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Constitutional Meeting of the Montreux Document Forum (MDF) of 16 December 2014

Chairs' Summary

1. Introduction

On 11-13 December 2013, Switzerland and the International Committee of the Red Cross (ICRC), in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF), hosted the Montreux+5 Conference to reflect on the fifth anniversary of the finalisation of the Montreux Document¹. During this Conference, Montreux Document participants considered it opportune to establish a Montreux Document Forum (MDF), which would enable them to regularly discuss ways of implementing the rules and good practices set out in the Document. In order to follow-up on this proposal, Switzerland and the ICRC convened a number of meetings in 2014 among Montreux Document participants to discuss the establishment, working practices and tasks of the MDF. These exchanges led to the meeting of 16 December 2014, which served to establish the MDF.

The present summary by the Co-Chairs provides a brief account of the meeting, decisions taken, and indications for the way forward. The summary is the sole responsibility of the Co-Chairs and does not purport to reflect the consensual view of participants.

The constitutional meeting of the MDF was divided into two parts. A first part in the morning, open to all interested states and invited international organizations, served to inform about the Montreux Document and to have an exchange with all present on its significance and on how to promote further support for the Document. A second part in the afternoon, for Montreux Document participants only, served to formally launch the MDF and to take initial operational steps. Prior to the meeting, all delegations had received copies of the agenda, questions for discussion and the proposed working practices.

2. Raising awareness of, and increasing support for, the Montreux Document

In the first part of the meeting, the ICRC gave a presentation on the Montreux Document, progress achieved since its finalization and remaining challenges. Following this, DCAF presented the different outreach activities that have been undertaken with the aim of increasing awareness of the Montreux Document and promoting further support. Notably, Switzerland, the ICRC and DCAF launched a multi-year programme of regional workshops, which have taken

¹ Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict.

place in Chile, Mongolia, Australia, the Philippines, and in Senegal. The next workshop will be held in Ethiopia in the second half of 2015. In six years, the number of Montreux Document participants has tripled, increasing from 17 states to 51 states today and three international organizations.

Delegations considered that cooperation, information sharing and technical assistance on the regulation of private military and security companies (PMSCs) is instrumental for achieving a more effective and full implementation of the Montreux Document. In this sense, some participants were of the view that a broader representation of the different types of states mentioned in the Montreux Document (contracting states, territorial states and home states) should be achieved and they supported enhancing the exchange between Montreux Document participants and states/international organizations not yet supporting the Montreux Document. Delegations indicated that the creation of the MDF would provide a framework to improve outreach.

It was also mentioned that general support for the Montreux Document is broader than the number of formal participants, as some states, not yet supporting the Montreux Document, already use it as a reference in their own relations with PMSCs. Against this background, delegations considered that there is room for further endorsements. In this sense, they deemed that promoting further support for the Montreux Document should be one of the main objectives of the MDF, which could be pursued by all Montreux Document participants and in particular by the Group of Friends of the Chair.

The experience of international organizations and their growing interest for the Montreux Document was also cited as a vector to promote support for the Montreux Document.

3. Establishment of the Montreux Document Forum

In the second part of the meeting, Montreux Document participants adopted the proposed Working Practices of the MDF (see annex) by consensus and thus established the MDF, which immediately convened in a plenary session. In accordance with the Working Practices, Switzerland and the ICRC took office as initial Co-Chairs of the MDF. China, the European Union and the United States of America were elected as members of the Group of Friends of the Chair for a period of two years. In order to ensure a broad diversity and representation within the Group of Friends of the Chair, as stipulated in the Working Practices, it was agreed that Switzerland and the ICRC would continue consultations with states from other regions. It was agreed that the Co-Chairs could proceed with submitting the election of candidatures to Montreux Document participants via a silent procedure, with no need to wait for the next meeting of the MDF.

As delineated in the Working Practices, two Working Groups were established: the Working Group on the International Code of Conduct Association (ICoCA Working Group) and the Working Group on the use of private military and security companies in maritime security. During the meeting, Sweden was elected as Chair of the ICoCA Working Group for a period of two years. One delegation expressed concerns regarding the establishment of the ICoCA Working Group within the MDF as implying an endorsement of the International Code of Conduct by Montreux Document participants. The Co-Chairs reaffirmed that the establishment of the ICoCA Working Group does not seek to combine the Montreux Document with the International Code of Conduct and does not imply an endorsement by Montreux Document participants of the International Code of Conduct.

No participants having at this stage expressed an interest in chairing the second Working Group, it was agreed that the identification of a corresponding Chair would be postponed to a later stage. It was agreed that Switzerland and the ICRC would continue their contact with interested states and submit candidatures to all Montreux Document participants for election via a silent procedure.

4. Implementation and good practices among Montreux Document participants

In a separate segment, participants discussed implementation and good practices among Montreux Document participants. It was believed that since its adoption in 2008, the humanitarian objectives behind the Montreux Document have been significantly advanced. Participants highlighted the instrumental role played by the Montreux Document in building consensus on the application of IHL and international human rights law to PMSCs' activities and on the need for regulation.

Participants highlighted the importance of the MDF which, by providing a venue for informal consultation among Montreux Document participants, will seek to support national implementation of the Montreux Document and the development of tools to support this. They were of the view that the MDF will breathe life into the Montreux Document and act as a hub for sharing information and experiences on the regulation of PMSCs. In this sense, a participant proposed that Montreux Document participants send their national legislation, regulations and directives to the Co-Chairs for inclusion in the MDF website.

Indeed, the effective and full implementation of the Montreux Document was seen as instrumental to prevent violations, ensure accountability of PMSCs and their personnel, and avoid impunity.

Participants also considered the issue of third country nationals who are employed by PMSCs to work elsewhere in the world, which was raised by one delegation as of particular concern and relevance. The problem that states of a workers' nationality face is how to prevent its nationals from being recruited by PMSCs abroad when such employment is a violation of the workers' home state laws. In this regard, the participant facing this problem called on Montreux Document participants to ensure that PMSCs refrain from employing third party nationals if such employment constitutes a violation of the third States' national laws.

In reaction, a number of delegations considered the matter worthy of further deliberation within the MDF, and in this context also pointed out statements 22 and 23 of the Montreux Document, which recalled the obligation of PMSCs and their personnel to observe the relevant national law². One delegation noted that the Montreux Document does not address the obligations of states in this regard, and that it would be important to consider the need to further develop the Montreux Document.

² Statement 22: PMSCs are obliged to comply with international humanitarian law or human rights law imposed upon them by applicable national law, as well as other applicable national law such as criminal law, tax law, immigration law, labour law, and specific regulations on private military or security services.

Statement 23: The personnel of PMSCs are obliged to respect the relevant national law, in particular the national criminal law, of the State in which they operate, and, as far as applicable, the law of the States of their nationality.

In light of the foregoing, the ICRC was invited to write a paper on the meaning of “applicable national law” as it relates to the Montreux Document and the consequences with regard to the responsibilities of PMSCs and of the three main types of states addressed in the Montreux Document (contracting, home and territorial). The MDF could then continue its discussion on the basis of this document.

5. Identification of topics for a possible exchange with other relevant actors

The MDF plenary also considered what topics should be dealt with in a possible exchange with other relevant actors involved in the regulation of PMSCs. An interest was expressed to involve the International Maritime Organization (IMO) in discussions on maritime security. It was agreed that once the Working Group on the use of private military and security companies in maritime security was established, contact should be taken to seek the possibility for a meeting with the IMO. Taking into account the existing approaches and implementation of standards, participants were of the view that it would be interesting to discuss the relevance and possible contribution of the Montreux Document for maritime issues.

One participant considered that it would be interesting to engage with other actors present in armed conflicts and in situations outside of armed conflict, such as NGOs and UN agencies that contract PMSCs, on the topics of humanitarian assistance and civil defense.

6. Presentation of the MDF Website Knowledge Hub

Delegations received a presentation by DCAF of the MDF Website which will be launched before May 2015. As a main resource page and reference point regarding the Montreux Document, the website will facilitate a platform for exchange on implementation as well as gather tools and support outreach to possible future participants of the Montreux Document.

7. Next steps

In closing the meeting, the following next steps were outlined by the Co-Chairs:

- Spring 2015: Next meeting of the Working Group on the International Code of Conduct Association.
- May 2015: Online launch of the MDF Website, as designed by DCAF.
- January 2016: Next plenary meeting of the MDF (with the possibility of *ad hoc* meetings if necessary).

Annex

Working Practices of the Montreux Document Forum as adopted on 16 December 2014

1. The Montreux Document Forum (MDF) provides a venue for informal consultation and facilitates coordination and communication among Montreux Document (MD) participants³ in relation to outreach, implementation and good practices. It assists States in implementing the rules and good practices contained within the MD.
2. The MDF consists of a plenary meeting, Working Groups, a Group of Friends of the Chair and a Secretariat. As a rule, the MDF meets once a year in Geneva. *Ad hoc* meetings can be convened as necessary and could take place via video- or teleconference.
3. The MDF plenary meeting is open to all MD participants and the International Committee of the Red Cross (ICRC). Other States, International Organizations as well as other relevant actors, such as expert stakeholders, may be invited by the MDF as observers.
4. The MDF is chaired by two Co-Chairs, tasked by the plenary meeting, who carry out their functions in consultation with the Group of Friends of the Chair and with the support of the Secretariat. Switzerland and the ICRC will act as initial Co-Chairs of the MDF. The Co-Chairs coordinate the substantive preparation of MDF meetings, preside over the meetings, steer the MDF between sessions and coordinate the required follow-up, among other tasks.
5. The Group of Friends of the Chair assists the Co-Chairs in the performance of their functions including by providing input on the draft agenda of plenary meetings and on documents submitted to the MDF, coordinating the work of the MDF, and encouraging and facilitating further outreach. The Group of Friends of the Chair is composed of the Co-Chairs of the MDF and representatives from MD participating States selected on the basis of two criteria: geographical representation, and representation of Home, Contracting and Territorial States and/or MD supporting International Organizations. The members of the Group of Friends of the Chair will be elected by the plenary for a period of two years.
6. Secretariat functions are carried out by the Geneva Centre for the Democratic Control of Armed Forces (hereinafter DCAF), which assists the MDF in the performance of its functions, including by coordinating the organization of the meetings. Switzerland will provide an initial financial contribution for the basic costs related to secretariat functions.
7. Two Working Groups are established: (1) Working Group on the International Code of Conduct Association; (2) Working Group on the use of private military and security companies in maritime security.

³ This expression encompasses States and International Organizations having expressed support for the Montreux Document.

8. The plenary meeting may establish additional Working Groups as may be necessary.
9. Working Group meetings are open to all MD participants on a voluntary basis and, subject to a decision by the plenary meeting, to observers and expert stakeholders. Participation in the MDF plenary meeting is without prejudice to participation in the working groups.
10. Chairs of the Working Groups are elected by the plenary meeting for two years.
11. Chairs of the Working Groups report annually to the MDF on their activities.
12. The Working Group on the International Code of Conduct Association (ICoCA) (hereinafter ICoCA Working Group) performs the functions of the Advisory Forum of Montreux Document Participants as provided for by the Articles of ICoCA. Its mandate is, in accordance with Article 10 of the Articles of Association, “to provide advice to the Association on national and international policy and regulatory matters”.
13. The Working Group on the use of private military and security companies in maritime security (hereinafter Maritime Working Group) serves as a forum to discuss the relevance of the MD to maritime security, its interaction with relevant international organizations and initiatives on maritime security and ways to assist States in implementing the MD.
14. Costs of the MDF are funded through voluntary financial and/or in-kind contributions, subject to decisions made by the plenary meeting regarding the acceptance of such contributions.
15. The MDF is an informal forum with no authority to take legally binding decisions.
16. The MDF plenary meeting and Working Groups will make every effort to operate by consensus.
17. The MDF may amend its Working Practices based on a decision by the plenary.