

# STABILITY POLICING CONCEPT: A MUST FOR THE ALLIANCE, AN OPPORTUNITY FOR THE SPANISH ARMED FORCES

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## ABSTRACT

SP (Stability Policing) is defined as the 5<sup>th</sup> function of NATO (North Atlantic Treaty Organization) MP (Military Police). Despite that and as a result of the last lessons learnt from NATO Operations, SP should be treated as a new independent discipline in NATO Doctrine due to the relevant impact of its activities in the operations. These are aimed at managing the transition from a situation of war or instability to a stable situation, filling the security gap that exists after the completion of military operations, until the deployment of civilian security forces is possible.

This article simply intends to highlight the need to enhance the capabilities of the military forces in order to lead the transition from a post-war situation generated after a military intervention, to a situation of stability that allows the participation of civilian capabilities. All this, in light of the negative results observed after the latest NATO operations. Without a change in this regard, it does not seem possible to face new missions with guarantees of success, at a time when large regions of the world are demanding the need for help to improve their stability as the first factor whose consolidation is essential for social progress in other areas.

The SP concept could be a useful tool to fill the existing aforementioned gap and contribute to achieve the final target of the operations: the establishment of a secure situation that facilitates the progress of societies.

SAF (Spanish Armed Forces) should take advantage of the excellent capabilities of Guardia Civil in order to perform SP tasks in military operations and benefit from its participation, making it possible to assume a leading position in NATO operations.

*Keywords:* Stability, military, police, civil-military, operations, strategy, security, Guardia Civil, Gendarmerie, investigation, NATO.

## 1. THE RELEVANCE OF STABILIZATION IN NATO OPERATIONS

Terrorists, organized crime syndicates, warlords, and petty criminals have all found a suitable habitat to develop their illegal activities in states and regions in conflict. During the last decades, these activities have been favored by the development of new technologies linked to the Internet, economic globalization, and the increase in

fanaticism. Civil society has been the victim that suffered the effects of the evolution of these unstable environments<sup>1</sup>.

Following the opinion of the USIP (United States Institute of Peace), the only effective possible response to this situation should group together all the actions required for the stabilization of each of the different sectors, in which it is necessary to act, assigning them to specialized organizations and serving as a basis for the establishment of a sustainable long-lasting peace<sup>2</sup>.

In a generic way, the USIP's Guiding Principles for Stabilization and Reconstruction defines the concept of stabilization as *"ending or preventing the recurrence of violent conflict and creating the conditions for normal economic activity and non-violent politics"*<sup>3</sup>.

In the field of defense, NATO defines stabilization<sup>4</sup> as *"an approach used to mitigate crisis, promote legitimate political authority, and set the conditions for long-term stability by using comprehensive civilian and military actions to reduce violence, re-establish security, and end social, economic, and political turmoil."*

During the last decades, NATO members have launched various initiatives aimed at stabilizing conflict zones in diverse countries such as Afghanistan, Iraq, or Somalia. It has also developed other initiatives oriented to the fight against terrorism, with characteristics similar to stabilization programs across the Middle East. In all of them, no matter what the solution is called, stabilization is a necessity whose achievement is essential, and it cannot be addressed by the military forces alone. The use of force should not and cannot be the only tool to be used in these initiatives, nor is it the most effective.

Although NATO's ability to stabilize conflict zones has increased in recent years, considering the lessons learnt from the failures of the last operations, it could be considered that it has not yet reached the desirable levels of development that will ensure the success of operations. NATO members face an increasingly complex and uncertain global environment in which many of their adversaries show instability and take advantage from it. Protracted conflicts provide a suitable habitat for violent extremists and criminals to expand their dominance of the area. Because of this, it is necessary for NATO to redouble its efforts and carry out stabilization missions adequately.

Following the Report of the SIGAR (Special Inspector General for the Afghanistan Reconstruction) *"Stabilization: Lessons from the U.S. Experience in Afghanistan"*<sup>5</sup> stabilization military missions should have into account, among other insights, the following recommendations highlighting the need for complementing military contingents

1 *"Guiding Principles for Stabilization and Reconstruction". USIP (2009). Washington. ISBN 978-1-60127-033-7. Section 1: INTRODUCTION, 1.0 Context, page 1-2*

2 *Idem 1*

3 *Ibid 1. Appendix E: Acronyms and Glossary of Selected Key Terms, page 11-232.*

4 NSO (NATO Standardization Office). Allied Joint Publication AJP-3.4.5 *"Allied Joint Doctrine for the military contribution to stabilization and reconstruction", Edition A Version 1, December 2015, Chapter 1, Section 1, par 102*

5 SIGAR. *"Stabilization: Lessons from the U.S. Experience in Afghanistan", May 2018 <https://www.sigar.mil/pdf/lessonslearned/SIGAR-18-48-LL.pdf> , EXECUTIVE SUMMARY, RECOMMENDATIONS, Executive Branch, page xiii, consulted 28th Feb 21*

with the civilian capabilities necessary to undertake them:

“1. State should take *the lead in laying out a robust whole-of-government stabilization strategy, USAID (United States Agency for International Development) should be the lead implementer, and US DOD (Department of Defense) should support their efforts.*

(...)

6. *DOD should ensure it has a sufficient number and mix of civil affairs personnel with the right training and aptitude for the next stabilization mission.*

7. *State and USAID should designate a new civilian response corps of active and standby civilian specialists who can staff stabilization missions”.*

## 2. STABILIZATION AND STABILITY POLICING

According to the USIP, the Strategic Framework for Stabilization and Reconstruction offers a comprehensive look at the complexity of stabilization missions. This framework recognizes that *“the end states and their associated conditions cannot be pursued independently of one another”*<sup>6</sup>. One of these end states necessary to achieve it is a SASE (Safe and Secure Environment), *“in which the population has the freedom to pursue daily activities without fear of politically motivated, persistent, or large-scale violence”*<sup>7</sup>.

A key action in this field is the SSR (Security Sector Reform), necessary to build host nation ownership and capacity. Following NATO Doctrine<sup>8</sup>, *“SSR involves reforming security institutions so that they can play an effective and accountable role in providing internal and external security. SSR is focused on establishing the conditions for meeting longer term governance and development; however, it also contributes to establishing a SASE and restoring public security”*.

SP (Stability Policing) is one of the pillars of the SSR process envisaged in AJP (Allied Joint Publication)-1 (e)<sup>9</sup> and in AJP-3<sup>10</sup> doctrinal series. SP involves reforming security institutions so that they can play an effective and accountable role in providing internal and external security, including maintaining local law and order until appropriate civil authorities can take over their tasks.

According to AJP-3.22<sup>11</sup>, SP is defined as *“police related activities intended to reinforce or temporarily replace the indigenous police in order to contribute to the restoration and/or*

6 *“Guiding Principles for Stabilization and Reconstruction”. USIP (2009). Washington. ISBN 978-1-60127-033-7. Section 2 The Strategic Framework for Stabilization and Reconstruction, page 2-8*

7 *Ibid, Section 6 Safe and Secure Environment, page 6-38*

8 *NSO. Allied Joint Publication AJP-3.4.5 “Allied Joint Doctrine for the military contribution to stabilization and reconstruction”, Edition A Version 1, December 2015, Chapter 1, Section 1, para 108*

9 *NSO. Allied Joint Publication AJP-1(e) “Allied Joint Doctrine”, Edition E Version 1, February 2017. Type of operations, 2.45 Crisis response, Military contribution to stabilization and reconstruction. Type of operations, page 2-22*

10 *NSO. Allied Joint Publication AJP-3 “Allied Joint Doctrine for the conduct of operations”, Edition C Version 1, February 2019. Section 5 – Types of operations, Military contribution to stabilization and reconstruction, page 1-31*

11 *NSO. Allied Joint Publication AJP-3.22 “Allied Joint Doctrine for stability policing”, Edition A Version 1, July 2016, Part II - TERMS AND DEFINITIONS, LEX-2*

*upholding of the public order and security, rule of law, and the protection of human rights.”* SP focuses on the needs of the civil populace through supporting and, when necessary, temporary replacing of the local police forces when the latter are either unable or unwilling to perform the function themselves. It is performed in unstable areas/fragile States where NATO is engaged, throughout the spectrum of conflict, ranging from peace to high-intensity conflict. However, it is conceptually framed within the stabilization and reconstruction of post-conflict processes.

### 3. MILITARY POLICE AND STABILITY POLICING

According to AJP-3.21<sup>12</sup>, MP (Military Police) forces are defined as *“designated military forces with the responsibility and authorization for the enforcement of the law and maintaining order, as well as the provision of operational assistance through assigned doctrinal functions. MP provide operational assistance through five doctrinal functions.”* These functions are:

1. Mobility support: MP facilitates and allows freedom of movement of military forces throughout the area of operations. It contributes to movement control activities through the control and regulation of military traffic during planned movement operations. It also assists with the security of basic military route networks, supporting the movement and coordination, among others, of stragglers, displaced civilians, internally displaced people, and refugees, to ensure the routes remain clear for military traffic.
2. Security: MP can contribute to the protection of the force through the establishment and maintenance of a safe and secure environment within which to operate. This function includes activities such as area, physical and personal security, crowd and riot control, convoy escort, close protection, and information security.
3. Detention: MP must be prepared to capture, detain, retain, or hold individuals for a wide variety of reasons. This may include members of their military, a foreign or adversary force, civilians, or other people for specified operational reasons.
4. Police: MP forces must be responsible for the enforcement of discipline and the conduct of investigations, especially for the alleged commission of military crimes.
5. SP: defined before.

MP can be intended as both a set of functions (mobility support, security, detention, police and stability policing) and as the organization/personnel that carry them out. This practical usage of the term MP typically causes confusion over the actual terms of discussion concerning the relationship between the latter and SP.

In terms of functions, MP and SP are different military functions. This diversity is conceptual and it is based on their relevant aims and “target audience”. While MP

12 NSO. Allied Joint Publication AJP-3.21 *“Allied Joint Doctrine for military police”, Edition A Version 1, February 2019. CHAPTER 1, INTRODUCTION, Military Police Definition, page 1-2*

focuses on marshalling the troops, ensuring discipline, providing combat support<sup>13</sup><sup>14</sup> and conducting enabling tactical activities<sup>15</sup>, SP focuses on providing a police service to the local population and building up the national ordinary police (it is irrelevant whether the national police possess military or civilian status) capacity and capabilities.

SP is an operational set of activities different from combat (nor is it a combat-light function), contributing to the military effort of stabilization and reconstruction of the Host Nation.

The aim of SP is to establish a SASE, restore public order and security, and contribute to the creation of the conditions for effective governance. Throughout the spectrum of conflict, the initial goal of SP is to re-establish and maintain sufficient security for the local populace; afterwards, to re-establish law and order, enforce the law and, eventually, reinforce the local security institutions. SP engages an adversary, which is not a conventional enemy, through tailored-to-the-need procedures, equipment, and forces, in order to contribute to the achieving of the mission objectives and the planned end-state. Even though SP focuses on civilians and ordinary police, it is not a civil function: it is a military function performed by the deployed military Force. Taking as a basis the NATO agreed term for SP, described above, a possible way to explain the actual essence of SP is an ordinary policing military function.

In terms of organizations/personnel, while the MP function can only be performed by the MPs (therefore it is an exclusive function), SP can be performed by a wide array of assets, despite the contrary criteria maintained by various NATO state members that will be explained in section 6 of this document, including the MP forces, based on the complexity of the tasks and on the required level of police skills as well as the police abilities and expertise owned by the potential “SP enforcers” (therefore it is an inclusive function). The more tasks are typically associated with ordinary police, the more ordinary police skills come to play.

That said, it becomes clear why we must be careful not to mix up functions and organizations when talking about MP and its relationship with SP.

The doctrinally assigned 5th function SP to the overall function MP is, in fact, the contribution of the MP organizations/personnel (better to say MPs to mark the difference from MP as a function) to the broader SP function. In other terms, SP is a function for the MPs, not an exclusive function of the latter. The wider function SP embraces the 5th function for the MP; the first can be performed by GTFs (Gendarmerie-Type Force) (GTF) / PFMSs (Police Force with Military Status), MP forces and conventional military forces. SP can be performed by a multipurpose asset as part of the assigned tasks or by a dedicated specialized asset, called SPU (Stability Policing Unit).

There is some misconception about SP as an exclusive MPs function based on a misinterpretation of AJP-3.21 as the doctrine setting the framework for the overall SP function, while the reference doctrine for SP is AJP-3.22. As a matter of fact, AJP-3.21 regulates the MPs contribution to the wider SP function, not the wider SP function itself.

13 NSO. Allied Joint Publication AJP-3.2 “Allied Joint Publication for land operations”, Edition A Version 1, March 2016, paragraph 0167

14 NSO. Allied Tactical Publication ATP-3.2.1 “Allied Land Tactics”, November 2009, paragraph 3006

15 bid 13, paragraph 0167

Marking the conceptual point about SP as a function for the MPs and not of the MPs is one of the utmost importance for several practical reasons. One prominent practical reason is that not all GTFs / PFMUs can perform MP tasks (or other military tasks), in accordance with their national laws/regulations: for the latter, SP may be the only possibility to contribute to military operations. Insisting on considering SP as an exclusive function of the MPs may exclude some GTFs / PFMUs from NATO Operations, thus resulting in a waste of capabilities and skills.

#### 4. NATO STABILITY POLICING CONCEPT

According to AJP-3.22, the NATO Strategic Concept, *“describes the requirement for the Allies to develop the capability to train and develop local forces (police forces included) in crisis zones, so that local authorities are able, as quickly as possible, to maintain security without international assistance<sup>16</sup>”*. This requirement demands the need to substitute and, if necessary, support local police forces, *“as part of NATO’s contribution to a comprehensive approach, has been underscored in recent operations in Kosovo, Iraq, and Afghanistan<sup>17</sup>”*. In this regard, *“while the Military Committee (MC) has undertaken effort to develop a Security Force Assistance concept (SFA Concept) to address the need to train and develop indigenous military security forces, the need to address local police forces remains unfilled<sup>18</sup>”*. That is why the necessity to adopt a SP Concept is in the collective interest of the Alliance.

The rationales described above require to be conceptualized, and a SP capability needs to be established: the mere fact that it needs to be explained highlights the gap that calls for being filled. *“NATO lacks a precisely defined SP capability that is properly acknowledged within the NATO Defence Planning Process (NDPP) and targeted to Nations. This means that during a force generation process Nations can provide SP contributions that lack police expertise and experience, likely resulting in disastrous consequences: this is why adopting an SP concept is the opportunity for the Alliance to fill this gap<sup>19</sup>”*.

A formal SP capability is needed in an effort to formally bring this police expertise within NATO, and to develop a reference capability requirement to support the creation of a minimum capability requirement for NATO Operations. Doctrine is not sufficient for this purpose.

This does not entail the establishment of new units or enlarging the NCS (NATO Command Structure<sup>20</sup>); it just means that there is a need to establish a SP capability package that can be plugged into the force, when required. Some nations may

16 NSO. Allied Joint Publication AJP-3.22 *“Allied Joint Doctrine for stability policing”, Edition A Version 1, July 2016, PREFACE, paragraph 2, page VII*

17 Idem

18 Idem

19 De Magistris, Giuseppe., Bergonzini, Stefano. (2020), Gendarmerie in international environment, *“STABILITY POLICING: A GOLDEN OPPORTUNITY FOR NATO”*. Romanian Gendarmerie, June 2020, page 26, <https://www.nspcoe.org/wp-content/uploads/2020/11/Stability-Policing-a-golden-opportunity-for-NATO.pdf>

20 *“The NATO Command Structure”, NATO. Factsheet, February 2018, https://www.nato.int/nato\_static\_fl2014/assets/pdf/pdf\_2018\_02/1802-Factsheet-NATO-Command-Structure\_en.pdf* : *“NATO’s Command Structure (NCS) is the backbone of NATO. It is composed of permanent multinational headquarters at the strategic, operational and component levels of command, distributed geographically and commonly funded”*.

contribute with their GTFs / PFMSs, others with their MPs or properly trained and equipped conventional forces; some other would not contribute as they may lack the required capabilities: no additional costs will be borne by NATO, nor by Nations other than those the latter want to bear on voluntary basis.

Adopting the SP Concept is also in the interest of GTFs / PFMSs and MPs themselves so they can plan and develop their capabilities supported by a clear conceptual framework. It is not about bearing more expenses, it is about improving and using the capabilities that are already in place.

In addition, nothing in the Concept calls for the establishment of a SP Advisor within the NCS. However, it is pivotal to establish a network of SP SMEs (Subject Matter Experts) throughout the staffs, at least at a strategic and operational level, but also at a LC (Land Component) level, to professionally manage SP during the planning and execution of Operations and exercises, as well as in the doctrine and lessons learned cycles. SP SMEs positions may be double-hatted and covered by GTFs / PFMSs, MPs, and conventional military forces personnel: it is not important who manages SP, but rather that it is managed in a professional manner.

## 5. STABILITY POLICING UNIT (SPU)

As described in the previous section, SP may be conducted by a wide range of military forces. Since it requires a civil-oriented mindset and a specialist approach to meet the needs and expectations of the civil population in order to succeed, the best suitable forces are the GTFs / PFMSs. In fact, SP is a function also for the MP, together with its traditional four functions. Nevertheless, when the MP are called to perform SP duties, they are not conceptually performing MP activities, but civil police activities.

SPUs are specialized units with specialized policing skills<sup>21</sup> generated for the specific purpose of conducting SP. Major international organizations, such as NATO, EU and UN, have set up varying types of Stability Police Units (SPUs), namely MSU<sup>22</sup> (Multinational Specialized Unit), IPU<sup>23</sup> (Integrated Police Unit) and FPU<sup>24</sup> (Formed Police Unit).

NATO created the MSU to cover the need for the Alliance to be endowed with a military capability of civil police SFOR operation in Bosnia and Herzegovina in 1997<sup>25</sup>.

21 NSO. Allied Joint Publication AJP-3 *“Allied Joint Doctrine for the conduct of operations”*, Edition C, Version 1, February 2019, Chapter 1, Section 5, para 1.66d

22 NSO. Allied Tactical Publication ATP-3.2.1.1 *“Guidance for the conduct of tactical stability activities and tasks”*, Edition B Version 1, March 2014, PREFACE, paragraph 194, page 1-38: *“A MSU is a military asset with specific capabilities at the operational level designed to guarantee a safe and secure environment through a Combat Bridging (CB) function. Combat Bridging is an enabling function utilizing Tactics Techniques and Procedures focused on the security requirements of an environment transitioning from the combat phase to the Stabilisation and Reconstruction phases. The MSU provides the Commander with a specialized asset ideally suited to bridge the gap between high intensity combat and stabilisation until the local Police and other institutions are capable of assuming these duties”*.

23 EU. Concept for rapid deployment of police elements in an EU-led substitution mission. Council of the European Union. 8508/2/05 REV 2 RESTREINT UE/EU RESTRICTED, 31 May 2005, 1.3.1. INTEGRATED POLICE UNIT (IPU), page 4

24 *“FORMED POLICE UNITS (FPUS)”*, United Nations Police, <https://police.un.org/en/formed-police-units-fpus>, consulted 6<sup>th</sup> June 2021

25 *“About NATO Stability Policing”*, NATO Stability Policing Center, <https://www.nspcoe.org/about-us/about-stability-policing/>, consulted 6<sup>th</sup> June 2021

Ever since then, some more experience was gained, and NATO currently considers that *“stability policing forces must be robust, flexible, interoperable, and rapidly deployable and provided with adequate logistic capacity. This means that Stability Policing Units (whose structure will be defined in a future tactical publication) will be most suitable to be deployed in these circumstances<sup>26</sup>”*.

GTFs / PFMSs are military forces that possess a unique set of ordinary police skills and expertise since they perform ordinary police tasks in their home countries daily as their core business, in addition to their military tasks. For this uniqueness, which represents their center of gravity, GTFs / PFMSs are the logical first choice to run and staff a SPU<sup>27</sup>, but not the only solution: this is also aligned with real NATO Operations (SFOR, KFOR) and Coalition Operations (Iraq) where the MSU<sup>28</sup> have been staffed mainly by GTFs / PFMSs, integrated, little by little, by MPs and conventional military forces.

Therefore, a SPU can hypothetically be staffed by GTFs / PFMSs, MPs, a combination of the two, and integrated by conventional forces, bearing in mind that a SPU is not a civil police asset, but a military asset performing ordinary police tasks in the area of operations.

Regarding the command and control on SP activities, a distinction must be made between the following situations:

#### 1. Absence of a deployed SPU

When no dedicated SPU of whatever size is deployed, it is reasonable to consider using the MPs to perform SP activities, as MP assets are always embedded in the deployed Force and they represent the most suitable available asset. The Provost Marshal would advise the Force Commander in this regard and, if double-hatted as the MP Commander, he would also command and control the activities.

#### Presence of a deployed SPU

When a dedicated SPU of whatever size is deployed, a general or specific need for SP is acknowledged by the Alliance. In this case, SP is led and chiefly performed by the SPU without excluding the possibility for other actors to conduct SP activities as well, depending on mission mandate. The SPU Commander would be subordinated to the Force Commander and would advise the latter on SP matters. The SPU Commander and the Provost Marshal would coordinate for cross-cutting issues and would keep reciprocally informed.

## 6. HOW IS STABILITY POLICING IMPLEMENTED IN NATO COUNTRIES?

Based on whether or not the SP is exclusively considered as an MP function, there are two large groups of member states whose characteristics are detailed below.

26 NSO. Allied Joint Publication AJP-3.22 “Allied Joint Doctrine for stability policing”, Edition A Version 1, July 2016, paragraph 0225, page 2-9

27 Idem 9, para. 2.6.3

28 NSO. Allied Joint Publication AJP-3.4.1 “Allied Joint Doctrine for the military contribution to peace support”, Edition A, Version 1, December 2014, NATO Standardization Office, paragraph 0441, page 4-19



## 6.1. SP AS A NON-EXCLUSIVE MP FUNCTION

This position is mainly defended by Italy and France, which have GTF / PFMS (Italian Carabinieri<sup>29</sup> and French Gendarmerie<sup>30</sup>) capable of developing, in addition to the MP functions, regular police public security functions in the benefit of the civilian population within the framework of their own territory, and whose armed forces also lack other specific military police different from the mentioned police Corps. In both cases, these corps are not considered MP forces.

AJP-3.22 is, for both countries, the only doctrinal reference for SP, while AJP-3.21 simply addresses the aspects related to the contribution of the MP to the SP. This stance is based on the next arguments:

- Some other NATO GTF / PFMS, such as the Romanian Gendarmerie<sup>31</sup>, which have already participated in recent years in NATO operations carrying out SP activities with excellent results, can only develop, according to the Romanian national legal framework, this type of function lacking the status of MP<sup>32</sup>. These functions are developed by specific MP forces, that are part of the Romanian Armed Forces. Considering SP as an exclusive MP function would make it impossible to integrate Romanian Gendarmerie into NATO operations.
- The forces responsible for carrying out SP activities must possess the professional experience and necessary expertise in performing police functions in their respective member states, exercising their authority over civilian population. Only in this case can it be assured that SP forces have the technical capability necessary to correctly develop SP tasks and contribute to achieve the operation objectives. This condition is not usually met by a large part of the MPs, whose authority is generally limited to military personnel.

## 6.2. SP AS AN EXCLUSIVE MP FUNCTION

Broadly speaking, the group of countries in favor of this position includes those member states that do not have GTF / PFMS. Among them are the Nordic countries, such as Sweden<sup>33</sup> and Denmark<sup>34</sup>, as well as USA<sup>35</sup>, Germany<sup>36</sup> and the

29 ITALY. LEGGE 31 marzo 2000, n. 78. Delega al Governo in materia di riordino dell'Arma dei carabinieri, del Corpo forestale dello Stato, del Corpo della Guardia di finanza e della Polizia di Stato. Norme in materia di coordinamento delle Forze di polizia. GAZZETTA UFFICIALE DELLA REPUBBLICA ITALIANA n.º 79, 4 de abril de 2000, article 1, paragraph 2

30 FRANCE. LOI n° 2009-971 du 3 août 2009 relative à la gendarmerie nationale. Journal officiel de la République française n°0180 du 6 août 2009, art 1, 3°

31 ROMANIA. LEGE nr. 550 din 29 noiembrie 2004, privind organizarea și funcționarea Jandarmeriei Române. Publicat în MONITORUL OFICIAL nr. 1175 din 13 decembrie 2004, art 1 (1)

32 ROMANIA. LEGEA nr. 346 din 21 iulie 2006, privind organizarea și funcționarea Ministerului Apărării Naționale. Publicat în MONITORUL OFICIAL nr. 867 din 2 noiembrie 2017, art 5 (36)

33 "FÖRSVARSMAKTENS MILITÄRPOLISENHET", FÖRSVARSMAKTEN, <https://www.forsvarsmakten.se/sv/organisation/livgardet/forsvarsmaktensmilitarpolisenhet>, consulted 3rd JUN 21

34 "Hærens Militærpoliti" Militærpolitisektionen, Hærens Logistiskole, Aalborg Kaserne. Norrøndby, Denmark. [http://www.militarypolice.dk/hls/HRN\\_MP\\_2003.pdf](http://www.militarypolice.dk/hls/HRN_MP_2003.pdf), III. MILITÆRPOLITI OPERATIONER

35 USA. FM 3-39 "MILITARY POLICE OPERATIONS", Headquarters, Department of the Army, Washington, DC, April 2019 [https://fas.org/irp/doddir/army/fm3\\_39.pdf](https://fas.org/irp/doddir/army/fm3_39.pdf), ANNEX A

36 "German Military Police", NATO MILITARY POLICE CENTRE OF EXCELLENCE, <https://mpcoe.org/GERMANY>, consulted 22nd October 2020

United Kingdom<sup>37</sup>, whose MP forces are legally authorized to carry out most of the functions and activities included in AJP-3.21, according to their national legal framework. Among them are the police investigation of certain crimes with similar powers to those assigned to the civilian police forces. Because of this, these member states do not accept that the SP can be separated from MP and merge as a new discipline for NATO.

## 7. STABILITY POLICING IN SPANISH ARMED FORCES

### 7.1. MP TASKS ACCORDING TO SPANISH REGULATION

According to the content of the SAF (Spanish Armed Forces) Security Decree<sup>38</sup> the military, naval or air police units (all of them considered as MPs) are those equipped with adequate weapons and equipment, organized, and trained to fulfill the next tasks<sup>39</sup> in Spanish territory:

1. Carry out the surveillance, custody, escort and regulation of military convoys and transports, as well as the protection of members of the SAF.
2. Identify personnel and vehicles in military compounds.
3. Ensure order, discipline, and uniformity of the military personnel.
4. Control the traffic within the military compound. Outside the military compounds, MPs may perform this activity in the absence of traffic police officers or with their support, always after having obtained authorization from the civilian traffic authorities.
5. Guard and safekeep prisoners and detainees in military penal prisons and establishments, as well as carry out security and order maintenance inside these establishments.
6. Assist military prosecutors and judges when required.
7. Make reports for the benefit of the security in their specific scope of action.

In addition to the described tasks, the SAF Security Decree enables MP to also perform the two following tasks:

1. Security services in military compounds<sup>40</sup>.
2. Support to security forces, at their request, exclusively performing their proper functions and within the limits of their powers.

Outside the Spanish territory, MP is only allowed to develop the described tasks and always in accordance with the provisions of the corresponding international agreements.

37 "Royal Military Police", *The British Army*, <https://www.army.mod.uk/who-we-are/corps-regiments-and-units/adjutant-generals-corps/provost/royal-military-police/>, consulted 04<sup>th</sup> June 2021

38 SPAIN. Real Decreto 194/2010, de 26 de febrero, por el que se aprueban las Normas sobre seguridad en las Fuerzas Armadas. BOE núm. 64, de 15 de marzo de 2010, páginas 25324 a 25334, art 29

39 Ídem 11, art 30

40 Ídem 11, art 15

## 7.2. SPANISH MP ORIGIN AND NATURE

In addition to the MP forces (military, naval and air police units) composed by military personnel from to the SAF, but with different origin, Spanish Guardia Civil may also be part of the Spanish MP, in compliance with the military missions that can be entrusted to this corps, based on the military nature and police formation, as established in paragraph a).1º, article 3, of the Decree on military missions of Guardia Civil<sup>41</sup>. During these missions, the members of Guardia Civil will be subjected to compliance with the Penal Military<sup>42</sup> and Disciplinary<sup>43</sup> Laws and will depend on the SAF chain of command, in the same conditions of the rest of the contingent. In fact, and at any effects, Guardia Civil can be considered as part of the SAF contingent in similar conditions to the rest of their components, providing the force a technical capacity based on specific skills.

## 7.3. SPANISH MP REGULATION VS. NATO DOCTRINE

The development of the five doctrinal functions defined in the Allied Joint Doctrine (AJD) for the MP notably transcends the kind of tasks that can be carried out by Spanish MP in accordance with the provisions of Spanish regulations reflected above. In fact, there is a more than evident lack of correlation among the tasks assigned to the Spanish MP with those provided for the AJD. In short, the situation goes as follows:

- Some of the tasks included in the AJP correspond to those assigned by the Spanish legislation to the MP.
- On the other hand, some others do not correspond to them but can be carried out through the participation of other capacities of the SAF.
- Lastly, there is a third group of tasks for which the personnel of the SAF do not have the necessary legal authorization.

Regarding the normative value of the AJD, the Spanish Supreme Court ruled<sup>44</sup> that the NATO Standardization Agreements (STANAGS's) do not have any normative or legal value either in international law or in Spanish domestic law, since they are only procedures developed for the homologation or standardization of the actions and operations of the armed forces regarding the different member states of the Alliance. Consequently, AJP-3.21<sup>45</sup> and AJP-3.22<sup>46</sup> must be interpreted and applied in a way that does not cause conflict with Spanish law. This situation is valid both in Spanish territory and abroad, based on the criteria established by the Constitutional Court in its

41 SPAIN. Real Decreto 1438/2010, de 5 de noviembre, sobre misiones de carácter militar que pueden encomendarse a la Guardia Civil. Boletín Oficial del Estado núm. 269, de 06/11/2010, páginas 93269 a 93271.

42 SPAIN. Ley Orgánica 14/2015, de 14 de octubre, del Código Penal Militar. Boletín Oficial del Estado núm. 247, de 15/10/2015, páginas 95715 a 95746

43 SPAIN. Ley Orgánica 8/2014, de 4 de diciembre, de Régimen Disciplinario de las Fuerzas Armadas. Boletín Oficial del Estado núm. 294, de 5/12/2014, páginas 100151 a 100191

44 SPAIN. Tribunal Supremo (Sala de lo Militar, Sección 1ª). Sentencia núm. 5789/2008, de 3 de noviembre (ECLI:ES:TS:2008:5789), Fundamento de Derecho CUARTO, página 23

45 The agreement of nations to use this publication is recorded in STANAG 2296

46 The agreement of nations to use this publication is recorded in STANAG 2616

Declaration 1/1992<sup>47</sup>, by which it is established that “*Spanish public powers are no less subject to the Constitution when they act in international or supranational relations than when exercising ad intra their attributions.*” This statement declares that the mandatory subjection of Spanish public powers in general, and among them the SAF in particular, to abide by the provisions of the Spanish constitutional framework, even when they perform their services abroad<sup>48</sup>.

For all these reasons, the Commander of the SAF has established in its Resolution<sup>49</sup> the implementation of the AJD of MP the following reservation: “*Spain agrees with the general aspects and tasks to be carried out by MP units set out in AJP-3.2.3.3 (currently AJP-3.21). However, in accordance with paragraph 0002 of the prologue, Spain will determine, case by case, the tasks that the MP units contributed may or may not carry out depending on their different origin and nature*”.

By means of this reservation, it is indirectly recognized that although the SAF can cover all five doctrinal functions included in the AJD for MP, not all of them can be carried out by the MP units composed by SAF military personnel. The position adopted by Spain in this regard advocates for the consideration of MP from a functional point of view: some functions can be covered by the referred MP Units, but others cannot and must be assigned to other kind of units or resources.

Specifically, after having analyzed the AJD of MP, it can be concluded that Spanish MP units (composed by SAF military personnel) are limited to perform only the next activities in relation with the first four MP functions:

1. Mobility support: activities related to civilian traffic control are limited to the absence or the support of the traffic civilian police. Besides that, MPs can exclusively make reports when an accident involving military vehicles occurs, but these reports are not for legal use due to the lack of authorization of MPs to investigate possible criminal responsibilities of military personnel, neither administrative responsibility of civilians in case. This needs to be investigated by traffic police.
2. Security: Spanish MP's are not allowed to do many of the activities required to Close Protections Teams (CPT) outside military compounds. Among them belong the identification of civilians or the delimitation of a secured area around the people escorted, reserved to the security forces. These restrictions generate huge limitations in MP CPT services. By contrast, they can be responsible for the security of the military bases.
3. Arrests: in peacetime Spanish MP's are only allowed to practice arrests in case they witness flagrant crimes, in the same conditions for any other people. Arrests in other cases are reserved to judicial police, always after

47 SPAIN. Tribunal Constitucional (Pleno). Declaración de 1 de julio de 1992. Requerimiento 1236/1992 del Gobierno de la Nación en relación con la existencia o inexistencia de contradicción entre el art. 13.2 de la C.E. y el art. 8 B, apartado 1 del Tratado Constitutivo de la Comunidad Económica Europea, en la redacción que resultaría del art. G B, 10, del Tratado de la Unión Europea. Boletín Oficial del Estado núm. 177, de 24/07/1992, Fundamento Jurídico 4, página 6

48 Liñán Noguerras, Diego J., Roldán Barbero, Javier. (2008), EL ESTATUTO JURÍDICO DE LAS FAS EN EL EXTERIOR. Madrid: Ed. Plaza y Valdés, página 309

49 SPAIN. Resolución 200/14804/13 del JEMAD por la que se implanta el Acuerdo de Normalización OTAN STANAG 2296 “Doctrina conjunta aliada de Policía Militar–AJP-3.2.3.3”. Boletín Oficial de Defensa núm. 212, de 29/10/2013, página 25054

their investigations. This changes in wartime, when the arrests of war prisoners are foreseen by military personnel, and especially Special Operations Forces (SOF) members.

4. Police: Spanish MP forces are responsible for the enforcement of discipline, but they are not allowed to conduct investigations for the alleged commission of any kind of crime. According to Spanish Law, activities developed during criminal investigations are strictly reserved to judicial police. The generic functions of the judicial police are determined in the article 126 of the Spanish Constitution<sup>50</sup>: *“the judicial police depends on the Judges, the Courts and the Public Prosecutor’s Office in their functions of investigating the crime and discovering and detaining the offender, in the terms established by law.”* Derived from the constitutional mandate, the Judicial Power Law<sup>51</sup> establishes in the same terms in its article 547 that *“the function of the Judicial Police includes assisting the courts and tribunals and the Public Prosecutor’s Office in the investigation of crimes and in the discovery and detaining of offenders. This function will be the responsibility, when required, to all members of the Security Forces and Corps, whether they depend on the central government, the autonomous communities or local entities, within the scope of their respective competencies”*.

#### 7.4. THE SPANISH JUDICIAL POLICE

The specific activities reserved to Spanish judicial police are described in different articles of the Criminal Process Law. Among others, they are the following ones:

- Arrest of alleged criminals when it can be inferred as a result of their investigations that they have committed a crime.
- Entry and registration at addresses without authorization of their residents.
- Control, checking and access to postal and telegraphic mails.
- Interception and access to phone conversations and electronic communications.
- Conversation, sound and image recording by means of electronic devices.
- Remote access to mass storage of information.
- Remote access to computer equipment.

The limitation of fundamental rights recognized in the Spanish Law required by the judicial police for the practice of investigations demands, with mandatory character, an express regulation carried out by means of a Norm with the character of Organic Law, enabling specific corps, agencies or public services to perform these sensitive activities in accordance with the provisions of article 81.1 of the Spanish Constitution: *“Organic laws are those relating to the development of fundamental rights and public liberties.”*

50 SPAIN. Constitución Española, de 29 de diciembre de 1978. Boletín Oficial del Estado núm. 311, de 29/12/1978, páginas 29313 a 29424

51 SPAIN. Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial. Boletín Oficial del Estado núm. 157, de 02/07/1985, páginas 20632 a 20678

Article 283, of the Criminal Process Law<sup>52</sup> (an Organic Law), defines the corps, agents or public employees authorized to carry out judicial police functions. Spanish Guardia Civil members are specifically included in the list. However, the members of SAF are not included in it. Taking this into account, it is not possible to attribute the character of judicial police to the members of the SAF based on the following:

- They are not included in the article 283 of the Criminal Process Law.
- There is also no other legal statement with normative rank of Organic Law in which this character is expressly assigned to them.

After this reasoning, it is necessary to think about the scope of the specific activities that the Spanish MP's can carry out to aid the organs and prosecutors of the military jurisdiction and try to define them. The answer to this question is found in the article 81 of the Military Jurisdiction Authority and Organization Law<sup>53</sup>, in which it is defined the general limits to which the work of auxiliary personnel extends: *"in all military judicial courts there will be the necessary auxiliary personnel who, under the direction of the corresponding Secretary, will carry out the work entrusted to them in relation to the dispatch and processing of the procedures that are followed."* Therefore, it can be possible to identify the tasks included within the term assistance as those related to the administrative processing of the procedures. Those activities are far different from those reserved to judicial police in the framework of the criminal investigation, also defined in art 82 of the referred Law, which consist of investigating the crimes, discovering, and detaining the offenders. All this respecting the military judicial courts and the military judicial prosecutors.

## 7.5. SPANISH SP IMPLEMENTATION

In the same way the Commander of the SAF has ruled in its Resolution<sup>54</sup> to implant the JAD for the SP that *"Spain agrees with the SP general aspects and tasks to be carried out by MP Units set out in that publication. However, Spain will determine case by case the activities and tasks that the MP Units may or may not carry out depending on their different origin."*

Regarding this aspect, it does not appear that SP activities are included, in any case, among the tasks assigned to the Spanish MP in the SAF Security Decree 194/2010. Moreover, considering the nature of SP tasks oriented to reforming, training, advising and assisting the local security forces, including the complete substitution of them in order to provide the necessary public security services, it would be more than convenient, due to the complexity that this entails, to deploy police officers experienced in carrying out of these kind of tasks on a daily basis. That is, specialists in maintaining citizen security endowed with extensive professional expertise, in addition to the specific training and equipment required in this area.

52 SPAIN. Real Decreto de 14 de septiembre de 1882 por el que se aprueba la Ley de Enjuiciamiento Criminal. Boletín Oficial del Estado núm. 260, de 17 de septiembre de 1882

53 SPAIN. Ley Orgánica 4/1987, de 15 de julio, de la Competencia y Organización de la Jurisdicción Militar. Boletín Oficial del Estado núm. 171, de 18/07/1987, páginas 22065 a 22079

54 SPAIN. Resolución 200/17595/17 del JEMAD por la que se implanta el Acuerdo de Normalización OTAN STANAG 2616 "Doctrina conjunta aliada para policía de estabilización – AJP-3.22, Edición A". Boletín Oficial de Defensa núm. 239, de 12/12/2017, página 29493

The Spanish MP is not a member of the Spanish security forces, defined in the Spanish Security Forces Law<sup>55</sup>, in which, on the other hand, Guardia Civil plays a relevant role. Therefore, it goes without saying that according to Spanish Law, it is not possible to assign MP forces to those missions related to the maintenance of the public security. Besides that, Spanish Criminal Process Law MP's are not allowed to carry out criminal investigations and activities exclusively reserved for the judicial police.

This situation differs from that existing in those Allied state members, such as the US, the UK, Germany, or the Nordic countries, where MP forces may perform certain criminal investigations, although mainly related to military crimes, or those other countries that lack specific MP forces, such as Italy or France.

That is why the Spanish approach to SP operations is described in the mentioned Resolution of the Commander of the SAF, by which the NATO STANAG 2616 is implemented, that establishes a model based on the assignment of SP tasks to the MP Forces, based on their nature and origin, due to the two different existing provenances: SAF or Guardia Civil. In other words, it recognizes that those MP forces composed exclusively by members of the SAF will not be the most suitable to carry out those SP tasks, which require the technical police specialization they lack and for which they are not legally authorized in Spain. These tasks should be assigned to MP forces composed by members of Guardia Civil.

As a guide, these tasks are related to training the local security forces in the practice of procedures reserved for the judicial police, that is, in actions related to the criminal investigations. It is not appropriate for the SAF personnel to oversee training local police corps in aspects related to the planning and execution of the service and, in general, of specific police techniques. SAF personnel are also not the most suitable to substitute local security forces in public security missions.

On the other hand, they are perfectly prepared for training local forces in transversal matters characterized by their generic nature, which can be shared between armed forces and security forces, especially in those environments where the degree of insecurity is very high, such as basic security techniques, movement of personnel, vehicles and convoys, use of firearms, signals, human resources management, logistics, budgeted and financial management or computers use and networks, among many others.

## **8. CONCLUSIONS**

In conclusion, the arguments presented highlight the need for the integration, in the Allied contingents, of experts in maintaining law and order with professional experience in carrying out their police duties daily. Mentoring, training, advising and reconstructing local security forces cannot be assigned to personnel without prior professional experience in the field. The lack of professional expertise could be one of the causes that explain the negative results of the last allied operations.

To try to solve this problem, GTFs / PFMSs are the best suitable resources due to the professional background of their members acquired in the daily work as public

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55 SPAIN. Ley Orgánica 2/1986, de 13 de marzo, de Fuerzas y Cuerpos de Seguridad. Boletín Oficial del Estado núm. 63, de 14/03/1986, páginas 9604 a 9616, artículo 2

security agencies in their own countries. For those allied countries that lack of GTFs / PFMSs, such as the US, it should be crucial to try to find the best solution in order to provide an adequate response to the operational demands. In this regard, it does not seem appropriate assigning SP responsibilities to MP forces without previous experience in this field.

In the case of the SAF, the most suitable option is to take advantage of the capabilities of Spanish Guardia Civil, a PFMS with exceptional police skills, that can be completely integrated in the SAF contingents and their chain of Command, reinforcing the support of this Corps to the Spanish National Defense, since it has the necessary expertise to carry out police tasks on benefit of the civilian population, as showed in previous NATO operations. Consequently, SAF must be aware of the qualitative advantage of having such a valuable resource as a means to consolidate their position as a relevant actor in the framework of NATO operations.

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