



Unanimity or standing aside? Reinterpreting consensus in United Nations Framework Convention on Climate Change negotiations

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Abstract

What is the meaning of ‘consensus’ within and beyond the UNFCCC? What alternative interpretations of consensus are available based on consensus facilitation practice and related literature? This article assesses the mismatch between how the UNFCCC interprets consensus and its broader interpretation in the facilitation practice literature, and proposes a way forward using the concept of ‘standing aside’ more prominently. The restrictive consensus interpretation has far-reaching implications for the ability of the world’s central climate regime to be fit for purpose, i.e., facilitating multilateral climate action. The analysis of consensus in the UNFCCC points to the central problems of unpredictability and ambiguity in the determination that consensus exists. Many negotiators and chairs acknowledge the problem of predominantly interpreting consensus as unanimity and have subsequently sought ways to address the damage it does through ad hoc rulings that consensus exists sometimes by ignoring the expressions of objection; however, this comes at the expense of a good predictable process.

Keywords United Nations · Negotiations · Climate governance · Consensus · Decision-making · UNFCCC

Abbreviations

COP25 25th Conference of the Parties
CBD Convention on Biological Diversity

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DSU	Dispute Settlement Understanding
EU	European Union
IPCC	Intergovernmental Panel on Climate Change
GHG	Greenhouse gas (emissions)
NDCs	Nationally determined contributions
SB	Subsidiary Body
UN	United Nations
UNCLOS	UN Convention on the Law of the Sea
UNEP	UN Environment Programme
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNITAR	UN Institute for Training and Research
WTO	World Trade Organization

1 Introduction

Progress towards the implementation of the Paris Agreement and limiting global temperature increases to 1.5–2 °C has been inadequate (IPCC 2021). Despite the initial negotiation success of the Paris Agreement, the slow progress of the 25th Conference of the Parties (COP25) in Madrid 2019, COP26 in Glasgow and COP27 in Sharm El Sheikh make it clear that the United Nations Framework Convention on Climate Change (UNFCCC) negotiations have entered an ever more challenging phase that requires all countries to agree to, commit to and implement increasingly ambitious climate policies.

While the UNFCCC still operates without formally agreed rules of procedure, there is a shared understanding that decisions are made by consensus (UNFCCC, 1996). Consensus has been often interpreted as unanimity (meaning no expressed opposition)—thus giving each of the over 190 countries a *de facto* veto (Michaelowa, 2015; Pentz & Klenk, 2020; Vogel, 2014). While the unanimity approach equips the UNFCCC with a very high level of legitimacy as no country can be ignored (Friman, 2016), a unanimity interpretation makes it very difficult to move beyond the lowest level of ambition to which all countries can agree (Chan, 2021; Lall, 1985). This in turn frequently results in deadlocks (Monheim, 2015; Narlikar, 2010). Considering the urgency of the climate crisis, the UNFCCC’s decision-making approach could be better equipped to deliver on effective climate governance.

The facilitation and multilateral negotiation literature has a long-established interpretation of consensus, which includes the presiding officer practice of asking parties whether they are willing to ‘stand aside’. Standing aside means that once all parties’ positions and concerns have been heard, understood and considered in forming a proposal and as long as all can ‘live with’ the proposed decision, countries express their opposition and then abstain rather than object (Lall, 1985; Susskind, 1999). This results in the central research puzzle why the UNFCCC uses a narrow interpretation of consensus, interpreting consensus as not existing as soon as one party expresses opposition. We find that presiding officers can move away from the unanimity interpretation of consensus through a more robust use of ‘standing aside’. The international environmental agreements and earth system governance literature provide deep insights into the governance mechanisms of the 1992 Rio Conventions (UNFCCC, Convention on Biological Diversity, Convention on Desertification). However, aside from passing references to the problematic effects of the ‘*de facto* veto right’ (Friman,

2016; Michaelowa, 2015; Monheim, 2015), it has widely accepted and reproduced the interpretation of consensus as unanimity while very rarely critically questioning the reasons, underpinning legal bases in international law and, most of all, the appropriateness of the practice given the urgency of the climate crisis.

We address two central research questions: How is 'consensus' determined to exist within and beyond the UNFCCC? and What alternative interpretations of consensus are available through precedents in negotiation practice and based on the international negotiation literature? In addressing these questions, we make two novel contributions to the international environmental agreements literature. First, we examine and provide a theoretically informed discussion of the meaning of consensus and, second, propose avenues based on established facilitation practice for how presiding officers could more explicitly invite parties to consider 'standing aside'. This would allow countries to agree and deliver on more ambitious climate action while maintaining a high level of input and output legitimacy with regard to hearing and considering the differing perspectives of sometimes a very small number of countries with opposing positions.

This has far-reaching implications for how presiding officers and negotiators approach the process of consensus finding. Earlier research points towards the important role of presiding officers and their ability to build trust (Walker & Biedenkopf, 2020) and steer the negotiation process (Monheim, 2015), but it lacks in-depth understanding of *how* this can be achieved in line with the UNFCCC's party-driven process and consensus-based decision-making.

Presiding officers use their discretion to determine when consensus exists, but there is little guidance on this point (for detailed background on the evolution of UNFCCC negotiations and decision-making, see Allan et al. 2017; Depledge, 2005; Monheim, 2015; Yamin & Depledge, 2004). One step to improve the UNFCCC decision-making process is reconsidering our understanding of when consensus is deemed to exist towards a more expansive and, in our view, accurate interpretation of consensus. This change is within the discretion of presiding officers right now and therefore does not require an official change to the UNFCCC Rules of Procedure, which would likely be unsuccessful, given the challenges to date with even adopting those rules.

Our methodology includes the analysis of UNFCCC texts as well as a comprehensive and systematic review of the international law/facilitation literature on consensus. The UNFCCC findings are furthermore informed by 14 years of observation at the UNFCCC negotiations from 2009 until 2022, including COP15 in Copenhagen, COP21 in Paris, COP22 in Marrakesh, COP23 in Bonn, COP25 in Madrid, COP26 in Glasgow and COP27 in Sharm El Sheikh, in addition to regular observation of Intersessional Subsidiary Body meetings in Bonn between 2010 and 2022.

We proceed in three parts. We clarify how consensus is interpreted by the international law and facilitation literature as including 'standing aside', as well as propose a conceptualization of consensus along a continuum with 'opposing the proposal' at one end, 'general agreement including standing aside' in the middle and 'unanimity' at the other end. In the second part, we evaluate how consensus has been interpreted since 2009, creating a number of precedents that open up a presiding officer's scope for more explicitly incorporating 'standing aside'. Before concluding, the third part makes recommendations for presiding officers that would assist the quality, speed and transparency of decision-making and increase trust in the UNFCCC process.

1.1 The meaning of consensus

Consensus exists when there is general agreement on a proposal being considered by a group. It develops when all views have been heard, understood and considered, and a decision emerges that each party can accept or can live with (Fernandez & Puyana, 2016). It entails that all parties work together to make the best possible decision for the group. Consensus decisions are most effectively achieved when there is commitment to common goals, and alternatives are discussed and evaluated. Each party will be assessing their own best alternative to a negotiated agreement (Fisher & Ury, 1983; Gamble, 2010) and sharing their underlying needs. All parties are heard and every party can address their concerns (Lechner, 1988). Decisions made by consensus tend to reflect a spirit of mutual cooperation and thus are often easier to implement and are respected more faithfully by parties (Lall, 1985, p. 6).

After full discussion, there are three potential responses to a proposal in decision-making using consensus: one can be in favor, stand aside or oppose. Being in favor means that parties support the proposal and express this through speaking in support of the proposal and then by remaining silent when the presiding officer asks whether there are any objections. Standing aside is used when parties do not fully support the proposal or perhaps do not support it at all, but are willing to yield to the desire of the rest of the group for any number of reasons (Bressen, 2012). These can include that the issue is not important to them or that they have brokered a deal in exchange for standing aside on this matter in order to get something they want in another aspect of the negotiations. Standing aside is usually expressed by silence at the time of decision-making or parties may express concerns or disagreements, but clarify they will not oppose. Opposition refers to the expression of such strong disagreement with the proposal that they need to put their will over the will of the group (Bressen, 2012), meaning that consensus does not exist.

There is a clear difference between consensus and unanimity, though each requires that there be no dissenting voice (Vignes, 1975). A decision is unanimous when all parties are fully in agreement (Stevenson, 2015). Consensus means there is general agreement in which some may disagree, though not strongly enough to block the adoption of the proposal. The final decision may not be the first preference of any individual in the group, and many may not even like the result. It is, however, a decision to which they consent because they know it is the best decision for the group (Lechner, 1988; Skjærseth, 2021).

Where rules of procedure are not specific regarding what consensus means in a particular negotiation context, it falls to the presiding officers to interpret whether consensus exists. Usually this is done by asking, 'Are there any objections?' and hearing none, the presiding officer will declare the proposal adopted. Presiding officers can exercise considerable power given that in most cases 'the informal powers of a presiding officer are neither codified nor really limited—whatever serves the purpose of the conference and is accepted by the participants may be undertaken' (Lang, 1989, p. 39).

Consensus has differing interpretations by presiding officers. A narrow interpretation sees any objection as evidence of lack of consensus—in other words, interpreting consensus as requiring unanimous support. With this interpretation, if any party expresses opposition, the proposal is considered not accepted. This maximizes the protection of parties' sovereignty, legitimacy of the decision and awards parties broad leeway to advance their political interests by having the power to stop and/or block the negotiation process until their objections have been addressed (Brunnée, 2002; Friman, 2016). This

sovereignty-based interpretation is, however, problematic from a normative Kantian perspective if the international problem under consideration can have devastating consequences to the opposing country itself and the international community, and is driven by domestic short-term interests. Also, it inhibits the exploration that helps a party to move beyond its original position based just on national self-interest to an understanding of common interests. Too narrow an interpretation of consensus reduces the effectiveness of the process and its ability to arrive at an ambitious outcome capable of addressing the problem requiring a multilateral agreement in the first place (Vogel, 2014).

Another way to interpret consensus is to stress its ‘general agreement’ definition and make explicit use of ‘standing aside’: once a country’s objections have been heard, understood, considered and efforts have been made to address their concerns and they are still objecting, the party can be asked if they are willing to ‘stand aside’, thus allowing the proposal to be accepted (Butler & Rothstein, 1987) (Fig. 1).

Negotiators need predictability in how consensus is interpreted. The negotiation/consensus facilitation literature suggests three standards for the declaration of consensus (see Bressen, 2012; Butler & Rothstein, 1987; Susskind, 1999):

First, an inclusive consensus-building process needs to have taken place that is based on sufficient time and creativity. Presiding officers and negotiators allow the time needed to hear, understand and consider the interests of all parties. Creative means are needed to try to meet all interests of all parties. They may include full group or smaller meetings before the negotiations to identify values, areas of agreement and areas of strongly conflicting positions. Developing consensus requires careful listening, sharing of needs, discussion and evaluation of options. These allow the identification of ways forward which may not have been what any party originally considered, but through careful consideration, a new formulation can emerge that has the support of all or an overwhelming number of nations. Every nation should be able to answer in the affirmative that their concerns were fully heard, understood and considered in coming to the final proposal (Susskind, 1999).

Second, parties that cannot support the motion will ‘stand aside’. If, after full participation in a consensus-building process, objections are still held by a small minority, those nations may agree to ‘stand aside’. Standing aside means to agree to disagree, to be willing to let a proposal be adopted despite unresolved concerns (Butler & Rothstein, 1987). Consensus exists when all parties support the decision even if for some parties, it is not their favored decision but they can live with it.

Third, there are no declarations of formal opposition to the proposal. If such declarations exist, and a party is not willing to stand aside, then consensus cannot be deemed to exist (unless parties are ignored as discussed below). While ultimately a party can formally oppose a proposal for any reason, consensus only works when parties understand that such objections are not just matters of preference, but rather that there is something bigger at stake. An example of this is whether the proposal would in some way jeopardize the goal or fundamental values and integrity of the negotiations. This articulates the higher standard for objection inherent in consensus, much higher than simple national preferences (Lall, 1985; Susskind, 1999).

Fig. 1 Consensus continuum in multilateral negotiations



While no rule or interpretation of rules can stop a party intent on being obstructive, encouraging ‘standing aside’ does provide a face-saving path for a party with strong objections (for domestic or any other reasons) to state their concerns, stand aside and allow the world to move forward. Standing aside could be explained in response to the chair/presiding officer’s request and as a contribution to an effective negotiation process (Friman, 2016).

2 The interpretation of consensus in the UNFCCC negotiations

2.1 UNFCCC rules of procedure

Most UN bodies and organs, including the General Assembly, base their decisions on majority voting anchored in the UN Charter (Higgins et al., 2017). In setting up the UNFCCC process, parties to the convention did not reach agreement on the Rules of Procedure due to disputes on Draft Rule 42/Voting (UNFCCC 1995). Rule 42 includes the statement that ‘The Parties shall make every effort to reach agreement on all matters of substance by consensus’ (UNFCCC, 1995, p. 12). While these words are in bold, signalling that they are not approved, it is the voting elements that were contentious. After a number of unsuccessful attempts to adopt the Rules of Procedure, the UNFCCC established a working practice and common norm of using consensus as its default basis for decision-making (Kemp, 2016) with the exception of decisions for which voting rules are set out in the Convention (e.g., adoption of amendments).

The meaning of consensus is not defined by the UNFCCC (Yamin & Depledge, 2004). Determining whether consensus exists and a decision can be adopted is one of the most significant tasks for a COP President or Subsidiary Body (SB) Presiding Officer, who is mandated by Rule 23.1 of the Rules of Procedure to announce decisions (Yamin & Depledge, 2004). By the time the Kyoto Protocol was negotiated in 1997, the use of the draft Rules of Procedure was well established and consensus was interpreted most often as a *de facto* veto right for any of the over 190 parties to the Convention (Friman, 2016; Kemp, 2016).

A different interpretation of consensus (Depledge, 2005; Yamin & Depledge, 2004) would allow the benefits of consensus to be retained while ending the conflation of consensus with unanimity. An exchange that took place at one of the SB informal meetings in Bonn in June 2019 is exemplary of a unanimous interpretation of consensus within the UNFCCC. Discussions on a matter had been going on for some time and were stalled without agreement:

The presiding co-facilitator spoke: ‘Despite a full discussion, we have not come to agreement and as I’m hearing no new views, I suggest we go into informal informals [discussions without observers] to develop a way forward’.

One of the negotiators requested to speak. When called upon the negotiator said, ‘As this is a party-driven process, it is important that the presiding officer not overstep and we oppose the movement into informal informals’.

The presiding officer responded, ‘All right. We will continue in this informal session’. (UNFCCC, Bonn, June 2019)

In this exchange, the expression of opposition by one party was considered enough to stop a proposal, in this case from the presiding officer. The one expression of opposition with no reasons given was enough to veto the co-facilitator’s process recommendation,

exemplifying the unanimity interpretation of consensus. This differs from the wider view of consensus decision-making that sees opposition as part of the process and not necessarily determinative of a rejected proposal. Using the latter approach, the objecting party's reasons would have been requested, other party opinions sought, efforts to adapt the proposal to meet all needs made, and if the objection remained and the rest of the room supported moving to informal informals, then the objecting party would be asked whether their objection was so substantial to be worth overruling the will of the room. In response, the objecting party would maintain their objection or if they were willing, to state their objection and then stand aside.

2.2 What is the meaning of consensus in the UNFCCC?

The UNFCCC Draft Rules of Procedure do not define consensus. While consensus decision-making is used in other UN bodies, the UN does not define what consensus means and how to assess whether it exists. Among the few UN documents that speak to the meaning of consensus (e.g. UNEP 2004; UNGA 2017; UNITAR 2005), the most precise source is the UNFCCC Guide for Presiding Officers (UNFCCC, 2017). This guide states that 'the United Nations Convention on the Law of the Sea (UNCLOS) and the Dispute Settlement Understanding (DSU) of the World Trade Organization (WTO) (Annex 2 of the WTO Agreement) are the only international legal instruments that provide a definition of the term "consensus"'. The Guide highlights the following:

Article 161.7(e) of UNCLOS states that 'consensus' means 'the absence of any formal objection'.

Article 2, paragraph 4, of the DSU stipulates that the Dispute Settlement Body (DSB) shall take decisions by consensus. A note to this provision states that 'the DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision'.

(UNFCCC, 2017, p. 11)

The Guide further cites a memorandum from the Legal Counsel of the UN to the Executive Secretary of the Convention on Biological Diversity (CBD) dated 17 June 2002 and quoted by UNEP in relation to the Montreal Protocol on substances that deplete the ozone layer dated May 2013:

In United Nations practice, the concept of 'consensus' is understood to mean the practice of adoption of resolutions or decisions by general agreement without resort to voting in the absence of any formal objection that would stand in the way of a decision being declared adopted in that manner (...) In this connection, it should be noted that the expressions 'without a vote', 'by consensus' and 'by general agreement' are, in the practice of the United Nations, synonymous and therefore interchangeable. Adoption in this manner does not mean that every State participating in the meeting or conference is in favour of every element of the resolution or decision. States so participating have the opportunity, both prior to and after the adoption, to make reservations, declarations, statements of interpretation and/or statements of position (...) Provided that the State concerned does not formally object to or challenge the existence of consensus or call for a vote on the resolution or decision, it is understood that consensus or general agreement is preserved.

(UNEP, 2013, page 46)

A UNITAR glossary includes the additional idea that consensus is determined to exist by the presiding officer ‘in the light of the views expressed by delegations and his/her assessment of the “sense of the meeting”’ (UNITAR, 2005).

According to the above resources, decision-making by consensus is broadly seen to have these attributes: (1) it takes place by general agreement, without resort to voting; (2) consensus exists if there are no formal objections or challenges to a decision being announced; (3) consensus is not the same as unanimity, in that it does not require all states to be in favor of all aspects of the decision; and (4) consensus is determined to exist by the presiding officer based on their ‘sense of the meeting’.

However, the definition of consensus remains unclear (Depledge, 2005; Park, 2016). What is not defined is how much agreement constitutes ‘general agreement’ and what manner of ‘formal objection’ needs to be recognized by the presiding officer as a successful challenge to the existence of consensus.

Like the presiding officer in the earlier-described scenario at SB50 in 2019, most have interpreted consensus as meaning without objection of any kind. This interpretation suggests that consensus is the same as unanimity; in other words, if there is any objection expressed, consensus cannot exist. This interpretation slows the negotiation process down, reduces the chance of agreement and also has the impact of reducing ambition to address climate change for if procedural or substantive proposals are regularly put aside because of the expression of dissent by one party, parties will have more hesitancy to develop those ideas—their energy is better spent elsewhere. This was evident in the comment of Mohammed Nasheed, the President of the Maldives, at COP17 in Durban 2011:

The current negotiation process is stupid, useless and endless. It is based on this principle: two parties reach an agreement, a third one comes along and says it doesn’t agree and it reduces the ambition of the others.

(Vihma, 2015, p. 1)

Other presiding officers have drawn a distinction between unanimity and consensus. While there appears to be agreement that consensus means that all may not be in favor, if, at the time of final decision-making, parties who object are willing to be silent, there have been times when consensus has been declared even with the existence of vocal objection. Perhaps the most famous example was in Cancun in 2010 when the COP16 President, Patricia Espinosa, presided over the final session. Bolivia, believing they did not go far enough, formally objected to (what became) the Cancun Agreements. The President stated:

Consensus requires that everyone is given the right to be heard and have their views given due consideration, and Bolivia has been given this opportunity. Consensus does not mean that one country has the right of veto, and can prevent 193 others from moving forward after years of negotiations on something that our societies and future generations expect.

(Patricia Espinosa, COP16/Cancun)

Then she brought down the gavel to applause and cheers. This action by the President shows a clear disagreement with the interpretation of consensus that would have allowed one party, included fully in the process of careful deliberations but who did not believe the agreements was ambitious enough, to block what was the overwhelming will of those in the room. This decision is believed to have had such broad support because of the extensive work of the President to engage all parties in the build up to the COP and in the formulation of the Cancun Agreements (Allan et al., 2017). Opening the space for negotiating

parties to express their position increases the trust and ‘builds the bridge’ in consensus-building (Castro, 2020).

Perhaps using Cancun as guidance, two years later in Doha the COP18 President did not recognize Russia, who requested to speak, but gavelled through the approval of the Doha Amendment (Allen et al. 2017, p. 66). Again, the widely felt need for a decision empowered the presiding officer to ignore opposition. COP18 President Al-Attayah said he had decided to adopt a majority decision, adding that prolonging discussions would have been like ‘opening Pandora’s box’. As then UNFCCC Secretary-General, Christiana Figueres said, ‘The voice of Russia was heard very clearly by all countries, before and after the adoption of the text. The objection was very clear to everyone, but it would have been a change to the text that would not have allowed for those texts to be adopted’ (King, 2012). At the final minutes of Paris COP21, French COP President Laurent Fabius put Nicaragua’s request for intervention on hold and only gave Nicaragua the floor after the gavel came down, marking the adoption of the historical Paris Agreement (Massai, 2019).

Especially since COP16 in Cancun 2010, there appears to be more flexibility in the interpretation of consensus (Park, 2016; Vihma, 2015). While ignoring objections is a choice with precedent, it has several problems as it violates some principles of good process such as respect, alignment with core UN values and predictability. It undermines respect and the UN’s core belief in the equality of states because it ignores a party. This was expressed by Bolivia who termed the decision at the final meeting of COP16 a betrayal of ‘the democratic principles’ and ‘core values of the UN’ (Vihma, 2015, p. 5). Presiding officer discretion is important and processes are weakened when they become less respectful and predictable, so there is a balance to be struck here. Consequences for future negotiations can include lack of ownership in the final agreement, future obstruction of the process and erosion of faith in the UNFCCC process. A more explicit invitation to stand aside may have made a difference in these situations by allowing a very strong but not proposal-defeating objection to be made by unsatisfied parties. The perception of disrespect can precipitate retaliatory disruptive acts. An example of this may be when Russia, who was ignored in their objections in the adoption of the Doha Work Program at COP18, then blocked the opening of workshops of the following negotiations at the Bonn Subsidiary Body meetings in June 2013 (McDonald, 2013).

2.3 The central role of presiding officers

Acting with impartiality is central to the work of a COP President or other presiding officer. The presiding officer influences the negotiations by guiding the behavior of parties to a shared outcome, in particular through small group consultations that only include the disagreeing parties who can be cajoled to agreement through trade-offs or compromise propositions. The presiding officer’s mandate to ‘announce decisions’ (UNFCCC Rules of Procedure, 1996: 23.1), provides a broad scope to interpret whether consensus exists, even without explicitly asking parties whether they are willing to stand aside. Presiding officers are required to judge the parties’ underlying interests when voicing an objection.

The adoption of crucial decisions, e.g. the Kyoto Protocol, the Cancun Agreements and the Paris Agreement, is owed to the presiding officers’ discretion to ignore what would have been objections that could have led to the failure of the proposed agreements/protocols. Deeming a party, who is voicing opposition, to have stood aside (as in these examples) happens rarely and only in situations where a lot of investment has already been made in hearing the parties fully earlier in the process and where progress is widely considered

essential. It requires negotiation skills, tactical moves, a high level of experience, an inclusive leadership style and in particular trust by the parties in the presiding officers.

In the years following the failure of the COP15 summit, not to a small part attributed to the lack of familiarity with the Rules of Procedure by the Danish Prime Minister Rasmussen (Michaelowa & Michaelowa, 2012, p. 528), the number of precedents increased in which presiding officers shifted towards an interpretation of consensus in which they acted as if the objecting parties had stood aside. The Mexican Presidency successfully guided to adoption the Cancun Agreements by preventing a veto and arguing that consensus is not unanimity (Park, 2016). The ambiguity surrounding the concept of consensus entails that the presiding COP President has some freedom in interpreting whether a party has a formal objection or is discontent while still allowing a decision to go forward (Friman, 2016). This happened in Cancun and was perceived as a creative interpretation of the decision-making rule of the UNFCCC, and accepted by the parties with sighs of relief and standing ovations (Park, 2016). Had Patricia Espinosa as COP16 President interpreted Bolivia's objection as veto and let the Cancun Agreements fail, it would have caused irreparable damage to the UNFCCC, which was already considered to be on 'life support' following the failure of Copenhagen. This could have even marked an historical turning point ending the UNFCCC process and with it the hope of arriving at a post-Kyoto Agreement that would limit global temperature increases to below 2 °C.

This, however, makes the process reliant on the chair/presiding officers' acumen, experience and foresight at best and, at worst, can lead to inconsistency and distrust, and thus threatens both process and output legitimacy of the UNFCCC negotiation process as a high level of unpredictability becomes inherent. Parties do not know how the chair/presiding officer will interpret consensus and whether objections will result in the interpretation of a *de facto* veto. This could lead to the failure of an international treaty negotiated in good faith, a delay to the negotiations to better understand and ideally resolve the underpinning reasons for the objection so that the party could 'stand aside' or uncertainty if parties' objection will be simply ignored and the agreement be adopted regardless.

3 Recommendations and Conclusion

3.1 Recommendations for reinterpreting consensus within the UNFCCC

The central role and leeway of presiding officers leads to a number of options, based on precedents, for how UNFCCC negotiations could become more effective, and more predictable in their interpretation of consensus. We recommend establishing the norm of standing aside as a standard step in the process of determining whether a negotiation has arrived at consensus. This would improve process and outcome legitimacy as parties can expect a 'fair hearing' and a chance to fully voice their objections with less risk of unravelling the UNFCCC process altogether.

Our general recommendation is for presiding officers to use an interpretation of consensus that distinguishes consensus from unanimity and provides standing aside as an explicit option. Both the UNFCCC Guide for Presiding Officers (UNFCCC, 2017) and the increasing number of precedents by presiding officers using their discretion point to an understanding that consensus does not mean unanimous support, but rather means that all parties have had an opportunity to participate in coming to the best possible decision that all can live with.

More specifically, the forward movement of decision-making and predictability of the process would be stronger if presiding officers developed a practice of explaining the difference between unanimity and consensus (involving standing aside), and explicitly asking parties whether they are willing to stand aside in bigger and especially (given their higher frequency) in smaller decisions.

Also, decision-making would be stronger if presiding officers explained the option for a party of strongly stating their opposition, then standing aside. This would support parties to represent their countries but not stop others from moving forward when there is broad support for a motion or proposal. If after an inclusive proposal development process and full discussion, there appears to be broad support for a proposal and opposition is expressed by only one or a few parties, the presiding officer could respond by confirming with parties if views have been fully heard, understood and considered. If a party responds 'No', the party is given an opportunity to share briefly what part they do not believe has been considered. At the discretion of the presiding officer, other parties may be called upon at this point to share if they have heard, understood and considered the first party's views or other means to remedy this actual or perceived lack of inclusion. If the party does believe their views have been considered, the presiding officer moves to the next question asking whether the party is willing to state their concerns about the decision, but stand aside allowing the decision to be approved. This means the party can live with the decision, while it is acknowledged by all that this is not the party's preferred decision. As is the case now, any parties standing aside may have their concerns noted in the reporting of the final decision. Alternatively, the chair could ask whether the objection is serious enough to stop all other parties from making this decision that appears to have overwhelming support. A party would take this route if their opposition is not just the nation's preference, but that this decision would undermine the UNFCCC goal or integrity of the UNFCCC process. Parties could be encouraged to maintain this high standard for a formal objection if they believe that to allow the decision to go forward would jeopardize the UNFCCC purpose and process; however, if their objection is anything less than that, a party would be expected to stand aside.

Finally, to support the implementation of these options within consensus facilitation, the UNFCCC Guide for Presiding Officers could outline these points. This approach could be included within any training received by presiding officers. Even without such institutional support, individual presiding officers can use a more explicit explanation of 'standing aside' within the processes they facilitate.

3.2 Conclusion

In this article we addressed two central research questions: What is the meaning of consensus outside and within the UNFCCC? What alternative interpretations are available through precedents in negotiation practice and based on the international negotiation literature? Given the lack of an official definition of consensus and how it is to be facilitated, there is a need to develop procedural norms including those to assist presiding officers in the interpretation of consensus guidance on what informs a facilitator's 'sense of the room'. Currently we see a tendency to equate consensus with unanimous support, so guidance to presiding officers to make a more robust use of 'standing aside' would assist in reinforcing that there can be strong vocal opposition and consensus still be found to exist.

There is momentum moving away from consensus equalling unanimity towards more robust acknowledgement that standing aside is essential for consensus to work. This was

exemplified by the former Executive Secretary Christiana Figueres when she emphasized that ‘to reach agreement no one can leave the table with 100% of what they wanted, but everyone should leave with something that is important to them’ (Christiana Figueres, quoted in Allan et al. 2017, p. 6). The process would be even stronger if the approach described above would become a norm and thus be used regularly by presiding officers. This would mean that after objections have been fully expressed and solutions fully explored, presiding officers would routinely ask parties who are objecting on matters large or small if they would be willing to ‘stand aside’ and allow the rest of the world to move forward in developing needed agreements to address climate change.

Data availability The relevant documents underpinning the analysis are referenced in the bibliography.

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