

Constitutional courts in the Middle East and North Africa: to what avail ?

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Just as constitutions in the Middle East and North Africa (MENA) region are sometimes described as paper or mere facades serving as blinds behind which “anticonstitutionalist rulers”¹ hide, so is constitutional review often perceived as a legal formality by which the executive gets its legislation rubber-stamped as valid by a generally amenable judiciary. The lack of judicial independence from the executive is part of a wider array of problems which have a negative impact on human rights and political stability, not to mention the rule of law. This Article looks into Constitutions and the functioning of constitutional courts as an indicator of the judiciary’s independence, taking into account the aftermath of the Arab Spring revolutions.

Although judicial independence is a proclaimed principle in most constitutions and international covenants², there is no global definition as to what comprises an independent judiciary nor by what means States are to guarantee it. Set at the apex of a judicial system, a constitutional court is a reliable gauge of whether the judiciary’s independence is guaranteed, in particular from the executive branch. More specifically, the appointment and removal process of constitutional court members are a cue to whether they are isolated from external pressure. If such isn’t the case, their decisions may be somewhat influenced by pleasing the executive rather than fulfilling the law’s requirements.

Hence in some judicial systems, court members are given life tenure such as in the United States, where the President appoints justices “by and with the advice and consent of the Senate”³. Other States involve a broad number of political actors in the appointment process, thereby guaranteeing the court’s independence. For instance, members of the French Conseil constitutionnel are, in addition to former Presidents who are *membres de droit*, respectively nominated by the President of the Republic, the President of the National Assembly and the President of the Senate⁴.

Equally crucial is how a law’s constitutionality is challenged before a court – is it referred to by a lower court – also known as *ex post* review, in which case

constitutional review is at the reach of the ordinary litigant – or is it the monopoly of official actors? And what margin of appreciation do judges have when they interpret the Constitution? Such factors are central to the question of constitutional review and determine whether a judiciary is able to withstand political pressure.

Part I tackles the context in which judicial review arose, first reluctantly, then less timidly so. Part II then shows that although there is some truth in this, it would be inaccurate to assume that all judges unconditionally submit to the executive. Indeed, a number of Arab States have shown a growing commitment to judicial independence. Lastly, Part III takes into consideration the wide range of outcomes with regards to constitutional review in the aftermath of the Arab Spring revolutions of 2011.

I. Obstacles to judicial review

A. Constitutions and democracy: the Arab context

Arab constitutions widely recognise judicial independence and lay down various ways of implementing it. However the extent to which practice follows the letter is very much contingent on political, economic and social circumstances. Unfortunately, many governments' constant tampering with the judicial process means that it is impossible for judges to adjudicate cases properly. The latter are under great pressure and risk not only their position and salary, but even their life. The main reason why justice has not yet met international standards of impartiality is because of the "oft-submerged tension between judicial review and democracy"⁵. Indeed, the democratic system and judicial independence are inextricably linked so much so that when the judiciary are targeted, it is the foundation of the society in question which is attacked.

(i) Reluctance to allow for judicial independence

In the same way that Arab states' executives are reluctant to limit their power, France, a major legal influence in the Arab world, was for very long unwilling to establish judicial review of its legislation. This hostility was justified by the

Rousseau-its conception of law as the expression of the general will which was absolute and could, under no circumstance, be subject to judges' appreciation. Equally justifying the French's averseness to judicial review was the historical distrust of magistrates under the Ancien Regime. The will to implement an « Etat de droit » or state of law eventually overcame these antipathies.

Hence rulers in the Middle East had - and in many cases still have - in common with their Western counterparts a great reluctance to judicial review which they viewed as an unacceptable restraint to their power. Notwithstanding, a subtle yet essential difference must be highlighted between French and Arab postures: whereas the French refused to carry out constitutional review because they viewed it as a violation of popular sovereignty as materialized by the law, Arab rulers, who were the 'remnants' of the Caliphs, refused to do so because it challenged that the three powers - executive, legislative and judicial - were vested solely in them. Once they became independent, Arab States promulgated constitutions as a "natural accoutrement of sovereignty"⁶, but they did not intend for them to be the highest law of the state.

(ii) From the *qadi* to the constitutional judge - the emergence of constitutional courts

Though judicial power was delegated by the Caliph to the local *walis* (governors) and *qadis* (judges) under the Ottoman Empire, the latter administered justice independently and the ruler did not interfere with scholars' development of Sharia. When the Empire's map was redrawn, the application of the notion of statehood signified implementing to its fullest extent the idea of law *as a product* of the state as opposed to law as product of the *faqih*⁷ to which was associated a framework of institutions and practices. As a result of the legal reforms that took place from the mid-19th century onwards, Arab States were already acquainted with notions such as *siyasa sharia*⁸ and *taqnin*⁹. Law was the product of the state, and generally of the head of state, which explains Arab rulers' reluctance to constitutional review. This further reveals why in some States constitutional courts were created by executive decree as opposed to constitutional amendment.

There are countless instances of the executive power bypassing constitutional constraints, such as King Fuad's repeated violations of Egypt's Constitution in the 1920s whenever the Wafdist party won elections or its simple abrogation in 1930,

only to replace it with another constitution that reinforced the monarch's power. Similarly, Bashar el-Assad amended the Syrian Constitution in order to reduce the minimum age required to preside the State. Since 1980, the Egyptian Constitution does not limit the number of Presidential mandates and in 1975, Bourguiba amended the Tunisian Constitution in order to preside for life.

B. Requirements for constitutional review

(i) Appointment process and length of terms

Heads of state are sure to keep a grip on power by controlling the appointment of constitutional judges and making sure that they serve abbreviated terms. For instance up until the Arab Spring, members of the Tunisian Constitutional Council were exclusively appointed by presidential decree¹⁰.

Whenever the head of state is not directly implicated in the appointment process, it is handled by the executive body: thus the Kuwaiti Constitutional Court is comprised of five members selected by a judicial council ; however this council's members are all senior judges appointed by the executive. Absence of parliamentary oversight in the appointment process and short tenure are one way of impeding judges' independence.

(ii) Referral to the Constitutional Court

With regards to referral to the constitutional court, judiciaries in the Arab world have been influenced by two historical models: the French model, in which the Conseil constitutionnel examines law in the light of the Constitution prior to its enactment by Parliament¹¹ and the American model, whereby an ordinary litigant may seek to defend his constitutional rights on the occasion of a case¹². The main difference lies in the citizens' right to a constitutional hearing.

The French paradigm has been implemented in states influenced by civil law, namely Algeria, Morocco, Tunisia and the Levant ; Iran's Council of Guardians has also adopted the pre-enactment constitutional review system. The American Supreme Court model has been adapted in Yemen, Kuwait, the United Arab Emirates and Egypt.

Arab constitutional courts have yet to develop their jurisprudence in order to match their Western full fledged counterparts. Apart from procedural issues such as

access to the courts which has yet to be widened, much remains to be done especially to avoid courts from being seriously curtailed in times of political contingency, such as was the case in Yemen in 1994 and Algeria in 1992. The latter's constitutional jurisprudence has been extremely modest: between 1989 and 2012, only six binding decisions were reached, none of which concerned citizens' rights and liberties¹³. The majority of decisions reached are *avis*, that is, non-binding opinions.

Thus a transverse view of Arab constitutional councils may hastily lead one to compare them to the somewhat conclusive French « Comité constitutionnel » created by the 1946 Constitution, which was devoid of any real power of judicial review and whose referral was very difficult. However, developments show that councils here and there are pushing their way toward effective judicial review of legislation. Indeed, the period prior to the Arab Spring witnessed some promising steps toward judicial independence, as illustrated by Egypt's Supreme Constitutional Court and the Lebanese Constitutional Court, among other instances.

II. A growing commitment to constitutional review

As Nathan Brown points out, "judicial review emerged *almost imperceptibly* in the Arab world"¹⁴. In fact it took place earlier than it did in France : whereas the Conseil Constitutionnel emerged under the Fifth Republic in 1958, by 1920 the Syrian Constitution had created a Supreme Court ; Iraq's 1925 Constitution¹⁵ provided for constitutional review by its High Court ; Egypt's Supreme Administrative Court issued a decision in 1948 asserting the principle of judicial review ; the 1952 Jordanian Constitution allowed the government to seize the High Court regarding interpretation of constitutional provisions and in 1962, the Kuwaiti constitution was the first in the region to require the creation of a constitutional court. All this took place *before* the Conseil Constitutionnel's 1971 decision which, by declaring a law contrary to the constitutional principle of liberty of association, marked its transition from « chien de garde de l'Exécutif »¹⁶ to an effective constitutional court in charge of controlling the conformity of laws with rights and liberties consecrated in the Constitution, its Preambles and the Déclaration des Droits de l'Homme et du Citoyen.

A number of Arab States – some more timidly than others – have shown a growing commitment to carry out effective constitutional review and consequently tend toward judicial independence, such as the Lebanese Constitutional Council and Egypt’s Supreme Constitutional Court under Chief Justice Dr Awad Mohammad El-Morr.

(i) The Lebanese Constitutional Council

The Lebanese system, like all democratic parliamentary systems, depends on the Parliament’s role as a check on the government. However, this fragile equilibrium is prone to distortion by an obedient parliamentary majority and in such circumstances, the creation of a constitutional council in 1990 was deemed necessary. The Ta’if reforms thus brought about “a reemergence of Lebanese constitutional life”¹⁷. As its name suggest, the Lebanese Constitutional Council was inspired by its French counterpart and – in contrast to constitutional *courts* which lie at the apex of the judicial hierarchy and thus depend on the judiciary – it is independent from the judicial court system. The Constitution provides that:

A Constitutional Council shall be established for the review of the constitutionality of the laws and the resolution of contexts and challenges pertaining to presidential and parliamentary elections. The right of appeal to this Council for review of the constitutionality of laws shall be limited to the President of the Republic, the Speaker of the Parliament, the Prime Minister, and ten members of Parliament, and, to the extent that matters of Personal Status, freedoms of belief, exercise of religious rites, and the freedom of religious education are involved, to the heads of the recognized religious communities¹⁸.

The possibility for religious communities to seek constitutional review is unique and innovative¹⁹. The Constitutional Council is comprised of ten members, half of which are elected by the parliament and the other half by the cabinet; once elected, members in turn elect their president and vice-president. Additionally, the law requires members to have a legal background of over twenty years as magistrates, lawyers or law professors (a condition unrequired by the French Conseil Constitutionnel). A majority of seven out of ten members is necessary to declare a law unconstitutional.

Since its creation in 1993, the Constitutional Council has reached over thirty decisions in electoral matters and more than twenty decisions regarding

constitutional review. In practice, much like its French counterpart, the right of recourse to the Lebanese Constitutional Council has mainly been used by parliamentary minorities to sanction the majority. However it has not been overused, perhaps because the government has made efforts to guarantee constitutional conformity of the laws.

The Constitutional Council has shown its will to remain free from political disputes on the onset of its first decision reached in February 1995 in which it decided that once undertaken, referral could not be withdrawn on the grounds that the right of constitutional recourse fell in the realm of public constitutional order (unlike an ordinary private claim which may be retracted by the claimant)²⁰. What's more, the Council examined the entirety of the law in question, not just the contested provisions.

Decisions reached by the Council prove that the Constitution is more than a natural accouterment of sovereignty or an ideological instrument; it fulfills its role as highest law of the land and the contentious issues it raises are dealt with objectively, even under political pressure. The decision reached on December 2nd, 2009 rejecting nineteen parliamentary election appeals was severely criticised by candidates who had lost the election. Council Issam Suleiman stated that "the unanimous decision of the ten members of the council was not due to a political consensus but to studying the allegations of the appeals and investigating them"²¹. The parliamentary elections carried out in 2009 are considered to be the first independent elections since 1972.

With regards to fundamental rights, the Constitutional Council decided in 1997 that the preambular declarations (among which the Universal Declaration of Human Rights) added to the Constitution after the Ta'if reforms had constitutional value ; thus laws violating public liberties could be abrogated if they were deemed unconstitutional. However with respect to separation of powers, the Constitutional Council has yet to sanction the executive for encroachment upon the Parliament's functions. Notwithstanding, it has defended the judiciary's independence by declaring unconstitutional a law allowing the Prime Minister to transfer or dismiss the president of the Ja'fari (Shi'i) court²².

Although the Lebanese Constitutional Council is relatively young, it has assuredly provided a means for curtailing an absolutist parliamentary majority. It has also given some much needed credibility to the country's institutions.

(ii) Egypt's Supreme Constitutional Court (SCC)

Egypt's legal system has been extremely influential in the region by virtue of its early modernisation reforms, legal experts and education system. When pursuing the arduous task of judicial reform, Arab states have on many occasions drawn on Egyptian experts.

However, it is without a doubt Egypt's SCC, created in 1979, which has gone the furthest in challenging the constitutionality of legislation. Taking after the American Supreme Court, Egypt's SCC may appreciate a law's constitutionality if another court refers to it²³. It may also decide on disputes over the competent authority among the judicial bodies as well as disputes resulting from two contradictory rulings.

Because the appointment system guaranteed its judges' independence, some political leaders believed that it exceeded its power, thereby turning into a « *gouvernement des juges* »²⁴ namely, a sort of 'chamber of appeal' encroaching the legislative and executive branches. Indeed, although judges are appointed by the President of the Republic, candidates are nominated by the sitting judges so that the Court is "self-perpetuating"²⁵.

Assuming its jurisdiction at the time article 2 of the Constitution was amended so as to make Sharia the main source of legislation, one of the Court's first tasks was to decide if laws allowing unlawful acts under Islamic law were constitutional. The judges held that the constitutional amendment had no retroactive effect, so that provisions of the 1949 Civil Code which contradicted the Sharia remained applicable²⁶.

The SCC has not shied away from sensitive and political issues such as family law (child custody, compensation attributed to a divorced wife), the Islamic veil, freedom of association, the formation of political parties or legal guarantees of the accused, among others. It has even gone so far as to cancel elections twice on the ground that the electoral law prevented fair results. The Court's record which sets it apart from its counterparts in the MENA region, owes much of its dynamic boldness to the late Chief Justice Dr Awad Mohammed el-Morr. Since the activist's retirement, the court has lost some of its impetus and has been more susceptible to pressure on behalf of the executive. Some very delicate issues have yet to be referred to the Court, such as

the transfer of civilians to military courts, women's suffrage, the status of the Baha'i religious minority, among others.

As shall be shortly developed, Egypt was the stage of a tumultuous transition from decades of authoritarian rule as illustrated by the differences among the constitutions promulgated by the Morsi and the al-Sissi governments in 2012 and 2014 respectively. These disparities are particularly noticeable as far as the SCC's composition and function are concerned.

III. Constitutional courts in the aftermath of the Arab Spring

A. Constitutional provisions prior to the Arab Spring

Providing for an independent judiciary, be it in *dustur* (constitutions) or *nizam asas* (fundamental rule) is not a novelty for Arab States. For instance, article 65 of the Egyptian Constitution of 1971 stated that "the State Shall be subject to law. The independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties" and article 166 asserted that "judges are independent. In their performance, they are subject to no authority but that of the law. No authority can interfere in case or judicial affairs"²⁷. Likewise, article 82 of the Constitution of the Kingdom of Morocco of 1996 read as follows: "The judiciary shall be independent from the legislative and executive branches"²⁸. Article 163 of the Kuwaiti Constitution of 1962 provided that "In administering justice, judges are not subject to any authority. No interference whatsoever is allowed with the conduct of justice. Law guarantees the independence of the Judiciary and states the guarantees and provisions relating to judges and the conditions of their irrevocability"²⁹.

With regards Egypt's Supreme Constitutional Court (SCC), Law 48 of 1979 provided that the Chief Justice and associate justices were appointed by presidential decree³⁰, however no mention was made of the number of members which comprised the court. This void led to the President filling the court with sympathetic

justices to obtain a favorable majority. There was clearly a need to establish a fixed number of justices so as to prevent control of the court by the executive.

B. Constitutional novelties

Yet successive upheavals have led to more or less tumultuous phases of transition, countries involved in the Arab Spring share a common trait, that of constitutional reform. In the case of Morocco, although some authors challenge the legitimacy of the constitution-making process due to the lack of a democratically elected commission³¹, the 2011 Constitution vests the new Constitutional Court with expanded functions. Whereas parliamentary opposition previously seldom made *ex ante* appeals to the Constitutional Council³², the new Constitutional Court makes sure that organic laws, ordinary laws and regulations of both houses of Parliament are in conformity with the Constitution³³. More importantly, the Constitution introduces a mechanism of *ex post* constitutional review, in other words the Constitutional Court may from now on consider the constitutionality of a law which is already in force³⁴.

This novelty may have been influenced by the French constitutional reform of July 23rd, 2008 which introduces the application for a priority preliminary ruling on the issue of constitutionality. In practice, it is the right for any party involved in legal proceedings before a court to argue that a statutory provision violates constitutional rights³⁵. Prior to this reform, a litigant couldn't challenge the constitutionality of a statute which had come into force.

Tunisia, where the constitution-making process proved more transparent than Morocco's, similarly underwent significant constitutional reform³⁶. Previously, the Constitutional Council was composed of nine members, four of which were appointed by the President of the Republic³⁷. Henceforth, the 2014 Constitution involves each branch of the government in the appointment process so that the President of the Republic, the Assembly of the Representatives of the People and the Supreme Judicial Council each appoint four members of the Constitutional Court³⁸. Like the 2011 Moroccan Constitution, the 2014 Tunisian Constitution has introduced *ex post* constitutional review³⁹.

Egypt's transitional process has proved extremely tumultuous in the year of 2012 which witnessed a strikingly rapid constitution-making period. As previously

mentioned, there was a need to explicit a fixed number of justices so as to prevent control of the court by the executive. This was achieved in the 2012 Constitution which stated that the Supreme Constitutional Court was composed of the president and ten members⁴⁰. Changes were also made to the functions of the court to meet particular purposes: article 177 provided that the President or the House of Representatives had the power to submit bills on political rights and elections to the Court. The article further stated that such laws referred to the court for *ex ante* review could then not be submitted for *ex post* review. As Nathan Brown points out, the intent was to prevent the SCC from striking a law that it had previously upheld⁴¹.

The novelties of the 2012 Constitution relating to the SCC were short-lived. Indeed the 2014 Constitution provides that the court is composed of a president and a “sufficient” number of members, basically returning to the court’s implementing legislation of 1979 which let the SCC decide how many justices it deemed “sufficient”. Yet it doesn’t provide for *ex ante* review of electoral bills, article 192 grants the SCC the sole power to “decide on the constitutionality of laws and regulations, to interpret legislative provisions, and to adjudicate on disputes pertaining to the affairs of its members [...]”⁴².

Mention must be made of Jordan’s constitutional reform which provides that a Constitutional Court shall be established by law and composed of nine members, “to be appointed by the King”⁴³. So far, three members were appointed by royal decree in September 2014 and their functions have yet to be explicated.

Conclusion

The Arab upheavals have led to a wide array of results and each country in the region – and consequently its judicial system – has been affected to a greater or lesser extent. Some countries remained immune such as Lebanon and thus witnessed no constitutional amendments, while others, such as Jordan, saw the emergence of a constitutional court. States such as Morocco and Tunisia enhanced their existing constitutional system by specifying the appointment process or by broadening the court’s functions, such as allowing it to carry out *ex post* constitutional review. In each case, there is room to further guarantee the rule of law. For instance, Jordan

may modify the appointment process of the justices so that it isn't exclusively the king's prerogative.

Several factors are accountable for the varying degrees of change following the Arab spring. While decades-lasting authoritarian presidents have been overthrown in Arab Republics such as Ben Ali in Tunisia, Qaddafi in Libya, Mubarak in Egypt and Saleh in Yemen, Arab monarchs (Morocco, Jordan, Kuwait, Saudi Arabia, Oman, Qatar, the United Arab Emirates and Bahrain) have proved more resistant, probably because of the high degree of legitimacy enjoyed by them as well as their unifying and stabilizing role, not to mention their ties to Western allies.

Monarchies such as Morocco, and Jordan more timidly so, have witnessed constitutional reforms but only to a point which didn't affect the executive's prerogatives. Unfortunately, the two years following the promulgation of the Moroccan Constitution show that the implementation process is moving at a much slower pace than that of the constitution-making process which took a little over three months. As pointed out by Francesco Biagi, "the most "delicate" constitutional provisions, representing the real novelty compared to the previous Constitution, have not yet been implemented: these include [...] the provisions on the independence and autonomy of the judiciary [...], the provisions on the organization and the functioning of the Constitutional Court, as well as the regulation of concrete constitutional review"⁴⁴.

Like their counterparts in the West, years may pass before MENA states' constitutional courts - and more broadly the judiciary - reach a greater level of independence. It must however be emphasized that a dynamic constitutional court is an essential actor for an effective transition to a nascent liberal democracy. It should guarantee the success of the democratisation process *prior* to the promulgation of a new constitution and thus play a key role in the latter's drafting. In other words, constitutional transition is a key step towards the establishment of a solid judicial system with checks on the executive, and not the contrary. A rushed constitutional transition may lead to exactly the opposite, that is, an imbalance of powers in favor of the executive.

Ideally, a supranational constitutional framework for transitions should see that judicial oversight of the constitution-making process is not hindered, as was the case following President Morsi's constitutional declaration of November 22nd, 2012 which granted him extensive powers and forbade any form of judicial review⁴⁵. An

interesting proposal to that effect was that of Tunisian President Mohamed Moncef Marzouki. In his speech to the United Nations General Assembly on September 25th, 2012, he suggested the creation of an International Constitutional Court as a means of preventing arbitrariness and strengthening the rule of law⁴⁶.

Notes

1. Brown, *Constitutions in a Non-constitutional World: Arab Basic Laws and the Prospects for Accountable Governance* (SUNY 2002) p. 5
2. Article 10 of the Universal Declaration of Human Rights provides that 'everyone is entitled in full equality to a fair and public hearing by an *independent and impartial* tribunal in the determination of his rights' and article 14 of the International Covenant on Civil and Political Rights stipulates that 'everyone shall be entitled to a fair and public hearing by a competent, *independent and impartial* tribunal established by law'.
3. Article 2 of the United States Constitution ; for the full text of the American Constitution, see http://www.senate.gov/civics/constitution_item/constitution.htm
4. Article 56 of the French Constitution ; for the full text of the Constitution, see <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-constitution-du-4-octobre-1958-en-vigueur.5074.html>
5. Nathan Brown, op. cit., p. 144
6. Nathan Brown, op. cit., p. 10
7. *Faqih* : expert in law
8. *Siyysa al-sharia* is a politico-legal doctrine created to enable the political and executive authorities to depart from strict Shari'a law in order to face political realities such as the protection of public interest. It finds its origin from a classical Islamic maxim¹ according to which 'God enforces through the ruler what he does not enforce through the Quran'.
9. *taqnin* : codification of the *sharia*
10. See article 66 of the 1959 Tunisian Constitution ; for the text of the 1959 Tunisian Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=7201>
11. As shall be evoked in Section III, B, the French constitutional reform of July 23rd, 2008 introduces the application for a priority preliminary ruling on the issue of constitutionality under article 61-1, thereby giving a litigant's right to challenge a statute's constitutionality. It has influenced some states in their constitutional drafting process following the Arab Spring.
12. Chibli Mallat, *Introduction to Middle Eastern Law*, (OUP, 2007) p. 185
13. See the Algerian Constitutional Council's website : <http://www.conseil-constitutionnel.dz/indexFR.htm> and Romain Graëffly, 'Le conseil constitutionnel algérien. De la greffe institutionnelle à l'avènement d'un contentieux constitutionnel ?', *Revue de Droit Public*, 2005, 1381 - 1404.
14. Nathan Brown, op. cit., p. 72, emphasis added.

15. Articles 83-87 of the Constitution of the Kingdom of Iraq of March 21st, 1925 ; see text of the 1925 Iraqi Constitution in French at <http://mjp.univ-perp.fr/constit/iq1925.htm>
16. « chien de garde de l'Exécutif » may be translated as 'the executive's guard dog'
17. Nathan Brown, op.cit., p. 72
18. Article 19 of the Lebanese Constitution; see http://www.accpuf.org/images/pdf/cm/liban/031-tf-txt_const.pdf
19. For the Lebanese Constitutional Council's composition and functions, see law n°250 of July 14th, 1993 (for Arab text, see http://www.cc.gov.lb/sites/default/files/loi_ar_2.pdf)
20. Chibli Mallat, op. cit., p.189 ; see also http://www.cc.gov.lb/sites/default/files/Recueil%20Vol%201_0.pdf
21. See http://www.cc.gov.lb/sites/default/files/Recueil%20Vol%202_0.pdf and 'Constitutional Council slams snub of appeal rejections', in Daily Star, December 3rd, 2009 http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=1&article_id=109363
22. Decision of the Constitutiona Council of the 25th of Febuary, 1995 ; this decision is all the more important as the law in question, adopted by the majority of the Parliament, sought to neutralise an irregular executive act (in this case a decision of the Council of State)
23. See Law on the Supreme Constitutional Court (No. 48/1979): 1979 (as Amended on July 22nd, 1998).
24. Nathan Brown, op. cit. p. 151
25. Nathan Brown, op.cit. p. 151
26. Supreme Constitutional Court, decision of May 4th, 1985 ; 'Supreme Constitutional Court - Shari'a and Riba', Arab Law Quarterly, 1, 1985, pp. 100-107.
27. For the text of the 1971 Egyptian Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=7140>
28. For the text of the 1996 Moroccan Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=6034>
29. For the text of the 1962 Kuwaiti Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=6148>
30. See supra, note 23.
31. On the aftermath of the Arab Spring, see 'The 2011 Constitutional Reform in Morocco: More Flaws than Merits' by Francesco Biagi in *Jean Monnet Occasional Papers*, Institute for European Studies (Malta), no. 7/2014. Previous to the 2011 uprisings, see A.R. Guédira (1963), "Une constituante ni nécessaire ni possible". *Confluent*, 27, January, p. 67, cited in M. Tozy (1999), *Monarchie et Islam politique au Maroc*. Paris: Press de Sciences Po, pp. 90-91.
32. *Ex ante* review implies that the Constitutional Council is seized of a law prior to its promulgation.
33. Article 132 of the Moroccan Constitution promulgated July 1st, 2011 (for the text of the 2011 Moroccan Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=13535>)
34. op.cit., Article 133.
35. Article 61-1 of the French Constitution.

36. See D. Pickard (2012), *Lessons from Constitution-making in Tunisia*. Atlantic Council, December, http://www.atlanticcouncil.org/images/files/publication_pdfs/403/mec121213tunisia.pdf
37. See Law n° 90-39 of April 18th, 1990 on the Tunisian Constitutional Council's composition and functions.
38. Article 118 of the 2014 Tunisian Constitution ; for the text of the 2014 Tunisian Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=14847>
39. Article 120 provides that the Constitutional Court is competent to oversee the constitutionality of the laws referred to it by courts as a result of a request filed by a litigator.
40. Article 176 of the 2012 Constitution ; for the text of the 2012 Egyptian Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=13113>
41. See N. Brown, 'Egypt, A Constitutional Court in an Unconstitutional Setting', 23 October 2013, p. 10
42. See article 192 of the 2014 Constitution ; for the text of the 2014 Egyptian Constitution, see <http://www.wipo.int/wipolex/en/details.jsp?id=15307>
43. See article 58 of the 2011 Constitution of the Hashemite Kingdom of Jordan ; for the text of the 2011 Jordanian Constitution, see http://www.representatives.jo/pdf/constitution_en.pdf
44. op.cit. p. 13.
45. See <http://english.ahram.org.eg/News/58947.aspx>
46. See President Mohamed Moncef Marzouki's speech to the UNGA at <http://webtv.un.org/meetings-events/watch/tunisia-general-debate-69th-session/3806208415001>

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