THE CONTRIBUTION OF STABILITY POLICING TO EXPLOSIVE ORDNANCE DISPOSAL

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During the last decades warfighting and conflicts have shifted into a grey area where the thresholds of conflict are blurry, the enemies are more and more difficult to distinguish, and the battles have become asymmetrically fought. An example can be seen during the more recent conflicts in Iraq and Afghanistan, where the strategic and effective use of improvised explosive devices (IED[1]) by terrorists and insurgents has triggered within NATO Allies the reaction of their explosive ordnance disposal (EOD[2]) capabilities which necessarily evolved to tackle or at least mitigate this phenomenon by countering, neutralising and the technical exploitation (TE) of the device.

However it is not only the use of IEDs by NATO adversaries that has to be dealt with but also the presence of unexploded explosive ordnances (UXO[3]) which often appear in the field in the aftermath of a conflict that have to be managed, securing the local population and own forces until EOD units render safe an area.

[1] IED: "*A device placed or fabricated in an improvised manner incorporating destructive, lethal, noxious, pyrotechnic or incendiary chemicals and designed to destroy, incapacitate, harass or distract*." NATO agreed term.
[2] EOD: *"The detection, accessing, uncovering, identification, mitigation, rendering safe, recovery, exploitation and final disposal of explosive ordnance, regardless of condition."* NATO agreed term
[3] UXO: *"Explosive ordnance that has been primed, fuzed, armed or otherwise prepared for action, and that has been fired, dropped, launched, projected or placed in such a manner as to cause harm to operations, installations, personnel or material and remains unexploded either by malfunction or manufacturing defect or for any other cause."* NATO agreed term

Likewise occurs with remnants of war, small arms, and ammunitions, abandoned and unexploded ordnances that may be located and which suppose a threat to the local population and that could easily find their way to the illegal market. These issues must be addresses through disarmament, demobilization and reintegration (DDR) efforts ensuring that these elements will not end in the hands of criminal organisations or terrorist / insurgent networks.

While establishing a safe and secure environment (SASE)[4] NATO Stability Policing (SP) capability may effectively support the EOD capability, and contribute to NATO's desired end state both in theatre of operations by preserving the host nation population from the EOD effects, as well as through the thorough collection and handling of evidence, which can serve in judicial procedures either locally or abroad at a later stage.

The notion of stability policing within NATO has been defined by NATO as being "*Police-related activities intended to reinforce or temporarily replace indigenous police forces in order to contribute to the restoration and/or upholding of the public order and security, rule of law, and the protection of human rights*."[5] These activities are to be conducted in the course of an operation in fragile states, before, during and post conflict/crisis with the aim of establishing a SASE.[6]

In this regard and relating to the SP contribution to EOD, some SP units deployed may have the capability to perform EOD activities autonomously; however, this is a most unlikely scenario. In practice EOD will be carried out by specialised EOD units, military engineering (MILENG), and supported by force protection (FP), medical support, electronic warfare (EW), military working dogs (MWD), logistics, weapon intelligence teams (WITs), boarding teams, military search, mine clearance measures (MCM), CBRN defence, military police (MP), communications, and of course by SP.[7]

In the field, it is highly probable that SP elements at some point come across an explosive device, *inter alia*, either during a patrols, attending a public security incident, a search and seizure mission, surveillance activities, during the course of a criminal investigation, whilst providing security to a critical site, during a counter-terrorism or organised crime operation, or during the course of community policing duties, to mention but a few…

As first responders it is critical for SP to take a series of measures to ensure the safety of the population whilst not disregarding their own personal safety. Moreover, depending whether the operational environment is permissive or not, SP can take immediate measures. These can include but are not limited to confirming the presence of the UXO or the IED, clearing and evacuating the danger area of personnel and casualties, reporting the incident through their chain of command providing as much and detailed description of the UXO/IED as possible, securing the incident area through an effective cordon and by controlling relevant entry points, preventing access to non-authorised personnel.

[4] SASE: *"The surroundings and conditions that are sufficiently protective for long-term security and stability to develop and where the population is served by a functional, legitimate, self-sustaining and resilient government."* NATO agreed term

[5] NATO AJP-3.22 *Allied Joint Doctrine for Stability Policing*

[6] NATO AJP-3.22 *Allied Joint Doctrine for Stability Policing*; AJP-3.4.5 *Allied Joint Doctrine for the Military Contribution to Stabilization and Reconstruction*

[7] NATO ATP-3.18.1 *Allied Tactical Publication for Explosive Ordnance Disposal*

Authorised entry should be fully identified and through a secure entry/exit corridor; indeed, it is essential that the crime scene remains as untouched as possible, in order to avoid its "*contamination*".[8]

While awaiting the arrival of the specialised EOD operators, the SP elements should redirect traffic and select a safe rendezvous point and inform the relevant parties. Furthermore, any witness should be identified and debriefed taking notes of the information acquired. Upon its arrival, the EOD specialised element is to be fully briefed on the incident and on the content of witness statements. Likewise, witnesses are to be accessible to EOD specialists too, for the latter require the best picture possible of the blast/incident.

The UXO/IED device (or suspected device) is only to be manipulated by specialised EOD operators. Only upon neutralising the device and rendering the area safe, should the crime scene examination begin. This should include the thorough examination and detailed recording of the crime scene to search and collect evidence, which can include biological evidence, latent print evidence (fingerprints, palm / foot prints etc..), shoeprints, tire track evidence, trace evidence (fibres, soil, vegetation), CCTV footage, witness statements, victims identification. Sketches and photography / video footage of the crime scene should be recorded. The identification and location of evidence which is recovered should be labelled and tagged, as well as the identification of who and where each piece of evidence was recovered. By the same token, the chain of custody records should be crystal-clear and maintained for all recovered items.

Types of evidence that may be found could include remains of safety fuses, remains of detonators, wires, fragments of containers, fragments of batteries, samples of explosives, just to name a few. Through biometric analysis fingerprints or DNA samples may be retrieved, a technical analysis of the structure of the explosive device may lead to identifying the bomb maker, etc… The material used to fabricate the IED may lead us to know if it was fabricated locally or not, if the support of an external supplier was necessary in order to obtain the components. In general terms, this may provide us with a wider picture of our adversaries' criminal network and enable to pursue this network through law enforcement efforts.

In the case of the appearance of an UXO it is of interest to the investigation to determine if it is attributable to our adversary, if it is considered as prohibited by the "*Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*" and if there may be issues of accountability for breaches of international humanitarian law and laws of armed conflict. These should be investigated and documented for possible legal procedures.

Likewise the origin of the UXO may permit NATO to discover hidden alliances, for example a state may be supplying certain weaponry to another state (or non-state armed group) in conflict in an effort of support, whilst publically it denies these actions. A discovery of this nature could justify a diplomatic intervention against the concerned state (embargo, sanctions, *et similia*) aimed at deterring it from supporting an opponent in an ongoing conflict.

[8] NATO AEODP-13 Allied EOD Publication. *EOD Roles, Responsibilities, Capabilities and Incident Procedures When Operating With Non EOD Trained Agencies And Personnel*

The above-mentioned actions above can be carried out by SP elements in support of EOD capabilities and are of vital importance as they ensure the admissibility of the battlefield evidence (BE)[9] retrieved in future legal procedures, either within the area of operations or abroad.

Despite being amongst the oldest type of weapons, during recent conflicts the use of IEDs by terrorist or insurgents has become more and more frequent. There are many explanations of why this choice of weaponry. These reasons could range from their cost-effectiveness, accessibility, their strategic role (limits mobility of security forces), the psychological effect produced on the population, and or the diminishing of the credibility of governments / international organisations[10]. However, probably the most important reason may be a combination of the above summed to the fact that their calculated use can tip the balance in an asymmetric war and requires NATO to undergo vast efforts to restore stability.

During the wars in Iraq and Afghanistan, the use of IEDs has been so effective for terrorists and insurgents that it comes as no surprise that they have been called *"weapons of strategic influence"*.[11] For the duration of these conflicts, IEDs have been strategically used by terrorist and insurgents to block NATO or local forces from in an area and/or preventing their advance in a determined direction during counterinsurgent operations. Terrorists and insurgents have also used these weapons to fix NATO or local forces to an area before other forms of attacks were carried out (ambushes, sniper attacks, etc. …).[12]

In order to counter the use of IEDs, NATO Allies have engaged and enhanced WITs for TE[13] efforts to produce technical intelligence (TECHINT)[14]. These WITs are defined for C-IED[15] purposes as a pool of specialists who investigate IED events when tasked. Their main task is to gather, analyse, collate and distribute technical and tactical intelligence and forensic potential evidence for exploitation. To do so the WIT capabilities are structured on various levels, ranging from on the scene, in theatre technical / tactical level to an out of theatre with advanced technical analysis and intrusive exploitation.[16] WITs allow NATO to direct its efforts not only against the device but also against the IED network (i.e. the opponents' capabilities).[17]

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[9] There is no agreed definition for battlefield evidence, however for the NATO defines for the purpose of the drafting of its BE Policy as: *"the information or material derived from NATO operations, missions and activities, shared or transferred to support law enforcement purposes and legal proceedings for Allies, Partners and/or Host Nations."* AC/342-WP(2020)0001 (INV), *NATO Battlefield Evidence Policy*

[10] NATO AJP-3.15 Allied Joint Publication for *Countering Improvised Explosive Device*

[11] *"Understanding the Enemy. The Enduring Value of Technical and Forensic Exploitation".* 2014, Thomas B Smith & Marc Tranchemontagne

[12] "*Countering the Afghan Insurgency: Low-Tech Threats, High-Tech Solutions*". PIERRE CLAUDE NOLIN (CANADA) SPECIAL RAPPORTEUR - 2011

[13] NATO AIntP-10 defines Technical exploitation as: *"A process using scientific methods and tools to derive data and information of potential intelligence or operational value from collected data, information, materiel and materials"*

[14] TECHNICAL INTELLIGENCE: *"Intelligence concerning foreign technological developments, and the performance and operational capabilities of foreign materiel, which have or may eventually have a practical application for military purposes."* NATO agreed term

[15] C-IED: *"The collective efforts to defeat an improvised explosive device system by attacking networks, defeating devices and preparing a force."* NATO agreed term

[16] NATO ACIEDP-02 *NATO Weapons Intelligence (WIT) Capabilities*

[17] NATO AJP-3.15 Allied Joint Publication for *Countering Improvised Explosive Device*

In this regard, NATO SP can contribute with specialised assets for forensics and biometric activities within these WITs as well as further exploiting available TECHINT to develop law enforcement intelligence (LEINT).[18] Through the use of forensic science techniques it is possible to identify actors that otherwise are indistinguishable from the general population. TECHINT & LEINT permit network analysis which provides information on bomb designers / makers – triggermen and also identifies techniques and materiel. This could then lead to the identification of suppliers, financers, trainers, leaders, and of patterns and trends, and serve as forensic evidence as it establishes the linkage between persons, places, things and events. All in all, this allows NATO decision makers to take timely resolutions and the provision of countermeasures and/or supports the targeting of these networks through law enforcement apparatuses, thus enabling the reestablishment of the rule of law by backing prosecutions and consequently strengthening the overall Security Sector Reform's efforts.[19]

However not only is this LEINT valuable in the theatre of operations but also abroad, as it is also necessary to manage at the domestic level emerging threats, which are originated by the return of foreign terrorist fighters (FTFs)[20]. The matter of the returning FTFs has been addressed by the United Nations Security Council in various resolutions[21] and many nations have already adapted their domestic legislation to comply with these UNSC Resolutions. The measures that have been implemented aim at facilitating information exchange and collaboration between nations and organisations. However the admittance of BE in national proceedings is not always a straight forward issue as it is not always available or admissible.

In this sense there is a need to have a close co-operation between civilian and military authorities to secure the BE and make it available for court procedures. This was highlighted during the "*workshop on the conduct of criminal trials against, and the prosecution of foreign terrorist fighters, including returnees and relocators*" which was held in Madrid on 11-12 June 2019.[22] Once again, it was pointed out that the dominant key to a successful prosecution in any jurisdiction is the availability of admissible evidence.

In an attempt to secure the admissibility of BE in legal procedures, the United Nations Security Council Counter-terrorism Committee Executive Directorate has set a series of guidelines, which were published in 2019, providing military personnel deployed under a UN mandate with direction in the collection of BE.[23]

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[18] NATO ATP-103 *Reinforcement and Replacement of Indigenous Police Forces*, Lexicon (Draft). Law enforcement intelligence (LEINT): *"The product resulting from the directed collection and processing of law enforcement information regarding the environment and the capabilities and intentions of actors, in order to identify threats and offer opportunities for exploitation by decision-makers"*

[19] *"Understanding the Enemy. The Enduring Value of Technical and Forensic Exploitation"*. 2014, Thomas B Smith & Marc Tranchemontagne

[20] Foreign Terrorist Fighter: *"individuals who travel to a State other than their State of residence or nationality for the purpose of perpetration, planning or preparation of or participation in, terrorist acts or providing or receiving terrorist training, including in connection with armed conflict."* UN Security Council Resolution 2178

[21] UNSC Resolution 1373 (2001), UNSC Resolution 2178 (2014), UNSC Resolution 71/19 (2016), UNSC Resolutions 2322 (2016), UNSC Resolution 2396 (2017)

[22] Co-organised by the Council of Europe, the Ministry of Justice and the Ministry of Foreign Affairs of Spain.

[23] *"Guidelines to facilitate the uses and admissibility as evidence in national criminal courts of information collected, handled, preserved and shared by the military to prosecute terrorist offences"*, UN SC CT Executive Directorate. 2019

From the Alliance's perspective, BE has become one of its current counter-terrorism priority areas of work and NATO has approved TE and a BE policy in 2020[24]. Furthermore NATO has offered Battlefield Evidence Collection training programmes in conjunction with International Criminal Police Organization (INTERPOL) and the European Union at the NATO Stability Policing Centre of Excellence (NATO SP COE) in Vicenza (Italy), where more than a hundred Iraqi officers received this training during the period of 2019/2020. Currently, thanks to a US grant and under NATO International Staff's aegis, four further iterations are planned to be conducted during 2021/22 to train MoD/MoI personnel from the Mediterranean Dialogue, Istanbul Cooperation Initiative and eligible G5 Sahel partner Countries.

All of these multilateral efforts share the common objective of establishing a set of best practices to ensure that BE is handled in accordance with international standards in order to guarantee its admissibility in future legal proceedings. EOD incidents and their exploitation are an utmost valuable source of BE and LEINT in the area of counter-terrorism, thus the importance of emphasizing this issue throughout the whole of this paper.

NATO Supreme Headquarters Allied Powers in Europe (SHAPE) and INTERPOL's cooperation goes beyond, having signing of a memorandum of understanding in December 2020, by which a framework for cooperation between both organisations is set. As a consequence, this will include the sharing of information on non-military illegal activities including terrorism-related activities.

An example of this information sharing could be INTERPOL's Project "*Watchmaker*", a programme which uses fingerprints retrieved from IED components, weapons and smartphones to help identify, locate and arrest terrorists. This programme will facilitate the data flow from the NATO Military/SP forces on the ground to the relevant hotspots via official police channels.

The "*MI-LEX"* project (also led by Interpol), which aims at delivering military-police information exchange, declassifying information for investigative and prosecution purposes, whilst ensuring the chain of custody and respecting data protection is also of high importance as it has been pointed out in the "EUROJUST Memorandum of Battlefield Evidence."[25]

This very report highlights that the use of BE in national jurisdictions has increased in the past years, rendering successful convictions. However, it is to be noted that, although the use of BE is not excluded under national laws, its admissibility is subject to guaranteeing the right to a fair trial, the respect of human rights in its obtainment, chain of custody and continuity, just to list a few conditions that must be met. In this sense, NATO SP provides a unique capability as it counts with specially trained and experienced assets in complex investigations, which can ensure the correct handling of BE derived from EOD exploitation to secure its admissibility in both local and national legal procedures.

A further area in which NATO SP can contribute to EOD efforts although in an indirect manner is through its cyber capability as it can monitor this domain to detect contacts between the network and suppliers SP elements can also carry out open source intelligence (OSINT) on social media by recognising, tracking and monitoring threat networks, tracking of cyber activity, IT communications, geolocation, media monitoring (video, audio, etc…).[26]

[24] AC/342-WP (2020)0001 (INV), NATO Battlefield Evidence Policy. AC/343-WP (2020)0001-REV1, NATO Technical Exploitation Policy.
[25] *"Eurojust Memorandum on Battlefield Evidence,"* EUROJUST. Sept. 2020.
[26] NATO AJP-3.15 Allied Joint Publication for *Countering Improvised Explosive Device*

SP also plays an important role in any DDR process too, by safeguarding the surrendering of weapons, their registration, weapons tracing, and dynamic surveillance of storage sites, securing destruction sites, advising and training of host nation law enforcement bodies as well as of former combatants for their reintegration. Through these activities SP can cut the supply of weaponry for home-made explosives for terrorist and insurgents, whilst at the same time preventing the arms trafficking of these remnants of war. Thus all contributing to the establishment of a SASE.

The main focus of this paper has been to the role of NATO SP in a substitution (replacement) mission with full executive powers; however, NATO SP role is not only limited to this. It has already been described above that the NATO SP COE is carrying out efforts to deliver to relevant stakeholders training in BE; this is directly linked to crime scene management and a crucial part to EOD/IED incident management.

Additionally, during a strengthening (reinforcement) mission SP can orientate its activities towards providing training to prepare the local law enforcement agencies to operate in an EOD/IED environment, whilst simultaneously providing mentoring, advising, and training in the conduct of the activities described throughout this article (crime scene management, BE collection, TE, law enforcement intelligence and exploitation), enabling local law enforcement bodies to combat the EOD/IED network through law enforcement activities.

In summary, in many cases NATO SP will be the first responder, the SP element may have the capability to accomplish the handling of the EOD/IED incidents in an autonomous manner, or as more likely the case, it will contribute by handling the crime scene, preserving and securing the area to prevent further casualties, the tampering or contamination of evidence. Furthermore, SP can contribute by leading the crime scene investigation, obtaining and registering and exploiting evidence which can later be admissible in legal proceedings and serve as well for tactical / operational leads.

NATO SP has the capabilities to contribute both to TE and BE collection as it counts on experts in forensic and biometrical sciences experienced in dealing with legal proceeding and with providing timely support to their chain of command during ongoing operations. These have been identified as key areas in modern day conflicts both for operational matters in the battlefield or judicial procedures in courtrooms be it domestically or abroad.

As seen, efforts carried out by SP in the area of DDR contribute to establishing a SASE and additionally prevent or pursue arms trafficking and proliferation through law enforcement instruments.

Stability Policing is without a doubt an added value to EOD/IED incident management and can increase the likelihood of success in the achievement of the mission mandate by contributing to address the grey area of conflicts though law enforcement mechanisms, whilst supporting local law enforcement bodies in becoming autonomous. This in turn improves governance and alternative livelihoods, thus tremendously supporting the Alliance in winning public support and the battle of narratives as well as contributing to long-term peace and stability.

[End text]

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