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The New Institutional Arrangements Might Rescue the Failing Libyan State

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Can the Libyan House of Representatives bring down the Al Sarraj government? The new political agreement is based on a power sharing accord between the three main governance bodies, and is based on the principles of separation of powers and checks and balances between branches of government, thus shifting the political system from a parliamentarian into a mixed semi-presidential system and forings the institutions to govern by consensus.

The Libyan Political Agreement is now officially part of Libyan legislation. After it was signed in Skhirat in December, the Libyan parliament or House of Representatives (HoR) adopted it in January with one reservation related to Article 8 of the Agreement's additional provisions. By taking this pivotal step, the HoR made the overdue United Nations-backed Political Agreement part and parcel of the Libyan Constitutional Declaration, the temporary constitution governing the remaining transitional period in Libya.

The Political Agreement created two new additional governing institutions: the Government of National Accord (GNA), composed of a Presidential Council of nine members and a cabinet of ministers; and the High Council of State (HCS), derived from the remnant General National Congress (GNC). Perhaps most importantly, the Political Agreement renewed the legitimacy of the HoR as the sole legislative authority of the country.

However, while adopting the agreement, the HoR also simultaneously rejected the cabinet proposed by Mr. Al Sarraj, the head of the Presidential Council. The parliament did not publish its decision nor the reasoning behind it; however, according to media speculation, it was due to

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the composition of the proposed government, particularly its expansion to 32 ministers. Some HoR representatives added that the proposed cabinet lacked expertise.

As the Presidential Council discusses a new cabinet proposal to be submitted by Al Sarraj to the HoR next week, a two-pronged question arises. Can the HoR still reject a second proposed cabinet? And if so, does this rejection put an end to the Al Sarraj Presidential Council? In response to the former, there is certainly nothing to prevent the parliament from rejecting the cabinet a second time. However, this will not automatically result in bringing down the GNA, for three important reasons:

1. Under the terms of the newly adopted political agreement, the role of the HoR is distinctly different than before. The HoR is no longer the nation's highest authority, nor the only representative of the Libyan people as stated in Article 17 of the Constitutional Declaration. The political agreement is a power sharing accord between the GNA, HoR, and HCS, based on the principles of separation of powers and checks and balances between branches of government. The political agreement has effectively shifted Libya's political system from a stronghold parliamentarian system into a mixed semi-presidential system. Today, the HoR is solely a legislative power, and can only function as such. Any motion of no confidence by the HoR on the GNA first requires a confidence vote to constitute a ministerial cabinet, by which the executive power is formed. In accordance with the political agreement a motion of no confidence requires the agreement of 120 HoR members, after consultation with the High Council of State; an act that seems extremely difficult to achieve.
2. Nothing in the political agreement governs a case wherein a proposed ministerial cabinet is rejected by the Parliament, nor does it oversee its consequences. The political agreement is based on different governing principles, meant to signify and promote "accord," "consensus," "consultations," "discussions," "cooperation," and "coordination." These are new concepts in Libyan politics today and need to be learned and practiced through peaceful political means in a country torn by civil war and controlled by militias. The political institutions that are introduced or legitimized by the political agreement need to cooperate, discuss, and consult to reach an accord or a consensus, and above all to execute the political agreement in good faith. The level of

crisis the country is in today leaves no room for the typical stubbornness, infighting, and blackmail we have seen over the last few years. Libya faces grave threats on multiple fronts. Such behavior can no longer be tolerated; the country and its people can no longer live with it.

3. Another weak claim circulating in Libyan media is that the HoR's (unpublished) internal regulations technically permit it to force the selection of another Prime Minister altogether. It argues that if a cabinet is not formed within a given time limit, or the next proposed cabinet is rejected by the HoR, a new prime minister must be appointed. A precedent for this argument did occur in October 2012, when Mr. Abushagur, nominated as prime minister by the GNC, failed to form a government within a given time limit. This led to his replacement by Mr. Zeidan who assembled a cabinet in due course that was accepted. However, this argument is invalid here because it does not take into consideration the implications of the HoR's new status under the political agreement it adopted. Since the political agreement became part of the Libyan Constitutional Declaration, a further step is required by the HoR, namely to revise and amend its internal regulations extensively so that they are compliant with the Constitutional Declaration as amended in accordance with the political agreement. By no means can the HoR's internal regulations supersede the supreme law of the nation.

This is not to say that the Presidential Council is above the other two institutions (the HoR and the HCS), nor that it can "impose" its ministerial cabinet. A motion of confidence is absolutely required from the HoR, being the sole legislative power. However, one of the focal points of the political agreement, which emerged from a long peace process, was to establish a new political context of reaching consensus and accord through constructive actions and dialogue. These need to be the guiding values of the new Libyan leadership to move the country out of crisis. Each of the government bodies under the political agreement needs to understand its roles, powers, and limitations so that they can work together to move Libya forward - not to block each other's paths. The latter is the mentality that pushed Libya to failed statehood and a recurrence of the same tactics will not lead it out.

About the author

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