

June

2012

The Military and the Constitution: The Cases of Algeria, Pakistan and Turkey

Virginie Collombier *

Civil-military relations have long been an important topic for political science scholars. Not only in regimes in transition is there a potential conflict between civilians and the armed forces when it comes to politics. As a hierarchically constituted body that holds and may exercise force, the military has the means to appropriate political power – or at least to exercise a predominant influence on that power – without having been called to govern by popular suffrage. The intervention of the military in politics therefore constitutes a major challenge for establishing democratic systems and ensuring their well-functioning.

In a context of democratic transition, relations between civilians and the military and the way they are organised by the basic texts deserve particular attention. The process of drawing up a constitution and the rules of law that result are determining elements of the democratic transition and of democratic consolidation.

The Algerian, Pakistani and Turkish experiences constitute interesting points of reference when it comes to examining the political role of the military and, more generally, the relations between civilians and the military. Even if this theme has also been a central issue in the democratic transitions in Latin America, these three ‘models’ are the most regularly invoked in the debates taking place in Egypt.

The aim of this paper is to analyse the main characteristics of civil-military relations in politics, highlighting the following:

- the circumstances surrounding the military’s intervention in politics
- when and how the Constitution does become a stake for the military
- the main procedural categories used to institutionalise the political role of the military

* A senior researcher with the Arab Reform initiative.

- the influence of these procedures on the transition to democracy and on democratic consolidation

In general, this study emphasises the ambiguity of the constitutional text as the framework that rules the intervention of the military in politics. Indeed, depending on the circumstances, the constitution may allow either the institutionalisation of the army's role in politics or the 'civilianisation' of politics in the wake of direct military intervention, through the granting of 'exit guarantees' to the military.

Algeria¹

In Algeria, the relation between civilians and the military has been, and remains, strongly influenced by the experience of the war of independence against French colonial forces. In 1956, the Summam Congress, considered as the founding act of the modern Algerian Republic, resulted in the elaboration of a platform – a kind of 'war constitution' – that instituted the primacy of civilian power over the military.

However, given the central role played by the National Liberation Army (*Armée de Libération Nationale*, ALN) in the struggle against the colonial forces, and later on in the setting up of the new national political institutions, the military rapidly took the upper hand over politics.

The first Algerian Constitution, adopted by referendum in 1963, was thus characterised by:

- immense powers conferred on the President of the Republic
- the pre-eminence of the National Liberation Front (*Front de libération nationale*, FLN), 'sole avant-garde party' (Art. 23), which 'defines the politics of the Nation and inspires the action of the State, [...] controls the action of the National assembly and of government' (Art. 24)
- the central role entrusted to the Army, which 'secures the defence of the territory of the Republic and takes part in the country's political, economic and social activities in the framework of the party' (Art. 8).

At that time, already, the Army was present in all the machinery of power. It was especially out in force in the political bureau of the National Liberation Front that was formed during the 1964 Congress. President Ben Bella was aware of the situation and attempted to limit its influence, but too late. In June 1965, the *coup d'état* led by Colonel Boumediene brought the military to power and led to the suspension of the Constitution.

As of that date the political system was ruled by the procedures of 10 July 1965. The ruling organs of the state were replaced by a twenty-five-member Revolutionary Council (*Conseil de la Révolution*), which was almost exclusively made up of senior officers from the National Popular Army (*Armée nationale populaire*, ANP) and had authority over the government. Boumediene then cumulated the functions of head of the Revolutionary Council, head of government and Minister of Defence. In the course of the following years, the Army and the Military Security (SM) became the main pillars of the system. If the

¹ The synthesis on Algeria refers to the following works: Hubert Gourdon, 'L'ordonnance en Algérie (1965–1975). Essai d'analyse du système politique', in Hervé Bleuchot & Maurice Flory (eds.), *Annuaire de l'Afrique du Nord*, Vol. 14, Paris, Editions du CNRS, 1976, 323–361; Hugh Roberts, 'The Struggle for Constitutional Rule in Algeria', in *Journal of Algerian Studies*, 3, 1998, 19–30; Abdelkader Yefsah, 'L'armée et le pouvoir politique en Algérie de 1962 à 1992', in *Revue du monde musulman et de la Méditerranée*, 65, 1992, 77–95.

National Liberation Front (FLN) conserved most of its prerogatives as stipulated in the 1963 Constitution, it became *de facto* a 'political extension of the army'. While uniforms increasingly blurred into civilian dress, the army became political.

From 1976, internal conflicts within the military leadership and economic problems led Boumediene to carry out a 'constitutionalisation' of his regime, that is, to consecrate in law the power that he held *de facto*. The draft that he had drawn up and had adopted by referendum served as the basis for the new Constitution. The new text confirmed the preponderant role of the Army, which became a force for social change on the same level as the FLN.

Article 82 stipulated that 'the National Popular Army, heir of the National Liberation Army and shield of the Revolution, has as its permanent mission the safeguard of the independence and national sovereignty. [...] Instrument of the Revolution, [it] participates in the development of the country and in building socialism'. Article 105 foresaw the election of the President of the Republic by direct universal suffrage, on the proposition of the FLN. Boumediene was elected to this post in 1976.

The Army could then withdraw and let the party formally occupy the front of the political scene, since the powers of the head of state and its own prerogatives had been 'secured' by the Constitution. In 1979, following the death of Boumediene, Colonel Bendjedid, formerly Minister of Defence, became President of the Republic. He then cumulated the functions of head of the FLN, head of state and head of the Armed forces.

The riots of October 1988, catalysed by the political and economic blockages, led the authorities to consider political reform, and

especially the introduction of a multi-party system. To this end, a new Constitution was promulgated in 1989. This affirmed the sovereignty of the people, removed the reference to the central role of the FLN (particularly in the designation of the candidate to the Presidency of the Republic), and only referred to the Army in its defence prerogatives (Art. 24). It thus consecrated the official withdrawal of the Army from political life.

Yet the military remained present in the new Constitution, through a rather vague reference to the High Security Council (*Haut Conseil de Sécurité*) as a 'consultative institution' (Art. 162). This institution – whose composition, as well as modes of organisation and functioning were left to the discretion of the President of the Republic – was to play a far more important role than the one stipulated in the Constitution itself. It is one of the institutions that the President of the Republic must reunite and consult in view of a declaration of a state of emergency (Art. 86) or a state of exception (Art. 87).

As a matter of fact, after the elections were annulled in 1991 and a state of emergency declared in 1992, it was the High Security Council that ran the country. The Constitution was partially suspended and a High State Council (*Haut Conseil d'Etat*) formed by the military. This was headed first by Mohamed Boudiaf, and then, after his assassination in 1994, by General Zeroual. In 1996, the 1989 Constitution was reactivated in an amended form, but the amendments did not lead to a major change in the organisation and distribution of powers.

Even though the letter of the Constitution underlined popular sovereignty and the role of representative institutions and limited the role of the Army to the defence of the territory, the

reference to the High Security Council remained unchanged (it has remained so until now). In the same way, the election of the President of the Republic, formally organised by direct universal suffrage, is in fact controlled by the military. Moreover, since the 2008 constitutional amendment, there is no longer a limit to the number of presidential mandates.

Pakistan²

After the creation of the state of Pakistan in 1947, the military initially submitted to the rules established by the civil authorities and remained at a distance from all political activity, in imitation of the colonial institutions under British rule. The 1956 Constitution bore the mark of this influence. Political instability, however, has favoured the growing role of the military, which rapidly imposed its domination on the political scene, and since 1958 the history of Pakistan has been characterised by a series of interruptions of the democratic process by the army.

The first *coup d'état* took place in 1958. This meant the establishment of martial law and General Ayub Khan taking office as head of state. He justified the military intervention on the grounds of safeguarding the nation in danger – the same grounds which were to be used in all subsequent interruptions of the democratic process. According to General

Khan, the army entered politics ‘with great reticence, but totally convinced that there was no other alternative than the disintegration and complete ruin of the country’. In 1960 Ayub Khan canvassed the support of elected politicians at the local level, in search of the necessary authority to draft a new Constitution. He then became President of Pakistan.

The new Constitution was published in March 1962 and bore the mark of his political ideas. The main characteristic of the new Constitution was the central role of the President, who enjoyed very extensive legislative and executive powers, and had very broad competences regarding the declaration of the state of emergency (Art. 30). On the other hand, Article 238 provided that during the first years of being in force, the Ministry of Defence had to be entrusted to an army officer with at least the grade of Lieutenant General.

The coming into force of the new Constitution put a formal end to the military regime, but the new political system was organised in such a way as to protect the interests of the military. Political power was concentrated in the hands of General Khan, who subsequently rarely appeared in uniform.

In 1969, in a context of growing social unrest and while Ayub Khan could no longer count on the unfailing support of the army, he announced his resignation as President and put power back into the hands of the armed forces. According to him, there was ‘no other efficient and constitutional means to cope with the situation’. The power was then entrusted to General Yahya Kan, who abrogated the 1962 Constitution, established martial law and was proclaimed President. The objectives that he announced were not different from those of his predecessor: a

² The section on Pakistan refers to the following works: Mazhar Aziz, *Military Control in Pakistan. The Parallel State*, New York, Routledge, 2008; Hasan-Askari Rizvi, *The Military and Politics in Pakistan, 1947-1997*, Lahore, Sang e-Meel, 2000; Hasan-Askari Rizvi, *Military, State and Society in Pakistan*, London, Macmillan, 2000; Hasan-Askari Rizvi, ‘The Military and Politics in Pakistan’, *Journal of Asian and African Studies*, 26, 1/2 (Jan. 1991); Aqil Shah, ‘The Transition to ‘guided’ Democracy in Pakistan’, Asia-Pacific Center for Security Studies.

provisional constitutional decision was promulgated which stipulated that Pakistan was to be governed, as far as possible, according to the provisions of the 1962 Constitution.

The 1971 civil war and the secession of Bangladesh from Pakistan accelerated the process of the transfer of power to a civil government, however. Zulficar Ali Bhutto, whose party had won the legislative elections in 1970, was entrusted with running the government. Bhutto undertook to draw up a new Constitution, in consultation with the country's main political forces. In April 1973, the new text was approved by the National assembly. It reflected the desire of the political elite to put an end to the intervention of the military in the political sphere.

For the first time the functions of the army were explicitly set down: under the direction of the federal government, it was made responsible for 'under the direction of the Federal Government, defend Pakistan against external aggression or threat of war and, subject to law, act in aid of civil power when called upon to do so' (Art. 245). On the other hand, the Constitution stipulated that military personnel had henceforth to take a sworn oath not to take part in any political activity.

In the context of the 1971 debacle, the great majority of the military hierarchy accepted the principal of the supremacy of civil power and retired from political activity. The main weakness of the Bhutto government at the time was that it did not exploit this opportunity to construct stable political institutions. In 1977, by the time the country was hit by a new wave of political and social unrest, which the civil government was unable to cope with, the army had regained confidence. The military overturned the government again, installed martial law and

suspended the Constitution. A Military council was established and headed by General Zia ul-Haq, who became President of the Republic the following year.

The year 1977 marked a major step regarding the definition of the role that the armed forces were to play in Pakistan's political life. Under the lead of General Zia ul-Haq, the role of the military institution – which had intervened intermittently in politics in the 1950s – was fixed by political-judicial procedures, and hence institutionalised, through a series of 'decisions affecting the Constitution of Pakistan' taken between 1977 and 1985. These are particularly based on three main elements.

First, the military reserved the right to intervene in politics on the pretext of protecting Islam and the ideology of Pakistan. According to Zia ul-Haq, the role of the army was to safeguard the 'ideological frontiers' of the country, as much as its geographical frontiers. Second, the military could take command of government in cases of 'national emergency'. Third, a National Security Council (NSC) was created. It had the power to make recommendations regarding the proclamation of a state of emergency (Art. 232), the security of Pakistan and all other questions of national importance that the President may submit to it, in consultation with the Prime Minister.

This last point was particularly important. The almost unlimited powers entrusted to the National Security Council conferred a direct role on the military hierarchy in constitutional and political matters. While practically not responsible to any other institution, the NSC supplanted the elected political forces. The President, who nominated all civilian members of the NSC with the exception of the president of the Senate, had his powers

reinforced, since the NSC could virtually exercise his veto on any decision made by elected politicians and it was the chief authority in declaring a state of emergency.

In 1985, after having made these changes in the political-judicial order and having thus obtained guarantees on the future role of the army, General Zia ul-Haq announced his willingness to 'share' power with elected representatives, on the condition that they would commit to continuing the process of islamisation that he had initiated. The 1973 Constitution, progressively amended as of 1977, was reactivated in 1985 and martial law was suspended. The same year, Zia was sworn in as President of the Republic for a five-year mandate.

In 1988, as Prime Minister Muhammad Khan Junejo was taking growing autonomy, Zia decided to use his position as head of the armed forces to overturn the government and call for new elections. Yet, after Zia's death in a plane accident the same year, the military hierarchy decided not to intervene and not to stop the electoral process. It was conscious that its repeated interventions in politics had severely damaged its reputation, and therefore agreed to step back.

In December 1988, Benazir Bhutto became head of a coalition government. She first undertook to win the trust of the senior military hierarchy, offering them guarantees such as that the military would not be affected by its removal from direct political power. She carried out many actions to reassure them and promised to build a strong and professional army. Nevertheless, Bhutto's room for manoeuvre was relatively limited. The opposition parties played with the idea of a military intervention in order to promote their own partisan interests and the security conditions in the region tended to reinforce

the role of the military in the decision-making process. In this context, the attempts by government to consolidate its authority ended up with its dismissal. Two civil governments followed between 1990 and 1999.

In December 1999, General Musharraf, then head of the army, once more interrupted this difficult process of transition towards democracy. Nawaz Sharif, Prime Minister since 1997, had overstepped what was considered to be the 'red line' in trying to sideline the General and remove him from his position. The schema already tested several times was again put in place: the Constitution was suspended, a National Security Council was nominated to run the country, and Musharraf was elected as President of the Republic in 2002 for a period of five years.

Because of the 'preference for democracy' that was then strongly expressed at the international level, however, the military chose to transfer power to a civil government which they intended to 'guide', all the while maintaining a certain number of tutelary powers over it. Moreover, 'arranged' elections brought to power an Islamist alliance that was ready to come to an agreement with the military.

Since 2008 and the forced resignation of Pervez Musharraf, obtained under pressure from the judiciary, however, the equilibrium between civilian politicians and the military has progressively evolved. Not only is Pakistan once again run by a civilian government, but the President of the Republic is now a civilian himself. The constitutional amendments of 2010 suppressed the dispositions related to the President's reserved powers and his right to dissolve the National assembly, and they established a parliamentary system. Yet Article 245 on the Army's duty to act in support of the civil

power when so solicited remained in force. In the same way, the NSC was maintained in its role of assisting the President and Prime Minister on questions of national security and foreign policy.

Turkey³

The two most recent Turkish constitutions, promulgated in 1961 and 1982, are the direct outcome of military intervention in politics. The civil forces did not contribute to it, or only very marginally. In the last fifty years, the military have interrupted the democratic process on three occasions, in 1960, in 1971 and in 1980. Each time their intervention was the chance for them to secure important 'exit guarantees' that have consequently increased their role in the political system.

The Constitution drawn up in 1924 under the auspices of Mustafa Kamal and his Republican Party partisans revealed its defects after 1946 and the transition to a multi-party system. In May 1960, the growing tensions between Republicans and Democrats together with a wave of social unrest was used by the armed forces as a pretext to overturn the Menderes government. The National Union Committee (CUN) that took over the state on this occasion announced that it was willing to return power to civilian forces, but not before the adoption of a new Constitution. One of its first decisions was to create a two-chamber Constituent assembly. The first chamber was the National Union Committee itself; the other was formed partly of co-opted members and partly of indirectly

elected members and was dominated by the People's Republican Party.

The 1961 Constitution and the functioning of the political system that followed conferred a central and special role on the armed forces.

In particular, Article 111 provided for the creation of a National Security Council (*Milli Güvenlik Kurumu*, MGK), made up of selected ministers (as provided by law), the Chief of the General Staff and representatives of the armed forces, and presided over by the President of the Republic. The MGK was to 'communicate the requisite fundamental recommendations to the Council of Ministers, with the purpose of assisting in the making of decisions related to national security and coordination'.

In this way the new Constitution created a 'double-headed political system: the civilian council of ministers coexisted with the National Security Council on the executive level, and the military system of justice continued to operate independently alongside the civilian justice system.'⁴

Second, the 1961 Constitution made the head of military staff responsible to the Prime Minister rather than the Minister of Defence, which reinforced his position.

Third, the leader of the 1960 *coup*, General Gürsel, was elected President by the new parliament, which was subject to considerable pressure from the armed forces. His election was indeed one of the conditions set by the military so that they would respect the results of the legislative elections and authorise the Parliament to sit. In 1966, General Sunay was in turn elected President.

³ The Turkish text is largely based on the following works: Ergun Ozbudun, *Contemporary Turkish Politics. Challenges to Democratic Consolidation*, Boulder, Lynne Rienner Pub, 2000; Ergun Ozbudun, *Democratization and the Politics of Constitution-making in Turkey*, Budapest, Central European University Press, 2009.

⁴ Umit Cizre Sakallioğlu, 'The Anatomy of the Turkish Military's Autonomy', in *Comparative Politics* 26(2), 2007, 157–158.

Fourth, the twenty-three members of the CUN became life members of the Senate, which constituted a major distortion of the electoral process and gave them considerable influence within the Senate, while the former deputies of the Democratic Party were permanently excluded from it.

Article 4 of the Temporary provisions that aimed at regulating the transition foresaw that the laws promulgated by the CUN could not be brought before the Constitutional Court, even after the transition to democracy.

The same article also contained guarantees according to which senior military officers could not be pursued or judged by the law.

Moreover, it should be noted that Article 35 of the Armed Services Internal Code states that ‘the duty of the armed forces is to protect and safeguard Turkish territory and the Turkish Republic as stipulated by the Constitution’. In the early 1960s, the military often invoked this article to legitimate their intervention in politics.

In 1971, radical reform-inspired officers conspired against the government led by Demirel and his Justice Party. The senior military hierarchy did not support them, but published a memorandum which was the equivalent to an ultimatum for the government⁵. This demanded ‘the formation, within the context of democratic principles, of a strong and credible government, which will neutralise the current anarchical situation and which, inspired by Atatürk's views, will implement the reformist laws envisaged by the constitution’, putting an end to the ‘anarchy, fratricidal strife, and social and

economic unrest’. If no response to this demand was forthcoming, the army announced that it would ‘take over the administration of the State in accordance with the powers vested in them by the laws to protect and preserve the Turkish Republic’.⁶

Demirel was forced to resign in these circumstances. Since the Army was reluctant to exercise power directly, however, it called for the formation of a technical, non-partisan government. In 1971 and 1973, it took advantage of the balance of power in its favour to reinforce its position and its institutional autonomy through the following key constitutional amendments:

- the composition of the MGK was modified so that it no longer included ‘representatives’ of the armed corps, but the ‘commanders’ of the different corps
- the role of the MGK was reinforced so that in the future the MGK would ‘recommend’ (and no longer ‘communicate’) its ideas to the Council of Ministers (it was no longer a question of ‘assisting’ the latter) for what touched national security and coordination in that domain
- the armed forces were exempted from the audit by the Court of Accounts
- a supreme administrative and military court was created
- the competence of military courts was considerably extended (despite the fact that the Constitution provided that military courts could only operate in a state of emergency)

At the end of the 1970s Turkey was faced with a disastrous economic and social situation, exacerbated by parliamentary

⁵ This three-point memorandum was released by then Chief of General Staff General Memduh Tağmaç and the commanders of the air, sea and land forces on March 12, 1971.

⁶ See Ozbudun, *op. cit.*, pp. 33-34.

instability and unprecedented levels of political violence between organisations of the extreme left and extreme right. In September 1980 the MGK seized power, stating that it would return power to civilians, but not under the same conditions as before, justifying its intervention by the urgent need to put an end to the situation.

Like in 1960–1961, the mission to restructure the political system was entrusted to a bicameral constituent assembly of which one of the chambers was the MGK itself. The other chamber was even less representative than in 1961: all its members were nominated by the MGK and none of them could belong to a political party. Moreover, the MGK was to have the last word on the new constitutional project, which it had the power to amend or reject.

The referendum to approve the new Constitution gave way to a campaign monopolised by General Evren, then head of State and head of the MGK. It coincided with the election of the President of the Republic so that a ‘Yes’ to the Constitution would also mean a ‘Yes’ to Evren’s presidency. The MGK made it clear that a rejection of the Constitution would mean that the MGK would keep on running the country. The goal of the military was obviously to create a strong presidency, which would remain within their own hands. The 1982 Constitution made the changes listed below.

First, the constitutional status of the MGK was again reinforced. The article dealing with the Council now stated that ‘the MGK shall submit to the Council of Ministers its views on taking decisions and ensuring necessary coordination with regard to the formulation, establishment and implementation of the National security policy of the State. The Council of Ministers shall give priority

consideration to the decisions of the National Security Council concerning the measures that it deems necessary for the preservation of the existence and independence of the State, the integrity and indivisibility of the country, and the peace and security of society’ (Art. 118).

Second, as regards the MGK, Law No. 2945 of 1983 gave a very broad definition of the concept of national security: ‘the protection and maintenance of the constitutional order, national presence, integrity, all political, social, cultural and economic interests in international field as well as against any kind of internal and external threats, of the State’.⁷

Third, the institutional autonomy of the Army was increased again, the armed forces being exempt from supervision by the newly-created Council of Supervision of the State. Moreover, there was no possible appeal against the decisions of the Supreme Military Council.

Fourth, Article 9 of the Temporary provisions that aimed at regulating the transition gave the President of the Republic very broad powers of veto on any subsequent constitutional amendments. Finally, Article 15 of these Temporary provisions brought guarantees according to which the military officials could not be pursued by or judged by the law.

Moreover, the electoral manipulations increased their scope, especially because of the ban on political activity imposed upon former politicians and the control exercised by the MGK on the 1983 legislative elections. After the elections, the MGK was transformed into a Presidential council for a period of six years. The Council only had consultative

⁷ See the full text of Law No. 2945 on the NSC and the Secretariat general of the NSC on http://www.mgk.gov.tr/Ingilizce/Kanun/kanun_en.htm.

powers, but its members enjoyed complete parliamentary immunity.

The transition in 1983 is a perfect example of how a military government can leave the direct exercise of power whilst at the same time dictating the terms of its departure. Since that date, political power has been progressively, and considerably, ‘civilianised’. This evolution is explained even more in terms of informal practices and the adaptation of actors than by a formal constitutional change.

In 1989, Turgüt Özal, became the first civilian to be elected as President of the Republic by the Parliament. The constitutional amendments of 1995 suppressed the two paragraphs of the Preamble which referred to the need for, and legitimacy of, military intervention in 1980. The ban on political activity, especially relating to trade unions and associations, was abolished. In 2002 and 2004, several important reforms modified the structure and functions of the MGK. The coordination of decisions on national security was from then on entrusted to the Deputy Prime Minister (whereas it was previously with the MGK). In July 2011, the resignation of most members of the General staff as a protest against the government policies of the AKP constituted a new — and important — measure of the ‘civilianisation’ of Turkish politics.

Concluding comments and routes for reflection

Democratic theory states that the military must be subject to the control of the representatives of the people, who hold supreme authority by virtue of their election. In reality, however, in many states the military are granted — *de facto* or *de jure* — a certain number of privileges, margins of autonomy, reserved domains and tutelary powers. This is generally more current in countries that have undergone the transition from an authoritarian regime dominated by the military to democratic government by civilian politicians.

In this context, a certain number of ‘exit guarantees’ granted to the military might be the price to pay by the civil political elites to prevent the military from impeding the transition towards democratic government. Yet these ‘guarantees’ can turn out to be an obstacle for the transition to a consolidated democracy.⁸ But even this sort of obstacle is not impossible to lift, mid-term or more long-term, as shown by the general evolution of the Turkish political system since 1983.

⁸ See J. Samuel Valenzuela, ‘Democratic Consolidation in Post-Transitional Settings: Notion, Process, and Facilitating Conditions’, in Mainwaring, O’Donnell and Valenzuela (eds.), *Issues in Democratic Consolidation: The New South American Democracies in Comparative Perspectives*, Notre Dame, University of Notre Dame Press, 1992.