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

Second session

Chiba, Japan, 24–28 January 2011

Item 2 (b) of the provisional agenda*

Organizational matters: organization of work

**Scenario note for the second session of the intergovernmental
negotiating committee on mercury**

Note by the Chair

1. The present scenario note, which I have prepared in consultation with the Bureau, sets out our plans and general expectations for the second session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury. I hope that it will assist parties and other participants in preparing for the session.
2. At our first session, in Stockholm in June 2010, we had the opportunity to hear views from parties and all regional groups on the various substantive areas to be covered in a comprehensive and suitable approach to mercury. We requested the secretariat to prepare for our consideration at our next session draft elements of such an approach. A further opportunity to provide input on the possible elements to be included in the future mercury instrument was also provided, and I am pleased to note that the secretariat has received submissions from 31 Governments from all United Nations regions. These submissions are available on the website of the United Nations Environment Programme (UNEP) and have been used in the preparation of the draft elements, which are set out in the annex to document UNEP(DTIE)/Hg/INC.2/3. As that document builds on the discussions held at our first session and takes into account the independent submissions made by Governments, I hope that we can consider it as the basis for our discussions during the committee's second session.
3. I am also pleased to note that a number of Governments provided additional information to contribute to the wide range of documents prepared for the second session. Those documents and the other papers that we requested the secretariat to prepare add to the wealth of resources available to inform our discussions, and I hope that you will all have the opportunity to familiarize yourselves with them. Given the limited time available for our discussions, we will not be able to have detailed discussions on much of this material in plenary meeting. The technical briefing session that will be held on Sunday, 23 January 2011, however, will provide an opportunity for some discussions, and members of the secretariat will be available for further discussions during the week. Furthermore, the documents will inform our discussions throughout the week and can be drawn on as required.
4. One document of particular note is the study on various types of mercury-emitting sources called for in paragraph 29 of Governing Council decision 25/5. I propose that the results of this study and the

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

range of information included within it be presented for our consideration early in the session. While there will always be potential for improving a study that endeavours to provide a snapshot of the state of emissions, we should be careful to avoid being sidetracked by extensive technical discussions on the details of the study. Instead, I hope that after the study is presented we can focus on drafting the emissions text needed for the mercury instrument. For those who would like to discuss the study in greater detail, I believe that there will be ample opportunity to do so at the technical briefing session on Sunday and throughout the week in the margins of the session or possibly in a contact group.

5. Turning to the substance of our work, I would like to remind you that, as we begin our second session, one fifth of our time will already be behind us. We have a long way to go on our journey towards an agreement. At this session we must enter into more detailed discussions on the mercury instrument, building on the very valuable exchanges that we had in Stockholm. Recalling those useful discussions, I hope that we can move swiftly in Chiba to discuss the actual text of the instrument. I think that we are all now fully aware of the issues, and I therefore encourage all parties to avoid making extensive opening remarks of a general nature so that we can turn very quickly to the substance of our work. I will impose strict time limits on any opening remarks.

6. As I noted above, I propose that we base our discussions on the draft elements of a comprehensive and suitable approach to mercury that the secretariat has prepared for our consideration. I further propose that we use the structure of that paper as the framework for our discussions. That will enable us to proceed systematically through each subject area to be covered in the instrument.

7. My intention is to undertake a complete first review of the possible elements in plenary meeting, where the views of all can be heard. In considering the draft elements, we need to recognize that we have all agreed that mercury is a problem of global concern that needs to be addressed by a global legally binding instrument. The challenge for us is to develop an instrument that makes clear our policy objective and provides for both transitional and long-term arrangements for achieving that objective. In rising to this challenge we must keep in mind the differing capacities and situations of the countries that will be party to the mercury instrument, and we must provide for flexibility to enable countries to use implementation measures best suited to their situation. Such flexibility could involve exemptions that would allow parties to make the transition away from mercury use over time.

8. As we identify areas that prove challenging to discuss in plenary meeting, or where there are a small number of parties with divergent views, it may be beneficial to establish small groups to discuss such issues in detail. The results of such discussions would of course be presented for consideration by the committee in plenary meeting. Furthermore, I would propose to give such groups narrow mandates and to limit the time for their work to ensure that the committee can keep moving forward in plenary meeting with other issues, taking into account the results of any such small-group discussions. I am also conscious of the challenges faced by many delegations in covering more than one discussion, and accordingly will limit the number of groups that meet simultaneously.

9. Another set of issues that might be referred to small groups are those on which we have reached substantial agreement in plenary meeting and in respect of which text must be reviewed to ensure that it conveys our intentions in a legally sound manner. One set of elements that may be ready for such review at an early stage, once any possible differences of view have been resolved in plenary meeting, consists of what are known as "final clauses". I therefore propose the establishment of a legal group to undertake such work during the session. The group would focus on clarifying draft text of the mercury instrument so that it reflects the policy directions agreed to by the committee and would be expected to highlight any ambiguities or potential controversies requiring the committee's further consideration. I also propose that this group undertake a further task, perhaps not at this session but rather in future sessions, namely, to make any textual adjustments that are necessary to ensure that all the provisions that we are developing are clear, consistent with one another and able to be implemented harmoniously, so that the mercury instrument functions effectively, without internal contradictions. There may be other issues that we determine at a later point should be referred to a legal group.

10. There are two additional types of issues, in my opinion. The first are those for which the committee has decided in plenary meeting on the best approach but has not developed text that adequately reflects that approach. Drawing on working practices that have proved effective during our journey to date, I would propose that for these issues we ask the secretariat to prepare draft text reflecting the outcomes of the plenary discussions. This text would then be fully discussed in plenary meeting and could either be passed to the legal group for final review or referred to a small group for discussion of any outstanding technical or policy questions.

11. The second category of issues involves those in respect of which the committee faces significant challenges in reaching agreement on the best way forward. We know that such issues will arise, as they do in all negotiations. I would encourage us all to make as much progress as we can during our second session. We should, however, be willing to acknowledge it if we reach a point in the discussions where we can make no further progress on particular issues. Delegations preparing for the session will have agreed national positions. I hope that these positions will be flexible because, in my view, making small adjustments to accommodate positions that differ slightly from our ideal positions is an essential part of negotiating in good faith. We must recognize, however, that such flexibility can only go so far and that delegations may be unable to revise their positions, even after consulting with capitals. I propose that, should we find ourselves in such a situation in respect of a given issue, we defer that issue for further discussion at our third session to allow for intersessional consultations.

12. Having set out how we may wish to work during the second session, I would like to close by considering what we might hope to accomplish by the end of the session.

13. I expect that we will have fully discussed the elements of the comprehensive and suitable approach, and that for each element we will have established whether the committee agrees with the approach set out in the elements paper or favours an alternative approach. On a number of issues I expect that we will achieve significant progress, to the extent that by the end of the session draft text on those issues will have been considered for the first time by the legal group.

14. For issues on which we still have significant differences to resolve prior to reaching agreement, I would like to achieve a clear understanding of the challenges involved, along with agreement from those with divergent views that they will examine the issue carefully, possibly through discussions during the intersessional period, so that progress on these issues can be made at the committee's third session.

15. Should there be any issues where there is a need for additional information to make further progress, a very clear request to the secretariat, limited only to the essential information needed, could be prepared. I would like to remind you all of the wealth of information that we already have available through the work of the previous years and would strongly encourage you to think carefully before requesting additional documents.

16. Lastly, at the end of the second session, I would like us to be able to request the secretariat to prepare a consolidated version of draft text of the mercury instrument reflecting the views expressed and indicating, where possible, differing approaches, so that we are ready to make further significant progress at our third session.
