



THE HNC AND SNC

SHIFTS IN REFERENCES AND GOALS DURING INTRA-SYRIAN NEGOTIATIONS

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**THE HIGHER NEGOTIATION COMMITTEE
AND SYRIAN NEGOTIATION COMMITTEE
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DURING INTRA-SYRIAN NEGOTIATIONS**

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Contents

Abstract	4
The international community's frame of reference	5
Syrian opposition attempts frame of reference	6
The impact of changing references	8
Justifications for the shift	9
What comes next?	10
Endnotes	11
About the Author	12
About AlSharq Forum	12



Abstract: Abstract - A political transition managed by a "Transitional Governing Body" was at the core of the United Nations approach for building a sustainable peace in Syria. The Syrian opposition committed itself to this principle during the Geneva negotiations of 2014 with broad international support and backing. The core group of the Friends of the Syrian People states initially advocated for delegating the management of the transitional period to this body by offering it wide executive powers. Nonetheless, the emergence of ISIS, the direct Russian military intervention in Syria, and the subsequent weaker opposition on the battlefield have contributed in a change of demands. In 2016, the international community adopted a much looser framework for political transition in Syria based on constitutional reform and elections instead. The Syrian opposition responded in the subsequent talks of 2017–2018 by adopting this international "shift" and has ultimately failed in producing their own frame of reference for the political transition in Syria. This paper delves into the reasons behind these dynamics and offers an alternative path for the opposition to move forward.



The international community's ever-growing eagerness to reach a settlement for the Syrian conflict has produced new dynamics in the political process introduced by the Geneva communiqué in 2012. International and regional actors that previously supported the Syrian uprising and the subsequent revolution have gradually abandoned the basic set of legal principles they initially defined as the governing framework for any future political settlement in Syria. This change in the international mood has had a far-reaching impact on the supposed guardians of the Syrian revolution, the Higher Negotiation Committee (HNC, lately rebranded as the Syrian Negotiation Committee, or SNC). As a result, the Syrian opposition negotiators have increasingly accustomed themselves to accepting a settlement that hardly achieves any of the Syrian uprising's demands.

The Syrian opposition has adapted itself to the international political mood regardless of how fluctuating and unsettled it has recently grown to be. In many cases, the Syrian negotiators have committed themselves to documents issued by the United Nations and other international bodies but have rarely been capable of crafting their own. Indeed, it is a positive sign for the opposition to adhere to international law and norms. Nevertheless, this flexible behavior has also revealed the lack of strategy, technical knowledge and skills which the opposition

should have acquired over the last seven years. This policy brief illustrates how the Syrian opposition has recently adopted the Russian-sponsored proposal of constitutional reform and national elections rather than a political transition as advocated in UNSC resolution number 2254.

The International Community's Frame Of Reference

From the outset, the Syrian crisis has been the subject of a large number of international legal and political documents. Dozens of recommendations, statements, and binding and non-binding decisions have been issued by the UN with the aim of tackling the Syrian question. The Geneva Communiqué adopted by the International Working Group on Syria on June 30, 2012, was long regarded as the primary reference for all international actors in their quests to find solutions for the Syrian quagmire.¹

The Geneva Communiqué was based on Kofi Annan's six-point plan² and offered a clear vision for a political process that could lead to a political settlement.³ Despite the initial rejection of the Geneva Communiqué by the Syrian opposition in the Cairo Conference of July 2012, the Syrian National Council quickly revised its position and announced its full adherence to the communiqué.⁴ The communiqué's importance increased over time, in particular after the UNSC resolution number 2118, which adopted it as a frame of reference on September 27, 2013.⁵

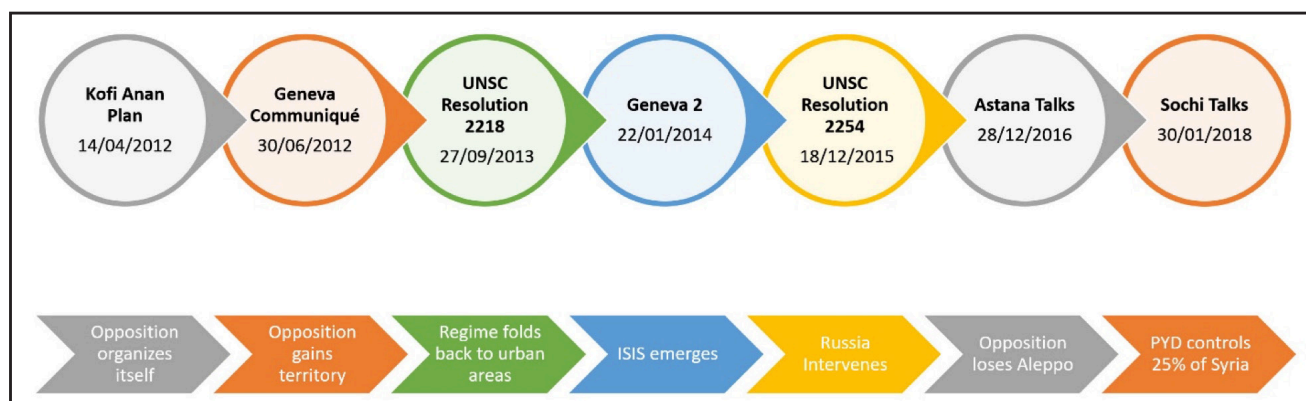


Figure 1: Timeline of the international frame of reference for the political process in Syria, with the major events that occurred during this process

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However, UNSC Resolution number 2254 produced another reference to the political and negotiation processes. Even though it involved the same core principles put forward in resolution 2118, it also introduced new notions efficiently emptying the Geneva Communiqué of its substance. The objectives of the negotiating process according to UNSC 2118 was the establishment of a "Transitional Governing Body" (TGB) exercising full executive powers. The vital role of the TGB was to establish a neutral environment in which political transition could take place. Yet Resolution 2254 to a great extent diminished the centrality of the TGB and adopted constitutional reform and national elections as a framework for transition.⁶

Indeed, Resolution 2254 puts forward a timetable of six months to create a transitional, united Syrian government and 18 months for a new constitution and democratic elections. By adopting this sequencing, the UN reduced the question of transition as a direct result of negotiations to elections. The question of leadership would ultimately be answered by a UN-supervised ballot in which the Syrian diaspora would participate. This ultimately means that the Syrian regime may have less authority during the period leading to the polls but will negotiate redrafting the Syrian constitution and the campaign for national elections while it retains control over the security and the state apparatus. The power-sharing scheme suggested by the Resolution during this preparatory period is kept ambiguous on purpose and provides no guarantees of equal access to the state for the opposition.

Syrian Opposition Attempts Frame Of Reference

Despite the Syrian opposition's efforts in drafting dozens of documents covering different political perspectives and objectives, the majority of those documents were produced by exclusive assemblies and conferences that lacked legal representation. For many reasons, the Syrian opposition and revolutionary forces have not been able to provide one widely recognized popular document that solves both the question of identity and provides a political project. One of the documents that the Syrian opposition has produced is the "Syrian Transition Roadmap" produced by the "Syrian Expert House"⁷ following a large conference in Istanbul in September 2012⁸, while another is the literature produced by "The Day After Project"⁹. Nonetheless, these have lacked specific objectives in terms of how to preserve and reform the Syrian state's institutions.

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Most of these documents have hardly explained their objectives beyond "overthrowing the regime with all its symbols and pillars". The opposition literature is lacking in clear strategies and well-defined goals with clear steps and plans to bring them into existence. The founding principles of some opposition bodies are a clear example of these shortcomings.¹⁰

The 2012 Cairo documents may have been earnest attempts at offering an overall national vision of the opposition.¹¹ However, these two documents had been achieved long before the culmination of the revolution



and prior to the emergence of many armed Syrian actors. They also primarily excluded the majority of local revolutionary forces and were instead the product of deliberations led by political parties and figures. Therefore, they cannot in any way be considered as a negotiating frame of reference for the entirety of the Syrian opposition.

Since its establishment in November 2015, the High Negotiations Committee (HNC) was engaged in the difficult position of continuously attempting to strike a balance between the ambitions and slogans of the Syrian revolution and "the possible" defined by accelerating developments on the ground as well as the continuously changing politics and interests of regional allies and foes

Since its establishment in November 2015, the High Negotiations Committee (HNC) was engaged in the difficult position of continuously attempting to strike a balance between the ambitions and slogans of the Syrian revolution and "the possible" defined by accelerating developments on the ground as well as the continuously changing politics and interests of regional allies and foes. Its delegations of 2016 and 2017 initially adopted the Riyadh Declaration of December 10, 2015 as a general frame of reference. This document authorized the HNC to nominate the negotiating team and to manage the negotiating process.¹² Subsequently, the HNC has produced several "internal" documents, including the "Political Determinant", and the "Executive Framework of the Political Transition According to the Geneva Communiqué"¹³ set forth in London on September 8, 2016. The common trend of both references is the peculiar combination of revolutionary clichés like "overthrowing the regime" and their adaptation to the international swinging interpretations of the UN resolutions. Nonetheless, this balancing act was perceived as a demonstration of the HNC's lack of flexibility.

The international community regarded the HNC as incapable of taking the necessary decisions to progress in negotiations. While at the rhetorical level there was an insistence on the core principles of the Syrian Revolution, the HNC lacked in creativity in advancing and pursuing its agenda during negotiations. This eventually led to total disillusion with the HNC that created momentum towards replacing or radically restructuring the HNC altogether. Subsequently, without any meaningful resistance, the HNC was replaced by a hybrid committee of Syrian opposition and non-opposition personalities under the name of the Syrian Negotiations Committee (SNC). Saudi diplomacy was the engineering force that manufactured this new version of the HNC with nearly a complete absence of the Turks or Qataris.

In principle, the opposition and revolutionary forces are required to demonstrate a positive response to relevant international resolutions – in particular, those of the United Nations Security Council – but turning those resolutions into internal references automatically resounded as a blatant example of weak preparation and a lack of vision. Indeed, The HNC failed in maintaining a delicate balance between positively interacting with the UN and the international community, and carving out policies and tactics that preserved the rights and objectives of the revolution. As far as the new SNC is concerned, this balance was never on its list of priorities and concerns.

For many reasons including strong external influences, the political and military decision-makers of the HNC and SNC have failed to come up with a unified vision for the future of Syria. They were unsuccessful in converting their legitimate political ambitions into series of policies and negotiating steps that could have achieved the goals of the revolution through effective leadership. Unfortunately, over time many capable members of the



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opposition institutions including the Syrian Coalition, the HNC and SNC have abandoned their political roles and created analyst and expert roles instead. The remaining institutions fell into the trap of carelessly repeating the external actors' arguments about the need to focus on constitutional reform and elections.

The Impact Of Changing References

The fundamental question that has arisen is how the core principle of political transition has slipped away during the successive negotiations. In studying in depth the reflection of international political references on the political process, the peace talks could be academically divided into four stages: the 2014 negotiations led by the Syrian Coalition (SOC), the two stages of the HNC in 2016 and 2017 and the current phase of the SNC. During these four stages, there have been very significant changes in general attitudes that have radically changed the way in which relevant international resolutions were interpreted. Also, radical changes were manifested in the list of the international community's priorities vis-à-vis intra-Syrian talks.

In the first stage of negotiations in 2014, the international community was very much in tune with the notion of political transition, which is the essence of the Geneva communiqué. It was in line likewise with the provisions of UNSC Resolution 2118, particularly in Article 16 of that resolution. The SOC negotiation delegation was also to a great extent in conformity with these clear

outlines of transition, and the international community supported that approach. But that harmony did not last long with the change of international alliances on the one hand and the changes of the map of control and influence on the ground on the other. The Vienna understandings at the end of 2015 brought about an alteration in terminology used to describe the objectives of the negotiating process and the mechanisms to reach these goals.¹³

The second stage was launched in parallel with UNSC Resolution 2254 of December 2015. At that time the international mood was already shifting. Henceforth it moved towards a process of staged constitutional reforms. That change of atmosphere was made blatant when the UN mediator modified the agenda of the later round in 2016.

During the 2016 stage, De Mistura was keen to kick-start the negotiation process with both parties – the regime and the opposition, with broad non-papers on the table. His motive was to engage the process while maintaining items of political transition and the establishment of the TGB on the Agenda. However, in the third stage, during 2017, the Special Envoy had moved away even further from the concept of the political transition. He replaced the centrality of the political transition in negotiations with a set of four "baskets", only one of which was correlated with the actual political transition. These four baskets were governance & political transition, constitution, elections and counterterrorism. In justifying this departure, the UN mediator argued that the concept of political transition was comprehensive and that the four "baskets" were related somehow to the transition. That argument was very diplomatic, in terms of sugarcoating the harsh reality of the new politics of the time. There is no doubt that the promoted interpretation of UNSC Resolution 2254 was far from the substance of UNSC Resolution



2118 and the Geneva Communiqué. Moreover, as if the shift in interpretation was not enough for the UN mediator he, along with other political actors, exerted tremendous pressure on the opposition to accept this shift in interpretation, focus and terminology. In addition, he maintained tension over the subject of the political representation of the opposition. His pressure resulted eventually in convening Riyadh 2 conference that brought together elements that were much closer to the regime than to the opposition.

Justifications For The Shift

In analyzing this shift in references for negotiations for the international community and the opposition, several justifications could be spelled out. Nevertheless, one could hardly justify the opposition negotiators' lenient approach, which matches the external actor's swinging mood. On the one hand, the SNC showed enormous tolerance towards the absence of the term "political transition" in many UN and other international documents. It also showed no less understanding of the focus shift towards replacing the establishment of the TGB by constitutional reform and elections on the agenda of Geneva negotiations, including the so called technical track. For example, the change in terminology could be traced in the series of briefings De Mistura delivered before the Security Council; where neither the HNC nor the SNC issued a statement to challenge that notion or to counterbalance it.¹⁴

The revolution's demands of total political change in order to achieve justice and integrity meet the simple political logic of producing the shift away from Assad and his entourage who planted the seeds of conflict in the first place

The adoption by the SNC of the concept of constitutional reform as a negotiating objective was an unacceptable departure

from all references that formed the basis for the negotiation process of the revolutionary and opposition forces. Political transition is not only the primary goal of the negotiations, but it also has a unique place in the political process; it is the only focal point where the revolution's demands meet both political reasoning and international legitimacy.

The revolution's demands of total political change in order to achieve justice and integrity meet the simple political logic of producing the shift away from Assad and his entourage who planted the seeds of conflict in the first place. The third pillar of these concepts is the international resolutions that embraced the idea of political transition where the vehicle for such a guaranteed transition is the TGB where Assad would have no full control over the security or military sectors.

Furthermore, to reiterate the notion that the negotiating objective is enshrined "only" in UNSC Resolution 2254 without recurrently linking it in rhetoric and policy to UNSC Resolution 2118 is a fatal legal and political setback. It has not only exceeded the widely accepted legal principle of the accumulative nature of legal rules and that new resolutions must not be analyzed in isolation from previous legal regulations and documents; it also gave up without compromise a robust legal weapon preserved in resolution 2118.

The correspondence of the Commission, which stresses that the negotiation agenda derives from resolution UNSC 2254 (and implicitly not from UNSC Resolution 2118 and Geneva Communiqué), was another blunder caused by the lack of a distinction between a decision that is the basis of the entire negotiations and a decision that is merely the operative implementation of the first. It is equally important to notice that such an approach was widely perceived as reflecting the Russian account of UNSC Resolution 2254 and the entire negotiating process.



Also, for the regime, politics and negotiations are open battles that must be won in order to reclaim the country's nearly vanished sovereignty and integrity. Hence the importance of the work of the revolution's negotiations team is beyond any doubt

The real danger was that the SNC continued to comply with the Russian interpretation. This acquiescence appeared at the SNC entry into negotiations at the preparation stages for the so-called Sochi Conference. It is true that the Commission did not attend that conference itself despite encouragement by its friends and supporters, but it nevertheless accepted the products of Sochi mainly by offering to participate in the so-called constitutional committee; an alien concept to all international legal documents related to the political process and an unknown to the internal legal and political documents of the HNC and the SNC themselves as well.¹⁵

By accepting this new mechanism, the SNC has violated its own references, including the first and second Riyadh declarations, the "Rules of Procedures" and the list of "Political Determinants" references for negotiation, all of which were drafted and approved by the components of the said Riyadh Conferences.

What Comes Next?

Seven years have passed since the first cries of the Syrian uprisings. Thousands of tons of explosives have been used by the Syrian regime and its allied forces in repeated failed attempts to break the will of the Syrian people. However, the political and diplomatic battle has been no less fierce and complicated. For the regime to advance on the ground or even for a partial military victory to be reached would be less critical than a plausible and clear political surrender at the negotiation table. This is the case because a political triumph would retain the regime's broken legitimacy and save its head from any potential prosecution.

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As we are passing through a highly dangerous and a precarious path at a very politically loaded moment in the history of Syria and the Syrian revolution; members of revolution institutions, particular members of former HNC and current SNC are all being asked to undergo a severe and profound process of review. These proposed revisions should be taking place at the reference and policy levels with sufficient humbleness and self-denial as a matter of urgency. The aim of such a review must be to come up with an unambiguous and detailed frame of reference that could serve as a base for the political process and transitional phase and beyond. The need for an overall creed that could override the mistakes of the past and achieve a unified vision of the opposition and revolutionary forces is still very much at the heart of any possible progress. The Syrian opposition is in urgent need of performing professionally and creatively according to a unified vision that recognizes the frequent changes in the reality on the ground yet which respects the foundations of the revolution. Any dissent from this track would result in losing the last remaining grip on political events and negotiations relating to Syria.



Endnotes

- 1- "Final Communiqué of the Action Group for Syria (Geneva Communiqué)," 30 06 2012. [Online]. Available: <http://www.un.org/News/dh/infocus/Syria/FinalCommuniqueActionGroupforSyria.pdf>.
- 2- Kofi Anan six-point plan:
 - i. Commit to work with the Envoy in an inclusive Syrian-led political process to address the legitimate aspirations and concerns of the Syrian people, and, to this end, commit to appoint an empowered interlocutor when invited to do so by the Envoy;
 - ii. Commit to stop the fighting and achieve urgently an effective United Nations supervised cessation of armed violence in all its forms by all parties to protect civilians and stabilise the country. To this end, the Syrian government should immediately cease troop movements towards, and end the use of heavy weapons in, population centres, and begin pullback of military concentrations in and around population centres. As these actions are being taken on the ground, the Syrian government should work with the Envoy to bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism. Similar commitments would be sought by the Envoy from the opposition and all relevant elements to stop the fighting and work with him to bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism;
 - iii. Ensure timely provision of humanitarian assistance to all areas affected by the fighting, and to this end, as immediate steps, to accept and implement a daily two hour humanitarian pause and to coordinate exact time and modalities of the daily pause through an efficient mechanism, including at local level;
 - iv. Intensify the pace and scale of release of arbitrarily detained persons, including especially vulnerable categories of persons, and persons involved in peaceful political activities, provide without delay through appropriate channels a list of all places in which such persons are being detained, immediately begin organizing access to such locations and through appropriate channels respond promptly to all written requests for information, access or release regarding such persons;
 - v. Ensure freedom of movement throughout the country for journalists and a non-discriminatory visa policy for them;
 - vi. Respect freedom of association and the right to demonstrate peacefully as legally guaranteed.
- 3- K. Anan, "Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab States," 14 April 2012. [Online]. Available: http://www.un.org/en/peacekeeping/documents/six_point_proposal.pdf.
- 4- "Syrian opposition ready to go to Geneva II if Assad regime agrees to Geneva I communique - SNC," KUNA, 26 July 2013. [Online]. Available: <https://www.kuna.net.kw/ArticleDetails.aspx?id=2325405&Language=en>.
- 5- UNSC, "Resolution 2118," 27 September 2013. [Online]. Available: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2118.pdf.
- 6- "Lavrov, Kerry Answer Questions Following Vienna Meeting," Sputnik News, 14 November 2015. [Online]. Available: <https://sputniknews.com/politics/201511141030110668-lavrov-kerry-meeting-journalists/>.
- 7- The Syrian Expert House is a combined group of approximately 300 human rights activists, academics, judges, lawyers, doctors, opposition politicians, defected government officials, defected military officers, members of local revolutionary councils, and commanders of the armed opposition, all committed to holding periodic meetings to build a final vision of the transitional period and produce considered, deliberate recommendations for Syria's political future.
- 8- S. E. H. a. S. C. f. P. a. S. Studies, "Syria Transition Roadmap," 2013. [Online]. Available: http://syrianexperthouse.org/reports/Syria_Transition_Roadmap_Full_en.pdf.
- 9- "The Day After Project," United States Institute of Peace, 2012. [Online]. Available: <https://www.usip.org/publications/day-after-project>.
- 10- S. O. Delegation, "Syrian Opposition Coalition Issues Proposal for Peaceful Transition," 9 February 2014. [Online]. Available: <https://goo.gl/XY9Bhp>.
- 11- "Cairo Documents for the Syrian Opposition," 06 July 2012. [Online]. Available: <https://othersuns.wordpress.com/2012/07/06/syria-the-final-statement-for-the-syrian-opposition-conference/>.



- 12- "Final Statement of the Conference of Syrian Revolution and Opposition Forces Riyadh," 10 December 2015. [Online]. Available: <https://www.diplomatie.gouv.fr/en/country-files/syria/events/article/final-statement-of-the-conference-of-syrian-revolution-and-opposition-forces>.
- 13- "Statement of the International Syria Support Group Vienna," 14 November 2015. [Online]. Available: <http://www.un.org/undpa/en/Speeches-statements/14112015/syria>.
- 14- S. d. Mistura, "Briefing to the Security Council by Staffan De Mistura, Special Envoy to the Secretary-General," 26 October 2017. [Online]. Available: <https://www.un.org/sg/en/content/sg/note-correspondents/2017-10-26/briefing-security-council-staffan-de-mistura-special-envoy>.
- 15- "المعارضة السورية تشترط «مظلة دولية» للجنة الدستورية" Al Hayat Newspaper, 1 February 2018. [Online]. Available: <http://www.alhayat.com/Articles/27100448/المعارضة-السورية-تشترط-مظلة-دولية-لجنة-الدستورية>.



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ABOUT ALSHARQ FORUM

The Sharq Forum is an independent international network whose mission is to undertake impartial research and develop long-term strategies to ensure the political development, social justice and economic prosperity of the people of Al-Sharq. The Forum does this through promoting the ideals of democratic participation, an informed citizenry, multi-stakeholder dialogue, social justice, and public-spirited research.

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The Higher Negotiation Committee And Syrian Negotiation Committee: Shifts In References And Goals During Intra-Syrian Negotiations

A political transition managed by a “Transitional Governing Body” was at the core of the United Nations approach for building a sustainable peace in Syria. The Syrian opposition committed itself to this principle during the Geneva negotiations of 2014 with broad international support and backing. The core group of the Friends of the Syrian People states initially advocated for delegating the management of the transitional period to this body by offering it wide executive powers. Nonetheless, the emergence of ISIS, the direct Russian military intervention in Syria, and the subsequent weaker opposition on the battlefield have contributed in a change of demands. In 2016, the international community adopted a much looser framework for political transition in Syria based on constitutional reform and elections instead. The Syrian opposition responded in the subsequent talks of 2017–2018 by adopting this international “shift” and has ultimately failed in producing their own frame of reference for the political transition in Syria. This paper delves into the reasons behind these dynamics and offers an alternative path for the opposition to move forward.