Making Coups History

Charles Sampford[1]

Introduction

International support is capable of making the difference between the successful defense of democracy and its ignominious defeat. Indeed, the perceived probability of both support for democratically chosen leaders and opposition to their attackers can fundamentally shift the balance in the domestic struggle between them. Nevertheless, although changes to international law and international relations justify a greater international role in preventing and deterring coups and erosions, not all responsibility for protecting democracy should be assigned to the international community. Indeed, the first line of defense should be a democracy's own domestic initiatives, with the main role of the international community being to support a domestic response to threats to democracy.

However, international support can be crucial to the survival of democracy, particularly when it is thought that domestic responses will be ineffective in isolation. Not for the first time in international affairs, the greater the resolve of democratic nations to act, the less likely they will be called on to do so. The less resolute the community of democracies[2], the more likely that individual democracies will be challenged -- and the more likely that other democracies will have to face dilemmas, messy decisions, and violent outcomes.

Threats to democracy involve officeholders' abuse of the official powers given to them within a democracy through the unconstitutional extension of those powers either temporally or substantively. This abuse is most dramatic in a coup d'état. The traditional coup occurs when one part of the state attempts to take over other organs of the state using force or the threat of force. Because the military represents that part of the state meant to control a monopoly of force,[3] the military is the most frequent -- but not the only -- culprit. Other kinds of coups could occur if a head of government uses unconstitutional means to dismiss judges who deliver unwelcome judgments (what Dr. Mort Halperin calls an "auto-coup"), or to get rid of an "uncontrollable" legislature in order to rule by decree instead (another form of auto-coup). A distinct but functionally similar threat is of the erosion of democracy, where officials abuse their constitutional powers to take over gradually the powers of other institutions, as in Zimbabwe.

The two kinds of threats may be causally related. Erosions of democracy, whether real or claimed, may be used as a justification for coups, and certainly dampen domestic and international opposition to coups, even though coups are hardly good examples of governance and rarely lead to improvements in governance. More

---

[1] Professor Sampford is Foundation Professor of Law at Griffith University, having been its Foundation Dean. He is currently the Director of IEGL, The Institute for Ethics, Governance and Law (a joint initiative of the UN University, Griffith and QUT in association with the ANU). The assistance of Melea Lewis, a Senior Research Assistant, in editing this essay is most appreciated.

[2] Whether informally in lower case or formally through the Community of Democracies established by the 2000 Warsaw Declaration.

[3] Police are lightly armed and much less numerous.

worryingly, improvements in governance, which generally strengthen democratic institutions, actually may stimulate a coup by the military or some other powerful grouping that stands to lose out as a result of such improvements.

While well-established democracies regard coups and erosions within their own borders as intolerable attacks against the sovereignty of the people, they have traditionally given little more than a rebuke when such attacks have occurred in other, more-fragile democracies. Nevertheless, the international community does possess various tools and approaches to respond to threats to the institutions and officials of a given democracy. Among them, however, the first and primary duty is to support domestic anti-coup measures.

The Fragility of Coups

There are many who find coups, especially in democracies, repugnant, or at least distasteful. However, they assume that there is nothing that can be done about them. It is easy to see why this assumption is so widely held. According to Weber[4], the state possesses a monopoly of force, which lies overwhelmingly in the hands of the armed forces. If the armed forces, then, turn that force against the rest of the state in order to take it over, they "must get through."[5] Indeed, S.E. Finer[6] saw the key question as why the military did not seize power more often, and permanently.

In fact, it is not at all obvious that coups will succeed, and some can hang in the balance for considerable periods of time. This is because coups are not nearly as simple as may be imagined. A successful coup depends on a mass of individual decisions being made by an inter-dependent and inter-related set of officials and subordinates. Until a sufficient number of individuals in the relevant positions have made these decisions, any coup remains precarious.

These decision-makers will be motivated by several factors: coercion by the rebels, anticipated reactions of the coup participants, personal support or abhorrence for the rebel cause, personal support for the outgoing regime, expectations of how others will react (and hence of the coup's chances for success), and the legal consequences of collaboration or inactivity should the coup fail.

Coups rely on an active few and a passive or compliant many, and unless and until sufficient individuals in key positions remain passive or become compliant, the outcome of the coup is uncertain. In fact, coups should be even more precarious than they are. Because of the need for secrecy, most coup leaders only mobilize a fraction of the total force available within a state. The remainder, if effectively mobilized in opposition to the coup, could usually crush the forces that are party to the conspiracy. This should make coups not only precarious, but impossible.

It is only a combination of two phenomena that allow them to succeed -- the isolation in which most actors must decide whether or not to take part, and the general

---

[4] M Weber (1946) 'Politics as a Vocation' in *From Max Weber: Essays in sociology* (trans HH Gerth and CW Mills) Oxford University Press, p 78.

[5] As it was assumed in the 1930s that 'the bomber must always get through'

[6] S. E. Finer (1976) *The Man on Horseback: the Role of the Military in Politics*, 2nd Ed, Harmondsworth, Penguin.

perception that the coup will succeed. The confusion generated by coups means that many key individuals have to decide whether to accept or resist the coup in isolation of others. This leads to what I have called the "dilemma of the lone actor," or the isolated decision-maker who must ask him- or herself: What can any one individual hope to accomplish alone?

Edmund Burke's words could not ring more true: "When bad men combine, the good must associate; else they will fall, one by one, an unpitied sacrifice in a contemptible struggle."[7] When military officers conspire to commit treason, those who are opposed to them need to combine as well. They need to appreciate that in combination, they can succeed -- and that only in combination can they succeed. A coup can be defeated if those who oppose it are prepared to act, together.

Outline of a Countercoup Strategy

A countercoup strategy for democratic states should make it easier for "good men to associate." The more credible such a strategy appears, the more it will erode the perception that the coup will succeed. Such a strategy should take into account the actions that are required and the decisions that have to be made by many individuals before a coup can succeed. It should then seek to shift the balance in such a way as to increase the likelihood that those in a position to make those decisions will oppose the coup in the ways available to them.

In general terms, any successful coup must go through eight stages:

1. **Genesis**. The perceived grievances must develop.
2. **Planning**. The inner core must plan the course of the coup.
3. **Recruiting**. Key military leaders must be recruited.
4. **Seizing key points**. Physical control must be established through seizure of key areas.
5. **Neutralizing**. Ensuring -- whether by persuasion, confusion or threat -- that the remainder of the armed forces do not intervene.
6. **Taking over unarmed institutions**. Civil servants and judges must do as they are told.
7. **Coping with international response**. Leaders must fend off international criticism, sanctions, or worse.
8. **Participating in international trade**. Without the ability to be accepted as a state in the international community, and the concomitant ability to participate in international trade, it is not clear that the coup could succeed.

A successful countercoup strategy involves a number of elements and various sub-strategies for ensuring that the army and other state institutions are more difficult to hijack. As such, it involves both "hard" and "soft" strategies. The soft strategies involve general improvements in ethics, governance, cultural changes, a strong civil society, and the improvement of the economic lot of citizens who might support a coup. These are generally long-term means of reducing the motivation and general support for coups. They also involve developing an effective rhetoric to ensure that

---

[7] E. Burke, (1926) "Thoughts on the Cause of the Present Discontents," in E. J. Payne, ed., *Select Works of Edmund Burke: Thoughts on the Cause of the Present Discontents and the Two Speeches on America,* vol. 3, Oxford, Clarendon Press.

coups are viewed in a very negative light, as a treasonous and corrupt abuse of powers granted for the purpose of protecting that people's democratic institutions.

The hard strategies are those that recognize that we are dealing with hard men for whom good governance is a threat rather than a promise. Hard strategies seek to respond to the tough-mindedness of coup-makers by threatening to mobilize an overwhelming response to the coup and by making it next to impossible for coup-makers to take over the administration and effectively exercise state power.

The Military

As the military provide both the resources for the attempted takeover of the state and its first line of defense, it is clearly a crucial institution. Four factors critically affect which of these two opposed activities it is more likely to pursue -- recruitment, structure, military law and training.

- Armies should be careful not to recruit soldiers or officers from a single class, party, ethnic group, or any other group that could end up in conflict with other groups within the relevant society.
- Military law should make the responsibilities of soldiers clear. Soldiers should clearly understand that not only are orders to engage in a coup d'état illegal, but that they have a duty to respond to such orders in the same way as they would to an invading force.
- Military law should clearly require the reporting of any plots, and criminalize the failure to do so as constituting "misprision of treason."
- Military ethics, military honor and military training should reinforce the above as well as the values that underlie it, including democracy and the rule of law.

The Unarmed Institutions of the State

The secret to successfully defeating a coup, like the secret to effectively mounting one, lies in the ability to mobilize and, especially, coordinate supporters.[8] This requires clear rules to determine the responsibilities of each official, and/or clear lines of communication and authority to give updated instructions as to the most effective response for loyal officials to make.

Emergency legislation should establish clear alternate lines of authority so that, whatever fate befalls the leaders of the government, there is always a replacement official with the authority to decide how loyal subordinate officials should act. At least some of those replacements should be overseas[9] and hence out of the reach of potential coup-makers.

Action by the International Community

International collective action should initially include diplomatic pressure and offers of mediation as well as continuing recognition of, and support for, the democratic regime -- and total non-recognition of any regime that attempts to overthrow it.

---

[8] See E Luttwak (1969) *Coup d'état: a practical handbook*, Alfred E Knopf; C Malaparte (1948) *Technique du Coup d'Etat* (trans. from the Italian by J Bertrand), Grasset.
[9] For example, the state's ambassador to the United Nations.

A helpful ally can provide intelligence and communication both before and after the coup. Its embassies can provide temporary asylum for government members. As a pre-emptive measure, allies that provide military training can try to imbue graduates with appropriate attitudes and values. Non-military aid can also be suspended and economic sanctions applied, with allies pressing other allies and third countries to join in.

If a democratically elected government is overthrown and some or all of its members flee the country, they should be supported by friendly governments as the government-in-exile. The international community should, however, pay attention to the quality of the overthrown government. It may be argued that the democratic credentials of the ousted regime had been damaged.

If this were the case, then the international assistance would be conditional on any such damages being rectified and dealt with through constitutional processes. If the ultimate constitutional court is still intact, then it can provide determinations. If not, the international community will have to find some other body which can dispense constitutional determinations. Even if the former government paid limited regard to such determinations, the international community can certainly insist on it doing so in future.

Aid

Apart from political and diplomatic attention, it is likely that coups can be averted through better-targeted aid to overcome uneven levels of development that concentrate wealth in some groups at the expense of others. Rather than focusing on sanctions after a coup, our aim in future should be to develop more effective models for aid delivery before one occurs.

Further, it could be argued that developed countries offer costly military training at the expense of essential training for the military's civilian superiors. The emphasis should be reversed. Strong civilian control is dependent upon the existence of a civilian bureaucracy and government ministers experienced and knowledgeable in military matters. There is also reason for considering more effective training for civilian police, who are better placed to handle domestic unrest. This would also help ensure that the military's focus remains externally focused. Finally, the building of a strong civil society is essential -- in particular a strong judiciary.

Recognition Policy in the United Nations

The U.N. Credentials Committee, or another representative U.N. group, should be given a mandate to establish whether a particular government is a representative one. If a country were disaccredited altogether (and this is possible),[10] it would not be able to participate in the General Assembly. International isolation and associated damage can impact on the regime, as can the withdrawal by international organizations of financial assistance. Consideration should be given to the loss of

---

[10] The committee has a number of choices concerning the outcome of its deliberations – including deferring the decision and letting the seat remain vacant.

jurisdictional immunities and the right to sue in the name of the Member State domestically and internationally.[11]

Coercive Intervention: Sanctions and Military Intervention

Sanctions

The Security Council can authorize and mandate collective sanctions under Chapter VII if it determines that there is a threat to peace and security. The effectiveness of sanctions is open to debate, however, and, unless carefully chosen, they have the potential to create great hardship among the population. Sanctions in the form of an effective refusal by all or most states to accord the delinquent state the benefits of membership in the international community are probably the most effective and devastating response, with an impact so great that a credible threat of its use might mean that it would never have to be used. Targeted sanctions are appropriate as part of a comprehensive strategy aimed at restoring democracy. Obviously, if non-democracies continue to trade and interact with the coup regime, this will limit sanctions' effect. However, if the democracies are united and clear in advance about what they will do, the deterrence should usually be more than sufficient.

Military Intervention to Protect Democracy

The most controversial assistance is armed intervention. Collective rather than unilateral military intervention remains the best approach. The key lies in deferring to the U.N. Security Council whenever possible, in order to reinforce its effectiveness.[12] That said, there might be cases when intervention without Security Council approval would be justified. But those who intervene without UNSC approval should agree to submit to the compulsory jurisdiction of the International Court of Justice and be prepared to defend the legality of the intervention in a court of competent jurisdiction.[13] The question is: Who is to decide and by what process is the justification established? Interventions must be subject to international law and be subjected to an independent tribunal.

Clearly, armed intervention should be a credible *last resort* that would be carried out in the unlikely case that other measures, including sanctions, failed. There are two bases for intervention -- by invitation and by prior treaty. Both are more legally defensible than intervention justified on humanitarian grounds.

- Military Intervention by Invitation. Intervention by invitation is exactly that -- intervention in response to an invitation for military assistance from the threatened or deposed democratic government. In fact, if the invitation is from the government recognized as the *de jure* government, then there is not really an "intervention," per se. Some controversy surrounds intervention by invitation,[14] especially where the

---

[11] See the Restatement (Third) of the Foreign Relations Law of the United States, para. 205.

[12] See ICISS (2001) *The Responsibility to Protect*, Ottawa, IDRC. See also C. Sampford (2001) "Challenges to the Concepts of 'Sovereignty' and 'Intervention'" in B. M. Leiser and T. D. Campbell (eds) *Human rights in philosophy and practice* , Aldershot, England , Ashgate.

[13] C. Sampford (2001) "Challenges to the Concepts of 'Sovereignty' and 'Intervention'".

[14] L. Doswald-Beck, (1985) "The Legal Validity of Military Intervention by Invitation of the Government," *British Yearbook of International Law*, 56: 189–252.

government seeking assistance has been deposed: By the "effective control" argument, a regime that is firmly in control of the territory of the state -- i.e., the *de facto* regime -- would be the only entity able to give such consent. For some, however, such a presumption is less persuasive where "a small, repressive military clique overthrows a popular and democratically elected government."[15]

- Mutual Intervention Treaties. It is axiomatic that clear and credible commitments to intervene made in advance are more likely to be effective deterrents than the vague possibility of intervention after the occurrence of a coup. If organized by prior agreement between democratically elected governments[16], intervention treaties will serve to increase the predictability of military intervention -- by providing an agreement to it in advance in a bilateral or, preferably, multilateral treaty. This approach also gets over the legitimacy question.

Intervention treaties among democracies to protect their members from unconstitutional overthrow would set out all the responses likely to occur, with an emphasis on:

- Recognition policy.
- Support for ousted institutions.
- Enforcement of the orders of democratically legitimate courts.
- Smart sanctions.
- Refusal of international credit.
- Refusal to recognize sovereign borrowings by coup regimes.
- Nonrecognition for the purposes of international trade.
- Ultimately, general sanctions and military intervention.

Such treaties also should create a new legal tribunal, or empower an existing one[17], to determine the legalities of actions taken in pursuance to the treaty, with signatories agreeing to be bound by the decisions of the tribunals.

Some may wonder whether democracies will be willing to enter into mutual intervention treaties. In robust liberal democracies -- those with the greatest capacity and resolve to support democracies at risk -- such action must take into account popular will. Leadership at home is thus as crucial as international leadership, given that the greater the strength of the commitment, the less likely the commitment will be called upon.

A countercoup strategy might therefore contain the following elements:

- Making the military a loaded weapon primed to explode in the hands of those who attempt to turn it on the State.
- Encouraging the establishment of an international military profession with internationally agreed-upon professional standards for military training and conduct,

---

[15] D. Wippman, (2000) "Pro-democratic Intervention by Invitation," in Fox and Roth, *Democratic Governance and International Law,* Cambridge University Press, pp. 293–327, at p. 299.

[16] For example, members of a regional organization.

[17] This tribunal could be the ICJ or a new tribunal established by treaty to regulate interventions among the signatories. The latter could be more specifically tailored but inevitably would have jurisdiction limited to those who were party to the instrument establishing it. Preferably, a reformed ICJ at the apex of all such tribunals.

according to which those who staged coups would be shunned as pariahs as forcefully as would be a doctor who murdered patients for personal gain.
- Making the State more difficult to take over by making it unresponsive to illegal direction, "to make it wither at the touch of the traitor."
- Encouraging like-minded states to be more active in providing real help for fragile democracies, rather than accepting the outcome of coups (in particular, by having diplomatic and trade relations with usurpers).
- Ensuring that development assistance encourages institution-building and the development of a strong civil society in countries likely to suffer coups.

Outline of an Anti-erosion Strategy

The response to erosions of democracy will necessarily be different from the response to coups d'état, although some of the mechanisms suggested above for dealing with the overthrow of elected governments might be applied to prevent erosion in democratic regimes as well. The key issue with respect to erosions is that the government in question initially had democratic legitimacy, and the point at which such legitimacy was lost is not always clear. Such a context inevitably shifts the kind of response taken by the international community more toward the "softer" end of the spectrum of options: for example, using aid to bolster democratic institutions, especially the courts, the media, and civil society, and encouraging a commitment by governments to legality.[18]

In some senses, an anti-erosion strategy might be seen as nothing more than a "good governance" strategy. Most of the strategies that integrity institutions and civil society pursue to preserve and enhance good governance are of real value in preventing the erosion of democracy. This is not surprising, given the links between corruption, coups, and the erosion of democracy. The erosion of democracy is a particular example of the abuse of power for political gain. So if all those institutions that seek to prevent the abuse of power in general are doing their job, that should, in theory, be sufficient.

To some extent, the domestic strategy for preventing the erosion of democracy is merely a matter of developing, strengthening, and defending what Transparency International calls "integrity systems."[19] An "integrity system" is the set of institutions, practices, and values that promote integrity and inhibit corruption (no single institution being sufficient[20]). Such institutions include an independent judiciary with the power of judicial review, legislation protecting freedom of information, a freely elected parliament with broad scrutiny powers, independent auditors, a public service committed to the rule of law and a strong ethical concern with the public interest, anti-corruption agencies, specific agencies to protect the public from abuses by officials, a free press, active civil society organizations, and public support for the values underlying such institutions. The various institutions, working more or less in the

---

[18] See Chapter Six for more on this topic.

[19] J. Pope, ed., *The TI Source Book* (Transparency International, 1996, 1st edition; most recent edition 2000); available at www.transparency.org/sourcebook/index.html.

[20] See C. Sampford et al. *Australian National Integrity Systems Assessment, Queensland Pilot*, (Melbourne: TI-Australia, 2001), pp. 1–4.

same direction, can achieve a high degree of success. What's more, they are difficult to attack or capture because there is no single institution and no single office to target.

Preventing the erosion of democracy should not be merely an implied goal of a nation's integrity system. Some specific measures should be taken domestically and supported internationally drawing on the countercoup strategy, damning the erosion of democracy by analogy to coups and emphasizing the importance of defending some of the key pillars of the integrity system. Where the same measures protect against coups and erosions, then their support is likely to be bolstered (e.g., those who do not see their country as likely to fall to a coup may be prepared to support measures that prevent erosion and vice versa).

The 'Good Coup'

Some erosions of democracy are so severe that it might be argued that they provide justification for a coup -- and, of course, some regimes toppled by coups were never democratic to begin with. This raises two questions: Whether a coup can ever be good, and if the measures listed above would stop them.

The reply to the first is that, whatever theory of the "good" is chosen, very few coups would qualify, after taking into account their effects.[21] A coup may simply oust a wicked government, establish the conditions for free and fair elections and return to barracks. However, the better the coup, the greater the "burden of gratitude" to the coup-makers, and the more likely that it will be used as a precedent in the future. Thus an apparently good coup will generally be followed by several bad ones. Since military coups emerged as a disease of the modern sovereign state, only two qualify as "good coups" -- Portugal in 1974 and Mali in 1992, both of which initiated democracies that subsequently took root.[22]

In answer to the second question, the measures outlined will be more effective in democratic countries. This is particularly the case with the kind of systematized international support suggested, which would only be offered to democracies.[23]

If it were possible to remove forever the possibility of coups, the benefits of doing so would outweigh the costs. Nations do better if authoritarian regimes fall by other means -- even if it takes longer. When a junta leaves office humiliated and discredited, the military is unlikely to be a significant threat to the junta's legitimate

---

[21] There are probably more coups that would have been good if they had succeeded – including, almost certainly, the coup which the German military planned if Chamberlain had been prepared to oppose Hitler on Czechoslovakia. The ultimate results of a successful version of the 1944 plot are not so clear given the fact given the demands for unconditional surrender and the likelihood of a second 'stab in the back' theory emerging.

[22] Note that the Portuguese coup was followed by failed rightist and leftist coup attempts which discredited future coups. This was also aided by the opportunity for entry to the EU and the inspired path to democracy established in its neighbour by King Juan Carlos (who anticipated and defeated a coup attempt in 1980).

[23] Some may object that this might amount to a democratic version of the Concert of Europe or the Brezhnev doctrine – 'once a democracy always a democracy' or, as Kofi Anan said at the first meeting of the Community of Democracies "wherever democracy has taken root, it will not be reversed." The difference is that all regimes claim to speak on behalf of the people of that state – with a variety of dubious claims being determined by force of arms rather than numbers of votes. However, no military regime can trump the claim of those who have actually been chosen by the people they would claim to represent.

successors. The final stage of such humiliations often occurs when the military refuses orders to fire on protestors demanding the departure of the government -- marking an exit by the military, rather than a further intervention.

Conclusion

Despite an undeniable evolution of international law towards the protection of democratic regimes, the international community, through the United Nations, is still plagued by tensions between human rights -- such as the right to participatory government -- and national sovereignty.

In a democracy, those judgments must ultimately be made by the relevant ministers in the government. But choices there are -- as the Burkean quote indicates. Countercoup strategies are dependent on "good men" and women standing against the coup and daring to treat it as legally ineffective. Most of the effort has to come from within the country subject to the coup. But much can be done by the international community to help, and it is incumbent on other democratic nations to support those courageously prepared to resist coups, rather than leaving them, as Burke so eloquently and poignantly put it, to "fall, one by one, an unpitied sacrifice in a contemptible struggle." Even under current international law, a sizable group of democratic states, by joining together in mutual support, could make coups history, at least among its membership.