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

Third session

Nairobi, 31 October–4 November 2011

Item 2 (b) of the provisional agenda*

Organizational matters: organization of work

**Scenario note for the third 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 third 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 and achieving progress at the session.
2. At our second session, in Chiba, Japan, in January 2011, we had the opportunity to consider draft elements of a comprehensive and suitable approach to mercury. We requested the secretariat to prepare for our consideration at our next session a draft text reflecting the full range of party views on the possible content of the mercury instrument expressed during the session and submitted to the secretariat after the session. I am pleased to note that the secretariat has received submissions from two regional groups, from one regional economic integration organization and from 18 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 text, which is set out in the annex to document UNEP(DTIE)/Hg/INC.3/3. As that document builds on the discussions held at our second session and takes into account the independent submissions made by Governments, I expect that it will allow us to make rapid progress at our third session.
3. I am also pleased to note that a number of Governments provided additional information to enrich other documents that have been prepared for the third session as requested by the intergovernmental negotiating committee at its second session. The documents provide information on a further comparative analysis of options for financial mechanisms to support the global legally binding instrument on mercury; releases of mercury from the oil and gas industry; health aspects of mercury issues and the use of mercury preservatives in medicine, including vaccines; the relationship between the future mercury instrument and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. The documents will provide further background for our discussions, and I hope that you will all have the opportunity to familiarize yourselves with them in advance of the session. While there will be limited time available to discuss in detail much of this additional background material during our plenary meetings, it will nevertheless inform our discussions throughout the week and can be drawn on as required.

* UNEP(DTIE)/Hg/INC.3/1.

4. A technical briefing session will be held on Sunday, 30 October 2011, providing further background information on currently available approaches, practices and technologies. A draft programme for the technical briefing session, which will include introductions to some of the background documents mentioned above, is available on the UNEP website. In addition, the UNEP Global Mercury Partnership is coordinating an exhibition area that will provide an opportunity for representatives to see and learn about relevant current technology.
5. I should also like to draw attention to the wealth of information that we already have available to us as a result of our work to date. I believe that we are now well equipped to continue negotiations in earnest on the text of the mercury instrument.
6. Having reviewed the new draft text myself, I can state that it is an extremely comprehensive document that aims to encompass the full range of views expressed by parties. This comprehensiveness means that the document is both long and complex, although the secretariat has made every effort to set forth all the necessary information as clearly as possible. I therefore cannot over-emphasize the need for delegations to prepare carefully for the discussions in Nairobi, and to make good use of the opportunity for preparatory discussions in the regional group meetings. I welcome the secretariat's efforts in organizing these regional meetings, as such opportunities for discussion have played an important role in the negotiations to date. It is essential that we work towards agreement on text during our third session to keep us moving towards our goal of completing the negotiations prior to the twenty-seventh session of the Governing Council of UNEP, in 2013. I have been encouraged by the cooperative and facilitative approach that we have taken in our discussions to date.
7. Turning to the substance of our work, I should like to remind you that during our third session we will cross the halfway point of our negotiating time. It is essential that we focus clearly on what we consider to be the essential provisions of an instrument on mercury, move swiftly into detailed discussions to resolve areas of difference and work to agree on suitable language to capture common views. The new draft text presents the full range of views expressed by parties, so we now must move past the presentation of initial views that was (the focus of previous sessions) to the negotiation of text that will meet the needs of all. As in our second session, I encourage all parties to avoid making extensive opening remarks of a general nature so that we can turn speedily to the substance of our work. Where possible, such remarks should be delivered on a regional basis rather than by individual Governments. I will impose strict time limits on any opening remarks.
8. As we will be focusing our discussions on the draft text prepared on the basis of your input, comments and suggestions, I propose that we use that text as the framework for our discussions. That will enable us to proceed systematically through each subject area to be covered in the instrument. While I would not rule out the possibility of new ideas being raised, I expect that after two negotiating sessions and three submission processes the draft text presents the relevant possible approaches fairly comprehensively. I therefore hope that the committee can now concentrate on moving towards a negotiated agreement.
9. In structuring our discussions my intention is to take up the issues in the order in which they are presented in the draft text. It may be necessary, however, after consultation with the Bureau, to discuss specific issues in a different order, for example when it is considered useful to establish a small group¹ at an early stage, in order to ensure progress during the session.
10. There are sections of the draft text where multiple options are presented. We need, however, to reduce those options and as far as possible determine a single, agreed approach. I recognize that some new proposals may require further explanation, but there is no need to restate previously presented positions and proposals. It is important that our discussions during our plenary meetings focus on resolving the major policy options. I would encourage you in your statements to identify clearly the options that would be acceptable to your Government and, when possible, to propose ways in which the differences between options might be bridged.
11. I hope that you will have had sufficient time to familiarize yourselves with the content of the draft text in advance. My intention is not to begin discussion with a general reading of the text, but to focus initially on areas that will require more attention, with the goal of reducing the options and identifying ways in which we might bridge the differences between those that remain. Subsequently, we may refer outstanding issues to small groups for more detailed consideration, where, it is my hope, further agreement on the most suitable approach can be reached. The results of the small groups' deliberations would of course be presented for consideration by the committee. Furthermore, I would propose to give any small groups narrow mandates and to limit the time for their work. The aim at this

1 The term "small groups" is intended to encompass such groups as contact groups, drafting groups, smaller groups with a limited specific participation on a very specific issue, and friends of the Chair, as needed.

session is to focus on the policy and legal framework of the instrument; the technical details can be developed later, although technical information, including materials described in paragraphs 3–5 of the present note, should be taken into account in the discussions on the policy and legal framework. My expectation is that this will focus discussion in the small groups, allowing the rapid return of issues for consideration and overall agreement by the committee. I am also conscious of the challenges faced by many delegations in covering more than one discussion, and accordingly will limit the number of small groups that meet simultaneously.

12. At our second session, we established a legal group to assist the committee, as reflected in paragraph 251 of the report of that session (UNEP(DTIE)/Hg/INC.2/20). We agreed that the mandate for the group would be to examine elements on which substantive agreement had been reached to ensure that the text of the individual elements, and the interplay between them, reflected and gave effect to the committee's intentions in a legally sound manner, highlighting any ambiguities or potential conflicts that might require further consideration by the committee. The group would, as necessary, prepare draft provisions of the instrument based on the policy approaches agreed by the committee; review draft provisions prepared by the committee and other groups; examine the consistency of the various draft provisions, harmonizing them as necessary; and advise the committee or other groups on any legal questions that arose. It is my expectation that the legal group will begin its work during the current session. I believe that there will be issues on which the committee can agree at an early stage so that they can be referred to the legal group for review without delay in order to make maximum use of the group throughout the session. There may be other issues that at a later point we determine to refer to the legal group. All the results of the legal group's work will be presented to the committee for approval or further consideration. In organizing the legal group's work, I will encourage it to work outside the hours set aside for plenary meetings as far as possible to ensure that the legal experts are present during our discussions of policy issues and can thus bring an appreciation of those discussions to their consideration of the draft text.

13. I trust that the secretariat will be able to produce during the session any texts that the committee may request to reflect its substantive discussions and negotiated agreements. This will ensure that our limited discussion time can be spent resolving issues of policy and substance. Any text provided by the secretariat at our request would then be fully discussed during our plenary discussions and could either be passed to the legal group for review or referred to a small group for discussion of any outstanding technical or policy questions.

14. The Bureau and I have been working intersessionally in preparation for this third session, including through conference calls and meetings, and this close coordination will continue.

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

16. I expect that we will have fully discussed the draft text and have achieved agreement in a number of cases on the most suitable option. For sections of the text where only minor issues need to be resolved, I expect that we will have made significant progress, to the extent that by the end of the session draft text on those issues will have been considered by the legal group and returned for further consideration by the committee. For issues on which we still have significant differences to resolve, I should like to have completed a more detailed review of the options available, including in small groups where appropriate.

17. Should there still be any issues on which the committee requires additional information to make further progress in our negotiations, a clear request to the secretariat, limited to the essential information needed, could be prepared.

18. Lastly, I should like us to be able to move forward at the third session with the preparation of a new draft text for consideration at our fourth session. Possible options for intersessional work might include again requesting the secretariat to prepare a revised version of the draft text of the instrument reflecting the progress that the committee has made in reducing and clarifying the various policy options. That will allow us to resume our negotiations efficiently at our fourth session.