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**Global Mercury Partnership  
Partnership Advisory Group  
Second meeting**  
Geneva, 21 – 22 September 2010

**Thought starter on possible options for the future partnership  
approach**

**Note by the Secretariat**

The Intergovernmental Negotiating Committee (INC) requested UNEP to develop and provide to the second meeting of the INC 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.

The Chemicals Branch of the UNEP Division of Technology, Industry and Economics has drafted a thought starter on possible options for the future partnership approach which is set out in the annex to the present note.

The Partnership Advisory Group may wish to discuss and provide input to UNEP on possible options for using partnerships to help achieve the goals of the future instrument on mercury.

## Annex

### Thought starter on possible options for the future partnership approach

#### Introduction

United Nations General Assembly Resolution 60/215 “Towards Global Partnerships” defines partnerships 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” (Paragraph 2).

The Global Mercury Partnership was proposed and established during the time when the UNEP Governing Council was unable to agree on whether to develop a legally binding instrument on mercury. The Partnership has provided — and continues to provide — a means for voluntary international cooperation and action on mercury.

In its decision GC 25/5 the Governing Council continued to recognise the role of the Global Mercury Partnership:

- paragraph 20: Commends the Executive Director and members of the United Nations Environment Programme Global Mercury Partnership for their progress in developing and implementing the Partnership as a vehicle for immediate action on mercury...
- paragraph 24: seeks close cooperation and coordination among the United Nations Environment Programme mercury programme and the Global Mercury Partnership and Governments, mercury-related activities under the Strategic Approach to International Chemicals Management and its Quick Start Programme, convention secretariats,
- paragraph 34: ...seeks the involvement of the Global Mercury Partnership in continuing and enhancing existing work concurrently with the work of the intergovernmental negotiating committee,
- paragraph 35: Urges Governments, intergovernmental organizations, industry, non-governmental organizations and academic institutions to continue and enhance their support for the activities set out in paragraph 34 of the present decision and for the Global Mercury Partnership through the provision of technical and financial resources, such as by supporting the implementation of country-based projects that tackle mercury risk reduction and risk management.

The main features of the Global Mercury Partnership include:

- an overarching framework adopted by stakeholders to govern partnership operations;
- seven partnership areas, including 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;
- a partnership advisory group that provides guidance to the partnership areas; and
- multi-stakeholder participation, with approximately 70 partners, including a number of associations representing numerous other entities.

#### Considerations

##### 1. Binding and voluntary approaches

In paragraph 25 of its decision 25/5, the Governing Council agreed that the treaty “could include both binding and voluntary approaches, together with interim activities, to reduce risks to human health and the environment”

- “voluntary approaches” could refer to:
  - 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]” or
  - Parties acting together through arrangements such as
    - the Global Mercury Partnership,
    - other partnerships,
    - bilateral or multilateral arrangements.
- However, the question remains whether voluntary arrangements such as the Global Mercury Partnership should be:
  - “included” in the treaty so that they operate under the authority of the conference of the Parties,
  - left to operate wholly outside of the treaty’s institutional and legal structures, or
  - left to operate outside of the treaty, but with the treaty establishing some kind of formal relationship with the Partnership.

## 2. Role and potential during the INC

The Global Mercury Partnership is already mobilising and has further potential to mobilise a wide range of stakeholders to address issues. Some strengths include:

- current partnership areas cover a wide range of issues;
- considerable expertise of partners;
- contribution to technical sessions preceding INC 1 has been appreciated;
- providing a platform to collaborate on ASGM as a global development issue (as opposed to discussing it only in the context of mercury);
- potential ability to respond quickly to issues that arise during INC negotiations;
  - scope for providing responses to questions and a resource for the Secretariat.

However, there are some uncertainties:

- participation in, and resources made available to, the Partnership has not been as great as originally envisaged;
- in particular, capacity for participation from developing countries has been low;
- focus of UNEP Mercury Programme spending tends to lean to meeting the need of the treaty negotiation over implementation of activities;
- where a partnership is dominated by one set of stakeholders, there may be questions of whether the direction and advice could be biased.

## 3. Role after entry into force

Currently, the Partnership sets its own priorities and focus. The Overarching Framework for the Partnership provides an ability to add partnership areas through a defined process outlined in its operational guidelines.

Some areas where the Partnership could contribute after entry into force include:

- information exchange and clearing house activities;
- technical assistance;
- platform to address artisanal and small scale gold mining;
- identification and promotion of alternatives to mercury in products and processes;
- coordination of monitoring efforts.

Some questions include:

- What should the relationship of the COP to the Partnership be?
- Should the Partnership report to the COP?
- Should the COP have the ability to influence the Partnership's direction and priorities?
- How would Partnership initiatives be eligible for funding from the treaty's financial mechanism or other means?

## 4. Reflecting the partnership in treaty text

There is an issue of whether to reflect the Partnership explicitly in the treaty text. An advantage could be that it would establish a formal link between the COP and the Partnership, including in respect to establishing a strategic vision for the Partnership and access to funding. However,

- the Partnership is a voluntary process: specific reference in the treaty, such as designating the Partnership as a subsidiary body, could imply a legal status and could raise difficult institutional and legal questions given the wide range of partners engaged;
- activities of the Partnership will always be within the scope of the treaty: it will be a global legal instrument defining what is allowed and not allowed in relation to anthropogenic sources of mercury;
- Parties who participate in the Partnership will be subject to obligations of the treaty: thus, it could be expected that priorities determined by the COP would be respected by the Parties and reflected in their actions, including those undertaken as part of the Partnership;
- the treaty should be "timeless", i.e., the INC should avoid references and constructs that could be different in future;
- the Partnership should continue to have the ability to adjust its directions and operational modalities without reference to the COP.