

RE-INTERPRETING CONSENSUS: A NEW TOOL IN THE APPROACH TO IMPROVING UNFCCC NEGOTIATIONS

CONSENSUS DOES NOT MEAN UNANIMITY

An important avenue to improve the UNFCCC decision-making processes is reconsidering the interpretation of the definition of consensus. Many presiding officers have interpreted consensus as meaning that no party objects; in other words, if any party expresses opposition to something, then consensus cannot be declared. This interpretation suggests that consensus is the same as unanimity; in other words. This is at odds with recent UNFCCC interpretation and the interpretation of consensus in civil society.

The interpretation that equates consensus with unanimity has negative consequences as it slows the negotiation process, reduces the chance of agreement, frustrates negotiators and reduces ambition, as expressed by Mohammed Nasheed, the President of the Maldives in 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)

This brief proposes the UNFCCC presiding officers use a test for consensus that includes a clear articulation of the option of “standing aside” and the circumstances in which a party needs to “block” consensus. Use of this interpretation would assist the quality, speed, negotiator satisfaction and transparency of decision-making and build trust in the UNFCCC process. Refinement in the UNFCCC interpretation of consensus is especially needed because time is of the essence, and justice requires forward movement, in addressing the climate emergency.

THE VALUE OF CONSENSUS

Key attributes have made consensus a common form of decision-making in multilateral agreements (Yamin & Depledge 2004, Susskind 1999, Wiredu 1995):

- Consensus requires listening to all voices – it respects the sovereign authority of all states to be part of developing a decision;
- All needs are considered and responded to creatively;
- It reduces open displays of disagreement;
- Decisions have greater support since they reflect the desire of all or most and not just the majority.

THE MEANING OF CONSENSUS WITHIN THE UNFCCC RULES OF PROCEDURE

While consensus is the process for decision-making presented in the draft UNFCCC Rules of Procedure (1996 Rule 42) and is used in many other UN bodies, nowhere is it defined fully what consensus means and how to assess if it exists. Among the few UN documents that speak to the meaning of consensus, the most helpful is the UNFCCC Guide for Presiding Officers 2017: 11-12). There is also guidance in a glossary of terms for UN delegates (UNITAR 2005: 38). In these resources, decision-making by consensus is broadly defined as having these attributes:

- It takes place by general agreement, without resort to voting;
- Consensus exists if there are no formal objections, or challenges to a decision being announced;
- Consensus is not the same as unanimity, in that it does not require all states to be in favour of all aspects of the decision;
- 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.

CONSENSUS DOES NOT REQUIRE THERE TO BE NO OBJECTION

Sometimes consensus has been declared even with the existence of vocal objection. Some presiding officers have drawn the distinction between unanimity and consensus. Perhaps the most famous example was at COP16 in Mexico in 2010 when the COP President, Patricia Espinosa, presided over the final session of the Cancun COP. Bolivia formally objected to the “Cancun Agreements,” and 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.”

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, despite being included in the process of careful deliberations and consideration of the views of all parties, 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 what became the Cancun agreements (Allan et al. 2017: 39).

Especially since Cancun, there appears to be more flexibility in the interpretation of consensus (Park 2016: 791f, Vihma 2015: 11). Perhaps guided by Cancun, 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: 66). 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 adoption of the historic Paris Agreement (Massai 2019).

GOOD CONSENSUS PROCESS REQUIRES ACKNOWLEDGEMENT OF OBJECTIONS

As the closing moments of the COPs in Mexico, Doha and Paris demonstrate, ignoring objections is a choice with precedent. It has severe problems however, as it violates the following principles of good UN process:

- **Respect:** Decision-making which ignores a party does not demonstrate the mutual respect which is a foundation of any productive negotiation;
- **Alignment with core UN values:** Those who have had their objections ignored, like Bolivia at the final meeting of COP16 termed the decision a betrayal of 'the democratic principles' and 'core values of the UN' (Vihma 2015: 5); and,
- **Predictability:** If consensus sometimes is interpreted as requiring no objection and other times not, decision-making will lack predictability.

When these values are set aside, consequences for future negotiations can include lack of ownership in the final agreement, future obstruction of the process and erosion in faith in the UNFCCC process.

USE "STANDING ASIDE" AND SET A HIGH STANDARD FOR FORMAL OBJECTION

How can the UNFCCC presiding officers interpret consensus as requiring general agreement (but not unanimity) and also have the respect, alignment with UN values and predictability in how consensus is interpreted? There is much guidance beyond the UN on this question (Susskind 1999; Bressen 2012; Butler 1987) which aligns with what has been shared in this Policy Brief and refines further three requirements for a declaration of consensus:

- **An inclusive consensus-building process requiring time and creativity has taken place.**
Presiding officers and negotiators have allowed the time needed to hear and consider the interests of all parties. Creative means were used to try to meet all interests of all parties. Careful listening allowed the identification of possibilities which may not have been what any party originally considered, but through careful consideration, a new formulation emerged 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.
- **Parties that cannot support the proposal "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. Consensus exists when all support the decision even if it for some parties, it is not their favoured decision but they can live with it.
- **There are no declarations of formal opposition to the assembly making the proposed decision.**
A formal objection means not just that a party would prefer a different decision, but that they cannot allow the meeting to make this decision. Reasons justifying a formal object could include belief that the proposal would jeopardize the goal, fundamental values or integrity of the negotiations or that the decision could challenge a party's ability to continue participating in the negotiations. Believing an agreement does not go far enough, for instance (as was the case with Bolivia at COP16), would not be seen as a reason to maintain formal opposition to the point of blocking a decision. Consensus sets a high standard for formal objection, much higher than simple national preferences.

We recommend that UNFCCC presiding officers use the full process of consensus. This means that if, after an inclusive proposal-development process and full discussion, opposition is expressed by only one or a few parties, the presiding officer would ask parties the following questions:

- **“Do you feel your 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. This speaks to a flaw in the process that can be remedied with further discussion. If the party responds “Yes,” the presiding officer moves to the next question.
- **“Are you willing to state your concerns about this 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. If the party says “Yes,” consensus exists; the parties standing aside may have their concerns noted. If the party says “No,” the presiding officer moves to the next question.
- **“Is your objection serious enough to stop all other parties from making this decision that appears to have overwhelming support?”** Parties are encouraged to maintain this high level of formal objection if they believe the consequences of making the decision would be significant, e.g., that it would jeopardize the UNFCCC or the party’s continued participation; however, if their objection is anything less than that, a party will “stand aside.”

CONCLUSION

While no rule or interpretation of rules can stop a party intent on being obstructionist, this interpretation of consensus does create a face-saving path for a party with strong objection (for domestic or any other reasons) to clearly articulate their strong objection yet still stand aside and allow the rest of the parties to move forward. Refinement in the interpretation of consensus is especially needed because time is of the essence and justice requires forward movement, in addressing the climate emergency.

RECOMMENDATIONS:

- **At the end of an inclusive consensus-building process, when there is overwhelming, but not unanimous support for a proposal, the UNFCCC presiding officers use the full process of consensus decision-making. This includes:**
 - Asking if all feel their concerns have been heard, understood and considered
 - Checking to see if those with concerns are willing to stand aside
 - Clarifying that any party not willing to stand aside needs an objection greater than their national interest, something so fundamental that to allow the majority to proceed would, for instance, jeopardize the UNFCCC process.
- **The Guide for Presiding Officers be amended to provide guidance on how to respond to expressed objection using the full process of consensus decision-making.**

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