12 September 2017

Submission by

The Kingdom of Saudi Arabia on behalf of The Arab Group

to the Ad Hoc Working Group on the Paris Agreement (APA) on

Agenda item 7:
Modalities and procedures for the effective operation of the Committee to facilitate implementation and promote compliance referred to in Article 15, paragraph 2, of the Paris Agreement

I. Introduction and Executive Summary

The Kingdom of Saudi Arabia, on behalf of The Arab Group, makes this submission in response to the request of the Co-Facilitators in their Informal Note of 17 May 2017.

The Arab Group affirms and incorporates all of the positions put forward in its paper of 30 March 2017. This new submission is divided into three main sections below:

- First, it expands upon the core principles which the modalities and procedures to be adopted by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement ("CMA") must respect and reflect in its work;

- Second, it addresses each of the three questions raised by the Co-Facilitators in the Annex to their 17 May Informal Note; and

- Third, as invited by the Co-Facilitators in their Informal Note, it addresses other important issues under the agenda item.

This paper may be summarized briefly as follows:

Core principles:

The modalities and procedures to be adopted by the CMA must respect and reflect four core principles:

- First, there can be no modification of the rights or obligations of the Parties under the Paris Agreement.

- Second, a substantive review of Nationally-Determined Contributions ("NDCs") is outside the scope of the Article 15 Mechanism.

- Third, the Article 15 Mechanism must implement the overarching principles of common but differentiated responsibilities and respective capabilities ("CBDR-RC").

- Fourth, the clear textual differences from the Kyoto Protocol mechanism must be given meaning, *i.e*., the Kyoto Protocol mechanism is not an appropriate model for the current exercise.

Responses to the Questions of the Co-Facilitators:

1. Linkages to the Paris Agreement

- Any linkage between the Article 15 Mechanism and other arrangements under the Paris Agreement could be permitted where such links (a) are consistent with the mandate of the Agreement; and (b) are appropriate, efficient, and non-duplicative.

- It would be appropriate to promote linkages to the financial, technical and capacity-building arrangements for the purpose of facilitating implementation of the Agreement.

- As part of its mandate to facilitate implementation of and promote compliance with the Agreement, the Article 15 Mechanism should have the ability to consider the impact of response measures. This would be both consistent with the mandate of the Agreement, as well as appropriate, efficient, and non-duplicative.

- Linkages to either the Global Stocktake (Article 14) or the transparency framework (Article 13) would be inconsistent with the clear mandate of the Article 15 Mechanism.

2. Outputs of the Committee's activity to effectively facilitate implementation and promote compliance

- The output of the Committee process should be limited to assisting the Party concerned in identifying the challenges it faces; sharing of information, experience and lessons learned; providing assistance, information, advice, recommendations and suggestions if requested by the Party concerned; and facilitating access by the Party concerned to, *inter alia*, financial, technical and capacity-building support.

- Any output must also be approved by the Party concerned, consistent with the facilitative, non-adversarial and non-punitive nature of the Article 15 Mechanism. The Committee's output should be advisory and non-binding, and should be provided only to the Party that requested assistance.

3. Operationalizing consideration of national capabilities and circumstances

- Article 2(2) directs that the Agreement must be "implemented" to reflect equity and CBDR-RC. This requirement applies to all forms of implementation, including the establishment of modalities and procedures by the CMA, and all actions taken by the Committee.

- These principles should in no way be limited to procedure, but extend to substantive implementation issues as well. This means that developing countries must be treated differently, taking into consideration such circumstances as the absence of financial, technical and other capacities, at all stages of the process.

- Nor should the CBDR-RC principle be applied on a "case-by-case" basis, an approach that suggests that the Committee, in its discretion, will decide whether, and how, the principle will be applied. Nothing in the text of the Agreement suggests that the application of the CBDR-RC principle can in any way be discretionary.

- The modalities and procedures developed under Article 15 could operationalize equity and CBDR-RC by stating that the Committee's actions shall, where appropriate, include a range of possible actions, including ensuring that any outputs, including advice, recommendations, suggestions or "Action Plans," take full account of the developing

country status of the Party concerned, recognizing its reduced capacity. The modalities and procedures could also provide that any outputs take into consideration the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties, in accordance with Article 4(15) of the Agreement.

Other Issues

- The applicable trigger for the Article 15 Mechanism is critical. To be facilitative, non-adversarial and non-punitive, the Article 15 Mechanism can be triggered solely at the request of a Party that wishes to seek assistance.

- There can be no-third party trigger, whether a Party-to-Party trigger, Committee trigger, Secretariat trigger or CMA trigger.

II. Discussion

A. Core Principles

The core principles advanced in the 30 March Arab Group paper should not be considered as controversial, as they have either been previously accepted by the Parties to the Paris Agreement, or apply by operation of law. The Arab Group highlights each of these core principles below.

1. No modification of rights or obligations of the Parties under the Paris Agreement

The Paris Agreement places important limitations on the mandate of the Article 15 Mechanism. In developing modalities and procedures for the "effective operation" of the Committee, as directed by paragraph 103 of Decision 1/CP.21 (the "COP Decision"),[1] the APA must determine what is "effective" not in the abstract, but rather what is required to give effect to the relevant provisions of the Paris Agreement, particularly Article 15 and Article 2(2).[2]

Article 15(2) places clear parameters around the modalities and procedures that are to be established. Article 15(2) specifies that the Committee must be "expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive," while paying "particular attention to the respective national capabilities and circumstances of Parties." The modalities and procedures must thus be tailored to the limited mandate and function of the Committee, as defined by the Agreement. The development of modalities and procedures cannot be used as a *de facto* renegotiation of Article 15, or as a vehicle for Parties to seek an alternative compliance mechanism that they would have preferred had been adopted in Paris. The limited mandate of the Article 15 Mechanism has been definitively settled by the Agreement.

It should also be emphasized that once the modalities and procedures have been adopted by the CMA, Article 15(3) of the Agreement makes clear that the Committee "shall operate" under them. The role of the APA is to develop principles that will guide the Committee in fulfilling its clearly-defined functions under the Paris Agreement. The Committee will not have unfettered discretion, but rather must act in accordance with the modalities and procedures adopted by the CMA.

Moreover, the obligations of developed country Parties under the UNFCCC, the Kyoto Protocol and the Paris Agreement can in no way be diminished by the modalities or procedures agreed under the Article 15 Mechanism.

[1] Conference of the Parties to the Paris Agreement, Decision 1/CP.21, Adoption of the Paris Agreement, para. 103.

[2] The importance of Article 2(2) is discussed further below.

2. Substantive Review of NDCs is outside the scope of the Article 15 Mechanism

The modalities and procedures to be developed by the APA should confirm that the Committee has no authority to express a position on the substantive content of a Party's NDC. Such an action would be outside the limited mandate of the Committee.

According to Article 15(1), the Committee has a mandate to "facilitate implementation of and promote compliance with" the provisions of the Paris Agreement. As the substantive content of NDCs is nationally determined and non-binding, it is outside the scope of this mandate.

Article 4(2) provides in part that: "[e]ach Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve." This provision reflects a carefully-negotiated balance between the acceptance of treaty obligations and the preservation of the national sovereignty of each Party. This balance must also be maintained in the modalities and procedures to be developed for the Article 15 Mechanism.

Article 4(2) thus imposes a procedural obligation to prepare, communicate and maintain an NDC. The ability of a Party to comply with this procedural obligation could be facilitated, at the request of that Party, under the Article 15 Mechanism. However, the substantive content of each NDC is self-determined, rather than imposed by the Agreement.[3]

The *Vienna Convention on the Law of Treaties*, which codifies customary international law principles of treaty interpretation, refers in its Preamble to important and accepted principles of international law, including the "non-interference in the domestic affairs of States[.]"[4] The Paris Agreement, through express treaty language, has determined that the substantive content of NDCs remains a domestic affair of each State. Subjecting the substantive content of NDCs to the Article 15 Mechanism would constitute impermissible interference in a Party's exclusive, sovereign prerogative to determine this content for itself.

Equally important, a review of the substantive content of NDCs under the Article 15 Mechanism could become adversarial and punitive in nature, contrary to the express language of Article 15(2).

The negotiations for the Paris Agreement succeeded in part because of the consensus to respect the national sovereignty of each Party to determine for itself the substantive content of its NDC. This consensus was memorialized in the treaty text. To subject the substantive content of NDCs to the Article 15 Mechanism, particularly if any third-party trigger is used, would thus undermine a principal foundation of the Agreement.

3. Article 15 Mechanism must implement the overarching principles of CBDR-RC

Article 2(2) of the Paris Agreement is unambiguous: "[t]his Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances." The reference to "this Agreement" shows a clear intention that this directive applies to the Agreement as a whole. The broad reference in Article 2(2) to the requirement that the "Agreement" will be "implemented" to reflect equity and CBDR-RC means that these principles apply both to (i) the establishment of modalities/procedures

[3] This conclusion is reinforced by the inclusion of the hortatory language at the end of the first sentence of Article 4(2), which refers to contributions that a Party "intends" to achieve, underlining its non-binding nature. The second sentence of Article 4(2) similarly provides that Parties shall pursue domestic mitigation measures, with the "aim" of achieving the objectives of such contributions. The hortatory term "aim" reinforces the principle that the substantive content of the domestic mitigation measures is not binding on a Party.

[4] The sixth Preambular paragraph of the *Vienna Convention on the Law of Treaties* refers to "the principles of international law embodied in the Charter of the United Nations, such as… the sovereign equality and independence of all States, [and] of non-interference in the domestic affairs of States….". Vienna Convention on the Law of Treaties Preamble, May 23, 1969, 1155 U.N.T.S. 331.

by the CMA; and (ii) all actions taken by the Committee under these modalities/procedures. Both are forms of implementation of the Paris Agreement.

The key rule of treaty interpretation is set out in Article 31(1) of the *Vienna Convention on the Law of Treaties*: "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[5] The ordinary meaning of "reflect" includes to "embody or represent (something) in a faithful or appropriate way."[6] Thus, as directed by Article 2(2), the Paris Agreement must be implemented to embody, in a faithful or appropriate way, the principles of equity and CBDR-RC.

According to Article 31(2) of the *Vienna Convention on the Law of Treaties*, the "context for the purpose of the interpretation of a treaty" comprises, *inter alia*, "the text, including its preamble…."[7] Article 2(2) was placed by the drafters in the text of Article 2, which sets out the objectives of the Paris Agreement, *i.e*., the drafters used Article 2 to set out principles that apply throughout the treaty as a whole. This structure is intentional and must be respected and reflected in developing the modalities and procedures.

This conclusion is reinforced by the third preambular provision of the Paris Agreement, which states that the Parties are guided by the principles of the UNFCCC, "including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances." Nothing in Article 2(2) suggests any limitation on the scope of this provision.

Moreover, the overarching language in Article 2(2) is reinforced by the more specific direction in Article 15(2) that the Committee "shall pay particular attention to the respective national capabilities and circumstances of Parties." Article 2(2) and Article 15(2), read together, lead to the firm conclusion that the Article 15 Mechanism must implement the principles of CBDR-RC – both in substance and procedure.

This issue is discussed further below in the response of the Arab Group to the third question of the Co-Facilitators.

4. Clear textual differences from the Kyoto Protocol mechanism must be given meaning

Article 15 of the Paris Agreement uses very different language from that of Article 18 of Kyoto Protocol, which requires the establishment of a compliance mechanism under the Protocol.[8] The differing language strengthens the conclusion that the modalities and procedures for the Article 15 Mechanism cannot be based on the compliance procedures and mechanisms established under the Kyoto Protocol.

Under Article 18 of the Kyoto Protocol, the Kyoto CMP was given the mandate to "approve appropriate and effective procedures and mechanisms to determine and to address cases of non-compliance with the provisions of this Protocol, including through the development of an indicative list of consequences, taking into account the cause, type, degree and frequency of non-compliance."[9] By contrast, the Paris Agreement includes no reference either to "non-compliance" or to the "consequences" of such non-compliance. Instead, as noted above, the Article 15

[5] Vienna Convention on the Law of Treaties Art. 31(1), May 23, 1969, 1155 U.N.T.S. 331.

[6] *Oxford English Dictionary* Online, https://en.oxforddictionaries.com/.

[7] Vienna Convention on the Law of Treaties Art. 31(2), May 23, 1969, 1155 U.N.T.S. 331.

[8] Kyoto Protocol to the United Nations Framework Convention on Climate Change art 18, Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, 37 I.L.M. 22 (1998).

[9] Kyoto Protocol to the United Nations Framework Convention on Climate Change art 18, Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, 37 I.L.M. 22 (1998).

Mechanism is intended to "facilitate" implementation and "promote" compliance in a non-adversarial and non-punitive way.

The strikingly different mandates under the Kyoto Protocol and the Paris Agreement mean that the *Procedures and mechanisms relating to compliance under the Kyoto Protocol* (27/CMP.1) [10] cannot be considered as an appropriate model for the Article 15 Mechanism. The Kyoto Protocol procedures provide for an "Enforcement Branch" with the authority to apply "consequences," including the suspension of rights under the Protocol.[11] Such an enforcement model is clearly unsuitable for the Article 15 Mechanism, and is demonstrably beyond the mandate of Article 15(2).

B. Responses to the Questions of the Co-Facilitators

1. *How can potential linkages to other arrangements under the PA be designed to ensure that the Committee operates effectively while still preserving the independence of these arrangements?*

In this section, the Arab Group addresses both permissible and impermissible linkages to other arrangements under the Paris Agreement.

In the view of the Arab Group, any linkage between the Article 15 Mechanism and other arrangements under the Paris Agreement could be permitted where such links (a) are consistent with the mandate of the Agreement; and (b) are appropriate, efficient, and non-duplicative.

Permissible linkages

Linkages to finance, technology and capacity-building arrangements

It would be appropriate to provide linkages to the financial, technical and capacity-building arrangements for the purpose of facilitating implementation of the Agreement. Such links should allow the Committee to assist Parties in obtaining financing and technical assistance as well as building capacity, and thus assist the Committee in facilitating a Party's implementation of its obligations under the Agreement.

Linkage to forum on response measures

As part of its mandate to facilitate implementation of and promote compliance with the Agreement, the Article 15 Mechanism should have the ability to consider the impact of response measures. Article 4(15) of the Agreement, using mandatory language, states that:

> Parties shall take into consideration in the implementation of this Agreement the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties.[12]

[10] Kyoto CMP Decision 27/CMP.1, *Procedures and mechanisms relating to compliance under the Kyoto Protocol* https://unfccc.int/files/kyoto_protocol/compliance/application/pdf/dec.27_cmp.1.pdf

[11] Ibid, Section V(6), XV(5).

[12] This provision of the Paris Agreement reflects the important principles established in Article 4(10) of the UNFCCC:

> The Parties shall… take into consideration in the implementation of the commitments of the Convention the situation of Parties, particularly developing country Parties, with economies that are vulnerable to the adverse effects of the implementation of measures to respond to climate change. This applies notably to Parties with economies that are highly dependent on income generated from the production, processing and export, and/or consumption of fossil fuels and associated energy-intensive products and/or the use of fossil fuels for which such Parties have serious difficulties in switching to alternatives.

Such an approach would also be consistent with the importance ascribed to the impact of response measures by the COP Decision. Part III of the COP Decision memorializes the Parties' "Decisions to give effect to the Agreement." This includes paragraph 33, which records that the COP:

> *Also decides* that the forum on the impact of the implementation of response measures, under the subsidiary bodies, shall continue, and shall serve the Agreement[.][13]

Paragraph 34 states that the COP:

> *Further decides* that the Subsidiary Body for Scientific and Technological Advice and the Subsidiary Body for Implementation shall recommend, for consideration and adoption by the Conference of the Parties serving as the meeting of the Parties to the Paris Agreement at its first session, the modalities, work programme and functions of the forum on the impact of the implementation of response measures to address the effects of the implementation of response measures under the Agreement by enhancing cooperation amongst Parties on understanding the impacts of mitigation actions under the Agreement and the exchange of information, experiences, and best practices amongst Parties to raise their resilience to these impacts[.][14]

Thus, the SBSTA and the SBI are to recommend, for adoption by the CMA, the modalities, work programme and functions of the forum on the impact of the implementation of response measures.

The Arab Group also notes that the eighth Preambular paragraph of the COP Decision acknowledges "the specific needs and concerns of developing country Parties arising from the impact of the implementation of response measures and, in this regard, decisions 5/CP.7, 1/CP.10, 1/CP.16 and 8/CP.17[.]"[15]

Thus, it would be entirely appropriate to establish a linkage between the Article 15 Mechanism and the forum on response measures – an "institutional arrangement" within the meaning of Article 19 of the Agreement – as this would be both consistent with the mandate of the Agreement, as well as appropriate, efficient, and non-duplicative.

<u>Impermissible linkages: No linkage to Global Stocktake or Transparency Framework</u>

Linkages to either the Global Stocktake (Article 14) or the transparency framework (Article 13) would be inconsistent with the clear mandate of the Article 15 Mechanism.

The Global Stocktake under Article 14 will assess the "collective progress" of the Parties towards achieving the purpose of the Paris Agreement and its long-term goals. An important individual undertaking at issue under Article 14 is a Party's NDC. Linking the Article 15 Mechanism to the Article 14 arrangement would thus be contrary to a core principle – that the substantive review of NDCs is outside the scope of the Article 15 Mechanism.

United Nations Framework Convention on Climate Change, art. 4(10), May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.

[13] Conference of the Parties to the Paris Agreement, Decision 1/CP.21, *Adoption of the Paris Agreement*, para. 33.

[14] Conference of the Parties to the Paris Agreement, Decision 1/CP.21, *Adoption of the Paris Agreement*, para. 34.

[15] Conference of the Parties to the Paris Agreement, Decision 1/CP.21, *Adoption of the Paris Agreement*, Preamble.

Nor should the results of the Global Stocktake be used in the Article 15 Mechanism. Article 14(3) specifies how the outcome of the Global Stocktake may be used:

> The outcome of the global stocktake shall inform Parties in updating and enhancing, in a nationally determined manner, their actions and support in accordance with the relevant provisions of this Agreement, as well as in enhancing international cooperation for climate action.

Thus, there are two specified outcomes for the Global Stocktake: (i) to "inform" Parties in updating and enhancing their actions and support; and (ii) to enhance international cooperation for climate action. This is an exhaustive list. If the Parties intended a third use for the Global Stocktake – such as input for the Article 15 Mechanism – Article 14(3) would have so specified. It did not.

Moreover, use of the results of the Global Stocktake as part of the Article 15 Mechanism would create a significant risk of politicizing what should be an apolitical, fact-based procedure. Such a result would be contrary to the non-adversarial, non-punitive process mandated by Article 15(2).

Similarly, as stressed by the Arab Group in its March 30 submission, the Article 13 transparency framework cannot and must not be linked to the Article 15 Mechanism. The Article 13 transparency framework provides for a technical expert review process. Reviewing the same information under Article 15 would clearly be duplicative.

Moreover, the perception by Parties of the independence of the Committee is critical to its effective functioning. Depending on whether the Committee itself will have trigger rights, linkage to Article 13 and Article 14 could negatively affect the perceived independence and impartiality of the Committee. Linkage to either Article 13 or Article 14 could be seen by a Party as providing a source of information that could trigger action by the Committee. If the Committee itself has trigger rights, it may well be seen as not fully independent or impartial in any subsequent examination of the implementation issue of a Party.[16]

Finally, the Arab Group does not consider it possible for there to be a linkage between Articles 13 or 14 while preserving the independence and effectiveness of those arrangements. Such a linkage could negatively affect the approach a Party takes either towards developing its NDC for purposes of the Global Stocktake, or reporting under the transparency framework.

For example, a Party that perceives the Article 15 Mechanism as tied to, and possibly triggered by, the results of the Global Stocktake or the individual Party's success in meeting its NDC, would be less likely to put forward an ambitious NDC. Similarly, linkage to the Article 13 transparency framework could threaten the independence and effectiveness of that arrangement. For example, a Party that perceives the Article 15 Mechanism as tied to, and possibly triggered by, the results of the transparency framework (including the individual Party's success in meeting its NDC) would have less of an incentive to be candid in its reporting and less of an incentive to put forward an ambitious NDC.

2. *What kind of outputs of the Committee's activity would effectively facilitate implementation and promote compliance, and how?*

In its March 30 paper, the Arab Group identified appropriate outputs for the Article 15 Mechanism, consistent with the limited scope of the Committee's mandate:

[16] This further underscores the importance of the principle that as the Article 15 Mechanism has a mandate to be facilitative, non-adversarial and non-punitive, the process should be triggered solely at the request of the individual Party that has opted to seek assistance from the Committee. See section C below.

> The end-result – the "output" – of this voluntary, self-triggered process should be limited to assisting the Party concerned in identifying the challenges it faces; sharing of information, experience and lessons learned; providing assistance, advice, recommendations and suggestions if requested by the Party concerned; and facilitating access by the Party concerned to, inter alia, financial, technical and capacity-building support.

To be facilitative, as mandated by Article 15, the outputs must be as apolitical as possible, focused on advice and recommendations, if requested by a Party. Measures that seek to apply political pressure are inimical to effective implementation and compliance and would be outside the mandate of the Committee. The measures must encourage means by which the Party itself could enhance its compliance – not punish it for non-compliance. As stressed by the Arab Group in its March 30 paper, the outputs of the Committee cannot include findings of non-compliance, sanctions or penalties. Statements of concern, early warnings, and "caution letters," are equally unacceptable and outside the scope of Article 15.

Any output must also be approved by the Party concerned, consistent with the facilitative, non-adversarial and non-punitive nature of the Article 15 Mechanism. The Committee's output should be advisory and non-binding.[17]

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[17] See, for example, Conference of Parties to the Basel Convention, Decision VI/12. *Establishment of a mechanism for promoting implementation and compliance*, para. 19 as follows:

> The Committee shall consider any submission made to it in accordance with paragraph 10 with a view to determining the facts and root causes of the matter of concern and, assist in its resolution. As part of this process, the Committee may provide a Party, after coordination with that Party, with advice, non-binding recommendations and information relating to, *inter alia*;
>
> a) Establishing and/or strengthening its domestic/regional regulatory regimes;
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> b) Facilitation of assistance in particular to developing countries and countries with economies in transition, including on how to access financial and technical support, including technology transfer and capacity-building;
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> c) Elaborating, as appropriate and with the cooperation of the Party or Parties faced with the compliance problems, voluntary compliance action plans, and review their implementation. A voluntary compliance action plan may include benchmarks, objectives and indicators of the plan, as well as an indicative timeline for its implementation;
>
> d) Any follow-up arrangements for progress reporting to the Committee, including through the national reporting procedure under article 13.
>
> Advice, non-binding recommendations and information other than those listed in subparagraphs (a) to (d) above should be provided in agreement with that Party.

http://www.basel.int/Portals/4/Basel%20Convention/docs/meetings/cop/cop6/english/Report40e.pdf#page=45;

Moreover, although never formally adopted, the UNFCCC Conference of the Parties, Decision 10/CP.4 *Multilateral Consultative Process*, para. 6, is nevertheless instructive:

> Mandate of the Committee
>
> 6. The Committee shall, upon a request received in accordance with paragraph 5, consider questions regarding the implementation of the Convention in consultation with the Party or Parties concerned and, in light of the nature of the question, provide the appropriate assistance in relation to difficulties encountered in the course of implementation, by:
>
> a) Clarifying and resolving questions;
>
> b) Providing advice and recommendations on the procurement of technical and financial resources for the resolution of these difficulties;
>
> c) Providing advice on the compilation and communication of information.

Paragraph 12 provides further:

> The conclusions and any recommendations of the Committee shall be sent to the Party or Parties concerned for its, or their, consideration. Such conclusions and recommendations shall be consistent with the mandate as described in paragraph 6 above. They may include:
>
> (a) Recommendations regarding cooperation between the Party or Parties concerned and other Parties to further the objective of the Convention; and

3. How would the consideration of national capabilities and circumstances of Parties be operationalized in the modalities for the operation of the Art 15 Committee?

As stressed above, Article 2(2) applies to the Agreement as a whole. The Arab Group reiterates that as the Agreement must be "implemented" to reflect equity and CBDR-RC, this requirement applies to all forms of implementation, including the establishment of modalities and procedures by the CMA, and all actions taken by the Committee.

These principles, as stated above, should in no way be limited to procedure, but extend to substantive implementation issues as well. This means that developing countries must be treated differently, taking into consideration such circumstances as the absence of financial, technical and other capacities, at all stages of the process.

Nor should the CBDR-RC principle be applied on a "case-by-case" basis, an approach that suggests the Committee, in its discretion, will decide whether, and how, the principle will be applied. Nothing in the text of the Agreement suggests that the application of the CBDR-RC principle can in any way be discretionary. To the contrary, the use of the phrase "will be implemented" in Article 2(2) makes clear that CBDR-RC is mandatory and that it applies to the Agreement as a whole. Article 2(2) requires that CBDR-RC be reflected in all aspects, including the design and the implementation of the modalities and procedures.

The modalities and procedures developed under Article 15 could operationalize equity and CBDR-RC by stating that the Committee's actions shall, where appropriate, include the following:

- providing assistance to the Party concerned during the Committee process;
- providing additional time, if needed, for developing countries to reply to any request for information;
- facilitating access by the Party to information, finance, technology, and support for capacity building;
- ensuring that any outputs, including advice, recommendations, suggestions or "Action Plans," take full account of the developing country status of the Party concerned, including, where applicable, recognizing its reduced capacity;
- ensuring that any outputs take into consideration the concerns of Parties with economies most affected by the impacts of response measures, particularly developing country Parties, in accordance with Article 4(15) of the Agreement; and
- ensuring that any outputs are subject to the express consent of the Party concerned.

C. Other Issues

As noted above, the Arab Group reaffirms and incorporates all the positions set out in its March 30 paper. However, one issue of particular importance is that of the applicable trigger for the Article

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(b) Measures that the Committee deems suitable to be taken by the Party or Parties concerned for the effective implementation of the Convention.

http://unfccc.int/resource/docs/cop4/16a01.pdf#page=42 .

See also the reference to Kyoto Protocol Facilitative Branch outputs, cited by the Arab Group in its March 30, 2017 submission.

The Arab Group reiterates that any reference to specific provisions of other MEAs, either in this paper or its 30 March paper, should not be interpreted as a recommendation that the compliance mechanism from those other treaties be adopted, in whole or in part, for the Article 15 Mechanism. The procedures from other MEAs can be instructive, but the Article 15 Mechanism will have its own, unique structure arising from the Paris Agreement.

15 Mechanism. As this issue was not included in the Annex to the May 17 Informal Note of the Co-Facilitators, the Arab Group wishes to expand on this key point.

Article 15(2) provides an overarching, principled approach on this issue by specifying that the Article 15 Mechanism must be facilitative, non-adversarial, and non-punitive. Only a self-trigger can meet these conditions. To be facilitative, non-adversarial and non-punitive, the Article 15 Mechanism can be triggered solely at the request of a Party that wishes to seek assistance. For these reasons, there can be no-third party trigger, whether a Party-to-Party trigger, Committee trigger, Secretariat trigger or CMA trigger.

A third-party trigger of any kind would be contrary to the express requirement in Article 15(2) that the Article 15 Mechanism not be adversarial or punitive. Moreover, third-party triggers can – and are often intended to – apply political pressure on another Party. Any third-party trigger would be contrary to the Article 15 prohibitions and would politicize the process.

* * *

The Arab Group looks forwarding to working with other Parties to develop modalities and procedures that faithfully reflect the clear mandate of the Paris Agreement, particularly Article 15 and Article 2(2).