



THE EVOLUTION OF THE LEGAL FRAMEWORK FOR DEFENCE PLANNING IN ROMANIA

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In a geopolitical and geostrategic environment that seems to be more complex than ever, ensuring the security of the world's states becomes a leading and binding concern on the part of the political-military decision-makers. In this respect, considering the various constraints of political, economic and social nature, as well as the availability of limited resources, a reliable defence planning system should ensure the achievement of the defence policy objectives in the most effective and efficient way, seeking to make the best use of available resources. Additionally, taking into account that the defence planning process has a long-term horizon, appropriate consistency and continuity of policy objectives regarding national security must be ensured in order to avoid undesired consequences on the long run that might translate in future unacceptable security risks.

Keywords: defence planning; legal framework; capabilities; NDPP.

The defence component is the centerpiece of the security construct for any state. Based on the values, aspirations, interests, geopolitical context and threat assessments, the defence and security policy provides, through its specific objectives, the generic coordinates for ensuring the sovereignty and the territorial integrity of any state.

Defence planning is the process designed for translating defence policy objectives into military and non-military capabilities. Moreover, the defence planning process has the role of ensuring the matching between the defence policy objectives and defence budget allocation designated for this purpose, therefore ensuring the required balance between aspiration and ability. In practical terms, defence planning seeks to ensure that a nation has the necessary forces, assets, facilities and capabilities to fulfil its defence-related tasks throughout the full spectrum of missions, in peacetime, crisis and war.

The national defence planning in Romania was considered an exclusive military responsibility until the end of the 20th century. The political-military context of the 1990s brought up the need for addressing defence planning from a different perspective. This was required by the democratic evolution of the country, implying the civil control of the armed forces. Romania's first deployments

of forces in expeditionary operations under the leadership of the United Nations (UN), the North Atlantic Treaty Organization (NATO) and the Organization for Security and Cooperation in Europe (OSCE), the acquisition of Romania's status as a NATO partner within the framework of the Partnership for Peace established in 1994 and Romania's aspirations to join the Alliance are key steps in shaping and strengthening the national defence policy.

First Steps in Regulating Defence Planning

In correlation with the long transformation process that the military institution has gone through, the new approach to defence planning required an adequate legal framework which evolved progressively throughout the following two decades. The first step in this regard was done in year 1998 when the Government issued an Order addressing the defence planning¹. The initial legal framework was later approved by the Parliament in year 2000 with some amendments.

The 1998 document referred to the "national defence planning of Romania" without defining an actual process. Instead, it established the main responsibilities for defence planning and identified the main documents representing the foundation for the national defence planning: The *National Security Strategy*, the *Governing Programme*, the *Government White Paper on national security and defence*, the *Military Strategy of Romania and the strategies and directives of other governmental*

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institutions with responsibilities for defence, public order and national security.

Subsequently, in 2000, as part of the approval process by the Romanian Parliament, a significant amendment was introduced, represented by the inclusion of the *Governing Programme* among the national documents underpinning defence planning. While the Governments Order does not provide the necessary directions on how defence planning should be carried out, the approval law introduces the term "programme" and delegates to the appropriate authorities the responsibility to issue internal instructions on how the defence planning will be actually performed. The new legal framework for defence planning allowed for the first *National Security Strategy* to be issued by the president and adopted by the Parliament in 2001.

Defence Planning and the Accession to NATO

For Romania, the transition from the NATO Partner status to the NATO Ally status in 2004 required a series of institutional adaptations and legal framework revisions, prior and even after the actual accession. The revision of Romania's Constitution in 2003 is a relevant change that aimed at ensuring the necessary legal basis for the future NATO membership and the later integration in the European Union. These changes made possible the transitioning to fully professional armed forces by suspending conscription, participation to NATO collective defence and harmonizing the national defence planning with the NATO defence planning process.

The revision of the Constitution implied the appropriate adaptation of the legislation on defence planning, which resulted in the adoption of *Law no. 473 dated 4 November 2004 on Defence Planning*. The most evident change was noticed in the title of the new law. While the previous law was entitled "The National Defence Planning of Romania", the new law was entitled simply "Defence Planning". Defence planning was no longer defined as "activity" but a "complex of activities and measures aimed at promoting the national interests, defining and achieving the national security objectives related to defence". The new definition implies the complexity of defence planning but does not define it as a process. Nevertheless, the document includes the term "*defence planning process*" without actually describing defence planning as a process.

Another significant improvement was the introduction of six defence planning domains², in line with the existing planning domains identified by the NATO defence planning process at that time. Moreover, the intent to synchronize the national defence planning with the corresponding NATO process is demonstrated by other new elements. The term "NATO collective defence" is included in the document and the *NATO Strategic Concept* is mentioned among the foundation documents for defence planning. These new elements justify the title change, recognizing that the defence planning was now extended beyond the national defence as it was previously the case.

The foundation documents for defence planning are classified on two levels: national and departmental. The *National Defence Strategy*³ is the capstone document for defence planning, complemented by the *Governing Programme* as the other national level reference for defence planning. At departmental level, besides the *White Paper on Defence* and the *Military Strategy*, the *Defence Planning Guidance* and the *Major Programmes* are explicitly mentioned among the department level instruments.

By providing the periodicity of issuing the relevant documents, the legal framework suggests to some extent the cyclical nature of a defence planning process. However, if the initial law ensured a certain level of synchronization and sequence of releasing the main documents (every four years), the new law provides different references for deadlines (inauguration of the president, the inauguration of a new cabinet). Moreover, the *Defence Planning Guidance* and the *Major Programmes* had to be issued annually, in line with the national budget cycle.

In terms of responsibilities, Law no. 473 of 2004 identifies the role of the Supreme Defence Council of the country regarding the endorsement of the relevant documents but its coordinating role in ensuring the unity of effort of all governmental institutions with responsibilities related to the defence sector is not explicitly stated.

Other changes aimed the time horizon for the documents driving the defence planning. While the time horizon for the former *National Security Strategy* and the subsequent documents, including the *Programmes*, was 4 years (considered medium term), but allowing for provisions on longer term, the time horizon for the *National Defence Strategy*



introduced by the 2004 law was increased to 5 years. As opposed to the previous consistency in this regard, the other documents had different time horizons: 4 years for the *White Paper on Defence* and the *Military Strategy* and 6 years for the *Defence Planning Guidance* and the *Major Programmes*.

Another worth-mentioning step ahead was made in 2006 through formalizing the Defence Planning Council as the key decision body at the Ministry of Defence level on matters of defence planning.

Adapting the defence planning to NATO Defence Planning Process (NDPP)

The most recent revision of the legal framework on defence planning resulted in a new law on defence planning in 2015⁴, which aimed to incorporate the important changes that took place in the previous decade: Romania had since become a member state within NATO and joined the European Union, Romania's armed forces had undergone a significant transformation process, NATO had reviewed its own defence planning process and adopted a new Strategic Concept⁵. Meanwhile, the evolution of the security environment urged for a renewed approach for the Euro-Atlantic security resulting in a shift of focus back to collective defence for the Alliance.

The new law defines defence planning as a process, recognizing its importance as a multiplier in the transformation process for the armed forces. In addition, it has made several improvements to the regulatory framework on national defence planning highlighting its evolutionary nature.

By introducing the "capabilities-based planning" concept, in accordance with the renewed NDPP⁶, the law aimed to ensure better alignment and synchronization with the corresponding planning processes of NATO and EU. This change came in contrast with the previous approach in the NATO defence planning, when the process was focused exclusively on force planning addressing conventional forces, in complementarity to the nuclear planning which was subject to a separate process. Focusing the defence planning on capabilities rather than on formations and force elements, NDPP demonstrates a shift from the mainly quantitative aspects of the conventional power to the qualitative aspects of these forces and the desired effects that they are expected to

produce. Therefore, defining the term "capability" in the national legal framework⁷ was a logical consequence. Moreover, the 2015 law describes the components of the capability development efforts (doctrine, organization, training, materiel, leadership, personnel, facilities and interoperability), recognizing the complexity of the capability development effort and allowing for alignment with the NATO capability development methodology.

Recognizing the recent evolution in the military domain, the changes in the security environment and the nature of modern military operations, as well as exploiting the experience from the recent and current deployed operations, the need for non-military capabilities was included in the new law. This was in line with the expanded list of planning domains⁸, also included in the new law, some of which refer to components of the defence planning which are not necessarily related to military forces but rather to non-military capabilities. For this reason, the document provides the need to involve other institutions besides the Ministry of Defence, in the defence planning effort, in accordance with their respective responsibilities related to defence.

The relationship between defence planning and operations planning was neither defined, nor clear in the previous versions of the law. This time, together with the introduction of the "capability-based planning" concept, where the capability is seen as the glue between the two inter-related processes, more clarity is provided with regard to this relationship. The Military Strategy is seen as the linking document between these two processes.

Evaluation of defence is another new feature of the national defence planning process described by the 2015 law. From this perspective, no evaluation instruments were mentioned in the previous versions of the planning process. Nevertheless, the NATO defence planning process included a solid review component in the new NDPP which dedicated the final step of the process to the review (Step 5 – Review Results).

Besides the new elements introduced by the law as described above, some adaptations of the existing provisions provided more flexibility for defence planners. Firstly, the planning horizon for the Defence Planning Guidance and the Major Programmes was extended to 10 years, somehow in line with NDPP which is mostly focused on



medium term. Secondly, the programming phase of PPBES was now provided with a 3-year budget estimate, allowing for a sustainable multi-annual programming. Additional flexibility is now ensured as the legal provisions allow for the out-of-cycle review of the main defence planning documents, whenever conditions require.

Conclusions

For a modern democratic state, the need to defend the sovereignty, independence and unity of the state, the territorial integrity of the country and the constitutional democracy is mentioned in the fundamental law and detailed in the national defence strategy. The vehicle that provides the link between the need for defence and the instrument that ensures it – the armed forces, is the defence planning process. Thus, the development of defence capabilities, which ensures both the fulfilment of national defence needs and the provision of the contribution to collective defence, in an allied context, must be a national priority.

Following the iterative evolution of the relevant legal framework and the inherent adaptations to the corresponding allied process, the national defence planning process continuously evolved. The current national defence planning process is the result of an evolution stretched throughout the past two decades and its improvements and benefits are emphasized in this article. This evolution was largely influenced by the political-military transformation of Romania until reaching its maturity as a NATO ally and the need to synchronize the national defence planning with NDPP. While the existing legal framework ensures the prerequisites for conducting the national defence planning, a structured capability-based defence planning process, at national level, can be further improved by integrating the defence planning domains in a whole of government approach under the coordination of an appropriate authority.

NOTES:

1 Government Order no. 52 dated 12 August 1998 on National Defence Planning of Romania approved by Law no. 63 dated 24 April 2000.

2 According to the law these domains are: force planning, armaments planning, resource planning, logistics planning, command, control and communications planning, civil emergency planning.

3 The National Security Strategy was no longer mentioned by the *Law on Defence Planning*, although other contradictory legal provision requiring the President to issue the National Security Strategy were still in force.

4 Law no. 203 dated 16 July 2015 on Defence Planning, published in Official Journal of Romania no.555, on 27 July 2015.

5 *Strategic Concept for the Defence and Security of The Members of the North Atlantic Treaty Organisation* was adopted by Heads of State and Government in Lisbon – Active Engagement, Modern Defence, https://www.nato.int/cps/en/natohq/topics_56626.htm, accessed on 07.09.2020.

6 *NATO Defence Planning Process* approved by the North-Atlantic Council https://www.nato.int/cps/en/natohq/topics_49202.htm, accessed on 07.09.2020.

7 Law no. 203/2015 defines the term "capability" as the ability [of forces] to perform actions in support of achieving certain objectives.

8 The 12 defence planning domains included in Law no. 203/2015 are: force planning, armaments planning, C3, logistics, civil emergencies, resources, air defence, air space management, intelligence, medical, research and development, and standardisation.

REFERENCES

*** Law no. 63 dated 24 April 2000 for the approval of Government Order no. 52 dated 12 August 1998 on National Defence Planning of Romania, published in Official Journal of Romania no. 185, on 28 April 2000.

*** Law no. 473 dated 4 November 2004 on Defence Planning, published in Official Journal of Romania no. 1052, on 12 November 2004.

*** Law no. 203 dated 16 July 2015 on Defence Planning, published in Official Journal of Romania no. 555, on 27 July 2015.

*** Parliament Decision No. 36 dated 18 December 2001 on Endorsement of National Security Strategy of Romania, published in Official Journal of Romania no. 822, on 20 December 2001.

*** Government Order no. 52 dated 12 August 1998 on National Defence Planning of Romania, published in Official Journal of Romania no. 302, on 18 August 1998.

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