THEORETICAL-PRACTICAL ASPECTS ON THE CONSOLIDATION OF INTERNATIONAL SECURITY LAW AS INSTITUTE OF PUBLIC INTERNATIONAL LAW

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International security law is an institution of public international law that consolidated immediately after the Second World War, although some of its elements existed previously. At the same time, the "cold war" period was characterized by a certain stagnation of the mechanisms, which should have ensured security at both universal and regional level. Seizures triggered from the dissolution of the USSR and Yugoslavia, but also the outbreak of a series of armed conflicts in Africa and the Middle East, resulting in various challenges for the international community, such as the large number of victims among civilians, refugees and internally displaced persons, have raised new debates about the role of international law in the process of regulating the concept of collective security.
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Aspecte teoretice și practice privind consolidarea dreptului securității internaționale în calitate de instituție dreptului internațional public
Dreptul securității inernaționale este o instituție a dreptului internațional public care s-a consolidat imediat după cel de-al Doilea Război Mondial, deși anumite elemene ale acestuia au existat anterior. Totodată, perioada „războiului rece" a fost una care s-a caracterizat printr-o oarecare stagnare a mecanismelor ce ar fi trebuit să asigure securitatea la nivel universal, dar și regional. Crizele declanșate în urma destrămării fostei URSS și a Iugoslaviei, dar și izbucnirea unui șir de conflicte armate în Africa și Orientul Mijlociu, soldate cu diverse provocări pentru comunitatea internațională, cum ar fi nmărul mare de victime printre populația civilă, refugiații și intern-deplasații, au trezit noi discuții referitor la rolul dreptului internațional în prcesul de reglementare a conceptului de securitate colectivă.
Cuvinte-cheie: *securitate, crize, drept internațional, legi și cutume de război.*

Introduction

Mankind has entered the 21st century, the century of globalization, which introduces major changes not only within the system of international relations, but also in the life of every state, even in the life of each individual. Globalization leads to increasing the independence between states, the unity of the international community.

In the first place is established the object of ensuring the common interests of the states, the interests of the international community in general. Today, even the Great Powers are unable to ensure their own security, the security of their citizens.

Mankind can only survive with joint efforts. Life dictates the need for a higher level of leadership in the international system.

Globalization gives broad possibilities for the development of human civilization and at the same time, it opens several issues, the resolution of which depends of the destiny of this civilization. The changes that are happening are so essential that they impose the need to strengthen a new world order.[1] Its foundation was determined by states and written in the Millennium Declaration adopted at the UNO meeting in 2000. It provided that: „...only through broad and permanent efforts, in order to create a common future based on the unity of multilateral humanity, globalization can become equitable."[2]

The process of consolidating international security law is one that characterizes the very development of codification of international law, in the context of the development of international relations.

The right to international security was born from the attempt to minimize the negative effects of wars that were becoming more and more destructive. Or, the peace conferences with the participation of the main international actors - starting with the Peace of Westphalia and ending with the Treaty of Versailles - represented largely a "regulation of accounts" of the winning states over the defeated ones. This in turn inevitably led to the desire to take revenge, from the losers. On the other hand, the arming process and the horror effects of the new forms and methods of war, have led states to address the issue of respecting the "laws and customs" of war under the new conditions. Thus, after the Battle of Solferino in 1859, takes place the first International Congress Committee of the Red Cross (1863), which adopts the Convention on the Protection of Wounded, Armed Campaign Patients (1864). Starting with this event, which is the first codification of the customary norms of jus in the bello, we can say that the premises of future institutions of international security law also arise.

Aspects about the concept of international security law

The international security law is built on the following issues: How to deal with insecurity, violence, war? Can we use it and under what conditions? Are there any means to reduce it, to avoid it? What formula should we manage if it is needed? Who can and should handle this? For which results?

The first answers are in search, in a complex legal ensemble, made up of rules, from various sources and applicable according to a temporary assignment. In principle, international security law is made up of three major units.

1) The first unit of rules aims their application before conflicts and to prevent them and ensure security, they govern the right to war;
2) The second unit of rules applies directly during the course of the conflict and during the period of international insecurity resulting from it, it is the right in wartime;

1 Лукашук И.И. Мировой порядок XXI века. В: МПЧП. 2002. No. 1 p. 4.

2 Rezoluția Adunării Generale a ONU A/55/L.2 http://www.un.org/french/millenaire/ares552f.htm (consulted at 13.12.2017).

3) The third body of rules refers to the end and consequences of a conflict and its impact on the international security; we are talking about the post-conflict right.

Taking into account this complexity, we opt for a global vision of international security law that can be defined as a framework and set of legal mechanisms that contribute to securing international security and regulate the conflicting aspects of international relations.

The subject of the research will focus on dealing with three issues arising in particular from *jus ad bellum*:

- the ban on states, the use of force and the threat of force;
- the analysis of the competence of the UNO Security Council to react in the event of force or threat;
- the persistence of certain war skills for the benefit of the states.

The only source of legitimacy of a state is the ability to protect and maintain the rights of its citizens and to provide them with the right environment to meet all needs. In fact, the pyramid of needs formulated by Abraham Maslow places the need for security or the unordered right of man to peace and welfare, without the assurance of which, everything that is being built as a legal and institutional system acquires a relative, slightly changeable character, depending on the political, economic, military, environmental or other pressures and risks.[3]

In order to achieve the security strategy, each government assumes security policies (legislative, institutional, material and human resources, etc.) capable of satisfying the full range of national security issues.

We mention that security, in the traditional sense, has been associated with military power. After 1990 and more often after September 11, 2001, security is extended to the political, economic and social spheres.

State functioning is a major desideratum of any local community constituted in a modern society according to the contemporary standards of state entity organization, for the development of a social life in conditions of normality.

In the classic imperial model, countries occupied a central position of power and influence worldwide, conquering peripheral territories and administering them directly. But the uncomfortable management of local populations by colonial powers is no longer taking place without reaction - in the sense that no powerful state can tentatively exert such a direct control.

However, the remote handling of resources and the population has not decreased. It is carried out in a new form through other forms of institutions.

Challenges for international security in the context of the end of the "Cold War"

Today it is obvious that the development of the international community is and will be the multilateral innate of states and regions. This leads, first of all, to the crea-

3 Maslow, Herzberg et les théories du contenu motivationnel. CLAREE. Centre Lillois d'Analyse et de Recherche sur l'Evolution des Entreprises. UPRESA CNRS 8020 http://alain.battandier.free.fr/IMG/pdf/CLAREE-Maslow_Herzberg.pdf (consulted at 13.12.2017).

tion of common economic, legal, informational spaces. In this context, the prospects for United Nations development should be explored from another point of view. This global routing system will have to be based on the international law system, mechanisms for coordinating and adopting unique mandatory judgments will have empowered administrative structures, judicial system, control and constraint mechanism.

In this regard, the practice of peacekeeping operations presents interest, when the UNO introduces a form of "external leadership" in the States covered by conflicts or in the sectors where either the local public power is missing or it is unable to fulfill its functions.

The fight against international terrorism has led to a new interpretation of the right to self-defense. Traditionally, it is considered that the application of force under the right of self-defense is only possible in the case of an attack by another State. However, the US events from September 11, 2001, as well as other cases of foreign terrorist attacks on the state, allow us to conclude that the right of self-defense can be used to respond to the attack of non-state organizations or formations. In addition, we find that Article 51 of the UNO Charter does not directly indicate that the attack must be directly from the side of a State.

The correct applicability of the right to self-defense in the antero-operations, following the events of September 11, 2001, can be found in the practice of states, UNO Security Council resolutions and some US Court Decisions. For example, the 2001 North Atlantic Council statement, which states: "If it is shown that the attack on the United States has taken place from the outside, it will be interpreted in accordance with Article 5 of the Washington Treaty, which states that the armed attack on one or more Union states in Europe or North America will be considered as an attack on all members". On October 2, 2001, NATO Secretary General Lord Robertson confirmed that the attack took place from outside and that Article 5 had been applied.[4] Similarly, the Australian government, following consultations with the US government, has applied Article IV of the ANZUS Treaty, recognizing that the terrorist attack on the US is an external attack.

In the Resolution S/Res/1368 (2001) the Security Council of UNO as answer at the attack from September 11, 2001, recognizes "the inseparable right to individual or collective self-defense in accordance with the UNO Charter" and "that *examines* such acts, like any terrorist acts, as a threat to international peace and security".[5]

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As I said recently, the US legal practice may be brought as an example also.

4 Déclaration du Secrétaire Général de l'OTAN, Lord Robertson, au Siège de l'OTAN. 02.10.2001 https://www.nato.int/docu/speech/2001/s011002b.htm (consulted at 13.12.2017).

5 Resolution of Security Council of UNO No. 1368 (2001) www.un.org/french/docs/sc/2001/res1368f.pdf (consulted at la 13.12.2017).

In the case of Padilla v. Bush, No. 02 Civ 4445 (MBM), stip. Op. at 53 (Order and Opinion), the court stated in the following manner: "The right to war referred by the President in relation to Padilla is applicable irrespective of whether the state of war is declared or not. The issue of the time when the war against terrorist groups is to be completed is not questioned."[6]

In the case of Hamdi v. Rumsfeld, 02-7338 (4 Cir Ct of Appeals, 08 Jan 2003), the Court set out in the following manner: "These interests are not less important, just because the conflict in which Hamdi was detained, is not directed against a state, but against some rebel forces, unrelated to a particular state. We note that "the non-traditional character of the fight that is going on today does not diminish its importance." Hamdi II, 296 F. 3d at 283. The character of the present conflict, too, cannot be considered as the basis for ignoring the opinion of the political authorities. As mentioned, "the political authorities are able to give the greatest appreciation to this global war in the full sense" (ibidem) and the lack of struggles in the classical sense of the word, and the pauses between terrorist attacks are not a foundation, for depriving the executive and legislators of the right to take war".[7]

The responsibility for the emergence of conflicting situations as well as for their ineffective resolution is addressed to states and their leaders. However, we also need to recognize the partial responsibility of the scientists involved in drafting the rules, participate as experts, consult governments, etc. Consideration has to be given to the long terms of elaboration of the rules of international law in comparison with domestic law. The elaboration of the norms of international law, as well as their adoption, is often left behind by the realities of international life. This allows politicians to make use of the vacuum in the legal regulation of international relations and to take inappropriate decisions.

As the case stands, it would be good for scientists to return to the theoretical basis and the legal sources of the current global order, to return to the basic principles, having examining it from critical positions. Referring to the subject under discussion, we bring the following considerations, which will inevitably lead to discussion. We are referring to the fact that the responsibility of the Security Council as one of the main UNO bodies for peace-making throughout the world (Article 24 of the UNO Charter) does not include the "monopoly" in the application of force, but only leads to the emergence of the priority right in the decision adoption on the enforcement

6 United States district Court Southern district of New York. Jose Padilla, Donna R. Newman, As Next Petitioners' Friend of Jose Padilla Reply to Motion To Dismiss Petition For Writ of Habeas Corpus Petitioners, 02 Civ. 4445 (MBM) against George W. Bush Ex officio Commander in Chief of US Armed Forces Donald Rumsfeld Secretary of the Defense John Ashcroft Attorney General U.S. Department of Justice Commander M.A. Marr Consolidated Naval Brig http://studylib.net/doc/8554245/padilla-_reply_final_71002 (consulted at 13.12.2017).

7 United States Court of Appeals for the fourth circuit. Hamdi v. Rumsfeld 316 F.3d 450 (4th Cir. 2003); 2003 U.S. App. LEXIS 198, 185 A.L.R. Fed. 751 Decided Jan. 8, 2003 No. 02-7338 http://www.uniset.ca/naty/maternity/316F3d450.htm (consulted at 13.12.2017).

of the means of constraint and highlights some legal consequences, especially for the purpose of interpreting the field of actions that would impose the prohibition of violence (p.4 Article 2 of the UNO Charter).

In general, we must recognize that monopoly while using force, characterizes states; only states, on the basis of its sovereignty, possess the monopoly over the use of force. UNO, in principle, does not have the monopoly on the use of force because it is not "a world government". The UNO does not have its own armed forces that could have been used by the UNO Security Council. The Security Council may, but is not obliged, to engage in the event of a breach of peace throughout the world (Articles 34, 36, 40, 41, 42 of the UNO Charter); even if the vast majority of the 15 members of the Security Council vote on the application of the means to guarantee peace, its involvement may be questioned because the Security Council may be blocked by one of the five states which have the right of veto (p.3 Article 27 and p.1 Article 23 of the UNO Charter).

„The Main Responsibility" offers a double priority to Security Council, on the one hand, in report with UNO General Meeting on the other hand, towards the UNO state members.

In relation to the General Assembly, in terms of time and technology, the priority provides that the General Assembly is not entitled to examine a dispute as long as this matter is dealt with by the UNO Security Council (Article 12 of the UNO Charter) and de facto assumes that the General Assembly is not entitled to make provisions, in particular, to adopt the decision on the application of force, it is only entitled to make recommendations (Article 11, 13, 14 of United Nations organization Charter). The right, the recommendations can also refer to the application of force in order to guarantee or restore peace all over the world. This was the case for the "Peace Union" Resolution of October 3, 1950, in connection with the conflict in Korea. Although they did not follow analogous resolutions, it is an essential precedent for the General Assembly to cover the legal void resulting from the blockade and incapacity of the Security Council. In principle, the International Court of Justice upheld the General Assembly's subordinate powers. Thus, the relative character of the Security Council's competence according to Article 24 of the UNO Charter is indirectly recognized.

If we are referring to the Security Council's report to the UNO member states, we find the important reasons for the judiciary appreciation those motives and goals have that forced UNO member states to offer "the primary responsibility for maintaining peace in the world and international security" to the Security Council in accordance with the UNO Charter. Article 24 of the UNO Charter links the mandate of exercising a primary responsibility for maintaining peace in the world with some requirements or objectives, which in most cases is not even considered in international law literature.[8]

8 Idem.

— Execution of the task is not subject to appreciation by the Security Council, and is a legal obligation; he cannot escape from achieving this goal (para. 1, 2, Art. 24, para. 2 Art. 51 al UNO).
— Article 24 does not grant to the Security Council unlimited powers, he obliges him to carry out his task of maintaining peace "fast" and "effective". The focus, of course, is on the "effective". If the Security Council does nothing, it violates this obligation if it takes insufficient action, or even more, in the event of a situation that necessitates the adoption of measures.
— The Security Council, exercising its task, is itself bound by the purposes and principles of the UNO Charter. In the case that the goals and principles are in a tension state, or even contradict each other, what sometimes takes place, for example on the one hand, the obligation, to stop and prevent the act of genocide, and on the other to respect the sovereignty of the state which commits the genocide act, the Security Council must strive to achieve the goals of the Charter that contradict themselves by virtue of their practical connection, or to strike the balance between the conflicting purposes, as a result of its main function.

Obviously, the Security Council, in the exercise of its functions, as well as the interpretation of the corresponding provisions, in accordance with Article 24 of the Charter of the United Nations, possesses wide powers, with the possibility to act independently. In principle, it cannot be otherwise, if we take into account the complexity of the conflicts set on the agenda. But as many facts, which become known, signal the violation of peace in the world and the more possible the situation for third parties, the greater the Security Council's possibilities to make decisions are limited.

However, if the Security Council does not fulfill its obligations, which is shown in Article 24 of the UNO Charter, because it cannot reach a common denominator viewing the "effectiveness" measures, in order to maintain the peace in the world, although it is obvious to the observers around the world that force must be applied against the "aggressor" in accordance with Chapter VII of the UNO Charter , then according to the principle of interpretation provided by the same art. 24 of the UNO Charter and there is the branch, about both the UNO General Assembly, as well as the UNO Member States, in order to maintain peace all over the world, regardless of the cause, either that the Security Council is not in a position to act effectively, is blocked as a result of vetoing by one of the permanent members. In this case, the Security Council is not in a position to bear the primary responsibility. If, under such conditions, UNO member states are forced to go under inaction under force-bending, we cannot find ourselves in front of a vacuum in terms of responsibility for peacekeeping, despite the fact that this violation is obvious and perhaps, was established by the Security Council itself at the initial stage on the basis of Article 39 of the UNO Charter. I am sure that the presence of such a regulatory loophole for the conditions of the application of the right of the member states of the UNO to self-defense under Article 51 of the UNO Charter and the mandatory fulfillment

of the primary duty by the Security Council was not intentionally established in the UNO Charter by the UN member states. As an example, the content of Article 24 of the UNO Charter, this provides that the Security Council will not only fulfill its obligations, but will do so «quickly and effectively».

The misunderstanding of principal obligation, as a result of the Security Council self-locking, opens the way for the UNO member states, which obligation is to restore the peace in the world. The states, under Article 24, in such situations, in the absence of formal mandates from the UNO or the Security Council, otherwise in the absence of the UNO mandate, may take measures to restore the peace in the world, by applying the force against the "aggressor".

In the absence of a political-military rival, such as the Warsaw Treaty, NATO remains the most important global institution capable of ensuring regional and universal security. The beginning of the 21st century and the events of the last decade in the previous century determined NATO to reassess the concept of security. The collective defense remains the main mission of the Alliance, but the risks, dangers and threats facing NATO have changed substantially. The sphere of defining NATO security concept was updated during the conferences of Istanbul Summit from June 2004, outlining the following objectives of the organization: collective defense; application of the principle of the indivisibility of allied security; a multilateral bridge across the Atlantic; countering the threats to the allies' territory, whatever their source may be. In conclusion, considering that the challenges to global security, NATO opts for the global cooperation as the only efficient response.

The debate upon the order of importance of the vulnerabilities faced by states in the context of ensuring international security is also viable for the European Union. Some vulnerabilities and threats can affect the entire international system, others, are targeted only for the zones and regional levels. It is clear that the strategy clearly defines its main objectives: the fight against terrorism, mass destruction, organized crime, violent conflicts and instability in the neighborhood of the Union - combating external poverty, hunger and endemic diseases; calling for a "good governance circle" in the Mediterranean and eastern borders (from the Middle East to the Caucasus, through the Western Balkans).[9]

Conclusion

The process of consolidation of international security law is closely linked to the very evolution of international relations. It was enough to end the "cold war" that the system of collective security should be challenged in various regions of the world. At the same time, this process must be seen in the search for viable solutions for companies facing security crises, irrespective of their origin. International practice shows that regional crises, which are not directly targeted by armed conflicts, affect not least international security, such as the lack of control over a part of the state

9 A Secure Europe in a Better World. European Security Strategy. Bruxelles, 2004.

territory, the lack of control over narcotics trafficking, arms etc. . In the context of new challenges such as massive migration caused by various factors such as regional armed conflicts, climate change, state insecurity caused by authoritarian regimes, lack of a system that would guarantee human rights and fundamental freedoms, torture by authorities the state or the rebel forces, the trafficking of narcotics, weapons, human beings, etc., in front of the international security law, has to give an adequate answer based on universal norms from which any offense must be excluded. However, ensuring the objectives and principles declared by the UN Charter is quite difficult outside close cooperation between states, whether it be regional or international.

The challenges posed at the beginning of the 21st century cannot be regulated only by the efforts made by a state or a group of separate states, including in the context of the antiterrorist struggle, which raises many questions from international organizations concerned with ensuring human rights and freedoms, including intergovernmental organizations and non-governmental organizations.