

## TITLE: HISTORICAL EVOLUTION AND CURRENT SITUATION OF THE RELIGIOUS ASSISTANCE IN THE ARMY IN THE KINGDOM OF SPAIN

In this historical study until the present of the religious assistance in Spain, which is the main subject of this meeting, we can't talk about an organized situation of military chaplains and an informal religious assistance in the Spanish Army until the reign of the emperor Charles V. Just until then, we can find military chaplains helping in the Army in main historical events, but they were not organized nor were they permanent through the time or the military structures. Thus, we can say that from the Visigoth Kingdom of Toledo (S. V AD) until the reign of Philip II (1527-1559) there were four main historical events:

1.-In the first place, the Muslim invasion in 711 of the Iberian Peninsula meant the beginning of a period in our history which lasted until 1492, when the Catholic Monarchs took over Granada. This fact meant the end of the period known as the Reconquest of the Iberian Peninsula.

In Europe, this period was called Middle Ages, and in Spain, it was very characteristic of this period the constant fighting between Christians and Muslims to gain the control of the peninsular territories. At the same time, the Reconquest will lead to the foundation and development of the Christian Kingdoms and the creation of the feudal estates.

The end of the Reconquest also meant the beginning of a new historical period, characterized by the foundation of the big nations. The Catholic Monarchs managed to unify the Christian Kingdoms under their rule, and they gained the control and the subjugation of the lords to the crown.

Finally, the discovery of America brought an expansion of the world known until then, and it brought fights among the different European nations to get the power and the rule over these territories. It also meant the beginning of International law and the development of peoples' rights since this situation brought new thinking about the conquest and the preaching of gospel in the New World.

2.- Non formal religious assistance in the Army

The Middle Ages is a period of history where the weapons and the wars are its main characteristic. We can't think of those medieval armies from our current point of view. We have to try to situate ourselves in those times, in the mentality of those feudal lords. These lords owned the lands and the people who lived in them. The armies were not regular armies, but they were created by a lord or a king due to specific circumstances and necessities; and in the same way they were created, they would be dissolved once the danger disappeared. The troops were linked to a specific territory and lord. They would live and joined the normal life, working in the fields or as craftsmen, and practicing their religious beliefs in their parishes. When they were needed, they would become men at arms, who would follow their lord to become warriors. Once the armies

were formed, a great number of people of different conditions would go along with them.

The spiritual assistance was given by those who were in charge of it also in peaceful times, as parish priests and monks. At that time in Spain there was religious assistance in the troops, but we can't consider it in no way as a formal or specialized religious assistance. The feudal lord would take care of his people spiritual needs and also his own needs, moved by his Christian spirit, his ideal of chivalry and his eagerness of reconquest. To reach this spiritual aim, he would include priests in his troops whenever he would participate in campaign so that the priests would take care of his men. Once the battle over, the priests or monks would return to their homeland and they would go back to their routines. The canonical jurisdiction over the troops would come from the one they had in their own territory, it wasn't due to a special order. In other words, during the Middle Ages, the religious assistance to the Spanish armies were affects to the territory, and they would be only mobilized for a combat or a conquest.

In the Middle Ages, everybody could use the *esteva* (plowtail) and the sword to defend their life, their honor and their freedom. The priests were part of the people, and the people were attached to their shepherds. When the first victories would permit to move forward, the entire village, along with the priests, would take possession of the territory, and they would restart their social and religious lives. As time passed by, new kingdoms, seigneuries, *abadengos* would appear, and along with them, new dioceses and parishes would be created.

So, before permanent armies were created, there were already priests from the regular or secular clergy going along with the troops, and they were in charge of the religious services. The archbishop of Toledo, a great rider and warrior, went along with Alfonso VII to the battle of Las Navas de Tolosa. And as it is said in the text "Crónica de San Fernando", when Fernando III "The Saint" conquered Seville the entourage was formed by "San Pedro Nolasco, founder of the Orden de la Merced, San Pedro González Telmo and the beatified Domingo, all of them had gone to the siege of Sevilla, along with many others, to give support and to practice their ministry and preaching".

But there is a difference between this assistance in the past and the recent religious assistance in the Army in Spain. In those ancient times once the war was over, the troops were discharged, and the priests were sent back to their previous places or they would go back to their monasteries.

### 3.- The religious assistance in the discovery of America

The discovery of the new world had as a consequence, from a religious point of view, the need of priests and monks who could be sent to Christianize the new territories. And there was also the need of priests who could give spiritual support to all of those participating in the conquest and in the discoveries.

The movement, the distance of the territory and the overseas lands, brought the need of priests to take charge of the spiritual support to all of those who would go far away, in their final destinations as during the journeys from Spain to America. From the second trip of Colon it is already well known about the presence of priests and monks going to those far lands.

The new territories went through special situations mainly due to the distance. This is why the Popes gave special *gracias*, rights, privileges which would give autonomy and independence to priests and monks. Though these *gracias*, rights and privileges were mainly aimed towards the conversion of the natives, the pontifical concessions took also account of the spiritual needs of the sailors in the King's vessels and their military forces, who made the famous Indian routes and the needs of all the Spanish men who would board or would remain in the American regions

In 1693, the Pope Urbano VIII created a special congregation of cardinals, which led, due to these historical circumstances, to the creation of several Roman congregations. The rights were given *ad quinquennium*, *ad decennium*, *ad vicennium*, depending on the distance of the appointed bishops.

#### 4.- The creation of the regular armies.

The creation of the great nation states was linked to the necessity of having regular armed forces. The kings had to create permanent troops at the crown service, which would help them to give power and stability to the crown and reducing the power of the lords. Thus, professional militias were created, with a specific training and a permanent service under the crown.

A regular and permanent Army in Spain is dated in the times of the Catholic Monarchs. The Monarchs attracted the nobles to the court in order to control them more easily. In the court, the nobles would receive all kind of honorary positions. In 1512 the Palatine Guard was created, and it was named "Cuerpo de Gentiles hombres de la Casa y Cuerpo del Rey". Its members, in a small number, were chosen among the distinguished families of Castile, Aragon, etc. The members of the Palatine Guard, along with the honorific title would also receive a payment. And so the nobility became part of the Army. The Catholic Monarchs also created the Holy Brotherhood, which became characteristic of villages, towns and country roads. This "Hermandad" was dedicated to protect the people from criminals.

Cardinal Francisco Ximenez Cisneros saw the necessity of strengthen the royal power in the streets in a permanent way. To achieve this, he created the plebeian militias in 1516, which would later be the basis of a permanent army. He improved the germ of the army due to the possibility of a war and priests start to be present definitely in the militia in 1532, when our famous Tercios were organized for the first time. The chaplain was included in these tactic units and he lived with his Tercio and followed it everywhere. He was already a military chaplain, one of the oldest known in the Armed Forces of Europe and in all the world.

But in these circumstances the military chaplain had no assignments neither privileges. He was under the Episcopal authority of the area where the troops he was with were at the moment. Thus, in 1535, the emperor Charles V gave instructions to the marquis of Bastos, virrey and captain general in Napoles and established that a secular priest should be sent for spiritual service to every single company.

## 2. THE MAYOR CHAPLAIN IN THE NAVY, AS A PREVIOUS OF THE FORMAL RELIGIOUS ASSISTANCE TO THE ARMIES IN SPAIN

In times of Charles V, Spain had a great naval force, with a lot of missions and great activity in the Mediterranean Sea as in the Atlantic ocean. This will lead to the birth of a special ecclesiastical-military organization long time before the Breve pontificio of Inocencio X was published, in 1645, about religious assistance in the Armed Forces of Spain and Europe

Around the year 1564, the officers and crews of the royal galleys built a brotherhood or Cofradía in the previously mentioned chapel. Mr. Luis de Requensens, major general of the Sea, and Mr. Juan de Austria, Generalísimo of the Saint league were very interested about this cofradía, and the winner of Lepanto asked Pope Pío V the permission and pontifical acceptance, and the Pope agreed in a document called Letras apostólicas, dated in Rome, the 19 th of March 1569. In this document, the Roman Pope gave three important concessions: a) he gave the title of major chaplain to the person appointed by the brotherhood; b) he authorized Mr. Juan de Austria to appoint the chaplain; c) and the most important one, he granted to whoever was named chaplain the ordinary and apostolic jurisdiction, with the right to delegate in navy chaplains and army chaplains.

For this reason, he appointed Mr. Juan de Austria to the general inquisitor Mr. Jerónimo Manrique with the title of Major chaplain of the Army with the pontifical jurisdiction already said. The nomination was confirmed by Apostolic Letter of Pío V the 27 th of January of 1570. The major Chaplain was to be responsible of the spiritual support and the religious service in the king's vessels, mainly in battleships. And it meant the formal and institutional beginning of the presence of the religious assistance in the Armed Forces of Spain.

When Philip II came to power, we find that there was a hierarchical corporation of chaplains that would provide services in the Navy. In the Ordinances of the right government of la Armada del Mar Océano of the 24th of January 1633, paragraph 156, the king decrees: "All of you who have to serve me as chaplains should be clergymen, priests, and to be assigned by the major chaplain of the Navy, and no monks will be admitted for this task, unless they are allowed personally by me".

Let's say with no doubt that the designation of major chaplain of the Navy was the precedent of the ecclesiastical military jurisdiction. Strictly speaking, it wasn't really a jurisdiction yet, and the sailors and naval officers were under the jurisdictional authority

of the territory. But a permanent service of chaplains was created around the figure of the major chaplain, which worked in a hierarchical way and it held certain privileges in the practice of their ministry. The major chaplain had local and personal exemption based on the pontifical jurisdiction. This was the first ecclesiastical and military exemption known in history, and the first military body depending directly on the Holy See.

The Navy was the first one to have exceptional and special jurisdiction. Lately, in 1645 the Army will also will enjoy this situation. And finally, both jurisdictions will be unified in one person, in a general vicario, in 1741, Mr. Francisco del Castillo y Vintimilla, bishop of Barcelona, five years after the Breve Quoniam in exercitibus, 4th of February 1736. In this document Clemente XII gave total exemption to the Ecclesiastical and military Jurisdiction in Spain.

### 3. CREATION AND CONSOLIDATION OF THE MILITARY JURISDICTION THROUGH THE PONTIFICAL BREVES GIVEN SINCE 1645

The military jurisdiction will get established in Spain because of the movement of the troops. It will evolve, from the initial attention made by priests without any kind of links neither state nor ecclesiastical organization, till the current religious assistance given through the military archbishopric as personal diocese at Spain.

Once the professional and permanent armies were created there was the need to give them personnel who could give the necessary spiritual assistance to the troops that formed them. At first, the soldiers were attached to the territory. But this situation originated a lot of problems and conflicts that would be solved over the time through successive changes. Later on, it was the own Pope who assumed himself the jurisdiction of all the persons who were in the armies. To do so, he took over the jurisdiction of the diocesan bishops and gave it to a general vicario who could also delegate it. And so, the Vicariato General Castrense was created. And then, in recent years, in 1987 a new transformation took place, and the Vicariatos Castrenses changed into military Ordinariatos, and they were put on the same level as the dioceses, where their Ordinario has ordinary jurisdiction by reason of people.

It calls particularly the attention, when studying different Breves and the different changes the religious service has been going through along the years, that these were given by prescription of the Spanish monarchs. The kings, taking into account the necessities, asked the Pope for the consent to establish chaplains to support the troops in first place. Then, when the problems appeared they asked for the regulations needed so that they could carry out their pastoral and spiritual mission.

The Secretariat of War and Navy was created after the establishment in Spain of the House of Borbon; it centralized the direction of the armed elements. As a consequence, the ecclesiastic military services in the General Vicarage/Vicaría General were

reorganized. Let's take a look at the canonical evolution through the "Briefs" /Breves in the religious assistance of the Army in Spain.

#### 1.- Breve Cum sicut Majestatis tuae de Inocencio X

In 1645, the Pope Inocencio X, by request of the King Philip IV, granted the Brief Cum sicut Majestatis tuae of September 26, 1645, by which the Ecclesiastic Military jurisdiction in the Army of Earth was instituted.

A personal jurisdiction was created, but only for times of war. The privilege was extended " to all those who live and are situated in the camps ", which means the operation Army (it did not distinguish the military men in strict sense from those who were not soldiers, but for any reason followed the army). It was executed by the Major Chaplains. There was no Military Vicarage in charge of the organization of the unified jurisdiction, but several Major Chaplains who accompanied the troops in campaign, and who were provided with special powers for the spiritual assistance, with powers to subdelegate in other priests incorporated into the operations: "...Capellanis Majoribus exercituum a Majestate tua pro tempore deputandis, facultatem ad Nostrum et Sedis Apostolicae beneplacitum tribuimus, quoad bella praesentia in dictis regnis duraverint, per se vel per alium seu alios Sacerdotes probos et idoneos ac praevidio diligenti examine aprobato ab eis respective subdelegados, omnem et quamcumque jurisdictionem ecclesiasticam...".

Soon a series of difficulties not foreseen by the Brief arose: in many occasions it was difficult to determine the end of the warlike contests; at the same time, once the war ended, also did the special jurisdiction on the military men. These returned to their territorial Dioceses, which recovered the jurisdiction, even on the controversies arisen in time of campaign that had not resolved by the end of the war.

In 1705 the King Philip V nominates D. Carlos de Borja Centellas and Ponce of León as General Vicar of the Army and of the Navy, who executed the unified jurisdiction by the powers contained in the Brief one of 1645.

#### 2.-Brief Quoniam in exercitibus of Clemente XII

Though historically it could be said that the Spanish Military Jurisdiction exists from 1645, organically it did not have real existence until the practical difficulties that were preventing the good functioning of the Vicariato General Castrense/General military Vicarage determined the request of the new Brief in order to extend the jurisdiction to all the parochial acts in time of war and of peace. So we arrive to the Brief Quoniam in exercitibus of February 14, 1736 granted by the Pope Clemente XII.

Clemente XII, based again on the criterion of the mobility, granted the privileges and extended them in time of war and peace, bearing in mind that "the mobility is a characteristic of the regular armies and that it is really difficult to adapt the parochial ordinary service to the needs of a campaign that to the requirements of its preparation". This Brief was granted for a term of seven years, renewable.

The Roman Pontiff assumed the Spanish jurisdiction, naming the Major Chaplain as personal delegate, granting him such wide powers that he could in turn subdelegate, that he had scarcely any limitation in ecclesiastic and spiritual matters.

In this period the Chaplains of the Navy were incorporated into the Vicarage, and the Military Subdelegations of the Maritime Departments were constituted, so that all the ecclesiastic services remained centralized in a single administrative institution.

The successor was the Cardinal Borja, D. Francisco of the Castle and Vintimilla, who on February 20, 1741 was nominated Major Chaplain and Military General Vicar of the Navy and Army, located/sited in Barcelona. The new General Vicar managed to obtain, little by little, the centralization of the ecclesiastic military services.

The jurisdictional independence made possible for the Vicarage to collect the sacramental books of the jurisdiction that were before part of the different diocesan archives. In the archives of the Archbishopric there is not a single document previous to 1736.

The Chaplains stimulated by their General Vicar, noticed soon the moral advantages that the new regime could bring, as well as the duties that it imposed. Acting as real parsons, attached to their prelate, they cooperated to the labor developed by the military subdelegations, so that the unification of the service and the creation of a real group of chaplains became a consolidated reality.

We can say, undoubtedly, that this Brief is the real beginning of the Ecclesiastic Military Jurisdiction exercised across the General Military Vicarage until 1987, when it became the current Military Archbishopric.

Benedicto XIV, with the Brief with same title that the one of Clemente XII, Quoniam in exercitibus of June 2, 1741, was the first Pope who extended the Jurisdiction, by just reproducing the previous Brief.

On February 4, 1750 Benedicto XIV the Brief of Benedicto XIV expired, and extension was requested.

3.-Brief Quoniam in exercitibus of Clemente XIII and Royal Ordinances of Carlos III.

In turn, the King Carlos III made a deep reorganization of the Army. For this, he established the Royal Ordinances of the Army (1768) that have been in force in Spain until 1978 in many of its articles, or at least in its spirit.

As base of the reorganization of the Ecclesiastic Service in the armed bodies, the King asked the Pope for a new Brief, requesting that all the powers contained in the previous Briefs were to be delegated directly to the Patriarch of the Indies; this provided the Prelate with increased authority, centralizing the managerial tasks, so that the post acquired some level of immobility. The Pope Clemente XIII agreed and granted the Brief Quoniam in exercitibus sent On March 10 of 1762.

The King, by Decree On May 11 of 1762 restored the Vicarage.

#### 4.-Problems of the Military Jurisdiction and the correction

Soon problems of jurisdiction with the territorial Dioceses arose, which were immediately solved by the Pope Clemente XIII in the new Brief, *Apostolicae Benignitatis*, of March 14, 1764.

This Brief states who will be under the Military Jurisdiction "all those who in peace and in war are under the flags of the King, and live from the military salary, and those who for a legitimate reason accompany them". This excluded the militias of any kind not being mobilized, the retired persons, and the persons belonging to the Navy as long as they did not have a post on board of the warships.

On August 27, 1768, Clemente XIII, extended the Military Jurisdiction by the Brief *Cum in exercitibus*. If there were indeed numerous the conflicts between the Military Jurisdiction and the Jurisdiction of the territorial Dioceses, which in many cases did not allow a real independence and organic action of the Military General Vicar, it is not less true that significant steps had to be given so that the Military General Vicar could keep his administrative independence inside the military structure, allowing him to fully develop his mission in the Army as an immersed institution, as stated by the Brief granted by the Popes.

Although the Briefs established, that "the Military General Vicar could delegate the parochial service in honest Priests, verifying their suitability through a diligent and rigorous examination, except those previously approved by their Ordinary", the King Carlos III granted the Ordinances for the Regime, Discipline, Subordination and Service of his Army On October 22, 1768, a few months after the concession of the pontifical Brief; in the dispositions/regulations, the Chaplains' appointment was left in hands of the Colonels of the respective regiments. The above mentioned Ordinances regulated the way in which the Chaplains and their obligations must be admitted.

Certainly for General Vicars it must have been inadmissible that the Colonels were in charge to select and nominate the Chaplains, and that they could interrupt the communication of the Chaplains with their legitimate Ecclesiastic Superior suspending the agreements of authority.

Based on their prelatric rights and duties, the General vicars went to the Sovereign, and the issue about the aptitude tests and admission of The Chaplains in the Army was defined according to the spirit of the pontifical Briefs.

The King Carlos III corrected the problems by the Royal Order on admission/accession to the Army, license and rewards of the Chaplains, also extended to the Navy, of November 4, 1783.

Later on, the monarch developed the regulations which, from that moment, will rule the selection and Chaplain appointment and their relations with the Military General Vicar.

In the Navy, these points were interpreted by the Royal Order of February 25, 1784, which deprived definitively the Intendants of Navy of the powers they had -or assumed to have- to appoint, to suspend of salary and to propose the separation of the Chaplains of the Navy. It stated that the Chaplains of the Navy depended from the General Vicar, and that the vacancies were provided on the proposal of the Prelate and by competition (examination). The disciplinary correction of the Chaplains of the Army was declared exclusive competence of the General Vicar.

We can see, therefore, the great importance of the Royal Order of 1783. If the complete exclusion from the Military Jurisdiction began really in 1736, it can be said that the independence of the Chaplains and their functions/activity as real parsons did not take place until 1783. The Military General Vicar had not acted as a real Prelate to their Chaplains until then, since until that moment he was not directly in charge of their appointment, rewards, or separation/dismissal from their duties.

5.-Renovation of the Military Jurisdiction through the successive pontifical Briefs from 1768.

On August 27, 1768, Clemente XIII granted another Brief Cum in exercitibus, to provide the agreed extension. From this moment and every seven years, the successive Popes provide for the corresponding extensions to renew the Ecclesiastic Military Jurisdiction.

Up to the Pope León XIII, the Popes who extended the jurisdiction were: Pío VI in 1775, 1783, 1790 and 1795; Pío VII in 1803, 1810, 1817 and 1823; Pío VIII in 1830; Pío IX issued three Briefs, in 1848, 1855 and 1862.

León XIII, by the Brief Quae Catholico Nomini of September 11, 1883 addressed to Alfonso XII, modified and adapted the sources of the Jurisdiction, confirmed the jurisdictional acts of the Military Vicarage and of his Subdelegates and confirmed all the previous powers, granting the corresponding extension.

In order to introduce a new regulation in the Jurisdiction of the palatine Chapel and of the Military General Vicarage, the Pope León XIII, in the apostolic Letters of April 21, 1885 addressed to Alfonso XII, established:

To appoint, at the instance/at the request of the King, the Archbishop of Toledo as Major Chaplain of the palatine Chapel; the Archbishop of Santiago kept his privilege and title of Major Chaplain he was already entitled to. The post would be exercised/performed/executed separately, and the King would designate one of them.

The selected Archbishop was not exempted of the obligation to reside in his Diocese: he could nominate a Delegate or Vicar to representing him in the Royal Chapel during his absence.

The Archbishop of Toledo was awarded with the title and honors of the Patriarch of the West Indies, granting him in addition an auxiliary Bishop.

Finally it awarded the post/office/employment/profession of Military General Vicar, at present and in the future, to the Archbishop of Toledo, without prejudice of the canonical residence in his Diocese, until seven years later León XIII established by request of the regent queen of Spain the separation of the title of the Archbishop of Toledo with that of Military General pro-Vicar with the title Episcopal title of Zion.

Here appears for the first time in the Jurisdiction the title episcopal of Zion/episcopal title of Zion, granted by the Holy See to the Military Bishop.

After León XIII, the Jurisdiction continued being extended by the successive Popes up to its extinction in 1933. Pío X granted two extensions, one in 1904 and other one in 1911; Benedicto XV did the same in 1918 and Pío XI was the last Pontiff to grant the extension in 1926.

#### 4. THE END OF MILITARY JURISDICTION DURING THE SECOND REPUBLIC.

The establishment of the Republic, on April 14th, 1931, led to a series of difficulties and disagreements between the Government and the Church that will seriously affect their relationships.

The Constitution elaborated by the Constituent Spanish Parliament and approved on December 9, 1931, was establishing as one of the essential elements of the juridical Spanish classification the laicism of the State. It was an aggressive constitution to the maximum against the Church and the religious freedom in Spain. And that, with the beginning of absolute laicism was going way beyond the mere separation between the Church and the State to enter an area of total elimination of the religion of political life.

##### 1.- Dissolution of the Ecclesiastic Corp of the Army

On May 19, 1932, to put into practice the total separation between Church and State supported in the Constitution, a project of law, in which the Ecclesiastic Body/Corp of the Army was dissolved, was presented to the Spanish Parliament. This Law of dissolution was approved on June 12, 1932 and it was published in the Gazette, today known as The Official Bulletin of the State, dating June 30, 1932.

##### 2. Suspension of Ecclesiastical Military Jurisdiction by Pius XI.

Following such regulations and having regard to attitudes of Republican Government against the mentioned Ecclesiastic Military Corps, just one year before the expiration of the extension (1936) of the Ecclesiastical Military Jurisdiction of Pius XI, the Pope decided not to renew such extension and suspend the jurisdiction. To the effect, in official circular letter of March 30, 1933, the Apostolic Nunciature in Spain made clear that “from this date the Ecclesiastic Military Jurisdiction shall remain extinguished in Spain”.

## 5. ECCLESIASTICAL JURISDICTION FROM MILITARY CIVIL WAR IN FRANCO REGIME.

Of all are known the tragic events that happened in Spain in the following years. As a result of uncontrolled looting and the lack of state and public security, the "national" military uprising occurred against the Republic, which led into a civil war that, with the addition of the riots and deaths, especially Christians, previously in Asturias and Catalonia, lasted three years, with more than a million deaths (1936-1939). With the return of governmental order and the progress of Generalissimo Franco, Military Jurisdiction was gradually restored and little by little his organization will configure itself.

Furthermore, it is necessary to bear in mind that from the Engineers' Weapon of the Army of Earth comes a new Army Air Force in which, as in the Army and Navy, religious attendance was also performed.

### 1.-The Religious Service in the Civil War

During the Civil War, extinguished the Chaplain Corps, in the so called national side it was necessary to organize religious assistance, especially in the front, in hospitals and in the columns of operations.

In consideration to the special circumstances Spain was going through, and in order to get military men religiously attended, the Holy See entrust Cardinal Goma the creation of an organization as a respond to such circumstances. Cardinal Goma, in fulfillment of that order, issued a decree organizing the military religious support stably but interim.

### 2.-The Military Religious Service after the war in 1939.

Having finished the civil war, with the final establishment of the regime of General Franco, the April 1, 1939, the army was reduced to its logical proportions and almost all the soldier-priest and voluntary chaplains, returned to their Dioceses and convents. Only then it was possible to appreciate that the number of chaplains of the different bodies of the Army and Navy were only half of its staff previous to the year 1931, for what the religious military service was reorganized with personnel of both Bodies and some soldier -priests and voluntary priest (the jurisdiction as such had not yet been restored).

On July 12, 1940 a law that overturned July's 30, 1932, which dissolved the Ecclesiastic Body of the Army 357, was enacted. On June 24, 1941 a decree by which there where established the forecasts of the Ecclesiastic Corp of the Navy was published. On December 31, 1945 two laws of transcendental importance appear, for the Ecclesiastic Army Corps was organized through one of them and, through the other one, the Ecclesiastic Air Corps was created.

To fulfill the mentioned laws, correspondent regulations were established. These regulations are prior to the laws of 1945 but they were the base of the functioning of the Ecclesiastic Corp of the Army of Earth up to the Agreements Church-State of 1979. Both regulations have been, until 1979, the base of the respective Ecclesiastic Bodies.

### 3.- Creation of the Ecclesiastical Military Jurisdiction in 1950.

In 1950 an agreement was signed between the State and the Holy See by which the Ecclesiastic Military Jurisdiction was created. It was the first time the Ecclesiastical Military Jurisdiction was an object of agreement. As we have seen previously, the Jurisdiction and powers of the General Military Vicarius and his chaplains and parsons/parish priest of square were granted by Brief pontificios at the request of the Kings of Spain. The new Agreement established that the Holy See would constitute, in Spain, a Military Vicariousness to attend the spiritual care of military men of land, sea and air.

The existing negotiations between the Holy See and the Spanish State gave place to the signature of a Concordat, on August 27, 1953. Such Concordat was referring to the Ecclesiastic Military Jurisdiction and to the religious assistance in the Armies in several of its articles, presented by General Franco, for its ratification in the Spanish Parliament, on October 30, 1953.

In the Concordat's final Protocol, and in relation to the article 32, the passive subjects of the 1950's Agreement were extending to all devoted public of both sexes, yet secular yet religious, who were giving stable service to the Army under any circumstances in order to get them live, habitually, in the quarters or in places reserved to the soldiers. The same jurisdiction was also extended to member of the Police and the Army Police Body/Corp as well as to their relatives (these were already included in the Agreement of 1950) 366. The Ecclesiastic Military Jurisdiction and the religious service to the Armed Forces will work by means of this legislation until 1979 when a new Agreement between Spanish State/Government and the Holy See was established.

## CURRENT REGULATION OF THE RELIGIOUS AND SPIRITUAL CATHOLIC ASSISTANCE IN THE FAS

### 1.Sources of religious assistance in Catholic FAS.

We are going to focus on the sources from a double perspective: the State and the Ecclesiastical. To be able to understand well the religious and spiritual catholic assistance in Spanish Armed Forces at present, we have to bear in mind how it is regulated in both areas since both regulations determine the bases and the nature of themselves. Religious attendance is determined by regulations made by the State

according to its principles and by the way spiritual assistance is provided. And the latter comes determined by the concrete regulations of the Catholic Church.

#### 1.- State sources that regulate religious assistance to the Catholics in the FAS

Once established the Agreement between the Spanish State and the Holy See, in 1976, by which the Concordat of 1953 was checked, another series of sectorial character agreements were set between both of them in 1979. Among others, on January 3, 1979, an Agreement between Spanish State and the Holy See on the religious assistance to the Armed Forces and clergymen's and religious military service is signed. This agreement was negotiated prior the promulgation of the Constitution but shall be ratified and promulgate subsequent to its entry into force once approved in referendum.

The Agreement will be of great importance because since then, and together with the constitutional requirements, it will define and inspire the religious assistance to the catholic military men in Spain.

According to the first article of the agreement: "The religious pastoral assistance to the catholic members of the Armed Forces shall continue exercising for the Military Vicariusness".

The Spanish Constitution of 1978 includes a series of fundamental articles in the field, marking the beginning of the relationships and the course of action the State has to have with the religious fact, and that they set the model of State in which the religious assistance is formed in the institutions from the respect and the protection of the fundamental right of religious freedom.

To understand the current organization of the military Archdiocese and the religious assistance to the Armed Forces of the Kingdom of Spain, the articles 16 and 1 are indispensables, as we previously saw, as well as their relations with articles 1,9.2,10 and 53.2.

And since it was necessary to develop the constitutional rules on this religious assistance to the Armed Forces and its coordination with the constitutional principles, on July 5, 1980 the Organic Law of religious Freedom was approved.

Another important fact for this religious care in Spain today is that in 2007, military career was approved by Law 39/2007 of 19 noviembre<sup>370</sup>. In its 8th disposition the Government guarantees the religious assistance in the FAS, in term foreseen in the provided in the Order. It is, so far, the last regulation that, with range of Law, refers to the religious assistance.

Later, this religious catholic assistance in the FAS is developed and regulated by the Royal Decree 1145/1990 of September 7, by which the Service of Religious Assistance of Armed Forces (SARFAS) was created, giving with it fulfillment to what it was arranged in the Law 17/1989 of July 19, regulatory of the regime of military personnel.

This Royal Decree was modified in some of its dispositions by Royal Decree of 21 February 212/2003 372 and by Royal Decree 28/2009 of 16 enero373.

It is also important to consider the Royal Decree 1314/2005 374, November 4, by which the Regulation remuneration of staff of the Armed Forces was approved and which was modified by Royal Decree 28/2009, January 16375.

As for the dispositions issued by the Ministry of Defence that affect the regulation of religious attendance, it is necessary to say that they are numerous and have been modified over time to adapt themselves to the constitutional regulations. On February 6, 2009 the new Royal Ordinances for Armed Forces were approved by Royal Decree. The old Royal Ordinances, which were approved by Law 85/1979 of 28 December 1978, remain in force in all that is not opposed to the new ones. These Ordinances, presumably, will give place to the respective Ordinances for different Armies (Earth, Sea and Air). Meanwhile the Royal Ordinances of Army of Earth, Navy and Air, remain valid in everything that it is not repealed by the laws, orders and instructions that will complement regulation on religious assistance in the FAS until today.

## 2. Ecclesiastical Sources

Ecclesiastical sources that have to be taken into account when considering the religious and spiritual assistance in the FAS are:

The Code of Canon Law of 1983 and more specifically the provisions of its canons 569 and 1110.

The Apostolic Constitution *Spirituali Militum Curae* the Supreme Pontiff John Paul II on the spiritual assistance to the military men, published on April 21, 1986, which transforms the Military Vicariate into Military Ordinariate (Military Archdiocese).

Immediately after the publication of the Apostolic Constitution and by its mandate, the Statutes of the Military Ordinariate or Military Archbishopric of Spain are established and published on January 1, 1988.

Military Archbishopric also drawn a number of Instructions and Decrees, important for its functioning, that are not motive of review at this conference. Last but not least, it is necessary to highlight the archbishop role as spiritual and religious assistant to catholics in "FAS".

The state, based on the constitutional principles of respect and promotion of the right of religious freedom, equality, laicism, and cooperation, that we already lived before, subscribes an agreement with the Catholic Church in 1979 which has been the regulatory context of the religious provider to catholic members in "FAS" since then on.

Article 1, from 1979 agreement, establish in a precise and transparent way who is going to be the provider of the religious assistance: "the religious-pastoral assistance to catholic army members will be given by the chaplain general".

We can observe how the article refers not only to religious assistance, but also uses the terms "religious-pastoral assistance". With it clearly establishes that the chaplain general mission consist of being the spiritual assistance provider to the faithful army members, differentiating it from the religious assistance that relies on the state and that is given providing the necessary elements (as it is the same 1979 agreement) so such spiritual assistance can be provided.

On the other hand, from article 1, we can deduce that the new agreement does not imply a total break-up with the previous model, but a continuation of the religious-pastoral assistance that was provided by the chaplain general. The religious assistance model transformation will take place in the following years through important legal and regulatory modifications, both at the state and ecclesial levels. The subsequent state regulations will be consequence of the need too adapt such assistance to the principles of the Second Vatican Council

Thus, the 1979 agreement establishes the military vicarage general as the institution in charge and holder of the mission to the catholics religious and pastoral assistance inside the spanish army. The relationship between the State with the Catholic Church is established through such vicarage general, in which both the State and Church put their trust so catholic soldiers can be spiritually assisted.

Articles number 2 and 4 establish the operation and organization of the militar Vicarage General, at the front of which is the Archbishop, military Vicar General, who is provided with his own curia and the corresponding Episcopal vicar and chaplain cooperation (art. 2. B).

The 1978 agreement does not explicitly establish the type of relationship that the Vicarage General should have with the State, and less with the military institution. The regular issue at that moment as at the beginning was that the chaplain general was providing assistance in the same way as he was doing before. But in fact the agreement left the possibility open to the relationship model to be different.

In the seventh additional disposition of the July 19th, 17/1989 Law, which regulates the military personnel regimen, the Parliament urged the Government to create, through Royal Decree, the religious assistance service in the army and provide the norms of the personnel regimen, in order to guarantee, through this new religious service, the religious assistance of the "FAS". The seventh additional disposition of the law, in its third section, establishes that the religious-pastoral assistance to the catholic members will remain provided by the military vicariate in terms of the 1979.

Nevertheless, the November 19th, 39 /2007 Law, of the military career, in its eighth disposition, although in its second section still says the religious-pastoral assistance is

provided by the military archbishop, explicitly determines that will be provided by the military chaplain in their different existing modalities till that moment.

## RELIGIOUS ASSISTANCE IN SPANISH CONSTITUTION

Religious assistance is not explicitly recognize in our Constitution. It is a right that is born and based on other rights. It is constitutionally recognized in an indirect way when it recognizes and protects the fundamental individual right to religious freedom.

. From this right originates that without which it would be impossible to have authentic religious freedom<sup>112</sup>. It is not, without any doubt, a minor aspect of the religious freedom, but at the same time closely related with the principles of equality, laicism and cooperation of religious confessions.

Article 16, in its first section, guarantees individual and collective ideological, religious, and cult freedom as a fundamental right.

This right would be infringed in many cases if religious assistance wouldn't exist.

As we already saw before, in many circumstances the individual on his own wouldn't comply with this fundamental right of religious freedom as he would find himself tied in certain circumstances in specific institutions.

In consequence, it is recognized that religious assistance is part of the essential content of the religious freedom, and has been formalized in our legal system through the organic development of the Constitution, and as a result discretionary political appeal has no place to minimize or diminish the importance of religious assistance.

But if the religious assistance foundation relies on the right to religious freedom, the Constitution in section 3 of article 16 goes far beyond establishing that the state and the public Authorities Will take into consideration the beliefs of the Spanish society, with a new mandate so they hold the subsequent cooperative relationships

The constitutional mandate to public authorities establishes, in a mandatory way, the duty of the state, in its relations with confessions, to start that cooperation so in the midst of other aspects makes possible religious assistance that derives in compliant of the religious freedom right from state equality and aconfesionalidad.

Cooperation principle comes across with the definition of Spain as a social and democratic State from its right (art.1.1 CE). This aspect plays a fundamental role in public authorities behavior (art. 9.2 y 16.3 CE). The state places itself to serve people's fundamental rights and tries to promote a common well-being

Furthermore article 9.2, establishes a mandate to public authorities to promote the conditions so liberty and equality of people and groups in which they integrate are real and effective, which means that the fundamental rights not only have to be protected and respected, but also promoted from public authorities.

The mandate of the art. 16.3 CE forces public authorities to cooperate with confessions and to take into consideration the religious beliefs of the Spanish society, and to favor the necessary conditions so the religious freedom right will be real and effective, both in the private and social and public dimensions.

From this perspective, although the state has to be neutral in regard to the specific options of the religious fact, it can not be in regard to religious freedom, which is obliged to recognize, address, and guaranty. The only limits for cooperation come determined by the equality and laicity rights, as religious assistance must be executed within the limits established by them.

The inclusion of article 16 into the first Section, Chapter II, Title I of the Constitution, supposes a double perspective: a.) the development of these rights by the Organic Law, as has happened in 1980, with the LOLR, b.) the double juridical protection, in the way of ordinary juridical appeal and in the way of constitutional appeal.

## 2. THE RELIGIOUS ASSISTANCE IN THE ORGANICAL LAW OF FREE RELIGION

Although the Spanish Constitution is not talking expressively about religious assistance, it is mentioned in the Organic Law of Freedom in Religion, charged with the development of the recognized right on religious freedom, and guaranteed in the Constitution.

The Organic Law 7/1980, of 5th of July, on Religious Freedom (LOLR), came to determine the normative cadre, concrete and adapted for putting into practice the constitutional requirements.

It concerns a short law, only counting with seven articles, two transitory provisions, one repeal provision and one final provision.

In the context of the law are marked, aside from the individuals, all the groups that can be religious community or belief. To the Catholic Church only applies the subsidiary form because having subscribed previously a number of Agreements with the Spanish State who have an international treating. The consideration of religious confession grants the public power through administrative or juridical way. This situations is not lacking problems when it comes to determine which groups are or are not religious beliefs, and this has brought more than little problems in the limitations of certain groups.

The LOLR guarantees de right of every person “to practice the acts of worship and receive religious assistance of his own belief” (art.2.1). And adds that for the real and effective application of this right, the public powers will adapt the necessary measures to facilitate the religious assistance in the establishments. Something which is

completed with Religious Assistance in Spain to the Armed Forces, making it more alive and evangelic than ever.

## 1.2.- The life of faith of the catholic Spanish military.

The catholic military who united to Christ through baptism and through Him belongs and incorporates to the Church, lives his faith in the military as another prolongation of his life, so IN the Spanish Armies than in other countries and armies.

From within his military profession he is called to develop his Christian vocation and is looking for his holiness. Faithful to his belief and the catholic hierarchy he is living his life in his military profession. He is participating with the whole Church of the apostolate and evangelization, and is looking for his sanctification of the sacraments.

The catholic military needs at Spain and at the world, to be able to live his faith, to participate in the sacramental life of the Church, of his Liturgy, of his Prayers, of the spiritual attention, of the apostolate, of the formation, in his principles and doctrine.

All this concretes in the daily life, during the moments and times for being able to fulfill his needs and exercise his religious rights. The believing soldier has the power, in the execution of his profession, to give compliance to his faith requirements. Moreover he has to be able to do it extensively to his own family who can also see this exercise as limited.

In this way are needed spaces and times for the celebration of the sacraments (Baptism, Confirmation, Eucharistic mass, Penitence, Matrimony, Priestly Order, Union of the sick); the oration and liturgy (personal and communitarian); the catechesis, the spiritual formation and the care. He has to be able to meet the religious precepts, and at the same time be able to grow and develop as believer in the military institute, in which, in many occasions, if this would not be through the means put at disposal by the State and the Church, he would not be able to do this solely.

## 2. THE NEED OF THE PRIEST IN THE RELIGIOUS AND SPIRITUAL ASSISTANCE TO THE CATHOLIC MILITARY AT SPAIN

We have seen how the catholic military has to practice his faith and how, equally to other catholic believers, disposes at Spain for this over a series of rights and holds some obligations. In the application of his faith, he is inserted in a life community (the catholic one in the military surrounding), what is helping him and animates him, in which integrates forming and participating in this, from his own charisma.

In the search for the holiness, he is not alone, but participates with the whole Church, who is helping and supporting him, accompanying him and giving him the necessary tools to do so.

The Catholics soldiers at Spain, for their own beliefs and doctrine, need for the practice of their faith, the presence, collaboration and accompanying of his shepherds, in other words those who have received the sacrament of the order, which qualifies them as Priest of Christ (PO 2) and consecrates them to proclaim the Evangel , shepherd the believers and celebrate the godly cult (LG 28). People of the same faith community who arrange themselves for the Village of God. As John Paul II confirmed “without priests the Church cannot live that fundamental obedience which is situated in the same center of her existence and her mission in history, this is, the obedience as send by Jesus. “This, then, and do as my disciples” (Mt 28,19) and “To this to commemorate me” (Lc 22, 19 cf. 1 Cor 11,24)”.

The clerics, consecrated to God for the reception of the priestly order, are the administrators of the mysteries of the Lord in favor of his people (c. 276.1).

The priests are, in the Church and for the Church, a sacramental representation of Father Jesus and Shepherd, are proclaiming with authority His word; are renewing his gestures of pardon and are the offer of salvation, principally with the Baptism, the Penitence and Eucharist; and exercise, until the total gift of these, the loving care of the herd, as they congregate in the unity and conduct the Father by means of Christ in the Holy Spirit.

The catholic military at Spain, as any other believer, needs for the practice of his faith, also the presence of priests who form him, animate him, accompany him, administer the sacraments etc... The believing military needs to be able to celebrate and participate in the Eucharistic mass, needs to be able to receive the pardon of God through means of the sacrament of confession, needs to be able to feel comfortable with the reception of the unction of the sick in the critical moments of his life, must be able to listen, meditate, learn, ponder and think over God’s word, all this helped and accompanied.

For all this the presence of priests at the Spanish Armies is essential, without which the believer could not accomplish many of theirs rights as a believer and as faithful) when detached from the church community. Catholic priest leads the Community to whom is devoted, administers the Sacraments as part of ordinary minister and encourages, teaches and gives advice and guides the community faith

The active life of any Spanish military is high availability to serve missions and tasks assigned by the command. It is characterized by long and frequent departures from their units, special styles of life due to the exercise of the profession that requires them to adjust to different types of services and schedules, different situations and frequent reassignments throughout his military career, etc.

This requires the presence of specialized priests who can accompany them and encourage them, but also to guide such a special community of believers, and as shepherd, priest, to be able to administer the sacraments in such circumstances and enable the practice of the faith of the Catholic military. At the Spanish Armies (like in other countries and forces) the functions of the ministry can be resumed as prophetic, priestly and royal functions. Army Chaplains, like any other priest, are ministers of the

Word, the Eucharist and the Sacraments and they lead the people of God entrusted to them).

Could a Catholic believer military from Spain fully practice their faith without chaplain during the time he is in foreign missions like Afghanistan, Lebanon etc.? As an average, the period spent on these missions at the Spanish Army is longer than (or exceeds) four months. And it is a special time for pastoral guide and advice, looking for the spiritual and psychological assistance of the Spanish soldier regarding God and the Church.

The same pastoral assistance to those soldiers who spend many days, weeks or months at sea? In these cases, the average stay away from our military units is around 40 days a year (without counting foreign missions or exercises within the military staff).

All this makes us think of a real need for specialized pastoral priests in the military service, to both accompany and assist the Spanish military soldier at the day by day and also, as the special chaplain's duty, to attend their spiritual needs and the pastoral support of their families in those difficult periods (of absence). Spiritual assistance that, today, is a reality at the Spanish Armies by the work of the Military Archdiocese, his Archbishop and his almost one hundred military chaplains that belong to the Spanish Army today.