

Supporting Implementation and Networking among Practitioners: A Montreux Document Forum Regional Meeting

1. Overview

The Montreux Document Forum (MDF) is a multilateral platform of exchange on challenges and good practices in the regulation of private military and security companies (PMSCs).¹ Established in 2014 as a venue for informal consultation on the implementation of the Montreux Document, the MDF also constitutes an important source of capacity-building. Practical implementation tools and resources have been developed to support Montreux Document participants in their regulatory efforts regarding PMSCs.

During the 2017 MDF Plenary Meeting, participants stressed the importance of contextualizing the Montreux Document to address challenges specific to national regulators in different regions and to continue working on the implementation of good practices, including through engagement with regional organisations and States participating in the initiative. In particular, the Latin America and Caribbean (LAC) region was highlighted as significantly relevant, especially in light of the successful 2011 Regional Conference for LAC held in Chile.

As a member of the Group of Friends of the Chair² and an important contributor to the development of the MDF, Costa Rica has proposed to host a MDF regional meeting in San José, Costa Rica. Gathering Montreux Document participants as well as States from the LAC region, and particularly Central America, this pioneer meeting would serve to highlight the application of the Montreux Document and its added value and relevance for States' regulatory efforts across Central America and LAC. As the first MDF regional meeting with national implementation at the center of attention, the proposed meeting would create a platform for Montreux Document participants and interested States to discuss the regulation of PMSCs in that region.

2. Background on PMSCs in the LAC region and the Montreux Document:

Private military and security companies are a growing global phenomenon. The past decades have seen a marked trend towards the outsourcing of traditional public security and military functions to PMSCs who have an increased presence across different regions of the world. This particularly applies to the LAC region, where the industry has grown significantly over the last 20 years. Today, at least 16,174 private security companies operate in the region, with more

¹ In section 9(a) of its Preface, the Montreux Document states that “PMSCs’ are private business entities that provide military *and/or* security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel” (emphasis added).

² The Group of Friends of the Chair supports the Co-Chairs of the MDF in carrying out their tasks. As of September 2017, the composition of the Group of Friends is as follows: Costa Rica, China, European Union, Madagascar, United States of America.

than 2,450,000 legally registered employees.³ PMSCs in the LAC region and Central America in particular provide security for extractive industries, protect critical infrastructure and business, deliver training and operational support, as well as collaborate in urban security partnerships with police and other public institutions.⁴ They operate in States enjoying peace and stability, in contexts affected by violence, or situations of armed conflict. As a result of this evolving landscape, valid concerns over ensuring respect for international human rights law (IHRL), and international humanitarian law (IHL) if applicable, have arisen.

To support States in addressing these concerns, *the Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict* (“The Montreux Document”)⁵ was launched in 2008 as the result of a joint initiative by Switzerland and the International Committee of the Red Cross (ICRC). The main objective of the Montreux Document was to address the misconception that PMSCs operate in a legal vacuum by recalling and compiling applicable international obligations. It reaffirms the existing obligations of States under international law, in particular IHL and IHRL relating to the activities of PMSCs. Although the Montreux Document was developed with the view that PMSCs operate in situations of armed conflict, it may also be instructive for post-conflict situations and for other, comparable situations where PMSCs operate. While the IHL-based statements of the Montreux Document only apply in situations of armed conflict, the Montreux Document also contains statements and good practices derived from IHRL, the law of State responsibility and international criminal law, which are also relevant outside situations of armed conflict. Furthermore, most of its good practices are ideally put in place during peacetime and may be instructive for States on how to regulate PMSCs at all times.

To date, the Montreux Document is supported by fifty-four States, including four from the LAC region (Chile, Costa Rica, Ecuador, and Uruguay).⁶ It is also supported by three international organisations (the European Union, the Organisation for Security and Co-operation in Europe, and the North Atlantic Treaty Organisation).

3. Regional MDF Meeting

The Ministry of Foreign Affairs and Worship of Costa Rica; with the support of the Co-Chairs of the MDF, namely the Swiss Federal Department of Foreign Affairs (FDFA) and the ICRC, and the technical support of DCAF as the MDF Secretariat, organizes a two-day regional meeting in the framework of the MDF in San José, Costa Rica.

The regional meeting will bring together practitioners working on the regulation of PMSCs from all Montreux Document participants and from other States in Central America and LAC. The objectives of the meeting will be:

- 1) To introduce and provide a space for discussion on the Montreux Document, the MDF,

³ United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), “Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context,” DCAF and United Nations, 2016.

⁴ Background paper, Proceedings of the Regional Conference for Latin America, Chile 12-13 May 2011.

⁵ See <http://www.mdforum.ch/montreux-document>.

⁶ Chile, Costa Rica, Ecuador, Uruguay. See www.mdforum.ch/participation.

and the challenges and good practices for national implementation with a specific focus on the region. The meeting will also give consideration to promoting the Montreux Document in regional multilateral fora, including through the Organisation of American States (OAS).

- 2) To have a dedicated exchange on existing challenges and good practices in PMSC regulation faced by national practitioners and regulators working on the subject. Participation should include, in particular, expert-level practitioners working on the regulation of PMSCs in relevant ministries and technical regulatory authorities, procurement and contracting officers, and other officials who work directly on the oversight or monitoring of PMSCs.

The event will take place on 27 and 28 of February 2018 in San José, Costa Rica. The exact venue is to be confirmed. The event will be held in a closed-group format and will include presentations and discussions on the regulation of PMSCs in a regional and national context. Experts and regional/international institutions will be invited to contribute to discussions.

The first day will bring together the representatives of States from the LAC region and representatives of all MD participants to introduce the Montreux Document as well as the regional challenges and good practices for national implementation. Having set the scene for a more dedicated dialogue on implementation, the second day of the event will gather technical, expert-level practitioners working on the regulation of PMSCs from LAC States, the Central America region in particular, as well as all Montreux Document participants.

The following topics will be considered for discussion during the second day:

- 1) Challenges related to regulating the PMSC sector:
 - Strengthening specific and adequate legal frameworks;
 - Addressing informality in the PMSC markets and certification/licensing/registration challenges;
 - Facilitating a whole-of-government approach to implementation of regulation and oversight mechanisms;
 - Building institutional capacities for regulation and oversight;
 - Clearly defining and implementing training requirements for PMSCs and their personnel;
- 2) Challenges related to services provided by PMSCs in the region and sub-region:
 - Public-private policing partnerships;
 - Critical national infrastructure protection.

A report on the Regional MDF Meeting will be presented to all Montreux Document participants during the 2018 plenary session of the Forum, including possible good practices developed in the LAC region.