

# **THE POLICE POWER OF THE BRAZILIAN ARMY: Prevention and repression operations in border areas in the State of Rondônia**

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## **ABSTRACT**

*This work deals with the legal frameworks that manage the exercise of the police power granted to the Armed Forces, addressing the attributions and situations in which they can be employed. The legal provisions are found in the legal system in force, among the precursors the complementary laws of n. 97/1999, n. 117/2004 and n. 136/2010, which brought significant changes in the general rules for the*

*organization, preparation and employment of the Armed Forces. The basis of this work is the study of the use of the Brazilian Army in law and order guarantee operations, as well as ensuring Brazilian territorial sovereignty. The activities called patrolling and policing operations in the border area of the Brazilian territory are exposed throughout the work. Such activities are subsidiary duties conferred by the Armed Forces. At first, a brief exposition will be made of the legal and doctrinal foundations that deal with the power of police, distinguishing it in what is the "administrative police power" and "the power of security police", although coming from state power, both have different purposes.*

**Keywords:** Police power, Brazilian Army, Border Patrol, Military Operations, Guarantee of law and order, Subsidiary Assignment.

## 1. INTRODUCTION

The Federal Constitution of Brazil, the country's basic and supreme law, in article 142, chapter II – Of the Armed Forces, the Navy, the Army and Aeronautics specifies the Armed Forces, which has a permanent and regular character, organized in a hierarchical and disciplined manner, with the purpose of defending the Homeland and guaranteeing constitutional powers, having as supreme authority the President of the Republic.

The Armed Forces, acting in a subsidiary manner, in the actions of law and order guarantee operations, together with the public security agencies. Observing the territorial extensions and the need to maintain national security, the State began to delegate attributions to the Armed Forces so that they can act in operations according to legality.

This dual constitutional mission must be analyzed based on the concept of national security, since the first refers to external security and the second refers to the internal security of the country. Decree No. 5,484 of June 30, 2005, promulgated the National Defense Policy, adopted the following concepts: "Security is the condition that *allows the country to preserve sovereignty and territorial integrity, to carry out its national interests, free from pressures and threats of any kind, and to guarantee citizens the exercise of constitutional rights and duties*"; whereas by National Defense it is conceptualized *as being "the set of measures and actions of the State, with emphasis on military expression, for the defense of territory, sovereignty and national interests against preponderantly external, potential or manifest threats"*.

It is considered that when we provide security to society, we reduce the chances of using the necessary elements to ensure defenses as a means of repression of an attack. It is up to the Armed Forces to ensure the maintenance of constitutional powers, bases of the democratic rule of law, and to comply responsibly with the maintenance of national security in an integral way in the external and internal spheres.

As a means of promoting effective public security the State has created different bodies to carry out this activity, so the Major Charter, in the following sections of art. 144, provides that: the federal police, federal highway police, federal railway police, civil police and military police and military fire brigades will act as responsible for preserving public order and the safety of people and property, provided citizens with security to exercise their constitutional rights and duties. The bodies responsible for public security are divided into: administrative police, aimed at the protection of freedom and property; and in security police,

which is subdivided into two categories: ostentatious police, which was given the task of avoiding damage and dangers caused by human beings, as well as diminishing them, and the judicial police, which has as competence the investigative services related to criminal offenses, to provide satisfactorily to the Public Prosecutor's Office, essential elements to make criminal actions of their jurisdiction.

According to the teachings of The Minister of the Supreme Federal Court Gilmar Ferreira Mendes, who at the time of the publication of opinion no. 025 of August 10, 2001, published in the Official Gazette n. 154.de August 13, 2001, when he held the position of Advocate General of the Union, conceptualized the meanings of the terms: Maintenance of Public Order, as being "the dynamic exercise of the Power of Police, in the field of public *security, manifested by predominantly ostentatious actions, aiming to prevent, deter, restrain or suppress events that violate public order*"; and Public Order as:

"Set of formal rules, which emanated from the legal system of the nation, having as scope to regulate social relations of all levels, of the public interest, establishing a climate of harmonious and peaceful coexistence, supervised by the Police Power, and constituting a situation or condition that leads to the common good".

In this way, we can analyze that the competence for the conservation of public order lies with the police, who use ostentatious actions, with the purpose of preventing, deterring, preventing and suppressing activities that violate public order. It is observed that the Armed Forces incubate such attributions only in exceptional situations, according to the understanding of the Former Minister of the Supreme Federal Court Gilmar Ferreira Mendes, in opinion n. GM - 025, when addressing the theme:

The use, emergency and temporary, of the Armed Forces, in the guarantee of law and order - it was seen - occurs -after exhausted the instruments intended for the preservation of public order and the incolumidade of people and property, related in art. 144 of the Federal Constitution- (cf. Complementary Law No. 97 of 1 999, art. 15, § 2). In other words: the alluded use of the Armed Forces aims at preserving (or restoring) public order, including ensuring the incolumidade of people and property (public, and private). And the enhanced preservation (or reinstatement) is the competence of the Military Police, under the Terms of the Major Law.

In such situations, therefore, the Armed Forces, because they are responsible (emergency and temporarily) of the preservation, or re-establishment, of public order, must play the role of military police, have the duty to exercise - at every step, as if necessary - the competence of the Military Police. Certainly, under the terms and limits that the Constitution and the laws impose on the Military Police itself (see, for example, art. 5 of the Charter, the items: II; III, final part; XI and XVI).

In an exhibition at the Symposium that had as its theme "The Armed Forces and Public Security" Mr. Márcio Thomaz Bastos, Former Minister of Justice, evaluated Decree No. 3,897 of August 24, 2001, which sets out the guidelines for the use of the Armed Forces in the guarantee of law and order, and provides other measures, in the following terms:

According to the legal text, the military forces that assume the function of guarantors of the internal order become responsible whenever necessary for the actions of ostentatious, preventive and repressive policing, of original responsibility of the military police. It is worth noting that, once this responsibility is assumed, they must always be in accordance with the terms and limits imposed on the police by the legal system. The avocation of the prerogative of guarantor of internal security must also respond to an emergency request and, therefore, always be temporally limited and territorially specified. Decree No. 3,897 determines that we can only consider exhausted the means provided for in art. 144 – the guarantee of internal public order by the state police

and the Federal Police – when, at a certain time, the staff of security institutions are unavailable, nonexistent or insufficient to the regular performance of their constitutional mission.

It becomes evident the existence of legal provision for the action of the Armed Forces together with the public security agencies, in order to defend the interests of the State. We should mention that the meaning of the non-existent term used in the cited text refers to regions in which public security agencies are not present or if present have an effective amount smaller than that necessary for the appropriate operational provision, as is the case in several areas of the Amazon region. It is emphasized that the performance of the safety agencies requires operational capacity that consists of specific personnel, material and training to deal with adverse situations of the daily routine to which many are inserted. If there are security agencies, the Armed Forces will act in accordance with Article 4 of Decree No. 3,897/01:

In the employment situation of the Armed<sup>Forces</sup>object of Art. 3 o , if insufficientmeans are available of the respective Military Police, this, with the consent of the Governor of the State, will act, partially or totally, under the operational control of the military command responsible for operations, whenever so require, or recommend, the situations to be faced.

§ 1- The operational control is the authority that is conferred, to a military commander or chief, to assign and coordinate specific missions or tasks to be performed by police officers under this degree of control, in such authority not including, in principle, disciplinary and logistical matters

Some military units located in the Amazon border areas are the only representatives of the State in the area of security, allowing them to act in accordance with LC no. 117/04, operating in the repression of cross-border offenses.

This confluence of responsibility in the sphere of public security has raised questions about the limit of the police power that members of the Armed Forces have for the execution of Law and Order Guarantee missions, in addition to the subsidiary competencies provided for by law, such as air, sea and land patrols. Determined the mission imposed on the Armed Forces in the Federal Constitution, the National Congress sought to promote its standardization regarding preparation and employment, which took place through Complementary Law No. 97 of June 9, 1999, which provides for general rules for the organization, preparation and employment of the Armed Forces, currently in force, its implementation repealed Complementary Law No. 69 of November 19, 1990, two other laws were enacted to promote necessary changes on the provisions of the general norms: Complementary Law No. 117, of September 2, 2004 and Complementary Law No. 136, of August 25, 2010.

These changes inserted by complementary laws cause ambiguities as to the understanding of matter. The modifications produced by Complementary Law No. 97/99 sought, among other purposes, to specify the use of the military's police power in law and order guarantee operations, in the subsidising actions of repression and prevention of cross-border and environmental crimes, as listed in articles 15 and 16 of LC no. 97/99, modified by LC no. 136/2010.

The term police power is not mentioned in LC no. 97/99, although this power is intrinsic to the operations defined in it and conferred on members of the Armed Forces. The power of police according to a brief analysis of Article 78 of the National Tax Code is the discretionary power available to the Public Administration, to impose the way the use and enjoyment of each individual's goods and rights should be carried out, prioritizing

the collectivity and interest of the State. It is characterized by determining a certain limitation to the essential rights and freedom, aiming at the rights of the collective. It is a power for the implementation of state-run activities.

With regard to border areas, the implementation of the law has brought great contributions, such as the cooperation of civil and military authorities for the elaboration of specific legislation snantis that establish standards of conduct. However, when taking charge of a Law and Order Guarantee operation, the law requires that the person responsible for the public security agency surrenders operational control to the federal military commander along with all the powers indispensable for the success of the necessary missions and activities. Given this event we can say that the delegation of the police power has been made explicitly.

If the duties of the Armed Forces in a Law and Order Guarantee operation are arranged, we find that not only sporadic public security actions are employed, but are also used in actions to prevent and repression of transnational and environmental crimes.

Considering the proposal of the article, we focus on the actions and operations carried out by the Brazilian Army, which acts as subsidiary with the security agencies, whenever necessary and requested. In the field of research we are found in the scope of Administrative Law, Constitutional Law, Criminal Law, Criminal Procedure Law, Military Criminal Law, Military Criminal Procedure Law,

The main purpose of this project and to resolve doubts about the activities performed by the Brazilian Army through its Police Power, acting as a subsidiary force. Considering the national territorial extension, and an insufficient number of federal agents (Federal Police), whose competence and migration control, border surveillance and the fight against transactional crimes.

The increasing participation of the Armed Forces in public security, with predominant actions in border areas, in the execution of prevention and repression operations, has raised questions regarding its police power to ensure law and order.

With regard to the legal system, the powers exercised by the Armed Forces have a legal basis, grounds in the Federal Constitution, as well as specific legislation. However, there is the question, is there a limit in the performance of the police power employed by the Armed Forces?

Considering the territorial extension of Brazil, as well as its border area, it is evident the fragility in the protection of border areas. The State does not have sufficient quantitative security agencies to ensure the execution of crime prevention and repression activities in these areas, with this in recent years the Armed Forces have been granted several attributions for its performance as a subsidiary force in places and situations that require a technical device and effective coercive attitude.

As in the entire legal system the action of the Armed Forces must be based on the legality and limits imposed in specific laws and in the Federal Constitution, due to the emergence of some inquiries, this work will seek in a way that raises them through the approach of legal provisions.

## **2. Limits and Borders - Federative Republic of Brazil**

The concept of frontier is not something finished, since it has been building and adapting throughout history. However, the idea of concept that we know today is based on the formation of the Nation State,

especially with regard to the post-French Revolution, when the feeling of fidelity and nationalism was founded. We can say that this conceptual evolution did not happen. According to the ideas contained in the work entitled *The Origin and Evolution of Frontier Theory*, MATTOS, 1990, p. 15, we have the following understanding:

Each nation state cultivates the sense of sovereignty. The possession of the national territory, its defense, becomes the sacred duty of the citizen. The delimitation of territorial rights becomes imperative. The border acquires exceptional importance – it is the limit of national sovereignty.

Once the concept of national states, the border, is consolidated, it is emphasized that there is a difference in the line and border strip, while one refers to the dividing line between two countries from an established landmark or a geographical landmark (river, lake, mountain, forest, etc.), the other refers to an area that extends within the territorial space, crossing the border established and entered within the state, "The range of up to one hundred and fifty kilometers wide, along the land borders, designated as a border strip, is considered fundamental for the defense of the national territory, and its occupation and use will be regulated by law", according to § 2, Article 20, of the Constitution of the Federative Republic of Brazil.

Border areas have become vulnerable and extremely important regions, because it is in these regions that there is contact between sovereign rights of states. The frontier began to be analyzed from the perspective of another category: that of *territory*, which according to the definition of the geographer Bertha Becker, is confronted with the concept of Geopolitics: "it is a field of knowledge that analyzes relations between power and geographical space." (BECKER, 2005: 71).

Based on the constitutional definition of land border strip (Art. 20, §2, of the Federal Constitution of 1988), we can obtain the following information: *extension of the strip* - up to 150 km wide, along the land borders; *purpose - defense* of the national territory. Stabilizing understanding and concern with the border region, the National Defense Policy (PDN (Decree No. 5,484, of June 30, 2005), sets out:

Defense planning includes all regions and, in particular, vital areas where the greatest concentration of political and economic power is found. In addition, it prioritizes the Amazon and the South Atlantic for the wealth of resources and vulnerability of access across land and sea borders.

The National Defense Strategy (END) refers to this question about national territorial limits, when it inserted in its guidelines: Deter the concentration of hostile forces at land borders and at the limits of Brazilian jurisdictional waters, and prevent them from using national airspace. The following is a table to demonstrate the extent of Brazil's border limits with its border countries:

Table 1. Physical characteristics of Brazil's border limits

Country	TOTAL (KM)	DRY LINE	RIVERS, LAGOS AND	
			CANALS	Frames
French Guina	730	303	427	10
Suriname	593	593	–	60
Guiana	1.606	908	698	134
Venezuela	2.199	2.199	–	2.682

Colombia	1.644	835	809	128
Peru	2.995	992	2.003	86
Bolivia	3.423	751	2.672	438
Paraguayan	1.366	437	929	910
Argentina	1.261	25	1.236	310
Uruguay	1.069	320	749	1.174
<b>TOTAL</b>	<b>16.886</b>	<b>7.363</b>	<b>9.523</b>	<b>5.932</b>

**Source:** BRAZIL. Ministry of Foreign Affairs, 1999. In. BARCELLOS *et. al.*, 2001 *apud* ABREU, 2008.

### 3. THE DEFENSE OF THE HOMELAND, THE CONSTITUTIONAL POWERS AND THE LAW AND THE ORDER IN THE FEDERAL CONSTITUTIONS

#### 3.1 *The Police Power assigned to the Armed Forces in the Federal Constitutions*

Over the centuries there have been significant changes that have altered historical contexts and contributed to the drafting of constitutional charters. In an in-depth study it is possible to realize that there were limitations, restrictions of rights, freedoms, as well as so many other events, however in a brief approach we can see that the constitutional mission of the Armed Forces in our country was present in all our Constitutions, some brought few changes and others did not change in almost nothing. In all of them was assigned the Armed Forces the Defense of the Homeland, the Constitutional Powers and the Law and Order, as we can analyze below.

The Constitution of 1824, known as the Political Constitution of the Empire of Brazil, among all was the one that remained in force the most, had in its creation French influence, its marks are administrative and political centralism, having the figure of the Moderator Power. It provides in its article 148, "*The Executive Branch is privately responsible for employing the Armed Force of Sea, and Earth, as it seems convenient to the Security, and defense of the Imperio*".

Next we have the Constitution of 1891, which was given as rapporteur Senator Rui Barbosa, and suffered great influence from the U.S. Constitution, consecrated the system of presidential government, the form of federal state. Such was the influence that the name given to Brazil in the Constitution of 1891, was the United States of Brazil. In your text we can find the following layout:

"Art. 14 - The forces of land and sea are permanent national institutions, aimed at the defense of the Homeland abroad and the maintenance of laws in the interior. Armed force is essentially obedient, within the limits of the law, to its hierarchical superiors and obliged to sustain constitutional institutions."

As a result of the economic crisis of 1929, several social movements emerged that pushed for better working conditions, on July 16, 1934, the third Constitution was promulgated. According to his preamble his creation was "*to organize a democratic regime that guarantees the nation unity, freedom, justice and social and economic well-being*". Becoming the one that stayed in effect the least, only three years. The 1934 Constitution was strongly influenced by the Weimer Constitution of Germany of 1919. The mention of the Armed Forces is given in Article 162 "*The armed forces are permanent national institutions, and,*

*within the law, essentially obedient to their superiors. They are intended to defend the homeland and secure the constitutional powers, and order and law."*

The Constitution of 1937 was promulgated in the midst of a political context marked by the antagonism between the fascist right – Brazilian Integralist Action, which defended an authoritarian state and the leftist movement with socialist, communist and union ideals – The National Liberating Alliance. It became known as "The Polish", for having been based on the authoritarian constitution of Poland. With regard to the defense of the state we can mention:

"Art. 166 - In the event of external threat or imminent internal disturbances or existences of concert, plan or conspiracy, aimed at disturbing public peace or endangering the structure of the institutions, the security of the State or citizens, the President of the Republic may declare throughout the territory of the country, or in the part of the territory particularly threatened, the state of emergency. As long as it becomes necessary to use the armed forces for the defense of the State, the President of the Republic shall declare throughout the national territory or in part of it the state of war."

In the midst of World War II, the Government of Brazil assumed to be an ally of the "Allies" and against the "Axis" countries, faced with such an attitude Getúlio Vargas lost the support of Minas Gerais, since when entering the War aiming to eliminate nazifascist dictatorships it was understood that fascism would be eliminated in Brazil, because it would not be permissible to have an internal policy with a Constitution based on fascism and externally fight against the regime. On February 1, 1946, the Constituent Assembly was established, which originated a text signed in liberal ideals and social ideals as in the old Constitutions, beginning the so-called redemocratization of the country, moving away from the totalitarian state. Again we can see in the constitutional text the attributions of the *Armed Forces* "Art. 177 - *The armed forces are intended to defend the Homeland and to guarantee constitutional powers, law and order."*

Following the same line of creation of the 1937 Constitution, the 1967 Constitution concentrated power at the federal level, conferring broad powers on the President of the Republic. As for the duties of the *Armed Forces*:

"Art. 92 - *The armed forces, constituted by the Navy of War, Army and Military Aeronautics, are national institutions, permanent and regular, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic and within the limits of the law.*

§ 1 - *The armed forces are intended to defend the Homeland and to guarantee the powers constituted, law and order."*

The 1969 Constitution (Constitutional Amendment No. 1, of October 1, 1969, which amended the entire 1967 Constitution), was not signed by the then President of the Republic Costa e Silva, as it was in health care. Its text contains in article 91 "*Armed Forces, essential to the implementation of national security policy, are intended for the defense of the Homeland and the guarantee of the constituted *podêres*, law and order."*

On October 5, 1988, the Constitution of the Federative Republic of Brazil was promulgated, based on ensuring different constitutional guarantees, sought to provide greater effectiveness to fundamental rights, allowing the participation of the Judiciary whenever there is injury or threat to the injury to rights. Again this listed in his articles the attributions of the *Armed Forces*:

"Art. 142. The *Armed Forces*, constituted by the Navy, the Army and the Air Force, are permanent and regular national institutions, organized on the basis of hierarchy and discipline, under the supreme authority of the President of the Republic, and



are intended for the defense of the Fatherland, the guarantee of constitutional powers and, on the initiative of any of these, of law and order."

Regardless of the reasons that have resulted in constitutional changes over the years, the concern in ensuring national defense is noticeable, promoting means that seek to effect such constitutional attributions, and it is up to the Armed Forces to guarantee law and order.

In the article entitled "Power of Police and National Security", Hely Lopes Meirelles, carried out an evaluation of the right and duty of self-defense of the State:

The defense of the homeland, the preservation of institutions, the protection of the citizen is the right and duty of the State. No nation can survive independently, if it is not recognized as the prerogative to defend, with power and force, if necessary, its territory, its people, its political regime and its constitutional system, against the violence of the nonconforming minors and the attack of ideologies contrary to the current legal order.

The defense of the homeland involves activities that aim at preserving, maintaining territorial integrity, sovereignty and national independence. Preventive actions to defend the territory are based on the valorization of diplomatic actions as the first requirement to be adopted for the resolution of conflicts. We can divide combat actions as follows: offensive and defensive actions, which will be addressed later. It is reiterated that the competence to guarantee constitutional powers are exclusive activities of the Armed Forces.

### **3.1.1 Armed Forces**

The Army, Navy and Air Force form the Brazilian Armed Forces. They are responsible for ensuring the integrity of the national territory; defend Brazilian natural, industrial and technological interests and resources; protect the country's citizens and property; and ensure the sovereignty of the nation.

#### **a) Brazilian Navy**

The Brazilian Navy has been operating in the defense of national sea and river waters since the 18th century, during the colonial period.

According to IBGE data, published in DOU no. 124 of 06/30/2017, the surface of Brazil has an approximate value of 8,515,759,090 km<sup>2</sup>. It has the largest watershed on the planet, with 4.5 million km<sup>2</sup> of maritime area and a coastline of 7,400 kilometers long.

It is up to the Navy to execute a broad strategy and control for the protection and defense of the country, as well as to improve knowledge about the maritime environment and to relocate the operational means available to immediately counter the occasional crises or emergencies in the Brazilian territorial sea. Brazilian Jurisdictional Waters (AJB) are considered, those listed in Art. 20, III and VI of the Federal Constitution, and mentioned in Decree No. 4,136/02 that regulated Law No. 9,966/00.

Art. 20. They are union assets:

(...)

III - lakes, rivers and any streams of water on land within their domain, or which bathe more than one State, serve as limits with other countries, or extend to foreign territory or come from it, as well as marginal land and river beaches;

(...)

VI - the territorial sea

The use of the Brazilian Navy, in a subsidiary way, is provided for in Art. 17 of LC no. 97/99, as a means of cooperation with federal agencies, in crimes of wide repercussion, national or international. In such a way, the article in question establishes:

Art. 17. It is up to the Navy, as private subsidiary assignments:

(...)

V – cooperate with federal agencies, when necessary, in the repression of crimes of national or international repercussion, regarding the use of the sea, inland waters and port areas, in the form of logistical support, intelligence, communications and instruction.

Taking as a reference point the Cape Orange, on the coast of Amapá to the Arroio Chuí, on the border between Brazil (Rio Grande do Sul) and Uruguay, Brazil has a total area of 7,408 kilometers bathed by the Atlantic Ocean.

However, if the overhangs are considered: beaches, dunes, reefs, mangrove islands, bays, cliffs, among other areas, this extension rises to the number of 9,198 kilometers.

Performed adistribution, considering the extensions by state, the percentage over the total, ordering by the size of the coastal strip, we have the following order:

Table two. Extension of the coastal strip by region

EXTENSION/REGION	AREA (KM)	Percentage
Bahia	932 km	12,4%
Maranhão	640 km	8,7%
Rio de Janeiro	636 km	8,6%
Rio Grande do Sul	622 km	8,5%
Sao Paulo	622 km	8,5%
Amapá	598 km	8,1%
Ceará	573 km	7,8%
Stop	562 km	7,6%
Santa Catarina	531 km	7,2%
Rio Grande do Norte	410 km	5,7%
Holy Spirit	392 km	5,3%
Alagoas	229 km	3,1%
Pernambuco - 2.5%	187 km	2,5%
Sergipe	163 km	2,2%
Paraíba	117 km	1,6%
Paraná	98 km	1,3%
Piauí	66 km	0,9%
<b>TOTAL</b>	<b>7.367 km</b>	<b>100%</b>

Source: elaborated from research data.

Given the coastal areas corresponding to the Brazilian state, we have a notion of which the Brazilian navy's operation is important and necessary. In such a way that in 1955, law no. 2,419/1955 was established by Law No. 2,419/1955, the Coastal Patrol, known as PATCOS, subsequently regulated by Decree no. 64.063/1969, this legislation lasted until the edition of LC no. 97/99, after a few years it became evident the need to create mechanisms that would suit and meet the new reality, thus giving rise to the edition of Decree No. 5,129/2004, which came to designate the old service by the new naval patrol nomenclature, PATNAV.

The Brazilian Navy pioneered preventive and repressive patrol actions, invested by constitutional powers, police power, and respecting legal limits, and began to carry out the necessary actions to protect our waters from international attacks and national actions that contravene established legal norms. According to Ordinance 018/2000 of the DPC - Manual of the Naval Inspector, we have the following concept of Patrol executed by the Navy:

Naval Patrol "Activity conducted by naval and air means, with the purpose of supervising and implementing national legislation in the AJB. Control the maritime areas under Brazilian jurisdiction with regard to the innocent passage of merchant ships and the transit and transit of warships and compliance with Brazilian legislation; cooperate with services aimed at monitoring the preservation of sea resources and inland waters, and; cooperate with the services of repression of smuggling, the way of trafficking and the illicit trade. Action in case of flagrante de (Ordinance 018/2000 of the DPC - Manual of the Naval Inspector).

To improve the understanding I note an excerpt from the Instruction Letter of PATNAV/Command of Marine Operations n. 003/09:

**PATNAV and the Police Power:** PATNAV is recognized the necessary administrative police power to fulfill the subsidiary attributions determined by the Supplementary Law in reference. It cannot be accepted the existence of a power to "implement and supervise compliance with laws and regulations, at sea and in the inland waters, in coordination with other organs of the Executive Power, federal or state, when necessary, due to specific competences" (Art. 17, item IV), without the consideration of the tacit authorization to adopt measures, which the result of the inspection indicates. This understanding is corroborated by the document in reference 1, in which the Deputy Legal Consultancy of the Navy Command (CJACM) expressed favorably that the ship in PATNAV may "exercise and develop law enforcement activities, which are characterized as administrative police power and are implemented in the inhibition of unlawful conduct that relates to the occurrence of rights that may occur in Brazilian jurisdictional waters and on the highseas." (my griffin)

## **b) Brazilian Air Force**

It was in 1941, during World War II, that the Brazilian Air Force (FAB) was created. Through the gathering of equipment and personnel from the Navy, the Army and the now defunct Department of Civil Aviation (DAC), the Ministry of Aeronautics was established, with the FAB having its main support.

The Brazilian Air Force, as well as the other members of the Armed Forces, has as its subsidiary mission to cooperate with federal institutions in crimes of great national or international repercussion in the form of logistical, intelligence, communications and instruction allocated as provided for in Article 18 of Complementary Law No. 97/99.

Art. 18. It is up to the Aeronautics, as private subsidiary assignments:

(...)

VI – to cooperate with federal agencies, when necessary, in the repression of crimes of national and international repercussion, regarding the use of airspace and airport areas, in the form of logistical, intelligence, communications and instructional support;  
(...)

The FAB is responsible for ensuring and maintaining the sovereignty of national airspace, preventing and preventing the practice of acts invasive or opposed to the interests of the country, acting in surveillance, combating crimes involving the trafficking of drugs, weapons, ammunition and illegal passengers at the time the aircraft remains in the airspace, since after landing the action is up to the competent supervisory bodies, as provided for in item VII, of article here:

Art. 18. It is up to the Aeronautics, as private subsidiary assignments:

(...)

VII – to act, continuously and permanently, through the actions of control of Brazilian airspace, against all types of illicit air traffic, with emphasis on those involved in the trafficking of drugs, weapons, ammunition and illegal passengers, acting in combined operation with competent inspection bodies, which will be the task of acting after the landing of aircraft involved in illicit air traffic.

(...)

It is noteworthy that both the Brazilian Navy and the Brazilian Air Force did not have police power, being assigned to them through LC n. 136/2010, received as attribution the police power to operate against cross-border and environmental crimes in the border strip, a power that was previously delegated only to the Brazilian Army. The actions of the Armed Forces will remain carried out in the same way that the Army performed, through preventive and repressive actions, being allowed to perform several typical police activities, such as: carrying out patrols, magazines of people, vehicles, vessels and aircraft. However, the imputation of combating these crimes was not delegated to the Armed Forces to the detriment of the constitutional attribution of the Federal Police, which has the title to act as a border police, besides having the competence of judicial police exclusive to the Union.

In 2010, with the edition of Complementary Law 136, which modified LC no. 97/99, we noticed the concern of the authorities regarding the international air routes of trafficking became more evident, making more stringent measures could be taken to curb such crimes.

The LC edition. n. 136/2010, modified LC no. 117/2004, which in turn had been created to pacify the controversies about the constitutionality of Law 9.614/98, known as the "Slaughter Law" or "Law of Shooting and Destruction", considered for years as unconstitutional because it was created through ordinary law.

Law 9.614/98 amended Article 303 of the Brazilian Aeronautics Code, and its application was regulated by Decree no. 5,144/2004. Now having the following composition:

Art. 303. The aircraft may be owned by aeronautical, state-owned or Federal Police authorities in the following cases:

I - if you fly in Brazilian airspace with violation of international conventions or acts, or authorizations for this purpose;

II - if, entering Brazilian airspace, disrespect the obligation to land at an international airport;

III - for examination of certificates and other indispensable documents;

IV - to check its cargo in the case of legal restriction (Article 21) or prohibited carrying of equipment (single paragraph of Article 21);

**V - for investigation of illicit.**

§ 1 ° The aeronautical authority may use the means it deems necessary to compel the aircraft to make the landing at the aerodrome indicated to it.

§ 2 ° Exhausted the legally provided coercive means, the aircraft will be classified as hostile, being subject to the measure of destruction, in the case of the caput items of this article and after authorization of the President of the Republic or authority delegated by him.

§ 3 The authority mentioned in § 1 shall be responsible for its acts when acting with excess power or with an emulator spirit. (Renumbered from § 2 to § 3 with new wording by Law No. 9,614, 1998) (*our griffin*)

To provide greater support for military actions in airspace patrol actions, in a possible trial for unlawful conduct the legislator delegated the Military Justice of the Union the jurisdiction to process and judge the acts committed in compliance with said law.

We note that in Article 9 of the CPM, several modifications have occurred, and the following text is included:

Art. 9 Military crimes are considered in peacetime:

(...)

§ 2 The crimes that this article deals with, when committed against life and committed by military personnel **of the Armed Forces against civilians, will be the competence of the Military Justice of the Union**, if committed in the context: (Included by Law No. 13,491, 2017)

I – the fulfilment of tasks established to them by the President of the Republic or by the Minister of State for Defence; (Included in Law No. 13,491, 2017)

II – action involving the security of a military institution or military mission, even if not belligerent; or (Included by Law No. 13,491, 2017)

III – of military activity, peace operation, guarantee of law and order or subsidiary attribution, carried out in accordance with the provisions of art. 142 of the Federal Constitution and in the form of the following legal documents: (Included by Law No. 13,491, 2017)

(...)

a) Law No. 7,565 of December 19, 1986 - Brazilian Aeronautics Code; (Included in Law No. 13,491, 2017). (*my griffin*)

This modification was well received, since it delegated the specialized justice to the assessment of acts that have specific peculiarities.

### **c) Brazilian Army**

The history of the Army is intertwined with the historical evolution that the country has undergone regarding the creation of its identity. Active throughout the national territory, it has its mission appropriate according to the continental dimensions and geographical spaces to which they are located.

To ensure compliance with its constitutional duties, it maintains an effective of more than 222,000 men and women.

Its activities range from collaboration with the Civil Defense, participating in relief actions and providing assistance to victims of natural disasters, to employment of the means necessary to promote recovery and reconstruction of affected areas.

The PolicePower, assigned to the ArmedForces, needs to be executed based on the state's police power, since it is up to it to the function of distribution and organization of competencies among the security agencies. For a better understanding of what has already been mentioned, it is suggested that you divide the police power of the Armed Forces into two groups: the first that refers to the administrative-military police power and the second that covers the power of the judiciary-military police.

The judiciary-military police power is executed in times of war or peace, considering that the Armed Forces have absolute competence to investigate police-military investigations (MPI), in addition to military crimes. Endowed with a Military Penal Code (CPM), which typify crimes in times of peace (art. 9), as well as those practiced and wartime (art.10º), it also expands the jurisdiction of the Federal Court.

With regard to peacetime performance, similar attributions are considered to be the activities developed by the Civil Police, however they are subject to a procedure established in the Military Criminal Procedure Code (CPPM).

It is noteworthy that it is not absolute the police power attributed to the Armed Forces, regardless of whether it is time for peace or war, it is not allowed to face the individual guarantees predicted in art. 5 of the Federal Constitution/88. We can highlight as fundamental guarantees that must be safeguarded:

"Art. 5º All are equal before the law, without distinction of any nature, guaranteeing brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms:

(...)

II - no one will be obliged to do or fail to do anything but by virtue of law;

III - no one shall be subjected to torture or inotheror or degrading treatment;

(...)

XI - the house is inviolable asylum of the individual, no one can penetrate it without the consent of the resident, except in case of flagrant crime or disaster, or to provide help, or, during the day, by judicial determination;

XII - the confidentiality of correspondence and telegraph communications, data and telephone communications is inviolable, except, in the latter case, by court order, in the cases and in the form that the law lays down for the purposes of criminal investigation or criminal procedural instruction;

(...)

XIV - everyone is guaranteed access to information and the confidentiality of the source is protected, when necessary for professional practice;

XV - is free to locomotion in the national territory in peacetime, and any person, in accordance with the law, enters, remains or leaves him with his property;

XVI - all may meet peacefully, without weapons, in places open to the public, regardless of authorization, provided that they do not attend another meeting previously convened for the same place, being only required prior notice to the competent authority";

It must be said that, in cases of state of defense, of the State of Siege or in which there is a Federal Intervention, the instrument that decrees these situations will bring limitations or reduction of such guarantees, considering the circumstances of time and place.

Also on the state competence to delegate powers, the Armed Forces received administrative powers that form the power of administrative-military police, which originates in special legislation, in the adjustments between art. 142 of cf with LC no. 97/99, and also of LC no. 117/04, which altered LC n. 97/99.

This dichotomy in which the power of police is divided and only to assist in the explanation. In practice there is no way to speak in division, being performed in a unitary way, starting from administrative acts depending on the type of action, omissive or activity, progresses to the field of the judiciary.

#### **4. THE POWER OF POLICE AS A MEANS OF MAINTAINING SECURITY AND DEVELOPMENT**

The Federal Constitution of 1988 demonstrates in its article 142, §1, that "Complementary law will establish the general norms to be adopted in the organization, preparation and employment of the Armed Forces". Although, in the year 1999, LC no. 97 was approved, establishing the general standards mentioned above, it was in the year 2004, with LC no. 117, that the EB finally received the attributions of the police power to be exercised in the land border strip:

"It is up to the Army, in addition to other relevant actions, such as private subsidiary attributions: IV – to act, through preventive and repressive actions, in the land border strip, against cross-border and environmental offenses, alone or in coordination with other organs of the Executive Branch, performing, among others, the actions of: a) patrolling; (b) a review of persons, land vehicles, vessels and aircraft; and c) arrests in flagrante delicto." (Art. 17-A, item IV, of LC No. 97 of June 9, 1999).

Subsequently, the police power exercised in the border regions were extended to the other Armed Forces through LC n. 136, of August 25, 2010.

"Art. 16-A. It is the Armed Forces, in addition to other relevant actions, also as subsidiary attributions, the exclusive powers of the judicial police, act, through preventive and repressive actions, in the land border strip, at sea and in the interior waters, regardless of possession, property, purpose or any record that falls on it, against cross-border and environmental crimes, alone or in coordination with other organs of the Executive Branch, performing, among others, the actions of: I - patrolling; II - magazine of persons, land vehicles, vessels and aircraft; and III - arrests in flagrante delicto.

Police power does not necessarily mean the use of physical violence, nor the use of weapons and equipment that can embarrass individuals, although this power is present daily in people's lives.

Professor Hely Lopes Meirelles, in his work proposes that police power "[...] it is the faculty of the Public Administration to condition and restrict the use and enjoyment of individual goods, activities and rights, for the benefit of the collectivity or the State itself" (2002, p. 127). The legal definition of this power is found, even, in the National Tax Code:

Art. 78. It is considered a power of police activity of the public administration that, limiting or disciplining the right, interest or freedom, regulates the practice of act or abstention of fact, due to the public interest concerning security, hygiene, order, customs, the discipline of production and the market, the exercise of economic activities dependent on the concession or authorization of the Public Power, public tranquility or respect for property and individual or collective rights.

It is important to note that the legal basis for the brazilian army's performance in the border strip should not be compared with the legal basis of GLO operations in other areas of the country, such as those performed in metropolises and elections. While in GLO operations it is necessary the order of the Chief of executive power, exercised by the President of the Republic, the police power of the EB, in the border strip, is independent of such an order. Below is a table that summarizes that such differences:

Table three. Subsidiary Actions in the Border Strip and GLO

Items	ACTIONS IN THE LAND BORDER STRIP	LAW AND ORDER GUARANTEE (GLO)
CONSTITUTIONAL AMPARO	Art. 142, and §1, CF/88; Art. 91, §1, III, CF/88.	Art. 142, and §1, CF/88; Art. 91, §1, IV, CF/88.
AMPARO LEGAL	LC/97, as given by LC/136, art. 16.	LC/97, art. 15 and §§ 1 and 2, and LC/117.
PRESIDENTIAL DECREE	Strategic Border Plan (Dec.n. 7496/2011)	Dec. n. 3897/2001.
GUIDELINE /ORDINANCES	Nr 061/2005, Cmt EB Nr 736/2004, Chapter 5(g)."	Nr 736/2004, Cmt EB.
BASIC ASSUMPTIONS/CHARACTERISTICS	in the land border strip (art. 20, §2°, CF/88); against cross-border and environmental offences; alone or in coordination with other organs of the Executive Branch; the exclusive powers of the judicial police are excluded.	throughout the national territory; after the exhausted instruments for the preservation of public order and incolumidade of people and property (art. 144, CF), after formally recognized as unavailable, nonexistent or insufficient by the Head of the Federal or State Executive Power; decision of the President of the Republic, on his own initiative or not, by means of a Message.
Missions	patrolling; persons, land vehicles, vessels and aircraft; arrests in flagrante delicto.	ostentatious police actions, preventive or operative (repressive) nature, such as the Military Police; intelligence and social communication actions.
Character	preventive and repressive	presence and dissuasion.

Source: elaborated from research data

According to Ordinance No. 061/2005, which approves the Strategic Guideline for Action in the Border Strip against Cross-Border and Environmental Crimes, part of the Army Strategic Guidelines (SIPLEX-5),



and provides other measures, we have the following legal bases for the performance of the EB in the border areas:

- A. Constitution of the Federative Republic of Brazil.
- b. Complementary Law No. 97 (LC 97/99), of June 9, 1999 – Provides for the general rules for the organization, preparation and employment of the Armed Forces (FA).
- c. Complementary Law No. 117 (LC117/04), of September 2, 2004 – Amends LC 97/99 by assigning subsidiary shares to the Brazilian Army.
- d. Law No. 6,634 of May 2, 1979 - Provides for a border strip.
- And. Law No. 9,605 of February 12, 1998 – Provides for criminal and administrative sanctions arising from conduct harmful to the environment.
- F. Decree-Law No. 2848 of December 7, 1940 - Penal Code. Army Bulletin No. 07 of February 18, 2005. - 19
- G. Decree-Law No. 3689 of October 3, 1941 - Code of Criminal Procedure.
- H. Decree-Law No. 1001, of October 21, 1969 - Military Penal Code (CPM).
- i. Decree-Law No. 1002 of October 21, 1969 - Code of Military Criminal Procedure (CPPM).
- J. Decree No. 85,064 of August 26, 1980 – Regulates Law 6.634/79.
- K. Decree No. 3,897 of August 24, 2001 – Sets out the guidelines for the use of FA in the guarantee of law and order.

In the context of Constitutional Law, the doctrine has been used from the Theory of Implicit Powers for the application of laws from a logical-rational interpretation. The legal world became aware of this theory during the trial of *McCulloch v Maryland* and *Myer v. United States*, when the American Supreme Court, in the first half of the 19th century (MORAES and TRIGUEIRO, 2009), ruled that there must be a coherent relationship between the functions instituted to the organs of the Constitution and the instruments used to carry out its mission and that the instruments used cannot be vetoed by the Constitution itself.

This theory defends the idea that once the objectives and competencies are established to each body of its jurisdiction, it is implicitly granting it authorization to adopt the necessary measures to fulfill its tasks, so we cannot talk about sealing the adoption of the essential means for success in fulfilling its duties.

Following this understanding, the Public Administration would cease to be the way and would become only the guide of the actions of the public agent. Such a theory should not be applied in feeling contrary to the laws and the legal system, nor the law that regulates the specific case.

Considering the Laws of Introduction to the Civil Code, which in its normative text Article 4 indicates that "when the law is omitted, the judge will decide the case according to analogy, customs and general principles of law", (BRASIL, Decree-Law 4.567, of September 4, 1942, 2012), in this way we can understand that the theory of implicit powers has the task of integrating the legal system, when there is no specific legislation for the case.

About the doctrinal understandings present in the Brazilian order, the lesson of Alexandre de Moraes and Oswaldo Trigueiro (2009, p. 605) stands out:

Our legal system was therefore incorporated into our legal system, the peaceful American constitutional doctrine on the theory of implicit powers – inherent powers– by which in the exercise of its listed constitutional mission, the executive body should have all the necessary functions, even if implicit,

provided that they are not expressly limited (Myers v. United States – US 272-52, 118), thereby consecrating itself and among us applicable to the Public Prosecutor's Office, the recognition of implicit generic powers that enable the exercise of its constitutional mission, only subject to the prohibitions and structural limits of the Federal Constitution.

The Supreme Court has already issued an opinion on the applicability of the theory of the principles of implicit powers in our order, as concluded from the statement pronounced *in judgment in verbis*:

"HABEAS CORPUS. CRIMINAL PROSECUTION LOCK. LACK OF JUST CAUSE. EXISTENCE OF MINIMAL PROBATORY SUPPORT. REVIEW OF FACTS AND EVIDENCE. Inadmissibility. POSSIBILITY OF INVESTIGATION BY THE PUBLIC PROSECUTOR. OFFENSES COMMITTED BY POLICE OFFICERS. ORDER DENIED. (...) 7th. **It is the basic principle of constitutional hermeneutics that of "implicit powers", according to which, when the Federal Constitution grants the ends, it gives the means.** If the end activity - promotion of public prosecution - was granted to the parquet in a privileged forum, it is not conceived as not to provide him with the collection of evidence for this, since the CPP authorizes that "pieces of information" base the complaint. (...). (STF, HC 91661-PE, Rel. Ellen Gracie, 2nd Class, j. 10/03/2009)". (ourgriffin).

Repeatedly, the theory of implicit powers has been applied to the Public Prosecutor's Office with regard to the powers of investigation, considering that it has the ownership of criminal proceedings and external control of police activities.

In this perspective, the delegation of a mission to any of the constitutional powers or public service institutions implies the simultaneous and implicit granting of powers to carry out the activities. What we see when we analyze the police power of the Armed Forces, when they perform GLO operations, whether the actions developed are carried out to ensure law and order, nothing more natural than launching the legal means and necessary to execute the mission and achieve the planned result.

## **5. STATE OF RONDÔNIA**

### ***5.1 Border Areas of the State of Rondônia***

The State of Rondônia was created through Complementary Law No. 041, issued on December 22, 1981, approved by the National Congress and sanctioned by the then President of the Republic João Baptista de Oliveira Figueiredo. Having as first governor the Colonel of the Army Jorge Teixeira de Oliveira, appointed on December 29, 1981, by the President of the Republic João Baptista de Oliveira Figueiredo. The installation of the State, together with the inauguration of the governor and secretariat, took place on January 4, 1982.

In the year of its creation the State of Rondônia consisted of 13 municipalities; being: Porto Velho, the capital, Guajará-Mirim, Ariquemes, Jaru, Ouro Preto do Oeste, Ji-Paraná, Presidente Medici, Cacoal, Espigão do Oeste, Pimenta Bueno, Vilhena, Colorado do Oeste and Costa Marques.

Regarding geographical aspects, the state has a geographical area of 238,512.8 km<sup>2</sup>, representing 6.19% of the North and 2.80% of the country. Becoming the 3rd State in territorial extension of the Northern region.

At the national level, it ranks 15th in territorial extension and 23rd in population terms. Having as limits to the North and Northeast, state of Amazonas; to the South and West, Republic of Bolivia; east and southeast, state of Mato Grosso; to the Northwest, the states of Acre and Amazonas. The expansion of the border of the State of Rondônia with the Republic of Bolivia is 1,342 kilometers.

The municipalities of Rondoni, located along the Bolivian border are: Alta Floresta do Oeste, Alto Alegre dos Parecis Cabixi, Costa Marques, Guajará-Mirim, Nova Mamoré, São Francisco do Guaporé and Pimenteiras do Oeste

## ***5.2 The Army in the State of Rondônia***

According to history, the presence of the Army in this part of the Western Amazon dates back to the eighteenth century, first with the Fortim of Nossa Senhora da Conceição, created in the year 1760, located on the banks of the Guaporé River, and, from 1783, with the Royal Fort Príncipe da Beira, erected about two kilometers ahead.

Although it has few historical records, and knowledge that the Fort Prince of Beira maintained a constant garrison until the end of the nineteenth century, when it was deactivated under the claim of measure of economy.

The 17th Jungle Infantry Brigade originates from the Special Border Contingents, founded in 1932, from the 27th Battalion of Hunters, current 1st Jungle Infantry Battalion, located in Manaus-AM, which reoccupied the area of Fort Príncipe da Beira and werelocated in the cities of Guajará-Mirim and Porto Velho.

The Special Contingents were subordinated to the Inspectorate of the Special Contingents of Guaporé-Mamoré Border, which had as inspector Capt. Aluízio Ferreira, who also performed the function of Director of the Madeira-Mamoré Railway.

In 1933, after its implementation, the Porto Velho Contingent took shelter in a shed of the Madeira-Mamoré railway.

During 1934, the Inspectorate transformed the name from Guaporé-Mamoré to Madeira-Guaporé.

Due to the need for expansion, in 1935, part of the current Barracks of the 17th Bda Inf SI was implemented, where the facilities of Cia Comando are currently located, until then occupied by the Porto Velho Contingent.

The 3rd Company/2nd Frontier Battalion was created in 1937, was created in Porto Velho. At the time, the Contingents of Guajará-Mirim, Forte Príncipe da Beira and Porto Velho were transmuted into platoons subordinated to the Company. Until then, the 2nd Frontier Battalion was located in the city of Cáceres-MT.

Following an evolutionary process that transformed and installed new companies in the 1940s, the 3rd Company/2nd Frontier Battalion was designated 3rd Independent Border Company, which in 1948 originated the 3rd Frontier Company; In 1954, the Shooting of War 191 was inaugurated in Rio Branco, which would be transformed in 1956 into the 4th Frontier Company.

In 1955, the 5th Border Platoon, located in Guajará-Mirim, was changed to 6th Frontier Company. As a result of a reorganization of the Army, in 1969 it was created in the municipality of Porto Velho, by extinction of the 3rd Border Company, the Acre/Rondônia Border Command, which had the following

military organizations as subordinates: the Command and Service Company of the Acre/Rondônia Border Command; the 4th Border Company, current Acre Border Command/4th Jungle Infantry Battalion; the 6th Border Company, currently designated as Rondônia Border Command/6th Jungle Infantry Battalion; and the 7th Border Platoon, in Fort Príncipe da Beira.

The 17th Logistics Base has its origin linked to the creation of the Supply Deposit of Porto Velho, which was later established in the facilities of the 3rd Border Company, its beginning was limited, this in 1968. However, in November 1975, the Minister of State for War Affairs, according to what recommended the Army General Staff, decided to organize and create the Porto Velho Subsistence Deposit (DSPV), expanding its support capacity.

From September 1, 1992, the said deposit began to occupy the accommodations located at Pinheiro Machado Nr street 2243 - São Cristóvão, in Porto Velho. In 1993. The DSPV was transformed into the 17th Logistics Base, which has the mission of supporting the organic units of the 17th Bda Inf SI and the garrison units of Porto Velho and Rio Branco.

The 54th Jungle Infantry Battalion originates from the 1st Jungle Infantry Battalion. On September 27, 1973, the 1st BIS referred the precursor detachment, worth a Jungle Marine Company, the 3rd Cia Fuz SI/1º BIS to Humaitá-AM, which would give rise to the 54th Jungle Infantry Battalion.

On December 31, 1974, the 1st Company of the 54th BIS became the 54th Jungle Infantry Battalion, reporting directly to the CMA. Years later, in 1976, the 54th Jungle Infantry Battalion was transferred to the Acre/Rondônia Border Command.

In addition, 1976, the Acre/Rondônia Border Command changed giving rise to the 3rd Border Group, commanded by the General Officer, the Border Companies were transformed into Special Border Battalions and the 7th Frontier Platoon had its subordination delegated to the 6th Special Frontier Battalion, currently the 6th Jungle Infantry Battalion.

Finally, in 1980, the 3rd Frontier Group became called the 17th Jungle Infantry Brigade and, in 1988, via ministerial decree, the historical denomination of "Brigade Príncipe da Beira".

The 17th Army Police Platoon was established in 1984, based in Porto Velho, and is due to subordinate directly to the Command of the 17th Jungle Infantry Brigade. The 17th Jungle Infantry Company is a subunit directly subordinated to the Command of the 17th Jungle Infantry Brigade.

The Company's activities began in 1997, with the arrival of the contingents that constituted it, being a contingent from the CFRON-AC/4º BIS, a contingent originating from the 54th BIS and contingents from Cia C/17ª Bda Inf SI, the 17th Pel PE and the 17th Ba Log. Having received the current nomenclature in 2014, no longer being named 3rd Company/54th BIS.

The 17th Pel Com SI was created in 2004, parting from the staff of Cia Cmdo of the 17th Bda Inf SI.

Considered a pioneer in the discovery of the Western Amazon, with a past worthy of glory and recognition to the 17th Jungle Infantry Brigade Brigade Forte Príncipe da Beira has developed a service for the benefit of society, aiming to ensure sovereignty, nationality, main factors of national harmony, on the northwest border of Brazil.

## **5.2. *Patrolling the border strip in the State of Rondônia***

### **5.2.1 *Limits of Police Power in Operations carried out by the Army at the border***

In a state that develops on the aegis of democracy it is necessary to understand that there is a limit to our actions, and this is based on the legality and permissibility imposed by the law.

As for the Armed Forces, since, the CF/88, did not check its attributions, it was up to the complementary laws to explain them, in this way we can use LC no. 97/99, modified by also Laws Complete no. 17/2004 and n. 136/2010, whenever it is necessary to understand the police power of THE in border areas.

The actions of the Ground Forces will not always be carried out in border areas, even if they are located in the region, it is emphasized that in order to carry out operations to prevent and repression of crimes listed as cross-border and environmental, it is necessary that there is no action of the public security forces. In this way, it assumes subsidiary the powers of the Federal Police, which has the duty of prevention and repression of crimes in border areas. It is noted that although the FA carry out the actions, mentioned herein, it has to communicate to the PF, since it belongs to it the role of exercising the judicial police.

According to the teachings of José Afonso da Silva (2011, p.704 and 705), which addresses the competencies established in art. 144, I, § 1º CF, incubate the Federal Police:

(1) to investigate criminal offences against the political and social order (...) or to the detriment of goods, services and interests of the Union or its municipal entities and public undertakings, as well as offences whose practice has interstate or international repercussions and requires uniform repression, as provided by law;

(2) to prevent and suppress illicit trafficking in narcotics and related drugs, smuggling and misdemeanor, without prejudice to the action of the child and other public bodies in the respective areas of competence; (...);

(3) to carry out maritime, air and border police functions;

(4) to exercise exclusively the functions of the Judicial Police of the Union.

Although acting in a subsidiary way with regard to the competencies of the Federal Police, the Ground Forces may act only in certain situations, not being allowed to perform all the duties in a broad way.

The conditions of employment of the Armed Forces in GLO operations are disciplined in Article 3 of Decree No. 3,897/01:

**Art. 3 In the event of the use of the Armed Forces for the guarantee of law and order, aiming at preserving public order and the safety of people and property, because the instruments provided for in Article 144 of the Constitution are exhausted, it will be up to them, whenever necessary, to develop the actions of ostentatious police, such as the others, of a preventive or repressive nature, which are included in the constitutional and legal competence of the Military Police, observed the terms and limits imposed on the latter, by the legal system.**

Single paragraph. The means provided for in Article 144 of the Constitution are considered exhausted, including with regard to the Military Police, when, at a certain time, unavailable, non-existent, or insufficient to the regular performance of its constitutional mission. (our griffin).

In addition to the attributions already mentioned we can see through a brief analysis of the article cited above that the Armed Forces were also invested with the power of ostentatious police.

Two aspects of ostentatious policing are considered, the following being:

- a) Preventive ostentatious policing: occurs in situations of regularity, through programmed actions whose objective is to prevent the occurrence of crimes and the affront to public order. It can be carried out by means of inspection or inspection, its realization can be given by provocation *or ex officio*; and
- b) Repressive ostentatious policing: we can succinctly define it as a policing that occurs when public order has already been anafated, when the situation is no longer seen as regular, has as peculiarity the sanctioning character, repressive in view of transgressions, disturbances or incidence of crimes. Using self-execution, a means in which the Government grants to impose on the individual, even with the moderate/adequate use of force that fulfills a certain conduct, with the purpose of restoring the order. The military, since exercising the power of police should be aware of the conduct typified in the law of abuse of authority, according to the teachings of Hely Lopes Meirelles (2002, p.117), "The abuse of power occurs when the authority, although competent to perform the act, exceeds the limits of *its attributions or strays from administrative purposes*".

Overpowering and diversion of purpose are two means in which abuse of authority can take part. Let us take the following understanding of excess power:

**Excess power occurs when the authority, although competent to perform the act, goes beyond what is permitted and exorbits the use of its administrative faculties.** It therefore exceeds its legal jurisdiction and thereby invalidates the act, because no one can act on behalf of the Administration outside of what the law allows it to do. Excessive power makes the act arbitrary, unlawful and null. It is a form of abuse of power that removes the legitimacy of the conduct of the public administrator, placing it in illegality and even the crime of abuse of authority when it focuses on the criminal predictions of Law 4.898, of 9.12.65, which aims to better preserve the individual freedoms already guaranteed in the Constitution (art. 5) (MEIRELLES, 2002, p. 118) (griffin ours) (griffin)

The law of abuse of authority is an instrument that should be known to all heads/commanders of operations in order to be adopted measures that address individual rights or the principles of public administration, and that an authority that has knowledge will be easier to impose limits on its subordinates and organize operations within the required legalities, preventing excesses, and the possibilities of civil, criminal and administrative liability.

### **5.2.2 RONDÔNIA BORDER COMMAND / 6TH JUNGLE INFANTRY BATTALION - "BATTALION FORT PRINCE OF BEIRA"**

The 6th Battalion of Jungle Infantry Battalion Forte Príncipe da Beira/6º BIS originated from the Special Border Contingent, established by deliberation of the Ministry of War, on September 23, 19932, had an effective composed of thirty-three squares, remaining subordinate to the Border Inspectorate Madeira Mamoré, established in Porto Velho. In the same year, the group was in fact established in the city under the command of Second Lieutenant Raimundo Zeno Ferreira.

On March 30, 1977 became the 6th Special Frontier Battalion, and on May 99, 19992 was named Rondônia Border Command and the Sixth Jungle Infantry Battalion.

In the year of one thousand nine hundred and ninety-seven, it received the Banner and the historical designation of "Battalion Fort Prince of Beira", according to the publication in the Army Bulletin of the

same date, and published in the Internal Bulletin of the Sixth BIS on October thirteen of one thousand nine hundred and ninety-seven.

The 6th Battalion of Jungle Infantry Battalion Forte Príncipe da Beira/ 6º BIS is formed by the General Staff, a Command and Support Company, two Jungle Marine Companies and an Administrative Base, also counting on the First Platoon of Jungle Marines, deployed at The Prince of Beira Fort, located in the city of Costa Marques.

The RO/6º BIS Border Command, in accordance with Provisional Instructions No. 72-20, has the following missions:

- In the Offensive, destroy the enemy located in your area of activity and/or achieve specific objectives on the ground;
- In the Defensive, maintain capital accidents, especially those that allow blocking and/or controlling river and land circulation routes;
- In the context of Integrated Security, pacifying or participating in the pacification of an area;
- As border command that is, watch over the border strip under your responsibility;
- In Resistance Combat, operate in a combat area, employing, alternately, their Jungle Marine Companies.

In addition to these missions of its task, the Battalion participates in the missions triggered by the Military Command of the Amazon (CMA), and the 17th Brigade of Jungle Infantry Brigade Prince of Beira. Are the operations Ágata, Curare, Ibama, Boiadeiro, Guaporé, among others, making security and supporting Ibama in the inspection of deforestation, and loggers that operate illegally in the State of Rondônia, also work together with IDARON, to curb the entry of unvaccinated cattle into Brazil, coming from neighboring parents, carry out operations in conjunction with the federal police to combat drug trafficking in the border area, going to its limit of action that is on the border with the state of Mato Grosso, on the cabixi river near the municipality of pimenteiras. Where the two battalions meet the 6th BIS and the 2nd Jungle Infantry Battalion (2nd BFRON) based in the prison city in MT. In these operations, the riverside community also provided medical and dental care, as well as lectures with an emphasis on national security and environmental education.

Due to the geographical location, located in a border area, the Battalion carries out river and land exercises, for the training of the troops and at the same time to inhibit cross-border crimes.

The Border Command – Rondônia / 6th Jungle Infantry Battalion is currently commanded by Lieutenant Colonel Of Infantry Fábio Pinheiro Lustosa.

#### ***5.2.2.1 Prevention and Repression Operations***

According to the concept brought in the publication "Integrated Security" (DUARTE, 2007), we can understand what are the preventive and reprehensive actions that can be carried out by the Brazilian Army in law and order guarantee operations. They are:

1. Those triggered on a permanent basis in order to prevent premature use of force and prevent or hinder the outbreak and aggravation of a situation of disturbance of order ....
2. Those triggered, on an episodic character, when preventive actions have no effect. They aim to reverse a situation of serious commitment of public order, to a situation of peace and social harmony.

In the publication *Integrated Security I*, it is highlighted that repressive actions will be triggered both in normal situations and in a framework of cooperation with state governments or with the Ministry of Justice, providing support or assisting in the coordination of security actions carried out by public security agencies. It is also sought that the actions occur in an integrated way, with the participation of the other Forces, involving other powers, promoting an effective action of *Integrated Security*.

The actions to be developed are provided for in Article 17a, inc. LC no. 97/99 (in accordance with art. 16-A of LC no. 136/2010). According to the text mentioned:

Art. 16-A. It is up to the Armed Forces, in addition to other relevant actions, also as subsidiary attributions, preserved the exclusive competences of the judicial police, to act, through preventive and repressive actions, in the land border strip, at sea and in the interior waters, regardless of possession, property, purpose or any record that falls on it, against cross-border and environmental crimes, alone or in coordination with other organs of the Executive Power, performing, among others, the actions of:

I - patrolling;

II - magazine of persons, land vehicles, vessels and aircraft; And

III - arrests in flagrante delicto.

Single paragraph. The Armed Forces, by ensuring the personal security of national and foreign authorities in official missions, alone or in coordination with other organs of the Executive Branch, may exercise the actions provided for in items II and III of this article.

In this understanding, Ordinance no. 061/2005, brings an example list of the police power attributed to the Brazilian Army:

*Preventive*: among others: a) intensify the activities of troop preparation, intelligence and social communication, considered permanent in nature; b) cooperate with federal agencies, when necessary, is desirable and by virtue of request, in the form of logistical support, intelligence, communications and instruction; and c) provide security to the activities of federal agencies, when requested and desirable, based on the item that this Guideline deals with;

*Repressive*, among others: a) install and operate locking and control stations for roads and river and static security posts; b) conduct patrolling and magazine of persons, vehicles, vessels, aircraft and facilities; c) making arrest in flagrante delicto; d) support the interdiction of illegal airstrips and berths, proven to be used for illicit activities; (e) inspect controlled products.

We can have as examples of preventive and repressive actions, carried out by the Brazilian Army in the Border Strip, The Ágata and Curare Operations, in addition to the Integrated Border Monitoring System - SISFRON.

Operation Ágata, which is already in its 12th edition (referring to the State of Rondônia), aims to carry out patrols throughout the land border area, working together with the other members of the Armed Forces and public security agencies in order to reduce the practice of cross-border crimes, which in a case of illicit drug trafficking and weapons, smuggling and misway of goods.

As for Operation Curare, as with Operation Ágata, it takes place in a period of not more than one year, they are part of the Strategic Plan of | Border of the Federal Government, created to prevent and suppress criminal actions that may occur on the border of Brazil with South American countries, in the second half



of 2017, occurred the 9th Operation Ágata-Curare, which covered the states of Mato Grosso do Sul to the border between the states of Amazonas and Pará. In addition to the troops of the 6th BIS Battalion, the operation had the participation of the Federal Revenue, Military Police, Environmental Police, Civil Police, IDARON and SEDAM Agents, as well as the military personnel in the 1st Special Platoon of Frontier and Platoon Royal Forte Príncipe da Beira.

During the operations, the military carried out tactical missions aimed at cracking down on cross-border crimes, which due to regional circumstances that facilitate the occurrence of entry and exit, are recurrent the crimes of drug trafficking, smuggling and descamides, trafficking in arms and ammunition, environmental crimes, illegal mining and immigration.

Ordinance No. 061, of February 16, 2005, of the Commander of the Army, provides a definition of the main cross-border crimes in its item 6. IMPLEMENTATION of this rule brings an enumeration, exemplified, of the main illicit objects of prevention and repression. They are:

- *Cross-border offences*: the illegal entry (and/or attempt to leave) weapons, ammunition, explosives and other related products into the national territory; illicit trafficking of narcotics and/or substances that determine physical or psychological dependence, or raw material intended for their preparation; smuggling and mistransport (Brazilian Penal Code, art. 334); the trafficking of plants and animals, in the form of the Environmental Crimes Act (L. 9,605/98), the Forest Code (L. 4,771/65) and the Wildlife Protection Code (L. 5,197/67); the entry (and/or attempted exit) into the national territory of vectors in disagreement with epidemiological surveillance standards.

- *Environmental crimes*: the practice of acts harmful to the environment, thus defined by the Environmental Crimes Act (L. 9.605/98); the predatory or illegal exploitation of natural resources; the practice of acts harmful to the diversity and integrity of the country's genetic heritage, as defined in Provisional Measure No. 2,186-16, of 23 Aug 01.

For an effective action, foot patrols, motorized patrols, in addition to aerial and river patrols carried out in the main rivers and roads are used.

When we mention military operations, we tend to misunderstand that these are only preventive and repressive operations, however, together with the actions carried out, the populations involved are offered civic and social services, ranging from medical to dental care.

The Federal Government sought through a strategic project to monitor the borders, thus emerging the SISFRON, composed of a set of sophisticated technological resources and communication systems to intensify the human presence in some places of the border.

### ***Patrolling***

Through a previous organization, the Ground Forces carry out preventive and repressive actions through patrolling, which is legally expected at LC no. 136/2010, art. 16-A, I.

As already mentioned, the performance of these activities can take time in isolation or together with the other security agencies. Pursuant to Article 15, § 2, of LC No. 97/99:

Art. 15. The use of the Armed Forces in the defense of the Fatherland and in the guarantee of constitutional powers, law and order, and participation in peaceoperations, is the responsibility of the President of the Republic, who will determine to the Minister of State of Defense the activation of operational organs, observed the following form of subordination:

(...)

§ 2º The action of the Armed Forces, in the guarantee of law and order, at the initiative of any of the constitutional powers, will take place in accordance with the guidelines downloaded in act of the President of the Republic, after exhausted the instruments intended for the preservation of public order and the safety of persons and property, listed in art. 144 of the Federal Constitution.

Patrolling is one of the means adopted to intensify actions is to make them effective in order to achieve the predefined objectives.

### ***The Journal of Persons, Land Vehicles, Vessels and Aircraft***

With regard to personal reviews, it must be carried out in accordance with the provisions expressed in the Codes of Criminal Procedure and Code of Military Criminal Procedure, in addition to the other relevant laws dealing with the subject.

Basically the personal magazine consists of the search carried out in the clothing, suitcases or objects that can serve as a guard for the transport of illicit material, of the person searched. The journal to be executed must meet certain legal assumptions, as a rule, must be carried out in compliance with a court order for search and seizure, or if there are reasoned indications that the individual brings with him means or products of the crime and evidence of materiality. The exception, which excludes the need for a court order, is provided for in the Code of Military Criminal Procedure - Decree Law No. 1002/69:

Art. 182. The magazine is warrant-independent:

- (a) when made at the time of the capture of a person to be arrested;
- b) when determined in the course of the home search;
- (c) where the case provided for in point (a) of the preceding article occurs;
- d) when there is a well-founded suspicion that the searching brings with it objects or papers that constitute the body of crime;
- (e) when made in the presence of the judicial authority or the chairman of the investigation.

The well-founded suspicion mentioned in the device points out that the police authority needs to be attentive to the grounds that the search, since, not meeting the requirements required, agents may be called in court to resolve doubts about the reasons that led to such action, which does not exempt him from criminal accountability for abuses in the acts committed.

We must pay to the advantage that the Code of Criminal Procedure regulates the procedures pertaining to personal search when carried out in women, "*Art. 249. The search for a woman will be done by another woman, if it does not matter delay or injury of diligence*". However, to consider the possibility of not having a woman to carry out the journal, in this case it is necessary to carry out the search and in the impossibility of doing it by a female military can the male agent perform it meets the legal requirements being vetoed to pass hands in private parts, since such attitude constitutes a crime typified as libidinous act and abuse of authority.

As for the use of the term "domicile" the country jurisprudence admits the understanding contained in Article 173 of the CPPM, and article 171 of that code should be analyzed together: *Art. 173. The term*

"house" comprises: a) any inhabited compartment; (b) occupied room of collective housing; (c) compartment not open to the public, where someone exercises profession or activity.

It is advisable that the journal be carried out with due caution, in possession of a judicial warrant for search and seizure, which is not necessary in exceptional cases provided for by law, since it has express protection in the Federal Constitution, Article 5, item XI:

Article 5 ° All are equal before the law, without distinction of any nature, guaranteeing brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms:

(...)

**XI - the house is inviolable asylum of the individual, no one can penetrate it without the consent of the resident, except in case of flagrant crime or disaster, or to provide help, or, during the day, by judicial determination;** (See Law No. 13,105, 2015) (Term) (our griffin)

In the delegation of the police power to the military for the execution of GLO operations, not only the powers are conferred, they must act in compliance with the legal precepts.

### ***Arrests in flagrante delicto***

According to Articles 301 and 302 of the CPP, as well as the devices 243 and 244 of the CPP, any person of the people can make an arrest in flagrante delicto, following the list of requirements that must be observed so that an illegal arrest is not made.

When the act of the arrest in flagrante must be read the constitutional guarantees of the prisoner and collected his signature in the Science Note, such guarantees are duly included in Article 5, items LXII, LXII, LXIV, LXV, LXV, CF, are they:

**Article 5 °** All are equal before the law, without distinction of any nature, guaranteeing brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms:

(...)

LXII - the arrest of any person and the place where he is located shall be immediately communicated to the competent judge and the family of the prisoner or to the person indicated by him;

LXIII - the prisoner will be informed of his rights, including to remain silent, being assured the assistance of the family and lawyer;

LXIV - the prisoner is entitled to the identification of those responsible for his arrest or for his police interrogation;

LXV - the illegal arrest will be immediately relaxed by the judicial authority;

As already said, the arrest report should be sent to the Federal Police, along with the prisoner, when it comes to civilians the same should be incarcerated in prison pf, in the absence of the prison establishment must wait in an appropriate place until the transfer is carried out.

Still on the requirements necessary for the legality of the arrest in flagrante, the Supreme Court (STF), has already established an understanding about this modality of imprisonment, deciding that: "Summary 145: There is no crime when the preparation of the blatant makes it impossible to consummate".

Another issue that caused repercussions is the use of handcuffs, which could characterize nullity of the act of imprisonment. The matter was the subject of binding summary of the Supreme Court, according to the provision sumular:

It is only permissible to use handcuffs in cases of resistance and a well-founded fear of escape or danger to the physical integrity of the prisoner or others, justified by the exceptionality in writing, under penalty of disciplinary, civil and criminal liability of the agent or the authority and nullity of the prison or the procedural act to which it refers, without prejudice to the state's civil liability.

The use of handcuffs, weapons and the use of forces at the time of imprisonment is also disciplined in the CPPM, art. 234, where it contains the provisions and means in which such instruments of coercion should be applied. See:

Art. 234. The use of force is only allowed when indispensable, in case of disobedience, resistance or attempt to escape. If there is resistance on the part of third parties, the means necessary to overcome it or to defend the executioner and his auxiliaries, including the arrest of the offending officer, may be used. Of all the self-written by the executor and two witnesses.

### ***Employment of handcuffs***

§ 1 - The use of handcuffs should be avoided, provided that there is no danger of escape or aggression on the part of the prisoner, and in no way will be allowed, in the prisoners referred to in Art. 242.

### ***Use of weapons***

§ 2 - The use of weapons is justified only when absolutely necessary to overcome the resistance or protect the incolumidade of the executioner of the prison or to assist his.

The concern is in the use of the means used in prison, since, the excess the restriction of freedom, the cruel and inhuman treatment will be criminally typified as torture. Considering that torture is expressly prohibited in the national legislation and in the international treaties ratified by Brazil, once committed the agent if convicted may suffer the loss of office, function or public employment and the prohibition for its exercise for twice the term of the sentence applied. It is note: The crime of torture is indefinable and insusceptible to grace or amnesty, according to Article 1, § 5 and 6 of Law No. 9,455 of 7 April 1997.

## **FINAL CONSIDERATIONS**

Given the mission of guardian of constitutional powers, law and order, it would not be plausible that the means that could successfully perform them were not offered in conjunction with the tasks.

These means are called police power that originates from state power. The Power of the State has the power to use force when necessary and when the situation justifies such use, but this force should not be the way to maintain power, it must exist to promote security, the defense of national interests and assist in the development of the State.

The preservation of public order is a generic assignment granted to all security agencies. Having to seek the maintenance of law and order, to promote peace and social well-being. A company with security tends to breach social norms in a smaller number and violate legal provisions.

And notorious the performance of certain security agencies in daily life, which can contribute to the erroneous thought that the Armed Forces only act in times of war or exceptional events in the national territory. It should be emphasized that the Armed Forces must act when exhausted: the means, if the staff

is non-existent or insufficient, the equipment is not suitable for situations of disorder established, and also in situations of prevention and repression.

Due to the rate of violence and situations, a more effective repression operation is necessary, in some regions there is a need to convene the Armed Forces to act in a subsidiary with local public security agencies.

The action in the border areas occurs due to the extension, the difficulty in controlling and supervising the entry and exit of people in national territory. Due to the geographical characteristics of the Amazon and the border areas it understands, the police force is insufficient to promote adequate and effective control regarding the movement of people and goods, thus occurring a high rate of cross-border illicit goods.

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