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ASSESSMENT REPORT

# Lebanon: The Presidential Vacuum Awaiting Regional and International Agreements

Policy Analysis Unit - ACRPS | May 2014

Lebanon: The Presidential Vacuum Awaiting Regional and International Agreements

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## Introduction

Following the failure of two sessions of the Lebanese parliament to agree on a new president on April 23 and April 30, there are heightened fears among the Lebanese that the presidency will remain vacant.<sup>1</sup> The constitutionally mandated timeframe for the election of a new president began on March 25, 2014 and comes to an end on May 25, which is the last day in office of incumbent president Michel Suleiman, all in accord with article 73 of the Lebanese constitution. The election of a president takes on particular importance in Lebanon given that the post is the only one in the Arab world to be occupied by a Christian, in addition to his being “the symbol of the nation's unity [who] shall safeguard the Constitution and Lebanon's independence, unity, and territorial integrity.”<sup>2</sup>

Although the constitution does not specify that the president of Lebanon shall be a Maronite, just as it does not specify the parceling out of the other leading posts on a sectarian basis (speaker of parliament to be a Shiite, prime minister to be a Sunni, and deputy speaker to be Roman Orthodox), the “National Charter” of 1943, in the form of an unwritten agreement, established this allocation by confession which remains in force until today.<sup>3</sup>

The president is elected on the basis of a two-thirds majority in the first round, and by simple majority in subsequent rounds. Since independence in 1943 until now, elections have established the precedent that there must be a quorum of two-thirds of members of parliament at every session to elect the president, including those which took place during the war in 1976 to elect a successor to President Suleiman Frangieh. In 1982

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<sup>1</sup> All the press and political punditry predicted that following the session on April 23, elections would be postponed until after May 25 (the end of Michel Suleiman’s term in office) as well as mid-June, the date for the elections to renew the term of Syrian President Bashar al-Assad. See “Lebanon: No Government in Sight and Fears of an Imminent Presidential Vacuum,” Assessment Report, *ACRPS*, January 20, 2014, <http://english.dohainstitute.org/release/6bbc9979-726a-4891-871f-8c17d0fd443a>; and “Lebanon: A New Government to Preempt a Presidential Vacuum,” Assessment Report, *ACRPS*, March 2, 2014, <http://english.dohainstitute.org/release/f8542616-446b-4b4e-a8b8-89588a373d59>.

<sup>2</sup> Article 49 of the Lebanese Constitution.

<sup>3</sup> On the Lebanese National Charter, see Bassem al-Jisr, *The 1943 Charter: Why It Was and Is it Over?* (Beirut: Dar al-Nahar, 1997).

during the election of Bachir Gemayel, the session was delayed for two and a half hours at Fayadiyeh military academy until the two-thirds quorum was present.

The provision of two-thirds of members of parliament at each session to elect the president is not laid down in the constitution; rather, it is an interpretation of the parliamentary bureau that has attained the force of customary procedure. It makes it impossible to complete the electoral process without the agreement of the Muslim section of parliament (half the members), irrespective of any political and partisan divisions and disagreements between the Christians. In the case of sharp, nearly even, division (as is the case now between the March 8 and March 14 forces) it becomes impossible to ensure the necessary two-thirds of members to make the session quorate or hold real elections. In their place there has to be prior agreement over the figure of the president imposed by international and regional equations, as happened in the majority of previous presidential elections, or by a change to the balance of power, meaning a military defeat, as has also happened many times before.<sup>4</sup>

## Presidential Powers Before and After the Taif Agreement<sup>5</sup>

The Taif Agreement, which was struck in 1989 to end Lebanon's civil war that had lasted for almost 15 years, made significant changes to the powers of the president of the republic. Prior to the agreement, on the basis of article 17, executive authority was "entrusted to the president of the republic, [who] shall exercise it with the assistance of the ministers in accordance with conditions laid down in this Constitution." Taif caused this to be amended to, "Executive power shall be entrusted to the Council of Ministers, and the Council shall exercise it in accordance with conditions laid down in this Constitution." Article 18, before the Taif Agreement, dictated that both the president and the parliament have the right to propose laws, whereas Taif divested the president of this

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<sup>4</sup> On July 20, 1995, Abdel Halim Khadam, the Syrian vice-president at the time who broke with the regime in 2011, stated that the extension of President Elias Hrawi's term in office stood. The matter was finalized on October 10 by President Bashar al-Assad in his statement to Egypt's *Al-Ahram*, "It seems that the Lebanese are in agreement over the extension for the president." That same day, Lebanese MPs agreed to extend the term in contravention of the constitution. The same situation occurred with the extension of President Lahoud's term in 2004, which resulted in Security Council Resolution 1559 and the assassinations that followed, shaking Lebanon and the region.

<sup>5</sup> See the text of the Lebanese constitution, <http://www.ministryinfo.gov.lb/en/sub/Lebanon/LebaneseConstitution.aspx>.

right under the new formulation: "The parliament and the Council of Ministers have the right to propose Laws. No law shall be promulgated until it has been adopted by the Chamber." Additionally, Article 33 previously stated that the president of the republic was to "convene an extraordinary session of parliament"; after the agreement, the president could only do so "in consultation with the Prime Minister".

Article 49 of the constitution, concerning the election of the president, specified that "the president's term is for six years. He may not be re-elected until six years after the expiration of his last mandate. No one may be elected to the Presidency of the Republic unless he fulfills the conditions of eligibility for the Chamber of Deputies." Following the Taif amendments, further stipulations were added: "It is also not possible to elect judges, Grade One civil servants, or their equivalents, in all public institutions to the Presidency during their term of office or within two years following the date of their resignation or their leaving office for whatever reason." However, this condition was breached during the terms of presidents Bechara El Khoury (1943-52), Elias Hrawi (1989-98), and Emile Lahoud (1998-2007), all of whom extended their terms in office by an additional half term of three years by force of a constitutional amendment in each case.

By virtue of the old article 52, the president of the republic could "negotiate and ratify international treaties, [and] bring them to the knowledge of the Chamber as soon as the interest and safety of the State permit." Following Taif, the president continued to negotiate and ratify international treaties, but must do so "in coordination with the Prime Minister. These treaties are not considered ratified except after agreement of the Council of Ministers. He brings them to the knowledge of the Chamber as soon as the interest and safety of the State permit."

Previously, the president was able to "appoint and dismiss the Ministers, from among whom he designates a President for the Council of Ministers, [and] nominate [people] to all posts for which the mode of appointment is not otherwise determined by law"; the amendment to article 53 divests him of this power, permitting him "to designate the Prime Minister in consultation with the president of the Chamber of deputies based on parliamentary consultations which shall be binding." In agreement with the prime minister, the president must also issue, "the decree appointing the Cabinet and the decrees accepting the resignation of Ministers," following the approval of two-thirds of the government by virtue of article 69. Also in agreement with the prime minister, the president may, "call the Council of Ministers to an extraordinary session, whenever he sees it necessary." This article leaves it to the president's authority to issue decrees appointing the prime minister or accepting the Cabinet's resignation, or considering it

resigned. He shall forward to the Chamber of Deputies bills that are delivered to him by the Council of Ministers, accredit Lebanese ambassadors abroad, and accept the credentials of foreign ambassadors. He shall preside over official functions and grant official decorations. He shall grant particular pardons by Decree. He shall address, when necessary, letters to the Chamber of Deputies. He may introduce, from outside the agenda, any urgent matter to the council.

According to article 55 of the constitution, it was the president's prerogative, "by motivated decree taken on favorable advice of the Council of Ministers, to dissolve the Chamber of Deputies before the expiry of its term of office." The Taif Agreement amended this so that it was linked with the conditions specified in articles 65 and 77: "The president of the Republic may, in accordance with the conditions stipulated in Articles 65 and 77 of this Constitution, ask the council of Ministers to dissolve the Chamber of deputies before the expiration of its mandate. If the council, based on this request, decides to dissolve the Chamber of deputies, the President shall issue the decree dissolving it." This means that the president depends on the approval of the council of ministers to approve his request to dissolve parliament. Article 56, concerning the promulgation of laws by the president, was amended by Taif to specify that the president "has the right to ask the Council of Ministers to review any decision that the Chamber has taken within fifteen days of the decision's transmission to the Presidency. If the Council of Ministers insists on the decision or if the time limit passes without the decree being issued or returned, the Decision or Decree shall be considered legally operative and must be promulgated."

Following Taif, article 57 stipulates that "the President of the Republic shall have the right to request the reconsideration of a Law once during the period prescribed for its promulgation," to which the agreement added, "after consultation with the Council of Ministers [...] if the time limit passes without the Law being issued or returned, the law shall be considered legally operative and must be promulgated." Article 58 was amended so as to enable the government to put on the agenda of a general session of parliament any bill it deems urgent to have it read, and if forty days elapse without it being acted on, the president may issue a decree implementing it with the approval of the Council of Ministers. As part of the transfer of executive authority to the Council of Ministers, the authority to summon parliament for an extraordinary session to reach a final decision on the draft budget has, by virtue of article 86 of the constitution, moved from the hands of the president of the republic alone to the requirement for his agreement with the prime minister. By virtue of the amended article, all the matters concerning the budget previously entrusted to the president have been entrusted to the Council of Ministers.

All the amendments referred to above make it clear that the powers previously enjoyed by the president of the republic alone have been entrusted to the Council of Ministers, under a formula that reveals the extent of the changes to the balance of social and political power in Lebanon as a result of the civil war. Despite this, the office of the president remains important in this small and diverse Arab country.

## The Importance of the Fears of a Presidential Vacuum

Most of the current fears over the impossibility of holding presidential elections in time center around two themes:

First, Christians, particularly Maronites, have expressed longstanding fears concerning the transfer of presidential powers to the Council of Ministers by virtue of article 62 of the constitution, which stipulates that "Should the Presidency become vacant for any reason whatsoever, the Council of Ministers shall exercise the powers of the President by delegation."<sup>6</sup> Prior to the Taif Agreement, there was a presidential vacancy twice, and once following it and caused by it. The first precedent occurred when President Bechara El Khoury appointed army chief and Maronite General Fuad Shehab as head of the transitional government in 1952. President Amin Gemayel also made use of this precedent a few hours before the end of his presidential term on September 22, 1988. He appointed the Maronite head of the army, General Michel Aoun as head of a temporary government comprised of the six military officers who made up the military council in order to avoid a presidential vacuum after parliament had been unable to elect a new president within the constitutional timeframe.

However, this government was not accepted by its opponents (the partisans of Syria at that time), and the Muslim officer-ministers resigned from the military government. The country was split between two governments: one in the presidential palace in Baabda and the other in the government headquarters in West Beirut. The split persisted despite the signing of the Taif Agreement (on October 22, 1989) and the election of two new presidents of the republic—René Moawad on November 7, who was assassinated on November 22, followed by Elias Hrawi on November 24, 1989. Finally the Syrian forces—under American cover—ended the "rebellion of General Aoun" on October 13, 1991. President Emile Lahoud's time in office came under the current constitutional regime, and his term ended without a successor having been chosen and without his having taken

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<sup>6</sup> Ibid.



any steps to secure one. Authority passed constitutionally to the Council of Ministers, and the Sunni prime minister assumed the powers of the Maronite president.<sup>7</sup>

Secondly Christians, and large numbers of the Lebanese, fear changing the current formulation of the political system, which is based on equal sharing power and on giving the Maronites and other Christians key positions—most importantly, after the presidency of the republic, the head of the army. They are afraid that the current president will be the last Maronite president, and that the internal Lebanese balance of power in government will be redrawn and the various components will be rearranged on the basis of the new balances arising from the rise of Shiite power backed by Iran and Syria in the face of Sunni power, backed by Saudi Arabia and other Gulf countries.

Hezbollah leader Hassan Nasrallah has suggested that a constituent assembly be convened, which some people fear is the preamble to stripping away the remaining Christian rights in Lebanon on the basis of a re-examination of the principle of power-sharing based on the Taif Agreement and its replacement with a tripartite system.<sup>8</sup> These fears and apprehensions are reinforced by regional and international situations, most notably: the ramifications of the Syrian Revolution, Hezbollah's fighting alongside Bashar al-Assad's regime, the question of the Syrian refugees, the reverberations of battles on the Lebanese-Syrian border, Lebanese fears over developments between Saudi Arabia and Iran, possible links between the US position with the Iranian nuclear issue, and Iranian efforts to secure its influence and hegemony in the region in the face of the breakup of the Arab regional order.

This is all occurring during a time when Hezbollah, which "has intervened at a crucial time to change the balance of forces on the Syrian battlefield," is getting ready to "take part in supervising the re-election of President Bashar al-Assad in mid June."<sup>9</sup> At the same time, the Obama administration continues its retrenchment with respect to the Middle

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<sup>7</sup> The irony here is that no prime minister can receive executive authority without a decree empowering him and forming his government signed by the president of the republic.

<sup>8</sup> See "Nasrallah proposes a historic initiative: A national constituent conference on how to build the state," *Al-Safir*, [http://www.neworientnews.com/news/fullnews.php?news\\_id=63897#sthash.IUPsX1S5.dpuf](http://www.neworientnews.com/news/fullnews.php?news_id=63897#sthash.IUPsX1S5.dpuf). On the tripartite idea see "Tripartism: A new term stirring Lebanese differences," *Al Jazeera Net*, <http://www.aljazeera.net/news/pages/74f2cd4f-d396-4d4e-9948-bbb82ccea2c7>.

<sup>9</sup> "A difficult birth for a Lebanese president awaiting the re-election of al-Assad," *Al-Hayat*, April 19, 2014.

East, and Russia continues to give unconditional backing to the Iranian-Syrian policy in Lebanon. In this local, regional, and international situation, it is likely that Lebanon will fall into a political vacuum as it waits first for international consultations (US—Russia—France), and second for regional consultations (Iran—Saudi Arabia), all of which is linked to the course of the Syrian Revolution.