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“Egypt's Litigious Transition”

The Atlantic Council

Monday, May 13, 2013 12:00 - 1:00 pm

1101 15th Street, NW, 11th Floor Washington, D.C. 20005

The Atlantic Council hosted an event for the release of their new issue brief titled "[Egypt's Litigious Transition](#)." The event featured **Mahmoud Hamad**, author of the issue brief and Assistant Professor at Drake University, and **Yussef Auf**, a nonresident fellow at The Atlantic Council's Rafik Hariri Center for the Middle East. The event was moderated by Dr. **Michele Dunne**, Director of The Atlantic Council's Rafik Hariri Center for the Middle East.

Mahmoud Hamad began the discussion by asserting that the political involvement of Egypt's judiciary is unseen in judiciaries around the world and this involvement is counterproductive to Egypt's political process. Many politically motivated decisions made by the courts create "judicial landmines" that can have real harm on the political process. The politicization of Egypt's judiciary, Hamad continued, has led political factions to conclude that their disputes can be fought in a courtroom rather than at the ballot box.

Hamad argued that the "judicialization of politics" began when the National Democratic Party (NDP) was dissolved by the High Administrative Court, sixty-five days after Mubarak's departure. While this ruling was enormously popular, it had no legal basis and was clearly political. The following criminal trials against former Mubarak regime personalities left much of the security apparatus intact, thus "facilitating the election of Morsi," because people feared that a victory for **Ahmed Shafiq**, combined with the presence of old-guard security officials, would spell the end of the revolution.

Following the dissolution of the NDP, Hamad argued, the courts influenced the electoral process through several key decisions. First, they allowed all Egyptians living outside of Egypt to vote, an unprecedented decision. Second, "to the chagrin of many revolutionaries," the courts ruled against a political exclusion law thus allowing former members of the NDP to run for office. Later, the courts "intervened in many occasions" to invalidate members of groups that were going to draft the new constitution.

When Morsi was elected, he tried to get the courts out of his way. Hamad predicted that this "struggle" will continue for the foreseeable future and that the courts will continue to be a force in Egypt's political sphere. Despite this, Morsi is not void of political tools. Without reducing the retirement age, Morsi will appoint four justices to the eleven-member Supreme Constitutional Court. If he is elected to a second term, he will appoint four more.

Yussef Auf spoke after Hamad and focused on the reasons behind this "judicialization of politics." He pointed out that there was a political vacuum after the revolution and the SCAF lacked the political will to fill it. Second, the SCAF had no public project for transitional justice. Specifically, their refusal to establish special revolutionary courts left the trial of Mubark personalities up to existing criminal courts. Third, the political factions failed to find agreements that would benefit the country in transition. Instead, they asked the courts to step in, thus leading to their inevitable politicization.

Auf pointed out that current judges feel "severe attacks" under Morsi's administration, and that the absence of political actors or decision-makers in the transitional period forced the judges to step in.

During the Q&A, **Michele Dunne** observed that the judiciary has long had a political role in Egypt as they are charged with supervising elections. **Mahmoud Hamad** agreed with this assessment but reiterated Auf's earlier point, that the inability and unwillingness of the SCAF to lead the post-Mubarak transition, forced the judiciary to increase their political involvement.

Hamad then pointed out that many in the judiciary see Islamists as "enemies." Due to the Mubarak-era distrust of Islamists, if you had any affiliation to the Muslim Brotherhood "you wouldn't become a judge." Hamad argued, however, that Morsi needs to show the judiciary respect. Specifically, many in Egypt view the proposed judicial retirement law as an attack on judicial independence. Hamad argued that if Egypt develops "a culture of not respecting judicial opinions... that will be very problematic."

Responding to a question, Hamad predicted that the Supreme Constitutional Court (SCC) will uphold the Shura Council's electoral law so that the Council will not be dissolved. He said that while the court dissolved the People's Assembly on the same premise last year, they would not dissolve the Shura because they "don't want to be more of [an] enemy to the Islamists," and dissolution would mean all legislative power rests with Morsi.

In a response to a question about the judiciary's stance on freedom of expression, Hamad stated, "The claim that the SCC has been a force of liberalism should be taken with a grain of salt." Instead, he argued that the SCC will mostly defer to parliament. Hamad noted that the Muslim Brotherhood does not want to change the freedom of expression laws because they are "political tools in their pocket." He pointed out that these "tools" were used this past weekend when opposition activist **Ahmed Maher** was arrested.

Hamad did note, however, that it was "harder for Morsi to control the judiciary" than it was for Mubarak. He pointed to new constitutional protections that secure a higher level of judicial independence and a law preventing judges from serving as a presidential advisor while on the bench, a tool used by Mubarak to pay sitting judges large sums of money. When asked about the use of civilian courts versus military courts in the new constitution, Hamad said the military fought for the ability to try civilians because it is a safeguard on their economic interest.

Responding to a final question about third party prosecutions, which occurs when a civilian rather than the state brings criminal charges against someone, Hamad said this was a tool developed and utilized by Mubarak but there is not much discussion of changing it because "everyone is using it." He stated the tactic was a "tool of political prosecution in the legal profession." A recent example of this tactic is when an independent lawyer charged satirist **Bassem Youssef** with "insulting the president."