

## **Framework for the Future? Exploring the Possibility of Majority Voting in the United Nations Framework Convention on Climate Change (UNFCCC)**

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The United Nations Framework Convention on Climate Change (UNFCCC) is struggling in its attempts to address the threat of anthropogenic climate change and create an effective post-Kyoto international climate agreement. One substantial part of the problem is consensus decision making within the Convention, which effectively gives every party a veto over the process. Majority voting is one potential alternative which is already being discussed within the UNFCCC. A comparative analysis of consensus and majority voting suggests that majority voting is superior in terms of both efficiency and effectiveness since it is a better consensus-builder, a speedier decision making process and provides opportunities for a semi-global approach to international climate policy. The objective in this paper is to investigate how majority voting could be implemented in the UNFCCC and to consider politically feasible and effective approaches to voting arrangements for the Convention. An overarching framework of systems dynamics through the use of influence diagrams, causal loop analysis and systems archetypes is used. Implementing majority voting in the Convention faces legal, political and institutional obstacles. While voting has growing support from some states, others remain staunchly opposed, with concerns over voting on financial matters being particularly sensitive. A type of Layered Majority Voting with larger majorities for financial and substantial matters is considered to be the optimal approach in balancing political feasibility and effectiveness. A weighted voting system differentiated on the basis of mitigation commitments, vulnerability and population (Common but Differentiated Voting) is proposed as an ideal, but currently unfeasible, approach. Despite these possibilities a change in decision making will likely require a crisis to catalyse the necessary political will and break the current path dependency that has been built around consensus.

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## 1 Introduction

The United Nations Framework Convention on Climate Change (UNFCCC- the Convention) is the cornerstone of the international climate regime complex. Despite its central role and importance, the Convention has struggled to achieve any lasting or effective agreement towards its aim of avoiding dangerous anthropogenic climate change. Consensus decision making has been identified as one of the key reasons for these shortcomings as it sacrifices effectiveness in favour of legitimacy.<sup>1</sup> Consensus itself has no clear legal definition under the Convention. It is generally employed as ‘negative consensus’ or ‘unanimity’, i.e. the absence of a stated objection implies agreement.<sup>2</sup> Accordingly, consensus as practiced in the UNFCCC is simply the absence of a veto.<sup>3</sup> The UNFCCC currently uses consensus as a

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<sup>1</sup> Biermann and Gupta 2011; Schroeder, Boykoff, and Spiers 2012.

<sup>2</sup> LRI 2011.

<sup>3</sup> Bodansky 2009.

default rule since in 1991 the proposed official rules of procedure were blocked by Saudi Arabia in 1991 at the last Intergovernmental Negotiating Committee directly before the first Conference of the Parties (COP).<sup>4</sup> ‘Draft Rule 42’ which specifies options for majority voting, was used as the basis for this action to allow Saudi Arabia to maintain a veto, or at least the threat of one, within the ongoing negotiations.<sup>5</sup> The Convention has now been operating for 20 years in a legal vacuum for decision making. In the absence of specific rules on decision making there has been a general understanding amongst parties that consensus is needed for the adoption of substantive decisions.<sup>6</sup> This situation is hindering progress in the current negotiations.

The recent history of the UNFCCC is one scattered with diplomatic failures in decision making. The Copenhagen Accord could not be adopted by consensus and was widely seen as a failure in terms of both process and outcomes.<sup>7</sup> COP16 in Mexico in 2010 achieved an agreement mainly through the skilful diplomacy of the Mexican chairs and their liberal interpretation of consensus with agreement being declared despite the protests of Bolivia. At COP18 agreement was achieved at the expense of Russia, whose objections were ignored at the final plenary session.<sup>8</sup> These declarations of false consensus are a clear example of ‘rule beating’, behaviour which appears to be in line with the rules but is actually actively distorting the system and progress towards goals.<sup>9</sup> The attainment of this recent false consensus has proven costly. Russia in 2013 blocked the progress of the Subsidiary Body for Implementation (SBI) for a full two weeks at the Subsidiary Bodies meeting in Bonn.<sup>10</sup> They did so by vetoing the adoption of the official agenda, demanding the addition of an item discussing decision making and procedural matters. While its embarrassment at COP18 was clearly a motive, Russia made some valid points and has reignited interest in decision making in the UNFCCC. Business-as-usual-decision making in the UNFCCC clearly needs to be reconsidered if progress is to be made.

One concept that has been presented as a way forward for the Convention is using majority voting. Mexico and Papua New Guinea have recently proposed a move towards majority voting through amendments to articles 7 and 18 of the Convention.<sup>11 12</sup> Discussions on this proposal at COP17, COP18 and COP19 have been unsuccessful thus far and consensus is still employed within the negotiations. Despite the importance of this issue and the attention it is receiving within the UNFCCC there has been no sustained analysis of how majority voting could be implemented into the UNFCCC or other multilateral environmental agreements (MEAs) within the academic literature.

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<sup>4</sup> Michaelowa and Luomi 2012.

<sup>5</sup> Depledge 2008.

<sup>6</sup> Yamin and Depledge 2004.

<sup>7</sup> Bodansky 2010.

<sup>8</sup> Stowe, 2012.

<sup>9</sup> Meadows 2008.

<sup>10</sup> Kemp, 2013.

<sup>11</sup> UNFCCC 2011.

<sup>12</sup> It should be noted that this proposal, and most proposed voting arrangements, use voting as a last resort when all efforts to reach consensus have failed.

Voting and decision making rules are crucial leverage points for the design and reform of international institutions. Voting arrangements are key to determining who legitimately controls an institution and its outcomes.<sup>13</sup> Yet many other MEAs are affected by the same lack of official rules of procedure. The Convention on Biological Diversity<sup>14</sup>, the Stockholm Convention<sup>15</sup> and the Rotterdam Convention<sup>16</sup> all currently operate with ‘interim’ rules and consensus processes due to disputes over voting.<sup>17</sup> Future arrangements within the UNFCCC could influence decision making in these MEAs as well as in newly created environmental bodies. Some scholars<sup>18</sup> have advocated for a form of qualified majority voting or weighted voting to be employed within a proposed future World Environment Organisation (WEO). Voting is not just of importance to the Convention, but will likely have ramifications for the wider realm of environmental governance.

## 2 Approach

This research will explore the issue of voting in the UNFCCC through the following questions:

1. *Is majority voting more efficient or effective than consensus?*
2. *What are the institutional barriers to and opportunities in changing decision making processes, particularly towards voting procedures, in the UNFCCC?*
3. *How can majority voting be implemented within the UNFCCC? What is the most politically feasible approach to voting arrangements for the Convention? What could be an ideal form of voting, regardless of current political circumstances?*

In the first of four stages of analysis I conduct a comparative review of consensus and voting. I then provide a legal, political and institutional examination of the barriers and opportunities for a change from consensus to voting were before discussing a number of different voting scenarios. I will focus on output legitimacy, rather than ‘input’ legitimacy, by examining decision making systems based on their ability to allow the Convention to meet its core objective of avoiding the dangerous impacts of anthropogenic climate change. The reason for this is both for analytical clarity (issues of legitimacy have been thoroughly explored elsewhere in the literature)<sup>19</sup> and because the legitimacy of the UNFCCC is more

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<sup>13</sup> Koremenos, Lipson, and Snidal 2001.

<sup>14</sup> Young 2002.

<sup>15</sup> UNEP 2012.

<sup>16</sup> Ibid.

<sup>17</sup> For both the Rotterdam Convention and Stockholm Convention the disputed clause on voting is under Draft Rule 45. For the Convention on Biological Diversity the contested text is listed under Draft Rule 40.

<sup>18</sup> Biermann 2000; Olsen and Elder 2012; Esty and Ivanova 2001.

<sup>19</sup> Stevenson and Dryzek 2012. Schunz and Bruyninckx 2011.

likely to be undermined by a lack of results (output legitimacy) rather than procedural injustices (input legitimacy).<sup>20</sup>

Data were collected through 13 semi-structured interviews with key informed negotiators, academics and secretariat officials (present and former), as well as observations from negotiations and interactions at COP18 (November, 2012), COP19 (November, 2013), the 38<sup>th</sup> session of the subsidiary bodies (June, 2013) and the second session of the ADP (April, 2013). My analysis draws upon Historical Institutionalism and Systems Thinking to create a hybrid methodology. I make use of the concept of “Path Dependency” from Historical Institutionalism to help explain change and inertia within the UNFCCC. Path dependency suggests that the trajectories of institutions are largely determined by foundational choices which constrain future change and often reinforce the existing institutional model.<sup>21</sup> Systems thinking through influence diagrams are used to depict the overall system of institutional barriers and opportunities for change in decision making and to generate scenarios for future change. Influence diagrams are visual representations of interacting variables within a system produced from blending and analysing interviewee worldviews. Within the diagrams arrows show the flow of influence between different variables, where variables are issues or changeable system aspects.<sup>22</sup> Polarities display how one variable affects the rate of change in another variable. Accordingly a ‘+’ indicates an increase in the rate of change in the next variable. Influence diagrams allow for the identification of important complex system features such as feedback loops and leverage points.

This paper provides a novel methodological contribution through the application of systems thinking dynamics and causal loop analysis (as well as other Human Ecology tools such as Resilience Thinking) to issues of international environmental governance. Moreover, while there have been calls for an exploration of decision making and new voting systems in regards to international environmental governance<sup>23</sup> and the climate regime<sup>24</sup>, such an examination and suggestion of alternatives has been overlooked thus far. Analysis of implementing majority voting within an MEA, and the proposal of unique voting systems based on this investigation, address a key lacuna in the study of decision making within Earth System Governance.

It should be noted that while this analysis is state-centric by nature, it also attempts to incorporate historical and institutional dimensions, as well as a systems perspective, in order to view consensus within the climate regime as a hegemonic discourse or project<sup>25</sup>. The emergent properties and behaviour of the UNFCCC as a system is indicative of how consensus decision making as a practice and discourse has shaped (and been influenced by) the self-governance and conduct of state actors through the Convention.

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<sup>20</sup> Vihma 2011, 7.

<sup>21</sup> Thelen 1999.

<sup>22</sup> Proust and Newell 2010.

<sup>23</sup> Biermann 2012; Biermann and Gupta 2011.

<sup>24</sup> Depledge and Yamin 2009.

<sup>25</sup> Bulkeley and Schroeder 2012.

### 3 Efficiency: Building Consensus in the Shadow of a Vote

The idea that voting is more efficient and quicker than consensus in reaching outcomes is relatively uncontroversial. The basic reasoning is that 193 countries, all with vetoes, addressing a controversial and complex global problem, does not equal a successful agreement, let alone a great deal of speed or efficiency.<sup>26</sup> Similar sentiments have been expressed in regards to the practice of consensus with the World Trade Organisation (WTO)<sup>27</sup>. Former WTO director-general Pascal Lamy has branded the practice of consensus as “medieval” and stated that “there is no way to structure and steer discussions amongst 146 members in a manner conducive to consensus (...). The decision making need(s) to be revamped”.<sup>28</sup> Even within the Council of the European Union, where voting is allowed, the qualified majority voting threshold of 74% has been criticised by scholars as too high, making it less effective efficient and unfairly biased towards the status quo, particularly with the enlargement and increasing diversity of EU membership.<sup>29</sup> The EU itself recognised the problems of consensus within a large and diverse group and, through the Treaty of Nice, attempted to accompany an expansion in membership with an extension of voting to areas previously covered by consensus.<sup>30</sup> The tendency for unanimous decision making to be restricted by the least enthusiastic party has been dubbed the “Law of the Least Ambitious Program”<sup>31</sup>, leading to ‘lowest-common denominator’ outcomes and serving the interests of the least ambitious party. Biermann et al.<sup>32</sup> highlight that political science has shown majority voting to be a speedier, more efficient process than consensus, namely because a stalemate cannot be maintained by an individual or small number of parties. Depledge and Yamin suggest that voting can also help “filter out “filter out extreme, frivolous, repetitive, or filibustering proposals”.<sup>33</sup>

One lesser acknowledged benefit of voting is that it can act as a consensus builder. Voting often acts as a deterrent to blocking, a kind of ‘nuclear threat’ that encourages compromise.<sup>34</sup> In consensus decision making the objecting party can simply maintain a veto until its demands are met. There is little incentive to compromise, leading to consensus often being “the best decision rule least likely to produce consensual behaviour.”<sup>35</sup> Voting switches the emphasis away from minority blockers and gives greater leverage to the majority. The threat of a vote often forces the least ambitious to become more accommodating.

Many international institutions with majority voting have never had to use it. Both the Montreal Protocol and Global Environmental Facility (GEF) are notable examples of environmental agreements which have majority voting but have passed all decisions by

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<sup>26</sup> Vihma 2011.

<sup>27</sup> Pauwelyn 2005; Tijmes-Lhl 2009; Low 2001.

<sup>28</sup> Denny, Elliott, and Munk, 2003.

<sup>29</sup> Baldwin et al. 2001; Leech 2002.

<sup>30</sup> Baldwin et al. 2001.

<sup>31</sup> Hovi and Sprinz 2006, 28.

<sup>32</sup> Biermann et al. 2010.

<sup>33</sup> 2009, 447.

<sup>34</sup> Ibid.

<sup>35</sup> McGann 2004, 14.

consensus.<sup>36</sup> Hovi and Sprinz<sup>37</sup> observe that out of a large sample size of international institutions the majority (79%) practice consensus, but only a minority (47%) actually have it codified into their rules. It is a recurring phenomenon for international bodies with formal voting procedures to practice consensus.<sup>38</sup> The Council of European Council has a well-known ‘culture of consensus’<sup>39</sup>: explicit voting is rarely done in the council<sup>40</sup> and when it does occur it is usually only due to the dissent of a single party.<sup>41</sup> Unsurprisingly, countries generally prefer to avoid conflict and reach consensual agreement rather than resort to a vote. The shadow of a vote hanging overhead, like a procedural Sword of Damocles, provides a condition that is more conducive to consensus outcomes than consensus is.

#### 4 Effectiveness: Critical Mass Governance

Voting in most cases should lead to either more progressive or no worse agreements than consensus would. While voting is more efficient, the issue of whether it leads to substantially different results than consensus is more difficult to ascertain.<sup>42</sup> Consensus and voting may lead to the same results simply at different rates. Arguably, transferring power away from blockers and building consensus could lead to progressive decisions where deadlock would otherwise exist. Some interviewees expressed concerns that if a country was outvoted on certain issues it would simply refuse to abide by the decision or to implement it. It should be noted that institutions generally have mechanisms in place to ensure that this does not occur. The EU, for example, has a collection of incentives and penalties designed to encourage states to stay within the Union even when they are on the losing end of an important vote. However the UNFCCC is quite different and would need to develop the necessary institutional infrastructure, such as strong carbon markets, financial incentives, or compliance mechanisms to encourage adherence with voting outcomes. Yet the possibility that some states would either drop out of the Convention or a treaty due to objections over substance is not necessarily a negative one. While some may view it as a potential weakness, a semi-global approach could prove to be ultimately more effective in achieving the aims of the Convention.

Voting could produce more progressive outcomes through allowing for decision making and implementation by a semi-global, critical mass of countries within the regime, an entire treaty or specific areas. Such a form of ‘Critical Mass Governance’ (CMG) could take one of three different forms within the UNFCCC: 1. The entire regime operates by a critical mass of countries, while those who are unwilling to work by voting drop out of the regime (this will be analysed later); 2. A treaty could work by a critical mass whereby a large segment of countries create a semi-global agreement that is not watered down to appeal to the

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<sup>36</sup> UNEP 2007; del Castillo 2009.

<sup>37</sup> 2006.

<sup>38</sup> Lockwood Payton 2010.

<sup>39</sup> Heisenberg 2005, 82.

<sup>40</sup> Mattila and Lane 2001; Mattila 2004.

<sup>41</sup> Ibid 2009.

<sup>42</sup> Lockwood Payton 2010.

participation of recalcitrant states, or; 3. Voting is used within specific issues under a treaty (or within separate ‘operational protocols’) in order to allow individual negotiating tracts and issues to move forward by a semi-global critical mass.

The creation of a ‘critical mass’ agreement which avoids the issue of appealing to the USA and other traditional laggards could be possible and preferable. This is important to consider since the desire to appease certain parties has led to a history of watered-down and inadequate agreements. An example of this is the history of the participation of the USA. As the largest developed country emitter, and an economic superpower, the USA is in a key position to take a leadership role on addressing climate change. Unfortunately, instead they have undermined the climate regime on numerous occasions, including signing the Kyoto Protocol and subsequently not ratifying it.<sup>43</sup> Importantly not only did they not ratify it, but they first watered down the text having numerous concessions put in. While many other countries have done similar acts, the actions of the US, in light of its size and power, have proven to be particularly destructive to the regime.

Underpinning these actions are a number of domestic political and institutional hurdles. The US has a unique constitution whereby international treaties must pass a two thirds majority vote in the senate and have the same legal status as federal law once ratified.<sup>44</sup> Lobbying, environmental scepticism and increasing partisanship in the US make the issue of climate change particularly politically difficult.<sup>45</sup> The US is unlikely to ratify any progressive binding multilateral climate treaty<sup>46</sup> unless a substantial political shift occurs or there are changes to the US Constitution. This tension underpins the current movement of negotiations on a 2015 agreement towards a non-legally-binding ‘pledge and review’ model.

Accordingly, a “deep, but narrow” climate agreement with strong substance and commitments which expands in membership over time could be preferable to a “broad, but shallow” one.<sup>47</sup> One interview respondent alluded to this prospect in mentioning a concept from the film “Field of Dreams” in that you could “build it (an effective architecture) and they will come.”<sup>48</sup> In practice this would be the second form of CMG. The entire Convention would operate by voting and a majority of parties would use this to create their own protocol without seeking to appeal to the interests of the US and perhaps other parties which would fundamentally undermine the substance of such an agreement.

Similar ideas have been put forward for other international institutions. Low has advocated for a form “Critical Mass Decision making” within the WTO, suggesting that a subset of parties could push a progressive agenda ahead on particular issues and create a better differentiation of commitments while maintaining multilateral cohesion.<sup>49</sup> Low further suggests using a form of consensus at the inception of an agreement, and letting the critical

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<sup>43</sup> Depledge 2005.

<sup>44</sup> Skodvin and Andresen 2009.

<sup>45</sup> Bang, Hovi, and Sprinz 2012.

<sup>46</sup> Purvis and Stevenson 2010; Bang, Hovi, and Sprinz 2012.

<sup>47</sup> Aldy, Barrett, and Stavins 2003.

<sup>48</sup> Interview with a developed country academic 07-12-2012.

<sup>49</sup> Low 2001.



mass dictate terms from there. This is close to the third form of CMG where voting would be applied in order to unblock specific issues. For example, a 2015 agreement could consist of numerous optional opt-out protocols where a smaller number of progressive parties could work by voting to advance particular issues (e.g. REDD+, market based mechanisms or building pre-2020 mitigation ambition) and build trust and momentum for the wider regime. This presents a more refined and concrete way to operationalise the ideas of other scholars<sup>50</sup> who have called for similar semi-global approaches. Parties who refuse to yield to the outcomes of voting on these issues could simply ‘opt-out’ of that protocol.

In contrast to Low, I would suggest that the creation of these critical mass tracts would be better instigated by a voting system rather than consensus, otherwise particular states could simply block the adoption of a certain protocol. This is a logical and promising approach since on individual topics there is often only one, or a small handful of countries, blocking progress. For example India and Saudi Arabia prevented action on hydrofluorocarbons (HFCs) and ‘black carbon’ recently at COP19, but the main blocker for regulating aviation and bunker fuels has been Singapore. Given this differentiation of interests between blockers, it makes more sense to use voting to exclude particular parties from certain topics rather than from an entire regime or treaty. This would presumably make the application of voting to specific issues under a new protocol the most politically feasible, and perhaps effective form of CMG.

Free-riding and leakage are serious problems for both of these forms of CMG within the climate negotiations. However, there are some potential ways of managing these issues. The threat of carbon leakage is rarely significant in an economy-wide sense<sup>51</sup> and there are also benefits to a small group of countries moving forward exclusively, including first mover advantages and ‘positive spillovers’<sup>52</sup> such as the development and diffusion of low carbon technologies. Measures against non-parties, such as border tax adjustments<sup>53</sup>, could also help deter free-riding. Moreover, it is likely that participation will naturally increase over time. This will occur both due to the falling price of renewable energies as well as increased domestic support for mitigation measures as the impacts of climate change are increasingly felt over time. Participation is more easily changed as a variable than legal structure and accordingly a narrow-but-deep, critical mass agreement could be successful over both a long and short term time horizon.

The outcome of a critical mass agreement is doubtful since voting usually acts as a consensus-builder. Parties are more likely to stay under the Convention or join a new agreement rather than dropping out or refusing to participate, but such an occurrence, is not necessarily a negative one.

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<sup>50</sup> Urpelainen 2013; Falkner, Stephan, and Vogler 2010.

<sup>51</sup> Barker et al. 2007; Zhou, Kojima, and Yano 2010.

<sup>52</sup> Barker et al. 2007.

<sup>53</sup> Aakre 2014; Purvis and Stevenson 2010.

## 5 Legal Aspects: Implementation

There are primarily two ways of adopting majority voting into the UNFCCC. Firstly the Convention could be amended to allow for voting. Secondly, Rules of Procedure with a resolved Draft Rule 42 could be officially adopted by the COP. The rules of procedure would need to be adopted by consensus according to article 7.2(k) of the Convention. This is perhaps why Papua New Guinea and Mexico have opted to induce change through the first path, i.e. amending the Convention itself.

### 5.1 Amendments to the Convention

Superficially, the implementation of majority voting through amending the Convention has promise, but upon closer inspection it possesses tremendous legal difficulties. Under Article 15.3 the Convention can be changed through a three quarters majority vote. Yet, Article 15.4 of the Convention stipulates that changes to the Convention are only binding upon those parties who have accepted and ratified it. In other words, amendments only apply to those who voted for it and ratify the amendments thereafter. Thus, majority voting could be introduced via a three quarters majority vote, but the dissent of a few parties could result in an interesting situation for the Convention: the majority of parties working by voting while others operate under consensus. Parties functioning under different decision making rules could ultimately be counter-productive by requiring dual COP decisions, and engender confusion in already overly complex institution.<sup>54</sup> Such a situation is likely to occur since ratification is often a long process and gives all states time to either reject, or indefinitely abstain from, the ratification process.

Yet, this could be a useful and simple pathway to enable the first form of CMG. The critical mass (which would need to be at least three-quarters of parties) in this case would simply be those countries that are willing to work by voting and ratify the amendments to the Convention. However, this form of CMG would likely be inferior to the other two forms since the critical mass is defined by those who are willing to work by voting rather than those necessarily seeking environmentally effective outcomes (although there would probably be some overlap between the two categories). Another important point is that empirical studies have shown that states are much more likely to stay in an ‘opt-out’ agreement rather than join an ‘opt-in’ agreement.<sup>55</sup> If majority voting was implemented through adopting rules of procedure (which will be explored next) it would be more of a ‘opt-out’ scenario requiring parties to intentionally leave the Convention suggesting that more parties would stay within the framework.

### 5.2 Rules of Procedure

Majority voting through the adoption of the rules of procedure, while requiring consensus, does not need ratification, making it an attractive path for implementation. The rules of procedure with a resolved Draft Rule 42 could be officially adopted by the COP,

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<sup>54</sup> LRI 2011.

<sup>55</sup> Galbraith 2013.

although that would require consensus agreement. There is a possibility that a blocker would veto such a measure, as Saudi Arabia did to the original rules of procedure. However, there is a loophole since consensus is a flexible concept which has no official legal definition within the UNFCCC or internationally. As recent experiences in COP16 and COP18 show, consensus technically can be achieved despite opposition. There is a political avenue for a strong COP president to promote adoption of the rules of procedure.

An important point is that the adoption of the rules of procedure, unlike amendments to the Convention, does not require ratification. The only way to veto their adoption would be to maintain a formal objection after the decision has been made and follow through with a legal process to dispute the ruling of consensus.<sup>56</sup> Countries who have been overruled to achieve consensus previously, such as Bolivia or Russia, have not taken such action. Bolivia threatened to take legal action through the ICJ but has thus far failed to do so.<sup>57</sup> Russia, despite its most recent actions, has also not followed through to procedurally dispute the consensus ruling. This suggests that the political nature and long legal process of questioning a consensus decision deters parties from doing so.

Perhaps another reason is that it is difficult to imagine how exactly a legal decision could be executed. Article 14.2 of the Convention stipulates that dispute settlement between parties can occur through negotiation, other peaceful means or submission of the dispute to the ICJ. However, the compulsory jurisdiction of the ICJ only occurs when both parties have agreed to submit to its decision. To complicate matters further it is unclear who the disputer would take legal action against; the host nation and chair, or the entire COP? The chair is seen simply as a facilitator of the will of the parties and not a party representative; and taking a case against the entire COP is difficult as it requires all parties to the Convention to submit to the jurisdiction of the ICJ. Furthermore, if a party did maintain a formal objection it is unclear what the outcome would be since consensus is not officially defined within the UNFCCC or the UN. It is difficult to dispute consensus if there is no official definition. The only two current international legal instruments to define consensus so far are the United Nations Convention on the Law of the Sea (UNCLOS) under article 161.8(e) and the Dispute Settlement Standing (DSU) of the WTO under Annex II of the WTO agreement.<sup>58</sup> If parties were overruled to pass the rules of procedure there is a high probability that they would not follow through with any threatened challenge and the decision would stand; even if they did take legal action it is unlikely to be successful in repealing the rules of procedure through the ICJ.

Overall, given the problem of ratification, the adoption of the rules of procedure is a legally and politically feasible way to introduce voting into the UNFCCC. This is a legal opportunity, but the shift towards majority voting is still largely contingent upon underlying political and institutional dynamics.

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<sup>56</sup> Schwarte, Wei, and Roberts 2011.

<sup>57</sup> Ibid.

<sup>58</sup> UNFCCC 2011.

## 6 Political Dynamics

No agreement exists on the current voting proposal. Bodansky and Rajamani<sup>59</sup> note that the COP is currently split on deciding between consensus and voting with no clear solution to the deadlock in sight. Formal contact groups at COP17 and COP19 as well as informal meetings at COP18 have been the basis for negotiations thus far. There is a general divide between supporters such as members of the Alliance of Independent Latin American and Caribbean States (AILAC), the EU, and others such as Guyana and Suriname who have repeatedly supported voting<sup>60</sup>, and opposition from Bolivia, Venezuela and Saudi Arabia who have insisted upon a consensus based approach.<sup>61</sup> “Stonewall responses”<sup>62</sup> from China and the US could be an indication of rejection.<sup>63</sup> They simply need not take a position since Saudi Arabia is already blocking any consensus on this issue. The politics of this are complex and reasons vary for both the rejection and support of this proposal:

**Table 1: Negotiating Bloc Positions on Voting**

<i>Negotiating Group</i>	<i>Stance</i>
<b>AILAC</b>	The AILAC grouping is one of the strongest proponents of the majority voting proposal. Member states such as Colombia and Costa Rica vocally supported the proposal during discussions at COP17 <sup>64</sup> and have since then maintained this sympathy. In the most recent talks on voting Colombia called for the adoption of rules of procedure as a “key matter for transparency” and noted that “it’s clear that consensus is not always possible”. <sup>65</sup>
<b>Bolivarian Alliance for the Peoples of our America (ALBA)</b>	ALBA has been opposed to the majority voting proposal. The reasons for this are quite clear: ALBA members such as Bolivia and Venezuela have been amongst the foremost users of the veto (although their intentions may have been noble at times) and Bolivia may still have negative memories of COP16.
<b>The Alliance of Small Island States (AOSIS)</b>	AOSIS has not yet discussed the majority voting proposal as a bloc or consequently developed a common position on this. <sup>66</sup> The current chair of AOSIS is supportive of majority voting. <sup>67</sup>

<sup>59</sup> Bodansky and Rajamani 2013.

<sup>60</sup> ENB, 06-12-2011.

<sup>61</sup> Ibid 01-12-2011.

<sup>62</sup> Vihma 2011.

<sup>63</sup> Vihma and Kulovesi 2012.

<sup>64</sup> ENB, 01-12-2011.

<sup>65</sup> Observation of contact group on voting agenda item under COP at COP19 18-11-2013.

<sup>66</sup> Interaction with AOSIS Chair Ambassador Marlene Inemwin Moses 19-02-2013.

<sup>67</sup> Ibid

<p><b>BASIC (Brazil, South Africa, India and China)</b></p>	<p>Most of the BASIC bloc such as China and India have refused to take a public stance on this issue, which suggests that they oppose the notion.<sup>68</sup> In the most recent negotiations both China and India stated that consensus has worked very well in many cases and that the focus should be on improving implementation, not decision making.<sup>69</sup> However, it is unclear whether this constitutes direct opposition to voting or was part of their wider strategy of pushing for greater access to financing and ‘means of implementation’ under most discussions and agenda items.</p>
<p><b>EU</b></p>	<p>The EU has been supportive of the majority voting proposal.<sup>70</sup> During interviews and interactions many EU respondents mentioned that while they supported the principle of majority voting they would prefer some form of weighted voting in comparison to the traditional ‘one country – one vote’ system.</p>
<p><b>Least Developed Countries (LDCs)</b></p>	<p>The majority voting proposal has not yet been discussed officially by the LDCs. Some were open to the idea and suggested that the bloc would be likely to support it given their frustration with the current process and desire for a speedier process to address the urgent threat of climate change.<sup>71</sup></p>
<p><b>The Umbrella Group (Industrialised, Non-EU Countries)</b></p>	<p>Some states such as the US and Canada have refused to take a clear public stance, which suggests that they have concerns. In the most recent discussions on voting Canada questioned the problem of ratification and asked “how would voting rules operate”, while the US observed that for now time and effort would be better spent formulating the 2015 agreement rather than engaging in a debate on decision making. Other countries in the bloc expressed concerns that G77 could easily unify and outvote developed countries on matters of finance.<sup>72</sup></p>

The political dynamics behind the majority voting proposal are important to determine both the optimal design of a voting system and the general political feasibility of such a shift in procedure. This is particularly true of the three major powers: the US, EU and China. The EU has proven supportive of majority voting, but China and the US are much more difficult prospects. Chances of maximising US support are dependent upon addressing the issue of voting on finances, while acceptance from China would likely require pressure

<sup>68</sup> Vihma 2011.

<sup>69</sup> Observation of contact group on voting agenda item under COP at COP19 18-11-2013.

<sup>70</sup> ENB, 06-12-2011.

<sup>71</sup> Interaction with an East African delegate 04-06-2013.

<sup>72</sup> Interaction with an Umbrella Group Delegate 06-06-2013.

from the rest of the BASIC bloc or a renewed desire to challenge US hegemony and take a leadership role. Yet country positions are fluid and can change over time, so political feasibility can change.<sup>73</sup> This can be seen in the current voting proposal with a number of countries, even Saudi Arabia, becoming more open to discussion around the issue since the blockage of the Subsidiaries Bodies meeting in 2013.<sup>74</sup> Indeed, at COP19 Saudi Arabia, while opposing voting for most matters, declared that “the one area when we can talk about voting is when we talk about financing”.<sup>75</sup> While this is naturally part of Saudi national interest as part of the G-77, and confirms the suspicion of the Umbrella Group, it nevertheless suggests an evolution of their position over time.

## 7 Institutional Barriers and Drivers for Change

Institutional dimensions such as discourses, rules and information flows shape how countries engage with the issue of decision making change. There are two distinct types of institutional forces at play: barriers that reinforce the status quo; and drivers that create momentum for the transformation of decision making processes. Both of these will be explored in order to identify leverage points for creating change in the UNFCCC.

### 7.1 Barriers:

*7.1.1 Pandora’s Box:* Some respondents suggested there is a concern amongst parties that amending the Convention would be similar to opening “Pandora’s box”<sup>76</sup>, as amendments could set a precedent for ongoing change to the principles and annexes of the Convention. This view is understandable given that there is a concurrent proposal by Russia to amend the annexes of the Convention. Major developing countries strongly oppose the notion of revisiting the annexes since it would likely result in a change to their status and responsibilities. Such anxiety was evident at COP18 in the final draft text of the Ad-hoc Working Group on Long-Term Cooperative Action which specified that the process of reviewing the temperature goal of the Convention “is not a review of the Convention itself”. A recurrent aspect of ADP negotiations has been the assertion by some parties that they will not reopen or reinterpret the Convention.<sup>77</sup> Fears over re-opening the Convention mitigate against the adoption of majority voting through amendments, although not for the adoption of rules of procedure.

*7.1.2 Consensus as a Norm:* There was a common perception amongst interviewees that consensus is a UN norm, more so than voting. This is partially true. Consensus is perhaps the best reflection of the legal principle of sovereignty. But voting in no ways violates the principle of sovereignty, since as with any form of international law parties can make reservations to outcomes or decisions taken by a vote. In fact, a large number of international

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<sup>73</sup> Downie 2012.

<sup>74</sup> Interaction with a Pacific Island Delegate 14-06-2013.

<sup>75</sup> Personal observation of contact group on voting agenda item under COP at COP19 18-11-2013.

<sup>76</sup> Interaction with a Western European Delegate 03-12-2012

<sup>77</sup> Interview with an Eastern European Delegate 12-06-2013.

bodies use majority voting, including the EU, ILO, WTO, Montreal Protocol, GEF and the highest decision making body of the UN, the UN General Assembly.

*7.1.3 Financial Matters:* Concerns over voting on financial issues appears to be a political blockade for both developing and developed parties. Many developed countries fear that “they could be overridden by the G-77 on budgetary and financial matters”<sup>78</sup> in a situation of voting and accordingly “want to maintain their veto over financial matters”.<sup>79</sup> This issue has a long history, with the US threatening to veto the original rules of procedure due to this concern.<sup>80</sup> Consequently financial matters must be given a higher voting threshold in order to make voting politically palatable for developed country donors. However there is then the possibility that the G77 may dislike the idea of developed countries having a veto over financial matters.<sup>81</sup> Yet opposition to voting on this basis would seem somewhat nonsensical given that it would still be an improvement over the current predicament where every state grouping has a veto.

*7.1.4 Veto Attraction and Institutional Memory:* Over time parties have grown to enjoy their veto power and may forget the problems that consensus previously caused. As one interviewee bluntly stated “the parties now like what they have, they have a veto.”<sup>82</sup> A veto ensures that parties will be taken seriously, regardless of economic or geopolitical significance.<sup>83</sup> It also guarantees that states have a greater degree of individual control over the outcome of negotiations.

A related problem is that of the institutional memory of the UNFCCC in relation to the history and success of consensus decision making. Some interviewees saw consensus decision making as having been quite successful prior to recent setbacks, sentiments that were also expressed by Saudi Arabia and India during COP19. This overlooks the history of the Convention, including its inception. As one interviewee noted, the Convention itself was adopted over the protests of a number of countries who still had their plaques raised to speak<sup>84</sup> and “it’s something we have conveniently forgotten.”<sup>85</sup> The UNFCCC was adopted without consensus in 1992. Negotiations at COP6 at The Hague in 2000 collapsed due to an inability to reach consensus. The history of negotiations in relation to decision making is not an entirely successful one, but there appears to be some limitations in the institutional memory of the Convention.

*7.1.5 Consensus as a Process:* Consensus as a process inherently favours the status quo and handicaps attempts at transformation. The will of the many to change can be thwarted by one conservative voice. This can be seen in the section on legal implementation. If consensus had

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<sup>78</sup> Interview with a high level UNFCCC secretariat member 12-06-2013.

<sup>79</sup> Interview with a senior UNFCCC secretariat advisor 12-06-2013.

<sup>80</sup> Interview with a former high level secretariat member 14-05-2013.

<sup>81</sup> Interview with a high level UNFCCC secretariat member 12-06-2013.

<sup>82</sup> Interview with a high level UNFCCC secretariat member 12-06-2013.

<sup>83</sup> Ibid

<sup>84</sup> Interview with a former high level secretariat member who attended this session 14-05-2013.

<sup>85</sup> Interview with a high level UNFCCC secretariat member 12-06-2013.

not been required to adopt the original rules of procedure then this current conundrum would not exist.

*7.1.6 Voting as a Double-Edged Sword:* One very legitimate appeal raised against voting was that consensus and the use of a veto can also be used to block environmentally ineffective decisions. Arguably the blocking of the adoption of the Copenhagen Accord at COP15 by Tuvalu and a number of ALBA and African countries constitutes at one incident when a veto was used to block an unambitious outcome. This is a fair criticism and a risk that must accompany any resort to a voting system, although based on the history of negotiations it appears more likely that in most cases the majority will be pushing for progressive rather than regressive outcomes. Importantly, this raises the question of whether in such predicaments it is better to have no decision rather than a suboptimal one?

*7.1.7 Misconceptions on Voting:* A recurrent idea amongst interviewees was that voting was a “divisive” process that could easily create wedges in an already overly politicised and antagonistic arena. However, as previously noted this is rarely the case and voting tends to act as more of a consensus builder, although there are exceptions. One interviewee noted that the International Whaling Commission (IWC) tends to rely upon frequent voting rounds and has devolved into a continuous “numbers game”.<sup>86</sup> This is a valid observation and accordingly a movement to voting could run this risk. However, the IWC has far less significant or far-reaching economic impacts as the climate policy, so such a numbers game is assumedly less probable to develop. Coupled with the strong culture and history of seeking consensual outcomes, the UNFCCC is more likely to mimic the Montreal Protocol than the IWC in its application of voting rules.

*7.1.8 Path Dependency:* Path dependency is a meta-barrier that encompasses most of the other blockades to decision making change. The numerous barriers to change have developed into a self-perpetuating culture and institutional practice that has locked in the current institutional state. Yet when the rules of procedure were first discussed in 1992, the vast majority of parties supported the notion of voting. It was only Saudi Arabia, and the US due to concerns over financial matters, who threatened to stop the adoption of voting arrangements;<sup>87</sup> it was Saudi Arabia who eventually blocked their adoption. Over time much of the Convention has established discourses and reasons to cement consensus into place; one respondent referenced this by claiming that “because of our practice we have now created an institutional law of consensus.”<sup>88</sup> Path dependency can be broken as there are numerous precedents of international organisations evolving their rules over time; for example The International Standards Organisation switched from consensus to majority voting, as has the EU in a number of policy areas.<sup>89</sup> The question then becomes what can drive a change in decision making processes away from the current institutional trajectory.

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<sup>86</sup> Interview with a former secretariat member and academic 09-07-2013.

<sup>87</sup> Interview with a former high level secretariat member who attended this session 14-05-2013.

<sup>88</sup> Interview with a legal expert and civil society member 14-06-2013.

<sup>89</sup> Maggi and Morelli 2006. Pauwelyn 2005.



## 7.2 Drivers for Change

*7.2.1 Political Crises:* The most important factor in breaking path dependency in the UNFCCC is crisis. Political failures have a catalysing effect upon the negotiations. The most recent example is Russia blocking the SBI. Not only did Russia put decision making reform back into the international dialogue, but it also explicitly showcased the failures of the current system, in which countries could block the progress of an entire negotiating channel over the apparently trivial matter of an agenda item. Tuvalu highlighted the “supreme irony” of Russia’s actions by describing it as “crashing the car to prove the seatbelts don’t work.”<sup>90</sup> When veto rights are abused it undermines faith in consensus and creates an impetus to change. One interviewee stated “I would characterise what has just happened (the SBI blockage), despite being painful, as an opportunity”.<sup>91</sup> Crisis helps to deconstruct the status quo and in doing so provides the space to develop new institutional structures. In the context of majority voting, political failure can delegitimise existing decision making practices and create political momentum for change.

*7.2.2 Attractiveness of Majority Voting:* Majority voting, despite some reservations, was seen to be a more efficient and speedy decision making process in contrast to consensus by most interviewees. Highlighting successful previous applications of voting and delivering information on the implementation and consequences of voting could also help to make new arrangements more familiar and further enhance this positive perception. This is important since most parties would “rather stick with a known quantity than something completely different.”<sup>92</sup> Another way of making parties more at ease with voting would be to highlight voting procedures used within related bodies and implement it into new ones. One interviewee noted that this more ‘bottom-up approach’ could be extremely useful since it largely avoids the difficult conversation on rules of procedure while aiding the work of other bodies under the Convention.<sup>93</sup> The Global Environmental Facility (GEF) already makes use of double qualified majority voting and the Green Climate Fund is currently debating the use of voting measures within the Board.

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<sup>90</sup> Personal observation at the final SBI plenary 14-06-2013.

<sup>91</sup> Interview with a high level UNFCCC secretariat member 12-06-2013.

<sup>92</sup> Interview with a US academic 05-12-2012.

<sup>93</sup> Interaction with a developing country respondent 05-12-2012.

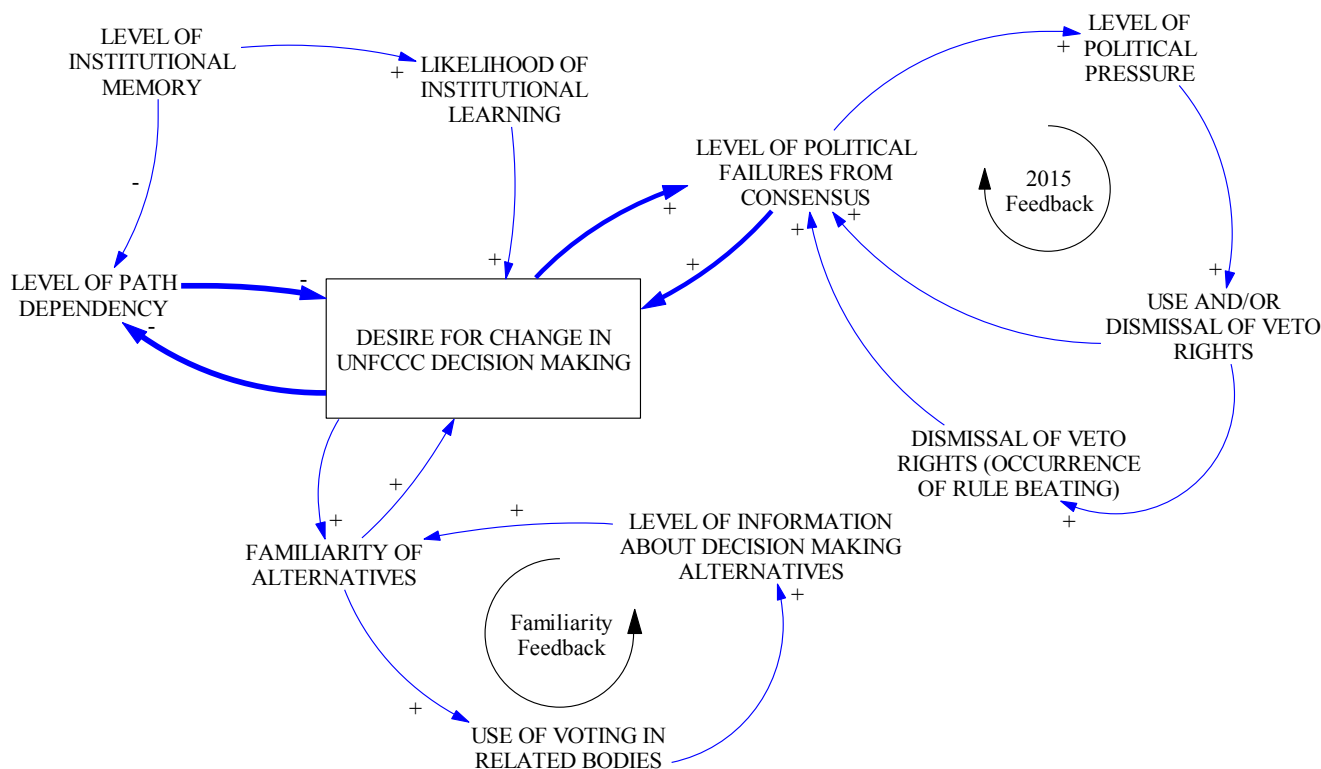


Figure 1: Institutional Dimensions of Decision Making Change in the UNFCCC

From the interaction of the institutional aspects of decision making change in the UNFCCC (Figure 1), a number of leverage points in driving change can be identified. Firstly, path dependency is the central impediment to decision making change with political crisis as the only driver with equivalent power. Importantly there is a positive feedback loop presently working to heighten the probability of political failure. As the 2015 deadline approaches there is an increasing level of political tension and many controversial issues that have previously been avoided, such as loss and damages or response measures, are coming to the fore. While consensus was most recently reached on these issues at COP19, the outcomes are tenuous and focus mainly on developing processes and frameworks, while loss and damages has a revision at COP22 enshrined as part of the compromise agreement. These issues are not entirely resolved. Their re-emergence has led to a strain on party relations, use of veto rights and suppression of dissent, as occurred at COP16 and COP18. Unfortunately the 2015 agreement includes almost all of the significant issues of the negotiations and there is a practice of not agreeing to anything until everything is agreed. This interconnectedness makes the use of a veto more likely and the consequences of that use more severe. This corresponds to how Folke et al<sup>94</sup> conceptualise transformation within Resilience Thinking in complex socio-ecological systems: transition is spurred by a crisis acting as a window of opportunity for change (2015 feedback and political crisis) and the resilience of a new regime

<sup>94</sup> Folke et al. 2010.

is built (reinforcing feedback of familiarity). This situation lends itself to thinking of consensus as a fix that fails, as seen in Figure 2.

Fixes that fail are a common archetypal system whereby a short-term policy fix leads to unintended consequences that exacerbate the original problem.<sup>95</sup> The short-term success hides the delayed negative effects. In other words, a short-term reinforcing feedback overrides the long-term balancing feedback which perpetuates the original problem. In the case of consensus decision making, the urge to achieve short-term agreement leads to rule-beating and the avoidance of politically difficult issues. The need to reach consensus may result in perceived success at annual COPs but generally procrastinates the more troublesome topics and suppresses geopolitical divisions that will need to eventually be managed or circumvented. The result is either collapse, as occurred in Copenhagen, which was preceded by a number of consensual COP decisions, or an ineffective outcome such as in Kyoto. With Kyoto, the need for consensus led to parties to overlook the issue of legality and US ratification. This mistake may very well be repeated with parties' still not openly addressing issues of ratification or legal nature in negotiations for the 2015 agreement.

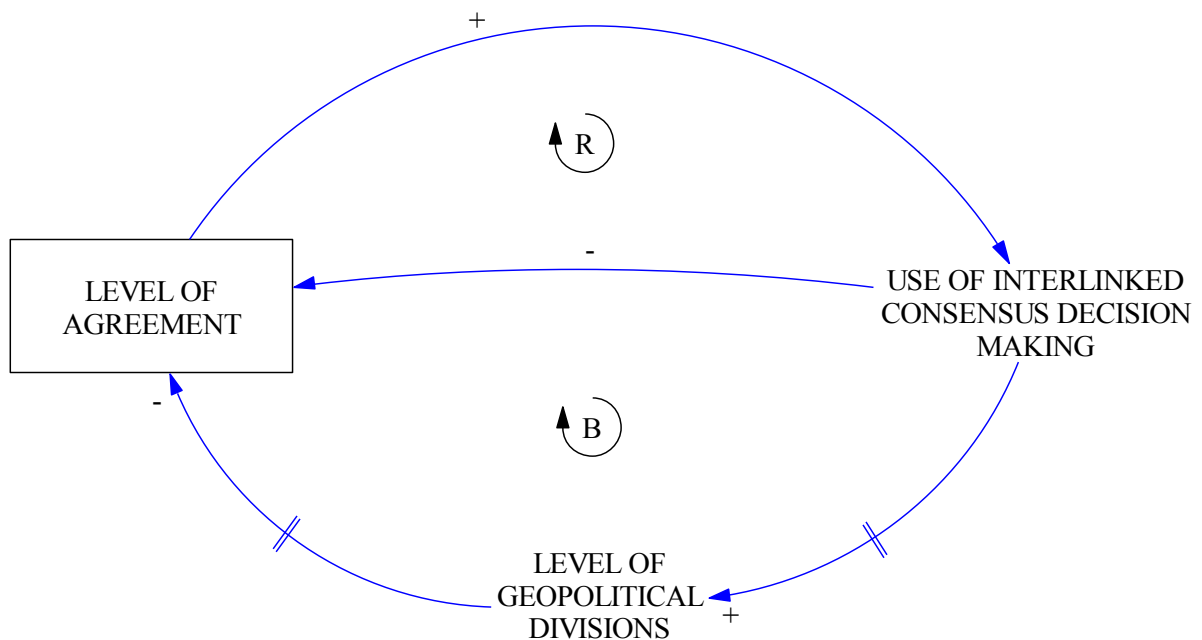


Figure 2: Consensus as a Fix that Fails

## 8 Scenarios

Based upon the preceding analysis of the legal, political and institutional dynamics within the UNFCCC there are six main scenarios for decision making change in the Convention. These scenarios, together with the legal pathways towards them, are depicted in Figure 2. One of these scenarios (*Dual Institutions*) follows from implementation via

<sup>95</sup> Wolstenholme 2003.

amendments to the Convention, while the remaining scenarios are based upon adopting rules of procedure.

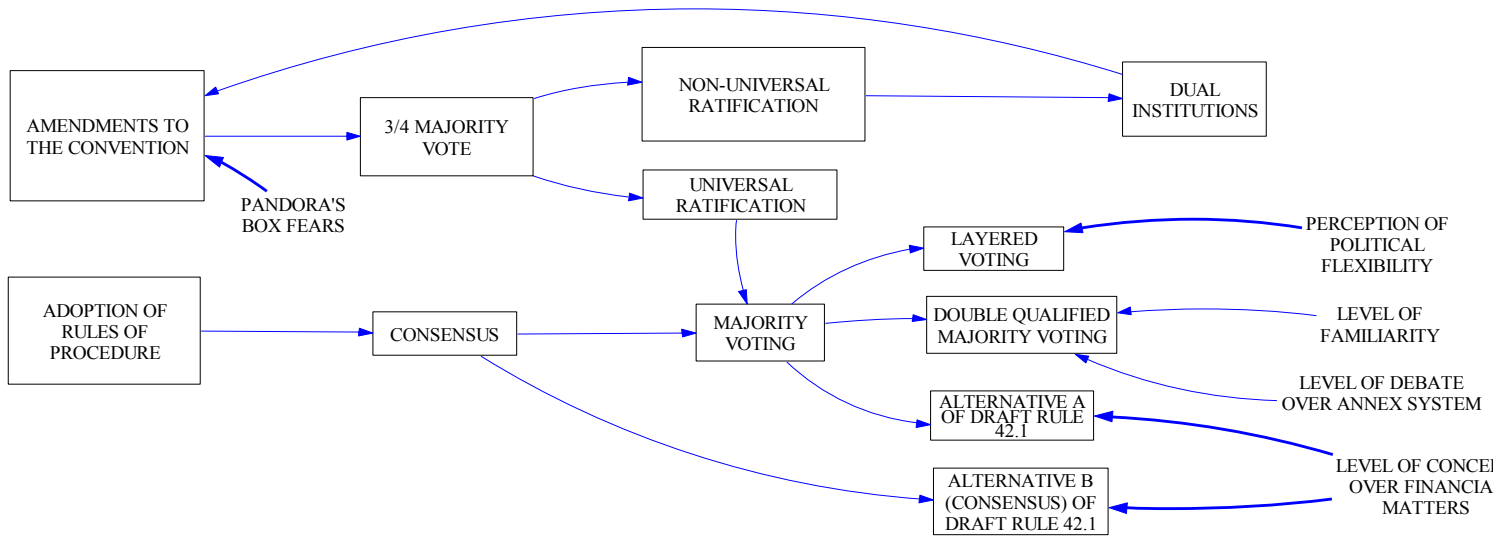


Figure 3: Scenarios for Decision Making Change in the UNFCCC

*8.1 Dual Institutions:* The least likely way of introducing majority voting would be amendments to the Convention without universal ratification, leading to a split regime in which dual institutions with different rules would require different COP decisions. Due to worries over this possibility, along with the “Pandora’s box” fear, this scenario is doubtful.

*8.2 Alternative A:* This scenario would see the adoption of rules of procedure according to Alternative A of Draft Rule 42.1 (see Appendix I). Since this scenario does not specify a larger majority for financial matters it is unlikely to occur.

*8.3 Alternative B:* This scenario would see the adoption of rules of procedure according to the current Alternative B of Draft Rule 42.1. This would simply be the official adoption and endorsement of consensus within the UNFCCC. This is improbable since parties are unlikely to invest the necessary political will of adopting rules of procedure in order to maintain the status quo; and the current wording actually has a lower (two-thirds) qualification for financial matters.

*8.4 Double qualified Majority Voting:* This scenario would involve the adoption of an amended Draft Rule 42 with a double qualification upon financial, or substantial matters, or both. The Montreal Protocol uses an innovative voting system whereby two qualifications need to be met for an affirmative vote: a simple majority of both developing and developed member parties. This system allayed the fears of developed countries that the G-77 would unify and utilise its superior numbers to control outcomes. A double qualified majority voting system could be effective in persuading developed countries who have voiced this fear. However, as one interviewee noted, such a system would have to work in the context of

the current annexes within the UNFCCC, which are contested and may make the idea politically unpalatable.<sup>96</sup>

*8.5 Layered Voting:* This scenario involves adopting an amended version of Draft Rule 42 which stipulates a higher majority for matters of finance and the adoption of protocols. Layered Voting is the assignment of varying qualifications to different voting matters based on political concerns. The benefit is that it allows for more controversial or important matters to have more stringent voting qualifications placed upon them. Countries will not walk away from the Convention due to a dispute over a procedural matter such as the election of a chair, while more sensitive matters, such as financing measures, could be given a higher voting threshold. Voting issues can be separated along four main lines: procedural, substantial and financial matters, and the adoption of legal instruments. I suggest changes to Draft Rule 42 that would lead to the following system of Layered Voting:

- Procedural issues shall require a simple majority vote.<sup>97</sup>
- Matters of substance shall require a three-quarters majority vote.
- The adoption of protocols or legal instruments shall require a three-quarters majority vote covering over 50% of current emissions regulated under the UNFCCC.<sup>98</sup>
- Financial matters shall require a majority vote of 90% of parties present and voting.

Layered Voting is a flexible option and could be modified to suit less ambitious conditions. Some interviewees claimed that the greatest potential for voting is just for unblocking procedural matters. This would be a significant step forward as it would help to avoid predicaments such as the recent Russian blockage of the SBI. In a situation of low political appetite for change then an alternative version of Layered Voting could be a two thirds majority vote for procedural matters, 90% threshold for substantial matters, and consensus (or consensus minus one or two) for the adoption of legal instruments and decisions related to finance.

Layered Voting provides a pragmatic and effective way of introducing majority voting into the UNFCCC through a flexible design that can be suited to the political context to address specific concerns and maximise political feasibility. Other MEAs which work on consensus (such as the Convention on Biological Diversity, Stockholm Convention, Rotterdam Convention etc.) by default could adopt a Layered Voting model since these MEAs can make the same distinction between voting issues.

*8.6 Common but Differentiated Voting (CBDV):* CBDV is proposed as an ideal, but unfeasible voting system, and as such has less connection with the examined barriers and opportunities. It is presented as a scenario to provide an informative example of how voting could be structured in conditions free of strong political constraints and what the resulting

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<sup>96</sup> Interview with an academic and former UNFCCC secretariat member 21-04-2013.

<sup>97</sup> While some procedural matters are defined in the Draft Rules of Procedure, there are ambiguities. Where ambiguity exists the distinction between procedural and substantial and left to the discretion of the chair as per Rule 42.3 of the Draft Rules of Procedure.

<sup>98</sup> Conditions for entry into force for any protocol would still need to be specified under that particular instrument as per Article 17(3) of the Convention.

distribution of voting power could look like. It could provide lessons or a possible model for the decision making of future environmental agreements and bodies. This voting system would operate in line with the principle of ‘common but differentiated responsibilities’ under Article 3.1 of the Convention. Drawing upon this principle I have developed a system of voting which gives every country a right to vote, but differentiates their voting power on the basis of the three criteria of population, mitigation and vulnerability. The weighting on vulnerability provides input legitimacy to the system by giving voice and power to those who are most impacted by climate change and accordingly the decisions of the COP. The issue of procedural legitimacy by including most vulnerable must be addressed as it has been a reoccurring objection to other alternative proposed forms of decision making, such as unilateralism<sup>99</sup>. This form of weighting would also be in accordance with Article 3.2 of the convention which states the need to fully consider the “special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change”. One clear problem with this criterion is that there are still methodological disputes on how technically measure vulnerability. An example of this could include whether to measure vulnerability simply by projected impacts attributable to climate change, or additionally by including the capacity of the state to adapt to the impacts. In my presented example (Table 2) data for vulnerability is based upon the 2010 dataset for the Global Vulnerability Index created by David Wheeler of the Centre for Global Development.<sup>100</sup> It draws upon climate vulnerability data that has been adjusted to account for income and regulation (indicators of adaptive capacity).

The second criteria of population would more fully embody the principle of democracy than the current one-country one-vote system, which is more representative of the legal norm of sovereignty.<sup>101</sup> Moreover, it better reflects geopolitical realities by giving greater weighting, and appealing to, the rising economic powerhouses of the BASIC group. Population would have to be tied to a common baseline in order to avoid a perverse incentive for increasing population in order to expand voting power. Population figures were taken from the World Bank 2012 data set.<sup>102</sup>

The third criteria of weighting on the basis of mitigation targets provides an incentive for developed countries to increase their mitigation commitments and for developing countries to take on their own, thus helping create the conditions for a ‘race to the top’. This is similar to the logic of weighting votes based on financial contributions in the International Monetary Fund (IMF) and World Bank. Weighting mitigation efforts both encourages and rewards leadership. Weighting mitigation effort both encourages and rewards leadership. There is some cause of concern here due to capacity bias: this criteria preferences those who have the financial and technical capacity to undergo strong mitigation activities. This should not be a large issue of legitimacy as this criterion is primarily intended for developed countries who, by and large, have the capacity for large-scale mitigation activities. In any case, the trade-off

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<sup>99</sup> Eckersley 2012.

<sup>100</sup> Wheeler, 2011.

<sup>101</sup> Schwartzberg 2003.

<sup>102</sup> The World Bank, 2013.

between effectiveness and legitimacy is necessary one in order to help catalyse leadership. Since most countries have not put forward clear mitigation targets for the 2015 climate agreement, the Climate Change Performance Index (CCPI), created by German Watch, has been used to measure the mitigation performance. The CCPI measures the mitigation efforts of 58 individual countries who account for over 90% of global emissions.<sup>103</sup> The CCPI ranks countries by an index of which 80% is assessed by objective measurements of emissions trends and levels, and 20% by policy assessment from international experts. The remaining countries that are not covered by the CCPI account for an insignificant amount of emissions individually and therefore their scores have been moderated to a common low score (0.01 by the CCPI scoring system).

Table 2 provides an example of how the distribution of votes under a CBDV system would look. As noted previously, there are clear constraints and problems in measuring and quantifying both mitigation performance and vulnerability, and accordingly this example is an imperfect attempt using the best current available data and measurements. If any such system were to truly be implemented within the convention, it would likely require the secretariat to undertake specific measurements of both vulnerability and mitigation agreed to by the parties.

The example below has modified the weighting of votes so that while population and mitigation are of equal weighting, vulnerability counts for less towards a country's overall voting power. As shown in Table 3 the votes are weighted so that the end voting score is comprised by 43.3% for mitigation, 43.3% for population and 13.3% for vulnerability. The rationale for this is both logical and geopolitical. Firstly, in a five or six degree world the impacts of climate change are severe enough to constitute a global systemic threat, and thus state-based evaluations are less relevant in the long-term. Secondly, the most vulnerable countries are much more numerous and also generally those who are least significant in terms of emissions, and thus their buy-in for political agreements on mitigation are somewhat less important.<sup>104</sup> These weighting modifiers balance legitimacy against ensuring that power still largely rests with those who are most needed to ensure effective global mitigation.

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<sup>103</sup> Germanwatch, 2014.

<sup>104</sup> This is primarily relevant for SIDS and LDCs, although some notable exceptions such as China and India also have a significant degree of vulnerability.

<b>Bloc</b>	<b>Weighted Vote Allocation</b>
<b>EU</b>	25.298%
<b>The Umbrella Group</b>	9.467%
<b>AOSIS</b>	1.979%
<b>BASIC</b>	20.678%
<b>EIG</b>	2.817%
<b>LDCs</b>	16.562%
<b>AILAC</b>	0.859%
<b>ALBA</b>	0.698%
<b>The G-77+China</b>	49.052%

Table 2: Negotiating Bloc Weighted Vote Allocations

<b>Weighting Modifiers</b>	
<b>Population</b>	1.3
<b>Vulnerability</b>	0.4
<b>Mitigation</b>	1.3

Table 3: Modifiers for CBDV Weighted Voting System



P= Population

V= Vulnerability

M= Mitigation

OVP= Overall Voting Power

Individual member party scores are depicted as a % of the overall total. The table is ranked from largest to smallest in terms of the end voting score.

Member Party	P	V	M	OVP (%)
China	19.31%	0.69%	1.58%	9.14%
India	17.68%	1.05%	1.72%	8.55%
United States of America	4.49%	0.00%	1.59%	2.63%
Indonesia	3.53%	0.16%	1.69%	2.28%
Brazil	2.84%	0.02%	1.67%	1.96%
Somalia	0.15%	14.14%	0.03%	1.96%
Mexico	1.73%	0.04%	1.85%	1.55%
Russian Federation	2.05%	0.01%	1.31%	1.46%
Japan	1.82%	0.01%	1.42%	1.41%
Germany	1.17%	0.00%	1.86%	1.31%
United Kingdom of Great Britain and Northern Ireland	0.90%	0.00%	2.09%	1.30%
France	0.94%	0.00%	1.98%	1.27%
Egypt	1.15%	-0.06%	1.77%	1.26%
Italy	0.87%	0.00%	1.89%	1.20%
Pakistan	2.56%	0.45%	0.03%	1.18%
Bangladesh	2.21%	1.55%	0.03%	1.18%
Thailand	0.95%	0.12%	1.64%	1.14%
Nigeria	2.41%	0.31%	0.03%	1.10%
Myanmar	0.75%	5.64%	0.03%	1.09%
Spain	0.66%	0.00%	1.81%	1.07%
Turkey	1.06%	0.03%	1.40%	1.07%
Morocco	0.47%	0.21%	1.92%	1.06%
South Africa	0.73%	0.06%	1.62%	1.03%
Denmark	0.08%	0.00%	2.26%	1.01%
Ukraine	0.65%	0.02%	1.68%	1.01%
Iran (Islamic Republic of)	1.09%	0.15%	1.14%	0.99%
Romania	0.30%	0.01%	1.92%	0.96%
Portugal	0.15%	0.01%	2.06%	0.96%
Argentina	0.59%	0.01%	1.61%	0.95%
Sweden	0.14%	0.00%	2.05%	0.95%
Poland	0.55%	0.01%	1.58%	0.93%
Switzerland	0.11%	0.00%	1.99%	0.91%
Belgium	0.16%	0.00%	1.94%	0.91%
Hungary	0.14%	0.00%	1.96%	0.91%

Algeria	0.55%	0.15%	1.50%	0.91%
Ethiopia	1.31%	2.40%	0.03%	0.90%
Ireland	0.07%	0.00%	1.95%	0.88%
Malta	0.01%	0.00%	1.99%	0.86%
Slovakia	0.08%	0.01%	1.90%	0.86%
Iceland	0.00%	0.00%	1.95%	0.85%
Netherlands	0.24%	0.00%	1.71%	0.85%
Burundi	0.14%	5.83%	0.03%	0.85%
Lithuania	0.04%	0.01%	1.83%	0.81%
Norway	0.07%	0.00%	1.78%	0.80%
Austria	0.12%	0.00%	1.72%	0.80%
Malaysia	0.42%	0.03%	1.41%	0.80%
Belarus	0.14%	0.03%	1.70%	0.80%
Democratic People's Republic of Korea	0.35%	0.33%	1.40%	0.80%
Luxembourg	0.01%	0.00%	1.81%	0.79%
Slovenia	0.03%	0.01%	1.78%	0.78%
Latvia	0.03%	0.01%	1.77%	0.78%
Finland	0.08%	0.00%	1.70%	0.77%
Czech Republic	0.15%	0.00%	1.62%	0.77%
Bulgaria	0.10%	0.01%	1.65%	0.76%
Cyprus	0.02%	0.00%	1.73%	0.76%
Canada	0.50%	0.00%	1.21%	0.74%
Greece	0.16%	0.01%	1.55%	0.74%
New Zealand	0.06%	0.00%	1.61%	0.72%
Croatia	0.06%	0.01%	1.59%	0.72%
Democratic Republic of the Congo	0.94%	2.14%	0.03%	0.71%
Singapore	0.08%	0.00%	1.51%	0.69%
Australia	0.32%	0.00%	1.25%	0.68%
Philippines	1.38%	0.27%	0.03%	0.65%
Vietnam	1.27%	0.52%	0.03%	0.63%
Estonia	0.02%	0.01%	1.37%	0.60%
Kazakhstan	0.24%	-0.03%	1.13%	0.59%
Central African Republic	0.06%	3.51%	0.03%	0.51%
Saudi Arabia	0.40%	0.01%	0.76%	0.50%
Eritrea	0.09%	3.38%	0.03%	0.50%
Afghanistan	0.43%	2.10%	0.03%	0.48%
Zimbabwe	0.20%	2.88%	0.03%	0.48%
Sudan	0.53%	1.71%	0.03%	0.47%
United Republic of Tanzania	0.68%	0.80%	0.03%	0.42%
Guinea-Bissau	0.02%	2.98%	0.03%	0.42%
Liberia	0.06%	2.73%	0.03%	0.40%
Niger	0.25%	1.86%	0.03%	0.37%
Uganda	0.52%	0.67%	0.03%	0.33%
Malawi	0.23%	1.62%	0.03%	0.33%
Rwanda	0.16%	1.81%	0.03%	0.33%
Republic of Korea	0.72%	0.00%	0.03%	0.32%

Colombia	0.68%	0.06%	0.03%	0.32%
Kenya	0.62%	0.19%	0.03%	0.31%
Mozambique	0.36%	0.88%	0.03%	0.29%
Nepal	0.39%	0.71%	0.03%	0.28%
Madagascar	0.32%	0.96%	0.03%	0.28%
Iraq	0.47%	0.38%	0.03%	0.27%
Chad	0.18%	1.27%	0.03%	0.26%
Sierra Leone	0.09%	1.60%	0.03%	0.26%
Guinea	0.16%	1.24%	0.03%	0.25%
Togo	0.09%	1.44%	0.03%	0.25%
Uzbekistan	0.43%	0.33%	0.03%	0.24%
Yemen	0.34%	0.51%	0.03%	0.23%
Mali	0.21%	0.94%	0.03%	0.23%
Zambia	0.20%	0.88%	0.03%	0.22%
Peru	0.43%	0.06%	0.03%	0.21%
Burkina Faso	0.24%	0.72%	0.03%	0.21%
Senegal	0.20%	0.81%	0.03%	0.21%
Haiti	0.15%	0.99%	0.03%	0.21%
Venezuela (Bolivarian Republic of)	0.43%	0.03%	0.03%	0.20%
Ghana	0.36%	0.20%	0.03%	0.20%
Kiribati	0.00%	1.42%	0.03%	0.20%
Syrian Arab Republic	0.32%	0.27%	0.03%	0.19%
Cambodia	0.21%	0.67%	0.03%	0.19%
Comoros	0.01%	1.26%	0.03%	0.19%
Cameroon	0.31%	0.23%	0.03%	0.18%
Sri Lanka	0.29%	0.27%	0.03%	0.18%
Angola	0.30%	0.22%	0.03%	0.17%
Côte d'Ivoire	0.28%	0.29%	0.03%	0.17%
Benin	0.14%	0.71%	0.03%	0.17%
Cuba	0.16%	0.59%	0.03%	0.16%
Lesotho	0.03%	0.99%	0.03%	0.16%
Lao People's Democratic Republic	0.10%	0.67%	0.03%	0.14%
Papua New Guinea	0.10%	0.58%	0.03%	0.14%
Ecuador	0.22%	0.14%	0.03%	0.13%
Bolivia	0.15%	0.36%	0.03%	0.13%
Chile	0.25%	0.01%	0.03%	0.12%
Guatemala	0.22%	0.13%	0.03%	0.12%
Congo	0.06%	0.60%	0.03%	0.12%
Mauritania	0.05%	0.62%	0.03%	0.12%
Solomon Islands	0.01%	0.78%	0.03%	0.12%
Timor-Leste	0.02%	0.63%	0.03%	0.10%
Gambia	0.03%	0.55%	0.03%	0.10%
Tuvalu	0.00%	0.67%	0.03%	0.10%
Tunisia	0.15%	0.09%	0.03%	0.09%
Dominican Republic	0.15%	0.12%	0.03%	0.09%
Honduras	0.11%	0.23%	0.03%	0.09%

Tajikistan	0.11%	0.19%	0.03%	0.09%
Paraguay	0.10%	0.25%	0.03%	0.09%
Azerbaijan	0.13%	0.05%	0.03%	0.08%
Nicaragua	0.09%	0.22%	0.03%	0.08%
Turkmenistan	0.07%	0.23%	0.03%	0.08%
Djibouti	0.01%	0.46%	0.03%	0.08%
Micronesia (Federated States of)	0.00%	0.53%	0.03%	0.08%
Vanuatu	0.00%	0.51%	0.03%	0.08%
Tonga	0.00%	0.48%	0.03%	0.08%
United Arab Emirates	0.13%	0.01%	0.03%	0.07%
Swaziland	0.02%	0.37%	0.03%	0.07%
Nauru	0.00%	0.43%	0.03%	0.07%
Sao Tome and Principe	0.00%	0.40%	0.03%	0.07%
Saint Lucia	0.00%	0.40%	0.03%	0.07%
Samoa	0.00%	0.38%	0.03%	0.07%
Grenada	0.00%	0.39%	0.03%	0.07%
Israel	0.11%	0.00%	0.03%	0.06%
Serbia	0.10%	0.03%	0.03%	0.06%
El Salvador	0.09%	0.07%	0.03%	0.06%
Jordan	0.09%	0.05%	0.03%	0.06%
Libya	0.09%	0.07%	0.03%	0.06%
Kyrgyzstan	0.08%	0.09%	0.03%	0.06%
Namibia	0.03%	0.27%	0.03%	0.06%
Guyana	0.01%	0.35%	0.03%	0.06%
Saint Vincent and the Grenadines	0.00%	0.32%	0.03%	0.06%
Costa Rica	0.07%	0.05%	0.03%	0.05%
Georgia	0.06%	0.03%	0.03%	0.05%
Republic of Moldova	0.05%	0.09%	0.03%	0.05%
Bhutan	0.01%	0.25%	0.03%	0.05%
Marshall Islands	0.00%	0.30%	0.03%	0.05%
Maldives	0.00%	0.26%	0.03%	0.05%
Lebanon	0.06%	0.03%	0.03%	0.04%
Bosnia and Herzegovina	0.05%	0.04%	0.03%	0.04%
Panama	0.05%	0.03%	0.03%	0.04%
Jamaica	0.04%	0.11%	0.03%	0.04%
Albania	0.05%	0.04%	0.03%	0.04%
Oman	0.05%	0.02%	0.03%	0.04%
Uruguay	0.05%	0.01%	0.03%	0.04%
Mongolia	0.04%	0.06%	0.03%	0.04%
Equatorial Guinea	0.01%	0.20%	0.03%	0.04%
Cape Verde	0.01%	0.22%	0.03%	0.04%
Fiji	0.01%	0.15%	0.03%	0.04%
Saint Kitts and Nevis	0.00%	0.23%	0.03%	0.04%
Antigua and Barbuda	0.00%	0.19%	0.03%	0.04%
Dominica	0.00%	0.18%	0.03%	0.04%
Kuwait	0.05%	0.00%	0.03%	0.03%

Armenia	0.04%	0.03%	0.03%	0.03%
Botswana	0.03%	0.07%	0.03%	0.03%
Trinidad and Tobago	0.02%	0.10%	0.03%	0.03%
Gabon	0.02%	0.07%	0.03%	0.03%
The former Yugoslav Republic of Macedonia	0.03%	0.02%	0.03%	0.03%
Qatar	0.03%	0.00%	0.03%	0.03%
Barbados	0.00%	0.14%	0.03%	0.03%
Mauritius	0.02%	0.04%	0.03%	0.03%
Belize	0.00%	0.13%	0.03%	0.03%
Bahrain	0.02%	0.03%	0.03%	0.03%
Suriname	0.01%	0.10%	0.03%	0.03%
Bahamas	0.01%	0.09%	0.03%	0.03%
Cook Islands	0.00%	0.10%	0.03%	0.03%
Niue	0.00%	0.10%	0.03%	0.03%
Montenegro	0.01%	0.03%	0.03%	0.02%
Seychelles	0.00%	0.08%	0.03%	0.02%
Brunei Darussalam	0.01%	0.01%	0.03%	0.02%
Palau	0.00%	0.04%	0.03%	0.02%
Andorra	0.00%	0.00%	0.03%	0.01%
Monaco	0.00%	0.00%	0.03%	0.01%
Liechtenstein	0.00%	0.00%	0.03%	0.01%
San Marino	0.00%	0.00%	0.03%	0.01%

Table 4: Member Party Vote Allocations under the CBDV System

The EU stands to benefit most from the CBDV arrangements (due to their mitigation efforts) followed by the BASIC bloc, the LDCS and then the Umbrella Group. This allocation suits the previously mentioned second form of CMG by redistributing power away from the Umbrella Group and placing an emphasis towards some of the more progressive parties in terms of mitigation (i.e. the EU), most vulnerable states (the LDCs) and most important countries in terms of future emissions (the BASIC bloc). This distribution could even provide a pathway towards a critical mass agreement built around the EU and BASIC states. Importantly, the Umbrella Group is not permanently marginalised and could easily become a larger voting force if their individual members improve their domestic mitigation efforts. Accordingly CBDV may provide a model with greater democratic legitimacy, realistic political representation and effectiveness in encouraging new political dynamics. Regardless of such benefits its feasibility in being implemented is questionable at best.

CBDV is an idealistic model: despite its advantages it is never likely to come into existence. There are two main factors which limit its political feasibility. First, it violates Article 18 of the convention which stipulates that “Each party to the convention shall have one vote”. Therefore weighted voting would require an amendment to Article 18 before its adoption, and it would prove to be almost impossible to have parties universally ratify such a radical change. Second, it is even less probable that member parties could come to an

amicable agreement on voting criteria. Considering that parties to the UNFCCC have had prolonged struggles with just picking facilitators (chairs), assigning voting quotas would prove near impossible. This is particularly true when political hand-grenades like historical responsibility could easily be put forward as possible criteria. Third, parties are accustomed to the notion that democracy and sovereignty are embodied in the one-country one-vote model and are unlikely to acquiesce to such a radical change in the near future.

Despite its lack of feasibility, this tripartite split between democracy, vulnerability and leadership could provide a theoretical basis for weighted voting in other MEAs or environmental bodies. In which case the same basic structure of voting weights would exist, but the criteria themselves would be changed in order to reflect the conditions and priorities of the relevant body. For example, for the Convention on Biological Diversity, votes could be weighted upon the criteria of population, the current extinction rates within a country and financial contributions.

Voting within the COP of the UNFCCC is not a matter to be taken lightly and requires careful consideration and design. Depledge and Yamin have called for a form of “smart voting”<sup>105</sup> that would probably require a method of weighting to ensure that decisions were broadly supported across negotiating coalitions. Both CBDV and Layered Voting are two potential answers to this request as both provide different forms of weighting: CBDV amongst parties and Layered Voting across issues. CBDV ensures that a broad coalition across developing and developed countries would be necessary to pass most decisions, while Layered Voting guarantees that the most sensitive issues will have qualifications that reflect their importance and demand the mobilisation of a broad supermajority of parties. Ideally both could be combined so that there is a differentiation of voting power amongst parties as well as differing qualifications for different voting matters. However, as CBDV in and of itself is unlikely to come to fruition, Layered Voting appears to be the only effective option that could be feasibly implemented within the UNFCCC.

## **9 Conclusion: Risk and Opportunity**

Through the use of systems thinking and casual loop analysis it can be seen that the hegemonic practice of consensus has not always been beneficial to the effective operation of the UNFCCC and that voting is a suitable alternative. Voting, in the context of the Convention, is a likely to be a more efficient and potentially effective substitute. There are potential, although unlikely, pitfalls such as the Convention falling into a numbers game of buying votes, inadequate decisions being passed by a vote that would otherwise be blocked, or the collapse of the Convention due to the withdrawal of key states. Path dependency is a substantial barrier to changing from consensus, but adopting rules of procedure and the catalysing effect of political crisis would make the implementation of voting both legally and politically possible. I propose that Layered Voting is the best way forward in terms of a politically feasible and effective voting method and that the model of CBDV provides an

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<sup>105</sup> 2009, 450.

idealistic, but currently unrealistic, decision making system. Both are novel voting systems that could provide the basis for decision making within the UNFCCC, other MEAs, or future international environmental institutions.

There are a number of interesting avenues for further exploration of decision making within the Earth System Governance framework. First, can the UNFCCC act as a catalyst amongst other MEAs and spread majority voting as a new norm for international environmental governance? It is generally assumed that MEAs learn from each other, but there is little empirical evidence to prove that this is true in terms of rules and decision making. Research on the diffusion of rules and procedures between MEAs is therefore an important future area of study. Second, if voting was to be adopted, what would a global climate agreement without the US look like? How would free-riding be addressed and could the sub-national forces within the US be involved to help minimise leakage? Essentially, what is the face of an effective semi-global treaty in practice?

The main driver for change within the UNFCCC, and perhaps the wider field of environmental governance, is likely to be crisis. Ironically, the long term success of the UNFCCC may be dependent upon its short term failure. Naturally there are inherent risks in having the process of consensus collapse within the UNFCCC. It must be questioned whether the potential benefits of introducing majority voting outweigh the risks attendant upon both a short-term crisis or continuing with a decision making process that appears to be fatally flawed. The Hitchhikers Guide to the Galaxy by Douglas Adams once made the famous quip that “the answer to the ultimate question of life, the universe and everything” was the number 42.<sup>106</sup> While it may not be so cosmic, the number still carries some significance. The future of the UNFCCC, and perhaps of many of the other MEAs, may lie within Draft Rule 42 and the possibility of majority voting.

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<sup>106</sup> Adams 1979, 99.

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## Appendix I: Draft Rule 42

### Rule 42

#### [1. Alternative A

**The Parties shall make every effort to reach agreement on all matters of substance by consensus. If all efforts to reach consensus have been exhausted and no agreement has been reached, the decision shall, as a last resort, be taken by a two-thirds majority vote of the Parties present and voting, except:**

**(a) as otherwise provided by the Convention, the financial rules referred to in Article 7, paragraph 2 (k) of the Convention or the present rules of procedure[.] [;]**

**[(b) for a decision to adopt a proposed protocol, which shall be taken by [consensus] [a three-fourths majority of the Parties present and voting][.] [;]**

**[(c) for decisions under paragraph 3 of Article 4 and paragraphs 1, 3 or 4 of Article 11 of the Convention, which shall be taken by consensus.]**

#### 1. Alternative B

**Decisions on matters of substance shall be taken by consensus, except that decisions on financial matters shall be taken by a two-thirds majority vote.**

2. Decisions of the Conference of the Parties on matters of procedure shall be taken by a majority vote of the Parties present and voting [, **except that adoption of a motion or proposal to close or limit debate or the list of speakers shall require a two-thirds majority vote of the Parties present and voting**].

3. If the question arises as to whether a matter is one of a procedural or substantive nature, the President shall rule on the question. An appeal against this ruling shall be put to the vote immediately and the President's ruling shall stand unless overruled by a majority of the Parties present and voting.

4. If, on matters other than elections, a vote is equally divided, a second vote shall be taken. If this vote is also equally divided, the proposal shall be regarded as rejected.

5. For the purposes of this rule, the phrase "Parties present and voting" means Parties present at the meeting at which voting takes place and casting an affirmative or negative vote. Parties abstaining from voting shall be considered as not voting.]