#### RELEASE IN PART B6

From:

Sullivan, Jacob J <SullivanJJ@state.gov>

Sent:

Sunday, August 12, 2012 7:14 PM

To:

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Subject:

Fw: Instant analysis

The below is better than anything I've seen from Cairo.

From: Benaim, Daniel

Sent: Sunday, August 12, 2012 07:04 PM

To: Sullivan, Jacob J

Subject: Fw: Instant analysis

From one of the smartest guys around on egyptian institutions.

From: Hawthorne, Amy W

**Sent**: Sunday, August 12, 2012 06:50 PM

**To**: Benaim, Daniel

Subject: Fw: Instant analysis

Good factual summary.

From: Nathan Brown [mailto

**Sent**: Sunday, August 12, 2012 06:16 PM

**Subject**: Instant analysis

This is an instant analysis of Morsi's moves--it's rough and unedited but should be polished and posted on Carnegie's website tomorrow. If you see any egregiousness error you want to save me from (or even some misleading claim), by all means let me know.

#### President's Morsi's Ramadan Surprise

On 12 August 2012, Egyptian President Muhammad Morsi took a series of dramatic steps that reconfigure Egypt's political landscape for the present and that will shape how it is redesigned. A series of personnel and constitutional changes have shifted the balance of political forces in Egypt. Two of the country's most powerful institutions—the presidency and the military—still seem very firmly in control; they also seem to be working together. But the effects of the decisions have the presidency swapping junior partner roles with the military.

In the following question-and-answer commentary, Nathan J. Brown, nonresident senior associate at the Carnegie Endowment, explains the significance of the decisions:

1. What did Morsi do?

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#### President Morsi:

- Appointed Mahmud Makki, a prominent judge, as his vice president;
- Made a series of personnel changes in top military positions; and
- Issued an addendum to Egypt's governing March 2011 interim constitution. The new addendum:
  - o Revokes a previous addendum issued by the Supreme Council of the Armed Forces (SCAF) in June that placed the military beyond civilian oversight; gave the SCAF a legislative role; allowed the SCAF to appoint a new constituent assembly if the current one is unable to complete its job;
  - o Transfers authorities that the SCAF had assumed over the past year and a half to the president (thus giving the president absolute legislative authority, for instance);
  - O Allows the president to appoint a new constituent assembly if the current one is unable to complete its job;
  - o Maintained the new transition sequence decided by the SCAF in June, in which a new constitution will be written and ratified and then parliamentary elections will be held. (In a sense, the same sequence will be followed; what has changed is that the sequence is based on the president's say-so rather than on the SCAF's).

### 2. Can he do these things?

The short answer is: Yes, he just did. The long answer is only a bit more complicated.

Morsi's authority to appoint a new vice president was uncontested; the only requirement was that he find an individual (or a group of individuals) who have the legal qualifications to succeed the president.

Morsi's authority over the military appointments was far less clear but is likely to stick. The SCAF's June 2012 addendum to the constitutional declaration seemed to take much of that authority away. But over the past week, he had taken a series of steps that symbolically asserted his authority—apparently with the acquiescence of the SCAF (these included some less dramatic military personnel changes and convening a meeting of the SCAF which Morsi himself chaired, in apparent contradiction of the June 2012 addendum).

Observers traded impressions about whether these steps were merely symbolic or if they portended a shift of authority to the presidency. The 12 August decisions seem to resolve that debate. And the way in which the various personnel involved have quickly accepted the changes suggest that regardless of the ambiguous nature of presidential authority, there will be no resistance to the move.

Finally, on the new addendum to the constitutional declaration, again Morsi will likely have his way, though a strong challenge on legal grounds is possible.

Last month, a Cairo court ruled that all constitutional actions taken by the SCAF between Mubarak's ouster and Morsi's election were beyond judicial challenge—there was a revolutionary situation, the court opined, and the

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actions taken by the SCAF were not reviewable by the courts. Implicitly no such revolutionary situation exists right now. And the legislative process—such as it was—was claimed in various ways by both the president and the SCAF. So a court could easily rule that Morsi's constitutional edict carries neither revolutionary legitimacy nor the SCAF's imprimatur.

This would be an argument that would have a strong basis in precedent but a weaker one in politics. The administrative courts or the Supreme Constitutional Court could refuse to honor Morsi's addendum. But unless there is strong opposition from a powerful political force (and the most likely such opponent, the SCAF itself, seems instead to be going along), a court taking such a move would be bold indeed.

### 3. Were Morsi's moves coordinated with the military?

Yes, to an extent. But it may never be clear how much.

On the appointments, their quick acceptance by those affected suggests at least some advance consultation with key actors. The terms of the understandings reached are far less clear.

On the constitutional addendum, I was told by a high official in the presidency at the beginning of this month that drafting was underway and that there was constant contact with the military on the issue. I had the strong impression there was much less political consultation with civilian actors, at least at that time.

# 4. Where does this leave Egypt now?

After Morsi's inauguration, the political system was headed by a forced marriage between a president from the Muslim Brotherhood and a committee of generals. Despite the nature of the marriage, there were strong signs that the two were working out a set of arrangements—based more on quiet understandings than written constitutional rules—for co-governing the country. At first, the presidency looked to be a bit of a constrained junior partner in these arrangements.

Now the tables have turned. The same co-governance is in place, but with the president as the more powerful actor. Indeed, by cancelling the June 2012 constitutional addendum President Morsi has now legally reinserted himself as chairman of the SCAF.

There are a host of state institutions that may be resistant to presidential hegemony and that will be anxious to assert their autonomy. However, such battles may take the form of long-term guerilla warfare rather than sudden confrontation.

Morsi's selection of a Mahmud Makki, a prominent judge as vice-president—after selecting Mahmud's brother Ahmed as minister of justice—may be part of a maneuver to outmaneuver judicial opposition. The Makki brothers were both prominent members of the 2005 judicial reform movement and thus have some credibility in circles opposed to the old regime. Both were also rumored to have mild Islamist inclinations, though such rumors are hard to evaluate, since judges rarely disclose their partisan feelings even when they have them.

But the placement of prominent judges in such positions—and the brief floating of a suggestion that the new justice minister draft a new judicial law to be issued by presidential decree—may be a way of signaling to the judiciary that accommodation rather than full frontal assault may be a better strategy for a set of judicial bodies anxious about the presidency and the Islamist rise.

## 5. Where does this leave the Egyptian transition process?

It seems likely that Egypt's current constitutional assembly will continue in its task.

Any possible opposition to the assembly will have to think twice about questioning its legitimacy or its work, since the body's failure would be followed by an assembly entirely appointed by Morsi. Similarly, non-Islamists in the body may calculate that the current assembly—which has been working largely by discussion and consensus—is their best bet to produce a document they can tolerate.

And the administrative courts, currently considering a challenge to the legitimacy of the constitutional assembly, had already shown signs of allowing the body to continue in its work; judges are likely to be mindful that if Morsi's constitutional addendum stands the choice will be between an assembly with many Islamists and an assembly entirely appointed by an Islamist.

The quick work of the assembly is likely to result in a document resembling the 1971 constitution but with some modifications. The draft should be submitted to voters before the end of the year; assuming it is ratified, parliamentary elections would follow in a couple months.