

Original article

## Poland's defense preparations in the context of allied obligations Legal, institutional, and instrumental aspects

Marian Kuliczkowski 

Faculty of National Security, War Studies University, Warsaw, Poland,  
e-mail: m.kuliczkowski@akademia.mil.pl

### INFORMATION

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### ABSTRACT

Poland's accession to the North Atlantic Treaty Organization in 1999 was one of the most critical events in the Third Republic history. The integration process with NATO's political and military structures is long-term and requires the constant commitment of all state structures and institutions. Participation in the joint creation of the North Atlantic Treaty Organization Member States' defense force means, under Article 3 of the Treaty, the states' maintenance and development of individual and joint capacity to counter armed attack. Thereby Poland is also obliged to conduct defense preparations in the national dimension. It requires providing formal, legal, and organizational conditions for the country's functioning in the event of increasing the national defense readiness. Such conditions are necessary to perform tasks as part of national defense carried out on its territory and the territory of other states – the Members of the Alliance.

The content presented in this article attempts to present legal, institutional, and instrumental aspects of defense preparations in Poland in the context of allied obligations. They concern the need for all NATO Member States to maintain and develop individual and joint capabilities to counter an armed attack. Given the nature of the problem, it should be remembered that Poland's integration with NATO takes place both in the defense sphere and in economic, social, legal, and political matters.

### KEYWORDS

NATO, national security system, national defense system,  
national defense preparations, host nation support (HNS)



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## Introduction

Providing security to its citizens is one of the most important functions of every state. In modern times, national security should be understood as one of the basic areas of the state's functioning, aimed at ensuring not only the possibility of survival but, above all, enabling the

development and freedom to pursue national interests in a specific security environment by facing challenges, taking advantage of opportunities, reducing risk, and preventing all kinds of threats to its interests [1, p. 17].

Poland, operating in a complex international security environment, must remember to build its national security. For a sovereign and democratic state and an active subject of many international organizations (UN, OSCE, NATO, EU), the priority goal is to ensure sustainable national security. That is particularly important due to the geostrategic importance of Poland for international security and painful historical experiences.

The content presented in this article is an attempt to present the issues of defense preparations in Poland in terms of the need for NATO Member States to maintain and develop individual and joint capacity to resist an armed attack [2, Art. 3]. Taking into account the nature of the problem, it should be remembered that Poland's integration with NATO takes place both in the defense sphere and in economic, social, legal and political matters. The fundamental issue is the formal and legal conditions of national defense preparations in the context of constitutional obligations and allied obligations. They give rise to many tasks for Poland, including *host nation support* (HNS) and defense planning tasks, in a manner consistent with the principles and procedures adopted in the Alliance.

## **1. Formal and legal determinants of national defense preparations in the context of allied obligations**

Law is one of the most significant determinants of national security, which directly affects the functioning of the state and almost all entities within its territorial borders (national law) and the functioning of states and international entities within international relations (international law). In all cases, the law is a set of values and norms of behavior established as binding within specified spatial and temporal boundaries in relation to specific subjects of that law.

The last decade of the last century and the beginning of the 21<sup>st</sup> century were characterized by the introduction of new strategic (doctrinal) documents as well as many legal and normative acts in the area of defense preparations in our country. They defined, among others, the legal and organizational framework of the national defense system, including the scope, principles, and procedure of defense preparations. The reform of the "defense law" [3, p. 141-2] executed after 1989 resulted in a qualitative change unprecedented in Poland's post-war history in the field of national security, including national defense preparations.

It should be remembered that when discussing the legal aspects of state defense preparations, it is impossible to ignore international obligations and acts of international law that are binding on our country. They reveal many tasks for Poland in the field of defense preparations. The *acquis communautaire* of the North Atlantic Treaty Organization in matters concerning the rules of the foreign troops' stay on the territory of another state or defense planning, in a manner consistent with the principles and procedures adopted by the Alliance, should be emphasized. Joining NATO requires the preparation of formal, legal, and organizational conditions for the country's functioning in the event of increasing the national defense readiness. Such conditions are necessary to perform tasks as part of national defense carried out on its territory and the territory of other states – the Members of the Alliance. It should be stressed that Poland's integration with NATO takes place both in the defense sphere and in economic, social, legal, and political matters.

The analysis of the legal bases in the field of national defense preparations, in the context of allied obligations, should begin with the strategic (doctrinal) documents in force in this respect, which, without the characteristics of a legal act, constitute a kind of “core” for the applicable legal solutions within the state security and defense.

### **1.1. Strategic documents in the field of national security, including national defense preparations**

The basic strategic documents concerning the national security of the Republic of Poland, referring in many provisions to the national defense preparations, are *The National Security Strategy of the Republic of Poland* of November 5, 2014<sup>1</sup> and *Strategy of Development of the National Security System of the Republic of Poland 2022* of April 9, 2013<sup>2</sup>. It should be emphasized that the above-mentioned strategies differ in structure and have different legal bases<sup>3</sup>.

The National Security Strategy of the Republic of Poland is the most important document officially adopted by the state's authority, regarding security and defense of the country. It contains a system of assumptions and principles of the state's operation aimed at ensuring national security. It constitutes the official interpretation of Polish national interests, specifying at the same time Poland's strategic goals in the field of security and tasks for individual executive subsystems of the national security system. It was signed by the President of the Republic of Poland and has a stronger impact than previous strategic documents. It is an attempt at an integrated approach to national security issues and creates the basis for an orderly thinking about national security, taking into account both the external security conditions and internal conditions that make up the national security system.

The Strategy presents both the structure of the national security system and its five subsystems: national security management, defense, protection, social and economic responsible, in accordance with the adopted priorities of strategic activities in the field of security, for organizing and carrying out defense and protection activities and those in the sphere of social and economic security. It was determined that the preparation of the defense potential includes the development of diplomacy, the Polish Armed Forces, special services operating in the defense sphere and the industrial defense potential, and the area linking the defense subsystem with other subsystems is defense planning (point 115).

<sup>1</sup> It was approved by the President of the Republic of Poland pursuant to Art. 4a of the Act of November 21, 1967 on the universal obligation to defend the Republic of Poland (Journal of Laws of 2018, item 1459, as amended) [Ustawa z dnia 21 listopada 1967 r. o powszechnym obowiązku obrony Rzeczypospolitej Polskiej (Dz. U. z 2018 r., poz. 1459 z późn. zm.)].

<sup>2</sup> It constitutes an appendix to the Resolution No. 67 of the Council of Ministers of April 9, 2013 on the adoption of the *Strategy of Development of the National Security System of the Republic of Poland 2022* (Monitor Polski of 2013, item 377) [Załącznik do Uchwały Nr 67 Rady Ministrów z dnia 9 kwietnia 2013 r. w sprawie przyjęcia „Strategii rozwoju systemu bezpieczeństwa narodowego Rzeczypospolitej Polskiej 2022” (M.P. z 2013 r., poz. 377)].

<sup>3</sup> The *Strategy of Development of the National Security System of the Republic of Poland* was developed on the basis of Art. 4a of the Act of November 21, 1967 on the universal obligation to defend the Republic of Poland, and the *Strategy of Development of the National Security System of the Republic of Poland 2022* is one of the nine integrated strategies that specify the National Development Strategy 2020. The legal basis for the development of the National Development Strategy 2020 was the Act of December 6, 2006 on the principles of development policy (Journal of Laws of 2006, No. 227, item 1658, as amended) [Ustawa z dnia 6 grudnia 2006 r. o zasadach prowadzenia polityki rozwoju (Dz. U. z 2006 r. Nr 227, poz. 1658 ze zm.)].

The document presents the actions of the state necessary to achieve the defined interests and goals. It should be emphasized that the key strategic goals in the field of security defined in this document include, among others, the need to develop defense and protection capabilities adequate to the needs and capabilities of the state and increase its interoperability within NATO and the EU (point 12).

It has been correlated with the strategies of the North Atlantic Treaty Organization (NATO) and the European Union (EU) and with strategic documents creating a new system for managing the country's development. The Strategy states that the North Atlantic Alliance is the most important form of Poland's political and military cooperation with its allies, and the European Union supports Poland's socio-economic development and strengthens its position in the world. Poland's strategic activities will focus on activities aimed at consolidating NATO around the defense function, including strategic strengthening the eastern flank of the Alliance. They are aimed at the development of practical mechanisms of collective defense, in particular, shaping military capabilities adequate to the threats. Among Poland's strategic partnerships, cooperation with the United States of America is a priority. Poland will strive for the broadest possible US military presence in Europe, including Poland, and will support efforts to maintain American guarantees for the security of Europe. Moreover, it is in Poland's interest to improve strategic cooperation between NATO and the EU to strengthen political cohesion and increase operation efficacy (point 67).

The contents of the *National Security Strategy of the Republic of Poland* are developed in the *Political and Strategic Defense Directive of the Republic of Poland* and the *Strategy for the Development of the National Security System of the Republic of Poland*, implementing the long- and medium-term development strategy of the country. The implementation of its provisions is the responsibility of the ministers managing departments of government administration, heads of central offices, voivodes, local government bodies, and other entities whose competence includes matters related to state security (points 152 and 153).

The Strategy for the Development of the National Security System of the Republic of Poland 2022 has been included in the governmental system of managing the country's development<sup>4</sup>. For the first time, the strategy in the area of national security has been drawn up in conjunction with the socio-economic policy of the country and based on the methodology enabling the implementation of its intentions. It specifies the operating conditions and ways of enhancing the national security system. A special role in this system is played by entities responsible for external security (the diplomatic service, the Armed Forces of the Republic of Poland, special services), in connection with entities responsible for internal security. For this reason, the main area of interest of this Strategy will be focused on external and military security. The strategy is correlated with the most important strategic documents of the

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<sup>4</sup> The government plan to organize the development strategy, containing the concept of organizing the binding strategic documents implementing the medium- and long-term national development strategy, included the *Strategy of Development of the National Security System of the Republic of Poland 2022* among the nine integrated national development strategies. This solution creates an opportunity to strengthen the implementation layer of the strategy and give a new impetus to work related to the construction of an integrated national security system, in connection with the socio-economic development of the country.

North Atlantic Alliance and the European Union in the field of security – the NATO Strategic Concept and the European Security Strategy<sup>5</sup>.

The main goal of the *Strategy for the Development of the National Security System of the Republic of Poland 2022* is to strengthen the effectiveness and cohesion of the national security system, understood as a synergy of efforts by individual authorities, institutions, and state services responsible for state security to identify and eliminate sources, manifestations, and effects of threats to national security. One of the priorities adopted under the second objective “Strengthening the national defense capabilities” is the continuation of building a professional and modern Polish Armed Forces as well as cooperation with the Polish defense industry and the related research and development potential.

The area of interest of the Strategy has been limited to three basic executive subsystems – foreign affairs, defense, and special services. It was determined that defense is an area of national security, constituting the sum of all civil and military undertakings aimed at preventing and countering any potential threats to state security that could lead to a political and military crisis. To satisfy Poland's defense needs, the state's defense system is organized and maintained. Its efficiency is determined by the harmonious interaction of the control subsystem that forms it and the executive subsystems – military and non-military (p. 18).

When forecasting the development of the national security system in the medium-term perspective, it was assumed that it would be based on a comprehensive system of allied and bilateral security, synergistically connected with the developed state's civil and military potential. All these solutions should be related to the socio-economic growth and thus constitute an integrated system of national security. It will be further expanded based on its two basic elements: the **state defense system** and the **crisis management system** (p. 33). It was pointed out that having and developing an efficient and effective national defense system is necessary for the functioning of the state in a dynamic and complex security environment, in which there are military and non-military threats. On the other hand, ensuring the continuity of the functioning of the state in the conditions of a political and military crisis and during the war, as well as building a strong position of Poland in the international arena, especially in NATO and the EU, requires the possession of professional and modern Polish Armed Forces and the effective use of special services, administrative and administrative structures as well as economic and research potential (p. 52).

The document generally refers to the issues of national defense preparations, which are necessary to provide the survival and efficient functioning of the state, including effective support of the Polish Armed Forces and Allied Support Forces in the event of an external threat to state security and in time of war. The area has appropriate legal and organizational solutions. However, due to the dynamic nature of contemporary threats, changing economic conditions, and the process of professionalization of the Polish Armed Forces, it requires constant improvement. Optimization of defense preparations in Poland will be aimed at increasing their effectiveness, adequacy, coherence, and coordination of operations (p. 64). It should be emphasized that the Strategy sets out the priorities and directions of strengthening the capacity of the administrative and economic structures of the country to function in crisis

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<sup>5</sup> *The NATO Strategic Concept* (adopted at the NATO summit in Lisbon on November 19, 2010), *European Security Strategy, A Secure Europe in a Better World* (adopted at the meeting of heads of government in Brussels on December 12, 2003).

situations and to support the national defense, including, among others, the improvement of defense preparations in the scope of strengthening the industrial defense potential, developing host nation support (HNS) capabilities and improving civil-military cooperation (CIMIC), as well as developing systemic solutions regulating the area of civil defense.

## **1.2. Legal aspects of national defense preparations in the context of allied obligations**

The Poland's presence in NATO requires the preparation of legal and organizational foundations for the functioning of the state, while increasing defense readiness to perform defense tasks carried out on its territory, as well as on the territory of other states that are the Members of the Alliance. It should be borne in mind that legal issues are among the most important areas of Poland's integration with NATO, and the reform of defense law implemented after Poland's accession to NATO resulted in a qualitative change in the field of national security, including defense preparations, especially in the non-military area<sup>6</sup>. Both the mentioned and previously characterized strategic documents as well as legal and normative acts, which will be the subject of further considerations, have been developed and put into use. They defined, among other things, the legal and organizational framework of the national defense preparations in the context of allied obligations. They result in many tasks for Poland in matters concerning, inter alia, the rules of the stay of foreign troops on the territory of another state or defense planning, in a manner consistent with the principles and procedures adopted in NATO.

Defense preparations in Poland are carried out based on the applicable system of legal and normative acts. The system is in line with the constitutional legal order, and the sources of universally binding law are the Constitution, statutes, ratified international agreements and regulations, as well as acts of local law in the area of operation of the bodies that established them (Article 87 of the Constitution of the Republic of Poland).

### **The Constitution of the Republic of Poland of April 2, 1997**

(Journal of Laws of 1997 No. 78, item 483)<sup>7</sup>

It is the most essential legal act – a charter of civic rights and obligations and a certificate of the sovereignty and independence of the Polish State. As a basic law, it is the “highest” act of constitutional law, a set of legal norms defining systemic principles of the functioning of the state and the hierarchy of legal acts; citizens' rights, freedoms and obligations; the way the law is made; competences and method of appointing the highest state bodies and relations between state authorities and public administration. The Constitution not only presides over the acts of universally binding law but also the highest law of the Republic of Poland, and its provisions are directly applicable. The provisions of the Constitution define, inter alia, the material scope

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<sup>6</sup> The adoption by the Sejm on October 29, 2003 of the Act Amending the Act on the Universal Obligation to Defend the Republic of Poland and Amending Certain other Acts (Journal of Laws of 2003, No. 210, item 2036) [Ustawa o zmianie ustawy o powszechnym obowiązku obrony RP oraz zmianie niektórych innych ustaw (Dz. U. z 2003 r. Nr 210, poz. 2036)] was important in this regard. The amendment equaled the text of the Act in volume and contained many amendments that would organize and adapt the nomenclature and competences of public authorities and administration in the field of defense to the current legal order in Poland. Moreover, many delegations for the Council of Ministers and the Minister of National Defense to issue executive regulations were changed (and new ones were introduced).

<sup>7</sup> Konstytucja Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 roku (Dz. U. z 1997 r. Nr 78, poz. 483).

and competence of individual bodies of public authority and administration and citizens in the field of national defense. The Constitution assigns a special role in this respect to the Parliament (Sejm and Senate), the President of the Republic of Poland, and the Council of Ministers<sup>8</sup>.

The provisions of Chapter XI of the Constitution of the Republic of Poland concerning "states of emergency" are imperative for the interests of national security and defense. Article 228 stipulates that in situations of special threats, if ordinary constitutional measures are insufficient, an appropriate state of emergency may be introduced: martial law, state of emergency, or a state of natural disaster – on the basis of the act, by way of an ordinance (subject to additional public disclosure).

The provisions of the Constitution, in the context of allied obligations, define the rules for the use of the Polish Armed Forces outside Poland and for the stay of foreign troops on the territory of our country, which is possible under separate laws or international agreements (Art. 117). The legal framework in this respect, apart from the *Alliance Strategic Concept*, is defined in the *Agreement between the Parties to the North Atlantic Treaty concerning the Status of their Forces* (NATO SOFA) signed in London on June 19, 1951<sup>9</sup> and the *Agreement between the Parties to the North Atlantic Treaty regarding the status of their Forces and its Additional Protocol*, signed in Brussels on June 19, 1995 (PfP SOFA). The legal act adjusting Polish law to the provisions of the SOFA is *the Act of September 23, 1999, on the rules of the stay of foreign troops on the territory of the Republic of Poland and the rules of movement through this territory, together with the executive regulations issued on its basis*<sup>10</sup>. The provisions of the above-mentioned international agreements formed the basis for the conclusion in 2005 of the *General Agreement (MOU) between the Government of the Republic of Poland and the Supreme Command of the NATO Joint Armed Forces in Europe and the Headquarters of the Supreme Allied Commander for Transformation, on the provision of host nation support for the operation NATO conducted on our territory*.

The *General Agreement (MOU)*, adopted by the Resolution of the Council of Ministers No. 200/2005 of July 28, 2005, constitutes a framework document and creates the conditions

<sup>8</sup> The position of the President of the Republic of Poland and the Council of Ministers in the national security system is determined by the principle of separation of powers and the principle of dualism of the executive power. The powers of the President of the Republic of Poland and the Council of Ministers regarding security and defense are set out in the provisions of the Polish Constitution and statutes. It follows from the constitutional principle of the operation of public bodies that while fulfilling the above-mentioned tasks, both the President of the Republic of Poland and the Council of Ministers act according to the principles defined in the Constitution and statutes.

<sup>9</sup> SOFA (Status of Forces Agreements) regulates the relationship between the host nation and the sending states with regard to the stay and performance of tasks by the armed forces of the sending states in the territory of the host nation. It regulates issues related to the entry and stay of foreign troops (or their transit through a given country) and issues of criminal jurisdiction, civil claims, tax and customs exemptions, as well as the rules of using healthcare.

<sup>10</sup> This applies to the following regulations: Rozporządzenie Rady Ministrów z dnia 28 sierpnia 2000 r. w sprawie wykonania niektórych przepisów ustawy o umowach międzynarodowych (Dz. U. Nr 79, poz. 891); Rozporządzenie Ministra Finansów z dnia 8 maja 2002 roku w sprawie zwrotu podatków od towarów i usług siłom zbrojnym Państw Stron Traktatu Północnoatlantyckiego (Dz. U. z 2002 r. Nr 66, poz. 601) and Rozporządzenie Ministra Finansów z dnia 27 sierpnia 2003 roku w sprawie zwolnień, zasad i trybu zwrotu podatku od towarów i usług oraz podatku akcyzowego od paliw, olejów i smarów używanych przez siły zbrojne Państw Stron Traktatu Północnoatlantyckiego oraz przez siły zbrojne Państw-Stron Traktatu Północnoatlantyckiego uczestniczących w Partnerstwie dla Pokoju (Dz. U. Nr 152, poz. 1485).

necessary for the rapid entry and development of allied forces on the territory of the host country. Poland fully undertook to provide support to the allied armed forces, but, which should be emphasized, only if it is available and within the limitations resulting from the circumstances. Such support will most often include, among others: water and food, fuel, electricity, or household services. As a rule, it does not apply to such matters as the supply of ammunition or spare parts for military equipment.

**Act of November 21, 1967 on the universal obligation to defend the Republic of Poland**  
(Journal of Laws of 2018, item 1459, as amended)<sup>11</sup>

It is a basic legal act, often referred to as the “defense constitution”, regulating the area of national defense. Pursuant to the provisions of Art. 2 of the Act “strengthening the defense of the Republic of Poland, preparing the population and national property in the event of war, and performing other tasks as part of the general obligation of defense, belongs to all government authorities and administration as well as other state bodies and institutions, local government bodies, entrepreneurs and other organizational units, social organizations, as well as every citizen to the extent specified in the acts”.

The Act defines systemically the areas of state defense preparations, including tasks resulting from allied obligations. In the provisions of Art. 6 (1) of the Act, the tasks of the Council of Ministers, performed as part of ensuring the external security of the state and exercising general management in the field of defense, were specified, including the implementation of those resulting from the duties of the HNS. On the other hand, the scope and procedure of these preparations carried out by public administration bodies was defined by the Council of Ministers by way of executive regulations to the Act (Article 6 (2)). The above-mentioned regulations of the Council of Ministers defined the legal framework for the participation of authorities and public administration as well as entrepreneurs in the field of national defense preparations, including the implementation of tasks performed for the benefit of allied forces.

The analysis of the above-mentioned regulations of the Council of Ministers presented below takes into consideration the issues of planning and implementation of national defense preparations, including tasks performed for the benefit of allied forces.

**Regulation of the Council of Ministers of January 13, 2004, on general principles of performing tasks under the general obligation to defend**  
(Journal of Laws of 2004, No. 16, item 152, as amended)<sup>12</sup>

The provisions of the Regulation establish general rules for the performance of tasks under the general duty of defense by ministers, voivodes, voivodship marshals, starosts and voits, mayors and presidents of cities, as well as entrepreneurs and other organizational units and social organizations. Ministers and voivodes were indicated as authorities responsible for creating organizational and technical conditions for planning and implementing defense tasks.

The aforementioned tasks include creating organizational and technical conditions for planning and implementing defense tasks; coordinating the planning and implementation of defense

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<sup>11</sup> Ustawa z dnia 21 listopada 1967 r. o powszechnym obowiązku obrony Rzeczypospolitej Polskiej (Dz. U. z 2018 r., poz. 1459 z późn. zm.).

<sup>12</sup> Rozporządzenie Rady Ministrów z dnia 13 stycznia 2004 roku w sprawie ogólnych zasad wykonywania zadań w ramach powszechnego obowiązku obrony (Dz. U. z 2004 r. Nr 16, poz. 152 z późn. zm.).



tasks within government administration departments and in voivodships; cooperation of public administration bodies, entrepreneurs, other organizational units, and social organizations in the planning and implementation of defense tasks and ensuring the conditions for the transmission of information and decisions regarding the planning and implementation of defense tasks (§ 1 (1)). They should ensure, among others, efficiency, continuity, and timeliness of actions in the government administration department and in the voivodship when increasing the national defense readiness; performing defense tasks, including their launch and development of structures and systems created for their realization; the continuity of the activities of the bodies and their executive structures as well as the performance of tasks for the Armed Forces of the Republic of Poland and allied forces, and the security of defense tasks (§ 3 (2)).

**Regulation of the Council of Ministers of June 15, 2004, on the conditions and procedures for planning and financing tasks performed as part of national defense preparations carried out by government administration bodies and local government bodies**

(Journal of Laws No. 152, item 1599, as amended)<sup>13</sup>

The objective and subjective scope of the Regulation covers the planning and financing of defense tasks and defines the basic concepts of defense planning, including: defense planning; operational planning; defense programming; defensive reviews (§ 2). The Regulation is the legal basis for the development of operational planning documents in the state. Moreover, it defines the principles and mode of defense programming, which is conducted based on the arrangements adopted in the national security strategy and in the guidelines of the *Council of Ministers for programming defense preparations of the Republic of Poland* [4] for a ten-year planning period.

In accordance with the provisions of the Regulation in question, material and financial undertakings in the field of improving and maintaining the structures of the national defense system, including those related to the implementation of tasks resulting from the obligations of the host nation, are included in defense planning documents<sup>14</sup>. Including projects related to the preparation for the implementation of the HNS tasks in the entire defense planning process means that elements related to the creation of conditions for their implementation are contained in all documents at the executive level.

<sup>13</sup> Rozporządzenie Rady Ministrów z dnia 15 czerwca 2004 r. w sprawie warunków i trybu planowania i finansowania zadań wykonywanych w ramach przygotowań obronnych państwa realizowanych przez organy administracji rządowej i organy samorządu terytorialnego (Dz. U. Nr 152, poz. 1599 z późn. zm.).

<sup>14</sup> As part of defense planning, the following plans and programs are prepared: *Defense Response Plan of the Republic of Poland (Plan Reagowania Obronnego Rzeczypospolitej Polskiej)* and *Operating Plans (Plan Operacyjny Funkcjonowania)*, developed in government administration departments, by voivodes, local government administration and by entrepreneurs; *Economy Mobilization Program (Program Mobilizacji Gospodarki)*, developed by the Minister of National Defense in cooperation with the ministers responsible for the economy, agriculture, health, home affairs, justice and the Head of the Internal Security Agency; *Program of Non-military Defense Preparations of the Republic of Poland (Program Pozamilitarnych Przygotowań Obronnych RP)*, which is drawn up by the Minister of National Defense in consultation with the competent ministers, central government administration bodies and heads of organizational units subordinate to and supervised by the Prime Minister or the minister, who are administrators of budget parts and with voivodes, and non-military programs defense preparations of government administration departments, central offices of government administration bodies and heads of organizational units subordinate to and supervised by the Prime Minister or the minister and voivodships.

### **Regulation of the Council of Ministers of April 27, 2004 on the preparation of the national security management system**

(Journal of Laws of 2004, No. 98, item 978)<sup>15</sup>

The provisions of the ordinance define the organization and the procedure for the preparation of the national security management system, including national defense, and the conditions for the functioning of public authorities in management positions. During the preparation of this system, the undertakings resulting from international agreements with which the Republic of Poland is bound are taken into account in the scope of providing appropriate support to allied forces (§ 4 (4)).

### **Regulation of the Council of Ministers of September 21, 2004, on national defense readiness**

(Journal of Laws of 2004, No. 219, item 2218)<sup>16</sup>

The provisions of the Regulation define the states of national defense readiness, their types, the conditions and procedure for introducing these states, as well as the tasks performed in specific states. There are no explicit provisions regarding the implementation of tasks for the allied forces. However, it indicates that the tasks specified in the *Defense Response Plan of the Republic of Poland* are carried out regarding the priority of tasks performed for the benefit of allied forces (§ 6 (2)). Due to the fact that operational plans developed in government administration departments, by voivodes, local government administration, and entrepreneurs, include among their operational tasks those that are directly or indirectly related to activities for the allied forces, to enhance the defense readiness of the Republic of Poland is linked to the implementation of tasks arising from the responsibilities of the host nation.

Under the Regulation, a system of constant duty is also created, the main task of which is to ensure the continuity of transferring the decisions of the bodies authorized to initiate the implementation of the tasks included in the *Defense Response Plan of the Republic of Poland*. It should be noted that increasing the defense readiness of the Republic of Poland is associated with the implementation of specific operational tasks resulting from the obligations of the host state, carried out for the benefit of allied forces.

### **Regulation of the Council of Ministers of August 3, 2004 on the preparation and use of communication systems for national defense purposes**

(Journal of Laws of 2004, No. 180, item 1855)<sup>17</sup>

The provisions of the Regulation define the rules and procedure for the preparation and use of communication systems for defense purposes. It was indicated that they should ensure cooperation with the communication systems of allied countries, as well as take account of the conditions of telecommunications and postal activities reported by the Ministry of National Defense during a threat to state security and during war by units of the Armed Forces and allied states temporarily staying on the territory of Poland – based on international to

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<sup>15</sup> Rozporządzenie Rady Ministrów z dnia 27 kwietnia 2004 r. w sprawie przygotowania systemu kierowania bezpieczeństwem narodowym (Dz. U. z 2004 r. Nr 98, poz. 978).

<sup>16</sup> Rozporządzenie Rady Ministrów z dnia 21 września 2004 r. w sprawie gotowości obronnej państwa (Dz. U. z 2004 r. Nr 219, poz. 2218).

<sup>17</sup> Rozporządzenie Rady Ministrów z dnia 3 sierpnia 2004 r. w sprawie przygotowania i wykorzystania systemów łączności na potrzeby obronne państwa (Dz. U. z 2004 r. Nr 180, poz. 1855).

which Poland is a party. The issue of communication and its preparation for the fulfilment of tasks resulting from the obligations of the host state is also included in the Act of July 16, 2004 – Telecommunications Law (Journal of Laws of 2004, No. 171, item 1800).

**Regulation of the Council of Ministers of February 3, 2004 on the conditions and method of preparation and use of transport for the defense needs of the state, as well as its protection in a crisis and during the war, and on the competent authorities in these matters**

(Journal of Laws of 2004 r. No. 34, item 294)<sup>18</sup>

The provisions of the Regulation stipulate that the minister responsible for transport, as part of the coordination of the preparation and operation of transport for the national defense needs, undertakes appropriate actions in the scope of concluding and executing international agreements on cooperation in the field of transport development and ensuring the transport needs of the Armed Forces and allied support forces implemented under the responsibility of the host country (§ 4 (1) and 2 (5)). The minister responsible for transport is also liable for coordinating and supervising tasks related to the preparation of road infrastructure for the national defense needs and the implementation of technical and defense requirements in this area. That applies, among others, to the construction and maintenance of road border crossings to be used by the Armed Forces and allied forces, in accordance with international agreements (§ 23 (2) (5)).

Providing sea transport for the defense needs of the state requires the Minister of National Defense to prepare conclusions on the determination of areas and water bodies through which the Armed Forces and allied forces may be moved (§ 12). The minister responsible for maritime economy is liable for its preparation, in the field of transshipments and sea transport of the Polish Armed Forces and allied forces. On the other hand, the voivodes are responsible for the organization and commissioning of ferry crossings for the Armed Forces and allied forces at agreed places and times, in consultation with the Minister of National Defense.

The implementation of the provisions of this Regulation is of fundamental importance for the fulfilment of tasks related to securing the movement of allied forces on the territory of Poland. It should be emphasized that the stay and movement of allied forces on the territory of Poland is related to the use of transport infrastructure, means of transport, and communication.

**Regulation of the Council of Ministers of June 27, 2012, on the conditions and method of preparation and use of medical entities for the defense needs of the state and the bodies competent in these matters**

(Journal of Laws of 2012, item 741)<sup>19</sup>

The Regulation specifies the conditions and method of preparation and use of medical entities for the defense needs of the state and the competence of the organs in these matters. The creation of organizational and technical conditions for the execution of tasks for the

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<sup>18</sup> Rozporządzenie Rady Ministrów z dnia 3 lutego 2004 r. w sprawie warunków i sposobu przygotowania i wykorzystania transportu na potrzeby obronne państwa, a także jego ochrony w czasie wojny, oraz w czasie wojny, oraz właściwych organów w tych sprawach (Dz. U. z 2004 r. Nr 34, poz. 294).

<sup>19</sup> Rozporządzenie Rady Ministrów z dnia 27 czerwca 2012 r. w sprawie warunków i sposobu przygotowania oraz wykorzystania podmiotów leczniczych na potrzeby obronne państwa oraz właściwości organów w tych sprawach (Dz. U. z 2012 r., poz. 741).

national defense needs takes the form of plans for the preparation of medical entities, drawn up by the minister responsible for health, voivodes, and local government units. The Regulation also specifies the method of planning the number of hospital beds in the voivodeship, which should be no less than 75 hospital beds per 10,000 inhabitants, with 50% of treatment beds, including beds provided for the needs of the Armed Forces of the Republic of Poland, allied forces, and organizational units subordinate to the minister competent for internal affairs and the Internal Security Agency. Planning of services for allied forces is carried out in accordance with the needs reported by the Minister of National Defense (§ 20 (3)).

**Regulation of the Council of Ministers of October 8, 2015, on defense training**  
(Journal of Laws of 2015, item 1829)<sup>20</sup>

The Regulation defines the organization of defense training in the state, entities subject to defense training in the state, tasks in the field of planning and implementation of defense training in the state, and the competence of authorities in the field of planning and implementing defense training in the state. The specialized tasks resulting from the obligations of the host nation performed by public administration and entrepreneurs requires properly trained personnel, as well as supervision over their implementation. The obligation to participate in defense training is especially imposed on persons holding managerial positions in public administration, employees in positions related to defense or dealing with matters related to the performance of defense tasks, and entrepreneurs performing defense tasks. The subject scope of the training comprises, among others, shaping the skills of cooperation between authorities and organizational units performing defense tasks with the relevant commands and organizational units of the Armed Forces of the Republic of Poland and allied forces. They are carried out in accordance with the training program, which also covers the problems of performing tasks for the Armed Forces of the Republic of Poland and allied forces.

**Regulation of the Council of Ministers of January 13, 2004, on the control of the performance of defense tasks**  
(Journal of Laws of 2004, No. 16, item 151)<sup>21</sup>

The Regulation specifies the scope of control by government administration and local government authorities of the performance of tasks under the general obligation of defense, planned and implemented by organizational units and entrepreneurs, and the manner of conducting the control. The inspections are to verify the correctness of the performance of defense tasks and the state of national defense preparations, including checking the facts, in particular, in the field of preparation of the state defense system, enabling the mobilization of the Polish Armed Forces, and preparation for the implementation of tasks of the host state for the benefit of allied forces (§ 4 (4)).

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<sup>20</sup> Rozporządzenie Rady Ministrów z dnia 8 października 2015 r. w sprawie szkolenia obronnego (Dz. U. z 2015 r., poz. 1829).

<sup>21</sup> Rozporządzenie Rady Ministrów z dnia 13 stycznia 2004 r. w sprawie kontroli wykonywania zadań obronnych (Dz. U. z 2004 r. Nr 16, poz. 151).

## 2. Organization of defense preparations in Poland in the context of obligations resulting from membership in NATO

National defense preparations, understood as a process carried out by all entities of the national defense system, covering all planning, organizational, and material-financial undertakings aimed at preparing the forces and means and methods (procedures) of these entities' operation to ensure the survival of the state and its citizens in the event of emergence of an external threat to security and during the war [5, p. 29]. They are an interdisciplinary undertaking, requiring the preparation of all entities to perform defense tasks, in accordance with the principles and procedures specified in applicable regulations. Therefore, it is important that the process of defense preparations and the actions taken by the state in this respect are properly planned and communicated to the relevant entities participating in its implementation.

The national defense preparations are carried out by all entities of the national defense system in two interdependent areas (spheres): concept and realization. The conceptual sphere manifests itself in developing the principles, assumptions and goals of the defense policy (security policy), on the one hand, and, on the other, in making the defense policy more concrete in the form of defense programs. The realization manifests itself primarily in translating defense programs into executive defense plans.

### 2.1. The objective scope of defense preparations in Poland

In the current legal situation, the material scope of national defense preparations was defined in the aforementioned *Act on the universal obligation to defend the Republic of Poland*<sup>22</sup> and covers *defense planning, including operational planning and defense programming; preparation of the national security management system, including state defense; maintaining the national constant defense readiness and creating conditions for increasing it, including the organization of a system of constant duty; mobilizing the economy; creating and maintaining strategic reserves; preparation of the country's transport and transport infrastructure for defense purposes; preparation and use of medical entities for the defense needs of the state; preparation and use of communication systems for national defense needs; preparations for the militarization of organizational units performing defense tasks; preparation for special protection of facilities; tasks performed for the Polish Armed Forces and allied forces; organizing defense training and controlling the performance of defense tasks.*

The afore-mentioned projects are conducted already in times of peace; therefore, it is important that the process of defense preparations and the actions undertaken by the state in this respect are properly planned and communicated to the relevant entities participating in its implementation. It should be emphasized that Poland's membership in the North Atlantic Alliance significantly strengthened our security, but at the same time did not release us from building a credible defense force capable of ensuring full participation in the implementation of the goals and tasks of joint defense, including the tasks of the "host nation". That means that our state has been obligated to be responsible both for its defense and participation in the joint defense of NATO [6, Art. 3 and 5].

<sup>22</sup> Art. 6 sec. 1 of the Act lists the tasks of the Council of Ministers, performed as part of ensuring the external security of the state and exercising general management in the field of national defense, and the relevant regulation takes place in the implementing regulations to Art. 6 sec. 2.

In the unanimous opinion of experts, under the conditions of an international crisis that threatens Polish security, Poland must have the ability to “self-defense” to defend its territory. The decision to “provide such a possibility by increasing defense capabilities must be taken by Poland on its own, in the best judgment, considering what provides the possibility of self-defense until the Allies are politically forced to react” [7]. According to the American political scientist Georg Friedman, “Europeans do not feel any threat and their contribution to the Alliance is unsatisfactory”, and in terms of Poland’s ability to defend itself, “it is crucial that Poland be able to defend itself for three months on its own. Otherwise, help simply cannot come” [8]. During this time, the allies will “work out” a joint NATO response, following Art. 5 of the Treaty on Joint Responsibility. It should be emphasized that the procedures of NATO operations lack the automaticity of military involvement in the event of an armed attack on one or more sides of the Alliance.

Considering the above, the main goal of defense preparations in Poland is to prepare forces, means and operating procedures to conduct a defense operation aimed at stopping and paralyzing the aggressor’s offensive activities and maintaining as much as possible military control over the entire defense space of the state in order to “gain time” needed to make political and military decisions and prepare forces to strengthen the Alliance, as well as enable them to efficiently move and operate in the territory of the host country. Tasks related to providing support as part of the host nation obligations have been included in the defense preparation process in Poland. The organization of the HNS system is based on elements of the national defense system, from which we can distinguish two subsystems: military and non-military, performing the tasks assigned to them on three functional levels: political, planning, and executive.

The main legal act in the area of national defense preparations that allows the inclusion of entrepreneurs in the planning and implementation of defense tasks is the Act of August 23, 2001, on the organization of tasks for national defense carried out by entrepreneurs (Journal of Laws of 2001, No. 122, item 1320, as amended). It defines the principles and procedure for organizing tasks for the defense of the state carried out by entrepreneurs conducting economic activity in the territory of the Republic of Poland, including entrepreneurs of special economic and defense importance. Moreover, the government administration authorities competent in organizing and supervising the implementation of those tasks were named, and the rules for financing these tasks were specified (Art. 4).

Within the meaning of the Act, tasks for national defense carried out by entrepreneurs include projects in *mobilizing the economy; militarization; operational planning; defense training and host nation training (HNS)* (Art. 2). The Act specifies the authorities authorized (ministers and voivodes) to impose these tasks by way of administrative decisions and the obligations of these authorities and entrepreneurs in this respect. In Art. 4a, it establishes the principles and procedure for the development of the Economy Mobilization Program (UGS), which prioritizes tasks that may be imposed on entrepreneurs of special economic and defense importance in the supply or repair of armaments and military equipment for the needs of the Polish Armed Forces and allied forces implementing joint defense tasks on the territory of the Republic of Poland.

As a member of the North Atlantic Treaty Organization (NATO), Poland is required to comply with allied obligations. One of them is providing support to allied forces coming to our country as a host nation under the Host Nation Support (HNS) system. Proper implementation of

support by Poland is of key importance for the defense of our country, as well as for its credibility as a partner in the allied forces' operations. Poland's security, as well as the position and perception of our country in the international arena, depends to a large extent on the efficiency in fulfilling this role in the event of a crisis and war.

## 2.2. Implementation of tasks resulting from host nation obligations (HNS)

The implementation of HNS tasks is one of Poland's most significant obligations resulting from joining NATO<sup>23</sup>. The host nation support is used in crisis response operations, humanitarian aid, securing the transit of foreign troops through the territory of the country, and providing assistance to allied forces. It should be emphasized that the above-mentioned tasks have been included in the defense tasks and, consequently, concern the entire national defense system, all structures, as well as individual levels of government, public administration, and entrepreneurs [9, point 2002 and 2022].

Well-prepared host country structures allow for not only significant reduction of the costs incurred by the allied forces, but also shortening the response time to emerging threats. That makes it necessary to standardize solutions consistent with the policy, rules, and procedures adopted as common by NATO, while maintaining national conditions. The document used in the implementation and settlement of the HNS within NATO is the STANAG 2034 standardization agreement – Standard Procedures for Mutual Logistic Assistance). It introduces procedures for the provision and settlement of mutual logistic support in a situation where the armed forces of a NATO state provide such support to the armed forces of another country, commands, or multinational formations in times of peace, crisis, and war. It should be emphasized that the North Atlantic Alliance's HNS policy is based on eight main principles: accountability; providing resources; sovereign powers; cooperation; coordination; economy (savings in the use of resources); transparency in the provision of resources, and reimbursement of costs [9, point 2002 and 2022].

The document used in the implementation and settlement of the HNS within NATO is the STANAG 2034 standardization agreement – Standard Procedures for Mutual Logistic Assistance. It introduces procedures for providing and accounting for mutual logistical support in a situation where the armed forces of a NATO country provide logistical support to the armed forces of another country, commands or multinational formations in times of peace, crisis, and war. In addition, the documents applicable to the definition of guidelines for civilian support to the armed forces, including HNS, include: the "Resilience Commitment" adopted by Heads of State and Governments at the 2016 NATO Summit in Warsaw; The "Guidelines for Resilience" approved by NATO defense ministers in June 2016 and the Joint Communication to the European Parliament and the Council on March 28, 2018. It should be highlighted that cooperation between NATO and the European Union in this area is developed under the Joint Declaration of the President of the European Council, the President of the European Commission, and the Secretary General of NATO of 8 July 2016 (NATO Joint declaration by

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<sup>23</sup> HNS (Host Nation Support) – is civil and military aid provided by the host country in times of peace, crisis and war to allied armed forces and organizations that are deployed, performing a task or moving through the territory of the host country – *Instrukcja „Uwarunkowania, założenia i procedury realizacji zadań wsparcia przez państwo-gospodarza – DD/4.5.1(A)”*. Warszawa: Ministerstwo Obrony Narodowej; Sztab Generalny Wojska Polskiego; 2008.

the President of the European Council, the President of the European Commission, and the Secretary General of the North Atlantic Treaty Organization).

The HNS activities are managed and coordinated within the framework of the national security management system, including national defense. In peacetime, the defense subsystem is based on the command bodies of the Polish Armed Forces and the decision-making bodies of the state public administration operating within the constitutional powers assigned to them. In a situation of increasing the national defense readiness and during a war, the defense control subsystem is organized based on the Military Command System developed in the Armed Forces of the Republic of Poland, and the positions of managing authorities and public administration. Public administration bodies will implement projects resulting from the obligations of the host nation as part of the current activities and non-military defense preparations of the state, and will include them in the relevant organizational regulations, scope of tasks, and documents prepared as part of defense planning.

The Minister of National Defense, within the scope entrusted by the Prime Minister, is entitled to coordinate, in times of peace and crisis and in times of war [10, Art. 12 (7)], the overall activities undertaken by public administration bodies, and exercises general supervision over the implementation of the HNS tasks in the state. Ministers managing these departments will be responsible for individual departments of government administration as part of the implementation of the HNS tasks, and voivodes at the voivodeship level.

The current NATO policy, related to the increased military presence in the region of the eastern flank, has resulted in a large increase in the allied forces in Poland [11]. This poses a new challenge for our country as a host country due to a significant increase in the scope of responsibilities arising from this role. The implementation of the HNS tasks requires the preparation of elements of the state, including its infrastructure, in such a way as to be able to optimally use the existing national defense resources. The goal is to have an efficient national support system for the Alliance's forces that will carry out tasks on the territory of Poland or move through this territory. One of the pillars of such a system should be transparent and consistent procedures ensuring proper planning, preparation, implementation, and accounting for the provided support.

## Conclusions

The thesis that "Poland can count on help from its allies is true only if it wants and can defend itself, if it obtains its capability of deterring the attacker" is true [12]. How timely today is the thought of the eminent strategist H. von Moltke, who, analyzing the causes of the fall of Poland in the 18<sup>th</sup> century, stated "The nation, whose existence is to depend on a system, a guarantee, which it does not have in its own strength gets into trouble" [13, p. 79]. This "own strength" should be based on the national defense preparations, which should take into account both the internal and external conditions of Poland, as well as specific challenges and threats and opportunities to counteract such threats.

The key elements of the national defense preparations include organization, logistic and technical security of the national security management system; satisfying the needs of the Polish Armed Forces and allied forces under the responsibilities of the HNS; defense training and control of the performance of defense tasks; preparing entrepreneurs to carry out defense



tasks, as well as militarization of selected public administration entities. The priority area of preparations should be to maintain an appropriate level of support for military operations by the state's non-military defense structures.

Following the analyzes of the legal status as regards national defense preparations, in the context of allied obligations, it should be stated that the legal and organizational solutions in force and the functional systems of these preparations ensure the efficient development of specific elements for the defense of the state in the event of a political and military crisis. It manifests itself both in the process of planning and imposing, as well as performing defense tasks in certain states of national defense readiness. However, there is a "dispersion" of important issues related to the subject matter in many legal acts. That raises many implementation problems that relate to taking appropriate actions by public administration bodies and entrepreneurs.

It is necessary to improve national defense planning, due to the need to adapt the planning process to changing conditions, including correlation with the national development management system and NATO defense planning. The changes should be aimed at increasing the transparency and coherence of planning, primarily at the strategic level and in relation to the Polish Armed Forces. The main activities in this area should include limiting the number of binding defense planning documents of a strategic nature; clarifying the scope of responsibilities of individual entities involved in the defense planning process and improving the process of adopting and implementing NATO goals (important for Poland's security). Moreover, the coherence of military and non-military defense planning should be enhanced through, inter alia, establishing a mechanism ensuring more efficient coordination of work related to the identification and updating of the needs of the Polish Armed Forces and allied forces, supported by non-military defense structures.

The changing understanding of national security and the nature of contemporary and future threats require a comprehensive approach to the issues of national defense preparations. In terms of the subject matter, they include constitutional obligations and allied obligations. As a member of the North Atlantic Treaty Organization (NATO), Poland must comply with allied obligations. One of them is providing support to allied forces coming to our country as a host nation under the Host Nation Support (HNS) system. Proper implementation of support by Poland is fundamental for the defense of our country, as well as for its credibility as a partner in the activities of the allied forces. Poland's security, as well as the position and perception of our country in the international arena, depends to a large extent on the efficiency in fulfilling this role in the event of a crisis and war.

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The author declared no conflict of interests.

### **Author contributions**

The author contributed to the interpretation of results and writing of the paper. The author read and approved the final manuscript.

## Ethical statement

The research complies with all national and international ethical requirements.

## ORCID

Marian Kuliczkowski  <https://orcid.org/0000-0003-2655-6288>

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## Biographical note

**Marian Kuliczkowski** – Dr. hab. Eng., academic teacher, he is a research and didactic worker at the War Studies University. From October 1, 2016, the Head of the Department of National Defense Preparations at the Institute of National Security, the Department of National Security of ASzWoj. Organizer and manager of short-term defense courses organized by WBN ASzWoj for employees of public administration and enterprises. He specializes in the issues of non-military defense preparations of the state implemented in the national security system of the Republic of Poland. Scientific achievements include several dozen publications,

including monographs and articles, as well as participation in scientific and research works. Co-organizer and participant of several conferences and scientific seminars. Directly before leaving the service in the Polish Armed Forces in 2004-2008, he was a senior specialist at the Department of Defense Strategy and Planning of the Ministry of National Defense. He participated in the works of the Strategic Team of the Defense Review 2016-2017. As part of cooperation with the civil environment, he conducts defense training (lectures upon invitations) on the issues of national defense preparations for employees of public administration and enterprises. He popularizes the issues of national security, including national defense preparations on his website [mkuliczkowski.pl](http://mkuliczkowski.pl).

### **Przygotowania obronne w Polsce, w kontekście zobowiązań sojuszniczych Aspekty prawne, instytucjonalne i instrumentalne**

#### **STRESZCZENIE**

Uzyskanie przez Polskę w 1999 roku członkostwa w Organizacji Traktatu Północnoatlantyckiego było jednym z najważniejszych wydarzeń w historii III Rzeczypospolitej. Proces integracji ze strukturami polityczno-militarnymi NATO jest długotrwały i wymaga stałego zaangażowania wszystkich struktur oraz instytucji państwa. Udział w kolektywnym tworzeniu siły obronnej państw – członków Organizacji Traktatu Północnoatlantyckiego oznacza, zgodnie z art. 3 Traktatu, utrzymywanie i rozwijanie przez państwa członkowskie indywidualnej i zbiorowej zdolności do odparcia zbrojnej napaści. Zobowiązuje to między innymi Polskę do prowadzenia przygotowań obronnych w wymiarze narodowym. Wymaga to przygotowania warunków formalno-prawnych i organizacyjnych do funkcjonowania kraju w sytuacji podwyższenia gotowości obronnej państwa, niezbędnych do wykonywania zadań w ramach obrony narodowej realizowanej na jego terytorium, a także na obszarze innych państw – będących członkami Sojuszu.

Zaprezentowane w niniejszym artykule treści stanowią próbę przedstawienia aspektów prawnych, instytucjonalnych i instrumentalnych problematyki przygotowań obronnych w Polsce, w kontekście zobowiązań sojuszniczych. Dotyczą one konieczności utrzymywania i rozwijania przez wszystkie państwa członkowskie NATO indywidualnej i zbiorowej zdolności do odparcia zbrojnej napaści. Uwzględniając charakter problemu, należy pamiętać, że integracja Polski w NATO odbywa się zarówno w sferze obronności, jak i w kwestiach ekonomicznych, społecznych, prawnych i politycznych.

#### **SŁOWA KLUCZOWE**

NATO, system bezpieczeństwa narodowego, system obrony państwa, przygotowania obronne państwa, wsparcie przez państwo-gospodarza (ang. Host Nation Support – HNS)

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