

APA: Discussion on how to facilitate implementation of Paris Agreement

New Delhi, 1 June (Indrajit Bose) — Parties to the UNFCCC's Ad Hoc Working Group on the Paris Agreement (APA) exchanged views on facilitating implementation and promoting compliance of the Paris Agreement (PA) at the recently held session of climate talks in Bonn from 16-26 May.

(Under Article 15 of the PA, a mechanism to facilitate implementation and promote compliance was established. It was decided that the mechanism would consist of a committee that shall be “expert-based and facilitative in nature, and function in a manner that is transparent, non-adversarial and non-punitive”. It was also agreed that the “committee shall pay particular attention to the respective national capabilities and circumstances of Parties”.)

The APA is tasked to develop the modalities and procedures for the effective operation of the committee by decision 1/CP.21 (paragraph 103).

The informal consultation on 25 May was co-chaired by **Sarah Baashan (Saudi Arabia)** and **Jo Tyndall (New Zealand)**. The Co-chairs posed two questions to guide the discussions: what key features of a mechanism to facilitate implementation and promote compliance would be appropriate; and what would trigger the work of the committee in the exercise of its functions consistent with its dual role to facilitate implementation and promote compliance, and what actions could the committee take?

China spoke for **G77 and China** and said that the key features of the mechanism were facilitative, transparent, non-adversarial and non-punitive. Particular attention is to be paid to national circumstances and capabilities, it said. The objective of the mechanism is to facilitate implementation and promote compliance. The ways to operationalize and reflect the functions need to be explored. Triggers, China said, could

range from Parties taking it upon themselves, Party-to-Party, and technical experts with clear mandate under the APA. Parties concerned should be kept informed through the process.

India, for the **Like Minded Developing Countries (LMDC)**, said there were dual roles for the mechanism, which included facilitating implementation and promoting compliance. “The mechanism must be facilitative, non-punitive and non-adversarial. The development of the mandated modalities and procedures should fully take in consideration the respective national capabilities and circumstances of Parties, and fully reflect and make operational differentiation between developed and developing countries,” it said.

India also said that the trigger could be based on self-referral by the Party to such a mechanism. Prior to the trigger as well as throughout the process, the committee should carry out full consultations with the relevant Party, it added.

Elaborating on the facilitative role of the mechanism, India said this could be done in two ways. “First is to facilitate Parties’ implementation as a whole and help to identify obstacles that are general in nature and make recommendations to improve implementation. Second, targeted on developing country Parties with less capacity, the committee should help the Party involved to identify obstacles and capacity needs, make recommendations to related bodies under the Convention, such as those under the financial mechanism to provide the support needed, such as financial support, technical or expert support.” India further added that the promoting compliance role of the mechanism was targeted only with respect to developed countries with non-compliance issues.

Saudi Arabia spoke for the **Arab Group** and said

that the drafting of Article 15 had been carefully done. It emphasized that the mechanism's purpose is to "facilitate implementation and promote compliance" and the features were clearly articulated. It said that the articles of the PA are very clear with respect to special circumstances of Parties and these should be the pillars of the operationalization of the mechanism.

Triggers, said Saudi Arabia, should be non-adversarial. "If we are to consider Party-to-Party trigger, it has to be tailored and reflect the non-adversarial nature of the process," it said Saudi Arabia. It further said it sees the committee play a liaison role with the Global Environment Facility and the Adaptation Fund to ensure that Parties are not hindered by lack of support.

Responding to Switzerland's suggestion (see below), Saudi Arabia said that it did not see the role of the Secretariat at this stage as a trigger. "This is a Party-driven process," it stressed, adding that since work is still at the very initial stages, creating links with the transparency framework would be premature. Work should progress organically, Saudi Arabia said.

Mali, for the **African Group**, said that Article 15 defined the scope of the compliance regime and called for other relevant articles in the PA to be linked to it. In developing the mandate, the committee should take into account national capabilities and circumstances, stressed Mali. It added that the new mechanism could learn from the lessons of other multilateral environment treaties, and the features for facilitating implementation should address actual challenges in implementation and it would be important to reflect how to address potential non-compliance, taking into account the national circumstances of Parties. Mali also said that the triggers should be non-adversarial and non-intrusive.

Speaking for the **Least Developed Countries (LDCs)**, the **Democratic Republic of Congo (DRC)** said that for the facilitating implementation features, the committee may address both legally binding and aspirational obligations. "In this regard, the committee may analyze a case where a Party is facing difficulties to meet its obligations, and may recommend and assist to develop a facilitative work plan that includes measures to improve implementation. The committee can facilitate engagement with other bodies under the Convention and provide the necessary support to the Party concerned in meeting its obligations. The committee can address

cases with a view to facilitate the implementation of other relevant provisions in the Agreement, such as the implementation and achievement of nationally determined contributions (NDCs). The idea is that facilitation be an incentive for Parties to disclose early, any potential issues that can lead to non-compliance so that this can be avoided," said DRC.

On promoting compliance, DRC said that the committee would address cases of non-compliance with respect to legally binding obligations. "The committee can acknowledge, by any of the triggers to be agreed upon, that a Party is not complying with its obligations and it may request further information from the Party concerned. In the cases of failing to comply, it may receive the committee's assistance to get back to compliance, depending on the cause, type, degree and frequency of such compliance difficulty, as well as the capacity of the Party whose compliance is in question," said DRC.

Triggers, DRC said, could be self-referral, referral by other individual Parties, referral by groups of Parties, decisions by the committee on the basis of defined criteria or their discretion. The trigger could also be linked to reviews under Article 13 (transparency), DRC added.

Speaking for the **Alliance of Small Island States (AOSIS)**, **Maldives** said it was open to considering whether the mechanism should look at individual compliance or collective compliance. Triggers, Maldives said, could be self-referral, referral by another Party, CMA (UNFCCC Conference of the Parties serving as the meeting of the Parties to the PA) or expert bodies, and added that different triggers would be available for different contexts.

Speaking for the **Independent Alliance of Latin America and the Caribbean (AILAC)**, **Costa Rica** said further definition must be built on the facilitative nature of the mechanism that is non-punitive and non-adversarial. Aspects on modalities and procedures should follow scope, trigger, decision-making, structure, measures or consequences, it said.

Speaking in its national capacity, **China** said Article 15 had the huge task of identifying the legal obligation of Parties in the PA with respect to general implementation and specific compliance. It called for differentiation to be reflected in the process. On triggers, China said that the options were open and it could be Party or other Parties or the CMA, adding that necessary clarification must

be provided before or during the trigger process. It said that the outcome should be facilitative and non-punitive and it would be up to the CMA to decide what measures to take. It said the committee's job is to develop an indicative list. It called for financial and capacity building support for developing countries to fulfill their obligations under the PA. On inter-linkages, it said that needs to be further explored.

On features, the **European Union** said the starting point for the mechanism is it should be transparent, non-adversarial and non-punitive. It stressed that the mechanism should be expert-based, and complementary to the transparency framework and the global stocktake. It further added that the mechanism establishes a holistic approach and that the PA acknowledges that attention needs to be accorded to national capabilities. "We need to further discuss how to give effect to that requirement," said the EU. On triggers, it said any Party should be able to seek and benefit from the mechanism. On potential actions of the committee, the EU said it was too early to discuss this now but it should be non-punitive and consistent with other processes.

Switzerland said it was in favour of a small number of qualified members in the compliance committee and added that the committee should not be misused by politics. It also said that the result of deliberations should be facilitative in nature and where compliance was far, the committee should add to its recommendation a statement of concern. On triggers, Switzerland said that the question of compliance is a question of success and triggers could result from self-declaration or Party-to-Party trigger process, or even the Secretariat could trigger such a process if they assess that a Party is not respecting its legal obligation.

Norway said the mechanism and the committee have different functions. It said promoting compliance means tackling the legally binding individual obligation of Parties and were mainly of a procedural character. The compliance function of the committee should capture aspects of whether Parties are in compliance with their obligations. The main task is to promote Parties' compliance and not punish or sanction them, said Norway. Most cases of non-compliance may be due to a lack of capacity to fulfill their obligations and these challenges could be aired here, it said.

Norway also said that the obligations apply to all Parties. "Certain obligations apply in the context

of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances. Differentiation is addressed in parts of the Agreement, but not in compliance," it said.

It added that facilitating implementation was broader and called for a facilitative forum pertaining to implementation. "Implementation of NDCs is crucial to reaching the long-term goal, but there is no place in the Agreement where Parties can discuss and address challenges in implementing the NDCs," said Norway, adding that this could be connected to the enhanced transparency framework under Article 13 of the PA. Under Article 13, if information shows that Parties face challenges, they could take recourse to the committee, it said further. It also said that particular attention needs to be paid to national circumstances and capabilities of Parties and that would allow for a "certain degree of differentiation".

On triggers, Norway said that the difference in triggers should be considered if the issue is that of implementation or compliance. If it is for compliance, there could be submissions with respect to Parties' own or others' compliance, or the committee could start working on a registry or any new channel based on Article 13. If it is for implementation, it would be done through greater discretion and should be based on voluntary access to the committee, said Norway.

The **United States** said the PA is different from the Convention or the Kyoto Protocol where the multilateral consultative processes developed were not appropriate. It said that the Kyoto model is not appropriate and that Article 15 rejects such approaches. "We need to develop something that works for all of us," said the US. It also said that the mechanism is quite simple and its purpose is to facilitate and promote compliance. It stressed that the committee will work to facilitate and promote compliance by taking into account Parties' national circumstances and capabilities. It also said that the committee should be non-political and added that triggers and outcomes flow together.

Canada said to fulfill the transparent, non-punitive and non-adversarial features of the mechanism it should be simple, effective and uncomplicated, and guarded from politicians. It stressed that while it applies to all, the mechanism should take into account the national circumstances and capabilities of Parties. It said it was open to considering a range of triggers or a

combination of triggers as long as these adhere to the features of the mechanism. Canada also said the committee could facilitate guidance, voluntarily facilitate implementation, plan and advise, and for the mechanism to develop mechanically.

Australia said that technical work should begin to understand what constitutes facilitation and how the section links to the other parts of the Agreement. It said technical analysis could delve more into the question of compliance with what. The mechanism in Article 15 could apply to

Parties' obligations such as updating NDCs and individual reporting obligations as per Article 13 of the PA, it said, adding that the key features of the committee should be to find ways to provide assistance to Parties that did not comply. On triggers, Australia said that the triggers must be active in that the committee should reach out to Parties who were not complying with their individual obligations. The triggers would be passive when Parties request such facilitation, said Australia.