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## **Is a New Wind Blowing through the State Comptroller's Office?**

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**The State Comptroller's Office is the only institution outside of the defense establishment that conducts comprehensive and independent audits of security matters; hence its importance to national security. In the view of newly-appointed State Comptroller and Ombudsman Matanyahu Englman, an audit is meant to be a constructive process that addresses issues of national value; the audit process is a tool that supports the government and prime minister; audits that are liable to affect real-time decision making should be avoided; and the Comptroller should also report on the success of those audited. By contrast, his predecessor, retired judge Yosef Shapira, stressed that the State Comptroller is not the government's in-house auditor and that audits do not depend on the good will of any external party. This article outlines the work of the State Comptroller's Office in the realm of national security and the approach of the new Comptroller, and proposes several recommendations.**

### **The State Comptroller's Office and National Security**

There are many cases where State Comptroller reports dealt with a range of issues that touch on national security. For example, the most recent annual report (May 2019) presented audits of the following issues: the preparedness of key agencies for cyber defense; the defense establishment's activities in the realm of environmental protection; medical services for disabled IDF veterans; aspects of Military Police investigation practices; and military courts in the West Bank. Previous reports dealt, inter alia, with the security cabinet's decision making processes regarding the Gaza Strip before and at the outset of Operation Protective Edge; how the tunnel threat was addressed; the combat readiness of the IDF ground forces reserves; the preparedness and fitness of reservist mobilization systems for high trajectory fire against the home front; the IDF's handling of safety standards for ground forces; IDF readiness for fire prevention and firefighting; processes for streamlining and downsizing as part of the defense budget framework; and organizational changes in the Defense Ministry. This is a partial list that reflects the State Comptroller's Office's broad coverage of national security matters.

The importance of the State Comptroller's Office for national security also stems from its being the only body outside the defense establishment that conducts comprehensive and independent research-based audits. The reports serve the government (where they are

discussed by the Ministerial Committee for State Audit) as well as the Knesset (in the Foreign Affairs and Defense Committee). Entities audited are themselves able to benefit from the reports, even though these bodies often disagree with the audit's conclusions. The publication of parts of the State Comptroller's reports contributes to public, extra-institutional oversight of the security establishment, which by its very nature is not publicly transparent. Operating within the defense establishment are the Defense Establishment Comptroller Unit and the IDF Comptroller, whose work is not made public except in cases where the military is specifically interested in doing so. One example is the publication of the conclusions of a committee led by the IDF Comptroller that assessed the findings of Maj. Gen. (ret.) Yitzhak Brick.

### **The New Comptroller's Outlook**

On June 3, 2019 the Knesset, by a majority vote of 67 MKs, ratified the appointment of Matanyahu Englman as the new State Comptroller and Ombudsman. In media interviews, Englman explained his view of the concept of "constructive criticism" – which is in part a tool that supports the leadership, or in this case, the government of Israel and the Prime Minister (Army Radio, June 3, 2019). In a speech to the Knesset plenum on July 1, 2019, before taking office, he laid out a detailed doctrine that focused, inter alia, on the following:

- a. The importance of audits and assessments: Criticism should, as a matter of principle, be a constructive and beneficial process.
- b. Issues subject to audit: Issues under audit should be aligned with national goals, so as to bolster the country's resilience in terms of national security and the economy and to strengthen weak links in Israeli society.
- c. The limits of audits: A clear distinction should be drawn between audits and decision making processes. The involvement of audits in decision making is liable to harm their standing as objective and independent, and as such it behooves the comptroller to maintain his status as a disinterested observer and examiner of processes (it might be inferred from this statement that the comptroller should avoid conducting real time audits).
- d. Auditor-audited relations: Audited entities should be encouraged, for example by noting satisfactory findings.

On June 12, 2019, as his tenure wound down, outgoing State Comptroller retired judge Yosef Shapira discussed the standing of the State Comptroller's role, given "initiatives to change the character and standing of the State Comptroller's Office." Contrary to the constructive approach evinced by Englman, Shapira stressed that the State Comptroller is not an internal auditor subordinate to the management who coordinates his work program with the CEO, and therefore he is not the internal auditor of the government of Israel and

does not depend on the willingness of those audited. This distinction was apparently meant to underscore the role of the State Comptroller as a gatekeeper who answers to the Knesset only, with no dependency on the government (per Basic Law: The State Comptroller).

Though both Engelman and Shapira regard the independence of the State Comptroller's Office as highly important, they appear to have significantly different views on the role of the Comptroller and on the auditor-audited relationship. It now remains to wish the new comptroller success and wait and see how his approach plays out in the State Comptroller's Office.

### **Recommendations for the New State Comptroller**

The initiatives to limit the Comptroller's powers warrant standing guard over the independence and freedom of action of the State Comptroller's Office. This is important for Israeli democracy.

Given the State Comptroller's singularity in the realm of national security, he should continue the office's broad and deep coverage on all military and civilian agencies. Though the State Comptroller is not obligated to decide his work program in advance, it is preferable that he consult with the defense and civilian agencies regarding the issues and questions to be covered by the audit, so as to maximize the efficacy of his work.

Whether the Comptroller should function in real time or retroactively is not a new question. Retroactive audits are useful for preventing any undesirable influence of the auditing process on decision making, but are liable to circumscribe the Comptroller's gatekeeper authority when there are failures in the performance of the audit systems within the executive branch or phenomena that must be stopped immediately. In general, it is advisable that the Comptroller avoid real-time audits during short term events such as military operations, but should not be deterred from auditing the performance of government apparatuses during long term events and processes, even if these have yet to reach completion. Throughout, it is advisable that the Comptroller take care to distinguish between isolated flaws in execution and conceptual lapses in thinking, planning, and conduct, which in most cases are more protracted and serious.

The auditor-audited relationship is important for the successful outcomes of the audit, at least according to Engelman's approach. The question is how to translate this into action. Therefore, the Comptroller should ensure that in examining the performance of those audited, he take into account the information available to them and the limitations – in terms of time and resources – that they were subject to during the event.

The Comptroller should encourage state apparatuses to update their protocols on policy, procedures, and instructions in a methodical manner. That said, there have been quite a few cases where those audited among the security establishment had the impression that the state audit placed greater weight on formal process and less on outcome – or at least, on the effectiveness with which the challenge was contended. In addition, great emphasis was placed on the degree to which past procedures or decisions were or were not adhered to, as well as to the number of discussions that were held or not held on a specific issue (a criterion that does not necessarily attest to the quality of the decisions). Without downplaying the importance of the formal process, in exceptional cases the Comptroller would be well-advised to try to show understanding for aberrations from previous decisions or from specific (not legally required) protocols, based on the assumption that these were done in context of a changing reality, so as to fulfill operational tasks.

While the Comptroller can indeed make note of satisfactory findings, as Englman would like, it is advisable to limit this policy to instances where there is a need to present the flaws in the context of the overall conduct in the realm examined, as part of a fair presentation of the criticism. Creating an obligation on the part of the Comptroller to present positive findings is liable to obligate him to exercise a consistency that he will find hard to maintain in all reports, and is even liable to obscure the audit's findings.