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process (2015 to 2024)

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In 2012, the United Nations initiated efforts to find a solution to the Syrian conflict. In collaboration with the Arab League, former UN Secretary-General Kofi Annan was appointed Special Envoy for Syria. He negotiated a ceasefire, attempted to guarantee its implementation through the deployment of the UN Supervision Mission in Syria (UNSMIS), and convened a Syria Action Group in Geneva. The group included the foreign ministers of the P5 (Britain, China, France, Russia and the United States) as well as a number of regional states and senior representatives of the European Union and the Arab League. A peace plan, known as the Geneva Communiqué, was subsequently drawn up. Following the cessation of the ceasefire and the suspension of UNSMIS, the UN Security Council was similarly unable to endorse the communiqué due to a disagreement between the United States and Russia over the proposed transitional governing body and, in particular, the role of the Syrian president in it. In consequence of the absence of international endorsement, Kofi Annan resigned as Special Envoy after a tenure of only six months.

Following the adoption of Resolution 2118 by the Security Council in September 2013, which endorsed the Geneva Communiqué and its call for a Syrian-led political process, Lakhdar Brahimi, Annan's successor, focused on intra-Syrian negotiations. In late 2013, he succeeded in launching the first UN-led negotiations between the Syrian government and the opposition in Montreux and Geneva. In March, Brahimi reported to the UN Security Council, where he expressed concern that »neither side had demonstrated a willingness to compromise or a genuine awareness of the suffering of the Syrian people«. Brahimi had previously called on Russia and the US to exert more pressure on the Syrian president or the rebels, but this had not been successful. In May 2014, Brahimi also resigned as UN Special Envoy, citing the lack of international support as the reason for his decision.¹

He was succeeded by Staffan de Mistura in July 2014. During his tenure, on 18 December 2015, the UN Security Council reached a final resolution with the potential to influence the situation in Syria, namely Resolution 2254. With this resolution, the UN Security Council

»expressed its support for a Syrian-led political process under the auspices of the United Nations that would lead to the establishment of a credible, inclusive and secular governing system within six months and to the establishment of a process and a timetable for the drafting of a new constitution«.

It also declared

»its support for free and fair elections under the new constitution to be held within 18 months under UN supervision, to the satisfaction of the governing body and in accordance with the highest international standards of transparency and accountability, in which all Syrians, including the diaspora, can participate, as set out in the 14 November 2015 Support Group statement.«²

The resolution identified a number of issues that required attention. Only one of these, the draft-

1 See Welt, 13 May, 2014, »Syrien-Sondergesandter Brahimi tritt zurück« [Syria Special Envoy Brahimi Resigns], available at <https://www.welt.de/politik/ausland/article127970818/Syrien-Sondergesandter-Brahimi-tritt-zurueck.html> (in German only); See also Hasmik Egian & Mouin Rabbani, 5 September, 2023, »Reviewing the UN's Conflict Mediation Role in Syria Is Long Overdue«, available at <https://www.passblue.com/2023/09/05/a-serious-review-of-the-uns-conflict-mediation-role-in-syria-is-long-overdue/>.

2 United Nations Security Council, 18 December, 2015, »Resolution 2254 (2015)«, S /RES/2254 (2015), available at https://www.securitycouncilreport.org/atf/cf/per cent7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9per cent7D/s_res_2254.pdf.

ing of a new constitution, was addressed. This paper examines the Syrian constitutional process in detail, focusing on the actors involved, the agreements reached thus far, and the progress made, particularly in the areas of minority inclusion in the constitutional process and the agreement on fundamental human and minority rights.

The final question is particularly intriguing, as the Syrian constitution of 2012³, initiated by President Assad, makes no concessions in this regard. In terms of content, it builds on the 1973 constitution, the most significant difference being the introduction of a multi-party system. Article 8 states that the state's political system is based on the principle of political pluralism and that power is exercised on the basis of democratic elections. Nevertheless, political parties may not be based on religious, sectarian, tribal, regional, class or professional grounds, nor may they be discriminatory on the grounds of sex, origin, race or colour. This stipulation is evidently directed primarily at religious or ethnic parties, in this case Kurdish parties, which would be the most likely to attract significant electoral support.

Furthermore, both the preamble and Article 1 of the constitution make exclusive reference to Syria's »Arab identity«, the »Arab homeland« and the »Arab nation«. There is no mention of Syria's diversity. Furthermore, the document—also in the preamble—commits itself to human rights. These are also discussed in Part II of the constitution. However, the list there is neither complete nor linked to a commitment to internationally recognised human rights at UN level.

Finally, the manner in which the constitution was drafted was not democratic or inclusive: All members of the drafting committee were appointed by the president. Furthermore, the constitution was adopted by the people at a time when parts of the country were being bombed by the Syrian army.

Could progress be made on these issues in the context of the constitutional process?

In order to address these questions, it is first necessary to examine the founding phase of the Syrian Negotiations Commission (SNC), the representative body of the opposition, and its inherent weaknesses. Building on this, this analysis will examine why the UN decided to prioritise the constitutional process in particular - and not other political aspects of the political process. Finally, the constitutional process itself will be analysed, with a particular focus on the last three rounds of talks of the Constitutional Committee in Geneva. This analysis will be conducted on the basis of the principles introduced into the constitutional process by the various groups, which have not previously been published.

3 In October 2011, seven months after the commencement of the Syrian revolution, President Assad convened a national committee with the objective of drafting a new constitution. On 14 February 2012, the chairperson of the committee presented the results of their work, and on 26 February 2012, the draft was approved by referendum. For further information, please see Martin Chulov, »Syria votes on new constitution as shelling of Homs continues«, 27 February 2012, available at <https://www.theguardian.com/world/2012/feb/26/syria-referendum-constitution-homs-shelling>.

The genesis of the political process: From UN Resolution 2254 to the Second Riyadh Conference

In December 2015, two significant developments occurred: the adoption of UN Resolution 2254 and the establishment of the High Negotiations Committee (HNC) in Riyadh. The occasion was a meeting of the »International Syria Support Group« (ISSG)⁴ on 14 November 2015, at which it was decided to start peace talks in Geneva in early January 2016. The HNC was tasked with representing the Syrian opposition at the planned 2016 Geneva talks. The HNC convened approximately one hundred exiled politicians from 34 opposition groups, including armed oppositionists, Islamist hardliners, defectors from the Syrian army, and other dissidents. Jihadist groups such as the Nusra Front and Islamic State (IS), as well as the Kurdistan Workers' Party's (PKK) sister party, the Democratic Union Party (PYD), were not invited to the talks. Furthermore, no representatives from the political activists who protested for freedom and democracy in 2011 were present.

The alliance officially recognised by the ISSG stated that the National Coalition of Syrian Revolutionary and Opposition Forces (Etilaf), the Free Syrian Army (FSA), the National Coordination Committee for Democratic Change (NCB) as well as the Cairo and Moscow platforms represent the Syrian opposition. The Kurdish population was represented by the Kurdish National Council (KNC), while political independents were included. Riyad Hijab, the former Prime Minister of Syria, was elected as the President of the HNC.⁵

At the conclusion of January 2016, the HNC resolved to participate in the Geneva talks contingent upon the establishment of a ceasefire in Syria: Geneva III was born.⁶ Following the failure of UN Special Envoys Kofi Annan and Lakhdar Brahimi to initiate direct talks between the opposition and the government at Geneva I and II, the new UN Special Envoy, Staffan de Mistura, attempted to kick-start the talks through what were known as »proximity talks«. The Special Envoy and his team alternated between talking to the opposition and the government. Additionally, informal meetings were held with other groups, including the Women's Advisory Board (WAB) and the Civil Society Support Group (CSSG). Following the suspension of the talks by the HNC in April due to ceasefire violations by the Syrian government, the UN mediator initiated a process of »technical talks« and »shuttle diplomacy«. This entailed his team travelling to various locations in the Middle East and Europe to engage with the parties to the conflict.

A significant shortcoming of the HNC was that the various groups were merely an alliance of convenience, lacking a common political agenda. The »Executive Framework for a Political Solution«, published in September 2016 and based on the Geneva Communiqué, represents an attempt to define a common political basis. In the following, the focus will be on the differences between the Arab majority and representatives of minorities such as the Kurdish National Council (KNC).

The initial section of the document, entitled »General Principles«, asserts that Syria is an integral part of the Arab world and that Arabic is the official language of the state. Arab-Islamic culture is described as the source of social relations between all Syrians, regardless of their ethnic background. However, there is no mention of the fact that Syria is a multi-ethnic, multi-religious

4 The establishment of the ISSG can be traced back to the Vienna Conference on 30 October 2015. At this conference, it was decided to pursue the political transition agreed upon in 2012 (Geneva I) with greater determination. The states and international organisations present at the conference, including all members of the UN Security Council, came together under the name »International Syria Support Group« (ISSG).

5 See Wikipedia, »High Negotiations Committee«, https://en.wikipedia.org/wiki/High_Negotiations_Committee. See also Scientific Services of the German Bundestag 2017, »Der Syrienkrieg – Akteure und Verhandlungen« [»The Syrian Civil War—Actors and Negotiations«], available at <https://www.bundestag.de/resource/blob/515094/6add202f3f24cc5c6295548c897f0d07/wd-2-043-17-pdf-data.pdf>.

6 Carsten Wieland 2021, Syria and the Neutrality Trap: The Dilemmas of Delivering Humanitarian Aid through Violent Regimes, London, I. B. Tauris, Foreword.

and multi-cultural country, with Yazidis, Christians, Turkmen and other groups living alongside the Kurds. Concurrently, point 6 of the General Principles asserts that the »Kurdish question« is regarded as a national Syrian issue and that ethnic, linguistic, and cultural rights should be enshrined in the constitution.

With regard to the matter of decentralisation, point 8 of the aforementioned document states that the principle of administrative decentralisation should be applied. This implies that the rejection of political and financial autonomy for different regions in Syria inhabited by minority groups is to be upheld. This position is at odds with the concept of a federal Syria, which the Kurdish National Council (KNC) and the PYD have called for.⁷

Furthermore, point 11 is problematic from the perspective of minorities: In the event that consensus cannot be reached on matters pertaining to the principles of the transitional period, decisions affecting specific components of Syrian society may be enacted by a two-thirds majority:

»The rules of decision-making by consensus will apply with respect to legislative and executive procedures which pertain to specific components of the Syrian society. In the event consensus is unattainable, a two-thirds majority decision shall suffice.«⁸

This stipulation has the potential to result in the exclusion of groups with less than a third of the total votes. Smaller interest groups may be concerned that their demands, however justifiable, will not be given due consideration. A more participatory system would be a double majority system, whereby all decisions require the support of both a majority of all representatives on the HNC and a majority within each group represented there. Such a system would ensure that individuals could not impede decisions, but that all groups would be included and their voices heard. Furthermore, it would compel all members of the committee to collaborate.

The next significant step towards reaching an agreement on common principles is the final declaration of the second conference in Riyadh (22–23 November 2017). This declaration demonstrates a clear commitment by the Negotiations Committee⁹ to the recognition of Syria's multi-ethnicity. Syria is understood to be a

»multi-ethnic and multicultural country whose constitution must guarantee the national rights of all sections of the population, including those of the Arabs as well as those of the Kurds, Turkmen, Arameans, Assyrians and others. These include their culture and languages, which are considered national languages and cultures and represent Syria's history and civilisation.«¹⁰

Furthermore, the document explicitly identifies the Kurdish question as a national issue and calls for the reinstatement of those who were unlawfully deprived of their citizenship by the Ba'ath regime.

Ultimately, the declaration refrains from committing itself to the principle of majoritarian de-

7 European Centre for Kurdish Studies 2016, »Vorschlag zur Verwaltung der kurdischen Gebiete in Syrien« [Proposal for the administration of the Kurdish areas in Syria], available at https://power-sharing-syria.ezks.org/wp-content/uploads/2022/02/2-Workshop-Paper_02_Erbil_2016_DE.pdf. See also ANF News, February 23, 2016, »Ehmed: Three federal regions will be formed in Syria – PART II«, available at <https://anfenglish.com/features/ehmed-three-federal-regions-will-be-formed-in-syria-part-ii-14012>.

8 High Negotiations Commission for the Syrian Revolution and Opposition Forces, September 2016, »Executive Framework for a Political Solution, Based on the Geneva Communiqué (2012)«, p. 11, available at <https://constitutionalblawg.files.wordpress.com/2016/10/hnc-executive-summary-english.pdf>.

9 The name »High Negotiations Committee« was changed to »Negotiations Committee« at the conference

10 Kurdish National Council (KNC) in Geneva, Berlin, 6 December 2017, »Final Declaration of the Extended Conference of the Syrian Revolutionary and Opposition Forces«, held in Riyadh from 22 to 23 November 2017, available at <https://knc-geneva.ezks.org/?p=2026&lang=en>.

mocracy and its potential to exclude minority groups. In this respect, it can be seen as a concession to the Kurdish National Council or minority groups.

Nevertheless, no progress was made on the desired form of decentralisation. Article 6 only mentions administrative decentralisation as an objective. Consequently, the Kurdish National Council signed the document, but with the proviso that it would prefer a federal state structure. Finally, the final document of the second Riyadh conference allows for negotiations on a future state structure without specifying further preconditions, thus not excluding a discussion on federal structures.

Using the discussions in the Syrian Constitutional Committee as an example, the further course of this study examines the extent to which the opposition has incorporated the results of the second Riyadh conference into the constitutional process and developed them further, and the extent to which it has been possible to agree on these principles with other groups. Initially, however, the focus is on the establishment of the Constitutional Committee and the UN's decision in favour of the constitutional process and against other issues in the political process.

The establishment of the Syrian Constitutional Committee (SCC)

In March 2017, UN Special Envoy Staffan de Mistura presented a non-paper that identified four topics (»four baskets«) through which the transition process envisaged in UN Resolution 2254 could finally be launched: governance and political transition; constitution; elections; and war on terror.¹¹ Russian Foreign Minister Sergei Lavrov assured support for the UN on the implementation of these issues:

»We appreciate this chance to meet shortly after the round of Astana talks ended and a day before the start of intra-Syrian consultations in Geneva [...] We will help you coordinate efforts on the »four baskets« - constitution, governance, elections and war on terror [...] All this was included in the UN Security Council's Resolution 2254.«¹²

In fact, Russia was adamant in its argument to the UN Special Envoy that of the four issues, only the issue of »constitution« should be addressed.¹³ This was the least dangerous from the Syrian (and Russian) point of view, especially in comparison to »political transition« and »elections«. On the one hand, because it did not imply regime change, and on the other, because constitutions generally do not play a major role in the region.

In the context of the Geneva talks, a list of potential members from the opposition and civil society was compiled over the course of 2017. The UN was responsible for compiling independent civil society actors or those aligned with the opposition, the Syrian government nominated members for the government delegation and civil society actors aligned with it, and the SNC proposed representatives for the opposition group. In January 2018, at the so-called Sochi Conference, the members of the Astana Group—Turkey, Russia and Iran—reached an agreement on the final composition of the 150-member Constitutional Committee.

In September 2019, the UN Secretary-General informed the President of the Security Council about the composition and functioning of the Constitutional Committee. In accordance

11 See Fathi Erel, March 27, 2017, »UN envoy shares four baskets plan with Syrian sides«, available at <https://www.aa.com.tr/en/europe/un-envoy-shares-four-baskets-plan-with-syrian-sides/780285>.

12 Cf. TASS, March 22, 2017, »Moscow ready to help UN implement ›four baskets‹ on Syria«, available at <https://tass.com/politics/936797>.

13 Carsten Wieland, 15 January, 2022, »The Syrian Constitutional Process: How it became what it is«, unpublished presentation at the workshop »Learning for Syria – Constitution-Making during Conflict: The role of the UN« published by the ECKS, Vevey, Switzerland.

with Article 2 of the »Terms of Reference and Core Rules of Procedure«¹⁴, the Committee is comprised of three groups: representatives of the government, representatives of the opposition, and representatives of civil society, collectively known as the Middle Third. The total number of individuals in each group is 50, and collectively they constitute the Large Body.

In addition, the Small Body, comprising 15 representatives from each of the individual groups, is responsible for drafting a new constitution. The Large Body, on the other hand, is tasked with approving or rejecting this draft constitution. In accordance with Article 3, a consensual decision is typically sought. However, should this be impossible, decisions may be made with a qualified majority of 75 % of the votes (113 in the Large Body and 34 in the Small Body). Article 4 also stipulates that the Constitutional Committee should have two co-chairs with equal rights. One of these should be nominated by the government, while the other should be nominated by the Negotiating Committee.

Article 5 defines the role of the UN Special Envoy:

»The Special Envoy shall facilitate the Syrian-led and Syrian-owned Constitutional Committee’s work, including by supporting the Co-Chairs to reach consensus and by bringing closer viewpoints among the members through exerting his good offices when needed.«

One issue with the nomination of members for the Constitutional Committee was the significant influence of the Astana Group. The cited document states that the Syrian Negotiating Commission (SNC) will appoint 50 members. In practice, although it was consistently emphasised that the constitutional process was »Syrian-led and Syrian-owned”«, Russia and Turkey exerted considerable influence. For example, Hawas Sadoun, a member of the Kurdish National Council and the Syrian Negotiating Committee, was to be included in the Constitutional Committee in accordance with the wishes of the Negotiating Committee. However, this was unsuccessful due to Turkey’s veto, which was opposed to Sadoun’s criticism of Turkish policy in Afrîn and also succeeded in having him excluded from the Negotiating Committee.¹⁵ Moreover, the Kurdish activist Faruk Mustafa was also denied a seat on the Constitutional Committee as a consequence of Turkey’s veto.¹⁶

Furthermore, the Constitutional Committee is subject to a number of design flaws: The establishment of only two co-chairs places the civil society group at a disadvantage, as it limits their ability to influence the committee’s decisions. While the exclusion of civil society representatives who are aligned with the government does not significantly impact the committee’s operations, it presents a challenge for civil society groups that are more aligned with the opposition. This group, which prefers the term »independent civil society group« to »opposition-aligned civil society group«,¹⁷ is unable to actively shape the agenda of the meetings or chair the meetings due to the lack of co-chairs.

Furthermore, the members of this sub-group lack both a government and political parties or organisations that provide them with financial support. Throughout the entire constitutional process, the UN has not identified a solution to compensate for this structural disadvantage.

14 United Nations, Security Council, 27. September 2019, »Letter dated 26 September 2019 from the Secretary-General, addressed to the President of the Security Council«, Annex »Terms of Reference and Core Rules of Procedure. For a Syrian-led, Syrian-owned, credible, balanced and inclusive Constitutional Committee facilitated by the United Nations in Geneva«, S/2019/775, available at https://specialenvoysyria.unmissions.org/sites/default/files/constitutional_committee_tors_and_rops.pdf.

15 Interview with Hawas Sadoun, 2018. Sadoun was informed about this by a high-ranking member of Etilaf, the most important group in the SNC.

16 Interview with Faruk Mustafa, 2018.

17 Interview with Sabah Alhallak, member of the independent/opposition-aligned civil society group of the SCC, Loccum, Germany, June 2022.

Members of the opposition-aligned civil society group of the Small Body, who typically rely on gainful employment for their livelihoods, do not receive any compensation for attending meetings of the Constitutional Committee. Furthermore, they are not guaranteed even moral support from the Office of the UN Special Envoy. In a discussion held in January 2022, a senior official from the Office of the Special Envoy expressed a dismissive attitude towards the opposition-aligned civil society group, stating that they were »not obliged to attend the negotiations if they did not wish to do so«.¹⁸

Finally, opposition-aligned and government-aligned members are not equally represented within the civil society group. In the Small Body, for example, there are eight members of the government bloc, six of the SNC bloc and one person who is considered independent. The civil society group was unable to fulfil its intended »bridging function« due to its internal division, which instead served to strengthen the government bloc.

It took almost two more years from its establishment to the first meeting of the Constitutional Committee. Finally, in October 2019—by which time Geir O. Pedersen had already been appointed as the new UN Special Envoy for Syria—the only meeting of the Large Body to date took place, namely a meeting of all 150 members. Pedersen described the meeting as a »sign of hope for Syria«. Although the committee's initial discussions had been characterised by considerable emotional intensity, it had been possible to agree on 45 individuals who would engage in direct dialogue with each other in the Small Body in the future. This group was to convene for the first time on 25 November.¹⁹

A more detailed examination of the composition of the Constitutional Committee reveals that it does not adequately represent the various groups within Syrian society. For instance, it was not possible to include a third of women, despite the UN having stipulated this as part of its conventional gender mainstreaming programme. In the Small Body, only 27 % of the members were women, and this figure was only reached due to the fact that the civil society bloc has a total of 40 % female members. The opposition was represented by only 14 % women, while the regime had 24 %.²⁰

Furthermore, members of minorities are also significantly underrepresented. This is also due to the fact that the UN has not set any guidelines in this area. Despite the estimated 10 – 15 % of the Syrian population being Kurdish, only six out of 150 members (4 %) of the Large Body are of Kurdish origin. This is distributed as two in the opposition bloc, two in the civil society group and two in the government bloc. The Small Body comprises two Kurds, one from the regime bloc and one from the opposition. Only Kamîran Hajo from the Kurdish National Council (opposition bloc) considers himself to be a representative of Kurdish interests.

It is not only the Kurds who are underrepresented in the SCC; other minorities are also underrepresented, although to a lesser extent. The proportion (2 %) of Assyrians in the Large Body (two members in the civil society bloc and one member in the opposition) is lower than their actual share of the Syrian population (4 %). The Turkmen are also represented in the Large Body with 2 % (one member of the civil society bloc and one member of the opposition), which is below their share of the Syrian population (4–5 %). Furthermore, there are no Assyrians and only

18 Interview by Eva Savelsberg and Siamend Hajo with staff from the Office of the Special Envoy for Syria, Geneva, 18 January, 2022.

19 United Nations, 22 November, 2019, »Special Envoy Calls Launch of Constitutional Committee for Syria 'Historic Moment', but Warns Security Council Conditions on Ground Must Improve«, SC/14032, available at <https://press.un.org/en/2019/sc14032.doc.htm>.

20 See European Centre for Kurdish Studies, August 2021, »The Syrian Constitutional Committee. Actor Mapping of the Small Body«, p. 11, available at https://power-sharing-syria.ezks.org/wp-content/uploads/2021/08/Actor-Mapping_FINAL-EN.pdf. All data refers to the year 2021.

one Turkmen in the Small Body (opposition). Additionally, there is one Armenian in the Large Body (government bloc) and one Assyrian (opposition), but none of them are in the Small Body.

With regard to religious minorities, it can be observed that Alawites are underrepresented in the Large Body of the Constitutional Committee, with a share of 12.7 % compared to approximately 15 % of the Syrian population. Four members belong to the opposition bloc, seven to the civil society group and eight to the government bloc. Seven of the nineteen Alawites are included in the Small Body, with four in the government bloc, two in the civil society bloc and one in the opposition. In contrast, Christians are slightly overrepresented in the Large Body of the Constitutional Committee, with 13.3 % compared to approximately 10 % of the Syrian population. Six Christians are represented in the government bloc, nine in the civil society bloc and five in the opposition. Four of them are included in the Small Body: one belongs to the government group, two to the civil society group and one to the opposition group. A similar pattern can be observed with regard to the Druze: 6 % of the members of the Large Body of the Constitutional Committee (nine individuals) are Druze, whereas according to available statistics, only 3 % of the Syrian population are defined as such. Three members of the opposition, three from the civil society group and three from the government bloc were selected. Two of them are also included in the Small Body, one from civil society and one from the opposition. In contrast, the Yazidis are not represented in the Syrian Constitutional Committee. Consequently, the civil society group is the most diverse in terms of religion, while the opposition bloc has the largest proportion of Sunni Muslims.²¹

The composition of the Constitutional Committee is of significant importance, as it can be assumed that the concerns of women, minorities or young people²² will only be given sufficient consideration in a debate if a significant number of representatives are committed to them. The fact that these groups were already underrepresented in the composition of the SCC did not bode well for the consideration of their specific needs.

In November 2019, August 2020, December 2020, January 2021, October 2021, March 2022 and May 2022, 45 representatives of the Small Body convened in Geneva for a series of meetings. The various rounds of talks can be broadly divided into two categories: In the second to fifth rounds of discussions, fundamental constitutional principles were the focus of debate. However, there was no established procedure in place, and the discussions were not based on specific texts. In contrast, in the sixth and subsequent rounds, previously submitted papers were discussed. This section will first provide an overview of the discussions in the second to fifth rounds, before going into detail on the principles discussed in the sixth, seventh and eighth rounds. The relevant texts are not yet public. The aforementioned documents were provided by various actors within the SCC as part of the Minority Advisor Board's work. The Minority Advisor Board [an expert body of the European Centre for Kurdish Studies (ECKS)] advised the minority representatives in the Constitutional Committee during the negotiation rounds and beyond. The discussions with various members of the Constitutional Committee mentioned below were also

21 See European Centre for Kurdish Studies, August 2021, »The Syrian Constitutional Committee. Actor Mapping of the Small Body«, pp. 16/17, available at https://power-sharing-syria.ezks.org/wp-content/uploads/2021/08/Actor-Mapping_FINAL-EN.pdf. All data refers to the year 2021.

22 The average age of SCC members in the Small Body of the government bloc is 54 years, in the opposition 52 years and in the civil society group 57 years. There are no members under the age of 30, and only seven members of the Small Body and ten of the Large Body are between 30 and 40 years old. Furthermore, 29 % of SCC members in the Small Body are between 61 and 70 years old. Consequently, the voices, interests and views of young people are not adequately represented in the Constitutional Committee, despite the average age of the Syrian population being 21.4 years. For further details, please refer to the European Centre for Kurdish Studies, August 2021, »The Syrian Constitutional Committee. Actor Mapping of the Small Body« (p. 18), available at https://power-sharing-syria.ezks.org/wp-content/uploads/2021/08/Actor-Mapping_FINAL-EN.pdf. All ages refer to the year 2021.

conducted in this context.

Round two to five of the Syrian Constitutional Committee

The second and third negotiating rounds of the Constitutional Committee in November 2019 and August 2020 concentrated on questions pertaining to Syria's identity. Among the topics discussed were the continued use of the designation »Syrian Arab Republic« or the alternative »Syrian Republic«, as well as the role of Islam in the constitution. Despite the efforts of the participants, no agreement was reached, which also had to do with the way the meeting was conducted. In this regard, it should be noted that those who wished to speak were permitted to do so without the chairpersons or the special envoy intervening in any structuring way. Nevertheless, the UN Special Envoy expressed a cautious optimism in his closing statement:

»I am confident that we have been able to build a little bit of confidence, a little bit of trust, and that we can build on this and continue the work that we have started, we would see progress in the work of the committee. But as I have said, progress is happening, it's of course up to the Syrians themselves within the Committee.«²³

The fourth round of talks, held in December 2020, also addressed the question of what constitutes »Syrian identity«. The opposition published a final declaration, among other things, stating that this identity must be actively developed in accordance with the principles of the modern civil state. In contrast, the Syrian government emphasised that the Syrian identity has been shaped by all civilisations, religions, and traditions. Concurrently, the government's statement reiterates that the name of the state is and should remain »Syrian Arab Republic« and that the official language of the state is exclusively Arabic. Furthermore, the government's statement primarily addresses the issue of terrorism, a term that is defined so broadly that it even includes Kurdish school lessons.²⁴ There was no rapprochement between the various groups in the fourth round.

The fifth round of the Syrian Constitutional Committee (SCC) in January 2021 also concluded without a tangible outcome. Subsequent to the discussions, the opposition asserted that the government was solely preoccupied with technical matters and had rejected all of the opposition's proposals in their entirety, rather than engaging in constructive discourse.²⁵ In contrast, the UN Special Envoy advocated for a modification of the procedural framework within the Syrian Constitutional Committee. In his briefing to the UN Security Council on 15 March 2021, he stated that:

»A sixth session of the small drafting body of the Constitutional Committee needs to be carefully prepared, and assurances should be in place to ensure that it implements the Terms of Reference and Core Rules of Procedure, restores and builds some trust and confidence, and makes progress on the Committee's mandate. A sixth session needs to be different from what has gone before—with some clear goals, credible working methods, enhanced Co-Chair cooperation, and a future workplan. [...] I appreciate that both Co-Chairs have committed procedural proposals to writing and that they are both engaging, and I continue to facilitate their exchanges in the hope of concluding an agreement. The United Nations will be ready to convene a sixth session as soon as agreement is in

23 See United Nations, 29 August, 2020, »UN envoy welcomes ›commonalities‹ shared by Syrians in Geneva talks«, available at <https://news.un.org/en/story/2020/08/1071342>.

24 See European Centre for Kurdish Studies, August 2021, »The Syrian Constitutional Committee. Actor Mapping of the Small Body«, p. 12, available at https://power-sharing-syria.ezks.org/wp-content/uploads/2021/08/Actor-Mapping_FINAL-EN.pdf.

25 The New Arab, 29 January, 2021, »Fifth round of Syrian constitutional talks end without 'true engagement' from regime«, available at <https://www.newarab.com/news/fifth-round-syrian-constitutional-talks-end-without-progress>.

place.«²⁶

Round six of the Syrian Constitutional Committee: A »disappointment«

In fact, the sixth round of the Constitutional Committee took place under different conditions: On 17 October 2021, the UN Special Envoy held preliminary talks with the two co-chairs in Geneva. The aim of these talks was to agree on principles to be discussed during the sixth round. However, this was not achieved even after two meetings. Consequently, the UN Special Envoy proposed that the government and opposition each bring two principles of their choice to the discussion. The co-chairs of the SCC finally agreed to discuss one principle each day, which would be presented alternately by the opposition and civil society. The government commenced on 18 October with the submission of a principle entitled »Sovereignty, Independence and Territorial Integrity of the Syrian Arab Republic«. It begins as follows:

»The Syrian Arab Republic is an independent and fully sovereign state that does not accept any interference in its internal affairs; it is united and indivisible by land and people, and no part of the territory may be renounced, nor the right and duty of the state to extend its authority to its entire territory and to ensure the continuity of the work of all its institutions. Anyone who deals with an external party in an unlawful manner that violates this principle is subject to legal liability.«

The claims made here to sovereignty under international law, inviolability of territory and the right to rule over territory and population are in principle a common constitutional principle.²⁷ The same can be said of the prohibition on interference in internal affairs, which is enshrined in international law. However, the idea of »fully« sovereignty is problematic, as every state or every state action is restricted by international law. Furthermore, the lack of a clear definition of »internal affairs« is problematic. It is important to note that the observance of human rights cannot in principle be counted as part of a country's internal affairs. This realisation became particularly prevalent after the Second World War.

The second paragraph of the principle reads:

»The liberation of the occupied land is a sacred national duty assumed by all state institutions. The restoration of this land is an inalienable right that is not subject to renunciation or negotiation, nor is it time-barred. Any form of cooperation that contributes to the continuation or consolidation of this occupation is considered high treason.«

The problematic aspect of this matter is the conflation of the constitutional principle of state sovereignty with criminal law provisions (legal responsibility, treason). The principle that has been formulated appears to seek to create new, very general criminal offences. The demand that all state authorities have a duty to liberate the »occupied land« is also unfeasible. It is unclear how the postal service, for example, could fulfil this duty as a state authority. Furthermore, the concept of a »sacre« or »national« duty is not clearly defined.

Paragraph 3 continues:

»Any separatist or semi-separatist projects or tendencies, regardless of their formulation, are seen as a contradiction to the principle of the unity of the Syrian country and the will

²⁶ United Nations, 15 March, 2021, »United Nations Special Envoy for Syria Geir O. Pedersen. Briefing to the Security Council on Syria«, available at https://specialenvoysyria.unmissions.org/sites/default/files/2021-03-15_secco_un_special_envoy_for_syria_mr_geir_o_pedersen_briefing_as_delivered.pdf.

²⁷ See, for example, UN Covenant II, Art. 1(1): »All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.«

of the Syrian people. The Local Administration Law regulates the rights and powers of the councils of the administrative units.«

This principle is not a constitutional principle; rather, it is an implicit threat of punishment. The punishable offence, namely separatist or semi-separatist tendencies, is not defined in more detail and is formulated too generally. The basic rule is that no punishment can be imposed without a law that clearly defines the offence that is punishable. This presumably refers to any desire for autonomy, decentralisation or strengthening of local self-government. The stipulation in the constitution that this is contrary to the »will of the people« also contravenes the principle of democracy. The people themselves should determine what corresponds to their will, and they can of course change their minds. Their opinion cannot be determined from above. The manner in which the country wishes to administer itself in the future (whether centralised or decentralised), whether regions should also play a role and which ones, must be answered within the framework of the constitution. The unmediated mention of the Local Government Act gives the impression that anyone who wants more vertical separation of powers than the Local Government Act provides for has at least semi-separatist tendencies.

Paragraph 4 follows:

»The Syrian state has the sole right to own full sovereignty over all opportunities, natural resources and underground wealth in all its lands, including occupied ones, and to manage and supervise their investment. Any illegal exploitation or participation therein is a criminal theft of the people's capabilities.«

The sovereignty of a country over its natural resources is guaranteed under international law.²⁸ In this respect, the formulated principle is unproblematic. However, this principle also mixes constitutional and criminal law. Once again, apparently new, undefined criminal offences (»illegal exploitation or participation therein«) are created.

The government formulates paragraph 5 as follows:

The Syrian »The Arab Republic is part of the Arab world, proud of its Arab affiliation and works to support and strengthen Arab cooperation and solidarity with the aim of uniting the Arab nation. «

It is evident that this is an instance of identity politics that fails to acknowledge the rich diversity of the Syrian population. The tenet of Arab nationalism, which espouses the principle of state sovereignty, is particularly evident in this context. It is clear that the principle is directed against the representatives of minorities and their clientele. Furthermore, it is necessary to consider whether the principle put forth here, which calls for the dissolution of the Syrian state into a larger federation, does not contravene the principle of sovereignty as outlined in paragraph 1.

The last paragraph of the principle reads:

»The Syrian Arab Republic strives for international peace and security in the light of respect for international law and the values of truth and justice.«

This conciliatory conclusion cannot mask the fact that the entire principle is indicative of an authoritarian spirit and an attitude of refusal to engage in discourse, in that it seeks to criminalise dissenting opinions. It is of paramount importance (and customary practice) that criminal law is excluded from the equation when laws or constitutions are being negotiated. No fact-based discussion is possible if political views cannot be expressed because they are considered treason

²⁸ See, for example, UN Covenant II, Art. 1(2): »All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.«

per se (or statements that are »against the people«).

Despite the content of the principle, Kamîran Hajo, a member of the Kurdish National Council (KNC) and the SNC, expressed the view at the end of the first day that, in contrast to previous rounds, there was at least a certain willingness on the part of the regime to discuss basic principles. At the same time, the regime was still attempting to delay the process. The discussions were scheduled to continue in the afternoon; however, the government delegation rejected this. Nonetheless, the prevailing sentiment was more positive than in previous rounds.

On the second day of negotiations, the prevailing positive sentiment persisted. The opposition's proposal concerning the principle of »military, armed forces, security forces, and intelligence services« was deliberated upon:

»The state is committed to building security and intelligence institutions to safeguard national security and is committed to the rule of law, constitutional and legal compliance and respect for human rights and operates to the highest standards.

The army, armed forces and security services are national institutions that guarantee sovereignty and national unity. The army's doctrine is defined independently of ideological, partisan and factional affiliations and the carrying and use of weapons is monopolized in the Syrian territories.

The army is an armed force based on competence and discipline that performs its duties in accordance with the constitution and is structured according to the law. It assumes the duty of protecting the nation's borders and population from external threats and terrorism, protects Syria's independence and territorial integrity, and is committed to complete political neutrality. It supports the civil authorities in accordance with the law.

The mission of the security services is to maintain security and public order, protect persons, institutions and property and enforce the law. They are themselves subject to the law and perform their duties within the framework of respect for fundamental human rights principles and complete political neutrality.«

According to various members of the Constitutional Committee, there was a serious debate about the principle, including on the part of the regime. From the government's point of view, it offered few fundamental points of attack. There was criticism of specific formulations, and representatives of the regime highlighted the military's achievements in the fight against the »terrorists« and for the Syrian people, as well as the numerous »martyrs« who had fallen. Nevertheless, it was not possible to discredit the principle in general. Members of the opposition elucidated that they had selected the principle primarily because the regime desired to discuss terrorism on the fourth day. Their objective was to highlight that the military had also perpetrated human rights violations.

Prior to this, however, on the third day of the negotiations, a principle of the opposition-aligned civil society group on the rule of law was discussed. The first part of the principle reads as follows:

»The rule of law is the foundation of governance in the state. All persons, institutions, entities and the public and private sectors, including the state itself, are accountable to laws that are publicly enacted, apply equally to all and are independent. The judiciary shall decide within its own framework and in accordance with international human rights. The state shall take the necessary measures to ensure compliance with the principles of the rule of law, equality before the law, accountability before the law,

fairness in the implementation of the law, separation of powers, co-determination, legal certainty, prevention of abuse, and procedural and legal transparency.

Syrians are equal before the law in terms of rights and duties, dignity and status.

The state guarantees freedom, security and equal opportunities for all Syrians.

The international treaties to which the Syrian state is committed are lower than the constitution and higher than national legislation. In addition to the obligations arising from Syria's accession to the conventions on international humanitarian law and international human rights law, war crimes, crimes against humanity and human rights violations are crimes under this constitution that are not subject to the statute of limitations. [...]«

In addition to the potential for debate regarding the primacy of the Syrian constitution over international treaties, the principle in question serves to reinforce the concept of the rule of law. Consequently, it is to be regarded in a positive light.

In contrast to the previous two days, the manner in which the principles were discussed was described as »terrible« by the opposition and opposition-aligned civil society. The regime's representatives were not interested in a constructive discussion. On the one hand, they criticised the principle as superfluous because all the demands were already included in the 2012 constitution. On the other hand, the principle was discredited as »Zionist«. The opposition therefore queried how the principle could be implemented in the 2012 constitution on the one hand and be Zionist on the other. Furthermore, the UN Special Envoy for Syria is also said to have described the government's behaviour as a disaster in a literal sense. Our interlocutors from the opposition and civil society postulated that the government's blockade was due to the fact that the principle is strongly focused on human rights. For example, the part of the principle not quoted here stipulates the prohibition of torture and degrading treatment.

The fourth day of the negotiations, during which the government's stance on terrorism and extremism was discussed, proved similarly unproductive. The various factions within the SCC engaged in a series of insults and accusations. This was also due to the government's decision to label the Muslim Brotherhood as a terrorist group in the same category as Al-Nusra and the Islamic State (IS). A significant proportion of the opposition is either aligned with the Muslim Brotherhood or maintains contact with it.

The principle of »terrorism and extremism« begins as follows:

»Terrorism is a threat to the country and its citizens. The state is committed to opposing it in all its forms and manifestations and to tracing its sources of funding. Any participation in or support for it is a serious crime and is punishable by law with the maximum penalties.«

As previously elucidated in the Syrian principle on «sovereignty«, there is an incongruous reference to criminal law provisions (maximum penalties) in lieu of the delineation of constitutional principles. Moreover, the criminal offenses themselves remain opaque, with the exception of the vague stipulation that »any [...] support« is prohibited. The second paragraph of the principle adheres to a similar rationale:

»Rejecting and uprooting extremist ideas is a pillar of protecting and strengthening the coherence of Syrian society. The law punishes with maximum penalties anyone who belongs to the «Islamic State«, the «Nusra Front» and the «Muslim Brotherhood«, or any other terrorist organization that adopts this terrorist extremist ideology, or practices or has practiced terror on Syrian soil.«

In the third and fourth paragraphs, the appropriation of the population for certain positions, also familiar from earlier principles, is striking. The support of the army by the people is postulated as an unalterable fact or »national duty«.

»The Syrian Arab Army and the armed forces are national institutions. They receive support and assistance from the population. They are responsible for protecting the territorial integrity, security and sovereignty of the country from all forms of terrorism, occupation, interference and external attacks.

The cohesion of the population with the Syrian Arab Army and the armed forces against terrorism and for the strengthening of security and stability in the entire territory of the Syrian Arab Republic is a national duty.«

The principle ends with the glorification of martyrdom.

»Martyrdom for the homeland, especially in the context of the fight against occupation and terrorism, enjoys the highest priority. According to the law, the state cares for the relatives of martyrs.«

On the final day of the negotiations, the plan was to move beyond the presentation of individual positions and formulate joint ideas. However, the co-chairs of the Constitutional Committee were unable to agree on a corresponding procedure. In his statement to the UN Security Council on 27 October 2021, Geir O. Pedersen provided a summary of the problems encountered:

»In that meeting [the meeting of the final day], the delegation nominated by the government stated that it had no revisions to present of its draft constitutional texts and that it did not see any common ground. The delegation nominated by the SNC, and some members of the Middle Third delegation, each presented revised versions of their respective draft constitutional texts, stating that these were attempts to build common ground in light of discussions earlier in the week. The delegation nominated by the SNC also presented comments and proposed amendments of the texts that had been presented by the other delegations, for the same stated purpose. The meeting concluded without any points of consensus or provisional agreement in the Committee.«²⁹

The failure of the negotiation round is therefore primarily attributed to the government delegation. In his analysis, Geir O. Pedersen describes the sixth round of negotiations as a disappointment:

»[...] [I]n the absence of an agreed mechanism to revise the drafts and begin to identify commonalities, the 45 members of the Small Body were not able to move from submitting and discussing initial draft constitutional texts to developing a productive textual drafting process. The Co-Chairs also discussed during the week possibilities for dates for the Seventh and Eighth Sessions before the end of the year, but an agreement on dates and a commitment to meet twice before the end of the year was regrettably not possible. It was for these reasons, Mr. President, that I viewed the outcome, particularly the last day's discussions, as a disappointment.«³⁰

The objectives defined at the conclusion of the fifth round, namely clear objectives, functioning working methods, increased collaboration between the co-chairs, and a concrete work plan, were similarly unattainable in the sixth round.

29 United Nations, 27 October. 2021, »United Nations Special Envoy for Syria Geir O. Pedersen. Briefing to the Security Council on Syria«, available at <https://reliefweb.int/report/syrian-arab-republic/united-nations-special-envoy-syria-geir-o-pedersen-briefing-security-8>.

30 Ibid.

Round seven of the Syrian Constitutional Committee: No comment

In the period preceding the seventh round of negotiations, Geir O. Pedersen once again convened with the two co-chairs of the SCC and members of the civil society group. The parties agreed to engage in discussions pertaining to four new constitutional principles: two proposed by the opposition (namely, »fundamentals of governing« and »organisation and function of public bodies«), one by the government (namely, »state symbols«), and one by civil society entities aligned with the government (namely, »state identity«). On the evening of the penultimate day, all groupings were to submit their own proposal for each of these principles. On the final day, the participants were to work towards the formulation of a unified position.

From the outset of the round, it was evident that the opposition was considerably less formidable than the government. Only ten of the fifteen members of the SNC delegation had even attended the Geneva negotiations. Those who were absent were indisposed (Basma Kodmani, independent, and Telid Saab, Cairo platform), had resigned (Awad Alali, independent), had not yet been replaced (Mohannad Dlykan, Moscow platform) or boycotted the talks (Jamal Soliman, Cairo platform). Furthermore, civil society organisations aligned with the opposition were also not present in full, with Sabah Alhallaq absent from Geneva. In contrast, the government delegation and the members of the civil society group aligned with them were in attendance in full.

The principle of the opposition's »fundamentals of governing« reads as follows:

»The system of state's government shall be republican. It is based on the rule of law, respect for human dignity, the will of the people, and full commitment to building a free, just, and solidarity society.

Sovereignty is exercised by the people through the means of election established in the Constitution. Allowing them to freely and democratically express their will to choose who exercises power on their behalf, at the national and local levels, within the framework of political pluralism and the peaceful transfer of power.

Parties express political pluralism, and contribute to the formation and manifestation of the people's will. They are an essential means of political contribution. Parties are established and operate freely within the framework of the laws governing their work, in a manner that is consistent with the provisions of the Constitution.«

In the period preceding the submission of the principle, there had been extensive discussions within the opposition. Representatives of the Kurdish National Council and the Assyrian Democratic Organisation (ADO) had proposed several amendments. The ADO, for example, wanted the system of government to be more specific; it argued that it should be clear whether the system should be presidential, semi-presidential or parliamentary. The KNC supported this idea—the corresponding amendment was submitted by Kamîran Hajo. However, these proposals were rejected by the opposition, as the majority argued that there was still no consensus on this point. Furthermore, the KNC proposed including minority rights in the principle, referring to international human rights conventions and characterising the system of government as decentralised. These proposals were also rejected, with the argument that the opposition had not yet made a decision on these points, despite the fact that the decentralisation of the administration had been agreed at the Riyadh II conference. Finally, Kamîran Hajo proposed amending the terms »national and local level« to »national and regional level« in the second paragraph and adding the sentence »National, religious, and cultural diversity in Syria will be protected and supported.« These proposals were also rejected by the internal committee.

The preceding discussions demonstrate that, at the outset of the seventh round, the SNC had not only failed to advance any further concretisations with regard to the principles significant to minority groups—namely, recognition of Syria’s diversity and decentralisation—but had, in fact, fallen behind the consensus reached at the time.

On the second day of the negotiations, representatives of civil society organisations aligned with the government presented their constitutional principle on the topic of »state identity«:

- »1. Name of State: Syrian Arab Republic.
2. Arabism is the identity of a civilized culture of the Syrian Arab Republic; determined by the historical and geographical affiliations, the common interests, and pains of the Arab people.
3. The Syrian Arab Republic is part of the Arab World and the Syrian people are part of the Arab nation.
4. Arabism is an inclusive vessel of civilizations that embraces all cultures in their diversity and richness. These cultures’ interaction formed this country’s civilization that has contributed to the enriching human civilization.
5. Syria is a democratic state. The law guarantees political and party diversity that shapes the political life in Syria.
6. The official language of the Syrian Arab Republic is Arabic.«

The principle in question is evidently characterised by Arab nationalism. Some members of the SNC suspected that the regime was attempting to divide the opposition through the use of such positions, particularly given the existence of individuals or groups within the ranks of the SNC who espouse Arab nationalist positions. However, this strategy was not successful. The majority of the opposition expressed criticism of the nationalist ideas expressed in the principle, emphasising that Syria’s diversity and the existence of ethnic minorities were being neglected. Furthermore, it was highlighted that a significant proportion of the population, the Kurds, were unable to align themselves with the aforementioned principles. Members of civil society aligned with the opposition also explicitly rejected the aforementioned principle. In this respect, the positions of the pro-regime Middle Third led to a temporary consolidation of the opposition rather than to its further division.

On 23 March 2022, the government introduced the following principle on the subject of »state symbols«:

- »The symbols of the Syrian Arab Republic represent well-established national and highest civilizational values and express its history, heritage, and unity, which are all uneditable:
1. The flag of the Syrian Arab Republic consists of three colors: red, white, and black, and contains two stars. Each of them is a green five-pointed star. The flag is rectangular in shape, its width is two-thirds of its length, and it consists of three rectangles of equal dimension along the flag’s length. The upper rectangle is red, the middle one is white, and the bottom one is black. The two stars are in the middle of the white rectangle.
2. ›Ḥumāt ad-Diyār‹: (protectors of the homeland, peace be upon you) is the national anthem of the Syrian Arab Republic.
3. The Arabic language is the official language of the Syrian Arab Republic.
4. The Syrian Pound is the currency of the Syrian Arab Republic and measuring unit of its

cash.

5. The coat of arms of the Syrian Arab Republic consists of an Arab-style shield bearing the national flag of the Arab Republic of Syria, in color. The shield is embraced by a vulture that holds in its claws a scroll of the words ›Syrian Arab Republic‹ in Kufi font. Below the shield, there are two wheat spikes. The color of the vulture, the ribbon, and both wheat spikes is gold. The color of the font and the lines of the wings is light brown.«

It is evident that the government delegation did not perceive the necessity for any alterations. Consequently, the flag, anthem and country name have remained unchanged and have been accorded an enduring status. In contrast, the opposition has taken a resolute stance against this interpretation of history. The opposition paper presented by Haytham Rahma asserts that the symbols of the state should be determined by parliament, rather than the constitution. This stance is also reflected in the constitutions of 1950 and 1973. Furthermore, the opposition paper addresses the changes that have occurred in Syrian society and asserts that these changes also necessitate the introduction of new state symbols:

»It is a historical reality and fact that no constitution remains unchanged. Constitutions changes as the conditions of the social contract that initially established them change.

We are at a historical stage that calls for change. Furthermore, we are undoubtedly in the process of creating a new social contract.

From this point of view, and in light of the new historical and geographical context, we believe that the issue of determining symbols, their form, and wording should be decided by the Syrian people.

Therefore, we deem it wise to delegate this task to the first parliament elected by the people through free and fair elections in which all Syrians inside and outside Syria participate in a safe and neutral environment under the supervision of the United Nations, in accordance with UN Security Council resolution 2254, and in accordance with the new constitution, which we are all working on drafting.«

On the fourth day of the negotiations, the SNC submitted a principle entitled »organisation and function of public authorities«. The principle reads as follows:

»The public authorities of the State shall be organized on the basis of the separation of legislative, executive, and judicial powers.

Legislative, executive, and judicial institutions and bodies shall exercise their powers within limits established by the Constitution and shall comply with the provisions of laws and legislation according to the Constitution. They shall also commit to respecting and enforcing the fundamental rights and freedoms enshrined in the Constitution and international conventions and pacts ratified by the Syrian State.«

The paper is notable for its vagueness, which reflects the general problem of the opposition: A multitude of issues have yet to be discussed, and the members of the SNC are far from agreeing on important points. On the previous day, the more nationalist members of the Moscow Platform and the Coordination Committee for Democratic Change did not support the regime's positions in most of their speeches. However, they advanced a more robust argument in favour of nationalist principles analogous to those espoused by the regime when formulating their own document, exemplified by their stance on the designation of the country.

This discrepancy was also reflected in the inability of the parties to agree on a paper for the special envoy. According to the new procedure, all SCC groups were to submit a summary of their

positions on all the principles discussed on the last day of negotiations. Some of the SNC members in the SCC are said to have consulted their political groups and parties on the final paper. It seems that the feedback they received rather hardened their positions. The principle in question was not the subject of any contentious debate during the Constitutional Committee meeting. Instead, the government delegation primarily sought clarification through questions.

On the fifth and final day of negotiations, the principles presented by all groups became clear. It was evident that the groups had not significantly altered their own principles based on the discussion, nor had they worked on the principles of the other groups in a way that would have resulted in a compromise paper. In the language of the government, this realisation was expressed as follows:

»Our delegation has followed all the discussions on the principle of state symbols that took place during the third meeting day, as well as the related proposals submitted by the other parties. Our delegation is not convinced by the discussions and proposals submitted to amend it. Moreover, we confirm our adherence to said principle as submitted [...].«

Against this background, all groups were once again given the opportunity to make a brief statement before a brief final discussion took place. Unusually, the Kurdish National Council (KNC), represented by Kamîran Hajo, although part of the Syrian National Coalition (SNC), was given the opportunity to read out its own statement. This was in response to the opposition's paper on the topic of »symbols of the state« and »states' identity«, which had caused dissatisfaction within the KNC. The SNC had formulated the following position:

»The State's flag, coat of arms, and anthem shall be determined and regulated by law and considered national symbols that stand for the Syrian State, its cultural history, and its people's diverse components.«

On the subject of »state's identity« it says:

»Official language: The Arabic language shall be the State's official language. However, we deem it necessary to review this principle in light of the other constitutional principles concerned with the cultural and educational rights of all components of the Syrian people to build a consensus on their cultural, educational, and linguistic rights.

The State's name: The Syrian constitutional context shows the use of ›The Syrian Republic‹ and ›Syrian Arab Republic‹. All previous constitutions stipulated that the Syrian people and State are part of the Arab and Islamic World. However, the events that Syria and its people have lived through during the past century show how essential it is that the Syrian constitution reflects the vital role of the multi-national Syrian people's components in building Syria's civilization and cultural heritage. To stress the unity of the Syrian people, the State's identity must refer to this national, religious, and cultural diversity that all Syrians consider a source of pride and enrichment and which highlights their essential role in building their country. Thus, we deem it fit to postpone this discussion until reaching a consensus on all provisions of the ›State's Identity‹ principle.

The Syrian cultural identity is an inclusive vessel that embraces all cultures of the multi-national components of the Syrian people and stands for their historical civilization and the diversity of their rich culture.«

In other words, the SNC postponed all decisions on state symbols, recognised official languages and the designation of the state, as it was not possible to reach a consensus. In this context, Kamîran Hajo presented the dissenting position of the minorities under the title Components'

proposals on the identity of the Syrian State and its symbols (Geneva 7) «:

»Name of the State: Syrian Republic

The Syrian Republic's cultural identity shall reflect the plurality and diversity of its components, including Arabs, Kurds, Syriacs, Assyrians, Turkmen, and others. It is a civilizational vessel that embraces all cultures' diversity and richness. It contributes to human civilization and is affected by it.

The Syrian Republic is a democratic, multi-national, and multi-religious State. It is part of its Arab, regional and international context and a founding member of the League of Arab States and the United Nations.

Arabic is the official language of the State. Kurdish, Turkmen, Syriac, and other languages are co-official languages in their areas of presence.

Symbols of the Syrian Republic, such as its flag, national anthem, coat of arms, and currency, reflect the rich diversity of Syria and shall be agreed upon by the parliament elected or agreed upon by the Syrians.«

It is notable that an attempt has been made to incorporate both regional and international reference points alongside the Arab influences that have undoubtedly characterised Syria.

The lack of consensus among the opposition on matters of identity policy and the alignment of certain opposition figures with the regime were once again brought to the fore on the final day of the hearing.

Following the meeting, the Special Envoy for Syria did not convene a customary press conference. Instead, he issued a brief statement in which he explained that no agreement had been reached.

Round eight of the Syrian Constitutional Committee: The end?

As in previous SCC rounds, all members of the government and pro-government civil society were present at the eighth round, while a number of opposition and opposition-aligned civil society SCC members were again absent. The participants included Jamal Soliman (Cairo Platform), Mohannad Dlykan (Moscow Platform), Basma Kodmani (independent), Awad Alali (independent), Mohamad Ahmad (armed groups), and Elaf Yassin (opposition-aligned civil society).

Despite two rounds of discussions that made no discernible progress, the discussion mechanisms remained unchanged. The discussions commenced with a principle submitted by pro-regime civil society representatives aligned on the topic of »Unilateral coercive measures from a constitutional perspective«:

»Unilateral coercive measures imposed on the Syrian people constitute economic terrorism that violates the fundamental rights guaranteed by the Constitution to the Syrian people, and it limits the ability to secure their basic needs.

The State is committed to seeking to lift the unilateral coercive measures and demanding appropriate compensation from the countries that have imposed them. It is the national duty of every Syrian to oppose and reject these sanctions.

The right to development and reconstruction of what has been destroyed by terrorism and external aggression is a legitimate right of the Syrian people as one of the fundamental rights guaranteed by the Constitution.

The right of Syrian refugees to return safely and voluntarily to their homeland is a human right that should not be linked to any external political conditions.«

The discussion centred around the question of whether the principle in question could be considered a constitutional principle. While the opposition argued that the principle was not a constitutional principle but rather a political one, the government and civil society groups aligned with the government insisted on its characterisation as a constitutional principle. The opposition criticised the discussion of principles that were not genuine constitutional principles as a strategy by the regime to prevent a real discussion of constitutional issues and to slow down the constitutional process. Despite this criticism, members of the opposition attempted to engage in a constructive dialogue on at least some aspects of the submitted paper, such as the return of refugees. There were concerns among opposition leaders, such as co-chair Hadi Al-Bahra, that the SCC rounds could be suspended if they failed to produce tangible results or genuine discussions. There were rumours that the UN wanted to discontinue the SCC rounds after the 9th meeting, as they were deemed to be of no use. Nevertheless, the cancellation of the SCC rounds would effectively bring an end to the current political process, as it was limited to the constitutional rounds. Consequently, there is no viable alternative to the constitutional process for a significant number of members of the opposition and civil society figures who are closely aligned with the opposition.

On the second day of the eighth round, the government presented a principle entitled »Preserving and Strengthening State Institutions«:

»The State institutions shall implement the general policy of the State. They shall work within the limits of the powers granted to them by the constitution and national laws of the Syrian Arab Republic. Preserving the existing institutions, enhancing their role, and developing their performance is a national duty. Every internal or external threat aimed at undermining state institutions or disrupting their work violates the constitution and is punishable by the law.

The Syrian Arab Army and the Armed Forces are national institutions that enjoy the support and solidarity of the people. They are responsible for defending the integrity, security, and sovereignty of the homeland against all forms of terrorism, occupation, interventions, and external attacks. Preserving and enhancing them by all available means is a national duty.«

As with the government's principles submitted in previous rounds, the principle has the problem of mixing constitutional principles and criminal law provisions or creating »national duties« that are not clearly defined. Furthermore, the principle seeks to establish popular support for existing state institutions, which can at best be earned, but not commanded. Finally, the impression is created that even criticism of existing institutions is to be criminalised.

During the discussion, the government delegation asserted that it would remain in power, that the institutions mentioned in the constitutional principle were the existing ones, and that they should be protected and not criticised in any way. In contrast, the opposition delegation maintained that there must be a new government and new institutions, whose functions must be redefined, and that criticism, including of the army, must be possible. When the opposition drew attention to the Syrian army's purported involvement in human rights violations, it became apparent that such criticism constituted a transgression of the government's »red line«. From their perspective, the army is the guarantor of stability, any criticism of it is inadmissible, and any reference to human rights violations is undesirable.

The opposition's position on the principle of »Preserving and Strengthening State Institutions«: is presented below:

»A comprehensive approach to addressing the legacy of gross human rights violations calls for a multifaceted strategy that includes interventions at the institutional, legal, civil society, community, and individual levels. This strategy will not be successful without reforming State institutions in order to improve their performance and establish their legitimacy. The pursuit of fairness, accountability, and prevention is here of great importance.

Public institutions—such as the police, the military, and the judiciary—often use instruments of repression and systematic human rights violations in societies experiencing conflict or subject to authoritarian rule.

When a political agreement securing the transition to peace and democratic governance is reached, reform of those institutions becomes critical. However, years of experience have shown that an exclusive focus on institutions directly involved in physical assaults is neither enough nor helpful. Therefore, and in order to ensure its professional independence, it is necessary to reform the entire State apparatus and establish appropriate mechanisms to monitor it. This requires a review of a large part of the legal framework in force, foremost the new constitution.

In addition to the points mentioned above, and if society resolves to fully address the violations committed -including those of economic and social nature- justice and reform of the security institutions must be complemented by radical changes in political, economic, social, and cultural institutions.

Institutional reform is a process by which State institutions are reviewed and restructured to respect human rights, maintain the rule of law, and be accountable to citizens.

It is necessary to emphasize the interrelationship between institutional reform and transitional justice. Indeed, institutional reform is one of the steps of transitional justice. That step shall lead to the recognition of victims as citizens and rights holders, and building trust between all citizens and their public institutions. This reform, if perfected and implemented transparently and inclusively, shall become a reparative one as well.

Thus, measures to advance institutional reform may include public education campaigns on citizens' rights, unrestricted access to information, and meaningful counselling for victims and civil society representatives on legal initiatives.

Returning to the proposed text submitted by the delegation of the candidates nominated by the Government, we place on record the following reservations and observations:

1. The proposed text failed to address the commitment of all State institutions, the army and the armed forces included, to human rights and human dignity.
2. The proposed text refrained from mentioning the army's and the armed forces' neutrality in political life.
3. The proposed text did not mention the organization and structure of the army and the armed forces, how to appoint their leaders, and how to hold them accountable.
4. The proposed text failed to mention the need to reform and restructure institutions.«

The statement represents a comprehensive and meticulous examination of the principle of the government delegation by the opposition. However, this did not elicit a comparable response.

On the third day of the negotiations, the opposition presented the principle of »Supremacy of the Constitution and the Hierarchy of International Conventions«:

»This Constitution is the supreme law of the land.

Treaties, conventions, and international charters duly approved, ratified, and published shall supersede the law.

The constitutionality of legal provisions, their hierarchy, and the necessity of publishing them are binding principles.«

It is notable that the opposition, in contrast to the civil society group aligned with the opposition in the sixth round of negotiations, regards the constitution as subject to international treaties. This places the Syrian constitution under greater scrutiny with regard to international standards, particularly in the context of international human rights.

During the discussions, the regime's delegation did not present any factual arguments against the principle of opposition. Instead, they employed insinuations. A similar approach was taken by the pro-regime civil society group. It was asserted that when the opposition demanded respect for human rights, they were actually seeking external interference. However, Elkrydee, a member of the civil society group aligned with the regime, described the opposition as »traitors and NATO stooges«. This prompted the opposition to leave the room in protest. After a discussion with the UN Special Envoy, the delegation returned shortly thereafter, and the discussion resumed. It would appear that Mais Elkrydee was requested to adopt a more discreet approach. Members of the opposition delegation were of the opinion that the provocations perpetrated by this individual were deliberate and intended by the government.

On the fourth day of the negotiations, the civil society group aligned with the opposition presented a proposal for a principle of »Transitional Justice«:

»[The Syrian state seeks] to address the legacy of past war crimes, crimes against humanity and gross violations of human rights. In order to ensure that what happened does not recur, and to build community peace, the Syrian State is committed to adopting a comprehensive approach to transitional justice. A justice based on the principle of non-impunity, and that these crimes do not fall under the statute of time limitations or with a previous amnesty. This approach shall focus upon the central role of victims and their families, especially women and children.

Such an approach should include a coherent and comprehensive set of judicial and non-judicial processes and measures based on national consultations, including truth, accountability, finding missing and forcibly disappeared persons, reparation programs, institutional reform.

Institutional reform shall include vetting and disarmament, demobilization, and reintegration initiatives to ensure that the root causes of the conflict are taken into account and violations of all rights, including economic, social and cultural rights, including property and housing rights, are addressed.«

The discussion was comparable to that of the previous day, with the government delegation failing to present an objective argument against the principle put forth. Instead, they insinuated that the civil society group aligned with the opposition was pursuing objectives that differed from those previously stated.

The UN Special Representative then took the two co-chairs aside and explained that it made no sense to continue the discussions in this manner. He proposed returning in future to

the original planned procedure of discussing for one week, pausing for a fortnight, and then reconvening. The rationale behind his assumption that such a proposal could be accepted by the government or would be suitable for avoiding unobjective discussions remained unclear.

As anticipated, the fifth and final day of the eighth round of negotiations of the Syrian Constitutional Committee concluded without a consensus on a common principle or paper. Nevertheless, the special envoy described the round as the most productive to date, as the parties engaged in constructive dialogue and listened to each other's perspectives. At the same time, he emphasised that a new mechanism would have to be found for the next round, which was due to begin on 25 July 2022. Otherwise, it would take years to agree on a principle.

Upon examination of the statements made by the various groups on the four topics under discussion, it becomes evident that there is a fundamental incompatibility of positions. For instance, civil society entities aligned with the opposition have made the following comments regarding the government's stated objective of strengthening state institutions, as previously mentioned:

»The proposal mentions preserving the existing State institutions. This infringes the authority and mandate of the Constitutional Committee, which stipulate that organizing the State's institutions (competences, formation, interrelationship) is one of its first tasks of the Committee. Thus, the Committee is free to form new institutions, end existing ones, restructure, or reform them.«

With respect to the subject of »Transitional Justice«, the government offered the following observation:

»The so-called ›transitional justice‹ is not a constitutional principle.«

The stance taken by the pro-regime civil society is strikingly similar:

»We hereby inform you about our opinion regarding the principle submitted by the Civil Society Group (Group 7): That the principle of ›Transitional Justice‹ is completely and utterly rejected. We refuse to add such a principle to the hypothetical constitution. «

The concept of a transitional justice system that addresses the crimes of previous governments and their institutions is inherently at odds with the objectives and interests of Assad and his supporters.

The opposition subsequently countered with a similar statement on the subject of »Unilateral coercive measures from a constitutional standpoint«:

»The suggested title is political, we do not see it fit to be part of the Constitution.«

The eighth round of negotiations is the most recent round to date. The ninth round, scheduled for 25 July 2023, was cancelled at short notice due to diplomatic disagreements between Switzerland, the host of the negotiations, and Russia. An alternative approach to continue the political process has not yet been found. The step-by-step process proposed by Geir O. Pedersen at the end of 2021 has also had no effect to date. It is presumed that this is also because the precise nature of the process remains unclear. The UN Special Envoy described it as follows:

»I think there is a possibility now to start to explore what I call a step-for-step approach, where you put on the table steps that is defined with precisions, that is verifiable, that hopefully can start to build some trust.«³¹

31 Mena Affairs, 13 December, 2022, »UN Envoy call for ›step for step‹ approach to solve Syria crisis«, available at <https://menaaffairs.com/un-envoy-call-for-step-for-step-approach-to-solve-syria-crisis/>.

However, it is evident that the opposition will no longer be involved in this process. Instead, it will be a matter of negotiations between the Syrian government and the governments of other states, namely the USA, Russia, Turkey and Iran. Consequently, the opposition has rejected the principle on the grounds that it could facilitate the normalisation of relations with the regime. The opposition is concerned that the concept of »step by step« may result in the relaxation of existing red lines and the emergence of ideas that are endorsed and implemented without the government offering reciprocal concessions.³² It appears that the concept of »step by step« has been introduced into the debate more out of a lack of concrete proposals than out of a genuine conviction.

Final Review

A review of the various constitutional rounds and the principles submitted reveals that the various groups in the Negotiations Committee have not made any progress in formulating a common constitution. The principal reason for this is that one of the negotiating parties, namely the government and the pro-government civil society group, was not interested in engaging in serious discussions or in initiating a more democratic process in Syria. The government only consented to the establishment of the SCC under duress from Russia and at a time when its military position was untenable. Subsequently, the Russian government, despite its pledge to the former UN Special Envoy de Mistura, no longer perceived the necessity to encourage Syria to engage in constructive dialogue. The expectation that Russia would adopt a more mediating stance in Syria or withdraw in order to reduce conflicts with the West when the war in Ukraine began has not materialised.

For its part, the opposition made no serious attempt to negotiate with the Syrian government when it was still militarily strong in Syria - that is, until around the beginning of 2016. By the time the preparations for the constitutional talks commenced in 2017, this moment had already passed. The internal divisions within the SNC, which extend not only between the various members but also within individual groups,³³ and the fact that some of the positions represented by the opposition are arguably no more democratic than those of the government, and that Arab nationalist positions are widespread, have further weakened the opposition.³⁴ It is not coincidental that the government delegation has repeatedly focused its attention on questions of identity.

32 For further insight into the relationship between normalisation and the concept of »step by step«, please refer to Carsten Wieland's unpublished presentation from 15 January 2022, »The Syrian Constitutional Process. How it became what it is«, delivered at the workshop »Learning for Syria — Constitution-Making during Conflict: The role of the UN« of the ECSC in Vevey, Switzerland.

33 The National Coordinating Committee for Democratic Change is a heterogeneous entity, encompassing diverse ideological perspectives. These include communism, Islamic-Arab nationalism, and feminism.

34 It is not only Arab nationalist positions that are prevalent within the opposition; anti-Semitic views are also widely held. In a statement dated 7 October 2023, the National Coordination Committee for Democratic Change celebrated Hamas' terrorist attack as legitimate resistance (cf. »The Palestinian resistance movement's resistance strikes deserve congratulations«, statement by Yahya Aziz, Secretary General of the National Coordination Committee for Democratic Change, in a WhatsApp group of the Negotiations Committee). There was no criticism of this statement. In a statement released on 7 October by Khadri Jamil's »People's Will Party«, one of the most prominent parties on the Moscow platform, of which Jamil is the chairperson, it was stated: »From wounded and tormented Syria, where war profiteers are wreaking havoc and Syrians are fighting for survival to restore their unity, we send a greeting of pride and appreciation to the heroic Palestinian resistance.« The aforementioned parties are not only defending Palestine, but also the unity of Syria and the right of its citizens to return to an honourable, free life, with the withdrawal of all foreign forces, in particular the Zionist occupiers from the occupied Syrian Golan. For further information, please refer to <https://kassioun.org/kassioun-library/party-documents/item/78614-2023-10-07-09-59-22>. For his part, the chairman of the Negotiations Commission, Badr Jamous, described the alleged Israeli attack on the Baptist hospital as a "heinous massacre", without mentioning the Hamas attack, the Israeli civilians killed or the hostages. For further information, please refer to the official website of the Chairperson of the Negotiations Commission, Bader Jamous, at https://m.facebook.com/story.php?story_fbid=pfbid036oX7jWS91ch6yCcUyHs2Jz1XqXP2NwdePTfQ3WaTLXoxHoFP6u3B4Skc3HuGX-aoRI&id=100050374905073&mixextid=WC7FNe.

It is reasonable to assume that the opposition is more divided in this area than in any other. Over the years, the Turkish influence on Etilaf—the dominant force in the Negotiations Committee and therefore also in the Constitutional Committee³⁵—has grown ever stronger. This has resulted in, among other things, Saudi Arabia’s withdrawal and the closure of the SNC office in Riyadh. This is highly unfavourable for the prospect of an agreement on significant minority rights within the opposition, as it is unlikely that Turkey will permit the Kurdish faction in the Constitutional Committee to be strengthened.

In his briefing to the UN Security Council on 27 February 2024, Geir O. Pedersen provided the following commentary on the meetings of the Constitutional Committee, which have been suspended since June 2022.

»9. Over eighteen months ago, I issued invitations for the ninth session of the Constitutional Committee to take place in Geneva. That session did not take place because, as Russian Foreign Minister Sergey Lavrov confirmed this month, Russia no longer considers Switzerland a neutral venue, and the Syrian Government did not accept Geneva as a result.

10. From the outset I have been clear about several points. Let me remind you about four of them: first, I have reminded all that the Syrian Government and Syrian Negotiations Commission, in the Terms of Reference for the Committee, agreed on Geneva, and stressed that the process should take place without foreign interference; second, as a facilitator I would be creative in trying to find a way forward for all parties, including exploring all possible alternatives; third, if the Syrian Government and Syrian Negotiations Commission reach consensus on a venue other than Geneva, I will support this; and fourth, this non-Syrian issue needs to be overcome so that the Syrian-led and owned, UN-facilitated process could continue.

11. Guided by this approach, over eighteen months, with the support of various outside stakeholders, including the Astana Guarantors and the Arab Contact Group, various venues have been floated. But, I am sorry to say, the reality is this: not one has yet enjoyed the minimum consent required—of both Syrian parties and the potential host itself. I had warned that this may be the case when these issues were first raised eighteen months ago.

12. I myself have recently proposed a further option: that the ninth session could be convened in the UN Office at Nairobi. I appreciate my UN colleagues in Nairobi being ready to do all that was required to help us host. I recently commended this way out to the Syrian parties. I also relayed a further suggestion from one Syrian party to the other on an alternative regional venue. However, I regret to say that consensus among the Syrian parties was not found on either venue, just as it had not been on earlier suggestions.

13. Having left no stone unturned to find an alternative venue, I believe the only way forward at this time is to reconvene in Geneva—at least as a bridging proposal while there is no consensus on an alternative venue, while *also* remaining open to an alternative venue for future sessions *if* consensus is found. This is something I have flagged for some time may be the only way forward if no alternative could be found. Therefore, I am today issuing formal invitations for a ninth round in Geneva in late April. I appeal today to the Syrian parties to respond positively and to all key international stakeholders to support the UN’s actions as a facilitator and refrain from interfering regarding a venue the Syrian

³⁵ In addition to Etilaf, the negotiating committee comprises six other organisations. Three of these are affiliated with Etilaf: the Kurdish National Council, the armed groups and the independents. In contrast to the original plan, the independents were never replaced.

parties themselves had formally agreed.«³⁶

In essence, this implies that, due to the failure of the 9th round of negotiations between the Constitutional Committee and Switzerland and Russia, which occurred at short notice due to diplomatic spats between the two countries, the Special Envoy has been unable to identify a suitable venue for the Committee to convene. This has been the case for a period of 21 months. A number of potential locations have been proposed, but these have all been rejected by the Russian Foreign Minister. In this context, Ibrahim Biro, a member of the SNC for the Kurdish National Council, has made the following comments:

»An official invitation from Pedersen requests that the next meeting of the Constitutional Committee be held in Geneva from 22 to 26 April. Pedersen had previously proposed that the meeting be held in Nairobi, as Russia does not agree to meetings being held in Geneva. We had agreed and proposed that the meetings could take place where there are UN centres. We had also proposed that Nairobi be considered. However, the regime rejected this proposal. Subsequently, Pedersen officially invited us to Geneva. In this instance, we concurred. Subsequently, the UN informed us that the regime had formally declined to hold the meeting in Geneva. Pedersen indicated that the regime desired the next meeting to occur in Baghdad. However, we have not yet received any official communication from Pedersen regarding his intention to adhere to his preference for Geneva or to present us with the regime's proposal so that we may express our opinion on Baghdad. A decision regarding the suitability of Baghdad as a venue for the meeting has not yet been reached. No official enquiry about Baghdad as a potential venue has been received.«³⁷

The failure of the constitutional process is evident to all. It is implausible to assume that a process in which even agreeing on a venue becomes an insoluble problem could lead to agreement on any principles worth mentioning. The UN's continued engagement with a process that is not only no longer a process, but strictly speaking never was one, is perplexing.

It is evident that the conclusion of the constitutional process would also result in the conclusion of the political process as a whole. Initially, there were two distinct positions: the first held that if the negotiations on a new constitution were unsuccessful, it would be similarly unsuccessful to pursue the other four so-called baskets. As previously stated, the constitutional issue is perceived to be the least challenging for the Syrian government. The second theory postulated that if the constitutional process failed to yield results, a different approach to the political process must be identified. The longer the constitutional process stalls, the fewer people are likely to place their hopes in this second strategy.

The UN has a vested interest in maintaining the political process, despite the apparent futility of doing so. This allows the UN to avoid a fundamental debate about its stance on Syria, which would be detrimental to its reputation. The UN is aware that the division within the UN Security Council is too deep for a unified stance on Syria to be effective. Therefore, the UN would rather steer clear of drawing any major attention to the issue.

This also applies to the proposal that the UN Secretary-General should dismiss the Syria Envoy in order to exert pressure on the UN Security Council with the announcement that he would only appoint a new Envoy if the Security Council was prepared to jointly support this Envoy and

36 United Nations, 27 February, 2024, »United Nations Special Envoy for Syria Geir O. Pedersen. Briefing to the Security Council«, available at https://specialenvoysyria.unmissions.org/sites/default/files/2024-02-27_secco_un_special_envoy_for_syria_mr_geir_o_pedersen_briefing_as_delivered.pdf.

37 Interview with Ibrahim Biro, March 10, 2024, Rudaw, <https://www.youtube.com/watch?app=desktop&v=Yb9NlyJCFM4&si=yLv9Z6muSjxzErK6&fbclid=IwAR12Mv4WQ9iPacCD70pwJO9GzxQjSNpEr1gJ42xTa91XD5w4OBQZXxPHnmc>.

his mission.³⁸ Such a threat would at best be a sign of goodwill but would hardly change anything. Instead, it would merely serve to highlight the UN's lack of power, thereby placing it at the centre of the political debate.

In addition to the support of the UN Security Council, the Special Envoy would likely require a fundamentally revised and expanded mandate in order to be able to act effectively. Resolution 2254 reflects the situation in 2015; however, the conflict structures on the ground have changed significantly since then. The resolution does not address more recent aspects of the conflict, such as the external control of parts of Syrian territory by various actors and their armies, the quasi-independence of the north-east, the Kurdish-Kurdish disputes and similar issues. Consequently, it is evident that the adoption of a new UN mandate is an unrealistic proposition.

Nevertheless, the opposition is attempting to exert influence over the process by proposing conditions:

»We have conditions. The meetings must not proceed as before. To date, no basic principles for a constitution have been established. We have requested that the UN Security Council convene a special session on Resolution 2254. We should attend as an opposition delegation. There should be a discussion about which countries are not implementing this resolution. We have hope that this could occur. Some countries in the UN Security Council will support such a meeting. However, there are preconditions." A resolution will only be adopted if nine out of 15 members agree.«³⁹

Even if this meeting takes place and clearly names the Syrian regime and Russia as those obstructing the constitutional process, this alone will not revive the process. In the absence of fundamental changes to the global political landscape, including a rapprochement between Russia and »the West«, and a comprehensive reform of the UN that would enhance the influence and accountability of states in the global South, it seems unlikely that the UN will be able to take effective action, including in the Syrian conflict.

38 See Hasmik Egian & Mouin Rabbani, 5 September, 2023, »Reviewing the UN's Conflict Mediation Role in Syria Is Long Overdue«, available at <https://www.passblue.com/2023/09/05/a-serious-review-of-the-uns-conflict-mediation-role-in-syria-is-long-overdue/>.

39 Interview with Ibrahim Biro, 10 March, 2024, Rudaw, <https://www.youtube.com/watch?app=desktop&v=Yb9Nly-JCFM4&si=yLv9Z6muSjxzErK6&fbclid=IwAR12Mv4WQ9iPACD70pwJO9GzxQjSNpEr1gJ42xTa91XD5w4OBQZXxPHnmc>.

UN Resolution 2254—destined to fail?

The history of the Syrian constitutional
process (2015 to 2024)

Eva Savelsberg & Siamend Hajo

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