

The Military and Egypt's Transformation Process

Preservation of the Military's Reserve Domains

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The military's withdrawal from Egypt's day-to-day politics after it had assumed power in the wake of Hosni Mubarak's ouster did not put an end to its role in the political process. A tacit agreement seems to have been reached between the President – affiliated with the Freedom and Justice Party (FJP), the political wing of the Muslim Brotherhood – and the military leadership. While the military institution keeps its reserve domains, it has also become a mainstay of Mohamed Morsi's regime. This backdoor deal – confirmed by the new Egyptian constitution, signed into law by the President on 26 December 2012 – also poses a great challenge to Egypt's transformation process, as it leaves the military unaccountable to elected civilian bodies.

On 12 August 2012, Mohamed Hussein Tantawi, then Minister of Defence and Commander in Chief of the Armed Forces, and his Chief of Staff, Sami Anan, as well as other senior military officials, were sent to retirement. This incident is quite significant in understanding the nature of civil-military relations in the aftermath of the election of President Mohamed Morsi, in office since 30 June 2012. What looked like a return of the military to its barracks appears more like a negotiated arrangement upon closer examination. As a starting point, President Morsi had reached out to high-ranked members of the Supreme Command of the Armed Forces (SCAF) – in power between the overthrow of President Hosni Mubarak in February 2011 and the

assumption of office by Morsi – who would support his intended reshuffling of the army command. These senior officers were unsatisfied with what they considered Tantawi's mismanagement of the transitional period, which damaged the military's national image, institutional interests, and affected the army's performance. Exploiting an attack by some militant groups on an Egyptian border post in Northern Sinai that killed 16 Egyptian security personnel, Morsi dismissed the most powerful generals across the security sector, namely the head of the Presidential Guard (Naguib Mohamed Abdel Salam), the head of the General Intelligence (Murad Muwafi), and the head of the Military Police (Hamdy Badin). By removing these central

security figures, he intended to secure the Presidency against possible reactions from the “street” orchestrated by the removed Minister of Defence or his close associates. All senior officers sent to retirement with Tantawi (almost 200 in total, 5 of them SCAF members) had not been informed ahead of time of such reorganisation of the military command. This reshuffling within the army command, on the one hand, complied with the military institution’s internal rules, as promoting Abdel Fatah al-Sisi – former head of the Military Intelligence – to the rank of Minister of Defence and Commander in Chief of the Armed Forces mandated sending to retirement all more senior officers within the army command. On the other hand, it was used as an occasion to get rid of Tantawi’s supporters and some of the most unpopular military figures involved in the crackdown of protests during the transitional period.

The reorganisation of the military command and the appointment of a new and younger military leadership could have been considered a fresh start, one in which the military would have accepted to be subject to a gradual increase in civilian oversight, a *sine qua non* feature of any transition towards a democratic system. Achieving more democratic civil-military relations would entail addressing some problematic issues between civil and military actors, namely the military’s economy, military trials of civilians, and questions related to transitional justice as well as Egypt’s national security/ foreign policy formulation. However, in all these areas, little progress has been made towards more transparency and civilian oversight since President Mohamed Morsi assumed power. Moreover, the new Egyptian constitution, approved by 63.8 per cent of the voters in a highly controversial referendum, has confirmed the military’s exceptional status.

The military’s economy

The Minister of Defence retains supervisory control over a wide variety of activities

known as the “military’s economy”, which grants him decision-making power over a substantial part of Egypt’s economy. This military’s economy consists of five main elements, namely: the annual defence budget (EGP 25.5 billion or US\$ 4.3 billion, and around 5.2% of the 2011/2012 budget); US military assistance (US\$ 1.3 billion received annually by the Armed Forces, usually in-kind since the aftermath of Egypt’s peace treaty with Israel in 1979); arms deals (import and limited export of weapons and ammunition); the factories run by the Arab Organization for Industrialization (AOI) under the supervision of the Ministry of State for Military Production; and the National Service Projects Organization (NSPO), directly overseen by the Ministry of Defence.

The official rationale behind the military’s economic activity has been budget relief, based on the argument that the military’s self-sufficiency allows Egypt to maintain large military structures without placing pressure on state finances. Initially created by President Anwar al-Sadat in 1975, the AOI provided a base from which arms manufacturing, as well as household appliances production, flourished in the 1980s. The NSPO, also established by Sadat, in 1979, runs exclusively civilian projects. Its budget is managed by the Minister of Defence and its profits are transferred to an undisclosed bank account. Such civilian activities made the army an integral part of Egypt’s development efforts through the armed forces’ involvement in the reconstruction of Egypt’s infrastructure – damaged by the war against Israel – under the late 1970s’ slogan “one hand builds and another carries an arm”. At the same time, it was Sadat’s strategy to reduce the army’s involvement in politics while rewarding it through the expansion of its role in domestic economic production. Thus Sadat, and Hosni Mubarak after him, transformed the military from an active protagonist in the Egyptian political arena into a power operating in cooperation with the President to advance their respective interests.

The Armed Forces started their civilian economic activities with agrarian projects, land reclamation, and civilian public works contracts. They then gradually expanded and diversified their fields of activities through a multitude of income-generating enterprises to include tourism/hotels, construction, maritime transport, production of petrochemicals, as well as environmental projects such as wastewater treatment and renewable energy. The military institution is keeping the aforementioned activities completely secret, using “national security” as a pretext. For example, none of these companies is listed on the Egyptian stock market.

However, the activities of the AOI and NSPO are ubiquitous and permeate Egyptians’ daily lives, namely army-produced brands such as “Queen” pasta and “Safi” mineral water, or the services provided by “Wataniyya” petrol stations and military-managed wedding halls. The military institution has thus developed a “grey economy” that is not subject to any parliamentary scrutiny or the Central Auditing Office. Given this lack of transparency, experts come to very different assessments of the military economy’s share, ranging from 5 to 15 per cent of Egypt’s gross domestic product. While these enterprises enjoy lucrative subsidies as well as tax and licensing exemptions, the revenues they generate are returned to the military’s own account rather than incorporated into the state’s budget.

After Egypt’s 25 January Revolution, many voices called for civilian oversight of the military’s budget and economic activities by the elected bodies. Others demanded a merger of the army’s projects into Egypt’s official public sector. This did not meet with approval from the military – one reason being that a portion of the revenue is spent on officers’ allowances, housing, and other improvements to their living standards. The remainder is either reinvested or used to complement spending on maintenance, operations, and procurement not covered by the defence budget or US mili-

tary assistance. The military institution responded harshly to such demands, stressing that the army’s economic projects are off-limits and expressed its readiness to fight for them.

This stance was in line with the obvious resolve to keep significant decision-making powers over military matters that the SCAF had made explicit on more than one occasion during the transitional period. This was expressed most clearly in November 2011, when an official committee headed by Ali al-Selmi, then Deputy Prime Minister for political affairs, issued a document that would have established a number of “supra-constitutional principles”. In essence, the so-called Selmi document would have given the SCAF the sole responsibility for all matters concerning the Armed Forces, especially with regards to their budget, which was supposed to be incorporated only as a single figure in the annual budget, and would not be subjected to discussion in Parliament. These “supra-constitutional principles” were quickly dropped after strong criticism; however, the new constitution retained some of these provisions, in particular with regards to the military’s economy.

While during the constitution drafting process, representatives of the opposition proposed to keep some items of the defence budget secret for “national security” reasons and to discuss others in closed sessions by specialised parliamentary committees (namely the Committee of Defence and National Security), none of these propositions materialised in the new constitution. Moreover, in the constitutional text signed into law, not a word is included on the military’s economic activities, implying that – at least for the moment – they will remain walled off from civilian oversight.

Military trials

During the three months following the revolution (January to March 2011), the military used excessive force against civilians and relied heavily upon military trials

that imposed disproportionate sentences. These abuses were at least partially due to the military's lack of experience in preserving domestic order, as military institutions (military police, military prosecution, and military courts) had replaced the respective civil state institutions in the aftermath of the revolution.

Later on, military trials were used as a political tool to intimidate opponents. According to the head of the Military Judiciary, nearly 12,000 civilians were tried by military courts from January to the end of August 2011 – a figure confirmed by relevant civil society organisations. Most of the cases were related to ordinary crimes, but hundreds of civilian activists were also subject to military trials. Accusations varied from looting to curfew violation, disturbance of public traffic, sabotage of public and private properties, slander of the Armed Forces, and offensive writings in social media networks. The number of civilians referred to military courts has significantly decreased since the end of August 2011 as a consequence of mounting pressure from civil society actors and wide media coverage of some cases. Obviously, the military took the decision to reduce confrontations with civilians to improve the Armed Forces' image and reduce criticism.

On 6 May 2012, the Egyptian People's Assembly approved the abolition of article 6 of the Code of Military Justice. This article had allowed the President of the Republic to directly refer civilians for trial in front of military courts. The new text restricts the President's powers. However, the military retains its authority to try civilians.

On different occasions, civilians tried before military courts were granted amnesty, initially by the SCAF, and later, in October 2012, by President Morsi, who granted a general amnesty for "crimes committed to support the revolution" – a vague formulation allowing the Military Prosecutor to exclude its application to some civilians tried before military courts. Despite official denials, military trials of civilians have since continued. For exam-

ple, on 18 November 2012, Military Police arrested 25 civilians during an attempted compulsory eviction of al-Qursaya Island (on the Nile – Giza area). The military claimed they were on military property, despite a 2010 court verdict overruling previous eviction orders and recognising the inhabitants' right to live and work on the island. The prosecutor charged the civilians with assaulting the military and their properties, and the military trial started in early December 2012.

This practice has been confirmed by the constitutional text (article 198) in which the military keeps its right to try civilians before military courts for crimes "harming the Armed Forces". Such a vague formulation leaves a wide margin for the legislator to include various cases at the military's discretion. In fact, the last constitutional draft, issued on 29 November 2012 and approved by popular referendum, backtracked on earlier drafts, which clearly stated that "no civilian shall be tried before military courts".

Transitional justice

Popular demands have stressed the necessity to hold military officials accountable for serious human rights abuses committed during the revolution and its aftermath, including the killing of demonstrators, the excessive use of force in dispersing protesters, torture during detention, corruption, etc. To satisfy popular demands, President Morsi formed in July 2012 a fact-finding committee to inquire into crimes committed against protesters from January 2011 to 30 June 2012. But the committee was hastily formed. It is mainly made up of representatives of the same security organs that previously failed to provide evidence to the court that would have made it possible to identify perpetrators during the 18 days of the revolution. Moreover, even though the committee gathers evidence charging military officials for crimes against peaceful protesters, according to the Code of Military Justice, all cases involving military

personnel will be subjected to the Military Prosecutor, which does not guarantee the transparency of the investigations.

Likewise, the civilian General Prosecutor lacks the power to investigate allegations of corruption against army officials, as the SCAF amended the Code of Military Justice (article 8A) on 10 May 2011 to limit prosecution of members of the Armed Forces accused of “illicit gain” to military courts. This includes retirees, which shows the particular concern of former SCAF leaders. To grant extra immunity to SCAF members, President Morsi delegated, in November 2012, his competencies regarding the lessening and cancellation of sentences issued against the military to al-Sisi, his Minister of Defence – a decision widely criticised by opposition members, as it leaves the military leadership complete discretion over the matter.

Today, reporting about the prosecution of the military does not go beyond eclectic official declarations and newspapers leaks. The latter were highly criticised by the military leadership; it was dissatisfied and offended when a newspaper reported that Tantawi and Anan “would be banned from travel for charges of illicit gains”. To reconcile the army’s leaders, President Morsi intervened to defend Tantawi and Anan, and the head of the Supreme Press Council suspended the newspaper’s editor in chief. Thus, while public pressure obliged President Morsi to initiate a process of transitional justice, the measures concretely taken reveal a clear lack of will to push through these efforts and to take the risk of a confrontation with the military.

National security / foreign policy orientation

The SCAF has used a nationalist discourse – based on the Armed Forces’ “victory” in the 1973 war – to argue that foreign and defence affairs cannot be left to civilian leaders and to assert its special status as “custodian” of Egypt’s order and revolution, through its intervention in domestic poli-

tics in times of social unrest and political instability. With regards to foreign policy and national security, there is a consensus among analysts that the military institution is eager to keep the country out of costly wars with its neighbours, particularly Israel, to maintain US military aid, and to shield the army from any adventurous foreign policy initiatives that elected civilian politicians may choose to advance.

In this respect, the situation on the Sinai Peninsula, which suffers from inadequate socio-economic development and has experienced a high level of penetration by Jihadist groups, is a matter of concern for the military command. Following the attack by some of these militant groups on an Egyptian border post in Northern Sinai on 5 August 2012, the military leadership extended its anti-insurgency campaign (initially launched in August 2011 after militants’ attacks on Israel, first called “Operation Eagle”, then “Operation Sinai”) to crack down on militant groups in Sinai and restore central authority over Egypt’s eastern governorate. Many Egyptian opposition leaders attribute Sinai’s increasing lawlessness to the 1979 peace treaty with Israel, which restricts Egypt’s military presence in “Zone C” (stretching along the Israeli border) and only allows the deployment of a rather symbolic and lightly armed Egyptian police force, besides a multinational monitoring force.

Parallel to the military campaign, President Morsi sent an official delegation in November 2012 to initiate a dialogue with relatively moderate Jihadist groups. According to a local former Salafi MP, this dialogue failed, as the representatives of Sinai Jihadists considered the Islamist members of the delegation – negotiating on behalf of the government – as “heretics” who “had made a pact with security agencies”. While some media reported that President Morsi asked the military command to stop the operations to give a chance for negotiations, the military spokesman asserted the continuation of military operations in Sinai and rejected any possibility

for dialogue between the Armed Forces and Jihadist groups.

At the same time, the Minister of Defence is currently engaging in a dialogue with tribal leaders over land ownership in Sinai. Law 14 of 2012 gives the Minister of Defence the responsibility of setting regulations concerning land attribution on the Sinai Peninsula. Thus, on 24 December 2012, the Minister banned private ownership or rental of land and property in strategic locations of military importance in Sinai, which includes “Zone C” (according to the 1979 Camp David peace treaty) and lands located within 5 km west of Egypt’s eastern border with Gaza/Israel. These military bans would stop any land ownership by foreigners, which would seriously affect the real estate market in the Sinai Peninsula, where foreign investment is a key factor. Moreover, this law would ban Palestinians and Israelis who obtain Egyptian nationality through mixed marriages from owning lands in the Peninsula. Putting this land issue in the hands of the Ministry of Defence highlights its crucial role in the formulation of Egypt’s foreign policy and national security matters.

New institutional set-up

Considering that for the first time since 1952, the Supreme Commander of the Armed Forces – the President of the Republic – is a civilian, the military was particularly keen on keeping the upper hand in military affairs and to be consulted for all national security matters. This military claim was institutionalised by the creation, composition, and prerogatives of the National Defence Council, as well as a number of other elements of the new Egyptian constitution.

Originally set up under President Gamal Abdel Nasser and formally established by the 1971 constitution (article 182), the National Defence Council rarely met or exercised any discernible authority before it was revived on 14 June 2012 by Field Marshal Tantawi, then head of the SCAF. Head-

ed by the President of the Republic and mainly composed of military figures (11 out of 16 members came from the army ranks), it could be viewed as a mini-SCAF. The composition of the National Defence Council in the new constitution is slightly different: It is still presided over by the President of the Republic but composed of 14 members, namely: the speakers of the People’s Assembly (lower house) and the Shura Council (upper house); the Prime Minister; the Minister of Defence; the Minister of Foreign Affairs; the Minister of Finance; the Minister of Interior; the head of the General Intelligence Service (GIS); the Chief of Staff of the Armed Forces; the Commanders of the Navy, the Air Forces, and the Air Defence; the Chief of Operations for the Armed Forces; and the head of Military Intelligence. This composition is more balanced than the one created by Tantawi, as 6 out of 14 members are civilians. Still, the absolute majority of the military is maintained, given that the head of the GIS has traditionally (in the absence of a binding constitutional text) been a military figure, since its establishment by President Nasser in 1954.

According to article 197 of the constitution, the National Defence Council has the exclusive prerogative to discuss the Armed Forces’ budget, thus stripping the Parliament – the civilian-elected body *par excellence* – of the oversight over the state’s non-elected entities. Hence, article 197 is highly controversial, as it confirms a status quo wherein the defence budget appears as one single figure in the state’s budget – without further details – not to speak of the military’s other economic activities, namely their so-called economic empire, US military assistance, and arms deals.

In addition to discussing the military budget, the National Defence Council has “military prerogatives”. The latter, which were detailed in law 86 of 1986, include defining the national defence policy and coordinating it with other relevant ministries’ policies; ensuring the country’s defence and troop mobilisation for war; and

determining the number of troops as well as their equipment in times of war and peace. This council, which cannot convene or make decisions unless a majority of its members are present – that is, it can be blocked by its military members – should be consulted by the President before declaring war or sending the Armed Forces outside state territory (article 146), and should also be consulted for draft laws related to the Armed Forces (article 197).

The military's resolve to secure its autonomy in security and defence affairs from civilian control was clearly expressed during the last discussions of the Constituent Assembly, which took place on 27 and 28 November 2012. Apart from insisting that the National Defence Council should be enshrined in the new constitution, Mamdouh Shahin, the SCAF representative in the Constituent Assembly, pushed for the creation of a second body, the National Security Council.

The National Security Council (article 193) is presided over by the President of the Republic and composed of 12 members, namely: the Prime Minister; the speakers of the People's Assembly and the Shura Council; the Minister of Defence; the Minister of Interior; the Minister of Foreign Affairs; the Minister of Finance; the Minister of Justice; the Minister of Health; the head of the GIS; and the heads of the Committees of Defence and National Security in the People's Assembly and the Shura Council. Among the prerogatives of this predominantly civilian council is adopting strategies for civil defence (article 193).

The creation of a National Security Council – a mostly civilian entity in charge of civil defence (for example, preventing food shortages or managing natural disasters), while keeping purely military prerogatives (for example, the Armed Forces' size and equipment, the military's budget, approval of war) in the hands of the predominantly military National Defence Council – is an indicator of the military's will to institutionalise its control of military affairs and have its reserve domains guaranteed by the

constitutional text, and unchallenged by civilian control.

Conclusions

For the time being, the military institution and the President have developed a sort of symbiotic relationship – both cannot do without each other. On the one hand, the military needs the President's support and cooperation to maintain its economic privileges, its exceptional status as an almost unchecked entity, and its longstanding interest in controlling Egypt's foreign and security policy, at least to a certain degree. On the other hand, the Muslim Brothers, via the President, have been forging an alliance with the military to face opposition from liberal actors, and to restore order and secure strategic locations in times of political instability and social unrest.

President Morsi's affiliation with the Muslim Brotherhood poses an extra challenge that will deter him from a potential confrontation with the Armed Forces. While the FJP was founded in April 2011 to allow the Muslim Brotherhood to field candidates in parliamentary elections and to run for the Presidency, the Brotherhood itself remains illegal. It has been banned since 1954 but tolerated since the 1970s. Such a status of illegality means that the Brotherhood is not under any scrutiny itself: Its members, its sources of funding, its trans-national activities, and its business empire remain unknown. The Brotherhood's status puts President Morsi in a rather awkward position: Attempts to subject the military (or any other actor) to transparency and civilian supervision will lack credibility as long as he himself stems from a clandestine organisation.

In this context, the military institution proved successful in securing its interests: The defence budget (as well as other military affairs) is discussed in the National Defence Council, where the military has a majority, and the constitution remains silent on the military's economic projects, which are not subject to parliamentary

scrutiny. The military leadership has also successfully resisted any questioning of its leaders with regard to excessive use of force against protesters or corruption charges.

At this point, it has become apparent that President Morsi and the Muslim Brotherhood are unwilling to enter into confrontation with the military leadership and thus keep the “transitional justice” file on hold. The same holds for military trials, as the new constitution still gives the military the right to try civilians before military courts in cases of harm to the Armed Forces. Thus, till now President Morsi’s strategy of aiming at satisfying revolutionary demands and accommodating the military has not worked out. Instead, inefficient half-measures have contributed to the accumulation of frustration and heightened popular demands.

Policy recommendations

Egypt needs the support of the international community to carry on its transformation process, as the macro-economic picture continues to deteriorate and the budget deficit is expected to rise to EGP 200 billion (US\$ 31.5 billion) in the current fiscal year. While the European Union committed itself to concrete measures to boost Egypt’s economy during the November 2012 Task Force meeting in Cairo, little has been done to support democratic and security-sector reforms. Europe could provide valuable assistance through the following measures:

Enhancing military-to-military dialogue: The extension of training programmes for Egyptian officers could be highly beneficial, if these exchanges are geared towards spreading democratic values. This could be a natural entry point for stimulating gradual military reforms.

Revision of Police Academy’s training curricula and methods: Europeans should offer to support a review with the aim of transforming the police into a body that serves society rather than acting as the state’s oppressive tool. This should be accompanied by com-

prehensive training in non-lethal riot-control tactics, which should be provided to police personnel.

Training in oversight for Egyptian parliamentarians and NGOs: The Europeans should offer specific training for parliamentarians, as well as civil society groups engaged in security-sector monitoring to help in gradually establishing oversight mechanisms over the military institution.

Encouraging transparency and inclusive national dialogue: European governments should encourage the Muslim Brotherhood to legalise its status and to establish a clear distinction between its resources and leadership and those of the FJP. They should also encourage Egypt’s President to set up a credible, inclusive, and transparent dialogue with different Egyptian political actors.

Addressing transitional justice and reconciliation issues: Meeting people’s need for justice and accountability by addressing past abuses and crimes committed against civilians remains a highly challenging issue. A failure by the Egyptian authorities to deal with it properly will plunge the country into a cycle of violence and threaten long-term stability. European Union assistance, with regards to the transitional justice file, could take the form of the provision of expertise and the sharing of “best practices” based on previous European and Latin American experiences, namely the establishment of a truth commission and/or a special tribunal to investigate and prosecute perpetrators, reparation programmes for victims and their families, as well as establishing places of – or procedures for – remembrance.

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Further reading:

Stephan Roll
The Military and the Muslim Brotherhood Will a Power-sharing Agreement Be Reached in Egypt?
SWP Comments 4/2012, February 2012