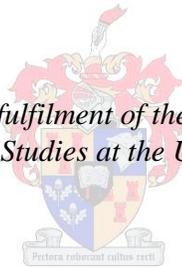


# **The endurance of Lebanese Consociational Democracy**

by  
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*Thesis presented in partial fulfilment of the requirements for the degree  
Master of International Studies at the University of Stellenbosch*



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March 2011

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## **Declaration**

By submitting this thesis/dissertation electronically, I declare that the entirety of the work contained therein is my own, original work, and that I have not previously in its entirety or in part submitted it for obtaining any qualification.

March 2011

Signature:

Date: 22 February 2011

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## **List of Abbreviations**

|        |  |
|--------|--|
| ADF    | Arab Deterrent Force                     |
| CCP    | Comparative Constitutions Project        |
| IDF    | Israel Defence Forces                    |
| LF     | Lebanese Forces                          |
| NGO    | Non-governmental Organisation            |
| PLO    | Palestinian Liberation Organisation      |
| PSP    | Progressive Social Party                 |
| UK     | United Kingdom                           |
| UN     | United Nations                           |
| UNIFIL | United Nations Interim Forces in Lebanon |
| UNSC   | United Nations Security Council          |
| USA    | United States of America                 |

## **Abstract**

The small Middle Eastern country of Lebanon was once recognised as the exemplar of power-sharing democracy, upholding a system that promoted peace and coexistence between Christians and Muslims. Power was divided proportionally amongst confessional groups, granting each sect power according to their demographic proportion. This division of power was aimed at promoting national unity, but changes in the Lebanese demography made the division undemocratic, and the constitution no longer accurately represented Lebanese society. The 1926 constitution, supplemented by the *National Pact* in 1943, which had upheld this division of power, baulked under the pressure of a 15-year civil war, to the surprise of many scholars who had praised the Lebanese system. While many place the blame on the outside influences, it has been determined that the problem lay within the system. The static characteristic of the system did not sufficiently provide for changing demographics, or a change in interest groups. The problem lay in the fixed nature of the proportionality of the consociational system.

The prolonged civil war, sometimes referred to as a proxy war between Israel and Syria, came to an end with the signing of the Taif Accord in 1990. Though none were satisfied with its provision, the Accord brought an end to the escalating violence. The Accord paved the way for the rebuilding of state institutions, enabling parliamentary elections in 1992 and 1996; general municipal elections in 1998; the peaceful transfer of power between presidents; as well as the reconstruction of the Lebanese economy.

The main objective of this study of Lebanon is to determine whether the amended Lebanese constitution of 1990 adheres to the principles provided in the theoretical framework regarding constitutional endurance. This study is in the form of a qualitative case study. It aims to describe, at length, and to form an in-depth understanding of the actors and events leading up to the Taif Accord, as well as the formation and implementation thereof. The research questions include: *What factors relating to flexibility, specificity and inclusion contributed to the breakdown of the 1943 National Pact?; What steps were taken leading to the Taif Accord?; and Have the changes made in the Lebanese constitution by means of the 1990 Taif Accord facilitated the endurance of the constitution?* The study aims to contribute through its application of the theoretical framework to a particular case study, namely that of Lebanon. By 'testing' this theoretical

framework, this study also provides an in-depth analysis of the happenings in Lebanon over the past 80 years.

It remains in question whether the Taif Accord's amendments to the constitution have sufficiently provided for the resilience of thereof. Twenty years of relative peace have not convinced Lebanese citizens of the legitimacy and efficacy of the Accord. While the over-centralisation of power within the system was curbed by shifting power away from the president to a cabinet equally divided between Christian and Muslims, the Accord failed to effectively deal with the preset nature of the proportionality within the system.

20 years of relative peace may be enough to ensure the endurance of the constitution, but regional factors as well as the presence of radicalised groups play an important role in destabilising the fragile balance within the country. Should the Lebanese state continue to be inclusive and flexible in the wake of a constantly changing environment, it may endure. However, the tumultuous nature of the region in which Lebanon finds itself may eventually provide external shocks that the Lebanese system fails to weather. The hope is that the system builds on sound, systemic foundations in order to be able to endure regional conflict.

## **Opsomming (Afrikaans)**

Die klein Midde-Oosterse land Lebanon, was vroeër 'n voorbeeld van 'n magsdelende demokrasie wat 'n stelsel gehandhaaf het wat vrede en naasbestaan tussen Christene en Moslems bevorder het. Mag is proporsioneel onder geloofsgroepe verdeel volgens hul demografiese verhouding tot die ander groepe. Hierdie verdeling van mag was gemik op die bevordering van nasionale eenheid, maar veranderinge in die Lebanese demografie het veroorsaak dat die grondwet nie meer verteenwoordigend was van die Lebanese samelewing nie. Die Lebanese Grondwet van 1926, tesame met die *Nasionale Verdrag* van 1943, wat hierdie verdeling gehandhaaf het, het onder die druk van 'n 15-jare Burgeroorlog inmekaar gestort, ten spyte van die vertroue wat in die stelsel was. Alhoewel die skuld soms op eksterne invloede geplaas is, is dit egter bepaal dat die probleem in die Lebanese stelsel self lê. Die statiese kenmerk van die stelsel het nie voldoende voorsiening gemaak vir 'n verandering in die demografie of belangegroepe nie. Die probleem lê in die statiese en onwrikbare aard van die konsosiatiewe stelsel.

Die uitgerekte Burgeroorlog, soms gesien as 'n oorlog tussen Israel en Sirië op Lebanese grond, is tot 'n einde gebring met die ondertekening van die Taif Verdrag in 1990. Alhoewel geen betrokke party ten volle tevrede was met die bepalinge van die Verdrag nie, het dit 'n einde gebring aan die toenemende geweld. Die Verdrag het die weg gebaan vir die heropbou van staatsinstellings; parlementêre verkiesings in 1992 en 1996; algemene munisipale verkiesings in 1998; die vreedsame oordrag van mag tussen presidente; sowel as die heropbou van die Lebanese ekonomie.

Die hoof doel van hierdie studie van Lebanon is om te bepaal of die gewysigde grondwet van 1990 voldoen aan die beginsels van die teoretiese raamwerk rakende grondwetlike uithouvermoë. Die studie is in die vorm van 'n kwalitatiewe gevallestudie. Dit het ten doel om te beskryf en 'n in-diepte begrip van die akteurs en die gebeure wat gelei het tot die Taif Accord, asook die vorming en implementering daarvan te vorm. Die navorsing vrae sluit in: *Watter faktore met betrekking tot buigzaamheid, spesifisiteit en insluiting het bygedra tot die verval van die 1943 National Pact?*; *Watter stappe is geneem wat gelei tot die Taif Verdrag?*; en *Het die veranderinge in die Lebanese grondwet deur middel van die 1990 Taif Verdrag die langdurigheid van die grondwet gefasiliteer?* studie het ten doel om by te dra deur middel van sy

toepassing van die teoretiese raamwerk om 'n bepaalde gevallestudie, naamlik dat van die Lebanon. Hierdie studie verskaf ook 'n in-diepte analise van die gebeure in Lebanon oor die afgelope 80 jaar.

Die vraag bly staan of die Taif Verdrag se wysigings aan die grondwet voldoende voorsiening gemaak het vir die oorlewing van die grondwet. Twintig jaar van relatiewe vrede het nog nie Lebanese burgers oortuig van die legitimiteit en doeltreffendheid van die Verdrag nie. Alhoewel die oor-sentralisering van mag binne die stelsel ingeperk is deur die verskuiwing van mag weg van die President, na 'n kabinet wat gelykop tussen Christene en Moslems verdeel is, het die Verdrag versuim om effektief met die proporsionele aard van die grondwet te handel. Dit is egter belangrik om op die uniekheid van die Lebanese geval te let, ten spyte van die vele faktore rondom die saak.

Hoewel 20 jaar van vrede genoegsaam kan wees om die langdurigheid van 'n grondwet te verseker, speel streeksfaktore, sowel as die teenwoordigheid van radikale groepe 'n belangrike rol in die destabilisering van die fyn balans wat in die land voorkom. Indien die Lebanese staat voortgaan om inklusief en buigsaam te wees in die nasleep van 'n voortdurende, veranderende omgewing, sal dit kan voortleef. Maar die onstuimige aard van die streek waarin Lebanon homself bevind mag eksterne negatiewe faktore na vore bring wat die Lebanese stelsel nie kan hanteer nie. Die hoop is dat hierdie stelsel sal voortbou op sterk, sistemiese fondasies om in staat te wees om eksterne, sowel as interne, konflik te hanteer.

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## **Chapter 1: Research Problem and Research Design**

### **1.1 Introduction**

Lebanon, a small but remarkable country in the Middle East, was once recognised as an exemplar of coexistence between Muslims and Christians. The institutions in place at independence in 1943 allowed the country to deal successfully with religious diversity, including Shi'a-, Sunni-, and Druze Muslims, as well as Catholic-, Orthodox-, and Maronite Christians as the largest recognised sects (Axar & Mullet, 2002:735, 736). The 1926 constitution (supplemented by the 1943 *National Pact*) divided power among confessional groups. The constitution eventually balked under the pressure of a 15-year civil war. The division of power amongst confessional groups was meant to promote national unity, but a change in demographics made the division undemocratic, and the constitution no longer accurately represented Lebanese society (Elkins *et al*, 2009:34). Elkins *et al* (2009:35) assert that 'a firmer sunset provision might have prevented the nominally temporary arrangement from breaking down in such a horrific manner'.

By briefly looking at the breakdown of democracy and the subsequent amendment of the Lebanese constitution which ended a 15-year civil war, this introductory chapter will establish the noteworthy case of Lebanon. A brief mention of key events will enable the establishment of a problem statement, which will in turn lead to the research questions which drive this study. Elkins' statement will be put to the test in applying the principles mentioned in their theory which would, and should, have ensured the endurance of the Lebanese constitution.

### **1.2 Problem statement**

Lebanon acted as a safe haven for repressed Palestinian refugees fleeing the disorder in former Palestine after 1936 (Spyer, 2009:196). Disagreements regarding Lebanese attitudes towards these refugees are the direct cause of a civil war between Muslims and Christians that began in 1975. Foreign interference in the war exacerbated the already fragile political balance (Axar & Mullet, 2002: 735, 736). The civil war in Lebanon has been referred to as a proxy war in which Israel and Syria took advantage of the already weakened institutions.

The civil war eroded all government power, leaving the presidency vacant. In 1988, Syria unsuccessfully attempted to impose a president on Lebanon. Two competing governments emerged as a consequence of the vacant presidency. This created a renewed sense of chaos, resulting in the intervention of the Arab league (Norton, 1991:458). In September 1989 in al-Taif, Saudi Arabia, negotiations began. Sixty-two of the seventy-one surviving members of the 1972 Lebanese parliament (Lebanon's last pre-war parliament) settled on a document stipulating political reform (Norton, 1991: 458 and Zahar, 2002:567). The vacant presidency was subsequently filled.

Implementation of the Taif Accord was delayed by the Gulf Crisis as well as the actions of the insubordinate General Michel Aoun, which will be discussed in more detail in later chapters. The Taif Accord, signed in 1990, stopped the prolonged civil war. Constitutional reforms based on the Accord were approved by the legislature on the 21st of August, 1990. By September the constitution had been amended, setting into motion the disbanding of militias (Norton, 1991: 461). While implicitly justifying the presence of Syrian and Palestinian forces in the country (their presence and disbandment were based on a time-frame), the Accord looked to constitutional reform (Axar & Mullet, 2002:736). The Accord is 'atypical of peace agreements in civil wars' (Zahar, 2002:571). The content looked at the issue of power sharing, as well as sensitive issues regarding the country's identity and the course of its foreign policy orientation (Zahar, 2002:571). The agreement caused a new type of division among the Lebanese – those for and those against it.

Despite challenging circumstances the Accord ended the 15-year violence. By paving the way for the rebuilding of state institutions, the Accord enabled parliamentary elections in 1992 and 1996; general municipal elections in 1998; the peaceful transfer of power between presidents; as well as economic reconstruction (Zahar, 2002:567). At the time, Syrian troops remained in the country. It was not until 2005 that Syrian troops were disbanded and removed from Lebanese territory in the Cedar Revolution.

In 1990, with a relatively successful peace accord in hand, the government commenced the rebuilding of the economy. Reconstruction of the public infrastructure, re-incorporating the militias and providing resettlement and social support for the displaced was deemed as 'investing

in “social peace” (Raphaeli, 2009:113). The government was forced into market borrowing, putting the country in debt (Raphaeli, 2009:113).

This leads to the problem statement. It remains in question whether the Taif Accord’s amendments to the constitution have sufficiently provided for the resilience thereof. When questioning whether constitutional endurance really is more optimal than the regular revision of constitutions, Elkins *et al* (2009:5) link endurance to ‘important social and political goods’ including national unity, democratic participation, economic development and political stability (Elkins *et al*, 2009:5). ‘[W]e are struck most by a general finding that most of the purposes that are ascribed to constitutions, such as entrenching fundamental principles or providing normative guidance for the polity, seem to improve with age’ (Elkins *et al*, 2009:5,6). The authors mention Aristotle’s notion that the strength of law lies in the obedience of citizens to that law, and that instability can ‘weaken the notion of law itself’ (Elkins *et al*, 2009:17). This once again reinforces the theory that the endurance of constitutions is optimal. The authors’ extensively collected data finds that, the longer a country’s constitution lasts, the richer, more stable and less prone to crises that country is (Elkins *et al*, 2009:32).

### **1.3 Research Question**

This study will focus on three main questions. The first of these questions is: *What factors relating to flexibility, specificity and inclusion contributed to the breakdown of the 1943 National Pact?* The 1943 National Pact will be discussed in terms of the theoretical framework provided. The second and third questions, linked to the first, are: *What steps were taken leading to the Taif Accord?* And *Have the changes made in the Lebanese constitution by means of the 1990 Taif Accord facilitated the endurance of the constitution?* This will be measured by looking at the amended constitution in terms of flexibility, inclusion and specificity using a theoretical framework regarding the endurance of national constitutions by Zachary Elkins, Toms Ginsburg and James Melton (2009).

### **1.4 The objective of this Study**

The main objective of this study is to determine whether the amended Lebanese constitution of 1990 adheres to the principles provided in the theoretical framework regarding constitutional

endurance. The study will first focus on the events leading up to the Taif Accord and the implementation thereof in 1990, specifically discussing the breakdown of democracy in Lebanon between 1975 and 1990. By looking at the way in which the agreement was finally reached, after many thwarted attempts, this study will be able to determine whether the re-negotiation of this particular peace accord has been effective, and whether it will continue to be so in the future. The study will look at the content of the Taif Accord, as well as the factors contributing to its negotiation and implementation.

The first chapter of this study looks at the technical aspects of the study, as well as providing a brief background for the reader. This chapter also looks at the theoretical framework which will be applied during the study. Chapter 2 will contain the conceptualisation and operationalisation of the terms used in this study, as well as an extensive discussion regarding the theory of renegotiation, as well as consociational democracy. Chapter 3 will look at the breakdown of the 1943 Lebanese National Pact. Chapter 4 will discuss the events leading up to the Taif Accord as well as the negotiation of the agreement, in terms of the framework provided. Chapter 5 will discuss the amended Lebanese constitution in terms of the framework, as well as look at the implementation of the Agreement, the successes and shortcomings thereof, specifically in terms of the framework surrounding constitutional endurance. The final chapter will draw conclusions from the evidence discussed.

### **1.5 The Elkins' Theoretical perspective**

The framework on which this study is based was compiled using an anthology of almost all national constitutions from 1789 onward. The theory is based on written correspondence between James Madison and Thomas Jefferson in which each argue whether or not a constitution should, in fact, be made to endure. Jefferson argues that the 'dead should not govern the living' (Elkins *et al*, 2009:1), while Madison saw more value in constitutional endurance (Elkins *et al*, 2009:1). Jefferson proposed an age of 19 years as the maximum for a constitution to reach within its lifetime. This section provides an introduction to the theory, which will further be discussed in the ensuing chapters.

The research initiative by Elkins *et al* (from here on referred to as the Elkins' study) was started some time ago with the purpose of understanding the 'origins, characteristics, and consequences

of written constitutions for most independent states' (Elkins *et al*, 2009:xi). The database used consists of the texts of almost all national constitutions from 1789 onward. The data collected shows that most constitutions do not survive for very long, and very few last for more than 50 years. The American constitution has survived for 220 years, while the French constitution of 1791 lasted less than one year (Elkins *et al*, 2009:1). The Elkins' study elaborates on a theory of constitutional formation, adjustment and endurance (Elkins *et al*, 2009:7). It is informed by the *rationalist tradition* in institutional analysis and by the emergent literature on self-enforcing institutions (Elkins *et al*, 2009:7). The Elkins' study is built on the assumption that the authors of the constitutions intended for the endurance of the documents.

The data collected in order to conduct the Elkins' study covers the constitutional history of every independent state from 1789 to 2005 (Elkins *et al*, 2009:6). This period includes 935 different constitutional systems for over 200 different nation states. Data collected by the authors showed that few constitutions last beyond fifty years, while most 'die' at a young age. The data allowed the authors to determine the average 'life expectancy' of national constitutions at the age of 19 years – as Jefferson had predicted (Elkins *et al*, 2009:2). The Elkins' study provides a framework in which it may be possible to determine why some constitutions last, and others fail. It not only looks at design (the content and drafting process) of constitutions, but also environmental factors which impact upon these constitutions (Elkins *et al*, 2009:2). The central issue, however, focuses on the effects of constitutional design on its endurance (Elkins *et al*, 2009:5).

The Elkins' study chooses 1789 as a starting point for the collection of data as it marks the year in which the United States' Constitution, reputed as the 'first' document of its kind, came into effect (Elkins *et al*, 2009:50). All independent states that existed for a minimum of 5 years are included in the study, making a total of 220 states. Subnational states and provinces are excluded for theoretical as well as practical reasons (Elkins *et al*, 2009:50). *New*, *interim* and *reinstated* constitutions are recorded for each state, as well as the year of *suspension* or *amendment* (Elkins *et al*, 2009:50). Constitutional 'death' happens when systems are replaced by new, interim or reinstated documents, or upon formal suspension of the document. The census brings forth 935 new constitutional systems, 746 of which have been suspended or replaced, and 189 of which are still in place (Elkins *et al*, 2009:51). The basis of the epidemiological analysis for the Elkins' study is a set of original data referred to as the *Comparative Constitutions Project* (CCP) (Elkins

*et al*, 2009:9). The dataset records a set of characteristics of every constitution written since 1789 (Elkins *et al*, 2009:9).

The United Kingdom is excluded from the sample entirely as their constitution is uncodified. Though the UK's constitution has been identified as unwritten, many of the rules that can be described as constitutional are written down. 'The lack of entrenchment or a clear rule of recognition distinguishing constitutional from ordinary regulation of governing institutions' causes the researchers to eliminate this special case from the study (Elkins *et al*, 2009:49).

'A constitution will be maintained only if it makes sense to those who live under its dictates, so a crucial quality of any successful constitution is that it be self-enforcing' (Elkins *et al*, 2009:7), meaning that those who have to adhere to the constitution should have a stake in its endurance. A constitution can only survive if it is comprehensive to those it prescribes to. Elkins *et al* (2009:7) mention the importance of the 'self-enforcing' quality of constitutions – meaning that those included in the implementation of the constitution should also have a stake in its successful implementation in order for the constitution to survive. The idea is that parties see themselves as 'better off' in the current constitution than they would be in the negotiating of a new one (Elkins *et al*, 2009:7).

It is important to mention that the theory of endurance rests on the premise that constitutions will remain in place providing they are not exposed to internal or external shocks, like armed conflict or financial crises (Elkins *et al*, 2009:7). The authors refer to the theory as the 'theory of renegotiation'. The theory looks at the formation of constitutions, as well as the adjustment and endurance thereof (Elkins *et al*, 2009:65). The authors identify three features which can provide resilience to a constitution in changing conditions, namely: inclusion; flexibility; and specificity (Elkins *et al*, 2009:8). These concepts will be discussed at length in Chapter 2. Here follows a brief conceptualisation of each:

Inclusion refers to the extent of participation in the formulation as well as the enforcement of the constitution (Elkins *et al*, 2009:78). The theory suggests that publicly formulated constitutions are more likely to breed and uphold attachment to that constitution, as well as spreading common knowledge on the content of the constitution. It may also be that while the actual formulation of the constitution is relatively private, those formulating the content are publicly selected and

representative of those whom the constitution will govern (Elkins *et al*, 2009:79). This very broad concept includes the role of interest groups in the writing of constitutional policy in order to minimise rent-seeking (Elkins *et al*, 2009:80).

The concept of flexibility is deemed equally important as that of inclusion. This refers to the constitution's limitations in changing conditions (Elkins *et al*, 2009:81). External 'shocks' provide a threat in changing the costs and benefits of a constitutional bargain to the parties involved (Elkins *et al*, 2009:81). Related to the notion of inclusion, flexibility allows 'the constitution to adjust to the emergence of new social and political forces' (Elkins *et al*, 2009:82).

The level of detail and the range of topics covered in the constitution make up the concept of specificity (Elkins *et al*, 2009:84). The argument here is that high levels of detail and unnecessary length lead to the necessity of repeated modification, and may even lead to the failure of the constitution itself. However, 'clarity and specificity' may provide more successful enforcement. A constitution should embody those matters of high probability and significance which customary law cannot (Elkins *et al*, 2009:85). Though costly, it is this trait of specificity in constitutions which breeds long-term investment (Elkins *et al*, 2009:87).

It is important to gain some distance from the Elkins' study. While the authors review hundreds of constitutions in order to substantiate their theory, it has been argued that these constitutions are not necessarily comparable (Breslin, 2010:84, 85). While some of the constitutions reviewed are authoritative constitutions, others have been viewed as 'shams', completely disregarded by those in power. Constitutions differ also in their principal function – 'to enhance the power of the state rather than limit or control that power' (Brown, 2001 in Breslin, 2010: 85, 86). The Elkins' study also focuses on constitutional documents rather than sources of constitutionalism, like constitutional courts. The study is also found lacking in variables – for example, constitutions are not compared on the grounds of the legal system within the host country.

The quantitative, statistical nature of the Elkins' study crosses 'methodological boundaries that have, to this point at least, been difficult to traverse' (Breslin, 2010:86). The study is groundbreaking in the scope of research, and the most recent, most thorough study of its kind.

## **1.6 Research design and methods**

This study is in the form of a qualitative case study. The main goals are to describe, at length, and to form an in-depth understanding of the actors and events leading up to the Taif Accord, as well as the formation and implementation thereof (Babbie & Mouton, 2001: 270). The case study is a thorough analysis of a single unit – the constitution (Babbie & Mouton, 2001: 310). Based on research recently published by Elkins *et al* (2009), this case study relies on contextually rich knowledge, as well as extensive research and considered presumptions (Babbie & Mouton, 2001: 280). The study will be looking at multiple variables over time. A detailed reading of available literature will lead to a deeper understanding of the events and actors involved in and leading up to the case. The focus of the reading will be on written texts, such as books and journal articles. Multiple sources will be utilised. The aim of the study is to describe, but not explain, in detail the subject of study, mainly the renegotiation of the Lebanese constitution in 1989: the Taif Accord. The renegotiation will be described using a framework regarding the endurance of constitutions.

## **1.7 Limitations and delimitations of the study**

This study is limited to research based on published texts, as well as by language – the author will only rely on texts written in English. The qualitative nature of the design may also act as a limitation to the study as no primary data has been obtained. The author is geographically bound and no primary data was obtained on Lebanese soil. Because of the focus on specifically Lebanon and the events that transpired there regarding the constitution, the time-frame for this study spans from January 1943 (when the National Pact was imposed) to January 2010. This time-frame acts as delimitation to the study. The study is also limited in length, and as such not all aspects will be discussed in equal detail, but a more in depth discussion of certain cardinal aspects will follow.

## **1.8 Summary**

The purpose of this chapter was to introduce the subject, as well as presenting the problem statement. The research question, as well as interlinked questions, was stated, as well as the objectives mentioned. The first of these questions is: *What factors relating to flexibility, specificity and inclusion contributed to the breakdown of the 1943 National Pact?* The second and third questions, linked to the first, are: *What steps were taken leading to the Taif Accord?*

*And Have the changes made in the Lebanese constitution by means of the 1990 Taif Accord facilitated the endurance of the constitution?* The chapter also provided a brief look at the content of the ensuing chapters, setting out the roadmap of this study. The theoretical framework regarding constitutional endurance on which this study is based was introduced, as well as the research design and methods which will be used during the study. It was stipulated that the study will take the form of a qualitative case study, providing descriptive and not explanatory information. Limitations and delimitations were set out. The next chapter will focus on the conceptualisation of the concepts which will be used during the study, focusing specifically on the Lebanese constitution.

## **Chapter 2: Conceptualisation and Operationalisation**

### **2.1 Introduction**

This chapter includes the conceptualisation and operationalisation of key terms that will be used during the course of this study. These include: constitution; consociational democracy; renegotiation; inclusion; specificity; and flexibility. Lebanon is an example of a consociational democracy, as its government is made up of a coalition of representatives from the ethnic groups residing within the country. The country has been governed by a chain of power-sharing deals that separate executive and legislative power by sect. The chapter broadly explains the academic debate surrounding power-sharing democracies, which then leads to a description of the term *consociational democracy*. The chapter then leads into an in-depth discussion on the *theory of renegotiation*. This study relies on a theoretical framework as mentioned in the introductory chapter, and as such will be relying on the conceptualisation and operationalisation of this framework (Elkins *et al*, 2009). The chapter then moves on to look at how the three factors mentioned – flexibility, inclusion and specificity – interact in order to produce a mutually reinforcing cycle. This section also provides an overview of the necessity of each of the factors in constitutional endurance. The chapter then moves on to analyse consociational democracy in terms of the criteria of inclusion, flexibility and specificity.

### **2.2 Constitutions**

When using the concept *constitution*, this study, in accordance with the theoretical framework used, will be referring to the ‘written constitutional charter of independent countries’ (Elkins *et al*, 2009: 36). Elkins *et al* (2009:36) refer to S.E. Finer’s definition of constitutions as ‘codes of rules which aspire to regulate the allocation of functions, powers and duties among the various agencies and offices of government, and define the relationship between these and the public.’ This study relies on this general definition as a foundation for the study of the Lebanese constitution.

It may be understood that the chief function of constitutions lies in limiting government conduct. Constitutions are made up of a set of concrete principles and provisions that direct future law and government activity (Elkins *et al*, 2009:38). Constitutions act as legitimising agents in states

where there may be no other source of authority. It is this function which enables constitutions as state-building agents, particularly in young states, where strong communal or ethnic identities contend with allegiance to the state. Not only is the constitution a ‘set of rules’, but also functions as ‘an ongoing set of practices that define the political unit’ (Elkins *et al*, 2009:38). By defining the hierarchy of authority, constitutions aid in the improvement of government institutions (Elkins *et al*, 2009:39). The authors also make a distinction between upper- and lower-case c constitutions. The proper noun Constitution refers directly to the text, while the lower-case constitution refers to the wider constitutional order (Elkins *et al*, 2009:39).

### **2.2.1 Criteria for identification**

Elkins *et al* (2009:49) identify three types of documents that constitutions consist of: (1) those documents that are identified clearly as the *Constitution*, *Fundamental Law* or *Basic Law* of a country; (2) documents that contain clear provisions that establish that document as *highest* law, by means of entrenchment or placing limits on future law; (3) documents that define the basic ‘pattern of authority’ by creating or suspending a legislative or executive branch of government. These measures are mostly nominal, but do contain some broadly functional features as secondary considerations (Elkins *et al*, 2009:49). For example, in the case of Israel, the authors define the constitution as a series of Basic Law, falling under the first condition. However, some of the laws are not superior to ordinary legislation, which means that they do not meet the second condition (Elkins *et al*, 2009:49).

### **2.2.2 Amendment and Replacement**

Making the distinction between amendment and replacement is important for the purpose of the study. Constitutional change is called an amendment ‘when the actors claim to follow the amending procedure of the existing constitution’ (Elkins *et al*, 2009:55). Replacement is when the actors ‘undertake revision without claiming to follow such a procedure’ (Elkins *et al*, 2009:55). Sometimes only nominal distinctions exist between replacements and amendments – in some cases, constitutions have been thoroughly revised by means of a set of amendments.

The sample for the purposes of the analysis of replacements and amendments includes 106 amendments and 349 replacements in order to compare to the ‘prerevision document’ (Elkins *et al*, 2009:56). The data finds that, on average, the replacements match their predecessor in 81% of topics, and amendments match their predecessor in 97% of topics (Elkins *et al*, 2009:57). This

means that, in most countries, replacement brings about more dramatic change in the ‘scope and coverage’ of a constitution than constitutional amendment (Elkins *et al*, 2009:59).

### **2.2.3 Constitutional Change vs Regime Change**

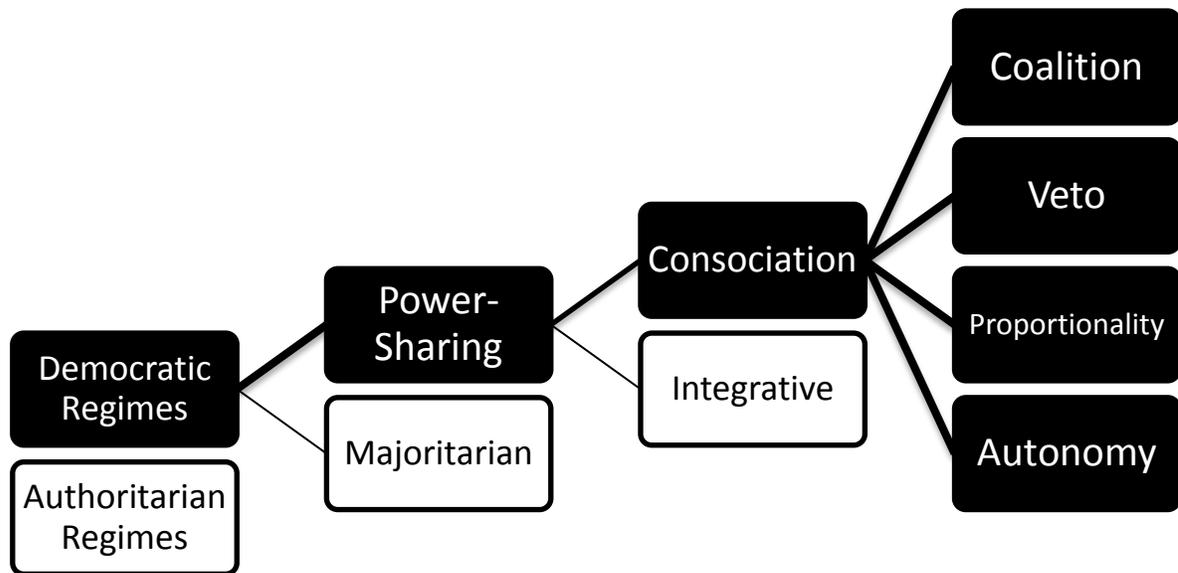
It is important to make a distinction between constitutional- and regime change. Within a broad perspective, it may be expected that countries with a high degree of constitutional instability will have a concomitant high degree of regime instability (Elkins *et al*, 2009: 59). In fact, countries with a history of volatile democracy correlate moderately with a country’s frequency of constitutional replacement (Elkins *et al*, 2009: 59). This invites the question of whether these two concepts are one and the same, but Elkins *et al* (2009:59) argue that although they are closely related, they are not synonymous. They argue that regime change is not a sufficient or necessary condition for constitutional change. It is argued that a ‘small, but significant, minority of regime transitions are accompanied by constitutional replacement and, likewise, a small minority of constitutional replacements coincide with regime transition’ (Elkins *et al*, 2009: 59, 60).

### **2.2.4 Comparability**

The study is historically and geographically wide-ranging, which inevitably brings up issues of comparability (Elkins *et al*, 2009: 47). Elkins *et al* (2009:48) concede that the contents and impact of constitutional documents, as well as the place of the constitution in society, will vary across context. It is argued that this variance will not negatively affect the study – ‘these conceptual differences among constitutions are not threats to comparability, but, rather, explanatory factors in the analysis’ (Elkins *et al*, 2009: 48). The authors welcome dissimilarity in the meaning of constitutions in different contexts, as they expect that such factors will partly give an explanation for their survival (Elkins *et al*, 2009: 48).

## **2.3 Confessional/Consociational Democracy?**

The following graphic illustration provides a roadmap in the definition of consociational democracy:



*Figure 1: Roadmap in the Definition of Consociational Democracy*

### **2.3.1 Majoritarian vs Power-Sharing Democracies**

The majoritarian interpretation of democracy argues that ‘majorities should govern and that minorities should oppose’ (Lijphart, 1984:21). The opposition to this view argues that those affected by a decision should have the chance to take part in making the decision, through chosen representatives or directly (Lewis in Lijphart, 1984:21). Majoritarian democracy holds problems for societies that are ethnically divided (Sisk, 1966:ix). This type of democracy typically consists of small single-member districts in a first-past-the-post, ‘winner-take-all’ electoral system. This means that the party that gains the majority of votes forms the government, while the other parties stay in ‘loyal opposition’ (Sisk, 1996:32). In ethnically divided societies, ethnicity provides a basis for political allegiance and the formation of political parties. This means that voting occurs along ethnic lines. In this type of system, there are very few floating voters. This may cause the formation of permanent majorities, if an ethnic majority exists and if one party dominates within that community. Where this is not the case, permanent minorities form (Lijphart, 1985:7). In majoritarian systems, minorities fear permanent exclusion from power by means of elections. The practice of power-sharing offers an alternative to majoritarianism (Sisk, 1996:ix).

Supporters of power-sharing systems in divided societies agree that majoritarianism holds problems within these societies – notably, ‘the potential distortions in vote-to-seat outcomes, the

inability of geographically dispersed minority parties to achieve representation, and – in the contest of an ethnic party system – the likelihood that a single ethnic group or coalition of ethnic groups will govern exclusively and to the detriment of the others’ (Sisk, 1996:32). Lijphart, the most acclaimed critic of majoritarianism and advocate of power-sharing systems, identifies the core problem of majoritarianism as the potential for ‘majority dictatorship’ (Sisk, 1996:32). Simple majoritarianism in divided societies has the potential to lead to ‘zero-sum politics’ (Welsh in Sisk, 1996:32, 33).

The fundamental nature of power-sharing systems is not to discard democratic competition, but rather to contain it within adequate boundaries with the intention that divergent opinions along ethnic lines do not lead to violence (Sisk, 1996:33). Power-sharing regimes generally have formal institutional regulations which ensure multiple elites a stake in decision-making (Norris, 2008:23). This type of arrangement is most applicable to multiethnic societies (Norris, 2008:23).

Power-sharing within the executive is thought to reduce expressions of ethnic intolerance amongst elites (Norris, 2008:24). At the time of settlement in segmented societies, leaders of all key factions are guaranteed a stake in government, whether regional or national (Norris, 2008:24, 25). This helps to legitimise the government in the eyes of politicians, as well as urge politicians to moderate their demands and work together with rivals (Norris, 2008:25). Making all significant actors stakeholders helps to secure their prolonged cooperation with constitutional agreements. This may also induce community leaders to promote conciliation among their supporters and to advance acceptance of the agreement (Norris, 2008:25). Arrangements such as these help distinct communities to feel that ‘their voice counts’, because their leader is in a position in the legislature and within government to voice their concerns and protect their interest (Norris, 2008:26).

Critics of majoritarianism concede that these systems can work well in relatively homogenous societies, or in societies characterised by strong interpersonal trust (Norris, 2008:26). However, in states where minority groups are constantly excluded from office, majoritarian systems reduce the incentives for community leaders to recognise the legitimacy of the outcome (Norris, 2008:26). Norris (2008:27) mentions Lijphart’s argument that ‘the only realistic type of settlement capable of attracting agreement among all factions in post-conflict divided societies

are power-sharing regimes which avoid the dangers of winner-take-all outcomes' (Norris, 2008:27).

### **2.3.2 Consociational vs Integrative Approaches to Power-Sharing**

#### **2.3.2.2 Integrative**

The integrative approach 'seeks to create incentives for moderation by political leaders on divisive ethnic themes and to enhance minority influence in the majority decision making' (Sisk, 1996:x). This approach looks to electoral systems that encourage the formation of pre-election pacts between political parties across ethnic or cultural lines in order to promote intergroup cooperation (Sisk, 1996:x). This creates largely inclusive, but majoritarian governments (Sisk, 1996:35). There has however been some debate whether the integrative approach may be deemed a 'power-sharing' system (Sisk, 1996:x). A weakness of this approach is that it lacks empirical examples of working systems including the whole country. The approach relies on the assumption that politicians react to incentives, and that citizens will vote for parties that are not based on their own ethnic, cultural or ideological group (Sisk, 1996:35).

Sisk (1996:xi) identifies five ways in which the integrative approach regulates conflict: (1) the creation of a non-ethnic, mixed federal structure; (2) the establishment of a centralised, inclusive unitary state; (3) the adoption of ethnically unbiased, majoritarian decision-making institutions; (4) an electoral system that is 'semi-majoritarian' or 'semi-proportional' which encourages the formation of pre-election coalitions between ethnic groups; (5) devising public policies which are 'ethnically blind'.

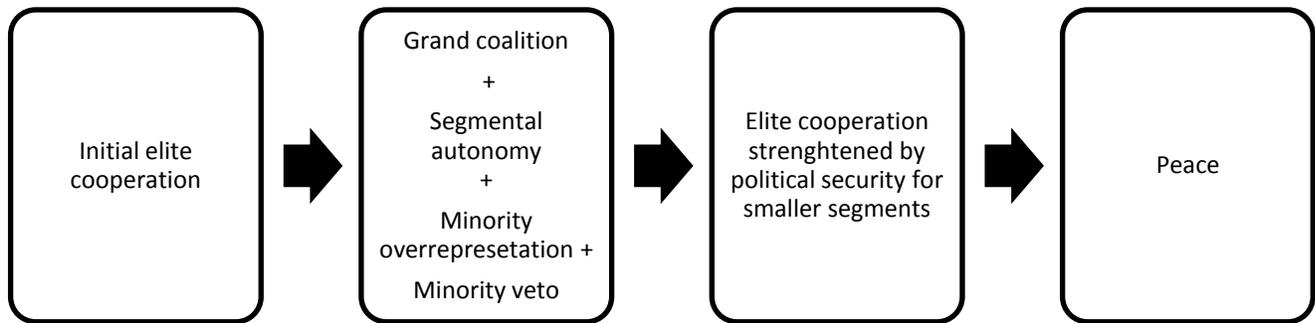
#### **2.3.2.3 Consociation**

Scholarly debate on the most appropriate regime for democratic transition and consolidation in deeply divided, post-conflict societies has been dominated by consociationalism (Norris, 2008:23). This theory deals with the fundamental contrasts between power-sharing and power-concentrating (majoritarian) regimes (Norris, 2008:23). The theory of consociationalism was originally developed in the late 1960s and the early 1970s in order to explicate the stability of certain deeply-divided European societies, including the Netherlands and Austria (Norris, 2008:23). The scope of the approach was later widened in order to include several developing

countries, like Lebanon and Malaysia. The most influential advocate of this approach is Arend Lijphart (Norris, 2008:23, 24).

Lijphart's theory, which will be elucidated further later in this chapter, was first developed to explain the stability of the regime in the Netherlands. Lijphart bases his theory on the study of the success of mostly small European democracies, including the Netherlands, Switzerland, Austria and Belgium. Lebanon has also been included as a hallmark of consociational democracy, up until the start of the civil war in 1975 (Dix, 1980:303). Malaysia, Nigeria and Cyprus have been grouped with Lebanon as cases of 'mixed success' (Dix, 1980:303). In his theory, Lijphart emphasises government incentives working by means of a two-stage process – firstly, power-sharing arrangements help to mitigate tension and conflict among leadership elites. These arrangements are designed to 'maximise the number of "stakeholders" who share an interest in playing by the rules of the game' (Norris, 2008:24). Proportional electoral systems with 'low vote thresholds', producing multiparty parliaments, exemplify this process (Norris, 2008:24).

The consociation, also referred to as the 'group building-block', approach relies on accommodation by ethnic group leaders as well as a high degree of group autonomy (Sisk, 1996:ix). 'In a consociational democracy, the centrifugal tendencies inherent in a plural society are counteracted by the cooperative attitudes and behaviour of the leaders of the different segments of the population. Elite cooperation is the primary distinguishing feature of consociational democracy...' (Lijphart, 1977:1). Lijphart goes on to define consociational democracy in terms of four characteristics: grand coalition; the mutual veto; proportionality; and autonomy. These four terms will later be looked at in greater detail. The following graphic illustrates Lijphart's theory of consociational democracy, as applied to deeply divided societies:



**Figure 2: Lijphart's theory of consociational democracy in deeply divided societies**

Source: (Sullivan, 2005:79)

Sisk (1996:xi) identifies five methods in which the consociational approach regulates conflict: (1) by granting territorial autonomy and creating confederal agreements; (2) by creating a federation based on ethnicity (a 'poly-communal' federation); (3) by taking on proportional representation in administrative appointments, which includes decision-making based on consensus in the executive; (4) by implementing a proportional electoral system set in a parliamentary framework; (5) by recognising group rights and non-territorial federalism.

The strength of this approach lies in the fact that it provides groups guarantees that their interests will be protected. However, the weakness of the approach is the uncertainty that elites may choose to pursue conflict rather than reduce it, and that communal groups may not comply with their leaders (Sisk, 1996:35). Lijphart consistently maintains consociationalism as the only feasible option for democracy in divided societies (Sisk, 1996:38).

In later work, Lijphart (1984) modified the core concept to link 'consensus' and 'majoritarian' democracies, expanding the comparative framework to include 10 institutions:

*The 'executive-parties' dimension compared the concentration of executive power in single party or coalition cabinets, the use of dominant or balanced executive-legislative relations, two-party versus multiparty systems, majoritarian or proportional electoral systems, and pluralist or corporatist interest groups systems. The federal-unitary dimension included unitary or federal systems, unicameral or bicameral legislatures, flexible or rigid constitutions, judicial review, and central bank independence. (Norris, 2008:25, 26)*

Lijphart compares this conceptual map and 36 democracies in order to come to the conclusion that democracies based on consensus have many advantages (Norris, 2008:26). Lijphart argues that where diverse ethnic communities are included in the governing process, segmented societies will coexist more peacefully, which in turn reduces pressures for secession (Norris, 2008:26). In order to prove this assumption Lijphart argues that a considerably smaller amount of violent riots and political deaths were recorded in consensus democracies when compared to majoritarian democracies (Norris, 2008:27). Consociationalism has become regarded as the ‘most realistic perspective’ in securing peace agreements among all parties involved (Norris, 2008:27). The failure of power-sharing democracy in Burundi has been attributed to the fact that two of the main requirements of consociational democracy were missing within the system, namely the lack of minority overrepresentation and the lack of segmental autonomy (Sullivan, 2005:91).

Lijphart (1969:216) mentions four factors conducive to consociational democracy: (1) elite ability to accommodate opposing interests and demands of the sub-cultures; (2) elite ability to transcend cultural cleavages in order to join in a coordinated effort; (3) commitment by the elites to the maintenance of the system as well as the improvement of its stability; and (4) elite understanding of the dangers of political fragmentation.

#### **2.3.2.3.1 Grand Coalition**

The most important element of a consociational democracy is that of a ‘government by grand coalition’ of the political leaders of all noteworthy segments of a plural society. In a parliamentary system, this takes on the form of a grand coalition cabinet, or in a presidential system, where it takes on the form of a grand coalition of a president and other top officeholders (Lijphart, 1977:25 and Lijphart, 1984:46). The concept of the grand coalition violates the basic principle of majority rule – the principle of the ‘minimum winning coalition’ (Riker in Graziano, 1980:351). In a divided society in which some groups may never become a majority, consensus can only be attained by means of direct participation in government (Graziano, 1980:351).

Grand coalitions go against the rule that in parliamentary systems’ cabinets should have majority support, but not necessarily the support of a great majority (Lijphart, 1977:25, 26). Small coalitions are formed more easily because there are fewer different opinions and interests to bring together, and allow for the existence of an effective democratic opposition (Lijphart,

1977:26). This principle of size applies in situations where those participating in the political process see politics as a *game* or a *war* which in turn increases the pressure for enlarging the coalition, perhaps creating a grand coalition (Lijphart, 1977:27). In plural societies, the political stakes are often very high, which means that a grand coalition is more ‘appropriate’ in these societies (Almond in Lijphart, 1977:27).

Lijphart (1977:27) argues that the ‘only real alternative to majority rule is minority rule – or at least a minority veto’. In most democratic systems, dilemmas are resolved by means of majority rule, where the stakes are ‘presumably not too high’. However, in systems where the population is divided into potentially hostile segments, almost all decisions are seen as having high stakes, which means that majority rule puts strain on the ‘unity and peace’ of the system (Lijphart, 1977:28). ‘Grand coalitions have achieved unity and stability during critical transitional periods by stilling partisan passions and strengthening consensus’ (Dahl in Lijphart, 1977:29).

The term ‘grand coalition’ may be constraining in that it does not exemplify the essential characteristic of consociational democracy – the deliberate joint effort by the elites to stabilise the system (Lijphart, 1969:213). The term ‘grand coalition’ may be replaced with ‘universal participation’, or a ‘cartel of elites’ (Dahrendorf in Lijphart, 1969:213). The Austrian grand coalition cabinet represents an example of the cartel of elites. The Swiss system makes use of a hybrid of presidential and parliamentary systems: all four major parties are represented within a multi-member executive (Lijphart, 1969:213). Government by grand coalition may take the form of an inclusive cabinet coalition of linguistic, religious or ethnic parties, like in Malaysia and South Africa (Lijphart, 1996: 260 and Bogaards, 2005).

#### **2.3.2.3.2 Mutual Veto**

Also referred to as ‘concurrent majority’ rule, *mutual veto* functions as added protection to minority interests by representing negative minority rule (Lijphart, 1977:25, 36). This instrument complements that of the grand coalition. While participation in a grand coalition does attribute political protection to minorities, this protection is not absolute or foolproof. Within a grand coalition, decisions are reached with a majority vote. Though minorities are given the chance to present their case as vehemently as possible, it may still be outvoted by the majority (Lijphart, 1977:36). Such decisions have the power to affect the vital interests of a minority, which could jeopardise ‘intersegmental elite cooperation’ (Lijphart, 1977:36). In order to avoid this, a

minority veto should be at hand in the grand coalition. Such a veto gives each segment a guarantee of political protection (Lijphart, 1977:36, 37). Each segment is given the ‘power of protecting itself’ (Calhoun in Lijphart, 1977:36).

The mutual veto does however hold a great danger of minority tyranny, which creates tension in the cooperation of the grand coalition. Lijphart (1977:37) argues three reasons why this danger may not be as serious: firstly, the fact that the veto is mutual means that all the minority segments possess it, and have the power to use it. Segments refrain from using their veto-power too often, as it may be turned against them. Secondly, ‘the very fact that the veto is available as a potential weapon gives a feeling of security which makes the actual use of it improbable’ (Lijphart, 1977:37). This means that each segment possesses the power of self-protection, which in turn curbs the struggle for ascendancy between the segments – each segment acts to preserve its own prosperity by protecting the prosperity of others (Lijphart, 1977:37). Lastly, the segments in the grand coalition are likely to recognise the danger that unreserved use of veto power may entail – that of deadlock and immobilism (Lijphart, 1977:37). Each segment acts in order to secure the common interest, even if it may have to give up its own interest in order to do so, as the danger of a political deadlock is worse. In Belgium, Cyprus, and the former Czechoslovakia the minority veto is formally entrenched in the constitution (Lijphart, 1996:261).

#### **2.3.2.3.3 Proportionality**

The principle of proportionality represents another divergence from majority rule and is connected to the principle of the grand coalition (Lijphart, 1977:38). Proportionality acts as the primary standard of representation in the political sphere, as well as civil service appointments and the allocation of public funds (Lijphart, 1977:25).

Lijphart (1977:38) points out two important functions of proportionality: firstly, proportionality acts as a standard when making appointments in the civil service, as well as the division of limited financial resources by means of government subsidies to different segments. This is in contrast to the winner-takes-all principle of majority rule – one of the motivations behind forming a minimum winning coalition is that the government funds may be allocated to only a small number of participants. Proportionality decreases the profitability of a minimum winning coalition (Lijphart, 1977:38).

The second function of proportionality relates to the decision-making process in government. The concept of proportionality acts as a neutral and unbiased standard of allocation, removing many troublesome problems from the process of decision-making, and lightening the burden of consociational government (Lijphart, 1977:39). Proportionality adds to the ‘refinement’ of the concept of the grand coalition by ensuring that not only are all segments represented in the decision-making organs, but they are represented proportionally (Lijphart, 1977:39).

Malaysia’s plurality elections are an example of proportionality, because the inter-ethnic coalition has ‘succeeded in guaranteeing a nearly proportional share of parliamentary seats to the minority Chinese and Indian parties by giving them the coalition's exclusive nomination in a number of districts’ (Lijphart, 1996:261).

#### **2.3.2.3.4 Autonomy**

A high degree of autonomy for each segment to administrate its own internal affairs acts as the final deviation from majority rule (Lijphart, 1977:25, 41). This principle entails minority rule, meaning that each minority has the power to rule over itself in areas of its exclusive concern (Lijphart, 1977:41). This is the logical consequence of the principle of the grand coalition. In matters of common interest, decisions should be made based on proportional representation, but other matters can be left to the separate segments. The delegation of rule-making and the application of rules on the basis of segments, as well as the proportional allocation of government funds, acts as a powerful incentive for segmental organisations (Lijphart, 1977:41).

Federalism is a special form of segmental autonomy (although it may be applied in non-plural societies) (Lijphart, 1977:42). Consociational theory and federalism have some significant parallels: both grant autonomy to constituent parts of the state; and both over-represent smaller subdivisions in the federal chamber (Lijphart, 1977:42). Federalism may be used as a method of consociation in a society where segments of the population are also territorially bound and separated from each other (Lijphart, 1977:42). The concept of autonomy is compatible with either approach – delegating governmental and administrative responsibilities to territorially clustered or non-territorial segments (Lijphart, 1977:42).

Cultural autonomy within power-sharing democracies has taken on three forms (Lijphart, 1996:260): (1) federal arrangements where linguistic boundaries coincide largely with state

boundaries, which in turn provides a high degree of autonomy, as in Belgium; (2) by granting religious and linguistic groups the right to establish and administer their own self-directed schools, as in the Netherlands; and (3) separating laws concerning personal status, including laws on marriage, divorce, adoption, custody and inheritance by religious minority, as in Lebanon. Canada's federal system provides an example of strong regional subcultures, which in turn aids the successful functioning of the federal system (Noel, 1971:16). Canadian federalism has been maintained and made to work largely through a 'process of accommodation at the elite level' (Noel, 1971:16). Switzerland also provides an effective example of a federal system used as consociationalism (Lehmbruch, 1993).

#### **2.4 The theory of renegotiation**

The theory of renegotiation includes ideas on constitutional formation, adjustment and endurance. The theory is based on the notion that all constitutions are, to a certain degree, bargains that represent agreement among the relevant parties (Elkins *et al*, 2009:66). Elkins *et al* (2009:66) mention that the sustainability of these bargains depends on: (1) whether the parties believe they would be 'better off' under different circumstances; (2) the expected penalties for violating the agreement; and (3) whether it is easy to amend the existing agreement or otherwise accommodate adjustments.

The authors accept that external events have an effect on the players' analysis of costs and benefits, and so induce demands for a new bargain (Elkins *et al*, 2009:66). However, they also suggest that 'certain structural features' of constitutions promote stability when faced with external shocks. The focus of the study is not on the 'birth', or the constitutional negotiation process, but rather on the 'moment of potential renegotiation' (Elkins *et al*, 2009:66). The theory uses a medical metaphor throughout, referring to the 'birth', 'death' and 'life expectancy' of constitutions, as well as performing 'autopsies' on 'deceased constitutions'. The theory concentrates on three features of the constitution itself that should extend its existence, namely inclusion, specificity and flexibility. These features should lower the risk of replacement in a constantly changing world (Elkins *et al*, 2009:66).

### **2.4.1 The Problem of Incomplete information**

It is important to specify those parties seated at the table of renegotiation. Should these groups come to a bargain; the bargain will inevitably be incomplete as the parties will be incapable of specifying every future contingency (Elkins *et al*, 2009:67). The expensive nature of negotiations is one of the reasons why the bargain will be incomplete, but two other types of obstacles also exist: uncertain payoffs; and hidden information (Elkins *et al*, 2009:68).

The problem of *uncertain payoffs* refers to the uncertainty of future payoffs, which may vary when unforeseeable external circumstances come into play. The international environment is constantly changing, creating uncertainty and affecting the costs and benefits of cooperation (Elkins *et al*, 2009:68). ‘Exogenous change means that even otherwise stable constitutions may come under pressure for renegotiation’ (Elkins *et al*, 2009:68).

The problem of *hidden information* involves knowledge of one’s negotiating partner’s actual capabilities and intents (Elkins *et al*, 2009:69). The problem of hidden information applies when information is not distributed evenly across parties. A party to a negotiation may misrepresent its own capabilities and intentions in order to protect its own interests (Elkins *et al*, 2009:69). If the ‘miscalculation’ is severe enough, and the other parties discover the misrepresentation, renegotiation may once again have to take place.

Time does however play a role in offsetting or exacerbating the effects of these problems (Elkins *et al*, 2009:70). The problem of uncertain payoffs becomes worse with time as more exogenous factors arise and prediction becomes more difficult. However, time lessens the effect of hidden information. As time progresses, parties reveal more and more information to each other, ameliorating the problem of hidden information over time (Elkins *et al*, 2009:70, 71).

#### **2.4.1.1 Standard contractual solutions to problems of incomplete information**

A standard answer to the dilemma of uncertain payoffs is to draft contracts that are loosely defined, that allow ‘flexible adjustment’ over time as new information is made known (Elkins *et al*, 2009:71). The parties are then able to specify their commitments within a general framework (Elkins *et al*, 2009:71). However, a more ‘general’ agreement may encourage parties to conceal intentions, which means that this solution to uncertain payoffs may exacerbate the problem of hidden information (Elkins *et al*, 2009:71). On the other hand, a rational response to the problem

of hidden information is to draft a more complete agreement which specifies contingencies. Forcing parties to reveal information minimises ‘strategically generated surprises’ later on (Elkins *et al*, 2009:71). This solution creates a risk of restricting adaptations to exogenous change (Elkins *et al*, 2009:71).

Another solution that is commonly used for these problems is relying on third parties, for example bringing in the constitutional court to resolve ‘problems of uncertainty’ in the process of bargaining (Elkins *et al*, 2009:72). This solution does however raise significant problems: (1) the issue of capacity, for instance whether the courts are able to determine the appropriate rule; (2) the parties still have the choice whether or not to comply with the court’s decision, which means that there is no guarantee that the decision will be followed; (3) the existence of the constitutional pact is a product of the bargaining process, which in turns brings up more questions regarding the role of the constitutional courts (Elkins *et al*, 2009:72).

The problems of hidden information and uncertain payoffs mean that parties are not able to produce a contract which is complete. Exogenous events that change payoffs or the revelation of hidden information impinge on parties’ perception of the agreement (Elkins *et al*, 2009:72). These changed perceptions could lead to ‘moments of potential adjustment – or breakdown – of the constitutional arrangement’ (Elkins *et al*, 2009:72).

#### **2.4.2 When to renegotiate?**

‘Renegotiation occurs when one party believes the anticipated future costs of remaining in the bargain exceed future benefits plus the cost of renegotiation’ (Elkins *et al*, 2009:73). The advocates of the renegotiation of a constitution may be those that can be construed as relative winners or relative losers in the original bargain. These winners and losers are those who respectively accumulate or lose political advantages following the original bargain (Elkins *et al*, 2009:73). It may be a relative winner that is in a position to claim a greater share of the ‘constitutional surplus’ at some point in renegotiation. Alternatively, it may also be the relative loser who is looking to regain position or power, regardless of a weaker position in negotiations. Losers may not have the power to win in ‘ordinary politics’, but it could be possible for them to impose enough costs on the winners to force renegotiation (Elkins *et al*, 2009:73).

Elkins *et al* (2009:74) identify three scenarios that could develop, depending on the size and number of the parties seeking to renegotiate. The first two scenarios entail when all parties either seek or oppose renegotiation. In these scenarios, renegotiation is either guaranteed or impossible (Elkins *et al*, 2009:74). The interesting scenario arises when some parties seek renegotiation, while others oppose it. This scenario will now be further discussed.

Once the parties have ‘chosen sides’, it should be decided how to approach the negotiation (Elkins *et al*, 2009:74). The constitution itself should act as a framework here, as constitutions typically include provisions on amendment. Two primary mechanisms of constitutional change exist within the constitutional bargain: formal amendments to the text; and informal amendments resulting from interpretative changes (Elkins *et al*, 2009:74). In cases where formal amendment is difficult, the constitution may be adapted through judicial or other reinterpretation. In cases where amendment of the constitution is ‘relatively simple’, there is less need to reinterpret the constitution by judicial or other means (Elkins *et al*, 2009:74).

Another alternative is *replacement*, which, in the terms of the authors, is equal to a new bargain (Elkins *et al*, 2009:74). Replacement is more costly than amendment because: (1) there could be more issues to negotiate which requires time and energy; (2) issues that were previously settled may arise again, which means that bargaining results are less predictable; (3) should the attempt at replacement fail, the costs may be very severe, as replacement may be illegal (Elkins *et al*, 2009:74, 75). Replacement runs the risk of ‘major shifts’ working ‘to the detriment of the group(s) that called for renegotiation’ (Elkins *et al*, 2009:75). Amendments also run the risk of re-opening other issues, which may negatively affect those that proposed the amendment in the first place (Elkins *et al*, 2009:75).

‘In short, parties will consider their position in the current bargain, comparing it with expected outcomes of constitutional renegotiation, net the costs of adjustment, or replacement of, the new bargain’ (Elkins *et al*, 2009:75,76). Parties will run a ‘cost/benefit analysis’ in order to determine which scenario will work out in their best interest. Constitutions which are flexible in providing for adjustment through amendment avoid the reputational costs of ending the current bargain (Elkins *et al*, 2009:76). In cases where constitutions lack internal flexibility, parties may choose to contravene the constitution by means of replacement or suspension, and see if the other parties comply (Elkins *et al*, 2009:76).

### **2.4.2.1 The Problem of Enforcement**

When the proponent of constitutional change decides to use extra-constitutional means in order to accomplish change, it is referred to as a *breach* (Elkins *et al*, 2009:76). This decision by the proponent relies on the opposition's ability to organise and foil such an action. These potential enforcers of the constitution are faced with the problem of collective action – they may have disparate opinions on when and how to enforce the constitution (Elkins *et al*, 2009:76). However, if the potential enforcers succeed in coordinating and generating common expectation, others will join in the confrontation. This minimises the threat of defection. The proponents of the breach will re-evaluate their actions if their breach is met with coordinated resistance. This is what is referred to as a 'self-enforcing constitution' (Ordershook and Weingast in Elkins *et al*, 2009:77).

Elkins *et al* (2009:77) identify three factors which increase the likelihood of enforcement: (1) enforcers must understand when and how the constitution has been violated, which means that the constitution should be clear on the rules of the constitution and the 'factual predicate of any alleged violation'; (2) parties should be sufficiently attached to the Constitution as the rightful 'law of the land'; (3) 'potential enforcers must believe that others share their understanding of, and devotion to, the constitution and are willing to take action to enforce the violation'. Loyalty to the constitution and the endurance thereof are 'inextricably linked' (Elkins *et al*, 2009:77).

### **2.4.3 Predictions from the model**

#### **2.4.3.1 Inclusion**

The concept of inclusion denotes the level to which social and political actors are included and participate in the constitution – not only in the drafting process, but also in its ongoing enforcement. Not only does inclusion make enforcement of the constitution easier, it also promotes investment in constitutional endurance (Elkins *et al*, 2009:8, 78). Elkins *et al* (2009:78) argue that 'the connection between attachment to the bargain and survival is reciprocal' – citizens and those involved in the drafting process will protect the document they are attached to, and documents that endure will consequently bring about 'norms of attachment'.

When constitutions are formulated and deliberated publicly, it is likely that the common knowledge and attachment crucial for self-enforcement will be generated. Aside from content,

how the constitution is put into place is critical. Constitutions passed in secret are not likely to bring about enforcement action. On the other hand, when constitutions are passed with great participation by the public, common knowledge of its content is more widely spread, and enforcement is facilitated (Elkins *et al*, 2009:78).

Two critical stages in which the extent of inclusion become apparent are highlighted – firstly, the drafting and debate around the constitution; secondly, the approval of the constitution (Elkins *et al*, 2009:79). It may be said, however, that a certain degree of privacy can be valuable in certain situations. Private settings may still be indirectly open, ‘as long as the group assembled is selected by the public or adequately representative’ (Elster in Elkins *et al*, 2009:79). Nevertheless, when key groups are left out, citizen attachment becomes severely compromised (Elkins *et al*, 2009:79). Constitutions which are publicly approved have the benefit of high levels of support. Constitutions that are publicly highly debated and discussed are more likely to be enforced and sustained when faced with external pressures.

Interest groups should be taken into account when attempting to ensure constitutional endurance: ‘...[S]o long as groups believe they are better off in the current bargain than in taking a chance on another round of constitutional negotiation, the constitution will endure’ (Elkins *et al*, 2009: 80). The argument here is that by including a larger number of groups, more groups will have a stake in the endurance of the constitution, which will extend the life of the constitution (Elkins *et al*, 2009:81).

In summary, there are two ways in which inclusivity increase the possibility of enforcement. Firstly, inclusion increases the visibility of the document and demonstrates ‘societal consent’, and secondly, it increases the ‘stake that citizens have in the document and their attachment to it’ (Elkins *et al*, 2009:81).

#### **2.4.3.2 Flexibility**

As mentioned in the previous chapter, the concept of flexibility is deemed equally important as that of inclusion. This refers to the constitution’s limitations in changing conditions, meaning the ability of the constitution to adjust to changing conditions (Elkins *et al*, 2009:8, 81). This can be measured by looking at how easily the constitution can be formally or informally amended.

Amendment, or adjustment, to a flexible constitution may occur by means of amendment or interpretation, without ending or negatively affecting the current bargain (Elkins *et al*, 2009:76).

The threat of outside shocks that can alter the costs and benefits to the parties involved, requires constitutions to have instruments and procedures for modification over time (Elkins *et al*, 2009:81). The ability of a constitution to be flexible allows for changes should new political and social forces arise, relating the concept to that of inclusion. Flexibility allows for the inclusion of new groups which in turn ‘generates a vital constitutional politics, in which groups have a stake in the maintenance of certain core elements of the constitutional bargain even as more peripheral elements change’ (Elkins *et al*, 2009:82). This means that, because the flexibility of the constitution allows it to be inclusive in changing circumstances, the negative effect of these changing circumstances can be limited. By being flexible in a changing environment, the radical overthrow of constitutional documents may be prevented, which in turn would bring about a loss of social surplus (Elkins *et al*, 2009:82).

It is not always necessary for formal amendment to the constitution – informal mechanisms exist, for example constitutional review by constitutional courts, ordinary legislation or ‘unwritten understandings’ of the constitutional text (Elkins *et al*, 2009:83). The most important aspect of amendment is that ‘common understandings among potential enforcers evolve over time in response to new pressures’ (Elkins *et al*, 2009:83). The central argument is that some method for modification or ‘fine-tuning’ of the constitution in changing circumstances over time reduces demands for more total revision (Elkins *et al*, 2009:83).

#### **2.4.3.3 Specificity**

Contrary to the commonly-held belief amongst American constitutional scholars that constitutions that are ‘loosely drafted’ are superior, this study suggests that a certain amount of clarity and specificity may be useful in facilitating enforcement (Elkins *et al*, 2009:84). The argument is that a document that provides a clearer and more specified framework is more easily and widely understood (Elkins *et al*, 2009:84). The concept of specificity within this constitutional study refers to the ‘breadth of coverage and level of detail of constitutional provisions’ (Elkins *et al*, 2009:8). The concept is measured by looking at the range of topics covered in the document, as well as the degree of detail attributed to each topic.

There are however disparities in this argument. Taking the time to negotiate detail within the text, and including a host of topics may prove to be expensive. Drafting a constitution with a high level of specificity requires consideration and negotiation, which takes time and political resources. The problem here is that constitutional design usually takes place in times of crisis, and constitutional designers have to act under great social and political pressures, in a short amount of time (Elkins *et al*, 2009:84, 85). On the other hand, the pressure of time often helps in producing agreement between parties in dispute (Elkins *et al*, 2009:85). The expensive nature of constitutional negotiation forces designers to make difficult choices on what to include, and what not to include, and how much detail to be given to each chosen topic (Elkins *et al*, 2009:85). Elkins *et al* (2009:85) argue that ‘the constitutional text is reserved, in principle if not always in practice, for matters whose combined probability and significance are such that the highest legal document ought to address them.’ This entails the including only issues which ordinary processes would fail to address adequately.

Specificity promotes constitutional endurance in three ways: (1) by forcing the drafters to discuss futures area of concern, the issue of ‘hidden information’ may be avoided. Problems of ‘strategic behaviour and delays’ may be minimised on implementation. (Elkins *et al*, 2009: 86, 87). (2) The costly nature of drafting a specific constitution enables the interest groups involved to become more invested in the document. This investment in the constitution minimises the risk for deviation later. (3) A constitution which includes a wide range of interest groups also generates a wide range of interest and monitoring in its operation. This provides encouragement for groups to invest capital in keeping the constitution up to date (Elkins *et al*, 2009:87).

In summary, constitutions that cover more topics tend to motivate more interest groups to endorse enforcement, and detailed texts help to cultivate shared understandings of what the constitution entails.

#### **2.4.3.4 Inclusion, Flexibility and Specificity**

The three factors indentified and explicated above – specificity, inclusion and flexibility – are mutually reinforcing. In cases where constitutions are drafted within inclusive environments and processes, it is expected that pressure for specificity will increase (Elkins *et al*, 2009:88). The concept of inclusion does however make coordination between participants more difficult – it is more difficult for a larger number of groups to coordinate a wide range of interests, and this also

has an effect on enforcement (Elkins *et al*, 2009:88). Specificity plays an important role in generating interest in the constitution because it encourages more activity on the part of interest groups. The problem with specificity is that it sometimes produces inflexibility within the constitution, but this in turn helps to produce a demand for a more flexible bargain (Elkins *et al*, 2009:88). By more clearly expressing the terms of the bargain over time, constitutional review processes generate specificity. A document that is more flexible stimulates participation because it is easier to change the document (Elkins *et al*, 2009:89).

The three factors are present within the process of constitution-making, but also feature in ongoing practice. Inclusion, specificity and flexibility ‘mutually reinforce each other to produce a vigorous constitutional politics in which groups have a stake in the survival of the constitution’ (Elkins *et al*, 2009:89). Should a constitutional document lack mechanisms that enable flexibility, external shocks will bring about constitutional infringement and even replacement. Lacking inclusion, there will be few who protect the bargain amidst calls for renegotiation. Without specificity, enforcers will struggle to find grounds of agreement within the constitutional text and not ‘care much when it dies’ (Elkins *et al*, 2009:89).

Constitutions that are inclusively generated are better known publicly, and are likely to become points of interest among a disparate public. Documents that are flexible are easier to adjust in a changing environment (Elkins *et al*, 2009:92). When documents are specific, it is more likely that there will be agreement on when constitutional infringement has taken place. These instruments act in a mutually reinforcing process: constitutions that are specific incite flexibility; flexibility in constitutions makes inclusion easier; and processes which are inclusive generate pressures for ongoing articulation of the constitution, which in turn produces yet more specificity (Elkins *et al*, 2009:92). The product of this mutually enforcing cycle is ‘an ongoing constitutional politics in which parties are aware of the constitution, invested in it, and hence more willing to enforce it’ (Elkins *et al*, 2009:92).

#### **2.4.4 Design Factors**

##### **2.4.4.1 Inclusion**

Consensus on norms within society, and what the ‘law of the land’ is, encourage actors to enforce the constitution (Elkins *et al*, 2009:97). The norms and expectations of society should be

reflected and written into the constitution. This makes these rules more likely to be enforced (Elkins *et al*, 2009:97). Elkins *et al* (2009:97) predict that ‘constitution-making processes that are highly open and inclusionary (or at least appear to be so) increase citizens’ awareness and regard for the document as well as their confidence that *other* citizens have developed the same awareness and respect’. When the public is directly involved in ongoing governance, ongoing interest in the functioning and the upholding of the constitutional order is also generated, which in turn may help the constitution to survive at critical junctures (Elkins *et al*, 2009:97).

The process of constitution-making is important, not just the actual text. The writing, the deliberation and the approval of the constitution are critical stages when identifying inclusion (Elkins *et al*, 2009:98). When examining the level of inclusion of the public in ongoing governance, in their study of the 935 constitutions, the involvement of the public in the election of the head of state and the first chamber of the legislature is examined (Elkins *et al*, 2009:98). Whether the constitution includes mechanisms of direct democracy (for example, referendum, or recall of executives and legislators) is also examined in the study, as these elements are viewed as capturing the same element (Elkins *et al*, 2009:98). The authors combined these basic concepts into one single index of inclusion, producing an index that ‘averages across eight binary features of inclusion in both constitution-making and ongoing governance’ (Elkins *et al*, 2009:98, 99).

#### **2.4.4.2 Flexibility – Ease of amendment**

The theory of renegotiation suggests that ‘constitutions with lower thresholds for amendments will be more flexible and likely to survive in the face of constitutional crisis’ (Elkins *et al*, 2009:99). By allowing for formal amendment, flexible constitutions allow for the incorporation and management of inevitable but unanticipated risks. Amendment acts as an alternative for replacement, which is more costly and more risky (Elkins *et al*, 2009:99).

Ease of amendment is measured in the study by using information on the observed amendment rate as well as the ‘formal amendment procedures’ of each constitution (Elkins *et al*, 2009:100). The unit of analysis in this model is the constitutional system, and the dependent variable is binary, which captures whether or not the constitution was amended within a given year (Elkins *et al*, 2009:100). ‘[T]he number of actors involved in various stages of the amendment process, the margin necessary to pass amendments through the legislature, and dummy variables to

indicate the role of different bodies in the process' are included in the model, as well as all of the independent variables from the principle model (Elkins *et al*, 2009:101).

#### **2.4.4.3 Specificity: Scope and Detail**

Elkins *et al* (2009:103) conceive specificity as consisting of two dimensions: *scope* and *detail*. 'Scope refers to the breadth of coverage of the constitution, or the number of issues that it chooses to regulate. *Detail* refers to the precision and elaboration of the provisions of the constitution in any given topic area' (Elkins *et al*, 2009:103). They argue that constitutions that are more detailed are evidence that the bargainers spent time in working out differences and conflicts (Elkins *et al*, 2009:103).

The scope of the constitution, or the breadth thereof, is measured in the study by identifying the number of topics covered in the text. In the model this is measured as a percentage of a list of 92 possible topics (Elkins *et al*, 2009:104). Constitutions on average include 45 of the 92 topics listed (which is equal to 49%). The Thai Constitution of 1997 and the Colombian Constitution of 1991 both include 78% of the topics, making them the most wide-ranging. At 14%, the Libyan Constitution of 1969 is the least wide-ranging (Elkins *et al*, 2009:104).

The level of detail is measured by dividing the length (in words) of the constitutional text by the number of scope items (taken from the list of 92) included in the constitution, amounting to the 'number of words per topic' in a constitution (Elkins *et al*, 2009:105). This measure is made with the understanding that it is an overestimate of detail, as not all topics are captured by the scope. In constitutions since 1789, the average number of words per topic is 306, with China's 1982 document rating the lowest at 26 words per topic, and the 1963 Kenyan Charter the highest at 1690 words per topic (Elkins *et al*, 2009:105).

Word length itself is also illustrative. Since 1789, the average constitution has about 14 000 words, with India rating the highest with its current constitution (140 000 words) (Elkins *et al*, 2009:105). The US Constitution only has about 4600 words, providing a 'framework for politics' rather than a 'repository of policies' (Elkins *et al*, 2009:105). Constitutions that cover numerous topics have a tendency to be longer, and those that contain a large number of topics also tend to include more words per topic (Elkins *et al*, 2009:105). Elkins *et al* (2009:105, 106) mention that though scope and detail are related, they are 'clearly distinct dimensions'.

#### **2.4.4.4 Constitutional Review**

The theory of renegotiation suggests that constitutional review can play a role in relieving pressure on the constitution (Elkins *et al*, 2009:106). Constitutional review not only assists adaptation, but also inclusion and specificity. Constitutional courts play an important role in determining the behaviour of parties in a constitutional crisis (Elkins *et al*, 2009:106). Parties often agree that a costly conflict should be avoided in favour of cooperation, but the terms of cooperation are often disagreed on. A natural solution to this is to defer to a neutral third party. It is necessary that both parties believe that the other will follow the rules suggested by the third party (Elkins *et al*, 2009:107)

Constitutional review also provides the vital role of coordination. It may provide the ‘connective tissue’ that allows an antiquated document to adapt to a world of technological advances (Elkins *et al*, 2009:108). Reinterpretation then allows for the inclusion of new interest groups. This brings forth the hypothesis that ‘an explicit provision or widely accepted norm of constitutional review will extend the life span of constitutions’ (Elkins *et al*, 2009:109).

#### **2.4.4.5 Executive and Legislative power**

The balance of power between the executive and the legislature are thought to have some effect on constitutional endurance (Elkins *et al*, 2009:109). Many constitutions have seen their end at the hand of power-hungry executives, which implies that constitutions with fewer constraints on the executive may be able to survive shocks better, as they require little adjustment in times of crisis (Elkins *et al*, 2009:109). Elkins *et al* (2009:110) contend that both executive and legislative power can facilitate endurance. Executive and legislative power are treated as reciprocal – the one comes at the expense of the other.

This study is a case study and is qualitative, not a comparative quantitative study, and these variables will be measured differently.

#### **2.4.5 The Environment**

##### **2.4.5.1 Loss of Territory**

It is traditionally one of the first acts of a new state to draft a new constitution, representing state sovereignty and a contract for the disparate factions that come together to form the state (Elkins *et al*, 2009:111). It may be said that major changes in a state’s territory warrant some

reconsideration of this fundamental document. Examples include mergers in the Arab world (like North and South Yemen in 1991) as well as breakups of federations like the Soviet Union (Elkins *et al*, 2009:112). A loss of territory reflects poorly on the state and its institutions. This leads to the hypothesis that territorial change (especially territorial losses) increases the probability of constitutional replacement (Elkins *et al*, 2009:112).

#### **2.4.5.2 Diffusion**

Constitutions are ‘highly symbolic and public documents’ (Elkins *et al*, 2009:112). It seems likely that the implementation of new constitutions in other countries (specifically countries that are geographically and culturally close) will increase the likelihood of a new constitution in a neighbouring country (Elkins *et al*, 2009:112). It is without question that constitutional content is created interdependently, which increases the probability that the replacement of constitutions may also be contagious (Elkins *et al*, 2009:112). Upon inspection of recent cases, Elkins *et al* (2009:113) found that constitutional reform in one country encourages constitutional reform in another. The hypothesis here is that ‘increases in constitutional replacements in the prior year, both globally and locally, will increase the probability of constitutional replacement’ (Elkins *et al*, 2009:114).

#### **2.4.5.3 Regime Change**

As mentioned earlier, constitutional change and regime change are closely related. Regime change refers broadly to shifts between authoritarianism and democracy (Elkins *et al*, 2009:114). It may be expected that abrupt shifts in political regime will be connected to constitutional reform – regime change is about shifts in institutional structure, and constitutions are the personification of these rules (Elkins *et al*, 2009:114). Elkins *et al* (2009:115) claim that constitutions that are developed in democratic settings will be more durable than those developed in authoritarian settings. This leads the authors to three sets of expectations regarding political regimes: (1) abrupt changes in regime, whether democratic or authoritarian, increase the likelihood of replacement; (2) constitutions written in democratic settings are generally more stable than those developed in authoritarian settings; (3) ‘shifts to democracy when authoritarian born constitutions are in place will be more unstable than shifts to autocracy when democratic constitutions are in place’ (Elkins *et al*, 2009:115).

#### **2.4.5.4 Leadership Changes**

Elkins *et al* (2009:115) assert the likelihood of smaller scale shifts in the leadership of governments increasing the probability of replacement. This may happen because new executives may not see the administration as following in the tradition of their predecessor, or they may wish for a symbolic break from the old leadership (Elkins *et al*, 2009:115).

The expectation is that leadership changes will increase the risk of constitutional change (Elkins *et al*, 2009:116). However, this is not anticipated as an unconditional effect, as in democracies, leadership change is built into the system. In fact, new democratic leaders are a sign of constitutional stability and may have little reason to destabilise it (Elkins *et al*, 2009:116).

#### **2.4.5.5 Interstate Conflict and Consensus/Ethnic diversity, large size**

‘Constitutions are meant to hold together disparate groups with different needs, preferences and goals’ (Elkins *et al*, 2009:116). Homogenous states differ from those in which many different ethnic groups reside, partly because existing power distribution is often questioned in such environments, and partly because it is more difficult to maintain consensus on constitutional norms in heterogeneous environments (Elkins *et al*, 2009:117). The hypothesis that Elkins *et al* (2009:117) derive from this is that ethnically diverse countries as well as large countries generally have less stable constitutions. This is measured using two background conditions separately, namely ethnic diversity and background (Elkins *et al*, 2009:117).

#### **2.4.5.6 Interstate Conflict/War**

Political systems are generally challenged in times of war. War has the tendency to lead to calls for revision of domestic political bargains, because those in the executive seek to increase their power in order to respond to demanding circumstances (Elkins *et al*, 2009:117). War also sometimes leads to interest groups putting pressure on constitutional bargains. It has to be said that a sufficiently flexible constitution may be able to accommodate the required changes, but many constitutions have died facing war or invasion (Elkins *et al*, 2009:118). It seems that military defeat is particularly risky for constitutions. The countries on the losing side in both world wars seemed to have eliminated existing constitutions.

It is noted that constitutions written during occupation are likely to be less stable than those written under other circumstances. A reason for this is that constitutions drafted in these

circumstances are often under heavy foreign influence, which is not inclusive to domestic actors (Elkins *et al*, 2009:118). Another reason may be that because enforcement is secured by an outside power, self-enforcement becomes unlikely. This leads to the hypothesis that a ‘defeat in war will increase the risk of constitutional replacement and that those constitutions written under occupation will be less resilient’ (Elkins *et al*, 2009:118, 119).

#### **2.4.5.7 Economic Crisis and Economic Development**

If the assumption is that bad economic times lead to reconsideration of governmental leadership and more fundamental political structures, it may be assumed that bad economic times also imperil constitutions (Elkins *et al*, 2009:119). A compelling case has been made that ‘the more development, the more stable the regime’, whether authoritarian or democratic (Elkins *et al*, 2009:119). The same is expected for the stability of constitutions. Elkins *et al* (2009:119) then derive from this that economic crises are likely to threaten the stability of the constitution. Economic development is measured using energy consumption per capita, correlating highly with GDP per capita (Elkins *et al*, 2009:119).

#### **2.4.5.8 Historical Legacy (Legacy of endurance)**

The expectations of citizens regarding constitutions are grounded in past experience (Elkins *et al*, 2009:120). Enforcement of the constitution relies heavily on citizens’ expectation that other citizens will support them in defending its contents (Elkins *et al*, 2009:120). It may be expected that states that have existed for some time and along several generations will have greater intelligibility regarding the nature of the political contract, and what political institutions should resemble (Elkins *et al*, 2009:120). States that write their first constitution upon or shortly after independence have less clarity regarding this contract, and as such, less stable documents arise. As such, it may be said that states with more experience will have more stable constitutions than younger, less experienced, states (Elkins *et al*, 2009:120).

Elkins *et al* (2009:120) draw two hypotheses from these findings: firstly, that ‘the stability of constitutions will vary directly with the average longevity of its previous constitutions’; and secondly, that constitutions of states that have lasted for more than 30 years are more likely to remain stable than younger states/constitutions.

### **2.4.6 Results**

The median survival time of constitutions, as mentioned earlier, is nineteen years. This is the age at which one-half of constitutions are expected to have died (Elkins *et al*, 2009:129). It was found that the ‘hazard rate’ increases until the age of seventeen, when risk of ‘death’ is at its highest (Elkins *et al*, 2009:129). From here on, the ‘hazard rate’ decreases steadily over time (Elkins *et al*, 2009:129). However, this does not guarantee the safety of constitutions older than seventeen – more than 30% of constitutional deaths occur in constitutions that are older than seventeen years. This includes the Swedish 1809 constitution, which died at the age of 165 years (Elkins *et al*, 2009:129). Seventeen years does seem to represent some type of threshold regarding constitutional endurance (Elkins *et al*, 2009:130).

Elkins *et al* (2009:130) find that there is a decline in constitutional lifespan after World War II. This is attributed to the fact that groups aspiring to statehood have found it easier to dissolve bargains after WWII. This depends on the ‘reservation price’ – the outcome obtained should the bargain fail (Elkins *et al*, 2009:130). A high reservation price means that a party is less probable to conclude a bargain, and the extent of the potential bargain becomes limited (Elkins *et al*, 2009:130). Economic liberalisation has reduced the cost of ‘small size’ regarding territory of a country. This has meant that the cost of secession has become lower (Elkins *et al*, 2009:132, 133). The UN charter prohibited the taking over of other countries, which created a safer environment for secession in the post WWII-era (Elkins *et al*, 2009:132).

#### **2.4.6.1 Environmental Factors**

The international and national environment has demonstrable effects (Elkins *et al*, 2009:134). Global as well as regional events are associated with constitutional downfall (Elkins *et al*, 2009:134). Elkins *et al* (2009:134) find that a ‘shift in the regional death rate in the prior year from 0 to 100% would double the hazard rate for countries in the region’. This implies that less extreme shifts in regional constitution-making activity could still have consequences.

It is also found that shocks like defeat in war, loss and gain in territory, and economic crisis appear to be ‘mostly innocuous’ (Elkins *et al*, 2009:136). Considering 648 cases where a country’s GDP dropped more than 10% (the measure used in this study for economic crisis), it was found that only 7% of cases resulted in constitutional death, which is almost insignificant

(Elkins *et al*, 2009:136). This seems to suggest that economic crises do not have a crippling effect on constitutional endurance, as previously thought.

Regime change, whether democratic or authoritarian, seems to have an impact on constitutional change (Elkins *et al*, 2009:137). It appears that new democrats are more likely to replace the constitution than new authoritarians. However, once in power, democrats are less likely to replace the constitution, when compared to authoritarians (Elkins *et al*, 2009:137). It is also noted that the level of development does not seem to have an effect on constitutional change (Elkins *et al*, 2009:138).

Regarding ethnic heterogeneity, it does seem to be associated with constitutional instability. The life expectancy of constitutions in ‘maximally heterogeneous states is thirteen versus twenty-three for those in maximally homogenous states’ (Elkins *et al*, 2009:138). The tradition of enduring constitutions does seem to increase the life expectancy of future constitutions (Elkins *et al*, 2009:139). ‘Every 10 years of average duration of a previous constitution appears to reduce the probability of constitutional replacement by 12%’ (Elkins *et al*, 2009:139).

#### **2.4.6.2 Design Factors of the Elkins’ study**

Three design factors are identified as strong predictors of constitutional survival. These predictors maintain their strength even when environmental factors which have been found to have a negative effect on constitutional endurance are present (Elkins *et al*, 2009:139). The first of these is inclusion – ‘constitutions written under inclusive conditions, and that also incorporate inclusive provisions, are more like to survive than those who do not’ (Elkins *et al*, 2009:139). The life expectancy of the least inclusive constitution included in the study is 14 years, while that of the most inclusive is 69 years (Elkins *et al*, 2009:139).

The second strong predictor of constitutional longevity is flexibility, or amendment ease (Elkins *et al*, 2009:140). The odds of replacement decrease as flexibility increases. However, an extremely high value of this predictor increases risk of death. Low and high values of flexibility are associated with shorter life spans, meaning that constitutions should aim to have a balance between the two (Elkins *et al*, 2009:140).

The third predictor is that of specificity, which is further subdivided into scope and detail (Elkins *et al*, 2009:141). Increased scope is associated with increased life-expectancy. However,

constitutions which are broad-ranging may have destabilising effects with regard to flexibility. Detail exhibits unmistakably stabilising effects on the constitution. Constitutions that have high levels of detail (like South Africa and India) have life expectancies between 80% and 90%, while constitutions with low levels of detail (like China) have life expectancies between 10% and 15% (Elkins *et al*, 2009:1401).

While it was expected that constitutional review would increase constitutional life expectancy, this hypothesis was disproved (Elkins *et al*, 2009:141). The hypothesis regarding executive and legislative power also seems to have been debunked. Restricting executive power does not seem to trigger constitutional replacement, and neither does enhanced legislative power (Elkins *et al*, 2009:142).

## **2.5 Consociational + Renegotiation**

Extensive research of each of these theories (consociational democracy and the theory of renegotiation) has brought to light certain factors which are present in both. The following table graphically illustrates the factors which coincide, and mutually reinforce each other:

***Table 1: Consociational Democracy and the Theory of Renegotiation***

|                        | <b>Inclusion</b> | <b>Flexibility</b> | <b>Specificity</b> |
|------------------------|------------------|--------------------|--------------------|
| <b>Grand Coalition</b> | ✓                | ✓                  | ✓                  |
| <b>Veto</b>            |                  | ✓ / X              | ✓                  |
| <b>Proportionality</b> | ✓                | ✓ / X              | ✓                  |
| <b>Autonomy</b>        |                  | ✓ / X              | ✓                  |

### **2.5.1 Inclusion**

The grand coalition is inclusive as it attempts to include all significant actors in decision-making institutions. By including a larger number of groups, more groups will have a stake in the endurance of the constitution, which will ultimately extend the life of the constitution (Elkins *et al*, 2009:81). The grand coalition acts to make all significant players stakeholders. This encourages community leaders to promote conciliation amongst their constituents and to advance acceptance of the agreement (Norris, 2008:25). It is this attribute of the grand coalition which makes it inclusive.

Proportionality, an integral part of the grand coalition, adheres to the concept of inclusion as it provides the opportunity for all key players to take part in decision-making. Proportionality ensures the inclusion of key groups.

### **2.5.2 Flexibility**

The grand coalition is flexible as the voting system by means of which the grand coalition is formed enables the coalition to be changed and amended according to the will of the constituencies. The mutual veto provides flexibility in that it gives individual groups the power to change the outcome of any decision.

Proportionality may also be flexible, or inflexible. When proportionality is specified, like in Lebanon where each group is ensured a specific percentage of seats in parliament, it reduces the flexibility of the arrangement. These concepts become interchangeable – as the specificity of the constitution grows, flexibility is reduced.

By recognising group rights, autonomy extends the concept of flexibility, as groups have the power to decide for themselves – interpretation of certain laws is entrusted to each group. However, when the specificity of the group rights is too rigid, it may induce a level of inflexibility within the interpretation of laws, as groups are only given the opportunity to interpret *certain* laws.

### **2.5.3 Specificity**

The grand coalition and the workings thereof may also be specified in the constitution, and the coalition may be very specific in its inner workings. The mutual veto is also very specific in providing rights to every community represented within the grand coalition. Autonomy is also very specific in that it provides very specific rules for each group, and entails the recognition of group rights. However, a high level of specificity mean that the system becomes too rigid.

## **2.6 Summary**

This chapter provided conceptual definitions of the key terms used in this study. The terms defined include constitution, renegotiation, consociational democracy, specificity, inclusion and flexibility. The theories surrounding consociational democracy as well as the theory of renegotiation were extensively discussed. It was determined that, on the basis of Arend

Lijphart's theory, that consociational systems rely on power-sharing arrangements that help to mitigate tension and conflict among leadership elites.

The chapter also looked at the interaction between the three key terms (specificity, inclusion and flexibility), and how these terms work together in order to provide an effective and enduring constitution. By also providing operationalisations for the terms mentioned, this chapter has laid out how the terms will be used throughout the study. The chapter moved on to integrating the two theories which were extensively researched, in order to determine whether the factors present are mutually reinforcing. It was determined the grand coalition and proportionality present within a consociational system reinforce the concept of inclusion. Flexibility is found within the grand coalition, and, when applied correctly, the veto, proportionality and autonomy may also enforce flexibility. All four factors present within a consociational system (grand coalition, veto, proportionality and autonomy) help to enforce specificity.

## **Chapter 3: The Breakdown of Democracy**

### **3.1 Introduction**

From the start, the success of the small republic of Lebanon was precarious at best. The country has few natural resources, and the sectarian nature of the distribution of power was considered to be highly volatile (Gaspard, 2004: 67). In spite of this, the political system operated effectively up until 1975, particularly by regional standards. The country has been governed by a chain of power-sharing deals that separate executive and legislative power by sect (Farha, 2009:83). Parliament has regularly elected presidents of the republic (except in 1988-1989) and parliamentary elections have been held on a regular basis, except during the civil war, which lasted from 1975 to 1990. In this time, mandates were consecutively renewed as the war inhibited the holding of elections. In 2004, the country was deemed as having the ‘freest and most open society in the region’ (Gaspard, 2004:67).

Prior to 1975, Lebanon, the ‘Switzerland of the Middle East’, had been viewed as a success story: ‘In a culture known for authoritarian, radical, and violent politics here was a political system that exhibited stability, prosperity, and political freedom’ (Hudson, 1976:110). Not only is Lebanon set in a region known for violent politics, but it is also deeply divided – not only between Christians and Muslims, but also between sectarian subdivisions. In contrast to this, Elkins *et al* (2009:34, 35) refer to the 1926 Lebanese constitution and the 1943 National Pact as a ‘tragic example of poor fit’. This statement will be elaborated on later in the text. The constitution ensured that power was divided among confessional groups.

The 1943 amendment was intended to act as a ‘temporary’ arrangement in the fair representation of the sects. This division was based on the idea that a confessional foundation for politics would promote national unity (Elkins *et al*, 2009:35). This arrangement remained relatively stable for some time, but change in the demographics of the country rendered the Christian-Muslim ratio of political power undemocratic. The constitution no longer accurately represented society. ‘The Lebanese constitution died in a bloody fourteen-year civil war beginning in 1975’ (Elkins *et al*, 2009:35). Elkins *et al* (2009:35) assert that a ‘firmer sunset provision’ would have helped to avoid such a horrific breakdown of the constitution.

This chapter takes a quick look at the 1926 constitution and a more in-depth look at the 1943 Amendment to the constitution, referred to as the *National Pact*. The chapter then looks at the breakdown of the constitution – specifically looking at questions concerning how and why the constitution failed. By applying the theoretical framework explained in the previous chapters, this chapter will determine whether the systemic factors ingrained in the Lebanese constitution were the cause of the breakdown, and what role external forces played in this breakdown.

### **3.2 Background**

Politically, Greater Lebanon (later independent Lebanon) proceeded as ‘an elaboration of the communal pluralism of the Ottoman autonomous province’ (Harris, 2009:16). The Ottoman era came to an end in World War I, when the Allied Forces defeated the Ottoman Empire (Young, 2010:xix). The arrival of the French and the British to the region saw the establishment of a border between then British Mandate Palestine and Lebanon. This border remains the accepted international border between Israel and Lebanon today (Spyer, 2009: 196). After the First World War, France attained a northern portion of Syria, separating the region of Lebanon in 1920. Lebanon was granted independence in 1943 (CIA World Factbook, 2010). In one of the earliest sessions of the United Nations (UN), a representative of Lebanon summarised the unique nature of his country (Fawaz, 2009:25):

*The history of my country is precisely that of a small country struggling against all odds for the maintenance and strengthening of real freedom of thought and conscience. Innumerable persecuted minorities have found, throughout the ages, a most understanding haven in my country, so that the very basis of our existence is complete respect of differences of opinion and belief.*

The religious composition, and the interaction of these groups with each other, has dictated almost all the political, cultural and economic events in the country (Fawaz, 2009:26). Most Lebanese citizens fall into one of three sects - Shi'a Muslims, Sunni Muslims, and Maronite Christians. Over a dozen other groups exist in the country, including Greek Orthodox and Druze (Farha, 2009:83). Arabic is the official language, but French, English and Armenian are also spoken (CIA World Factbook, 2010).

### **3.3 1926 Constitution**

The 1926 constitution laid out principles that were to become an intrinsic part of Lebanese society, including personal liberty, freedom of conscience and beliefs, equality of all Lebanese people and education for all (Fawaz, 2009:31). The constitution was drafted by Lebanese jurists in cooperation with the French (Seaver, 2000: 255). It was designed in such a way that it would provide a basis for power sharing, which would in turn be part of the nation-building process. Consequently, true power remained in the hands of the religious authority and the affluent business class (Fawaz, 2009:31). The Lebanese republic of 1926 was comprised, according to a census, of only a slim Christian majority. It must however be noted that the series of censuses held between 1922 and 1932 were construed as being ‘politicised’ and ‘skewed’ (Farha, 2009:84), which in turn brought into question the legitimacy of the constitution.

### **3.4 1943 National Pact - *Al-mithaq Al-watani***

On the 28<sup>th</sup> of August 1943 parliamentary elections were held (Young, 2010:xxii). Christian Bishara al-Khoury is elected president for a six-year term, who then in turn appoints his Sunni rival Riad al-Solh as prime minister. At this time, the government entered into negotiations with French delegate-general, Jean Helleu, in order to revise the constitution and put into practice the provisions needed to gain independence (Young, 2010:xxii).

On the 8<sup>th</sup> of October, Prime Minister al-Solh presented to government the general outlines which would later become the National Pact (Young, 2010:xxii). France rejected the Lebanese bid to unilaterally revise the constitution, but the Lebanese parliament formally sanctioned measures which effectively granted the country independence. France attempted to curb this initiative by arresting key actors, but foiled under popular pressure and British opposition (Young, 2010:xxii).

The 1943 National Pact was devised by the Maronite president, Bishara al-Khuri and the Sunni prime minister, Rivad al-Sulh, when Lebanon gained independence from France (Seaver, 2000:254). The Pact was set up as a carefully constructed verbal agreement. The 1932 census was used as standard when the 1943 National Pact was drafted. This Pact governed the allocation of legislative and executive power after Lebanon’s independence (Farha, 2009:84). It stipulated that the Christians in the country would give up all military pacts with the West, and the Muslims

agreed to break free from any pan-Arab aspirations, and recognise Lebanon's geographical boundaries (Seaver, 2000:254). The hope was to build an overarching Lebanese national identity – both for Muslims and Christians. This 'informal' arrangement reserved the presidency for a Maronite Christian, the premiership for a Sunni Muslim and parliamentary seats for a 6:5 ratio of Christians to Muslims – roughly in line with the census. Shi'a Muslims were only officially included in 1947, when the position of parliamentary speaker was strategically reserved for them (Farha, 1947:84 and Seaver, 2000:255). As mentioned, parliamentary seats would also be appointed on a sectarian basis, in keeping with the 6:5 ratio of Christians to Muslims. Civil service appointments and public funding decisions would also be based on sect. Numerical weakness denied the Muslim Druze community privileged office in the 1943 National Pact (Rabil, 2003:46).

The National Pact acted as a supplement to the 1926 constitution. The constitution provided for parliamentary elections every four years, which then elects a president of the republic to serve a six-year term (Seaver, 2000: 255). The president then appoints a prime minister (a Sunni Muslim), who then in turn forms a cabinet 'that will hold the confidence of the parliament' (Seaver, 2000:255). By the 1970s the president had learned to make use of the power conceded to him by the constitution – including veto authority, decree powers, the power to disband the parliament and the power to appoint and discharge the prime minister and the cabinet (Seaver, 2000:255). This in turn allowed him to gain a significant amount of independence.

Before 1975, the provisions in the constitution which provided that the confessional groups in Lebanon would be represented proportionately in parliament were praised by policy-makers and scholars. It was applauded for succeeding in maintaining 'civil order in a deeply divided, modernising society set in a tumultuous region' (Seaver, 2000:255). Few scholars recognised the weak structure upon which the political consensus was built (Seaver, 2000:255).

### **3.5 Constitutional Design – Consociational Democracy**

The origin of Lebanon's multi-confessional elite lies in the Ottoman period, and became institutionalized under the French Mandate. The first grand coalition was put together in parliament and the cabinet representing the five largest communities in Lebanon, following the prerequisites stated in the 1943 National Pact (Dekmejian, 1978: 253). In reality, the elite cartel

in Lebanon operated with some success in promoting 'co-optation and circulation without changing the basic formula established by Articles 24 and 95 of the 1926 Constitution and by the National Pact of 1943' (Dekmejian, 1978: 254). Governmental interference in elections often worsened conflict between elites, but the electoral mechanism promoted elite accommodation and inter-sectarian peace (Dekmejian, 1978: 254). Lebanese governments had respected cultural autonomy and internal self-governance, except when using (infrequently) the army against the Palestinians, who were not considered a main confessional segment (Dekmejian, 1978: 257).

Lebanon's political system was designed with one main intention in mind – to cope with hostility between Muslims and Christians. The design was simple in its rationality – preset proportional representation consistent with religious sect in all governmental institutions (Hudson, 1976:114). It has been stated that the confessional system itself was the origin of the problem, and not the failings of personal leadership (Hudson, 1976:114). This study contends that it was not the confessional nature of the system, but rather the unsuccessful application thereof that led to its ultimate breakdown.

Hudson (1976:117) argues that although incompetent, corrupt politicians were deemed one of the most important factors in the breakdown, the real causes were systemic. Hudson (1976:113) notes that the intrinsically static nature of consociational democracy inhibits the ability of the system to accommodate 'the enormous social and political forces unleashed by social mobilization'. The solution of proportional representation aggravated problems in Lebanon because of its inherent immobility. Growing dissatisfaction with the failure of the Lebanese state to modernize and offer sufficient services for the modernizing society (Hudson, 1976:114). Despite its inherent vulnerability, Lebanon's consociational democracy represents the most successful case in the developing world (Seaver, 2000:249).

Lebanon served well as an example of this model until 1975, when civil war broke out (Lijphart, 1984:40). The 1943 'National Pact', an informal and unwritten agreement, set out a grand coalition of top officeholders deemed a 'quasi-presidential system' (Rondot in Lijphart, 1977:148). Lijphart (1977:149) identifies the weakness in the consociational democracy as the 'inflexible institutionalisation of consociational principles'. The 'preset' electoral proportionality of consociational principles did not allow for the demographical change in Lebanon – the Christian majority slowly giving way to the Muslims (Lijphart, 1977:149).

### **3.5.1 Flexibility**

Seaver (2000:258) stresses the challenges faced by the Lebanese system in the wake of the Arab-Israeli conflict. At various times after 1943, regional clashes were the main source of elite dissonance in Lebanon. The pressure on the Lebanese system weakened it considerably. However, the problem was systemic – had the Lebanese system been more flexible and inclusive, it may have survived the onslaught. Lebanon lost its self-asserted ideological neutrality, and with it divided the masses, which in turn put even more strain on the already weakened system.

By opting for preset proportional representation, the design exacerbated other problems because of the resistance to political change which it created. One of the most serious problems was that of lack of administrative efficiency, specifically regarding decision-making and implementation. From the 1950s onwards there had been an increasing feeling of discontent at the failure of the Lebanese state to modernise and offer sufficient services for the modernising society (Hudson, 1976:114). This speaks to the issue of flexibility – had the Lebanese constitution been more flexible, it may have been able to modernise more effectively, and prevent the breakdown of the regime.

In 1957, the Lebanese state adhered to the Eisenhower Doctrine, which declared the ‘preservation of the independence and integrity of the nations of the Middle East’ as ‘vital to national [American] interest’ (Schenker, 2009:215), despite widespread discontent. This shows that the state was not acting in accordance with citizens’ interests, which in turn may mean that the state was not adequately representative, or inclusive, of the interest groups within Lebanon. The elites struggled to integrate the growing number of interest groups and parties into the system, not just because the system was inflexible, but also because the elite feared that the state would become a radical Muslim state should these groups be integrated (Seaver, 2000:254, 255). The preset nature of the Lebanese confessional system ensured that loyalty went to sect and leader, which is good in a confessional system, but inherently destabilised the flexibility of the legislature as well as the executive.

The powers conceded to the president by the Pact curbed the flexibility of the system as it enabled President al-Khoury to extend his term as president, albeit that many considered this move to be illegitimate. Electoral law was subject to the manipulation of the president (Rabbath

in Donohue, 2009: 2511, 2512). The veto authority granted to the president undermined the flexibility of the system as the president could alter any decision passed by parliament. The president was also granted the power of appointing a prime minister, and while it was preset that the prime minister be a Sunni Muslim, the president could choose to appoint someone whose views did not necessarily represent those of the Sunni community. The political system also provided for a mutual veto, although this was again an unwritten, informal part of the constitution (Lijphart, 1977:149).

### **3.5.2 Inclusion**

The 1926 Constitution officially recognises 17 religious groups, Muslim, Christian and Jewish (Donohue, 2009:2510). Article 7 ensures that all Lebanese citizens are equal before the law. Article 9 guarantees respect for their personal status, laws and religious interests, and Article 10 grants them the right to decide on education (Donohue, 2009:2510). Article 95 grants the country a communitarian basis: ‘Temporarily, with the intention of assuring justice and harmony, the communities will be equitably represented’ (Article 95 in Donohue, 2009:2510).

The breakdown of the Lebanese confessional system has been attributed to several contributing factors, one of which is the demographic shift which changed the ratio of Muslims to Christians, and the inability of Lebanese elites to deal successfully with ‘regional development and socioeconomic disparities which generally, though not exclusively, disadvantaged the Muslims’ (Seaver, 2000:257). Another contributing factor is upsurge of pan-Arabist intelligentsia supportive of radical socio-political change in Lebanon.

Although the election methods used for the president and the members of parliament did not belong to the customary proportional representation systems, the effects were proportional (Lijphart, 1977:148). By pre-determining that the president be a Maronite, a contest among the different sects was avoided. Parliamentary elections were conducted in line with the ‘plurality and multi-member constituency system’ (Lijphart, 1977:148). The legislature was divided into a 6:5 ratio of Christians to Muslims. This electoral system was applauded as a proportional system producing harmony and compromise, as candidates required not only votes from their own sect, but also from other sects (Lijphart, 1977:149).

The Pact called for a Maronite president, a Sunni prime minister, a Shi'a chairman of the legislature, and a Greek Orthodox deputy chairman and deputy prime minister (Lijphart, 1977:148). The relative importance of these offices reflected the numerical strengths of the sects (Lijphart, 1977:148). Sects were also proportionally represented in the cabinet, forming part of the grand coalition. In looking at the different factions and class groups that seek to be represented in the Lebanese authority, it may be noted that many factions need to be taken into account in the drafting as well as the implementation process of the constitution. While certain key groups were granted key positions within the executive as well as the legislature, the Pact failed to grant the Muslim Druze community privileged office, which in turn led to more discontent. The Muslim lower- and middle classes were also shut out of the political system, which in turn fuelled their need to improve their position. The PLO took advantage of this and sought to encourage Muslim discontent with the Lebanese system. This in turn caused the deligitimisation of Lebanese institutions.

The cleavage can not only be attributed to sectarian hostility; identity and class divisions also played an important role in the resentment between groups, which eventually evolved into hostility. The gap between rich and poor grew as prices rose, wages declined, national production rates dropped in the export- and service-orientated economy (Seaver, 2000:257). The economy broke down (Hudson, 1976:110). The Middle East Oil revolution (1973-1974) and social unrest over the lack of attention given to the impoverished regions in the southern part of Lebanon exacerbated the problem. Although scholars have placed the blame of regime breakdown on the interference and exploits of Israel and Syria, as well as the Palestinians, it is clear that the deficiencies of the power-sharing arrangement in regulating disputes between elites as well as elite-mass conflict created ample conditions for regime collapse (Seaver, 2000:257).

The drafting of the 1926 constitution was done by Lebanese jurists in cooperation with the French, which meant that the drafting of the constitution was not inclusive, which in turn may be a reason for the discontent of those who were governed by it. The 1943 National Pact was devised by the Maronite president and the Sunni prime minister. Though this arrangement seems more inclusive, the fact that the Maronite president had appointed the prime minister may be where the fault lies. The drafting of this amendment can also be accused of being non-inclusive.

### **3.5.3 Specificity**

The National Pact is described as a ‘carefully constructed verbal agreement’. The ‘unwritten’ nature of the Pact reduced its adherence to the concept of specificity as the agreement failed to specify certain conditions. The Pact failed to address the conflicts which had arisen in the region, which in turn allowed the interference of the neighbouring countries in Lebanese affairs. Amendment procedures were not clearly specified within the arrangement, which could have helped to prevent the collapse of the system. Had amendment procedures been clearly specified, discontented parties may have been able to peacefully integrate representatives of their interests into the system.

An unwritten part of the constitution provided that the regime will not interfere in ‘intra-confessional social relationships’ (Binder in Lijphart, 1977:149). Matters such as inheritance, marriage and divorce were administered in separate sectarian courts. Each sect was able to have their own social, recreational and welfare organisations, making segmental autonomy another strong consociational element of the Lebanese system (Lijphart, 1977:149).

## **3.6 Breakdown**

The Lebanese consociational system persevered for 32 years amidst periods of severe internal strain, including the incursion of Palestinian refugees and guerrillas, the 1958 civil war, the Six-Day War of 1967, and the Palestinian Liberation Organisation’s (PLO) expulsion from Jordan in the early 1970s (Seaver, 2000:249). Despite its inherent fragility, Lebanon’s consociational democracy represents the most successful case in the developing world (Seaver, 2000:249). The breakdown thereof consequently came as much of a surprise.

### **3.6.1 1958**

The brief civil war in 1958 was an indication of the system’s intrinsic weakness (Seaver, 2000:254). Modernisation and social mobilisation were also important indicators of instability, as these forces create problems for democratic regimes. These forces increased the demands for decision-making in the Lebanese system, and played a part in the disproportionate regional development in the country (Seaver, 2000:255). At the same time, elites were unable to incorporate the growing number of untraditional interest groups and parties into the system, in

part due to their ‘well-justified fear’ that it would produce a radicalised Muslim state (Seaver, 2000:254, 255).

Despite having some overlap in interests, confessional groups in Lebanon clung to communal solidarity and feudal leadership, weakening the fabric of Lebanese society. The lack of national sentiment meant that loyalty went to sect and leader (Rabil, 2003:46). The 1958 Civil War broke out when Muslims in support of the Egyptian president Gamal Abdel Nasser challenged Christian pro-Western forces (Rabil, 2003:47 and Farha, 2009:84). The Maronite president at the time, President Camille Chamoun, called on the United States for aid. The U.S. responded by landing Marines in Beirut, and slowly brought the fighting to an end by means of negotiation. Stability was temporarily restored, but still rested on the fragile balance of power between confessional groups. This balance was disrupted once again when the Palestinians living in the country became an additional actor, bringing their ‘Palestine Problem’ into domestic politics in Lebanon (Rabil, 2003:47).

Suspicious around the extravagant privileges of the Maronite president and enthusiasm for Arab unity under Nasser drove Muslim demonstrators to publicly trample the Lebanese flag (Farha, 2009:84). It was concluded that unless the US intervened in the advancing of General Fuad Chehab as replacement for the domineering President Camille Chamoun, ‘constitutional changes to make Lebanon a Muslim-governed country would become the armed rebels’ minimum demand’ (Farha, 2009:84). Upon gaining office, Chehab issued a decree mandating Muslim-Christian equality (noted as *munafasa*) in all administrative positions as a temporary measure ‘for the sake of justice’ (Farha, 2009:84).

The National Pact embodied an agreement on Lebanon’s foreign policy that it should not become overly associated with the Christian West, or the Islamic Arab world (Hudson, 1976:115). Prior to 1975, Lebanese policy-makers had been able to adhere to this regulation, but the arrangement did not ‘adequately encompass the conflicts that have arisen within the region itself and the concomitant interference of the rival great powers in them’ (Hudson, 1976:116). In the 1950s, Lebanon became caught between the Nasserist movement and the pro-Western, conservative opposition which, in concomitance with internal problems, led to the temporary breakdown of civil order in 1958. Not only was the shifting of the demographic balance rocking the fragile

power-sharing arrangement, but external ideological challenges were also becoming an important factor in destabilising the already delicate balance of power (Farha, 2009:84).

### **3.6.2 Leading up the 1975 Civil War**

Lebanon's Muslim community is mainly made up of three sects: Shi'a, Sunni and Druze. The Christian population consists of several sects, including Maronite, Greek Catholic, Armenian Orthodox, Greek Orthodox, Armenian Catholic, and others (Seaver, 2000:254). Protestants and Jews also reside in Lebanon, but in smaller numbers. The Palestinians living in Lebanon at the time of the 1975 civil war were made up of about 85% Sunni Muslims, and 15% non-Maronite Christians (Seaver, 2000:254). Most of the Palestinian Muslims were not lawful citizens of the Lebanon (Seaver, 2000:254).

Palestinians have comprised a large and significant part of Lebanese society since they were driven from Israel in 1948 (Hudson, 1976:116). The 1967 Six-Day war played a big role in mobilising the Palestinian role in Lebanon. Though Lebanon had previously gotten away with remaining detached from the Arab-Israeli dispute, the 1967 war forced Lebanon into becoming involved (Seaver, 2000:262). The Israeli army's victory and the support from the United States to Israel ignited a feeling of Arab nationalism in Palestinians. The Palestinian Liberation Organisation's (PLO) guerrilla activities aggravated the Maronite-led government, the government that was trying to avoid military confrontation with Israel (Seaver, 2000:259).

The 'delicate balance of religious confessional power in the absence of genuine national integration' was put under severe strain when the PLO started using Lebanon as base for its organisation as well as its clandestine activities (Rabil, 2003:43). The Muslim communities eventually became frustrated with the unrepresentative power-sharing agreement and sought to improve their standing in the system, and the PLO became the perfect instrument for achieving this (Rabil, 2003:43). In order to protect their position, the Christians (specifically, Maronite Christians) formed an alliance with Israel. This alliance grew strong with the Maronite Christian leader Bashir Jumayil's rise to power, and from Israel's desire to 'reinforce its hold over the West Bank against the backdrop of its withdrawal from the Sinai Peninsula following the peace treaty with Egypt; and to deny the PLO and Syria domination over Lebanon' (Rabil, 2003:43). Syria reacted in an attempt to prevent an Israeli hold over Lebanon, and to gain regional power.

While in the early 1970s intra-Arab hostility had been somewhat subdued, but far from harmonious, things heated up with Egypt's separation from the other Arab confrontation states (Hudson, 1976:116). Hopes at any comprehensive approach to the Arab-Israeli conflict were dashed, and as a result civil strife in Lebanon escalated at alarming rates. The Palestinian dimension within Lebanon at the time forced the country to take notice of the situation, as it previously had not (Hudson, 1976:116). The Palestinian resistance movement began to undertake fierce attacks in Israel, but also in Lebanon. One of the main aims of these attacks was to turn Lebanese society against the Palestinians and 'destroy their capacity for attacking Israel' (Hudson, 1976:116).

Despite attempts to thwart their cohesion, unity between the Lebanese Arab-Muslim nationalist groups and the Palestinian resistance started to grow in the 1960s. The Palestinian activism coincided with the Lebanese Muslim lower- and middle classes' discontent. Both these groups had been practically shut out of the political system, and sought to improve their position. The movements became interlinked – the discontent Lebanese Muslims and the Palestinian Liberation movement (Seaver, 2000:262). It may even be said the Palestinians fuelled Muslim nationalist discontent and served as a model for organising this discontent into a full-blown resistance (Hudson, 1976:116). A consequence of this was the delegitimisation of Lebanese political institutions.

The Israelis played a big role in striking the Lebanese state, putting it under constant humiliation, which in turn was not good for political development. By 1973, a Palestinian-Christian rightwing confrontation was in the making. The Kata'ib (the Maronite party), the president and other conservative Maronite factions openly and violently challenged the Palestinians, and sought to diminish the power of Muslim leaders (Hudson, 1976:116,117). Arab Nationalism and radicalism further fuelled antagonism towards the West, which in turn aggravated the tension in Lebanon – more specifically between Sunni Muslims and Maronite Christians (Hudson, 1976:110).

Lebanon also had problems of corruption. The Lebanese society had been relatively tolerant of political venality, but in the years leading up to the 1975 Civil War this tolerance had been sorely abused (Hudson, 1976:115). The bureaucracy, parliament and the presidency was riddled with

corruption and favouritism. Corruption weakened the legitimacy of the system. The ‘final straw’ was the cataclysmic weakening of Lebanon’s regional position (Hudson, 1976:115).

### **3.6.3 The 1975 Civil War**

By 1975, the consociational-confessional system had fallen apart. What had been a crisis now had become ‘full-scale chaos’ (Hudson, 1976:117). Dekmejian (1978:255) identified a pattern within the Lebanese political system:

*[A]s soon as Lebanese politicians lose in the elite cartel, they will try to broaden the scope of conflict to attract foreign supporters in an attempt to defeat their opponents. Also once in power, the top members of the elite cartel often use unconstitutional means to reduce their opposition to lessen its chances of achieving power. Furthermore, it is common for individual zu'ama' to exacerbate intersectarian conflict for political ends. A number of non-Christian politicians have perceived the 1975 conflict as a means of reaching the presidency-heretofore a Maronite preserve.*

Elites were openly in conflict, inciting restlessness among their followers. Radical socialist and Arab national groups and militias undermined the control of traditional elites over their Muslim-left constituencies (Hudson, 1976:117). The military was now regarded as a party to the conflict and lost legitimacy as an independent balancer. The presidency, under Chehab, was seen as illegitimate by the Muslims.

A Sunni endeavour, in association with the armed Palestinian groups as well as Kamal Jumblatt’s Progressive Socialist Party, to override Maronite political dominance in part sparked the 1975 civil war (Farha, 2009:84). At the outbreak of the war the country was divided into three main factions: the conservative ‘rightist-Christian’ faction; the revisionist ‘leftist-Muslim’ camp; and the various Palestinian forces, which later aligned themselves with the revisionist camp, and helped to train, arm and man its various militias (Badran, 2009:37). The war claimed thousands of lives, wounded and made homeless tens of thousands – a large number of Lebanese, mostly Christian Middle Class, fled from the country.

The start of the 1975 Lebanese civil war is marked by two events, the first of which occurred in February of that year. The Lebanese fisherman’s unions relatively peacefully protested the establishment of *The Protein Company*, a modern, monopolistic fishing company largely owned

by former President Chamoun, who was ousted in 1958 (Seaver, 2000:255). A strike held in Sidon some days later provoked intervention by the Lebanese Army, which fired at protesters, killing the Sunni leader of the Popular Nasserist Organisation of Sidon. In the two weeks following this event, most of Lebanon's major cities were seized with demonstrations, the most intense of which in Sidon. Palestinian commandos took up arms alongside radical Lebanese militias in an attempt to prevent the Lebanese Army from taking over the city (Seaver, 2000:255). This degree of cooperation between Palestinians and leftist Lebanese demonstrated that socio-economic and political discontent was becoming linked with the Palestinian issue (Seaver, 2000:255).

The second of these hallmark events broke out on the 13<sup>th</sup> of April 1975. The leader of the Maronite party was attending the consecration of a new church when unknown assailants opened fire on the church. Three Christians were killed (Seaver, 2000:255). Within hours, a group of Maronite militias retaliated by attacking a bus containing mostly Palestinians on their way back to a refugee camp killing 27 passengers and wounding twenty others (Seaver, 2000:256). This incident sparked hostility and fighting between the Kata'ib, Palestinians and leftist Muslims throughout the entire country. Over 300 people were killed within three days (Seaver, 2000:256). The leader of the Progressive Socialist Party and the Lebanese National Movement umbrella organisation, Kamal Jumblatt, publicly announced a boycott of government containing Kata'ib members. The leader of the PLO, Yasir Arafat, attempted to pacify the situation. Kata'ib, the National Liberal Party and the National Bloc (the Maronite parties) removed their ministers from cabinet, and as a result Prime Minister Rashid al-Sulh resigned (Seaver, 2000:256). Sunni, Shi'a and Druze leaders eventually sided with Jumblatt, despite their opposition to his political demands, in boycotting the Kata'ib (Seaver, 2000:256,257).

The country started to split into two 'general' movements - the 'conservative' Lebanese Front and the 'progressive' Lebanese National Movement which advocated social reform (Seaver, 2000:257). The Lebanese front was backed by the Lebanese Forces and led by Maronite elites including former president Camille Chamoun and Father Kassis of the Lebanese Monastic Orders (Seaver, 2000:257). Fighting continued throughout October 1976, but temporarily ceased when other Arab governments intervened. The presence of the Arab Deterrent Force (ADF), which was primarily made up of Syrian troops, helped to ease general hostilities.

On the 14<sup>th</sup> of February, 1976, then President Franjeh, who was known to be anti-Palestinian, announced the terms of a solution which had been drafted by Syrian officials (Hudson, 1976:118). Some factions agreed to this solution, but not all. The solution included re-allocating parliamentary seats on a 50-50 basis as opposed to a 6:5 ratio of Christians to Muslims, electing the prime minister directly through parliament, as opposed to the President appointing this position. It also included the abolishment of proportional sectarian representation in the administration, and reaffirmation of the 1943 National Pact: the President a Maronite Christian, the Prime Minister a Sunni Muslim, the Speaker of the Chamber of Deputies a Shi'a Muslim and the Deputy Speaker a Greek Orthodox Christian (Hudson, 1976:118). The solution reiterated the terms of the 1969 Cairo agreement in which Palestinians were to be careful not to infringe upon the sovereignty of Lebanon, but were given considerable autonomy in the country (Hudson, 1976:118). The solution was not revolutionary, it was 'incremental and accommodative' to the system already in place (Hudson, 1976:119), but it failed to address some of the most important inefficiencies of the system. But the problem was the model – the static characteristic of the system was 'unlikely to bring real stability, political normality, and above all political legitimacy back to the Lebanese political system' (Hudson, 1976:119).

This solution proved completely unsuccessful when at the end of March a new round of even more violent fighting broke out. Moderate and radical Muslim-left factions opposed the idea that the president remain a Maronite. It was generally agreed that non-Christians were now the majority in the country (Hudson, 1976:119). The Maronite-right was faced with a dilemma: scrapping confessionalism would open the way to becoming overwhelmed by Muslim factions, but in order to bring order to the system, the Maronites would have to concede at least some power. The Syrian solution was ineffective in addressing the duality of power, and the conditions that were the underlying cause of the conflict were not addressed (Hudson, 1976:119). The Syrian plan completely failed, with renewed depths of violence spreading through Lebanon. The Muslim-left rejected the plan as inadequate, and the Christian-right found it too radical.

Unfortunately, internal destructive fighting and intervals of relative peace continued for fifteen years. The fighting was in large part fuelled, but occasionally mitigated, by the dominant presence of Syria and Israel in Lebanon (Seaver, 2000:257).

### **3.6.4 Foreign Influence**

Lebanon was a weak state with a partly-democratic system. This set the country up to become a 'playground' for rival movements in the Arab world, specifically relating to imperialism and Zionism (Rabil, 2003:46). Israel and the radical Muslim Arab world exacerbated rather than moderated the conflict (Hudson, 1976:117).

Israel's intervention in Lebanon was fuelled by the growth of the PLO's presence in the south of Lebanon in the early 1970s. The Lebanese war led to unparalleled public questioning of the Israeli military's objectives, and calls to end the war as soon as possible (Kaye, 2002-03:564). Israeli presence in Lebanon continued well into the 1980s (Israel only officially withdrew from the security zone in 2000), despite calls from the UN to do so. The Six-Day War not only affected the Lebanese-Israeli relationship, but also the Lebanese relationship with Syria. Syria looked upon itself as the sole patron of Lebanon, as many Syrians believe that Syria's border with Lebanon was drawn up by France to 'suit its colonial interests' (Seaver, 2000:260).

The war has been famously referred to as the 'war of the others' (Tueni in Farha, 2009:84) as the domestic quarrel increasingly reflected 'the interests of the external powers that armed and financed its combatants' (Farha, 2009:84). The sustainability of the war was reliant on foreign sources. Regional powers supplied the arms and ammunition, which meant that those in support of regional interests were those supported by external forces (Badran, 2009:35). Nevertheless, Lebanese combatants were not capable of overrunning each other, and as a result the country was settled in a stalemate – politically, ideologically and socially, and no single group was capable of scoring a significant victory over the other (Badran, 2009:36).

### **3.7 Summary**

By exploring the breakdown of democracy in Lebanon from 1926 to 1975, this chapter identified the factors present in the drafting and content of the 1926 and 1943 constitutions which inevitably led to their demise. The chapter looked specifically at questions pertaining to how and why the constitution failed. Not only were the external forces identified, including the influences of Syria, Israel and the Arab-Israeli conflict, but also the internal deficiencies. Internal deficiencies within the system include the inability of Lebanese elites to incorporate the growing number of untraditional interest groups and parties into the system.

The application of the theoretical framework determined that the systemic factors ingrained in the Lebanese constitution, specifically relating to flexibility and inclusion, were the cause of the breakdown. With regard to inclusion, the constitutions were determined to be not inclusive in all aspects. With regard to flexibility, both constitutions, in drafting and in content, were unable to deal effectively with changing circumstances (internal and external) in Lebanon. With regard to specificity, it was found that neither constitution had been sufficiently specific.

## **Chapter 4: Leading up to Taif**

### **4.1 Introduction**

The original Lebanese constitution catered for the Christian majority and the Shi'a Muslim, Sunni Muslim, and Druze minorities (MidEast Web Historical Documents: The Taif Accords, 2002). Demographic shifts and religious- and clan loyalty created tension in the country, and Lebanon fell into a long, violent period of civil war. The presence of the PLO in Lebanon exacerbated the internecine conflict (MidEast Web Historical Documents: The Taif Accords, 2002).

Greatly exacerbated circumstances in Lebanon forced the region, and the world, to take notice. This chapter will discuss the events leading up to the Taif Accord as well as the negotiation of the agreement, in terms of the framework explicated in Chapter 2. The chapter first looks at how the situation intensified from 1988 onwards, and more specifically, the actors involved. The chapter goes on to examine in detail the effect that a split government had on the worsening conditions, as well as the role of external forces in bringing about a cease-fire and instigating negotiations.

The chapter then moves on to examine those involved in the negotiations, and the conditions in which the negotiations took place. In explaining this, the chapter also looks at some peculiarities regarding the Taif Accord. The chapter then turns to the framework provided by Elkins *et al* (2009), which entails a discussion on the level of inclusion, the degree of flexibility as well as the concept of specificity. The chapter aims to determine whether the drafting of the Taif Accord fits into the framework, and as such possesses the necessary inclusion, flexibility and specificity in order for the Accord to endure.

### **4.2 The situation in 1988**

The Lebanese civil war was marked by the involvement of regional powers. Syria, a main actor throughout the civil war, was granted access to Lebanon in a silent agreement between the US and Israel in 1976 in order to 'restore order' (MidEast Web Historical Documents: The Taif Accords, 2002). Israel in turn invaded Lebanon in 1982. This set into motion the Shi'a-led

Hezbollah movement, with support from the Palestinian Shi'a community. The movement was aided financially and supplied with ammunition by Iran. The movement gained military and political power and effectively became the rulers of areas in southern Lebanon not under the control of Israel (MidEast Web Historical Documents: The Taif Accords, 2002).

Lebanon split into religiously-motivated, armed militias, including the Druze Al-Amal movement and the Christian Phalanges. The capital, Beirut, became anarchic and violent amidst the inter-group rivalry, including car bombs, assassinations and kidnappings (MidEast Web Historical Documents: The Taif Accords, 2002). The multi-national force sent by the USA left after several successful suicide attacks on the force by Muslim militias. The Syrian army maintained its presence in several areas of the country, specifically the Beka valley in Eastern Lebanon, and maintained some semblance of order (MidEast Web Historical Documents: The Taif Accords, 2002).

#### **4.3 The events leading up to Taif**

Lebanon was left broken in 1988 after nearly fifteen years of warfare (Mackey, 2008:131). The Lebanese army was outnumbered by militiamen; 25 000 Syrian soldiers occupied the east and the north; in the south, Israel claimed its 'security zone'; and Hezbollah, backed by Iran, was planning to destroy Lebanon as a secular state (Mackey, 2008:131).

##### **4.3.1. The Presidential Deadlock**

In the summer of 1988, the rival parties involved in the Lebanese civil war reached an unprecedented political deadlock (Zahar, 2002:569). The main actors in the dispute could not agree on a presidential candidate to fill the vacant presidency. Gemayel (president from 1982 to 1988) reached the end of his term on the 23<sup>rd</sup> of September 1988, and was constitutionally barred from re-election. The presidential election resulted in a stalemate marking the end of the First Lebanese Republic. No successor to Gemayel was elected (Young, 2010:xxvii). Despite attempts by Syria to fill the vacancy, the position remained unfilled.

Gemayel hastily appointed General Michel Aoun, a commander in the Lebanese Armed Forces who had been aspiring to become president, as prime minister in a military government of transition (Norton, 1991:460). Gemayel claimed that he had adhered to constitutional provision

regarding succession should there be no election. The appointment of Aoun, a popular Maronite, was seen by Druze, Shi'a and Sunni opposition as an attempt by the Maronites to maintain their advantage. The appointment of General Aoun as head of a cabinet of transition was deemed unconstitutional by Muslim leaders, who formally recognised the last prime minister, Salim al-Huss (Zahar, 2002:570). Those state institutions that had survived the civil war were now at great risk. The dilemma of the vacant presidency led to the emergence of two opposing governments (Norton, 1991:458).

#### **4.3.2 The Split in Government**

Both rival governments, one led by Aoun, the other by acting Prime Minister Salim Huss (a Muslim), claimed to be legitimate, although neither succeeded in making good on this claim (Norton, 1991:460 and Young, 2010:xxviii). It is important to note that, though undermining Lebanon's functioning as a unified state, no noteworthy Lebanese party or armed force has advocated the abolishment of Lebanon as a political entity (Norton, 1991:460). However, the competing governments threatened to formalise the split of Lebanon's political system. The presidential vacancy led Lebanon to face a 'constitutional vacuum'. The Muslims under Huss demanded that political reforms come before the election of a new president, while their Maronite opponents sought the election of a president first, and political reforms later (Norton, 1991: 460). The split in government intensified the division in Lebanon.

The civil war had removed most of the presidential power, but the Maronites still viewed the presidency as a symbol confirming their existence in Lebanon (Mackey, 2008:132). The problem lay in the mechanism in which the president should be chosen. The mechanism had been constructed by the reigning *zuama* (the Lebanese elite) 45 years before in order to accommodate Lebanon's unique political system (Mackey, 2008:132). The 'cunning' men (Maronites, Sunnis and Shi'a) who had made the mechanism work effectively were no longer in power – some had been assassinated during the war, while others had simply died during the protracted conflict. Some were in exile, and others had been ousted by militias (Mackey, 2008:132).

In reality, the Lebanese themselves no longer had full power over the distribution and application of power. Any chosen president would have to keep Syrian military leader Hafiz Assad happy, as his army stood at the ready to intercede between the militias (Mackey, 2008:132). Syria proposed 78-year-old Suleiman Franjieh (a teetering supporter of pre-war politics) as president, but those

remaining deputies of the 1972 Lebanese parliament refused Syria's choice. The day before Gemayel's term was to expire (21 September 1988), the absolute need to reach an agreement forced the remaining members of the Chamber of Deputies to meet in the old parliament building in the west of Beirut. Prime Minister Selim Huss braved the streets surrounded by bodyguards in order to attend. But the Chamber of Deputies did not assemble, as the Maronite deputies refused to leave their fortress of security, referred to as 'the Mountain'. This lack of Maronite representation meant that there was no quorum, and as such, no president (Mackey, 2008:133).

Michel Aoun, appointed by Gemayel as head of the interim government, did not fit entirely into any major political grouping in Lebanon. A self-proclaimed nationalist, Aoun believed that the existence of Lebanon was gravely in danger because of the Syrian occupation. Unlike some Maronite nationalists, Aoun showed no interest in cooperating or accommodating the Muslims – a necessity should the Lebanese state ever be restored (Mackey, 2008:134, 135). In 1989, Aoun shamelessly moved to take over the Lebanese presidency with a vow of re-establishing 'central authority and Lebanese sovereignty' (Mackey, 2008:135). Aoun held command of only about 20 000 men, but Iraqi support by means of arms made Aoun confident (Mackey, 2008:135). This split brought a new facet to the conflict. Iraqi aid for General Aoun, in the form of arms shipments, as well as continued support of the Lebanese Forces from the Iraqis raised the likelihood of direct conflict between Syria and Iraq, as Syrian stakes in the war were being compromised (Norton, 1991:460).

#### **4.3.3 40 Days of Violence**

During March and April of 1989, for 40 consecutive days, the Syrian and Lebanese armies fought, mortars and rocket launchers flying over Beirut. On the 13<sup>th</sup> of April, the 14<sup>th</sup> anniversary of the outbreak of the civil war, roughly 10 000 rockets and mortar shells hit the Christian enclave at the foot of the Mountain (Mackey, 2008:137). The Christian enclave had been spared much of the war, until this crippling blow. Food and energy supplies were destroyed and depleted. Debris of war filled the streets of previously untouched cities. Food and goods prices soared in the Christian enclave. The attack brought doubt to many Christians, including leaders in the Lebanese Forces, whether the 'Christian-led defiance of Syria could succeed' (Mackey, 2008:137). Aoun refused to accept reality, and stuck to his plan.

Renewed fighting in August drove more than a million Beirut citizens out of the city. 200 000 with nowhere to go were left behind in the chaos. The bombardments only became worse and increasingly fierce, shocking even the Lebanese most hardened by war. The Christian enclave took the greatest impact of the fighting (Mackey, 2008:137).

Lebanon's executive had continued to function throughout the civil war, despite not holding control 'on the ground' (Zahar, 2002:570). The Lebanese Forces, the Progressive Social Party (PSP), Amal and Hezbollah each controlled their respective areas, putting police forces and the army on the sideline. The Foreign Ministry, the Presidency of the republic and the Central Bank remained active throughout the war (Zahar, 2002:570). The cabinet ceased to function effectively as warlord ministers refused to attend sessions. Parliament had regular meetings, but had almost no influence on the situation. The division in government also caused the army to split along confessional lines – some claiming loyalty to Aoun, others to Huss. The Central Bank claimed no allegiance with either government (Zahar, 2002: 570).

#### **4.3.4 The Arab League**

The Lebanese population was at a previously unprecedented level of desperation, and the Arab League stepped in with mediation of the seemingly never-ending conflict in mind (Mackey, 2008:137). It may be said that Aoun had started a crisis so violent and so destructive that the warring factions finally seemed ready to consent to a new plan of accommodation, even if it was not perfect (Mackey, 2008:137).

The Arab League's emergency attempts at negotiating the conflict in January 1989 seemed hopeless – Aoun refused to enter into negotiations with foreign troops present in Lebanon, while Huss was resolute on the importance of internal transformation (Zahar, 2002: 570). Aoun embarked on a 'war of liberation' against Syria's occupation of Lebanon, but his military capability could not compete with Syrian firepower. Nevertheless, the increase of military action drew the attention of the international community (Zahar, 2002:570).

The chaos caused by the split in government caused the Arab League to take urgent notice of the situation, and step in to act as an external mediator (Norton, 1991:458). The Arab League committee, which had come into practice in January 1989, took on the issue of Lebanon at their summit meeting in Casablanca on 25 and 26 May 1989. At the summit, the league created the

Tripartite High Commission. The commission was given the task of resolving the regional dilemma of Lebanon. The committee consisted of Algerian President Chadli Bendjedid, King Hassan II of Morocco and King Fahd of Saudi Arabia (Norton, 1991:460). The trio, with the help of the Arab League's assistant secretary general, Lakhdar Ibrahimi (former Algerian Minister of Foreign Affairs), aimed to assist in the election of a new Lebanese president and encourage presidential reforms (Norton, 1991:460). The Tripartite Committee criticised Syria as 'an obstacle to the restoration of Lebanese sovereignty' (Zahar, 2002:570).

It was the violence in August that compelled the committee to call for an end to the bloodshed (Mackey, 2008:137,138). It was this call that finally brought the combatants into agreement to end the violence. The reasons for this were manifold, including the fact that the Lebanese economy was falling apart; key leaders who had held 'onto their maximal demands for much of the war no longer occupied centre stage'; and some militias had lost their foreign patrons because of infighting, exhaustion and fractionalisation (Mackey, 2008:138). Finally, 'most Lebanese realised that no single group or coalition was capable of imposing its will on the others' (Mackey, 2008:138). Those who had sustained the war could no longer uphold it, or themselves. On the 13<sup>th</sup> of September 1989, the Tripartite High Commission offered a proposal of immediate cease-fire to the warring parties, as well as summoning the parties to consider and discuss a document of national reconciliation (Mackey, 2008:138). A cease-fire commenced 11 days later.

The mediation effort succeeded in putting together a seven-point peace plan stipulating a ceasefire from the 29<sup>th</sup> of August, and a meeting of the Lebanese parliament in Taif (Zahar, 2002:570). These negotiations aimed to 'address a critical political deadlock that threatened to unravel the remaining functioning state institutions' and 'defuse a tense military situation between the forces of General Aoun and his allies on the one hand and the Syrian troops in alliance with the militia of the PSP on the other' (Zahar, 2002:570). Late in 1989, the majority of the surviving members of the 1972 Lebanese parliament met in order to draft a political reform document, and fill the vacant presidency (Norton, 1991:458).

#### **4.4 Meeting in Taif**

In September/October of 1989, 62 of the 71 surviving members Lebanon's 1972 parliament met in al-Taif, in the south-western mountain of Saudi Arabia, in order to 'hammer out a peace agreement' to end the civil war in Lebanon (Mackey, 2008:138 and Zahar, 2002:569). This 'parliament' was seen as the 'only remaining legitimate constitutional organ of the Lebanese government' (Mackey, 2008:138). Some of the remaining members still lived in Lebanon, but most came out of exile (mostly from France, Switzerland and Iraq) in order to attend the assembly (Mackey, 2008:138). They met in order to draft and approve a 'National Reconciliation Accord' under the guidance of Syria and Saudi Arabia (Young, 2010:xxviii). The accord looked to end the Lebanese civil war, to help Lebanon reclaim authority in Southern Lebanon (then occupied by Israel), and to legitimise Syrian occupation of Lebanon (MidEast Web Historical Documents: The Taif Accords, 2002).

The problem here was that this representation of the old order, those now taking part in the mediation efforts, did not represent the power 'on the ground', or the demographic profile of Lebanon at that time. The individuals within the group held conflicting, and very passionate, views on constitutional reform and the preservation of Maronite privileges. Replacing the system of proportional confessional representation with one in which the concept of 'one person, one vote' counted was an option for many, while others clung to the safety of the preset confessional system (Mackey, 2008:138). Not only were there divergent views on all these subjects, but also on the three key issues regarding the Lebanese state: 'the distribution of power, political reform, and national identity' (Mackey, 2008:138) – the same issues that had led to the civil war in 1975.

The negotiators expected to stay in Taif for three days, but only 23 days later did they come to an agreement (Mackey, 2008:138). A document of national reconciliation was drafted by a committee of seventeen, with some guidance from the Saudis. The document, though completely satisfying no-one, was accepted by all (Mackey, 2008:139). The document opened with an explicit statement: 'Lebanon is an Arab country, both by kinship and identity' (Mackey, 2008:139), something which had become a clear product of the war. Opposing definitions regarding Lebanese identity seemed to come to an end with this one statement, putting the 1943 National Pact to rest (Mackey, 2008:139).

#### **4.5 The Atypical Peace Agreement**

The Taif Accord stands out as atypical among other peace agreements in civil wars (Zahar, 2002:570). One of the reasons for this is that those parties involved in the conflict did not act as the main negotiators in the talks. The members of parliament voted into power in 1972 who acted as negotiators to the conflict, were largely spectators, not actors, in the conflict (Zahar, 2002: 570,571). This in turn allowed sceptics to cast doubt on the representativeness of the negotiations, as well as question their outcome.

The negotiators in the Taif talks failed to represent the parties involved in and responsible for the military escalation or the political stalemate, but the task of resolving the conflict was placed in their hands. It is this aspect of the Accord that signifies its peculiarity; it is deemed a ‘package deal in which the internal and external aspects of the Lebanese are inextricably linked’ (Maila, 1994 in Zahar, 2002:571).

Another of the peculiarities of this Accord lies in the fact that it did not follow a mutually hurting stalemate (Zahar, 2002:571). The Accord came after an escalation between an outside power acting as patron to a Lebanese party, and an internal opposition party. Aoun and his supporters were clearly hurting as a result of the Syrian-imposed naval blockade which made it difficult for them to restock on firepower. The blockade negatively affected the civilians in the regions in Aoun’s control as it caused shortages of fuel, medications, basic commodities and hospital supplies (Zahar, 2002:571). The Syrian troops and their supporters did not feel these negative effects.

#### **4.6 The trouble with Implementation**

The implementation of the accord would have to await the ‘signal distraction of the Gulf crisis and the vanquishing of the rebellious General Michel [Aoun]’ (Norton, 1991:458). Michel Aoun refused to accept the Accord on the grounds that it did not set a clear deadline for Syria to withdraw from the country (Young, 2010:xxviii).

On the 4<sup>th</sup> of November 1989 the deputies met once more, this time in the small mountain town of Qlailaat, close to the Syrian border. Here they ratified the Taif Accord, and elected Maronite Christian Rene Moawad as president. Moawad, a cultivated member of the pre-war parliament, exemplified the shrewd Lebanese elite of the ‘old school’ (Mackey, 2008:140). The election of

Moawad was to function as confirmation of the need for compromise, as well as the need of accepting Syrian agreement to any negotiated settlement. On the 21<sup>st</sup> of November, Moawad gave his first official speech, filled with optimism and emotion. He pleaded to the Lebanese to ‘come together, rejoice, reunite, and rebuild the country’ (Mackey, 2008:140).

Those filled with optimism were soon disappointed: Moawad was assassinated in his limousine by means of a 400-pound car bomb after only seventeen days of presidency (Mackey, 2008:140 and Young, 2010:xxviii). All Lebanese radio stations openly honoured Moawad in death, only a television station under the control of Aoun, still claiming to be the legitimate president, ignored the tragedy (Mackey, 2008:140). The assassination did not bring an end to the process started by the Taif Accord. The parliament assembled once more, this time electing Elias Hrawi as president. Hrawi would now face the challenge of successfully implementing the Taif Accord. The president was openly optimistic, but Aoun challenged his authority. Hrawi dismissed Aoun as commander in chief of the army, giving him 48 hours to leave the presidential palace (Mackey, 2008:141). By the end of January 1990, fighting broke out between army units in support of Aoun and the Lebanese forces militia in Christian districts (Young, 2010:xxviii).

#### **4.7 ‘Peace of the Others’**

Israel and Syria had interests in the Lebanese civil war, and neither country wanted to relinquish power of Lebanon to the other. Syria mediated several unsuccessful ceasefires in Lebanon, the first of which as early as January 1976, sending troops in by May (Zahar, 2002:569). In March 1978, the Israel Defence Forces (IDF) entered Southern Lebanon. Forced out by the UN Interim Forces in Lebanon (UNIFIL), the Israelis returned in 1982 under the auspices of eliminating the Palestinian presence that threatened their own territorial security (Zahar, 2002:569). The Lebanese Forces (LF), working together with Israel, thwarted several Syrian peace settlements, while Syria foiled the 1983 agreement between Israel and Lebanon (Zahar, 2002: 569). On 13 October 1990, Syrian military forces acted against Aoun’s military support. General Aoun retreated to the French embassy for refuge. The Syrian ‘imposition’ helped to bring an end to the 15-year civil war (Young, 2010:xxix).

‘Taif is effectively a compromise accord between Saudi Arabia and Syria, blessed by the United States’ (Young, 2010:xxviii). Lebanese politician and journalist Gebran Tueni famously

described the 1989 Taif Accord as the ‘peace of the others’ (Farha, 2009:85). While the USA was engrossed in the first Gulf War, Syria and Saudi Arabia acted as the ‘godfathers’ to the drafting of the accord, specifically mandating the legislative equality of Muslims and Christians, as well as decreasing the powers of the presidency. While these new terms did not correspond to demographic reality, most major political actors came to agree to them, if only at the request of their external patrons (including Iran) (Farha, 2009:85). Though acting as ‘watchdogs’, the foreign mediators did not directly participate in the talks (Zahar, 2002:571). Saudi Arabia provided neutral ground on which to hold the negotiations, and the Arab League’s Tripartite Committee readied the grounds for the assembly. The negotiators were left to debate and draft the details of the agreement without outside interference.

On October 31, 1989, the United Nations Security Council (UNSC) showed support for the Taif Accord. It was only on the 21<sup>st</sup> of August, 1990, that the Lebanese legislature (the Chamber of Deputies) authorised constitutional reforms stipulated in the Accord (Norton, 1991:461). The constitution was amended in September of that year, starting the ‘Taif Clock’. This ‘Clock’ was in regard to ‘the dissolution of militias and the withdrawal of Syrian forces to positions in the Bqqa, respectively timed to occur six months and two years after parliamentary endorsement of the agreement’ (Norton, 1991:461).

## **4.8 Analysis**

### **4.8.1 Inclusion**

As mentioned in chapter two, the concept of inclusion applies not only in the ongoing enforcement of a constitution, but also in the drafting process (Elkins *et al*, 2009:8, 78). The extent of inclusion is critical in the drafting of the constitution, but also in the debate about it. The approval of the constitution is also important (Elkins *et al*, 2009:79). A degree of privacy is however valuable in some circumstances, and private settings may be indirectly open if the group assembled is chosen by the public, or sufficiently representative (Elster in Elkins *et al*, 2009:79). However, when key interest groups are not included in the bargain or the drafting thereof, citizen attachment is compromised (Elkins *et al*, 2009:79). ‘...[S]o long as groups believe they are better off in the current bargain than in taking a chance on another round of constitutional negotiation, the constitution will endure’ (Elkins *et al*, 2009: 80).

When regarding in detail the level of inclusion in the drafting and approval process of the Taif Accord, it may be said that the process lacks this characteristic. Those involved in the drafting process, the Lebanese parliament of 1972, may have been elected at that time, but changing demographics and interest groups illegitimatised the parliament. None of the groups directly involved in the conflict were invited to the negotiations, and those that did take part in the negotiations were not adequately representative of those that had stakes in the conflict.

Saudi Arabia provided neutral ground for the negotiations to take place, where those in exile could safely attend. This however meant that the negotiations did not take place publicly. Those involved in the conflict ‘on the ground’ were made aware of the negotiations, but were not given a stake in the deliberation thereof. One of the greatest Lebanese issues is that of the election of parliament on a secular basis, which by 1989 was not demographically representative. This meant that the legitimacy of the negotiations, and as such the Taif Accord, would be questioned.

Those invited to the negotiations, Lebanese elite who had been in exile for most of the war, held disparate views on almost all issues regarding the reconciliation of Lebanon. These views, however, were mostly based on a pre-war Lebanon. The Palestinian presence in the country changed the demographics, as well as the interest groups involved. The Palestinians were left out of the negotiations. The extremist group Hezbollah were also not included in the negotiations. This group, though infamous for extreme measures, held a stake in the future of Lebanon. The group’s fame had started to grow and was drawing an increasing number of followers. Despite being known as a terrorist group, Hezbollah played a major role in defining Lebanese politics.

The shortcomings regarding inclusion in the drafting of the Taif Accord are clear. The lack in this regard would later impede successful implementation of the Accord, as common knowledge of the Accord was unlikely, and few held official stakes in its enforcement. Self-enforcement of the document seems unlikely when regarding the complete lack of inclusivity in the drafting thereof.

#### **4.8.2 Flexibility**

Constitutional endurance is compromised when the threat of outside shocks alter the costs and benefits to the parties involved. This is where the concept of flexibility comes into play – if constitutions possess instruments and procedures for change over time, this threat may be

lessened, if not completely avoided (Elkins *et al*, 2009:81). The concept of flexibility links to that of inclusion in that it allows for change when new political and social forces arise (Elkins *et al*, 2009:82). By allowing for the incorporation of changing circumstances, flexibility limits the negative effect of changing circumstances (Elkins *et al*, 2009:82).

Although this concept may not apply directly to the drafting process, it may be noted that, had the previous system been flexible, it may have allowed for the inclusion of new social forces and interest groups in the drafting of the Taif Accord. The involvement of external forces in Lebanon has been widely noted – Israel and Syria have claimed high stakes in the country, and the large number of Palestinians taking refuge in Lebanon has also contributed to the changing demographics. The problem of representativeness in the drafting of the Accord may have been avoided had the 1943 National Pact provided the instruments that would enable the constitution to incorporate change sufficiently.

#### **4.8.3 Specificity**

As mentioned in chapter two, the concept of specificity is measured by looking at the scope of topics covered in the document, and the level of detail in which each topic is discussed. There is some disparity regarding the time that it takes to negotiate such a deal. A constitution with a high level of specificity takes time, consideration and political resources, which may be very expensive. Constitutional design usually takes place within critical times of crisis, putting pressure on the negotiators (Elkins *et al*, 2009:84, 85). However, the pressure of time may help to produce agreement. The expensive nature of constitutional negotiation puts pressure on drafters to make difficult decisions regarding what to include, and what not to include, and how much detail to be given to each chosen topic (Elkins *et al*, 2009:85).

Time was definitely a factor in the negotiations of the Taif Accord. The situation in Lebanon was worsening, millions were fleeing the country and the severity of attacks increased significantly. It was this violence that compelled outside forces to step in. The Arab League set the terms for a cease-fire, at which time the surviving members of the 1972 parliament would meet. The negotiators expected to reach an agreement, and draft a solution, within three days. It took twenty-three days. This is however a positive sign in that the negotiation was not rushed, but rather extensively deliberated and discussed. Time was however spent only on certain issues – those fundamentally effecting Lebanese society: ‘the distribution of power, political reform, and

national identity' (Mackey, 2008:138). In the next chapter, the extent to which these, and other, issues were addressed will be examined in detail.

#### **4.9 Summary**

This chapter set out to explain the events leading up to the negotiation of the Taif Accord. By first examining the circumstances at that time, this chapter was able to determine what led to the external mediation which allowed for the cease-fire, as well as the opening up of negotiations. A split in the Lebanese government produced an unprecedented level of division within Lebanon. The Maronites sought to hold power, while the Muslim sought to gain more power. The problem lay in the mechanism in which the president should be chosen. Aid from the Iraqis for the Maronite General Aoun compromised Syrian stakes in the war, which in turn increased the likelihood of direct conflict between Syria and Iraq. The heightened tension compelled a committee set up by the Arab League to call for an end to the bloodshed, finally bringing the combatants into agreement to end the violence. The drafting of the Taif Accord followed.

The chapter went on to explain, within the framework on which this study is based, whether the drafting of the Accord occurred under the necessary circumstances. The Accord is viewed as 'effectively a compromise accord between Saudi Arabia and Syria, blessed by the United States'. It was determined that while those chosen to draft the document may have been sufficiently representative in 1972, in 1989 they did not represent those who had stakes in the conflict, or the resolution thereof. Key interest groups were blatantly left out of the discussion, specifically the dangerous Hezbollah, which in turn lowered the self-enforcement capabilities of the Accord. It was also noted that, though not directly relevant to the drafting process, the concept of flexibility may have been beneficial in the time leading up to the negotiations. Lastly, it was mentioned that the factor of time as well as pressure may have affected the drafting process. This will be further discussed in the following chapter.

## **Chapter 5: The Taif Accord**

### **5.1 Introduction**

The Taif Accord, signed on the 5<sup>th</sup> of November 1990, was publicly disputed. Michel Aoun, self-proclaimed rightful prime minister at the time, openly rejected the Accord. The Accord has been criticised as being illegal as when it was drafted, Aoun had dissolved parliament. While some Maronite leaders accepted the Accord, Druze militia leaders expressed disappointment over the Accord, calling it superficial and overly favourable to the Sunni Muslims (MidEast Web Historical Documents: The Taif Accords, 2002). Syria expressed support for the Accord. The Accord was never fully implemented (MidEast Web Historical Documents: The Taif Accords, 2002).

This chapter first looks at the differences between the pre- and post-Taif constitution, and then moves on to explicate the shifting of power between the president and the cabinet. The chapter also takes a look at the territorial provisions in the Accord, as well as the provision taken regarding the disbanding of militias. A discussion on Lebanon as a confessional democracy follows. The chapter then moves on to a discussion of the amended Lebanese constitution in terms of specificity, inclusion and flexibility, as well as in the terms provided regarding consociational democracy. In the last section, the question of the implementation and success of the Taif Accord is explored, and a look is taken at future prospects for this state.

### **5.2 The Taif Accord**

The following table illustrates the most important differences between the pre-Taif and Taif constitution:

**Table 2: New Equilibrium in the Lebanese Government**

| Pre-Taif   | Taif   |
|--|--|
| <b>Chamber of Deputies</b>   |  |
| <ul style="list-style-type: none"> <li>• Ninety-nine seats were divided according to a 6:5 ratio in favour of the Christians</li> <li>• The speaker served a one-year and was decidedly subordinate to both the prime minister and the president</li> <li>• The Chamber of Deputies shared with the president the authority to dismiss ministers</li> </ul>  | <ul style="list-style-type: none"> <li>• Christian-Muslim parity is established by dividing 108 seats equally</li> <li>• Enhanced political role established for speaker, traditionally a Shi'a Muslim, who will serve a four-year term.</li> <li>• Given sole power to cast no-confidence votes and to dismiss individual ministers and the Council of Ministers.</li> </ul>  |
| <b>Prime Minister</b>  |  |
| <ul style="list-style-type: none"> <li>• The president selected the prime minister after non-binding parliamentary consultation.</li> <li>• In practice, the prime minister and the president shared the task of forming a government, but the president retained the ultimate constitutional authority to create the government.</li> <li>• The president presided as the ultimate political authority although a strong prime minister often tempered presidential power.</li> </ul> | <ul style="list-style-type: none"> <li>• The Prime Minister, traditionally a Sunni Muslim, is appointed by the president on the basis of binding parliamentary consultation.</li> <li>• The prime minister forms a government based upon non-binding parliamentary consultations.</li> <li>• The prime minister presides over the Council of Ministers, which sets general policy, drafts laws and decrees, and decides on the implementation of laws passed by the Chamber of Deputies.</li> </ul>  |
| <b>President</b>   |  |
| <ul style="list-style-type: none"> <li>• The president ruled through the council, over which he held ultimate authority.</li> <li>• Only the president could convene the Council of Ministers or Chamber of Deputies in extraordinary session.</li> <li>• The president possessed ultimate command authority over the armed forces.</li> <li>• The president often exercised a tacit veto by simply refusing to promulgate laws.</li> </ul>  | <ul style="list-style-type: none"> <li>• The president, traditionally a Maronite, has no vote in the Council of Ministers, but he may preside over it when he wishes</li> <li>• The Council of Ministers convenes with the agreement of the prime minister, extraordinary meetings of the Council of Ministers or the Chamber of Deputies.</li> <li>• The president presides over the Supreme Defence Council, but the Lebanese Armed Forces are subject to the authority of the Council of Ministers.</li> <li>• The president may not block legislation by refusing to promulgate laws.</li> </ul> |

Source: Norton, 1991:462

### **5.2.1 President and parliament**

The Taif Accord transferred power traditionally attributed to a Maronite president to a cabinet, which would be equally divided between Christians and Muslims (MidEast Web Historical Documents: The Taif Accords, 2002). The Lebanese system specifies a preset sectarian distribution of parliamentary seats, but this quota is compromised as most candidates face a multi-confessional electorate (Farha, 2009:85). Many candidates ‘contest districts in which their sect is not a majority’ (Farha, 2009:85). For example, those who win the Sunni seats in south Lebanon, which consists mainly of Shi’a Muslims, are ‘effectively beholden to Shi’a politicians’ (Farha, 2009:85). In Beirut, the Sunni vote is influential in electing the Shi’a and Christian deputies.

This feature of the Lebanese electoral system has been praised, because ‘mixed electoral districts mandate inter-confessional political alliances and, so the hope is, advance national integration’ (Farha, 2009:85). The Taif Accord based the stipulation of large electoral districts on this rationale, claiming to be working towards the ultimate goal of a singular, national district (*da’ira muwwahhada*) (Farha, 2009:85). However, Lebanese society seemed to be defined by ‘politics of the notables’ from the top and ‘largely endogamous’ social segregation from below, which in turn tends to exclude grassroots movements (Farha, 2009:85). In winner-take-all election systems, as opposed to proportional systems, this holds especially true (Farha, 2009:85). A problem that arises with this, however, is the gerrymandering of electoral districts in order to alter the number of a given sectarian community’s seats that are under the effective control of other communities or sects (Farha, 2009:85).

The Accord claimed its ultimate goal to be the de-confessionalisation of the Lebanese system, while institutionalised sectarianism was only intended as a transitional system (Seaver, 2000:269). But ultimately, the Accord strengthened the Lebanese confessional system. The Accord shifted power away from the president to the cabinet, which in turn increased the power of the Sunni prime minister, thereby increasing the representation of the Muslim majority in Lebanon (Seaver, 2000:269). The status of the Chamber of Deputies was elevated, also at the expense of the president. More specifically, the nomination and appointment of the prime minister by the president would require the president to meet and consult with the speaker of the

Chamber, who communicates the results of binding parliamentary consultations (Seaver, 2000:269 and Norton, 1991:464).

The 6:5 ratio of parliament, favouring the Christians, was replaced by a 50-50 division of seats, attributing 54 seats to the Muslims, and 54 seats to the Christians. The Muslims had demanded this change since the 1970s (Seaver, 2000:269). Sectarian criteria for the recruitment and appointment of public servants was eliminated, excepting high-level posts (Seaver, 2000:269). While the Accord improved the position of the Muslims overall, in comparison to the Christians, the Sunni Muslims were more benefited than the Shi'a (Seaver, 2000:269). The Shi'a gained only three of the new seats.

The speaker of parliament, a Shi'a Muslim, would be elected for a four-year term. The cabinet (the Council of Ministers) would be the real 'custodian of executive authority' (Norton, 1991:464). The single most important person in the system would be the prime minister (Norton, 1991:464). Most of the autonomous powers of the president were shifted to the cabinet, with a few minor exceptions like the issuance of pardons and the accreditation of ambassadors (Norton, 1991:464). The 'big losers' in the bargain were the Maronites and the Shi'a Muslims – Maronite power had lain in the president, whose power had been severely cut by the Accord, and Shi'a Muslim power, accounting for at least one-third of the Lebanese population, was blunted in favour of the Sunnis (Norton, 1991:464).

### **5.2.2 Included and Excluded**

No sectarian community in Lebanon makes up a majority; however, there is a de facto working majority, made up of non-Shi'a Lebanese who oppose Shi'a dominance in the state (Norton, 1991:464). This majority is backed by the 'Shi'a-phobic' Saudis (Norton, 1991:464). Despite Shi'a plurality in Lebanon, the Accord granted them only three of the new appointive seats, bringing them to a total of 22 (like the Sunni Muslims) (Norton, 1991:464). The previously unrepresented community of Alawi, a small community of about 20 000, were reportedly given two of the nine appointive seats. The community includes an influx from Syria in the 1980s (Norton, 1991:464).

On the 27<sup>th</sup> of September, 1990, parliament had 30 empty seats. Two of the seats belonged to living presidents Gemayel and Hrawi, who had given up their places by moving to the presidency (Norton, 1991:464). The other 28 seats belonged to deputies who had either been killed, or had died of old age. Provisions for the government to fill these vacancies as well as the nine new seats were made in the Accord. However, seats becoming vacant after September 27 1990 would not be filled by appointment (Norton, 1991:464). Many Lebanese were distressed that elections were not held to fill these vacant seats (Norton, 1991:464). *Table 3* shows the distribution of seats in parliament, including the vacant seats in 1990 and the distribution of the nine new seats (Norton, 1991:463, 464). The number of members in the Chamber was later increased from 108 to 128 (Donohue, 2009:2526).

On the 24<sup>th</sup> of December 1990, a ‘government of national reconciliation’ was formed by Prime Minister Karami, the brother of former Prime Minister Rashid Karami who had been assassinated in June 1987. The cabinet, which was split evenly between Muslims and Christians, was the largest in Lebanese history at 30 members (Norton, 1991:467).

***Table 3: Confessional division of the Lebanese Parliament***

|                   | <b>1972 Parliament</b> | <b>1989 Taif Accord</b> | <b>1990 Vacancies</b> |
|-------------------|------------------------|-------------------------|-----------------------|
| <b>Confession</b> |                        |                         |                       |
| <b>Christians</b> |                        |                         |                       |
| Maronite          | 30                     | 30                      | 12                    |
| Orthodox          | 11                     | 11                      | 4                     |
| Catholic          | 6                      | 6                       | 0                     |
| Armenian Orthodox | 4                      | 4                       | 0                     |
| Armenian Catholic | 1                      | 1                       | 1                     |
| Protestant        | 1                      | 1                       | 0                     |
| Other             | 1                      | 1                       | 0                     |
| <b>Subtotal</b>   | <b>54</b>              | <b>54</b>               | <b>17</b>             |
| <b>Muslims</b>    |                        |                         |                       |
| Sunni             | 20                     | 22                      | 5                     |
| Shi'a             | 19                     | 22                      | 3                     |
| Druze             | 6                      | 8                       | 5                     |
| Alawi             | 0                      | 2                       | 0                     |
| <b>Subtotal</b>   | <b>45</b>              | <b>54</b>               | <b>13</b>             |
| <b>Total</b>      | <b>99</b>              | <b>108</b>              | <b>30</b>             |

Source: (Norton, 1991:463)

### **5.2.2.1 Hezbollah**

Hezbollah, at the time denying the legitimacy of the government, was not represented within the government, while six Shi'a Muslims represented the influence of Amal (Norton, 1991:467). The extremist movement Hezbollah has played a key role in the Lebanese dilemma in the past 25 years. Hezbollah has moved to gain a leading role in social and political life in Lebanon since publishing its political platform in February 1985 (Zisser, 2009:158). The document declared an 'uncompromising struggle with Israel until the destruction of that entity' (Zisser, 2009:158). The platform called for the establishment of Lebanon as an Islamic republic, with the goal of eventually establishing the Islamic world as one Islamic state. Hezbollah struggled with Israel in south Lebanon, with the Shi'a community of Amal in the same area, as well as with several Palestinian organisations working in Palestinian refugee camps in south Lebanon and Beirut (Zisser, 2009:158).

Hezbollah grew, and soon had it within its power to take over those parts in Lebanon inhabited by Shi'a Muslims. The Taif Accord, however, presented Hezbollah with the first real challenge to its advance. The civil war which had made Hezbollah's advancement possible was brought to an end with the signing of the Accord (Zisser, 2009:159). The process of rehabilitation of the institutions of the Lebanese state started, which led to the disarmament of the militias who had been active during the civil war. The growth of the Shi'a community in Lebanon was not taken into account in the drafting of the Accord (Zisser, 2009:159).

Hezbollah made clear its aversion to the Taif Accord, but eventually accepted the inevitable reestablishment of the Lebanese state, the 'Lebanon of Taif'. Hezbollah began to act in order to have itself integrated into the state's institutions (Zisser, 2009:159). With generous help from Iran, Hezbollah sought to establish a 'network of social and welfare services that would draw the support of the Shi'a community and provide it with an alternative to the services provided by the Lebanese state, or, to be more precise, to the benefits and aid the state should have provided for this population and did not' (Zisser, 2009:159).

### **5.2.3 Lebanese Territory**

The intention to extend Lebanese government sovereignty to Southern Lebanon was declared in the Accord. Hezbollah remained in control of the area, until Israel eventually withdrew from the area in 2000 (MidEast Web Historical Documents: The Taif Accords, 2002). The Accord stipulated steps for bringing about the withdrawal of Israeli forces from Lebanese territory (MidEast Web Historical Documents: The Taif Accords, 2002). While the Accord stopped the war between Christians and Muslims in Lebanon, it has been criticised for implicitly justifying and endorsing Syrian and Palestinian presence in the country (Axar & Mullet, 2002:736).

Zahar (2002:567) argues that, although it may have come at the expense of democracy, human rights and national reconciliation, the Syrian presence in Lebanon has added to the stability and successes in the country. It is argued that the Syrian presence 'has provided a basis for economic recovery and for strengthening state institutions, paving the way for self-enforcing implementation' (Zahar, 2002:567, 568).

### **5.2.4 Disbanding of Militias**

The disbanding of militias and the redeployment of Syrian forces inside Lebanon was stipulated in the Accord. This would be the major test for the Taif Accord (Norton, 1991:468). Lebanese and non-Lebanese had to surrender their weapons to the state (Donohue, 2009:2525). A joint Syrian-Lebanese mechanism for making future decisions regarding the position and function of the Syrian troops would also be established. The Accord called for the dissolution of militias, as well as the withdrawal of Syrian forces to the Bekaa valley within six months and two years, respectively (Seaver, 2000:269). The Accord did not stipulate Syrian withdrawal from Lebanese territory, granting the Syrians privileged status (Seaver, 2000:269). The Agreement required ratification by the Chamber. The implementation of UN resolution 425, which demanded the withdrawal of Israeli troops, was called for.

However, not all militias have been broken up, and Syrian troops retained a foothold on Lebanon until the Cedar Revolution in 2005. Many displaced persons have still not returned to their homes, and parliament has signed several bilateral treaties placing Lebanon 'squarely in the orbit of Syria' (Zahar, 2002:567). Internal opposition has been repressed, and human rights organisations have recorded violations in the authorities' conduct towards political opponents of

the government (Zahar, 2002:567). The state has put pressure on the media, civil society and non-governmental organisations (NGOs) and as such has curtailed basic freedoms (Zahar, 2002:567). Syria had in fact declared that Hezbollah was not a militia, rather a resistance force, and should be allowed to keep, and increase, its arms (Donohue, 2009:2525).

### **5.3 Regional politics**

The events in the last 25 years illustrate the strengths and weaknesses of the unique Lebanese system (Donohue, 2009:2529). Some Lebanese maintain the argument that ‘if only they would leave us to ourselves’, Lebanon would experience less conflict and disparity. While the Lebanese system may hold internal problems, regional struggles put significant pressure the system (Donohue, 2009:2529). It appears that, in times of peace, Lebanon is open and democratic, but in times of stress, the system borders on complete collapse (Donohue, 2009:2529).

The institutional improvements implemented by the Taif Accord did not significantly add to the strengthening of Lebanon’s weak position in the region. The future of Lebanon and more specifically the success of the Accord rests upon the unstable regional climate of the Middle East (Seaver, 2000:269). By the year 2000, the region had however stabilised since the 1960s and early 1970s, as Palestinians were in support of a political rather than military solution of the problem of Palestinian autonomy at the time (Seaver, 2000:269). Friction between Syria and Iraq had also lessened at the time, in part due to Syria’s successful attempt at removing Iraqi influence from Lebanese politics (Seaver, 2000:269).

Elkins *et al* (2009:112) argue that the implementation of new constitutions in other countries will increase the likelihood of a new constitution in a neighbouring country, specifically countries which are culturally close. It is found that constitutional reform in one country encourages the same in another. As mentioned in Chapter 2, Elkins *et al* (2009:134) find that a ‘shift in the regional death rate in the prior year from 0 to 100% would double the hazard rate for countries in the region’. This could mean that less extreme shifts in regional constitution-making activity could still have significant effects.

Lebanon is situated in a volatile region. While the constitutions of Israel (1948), Jordan (1952) and Iran (1979) have not been replaced recently, the constitutions of Iraq (2005) and Palestine

(2003) have (Elkins *et al*, 2009:218, 219). Though the constitutions have not been replaced, they have been frequently amended, which in turn provides a volatile framework for a new constitution to survive in. The Lebanese constitution of 1990 has to endure in harsh regional conditions.

#### **5.4 Other External Factors**

Elkins *et al* (2009:138) also find that ethnic heterogeneity is associated with constitutional instability. Maximally heterogeneous states have a life expectancy of thirteen years, while those states with maximally homogenous societies have a life expectancy of twenty-three (Elkins *et al*, 2009:138). Lebanon clearly illustrates a state in which multiple communities, religious sects and social classes reside, making it a highly unstable environment for a constitution to survive within.

It is also found that the tradition of enduring constitutions increases the life expectancy of future constitutions (Elkins *et al*, 2009:139). For every ten years of average duration of the previous constitution, the probability of constitutional replacement reduces by 12% (Elkins *et al*, 2009:139). While the 1926 Lebanese constitution was amended in 1943, it survived for 32 years until the outbreak of civil war in 1975. While this may shed a positive light on the endurance of the 1990 constitution, the fifteen-year breakdown of democracy in between constitutions may adversely affect this positive.

#### **5.5 The confessional system**

While the Lebanese system has successfully proved to be a barrier to the rise of an authoritarian state, which in the Arab world would entail the monopolisation of power by one ethnic/sectarian group (Gambill, 2009:131). However, the system has also ‘reified patron-client relationships within the country’s confessional communities and inhibited the growth of a common national identity’ (Gambil, 2009:131).

While confirming that Lebanon was a country of many sectarian communities wishing to live together, the Taif Accord failed to address the core Lebanese problem: ‘the conflicting definitions of Lebanese identity’ (Mackey, 2008:139). The Accord did not bring radical change

from earlier attempts to reform the Lebanese political system. The Accord also failed to lay out strategies aimed at breaking the walls of communal loyalties and perceptions at the foundation of Lebanese society (Mackey, 2008:139). The Accord re-established many of the country's deep-seated political traditions. The Taif Accord 'rejuvenated the very system that had caused the disintegration of the country in the first place' (Mackey, 2008:139). Leaders, who previously had no incentive, nor the ability to rebuild the state, were once again given the responsibility of restoring the state. The Lebanese people embraced an end to the protracted war, all the while disregarding the need to build a nation (Mackey, 2008:139).

Fifteen years of civil war, rendering the Lebanese system useless, were followed by 15 years of Syrian hegemony. While representative of communities, the system fails to represent individual citizens sufficiently. Although constitutionally bound to act 'for the citizenry regardless of sect', parliamentary deputies are elected because of sect (Harris, 2009:17). It is possible that parliamentary seat allocation is not in line with sect-division, as originally intended. Each community is either under- or overrepresented, resulting in civil discontent – even under the Taif adjustments (Harris, 2009:17). Despite these failings, the system has proved surprisingly resilient. Lebanon is one of the only Middle Eastern countries 'where the government arises from parliament' (Harris, 2009:17). The political framework for public pluralism is unique in the region, keeping civil society and the media unrestricted (Harris, 2009:17), despite the state's curtailing of basic freedoms of expression by putting pressure on the media, NGOs and civil society in 2002 (Zahar, 2002:567).

The Lebanese system, even when operating 'has never reconciled representation of communities with representation of individual citizens' (Harris, 2009:17). While parliamentary deputies are elected under sectarian labels, they are bound by the constitution to act for the citizenry, regardless of sect. The allocation of parliamentary seats is not numerically representative of the communities in Lebanon any more (Harris, 2009:17). The only way to resolve the issue would be to hold an internationally supervised census, but this idea has been rejected. The Shi'a community, which comprised around one-fifth of the population in 1932, now probably comprise about one-third. The 1989 Accord grants this sect 27 out of 128 seats, when 'it should have at least 40' (Harris, 2009:17).

In 2006, Lebanon was once again facing a political stalemate. The government, largely made up of coalition members, also included members of Hezbollah and Amal (the Shi'a party). All members had effective veto power, which enabled the freezing of key economic and political reforms. The state 'coexisted uneasily' in the presence of the independent power of Hezbollah (Salem, 2006:16).

The Taif Accord, though faced with many challenges, paved the way for the rebuilding of the Lebanese state. Parliamentary elections were held in 1992 as well as in 1996 and general municipal election in 1998 (Zahar, 2002:567). The transfer of power between presidents has been orderly and peaceful. The state seems to have reasserted its authority over the largest part of the national territory, and the reconstruction of the economy is well under way (Zahar, 2002:567). Calls to get rid of the confessional system in Lebanon were occasionally voiced, but were little more than 'political sloganeering' (Donohue, 2009: 2527). The religious head of the Shi'a Muslim community remarked, 'We did not get rid of political Maronitism to replace it with political Shi'ism' when referring to the Shi'a bid to take over government as the majority (Donohue, 2009: 2527).

### **5.5.1 Inclusion**

Chapter 4 provided in-depth analysis of the level of inclusion present in the drafting of the Taif Accord, concluding that the drafting process had a very low level of inclusivity. In the 1990 amendment, Lebanon is stated as a 'united country': 'The people may not be categorised on the basis of any affiliation whatsoever and there shall be no fragmentation, no partition, and no repatriation' [of Palestinians in Lebanon] (Donohue, 2009:2523).

The implementation of the Accord ensured that the power of the system is shifted from the presidential, placing the executive power in the hands of the Council of Ministers (Donohue, 2009:2523). By cutting away the presidential powers, the Taif Accord also cut away at Christian dominance of the Lebanese political system (Mackey, 2008:139). The president continued to symbolise the authority of the state, but no longer controlled the central government. The Taif Accord answered the Muslim claim for greater participation (Donohue, 2009: 2528)

The Taif Accord called for the province as the electoral circumscription, meaning that the Lebanese provinces would now act as voting districts (Donohue, 2009:2526). This was in order to strengthen national unity, as the province ‘would embrace a diversity of communities unlike the smaller conscription (*caza*) where the numerical majority of a particular sect would skew results to its advantage’ (Donohue, 2009:2526). Those in command, however, put aside these thoughts as their principle aim was to guarantee the election of Syrian allies. Several provinces were divided – Beirut was the only province that remained the circumscription. The Bija, for example, was divided into three electoral units (Donohue, 2009:2526).

### **5.5.2 Flexibility**

Flexibility, or ease of amendment, is measured by using information on the observed amendment rate as well as the ‘formal amendment procedures’ of each constitution (Elkins *et al*, 2009:100). The Lebanese constitution, with the Taif amendments in place, provides provision for amendment in Article 65:

*Basic issues shall require the approval of two thirds of the members of the government named in the Decree of its formation. The following issues are considered basic: The amendment of the constitution...*

This amendment procedure seems to provide a relatively simple barrier to constitutional amendment. The sectarian nature of the government will then allow multiple groups to be represented in this decision, however still granting the ability to change the constitution if so required. There have been some changes to the Lebanese constitution since this establishment, including the enlargement of the parliament from 108 to 128 seats.

Article 49 in the constitution, stipulating the qualification and term of the president of the republic was changed “once and only once” four times (Donohue, 2009: 2527). First, president Hrawi’s term was extended by three years, and then the article was changed in order to allow General Laud to be elected, who was also granted a three year extension to his tenure. In 2007, the article was amended once more to allow for the election of General Suleiman (Donohue, 2009: 2527). While the first extension passed without significant resistance, the extension of Lahud’s term in 2004 faced opposition (Donohue, 2009: 2527). Extremely high values of

flexibility increase risk of constitutional death. Low and high values of flexibility are associated with shorter life spans, meaning that constitutions should aim to have a balance between the two (Elkins *et al*, 2009:140).

The Lebanese constitution grants each sectarian community authority over matters related to personal status, such as marriage, divorce, child custody, and inheritance (Gambill, 2009:131). Granting this level of autonomy to each sect increases the level of specificity, which in turn may decrease the flexibility of the constitution.

### **5.5.3 Specificity**

As mentioned in Chapter 2, '*[s]cope* refers to the breadth of coverage of the constitution, or the number of issues that it chooses to regulate. *Detail* refers to the precision and elaboration of the provisions of the constitution in any given topic area' (Elkins *et al*, 2009:103). In the Elkins *et al* (2009:103) study, the scope of a constitution is measured by identifying the number of topics covered in the text. Of the 70 topics listed in the Elkins *et al* index (2009:222-224), the Lebanese constitution of 1990 includes only 29. Constitutions on average include 49% of topics (Elkins *et al*, 2009:103). Translated into percentage, the Lebanese constitution scores a mere 43%.

Detail is measured by the division of length (in words) of the constitutional text by the number of scope items included in the constitution, amounting to the 'number of words per topic' in a constitution (Elkins *et al*, 2009:105). For constitutions since 1789, the average number of words per topic is 306. The Lebanese constitution of 1990, translated into English, has 7730 words. This means that the document has about 267 words per topic, making it a constitution with a below average number of words per topic. Word length is also illustrative; since 1789, the average constitution has about 14 000 words (Elkins *et al*, 2009:105). Once again, the Lebanese constitution of 1990 falls below average.

## **5.6 The Question of Taif**

Some disparate views on the successes of the Taif Accord have arisen amidst concerns of its full implementation. A Lebanese critic wrote:

*Due to the Taef [sic] agreement, Syria has been allowed to get away with pretty much whatever it likes in Lebanon. ... Taef has been used only to swallow Lebanon through a*

*succession of "bilateral agreements" designed to lead toward the gradual merger of Lebanon with Syria at all levels...[The] Taef accord was a conspiracy against Lebanon and its people. Those who are calling for the implementation of the Taef accord are committing a very serious crime, the crime of treason. By supporting the Taef agreement, they are in fact supporting Syria's occupation of Lebanon. It is time to rip up the Taef accord and start a new chapter. (MidEast Web Historical Documents: The Taif Accords, 2002).*

The deficient implementation of the Taif Accord has been questioned. The Hezbollah militia was not dissolved, but rather maintained by manipulation. The Syrian troops were not redeployed, as required by the Accord (Donohue, 2009: 2527). In September 2004, the French and the Americans pushed for the adoption of Security Council Resolution 1559, which called for the disarming of Hezbollah, the departure of foreign forces and free elections in Lebanon (Donohue, 2009: 2527). Syria pushed to prolong Lahud's tenure. Opposition to this move led to the assassination of former Prime Minister Hariri early in 2005, as well as the mobilisation of Lebanese citizens against Syrian presence (Donohue, 2009: 2527).

The Taif Accord provided for the departure of Syrian troops, in Lebanon since 1976, but the troops maintained a foothold until 2005. Until this time Syria 'essentially controlled Lebanon dominating government, interfering in elections, naming presidents and prime ministers, [and] making major policy decisions' (Salem, 2006:14). UN Resolution 1559 of September 2004 mandated the withdrawal of all foreign forces from Lebanese territory (Salem, 2006:16). Hariri's assassination in 2005 triggered anti-Syrian demonstrations, which led to Syrian departure in April 2005. Many outsiders considered Syrian presence necessary in order to maintain peace in Lebanon. However, the 'Syrian intermezzo in Lebanon proved, as did the Egyptian hegemony in Syria in the 1960s, that sisterly Arab states are incapable of governing other sisterly Arab states'(Donohue, 2009: 2528).

Twenty years of relative peace in Lebanon have not ingrained the belief in the effectiveness of the Taif Accord, and observers remain sceptical. Lebanon has been referred to as the embodiment of 'the phenomenon of schism in the political and cultural realms... It is a society without foundation, fragile, divided, disjointed and torn.' (Khalaf in Raphaeli, 2009:109).

Lebanon remains vulnerable to regional stability, despite institutional improvements put into place by the Taif Accord. It has been said that the success of these improvements lies in the regional climate in the Middle East (Seaver, 2000: 269).

The murder of former Prime Minister Rafiq al-Hariri in 2005 set into motion what is now referred to as the Cedar Revolution – for several weeks thousands of Lebanese citizens from almost all denominations and categories participated in peaceful rallies challenging the Syrian presence in Lebanon (Young, 2010:3). In the same year, Lebanon saw a return to ‘confessional democracy’, the division of parliamentary seats and power amongst the different groups present and active in the country. Syria’s withdrawal and the first free elections since 1972 led to ‘parliamentary balance’ – Sunni and Shi’a Muslims, Christians and Druze. In the elections, Hezbollah and Amal gained 35 seats; the Cedar Revolution alignment gained 72 seats; and 21 seats went to a Maronite faction (Harris, 2009:17).

Recently the drafting of new electoral law has become a matter of debate. A hybrid system has been proposed, involving a division between seats – 71 filled by ‘winner-take-all’ elections, and 51 filled by means of a proportional electoral system. This proposition also includes the participation of Lebanese citizens residing abroad, as well as lowering the voting age to 18 (from 21). The proposition also sets up stringent monitoring and spending restrictions for political campaigns (Farha, 2009:85). This revision does not however seem a likely prospect in the near future. Revision of the Accord would result in the provocation of renewed conflict, unless leaders in the Christian community take the initiative, which is unlikely seeing as though they would lose the most in such a reformation (Farha, 2009:89).

Farha (2009:90) asserts that although ‘deconfessionalisation may be a better cure for Lebanon’s ailments in principle, in practice those who hold positions of power under the sectarian system are not likely to promulgate its abrogation’. For the past two decades, proposals of reform have circulated, but ‘a sweeping revision of the Constitution is highly unlikely in the short term’ (Farha, 2009:90).

Fears of radical Islamism are also abundant in the country, as well as the region. Christians and many secular Muslims share this fear (Farha, 2009:89). Despite the success of the Taif in securing disarmament of the militias, Hezbollah remains a threat. Hezbollah’s terrorist tactics

undermined Israeli efforts at upholding peace in the late 1990s, and remains intact (Seaver, 2000:269).

## **5.7 The Future of Lebanon**

### **5.7.1 Hezbollah, Syria, Lebanon and the Israeli conflict**

Hezbollah's attempt in 2006 at entangling Israel in a 'limited skirmish on its northern border and a drawn-out prisoner exchange' failed when Israel responded with a large-scale war intended to deliver a knock-out blow to Hezbollah, removing the missile threat to the north of Israel, weakening Iran and eliminating an opponent in the USA's War on Terrorism (Salem, 2006:13). The USA was also hoping to provide a boost to the Lebanese government, a government it considered a 'success story' (Salem, 2006:13). The full-scale war that proceeded from this exchange devastated Hezbollah's Shi'ite constituency. Israel failed to eliminate Hezbollah, or even stop its missile attacks. Israel's ground invasion suffered several setbacks (Salem, 2006:13). Lebanon was caught in the crossfire, suffering terrible tolls on civilian life and infrastructure. The crisis was eventually, though surprisingly, resolved diplomatically (Salem, 2006:14). UNSC Resolution 1701, which had brought an end to the conflict, provided provisions for the deployment of the Lebanese army, with UN troop support, to southern Lebanon. This finally put an end to 40 years of control of the region by non-state actors (Salem, 2006:14). This resolution has brought about a vital step toward a 'stable and sovereign Lebanon' (Salem, 2006:14).

Hezbollah emerged as a strong power after the war with Israel – while there was no clear victor, Hezbollah had dealt some crippling blows to the Israeli armed forces. Israeli soldiers emerged as 'confused and demoralised' (Salem, 2006:18). Lebanon, however, had paid the price for the war – approximately 1200 civilians were killed, 4000 civilians were wounded, and another million were displaced. The country's infrastructure also suffered – factories, schools, hospitals and roads were either destroyed or damaged (Salem, 2006:18).

Hezbollah had also suffered some significant political and strategic losses – it had given up control of the region south of the Litani River to the Lebanese army, backed by the UN troops, and also agreed to grant the Lebanese military control of the Syria-Lebanon border (Salem, 2006:18). Destruction of the Shi'ite communities, Hezbollah's greatest supporters, meant that

Hezbollah would have to concentrate on relief and reconstruction before it could launch another attack (Salem, 2006:18).

The departure of the Syrians from Lebanon was an occasion for dialogue without outside patronage in March 2006. Little progress was made, but Hezbollah's kidnapping of three Israeli soldiers, and the threat of the ensuing war of Israel against Lebanon, broke up the talks (Donohue, 2009:2528). The anti-Syrian forces marked a victory in the 2006 legislative elections. However, instead of producing dialogue, there was a 'blockage' in governmental functioning (Donohue, 2009:2528). Pro-Syrian forces obstructed government, and the speaker of the Chamber refused to convene parliament for the election of a new president (Donohue, 2009:2528). Attempts at dialogue and mediation were rebuffed by the pro-Syrians, who by this time had started a year-long 'sit-in' in the centre of Beirut (Donohue, 2009:2528). In July 2007, the French foreign minister attempted to break the impasse by convening an 'inter-Lebanese' meeting. This was one of the first meetings including civil society actors as well as the politicians. The meeting succeeded in getting the antagonists to open dialogue.

Hezbollah's failed attempt at an armed takeover of Beirut and the Shuf in May 2008 enabled effective dialogue to become possible (Donohue, 2009:2528). Hezbollah only then became willing to accept offers of mediation by the prime minister of Qatar and the Amir. In 2008, the Accord of Doha 'assured the convocation of the chamber, the election of a president and the formation of a government of national unity composed of 30 members, 11 of the opposition (a blocking minority)' (Donohue, 2009:2528). Participant agreed on not using arms to solve the political problems. The dialogue assured the extension of Lebanese sovereignty over all the territory.

The question of eliminating confessionalism no longer exists. The question now focuses on controlling the armament of Hezbollah (Donohue, 2009:2528). The only proposed solution to this so far has been dialogue, but to date this has produced nothing except perhaps a sense of calm (Donohue, 2009:2528).

### **5.7.2 The future of Lebanon**

Salem (2006:20) argues that the Lebanese government should move beyond struggling to hold onto power, and rather focus on bringing about political reform. This would mean fully implementing the Taif Accord, which would include the passing of ‘overdue election and administrative decentralisation bills’ (Salem, 2006:20). The government should commit to anti-corruption campaigns and move to improve the armed and civil services. In order to justify its own existence, Hezbollah has pointed out the weaknesses of the Lebanese army and state. In the short term, the state should ‘address the serious divisions that had led to political stalemate before the war-and that will again if nothing changes’ (Salem, 2006:20).

Hezbollah called for a ‘government of national unity’ in which they have a larger share of power (Salem, 2006:21). Lebanese leadership has resisted this move, claiming that a government including Hezbollah would be ‘unwieldy’, and unable to implement the UN resolution (Salem, 2006:21). However, the government should be moving to meet the opposition at least partway, ‘for example, by reviving the national dialogue, passing the overdue election law, and being open to a jointly approved candidate for next year's presidential election’ (Salem, 2006:21). Hezbollah should decide whether it wishes to integrate into the Lebanese government, and the Shi’a community backing Hezbollah should decide whether to support a ‘united and independent Lebanon’, or a ‘two-state solution’ (Salem, 2006:21). The government could move to encourage a unified and independent state by reacting to Shi’a complaints on post-Taif developments.

Without Syrian backing, Shi’a concerns regarding the Lebanese state have become more significant (Salem, 2006:21). Salem (2006:21) argues for the formation of a bicameral legislature, in which a lower house ‘free of confessional quotas’ will allow the Shi’a to be better represented within government.

### **5.8 Summary**

This Chapter looked at the changes made to the Lebanese constitution by means of the Taif Accord of 1989/1990. In exploring these differences and amendments, the chapter was able to establish how these changes have enabled the shifting of power within the Lebanese system. The amendments were also discussed in terms of the consociational democracy model, and by discussing the terms inclusion, specificity and flexibility at the hand of these changes, the chapter

was able to determine to which degree these terms applied. The application of these terms enables the conclusion that the changed constitution, however optimistic, did not address the key problems identified in the pre-Taif constitution. The Taif Accord answered the Muslim claim for greater participation, but did not address the inclusion of smaller groups like Hezbollah. The procedure for amendment of the constitution does provide simple barrier for amendment, and the sectarian nature of the government allows multiple groups to be represented in this decision. However, not all groups are represented within government. In terms of specificity, it was found that the Lebanese constitution fell well below average, whether in words per topic or in word length. It was determined that the road to peace and stability in Lebanon was certainly not clear upon the implementation of the Taif Accord.

## **Chapter 6: Conclusion**

### **6.1 Introduction**

This chapter will provide an overview of the preceding chapters. The chapter will then go on to summarise the answers to each of the research questions stated in Chapter 1, as well as determining whether the objectives stated in chapter one were reached. The study aimed to contribute by means of ‘putting to test’ the Elkins’ theoretical framework, as well as by providing an in-depth analysis of the Lebanese predicament.

### **6.2 Review of the study**

Chapter 1 introduced the subject of the study and presented the problem statement as well as the research questions: *What factors relating to flexibility, specificity and inclusion contributed to the breakdown of the 1943 National Pact? And What steps were taken leading to the Taif Accord? And Have the changes made in the Lebanese constitution by means of the 1990 Taif Accord facilitated the endurance of the constitution?* Chapter 1 also introduced the theoretical framework regarding constitutional endurance which forms the basis of this study. The research design, in the form of a qualitative case study, providing descriptive and not explanatory information, was introduced. Limitations and delimitations were set out.

The second chapter aimed to set out the conceptualisation and operationalisation of the key terms used in the study, focusing specifically on constitution; consociational democracy; renegotiation; inclusion; specificity; and flexibility. The chapter broadly looks at debate on the subject of power-sharing and majoritarian democracies, which leads to a discussion on Arend Lijphart’s expanded theory regarding consociational democracy. Elkins *et al* (2009) theory of renegotiation is also broadly explicated – more specifically, predictions from the model, as well as the design factors thereof. The concepts of inclusion, flexibility and specificity are broadly explicated in order to provide an extensive framework. This theory is then integrated with Lijphart’s theory of consociational democracy in order to provide a conceptual framework on which to base the study of the Lebanese constitution.

The third chapter briefly looks at the 1926 Lebanese constitution and then moves on to an in-depth look at the drafting and content of the 1943 Amendment to the constitution, referred to as

the *National Pact*. The chapter then explores the breakdown of the constitution from 1926 to 1975. The chapter identifies how and why the constitution failed in term of the framework provided in Chapter 2. The chapter identifies the systemic factors ingrained in the Lebanese constitution which were the cause of the breakdown. The chapter focuses on the internal deficiencies of the system during this time, but also the role of external forces in the breakdown. The application of the theoretical framework determined that the systemic factors ingrained in the Lebanese constitution, specifically relating to flexibility and inclusion, were the cause of the breakdown. With regard to inclusion, the constitutions were determined to be not inclusive in all aspects. With regard to flexibility, both constitutions, in drafting and in content, were unable to deal effectively with changing circumstances (internal and external) in Lebanon. With regard to specificity, it was found that neither constitution had been sufficiently specific.

Chapter 4 moves on to describe the events leading up to the drafting of the Taif Accord in 1989. The chapter looks at how the situation intensified from 1988 onwards, as well as the actors involved. The chapter goes on to examine in detail the effect that a split in the Lebanese government had on the worsening conditions, as well as the role of external forces in bringing about a cease-fire and initiating negotiations. Those involved in the negotiations are mentioned, as well as the conditions surrounding the negotiations. The chapter indentifies some peculiarities surrounding the Accord, including the fact that those involved in the negotiations were not those involved in the conflict.

The chapter then turns to the framework provided by Elkins *et al* (2009), which entails a discussion on the level of inclusion, the degree of flexibility as well as the concept of specificity. The chapter aims to determine whether the drafting of the Taif Accord fits into the framework, and as such possesses the necessary inclusion, flexibility and specificity in order for the Agreement to ultimately endure. It was determined that while those chosen to draft the document may have been sufficiently representative in 1972, in 1989 they did not represent those who had stakes in the conflict, or the resolution thereof. Key interest groups were blatantly left out of the discussion, which in turn lowered the self-enforcement capabilities of the Agreement. It was also noted that, though not directly relevant to the drafting process, the concept of flexibility may have been beneficial in the time leading up to the negotiations. Lastly, it was mentioned the factor of time as well as pressure may have affected the drafting process.

Chapter 5 provides a comparison of the pre- and post-Taif constitutions, in order to illustrate the shifting of power between the president and the cabinet. The chapter goes on to look at the territorial provisions in the Accord, as well as the provisions taken in order to ensure the disbanding of militias. The chapter then discusses the amended Lebanese constitution in terms of specificity, inclusion and flexibility, as well as in the terms provided regarding consociational democracy. The application of these terms enables the conclusion that the changed constitution, however optimistic, did not address the key problems identified in previous chapters in the pre-Taif constitution, specifically the degree of inclusion and flexibility within the constitution. The constitution also does not adhere to the optimal scope and detail, which in turn lessen the likelihood that the 1990 Taif Accord's amendments to the constitution have enabled it to endure amidst external as well as internal shocks.

### **6.3 Findings**

The first research question stated in Chapter 1 is: *What factors relating to flexibility, specificity and inclusion contributed to the breakdown of the 1943 National Pact?* This question was answered in Chapter 3 by giving an extensive overview of the 1943 National Pact, which provided a confessional basis for the Lebanese system. This arrangement remained relatively stable for some time, but change in the demographics of the country rendered the Christian-Muslim ratio of political power unrepresentative. The chapter also identified the over-centralisation of power within the office of the president, and set out the events which eventually led to the civil war from 1975 to 1990, specifically relating to the presence of Palestinian refugees and the PLO. The delicate balance of confessional power was shaken with the presence of the Palestinians, who in turn helped to mobilise the discontented Muslim population within Lebanon. The Christians sought to hold on to the power which had been granted to them in the 1943 National Pact, but which had become illegitimatised with the change in demographics and demands of the Lebanese population.

Regional factors, including the interference from Syria and Israel, are also mentioned in the chapter. It was determined that the problem lay within the system – the static characteristic of the system was ‘unlikely to bring real stability, political normality, and above all political legitimacy back to the Lebanese political system’ (Hudson, 1976:119). The problem lay in the fixed nature

of the proportionality of the consociational system. The flexibility, and as such, the inclusion, of the system should lie in the proportionality – the proportionality of the system should allow for changing demographics and new interest groups to be included. Unfortunately, the preset Lebanese system, intended to protect confessional power, instead limited the distribution of power within Lebanon, and as such led to the breakdown of democracy within the country.

Chapter 4 sought to answer the question: *What steps were taken leading to the Taif Accord?* This question was asked in order to determine whether the events leading up to and the drafting of the Taif Accord fall in line with the requirements which could help to ensure constitutional endurance. The chapter identified the split in government which led to a political stalemate. Increased violence within Lebanon forced the regional powers to take notice of the situation and provide a platform for the negotiations. Those who took part in the negotiations, however, failed to represent those taking part in the conflict. This was an essential flaw of the negotiations, which would later have repercussions regarding its legitimacy and implementation. It is argued that had the Accord been drafted more publicly and inclusively, it would have been more self-enforcing. It was also determined once again that the inflexibility of the system stunted efforts at attempting to integrate new interest groups into the Lebanese system.

Chapter 5 looked to answer the question: *Have the changes made in the Lebanese constitution by means of the 1990 Taif Accord facilitated the endurance of the constitution?* The chapter looked to explicate the basic outlines of the Accord, and then determine within the framework stipulated in Chapter 2 whether these amendments to the constitution have facilitated its endurance. While external factors were mentioned, it is important to note that the median survival time of constitutions, as mentioned earlier, is nineteen years. This is the age at which one-half of constitutions are expected to have died (Elkins *et al*, 2009:129). Elkins *et al* (2009:129) find that the ‘hazard rate’ increases until the age of seventeen, when risk of ‘death’ is at its highest. From here on, the ‘hazard rate’ decreases steadily over time (Elkins *et al*, 2009:129). The amended Lebanese constitution has now survived for 20 years, which, according to this model, means that, although the constitution is not completely safe, it is out of the ‘danger zone’.

However, twenty years of peace have not convinced Lebanese citizens of the legitimacy of the Accord. While the over-centralisation of power within the system was curbed by shifting power away from the president to a cabinet equally divided between Christian and Muslims. However,

the Accord failed to deal effectively with the preset nature of the proportionality within the system, as the Christians sought to hold on to power, and the Muslims sought to gain more power. Each group believed that by ridding the system of its preset nature, someone would effectively lose power. However, it was this move that curbed the inclusivity as well as the flexibility of the Lebanese system. It may be said, however, that the recent inclusion of Amal and Hezbollah representatives in the Lebanese system show a flexibility within the system, which in turn has allowed the inclusion of key interest groups. It was also determined that the Lebanese constitution has a below-average level of specificity regarding scope and detail, which in turn may cause problems in the future.

While there are many factors present in the Lebanese situation, it is important to note that this country presents a very unique case. 20 years of relative peace may be enough to ensure the endurance of the constitution, but regional factors play an important role in destabilising the fragile balance within the country. The presence of the radicalised group Hezbollah presents an ongoing problem to the Lebanese political system; however the inclusion of this group within the system may in fact curb the group's radical movements. Should the Lebanese system continue to be inclusive and flexible in the wake of a constantly changing environment, it may endure. However, the tumultuous nature of the region in which Lebanon finds itself may eventually provide external shocks that the Lebanese system fails to weather. The hope is that the system builds on sound, systemic foundations, by means of a sound constitution, in order to be able to endure regional conflict.

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