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A Typology of National Security Policies

J.A. Tapia-Valdés

I. The Inadequacy of Abstract Definitions of National Security

Authors addressing the problem of how to assess properly human rights when derogated in the face of national security claims often point out the difficulty of determining what national security means. This ambiguity presents several problems for those who monitor human rights. Wolfers has observed that when political formulas such as “national interest” or “national security” gain popularity they need to be scrutinized with particular care. They may not mean the same thing to different people. They may not have any precise meaning at all. Thus, while appearing to offer guidance and a basis for broad consensus, such formulas may be permitting everyone to label whatever policy he favors with an attractive and possibly deceptive name.

Formerly, “national defense” meant military preparedness to protect national territorial integrity, independence, and sovereignty against actual attacks from external aggressors. Such a state entailed actual war waged by regular armies, usually in accordance with a set of rules internationally accepted as the Law of War. The use of the army for other purposes was “militarism.” Such a clear-cut characterization cannot be ascribed to the current concept of national security.

Today, the definition of national security depends upon the definer’s...
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ideology. Consider for example, the gap between liberals, who view the introduction of militaristic influences into the society as corrupting society, and conservatives, in the manner of S.P. Huntington, for whom the same influence means saving society. It is this same kind of interpretative disparity that allows many scholars to view today's national security doctrines as merely ideological rationalizations of a permanent militarization of the state and society. For others, they are no more than a mandate for state and class domination. It is precisely this ideological bias that makes it sometimes difficult to distinguish between "securing the nation" and "militarizing the nation."

Therefore, if one insists on finding an abstract definition of national security, he must realize that it is not a purely military notion. It is more a political category than a military one, a part of state policy in which the military component is but one element engaged in national security functions. Given that understanding of national security, one might attempt to define national security as "[that part of government policy that has the objective of creating national and international conditions that are favorable to the protection or extension of vital national values against existing or potential adversaries."

However, this definition is of little help in realizing what national security means in practice.

Rather than being simply a subject of strategic studies, the current concept of national security implies a new vision of strategy itself. Tra-


5. See, e.g., Thee, Militarism and Militarisation in Contemporary International Relations, in Eide & Thee, supra note 2, at 15. Thee's paper and several others included in this book were presented at the Pugwash Symposium on Militarism and National Security, held in Oslo in November, 1977.


In a general sense, "security" is an individual or collective feeling of being free from external dangers or threats, whether physical, psychological or psycho-sociological, which could jeopardize the achievement and preservation of some objectives considered essential, such as life, freedom, self-identity and well-being. This notion of security implies freedom from uncertainty. Such a state of affairs has an ideal existence only. This concept is considerably different from that of security as related to traditional military strategy, which focuses on the prevention of attacks, sabotage or mutinies against the armed forces. Indeed, the present notion of national security has an all embracing tendency which places it as close to the unexistent ideal as it can be, thus forgetting that "the search for perfect security... defeats its own ends."

Lindsay, Introduction to Thomas Hobbes' "Leviathan," quoted in Wolfers, supra note 3, at 497 n.13. On what has been called "the security and power dilemma" see R. Gilpin, War and Change in World Politics 94 (1981).
ditionally, strategic studies were “war-focused, history-oriented, and descriptive.” Today, they are prescriptive, concerned about the present and the future, and focus on producing policy alternatives. The old military strategy has been replaced by the concept of “Grand Strategy,” an area where the skills of the soldier and those of the politician merge.

By recognizing this new strategic vision of security, it is possible to generate a general notion of national security. This notion should specify the major national policy areas with which national security is concerned as well as the reasons for such a concern and the means used to achieve national security goals. Accordingly, the politics of national security of any nation can be characterized as the integration of its military, foreign, and domestic policies with the aim of coordinating its political, economic, psycho-social, and military potentials to guarantee, against actual or potential external or internal adversaries, the achievement and preservation of its essential national objectives. In short, it is “Grand Strategy.”

Despite the neatness of this characterization, the real meaning and scope of the definition will depend not so much on wording as on the kind of historical problems and geopolitical framework by which a state defines its objectives and policy-goals, on the prevailing social philosophy and strategic views, and on the nature of the threats to those objectives. However, before elaborating on this theme, it would be instructive to consider in more detail how national security may constitute a danger to those very principles it claims to protect.

II. National Security as Dangerous Symbol: The Myth that Security is Essential for Development

Today, the real focus of national security is the sphere of domestic politics and policies. Generally, a power elite posits a situation of “bel-

9. Kissinger has said that “strategy is the mode of survival of a society,” quoted in Louw, Introduction, supra note 2, at 2, a phrase that can be considered the philosophical resumé of the doctrines of national security practiced today by the South American military regimes. The current broad scope of strategy is well exhibited in the classic works. See, e.g., A. Beaure, Introduction a la strategie (1964); A. Beaure, Strategie de L’Action (1966). See also B. Brodie, War and Politics (1973); A. Atkinson, Social Order and the General Theory of Strategy (1981); E. Mercado, Seguridad Politica y Estrategia (1974).
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Gligent peace" which blurs the distinctions between internal and external affairs. This elite proclaims the essential relation of security to the development of a sound economy, thus legitimizing the restrictions it may place on constitutionally mandated rights and freedoms. The current concept of national security, oriented to cope with the multiple conflicts arising from the East-West and North-South confrontations, and the destabilizing forces of underdevelopment and development, is construed so as to demand a permanent national preparedness for war. To a large extent, domestic policies become subservient to the needs of the military and foreign policies. The old concept of "nation in arms" as an exceptional defense policy to face an actual war is transformed into one where social and political energies are constantly channeled toward achieving a "state of security." Giving priority to military and foreign policies necessarily postpones the satisfaction of peoples' present needs and expectations. The acceptance of such a policy approach is enhanced by stressing the interdependency of security and development. The binomium "security-development" thus becomes a universal and absolute principle in some Third World countries.

However, because of its seeming abstractness, that core concept of national security does not answer the questions of "security of whom?" and "development for whom?" Therefore, the kinds of problems that the national security expert must tackle are difficult, if not insoluble. For example, he must determine what threats exist; which values and interests should be protected first; how many restrictions should the citizen be expected to tolerate because of national security demands; and how much should the people know about the reasons and measures of the national security policies. All of these problems demand a deeper and permanent involvement of the national security bureaucracy in the domestic political process.

One can find here multiple sources of tensions between the aims of the national security establishment and the claims by individuals that

11. See generally, Luckham, supra note 6.

12. The internal side of national security has to deal with rather non-conventional threats, different from actual warfare operations and linked, by its nature, to the ideological characteristic of contemporary belligerent conflicts. These non-conventional threats are those jeopardizing internal order, domestic peace and governmental effectiveness. In other words, national security personnel are concerned today with problems of law and order, and private as well as public morality; economic, social, ethical, and ideological conflicts; the effectiveness and efficiency of political institutions and processes; the soundness of the economic system and its capacity to produce the surpluses needed for national security purposes; the levels of legitimacy and consensus as to national political projects and respective foreign and military policies; and the level of national integration and morale, Louw, Introduction, supra note 2, at 14-15.
their fundamental rights and freedom are being violated. The problem is further complicated by the existence of a sort of “built-in” mechanism that encourages elites to dispense with procedural safeguards. The secrecy of the security decision-making process, the elitist nature of the national security bureaucracy, and finally, the usually unpopular nature and effects of the security measures, reinforce the tendency of the apparatus to keep its work from the public. Moreover, the feeling of being responsible for making difficult, urgent, and important decisions under highly stressful conditions encourages the national security expert to attribute to himself the role of savior of the people, in spite of the people. These built-in “a-democratic” influences will affect the national values and objectives, forcing the national security expert to face a double moral dilemma. First, he must protect those values that make national security a legitimate policy, and second, he cannot allow the request for discretion and expediency of the national security operations to go too far without harming those values. At this level of the problem-solving procedure, it might be difficult to avoid not only lying to protect national security interest but distinguishing that from the misuse of the national security interest in order to lie.

Essentially, this represents a major change in the traditional pattern of civil-military relationships. A “politics of power” predominates. This can easily slide into a “bellicization” of the political process with a concomitant outlawing of the political opposition. This phenomenon may be one reason for the current militaristic dynamics of the world political process. Furthermore, some authors believe that “the dynamics of global militarisation and its manifestation in the various countries are the most serious obstacles to the realisation of an international legal order based on sovereign equality of states and security for the human being.” In fact, there appears to exist a close positive correlation between current national security doctrines and the recent trend of growing militarization, militarism, and armament across the world.


[Realist propositions can be advanced, maintaining that foreign and security policy is so important that it deserves the control of the most educated and informed; that mass opinion is often too slow to crystallize; that public discussion can provide other governments premature information concerning U.S. national security policy.

Id. The authors themselves seem not fully to support this viewpoint.


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Essentially the notion of national defense has been subsumed into the amorphous concept of national security. By virtue of this fact, it becomes extremely difficult to distinguish between "bare militarism" and a legitimate national security policy. To facilitate this task, this author proposes a taxonomy of national security types.

III. National Security Types

Despite its potentially adverse effects on world public order, national security is an unavoidable category of both strategy and politics. No nation-state is free to determine independently what its security needs are and, therefore, how much of its resources it should divert for security purposes. The practical importance of national security compels the search for an approach that could make security goals compatible with democratic values and human rights. From this standpoint, neither a general definition of national security nor an abstract moral judgment of it are meaningful.

To obtain a more realistic assessment of the legitimacy of national security and human rights claims, a typology which can identify the different ways national security has developed in different countries is necessary. Such a typology also could provide alternative ways to protect and defend human rights in particular cases.

This paper purports to present a tentative typology. To accomplish this, we use a "descriptive construct," built upon the more general characteristics of discrete kinds of national security notions, as actually enforced in different countries. Empirical data on the basis of which we elaborate are available from many scholarly publications and from field research reports of private organizations monitoring national security bodies. The types are worked out around a set of variables which, although not tested empirically, have proven to be helpful in specifying the major characteristics of each type. The variables are:

A. Political setting. Starting from the notion of "polyarchy" as presented by R. Dahl, we pay attention to the level of pluralism, the

17. In this connection, it is interesting to note that U.S. and Chilean military literature do not offer significantly different definitions of national security.
18. See generally R. Dahl, Polyarchy: Participation and Opposition (1971). According to Dahl's model of a democracy comprising a large number of people, some of the requirements for a polyarchy are the following: (1) freedom to form and join organizations;
openness of communication channels, the legitimacy of the political regime, and the likelihood of enforcement of a “Rule of Law.” These sub-variables influence the type of national security policy enforced.

B. Perception of threats. We search for the origin, whether external, internal, or both, of the perceived threats, the kinds of threats, the actual or fabricated character of the threats, and the types of response the national security establishment makes.

C. Permanent national objectives definition. We pay attention to what extent “national,” as opposed to individual or group interests, comprise permanent national objectives, and to the level of intervention of the national security establishment in the defining of these objectives.

D. Rank of the national security policy. This is the role of national security policy in relation to foreign and domestic policies, viewed primarily at the socio-cultural and economic levels.

E. Degree of autonomy of the national security establishment. Here, attention is paid to whether the national security establishment acts within a legal framework of power, and to its independence from political and administrative bodies. The likelihood of actual political and judicial control of national security policies and operations is also assessed.

F. Human rights claims. The kinds of human rights violations, the potential for domestic and international protection of human rights, and the enforcement of due process of law are here examined.

Building on the basis of the above mentioned variables, we elaborate three types which we respectively call, for reasons which will become evident, “outward oriented national security policy,” “national securitism,” and “inward oriented national security policy.”

(2) freedom of expression; (3) right to vote; (4) eligibility for public office; (5) right of political leaders to compete for support and for votes; (6) alternative sources of information; (7) free and fair elections; and (8) institutions for making government policies depend on votes and other expressions of preference. Id. at 3. The concept of hegemony used elsewhere in this article is not Dahl's notion of hegemony, defined as a regime intolerant of "public contestation," id. at 7-8, but is rather Antonio Gramsci's idea of hegemony as the capacity to rule by consensus. See A. Gramsci, Prison Notebooks: Selections (1971).

19. We have partially borrowed, to construct our typological cadre, from the variants of militarism presented by Marek Thee, supra note 4, at 21-23. Nevertheless, we contest Thee's assumption that outward-oriented militarism is characteristic of great "first and second" world powers, and that inward-oriented militarism is characteristic only of the military regimes of the Third World.
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IV. Outward-Oriented National Security Policy

A. Political Setting

This type of national security policy can develop in the kind of political regime Dahl describes as a "polyarchy." Under particular conditions, this type may also emerge within a "near-polyarchy" regime. \(^{20}\)

The political regime is characterized by the existence of a rational-formal legitimacy, subject to permanent and regular checking processes through periodic elections and judicial review. The communication and information channels are free and open, allowing for the exercise of the freedoms of assembly, opinion, and press. These characteristics provide the rational and moral ground for the freedom and legitimacy of the political opposition, and for the alternation in power of competing political forces. \(^{21}\)

However, we should not forget that we are dealing with a strategic outlook the most obvious effect of which is an increase of military participation in the political processes, conflicts, and institutions. Current doctrines of national security have legitimized the military's exercise of influence in the decision-making process. Nevertheless, the polyarchival system seems to offer the greatest hope that national security interests and democratic values may be reconciled. Because of the characteristics of polyarchy, national security policymakers are forced to balance national security needs with pluralistic interests and expectations. The very same set of political conditions which allow a polyarchy to exist and survive will in principle directly influence the philosophy, content, and scope of national security measures. \(^{22}\)

\(^{20}\) In Dahl's terms, a "near-polyarchy" is a "mid-area" type of regime lacking one or more of the characteristics of a polyarchy, but still closer to that type than to the "hegemony" type. R. Dahl, *supra* note 18, at 8, 9.

\(^{21}\) Most of the elements distinguishing this kind of regime conform to the notion of a "Rechtsstaat," or Rule of Law, that is, supremacy of the constitution, legality of the origin and powers of the political and administrative authorities, ministerial responsibility, control of legality, division of powers, and due process of law.

\(^{22}\) According to Abraham F. Lowenthal, "the relation between the level of military institutionalization and the institutionalization of civilian political procedures may be a key determinant of the varying political roles army officers play." Lowenthal, *Armies and Politics in Latin America*, in *Armies and Politics in Latin America* 5, 20 (A. Lowenthal ed. 1976). See also Welch, *Two Strategies of Civilian Control: Some Concluding Observations*, in *Civilian Control of the Military* 323 (C. Welch ed. 1976). Nevertheless, the warning made by Ejub Kučuk should be kept in mind: only to a certain degree do the existence of democratic political institutions prevent the appearance of the militaristic phenomena. In the Chilean case, militarisation was carried out just because of the existence of democratic institutions of the political system, since they had become highly suitable instruments of bringing about the socialist transformation of society and had thereby become a direct threat to the vital interests of the wealthy classes and foreign capital.
B. Perception of Threat

If the internal political arena allows the alternation of political adversaries in the exercise of power, the national security policymaker will naturally focus his attention not on the domestic political conflict, but on the threats arising from external enemies, mainly other nation-states. War hypotheses and security operations are developed according to the perception of actual, imminent, or potential threats against the national territorial integrity and sovereignty.23

The same kinds of values and political and economic reasons which limit the use of military power to counter actual, or prevent imminent, external aggression, will also function in internal security contexts. Under normal political conditions, only those individuals responsible for political crimes previously defined by law will be prosecuted. The declaration of a state of emergency will have to be grounded in the need to confront actual, concrete, and manifest disturbances of the domestic peace and public order. Regular political institutions will enact the appropriate measures which will be temporary and regulated. Because of the existence of checks-and-balances mechanisms, there will be no room for "fancied emergency" situations.

Given the pluralistic and competitive nature of the political arena, it makes no sense to label political adversaries as "internal enemies." Those challenging the system and its rules by violent means will be prosecuted as felons because of their actions, and not because of their thoughts or political philosophy.24

The outward-oriented characteristics of the national security policy allow the persistence of institutional and professional differences between military affairs and police affairs. The use of the armed forces to meet domestic political problems is exceptional and must proceed under the control of the regular civilian government.

C. Permanent National Objectives Definition

As long as an essential factor of the polyarchy is government by con-

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E. Kucuk, The Socio-Class Determinants of Militarism, in EIDE & THEE, supra note 2, at 166.

23. Border problems can be sources for the threats; other sources include the blockade of fundamental foreign policy objectives, the peril of direct armed intervention by another nation-state in domestic political affairs, an attack on an allied nation, etc. The threat is actual, external, and usually military.

24. Legislative measures adopted to meet the growing problems of terrorist actions do not represent a real exception to the common principles of criminal law. The use of modern technology to gather information, and the extension of periods of preventive detention, authorize no exception to the legal and moral propriety of the measures taken, nor suspend the rules of due process of law with regard to the offenders.
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sensus, the use of coercive force will be an exception. The composition of the polity forces the recognition of pluralism as an outstanding value in itself, while at the same time only pluralistic procedures can determine what values and interests are going to be considered truly national. Those values will usually be part of a formal, written constitution.

Pluralism, universalism, and therefore institutionalized political conflict become the major national objectives at the political level. Plurality and conflict are accepted not only as normal, but defined as the desirable state of affairs. This social philosophy implies the rejection, as a matter of principle, of any view, whether civilian or military, which attempts to replace pluralism. In brief, the national security establishment has little involvement in the definition of permanent national objectives. The influence accorded it in the policymaking process does not amount to the incorporation of national security itself as a paramount national objective, nor does it admit of the change of values and goals democratically defined and legally protected by the civilian political society.

D. Rank of the National Security Policy

Defined as the integration and coordination of the foreign, military, and domestic policies, the general conception of national security implies, first, the upgrading of national security itself, and second, the participation of the military in many spheres other than its traditional role in national defense. Yet, the extent of such participation will depend mainly on the form and content of the defined permanent national objectives, the nature of the threats against them, and the respective policy field.

At the foreign policy level, depending on the power position and geopolitical perspective of the nation-state, the outward-oriented national security type demonstrates the influence of the new strategic conceptions. The foreign policy is conducted according to national security concerns, sometimes going so far as to “militarize” the foreign policy. In all other policy areas, the political setting will force the policymakers to assign priority to domestic policies oriented to meet internal social needs. At the economic and financial level, for instance, the greater

25. This of course assumes that the use of regular institutional channels allows the adoption of political decisions which are considered the best for all, or at least the least bad for all.

26. See, e.g., Tapia Valdés, El terrorismo de estado: La Doctrina de la Seguridad Nacional en el Cono Sur, NUEVA IMAGEN (Mexico), 1980, at 45 (editorial) (bibliography cited).
influence of national security is seen mainly by lobbying efforts to get a bigger piece of the budgetary pie. Nevertheless, the prevalence of a Cold War mentality, or self-assigned international roles related to foreign policy objectives, can foster the perception of a war-like situation, resulting in the subordination of the domestic policies to the expectations of the war.

E. Autonomy of the National Security Establishment

Paradoxically, in the "outward-oriented" type, the national security establishment's increased involvement in the overall political process can diminish its autonomy.

First, a complex system of legal and political regulations and controls obliges national security institutions to act within a determined legal framework, and be subjected to checks and balances by the legislature, judiciary, and public opinion. A second form of controls arises from the nature and scope of the duties of the national security establishment. National security policy demands a closer cooperation between civilian and military at different levels. More important, the inner circle of national security advisers often contains a civilian majority. It can be said that the military general staff is no longer a decision-making body, but primarily an advisory one.

As to meeting internal security crises, the national security establishment is forced to follow legally regulated procedures and penal law definitions of criminal behavior. In brief, the existence of many institutional and extra-institutional mechanisms which preserve civilian supremacy over the military not only inhibits the latter's political autonomy, but subjects it to civilian control in matters of war and security.

F. Human Rights Claims

Where the enemy is defined as an "external" one, national security claims would be addressed to stop foreign individuals or groups engaged in espionage, sabotage, or terrorism. If the threat, short of civil strife, is an internal one, the constitutional mechanisms to keep the internal order and safeguard the governmental institutions would apply. In other words, without violating the constitution, rules for emergency situations grant extraordinary powers to suspend some of the funda-

27. Actually, the problem evolves around the scope and methods of intelligence activities. See, e.g., A. Jordan & W. Taylor, supra note 13, at ch. 7.
mental political rights. However, this partial derogation of rights should not extend to the exercise of the writ of habeas corpus, the rules of due process of law, or the normal functioning of the regular branches of government. The principle that the government is law-abiding then remains intact, including the legality and propriety of the security and intelligence activities.

So long as national security decisions and operations proceed according to regular legal procedures, the legitimacy of the national security claims should be acknowledged by the courts. Under such a situation, claims in favor of human rights would succeed only if there is evidence of abuses of power by the political or police authorities. Individuals considered as a threat to national security have the opportunity to bring their case before the courts, or even political bodies, to be protected from abuses of the powers granted to the executive or military authorities. More important, arbitrary repression cannot work in a society in which civil liberties have a long tradition or standing. In such a society, excessive appeals to national security and collective security may backfire. Finally, in some cases it will be possible to resort to international tribunals, if domestic procedures do not provide relief.

V. National Securitism

A. Political Setting

The type we call national securitism develops within a political arena definable as a polyarchy in which the acuteness and persistence of the political conflict forces the government continually to resort to its emergency powers. In these cases, most of the external characteristics of a democratic regime appear to exist, particularly civilian control over the military. However, a gap between the official political discourse and the actual policies of the rulers creates a purely formal democracy. Such a perception is particularly sharp among the significant groups opposing the government. In general, the government's legitimacy to rule is at stake. The political system faces a crisis of hegemony, under which the whole of the government's socio-philosophical foundations and the corresponding structures and institutions of political power is contested. This sort of crisis carries with it a marked diminution of


30. For a more extended analysis of our view as to the existence of a crisis of legitimacy and a crisis of hegemony, see Tapia-Valdés, La legitimidad dictatorial: Elementos para el análisis empírico de los problemas de legitimidad en sociedades periféricas, REVISTA CHILE-AMÉRICA at 80-81 (1982).
the capacity of the socially dominant sectors to govern by consensus. The rulers usually respond by extending the externally-oriented security measures to the domestic political arena.\textsuperscript{31} A consequence of such a response is the de facto restriction, despite the formal recognition of constitutional principles, of the rights and freedom of significant numbers of individuals and groups challenging the government. The government controls all of their activities considered to be dangerous for national security. In short, the government's answer to the challenge of its legitimacy is a quasi-delegitimation of the opposition.

This situation is still far from that of the "garrison state."\textsuperscript{32} Nevertheless, the state practicing national-securitism justly could be considered a "national security state"\textsuperscript{33} or a modern type of "police state."\textsuperscript{34} The setting is not a state of emergency to meet contingent and temporary threats to domestic public order, but rather a permanent policy of exercising stricter socio-political control by granting to the national security establishment a degree of power formerly applicable only during an exceptional state of emergency. This enlarged security structure represents a "militaristic" view of the political conflict which requires control of dissidence. Civilian, military, and police roles are blended in order to "manipulate" national security as a pretense to justify the use of the police and armed forces in backing a determined civilian political project and status quo.

B. Threat Perception

National securitism arises when a perception of an occasional and limited threat is replaced by one of continuous and global dimensions of external and internal origin.\textsuperscript{35} Where a Cold War atmosphere pervades foreign policy, the elite is preoccupied with the ostensible dan-

\textsuperscript{31} Extension of the security measures to the domestic arena usually is accomplished by means of installing an enlarged national security establishment.

\textsuperscript{32} In spite of the rather ideological criticisms raised against the Lasswellian model of the military state, increased scholarly attention has been given in the last ten years to his "garrison state" hypothesis as an analytical frame of the generic and structural factors and foreseeable trends of the neo-military regimes. See, e.g., Smoke, \textit{supra} note 2, at 324. \textit{See generally} M. Janowitz, \textit{Military Institutions and Coercion in the Developing Nations} (1977); A. Perlmutter, \textit{The Military and Politics in Modern Times} (1977); D. Yergin, \textit{Shattered Peace: The Origins of the Cold War and the National Security State} (1978). \textit{See also} Luckham, \textit{supra} note 6, at 251; Matthews, \textit{supra} note 2, at 140; Tapia-Valdés, \textit{El terrorismo de estado}, \textit{supra} note 26.

\textsuperscript{33} \textit{See generally} M. Raskin, \textit{The Politics of National Security} (1979); Smoke, \textit{supra} note 2, at 325.


\textsuperscript{35} \textit{Hearings Before the Subcomm. on National Security Policy and Scientific Development}
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gers of too much democracy and too little economic stability, political and social domestic actions causing instability are added to the list of threats to national security. The aggregate effect of these pressures and demands upon the political system drives national security officials to a state of hysteria in which non-rational thinking becomes prevalent. The result is a distorted perception of facts as black or white, where democracy is blamed for giving radical groups of mass movements the chance to abuse it by blocking governmental procedures and the regime. In other words, democratic practices become suspected of subverting that “capacity to govern” that the dictatorships seemingly have.

Because of both the ideological nature of the international and domestic conflicts and the “eroding” effects of the social changes upon institutions and political stability in Western countries, the national security expert is concerned with modifying the group-formation process. According to Dutton, group-formation in Western countries is “sponsored and sustained by international interests and by non-governmental multi-national bases of power.” It follows ideological commitments which cut across the traditional loyalties to the state, constituted political parties, communities, and even the family. Therefore, groups formed according to this pattern become destabilizing effects of the developmental process itself. In this view, as long as development entails change and adjustment, “the developmental pro-

36. This preoccupation also includes concerns about transnational corporations’ interests and internal insurgency.


39. See Barber, supra note 7, at 38. “[I]t is sometimes . . . very difficult for a representative, pluralistic government to formulate and develop relevant security policies, (autocratic or totalitarian governments encounter less difficulty in this regard).” Id. According to the opinion of another expert on national security affairs, the conventional organizations of the democratic system are not conducive to maintenance of the “unified command, joint central planning, decentralized executive and sustained vertical and horizontal coordinations” needed for a total strategy. Dutton, The Military Aspects of National Security, in National Security: A Modern Approach 100, 110, 113 (M. Louw ed. 1978). His conclusion seems to be that when the survival of the state is at stake, democracy must yield. Id.


41. See generally Barret, supra note 37, at 153.
cess is unsettling, fraught with difficulties, and laden with potential violence.”

Since government cannot stop development, it perceives its only option as channeling development toward realizable goals, by means of carefully trained internal security establishment.

Underlying this attitude is a fear of changes to the internal social structure that can induce changes in the power structure. These changes are perceived to result, on one hand, from excessive politicization of the domestic conflict, and on the other, from a connection between the external enemy and domestic groups fostering more or less radical changes. Thus, the potential exists to present the political conflict as sliding towards a “war-like” system, characterized by high expectations of permanent violence and instability. A “national security culture” can develop from this collective perception.

In more than a few cases, the terrorist practices of small groups of radicalized middle class segments or national or ethnic minorities have allowed national security experts to explain that phenomenon as a result of the indefensibility of the traditional democracy in the face of a new kind of threat. An example of such characterization of events is the following:

In the pursuance of their aim the Soviets generally support destabilizing forces in non-communist countries and societies . . . . Within this global situation the current threats against the national security of Western states on a local and regional level are perceived to derive more from disruptive forces within the state than from conventional inter-state rivalry.

While the foreign power supporting the domestic destabilizing forces is not necessarily the Soviet Union, the common denominator in states manifesting national securitism is the link made between external threat and “home-grown” movements that reject the internal status quo. The confusion between external threat and radicalized home-

42. Id.
44. The perceived connection between the external enemy and domestic entities could be either conjectural or planned.
46. On the notion of “national security culture” see Smoke, supra note 2, at 324-35.
48. Commenting on the scope of the expression “subversive and disruptive movements,” Dutton includes, among others, “labour strike actions and protest marches, demonstrations, riots, defiance of authority.” Dutton, supra note 39, at 104. Such movements include a
grown opposition has made most leftist political parties or movements targets of national security operations. The traditional anti-liberal and anti-socialist stance of the military has reinforced the respective indoctrination process.

C. Definition of Permanent National Objectives

The permanent national objectives of states in which national securitism develops are still formally defined in a constitutional context. Values and goals are the same as those of a pluralistic society having a civilian government. However, by creating a “war-system” and “national security culture,” new national security policies introduce a de facto modification of the stated national objectives. Although the national security establishment does not have the power formally to change the national objectives, it can alter them by means of upgrading national security itself to the level of essential national objective. The official discourse justifies this change of priorities as necessary to protect the prevailing social values and goals.

National securitism does not elicit a political doctrine of its own. Its ideology does not differ from that of the hegemonic forces of the society. Nevertheless, so long as some individuals and groups come under suspicion and some kinds of social change are looked upon as disruptive, a de facto reduction of political freedom takes place. In this sense, national securitism can be seen as an ideological effort to control the content, scope, and direction of social change. By invoking the principle that democracy must yield when the state’s survival is at stake, the national security expert can redefine national objectives as those which, within the purview of his ideological background, are essential for the survival of the system. This could very well result in less pluralism, less social change, and less participation.

D. Ranks of National Security Policies

In the national securitism type, the perception of a global threat arising from a mix of foreign and domestic enemies will elevate national variety of groups which voice their non-conformity with official policies regarding environmental protection, armaments, problems of war and peace, etc. In addition, national security operations have been directed against the organization and activities of critical political movements which voice their disagreement with the status quo and seek to change it by institutional means.

49. Such groups include: trade-unions not co-opted by the establishment; student associations; churches; foreigners and political refugees; circles of intellectuals and scientists and the institutions where they work, mainly universities; and sectors of mass-media professionals.
security policy in almost all other areas. "Si vis pacem, para bellum" is adopted as the leading principle for policymaking. The preparation for confrontation, conflict, or war replaces the seeking of human welfare, dignity, or peaceful social life as the goal of the social productive effort. The persuasive effect of national securitism is evident in a strong tendency to militarize foreign policy. The foreign policy will encourage the use of military means, in the form of technical assistance, training, arms supply, covert intelligence activities, or direct or indirect intervention. The military-industrial complex will be fostered, while at the same time, economic proficiency and superiority over the enemy are incorporated into security needs. Science, education, the arts, and even sports are arranged into a single picture having social-psychological appeal in terms of the feeling of security.

This war-like situation is intended to provide a stimulus for economic growth. Nevertheless, it is necessary to ask the people to accept the diminution or postponement of their expectations. The war-economic effort is carried out at the expense of the resources otherwise available for domestic social welfare. An economy simply cannot support both goals.

Under national securitism, the overall process of policymaking asks "how much security is enough?" The implementation of policies reveals just how little social change can be tolerated by the democratic polity.

E. Autonomy of the National Security Establishment

A need for secrecy, specialization, and elitism drives the national security establishment to seek more power, discretion, and centralization for its policy-making and operational capacities. Military principles of organization, control, and intelligence are extended to areas quite remote from military affairs. In the background lies contempt for politics, politicians, and democratic procedures, all of which are considered unsuitable for planning and executing national security policies. The net result is the granting of a significant degree of autonomy to the national security establishment and its transformation into a political

50. See the well-known thesis of Snyder about the "gray areas" in G. SNYDER, DETERRENCE AND DEFENSE: TOWARDS A THEORY OF NATIONAL SECURITY 225 (1961).
52. See supra note 39.
police, empowered to control unilaterally other bodies of the state and
the civil society. The pyramidal structure of the large national security
establishment is politically and administratively responsible only to the
highest reaches of the executive branch. Moreover, in addition to their
blanket powers, granted under flexible legal rules, the security bodies
develop human and technological capacities enabling them to practice
“black operations” and to exercise almost total control over any dissi-
dent opinions or behaviors that might threaten national security.

The degree of the national security establishment’s autonomy can be
tested by studying the continuity of its structures, functions, and even
its personnel, in the face of changes in the components and policy-orien-
tation of the major branches of power.

Under national securitism, the national security establishment func-
tions to warn the current government about activities that, by virtue of
their potentially destabilizing effects, could be utilized by potential ex-
ternal aggressors. It becomes the moral and political censor of its own
society, vested with broad discretionary powers to decide who is a dissi-
dent or critic, and is able to manipulate public opinion in order to legit-
imize the persecutions.53

Despite the polyarchical type of the political setting, the degree of
autonomy achieved by the national security establishment can be con-
trolled only when its more outrageous activities trigger the concern of
the representative political bodies, the judiciary, or public opinion. For
the rest of its activities, that autonomy is enough for it to feel that mi-
nor infractions against the constitutional order are allowed in the name
of national security.

F. Human Rights Claims

The current world-wide concern for human dignity and human
rights has brought about a twofold concern about national securitism.
First, there exists a moral issue linked to the propriety and legitimacy
of the security operations, which prevents vigilance functions, juxta-
posed with the values of an open and pluralistic society. Second, this
moral issue is perceived as a loophole in the security screen, allowing
the penetration of the system by individuals or groups whose actual
aim is to cause a system breakdown.54 This situation forces the na-
tional security establishment to use political and administrative meas-
ures against the communication and information-gathering capacities

53. See Barber, supra note 7, at 35. See also Smoke, supra note 2, at 329-30; Schratz,
supra note 16, at 284.
54. See Olivier, supra note 29, at 73.
of domestic adversaries. Potentially, a whole range of human rights violations could appear.\footnote*{55} As long as the national security establishment does not act under the umbrella of a state of emergency or martial law, the ordinary courts' normal jurisdiction remains. It is rather exceptional to find the creation of special tribunals, although that has happened in some countries with regard to the custody of terrorists. Because of the executive involvement in the implementation of national security policies and the habitual lack of means of the legislative branch genuinely to control the national security apparatus, the last resort for the protection of human rights is an independent judiciary. If such an institution lacks the power or fails to fulfill its normal duties, national securitism can transform the polarchy into a democratic facade behind which the security of the state is obtained at the expense of the security of the person and legitimate society.

Even if a distortion of a legitimate conception of national security, national securitism is not an unregulated state of affairs. This fact and the conviction that national security considerations do not suspend or modify the human rights guaranteed by the laws of the nation,\footnote{56} make plausible and possible an effective judicial counter-balance of the national security establishment. The residual duty of defending the very same values and ideals against incursions by that establishment can arise from an alert public opinion.

VI. “Inward-Oriented” National Security Policy

A. Political Setting

An “inward-oriented” national security policy is closely linked to a strong authoritarian regime which transforms current strategic philosophies into a political-military doctrine. This is the so-called “garrison state” or National Security Doctrine Regime (NASEDO).\footnote{57} Examples can be found in South America (Chile, Brazil, Uruguay, and, to some

\footnote*{55} Violations would be related to illegal invasion of privacy, in the way of wire-tapping, or vigilance, or burglary, entrapment, forgery, illegal seizure, defamation, false arrest, restraint of freedom of movement, passport denial, and so on. Cases in which the intelligence services have been responsible, directly or indirectly, for assassinations, are not rare.

\footnote{56} See, e.g., Emerson, National Security and Civil Liberties, infra this volume.

\footnote{57} “NASEDO regimes” is a name often given to the current military regimes of South America. See, e.g., Tapia-Valdés, La suprématie politique des militaires et la doctrine de la sécurité nationale, 1-2 REVUE DE L’INSTITUT DE SOCIOLOGIE (1981) (Université Libre de Bruxelles). The description that follows is based on the characterization of that type of regime made in Tapia-Valdés, El terrorismo de estado, supra note 26. See also Falk, Militarisation and Human Rights in the Third World, in EIDE & THEE, supra note 2.
extent, Argentina), in Asia (South Korea, The Philippines, and perhaps Indonesia), and even in Europe (the Colonels' Regime in Greece and the military government of Turkey). 58

Under the influence of national security tenets and within a Cold War setting, a new kind of militarism, characterized by its institutional, permanent, and ideological nature, has appeared. The military establishment, mobilized by a revolutionary elan, is alienated from the dominant social groups. By manipulating facts and information, the military creates a feeling among the population that an actual and protracted situation of internal war exists. This strategy facilitates the monopolization of all political activity by the military. The bellicization of politics will be maintained so long as the regime lasts. On that ground, a sort of de-legalization of the political process takes place which results in the government or ruling group remaining in power above the law, with the political opposition outlawed.

Current models describing and analyzing the so-called "authoritarian regimes" 59 are useless in analyzing the role that military values, goals, attitudes, and organizations play in this kind of regime. 60 While many of the regime characteristics have borrowed surreptitiously from Leninist theories on state, law and politics, 61 the bulk of national security doctrine follows the U.S. military doctrines of strategy, tactics, and intelligence. 62

58. On the extension of the neo-authoritarian analytical model to South Korea, see THE NEW AUTHORITARIANISM IN LATIN AMERICA 396 (D. Collier ed. 1979) [hereinafter Collier]. See also J. MIN, POLITICAL DEVELOPMENT IN KOREA, 1945-1972: A STUDY OF POLITICAL FUNCTIONALISM (1980); H. SUNJO, THE FAILURE OF DEMOCRACY IN SOUTH KOREA (1974). About the Philippine example, see generally MARCOS AND MARTIAL LAW IN THE PHILIPPINES (D. Rosenberg ed. 1979). About the Greek example, see Vegleris, GRECE : LA DICTATURE GRECQUE ET SA CONCEPTION DE LA DEFENSE NATIONALE, in REVUE DE DROIT PUBLIQUE ET DE LA SCIENCE POLITIQUE, (May-June 1970). As to the nature, policies and goals of the current Turkish military regime, the information publicly available allows one to compare it ideologically with the Pinochet regime in Chile.

59. We refer to the notions of "neo-Authoritarianism," "Bureaucratic-Authoritarian," "Corporatism," and "Nation-Building." For a criticism of the applicability of the analytical models of authoritarianism to the South American cases, see Tapia-Valdés, SEGURIDAD NACIONAL E INSEGURIDAD LABORAL, in SINDICALISMO Y REGIMENES MILITARES EN ARGENTINA Y CHILE (CEDLA 1982). See also the rather critical studies of the bureaucratic-authoritarian model and the corporatist model respectively contained in Collier, supra note 49, and in AUTHORITARIANISM AND CORPORATISM IN LATIN AMERICA (J. Malloy ed. 1977).

60. The analysis includes a regime's historical background, its political praxis, and millenarian nature.

61. The characteristics that were borrowed from Leninist theories include primarily the notions of sovereign dictatorship, permanent state of emergency, and internal enemy. On the juridical-political nature and characteristics of the NASEDO regimes, see Tapia-Valdés, EL TERRISMO DE ESTADO, supra note 26, at ch. VI.

62. See Luckham, supra note 6; Tapia-Valdés, EL TERRISMO DE ESTADO, supra note 26; M. WOLPIN, MILITARY INDOCTRINATION AND THE UNITED STATES IMPERIALISM (1973).

The Brazilian armed forces developed the most sophisticated version of national security
B. Threat Perception

In the inward-oriented model, the military seizure of the state generally follows a deep domestic political crisis that the government could not control because of the acute politicization and polarization of the people. Usually, the government has been polyarchycal or near-polyarchycal, a fact which is often cited to demonstrate the impracticality of the consensual government for crisis management.\(^6\)

NASEDO practitioners espouse the view that the reasons for such a political crisis are related to the existence of an “internal enemy,” whose goals, at the domestic and international levels, have a foreign inspiration. This internal enemy does not present a military threat. Rather, as a foreign-inspired enemy, he is an “alien,” devoted to perverting the society politically and morally and to destroying the state. The society in turn, weakened by the criticisms of the enemy and by the openness and liberalism of its values, is viewed as ill-equipped to overcome this hegemonic crisis. Thus, the immediate goal, the military-political project, is to discipline the polity, so as to enable it to identify and eliminate this internal enemy and to secure the survival of the state.\(^6\)

Counter-insurgency tactics are applied to control the political arena. Political parties and political activities are prohibited and the former ruling elites are deposed, and in many instances, assassinated. At the beginning of the military regime, there may exist an appearance of a quasi-civil strife situation. After a short period of military operations involving ruthlessly repressive tactics, however, the military achieves total political control of the country. Nevertheless, the garrison state will continue to maintain the illusion that it is waging a dangerous war within the country’s borders.\(^6\) Communist insurgency, native insurgency, and even simple pro-democratization movements are equally labeled as internal threats to security, and equally delegitimized as doctrine. Other South American armies followed the Brazilian mode with local adaptations. McCann, *The Brazilian Army and the Problem of Mission, 1939-1964*, 12 J. LATIN AM. STUD. 107 (1980). See also Tapia-Valdés, *El terrismo de estado*, supra note 26, at 105 and the bibliography cited therein.

\(^6\) Considered as a form of “modern Praetorianism” as described by Perlmutter, “the modern military challenges legitimacy [of the democratic authority] and offers a new type of authority.” A. PERLMUTTER, supra note 32, at 93 (emphasis in the original). In other words “the praetorian condition is identified with the absence of electoral and political support procedures necessary for the establishment of authority.” Id.

\(^6\) Falk, supra note 57, at 208.

\(^6\) In this way, the internal enemy continues to play a dynamic and legitimizing role for continuance of the garrison state.
A Typology of National Security Policies

political adversaries.\textsuperscript{66}

It is not easy to determine how actual or imagined are the threat and the enemies that the regime has to face.\textsuperscript{67} Ultimately, the justification of the society as a war system requires an ever present internal enemy, so that such an enemy will be created should he not exist in practice. Regardless of any lip service the NASEDO may pay to restoring a new kind of protected, authoritarian, or non-naive democracy, ultimately the real internal enemy is the democratic man.

C. Definition of Permanent National Objectives

In inward-oriented national security states, the definition of permanent national objectives becomes a matter of military affairs. By judiciously combining the constitution with strategic objectives, the garrison state elite is able to characterize its political agenda as a list of goals, values, and interests to be achieved and preserved for the good of the whole nation. This set of objectives is usually synthesized in the binomium “development-security.” Allocation of funds is skewed heavily toward military expenses, which support the enlarged and bureaucratic police-military national security establishment. This demonstrates that the actual priority is accorded security, and that development merely follows from it.

The usually official military discourse\textsuperscript{68} suggests the following principles from which permanent national objectives of the NASEDO will directly derive:

1. securing the unity and survival of the military institutions;
2. securing the autonomy of the military institution with regard to any particular social sector or class or political body;
3. attributing to the elite an exclusive authentic national representativeness;
4. millenarian and revolutionary approach declaring an end to a period of turmoil and decadence and the beginning of a new era;
5. conception of a missionary role regarding the protection of the

\textsuperscript{66} That enemy is qualified as a “dirty” one, a fact which will directly determine the attitudes of the ruling military elite with regard to human rights issues.

\textsuperscript{67} On the one hand, more than attacking actual enemies, the regime prevents, through different terroristic tactics, the development and organization of any significant opposition. The goal is to “nip in the bud” all kinds of dissidence, and to give to the society a structure and an ideology so homogeneous that pluralism disappears as a socio-political problem. On the other hand, the socio-economic policies and the anti-political tactics will tend to gradually broaden the range of the oppositionist forces.

state couples with the national security experts' definition of national values and goals;

6. permanent supervisory role of the governmental process and political arena;

7. adoption of economic policies which will secure the existence of surpluses to support the security needs;

8. aggrandizement of the international personality and presence of the nation state.

Under this type of national agenda the state takes a clear ideological path, enabling the rulers first, to affirm their own identity, and second, to identify the internal enemy as a function of the opposition against the militarily defined national goals. In short, the military has created a political climate where neither the good nor the bad are subject to doubts and compromise.

The actual major goals are securing the survival of the state and achieving political stability by controlling and orienting social change in ways which ensure the permanence of the military's rule. In this way, the new political-military doctrine rationalizes and legitimizes the prolonged control of the country by the armed forces.69

D. Rank of National Security Policies

Although national security remains the exclusive province of the military, it obtains the assistance of civilian technocrats from industry and finance to coordinate national security policy with foreign, economic, social, and cultural policies. The civilians are given a mandate to modify previous economic policies70 so as to meet national security needs. The military requires that surpluses be expended on security needs. This focuses the economic sector to proceed according to methods which allow quick accumulations of financial resources.71 Even if the military allows the private sector to plan in areas in which the military

69. Whether in the capacity of Commanders-in-Chief, or as National Security Council, the military retains control over permanent national objectives, their implementation, and the determination of how, why, and when such objectives are in jeopardy. Perceiving itself above social classes, parties, and groups of contingent interests, the military is distrustful of actual or significant civilian participation in the definition of national objectives.

70. In most of the known cases, those former policies were tailored to the needs of late-capitalist regimes in the process of industrial development and have pursued monetarist models to face crisis situations, to introduce structural changes, and to develop the economy. On the influence and functionality of the monetarist doctrines of the Chicago School and other theses of the neo-conservative doctrines for the ruling military groups, see Tapia-Valdés, supra note 59.

71. The very same economic policies seem to favor capitalist sectors other than the industrial one, except when this sector has already a size and competitiveness transforming it in the central dynamic sector. This fact can be a major explanation of the difference of
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is not competent, all of the national policies must be designed to coincide with the national security policy. In other words, despite the seemingly strong influence of some civilian sectors and of the profits that some of them can realize from specific economic measures, ultimately any field of policy is under the control of the military rulers. The latter are free to change the rules of the game whenever national security interests demand that other views and priorities prevail.

E. Autonomy of the National Security Establishment

The NASEDO regime engenders the alienation of the military organization from the ruling civilian classes. The military institution can imprint its principles of organization and system of values on all social processes and relationships. Moreover, military leaders are free to select their advisors and supporters from the many private sectors willing to accept their rule. This power effectively forestalls the capacity of the civil society to organize mass movements. Ultimately, this results in no group being in a position to actually influence the decision-making processes against the will of the military rulers.

Within this context, the concept of the dual state is clearly applicable. Together the military government and the large internal security bureaucracy form a prerogative state, which can exercise, without effective counterbalancing by other bodies, unilateral political control over actual or potential internal enemies. This prerogative state is beyond and above the law.

In all other matters considered to be technical, a normative state exists. Bureaucrats and civilians perform their duties and exercise their rights according to the established laws. Nevertheless, this normative state remains subordinate to the needs of national security. When a problem evolves into a political or social class conflict, the prerogative state will take control of the situation.

economic policies pursued, on the one side, by the Brazilian military, and on the other, by the Argentinean, Chilean, and Uruguayan regimes.

72. For example, education, culture, mass-media, and employment policies are usually addressed to upgrade the levels of control and self-discipline, as well as to indoctrinate the population in new values, attitudes, and behaviors.

73. On the "alienated" nature of this type of military regime, see Kucuk, supra note 22, at 150-52.

74. See supra note 61. See also E. Fraenkel, The Dual State: A Contribution to the Theory of Dictatorship (1941); A. Wolfe, The Limits of Legitimacy, ch. 6 (1977).

75. See generally E. Fraenkel, supra note 74.

The area of the courts' jurisdiction clearly illustrates the military government's autonomy regarding the law and the powers of other bodies. Not only do courts usually perform a legitimizing role with regard to the dictatorship, they also undergo a critical curtailment of
F. *Human Rights Claims*

Under NASEDO regimes, "an internal security bureaucracy, which includes a network of spies and informers to penetrate all parts of society and often to reach overseas to control exile activity, emerges and grows." The intelligence apparatus, which, besides gathering and analyzing information, has the capacity to make decisions and implement them directly, operates upon two premises. First, the enemy is a "dirty" one, meaning that no rules of due process of law, and not even laws of war, need be applied to him; and second, that the moral issue linked to the violation of human rights is merely a weapon used by external and internal enemies to hinder national security policies. These premises provide a justification for NASEDO elites criminalizing the whole political arena by outlawing political opposition and prohibiting any meaningful political activities. The number of potential targets of national security policies amounts to literally masses of the population.

Within the above described stage the usual offenses against human rights are linked to the right of life, physical integrity, personal freedom, freedom of speech, etc. But aside from violations of these fundamental rights, one cannot fail to consider violations which affect essential social rights whose absence can foster a genocidal situation. This is manifested in the pauperizing impact of the socio-economic policies usually enforced by this kind of regime, which besides high rates of unemployment and low salary levels, forbids any protest on the part of the workers. Thus, the scope of the NASEDO offenses against fundamental rights might be better described as a situation in which, from the point of view of the rulers, rights and freedoms do not exist. In other words, the individual has no inherent rights: the state is the gracious grantor of rights and freedoms.

Domestic court protection of human rights has been almost non-existent in this type of regime. Aside from sporadic instances where internal pressures have prevented particular blatant violations, NASEDO regimes have carried on relatively unhampered. Ultimately, they have been a painful illustration of the importance of international institu-

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A Typology of National Security Policies

tions and organizations as a final form and force of human rights protection.

More than in any other case, the illegitimacy of national security claims can be presumed under the NASEDO type. The inward oriented national security policy can be characterized by its actual abrogation of human rights, a fact that cannot be shunned by cloaking it with a claim that it is merely a matter of domestic jurisdiction or internal affairs.

VII. Legitimizing Conditions for National Security Claims

If a crisis of human rights exists where the new notions of national security are applied, it is because national security has put democracy itself in jeopardy. The task, therefore, is to make national security compatible with democracy and its fundamental tenet, the rule of law. Only a national security policy regulated by law can be legitimate.

Some authors have offered interesting suggestions regarding this problem. By partially borrowing from those authors, we will present here some ideas that might help thwart the threat national security states pose to human rights. Our solutions are intended to prevent the use of fancied emergencies for political purposes; to protect the normal jurisdiction of the ordinary domestic tribunals on human rights problems; and to include elected public officials in the formulation of national security policy if actual external war occurs. In brief, the suggestions aim to preserve the effectiveness of the rule of law.

In our view, a sound national security policy should abide by the following principles:

1. Subjection of the national security policies and institutions to the fundamental laws of the land. This includes strict legal regulation of their organization, powers, and functions regarding internal security in peacetime.

2. Requiring national security operations to accord with national values and standards.

3. Personal liability for those in charge of national security institutions and operations for the crimes or abuses committed in the performance of their functions.

4. Except in case of martial law, elimination of any special jurisdic-

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tion or procedure, and full jurisdiction of the ordinary domestic courts to adjudicate all cases of alleged threats against internal security.

5. Where a state of emergency is constitutionally declared:
   (a) There must be an actual or imminent threat. The government (controlling political body) must exhibit sufficient proof.
   (b) The government must release exact information about the measures taken.
   (c) Any such measures must be temporary.
   (d) Any derogation of rights must be proportional to the extent of the threat.
   (e) Certain "derogation-proof" rights must not be abridged.
   (f) There must be automatic view of the derogations of rights. Such review should necessarily extend to the merits of the measure in each case.

6. Granting of a supervisory role to international institutions and courts upon domestic measures which could violate human rights, in the event the domestic courts fail to protect them.

As a matter of course, the proposed measures are applicable only within a polyarchy or near-polyarchy type or political regime. It would be naive to pretend that such measures could protect human rights within a garrison state. Ultimately, however, it is only by restoring democracy that those violations will be stopped.

Failure to make democracy and national security compatible and to put under control a strategy supposedly directed to protect democracy can make democracy worthless to live with and to fight for.
## A Typology of National Security Policies

<table>
<thead>
<tr>
<th>National Security Type</th>
<th>“Outward Oriented”</th>
<th>“National Securitism”</th>
<th>“Inward Oriented”</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. POLITICAL SETTING</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. <em>Level of Pluralism</em></td>
<td>Polyarchy</td>
<td>Near Polyarchy,</td>
<td>Authoritarian/</td>
</tr>
<tr>
<td></td>
<td></td>
<td>primarily formalistic;</td>
<td>“Garrison State”</td>
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<tr>
<td></td>
<td></td>
<td>very little actual</td>
<td>(NASEDO); very little</td>
</tr>
<tr>
<td></td>
<td></td>
<td>pluralism; no consensus</td>
<td>pluralism: military elite</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>is isolated from</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>dominant social group</td>
</tr>
<tr>
<td>2. <em>Communication Channels</em></td>
<td>Free and open</td>
<td>Closed off to a large extent</td>
<td>Closed; political opposition outlawed</td>
</tr>
<tr>
<td>3. <em>Regime’s Legitimacy</em></td>
<td>Rational-formal</td>
<td>A few checks but open debate foreclosed</td>
<td>Delegalization of the political process</td>
</tr>
<tr>
<td></td>
<td>Checksbalances</td>
<td>A kind of “Emergency Power” to grant to the National Security Establishment</td>
<td></td>
</tr>
<tr>
<td>4. <em>Likelihood of Enforcement of Rule of Law</em></td>
<td>Very good</td>
<td>Poor; only in extreme circumstances</td>
<td>Practically none</td>
</tr>
<tr>
<td><strong>B. THREAT PERCEPTION</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. <em>Internal/External</em></td>
<td>External</td>
<td>Both</td>
<td>Internal enemy with “foreign inspiration”</td>
</tr>
<tr>
<td>2. <em>Kind of Threats</em></td>
<td>Border problems, blockades, attacks on allies</td>
<td>Global dimensions; continuous threat (“Cold War”)</td>
<td>Alien influence from without: pervert morals</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Transnational groups; destabilization</td>
<td>Liberal Society ill-equipped to deal with alien influence</td>
</tr>
<tr>
<td>3. <em>Real or Imagined</em></td>
<td>Actual, imminent or potential</td>
<td>Distorted perceptions of facts; “Hysteria”</td>
<td>No actual civil strife—military has eliminated opposition; if threat does not exist, one will be created</td>
</tr>
<tr>
<td>4. <em>Response by National Security Establishment</em></td>
<td>State of Emergency temporary and regulated</td>
<td>Channel development toward realizable goals through a well-trained internal security establishment—a “National Security Culture”</td>
<td>Discipline polity to enable National Security; establishment to identify the “internal enemy”; counter-insurgency tactics; outlaw political parties and activities</td>
</tr>
<tr>
<td>National Security Type Variable</td>
<td>I. &quot;Outward Oriented&quot;</td>
<td>II. &quot;National Securitism&quot;</td>
<td>III. &quot;Inward Oriented&quot;</td>
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<tr>
<td>C. PERMaNENT NATIONAL OBJECTIVES</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Are the interests “national” or primarily those of an individual or group?</td>
<td>Pluralism determines Permanent National Objectives; Permanent National Objectives are pluralism and institutionalized political conflict; National Security is not a priori Permanent National Objective</td>
<td>There is a de jure (national) permanent national objective and a de facto permanent national objective (i.e. &quot;war system&quot; plus &quot;National Security Culture&quot; aimed to eliminate disruptive forces); there is no formal power to change permanent national objective but de facto power to national security establishment</td>
<td>A matter of military affairs; however, characterized as being for the good of the nation; budget allocations imply that actual priority is accorded security—an end in itself</td>
</tr>
<tr>
<td>2. To what extent does the national security establishment intervene in the determination of the permanent national objectives?</td>
<td>National Security Establishment has little involvement. The pluralistic nature of society is protected.</td>
<td>National Security Establishment can redefine permanent national objectives by invoking principle that democracy must yield when the state's survival is at stake</td>
<td>Military clearly defines permanent national objectives; they create a &quot;black and white&quot; political climate to support their objectives</td>
</tr>
<tr>
<td>D. RANK OF NATIONAL SECURITY POLICY</td>
<td>National security concept controls in the foreign policy area but, in other areas, particularly the economic, the policymakers assign priority to domestic policies oriented to meet internal social needs; national security, however, controls internally if there is an actual or imminent internal threat</td>
<td>Perception of &quot;global threat&quot; elevates national security as a determinant of policy in nearly all other areas; war preparation replaces the quest for human dignity, welfare and peaceful social life is the goal of the social productive effort</td>
<td>All national policies, even if planned by civilian experts (where the military lacks the expertise), must coincide with national security goals; the National Security establishment is free to change policies at will</td>
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<td>E. DEGREE OF AUTONOMY OF NATIONAL SECURITY ESTABLISHMENT</td>
<td>Yes</td>
<td>No. &quot;Need&quot; for secrecy leads to a centralization of policy-making apparatus; very flexible legal rules allow it considerable autonomy</td>
<td>“Prerogative State”—above and beyond the law, and a &quot;Normative State&quot;—bureaucracy</td>
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A Typology of National Security Policies

<table>
<thead>
<tr>
<th>National Security Type Variable</th>
<th>I. &quot;Outward Oriented&quot;</th>
<th>II. &quot;National Securitism&quot;</th>
<th>III. &quot;Inward Oriented&quot;</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Is it independent of other administrative bodies?</td>
<td>No; subject to checks and balances of Legislature, Judiciary and Public Opinion</td>
<td>Yes; unless they perform particularly &quot;outrageous&quot; acts</td>
<td>Yes; alienated from civilian ruling groups</td>
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<td>3. Does it have supervisory power over administrative bodies?</td>
<td>No; it is an advisory rather than a decision-making body</td>
<td>Yes; unilateral control over other bodies; &quot;censors&quot; of society</td>
<td>Yes; especially regards the regular court's jurisdiction</td>
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<tr>
<td>4. Is there any actual control (political or judicial) of national security policies?</td>
<td>Yes; civilians in control in many instances</td>
<td>Only if acts are particularly outrageous</td>
<td>No</td>
</tr>
</tbody>
</table>

F. HUMAN RIGHTS

1. Kinds of Violations
   - Abuses of constitutional authority by the police authorities
   - Invasions of privacy (wiretaps, burglary), entrapment, forgery, illegal seizure, defamation, false arrest, restraint of freedom of movement, passport denial
   - Same as National Securitism; also outlawed political opposition, "black operations" against fundamental rights (life, physical integrity, personal freedom) and "social" rights (trade unionism, etc.); In sum: rights and freedoms do not exist

2. Possibilities for Protection of These Rights
   - Very good; emergency powers exercised within a constitutional context
   - Only possibility is courts because of executive compliance with National Security Establishment and inability of legislature to control
   - International Tribunals only available forum

3. Extent of Due Process
   - Emergency powers do not extend to habeas corpus or the normal functions of regular branches of government; regular courts available
   - Courts may be available
   - Nonexistent