

APA: Interesting exchange on implications of early entry into force of Paris Agreement

New Delhi, 3 June (Indrajit Bose and Meena Raman) — Parties to the UNFCCC's *Ad Hoc* Working Group on the Paris Agreement (APA) had an interesting exchange of views on the implications of an early entry into force of the Paris Agreement (PA) at the recently held session of climate talks in Bonn.

The likelihood of an early entry into force of the PA and its implications became the main focus of discussions held on 25 May at the informal consultations of the APA in relation to the preparations for the entry into force of the Agreement.

The APA is mandated by the decision in Paris (decision 1/CP.21) to prepare for the entry into force of the PA and for the convening of the first session of the Conference of the Parties serving as the meeting of the Parties to the PA (CMA 1).

[The Agreement will enter into force on the 30th day after the date on which at least 55 Parties to the Convention, accounting in total for at least an estimated 55% of the total global greenhouse gas (GHG) emissions have deposited their instruments of ratification, acceptance, approval or accession.]

The concerns of Parties related to two issues regarding the early entry into force of the PA namely: (i) If the PA entered into force by fulfilling the criteria of ratification by 55 Parties accounting for 55 per cent of global GHG emissions, that would enable only those Parties to take decisions relating to the implementation of the PA, while the others who have yet to ratify the Agreement would be excluded from decision-making; and (ii) whether the APA would be able to finish its work by the time the CMA 1 convenes.

The United States (US), at the Bonn session declared that it “will join” the PA this year.

(According to observers, if the US and China

both ratify the PA this year, then about 40% of the global emissions would have been covered and the remaining countries would have to account for the balance of the 15% of the emissions and at least 55 countries must have ratified the Agreement for it to come into force, which is quite a likely scenario.

(Thus far, 17 countries out of the 197 countries that are Parties to the UNFCCC, mainly small island states, have ratified the PA, accounting for only 0.04% of global emissions.)

While a number of Parties, including developed and developing countries, shared the view that an early entry into force of the PA must not affect the ability of those Parties that have not yet ratified the Agreement to participate in decision-making regarding the rules related to the implementation of the PA, there were differing views on how to enable this to happen.

One option that was raised by several Parties was for the COP to continue the work under the arrangements mandated from the Paris decision with the APA, subsidiary and constituted bodies, which requires the first CMA to be suspended.

Several developed countries also called for a definite time frame by when work under the Paris mandates should be completed, suggesting 2018 as a possible timeline.

To help guide Parties in discussions on the matter, on 25 May the UNFCCC Secretariat's Legal Affairs Programme made a [presentation](#) on the matter.

The Secretariat said that when the PA enters into force, the rights and privileges of Parties become effective and it is these Parties alone that can exercise governance, leadership and decision-making of the Agreement. The legal consequence is that the CMA becomes the supreme governing

and decision-making authority and those Parties to the Convention that have not ratified the PA may participate in deliberations, but only as observers, it said further.

The Secretariat explained that the CMA would assume authority of the PA work programme and will be obliged to adopt key decisions on how to move forward, in particular, key decisions on the PA work programme, procedural matters and arrangements to complete the work on the Agreement's unfinished elements, and implementation of the PA would then commence.

"It is highly possible that the PA enters into force this year or next year. If the ratification happens before 7 October (this year), then the CMA can convene in Marrakech," said the Secretariat (referring to the 22nd session of the UNFCCC's Conference of Parties meeting in Marrakech in November this year). This would present the challenge of work on the elements of the Paris work programme not being completed; so the CMA "will have hard decisions to take," explained the Secretariat.

The Secretariat then provided two options to Parties to consider as the way forward.

One option is that the CMA could decide on arrangements to continue work under its own authority, with the assistance of subsidiary and constituted bodies, as well as the APA, subject to a COP decision to continue the APA, since APA's mandate ends with the CMA.

The other option is to request the COP to continue the work under the arrangements in decision 1/CP.21, with the APA, subsidiary and constituted bodies. In this case, the CMA 1 would have to suspend, and resume at subsequent COP(s) to take stock and appropriate decisions. In effect, the lifetime of CMA 1 would be extended until the CMA decides otherwise, said the Secretariat.

The Secretariat also said that there were a number of procedural, institutional and administrative issues for which preparatory work by the APA is required. "These are based on the mandate in the PA as well as its decisions. Some are not elaborated enough. We will need to prepare the provisional agenda of CMA 1. We will need to prepare draft decisions following the precedent of the Kyoto Protocol. We would like to elect additional members to the bureau, including the CMA 1 President, should they host the COP. There may be a number of procedural issues. The CMA will have to take a decision to support the

budget. The APA itself could take these issues within its mandate. The subsidiary bodies could be mandated by the COP, and the Secretariat, within its own mandate, could take up these procedural and administrative matters," said the Secretariat.

Algeria, for the **Like Minded Developing Countries (LMDC)** stressed that early entry into force of the PA (before 2020) must not affect the right and ability of Parties, whether they have signed or ratified the Agreement, to fully participate in the processes established under the COP in relation to the PA, including in the processes of the various subsidiary bodies serving as subsidiary bodies of the CMA under the Paris Agreement.

"To ensure that such Parties are able to fully participate, including in making decisions, the COP should decide to continue the mandates of these various subsidiary bodies, including the APA, coming from decision 1/CP.21 in relation to the PA work programme, until they are concluded and the outcomes brought forward to the COP for recommendation to the CMA, thereby maintaining the status of these bodies as bodies under the COP rather than under the CMA which would then, in turn, allow Parties to the Convention that are not Parties to the PA to fully participate in their work," said Algeria. The timeline for this arrangement should last for as long as the work in these bodies in relation to the PA have not yet been concluded, added Algeria.

CMA 1 will need to be mindful of Articles 16.2 and 18.2 of the PA, which govern the conditions under which Parties to the Convention that are not Parties to the PA may participate as observers in the work of the CMA and the various subsidiary bodies.

(Article 16.2 reads: "*Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the Conference of the Parties serving as the meeting of the Parties to this Agreement. When the Conference of the Parties serves as the meeting of the Parties to this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.*")

(Article 18.2 reads: "*Parties to the Convention that are not Parties to this Agreement may participate as observers in the proceedings of any session of the subsidiary bodies. When the subsidiary bodies serve as the subsidiary bodies of this Agreement, decisions under this Agreement shall be taken only by those that are Parties to this Agreement.*")

In terms of decisions, if the APA and the subsidiary bodies have not yet concluded their

preparatory work that should be delivered for the consideration of CMA 1, clearly CMA 1 cannot take any substantive decisions, said Algeria. “Among the institutional issues that the CMA 1 could consider and decide on may include CMA 1 Bureau membership following Article 16.3, which may therefore require initial preparatory consultations among regional groups. Some administrative issues include administrative reorganization within the Secretariat to provide secretariat support to the CMA 1; and logistical reorganization by the host of the COP in which CMA 1 will take place in order to ensure that the appropriate logistical arrangements, including room availability and scheduling for CMA 1 meetings, are made,” said Algeria.

The LMDC suggested that the chairs of the various subsidiary and constituted bodies to whom mandates were given in relation to the PA under decision 1/CP.21 should make oral and written reports to the APA sitting in formal session in plenary on the progress of their mandated work. “Such reports should also include an identification of the areas in which progress has been made or the work has concluded, areas in which progress need to be accelerated, and areas in which progress is being delayed. On the basis of these reports, the APA could give recommendations on how to ensure coherence, coordination between these bodies and improve their work,” said Algeria.

Mali spoke for the **African Group**, and said it supported the temporary suspension of CMA 1 and stressed that whatever procedure was adopted, it must take into account the effective participation of Parties.

Maldives for the **Alliance of Small Island States (AOSIS)** said that rapid entry into force of the PA should not be a cause for concern, but celebration. The procedural issues should be worked out, it added. “Article 16.2 of the PA establishes the procedure for Parties. Similar negotiations were done in relation to the Kyoto Protocol, where observers were allowed in discussions, but not in decision-making. With respect to decisions by the CMA 1, assuming the work is not completed, a procedural decision on process and an institutional decision for completing the decisions could be taken,” said Maldives.

The **Democratic Republic of Congo (DRC)** spoke for the **Least Developed Countries (LDCs)** and said it was concerned with the proposal to suspend the CMA and request the COP to adopt a decision to let the APA continue

its work as “such an arrangement would become a negative incentive for those of us who are eager and ready to ratify soon”.

It reminded Parties that they could provisionally apply all of the provisions of the PA, pending its entry into force. Both provisional application of the PA and the prompt ratification of the Doha Amendment to the Kyoto Protocol (that established the second commitment period for emissions reductions by Annex 1 Parties) will send a positive signal, said DRC. “Our group would consider such arrangements before we agree to any other arrangements, such as suspending the CMA 1 to allow the APA to continue its work,” it added.

DRC emphasized that Parties should try their utmost to finish work as soon as possible. “We understand that there may be some areas of work that needs further negotiations. We believe that the CMA 1 can take over the unfinished work of the APA to complete the work under its authority. Further, the CMA could mandate the work to the subsidiary bodies and constituted bodies on related outstanding issues. The subsidiary bodies and constituted bodies should report to the CMA as requested by the provisions of the Agreement and the decision 1/CP21,” said DRC.

South Africa underscored the importance of pre-2020 climate action and stressed that Parties must avoid a situation where artificial pressure is created to implement the PA. It said adequate time is needed to develop further guidance and since the existing work is complicated and broader, Parties should allow themselves more time.

It further added that the CMA, and not the COP, would be authorized to take decisions. If only those Parties that have ratified the Agreement would be part of the decision-making process, South Africa said that this “would create an unacceptable situation”. “We are encouraged to hear that the early into force will be guided by non-exclusion. CMA 1 should be suspended and the APA should be mandated by the CMA 1 to continue work. This understanding should be captured in a decision and adopted in COP 22. The timing of the first CMA will depend on when the entry into force happens,” said South Africa.

Brazil said early entry into force is a positive celebration, and suspension of CMA 1 would not be the proper way forward. This could send the wrong political message. The principle of non-exclusion, similar to what was followed in relation to the Kyoto Protocol could help the CMA 1 process. There are substantial issues, which will

need to be considered in CMA 1, and suspension will delay those issues, it said, adding that it preferred an approach that would set a deadline for the finalization of work under the APA.

The **European Union (EU)** said it supported the swift ratification of the PA and would welcome its early entry into force. This, it said, would pose two challenges: there may not be enough time to complete the work, and not all Parties will be able to participate in the development of the work programme.

The EU added that it agreed with those who had said that Parties should not be excluded. It said that Article 16 makes it a legal obligation for the Secretariat to convene the CMA, so the CMA cannot be postponed. Also, the APA must complete its work by CMA 1. The CMA could convene its first session, and adopt a decision to suspend its session and invite the COP to request the APA and other bodies to carry on work, it said, adding that such an arrangement should be time limited. The EU also said that a major part of the work programme is due to conclude in 2018 and the suspension option provides that everyone can

participate. The process should not create a perverse incentive for ratification, the EU said further.

Switzerland said for everyone to be included, the CMA 1 could be suspended. “The transition phase needs a deadline and we have sympathies with this. 2018 might be a reasonable deadline so that all countries have the chance to go through the ratification process and then in 2019 we have Parties to the PA taking decisions,” it added further.

The **United States (US)** said it welcomed the prompt entry into force of the PA and added that it will “join the PA this year”. It was in favour of an inclusive and participatory approach but such accommodation should have a time horizon and that 2018 seemed to be a “reasonable timeline”. The US also said that it saw the CMA 1 allowing the work programme to be launched under the COP.

While **Japan** agreed that Parties should not be disadvantaged with an early entry into force, it did not support the suspension of the CMA 1 forever. Japan proposed 2018 as the deadline.