



The Presidential Powers in Palestine: A Scheme for Potential Deadlocks, or Quasi Monarch Regime

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Abstract

In the French constitutional context, it appeared it is possible to have heterogeneous layers of government; the President who is directly elected by public suffrage, and the Prime Minister who is supported by the President's opposition majority in the Parliament. Notwithstanding that this situation is undesirable, but it seems that it is adhered to the semi presidential type of government. Indeed, the real danger of this system has been experienced in many countries where this system was adopted. In the Palestinian case, since 2003 the first test for this system was subtly experienced when each the President and the Prime Minister has his own political agenda. This difference resulted in shortening the life of the Government to six months. During this period the ramification of adopting such a system slightly appeared but its future potential dangers were underestimated.

The second crisis in 2006 was immense enough to restore the authoritarian state of affairs in which the constitutional design for the separation of powers failed to confine for the second time the President from being the sole source of powers; there is no Parliament and both the Government and the Judiciary are under the control of the President and their loyalty to the President is the guarantee for their existence. The open question in this place, weather the current situation is alarming enough to bring the attention to review the constitutional arrangements and the deficiency of the current system or it is the quasi monarch system based on the hidden inherited legal and political power will continue to govern in the coming future.

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Introduction

Despite the absence of a recognized Palestinian State, the quasi-state institutions, in point of fact, exist in a way or another. These institutions include the Office of the President, the Government and its institutions, the Legislative Council, and finally the Courts. In fact all these institutions are working within the confines of the Israeli occupation. But, this paper will intact from any relation with the occupation and its effects on the state of relations created and developed after Oslo Peace Agreement in 1993. Indeed, this research will suffer a reduction of its actuality through this methodology, but, on one hand it may be considered as a try to study the domestic state of relations between the pure Palestinian institutions where these institutions deal with the daily life of the Palestinians and are considered their hope to pave the way for a democratic state governed by the rule of law. On the other hand, the legal documents and practices in which this paper will focus are elevated to the level that constitutes a valid study from the separation of powers point of view.

The starting point of this paper is the current institutional arrangements, practices and relations. All these factors will be put in a constitutional framework in order to compare them with a universally recognized module of similar constitutional arrangements, namely the French module. Why the French? Because in deconstructing the elements of the Palestinian constitutional relations, it seems clearly that they consciously or unconsciously follow the French semi presidential module. As Maurice Duverger describes it,

A political regime is considered as semi-presidential if the constitution which established it, combines three elements: (1) the President of the republic is elected by universal suffrage, (2) he possesses quite considerable powers; (3) he has opposite him, however, a prime minister and

ministers who possess executive and governmental power and can stay in office only if the Parliament does not show its opposition to them¹.

This regime is a mix of both presidentialism and parliamentarism regimes since it borrows from the parliamentary system the idea that the head of the cabinet is able to assume and continue in the office only through the support of the majority in the Parliament, and differs from the presidentialism where the cabinet is responsible and accountable to the President, and their existence and continuation do not depend on the support of the Parliament².

Many scholars argued about the advantages and disadvantages of the presidential and the parliamentary system³. The same may be said about the semi presidential system, which in one hand provides for more and wide consent between the major players where the President and the Parliament support the same person, who will be able to carry out the Government program smoothly⁴, on the other hand, in case of difference between the President and the Parliament, the President has to abide to the will of the Parliament and appoint the person who can obtain the support of the Parliament, and in this case the President has to cohabitate and share the executive powers with the Prime Minister. However, it is clear that the described scenarios are the optimal and in most situations are unrealistic; particularly if the President and the Prime Minister refuse to cohabitate, this case the risks of the semi-presidential system can clearly demolish all its advantages⁵.

How the Palestinian system became semi presidentialism will be addressed in the first part; the constitutional frame work through which the President exercised his powers besides the contexts of adopting the current system and its implications will be discussed through this part. In the second part the first bulk of the presidential powers which are common in the semi

presidential system of government will be exposed in both; the Palestinian and French constitutional systems. The role of the Judiciary as the guarantee to the commitment of the authorities to the system of separation of powers will be articulated in both the Palestinian and French practices in the third part. The second bulk of what is called “extra presidential powers” which are hidden in the Palestinian system of government and were practiced through the life of the Palestinian Authority will be unmasked in the fourth part. Finally, estimation to the current and future expectations to the existed system of government in Palestine and the system to overcome stalemates and breakdowns will be handled in the fifth part.

1. The context and sequence of adopting semi presidentialism regime in Palestine

Like many semi presidential systems, the charisma of the President plays a decisive rule in defining the elements of this system; however this role of the Palestinian President in comparison to the French President is different. The French Constitution of 1958 became semi presidential through the gradual adoption of its main features. In June 3, 1958 De Gaulle, who was enjoying a magic character with boom history was authorized by the National Assembly to draft a new Constitution which would be compatible with his idea about the strong executive⁶. In addition, the amendment of this Constitution in 1962 by a proposal from De Gaulle⁷ to provide for an elected President contributed to make the executive stronger⁸ at the expense of the Parliament. While in the Palestinian case the story is different, since this system was the result of several negotiations and compromises to confine the powers of the President who at the end was able to hold considerable powers to be able to stand before the Parliament. The contexts of adopting the current system will be discussed through separate but combined phases; the first where the President was the source of authority, the second where new constitutional framework was adopted, the third is the shift in the newly adopted framework, and finally the current phase where the resulted system is being tested.

1.1 The President is the source of authority

The charisma of the former Palestinian President, Yasser Arafat, played a main rule shaping the Palestinian political system; he was the leader of Fateh party which was the dominant political party in the Palestinian Liberal Organization (PLO) outside Palestine from 1968 to 1994. He was the head of the PLO which traditionally is considered the sole legitimate representative body for the Palestinian people. Taking in to account the hope of the liberal democratic State promised by the leaders of the PLO alongside with its main role in the

Palestinian first Intifada in 1987 particularly its leader Yasser Arafat, all that was deemed to be enough to provide a special legitimacy on the PLO institutions and its leadership even without formal popular delegation.

By the end of the first Intifada, simultaneously with the end of the first Gulf war in the beginnings of the 1990s, a dramatic change in the PLO strategy resulted in starting the peace negotiations with Israel. As an outcome, these negotiations resulted in an Agreement establishes the Palestinian Authority, which started its mandate in Palestine in 1994. Under this Agreement this Authority was supposed to serve as an interim Authority that will prepare for the independent Statehood by the end of 1999. This Agreement was known as Oslo Agreement of 1993⁹. It is important here to mention that the Palestinian representative part in the Agreement was mainly Fateh party, and this Agreement faced a vigorous opponent from several other parties, mainly Hamas, and from several independent academics and institutions as well¹⁰.

In order to fulfill the promise of the robust liberal democratic State, and to bypass the opposition, the Oslo parties agreed to carry out the election for the post of the President of the Palestinian Authority and to establish the Legislative Council which will be elected in public suffrage as well. However, since there was a considerable boycott for this election from the part of the opposition, the people went to this election while they are expecting the result formerly. From Fateh point of view and despite the fact they already knew the result of these elections, this process was important since they cover the Oslo agreement in some kind of popular legitimacy. Apparently, Fateh party won the elections which were held in 1996, and as a result the President and the members of the Legislative Council were mainly from Fateh.

Going backward to 1994 when the Palestinian Authority started its mandate in Palestine, and before the popular election in 1996, at that period the President was the sole source of legislative and administrative power, he governed in the vacuum of any constitutional document and he invoked in his acts some flawed values like the public interest or the high interest of the Palestinian people, as well as the powers granted to him which I think he meant by this the legal and political powers of the President adhered to the inherited legal and political system and to the symbolic background he disposed, and his position as the leader of the PLO as well. During this period the President started establishing the executive and administrative authorities. He formed the Government with several ministers and presides over it¹¹. He also issued the legislations¹² that establish and regulate the public administrations, and as part of these administrations he established the Central Election Commission in 1995¹³ which prepared and held the elections for the President and the Legislative Council in 1996.

After the election of the President and the Legislative Council a new phase of constitutional relations started despite the fact there was still no constitutional document at that time. However, the elements of the Palestinian public authorities begin to grow up; the elected powerful President and his Government, the elected Legislative Council, which started working on its standing of procedures¹⁴, and finally, there was the inherited fragile Court system which was the weakest body in this formula because of the long history of inferiority that stigmatized this branch of authority. In examining these institutions and their relations one can tentatively describe this system as a presidential regime in which the Government is accountable to the elected President, elsewhere, its existence and continuation does not depend on the Legislative Council.

1.2 The failure to adopt new constitutional framework

The initiatives of adopting new Constitution framework waved between two ideas; the first, the need for the constitutional legal framework to govern the exercise of the authority in the transitional period and constitute the bases for the permanent Constitution which will be adopted by the end of the interim period¹⁵. This idea was supported by certain members of the Legislative Council and several civil society institutions. The second, the concentration shall be on preparing for the permanent Constitution which has to take into account more sensitive issues like the consent of the Palestinian refugees who are not represented in the Legislative Council, in addition, Jerusalem status, the borders, the Palestinian sovereignty over the land and natural resources, etc, which were deferred by the previous agreements to the permanent status negotiations. Hence the permanent Constitution will be adopted after the end of the transitional period to take all shortcomings adhered to the nature of the transitional period in to account. The later position was supported by the President. However, a constitutional document called “the Basic Law” had been adopted by the Legislative Council in October 1997. This document was the result of several drafts by internal and external experts and was deliberated in the Legislative Council through three readings during 1996-1997.

When this document was introduced to the President he refused it, formally for the reason stated above, but it was understood in a different way by those who strongly supported its adoption that they attributed his refusal for the advantages he was gaining from exercising the powers in a vague legal status and the absence of any system of checks and balances¹⁶. A according to the Legislative Council member Ziad Abu Amr, the Legislative Council during this period “has been unable to exercise sufficient oversight of the Executive Branch or to enact legislations, including the Basic Law”¹⁷. Hence, any new constitutional arrangements will lead to

constrain and reduce the President advantages. For the Legislative Council this was considered to be more marginalizing to their role since they lack the legal bases to confine the President and the executive role in the legislative process, or to exercise influential means of accountability over the President or the executive authority under his control. During this period, the role of the Legislative Council was not clear, and its mandate limited to adopting the laws in the absence of predictable established principles¹⁸ except its standing of procedures which was formally adopted in Jun, 2000 but was not published in the official gazette¹⁹ until Aug, 2003²⁰.

1.3 The adoption of the Palestinian Basic Law of 2002

In 2002, two years after the fail of the negotiations between the President and the Israeli Government and the outbreak of the second Al-Aqsa Intifada, the President was deemed by Israel and U.S.A to be uncooperative and impediment in the progress of the peace process, hence they decided to isolate him and seek for an alternative Palestinian leadership to be a cooperative partner in the peace process. Internally the infamous performance of the Palestinian Authorities which was attributed to the President policy, together met to push for the forceful reform; and one aspect of this reform was the promulgating of the Basic Law which was on the President's disk since 1997. And with some changes by the President hand this Basic Law was signed and immediately published in the Official Gazette²¹. The story of the Basic Law may be considered a typical case that all the laws during this period were facing, hence like other laws the argument about its meanings and the ways to implement its provision started²².

The main features of this document from the separation of powers point can be summarized; the President is the head of the Palestinian Authority²³, he is directly elected²⁴ and no clear constrain on his term in office²⁵, he is not accountable to the Legislative Council, he is the head of the Government and he appoints, dismisses, the cabinet and presides over it²⁶, he has

the power to issue legislations in the absence of the Legislative Council²⁷, and he has the power to declare the emergency situations²⁸, but he cannot dissolve the Legislative Council²⁹. On the other hand, the Legislative Council is the legitimate legislative authority³⁰, the Cabinet but not the President is accountable before the Legislative Council, and has to gain the confidence of the later to assume the office³¹. The Legislative Council can dismiss the Government by vote of no confidence³²; in this case the President has to form a new government which has to gain the confidence of the Legislative Council³³. The judicial authority is independent³⁴. The law shall describe the way of appointing the judges and their affairs³⁵. A High Judicial Council shall be established³⁶. Finally the Constitutional Court shall be established, and it has the power to review the constitutionality of the laws and regulations and other legal actions³⁷.

By adopting this Basic Law a new phase of hybrid, mixture system was created for the first time in Palestine. The cabinet now is accountable before both the President and the Legislative Council; this clearly means that the political system started to incline towards the parliamentary regime despite the general presidentialism character it is still adhere to.

This new constitutional arrangement didn't last long time, it is here useful to mention that these arrangements were drafted in 1997 and issued in 2002, hence, despite the textual progress this document represented from the legal point of view, from the political point of view it suffered the paradox of the fact that in one hand it contained the balance of powers of 1997 and faulty reproduced it in 2002. On the other hand, it was drafted to serve for a defined transitional phase, and now this transitional period converted to continuous open-ended period through which all the authorities are confined by the occupation and its vigorous influence in its relations. Hence, the abnormal quasi state authority it creates within the open-ended occupation was another dilemma the constitutional system has to suffer beside any internal institutional breakdown.

In any case, the President's acceptance to adopt this basic was the impact of the conflict internal and external interests and powers; however no dramatic change in the institutional relations were noticed except the disturbance of the previous powers of the President and the emergence of new political Lines inside Fateh and consequently the Legislative Council. These new political lines stood behind the internal increase demand for actual reform and started to form real opposition to the President internal and external policy. Meanwhile, the international isolation of the President continued. All that pushed the President to inter in a new compromise by which the position of Prime Minister was proposed and the executive powers have to be shared between him and the potential Prime Minister. Subsequently the President, the Legislative Council, and the potential Prime Minister who was supported externally and internally by several senior figures from Fateh, entered in to a new round of negotiations to amend the Basic Law in order to reduce the powers of the President by creating the position of the Prime Minister.

1.4 The adoption of the Amended Basic Law of 2003

The new Amended Basic Law of 2003 was the result of the compromise between the President, the Legislative Council, and the potential Prime Minister, each party wanted to gain the needed powers to be able to have prominent position in the authority context. The Legislative Council on one hand wanted to gain more powers by splitting the powers of the executive which till that time were shielded by the position of the unaccountable President. On the other hand the potential Prime Minister wanted to assume considerable executive powers in order to be able to execute his agenda which was different of that of the President despite they are from the same party. For the President, at that period he has no choice and has to accept and to bargain on issues rightly he considered decisive in determining his political future like the security forces which he insisted to continue under his control either directly or by exercising veto on any

potential minister of internal affairs. Here it is important to mention that despite the concessions the President made he was aware of his factual powers he created through his long history and he intended to continue assuming his traditional powers by virtue of his position as the leader of the PLO and the remaining loyal factions in Fateh either to his symbolic position or to their interests.

With internal and external mediation, alongside with the pressure exercised on the President a sort of textual compromise between the parties was reached. The new main features of the new compromise are; (1) the President is no longer the head of the Government, and the executive powers has to be distributed between him and the Cabinet³⁸. He has the power to nominate the Prime Minister³⁹, however this power is restricted since the Legislative Council can refuse the candidate by investiture vote of confidence, and then the President has to find another figure able to survive the vote of confidence⁴⁰. (2) The Legislative Council accountability powers extended to the whole Government, hence its administrations no longer shielded by the position of the President. (3) The Prime Minister is now the head of the Government and except for those executive powers granted to the President in the Basic Law, all other executive powers are to be exercised either by him or his Government⁴¹.

By the end of this compromise, one point was still bending between the President and the potential Prime Minister which is the issue of selecting and appointing the ministers particularly the Finance and Interior Ministers. This issue was resolved through an agreement which provides that despite it is the Prime Minister who has this power, but it is a Palestinian political convection that in the process of recruiting the ministers the Prime Minister has to consult with the President. This complementary compromise was written in the introduction to the Basic Law. Finally, in order to remove any confusion between the original Basic Law and the new amendments the parties agreed to draft a consolidated one paper which was called the Amended

Basic Law of 2003. This document was immediately adopted by the Legislative Council and then signed by the President then without delay published in the Official Gazette⁴².

The adoption of the Amended Basic Law of 2003 clearly increased the system inclination towards the parliamentary regime, however the existence of the publicly elected President, and his considerable powers which will be discussed later in two parts, and despite the formally adoption of the parliamentary system in the article 5 of the Basic Law which states that “The governing system in Palestine shall be a democratic parliamentary system”, this system can be describe as semi presidentialism in which mixed elements from both the presidentialism and the parliamenalism regimes are presented. This new regime combines the main elements of the semi presidential system which are; the President is directly elected, he possesses quite considerable powers, and he has opposite him a prime minister and ministers who possess executive and governmental power and can stay in office only if the Parliament does not show its opposition to them⁴³.

1.5 The sequence of implementing semi presidentialism regime in Palestine

After the aforementioned arrangements were legally enforce the real application starts to uncover the hostility between the different parties. The main conflicts was between the President and the Prime Minister since the former continued to exercise his traditional powers in the previous way in contradiction to the new arrangements. We can here refer to the actual and historical position that the President relied on which he was aware of during the aforementioned negotiations phases. In this paper I will refer to more details about the bases of these powers when I address the two bulks of the President powers in the Palestinian context.

However, here it deserves providing some examples. In fact almost all the heads of the executive or independent administrative bodies were appointed by the President and they have political or personal relation with him, also they were aware of the contexts of the new arrangements, so in order to keep their positions in the face of the new Government many of them deemed themselves loyal to the President despite any new constitutional arrangements. Hence, when the new Prime Minister, without consulting the President and in contradiction to the will of the later, wanted to exercise his executive powers as the head of the Government he was faced with the actual powers of the President. An example of this issue was the new Government decision to appoint a new head for the public service bureau. When the Government issued the decision to dismiss the one who was appointed by the President and appoint a new one the former refuses this decision and contested that he was appointed by the President and only the President can dismiss him. This position was supported by the President, and a military group was used to support the position of the President. The same can be said about the decisions of the new minister of internal affairs which were refused by the heads of the security forces on the ground that they are only under the control of the President.

This situation only lasted six months at the end of this period the new Prime Minister and his Cabinet surrendered and resigned. The Prime Minister declared his resignation inside the Legislative Council accompanied with a speech about the situations he faced with his Cabinet during their term in office. This resignation received all the welcome from the President and immediately a new loyal Prime Minister was nominated to form a new Cabinet and the later was able to gain the support of the Legislative Council. So in a short period the President was able to create a new convention that the Prime Minister has to consult with the President before taking

any serious decision, moreover he must work within the agenda of the President or he will face the destiny of the former Prime Minister.

The President also continued between time to time to preside over the sessions of the Government in reference that he is the real head of the executive. However, despite the attempts by the President to protect his position, the internal and external coalition contributed to decline his powers gradually, especially in the financial issues which in fact were the main privileges through which the President was able to expand his powers. Roughly speaking the executive continued to be under the control of the President with some reform in areas like the financial sectors since the external support was conditional to be outside the control of the President, and the same may be said about Israel which refused to pay the Palestinian taxes revenues unless they are outside the control of the President.

The situation continued in the described manner till the death of the President in November 2004. The speaker of the Legislative Council assumed his office for a transitional period until a new election for the post of the President was held in Jan, 2005. During this period the Speaker issued all the laws which were suspended by the Former President especially those the later opposed since they are related in a way or another to his position; examples of these laws are, the Illegal Gains Act⁴⁴, and the Financial and Administrative Monitoring Bureau⁴⁵ which provided for the ability to trial the holders of public offices including the President for abuses or criminal behaviors.

The new presidential election was held in Jan 2005. This election was for the position of the President and there was an agreement that the President will arrange for the legislative elections after he assumes his office. Again, several parties including the Islamic movements

boycotted this election and the President was Mahmud Abbas from Fateh, the first Prime Minister under the term of the Former President. A new Government headed by the same Prime Minister was introduced to the Legislative Council and easily gained the later confidence. During this period, because of the absence of the leader charisma of the former President, and before the election of the new Legislative Council, there was some kind of agreement between the main players; the new President, the Prime Minister, and the majority in the Legislative Council to share the powers with some kind of harmony. Additionally, since all the major players belong to the same political line inside Fateh, the new Government apparently can be described as homogeneous.

Furthermore, during this period a new election code was adopted⁴⁶. According to this Law, the President term of office is limited to 4 years and to maximum two terms⁴⁷. Also the next election of the President shall be held simultaneously with the second election of the Legislative Council⁴⁸. Meanwhile, the new legislative election is to be held on the bases that half of the seats will be distributed according to the party lists system while the other half on the basis of individual voting system⁴⁹. This Law was a reflection of the real political pluralism which existed in the Palestinian's scene and ranged from Islamic movements to Communists parties. Under this new election system the Islamic movement Hamas, the biggest Islamic opposition party, decided to participate in the election. This decision was because of their knowledge that the existing authority suffers the lack of the popular confidence for several reasons and mainly for the infamous performance of the public Authorities, and for other political, social, and economical factors as well⁵⁰. Despite these risks, and the partial Fateh's opposition, the President was commit to the law, and adopted all the needed decisions to hold the election in the designed date; Jan 25 2006⁵¹.

The result of the election was the win of Hamas with clear majority that enables them to form the Government without coalition with other parties. This situation was a shock in the beginnings because the Islamic movements always were not only in the opposition but also till that time they never participate in any government and now they can form the new Government.

Immediately after the election the President declared that he accepted the election result and he is committed by the Basic Law to appoint the Prime Minister from the majority party. However the conditions to form an operational Government by Hamas was facing three major impediments; (1) The political agenda of Hamas was different of that of the President, and both now are directly elected and each one will resort to his agenda as the one that gains the consent of the constituents. (2) Despite the fragile status of the PLO institutions which are dominated by Fateh and were weakened by Fateh itself during the period of the Palestinian Authority, after Fateh defeat in the Legislative Council election, this party opted to invoke the legitimacy of the PLO institutions and its superiority over the Palestinian Authority Institutions. This general position was rejected by Hamas and they stipulated that before they admit the role of the PLO, a reform for its institutions should be carried out to take in to account the parties that are not represented in its institutions. (3) Finally, the administrations was designed and mainly filled by Fateh members or proponents, and hardly can one imagine at that period that they will accept to be under the control of their historical bitter rivals. Moreover, in a hysterically status Fateh caretaker Government limited its work on the appointment decisions before the new Government hold office⁵².

In short, at that time the situations can be summarized as the following; the President is publicly elected and supported by external coalition was insisting on going through his political agenda. The administrations are mostly controlled by Fateh or their proponents and they were

alarmed about any future change will be introduced by Hamas policy. The security forces and Fateh military groups are under the control of the President. The international position was supporter to the President and ready to imposed financial siege on any potential Government formed by Hamas. On the other side Hamas is the wining party in the election and is insisting on forming the Government. Moreover, their candidate Prime Minister clearly declared his new political agenda which is incompatible with that of the President. Finally, Hamas has its own military groups, particularly in Gaza, which were ready to inter in any future political conflict.

Taking into consideration all the aforementioned contexts, apparently the whole constitutional system was at stake. Thus, a closer examination to the presidential powers will show the potential risks in adopting the dual executive system of Government as well as the constitutional possibilities available to overcome any future breakdowns.

2. The textual and contextual powers of the President

In this part the focus will be on the presidential powers in the semi presidential system, which are; the appointing powers, the power to dissolve the Parliament, the veto powers, the legislative powers, and finally the emergency powers. All these powers will be discussed in comparative perspective in support of the argument that despite the limited textual executive powers entrusted to the Palestinian President, the way these powers are interpreted and practiced, inevitably will lead to the supremacy of the post of the President and the breakdown of the designed system of separation of powers.

2.1 *The appointing powers*

Under the Basic Law, the President appoints and dismisses the Prime Minister⁵³, and the later recruits the ministers⁵⁴, and both the Prime Minister and the ministers have to immediately gain the support of the majority in the Legislative Council to assume the their offices⁵⁵. It is clear that the President has much to say when he is supported by the majority of the Legislative Council in appointing the Prime Minister or the process of recruiting the ministers. However, after the two experiences the Palestinian context witnessed this power became confined when the President and the majority of the Legislative Council are in disagreement even though they are from the same political line. But, this discretionary power loses all its meaning when the President has no clear majority to support his decision, hence this power become ceremonial and limited to the procedural sphere.

Comparing with the French Constitution, the President has the power to appoint⁵⁶ and dismiss⁵⁷ the Prime Minister, however, the French President has much leeway to elude and protect the Government he supports since the Prime Minister and his ministers are not required

to go immediately to the Parliament to gain its confidence. On the contrary, if the Prime Minister chooses to make use of the article 49(1) permissibility, the Parliament is the body who has to initiate the vote of no confidence against the Prime Minister and his Government⁵⁸. And in this case the President can choose between selecting new Prime Minister who is able to stay in office and survive any potential vote of no confidence, or the President can use his prerogative to dissolve the Parliament⁵⁹ and call for new parliamentary elections.

Before I proceed in the issue of other appointing powers, three provisions of the Palestinian Basic Law deserve careful examination; first, article (38) which provides; “the President of the National Authority shall exercise his duties as specified in this Law. Second, article (46) provides “the Council of Ministers shall assist the President in the performance of the President’s duties and exercise of powers, in the manner stipulated in this Basic Law”. And finally, article (63) provides; “The Council of Ministers (the “Government”) is the highest executive and administrative instrument; it shoulders the responsibility for implementing the program that has been approved by the legislative branch. Except for the executive powers of the President of the National Authority, as specified in this Basic Law, executive and administrative powers shall be within the competence of the Council of Ministers”.

One major difference between the powers provided to the Palestinian President and those provided to the French President is that the later not only exercises the explicit powers provided in the Constitution, but also any necessary powers to ensure the proper functioning of the public authorities and the continuity of the State⁶⁰. These powers are clearly not provided to the Palestinian President, since the aim of the Basic Law was to confine the powers of the President, which is the contrary in the French Constitution which aims to strengthening the executive at the expense of the Parliament to address the Government instability during the Fourth Republic

where twenty-five successive governments served in twelve years of history between 1946-1958⁶¹.

These provisions limiting the Palestinian President powers show how far the laws with regard to the President powers of the appointment go far from that provided in the Basic Law, since if one surveys the Basic Law provision to extract the presidential executive powers in the matter of appointment she/he will find that the President has the power to appoint the following positions; the National Authority's delegates to foreign countries, international organizations and foreign agencies⁶², the Governor of the Monetary Authority with the consent of the Legislative Council⁶³, the Chief of the Financial and Administrative Auditing Bureau with the consent of the Legislative Council⁶⁴, the Attorney General upon a recommendation from the High Judicial Council⁶⁵, and finally a controversial provision related to the appointments of the judges provides, "Appointment, transfer, secondment, delegation, promotion and questioning of judges shall be as prescribed in the Judicial Authority Law"⁶⁶. However, the conventional practices, before and after adopting the Amended Basic Law, give the President the powers to appoint the holders of the public offices.

Comparing with the French Constitution, the President as a general rule has the powers to make appointments to the civil and military posts⁶⁷. Certain posts are filled by the council of minister decision⁶⁸. The posts which the President appoints and how to delegate his powers to be exercised on his behalf shall be determined by an institutional law⁶⁹. The power of the President in this regard should be read in conjunction with articles 19 which requires that acts of the President shall be countersigned by the Prime Minister and, where required, by the appropriate ministers. In addition, along with article 23 the Prime Minister, subject to article 13, he shall have the power to make regulations and shall make appointments to civil and military posts.

While under the Palestinian Basic Law there is no countersignature requirement for the acts of the President which is used in the French system to rationalize the powers of the President and to harmonize the actions of the executive as well. Furthermore, the appointing power proved to be one of the most sensitive and crucial issues in the Palestinian administrative context; the weak Palestinian economy, the high unemployment and poverty percentage, and the absence of any meaningful social security system, all that lead to the fact that the public service is the main pillar of the peoples income. Hence the appointment power has been used during the period of the Palestinian Authority to gain political interests and to expand supporting factions. Accordingly this power was one the main reasons for the conflicts and the deadlocks between the President and Hamas Government. One example is the Prime Minister speech on the T.V as a result of the powers conflicts in which he showed a list of qualified employee (as he said) whom the Cabinet took the decision to appoint and sent to the President for signature and the later refused to do so. Meanwhile, the President Office on the media declared that the new Government appointed thousands of employees in several levels of the public serves without consultation with the President or following the legal procedures.

Whatever was the issue it is against the transparency principle where both the President and the Cabinet did not protect the neutrality of the public administrations. As a result the appointment according to the political affiliation was the main character of the period after the last Legislative Council elections, and each party was trying to inject his proponents in order to find more support for his policies in the public administrations.

Moreover, the public independent bodies were not immune from such political fractions. These institutions were mainly created and carried out its function under the control of the Former President, and during the negotiations for creating the position of the Prime Minister; a

provision was inserted in the Amended Basic Law which provides that the establishment of the public administrations, and the appointment of its heads are the authority of the Government, and shall be regulated by the law⁷⁰. Indeed, after the death of the Former President, that period witnessed several presidential and governmental decisions which shifted the public institutions from the President Office to the Cabinet or the executive apparatus⁷¹. But, after the Legislative election, reverse decisions were made before and after Hamas Government assumed the office to bring back these bodies under the control of the President.

Similarly to the Amended Basic Law, under the French Constitution the public institutions shall be established by the law⁷², and the implementations of the laws establishing these institutions is the responsibility of the Government and particularly the Prime Minister⁷³, hence neither the French Constitution, nor the Palestinian Basic Law provide for any presidential direct control over the public institutions.

2.2 The power to dissolve the Parliament

The question whether the President has the power to dissolve the Legislative Council was highly debated after the continuous stalemates between the President and the Legislative Council, and the answer is clearly no. In view of the fact that The Amended Basic Law was introduced to confine the powers of the President, any interpretation of its texts to give the President such power is a violation not only to its texts but also its context as mentioned before. This is from the legal point of view but there was a contest to this view that that the President has such power and must be given such powers since his position as the head of the state and because of the failure of the several authorities to work under the current situations and because of the international boycott the Government and the Legislative Council were facing. All these situations make it a need to get out of these impasses by giving the President such power as

constitutionally accepted in several democratic comparative constitutions. More particularly, a special reference in this issue was to the French Constitution which gives the President such power not only in cases of stalemates like these the Palestinian constitutional system was facing, but also upon his own discretion.

However this argument was not accepted because the Basic Law is clear in this issue, also because any resort to such unconstitutional practice will make the situation more disastrous. In fact, several agreements was reached in order to close the distance between the President and the Government agendas but all these agreements were always more fragile than the papers wrote in, and the political conflicts in several cases turned to military conflicts between the security forces and Fateh military groups on one hand, and Hamas military groups on the other hand. One illustration during this period was the President declaration that unless an agreement reached to end the military conflicts in Gaza he will call for earlier elections for both the position of the President and the Legislative Council, however this declaration was refused by Hamas and considered as a pressure to accept the President agenda, and they truly contested that under the Basic Law the President has no such power over the Legislative Council since the term of the later is fixed for 4 years⁷⁴ and no one can reduce or interrupt this fixed term, and the argument continued, that if the President wants to resign and call for a new election for his position he can do so.

As mentioned above, the French President has great discretionary power to declare the National Assembly dissolved and call for new parliamentary election⁷⁵. The only constitutional constrains for exercising this powers are; the consultation with the Prime Minister and the Presidents of the Assemblies, as well as the prohibition of dissolution within one year after the new election. This power clearly provides the French President with enormous power before the

Parliament in the case of deadlock between the Parliament and the Government and was provided to the President of the French Fifth Republic in order to remedy the instability of the governments under the Parliamentary Constitution of 1946 during the Forth Republic. Hence the drafter of the French Fifth Republic Constitution deliberately planed the Constitution to strengthen the Government at the expense of the Parliament⁷⁶.

In addition, it is argued that this power is the key aspect of the presidential leadership in France since his power can be used in different ways; as a political threat to avoid deadlocks, and to renew the President's legitimacy, and finally through this power the President can claim the supremacy over the state authorities⁷⁷. Hence, in case of deadlock the President was provided with the ability to return to the public to solve this issue indirectly by electing new Parliament. The result of this election will determine the destiny of the Government; if the existing Government win the elections it will stay in office and has new public mandate to go for its agenda otherwise, the President shall appoint a prime minister who can survive the confidence of the majority or the coalition in the new Parliament and has to cohabitate with the new Prime Minister.

2.3 Veto powers

This power was provided for the Palestinian President in both the Basic Law of 2002 and the Amended Basic Law of 2003, in other words this power was reserved to the President to counter balance the powers of the Legislative Council and as a proof to his profound engagement in the legislative process. Article (41) of the Amended Basic Law provides;

“1- The President of the National Authority shall promulgate the laws voted by the Palestinian Legislative Council within thirty (30) days of their transmittal to him. The President may refer a law back to the Legislative Council with his observations and the

reasons of his objection within the same period. Otherwise, the law will be deemed promulgated and will be published in the Official Gazette.

2- If the President of the National Authority returns the proposed law to the Legislative Council in conformity with the time limit and conditions specified in the previous paragraph, the Council shall debate the law again. If the Council passes the law a second time by a majority of two-thirds of its members, the proposed law shall be considered approved and shall be immediately published in the Official Gazette.”

However, the application of this power can be summarized during the term of the two Presidents in the following approach; the Former President traditionally used this power in a strange way in which it elevated to suspending power in some cases and to preventive power in other cases. Many of the legislations are examples of such kind of practices. The Basic Law itself which was issued after 5 years of its passing by the Legislative Council is an example. The same can be about the Judiciary Laws and the Labour Law⁷⁸. All these laws, and many others, after they were raised to the President for ratification they were suspended in several cases for years and promulgated sometimes in ceremonial ways as grants from the President. In addition, the Former President used this power in order to elude and make use of this advantage to appear as the ultimate authority for issuing and enforcing the legislations. Also many laws are example of using this power as a preventive one; the legislations which were issued by the Legislative Council speaker during the two months period after the death of the Former President are examples of this abuse of power⁷⁹.

Moreover, the effect of this power was clear in the current governmental crises, as a result no law was adopted by the Legislative Council, and the current President now is the source of the legislations. Besides, it was clear after the Legislative elections where the President and the Legislative Council each had his different agenda that no law can be adopted; Hamas will not have the qualified majority to override the veto of the President since they constitute 56% of the Council, and the President has legislative powers only in exceptional cases. In fact, the

Legislative Council was not expected to try to pass any law with the previous knowledge that they will not have the qualified majority to override the President potential veto.

In short this power proved its importance in impairing the development of the legal system during the period of the Former President. In addition, it proved to be decisive in shifting the balance of powers towards the President in the current crises. Also if one read this power with the presidential legislative powers, which will be discussed later, he/she can see how the President will become the dominant figure in case of stalemates.

Comparing with the French constitutional system, The French President has no such similar power. However, he is capable to return the legislation to the Parliament for reconsideration⁸⁰, or, referring the legislation to the Constitutional Council for reviewing its constitutionality⁸¹. In the first case, after the legislation is returned to the Parliament, the Parliament can't refuse its reconsideration, however there is no required special majority to override any presidential objection. Hence, after reconsideration the legislation or part of it, the Parliament can accept or reject the President objection by the simple majority, and in this case the President shall promulgate the legislation within fifteen days following its final adoption and its transmission to the Government.

2.4 Legislative powers

The Palestinian President not only can veto the Legislative Council legislations, but also in practice, the former and the current President exercised both original and ancillary legislative powers. To follow up this power, there are three periods which deserve examination; the first, before the first election of the Legislative Council in 1996. At that period the President was the sole source of legislations. He issued all types of legislations in different names (laws, decisions,

decrees... etc). During this period there was no legislative body and the President exercised de facto legislative powers and he issued several type of legislations. The Law Relating to the Procedure for Preparation of Legislation (No.4), 1995, is an example of such kind of legislative powers; by this law the President gave himself the power to issue all sort of legislations which can be prepared by any competent authority but he was the ultimate authority for issuing these legislations.

The second is the period after the election of the first Legislative Council in 1996 until the second election of the Legislative Council in 2006. During this period both the former and the current President exercised genuine legislative powers in several areas, especially the administrative area, and continued to issue legislations in the form of presidential decrees despite the absence of clear constitutional framework for such powers. During this period several administrative bodies established through presidential decisions, the Land Authority which was established by the decision no. (10) of 2002 is an example of such administrative bodies established by the Former President, and the Presidential Decree no. (7) of 2005 Concerning the Formation of the Council of Orphans is an example of the exercise of such powers by the current President. Here one can notice that the promulgating of the Basic Law which does not provide for such powers makes no difference for invoking such powers by the presidents.

The third is the current period, more specifically, the period after the election of the current Legislative Council in Jan, 2006. The Legislative Council is currently delayed, and this Council did not pass any law during its term because of the political conflicts and stalemates. Hence the President beside his controversial legislative powers mentioned above, he is now invoking his constitutional powers to issue all kind of legislations in the form of decrees⁸². In addition, in the later period some of these presidential decrees elevated to suspend or amend

constitutional provisions and were attributed to the emergency situations declared by the President as a result of the military conflict between Hamas military groups and Fateh military groups and security forces in Gaza which ended in the fall of the security headquarters under Hamas control.

Comparing with the French President legislative powers under the French Constitution; in general the executive has enormous legislative powers. In this issue the French context is different and hardly can be compared with the Palestinian one. It was deliberately designed that the 1958 French Constitution has to shift the balance of powers towards the executive; this was one important feature of the Fifth Republic Constitution as a response to the inefficiency of the parliamentary constitutional system in the Fourth Republic.

By reviewing articles 34, 37, 38 of the French Constitution one find several limitations on the competence of the Parliament by giving the executive the general legislative competence and limiting the powers of the Parliament to legislate in specific numerated areas as well. Moreover, the executive also can ask the Parliament to legislate in the later areas by the enabling act⁸³. The importance of this kind of delegation for the executive is, in one hand, its ability to amend any previous Parliament's act in the area of delegation, and, on the other hand the executive ability to make any future amendments to this ordinance without the consent of the Parliament. Due to this, it is argued that this kind of delegation is important to the executive to apply its policy expeditiously and without the complexity of the Parliament's procedures⁸⁴.

Notwithstanding the enormous legislative powers provided to the French dual executive, the countersignature requirement where, on one hand the President shall sign the ordinances and decrees deliberated upon in the Council of Ministers⁸⁵, and on the other hand the Prime Minister

shall countersigns Acts of the President⁸⁶ give the constitutional system more consistency comparing with the Palestinian counterpart. Indeed the absence of the countersignature requirement in the Palestinian Constitutional system contributes to make the legislative powers more confused and swinging between the dual executive (the President and the Cabinet) and the Legislative Council. Hence, this situation resulted in the existence of actual two executives with irrational, deviant, and misuse of the legislative powers. Here, one may expect that the constant unconfined use of this power by the President especially in the absence of the judicial review, which will be focused upon later, is one of the main threats which will lead to restore the authoritarian state of affairs⁸⁷ practiced by the Former President.

2.5 Emergency powers

To begin in different way, these powers are famous for their bad reputation in Palestine since this concept was introduced for the first time to the Palestinian legal system during the British Mandate on Palestine “1917-1948”. These powers used during the several successive periods to violate the individual and collective rights of the Palestinians⁸⁸. During the time of negotiating the drafting of the Palestinian Basic Law there was an argument about whether to provide for such powers since one of the important provisions of the Basic Law is the one which expressly abrogate all the legislations regulating the emergency situation in Palestine and namely the defense regulations of 1945 which were widely used by Israeli occupation authority.

However, the Basic Law contains expressly a chapter which deals with the emergency situations in Palestine; it is Ch. 7. According to this chapter the President can declare the emergency state in Palestine when there is a threat to national security caused by war, invasion, armed insurrection or in times of natural disaster, for a period not to exceed thirty days⁸⁹. However, the President powers after declaring the state of emergency are not more than his

powers in the ordinary courses since he is confined in the extent, substance and period of the state of emergency⁹⁰. Indeed, the Amended Basic Law provides for what shall not be done during the state of emergency, meanwhile, nothing about what shall be done is provided. Also, the extension of the state of emergency for another period of thirty days is literary possible in case tow-third of the Legislative Council vote for this extension⁹¹, which is practically impossible unless there is a wide consensus about the subject motivated the declaration of the state of emergency.

This power was used twice by both; the Former President in 2002, and the current President in 2007, but the contexts of using this power were different. In the first time it was in 2002 when Former President declared the state of emergency mainly because of the ministerial crises in 2002. However, the main legal question after this declaration was whether the Government formed during the state emergency had to gain the confidence of the Legislative Council. The legal answer was yes, since the provisions regulating the emergency situations change nothing for the issue of the relations between the authorities.

The second declaration of the state of emergency in 2007 was the outcome of the continuous political and military conflicts between the President party on one hand and the Government supported by the majority party in the Legislative Council on the other hand. This bitter conflict resulted in a sharp split and a break in the political system; the President dismissed the running Government and appointed a new Prime Minister and the later formed a new Government, which the President exempted from the certain constitutional requirements. While, the dismissed Government which was offended by the President to contribute in the insurrection against the President legitimacy invoked its legality as the caretaker Government until a new Government gains the confidence of the Legislative Council. However, it is clear that the

legitimacy of both the dismissed and the newly appointed Government is a question. However, each consider itself the legitimate one, and the political and geographic split between West Bank and Gaza helped in the existence of both with lawless state of affairs.

Whatever the case, in this new situation the President now is invoking the presidential decisions and decrees to substitute the legislative vacuum status, and he is supported with his Government in the West Bank by the international community. In Gaza, the head of the dismissed Government, with the remaining part of his ministers, are continuing to consider themselves as the caretaker Government in front of the wide international boycott. In the meantime the whole Legislative Council is in active since most of Hamas members in the West Bank are prisoner by Israel and Fateh members are boycotting its secessions since they considered it Hamas institution.

The situation in the French system is quite different comparing with the Palestinian one since there is no “State of Emergency” but it is about “Emergency Measures”, with certain restrains in exercising these measures. According to the French Constitution of 1958, in prescribed situations and after formally consulting the Prime Minister, the Presidents of the Assemblies and the Constitutional Council, the President can exercise emergency measures. The Constitutional Council must be consulted with regard to such measures⁹², and the Parliament can’t be dissolved during the exercising of emergency measures. However, in the French legal literature this power also considered agitate source of fears that the French regime may lapse in to authoritarian one because of the absence of prior approval or subsequent vote, and without time confines to govern by emergency powers⁹³.

Indeed, apparently the absence of the Palestinian President power to dissolve the Parliament, or any other constitutional arrangements to overcome like stalemates, alongside the military conflicts resulted from these stalemates led the President to unconstitutionally invoke the state of emergency to dismiss the Government, and appoint new one. This new Government was called “Emergency Government”, and substituted the dismissed Government without proceeding in the constitutional requirement according to the Amended Basic Law.

3. The role of the Judiciary

During the state of emergency and after its expiration, the President was invoking the Basic Law in his decrees and decisions even in clear violation to its texts and context. However, these decrees and decisions during this period hardly can be contested on constitutional grounds since the first pillar of the system of check and Balances designed by the Basic Law, namely the Legislative Council was collapsed; the other pillar which is the Judiciary. In many occasions during the current crises, the President and his supporter threaten that the President has immense powers which he can exercise in the face of the opponent Legislative Council and the Government. Moreover, after the President official declaration of his intent to use the said “immense powers”; for example his call for early elections, the supporters of the existence of such powers believed and gambled on the role of the Judiciary in embracing the President actions.

Before proceedings on the bases for this believe, an important event deserves mentioning. In a clear violation to the Basic Law, the appointment of a new Government was the main and first procedure invoked by the state of emergency declared by the President, as was mentioned the President issued several decrees through which he illegally suspended the constitutional provisions that require any role for the Legislative Council in forming the Government. Indeed, clearly the Basic Law provides that “The Palestinian Legislative Council may not be dissolved or its work hindered during a state of emergency, nor shall the provisions of this title be suspended”⁹⁴. Another important provision provides “After obtaining the vote of confidence and before assuming their offices, the Prime Minister and members of the Government shall take the constitutional oath, stipulated in Article (35) of this Basic Law, before the President of the National Authority”⁹⁵. This oath was taken by the “Emergency Government” before the President,

and in the presence of another important figure; the Chief Justice, but without obtaining the vote of confidence stipulated in the Basic Law since this Government was exempted from fulfilling this requirement by the President when this provision like many others was suspended by the presidential decrees.

In discussing the role of the Judiciary in the current crisis two stories may show the weak role that the Judiciary can play in such situations. The first one is the appointment of the successive chief justices and the second is the case of the decisions of the Legislative Council.

3.1 The appointment of the successive Chief Justices

The problem of the Judiciary system in Palestine was first dealt with by the Former President in 1994. In the beginnings of the Palestinian Authority the President issued a decision in which he granted the legitimacy for inherited judicial institutions as it was before assuming the Palestinian authority the mandate over West Bank and Gaza. The problem of the inherited overwhelming difference between the two systems in West Bank and Gaza was simply touched by the presidential decisions; the law issued by the President relating the expansion of the High Court mandate in Gaza to cover the West Bank in 1994, is one example of these decisions⁹⁶.

Also the Former President appointed the “Chief Justice” of the High Court in Gaza⁹⁷, and by the decision no. (26) of 1999 he endorsed him the power over the judicial system in both the West Bank and Gaza⁹⁸. The paradox this decision presented was the guarantee of the Judiciary independence and the prevention of any interference in the Judiciary “according to the constitutional and legal principles”⁹⁹. After that, what was called the High Judicial Council was established in 2000 by the Former President, and the same “Chief Justice” presided over it¹⁰⁰.

Then, the judicial authority law was adopted in 2002¹⁰¹, this law provides for establishing a transitional High Judicial Council, and this Law specifies its members in reference to their positions, but the President again, in violation of this Law, issued a decree by which he deemed the former “High Judicial Council” established previously by him as the transitional one for the meaning of the Judicial Authority Law¹⁰², hence the same Chief Justice continued in his position. After that, in 2003, a new decree, violating the law, appointed and promoted judges for the positions described in Judicial Authority Law reestablished the High Judicial Council according to these illegal appointments¹⁰³. Finally, the appointment the current Chief Justice was also incompatible with the Law of the Judicial Authority because the current President bypassed the Law requirement which provides that in the event the position of the Chief Justice is vacant his most senior vice shall replace him¹⁰⁴.

One can see that through the successive appointments of either the High Judicial Council in general or the Chief Justice in particular that the President has the main influence over the Judiciary through the illegal appointments of the high positions in this system. Moreover, the Chief Justices through their history deemed themselves under the authority of only the President, and they expanded their authority at the expense of the High Judicial Council and marginalized its role to become the body which stamps their decisions.

Meanwhile, this High Judicial Council “the Chief Justice” with the President are the reference for all the Judiciary affairs. But from a constitutional point of view, does the President have the power to appoint or interfere in the judicial affairs? This is an open question since there is nothing in the Basic Law provides the President with such powers, the only reference one can find here is the provision which provides that all the judicial affairs shall be regulated by the law. Taking in to account the context in which the Basic Law was adopted in order to confine the

powers of the President, and the clear statement that the President exercises his powers in the way provided in the Basic Law, besides other provisions which expand the powers of the Legislative Council and the Prime Minister at the expense of the President, all these contribute to strengthening the contest about the President powers in this sphere¹⁰⁵.

Finally, the Basic Law provides for the establishment of the Constitutional Court which will have the power to review the constitutionality of the laws, regulations and others. This Court seems to be not more fortunate than the High Court since the adoption of its law was the last decision the former Legislative Council took before the new Legislative Council assumed its term. Hence, before the establishment of this Court it was driven to the political conflicts and the provision regarding the appointment of its judges was changed in the last moment to give this authority to the President as part of the last night decisions taken by the former Legislative Council which will be addressed in the next part.

In the French context, and contrary to the Palestinian one, the Judiciary system is playing a central role in the constitutional design of the system of separation of powers, despite the fact that the Council Constitutional was innovated by the Constitution of the Fifth republic in order to protect the prerogatives provided to the executive by this Constitution. According to the French Constitution this Council has the power only to review the laws before they are promulgated, in addition its powers are limited to the laws of Parliament (organic, and ordinary)¹⁰⁶. The members of French Council Constitutional are appointed, three by the President of the Republic, Three by the Speaker of the National Assembly, and three by the President of the Senate whose term of office shall be nine years and shall not be renewable¹⁰⁷. In addition to the nine members, Former Presidents of the Republic shall be ex officio life members of the Constitutional Council¹⁰⁸.

Finally, the President of the Council Constitutional is appointed by the President of the Republic¹⁰⁹.

One important competence of the Council Constitutional, which was main reason for its foundation, is to make sure that the Parliament does not intrude on the sphere of the executive particularly in the field of the legislative competence allocated in articles (34), and (37)¹¹⁰. This competence is clear in article (41) of the French Constitution and as mentioned above its aim is to guarantee that any member's bill or amendment will be declared inadmissible by the Council Constitutional if it belongs to the Government competence under article (37) of the Constitution. Another related warranty to the Government in the legislative sphere is the Council Constitutional competence to review the constitutionality of the Parliament Standing Order¹¹¹. In this regard, the Council Constitutional declared unconstitutional the provisions in the revised Parliament Standing Order of 1959 which limits the governments powers in articles (31), (37), (38), (40), (41), (49), and (50) of the 1958 Constitution¹¹².

Originally, only the President, Prime Minister, Speakers of the Parliament Chambers, have the standing right before the French Council Constitutional. However, as a result of the departure of the De Gaulle charisma from the scene the role of the Council Constitutional was modified to reflect more balance between the executive and the Parliament; the Constitution was amended to allow sixty deputies or senators to challenge the constitutionality of the statutes¹¹³. This amendment "transformed the Council Constitutional from a watch-dog of the executive authority in to a body that could play a much more independent role"¹¹⁴.

The coming part which will articulate and discuss the case of the Legislative Council decisions¹¹⁵ will be helpful to compare between the role played by the French Council Constitutional and that of the Palestinian High Court or the future Constitutional Court.

3.2 The case of the Legislative Council decisions

After the Legislative Council election of 2006 and before the potential shift in the political authority, the dominant members of the predecessor Legislative Council called for an irregular secession in order to make the last night decisions. These decisions related to ratify the appointment of senior officials in the public administration and passing the Constitutional Court Law which was modified to give the President the powers to appoint its judges. This session was contested by the newly elected members and they publicly asked for not holding such session, and in case this session is held they will nullify its decisions. However this session was held in 13 Feb, 2006 and several decisions were passed. On March 5th the new Parliament held a regular session and one of its decisions was the annulling of the previous decisions. This case brought to the Court by the former members.

The High Court was held as the Constitutional Court in conformity with the Basic Law¹¹⁶ annulled the decision of the new Parliament and considered the former decisions as valid and enforceable on the ground that the new Parliament does not have the right to review the decisions of the former Parliament since this decision exceeds their authorities.

Despite the controversies this decision face, and the fact that the decision was expected but the judges suffered and differed on the grounds to deem the new Legislative Council decisions unconstitutional, however, the importance of the Court decision in this case comes from the fact that it was an assurance of the Court power to review the constitutionality of all

kind of legal norms which violates the Basic Law. So, it was an announcement of its constitutional competence in this sphere. Hence, one should follow up to see the development of such new tendency because many considered this decision politically motivated and the Court did not really intend to activate its competence to review the constitutionality of the legal norms because it will never be an easy task taking into account the situations surrounded the Court system and the enormous amount of unconstitutional norms adopted during the short life of the Palestinian authority.

Finally, in the transforming stages, the constitutional practices proved that a partial third party serves as an arbiter between the public authorities is imperative in resolving the deadlocks which may occur during the ordinary courses and the exercise of powers particularly where one strong authority is interacting in the borders of the others. In the Palestinian context, and where the Basic Law main aim was to rationalize the powers of the President, and where the traditional, conventional power was expected to thoroughly resist this change, the absence of such arbiter was decisive in impairing and hindering the real transform. Hence the third pillar of the system of checks and balances in the Palestinian constitutional relations seems to be feeble and fragile enough to be unable to balance the system of powers.

4. Extra presidential powers

An important part touches all the previous mentioned points will be discussed below is the extra presidential powers which contribute alongside with the aforementioned powers, to make the presidential powers more extensive than one may estimate even when analyses the allocation of powers between the current authorities as provided in the Basic Law.

During the period of the Palestinian Authority, and despite all the attempts to confine the powers of the President, these powers seem to expand, and the last crisis proved that in case of conflicts and stalemates, which are adhered to the semi presidential system of government, the President can show more powers than one can see through the texts of the Basic Law. These powers practiced illegally by the Former President in the vacuum of the constitutional framework and after the adoption of the Basic Law. In addition, the current President is clearly making use of these “immense powers”, as described by his supporters, despite his clear declaration that he is adhered to the rule of law principle. What are those “immense powers” or extra powers and the contexts of using them is discussed below.

4.1 The powers to ratify the Court decisions

In order to enforce the judicial decision one needs to address the President office in order to dress those involved to apply the Court decisions. In addition, if the Court decision is against the will of the President, the practice proved that the Former President refrained from applying these decisions. Several Court decisions regarding the release of political prisoners in the Palestinian Authority prisons are examples. Those decisions were refused by the security officials with the contest that extra presidential decision or ratification is needed to apply the Court decisions. This ill practices are inherited from the British commissioner as well the

military Israeli officials who exercised such practices over the Judiciary and this kind of inherited powers exercised by the President because of the idea that the Judiciary decisions are not self executable and there is a need for other authority to put them in force. A clue of this interpretation can be found in the Basic Law in the article that provide for the executability of the judicial decisions and criminalized who refuse to apply these decisions¹¹⁷.

4.2 The powers to implement the laws after it is enforce

Notwithstanding the deficiencies and gaps in the legislative process because of the loose and arbitrary procedures in adopting the laws, after it is adopted a new phase in urging the President to promulgate them starts after that. After they pass the impediment of the presidential powers they become under the arbitrary discretion of (Diwan Alfatwa wa Altashre'), the publishing authority¹¹⁸. It may takes years for the law in order to survive all these phases and to become legally enforce, meanwhile, it happens that most of the competent authorities which suppose to implement the law know nothing about it, or the financial needs to implement the law were not taken into account during the adopting process. That may be true for the most important laws in the Palestinian context. It is the case of the Civil Service Law of 1998, the Social Insurance Law of 2003, and the Judicial Authority Law of 2002. Hence, because of this shortage in the legislative process, the absence of the political will to abide by the law, and the inability to enforce these laws by the Judiciary, all these reasons drive to the popular and civil society demand to apply these laws. Then, as a privilege to the President he may issue another decisions regarding the implementation of these laws. This typically was the case of the Civil Service Law concerning the wages and other employees' rights, and also it was the case of the Judicial Authority Law in the part related to the judges' remunerations.

4.3 The presidential recommendations

One of the most controversial powers exercise by the Former President were the recommendations he was making in the all fields and by which he was intruding or bypassing all other authorities in indication that he is not only the ultimate authority but also the reference one. More specifically, I mean here the wide practices and encouragements by the former President and his followers to promote either the individuals or the public or private bodies to invoke the presidential initiatives in all kind actions, especially those related to the public services or the public expenses. An example is the appointing of either the inferior or superior officials; it was widely said that if you want to be appointed you have to gain a presidential support in the form of recommendation addressed to the concerned authority. This support will provide you the help to overcome any qualification requirement in any potential competence.

4.4 Establishing exceptional courts

In violation to all judicial and fair trial principles, several decisions issued by the Former President by which he established and specified the competence of exceptional courts in the cases alleged to be related to the security of the state¹¹⁹, those courts was formed by military officers¹²⁰ and do not follow the ordinary procedures in the trials phase or the judgment. Those courts were prohibited by the Basic Law¹²¹ because of the civil society and human rights institutions vital opposition to the existence of such courts and the reprehensible way they were formed and issued their decisions. Meanwhile, the existence of such courts through presidential decrees was bitterly received by the observers of the practices of Palestinian Authority in the field of human rights.

4.5 The powers over security and militia forces

Before going through these infamous powers, it is worth mentioning that the main two parties which dominate the Palestinian political era; Fateh and Hamas, both have within its composite military groups. Roughly speaking, Fateh military groups are under the control of the party leaders. In addition, the Palestinian Authority has its security forces. By combining those factors and since Fateh leaders have been presiding over the Palestinian Authorities since its establishment in 1994, this means the President have control over the security forces and the party military groups. The same is said about Hamas. Under these circumstances it is clear that the party leaders after they are in public offices; whether the Presidency or the Cabinet they are supported by some kind of military shield. This dilemma and its relation to the state building process has been a question since the establishment of the Palestinian Authority under the Israeli Occupation.

However, According to the Basic Law the President is the Commander-in-Chief of the Palestinian Forces¹²². This power was preserved to the President in all the aforementioned constitutional compromises. It is clearly against the context in which the Basic Law itself was amended to keep the President such power. Indeed, the misuse of this prerogative by the Former President specially against his political opponents, as well as the bad reputation of these forces and the insecure state of affairs these forces created, were the grounds for unifying the internal factions towards amending the Basic Law and reforming these forces outside the control of the President. In fact, this was one of the main fails of the Basic Law which proved and will continue to prove its risks in any future governmental combination.

4.6 The inherited presidential powers

Finally, the Palestinian Presidents beside all the specific aforementioned powers also practiced inherited legal and political powers; in one hand, the inherited legal powers are those previously were the privileges of the British Commissioner, the Jordanian king, the Egyptian Public Governor, or the Israeli military officers. Since the Palestinian legal system is complicated because of the successive oppression and tyranny rulers, those rulers keep to themselves the ultimate authority to decide in all fields; whether the political, social, or economic spheres. Many of these laws are still enforce and the powers of those rulers which were passed from each period to other till it reached the Palestinian Authority. Those powers despite its wide use, the adoption of the Basic Law and the renewal of several laws are making these powers gradually decreasing; however these inherited laws especially in the public administration have their imprint in the minds and behaviors of the public relations.

On the other hand, the inherited political powers; it is fact that most of the current state men, especially those returned with the Former President, are politically loyal to the party traditional behaviors which sacred the position of the President. Many practices showed the importance of these inherited political powers and proved that it is the loyalty to the President is the way of the promotion in the party and state posts. The current President, like his former, took several presidential political decisions during and after the political crises in which he dismissed his opponents and those who criticized his policies or practices.

Notwithstanding that all these powers are hardly to reconcile with the current constitutional system, I will bring the reactions to presidential call for the referendum in the beginning of the current crisis between him and the Legislative Council as an example of the legal and political response to this action. Many legal and political arguments were brought to

justify the President powers to take such kind of procedure and all these arguments can be summarized that because he is the President, he can resort to this procedure. The absence of such power in the Basic Law was not a problem to its proponent. What kind of procedures, what bodies, who and how can regulate such procedure also were not problems. Moreover what are the legal ramifications and how can the result of this referendum be applied, also was not an embodiment. All these questions and the bad consequences of resorting to such kind of procedure immediately after the new elections were the real and decisive reasons for preventing this procedure from being executed.

5. The system to overcome stalemates, final remarks

In this part final analyses to the current system ability to bypass the potential deadlocks will be discussed in order to stand on the real expectations of the future of the Palestinian Constitutional relations, and the determined factors that would increase or decrease the usurpation of one authority over the others.

It is clear that the valid intent of the Basic Law to rationalize the powers of the President and to empower the Parliament at the expense of the President failed to reach its aim. On the contrary, after five years of adopting this law the President now is more powerful and the Parliament is inactive and its rule is ultimately reduced to be practiced through the person of the President in clear violation to the Basic Law, while for the Judiciary, again they proved their ability to survive at the expense of their supposed role as an independent and partial arbiter in the transitional struggle for democracy.

While, in French context and despite the considerable powers granted to the Presidents of the Fifth Republic the rational use of these powers by the successive Presidents and especially the careful use the presidential powers which go beyond the ordinary courses of institutional relations were the main reasons for the stability of the regime created by the Constitution of 1958¹²³, despite the first pessimistic reflections on this regime which presented by the commentators who expected that the new regime hardly can outlast its founder and creator¹²⁴.

Subsequently, and because of the unsuccessful Palestinian new regime, I will try here to support adopting several new constitutional arrangements in the tentative future Constitution since all the authorities in their previous practices proved their willing to keep their powers and to use all sort of legal or illegal actions to improve their positions or to go through their agendas

at the expense of any democratic or constitutional arrangements. However, it is apparent after this short existence of the Palestinian authorities that the real need is to redesign the constitutional system by trying to split the core powers and redistribute them in more careful system of check and balances.

The powers of the President; the main failure of the Basic Law was its half solutions to address the dilemma of the presidential powers, despite the two constitutional attempts to rationalize the powers of the President, these powers were able to defuse through the gabs overlooked by this system and to restore the authoritarian regime prevailed during the beginnings of the Palestinian Authority. Hence, two approaches may help to address the previous constitutional failure; the first, the approach towards real ceremonial presidential powers limited to the procedural aspects to guarantee the continuity of the public authorities. The second approach is the demolition of the position the Prime Minister and restoring the executive powers of the President as the head of the Government¹²⁵.

In the later approach, the Government is the executive authority, its existence as a whole depends on the support of the Parliament. The President who is the head of the Government is elected simultaneously with the Parliament members by public suffrage and his term is limited to his ability to form the Government which is able to gain the support of the Parliament, and for limited maximum period of 4 years. Furthermore, in case of stalemates and deadlocks and where the Government can no longer enjoy the support of the Legislative Council, both the Government with the President and the Legislative Council shall be deemed dissolved, and a new election for the President and the Legislative Council shall be carried out. Meanwhile, the Parliament is the general source of legislations and can delegate its legislative powers to the Government in described constitutional confines. The later, wholly and individually, is

accountable to the Parliament by means of vote of confidence and vote of no confidence. Moreover, the entire executive senior officials as well as the Judiciary appointments must be sanctioned by the Parliament. In this regard, also, any holder of public office can be impeached. Finally, for the issue of the Judiciary, the previous arrangements with other profound reforms can automatically relieve this authority from its political dependence on the President position. In addition, the Law of the Constitutional Court shall be abrogated and the ordinary courts shall be able to review the constitutionality of the laws or the acts of the public authorities.

Finally, despite it is not duly discussed through this paper, under such mentioned arrangements the party system is decisive in enhancing or hindering the democratic practices, hence, as a prerequisite to any constitutional reform, the party system reform is imperative in promoting the constitutional practices and relations and protecting the rule of law principles.

Conclusion

In this paper the main phases of the constitutional relations and practices alongside with the constitutional texts and contexts were discussed. The main concern this paper tried to address was the combinations between the constitutional presidential powers and the inherited extra presidential powers which proved to stand before all the attempts to change the political regime from presidential to parliamentary. These attempts resulted in the hybrid semi presidentialism regime. One important feature of this regime is the considerable powers of the President in the face of the other authorities in case of stalemates which if not rationally used will lead to the authoritarian state of affairs by which the president will be the ultimate authority.

Taking into account that this system clearly provides the bases for conflicts between the different authorities, the working Government according to this system of government, relying on the French experience, depends on not only the consistent constitutional texts and conventional stable practices, but also on the high consensus state of affairs to overcome stalemates and prevent system breakdowns. The other scenario, which is the current case in the Palestinian contexts, this system of government led to a bitter conflict, and despite the two attempts to rationalize the president powers these powers demonstrated its ability to restore the authoritarian regime and to hinder any future transition for democracy.

At the end of this paper, an open question about the appropriate responses to the alarming hazards of the current system in case of any future political and party pluralism state of affairs have to be duly discussed. More specifically, can the current and future Palestinian political regime taking in to account the historical and traditional way of distribution of powers tolerate the system of dual executive?

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¹ Maurice Duverger, "A New Political System Model: Semi-Presidential Government", *European Journal of Political Research*, 8, 1980, p. 166

² For more details see, Arend Lijphart: *Parliamentary versus Presidential Government*. Contributors. Oxford University Press. Oxford, England. 1992

³ Ibid

⁴ Ibid

⁵ ibid

⁶ Karl Loewenstein: *The Constitution of the Fifth Republic a Preliminary Report*, *The Journal of Politics*, Vol. 21, No. 2. (May, 1959), p. 212

⁷ Elgie, Robert. *Semi-Presidentialism in Europe*. Oxford: Oxford University Press, 1999. Oxford Scholarship Online. Oxford University Press. 13 March 2008, pp. 77-78

⁸ Article 6 of the French Constitution provides for the election of the President. In different Context, the case of the Polish Constitution of 1997 proves also the influence of the first elected powerful President in shaping the political regime towards semi presidentialism. The President, Lech Walesa with a strong leadership characteristic was elected in 1990. After that, the election for the nation's legislature on a proportional representation basis with no minimum threshold was held in 1991. As a result 29 parties were in the Sejm. It was severely difficult to create a stable coalition for a program to form a strong government since there was no party exceeded 14 percent of the votes. Hence, the first government was formed two months of rigorously debate. All these circumstances resulted in a stronger President and a non stable government. In the first seven months after electing the Parliament there were three different Prime Ministers. In light of these facts the negotiations about the new Constitution started by a proposal from the President to the Parliament. This proposal gives him more powers over the Prime Minister and the cabinet. The Parliament was not satisfied about this proposal and it was withdrawn. However crisis continued between the President and the successive Prime Ministers until finally the divided Parliament elected the third Prime Minister who supported the proposal of the President. This case was detailed in, A Stepan, E Suleiman: *The French Fifth Republic: A model for import? Reflections on Poland and Brazil - Politics, society and democracy: Comparative studies*, 1995, pp. 283-290

⁹ It was called "the Declaration of Principles on Interim Self-Government Arrangements" or "Declaration of Principles". It was between PLO and Israel in Oslo, Norway on August 20, 1993".

¹⁰ "Some Palestinians, including prominent Palestinian-American professor Edward Said, have serious complaints about the peace process or are even completely opposed to negotiating with Israel at all". See Adrien Katherine Wing: *The Palestinian Basic Law: Embryonic Constitutionalism*, *Case Western Reserve Journal Of International Law*, Spring/Summer, 1999. p. 389. This article was the basis of a presentation delivered by Professor Wing as part of a discontinuous symposium entitled, *The Legal Foundations for Peace and Prosperity in the Middle East*, sponsored by the Case Western Reserve Journal of International Law and the Frederick K. Cox International Law Center. Professor Wing delivered this presentation at the Case Western Reserve University School of Law on February 9, 1999.

¹¹ The President during this period was not only the head of the Palestinian authority but also he was the head of the Cabinet although there was no constitutional framework that refers to titles like ministers or Prime Minister except the Jordanian Constitution of 1952. But I think Yasser Arafat never admitted this Constitution and hardly one can say that he refers to this Constitution in this issue.

¹² The President at that period governed with what was called decrees and even after the election of the Legislative Council he continued to issue these norms.

¹³ The Palestinian Electoral Law (No.13) of 1995

¹⁴ The President and the Legislative Council agreed to form the government and this government easily gained the confidence of the Legislative Council under the later standing of procedures. This government begun to work under the full control of the President since not only the government but also the Legislative Council was under the control of the President (may be because most of the members of the Legislative Council were from Fateh) and according to Fateh practices, and in contrary to its internal regulations, the way this party was governed is through the absolute authority of the President. As one of the independent members described the relation between the President and the Legislative Council during the beginnings of this period, when the President wants to formally address the Legislative Council he usually do that through the party name of the Speaker and not in relation to the later position.

¹⁵ For more details see, Adrien Katherine Wing, 1999, pp. 385-386.

¹⁶ See also, Adrien Katherine Wing, Ibid, pp. 402-404

¹⁷ Ziad Abu-Amr, The Palestinian Legislative Council: A Critical Assessment, 26 J. Palestine Stud. 90 (1997). This position is cited in Adrien Katherine Wing, Ibid, p. 393.

¹⁸ For more details about the Legislative process in Palestine, see in Arabic;

بكيرات، فايز، وآخرين، العملية التشريعية في فلسطين بين النظرية والواقع. معهد الحقوق – جامعة بيرزيت 2006 .

¹⁹ It was published in Aug, 2003 after the adoption of the Amended Basic Law of 2003

²⁰ The Bylaw of the Palestinian Legislative Council of 2000

²¹ The Basic Law of 2002 was published in the Official Gazette on July 7, 2002.

At that time, it was ordinary course of behavior that several abuses can be exercised during the publication process of the laws adopted by the Legislative Council by the publication body called “Diwan Alfatawa wa Altashre”; like changing the texts during the printing process or defer the publication of the laws by instructions from the President. For more details see in Arabic;

- أبو دية، أحمد، إشكاليات الفصل بين السلطات في النظام الفلسطيني الحالي. أمان. للخروج من أزمة النظام السياسي الحالي: نظام ديمقراطي "رئاسي" أم نظام "برلماني" لفلسطين؟ (مؤتمر 2007/3/4).

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²² After adopting this document the Legislative Council begins to be stronger and the President previous advantages started to shrink. But still there was no real accountability; however it was progress since for the first time there are some constitutional bases for contesting presidential ill practices. Apart from that no dramatic change happened.

²³ The Basic Law of 2002, article 50

²⁴ Ibid, article 51

²⁵ Ibid, article 53

²⁶ Ibid, article 62

²⁷ Ibid, article 60

²⁸ Ibid, article 101

²⁹ Ibid, article 104

³⁰ Ibid, article 34

³¹ Ibid, articles 64, 68-70

³² Ibid, article 71

³³ Ibid, article 64

³⁴ Ibid, article 88

³⁵ Ibid, article 88

³⁶ Ibid, article 91

³⁷ Ibid, article 94

³⁸ The Amended Basic Law of 2003, articles 38, 46, 63

³⁹ Ibid, article 45

⁴⁰ Ibid, article 67

⁴¹ Ibid, article 63

⁴² The Amended Basic Law of 2003 was published in the Official Gazette in March 19, 2003

⁴³ Maurice Duverger, Ibid, p. 166

⁴⁴ The Law of Illegal Gains No. 1 of 2005

⁴⁵ The Law of the Financial and Administrative Control Authority No. 15 of 2004

⁴⁶ The Law No. (9) of 2005 Concerning the Elections.

⁴⁷ The Law No. (9) of 2005 Concerning the Elections, article 2(2)

⁴⁸ Ibid, articles 2(1), 111

⁴⁹ Ibid, article 3

⁵⁰ In order to have the full vision about the period before the elections Fateh also was divided to two main parts, the President part who were the opponents of the former President policy and the former President part who refused the new President policy and there was a third part whom described as the rebellions and they decided to participate in the elections in the name of Fateh even without the party consent. This situation inside Fateh led them to introduce two lists to the election committee on the name of Fateh and tell the last moment there were negotiations inside Fateh to unify their two lists and that what happen in the last moments.

⁵¹ Presidential Decree No. (19) of 2005 Concerning the Allotment of a Date for the Conduct of the Legislative Elections.

⁵² Meanwhile, Fateh seniors and former Ministers started to shift to the office of the President and what is called “shadow government” was created later as an alternative to any potential government formed by Hamas.

⁵³ The Amended Basic Law of 2003, articles 45

⁵⁴ Ibid, article 65(1)

⁵⁵ Ibid, article 65(2)

⁵⁶ The French Constitution of 1958, article 8

⁵⁷ In his radio television address to the nation on January 30, 1959, President de Gaulle officially announced his prerogative "by prestige if not by law" to dismiss the Cabinet at his discretion. See Karl Loewenstein: The Constitution of the Fifth Republic a Preliminary Report, The Journal of Politics, Vol. 21, No. 2. (May, 1959), p. 216

⁵⁸ The French Constitution of 1958, article 49(2)

⁵⁹ Ibid, article 12

⁶⁰ Ibid, article 5(1), (2)

⁶¹ Semi-Presidentialism in Europe, p. 75

⁶² The Palestinian Basic Law of 2003, article 40.

⁶³ Ibid, article 93(2)

⁶⁴ Ibid, article 96(3)

⁶⁵ Ibid, article 107(1)

⁶⁶ Ibid, article 99(1)

⁶⁷ The French Constitution of 1958, article 13(2)

⁶⁸ Ibid, article 13(3)

⁶⁹ Ibid, article 13(4)

⁷⁰ The Palestinian Basic Law of 2003, article 69(9)

⁷¹ Most of these institutions were created by the former President through presidential decisions and were put under his control and supervision, and he appointed the senior officials and most of its stuffs. Elsewhere, the current

President, faithful to his past when he was the Prime Minister he promised to continue his program in shifting the institutions to the control of the government as he was fighting for. Indeed he started doing so. Considerable amount of institutions were shifted textually and in nearly actually from the direct control of the President to the control of the government. However, the new election interrupted this shift. The new Prime Minister will be from the revival party so everything ought to be like before. The fresh presidential decisions were abrogated; moreover new presidential decrees and exercises strengthened the presidential control over these institutions.

⁷² The French Constitution of 1958, article (34)

⁷³ Ibid, article (23)

⁷⁴ The Palestinian Basic Law of 2003, article 47(3)

⁷⁵ The French Constitution of 1958, article (12)

⁷⁶ Karl Loewenstein, Ibid, p. 230

⁷⁷ A Stepan, E Suleiman: The French Fifth Republic: A model for import? Reflections on Poland and Brazil - Politics, society and democracy: Comparative studies, 1995, p. 278

⁷⁸ Examples of these laws are; Law of formation of Civil Courts No (5), 2001, Labour Law No (7), 2000.

⁷⁹ Examples of these laws are; The Law of Illegal Gains No. 1 of 2005, and The Law of the Financial and Administrative Control Authority No. 15 of 2004

⁸⁰ The French Constitution of 1958, article (10)

⁸¹ Ibid, article 61(2)

⁸² The Palestinian Basic Law of 2003, article (43)

⁸³ The French Constitution of 1958, article (38)

⁸⁴ For more information about the impacts of this kind of delegation review the Council Constitutional decision, Privatization case, decision no. 86-207 DC of 25, 26 June 1986.

⁸⁵ The French Constitution of 1958, article 13(1)

⁸⁶ Ibid, article (19)

⁸⁷ For more discussion about why the presidential government collapses to dictatorship read Steven G. Calabresi: The virtues of presidential government: why Professor Ackerman is wrong to prefer the German to the U.S. Constitution. Constitutional Commentary, Inc., Volume 18, 2001-03-22, pp. 98-103

⁸⁸ See, Adrien Katherine Wing, Ibid, pp. 399-400.

⁸⁹ The Palestinian Basic Law of 2003, article 110(1)

⁹⁰ Ibid, article 110(2)

⁹¹ Ibid, articles 110(3,4), 111, 112, 113

⁹² The French Constitution of 1958, article (16)

⁹³ A Stepan, E Suleiman, Ibid, p. 278

⁹⁴ The Palestinian Basic Law of 2003, article (113)

⁹⁵ Ibid, article (67)

⁹⁶ Law Relating to Prolongation of the Term of High Court in Gaza (No.2), 1994, article (1)

⁹⁷ Decision (no.18) of 1999 concerning the appointment of the President of the Supreme Court (Chief of Justice).

⁹⁸ Resolution Relating to Jurisdictions of the President of the Supreme Court (Chief of Justice) (No.26), 1999 article (1)

⁹⁹ Ibid, article (3)

¹⁰⁰ Resolution on the Establishment of the Supreme Judicial Council (No.29), 2000

¹⁰¹ Law of the Judicial Authority No (1), 2002

¹⁰² Presidential Decree Concerning the Consideration of the Present Higher Council of Judiciary a Transitional Council No (11), 2002

¹⁰³ Presidential Decree Concerning the Higher Council of Judiciary No (8), 2003

¹⁰⁴ Law of the Judicial Authority No (1), 2002, article 38(1)

¹⁰⁵ The same can be said about the security forces, since the Basic Law provides that it should be regulated by the Law without making more details, however, these law provides for the presidential control over many of these forces.

¹⁰⁶ The French Constitution of 1958, article (61)

¹⁰⁷ Ibid, article 56(1)

¹⁰⁸ Ibid, article 56(2)

¹⁰⁹ Ibid, article 56(3)

¹¹⁰ For the same idea see Bruce Ackerman: The Rise of World Constitutionalism, Virginia Law Review, Vol. 83, No. 4 (May, 1997), p. 789

¹¹¹ The French Constitution of 1958, article 61(1)

¹¹² Council Constitutional decision no. 59-2 DC of 17, 18, 24 June 1959, Standing Orders of the National Assembly, Rec. 58; GD, no. 3.

¹¹³ The French Constitution of 1958, article (61)

¹¹⁴ Bruce Ackerman, Ibid, p. 789

¹¹⁵ The High Court Decision no. (1) of 2006, December 19, 2006.

¹¹⁶ The Palestinian Basic Law of 2003, article (104)

¹¹⁷ Ibid, article (106)

¹¹⁸ Because of the absence of the law that regulates the issue of publishing the legislative norms, it is usually under the arbitrary discussion of this authority which was created by a presidential decree and was given this authority without clear limitations.

¹¹⁹ Resolution Regarding the State Security Court Jurisdiction (No.15), 1998

¹²⁰ Resolution Regarding Addition of an Alternate Member to the Membership of the State Security Court (No.51), 1995

¹²¹ The Palestinian Basic Law of 2003, Title Six: The Judicial Authority.

¹²² Ibid, article (39)

¹²³ A Stepan, E Suleiman, Ibid, pp. 278-279

¹²⁴ Karl Loewenstein, Ibid, p. 233

¹²⁵ This approach was discussed in Nino, Carlos Santiago: "Hyperpresidentialism and Constitutional Reform in Argentina." In *Institutional Design in New Democracies: Eastern Europe and Latin America*. Arend Lijphart and Carlos H. Waisman, eds. Boulder: Westview Press. 1996, p. 172, 173