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Abolishing Sectarianism in Lebanon

Policy Paper

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This year's edition focused on "constitutionalism, human rights, and civil liberties: 11 years after the Arab uprisings." It included lectures by: Dr. Jinan Limam, Professor of Public Law at the Faculty of Legal, Political and Social Sciences in Tunisia; Dr. Asem Khalil, Professor of Public Law at Birzeit University in Palestine; Dr. Iman Rashwan, Professor of Public Law at the Faculty of Law at Cairo University and a visiting lecturer on Law and Economics at the Faculty of Law at the University of Hamburg; Mr. Aymen Briki, a researcher specializing in Public Law and Political and Geopolitical Sciences, and a Research Fellow at the Max Planck Foundation for International Peace and the Rule of Law; and Mr. Halim Shebaya, Non-resident Fellow at Arab Center Washington DC and Head of Advocacy and Strategic Action at Impunity Watch.

This seventh edition also featured case studies and meetings with a number of high-level guest speakers and experts, including, among others: Ms. Stephanie Williams, Special Adviser on Libya to the Secretary-General (2021-2022), Acting Special Representative and Head of the United Nations Support Mission in Libya (UNSMIL) (2020-2021), and Deputy Special Representative (Political) of UNSMIL (2018-2020); Dr. Salma Mabrouk, member of the Tunisian National Constituent Assembly, member of the constituent committee on rights and liberties and of the legislative committee on social affairs; and Ms. Khadija Rabbah, founding member of the Democratic Association of Moroccan Women and an international expert and trainer in inclusive democratic development and transformational leadership.

The Academy of Constitutional Law is organized annually by the Arab Association of Constitutional Law with the aim of encouraging researchers in Arab countries to dialogue and work with each other and exchange experiences on the most relevant current constitutional issues.

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Executive Summary

1. Political systems can be classified into two categories: majoritarian systems and consociational systems. Consociational systems are adopted in countries with pluralistic societies and consist of four basic elements: a grand coalition government, the proportionality rule, segmental autonomy, and mutual veto.
2. Lebanon's system of government is consociational, as the elements of consociation are enshrined in the Preamble to the Constitution and in eight of its essential articles, which outline the basic elements of such a system: an inter-communal coalition government, decision-making by consensus or by a qualified majority on major issues (Article 65 of the Constitution), the role of the President of the Republic (Article 49 of the Constitution), the proportionality rule or the allocation rule (Articles 22, 24 and 95 of the Constitution), mutual veto, and segmental autonomy in personal status and freedom of religious education (Articles 9, 10 and 19 of the Constitution).
3. The consociation theory has dominated peace-building processes around the world since the 1990s, after it became the international community's preferred institutional tool to end civil wars. It has also evolved into a transformative theory, understood as facilitating the transition towards more liberal systems through the promotion of citizenship and common identity instead of individual identity. It is also meant to allow the transition from corporate consociation, which guarantees each social group a share of power in any electoral process, to liberal consociation, which guarantees the right to protection and representation on the basis of citizenship, regardless of racial, ethnic, sectarian or linguistic divisions and establishes flexible foundations for participation, which is one of the elements of the consociation theory, in order to allow access to and sharing of power.
4. The philosophy underpinning the National Reconciliation Accord, also known as the Taif Agreement, and subsequently the Lebanese Constitution after the amendments introduced to it in 1990, is based on the transition from corporate consociation to liberal consociation, through guarantees given to groups and to individuals based on their rights as citizens. Group guarantees are granted through the establishment of the Senate and in the form of the autonomy given to sects in personal status and religious education,

while the basic guarantee granted to individuals is the abolition of sectarianism, which would lead to the consolidation of democracy in Lebanon. The latter objective requires that the state guarantee the protection of individuals and their rights, prohibit all forms of discrimination and distinction, and place individuals and their rights at the heart of its efforts with regard to organization, administration and governance. Therefore, it is necessary to start by abolishing some elements of sectarianism which have allowed sects to become the main determining factor in organization, administration and governance. This abolition should be gradual, according to a phased plan, by setting a quota for the sect based on civil law, which doubles gradually, i.e. eight deputies elected on a civil basis without any sectarian restrictions in the upcoming elections, then sixteen in the following elections, and so on until representation in the Chamber of Deputies, and subsequently the formation of the Council of Ministers, is determined on a national, non-sectarian basis.

5. After sectarianism took on a political nature, it became known as the cause of the recurring crises in Lebanon's political system, which is why there have been many calls for its abolition. However, because this phenomenon has become so deeply entrenched in Lebanon, it should be accurately diagnosed in order to determine the optimal remedy. This process begins by identifying the four aspects of sectarianism in Lebanon, each of which requires a different approach. These are: 1) The allocation of the three highest-ranking offices to different sects; 2) The quota system for parliamentary representation and the formation of the Council of Ministers (Articles 24 and 95 of the Constitution); 3) The sectarian personal status laws and religious education curricula (Articles 9 and 10 of the Constitution); and 4) The sectarianization of religion to fuel conflicts (political sectarianism). Therefore, in Lebanon's case, the pathways for consociational democratic transformation through constitutional amendments include: the inclusion of the ruling elite (the Elite Cartel) in the Senate, so that the Senate preserves the political legacy of powerful Lebanese leaders (or za'ims). This would be preceded by the gradual abolition of the rule of sectarian representation in the Chamber of Deputies, with the election of eight non-sectarian deputies per electoral cycle, so that the percentage of representation is reduced equally between sects and proportionally between Christians and Muslims.

The same applies for the formation of the Council of Ministers. The number of MPs is thus reduced to 96, and the number of Senators would be 32. The personal status system should also be modernized to become more inclusive and equitable. That way, the allocation of the three highest-ranking offices is also freed of sectarian restrictions, with the establishment of consociational controls to prevent a return to the monopolized state of affairs. A suitable control in this case could be the imposition of a rotation in the three highest-ranking offices to prevent the same sects from being in office for more than 2 consecutive terms.

Introduction

Comparative constitutionalism divides political systems into two categories: majoritarian systems and consociational systems. The Lebanese political system is consociational, as is often the case in pluralistic societies. Arend Lijphart, American political scientist of Dutch descent, used Lebanon as one of the foundational models for his consociationalism theory in the 1960s and 1970s.¹ Constitutional jurist Antoine Messarra also examined the Lebanese system extensively in many of his writings, highlighting its foundational elements and their evolution.² Similarly, constitutional expert Christine Bell has shed light on the widespread adoption of consociationalism, most notably political power sharing, as a tool to resolve conflicts around the world since the 1990s.³

Consociationalism is based on four key elements: forming a grand coalition government, adopting the proportionality rule in parliamentary elections and in governmental appointments to represent all social groups, as opposed to the principle of the “winner takes all” applied in majoritarian systems, and segmental or cultural autonomy and federalism, and the minority mutual veto.⁴

These elements are the foundations of the government system in Lebanon, as stipulated by the Preamble to the Constitution and eight of its main articles: an inter-communal coalition government, decision-making by consensus or by a qualified majority on major issues (Articles 65 and 95 of the Constitution), the role of the President of the Republic (Article 49 of the Constitution), the proportionality rule or the allocation rule (Articles 22, 24 and 95 of the Constitution), mutual veto,

and segmental autonomy in personal status and freedom of religious education (Articles 9, 10 and 19 of the Constitution).

Consociationalism gained prominence in the field of comparative constitutionalism after its development in the 20th century. However, despite dominating peace-building processes around the world since the 1990s, after becoming the international community's preferred tool to end any civil war, it has evolved into a transformative theory, meaning that it is understood to facilitate the transition towards more liberal systems through the promotion of citizenship and common identity instead of individual identity. It also meant to allow the transition from corporate consociation, which guarantees each social group a share of power in any electoral process, to liberal consociation, which guarantees the right to protection and representation on the basis of citizenship, regardless of racial, ethnic, sectarian or linguistic divisions. The founders of this theory concluded that it is the best solution for the dilemmas of societies torn apart by deep segmentation.⁵ This theory, however, is effective during transitional periods in that it helps to end conflicts and achieve stability, but it does not offer permanent solutions.⁶

In 1990, the National Reconciliation Accord, also known as the Taif Agreement, explicitly introduced the elements of consociationalism into the Lebanese Constitution, while also laying the groundwork for detaching political representation from sectoral affiliation, by adopting a national basis for parliamentary representation and limiting sectoral representation to the Senate. Therefore, the philosophy of the Lebanese Constitution is based on transitioning from corporate consociation to liberal consociation by providing guarantees to groups and to individuals based on their rights as citizens. Group guarantees are granted through the establishment of the Senate and the right to autonomy, while the basic guarantee granted to individuals is the abolition of sectarianism and the consolidation of democracy in Lebanon.

The main reason for the collapse of Lebanon's second republic, which was based on the 1943 National Pact, was the lack of true power-sharing. Constitutional amendments in 1990 therefore reconciled between the separation of powers and the need for power-sharing, with the Constitution guaranteed the participation of sects in power (Articles 17, 24, 65, and 95) under a parliamentary system (Articles 55 and 66-70). For this reason, the rules of the British parliamentary system cannot be applied in Lebanon, because the Lebanese constitutional system is a consociational system with a parliamentary façade. As a result, the study of the constitutional powers and

the relationship between them in Lebanon is related to and affected by the grand coalition (Article 95), the mutual veto right (Preamble, paragraph J), segmental autonomy (Articles 9 and 10), which delineates the competencies of the state and the sects, and the proportionality rule, which outlines the relationship between the sects (Article 22 and 24). These articles prove that the Lebanese constitutional system is a parliamentary consociational system, which is why constitutional change in Lebanon aimed at abolishing sectarianism should start by amending these articles.

This classification of the Lebanese constitutional system is the first step in drafting an applicable plan for constitution-building in Lebanon, resuming the constitutional amendment process launched by the National Reconciliation Accord, particularly to establish the National Committee mentioned in Article 95 of the Constitution and to implement Article 22 of the Constitution, which frees parliamentary representation, and thus the formation of the Council of Ministers, from sectarian restrictions. “Political” sectarianism has long been considered as the cause of the recurring crises in Lebanon’s political system, which is why there have been many calls for its abolition. However, because this phenomenon is so deeply entrenched in Lebanon, it should be accurately diagnosed in order to determine the optimal remedy. This process begins by identifying the four aspects of sectarianism in Lebanon, each of which requires a different approach. These are: 1) The allocation of the three highest-ranking offices to different sects; 2) The quota system for parliamentary representation and the formation of the Council of Ministers (Articles 24 and 95 of the Constitution); 3) The sectarian personal status laws and religious education curricula (Articles 9 and 10 of the Constitution); and 4) The sectarianization of religion to fuel conflicts (political sectarianism).⁷

The Lebanese Constitution made the abolition of political sectarianism a primary national objective that should be achieved according to a phased plan (Preamble, paragraph H). It set a roadmap for this national objective by proposing a phased plan that does not pit one sect against the other and paves the way for the abolition of sectarianism without any coercive policies or top-down, non-consensual laws. Rather, it calls for the formation of a National Committee tasked with studying and proposing means to ensure the abolition of sectarianism, according to Article 95 of the Constitution. Three serious initiatives have been undertaken to form a National Committee to abolish sectarianism as stipulated by Article 95 of the Constitution, but they were all met with strong objections, particularly by Christian parties,

causing the examination of this question to be deferred. The objection of Christian parties to the abolition of sectarianism is no doubt due to their fear of political isolation given their receding demographic mass, especially since they have already suffered from marginalization and restrictions in the past. This urges us to raise the following question: What are the means to abolish sectarianism while still reassuring Christians and the rest of the Lebanese people? To what extent does abolishing sectarianism in Lebanon affect its classification as a consociational system?

We will answer these questions in two parts, the first of which will examine the means to abolish sectarianism in Lebanon, while the second will look into the formation of a Senate as stipulated in Article 22 of the Constitution.⁸

Part 1: Means to Abolish Sectarianism in Lebanon

The Lebanese Constitution not only called for the abolition of political sectarianism as a primary national objective; Article 95 thereof also developed a detailed mechanism and laid out a phased plan to achieve that objective. In fact, this mechanism leads not only to the abolition of sectarianism at the political level, but also at the social level, where it manifests itself in the form of partisanship among most Lebanese citizens. This would transform Lebanon's sects into faith communities that enjoy religious freedom independently, without any exploitation of religious differences for political ends. The primary function of the National Committee is to study and propose well-thought-out means that ensure the abolition of sectarianism, as well as develop recommendations and proposals and submit them to the Chamber of Deputies, which is the authority empowered to abolish sectarianism. Indeed, the Chamber of Deputies makes the final decision by amending the Constitution and issuing constitutional laws by a majority of two-thirds of its members, based on a constitutional amendment draft law approved and submitted by two-thirds of the members of the Council of Ministers, as stipulated in Articles 65, 76 and 77 of the Constitution.

Sectarianism can only be abolished in a consensual and gradual manner, after offering guarantees to all sects to reassure them that they would be able to maintain their full national presence, participation and role. The National Reconciliation Accord, also known as the Taif Agreement, laid the groundwork

towards achieving this national objective. It proposed a phased plan that does not pit one sect against the other and paves the way for the abolition of sectarianism without any coercive policies or top-down, non-consensual laws. Rather, it calls for the formation of a National Committee tasked with studying and proposing means to ensure the abolition of sectarianism, according to Article 95 of the Constitution.

While it did not offer any radical or decisive solutions to Lebanon's crisis, one of the positive outcomes of the Taif Agreement is that it put an end to the war and imbued the Constitution with the principles of consociationalism. In fact, the Taif Agreement was a political settlement that put forward a general framework or a viable starting point for peaceful discussions on how to develop Lebanon's current political system, strengthen the rule of law and build strong public institutions. What is certain is that modernization and development processes and constitutional amendments in countries with pluralistic societies are not the result of military confrontations and civil wars; rather, these processes take place in times of peace, as they require genuine concord and consensus, well-intentioned initiatives and a desire to promote lasting coexistence, where no segment of society would feel victimized. That is why the Taif Agreement called for the abolition of sectarianism, but also for the formation of a Senate, where all faith communities – that is, all of the sects and confessions in Lebanon – are represented, and whose powers shall be confined to major issues.⁹

The representation of sects in government on fair grounds was seen as the optimal solution to limit political sectarianism from both a practical and theoretical perspective. When the National Reconciliation Accord was negotiated and approved, enabling sects to be represented in government was the only realistic and practical way to resolve the multiple crises of Lebanon's political system and to build the third republic. As a result, the Constitution stipulated that sects be represented in a fair and proportional manner in the formation of the government during the transitional period. However, the Constitution clearly states that sectarian representation is not a permanent solution, as the ultimate objective is to build a republic free of sectarian restrictions.

In order to make sure that this sectarian representation does not become a permanent solution, and to truly abolish sectarian restrictions, several measures should be taken to abolish sectarianism. These include rotation in the three highest-ranking offices, partial non-sectarian or proportional representation in the Chamber

of Deputies (whereby eight deputies are elected on non-sectarian grounds at first for example, with the possibility of increasing this number in subsequent elections), instilling constitutional culture and forming the Senate. The nature of sectarianism in Lebanon, which takes on four different aspects, makes it necessary to adopt a multi-pronged approach to abolish it. It is also necessary to pinpoint these four different aspects of sectarianism in Lebanon in order to find ways to implement Article 22 (amended) of the Constitution, which stipulates that: “With the election of the first Chamber of Deputies on a national, non-sectarian basis, a Senate shall be established in which all the faith communities shall be represented. Its authority shall be limited to major national issues.” The identification of these aspects would also facilitate the work of the National Committee mentioned in Article 95 of the Constitution.

“Political” sectarianism has long been considered as the cause of the recurring crises in Lebanon’s political system, which is why there have been many calls for its abolition. However, because this phenomenon is so deeply entrenched in Lebanon, it should be accurately diagnosed in order to determine the optimal remedy. This process begins by identifying the four aspects of sectarianism in Lebanon, each of which requires a different approach. These are: 1) The allocation of the three highest-ranking offices to different sects; 2) The quota system for parliamentary representation and the formation of the Council of Ministers (Articles 24 and 95 of the Constitution); 3) The sectarian personal status laws and religious education curricula (Articles 9 and 10 of the Constitution); and 4) The sectarianization of religion to fuel conflicts (political sectarianism).

The “allocation” rule or the positive discrimination policy involves the allocation of a specific share for each ethnic, linguistic, racial or religious group to participate in government. Meanwhile, the “proportional” or quota rule is the distribution of posts and appointments among the different segments of society according to their size. These two rules are applied in more than forty countries around the world, including but not limited to small democracies in Europe (Austria, Switzerland, The Netherlands and Belgium) and other countries (Canada, Malaysia, Columbia, India, Vietnam, New Zealand, Pakistan, etc.). In other political systems, such as Turkey, Egypt, South Africa and Thailand, a number of seats in representative councils is reserved for deputies to compensate for the imbalance resulting from the purely majoritarian representation systems. However, the strict implementation of these two rules runs the following risks: the profiling of citizens; the violation of

the principle of equal opportunities; the overburdening of public administrations with posts established to ensure balanced representation rather than efficiency; and the obstruction of the decision-making process, as a simple majority would no longer be sufficient to make decisions.¹⁰

As for autonomy in personal status and religious education, Articles 9 and 10 of Lebanon's constitution establish a federal system for personal status within a unified state. This approach is adopted in countries where social groups are spread across different regions and are of comparable size. When linguistic, ethnic, racial or religious minorities are not confined to certain geographic areas – that is, when sect boundaries are inconsistent with geographic boundaries – geographic federalism or decentralization does not strengthen the participation of minorities or promote administrative efficiency and democratic participation. Lebanon's federal system ensures equality at an individual level between the personal status systems of the country's different sects, as the law of one sect cannot take precedence over the laws of other sects in the event of a dispute of an international nature related to personal status issues. This system also offered a pathway for an unbiased, individualized form of federalism to avoid the inevitable sectarian profiling of Lebanese citizens, as Decree No. 6 of 13/3/1936 established the “sect subject to civil law” – that is, a non-religious, civil sect.

Lastly, political sectarianism involves the sectarianization of religion to fuel political conflicts. In other words, it refers to the exploitation of religion by political leaders to mobilize citizens in their favor, as well as the interference of religious leaders in politics, which is a major problem in Lebanon's political system. As a result, the abolition of the allocation rule and the proportionality rule or the issuance of a unified and civil personal status law cannot solve this problem, as it is of a different nature.

How, then, can these different aspects of sectarianism be addressed, and what are the potential outcomes?

I. Developing the Allocation Rule for the Three Highest-Ranking Offices

The Lebanese case offers a theoretical framework to examine the allocation rule and the means to apply it, develop it, and override it in consociational systems based on political power-sharing. The restricted or fixed allocation rule fosters a sense of inequality which, when politicized by an ideology based on numerical

superiority or the strength of loyalty, as is the case in Lebanon, generates conflict. Setting a fixed allocation rule can only be used as a temporary measure. Adopting it permanently and as an established right for certain sects creates a sense of inequality for others. Citizenship means equality between all citizens and accepting the right of free political participation for all citizens on equal grounds – that is to say, granting all citizens equal rights in political competition.

The allocation rule is linked to three aspects: the number of sects within a society, eradicating social differences, and the interests (positions and resources) which are subject to competition. The higher the number of sects, the more difficult it is to avoid injustice. If society is comprised of two equal or semi-equal groups, as in the case in Belgium, a rotation system that gives equal value to both parties can be adopted. However, in a multi-sectarian society, as is the case in Lebanon with its 18 officially-recognized sects, allocation leads to inequality, hinders decision-making, and strengthens sub-national loyalties. As such, the allocation rule should either be coupled with the practice of rotation, for a specific period of time, or be balanced by compensating the affected sect at a different level to remedy the injustice. In the section below, we will present the available options to develop the allocation rule in Lebanon:

1. The Immutability System

A coalition of four major sects was established in 1943 to rule Lebanon.¹¹ This immutable coalition was justified by the requirements of the reconciliation process, as a guarantee to the identity of some of the sects, as well as by numerical superiority, historical seniority, and the level of allegiance to Lebanon. The highest-ranking offices were politically perceived as being a right and privileges of first-degree sects. However, by allocating these offices to specific sects in the Constitution, they became more akin to vested rights and ownership deeds, and they were no longer the result of a reconciliation effort dependent of the capacity of its sponsors to maintain this reconciliation and become a factor of unity and solidarity. One of the outcomes of consociationalism is political power-sharing, but the tight link between the highest-ranking offices and certain sects hinders the capacity of their holders to act as unbiased governors for all of Lebanon and its citizens. Rather, this arrangement promotes demands for quotas at all levels, like the demands of the Druze, Greek Catholic, and Greek Orthodox sects to preside over the Senate.

2. The Quota System

The second way out of the allocation rule is by ramping up its application by dedicating certain positions, jobs, and competencies to each sect to appease them. Two uneven groups of sects have emerged in Lebanon: the three major sects that enjoy most of the power and the smaller sects that have been prevented from actual participation in ruling the country, stripped of their political right to reach the three highest-ranking offices. The quota system can be applied to all 18 sects, whether large and small, by including the presidencies of the Senate, the Constitutional Council, and the major ministries in the quota system. But does this lead to a more effective government system? It increases the sectarianization of the system in the name of abolishing sectarianism. Quotas and the constant effort to ensure balanced representation increase the chances of standstill due to the use of the veto, which becomes more constraining.

3. Open Participation

The third option entails open participation with certain controls, i.e. a system that combines competitiveness with consociationalism. One of the downsides of the restricted allocation rule is that it does not foster cooperation between the sects. In fact, the President of the Republic is appointed by the Maronites, the Prime Minister by the Sunnis, and the Speaker of the Chamber of Deputies by the Shias. The solution would be to make these three high-ranking offices representative of all Lebanese citizens, rather than being permanently held by specific sects, by adopting the open participation formula, without permanently dedicating each high-ranking office to a specific sect. This would compel sect leaders to cooperate with other sects instead of resorting to a sectarian cover to assume a certain high-ranking position. The direct interference of sects in political matters is one of the facets of political sectarianism, which is rejected by the Lebanese people. Complete or partial openness requires setting consociational controls to prevent a relapse to monopoly. One of the most adequate controls would be to prevent the same sect from holding one of these high-ranking offices for more than two consecutive mandates.

II. Developing the Proportionality Rule

The proportionality (quota) rule has been in place for five centuries of Lebanon's political history. It has been applied throughout that period to ensure that all sects partake in ruling the country without any exclusion. While it is true that democracy is not a distribution of shares, because a country is not a stock market, it is also not based on the "winner takes all" model. Democracy is the rule of the people, by the people, meaning that accession to power occurs through elections where political parties share power according to the votes they receive. In homogenous societies, fluctuations in public opinion force parties to transition from majority to opposition and vice versa. However, in pluralistic societies, where political parties mostly represent the sects present in that society, there are two options: either a competitive democracy that excludes minorities or a participatory democracy that adopts the quota and qualitative majority rule mentioned in this paper, as is the case of Lebanon's political system.

Abolishing the quota rule and immediately adopting a fully competitive system leads to an open conflict between sects to ensure participation in power and balanced representation, as well as to avoid exclusion and dominance. The quota rule provides safety for Lebanese sects; it was essentially put in place as a guarantee and a means to organize participation in power. Abolishing it would lead to an open sectarian struggle to amass the highest number of seats for each sect. The quota rule keeps electoral competition confined within the boundaries of each sect (Maronite compete with Maronites, etc.). If it were to be abolished, the competition would expand to include all the sects. Christians would not accept having 30% of parliamentary seats, reflecting their share of electorate votes, through the immediate abolition of sectarianism. The quota rule guarantees the participation of all sects in power, while the purely competitive system may cause sectarian conflicts to erupt and prevent sects from coming together.

Articles 24 and 95 of the Lebanese Constitution provide for the adoption of the proportionality rule in parliamentary representation, in the formation of the Council of Ministers, and in Grade One posts. Article 24 stipulates that the Chamber of Deputies should comprise members elected according to the applicable electoral laws, in terms of numbers and election methods, and that it should enact an electoral law that is unrestricted by sectarianism, where seats are distributed according to

the following rules: equally between Christians and Muslims and proportionally between the denominations of each sect and between regions. As such, sectarian parliamentary representation is only intended to last for a temporary, transitional phase, as Article 22 of the Constitution stipulates the election of the Chamber of Deputies on a national, non-sectarian basis, gradually and according to a phased plan, in line with the Preamble and Article 95 of the Constitution.

Article 95 of the Constitution allows for flexibility and leaves ample space for gradual change. Prior to its amendment, this article stipulated the following: “on a temporary basis, and to ensure justice and reconciliation, sects shall be represented in a just manner in public office and in the formation of the Council of Ministers, without prejudice to the state’s interests.” After its amendment by virtue of Constitutional Law No. 18 of 21/9/1990, and according to the National Reconciliation Accord, the text became as follows:

“The Chamber of Deputies that is elected on the basis of equality between Muslims and Christians shall take the appropriate measures to bring about the abolition of political sectarianism according to a phased plan. A National Committee shall be formed, headed by the President of the Republic. It includes, in addition to the Speaker of the Chamber of Deputies and the Prime Minister, leading political, intellectual, and social figures. The tasks of this Committee shall be to study and propose the means to ensure the abolition of sectarianism, propose them to the Chamber of Deputies and to the Council of Ministers, and follow up on the execution of the phased plan. During the transitional phase: sects shall be represented in a just and equitable manner in the formation of the Council of Ministers; the principle of sectarian representation in public service jobs, in the judiciary, in military and security institutions, and in public and mixed agencies shall be cancelled in accordance with the requirements of national reconciliation; they shall be replaced by the principle of expertise and competence. However, Grade One posts and their equivalents shall be excepted from this rule, and these posts shall be distributed equally between Christians and Muslims without reserving any particular job for any sectarian group, but rather applying the principles of expertise and competence.”

As such, the proportionality rule can be developed in two ways:

1. Setting an open quota for non-sectarian representation. For instance, 8 seats in the Chamber of Deputies and 2 ministries in the cabinet, with the possibility of doubling this quota over time, without restricting it to a specific sect.

Open and progressive participation is consistent with the principle of the unified electoral body upon which the Lebanese electoral system is based, whereby voters from different sects elect candidates from different sects.

2. Adopting rotation in public office, thus preventing the monopoly of one position by a certain sect, by setting the following rule: No person of the same sect shall hold a high-ranking office for more than two consecutive mandates.

III. Developing Segmental Autonomy

Article 9 of the Lebanese Constitution guarantees the autonomy of sects in personal status issues. However, the Chamber of Deputies is granted absolute legislative authority according to Article 16 of the Constitution. Therefore, sect autonomy should evolve to be fairer and more inclusive, by enacting a law on marital rights for Lebanese women that would guarantee equality between Lebanese women in marriage, divorce and custody. This law would offer guidance for Sharia, spiritual and confessional courts when looking into these cases. A civil personal status law for the “civil law sect” should also be enacted, keeping in mind that the “civil law sect” is a non-religious sect established by Decree No. 6 of 3/13/1936 during the French mandate. This group includes those who do not belong to any religious sect and those who wish to renounce their original sect.

IV. Abolishing Political Sectarianism

Political sectarianism refers to the politicization of religion and its exploitation by political leaders in their favor. Every society has certain elements that are subject to politicization and that can be exploited by political leaders. However, politicizing religion is dangerous because religious beliefs, unlike other beliefs, are not negotiable; therefore, this politicization leads to intolerance and perpetual conflicts. The problem in Lebanon is not the influence that religious leaders exert over politics, which is why secularization is not the solution. In fact, the opposite is true, as political leaders interfere in religious affairs and speak in the name of religion.

The stability of pluralistic societies is threatened due to the politicization of differences by political elites. Reducing politicization is crucial for societies to contain conflicts and achieve stability. Comparative experiences have shown that primary loyalties cannot be dissolved in a pluralistic society and do not disappear with time

(Belgium has been dealing with the language problem for seven centuries). Past experiences have also shown that these loyalties might become non-contentious or marginal with proper organization and integration, as was the case in Austria when segmental classifications were abolished in exchange for recognizing the legitimacy of segmental loyalties legally and in the collective awareness and democratic practices, which offer psychological safety for all citizens who enjoy government protection without discrimination.

Comparative constitutionalism has shown that, in a pluralistic society, there are primary loyalties and relations between the segments of society, and the best way to limit the politicization of primary loyalties for electoral and political mobilization is to limit these loyalties and their interconnections within a senate comprising leaders of faith communities (*Weltanschauungsgruppen*) as in Austria and Belgium. This senate would decide on such matters and contain conflicts, because sect leaders have a comprehensive view of their followers in Lebanon, while politicians look at followers from their sect in a specific electoral district. The comprehensive vision of all the sects in Lebanon holds in itself aspects of containing, controlling and settling conflicts. Therefore, members of this Senate would have a broad understanding of the foundational principles and enjoy stable membership outside the framework of the electoral process that incentivizes political leaders to politicize the sects in their favor.

We will address the importance of forming a Senate in detail in the next section.

Part 2: Establishing a Senate in Lebanon

Chapter II - Political Reforms, Paragraph 7 of the National Reconciliation Accord (the Taif Agreement) stipulates the following: “With the election of the first Chamber of Deputies on a national, not sectarian, basis, a senate shall be formed and all the spiritual families shall be represented in it. The senate powers shall be confined to crucial issues.” This paragraph was inserted in the Constitution by virtue of Law No. 18 of 9/21/1990, issued in implementation of the provisions of the Taif Agreement, as Article 22 of the Constitution was reactivated after being annulled by the Constitutional Law of 10/17/1927. However, re-establishing the Senate was digressive, without much detail, as a way to abolish sectarianism and as a constitutional guarantee

of the characteristics of Lebanon and its system of coexistence, as well as the imperative of national consensus to preserve the nation's unity.

Articles 22 and 95 of the Constitution linked the election of the first Chamber of Deputies on a national, non-sectarian basis to the establishment of a Senate, and they called for the abolition of sectarianism through a phased plan designed by a National Committee that includes political, intellectual and social figures. This Committee would be entrusted with helping Lebanese society transition from a sectarian system to a citizenship-based system, where religious rituals are practiced freely and respectfully, without any political exploitation of religious differences. In other words, the Senate cannot be established before the election of the Chamber of Deputies on a national, non-sectarian basis. And there can be no national, non-sectarian Chamber of Deputies without a national plan that includes a transitional period. This plan should expand the proportionality rule or the rule of guaranteed participation in the legislative and executive powers, in addition to promoting these principles in curricula across all academic stages, from nursery until university. Citizenship is a culture that necessitates the civic education of citizens. During the transitional period, the allocation of the three highest-ranking offices and public posts to different sects, including ministries, is expanded, and a rotation system is adopted to prevent exclusion or oppression. Finally, democracy should be consolidated by abolishing the rule of allocating the three highest-ranking offices to different sects and the proportionality rule in the Chamber of Deputies and the Council of Ministers, in addition to the formation of a Senate that guarantees the representation of all sects and their participation in addressing major national issues.

The purpose of forming a Senate in Lebanon is not to create a second version of the Chamber of Deputies, which is elected directly by the people for a relatively short term and which is subject to political and other fluctuations. Rather, there is a need for a more stable and specialized Senate in Lebanon to defend the deep interests of the Lebanese nation, away from political and electoral fluctuations. It is necessary to ensure the stability of the government system and to avoid disruption, as all faith communities are represented in the Senate and their participation in the decision-making process regarding major national issues is guaranteed. Therefore, its members are supposed to show wisdom and moderation – that is, to combine the advantages of general direct suffrage, as an essential element of the democratic

system, as well as the expertise and experience that the ruling elite possesses, with the need to provide pluralistic, diverse and balanced representation of all segments of society. The Taif Agreement and, by extension, the Constitution, did not mention the specific number of members in the Senate, its composition, how its members are selected, and the duration of its term. Accordingly, we will discuss the composition of the Senate, how its members are to be elected and which major national issues it shall be entrusted to address:

I. Composition of the Senate

The constitution dictates that the Senate be composed of representatives of faith communities. However, this representation cannot be equal between the eighteen Lebanese sects (thirteen Christian sects and five Islamic sects, one of which is the Ismaili sect that has no active presence and is not currently represented in the Chamber of Deputies). Therefore, the equal representation of sects is not possible. The need for all faith communities to be represented in the Senate does not mean that each community elects its own representatives, as the coexistence pact should remain inviolable. Therefore, the members of a particular sect should not solely elect senators to represent them who belong to the same sect, as that would perpetuate the profiling of the Lebanese people. The Senate would thus represent the sects and the Chamber of Deputies would represent the entirety of Lebanon's citizens.

It is also possible to allow all MPs who have won five parliamentary elections, i.e. the Lebanese political leaders or the ruling elite, to join the Senate, which would make the latter a constitutional institution for dialogue between Lebanese leaders. When Lebanese citizens see their sect leaders in the Senate, they no longer feel compelled to elect a member of their sect as a deputy; rather, their votes would be based on political, economic and social opinions and agendas. In this case, the Senate would consist of thirty-two members representing all the faith communities in Lebanon, and the number of deputies would be reduced to ninety-six.

II. Powers of the Senate

By comparing the Senate mentioned in the Lebanese Constitution to other bicameral systems, we only find one common aspect: the representative nature of these chambers is related to the presence of multiple segments in these

pluralistic societies. However, the second chamber in the United States of America, Switzerland and France is based on geographical representation. Therefore, the suggested Senate in Lebanon, where all faith communities are represented, cannot assume the powers of the U.S. Congress, the French Senate, or the Swiss Federal Council, for it does not have a geographical character. The main purpose of the Senate is to reassure faith communities that their participation in addressing major national issues is guaranteed, to safeguard their national role, to preserve their presence and role in the Lebanese system, and to guarantee their religious freedoms, as stipulated in Articles 9, 10 and 19 of the Constitution, which would uphold Lebanese values and civil peace. It also aims to achieve full equality among the Lebanese in terms of rights and obligations and to abolish all forms of discrimination and favoritism, both positive and negative.

The primary issues mentioned in Article 65 of the Constitution that require the approval of a two-thirds majority of the members of the Council of Ministers cannot all be considered major national issues to be included in the powers of the Senate. However, some of these are in fact major national issues, such as amending the Constitution, declaring the state of emergency, war and peace decisions, international accords and treaties, reconsidering administrative divisions, the electoral law, the Nationality Law and personal status laws. However, other issues are not considered major, despite their importance, as they pertain to the relationship between the Chamber of Deputies and the Council of Ministers, including: appointing Grade One employees and their equivalents, dissolving the Chamber of Deputies, dismissing ministers, and deciding on the state budget. If the Senate becomes involved in dealing with these issues, it would contend with the executive branch, which would disrupt the system's efficiency. This is what led to the abolition of the Senate after the issuance of the 1927 Constitution.

Forming a Senate should not cause any conflict of powers with the existing Chamber of Deputies, as Article 22 of the Constitution did not grant the Senate any legislative role; rather, it confined its powers to major national issues only. According to the Constitution, the Senate's role is limited to representing the sects, dispelling their concerns and fears, allowing them to participate in making national decisions, and enabling the election of deputies without sectarian restrictions, which would resolve many complications in legislative work and allow deputies to focus on addressing issues related to people's livelihood.

That is why the Constitution limits Senate's powers to major national issues, so that the country's fate can only be decided through consensus between faith communities, whose representatives have the right of veto. This would ensure stability and balance when the nation faces existential threats.

■ Conclusion

This paper has shown that Lebanese consociationalism is in fact far from being synonymous with political sectarianism, because consociationalism in Lebanon is based on the National Pact of coexistence and the Constitution's Preamble and provisions. All of these texts call for the abolition of all the political manifestations of sectarianism, which have turned sects into the main reference points in all matter related to regulation, administration, and governance. However, this is not the same as abolishing religious freedoms in Lebanon, especially the freedom of belief and the freedom to practice religious rituals, the freedom of religious education and personal status regulations, which remain protected under Articles 9, 10 and 19 of the Constitution. Instead, the Constitution stipulated that, after the abolition of sectarianism, sects become faith communities.

The Lebanese political system, like any consociational system, is governed by a group of leaders known as the ruling Elite Cartel. This system requires consensus between all leaders in order to make a decision whenever exceptional circumstances arise and evolve into a crisis. In order for these deliberations between the ruling elites not to remain outside the official system, Article 22 (amended) of the Constitution called for the establishment of a Senate "in which all faith communities are represented and whose power shall be limited to major national issues." By doing so, the Constitution established the objective requirements for consensus and favored consociationalism

In light of the above, we propose the following recommendations, which we believe could help build a more harmonious and balanced constitutional system and achieve democratic transformation in Lebanon:

1. One of the downsides of the restricted allocation rule is that it does not foster cooperation between the sects. In fact, the President of the Republic

is appointed by the Maronites, the Prime Minister by the Sunnis, and the Speaker of the Chamber of Deputies by the Shias. The solution would be to make these three high-ranking offices representative of all Lebanese citizens, rather than being permanently held by specific sects, by adopting the open participation formula, without permanently dedicating each high-ranking office to a specific sect. This would compel sect leaders to cooperate with other sects instead of resorting to a sectarian cover to assume a certain high-ranking position. The direct interference of sects in political matters is one of the facets of political sectarianism, which is rejected by the Lebanese people. Complete or partial openness requires setting consociational controls to prevent a relapse to monopoly. One of the most adequate controls would be to prevent the same sect from holding one of these high-ranking offices for more than two consecutive mandates.

2. Articles 24 and 95 of the Lebanese Constitution provide for the adoption of the proportionality rule in parliamentary representation, in the formation of the Council of Ministers, and in Grade One posts. Article 24 stipulates that the Chamber of Deputies should comprise members elected according to the applicable electoral laws, in terms of numbers and election methods, and that it should enact an electoral law that is unrestricted by sectarianism, where seats are distributed according to the following rules: equally between Christians and Muslims and proportionally between the denominations of each sect and between regions. As such, sectarian parliamentary representation is only intended to last for a temporary, transitional phase, as Article 22 of the Constitution stipulates the election of the Chamber of Deputies on a national, non-sectarian basis, gradually and according to a phased plan. The proportionality rule can be developed in two directions: 1) parliamentary representation and the formation of the Council of Ministers: Setting an open quota for non-sectarian representation. For instance, 8 seats in the Chamber of Deputies and 2 ministries in the cabinet, with the possibility of doubling this quota over time, without restricting it to a specific sect; 2) public office: Adopting rotation in public office, thus preventing the monopoly of one position by a certain sect, by setting the following rule: No person of the same sect shall hold a high-ranking office for more than two consecutive mandates.

3. The Lebanese Constitution guarantees the religious sects' autonomy in personal status in Article 9 thereof; however, the Chamber of Deputies is granted absolute legislative authority. Therefore, personal status system should be modernized to be more inclusive, by enacting a civil law for the "civil law sect" that would ensure more equality for Lebanese women in marriage, divorce and custody.
4. The establishment of a Senate in Lebanon, in which all the faith communities, i.e. the eighteen sects, are represented, guarantee unity in pluralism and prevents oppression and exclusion. The Senate is to be formed after the election of the first Chamber of Deputies on a national, non-sectarian basis, according to a phased plan designed by a National Committee. This Committee would be entrusted with helping Lebanese society transition from a sectarian system to a citizenship-based system that guarantees harmony between religion and the state, a system where religious rituals are practiced freely and respectfully, without any sectarian one-upmanship, exploitation or strife. Since Lebanon is a country built on partnership between minorities, where can these partners meet, discuss, decide and express themselves other than in their natural location, the Senate? If the people Lebanese live in a permanent and mutual state of misunderstanding, how can they secure their coexistence without the formation of a Senate? The Senate is a necessary, essential and vital pillar of the Lebanese system. It is a vital institution for the system to function, provided that consensus is guaranteed. The lack of consensus means moving the political debate from its natural space to mosques and churches and reigniting sectarian strife. Therefore, it is necessary to establish a Senate to be the constitutional space for dialogue and consensus among the Lebanese people on major national issues.
5. The full implementation of the National Reconciliation Accord requires the establishment of a Senate, because the bicameral system is one of the most important guarantees of pluralism. It is an alternative to the principle of guaranteed participation (allocation rule and proportionality rule) and the right to mutual veto, which are two of the four basic aspects of consociationalism. Therefore, in order to implement Article 22 of the Lebanese Constitution, which states that "with the election of the first Chamber of Deputies on a national, non-sectarian basis, a new Senate shall be established in which all religious communities are represented"

– in other words, when the guaranteed participation of sects is no longer needed – the right to mutual veto (according to the requirements of the National Pact) should be limited to members of the Senate.

6. The suggested Senate in Lebanon, where all faith communities are represented, cannot assume the powers of the U.S. Congress, the French Senate, or the Swiss Federal Council, for it does not have a geographical character. The main purpose of the Senate is to reassure faith communities that their participation in addressing major national issues is guaranteed, to safeguard their national role, to preserve their presence and role in the Lebanese system, and to guarantee their religious freedoms, as stipulated in Articles 9, 10 and 19 of the Constitution, which would uphold Lebanese values and civil peace. It also aims to achieve full equality among the Lebanese in terms of rights and obligations and to abolish all forms of discrimination and favoritism, both positive and negative. The purpose behind of establishing a Senate is to dispel the concerns of minorities by allowing them to participate in decisions related to major and highly important issues. No law is to be passed and no decision is to be made on these issues except with the approval of the Senate.
7. The Constitution limited the Senate's powers to major national issues, so that the country's fate can only be decided through consensus between faith communities, whose representatives have the right of veto. This would ensure stability and balance when the nation faces existential threats. Accordingly, the election of the President of the Republic is considered a major national issue and thus requires consensus to secure the two-thirds majority of the votes cast in the Chamber of Deputies, as stipulated in Article 49 of the Constitution. This also means that some of the basic issues mentioned in Article 65 of the Constitution, which require the approval of a two-thirds majority of the members of the Council of Ministers, are considered major national issues to be included in the powers of the Senate. These include the following: amending the Constitution, declaring the state of emergency, war and peace, international accords and treaties, reconsidering administrative divisions, the electoral law, the Nationality Law and personal status laws. However, other issues are not considered major, despite their importance, as they pertain to the relationship between the Chamber of Deputies and the Council of Ministers, including: appointing Grade One employees and

their equivalents, dissolving the Chamber of Deputies, dismissing ministers, and deciding on the state budget. If the Senate becomes involved in dealing with these issues, it would contend with the executive branch, which would disrupt the system's efficiency. This is what led to the abolition of the Senate after the issuance of the 1927 Constitution.

8. Forming a Senate should not cause any conflict of powers with the existing Chamber of Deputies, as Article 22 of the Constitution did not grant the Senate any legislative role; rather, it confined its powers to major national issues only. According to the Constitution, the Senate's role is limited to representing the sects, dispelling their concerns and fears, and allowing them to participate in making national decisions as constitutional institution for dialogue between the different segments of Lebanese society. This would enable the election of deputies without sectarian restrictions, thereby resolving many complications in legislative work and allowing deputies to focus on addressing issues related to people's livelihood. When Lebanese citizens see their sect leaders in the Senate, they no longer feel compelled to elect a member of their sect as a deputy; rather, their votes would be based on political, economic and social opinions and agendas.

Endnotes

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- (8) The Lebanese Constitution, Article 22: "With the election of the first Chamber of Deputies on a national, non-confessional basis, a Senate shall be established in which all the religious communities shall be represented. Its authority shall be limited to major national issues."
- (9) Muhammad Al Majzoub, *The Mediator in Lebanese Constitutional Law and the Most Important Contemporary Political Systems in the World*, p. 328-329.
- (10) Antoine Messarra, *Public Theory in the Lebanese Constitutional System*, *Ibid*, p. 88.
- (11) In 1943, a pact was established in Lebanon between the major minorities: the Maronite Christians, Shiite Muslims, Sunni Muslims, and Greek Orthodox, by which they shared the high-ranking offices in the state. The President of the Republic should be a Maronite Christian, the Speaker of the Chamber of Deputies a Shia Muslim, the Prime Minister a Sunni Muslim, and the Deputy Speaker and the Deputy Prime Minister Greek Orthodox. The remaining sects were given proportional representation in the Council of Ministers, forming the grand coalition government.



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