake multi-stakeholder partnership-type activities to help address particular implementation issues.
14. One example is the joint UNEP/World Health Organization (WHO) programme on demonstrating and scaling-up sustainable alternatives to DDT in vector control management. The programme was established in 2009, in response to the specific exemption under the Stockholm Convention on Persistent Organic Pollutants for the continued use of DDT for malaria control, to promote sustainable alternative approaches to DDT for vector control through various regional projects. Another is the partnership programme of the Basel Convention on the Control of

² See paras. 20, 24, 34 and 35.

Transboundary Movements of Hazardous Wastes and Their Disposal, which was established in 2002 as a mechanism for stakeholders to meet to tackle areas of common concern, define technical issues, set out technical and policy options and provide input for technical and policy reviews.

15. The Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC) network is an example of a wildlife trade monitoring network that provides information and assistance to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). TRAFFIC is a non-governmental organization that supports efforts to ensure that international wildlife trade is at sustainable levels and does not pose a threat to the conservation of species. While the Convention itself establishes no formal link between CITES and TRAFFIC, there is nevertheless a formalized working arrangement between the two: in 1999 the CITES secretariat and TRAFFIC signed a memorandum of understanding to undertake joint activities for capacity-building under CITES to strengthen its implementation and enforcement.

16. The WHO Tobacco Free Initiative existed during the negotiations on the WHO Framework Convention on Tobacco Control. It is similar in some ways to the Global Mercury Partnership, in that during those negotiations it was an established entity that mobilized a wide range of stakeholders to contribute in specific work areas while the negotiations were under way. The Initiative operates independently of the Convention. For example, it reports to the World Health Assembly, while the Secretariat of the Convention is part of WHO and reports to the Conference of the Parties to the Convention. The Initiative's complementary role is to provide global policy leadership; encourage mobilization at all levels of society; and promote the Convention by encouraging countries to adhere to its principles and supporting them in their efforts to implement tobacco control measures based on its provisions. The Convention secretariat operates through assessed contributions from the parties, while the Initiative's funding comes from WHO (20 per cent) and donors (80 per cent).

17. Overall, partnership initiatives have been shown to be useful in the implementation of other treaties regardless of how they were established, and there are a number of models that may be considered further in the development of the mercury instrument. Further information on these and other partnership models is included in the appendix.

IV. Future role of partnerships in the context of the mercury instrument

18. By paragraph 25 of its decision 25/5, the Governing Council agreed that the future mercury treaty could include both binding and voluntary approaches, together with interim activities, to reduce risks to human health and the environment. In this context, the term "voluntary approaches" could refer to:

(a) Discretionary actions by an individual party, indicated in the treaty by language such as "each party may," "each party is encouraged to," or "any party may adopt more restrictive measures and enter into agreements with other States [for achieving the objectives of the convention]";

(b) Parties acting together through voluntary arrangements such as the Global Mercury Partnership, other partnerships or bilateral or multilateral arrangements.

19. Partnerships are a technical and delivery tool that can mobilize efforts to reduce mercury use and releases at all levels of society, support parties in implementing the future instrument and act as a mechanism for providing information to meet specific needs under the instrument. In particular, one advantage of maintaining partnership initiatives as a delivery tool to complement the legally binding instrument is that the partnership initiatives have the potential for more ambitious implementation measures that extend beyond meeting the obligations imposed by the instrument.

20. Partnerships could undertake activities to promote the treaty's implementation. Some areas in which partnership efforts could contribute after the treaty's entry into force include:

(a) Information exchange and clearing-house activities;

(b) Technical assistance;

(c) Platform to consider and address artisanal and small-scale gold mining issues;

(d) Identification and promotion of alternatives to mercury in products and processes;

(e) Provision of information and assistance related to monitoring performance.

21. Unlike the partnerships described in chapter III above that were established to support the implementation of existing multilateral environmental agreements, the Global Mercury Partnership is an established entity that is already mobilizing a considerable network of expertise through its

membership. Aspects of the Partnership are likely to prove useful in assisting with implementation of the future instrument regardless of whether and how they might be reflected in it.

A. Review of possible options

22. Partnerships could be explicitly referenced in the instrument as discretionary activities. The Global Mercury Partnership (or other partnership efforts) could, however, also operate outside the instrument, as has been the case with many existing multilateral environmental agreements.

23. Presented below are three options for using partnerships to help achieve the goals of the future instrument.

1. Option 1: Partnerships are formally linked to the implementation of the mercury instrument

24. A formal link between the Global Mercury Partnership (or other partnership efforts) and the Conference of the Parties and/or one of its subsidiary bodies might be established³ explicitly by the mercury instrument.

25. Formally linking partnerships to the implementation of the mercury instrument might help to promote synergy and collaboration between initiatives.

26. Although the mercury instrument would be an agreement between Governments, explicit reference to multi-stakeholder partnership approaches therein might assist in mobilizing additional national and international efforts to reduce mercury use and releases by all levels of society.

2. Option 2: The Global Mercury Partnership operates in its current manner, independently of the mercury instrument

27. The Partnership could be left to operate wholly outside the treaty's institutional and legal structures once the treaty had entered into force.

28. The Overarching Framework and operational guidelines for the Partnership could continue to guide it over the long term on the following basis:

- (a) Operating through partnership areas;
- (b) Reporting on progress to the Executive Director of UNEP;
- (c) Voluntary participation;
- (d) Advised by the Partnership Advisory Group;
- (e) Amended over time as deemed appropriate by the Partnership Advisory Group, following the Partnership's operational guidelines;
- (f) Administrative functions housed at UNEP.

29. Parties to the mercury instrument participating in the Partnership would be subject to the instrument's provisions and would be accountable to the Conference of the Parties. It could therefore be expected that priorities determined by the Conference of the Parties would be respected by the parties and reflected in their actions, including those undertaken under the Partnership.

30. Omitting references to and provisions concerning the Partnership from the treaty would allow the Partnership to be flexible in its approach and to adapt more easily over time.

3. Option 3: Combination of options 1 and 2

31. It could be beneficial to continue some activities and partnership areas of the Global Mercury Partnership outside the treaty's institutional and legal structures (as in option 2), while other activities currently undertaken by the Partnership, such as information exchange and monitoring of performance, could benefit from the establishment of a formal link to the implementation structure of the treaty (as in option 1).

32. In addition, there could be value in developing other partnership arrangements or revising the scope of the current partnership areas to meet the treaty's implementation needs. Some partnership area activities, for example, could be overtaken by the mercury instrument and might not be deemed necessary in the long term. The supply and storage partnership area has already identified a limited lifespan for itself for this reason.

³ The Global Mercury Partnership is a voluntary process. Designating the Partnership as a subsidiary body to the treaty could imply a legal status and could raise difficult institutional and legal questions given the wide range of partners engaged.

33. The Overarching Framework and operational guidelines would continue to guide some partnership areas in the long term, and revisions could be made to the Partnership structure, as appropriate, at the discretion of the Partnership Advisory Group.
34. It may also be worth reviewing the possibility of developing new or additional partnership efforts to meet the future instrument's identified implementation needs.

B. Funding considerations

35. Any partnership initiative will require resources. The activities of the current Global Mercury Partnership are financed through extrabudgetary funds, mainly provided to UNEP, and through in kind contributions by partners. UNEP has engaged one P-3 staff member to support the Partnership, with funding from the Environment Fund, since May 2009 and has also provided support for one P-4 staff member to support mercury interim activities since February 2007. As the Partnership expands, so too does the need for administrative support.
36. In its report on overall progress between January 2009 and June 2010, the Partnership Advisory Group reported that, while the Partnership donor base had expanded since its inception in 2005, overall funding had decreased during the reporting cycle. Among other factors, such as the fiscal crisis, significant amounts of funding related to chemicals had been directed towards the development of a global legally binding instrument on mercury.
37. Although the private sector participates in and makes in kind contributions to the Partnership, to date Governments have been the main financial contributors.
38. It will be necessary to consider how future partnership activities would be eligible for funding from the mercury instrument's financial mechanism and other sources. It is understood that many obligatory measures under the instrument could be eligible for funding under its financial mechanism; funding is unlikely to be fully available, however, until some time after the instrument's entry into force. In the interim, complementary funding means might include:
- (a) Formally established complementary funding mechanisms to support various aspects of voluntary near-term implementation, an example being the approach of the United Nations Framework Convention on Climate Change;
 - (b) Contributions from a wide variety of stakeholders, including the private sector, to a separate voluntary fund. For example, public attention is currently fixed firmly on gold, both as an investment and a commodity, and it might be timely to consider how resources might be leveraged from a broad donor base to support activities relating to gold mining (extending beyond parties to the instrument).

V. Concluding remarks

39. Overall, partnerships are a technical and delivery tool that can mobilize efforts to reduce the use of mercury and mercury releases at all levels of society, support parties to implement the future mercury instrument and act as an information resource mechanism to meet the future instrument's specific needs.
40. Most existing multilateral environmental agreements do not specify implementation arrangements and do not have formal links to partnership activities. Most, however, were established before the value of multi-stakeholder engagement was formally recognized at the global level.
41. Partnerships could be explicitly referenced in the instrument as discretionary activities or could also operate outside the instrument, such as through the existing Global Mercury Partnership.
42. Any partnership initiative would require resources. Consideration will need to be given to how partnership activities would be eligible for funding from the mercury instrument's financial mechanism and other funding sources.
43. Some areas to which partnership efforts could contribute after the instrument's entry into force include information exchange and clearing-house activities; technical assistance; provision of a platform to address artisanal and small-scale gold mining activities; identification and promotion of alternatives to mercury in products and processes; and provision of information and assistance related to monitoring performance.

44. The Global Mercury Partnership is an established mechanism with over 70 partners that is already mobilizing a wide range of stakeholders and has potential to mobilize still more. Regardless of whether (and how) partnerships were explicitly referenced in the mercury instrument, the established networks within the Partnership would probably prove useful in supporting the instrument's implementation.

Appendix

Profiles of other global partnerships and alliances

I. Basel Convention Partnership Programme

1. The Programme was established in 2002 by decision VI/32 of the Conference of the Parties to the Basel Convention as part of the Convention's 10-year Strategic Plan. The Convention entered into force in 1992. The Partnership Programme was established in recognition of the fact that the active involvement and support of industry and business organizations and non-governmental organizations was necessary to achieve the Convention's aims. Public-private partnerships under the Convention are a unique way for stakeholders to meet to consider, among other things, common areas of concern, to define technical issues, to set out technical and policy options and to provide input for technical and policy reviews. A number of other specific partnerships have been established under the Convention, including an electronic waste programme for Asia and the Pacific, the Mobile Phone Partnership Initiative, a partnership on used oils in the Caribbean and a partnership on household wastes mixed with hazardous wastes.

II. Demonstrating and scaling-up sustainable alternatives to DDT in vector control management

2. This is a global partnership between WHO and UNEP that aims at introducing and promoting sustainable alternative approaches to DDT for vector control through various regional projects. The programme was launched in 2009 and will run until 2015. The Global Environment Facility will provide funding of some \$32 million, combined with an estimated \$45 million from other sources. The programme makes an important contribution to the implementation of the Stockholm Convention (adopted in 2000). A specific and limited exemption is set out in the Convention to allow the use of DDT to control malaria because it is recognized that in some situations adequate alternative control methods are not available.

III. Forest Stewardship Council

3. The Council is an international association of some 700 members consisting of a diverse group of representatives from environmental and social groups, the timber trade and the forestry profession, indigenous peoples' organizations, corporations, community forestry groups and forest product certification organizations from around the world. An independent, international non-profit organization, the Council promotes responsible management of the world's forests by developing standards and a system for accrediting independent third-party organizations to certify forest managers and forest product producers to Council standards, enabling wood and paper products to carry the Council's trademark. There are currently more than 700 members from the environmental, social and economic sectors. Since the Council's founding assembly in 1993, almost 100 million hectares in more than 70 countries have been certified according to Council standards while several thousand products are produced using Council-certified wood and carrying the Council trademark. The Council operates through its network of national initiatives in some 50 countries. Its governance structure is based on principles of participation, democracy, equity and transparency. This model may be relevant when considering partnerships on mercury in the mining sector.

IV. Global Alliance against Chronic Respiratory Diseases

4. This is a voluntary alliance of 80 national and international organizations, institutions and agencies working towards the common goal of improving global lung health by adopting a comprehensive approach to combat chronic respiratory diseases. Officially launched in March 2006 in Beijing, the Alliance is part of WHO work to prevent and control chronic diseases. Its secretariat is located in Geneva. Its focus is specifically on the needs of low-income and middle-income countries and vulnerable populations, and it seeks to foster country-specific initiatives tailored to local needs. The Alliance also seeks to improve coordination between existing governmental and non-governmental programmes to avoid duplication of effort and waste of resources.

V. Partnership for Clean Fuels and Vehicles

5. This is a global initiative of some 110 organizations and individuals cooperating to tackle more efficiently and successfully cleaner fuel and vehicle issues in developing countries to improve air quality. The Partnership seeks to ensure the implementation of three identified priority objectives: the elimination of lead in gasoline; the phasing down of sulphur in diesel and gasoline fuels; and the adoption of cleaner vehicle technologies. Launched at the World Summit on Sustainable Development in 2002, the partnership's many partners include Governments, civil society organizations, international organizations and institutions of higher learning. The Partnership's clearing house is housed at UNEP headquarters in Nairobi.

VI. Tobacco Free Initiative

6. This initiative was established by WHO in 1998 to focus international attention, resources and action on the global tobacco epidemic. The WHO Framework Convention on Tobacco Control subsequently entered into force in 2005. The Initiative's objective is to reduce the global burden of disease and death caused by tobacco, thereby protecting present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke. To accomplish its mission, the Initiative provides global policy leadership; encourages mobilization at all levels of society; and promotes the Convention, encouraging countries to adhere to its principles and supporting them in their efforts to implement tobacco control measures based on its provisions. The Initiative, headquartered in Geneva, works closely with its regional advisers to plan and implement its activities. Most of the Initiative's major activities are coordinated by WHO regional offices and are decentralized to the country level.

VII. Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC)

7. This is a wildlife trade monitoring network headquartered in Cambridge, United Kingdom of Great Britain and Northern Ireland. Established in 1976, TRAFFIC is a leading non-governmental organization in the field of conservation as it relates to wildlife trade. TRAFFIC is a research-driven and action-oriented global network that is committed to delivering innovative and practical conservation solutions based on the latest information. Its priority is to promote international cooperation to tackle wildlife trade issues, with particular emphasis on the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which entered into force in 1975. TRAFFIC provides information and assistance to help the decision-making processes in CITES, supporting efforts to ensure that international wildlife trade is at sustainable levels and does not pose a threat to the conservation of species. In 1999, CITES and TRAFFIC signed a memorandum of understanding to undertake joint activities for capacity-building. TRAFFIC is governed by a steering group (known as the "TRAFFIC Committee") comprising members of TRAFFIC partner organizations, the World Wide Fund for Nature and the International Union for Conservation of Nature. A central aim of TRAFFIC activities is to contribute to its partners' wildlife trade-related priorities. TRAFFIC employs some 100 staff members based in nearly 30 countries.
