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Doctoral School of International Relations and Security Studies

PhD Thesis

**The governance of national security and civil rights at the beginning of the
XXI century**

- Summary-

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Cluj-Napoca 2012

Keywords: governance, national security, civil rights, war against terrorism, habeas corpus, terrorism, international security, human rights, SUA, Guantanamo.

Summary

The contemporary world, the dynamic of foreign relations and the modifications of the social dimensions have known a radical change in the last two decades. The collapse of the bipolar system based on the ideological-political antagonism between West and East has created not only a power void at an international level, but it also opened the path towards new challenges for the states of the world. The accelerations of the global interconnectivity have led to a quicker globalization process with direct effect on human lives and on communities. The postwar technological revolution and the expansion of mass communication means had created a special context at the end of the past century, a context which modified the human perception on time and space and which put under siege consecrated values from different regions of the world.

Power, security and the threats on security have known a substantial change through their adaptation to the new directions of global development and to the new technological accomplishments. As a consequence, violence and use of violence in order to obtain political result or access to power adapted themselves to the modern instrument. In this context, the prevailing of some conservative mindsets, but especially radical ones, have created a solid base for new hot points of violence and offered a stronger legitimacy to those involved in the conflict of the new millennium. From this standpoint, the birth of contemporary fundamentalist terrorism can be considered to be the sum of diverse historic, social and economic effects to a bigger extent than an adaptation of the old methods of organized violence to our century. Of course, here he

cannot ignore neither the fact that the instrument used by them has been adapted and gained a more destructive character due to the inclusion in the combat forces of some elements that became more destructive than their equivalent in the past decades.

This re-dimensioning of threats to national security has also created a set of rules and laws meant to counter such actions, but their efficiency depended greatly on the compromises that the societies in question were willing to accept. Under the shock of the 9/11 event, the Government and Congress of the United States of America started a political and judicial process which marked the evolution of democracy and civil rights not only in what the United States is concerned, but also at a global level. The war on terror and the new anti-terrorist legislation radically changed the balance of powers in the federal system, creating dangerous premises to individual freedom and to the state of the law. Of course, this process would not have had such an impact if the judicial repercussions would not have affected in an irreversible manner the already precarious frame of fundamental rights at the level of the international community.

The effects of the anti-terrorist legislation promoted by the US and the foreign policy based on an accentuated neo-conservatism legitimize the reset of the actor to historically condemned actions internationally. The war against terror, the suspension de facto of the principles of habeas corpus, the legalization of terror in the context of global terrorism and the repeated breach of the Geneva agreement regarding taking war hostages destroy the progress made in the last five decades in what the human rights are concerned. All of these are focused on a national security policy starting from the principle of a permanent siege where the priorities are based on the necessities dictated by these policies and less by a constructive pragmatism.

A study underlining the dynamic of the problem created by this international context, as well as the effects it has over contemporary civil society and human rights legislation is needed. In our opinion, the violation of democratic values and of civil right, even in the context of the war against terrorism, is not justifiable because such an institution that could offer an umbrella of security is clearly attacking the values on which contemporary societies are built. The survival of the state as an actor and of its institutions is probably the main goal of its existence, but in the contemporary world the

social and global complexity require more pragmatic approaches where the main goal is not one of an axiomatic nature.

To begin with, we would like to clarify our position and the direction that this research plans on pursuing which is essential for a proper understanding of this scientific endeavor.

Firstly, we wish to specify that this research is focused on the relation between the governance of national security and the civil rights at the beginning of the millennium, even if the approach of the problem is done in a bigger context which covers almost eight centuries of judicial- political evolution. The time framing and the shrinking of the topic is necessary not only from the point of view of the efficiency of the research, but also because of the contemporary context which offers an ideal and useful frame of study on the two issues. This clear delimitation of the interactions studied helps us in a theoretical limitation and in avoiding a more or less sterile discussion regarding the structure of the international system or of the levels of analysis of security. We do not wish to eliminate these discussions or to avoid a theoretical approach of the issue, but experience tells us that such approaches, though useful to the theory of international relations, often distract and create a false analyzing framework.

Secondly, our research wishes to focus strictly on the effect of the 9/11 event and on the evolution of the concept of national security in relation with the evolution of civil rights in the light of the new events and modification at the judicial- political level of contemporary society. From this perspective, the approach of the issue from the framework of the process of globalization and of its effects on the contemporary society represent a relatively useful pillar of work which helps us not only in the problems of a contemporary nature, but also allows their analysis in a deeper and longer ideological time frame.

The embracing of the national security politics following the United States model or the borrowing of some elements of prevention and protection from the legislation linked to the anti-terrorist one after 2001 has put, at the level of civil society, the problem of the surfacing of a democratic regress and power abuse of the executive in the detriment of the judicial. The foregoing of the usual procedures in favor of special ones

has created a negative impact on the balance of power between the executive and the judicial. The latter, in the cases regarding national security, is excluded from the final procedure of penal charges, its role in the juridical process being utterly ignored with serious consequences on the contemporary civil rights. We can affirm that :

National security and its legislation is not following, at the moment of speaking, the rules that guide good governance, and the unbalance between the executive and the juridical powers through the abuse of some prerogatives, traditionally established in the American tradition, constitute a threat to the application of the principles of the rule of the law and of civil rights, with serious consequences for the whole international system, but especially for the democratic regimes, mostly for the fragile ones.

This is why our approach is mostly based on this unbalance caused by the anti-terrorist legislation and why we will analyze this unbalance from the framework of the theory of constitutionalism. This idea lays at the foundation of the Constitution and political system of the United State- which becomes, in the 20th century, a state that is responsible for the creation of the legal context regarding human rights and the protection of democratic rights at the international level. We will follow in our analysis some essential questions regarding this unbalance which can give us an insight on the American constitutional mechanism, with effects on the international community:

How deep and irreversible this judicial unbalance created in the international context following 9/11 has become and what would be its long their effect (1), and which mechanism would lead to the restoring of this balance and to the reconsolidation of civil rights in order to avoid other such future anomalies (2).

Apart from the above mentioned research direction, we will also focus on the historic and juridical contextualization of this phenomenon in the sphere of international relations, so that the constitutional analysis will not remain a frameless approach, without a well-argued background at the level of the necessity of the legislation in discussion. The contextualization of this juridical problem is valuable if looked at from the angle of the evolution of the international system, and its effects are noticeable only in the case of a analysis of the international climate.

This paper has in its structure an introduction, four major chapter, a bibliography and an appendix. The introduction presents the main argument on which the research is based, offering the over-all image from which the research starts.

In the chapter “The Premises of Research and the Process of Research”(II), the general framework in which the paper falls and which limits the specialties which are used in the analysis is defined. This is why we can talk about an inter-disciplinary research between international relations (general framework), juridical studies, history and political science (security). This chapter of the paper offers the starting point for the rest of the chapters, as well as the foundation of the analysis from the following parts of the paper.

The third part (III) of the paper is focused on the contextualization of the object of the research in the frame of international relations, especially of the historic dimension of international relations, so that different problems are put into context over a longer or shorter period of time. In what civil/ democratic rights are concerned, contextualization is made on a larger and deeper foundation based on below the surface historical digging in the problems of rights.

The fourth part of the thesis (IV) concerns the politics of the European Union of assuring security and of creating security policies in the context of the Lisbon Treaty. Though this chapter is not a case study in the proper sense of the word, it represents more of an analysis of the evolution of civil rights from Europe as an alternative to the post 9/11 American model. In the same time, the chapter emphasizes on the European way of approaching contemporary problems of national security which is not as radical in front of international threats as the United States' one.

The last part of the thesis deals with a case study regarding the way in which the United States dealt with contemporary problems of security and with their reaction to the surfacing of new challenges and threats to national security. The case study is based on two dimensions of the problem of national security in the United States: the problem of the evolution of the concept from the political point of view on a duration spanning from a few decades before 9/11 to the event per say, when, in the context of the terrorist

attacks, the new American legislation has created a special legal framework that is dangerous for the evolution of civil rights.

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