

Arms above Laws? The Security Sector, Constitutions, and the Arab Uprisings

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Armed Institutions and the Arab-Majority Uprisings

“The only single stable solution is for the military to accept that its subordination to civil power is an entirely necessary prerequisite for a country to function in a democratic way... this subordination is also necessary if the military as a group is to serve the State effectively,” once wrote the man who was in charge of Spain’s process of democratic control of the armed forces.² Narcis Serra was the longest serving European Defence Minister, and he led the process of building the foundations of democratic civil-military relations in a country where a group of generals had sparked a brutal civil war four decades earlier. But if Serra’s statement were to be repeated in Egypt after the 2013 coup, the authority’s reactions would not be different from those of General Franco’s in 1940s Spain: repress the idea and its upholders. In a strange way, several Arab Islamist parties find themselves in the position of many Latin American and southern European leftist parties in the last century. They can win elections, but they are not allowed to govern. They are popular among the lower and lower-middle classes, but the upper and upper-middle classes cheer and fund their exclusion and repression. More importantly, the armed institutions of the State believe that they threaten their interests, even if their rhetoric and policies indicate otherwise.

The enduring crisis of civil-military relations in the Arab-majority world is centuries old. In its modern form, it started with the coup of Husni al-Za’im in Syria in 1949. This was followed by another nine coups in Syria. That sparked a regional trend, whose common bottom line was the assertion of the supremacy of the armed institutions over any other judicial or elected ones.

Egypt followed Syria with a coup in 1952, and again, in 1954. The latter put an end to basic freedoms in the country for the next 57 years, until the removal of Hosni Mubarak in 2011; the army command then made a strong comeback with its July 2013 coup. The coup trend continued to establish “officers’ republics” elsewhere in the region; most notably in Iraq in 1958 and 1970, in Yemen in 1962, in Algeria in 1965 and 1992, in Libya in 1969, in Syria in 1970, and in Sudan in 1989.

The 2011 Arab revolutions challenged the officers’ republics in Tunisia, Egypt, Libya, Yemen, Syria and elsewhere. The slogans of “bread, freedom, dignity and justice” directly and indirectly conflicted with the entrenched interests of politicised armed institutions in the aforementioned states. And the idea of “elected civilian control of the armed forces” was not only radical and alien for the ruling generals, but was also equated to a lack of “patriotism” and even national treason.

Behind the Arab Uprisings

The Arab-majority uprisings were principally sparked by the brutality of the security sector in almost every single country where they occurred. In Tunisia, Mohamed Bouazizi’s self-immolation following an insult

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² SERRA, Narcis. *The Military Transition: Democratic Reform of the Armed Forces*. Cambridge: Cambridge University Press, 2010.

by a policewoman in December 2010 triggered the revolution. In Egypt, the June 2010 murder by two policemen of Internet activist Khaled Said, followed by the brutality of police during the fraudulent parliamentary elections of November-December 2010, provided the revolution's context. In Libya, the arrest in February 2011 of Fathy Terbil – a human rights lawyer who had represented the families of the victims of the June 1996 Abu Selim Prison massacre, in which more than 1,236 political prisoners were gunned down by Muammar Gaddafi's security forces – sparked that country's revolution. In Syria, abuses committed in March 2011 by Assad's security forces, which included the pulling out of the fingernails of children and teenagers in Deraa, triggered the protests that ignited a revolution, followed by that country's ongoing armed conflict. In many ways, the process optimistically named the "Arab Spring" was a region-wide reaction against violations by the security services.

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Throughout the decades prior to the 2011 revolutions, Arab security establishments behaved more like organised crime syndicates than professional security services. Concepts such as human rights, human security, democratic control, civilian oversight and accountability were absent from the lexicons of Arab interior and defence ministries, and any attempts to introduce them were staunchly blocked.³ Indeed, Egyptian opposition activists unsurprisingly chose to stage the massive protests that began Egypt's uprising on 25 January – Egypt's "Police Day," intended to "honour" the security services. "[We] wanted to ruin their party like they ruined our lives," a young Egyptian revolutionary told me. Fol-

lowing the removal of the 2011 dictatorships in Tunisia, Egypt, Libya and Yemen, security sector reform (SSR) became an immediate objective of both revolutionary and reformist forces, regardless of ideological or political affiliation. The same would have happened in any other post-despotic transition in the Arab-majority world.

However, that immediate urge for SSR did not last long. By 2014, the commanders of the Egyptian military had held the elected President in one of their camps, dissolved the Parliament, and suspended the constitution via a bloody process that left more than 2,000 people dead and more than 23,000 detained. In Libya, the General National Congress, the only elected body in the country, has been a target of multiple attacks by armed units of various affiliations. The country could well be en route to a civil war. In Yemen, the country has descended into a series of armed clashes involving the army and other non-state armed actors, with significant military capabilities. The intensity, duration, scale, and scope of these armed clashes ebb and flow. But elected civilian control of the armed forces remains an unrealised dream, like in Egypt and Libya. In Tunisia, although significant progress has been made on various dimensions of security sector reform, the political polarisation has had a visible negative impact on that process.

Security Sector Reform?

SSR can be described as the transformation of a country's security apparatus – including the roles, responsibilities and actions of all the actors involved – so that it is managed and operated in a manner consistent with democratic norms and sound principles of good governance and thus contributes to a well-functioning security framework. Ideally, the reform process should embrace all branches of the security sector, from the armed forces to the customs authorities.

In Egypt, Libya and Tunisia, security bureaucracies under the Interior Ministries include: the police; paramilitary forces, such as the Central Security Forces in Egypt and the Intervention Forces in Tunisia; domestic intelligence services, such as the National Security

³ A. D., H. Lt. Colonel in the Egyptian Police Academy. Interview by author. Cairo, 16 April 2013; Laarayedh, Ali, former Minister of Interior in Tunisia. Interview by author. Geneva, 21 November 2012.

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Apparatus in Egypt; and temporary irregulars, such as the Supreme Security Committee in Libya.

Two core objectives of SSR are critical in the case of Arab-majority states in general and Arab Spring countries witnessing post-despotic transitions in particular. First, effective governance, oversight and accountability must be established in the security system; and, second, the delivery of security and justice services must be improved. The challenges of SSR are numerous, however, beginning with the technical, organisational and administrative dimensions of the process. In addition, SSR is a highly political process involving powerful anti-reform factions within the relevant bureaucracies. Indeed, this political dimension can dictate the direction and success of the entire project.

Attempted Reforms

Following each successful revolution of the Arab Spring, various SSR initiatives were put forward by governmental and non-governmental institutions, as well as by independent experts. In Tunisia, SSR efforts started as early as June 2011, a few months after President Zine El Abidine Ben Ali fled. In November 2011, the Ministry of the Interior laid out a roadmap for reforming Tunisia's security sector in a white paper, which discussed transforming the security sector from a police order to a police service that could respond urgently to the new challenges of crime. Tunisia's current leaders, however, view this white paper as the product of former regime elements within the Ministry of the Interior who are not necessarily pro-reform. "There are some good elements [in the white paper]. But it offers no comprehensive reform," Amer Larayedh, head of the Political Bureau of the Ennahda party, the lead party in Tunisia's ruling coalition, told me. Meanwhile, in December 2011, Ali Larayedh, a civilian who was himself a

torture victim during the 16 years he was jailed by the Ben Ali regime, became the Interior Minister; he became Prime Minister this March.

In Egypt, more than 10 SSR initiatives have been proposed since March 2011. The proposals, which vary significantly in terms of quality and comprehensiveness, have been put forward by a range of stakeholders including independent experts, civil society groups, disenchanted police officers, the Ministry of the Interior and Parliament. Civil society organisations have offered various initiatives focused on legal reform, oversight and civilianisation of the security sector. Disenchanted police officers were able to form several independent organisations, such as the General Coalition for Police Officers (GCPO), which lobbied for official recognition as a police union with an elected leadership. The initiatives proposed by GCPO and others were focused on cleansing the police force of corrupt generals; improving work conditions, training, media relations and public relations; and increasing salaries and pensions. Several independent SSR experts were consulted by both the Presidency and the Parliament regarding implementation of the various proposals.

But perhaps the boldest step towards civilian control over the security sector was taken by the Egyptian Presidency. In August 2012, a massacre of Egyptian soldiers in Sinai by an armed group led to the culling of the top brass of Egypt's Supreme Council of the Armed Forces (SCAF), including its head, Field Marshal Hussein Tantawi, and his deputy, General Sami Annan. The Sinai incident also sparked a process of removing some of the most powerful generals across the security sector. These included the head of the General Intelligence Directorate, Murad Muwafi; the head of the Presidential Guard, Nagib Mohammed Abd al-Salam; the head of the Military Police, Hamdy Badin; the head of the Cairo Security Directorate, Mohsen Murad; and the head of the Central Security Forces, Emad al-Wakil. These generals all shared an anti-reform stance, defiance of elected civilian rule and a desire to maintain as many Mubarak-era policies and practices as possible. Two of them, Badin and Murad, were specifically accused by several revolutionary and reformist groups, including the GCPO, of organising a campaign of repression against activists.

In Libya, security sector reform began with the appointment of Salem al-Hasi as the head of the Libyan

intelligence agency, the Foreign Security Apparatus (FSA). Al-Hasi, who was a member of the armed wing of the National Front for the Salvation of Libya (NFSL) and spent more than two decades in exile in the United States, thus became the first civilian opposition figure to lead an Arab intelligence service. "All of the Arab intelligence services were there to protect the regime and oppress citizens. I will change that," al-Hasi said⁴ upon taking his post. "The Libyan intelligence will be under the control of the elected executive and the direct oversight of the legislative assembly."

Whether he will succeed or not is another matter. Accusations have been levelled against al-Hasi and his agents for allegedly tapping phones and electronically monitoring Gaddafi loyalists, using the interception equipment they inherited from his regime. Libya's General National Congress (GNC) and future parliaments will need to craft laws for oversight and control of the security and intelligence apparatuses, as well as a clear mechanism for enforcing that control. Such steps will require the help of the UN Support Mission in Libya (UNSMIL) as well as independent experts. At the same time, Libya also critically needs a thorough process of disarmament, demobilisation and reintegration (DDR), and several steps have already been taken to that end.

Army and Constitution: the Case of Egypt

The story of constitutions and armed institutions in Egypt is a thorny, controversial one. It started in 1952 with a process of constitutionalising the dominant role of a military junta in politics. By 2014, Egypt had not gone far, if it hadn't dramatically deteriorated.

The prerogatives of the army in Egyptian constitutions have steadily expanded since the 1952 coup. But the story begins a bit earlier. In the 1923 constitution, both the laws governing the army and the police force were left entirely in the hands of lawmakers in the elected Parliament (articles 146, 147, and 148). This reflected one necessary form of elected civilian control over armed institutions. However, back then the army and the police force were not the dominant armed institutions; the balance of power

was on the side of the much superior British armed forces in Egypt.

The 1952 coup changed these conditions quite significantly. The army staged the coup not only against the monarchy, but also against an elected parliament. Once King Faruk I departed, a minority of the junta wanted to recall the Parliament and resume constitutional democratic politics. Those were mainly represented by Col. Yusuf Siddiq, Col. Ahmed Shawky, Col. Rashad Mehanna, Maj. Khaled Mohyiddin and others. The overwhelming majority of the junta, however, wanted a military dictatorship. With the pro-democracy minority controlling significant firepower, especially in the artillery corps, a compromise had to be reached: ask the judges.

On 31 July 1952, a highly politicised State Council ruled with a nine-to-one majority that the Parliament should not be recalled. Abd al-Razzaq al-Sanhouri, the head of the Council, and Suleiman Hafiz, the deputy head of the Council, were anti-Wafd⁵ judges, who aimed to block the Wafd Party, the most popular at the time, from controlling Parliament. At a later stage, they also ruled that it is constitutionally legitimate for an army officer to preside over a civilian government. Nine unelected, politicised judges ruled to bring down their elected political rivals, and with them the fragile Egyptian democracy.

But the 1954 draft constitution was an attempt to retract the Revolutionary Command Council (RCC) course of military rule. The draft not only outlawed the prosecution of civilians by military tribunals under any circumstances (article 20), but also required that the State educate and teach the conscripts (article 180). It did establish a National Defence Council (NDC), but relegated it to a mere advisory role on three specific issues (declaration of war, reconciliation, and defensive measures) (article 185). Most of the laws controlling armed institutions (both army and police) were left to the elected Parliament, to which the first article of the draft gave a special status: "Egypt is a parliamentary representative republic."

But the 1954 draft was never ratified. Nasser and his junta wanted a dictatorship built around a cult of personality, not a state with functioning democratic institutions. Instead of ratification, historian Salah Issa found the only copy of the 1954 draft in 1999,

⁴ See interview in: www.aawsat.com/details.asp?section=4&issueno=12125&article=662635&feature=#.UaCj5pywVVU.

⁵ A nationalist liberal party, which was the most popular one in 1952.

in the basement of the think-tank affiliated with the Arab League. He wrote a book entitled *A Constitution in a Trash Bin* to reflect the tragic story of constitutional democracy in Egypt.

Compared to the 1954 draft, the 2012 constitution certainly looks like a step backward on democratisation, liberties and balanced civil-military relations. For example, the Defence Minister can only be a military officer (article 195), and the NDC must have a majority of military commanders (article 197). In addition, article 198 allows military tribunals for civilians “when a crime harms the armed forces.” A list of specific crimes would have been put forth by lawmakers had the elections taken place in 2013 as planned. This law would probably have been another tug-of-war between civilian representatives and army generals.

However, compared to the 1971 constitution or the 2014 constitution, the 2012 constitution looks like a step forward. Aside from the question of the legitimacy of a junta-appointed constitutional assembly, the highly repressive conditions, the extreme levels of bloodshed, and systematic exclusion accompanying the process of a post-coup constitutional crafting, not only were all of the aforementioned military prerogatives from the 2012 constitution upheld in the 2014 constitution, but more were added, including those in articles 152, 201, 203, 206, 207, 234, and 237. The overall package of prerogatives not only turns the Ministry of Defence into an autonomous power, but also grants significant prerogatives to the General Intelligence Apparatus and the Ministry of Interior. The prerogatives can be grouped into three categories: institutional autonomy, legal immunity and constitutional rights, and formulation of national high policy.

The first category includes articles such as 201 and 234. Article 201 provides that the Defence Minister must be a military officer and article 234 requires the SCAF to approve the Defence Minister for the next two presidential terms. An example of the second category is article 204, which is an expansion, with multiple additions, of article 198 from 2012. It allows civilians to be tried in military tribunals in a way that is likely to grant these tribunals jurisdiction whenever they wish. The article also shields both military and

intelligence staff and their “equivalents” from any civilian oversight (whether judicial, parliamentary, or other). An example of the third category would be article 203, a modified version of article 197 from 2012. The article drops one civilian representative from the NDC (due to the abandonment of the bicameral system and, therefore, the Upper House), yielding an absolute military majority of nine-to-five. No reference is made in this draft or others to the military-economic complex, and no articles provide for oversight institutions to monitor or regulate the military’s civilian assets, including land acquisition and confiscation.

The Police Sector and the 2014 Constitution

The police sector was also given new prerogatives that did not exist in the 2012 constitution. Article 206 asserts that the police’s loyalty is to “the people.” No official elected institution is mentioned. This could mean that a 100,000-strong demonstration filling Tahrir Square, extensively covered by local media, and declared a representation of the 84.5 million “Egyptian people,” would legitimate a police crackdown similar to that carried out by the military in July 2013. Additionally, article 207 declares that the Supreme Police Council (SPC) will be established from senior police officers and must be consulted on any law(s) affecting the police. This article can be used to veto any attempt at security sector reform, via the SPC, which is what happened⁶ under President Morsi. Finally, article 237 requires that the State fight “terrorism,” a term broadly and selectively used to describe and deliberately conflate both armed and peaceful opposition to the military coup. That included the accusation that President Obama⁷ was a member of the “terrorist” Muslim Brotherhood (MB), the accusation that Mohamed ElBaradei was conspiring with the MB to instigate violence in Sinai, and even the accusation that a fictional female puppet-character, Abba Fajita,⁸ was inciting violence and sponsoring terrorism.

The prerogatives that the 2013 draft grants to the armed institutions are unprecedented in the history

⁶ See for example: www.bbc.co.uk/programmes/b03bqfwv?ocid=socialflow_twitter_worldservice.

⁷ See for example: <http://blogs.aljazeera.com/topic/egypt/egyptian-media-says-obama-muslim-brotherhood-member>.

⁸ See: www.washingtonpost.com/world/middle_east/egypts-latest-terror-suspect-the-popular-felt-and-yarn-puppet-abba-fajita/2014/01/02/ced0def6-73c3-11e3-9389-09ef9944065e_story.html.

of Egyptian constitutions. Those prerogatives would not have passed without collaboration from civilians. Article 204, which allows military tribunals for civilians, was approved by the overwhelming majority of 41 to 6 in the constitutional assembly appointed by the 2013 junta. Article 203 on the NDC's military majority and defence budget was approved almost unanimously: 48 to 1. Even though the 1954 constitutional assembly was also appointed by junta, the quality of the articles, the checks on authoritarian tendencies, and the guarantees of basic freedoms were of a different level.

Conclusion

Although the repressive societal model known as the “mukhabarat state” was initially severely undermined by the Arab revolutions, many of its subcultures survived in Tunisia, Yemen and Libya and it is making a brutal comeback in Egypt. To ensure that SSR progresses further, three recommendations are essential. They are related to the political, institutional and legal dimensions of the SSR process and can be summarised in a few words: a political consensus on SSR, institutional oversight and new police laws. The involvement of international democratic partners such as Spain, the United Kingdom, the United States and other democracies in Arab SSR is useful for knowledge transfer – for example,

oversight training for MPs, non-lethal riot control training for the police and assistance with depoliticising security institutions – as well as for advanced equipment supply and training. However, direct Western support of SSR in the Arab world may be used by anti-reform generals, old regime remnants and even by some opposition groups to delegitimise SSR as a “foreign conspiracy” to weaken or infiltrate the security services.

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In any case, no democratic transition is complete without targeting abuse, eradicating torture and ending the impunity of the security services while at the same time imposing effective and meaningful elected-civilian control of both the armed forces and security establishments. Those objectives were at the core of the Arab revolutions of 2010-2011. They have yet to be attained.