



Syria Transition Challenges Project

Discussion Paper (3)

The Prospective and Limitations of the Syrian Constitutional Committee

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The Geneva Centre for Security Policy (GCSP)

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Syria Transition Challenges Project

A multilateral dialogue and research project that aims to build bridges between the EU, Russia, Turkey, and the US on the three issues of Reform, Refugees Return, and Reconstruction. The project is run by the GCSP in collaboration with European University Institute (EUI), Syrian Centre for Policy Research (SCPR), and swisspeace.

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Introduction

The Syrian Constitutional Committee, a UN-authorized constituent assembly, was established to reconcile the Syrian government and the Syrian opposition, in the context of the peace process, by adopting a new constitution for Syria. While it enjoys a measure of international legitimacy, it may be a mechanism to override the terms of UN Security Council's resolutions 2254¹ in favour of establishing the Astana talks as the only regulator of the political process. The committee has encountered several challenges. First is the divergence of expectations between the opposition and the Syrian government; second, the lack of a clear time frame for its deliberations; third, the Syrian government's insistence on imposing its anti-terrorism vision; finally, the lack of international commitment to its outcome, mainly from the US and its partners. This brief examines the positions of both the Syrian government and the opposition and their expectations from the constitutional process as well as the impact of the Turkish offensive in the north east of the country on the process.

Position of the Syrian government

Since 2012, the Syrian government has shown considerable reluctance to positively engage in any serious and credible negotiation to end the ongoing civil war. The reasons behind this disinclination are numerous, but two main political arguments motivate its behaviour. First, it perceives such negotiations as a recognition of the Syrian opposition, which Damascus has persistently discredited, claiming that they are terrorists or foreign agents with external agendas (The government is even suspicious of mainstream actors in the opposition). Second, the government has never prescribed to the main objective of the Geneva process, which is the establishment of transitional governance of the country. Alternatively, the Syrian government has always insisted on a roadmap that starts with an anti-terrorism approach to stop the ongoing "insurgency" and ends with a case-by-case selective approach for political reconciliation.

Ultimately, the Syrian government believes that the survival of his government depends on maintaining unchallenged and undivided control of the Syrian state. Such control would force the international community to engage with him on low-politics, security arrangements, and economic issues, eventually leading to his rehabilitation onto the international scene. Thus, in practice the government views any political resolution of the conflict via a dialogue with the opposition as direct threat to its legitimacy and its popular base, as well as an attempt to weaken its efforts to end its regional and international isolation.

The constitutional reform process, in this context, could represent an acceptable compromise for the Syrian government as it downgrades the political nature of the UN-led Geneva negotiations to a legal basis for a "domestic" Syrian-state-led negotiation. However, following this rationale, this also means that the government is still not committed to the current suggested format of negotiations. In order to fully commit to the outcome of such a committee, the government

¹ Calls for a ceasefire and a political settlement in Syria. See: United Nations, "Security Council Unanimously Adopts Resolution 2254 (2015), Endorsing Road Map for Peace Process in Syria, Setting Timetable for Talks" 18 December 2015 <https://www.un.org/press/en/2015/sc12171.doc.htm>

would insist on holding its proceedings in Damascus, under the guardianship of the Syrian state, and with a mere observatory status for the UN. The Government's stance has been reflected in his November 2019 interview in which he described the Syrian government negotiators as a non-official delegation and downgraded the whole process as a mere consultative non-binding effort to reform the constitution.

Ahmad Kuzbari, the Syrian government co-chair of the Constitutional Committee, gave little ground to the Geneva led process in his opening statement in October 2019, pointing out that the country had already a newly reformed constitution. Yet, Kuzbari hinted to being open to considering "any possible amendments or even a new constitution that would improve the reality of our people"². In his speech, Kuzbari had supposedly laid out an acceptable outcome of the process; that the new or reformed constitution would have to ensure the sovereignty, independence and territorial integrity of Syria, alongside the rejection of any direct or indirect interference in Syrian affairs. Confirming to that tone, the wording of the Syrian government delegation during the Geneva process were often loose, unclear, and difficult to translate into transparent, desired and measurable outcomes.

Position of the opposition

In contrast, the opposition delegation focused on obtaining three main concessions from the government. First, the devolution of powers of the Syrian president. In this regard, the opposition demanded the transfer of the majority of his authority to the parliament. Second, the clear separation of authority between the executive and judicial branches and the executive and legislative branches. According to the 2012 constitution, the Syrian president is the head of the Supreme Judicial Council and is the sole official that holds the right to propose legislation. Third, the devolution of authority from the central government to local administration to grant municipalities more considerable influence over policymaking and economy.

The Syrian opposition delegation in these negotiations was weakened by internal divisions, constant loss of territorial control, and deprived of significant international support in comparison to the Russian backing to the government. Moreover, the opposition made a significant concession by agreeing to engage in mere constitutional debates rather than focusing the discussions on concrete issues like the establishment of a transitional governing body. However, no timeframe for this process had been set, thus allowing the government to indefinitely stall the process while consolidating its authority and military gains on the ground. In an interview, Nasr al-Hariri, the head of the opposition Syrian Negotiation Committee, attempted to downgrade the importance of the Constitutional Committee, stating that it was a parallel process to the UNSC resolution 2254. However, a return to Geneva's original framework seems inconceivable, given Turkey's (the main opposition backer) commitment to the Sochi summit arrangements in 2018/2019.

Indeed, the Sochi troika states –Russia, Turkey, and Iran– agreed on a roadmap that begins with constitutional reform and ends with nation-wide elections on the municipality, parliamentary and presidential levels. The opposition, who views the stepping down of Bashar al-Assad as a

² The Guardian "Russia-backed Syria constitution talks begin in Geneva" 30 October 2019
<https://www.theguardian.com/world/2019/oct/30/russia-backed-syria-constitution-talks-begin-in-geneva>

condition for a meaningful and credible transition, has no guarantees that this objective would be achieved through the constitution committee. Moreover, taking part of the process risks legitimising its outcome if it ended with an unfair/unfree elections. Subject to military pressure from Russia and the Syrian government, political pressure from Turkey, who is looking to preserve its gains in Syria and suffering from US and EU disinterest, the opposition has few cards to play in the pursuit of its primary objectives.

The security approach and the constitution process

Moscow has introduced the constitution process as the main mechanism for engaging the government and the opposition in negotiations. By doing so, Russia has reduced the scope of the political transition defined by the UN resolution as a “transitional government body” –intended to lead the post-war era, to a theoretical consensus among Syrians actors– and intended to set the rules for the next phase. These negotiations as conceived by the Russians, are only intended to discuss the legal framework of future governments and powers, not the political implications or agenda to reach them. The latter is supposed to be determined by the outcome of nation-wide elections on every level of the government structure. Meanwhile, the Syrian state is free to pursue its “duty and rights” to eliminate all terrorist and cessation of threats against it. In its most basic form, the Russian initiative to implement a peace process in Syria has deliberately taken the government security concerns out of the negotiation process, effectively giving it a free hand to use force and military options to strengthen its position on the ground.

The government’s securitised approach to end the conflict implies a policy that supports the termination of all the security roles of all actors, including their arrangements with external actors. In dealing with the mainstream Arab armed opposition groups, the government has implemented a gradual land-grabbing strategy, relying on Russian support to maintain Turkey’s commitment to contain the armed resistance groups, as well as the presence of UN-designated terrorist organisations to legitimise its military campaign. Ultimately, the government would not cease its attacks on the Arab opposition territory in the north-west before recovering its totality.

The government’s mission is a bit more complicated with regards to the Syrian Democratic Forces (SDF). First, the Democratic Union Party (PYD)-led coalition enjoys the support of the US, France, and the UK, thus posing a more significant obstacle in recognising the government as the sole representor of the Syrian state. Second, a military confrontation with the group could be costly, lengthy and exhausting, and most importantly could indirectly create an opportunity for Turkey to further re-enforce its stance in northern Syria, further complicating the government objective of eradicating the Arab opposition. This rationale has led the government to pursue an alternative approach in containing the SDF, by prioritizing a Russian facilitated negotiation process over a securitised approach.

The Peace Spring military operation launched by Turkey in north-eastern Syria, however, has inadvertently solved the deadlock on SDF-government negotiations. It is still too early to predict the potential outcome of such negotiations, taking into consideration the US decision to remain in the area. However, contrary to its approach in dealing with Turkish-backed Arab armed opposition groups, the government does not dismiss a political arrangement with the PYD, and the latter’s need for Russia’s commitment to protecting it has considerably weakened its stance towards

Damascus. The remaining question is whether the government would conclude such an accord “domestically” or allow it to escalate to an international-led process.

Considering the government’s attitude towards the resolution of the conflict, it should attempt to resolve the Kurdish issue and agree for a PYD participation in Geneva or the Constitutional Committee only as an ally after concluding a preliminary deal with the Kurds. Conscious of this reality, the US, France and the UK are trying to force the PYD to participate in the UN-led process as an independent actor. However, they face a categorical refusal from Turkey, as well as Russian indifference to these wishes. In this context, time is not necessarily the government’s best ally. The longer the delay, the more PYD would gain confidence in negotiations, a significant US objective for remaining in Syria despite its withdrawal from the Syrian-Turkish borders. Such a development could rally Russian support, as it attributes great importance to the definite conclusion of the constitution committee.

Areas of agreements

Despite the opposition’ and government’s different objectives and expectations, there are still areas of possible agreement between the two. Among these, is the definition of the Syrian state. There is a consensus on the Arab identity of the state and the role of Islam as a principle source of legislature. This area of agreement between the mainstream opposition, mostly composed of Arabs, and the government is in contradiction with the SDF vision who insist on ethnic rights for non-Arabs, primarily the Kurds. This possible area of consensus could be challenged if the SDF is included in future rounds. In 2017, the Russians campaigned for a form of an “Assembly of Regions” in Syria, which in theory would allow a certain level of autonomy for Kurdish regions. The government was more susceptible to accept such as suggestion three years ago, but there is no guarantee it would concede to this demand today. For the opposition, as long as their main ally, Turkey, strongly objects to such an arrangement, there is no indication it would agree under the current circumstances.

Additionally, there is a common accord on establishing a new administrative decentralisation law despite divergence on the level of authority delegated. This area of agreement also coincides with the international community’s recognition of Damascus’s inability to impose the same level of centralisation it used to enjoy before the uprising in 2011. Local communities have adapted to the retreat and failure of state institutions and have established grassroots and communal governance. A decentralised structure has the potential of reconciling the conflicting local interests as well as offering a structure to normalise the existence of various zones of foreign influence in the Levant. Nonetheless, it can only prevail and succeed in a stable and mature social environment.

Finally, there is a possible consensus on granting more legislative authority to the parliament. However, the government may not concede the veto powers enjoyed by the president. The government would also insist on preserving the president as the commander-in-chief, in addition to retaining the power of appointing the heads of the Constitutional Court and the Central Bank. The opposition, in principal, would attempt to delegate all these powers to the parliament, but the lack of credible alternatives could provide a certain level of needed stability in the forthcoming period of Syria politics.

Nonetheless, the real challenge lies in the execution of these possible areas of consensus. The government could accommodate the opposition demands by adopting loose texts with different possible interpretations. But the lack of clear procedures to execute any possible amendments could discredit the whole process. However, what is uncertain is to what extent the Syrian government would demonstrate its commitment to a new version of the constitution, given its track record of ignoring its own previously drafted versions.

Conclusion

This brief has examined the positions of the opposition and the Syrian government and their expectations from the constitutional process. Despite Russia's best efforts, the Constitutional Committee could ultimately fail to introduce an alternative to of UN Security Council's resolutions 2254. The divergence of expectations between the opposition and the Syrian government are greater than the areas of agreement. While the government adopts a securitised approach to end the conflict, the opposition only relies on the fading political support of the friends of Syria group.

The other reason for its potential failure is the lack of a clear time frame for its deliberations. The government is deliberately using stalling tactics to force the international community to engage with it on low-politics, security arrangements, and economic issues, eventually leading to rehabilitation onto the international scene.

For the time being, all local, regional and international actors engaged in the Syrian conflict seem resolute to pursue their agenda through military actions despite their official rhetoric instead of engaging in a meaningful negotiation process.