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**NATO TRANSPORT THROUGH A “SCHENGEN MILITARY ZONE”  
FROM AN INTERNATIONAL LEGAL PERSPECTIVE**

**Summary.** The cross-border transport of soldiers and military equipment is particularly difficult and characterized by a distinct difference with civil transport. For its implementation, political will is needed, in line with the tolerance of representatives of foreign armed forces on the territory of the state, as well as adequate transport capacity and infrastructure capable of ensuring transport efficiency. These circumstances are particularly important in the case of alliance cooperation within NATO in the Euro-Atlantic subregion. Legislation within the organization is designed to ensure coordination of military transport activities. However, the procedures currently in place are criticized as being too rigid and failing to provide a quick transfer of forces and resources in the event of a sudden threat to one of NATO’s allies. For this reason, there have been calls to create an allied “Schengen military zone”, in which the Schengen Agreement would be abolished, internal controls and administrative hindrances between NATO countries would be lifted, and the free transport of soldiers and military equipment would take place. The aim of this article is to examine the feasibility of implementing this proposal and to identify the basic difficulties involved in carrying out military transport within the NATO context. A question arises about the possibility of creating a “Schengen military zone” for NATO. The aim of the article is, firstly, to present NATO legal sources governing the issue of military

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transport. In the next part of the analysis, allied military transport procedures will be analysed, accompanied by a critical identification of potential shortcomings. The article concludes by providing answers to the research question.

**Keywords:** Schengen military zone, military transport, North Atlantic Treaty Organization (NATO)

## 1. NATO LEGAL SOURCES IN RELATION TO MILITARY TRANSPORT

Military transport can be defined as the transport of troops, armaments and military equipment between the point of loading and the destination, using various means of transport. Such transport can include road transport, rail transport, maritime transport, air transport and, albeit relatively rarely used, inland transport, each of which is characterized by certain differences, as reflected in NATO's internal legislation. The main NATO document in this area remains the Allied Joint Movement and Transportation Doctrine<sup>3</sup>. In previous years, the following were also important: STANAG 2454, AMovP-1 (Road Movements and Movement Control)<sup>4</sup>; STANAG 2455, AMovP-2 (Procedures for Surface Movements Across National Frontiers)<sup>5</sup>; STANAG 2456, AMovP-3 (B) (Movement and Transport Documents and Glossary of Terms and Definitions)<sup>6</sup>; STANAG 2468, AMov P-4 (Technical Aspects of the Transport of Military by Railroad)<sup>7</sup>; STANAG 2236, AMov P-5 (Multi Modal Transport Issues)<sup>8</sup>; AMov P-6 (Allied Multi-modal Transportation of Dangerous Goods Directive)<sup>9</sup>; STANAG 4441, AASTP-2) Manual of Safety Principles for the Transport of Military Ammunition and Explosives)<sup>10</sup>; AASTP-5 (NATO Guidelines for the Storage, Maintenance and Transport of Ammunition on Deployed Missions or Operations)<sup>11</sup>. These documents have the character of so-called Standardization Agreements (STANAGs), each of which, according to NATO terminology, is a "normative document, recording an agreement among several or all NATO member nations, that has been ratified at the authorized national level, to implement a standard, in whole or in part, with or without reservation"<sup>12</sup>. They are therefore special types of international agreement through which NATO member states commit themselves to the standardization of a particular type of equipment or procedures. Apart from the aforementioned legal acts, included in the NATO acquis, it should be noted that a number of other types of legal acts is also affected by military transport, including:

- 1) Multilateral international agreements on military cooperation, primarily the Agreement Between the States Parties to the North Atlantic Treaty on the Status of Their Armed Forces, drawn up in London on 19 June 1951, also called the North Atlantic Treaty Organization Status of Forces Agreement (NATO SOFA).

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<sup>3</sup> Allied joint movement and transportation doctrine (AJP-4.4(B)), <http://nso.nato.int/nso/nsdd/listpromulg.html>

<sup>4</sup> STANAG 2454, AMovP-1 (Road Movements and Movement Control).

<sup>5</sup> STANAG 2455, AMovP-2 (Procedures for Surface Movements Across National Frontiers).

<sup>6</sup> STANAG 2456, AMovP-3 (B) (Movement and Transport Documents and Glossary of Terms and Definitions).

<sup>7</sup> STANAG 2468, AMov P-4 (Technical Aspects of The Transport of Military by Railroad).

<sup>8</sup> STANAG 2236, AMov P-5 (Multi Modal Transport Issues).

<sup>9</sup> AMov P-6 (Allied Multi-modal Transportation of Dangerous Goods Directive).

<sup>10</sup> STANAG 4441, AASTP-2 (Manual of Safety Principles for the Transport of Military Ammunition and Explosives).

<sup>11</sup> AASTP-5 (NATO Guidelines for the Storage, Maintenance and Transport of Ammunition on Deployed Missions or Operations).

<sup>12</sup> AAP-06 Edition 2014, NATO Glossary of Terms and Definitions (English and French), NATO Standardization Agreement.

- 2) Bilateral international agreements on military cooperation.
- 3) International Regulations for the Transport of Dangerous Goods, contained in the European Agreement Concerning the International Carriage of Dangerous Goods by Road (ADR), agreed in Geneva on 30 September 1957.
- 4) International agreements in the field of railway. For military rail transport, the provisions of international agreements in the field of railways also apply. First of all, the Convention on International Carriage by COTIF of 1980 (as amended by the Protocol of 1999) and the Annexes to the Convention (in particular, Annex A “Uniform Rules for the International Carriage of Persons by Railways” (CIV); Annex B “Uniform Rules for International Carriage of Goods by Rail” (CIM); and Annex C “Regulations for the International Carriage of Dangerous Goods by Rail” (RID)). A European Agreement on Major International Railway Lines (AGC) and the International Convention on Safe Containers are also in force.
- 5) International agreements falling within the law of the sea and relating, inter alia, to the safety of navigation and the protection of the environment (primarily, the Convention on the Law of the Sea of 10 December 1982).
- 6) International agreements included in aviation law, including the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, and Annex No. 18 (Safe Transport of Hazardous Materials by Air) to the Convention.
- 7) Internal national regulations, as generally applicable, as well as ministry, often adopted by the Ministry of National Defence.

The analysis of the aforementioned acts allows us to state, in a very simple way, that the military transport process in NATO consists of two basic elements:

- 1) Planning and preparation of transport, including, first and foremost, the development of a movement plan and the granting of consent for the displacement of foreign troops through the territory of another allied state.
- 2) Proper transport, including, in the case of road transport: the passage of border formalities (especially customs) when crossing state borders; organization of the passage, including the marking of military vehicles and protection for the passage. Certain differences exist in the case of maritime and air transport.

In each of the above elements, there are some shortcomings limiting the rate of military transfer. This is despite the fact that the Allied Joint Movement and Transportation Doctrine within NATO is based on nine principles, which in practice are difficult to achieve. These include:

- a) Collective responsibility. NATO and nations have a collective responsibility for movement and transportation (M&T) support to NATO operations. This responsibility extends from initial M&T planning through to strategic deployment, reception, staging, onward movement, sustainment and redeployment stages of operations.
- b) Cooperation. Cooperation between NATO and national authorities, both military and civil, is essential. Such cooperation can be of a bi- or multilateral nature. This includes, as required, non-NATO nations, the EU, the UN and other organizations. Cooperation between NATO and these entities will be consistent with agreed and applicable NATO logistics policies, decisions and procedures.
- c) Coordination. It is essential that all M&T activities are fully coordinated and synchronized at the appropriate levels.

- d) Effectiveness. M&T planning and execution must be primarily tailored to satisfy NATO operational requirements.
- e) Efficiency. Use of military and civil resources, facilities, existing infrastructure must be optimized, for example, by considering economies of scale.
- f) Flexibility. M&T support must be proactive, adaptable and responsive to achieve the objective and capable of reacting in a timely manner to changes in the operational situation and/or requirement.
- g) Simplicity. M&T plans and procedures must be kept as simple as possible.
- h) Standardization. Systems, data, software, procedures and equipment must be standardized to facilitate interoperability and M&T support.
- i) Visibility and transparency. The exchange of M&T information between all participants is essential for the efficient planning, coordination and execution of M&T tasks.

## 2. PLANNING AND PREPARATION OF MILITARY TRANSPORT

Transportation planning for NATO operations is part of a broader alliance planning process. Each country prepares its own national Detailed Deployment Plans, using the Allied Deployment and Movement System as a planning tool to facilitate the planning of movement and transfer of information in allied operations. When planning the plan, the Allied Disposition List is taken into account in order to address the requirements, objectives and priorities of the operations commander. On the basis of national plans, a joint Multinational Detailed Deployment Plan is prepared at NATO planning conferences.

In the case of road transport, in accordance with NATO's accepted planning principles, the competent authority of the state for the transport and movement of troops in which the displacement begins, upon receipt of the "permit for passage" from the sending military unit, analyses the sent passage plan concerning roads to its border crossings. Subsequently, this authority draws up a "permit for passage" and sends it to the appropriate troops transport and movement authority of the host country, in which the planned border crossing points are determined, as well as the time of crossing them. The military transport and movement arm of the host country prepares a "permit for passage" from its border crossing points and transfers it to the authority of troops transport and movement relative to where the displacement begins. This authority then directs the obtained "permit for passage" to the sending unit. In the case of transit through several countries, the country where the shipment begins must submit the demand for transit to the first transit state. Once the march has been developed, the first transit state will forward all documentation to the next state for further reconciliation. Subsequently, the transit state either sends the documentation to the next transit state or returns the "permit" received to the first transit state. The transit state then directs it to the state where the displacement begins.

The sending state, when making any arrangements with the carrier and the authorities of the transit states and the host country, must draw up a movement plan containing a set of planning and calculation documents, describing in detail the time and space planned for the displacement of the military unit.

As a result, the displacement of troops abroad requires, on every occasion, the consent of the country/states concerned, through which the transport will take place. This lengthens the transit process, as the request for such a permit ("CLARIS") must be made in advance by the authority of the sending state or by an international organization under whose command foreign troops remain. For example, in Poland, a minimum of 30 working days' notice is

required before any planned date of the commencement of the deployment of troops. CLARIS is associated with certain administrative difficulties, as it should contain, inter alia, a list of participants in transport, a list of personal weapons, a list of goods, a list of dangerous goods, and a list of vehicles and their load. Other data are required, such as the operation codes, the identification numbers for residence permits or transfers, the international vehicle identification codes (types and numbers of vehicle columns), the location of the place of loading and planned departure time, the crossing points (route of departure) and planned arrival time, the location of the destination (stopping, resting, unloading, centred area), the quantity and type of cargo (number of passengers, cargo volume in tons and cubic metres, data on dangerous goods, number of wheeled/crawled vehicles), and data on further movement (road passage requirements or “permit for passage” numbers, land means of transport requirements or reply for requirement numbers).

As can be seen from the above, the preparation of a motion request is a long-term logistical and administrative project. Regardless of the technical aspects of the shipment, the administrative and legal procedures for expressing consent to the shipment sometimes take several weeks. It should also be remembered that, in some European federal states, such as Germany, every region aspires to have its own procedures, which further complicates matters and requires time-consuming consultations. In addition, additional, separate authorizations are sometimes required when moving special vehicles, special-purpose vehicles, vehicles used in connection with special-purpose vehicles, non-standard vehicles and vehicles carrying dangerous goods.

The same principle applies to the obligation to obtain the consent of foreign states through whose territory the shipment will be carried out in the case of military maritime and air transport. Marine maritime transport is affected by the division of maritime areas in international law. Each of them is governed by specific regulations related to access to a given sea area. Diplomatic consent for displacement is required in the case of inland water, which is treated in the same way as the land territory of the country. However, consent is not necessary in the case of transport through the territorial sea of the state, as it is valid in the context of the so-called international law of harmless flow<sup>13</sup>. This applies to all states and results in the possibility of carrying out transport without obtaining the formal consent of the coastal state. The right also applies to warships if they are used for transport purposes or as escorts for transport. This is the case for maritime transport in NATO. For example, on 23-24 May 2017, two ships (the Norwegian freighter Roald Amundsen and the Dutch freighter Zr.Ms. Evertsen) belonging to the First Standing Maritime Group 1 escorted a British civilian ship (MV Hartland Point), which was transporting armaments from Norway to the Port of Klaipeda in Lithuania in order to supply Lithuanian troops deployed in Eastern Europe as part of NATO’s international divisions<sup>14</sup>. The lack of diplomatic consent for transport also concerns the maritime exclusive economic zone of the state. This does not alter the necessity of planning and presenting, in a graphical and descriptive manner, a specific maritime transport operation.

The diplomatic consent of a foreign state also requires the air transport of soldiers and equipment in its airspace. Air transport planning can be defined as the design for the transport of troops, armaments and military equipment from airports to be loaded at the airport of unloading, as well as a description of how it works in order to achieve its objectives. Consent

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<sup>13</sup> Article 19, UN Convention on the Law of the Sea, 1982.

<sup>14</sup> ‘NATO ships escort UK MoD leased ship carrying Norwegian weapons to Lithuania’, <http://navaltoday.com/2017/05/25/nato-ships-escort-uk-mod-leased-ship-carrying-norwegian-weapons-to-lithuania/>.

is preceded by the timely preparation of the transport plan and submission needed to apply for consent (shorter deadlines apply compared to land transport). It is possible to apply for a standard form for special aircraft requests, or a standard form for blanket overflight clearance in order to cross a state border and fly one or more foreign military aircraft. Special rules apply when planning the carriage of loads with hazardous materials (e.g., combustible materials, poisonous materials). The Dangerous Goods Regulations, issued by the International Air Transport Association, apply here<sup>15</sup>. The transportation of such materials is also subject to the consent of the transit states and the receiving state. The classification of hazardous materials is used in the classification of hazardous materials, while the International Civil Aviation Organization's branding is included in the labelling, as per Annex 18 (Safe Transport of Hazardous Materials by Air) to the Convention on International Civil Aviation, signed in Chicago on 7 December 1944<sup>16</sup>.

Coordination of the movement of troops within the territory of individual countries is carried out within NATO by the National Movement Coordination Centres (NMCCs) created by each of the countries involved in the joint operation. Although NMCCs are built on the basis of each country's domestic law, they should remain compatible with the structures responsible for controlling land roads, airspace and sea lanes. Within an NMCC, there are liaison officers from other states involved in the operation and the operation commander him/herself. The work of an NMCC is coordinated by the Allied Military Coordination Centre, which helps the Allied Command Operations to manage the strategic relocation to the area of operations, the supply of transport and the withdrawal of forces.

### 3. IMPLEMENTATION OF TRANSPORT

The implementation of transport also entails certain administrative obstacles, which in turn slows down the deployment of troops. The most important is the necessity to overcome certain border formalities when crossing borders, which include border control, customs clearance, foreign exchange and sanitary services.

The crossing of a state border by means of military transport should be carried out at established and agreed border crossing points on the basis of documents that allow such passage.

When crossing a border, military service vehicles or civilian personnel, in addition to registration numbers, should carry a visible symbol of their own country. Members of foreign armed forces should generally be uniformed and are exempted from the reporting obligation.

Based on Article III of the NATO SOFA<sup>17</sup>, personnel of NATO member states' armed forces are neither subject to passport and visa regulations nor to the control of immigration authorities when entering or leaving the territory of another member state. In addition, while they are not subject to the host country regulations concerning the registration and control of aliens, this does not mean that they are entitled to permanent residence or residence in the territory of another member state. The NATO SOFA, however, requires members of foreign armed forces seeking to cross the border to be in possession of two documents, which must be presented on request: an identity card issued by the sending state, including the bearer's name,

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<sup>15</sup> Dangerous Goods Regulations, International Air Transport Association.

<sup>16</sup> Convention on International Civil Aviation, Chicago Convention 1944, Annex 18 (The Safe Transport of Dangerous Goods by Air).

<sup>17</sup> NATO SOFA, 1955.

date of birth, degree and number (if any), type of service and photograph; and an individual or collective departure order (NATO Travel Order) in the language of the sending state, as well as in English and French, issued by the appropriate authority of the sending state or NATO, confirming the status of the person or group of persons as a member or members of the armed forces, along with the order of departure. The receiving state may require the departure order to be countersigned by its competent representative.

Pursuant to Article XI of the NATO SOFA, the temporary importation and re-export of military vehicles or civilian personnel at their disposal are exempt from customs duties. However, it is required to submit an appropriate form (Form 302 “Customs Declaration for Export and Import for Goods that Are Owned by the Armed Forces”). Exemptions from the customs duty are also subject to official documents bearing an official stamp.

The transport of troops by road is carried out using columns of military vehicles. These are groups moving along the same road, at the same time and in the same direction as the vehicles, directed by commanders of the columns. A column may consist of groups of vehicles, while their use is to ensure efficient and timely displacement. For safety reasons, certain distances between vehicles must be observed. In addition, in the course of road haulage, the rules, including those of the road, of the host country should be respected. Columns should be labelled according to NATO standards (AMovP-1 “Road Traffic Regulations and Procedures and Traffic Management Agencies and Services”) applicable to military columns. These include provisions for lighting and flagging vehicles. Passing beams of all vehicles moving in the column must be switched on. It is required that the first and last vehicles of each column element (vehicle group) have a blue flag attached to front-left side (not a single column pass). The column commander’s vehicle is marked with a black and white flag, which is also attached to the front-left side. In turn, any damaged vehicle is marked with a yellow flag, visible to oncoming traffic. On the left of both the first vehicle at the front and the last vehicle at the back, on the left is placed a special signboard for marking the columns of military vehicles. In the case of passage of the column by expressway or motorway, a yellow flashing warning light should be placed on vehicles, which must be visible from a distance of at least 150 m with good air transparency. The signal on the first vehicle should be visible at least at the front and at the sides of the vehicle, while the signal on the last vehicle should be visible at least at the rear and at the sides of the vehicle (this requirement is not applicable when piloting the column by marked military police or military traffic control vehicles).

Each vehicle column is identified by a number, referred to as a roadside permit number. It allows the column to be identified throughout the movement, including crossing national borders. This number should be on a contrasting colour, placed on both sides of each vehicle.

During military transport, it is also possible to pilot it. This term is understood as a set of activities performed on a public road aimed at ensuring traffic safety during the passage of a non-standard vehicle or vehicle column.

The security of the military columns may be of a combat and logistical nature. The first type of protection is used during an armed conflict. Combat security is organized to ensure the smooth running of the columns and groups of vehicles on the roads, as well as to ensure smooth entry into the battle of moving troops in the event of an unexpected encounter with an enemy whose forces cannot be overcome. Logistical security is related to the handling of technical transport (e.g., refuelling, repairing damaged vehicles), medical (medical help for the injured and sick during the journey), as well as meals during the journey. It is also important to ensure the communication and coordination of military movements. Security is provided, for example, by a registration system. Within the framework of NATO, there are

two main message options: Deployment Report (DEPLOYREP) and Movement Assessment Report (MOVASSESSREP).

In the case of maritime transport, in accordance with the requirements of the International Maritime Organization, each vessel should have a cargo securing manual containing a description of the vessel's anchoring system. Special attention has been paid to the transport of hazardous materials, which should be stored in accordance with the rules set out in the International Maritime Dangerous Goods Code (IMDG Code). The loading of equipment should follow this order of priority: first, the equipment with hazardous materials, then light vehicles, followed by heavy vehicles and, finally, crawler vehicles. The unloading of maritime means of transport can be carried out in fixed ports or on an ad hoc prepared shore. The planning and coordination of landings are the responsibility of the host nation, the country in which the landing port is located. Sending nations have an agreement with the host country, specifying the scope of support and regulating mutual settlements. In the absence of a host country, or if its host nation support is insufficient, the lead nation, based on NATO procedures, takes over the role of the security of landings. Maritime transport should be coordinated with air transport and shipment to and from the ports of loading and unloading, as well as when reaching the operational region of destination. Foreign vessels during movement are obliged to comply with the domestic law of the country, alongside international rules for the prevention of collisions at sea and the protection of the marine environment, namely, the International Convention for the Safety of Life at Sea (also known as the "SOLAS Convention"), drawn up in London on 1 November 1974<sup>18</sup>, and the IMDG Code, put into force by the Intergovernmental Maritime Organization (IMO)<sup>19</sup>.

In the case of air transport, it is also necessary to be in possession of appropriate transport documents, such as: a list of passengers on the aircraft; passports or passenger ID cards, with the expiry date after the planned return date; NATO departure order (in the case of allied transport); certificate for the master of the ship or air waybill; cargo manifesto (equipment); declaration of the carriage of dangerous goods (in the event of carrying such materials); a list of loads on pallets; load specifications for containers; declaration of import and export customs for goods that are owned by the respective armed forces (NATO's so-called Form C 302); other documents required by the carrier or local authority regulations); diplomatic transit documentation issued by transit countries and host countries for aircraft flights in their airspace and landing.

At the moment of landing in the territory of the Republic of Poland, foreign military aircraft begin border procedures, related to border, customs, currency and sanitary controls.

#### 4. CONCLUSIONS

The division of territory and the principle of territorial sovereignty are the basic determinants of military transport abroad. Obedience determines the implementation of transport and demands the application of diplomatic consent for carriage and compliance with the laws of the state through which the transit is taking place.

As shown in the above paragraphs, the planning and realization of transport within NATO is extremely complex, time-consuming and tedious. It currently does not seem possible to abolish the traditional conditions for the cross-border movement of troops, which requires the diplomatic consent of a foreign state for the purposes of its transit through or

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<sup>18</sup> International Convention for the Safety of Life at Sea, 1974.

<sup>19</sup> International Maritime Dangerous Goods Code, International Maritime Organization.

staying in that state’s territory. The essence of state sovereignty, which still determines the content of legal regulations, includes the ability to control all relations within the territory of the state. This also applies to the sensitive issue of the control of foreign armed forces movement through such territory. Changing this state of affairs would bring about a real military threat, as evidenced by the history of post-war integration in Western Europe, which is an important catalyst for integration processes. Realistic and feasible to implement, however, is the reform and simplification of the planning procedures in force within NATO itself. Their purpose would be to eliminate unnecessary bureaucratic obstacles. Such reform would require reflection on the part of NATO institutions and the goodwill of member states. The creation of a “Schengen military zone”, similar to the civilian equivalent in the EU, is currently not possible within NATO. That said, it is possible and desirable to adopt a single procedure for the transfer of troops in the area of NATO states by shortening all administrative and legal formalities related to the movement of troops to 48 hours. The US Army Europe Military Commander, General Ben Hodges, has appealed for this reform to take place, the urgency of which was reinforced by the “Zapad” Russian-Belarusian military manoeuvres in September 2017. In his view, the slow military transport procedures within NATO blatantly contrast with the high degree of mobility concerning Russian forces. Given how this threatens to directly undermine NATO’s eastern flank, any reform of military transport procedures needs to be radical. It is clear that this should be the foremost task for the planned new NATO command structure, which is to be responsible for logistics issues.

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