

**The Montreux Document on Private Military and Security Companies**

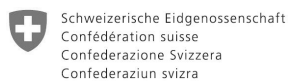
**Proceedings of the Regional Conference for  
Southeast Asia**





# **The Montreux Document on Private Military and Security Companies: Proceedings of the Regional Conference for Southeast Asia**

Manila, Philippines – 9 & 10 July 2013



**DCAF**  
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the rule of law

On 9–10 July 2013, a conference was held in Manila, Philippines to discuss 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* and its relevance for the Southeast Asian region. The conference was convened by the Swiss Federal Department of Foreign Affairs and the Ministry of Foreign Affairs of the Philippines, in coordination with the International Committee of the Red Cross (ICRC), and in collaboration with the Geneva Centre for the Democratic Control of the Armed Forces (DCAF) and the National Defence College of the Philippines (NDCP). The event included the participation of nearly 60 representatives of governments, international organisations, civil society and industry from eight states in the region (Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Thailand, and Vietnam). This report details the proceedings of the conference and was prepared by DCAF at the request of the Swiss Federal Department of Foreign Affairs.

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# Conference Report

On 9–10 July 2013, a regional conference for Southeast Asian states was held in Manila, Philippines to promote awareness and support for 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.<sup>1</sup>

As part of a multi-year programme of regional conferences,<sup>2</sup> this event was convened by the Swiss Federal Department of Foreign Affairs, the Ministry of Foreign Affairs of the Republic of the Philippines, in cooperation with the International Committee of the Red Cross (ICRC) and in collaboration with the Geneva Centre for the Democratic Control of the Armed Forces (DCAF) and the National Defence College of the Philippines (NDCP). The event was attended by nearly 60 participants including representatives of eight governments from the region (Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Thailand, and Vietnam), as well as local industry, civil society and international and regional experts.

The objective of the conference was to raise awareness of the Montreux Document in Southeast Asia. It also sought to gain a regional perspective with regard to states' interactions with private military and security companies (PMSCs) in order to identify existing rules and obligations, and to look for opportunities for more effective oversight of the industry. While the focus of the Montreux Document continues to be on PMSCs operating in situations of armed conflict, the conference considered how the "Good Practices" section can assist Southeast Asian governments in their regulation of private security companies in other situations.

The ceremony commenced with Dr. Fermin R. de Leon of the National Defence College of the Philippines welcoming participants and expressing his hope that a deeper understanding would be gained from the workshop regarding the Montreux Document. Nicolas Lang, Swiss Ambassador-at-large for the application of IHL joined Dr. de Leon in opening the conference and conveyed his hope that the relevant stakeholders would build consensus on the need to improve oversight of the PMSC industry. Ambassador Lang expressed the view that avoiding a "one-size fits all" approach and understanding existing regional challenges must lie at the heart of this endeavour. Finally, Undersecretary Pio Lorenzo Batino of the Department of National Defence of the Philippines expressed the Philippine government's support for international human rights and humanitarian law and noted the increasing use of PMSCs in recent years, emphasizing the importance of continued discussions on the Montreux Document among the participating states.

## **Introduction to the Montreux Document**

*Ambassador Nicolas Lang, Federal Department of Foreign Affairs (FDFA), Department of International Law*, began by defining and describing PMSCs and their operations. Although far from being a new phenomenon, Ambassador Lang noted that PMSCs have sharply increased in both number and complexity of activity since the early 1990s. More recently, due in part to the wars in Afghanistan and Iraq, PMSCs have been brought closer to military operations and today, their services include the protection of military assets, weapons systems maintenance and training of personnel. Ambassador Lang also raised the misconception that PMSCs somehow operate in a legal vacuum and explained that the government of Switzerland and the ICRC supported the development of the Montreux Document to underline the fact that IHL and international human rights law do apply to the activities of PMSCs. The Montreux Document plays a humanitarian rather than political role and neither legitimizes nor condemns the industry. Instead, the Montreux Document takes a practical and pragmatic stance, seeking to achieve clear, time-bound implementation of human rights laws and IHL with a representative number of states directly or indirectly facing the PMSC industry.

*Marie-Louise Tougas, Legal Adviser, ICRC*, elaborated on the legal framework of the Montreux Document. She argued that misconceptions regarding the status of PMSCs under international law come from the lack of clarity regarding the traditional roles of the military vis-à-vis PMSCs carrying out military functions as civilians. Regardless of their status and because of the potential humanitarian consequences of PMSC activities, the Montreux Document articulates the most pertinent IHL and human rights law obligations of states and recalls that PMSCs are under its purview. Dr. Tougas explained that states are under the obligation to ensure respect for IHL and human rights law by PMSCs and are responsible for investigating and prosecuting wrongful acts committed by PMSCs.

## **Country Perspectives and Challenges: Regional Regulation and Good Practices relating to PMSCs**

*Herman Kraft, Executive Director, Institute for Strategic and Development Studies*, spoke on the issue of regulating PMSCs in the context of Southeast Asia. Citing specific national laws in ASEAN member countries, Mr. Kraft explained that most PMSCs are involved in domestic guarding of goods and persons. However, both foreign-based and Southeast Asian PMSCs are also particularly active in the recruitment and



training of military personnel as well as complementing states' anti-piracy efforts. Due to these activities, the Montreux Document is highly relevant for the region; moreover, as the PMSC industry grows ever more robust, the Montreux Document is also an important tool for the future.

*Ambassador Rosario Manalo, Philippine Commissioner, ASEAN Human Rights Commission*, provided an overview of the relevance of the Montreux Document to ASEAN. He suggested that there are great opportunities to bring awareness of the Document to ASEAN, which may be able to oversee the implementation of ASEAN-wide standards for PMSC oversight in the future. Ambassador Manalo went on to explain that the Montreux Document should be discussed among foreign ministers and defence ministers of ASEAN countries, as well as in the ASEAN Intergovernmental Commissions for women and children, and for migrant workers.

*Teresita Soliman, Soliman Security Services*, provided a regional industry perspective and spoke on the relevance of the Montreux Document in the Philippines. After detailing the legal and regulatory framework covering PMSCs in the Philippines, Ms. Soliman explained that the Philippine National Police (PNP) monitor and supervise the operations of security agencies. Ownership of security agencies is limited to Philippine nationals and business entities are required to comply with licensing, labour, and firearms laws as well as training and submission of PNP clearances and medical tests. Ms. Soliman stated that she was not aware of foreign PMSCs operating on Philippine soil or of Philippine PMSCs participating in armed conflict, maintaining or operating weapons systems, detaining prisoners or engaging in the training of local forces. Instead, PMSCs in the Philippines serve as supporting actors and a force multiplier for the PNP.

*Colonel Piyachart Jaroenpol, The Judge Advocate General's Department, Ministry of Defence and Ms. Pakrapai Thontiravong, First Secretary, Peace, Security and Disarmament Division, Ministry of Foreign Affairs, Thailand*. Colonel Jaroenpol and Ms. Thontiravong described the activities of PMSCs in Thailand and the relevance of the Montreux Document. In Thailand, the activities of PMSCs are centred mostly on local guarding of people, premises and property. However, maritime security is of particular interest to Thailand and the Montreux Document can be undoubtedly useful in improving effective regulation of the industry. Colonel Jaroenpol noted that bilateral outreach would be beneficial to bring more attention to the Montreux Document among the upper levels of the Thai government.

## **The International Code of Conduct and the Work of the United Nations**

*Anne-Marie Buzatu, Deputy Head of Operations IV, DCAF Geneva*, gave a presentation on the International Code of Conduct for Private Security Service Providers (ICoC). Ms. Buzatu focused on highlighting the differences between the Montreux Document and the ICoC. After describing a brief history of the ICoC's development, she also talked about the core functions of the new Association: certification, reporting, auditing and monitoring of PMSCs' activities; and a mechanism for addressing complaints and alleged violations. Participating states expressed a continued confusion as to the differences between the ICoC and the Montreux Document to which the panelists replied that the ICoC performs an important complementary role to the Montreux Document; the fundamental difference is that the ICoC is oriented towards the industry, while the Montreux Document is oriented towards states.

*Rémy Friedmann, Senior Adviser, Swiss Federal Department of Foreign Affairs*, added to the discussion on the ICoC, focusing his presentation on the background of the ICoC Oversight Mechanism, the ICoC Association and its launch in September 2013. He noted that a key purpose of the Oversight Mechanism is to establish the mandate for the development of procedures for the core activities of the Association.

*Stuart Groves, Security Consultant*, delivered a comprehensive presentation on the UN Security Management System and detailed how the system strives to meet the ICoC as well as the Montreux Document requirements. Although the UN's experience cannot serve as a universal model for national implementation in every case, it is nevertheless a testament to the effectiveness of the Document that a complex institution, such as the UN has made successful efforts at implementation.

## **Emerging Issues: Extractive Industry and Maritime Industry**

*Richard Jacobson, Director of Operations, Pacific Strategies and Assessments*, delivered a presentation on how the Montreux Document can be translated into locally appropriate and feasible oversight systems. The "do it your own way" attitude among local government officials can be dangerous since PMSCs may take advantage of any flexibility. Since the Montreux Document is not a binding international instrument, it can be adapted and translated to meet differing local conditions. For instance, in the Philippines, mining has been disrupted by the New

People's Army (NPP) whereas in Indonesia extractive industries have experienced different threats. Mr. Jacobson additionally emphasized the need for human rights law and IHL documents to be mandatory reading for PMSC personnel. Here, he noted that the ICoC is a valuable tool as it requires that human-rights based requirements be placed directly into contracts.

*Andrew Nicholson, Director Government and Industry Affairs, Drum Cussac.* As a representative of the industry, Mr. Nicholson noted the benefits of using commercial pressure as leverage to compel PMSCs to become more accountable. By incorporating the ICoC into standard contracting procedures, states actually meet and satisfy many of the Good Practices in the Montreux Document. He also encouraged PMSCs to be accountable for their operations, as corporate social responsibility is also a valuable marker for a company's profile.

*Lt. Col RMAF Mohd Razif Bin Ramli, Military Legal Advisor, Malaysian Armed Forces; Lt. Col Ahmad Ghazali Bin Hj Puteh, Malaysian Peace Keeping Centre – Chief Instructor, Port Dickson,* focused their presentations on security and the maritime industry in Malaysia, identifying piracy, maritime terrorism, transnational maritime crime and environmental security as key issues and concerns. They also described the legislation currently in effect in Malaysia to address these insecurities, in particular maritime piracy and sea robbery. However, Malaysia has rejected accepting foreign PMSCs in Malaysian waters due to concerns over sovereignty, legal jurisdiction, and the fact that rules and regulations vary from country to country.

## **Third Party Nationals: ASEAN Citizens Working for International PMSCs**

*Stuart Groves, Security Consultant,* spoke about the issue of third party nationals being employed by a PMSC to work elsewhere in the world. The Montreux Document delineates between home, territorial and contracting but also sets out the obligations of all other states. Here, both home and territorial states have an obligation to ensure the wellbeing of migrant workers and the Montreux Document draws attention to this in its Good Practices. However, the problem that states of a workers' nationality now face is how to protect citizens who are being recruited abroad from becoming criminally liable in a deployment where the workers' home state laws are no longer enforceable except through the regulations of the PMSC that recruited them. While national legislative frameworks could provide mechanisms for oversight while an employee is within the jurisdiction of an ASEAN state, once a private contractor leaves that state's jurisdiction, limits to their behaviour are largely constrained by the company that hired them.

*Dr. Jesus R.S. Domingo, Assistant Secretary of Foreign Affairs, Department of*

*Foreign Affairs, Philippines*, delivered a presentation on the recruitment of many Philippine nationals by foreign PMSCs. The problems associated with the rights and well-being of Philippine migrant workers abroad have left the government with no choice but to ban travel to Iraq and restrict recruitment to Afghanistan. Assistant Secretary Domingo elaborated that the next steps should be to engage in dialogue with foreign recruiting PMSCs and governments as well as ASEAN – for its potential to be a valuable lobbying partner – and to consider national legislation that would interface IHL and human rights law with the commercial and labour needs of recruiting companies.

## **Roundtable Discussion: Concrete Steps to the Way Forward – Southeast Asia and the Montreux Document**

The roundtable discussion was chaired by Richard Desgagné, Regional Legal Adviser of the ICRC Regional Delegation in Beijing, who invited the conference participants to express their thoughts, reflections, and reservations regarding the Montreux Document. Ambassador Manalo expressed the view that ASEAN member states need more time to familiarize themselves with the Montreux Document and that internal decision-making procedures vary greatly from state to state. However, with regular dialogue and engagement, there is potentially no upward limit to support for the Montreux Document. The representatives from Myanmar stated that, as a country with fewer resources than many other Montreux supporters, it would require further outreach and engagement. Participants from states with maritime security concerns (Malaysia, Thailand) expressed the view that the Montreux Document is most pertinent when translated to address this particular dimension of the private security industry. Members of the Philippine delegation inquired as to the added value of supporting the Montreux Document when some key concerns (e.g., third-party nationals) were not addressed explicitly in the Document. Finally, there were some continued questions regarding the interplay between the ICoC and the Montreux Document as well as the problematic definition of a “PMSC.” Many states were concerned that a “private military company” operating on its territory was tantamount to infringement on sovereignty and the traditional state monopoly on the use of force. Conversely, a “private security company” seemed too constrained to domestically limited guarding and protection services, something the Montreux Document is less concerned with than operations of PMSCs during armed conflict or those activities that may bring PMSCs in close proximity to armed conflict or fragile human rights environments. Other states inquired whether the Montreux Document could be helpful in their countries, where there was no armed conflict. To this, Anne Marie Buzatu responded that although the Montreux Document is geared

towards situations of armed conflict, its Good Practices are ideally put in place during peacetime. Herman Kraft emphasized that while the Philippines has laws regulating domestic security agencies, the enforcement of these laws is an issue. The value of the Montreux Document in this context is that the Document provides a template for what an effective national framework should contain. There were also inquiries regarding whether the Montreux Document is legally binding and that the legal sources/bases of the Montreux Document should be better identified. Marie-Louise Tougas and Richard Desgagné of the ICRC responded that the Montreux Document itself is not a legally binding instrument, and does not affect existing obligations of states under customary international law or under international agreement to which they are parties. Its foundation in IHL and human rights law means that states are bound by existing international agreements and customary international law.

In closing, Ambassador Nicolas Lang thanked the participants and expressed his hope for continued dialogue and engagement as well as participation in the forthcoming Montreux+5 Conference in Montreux, Switzerland on 11–13 December 2013. Graziella Leite Piccolo, Deputy Head of Delegation, ICRC (Manila Delegation), thanked the participants and expressed the importance of continued momentum on more effective oversight of the PMSC industry.

# Opening Remarks

## ***Welcome Address by Ambassador-at-Large of Switzerland for the Application of International Humanitarian Law, Nicolas Lang***

*Regional Conference on the Montreux Document on Private Military and Security Companies, Manila, Philippines, 9 July 2013*

Distinguished Representatives,  
Ladies and Gentlemen,

It is my great pleasure to welcome you, on behalf of the Swiss Federal Department of Foreign Affairs, to this two day workshop on the Montreux Document on Private Military and Security Companies (PMSCs).

Our meeting of today and tomorrow is the result of bilateral talks in mid-January of this year between the Swiss Foreign Minister, Federal Councillor Didier Burkhalter, and the Foreign Minister of the Philippines, His Excellency Mr. Albert del Rosario, at the World Economic Forum in the Swiss Alps in Davos.

Among the many things they discussed was the holding of this conference, which the Philippine government has generously accepted to host. We are very grateful for this gesture which allows us to bring together experts from the capitals of the ASEAN countries.

This event is organized jointly by the Philippine Department of National Defence (DND), the National Defence College of the Philippines (NDCP) and the Federal Department of Foreign Affairs of Switzerland, in co-operation with the International Committee of the Red Cross (ICRC) and the Geneva Centre for the Democratic Control of Armed Forces (DCAF).

This is the fourth in a series of regional conferences on the Montreux Document on Private Military and Security Companies. The first awareness-raising event took place in Chile for Latin America in May 2011. A second conference was held in Mongolia for North East and Central Asia in October 2011. The third was organized in Australia for the Pacific in May 2012, and in the spring, a fifth conference will be held in Africa.

This meeting, like the previous regional conferences, is part of the ongoing effort to increase support for the outcome of two successful Swiss/ICRC Initiatives: first the adoption of the Montreux Document on legal obligations and good practices relating to PMSCs in September 2008, second the adoption of the International Code

of Conduct for Private Security Service Providers in November 2010. As concerns the latter, efforts are under way to establish an effective international oversight mechanism by September of this year.

The number of PMSCs contracted by States to provide services in the context of armed conflicts has increased enormously over the last two decades. This phenomenon raises a number of important humanitarian concerns as their role brings PMSCs close to actual combat, and thus they potentially pose an additional risk to the civilian population. It is against this background that the Montreux Document aims to improve the protection of the rights of civilians affected by armed conflict against a possible negative impact the use of such companies may have.

The aim of this conference is to raise regional awareness about the Montreux Document and to open a dialogue about both challenges faced as well as possible successes achieved regarding PMSCs in Southeast Asia.

This conference also builds on the emerging consensus, among practitioners as well as academics, on the need to fill any gaps that may exist in the regulation of PMSCs. As this industry – and the effects it has on civilian population – grows, so should our discussion and dialogue about how to improve its governance. But there is no “one-size fits all” approach to effective governance. For it to be effective, this discussion has to take into account the real challenges that exist on the ground.

At the time of this conference, the Montreux Document is now supported by 46 States and 1 International Organization (the EU) and remains open for support by all States and international organizations.<sup>3</sup>

Today, we will start off by looking at efforts that are being undertaken at the international level and discuss how the growing use of PMSCs impacts and shapes international standards. Later in this conference, we will narrow the focus to the Southeast Asia region and listen to perspectives from individual countries. The reason why we have chosen to take this approach – from international to local – is simple: international principles must have real meaning on the ground to help safeguard persons from violations of their rights under international humanitarian law and their human rights. And this requires a dialogue between the international and local, so that local practices are aware of international standards, and international standards take into account actual security challenges faced by people every day.

This is the context within which this event is held. It is up to all of us to turn this meeting into a meaningful exchange.

I trust that the conference will allow participants to engage in an open dialogue and fruitful discussions, making this conference a resounding success. Let me conclude with my heartfelt thanks once more to the Philippine Government for hosting this conference and for the excellent organization.

With that I wish us all fruitful and successful discussions.

# Background Paper: Regulating Private Military and Security Companies in Southeast Asia

*Herman Joseph S. Kraft<sup>4</sup>*

The emergence of the global war on terror following the attack on the United States by terrorist elements of Al Qaeda in 2001 brought about a transformation in the conduct of warfare which has highlighted an increasingly important aspect of the state security apparatus: the outsourcing of warfare and security to private institutions. The involvement of private military and security companies (PMSCs) by state agencies to perform functions and undertake responsibilities that are traditionally reserved for the armed forces of a state has been a staple of reports about the conflict in Iraq and Afghanistan. Their involvement includes logistical support, security for U.S. government personnel and reconstruction projects, training of military and security personnel, and operating and maintaining weapons systems.<sup>5</sup> They have, however, also been engaged in more sensitive activities such as prisoner interrogation and statement translation (especially in the context of the American-led invasion of Iraq and Afghanistan) – activities that have led to accusations of human rights abuses.

These developments, however, are not particular to the United States. A 2007 report by the UN Working Group on the Use of Mercenaries noted the ways in which some PMSCs recruited people in countries with high unemployment to provide security services in areas of armed conflict constitute new forms of “mercenarism.” The US invasion of Iraq, however, provided an impetus for the increased importance of the industry. According to retired Colonel and Director of Security Support in Fiji Sakiusa Raivoce (who runs the biggest of the six PMSC or private security employment agencies in Fiji), “private armies became a viable commercial enterprise the moment America invaded Iraq.”<sup>6</sup>

The use of PMSCs is not a geographically limited phenomenon or a recent invention. PMSCs were present in Africa in the 1990s where civil wars and the illegal exploitation of natural resources (to acquire arms and military personnel) went hand in hand.<sup>7</sup> These groups, unlike the activities of the PMSCs in Iraq and Afghanistan, were linked to the exploitation of natural resources. The activities of PMSCs today are a far cry from the military activities undertaken by private individuals and groups contracted by state officials or private corporations which took place as part of the post-colonial or neo-colonial conflicts of the 1960s.<sup>8</sup>

The differences in the kinds of activities engaged in by PMSCs at present



compared to those engaged in by private military adventurers in the 1960s still points to the need to regulate them. The Montreux Document is supposed to define the limits of what PMSCs can legitimately do, and constrains them on matters that have to do with International Humanitarian Law and grave human rights abuses in conflict zones. The case of Southeast Asia, however, illustrates the limitations of emerging international norms on PMSC regulation. There is a particular context to which the Montreux Document applies, and Southeast Asia (despite the interest of the United States in the region and the actual deployment of US military forces there) is a region that does not easily fit into it.

This paper looks at areas where PMSC activities are present in Southeast Asia and the extent to which the Montreux Document applies to these. It looks at the context of PMSCs in the region and the regulatory environment in Indonesia, Malaysia, the Philippines, and Singapore. Basically, it argues that while there are private security groups operating in the region, these are largely limited in terms of the activities they are involved in (provision of security to private entities such as banks, and private investigative and detective services to non-government clientele), and largely fall outside of the terms covered by the Montreux Document. Increasingly, however, they are becoming involved in more complex activities that require specialized training, mostly military-oriented specializations. More importantly, they are becoming more involved with international PMSCs, especially in training and recruitment. These international PMSCs are likewise becoming more involved in the region because of maritime concerns with the Malacca Straits providing a special case. It is a case which illustrates a grey area in the regulation of PMSC operations.

### ***PMSCs, the Montreux Document and the Context of Security in Southeast Asia***

The Montreux document defines Private Military and Security Corporations (PMSCs) as private entities that provide military and security services, irrespective of how they describe themselves. Military and security services include armed guarding and protection of persons and objects, such as convoys, buildings, and other places; maintenance and operation of weapons systems; prisoner detention and even interrogation; and advanced training of local forces and security personnel.

The Montreux document makes clear the legal obligations of the State when contracting the services of PMSCs and their personnel, and the obligations of PMSCs and their personnel in the conduct of activities for which they have been contracted. It emphasizes “good practices” that States should consider in the promotion of international humanitarian law and human rights during armed conflict. The development of this document can be seen as one of the responses to the increasing number of reports of abuses of private military contractors during

the conduct of their operations. The document outlines international obligations and responsibilities of States in safeguarding human rights where contracted PMSCs operate and in the prevention of such abuses by the personnel of PMSCs.

A cursory glance at the situation in Southeast Asia would give the impression that it is a region where the potential for PMSC activity would be strong because of the linkages that have been implied (but not clearly established) between the *Al Qaeda* group and groups in Southeast Asia engaged in a violent ideological conflict with the government like *Jemaah Islamiyah* (whose influence reaches across Indonesia, Malaysia and Singapore) and the *Abu Sayyaff* in the Philippines. There is, however, very little PMSC activity in the region of the transnational type covered in the Montreux Document, and practically none if the question were directed at local PMSCs engaged in domestic security activities. The principal reason for this has to do with the nature of civil-military relations of countries in the region.

Southeast Asia is best described in terms of the diversity that exists across states and within states. This cuts across different areas of social conditions and activities, particularly relating to cultural, economic, linguistic and political affairs. Southeast Asia has been characterized by a number of political contradictions. It is a region where states of long-standing constitutional and political continuity co-exist beside those whose short-term political prospects face the probability of sudden and, most likely, extra-constitutional political change. Zealously asserted sovereign claims over territory are equally matched by highly porous borders. It is also a region where vast discrepancies between the economic conditions of states are replicated in the income gaps that exist within states – gaps that are, more often than not, also a function of ethnic and cultural differences. These conditions make it easy for political conflict to either simmer beneath the apparent tranquillity of everyday social transactions, or erupt in protracted and, oftentimes, brutal armed struggle.

From the days of colonial rule, the overriding political condition characterising states in the region has been one of armed conflict. Countries in Southeast Asia, except for Thailand, have been fighting for their independence and in the aftermath of their struggles for national liberation, despite having established themselves as “independent” states, they have not been freed of the vestiges of the past. Problems of national identity building, social cohesion, legitimacy of governments, and insurgencies are pervasive. Southeast Asian states have more internal instabilities than externally-originating threats. At present, separatist insurgencies in Myanmar, Indonesia, the Philippines, and Thailand continue to consume state resources which could be used to address welfare and development concerns. The long-standing communist insurgency in the Philippines further adds to the difficulties of political stability in that country.

The armed forces of states in the region have been used to deal with these internal

problems. They are commonly highly centralised in that the armed forces are under the control of the state under the Commander in Chief or, as in the cases of Indonesia and the Philippines during the Suharto and Marcos era, a dictator. Concessions are given to the armed forces by the state to ensure its loyalty, usually in the form of business concessions or appointments to strategic positions in government. Thus, when it comes to addressing internal threats or conflicts, whether from insurgents or the political opposition, or simply doing the whims of the government, the armed forces can be relied upon by those in power.

Accounts of the history of militaries in the region show that they have been used to suppress uprisings, oppress their own people, or even topple governments and gain power for themselves. They played a huge role in maintaining some kind of stability, albeit sometimes only on a temporary basis. They have monopolised the use of force, which also explains why there is very little opportunity for PMSCs to take root. The central/national governments (and in the case of Thailand, the military itself) have not allowed any other entity outside the military to have the “right” or capability to use force that can rival their own. A closer look at specific cases, however, illustrates some notable differences across the region.

**Indonesia.** The military and the police in Indonesia were one of the best trained and one of the most well equipped among the uniformed services within Southeast Asia during the Suharto era. The monopolisation of the use of force has traditionally been with the military. With this kind of set-up, private security groups did not prosper. The emergence of a dependence on civilian security groups in the fairly recent past is attributed to several factors, namely: (1) the perceived breakdown in law and order after the collapse of the Suharto government in May 1998; (2) widespread distrust of the police; (3) a massive decentralisation program that gave greater political and economic power to local governments; and (4) a shortage of police as a result of the formal separation of the police from the armed forces in 1999.<sup>9</sup> The devolution of authority over some police functions to civilian auxiliaries or community-based security organisations re-emerged as a trend in 1998 following traditions of civilian security auxiliaries that had existed since the Dutch colonial days.<sup>10</sup> The gradual decline in police authority contributed to the emergence of local civilian groups providing protection and fighting crime in the absence of an effective and trusted police force.

The issue with police forces also gave way to the increased privatisation of security as more private security agencies were established and private security guards were employed by companies to provide security at places such as banks, offices and schools. With the rise of terrorist activities in Southeast Asia, sensitive areas such as ports were also secured by contractors from private companies. The

security of the port of Belawan, the second largest in Indonesia after Jakarta, is a multi-actor affair with state and non-state agencies involved. PMSCs ranging from corporations owned and run by military organisations to those owned and run by retired military officers and those that are not Indonesian owned and Indonesia-based are part of the security apparatus around the port.<sup>11</sup> According to Alban Sciscia, the Indonesian Air Force operates a number of companies that are involved in providing a variety of services to residential compounds as well as establishments such as nightclubs.<sup>12</sup> Similar organisations have also been hired to provide security for resource extraction companies in Aceh and Papua and have been a source of criticisms regarding human rights abuses.<sup>13</sup> In fact, there has been increasing concern over the use of private security organisations in Indonesia.

Sciscia noted a number of issues that contribute to the issue of abuses involving PMSCs in Indonesia. He noted the continuing tradition of using paramilitary and vigilante groups for security purposes even as the police forces have regained their place in Indonesian society, and the long tradition of military business which was part of the “New Order” regime of the Suharto era.<sup>14</sup> Even as the military is no longer allowed to own and run for-profit operations and organizations under the post-Suharto dispensation, this seems to be a continuing condition. A more significant issue, however, is the general absence of regulations concerning the employment of for-profit security actors in Indonesia. PMSCs in Indonesia are supposed to be overseen by the police force, and the regulations governing them are contained in an administrative order issued by the police. Thus, the national government has had no involvement in the oversight of PMSCs, thereby creating unevenness in the way that they are administered.

**Malaysia and Singapore.** Both Malaysia and Singapore have very clear regulatory mechanisms for private security groups within their particular jurisdictions. Traditionally, these two countries have very good regulatory institutions and mechanisms extending well across most levels of social activity. In the area of security, the state exercises strong control over and imposes limits on private agencies that are supposed to undertake the provision of services intended to protect the interests or goods of private entities. The cases of Malaysia and Singapore, however, as well as Indonesia also include a special case in the matter of the Malacca Strait. These three countries share or claim to share jurisdiction over the Malacca Strait where persons who may have been engaged by shipping organisations operate to protect ships against pirates or other predatory activities by criminal or terrorist organisations. Yet, the regulatory institutions and mechanisms of these three countries do not cover the operations of these individuals because of a dispute over the status of the Strait itself.

Singapore enacted the “Private Security Industry Act” to replace the “Private Security and Agencies Act.”<sup>15</sup> Basically, this law provides for the regulation of private investigators, private investigation agencies, security officers, security agencies and security service providers. It is supposed to ensure the relevance of regulatory mechanisms pertaining to private security agencies given the current security climate. Thus, it presents a set of rules on the level and standard of training for every security officer who is licensed by the state. It also stipulates the kind of professional conduct required and expected of every such officer. The concern over terrorism in Singapore has seen an expansion in the private security industry. In a speech given by K. Shanmugam, Minister of Law and Second Minister of Home Affairs, on 1 August 2009, it was made known that the industry has grown from 15,000 personnel in 2005 to 32,000 in 2009.<sup>16</sup> This expansion and the reasons behind it (e.g., the more uncertain security situation in the country) have made it imperative to strengthen the regulatory institutions governing the activities of private security organisations.<sup>17</sup> It also shows the increasing dependence of Singapore on such organisations. In the same speech, Mr. Shanmugam noted that

[t]he security sector today plays an increasingly important role to safeguard the lives and assets of our people. The public law enforcement agencies cannot work in isolation. Both the private security industry and our public law enforcement agencies need to work together to keep Singapore safe and secure. We need the right people, technology and systems to effectively manage our security threats and challenges. With the tripartite team working hand in hand, I am confident that our security industry will continue to evolve and unite, to overcome all challenges.<sup>18</sup>

Malaysia similarly has the “Private Agencies Act of 1971.” It was enacted to regulate the activities of organisations and individuals involved in activities geared towards providing protection for: (1) the personal safety and security of another person; and/ or (2) the safety and security of the property or business of such other person. It also looks into organisations engaged in obtaining and furnishing information as to the conduct, activities or affairs of another person. The Malaysian state regulates these organisations by providing licenses to operate renewable every year (currently through the Office of the Minister for Home Affairs). The responsibility for establishing standards of training and capacity are established by the law, and overseen through the State Police Forces.

An important concern regarding the regulation of private security agencies involves the issue of private security companies providing security for ships traversing the Strait of Malacca. According to Noor Apandi Osnin, the organisations operating in the area raise political and legal questions about jurisdiction and

sovereignty.<sup>19</sup> Part of the problem emanates from the shared jurisdiction by the littoral states of Indonesia, Malaysia and Singapore of the Straits. PMSCs have operated in the area by providing security for shipping in the area. During the height of pirate attacks in 2004, Singapore issued licenses and permits for PMSCs based in Singapore to provide armed guards and escorts for ships using the Strait or berthed in ports.<sup>20</sup> Their activities have diminished with the decrease in pirate activity in the Strait. Concerns in Malaysia and Indonesia, however, about a resurgence of PMSC activity if there is an increase in pirate attacks have been expressed. Furthermore, Singapore's current concern over the present security situation in the region raises questions about whether this would justify issuing permits and licenses to PMSCs operating in the Strait. Beyond this, ship owners that decide to hire armed guards do so independently of national regulations for private security agencies in areas such as the Strait. For Indonesia and Malaysia, this has become an issue of sovereignty assertion.

**Philippines.** The Philippines is home to private agencies which provide security services, particularly armed guarding and protection of objects, such as buildings and homes. Under Philippine law, the organisation and operation of private security agencies is covered by Republic Act No. 5487, entitled, "*An Act to Regulate the Organization and Operation of Private Detective, Watchmen, or Security Guard Agencies*" otherwise known as "The Private Security Agency Law." This law is applicable to all persons, natural and juridical, that are registered with the Security and Exchange Commission (SEC).

Under this law, private security agencies refer to three groups. First are the private detective agencies and other enterprises that conduct detective services. Second, there are also individual private detectives, who are not members of a regular police agency or the armed forces and do detective work for hire, reward, or commission. Lastly are watchmen or security guards and the related watchmen or security guard agencies. The former refers to any person who offers or renders personal service to watch or secure either residential or business establishment, or both or any building, compound, or area including but not limited to logging concessions, agricultural, mining or pasture lands for hire or compensation. The latter includes any person, association, partnership, or corporation, who recruits, trains, musters, furnishes, solicits individuals or business firms, private or government-owned or controlled corporations to engage its service or those of its watchmen.<sup>21</sup> Based on the Implementing Rules and Regulations of R.A. No. 5487, before any of these groups can perform any of the cited activities, they must first apply for a license with the Chief of the Philippine National Police (PNP), and these applicants must

also undergo training from any private or public institution duly recognised by the Philippine Government to conduct private security or police training.<sup>22</sup>

Their discipline and level of training, however, leave much to be desired. Chief Superintendent Thomas Rentoy III of the PNP-Supervisory Office for Security and Investigation Agencies (SOSIA) had noted the need to professionalise these organisations in an interview.<sup>23</sup> A bill is currently pending in the House of Representatives seeking to address these issues.<sup>24</sup>

Nonetheless, there have been reports of incidents of violence and abuses involving private security personnel and people from local communities or non-government organisations protesting the activities of whomever the security personnel are working for. In fact, these reported cases have placed private security corporations in the middle of the conflict between the government and different insurgent forces across the country.<sup>25</sup> This situation has also opened the door for private companies (especially mining companies in Mindanao) to hire foreign private contractors to train their local security guards. This is sometimes done with local private security companies as the local hiring entity.<sup>26</sup>

### ***PMSC Operations in Southeast Asia Outside of National Frameworks***

As indicated in the cases cited above, there are national level mechanisms for regulating the operations of private security companies in Southeast Asian countries. While these are directed towards local organisations, they are also supposed to cover organisations that conduct their business there. The regulatory mechanisms range in level of significance and political importance from the administrative order issued by the Indonesian police to the laws passed in the legislatures of Malaysia, the Philippines and Singapore. Their efficacy as instruments of oversight for PMSC behaviour, however, is uneven based on the extent to which the regulations are enforced by any of these countries. Furthermore, the instruments themselves may not have any supporting provisions on those areas that are emphasised in the Montreux document, namely protection of human rights and upholding IHL. As shown in the case of the Philippines, even if there are national frameworks for overseeing the work of private contractors operating in any of these countries in Southeast Asia, these may not sufficiently guarantee their adherence to and oversight of their observance of human rights and IHL. More so as “foreign” PMSCs are becoming more involved in these countries.

There have been a number of reports that PMSCs registered as corporations outside the region have been recruiting contractors from the region, especially the Philippines. Most noted among these (even if they have disbanded or changed their names) are Blackwater, Triple Canopy, Dyncorp, and Corporate Training Unlimited.

As noted in the previous section, some of these PMSCs have set up offices in Southeast Asia, particularly in Singapore. There have been extensive reports, however, that foreign PMSCs have been recruiting Filipinos to serve in Iraq and Guantanamo Bay in various capacities, including combat support. These groups have been contracted by the US State Department to provide security services such as securing camps, buildings, and similar facilities.<sup>27</sup> Filipino workers were trained at a firing range at the Clark special economic zone in 2008 because their employment contract required arms familiarisation. There have, in fact, been inquiries voiced by Philippine politicians regarding the presence of these PMSCs in camps of the Armed Forces of the Philippines (AFP) and in the former US facilities in the Philippines.<sup>28</sup> José Luis Gómez del Prado, former chair of the UN Working Group on Mercenaries reported that Filipino ex-policemen and soldiers recruited to provide security in Iraq are growing.<sup>29</sup> According to the report, those employed by western companies as private security guards constituted the second highest number of armed forces currently posted in Iraq next only to the US military. Many of the recruits are former members of the police and military forces in the Philippines, Peru, and Ecuador.<sup>30</sup>

Documents allegedly obtained by the local Philippine newspaper *Malaya* show that Triple Canopy Incorporated had recruited some 300 Filipinos, mostly former soldiers, to work as the armed personnel of a private military company tasked with securing US personnel and facilities in Iraq.<sup>31</sup> Triple Canopy was founded in September 2003 by veterans of the US Special Forces, with its headquarters in Chicago, Illinois. It employed over 300 people, with a number being Green Beret and Delta Force veterans. When its website was up in 2009, its self-representation indicated that “Triple Canopy mitigates risk and develops comprehensive security programs for government agencies, private corporations and non-governmental organisations working in high-risk environments across the globe.”<sup>32</sup> In 2005, they reported over 90 million USD in US government contracts.

There are also reports that as early as March 2004, Dyncorp, a Virginia-based technology and services company, had been recruiting “contractors” in the Philippines to work in Baghdad. Dyncorp has a multi-million dollar contract with the US State Department not only to provide peacekeeping support but also to advise the Iraqi government on setting up effective law enforcement, judicial, and correctional agencies.<sup>33</sup> In a 100 billion USD industry, Dyncorp established its reputation in the business providing close-in security for Afghan President Hamid Karzai. They also provided police services in Bosnia, flew defoliating missions over Colombia, conducted patrols along the US-Mexico border, and were involved in peacekeeping operations in East Timor.<sup>34</sup>

Another PMSC which has been reported to recruit Filipinos is Erynis International, a private military contractor founded by ex-Apartheid South African officials. This



company offers a salary of 3,000 USD a month to provide security on the perimeters of the Baghdad Green Zone (International Zone).<sup>35</sup>

That these firms are able to conduct recruitment campaigns in the Philippines indicate collaborative work with local private security companies. It becomes even more difficult to monitor the recruitment process since it is done on a personal basis and contractors are hired individually through local agents (including local private security companies). This kind of recruitment poses a problem since those who are recruited are mostly from the armed forces or the special forces of the national police. The prospect of receiving a salary that is much higher than what they earn in the Philippines makes a private contractor's life very attractive. Unfortunately, unlike the other contracts of service which have their own safeguards, engagement with such PMSCs has none. The problem the Philippine government must now face is how to protect its citizens who are being recruited abroad from becoming criminally liable in a deployment where the rules are no longer enforceable except through the regulations of the PMSC that recruited them. In the context of the concerns related to the Montreux Document, once out of the national legal framework, the transnational activities conducted by private contractors depend heavily on company's willingness to subject their activities to the limits imposed by human rights regimes and international humanitarian law. National frameworks could provide mechanisms for oversight within the jurisdiction of countries like Indonesia, Malaysia, the Philippines or Singapore. However, once a private contractor leaves that jurisdiction, the limits to their behaviour are largely dependent on the company that hired them.

Another area where PMSC operation is potentially problematic is in the provision of armed escorts to shipping companies and even airlines in the aftermath of the 9/11 attacks on the United States. In the case of the Malacca Strait, the lack of a common policy among the littoral states on this particular issue has made it a potential source of concern for Malaysia and Indonesia. Thailand has also raised similar concerns over airline policies on air marshals. Again, in the Philippines, terrorism combined with the ongoing twin insurgencies in the country has led to reports of multinational corporations hiring PMSCs to oversee the security of their operations. According to Caroline Liss, these issues have become sources of tension among countries in the region (over the Malacca Strait) or between the PMSC operatives and local armed forces especially in areas where there are active insurgencies (such as the Philippines).<sup>36</sup> And yet, the issue goes back to fundamental concerns about confidence in the ability of local authorities to provide security in an uncertain environment.

## ***Concluding Thoughts***

PMSCs operating in Southeast Asia are subject to local regulatory rules. The principal issue is the extent to which these rules are enforced. Many of these rules were designed for security agencies that are really geared for providing protection services for persons, installations, and valuable objects, and for purposes of investigating other persons. They were not designed to respond to the more complex security conditions that countries in the region have to deal with at present. The problem is that these countries are not in strong possession of capacities that could generate business confidence in both their citizens and foreigners who have to deal with them because of business transactions in their armed or police forces. Consequently, there is an increased demand for the services of private military and security companies. The fundamental problem is in areas where these organisations operate, are there sufficient regulatory mechanisms in place? More importantly, do the states involved have the political will or the capability to enforce these rules in relation to foreign PMSCs activities?

Increasingly, these questions are being raised especially in the context of the Montreux Document's emphasis on the observance and enforcement of human rights and IHL. As noted in this essay, having a national regulatory framework does not guarantee that these norms will be observed – either because the existing national framework does not accommodate them (as is the case in Indonesia and likely the case in Malaysia and Singapore) or that the national regulations themselves are poorly enforced (as is the case in the Philippines). Yet, the national institutional mechanisms should be able to provide the basis for addressing the concerns noted in the Montreux Document as for the most part PMSCs (either local or foreign) are engaged by private entities, not the governments, as is the case with PMSCs in Iraq under contract with the United States government. In this context, two issues have to be addressed. First is ensuring that national frameworks are consistent with provisions on human rights protection and IHL implementation in the Montreux Document (even if there is no explicit buy into the latter by national governments). A strong campaign to ensure such an alignment of national laws and regulations with the Montreux Document should be sustained. Secondly, where there are existing laws that are consistent in content with the Montreux Document, care must be given to ensuring their proper implementation. This might mean looking into questions of capacity (which is an issue that can be assisted materially) or issues of political will (which means convincing governments to do what they are mandated to do). The former will require greater efforts among proponents in working with governments, but the latter might mean having to collaborate with local advocacy groups to try to get the message across to governments.

A greater concern as far as the Montreux Document is concerned (because of the potential for a lacuna in effective regulations) is in the maritime domain. A startling lack of regulations in this area may be attributed to either multiple jurisdictions (the Malacca Strait) or, again, the lack of political will (the Philippines in relation to multinational corporations). Just the fact that different PMSCs have been recruiting personnel from the region raises questions of government involvement or lack of it. This basically opens up questions about the lack of transparency in its conduct of business – a question that leads to further questions about regulation. While the political environment has made it difficult for foreign PMSCs to prosper at the domestic level (although they are present in limited numbers), economic conditions have also made it easy for these same PMSCs to recruit from countries like the Philippines. While these activities could be argued as being no different from the normal recruitment activities of a multinational corporation, the kind of work involved and the potential for wrongdoing (such as human rights abuses) that could emanate from such work are of great importance to the country from which such recruitment is taking place. Similarly, it is of great importance to the effectiveness of the regulatory mechanisms of the Montreux Document.

In sum, there are few examples of the Montreux Document's implementation of regulation over the kind of private security groups that exist within the region because of the nature of these organisations as either mainly state-regulated or even state-sanctioned in nature. All of these groups, however, are of interest to the Montreux Document's concern over the possibility of PMSCs for abuses of IHL and human rights. Of greater concern to the Montreux Document, however, is the issue of recruitment activities being undertaken by PMSCs in the region, as well as their operations in areas where regulation is either weak or its jurisdiction is contested. Even as these are nothing more than commercially-related activities, the kind of work that these companies are engaged in have ramifications for the security of the governments of the countries where the recruitment is taking place, as well as for the regulatory capacity of the Montreux Document.

# Notes

1. The Montreux Document is the first international document to define how international law applies to the activities of private military and security companies when they are operating in a zone of armed conflict. It contains a set of good practices designed to help states implement national measures in order to fulfill their obligations under international law, <http://www.eda.admin.ch/psc>.
2. Chile (12–13 May 2011), Mongolia (11–13 October 2011), Australia (8–9 May 2012), and Senegal (3–4 June 2014).
3. As of November 2014, the Montreux Document is supported by 51 states and 3 international organisations.
4. Associate Professor at the Department of Political Science at the University of the Philippines in Diliman. This paper is derived from an earlier version co-authored with Atty. Katherine Marie G. Hernandez entitled “Private Military and Security Companies in Southeast Asia: Regulatory Issues and Concerns” submitted to the Geneva Centre for the Democratic Control of the Armed Forces (DCAF) in 2009.
5. Amnesty International has been particularly critical of the involvement of PMSCs in cases such as Abu Ghraib and the lack of indictments from the investigations conducted by the US government involving personnel from PMSCs. See <http://www.amnestyusa.org/military-contractors/page.do?id=1101665>.
6. See “Blackwater Worldwide and the Role of Mercenaries in 21st Century Armed Conflicts Part II” in <http://thewarriorlawyer.com/2008/06/09/blackwater-worldwide-and-the-role-of-mercenaries-in-21st-century-conflicts-part-ii/>.
7. See [http://www.ssrnetwork.net/document\\_library/detail/4009/private-military-and-security-companies-and-the-nexus-between-natural-resources-and-civil-wars-in-africa](http://www.ssrnetwork.net/document_library/detail/4009/private-military-and-security-companies-and-the-nexus-between-natural-resources-and-civil-wars-in-africa).
8. See <http://www.globallsecurity.org/military/world/para/mercenart.htm>.
9. The International Crisis Group, “The Perils of Private Security in Indonesia: Guards and militias on Bali and Lombok,” *ICD Asia Report* No. 67, 07 November 2003, p. i.
10. *Ibid.*, p. 2.
11. Alban Sciascia, “Monitoring the Border: Indonesian Port Security and the Role of Private Actors,” *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, Volume 35, Number 2 (August 2013): 178.
12. *Ibid.*
13. A long-standing issue involves the pulp and paper industry involved in illegal logging operations in Sumatra, and mining operations in Irian Jaya (Papua). See Human Rights Watch, “Without Remedy: Human Rights Abuse and Indonesia’s Pulp and Paper Industry,” Vol. 15, No. 1 (January 2003); and Simon Montlake, “Cave In: Freeport-McMoRan Digs A Heap Of Trouble In Indonesia,” *Forbes* (26 January 2012) available at <http://www.forbes.com/sites/simonmontlake/2012/01/26/cave-in-freeport-mcmoran/2/> and downloaded on 15 August 2013. <http://www.forbes.com/sites/simonmontlake/2012/01/26/cave-in-freeport-mcmoran/2/>
14. Sciascia, *op. cit.*, p. 180. See also The International Crisis Group, “The Perils of Private Security in Indonesia . . .,” *op. cit.*
15. See “Private Security Industry Act,” First published in the Government *Gazette*, Electronic Edition, on 27th April 2009 at 5:00 pm and available at <http://www.spf.gov.sg/licence/PI/others/CAMS%20Operator.pdf>.
16. K Shanmugam, “The Private Security Industry Tripartite National Day Observance Ceremony and Security Industry Conference,” speech made at the NTUC Centre Auditorium on 01 August 2009. Available at [http://www.mha.gov.sg/news\\_details.aspx?nid=MTQ3NQ%3D%3D-k8Du8Q45QZE%3D](http://www.mha.gov.sg/news_details.aspx?nid=MTQ3NQ%3D%3D-k8Du8Q45QZE%3D).
17. See “Private unarmed security officers to be issued identification cards from August,” *Channel News Asia*, 1 August 2009 available at <http://www.channelnewsasia.com/stories/singaporelocal-news/view/446189/1.html>.

18. *Ibid*
19. See Noor Apandi Osnin, "Private Maritime Security Company (PMSC) in the Strait of Malacca – Options for Malaysia," *WMU Journal of Maritime Affairs*, Vol. 5, No. 2 (October 2006):195-206.
20. Sciascia notes for example the case of Glenn Defence Marine which provides armed security teams that provide security for foreign military and merchant ships in port. See Alban Sciascia, "Monitoring the Border: Indonesian Port Security and the Role of Private Actors," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, Volume 35, Number 2(August 2013): 178.
21. Section 3, R.A. No. 5487.
22. Sections 2 and 3, IRR of R.A. No. 5487.
23. Matikas Santos, "Security agencies urged to adopt stricter requirements for guards," *Philippine Daily Inquirer* (31 January 2013) available at <http://newsinfo.inquirer.net/350459/security-agencies-urged-to-adopt-stricter-requirements-for-guards#ixzz2YOCrPh70> and downloaded on 19 June 2013.
24. House Bill 6737 passed on second reading in January 2013. See Ma. Victoria I. Palomar, "Congress approves bill strengthening private security industry," press release issued on 2 January 2013 available at <http://www.congress.gov.ph/press/details.php?pressid=6704> and downloaded on 15 August 2013.
25. An example that illustrates this is the raid committed by the Communist New People's Army on the armoury of the Earth Savers Security Agency in Butuan City. This security company had been hired by a foreign-owned mining company in Mindanao and was targeted partly as punishment because "[t]he security agency committed rampant abuses and harassment against civilians and [indigenous peoples], who are opposed to mining." See Franklin A. Caliguid, "Philippines: Large raid by New People's Army on mining company's 'private army,'" *Inquirer Mindanao* (25 April 2012) available at <http://revolutionaryfrontlines.wordpress.com/2012/04/25/philippines-large-raid-by-new-peoples-army-on-mining-companys-private-army/> and downloaded on 15 August 2013.
26. See for example David Pugliese, "Canada's guns for hire on terror's front lines: Military firms help 'unplug' terrorism in South Asia," *The Ottawa Citizen* (2 November 2002) available at [http://www.sandline.com/hotlinks/canada\\_story.html](http://www.sandline.com/hotlinks/canada_story.html) and downloaded on 15 August 2013.
27. See [www.smc.org.ph/amnew/amn060615/southeast/philippines060615.htm](http://www.smc.org.ph/amnew/amn060615/southeast/philippines060615.htm) downloaded on 10 April 2009.
28. Jody Ray Bennett, "The Politics of Private Force in the Philippines," (Zurich: International Relations and Security Network, 2009).
29. José L. Gómez del Prado, Private Military and Security Companies and Challenges to the UN Working Group on the Use of Mercenaries 5 (Conference on Private Military Contractors in Latin America, Conference Paper), available at <http://www.havenscentre.org/privatemilitaryconference2008/>; "Mercenaries in Iraq include Filipinos", *The Manila Times* (27 February 2007) available at [www.manilatimes.net/national/2007/feb27/yehey/top\\_stories/20070227top1.html](http://www.manilatimes.net/national/2007/feb27/yehey/top_stories/20070227top1.html) and downloaded on 10 April 2009.
30. *Ibid*.
31. *Ibid*.
32. The website was at [www.triplecanopy.com/triplecanopy/en/home/](http://www.triplecanopy.com/triplecanopy/en/home/) and the information was retrieved on 06 April 2009. The site is no longer available.
33. See <http://www.ellentordesillas.com/?p=343> and downloaded on 10 April 2009.
34. *Ibid*.
35. *Ibid*.
36. Caroline Liss, "Southeast Asia's Maritime Security Dilemma: State or Market?" *Japan Focus* (8 June 2007) available at <http://www.japanfocus.org/-Carolin-Liss/2444>.

# Annex I: Agenda

## Regional Conference on the Montreux Document on Private Military and Security Companies (PMSCs)

Manila, Philippines, 9–10 July 2013

### DAY ONE

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9:00 *Coffee*

9:30 **Welcome**

Ambassador Nicolas LANG, Swiss Federal Department of Foreign Affairs,  
Directorate of International Law, Bern

Undersecretary Lorenzo Pio BATINO, Philippine Department of National Defense,  
Manila.

10:00 **Panel 1: Introduction to the Montreux Document**

Moderator: Anne-Marie BUZATU, Deputy Head of Operations IV, DCAF Geneva

Panelists:

- Ambassador Nicolas LANG, FDFA, DIL
- Marie-Louise TOUGAS, Legal Adviser, ICRC

10:45 *Coffee*

11:15 **Montreux Document: Questions and Answers**

12:00 *Lunch*

14:00 **Panel 2: Country Perspectives and Challenges: Regional Regulation and Good Practices relating to PMSCs**

Moderator: Marie-Louise TOUGAS, Legal Adviser, ICRC

Panelists:

- Herman KRAFT, Executive Director, Institute for Strategic and Development Studies
- Ambassador Rosario MANALO, Philippine Commissioner, ASEAN Human Rights Commission
- Teresita SOLIMAN, President/General Manager, Soliman Security, Philippines
- Thailand: Colonel Piyachart JAROENPOL, The Judge Advocate General's Department, Ministry of Defence,  
Ms. Pakprapai THONTIRAVONG, First Secretary, Peace, Security and Disarmament Division, Ministry of Foreign Affairs

15:00 *Coffee*

15:30 **Interactive Discussion Session**

16:30 **Close for the day**

20:00 **Reception at the Discovery Suites Hotel**

## DAY TWO

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8:30 *Coffee*

9:00 **Panel 3: Other International Initiatives: the International Code of Conduct and the Work of the United Nations**

Moderator: Andrew NICHOLSON, Director Government and Industry Affairs, Drum Cussac

Panelists:

- Anne-Marie BUZATU, Deputy Head of Operation IV, DCAF Geneva
- Rémy FRIEDMANN, Senior Advisor, Swiss DFA Federal Department of Foreign Affairs
- Stuart GROVES, Security Consultant, Stuart Groves Security

9:45 **Interactive Discussion Session on International Initiatives**

10:15 *Coffee*

10:45 **Panel 4: Emerging Issues: Extractive Industry and Maritime Industry**

Moderator: Rémy FRIEDMANN, Senior Advisor, Swiss DFA Federal Department of Foreign Affairs

Panelists:

- Richard JACOBSON, Director of Operations, Pacific Strategies and Assessments
- Andrew NICHOLSON, Director Government and Industry Affairs, Drum Cussac
- Malaysia and the Maritime Industry: Lt. Col RMAF Mohd RAZIF BIN RAMLI, Military Legal Advisor, Malaysian Armed Forces
- Lt Col Ahmad GHAZALI BIN HJ PUTEH, Malaysian Peace Keeping Centre – Chief Instructor, Port Dickson

11:15 **Interactive Discussion Session**

12:00 *Lunch*

14:00 **Panel 5: Third Party Nationals: ASEAN citizens working for international PMSCs**

Moderator: Herman KRAFT, Executive Director, Institute for Strategic and Development Studies

Panelists:

- Stuart GROVES, Security Consultant, Stuart Groves Security
- Dr. Jesus R.S. DOMINGO, Assistant Secretary of Foreign Affairs, Ministry of Foreign Affairs, Philippines

14:45 **Interactive Discussion Session**

15:30 *Coffee*

16:00 **Roundtable Discussion: Concrete Steps to the Way Forward – Southeast Asia and the Montreux Document**

Richard DESGAGNÉ, Regional Legal Adviser, ICRC (Regional Delegation, Beijing)

17:00 **Closing Remarks**

Ambassador Nicolas LANG, Swiss Federal Department of Foreign Affairs, Directorate of International Law, Bern

Graziella LEITE PICCOLO, Deputy Head of Delegation, ICRC (Manila Delegation)

20:00 Dinner and Reception

## **Annex II: List of Participants**

1. Ambassador Nicolas Lang, Swiss Department of Foreign Affairs, International Law Division, Geneva
2. Ms. Marie-Louise Tougas, Legal Adviser, ICRC Geneva
3. Mr. Richard Desgagné, Regional Legal Adviser, ICRC (Regional Delegation, Beijing)
4. Ms. Graziella Leite Piccolo, Deputy Head of the Manila Delegation, ICRC (Manila Delegation)
5. Mr. Jürg Casserini, Counsellor and Deputy Head of Mission, Embassy of Switzerland, Manila
6. Ambassador Rosario Manalo, Philippine Commissioner, ASEAN Human Rights Commission
7. Ms. Anne-Marie Buzatu, Deputy Head of Operations IV, DCAF Geneva
8. Ms. Anna Marie Burdzy, Research Assistant, DCAF Geneva
9. Ms. Teresita Soliman, President/General Manager, Soliman Security, Philippines
10. Mr. Richard Jacobson, Director of Operations, Pacific Strategies and Assessments
11. Mr. David Andrew Nicholson, Director Government and Industry Affairs, Drum Cussac
12. Mr. Rémy Friedmann, Senior Advisor, Human Security and Business, Swiss FDFA
13. Mr. Bantan Nugroho, Political Affairs Officer, UN Office for Disarmament Affairs
14. Dr. Herman Kraft, Department of Political Science, University of the Philippines
15. Mr. Stuart Groves, Security Consultant, Stuart Groves Security

### **Malaysia:**

16. Lt. Col RMAF Mohd Razif Bin Ramli, Military Legal Advisor, Malaysian Armed Forces
17. Lt Col Ahmad Ghazali bin Hj Puteh, Malaysian Peace Keeping Centre – Chief Instructor, Port Dickson

### **Cambodia:**

18. Mr. Tan Chandaravuth, Second Secretary and Consul, Royal Embassy of Cambodia



**Vietnam:**

19. Ms. Thuy Hang Nguyen Thi, Legal Advisor of the Dept. of International Law and Treaties, Ministry of Foreign Affairs
20. General Colonel Ha Tuan Huy, Assistant Department of Legal Affairs, Ministry of Defense

**Myanmar:**

21. Lt. Colonel Aung Khin Thein, Assistant Judge Advocate General, Office of the Judge Advocate General, Ministry of Defence
22. Dr. Thi Da Oo, Deputy Director, Office of the Union Attorney General

**Thailand:**

23. Colonel Piyachart Jaroenpol, The Judge Advocate General's Department, Ministry of Defence
24. Ms. Pakprapai Thontiravong, First Secretary, Peace, Security and Disarmament Division, Ministry of Foreign Affairs

**Lao:**

25. Mr. Kalamounghkhoun Souphanouvong, Technical Officer, Ministry of Foreign Affairs
26. Mr. Chanthala Vanhnahong, Technical officer of the International Organizations Department, Ministry of Foreign Affairs.

**Indonesia:**

27. Mr. Muhammad Helmy Zulfadli, Magister of Law, Humanitarian Section, Ministry of Defense, Indonesia
28. Mr. Jamaruba Silaban, Magister of Law, Ministry of Defense, Indonesia

**Philippines:**

29. Commander Rostum J. Bautista, Chief, Research and Special Studies Division, NDCP, Department of National Defense, Philippines
30. Pio Lorenzo Batino, Undersecretary for Legal and Legislative Affairs and Strategic Concerns, Department of National Defense, Philippines
31. Brigadier General, Fermin R. De Leon Jr., President of National Defense College of Philippines (NDCP), Department of National Defense, Philippines
32. Atty. Hermie Angeles, Senior State Prosecutor, Department of Justice

33. Atty. Melvin Suarez- State Prosecutor, Department of Justice
34. Atty. Cecille Corpuz, Office of the Executive Secretary, Office of the President, Presidential Human Rights Committee, Office of the President, Department of Foreign Affairs
35. Atty. Ray Paolo Santiago, Executive Director, Ateneo Human Rights Center
36. Atty. Elma M Rafallo-Lingan, Senior State Solicitor, Office of the Solicitor General
37. Director Emmanuel Harder, Managing Director, Executive Protection Center
38. Prof. Harry Herminio L. Roque, College of Law, University of the Philippines
39. Prof. Raul C. Pangalanan, College of Law, University of the Philippines

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40. Atty. Cherrie Belmonte-Lim, MNSA, Chief, Office of Legal Service
41. Dr. Anne Marie P. Sta Ana, Director, Office of the Assistant Secretary for Personnel
42. Atty. Jose Angelo V Cunahan, Defense Legislative Liaison Specialist
43. Col. Jevay DS Resurrecion, Deputy Senior Military Assistant to USDA & Military Assistant to ASPP, Office of the Assistant Secretary for Plans and Programs

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44. Dr. Jesus R.S. Domingo, Assistant Secretary of Foreign Affairs, Ministry of Foreign Affairs, Philippines
45. Ms. Jhoana Jarasa, Desk Officer, Office of the United Nations and other International Organisations
46. Ms. Sheila Bermundo Bengtlars, Desk Officer, Office of the United Nations and other International Organisations
47. Ms. Jaybee Arguillas, Department of Foreign Affairs
48. Mr. Eleazer Sevilla, Department of Foreign Affairs

***Armed Forces of the Philippines***

49. LtC Arnulfo Ferdinand G Bajarin, Assistant Chief, CID, Office of the Deputy Chief of Staff for Intelligence
50. Major Harold L Nemenio, Branch Chief, Office of the Deputy Chief of Staff for Operations
51. Major Narciso G Ferrer, Chief, Admin Division OJ5, Office of the Deputy Chief of Staff for Plans
52. LCDR Ruel GC Nicolas, Assistant Chief, Public Affairs Division, Office of the Deputy Chief of Staff for Civil Military Operations

53. LtC Ronald Jess S Alcudia, Acting Assistant Chief, Office of the Strategic Studies
54. Col Augusto D Dela Pena, MNSA Student/Former Executive Officer, Office of the Assistant Chief of Staff for plans PAF
55. Major Jo-Ar A Herrera, Commandant, AFP Civil Military Operations School
56. LtC Gorgonio S Perez, Assistant Chief, PAF Human Rights Office
57. Major Roberto c Go, Section Chief, Tactical Operation Section

***Philippine National Police***

58. Pssupt. Aurelio R Ducay, Jr. Chief, Asst. Resources and Management Div, Civil Security Group/Supervisory Office for Security and Investigation Agencies
59. Pssupt. Joel Pernito, Chief SLD, Civil Security Group/ Supervisory Office for Security and Investigation Agencies

## Annex III: Montreux Document in brief

The Montreux Document is an intergovernmental document intended to promote respect for international humanitarian law and human rights law, especially when PMSCs are present in armed conflicts. It conveniently compiles and articulates the relevant obligations under international humanitarian law and human rights law in one text. It is designed for practitioners who are confronted with the phenomenon of PMSCs especially during armed conflict.

The Montreux Document is not a new international treaty and it does not create any new legal obligations. Regardless of their support for the initiative, states are already subject to the international legal obligations contained in the Montreux Document. Most of the rules and good practices assembled in the Montreux Document derive from well-established principles of international humanitarian law and human rights law. Other branches of international law, such as the laws of state responsibility and international criminal law, also serve as a basis. The Document clarifies the misconception that private military and security companies operate in a legal vacuum by recalling, compiling, and reminding the reader of the applicable international legal obligations. The Montreux Document enhances the protection afforded to people affected by armed conflicts by clarifying and reaffirming international law, by encouraging the adoption of national regulations on PMSCs designed to strengthen respect for international law, and by offering guidance on how and in what light this should be done, based on lessons learnt.

The Montreux Document is intended to have a practical bearing on the interaction between states and PMSCs. The Montreux Document describes good practices in implementing existing international legal obligations. These good practices are designed to help governments to establish effective oversight and control over PMSCs. The good practices cover a number of practical areas, including: authorisation systems, contract provisions, and licensing requirements, as well as suggesting a number of effective methods for states to oversee the PMSCs they come into contact with.

*All States and international organizations are invited to communicate their support for the document to the Swiss Federal Department of Foreign Affairs, as set out in the preface to the Montreux Document. In doing so, they do not commit themselves to new legal obligations.* They declare their political support for the Montreux Document's main thrust: that international legal obligations have a bearing on PMSCs and must be complied with.

As support for the Montreux Document is continuously growing, the focus is now turning to its dissemination and practical implementation. Since its adoption, the Montreux Document has served as a basis for the International Code of Conduct for Private Security Service Providers which binds member companies.

### ***What the Montreux Document is***

The Montreux Document is an intergovernmental document intended to promote respect for international humanitarian law and human rights law, especially when PMSCs are present in armed conflicts. It is not legally binding as such. However, the rules it contains are well-established in international law and are binding to States by virtue of international treaties or international customary law.

The Montreux Document is the result of an international process launched by the Government of Switzerland and the ICRC. It was finalized by consensus on 17 September 2008 by 17 States: Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Ireland, Ukraine and the United States of America. The number of participating States is growing steadily.

For up-to-date information on participation and full text of the Montreux Document, see [www.eda.admin.ch/psc](http://www.eda.admin.ch/psc).

### ***When the Montreux Document applies***

The Montreux Document, in line with international humanitarian law, was written bearing in mind that PMSCs operate in an armed conflict environment. However, it is also meant to provide practical guidance in other contexts (see paragraph 5 of its preface). It also contains statements on pertinent international human rights law and international criminal law which are applicable at all times. Furthermore, most of the good practices identified, including those derived from international humanitarian law, are ideally put into place during peacetime. The Montreux Document and its good practices provide useful guidance to set meaningful regulatory standards for, and to support effective oversight over a rapidly expanding industry in any situation and thus helps to prevent actions or misconduct that may contribute to violations of national and international laws.

### ***What the Montreux Document does***

The Montreux Document ...

- recalls the pertinent international legal obligations of States, PMSCs and their personnel in situations of armed conflict;

- contains a compilation of good practices designed to help States take national measures to implement their obligations;
- highlights the responsibilities of three types of States: Contracting States (countries that hire PMSCs), Territorial States (countries on whose territory PMSCs operate) and Home States (countries in which PMSCs are based);
- makes it clear that States have an obligation to ensure respect for international humanitarian law and to uphold human rights law; as a result, they have a duty to take measures designed to prevent misconduct by PMSCs and ensure accountability for criminal behaviour;
- recalls that PMSCs and their personnel are bound by international humanitarian law and must respect its provisions at all times during armed conflict, regardless of their status;
- recalls that misconduct on the part of PMSCs and their personnel can trigger responsibility on two levels: first, the criminal responsibility of the perpetrators and their superiors, and second, the responsibility of the State that gave instructions for, directed or controlled the misconduct;
- provides a toolkit for governments to establish effective oversight and control over PMSCs, for example through contracts or licensing/authorization systems.

### ***Why the Montreux Document is useful***

The Montreux Document is useful because it enhances the protection afforded to people affected by armed conflicts but also by post-conflict and by other comparable situations. It does so by clarifying and reaffirming international law, by encouraging the adoption of national regulations on PMSCs designed to strengthen respect for international law, and by offering guidance on how and in what light this should be done, based on lessons learnt.

## **Questions and answers on the Montreux Document**

### ***Why are PMSCs a source of humanitarian concern?***

The humanitarian need to address the phenomenon of PMSCs stems from their presence and role in today's armed conflicts. Inasmuch as they are armed and mandated to carry out activities that bring them close to actual combat, they potentially pose an additional risk to the local population and are themselves at risk of being attacked. So far, PMSCs have been largely left without oversight by States and no specific international regulations are in place for them. International humanitarian law is applicable to them, but there was a clear need to spell out the rules for PMSCs and offer practical advice on how to deal with them. The Montreux Document is designed to meet that need.

### ***What is the difference between private military and private security companies?***

There is no standard definition of what is a “military” company and what is a “security” company. In ordinary parlance, certain activities (such as participating in combat) are traditionally understood to be military in nature and others (such as guarding residences) related to security. In reality many companies provide a wide range of services, which can go from typically military services to typically security services. They are therefore not easily categorized. Moreover, from the humanitarian point of view, the relevant question is not how a company is labelled but what specific services it provides in a particular instance. For this reason, the Montreux Document avoids any strict delimitation between private military and private security companies and uses the inclusive term “private military and security companies” (PMSCs) to encompass all companies that provide either military or security services or both.

### ***Does any international treaty mention the rights and obligations of PMSCs directly?***

No international humanitarian law or human rights treaty mentions PMSCs specifically. The Montreux Document compiles those rules of international law that are most pertinent to PMSC operations, for easy reference.

### ***Do PMSCs operate in a legal vacuum?***

No. It is true that States often discover that they lack the necessary domestic legislation to deal with PMSCs. It is also true that international law on mercenaries is largely inapplicable to the relatively new phenomenon of PMSCs (see below). However, in situations of armed conflict certain well-established rules and principles do clearly apply, namely under international humanitarian law, which regulates both the activities of PMSC staff and the responsibilities of the States that hire them. Also, human rights law imposes a number of obligations on States to protect persons against misconduct on the part of PMSCs. The Montreux Document explains these rules and principles.

### ***When does the Montreux Document apply?***

The Montreux Document, in line with international humanitarian law, was written bearing in mind that PMSCs operate in an armed conflict environment. However, it is also meant to provide practical guidance in other contexts (see paragraph 5 of its preface). A current example is the contracting of PMSCs to protect merchant shipping against acts of piracy. Even if fighting piracy is best understood as a matter of law enforcement (and not of armed conflict), the Montreux Document’s statements on jurisdiction remain pertinent reading.

### ***What rules apply to States with regard to PMSCs?***

States that contract PMSCs can, under certain conditions, be held accountable for violations committed by PMSC employees, in particular if the PMSC exercises elements of governmental authority or if it acts under the instructions or control of the State authorities. In such cases, the same rules apply to the State – i.e. not to violate international humanitarian law and human rights law – as if it had acted itself through its own military forces.

States also have obligations to uphold the law: they must ensure respect for international humanitarian law and, to the extent that it applies in armed conflicts, human rights law. Hence States must take appropriate measures to ensure that no PMSC violates international humanitarian law or engages in misconduct that affects the human rights of potential victims. This can include taking measures to ensure that PMSCs vet their personnel and provide adequate training for them. States also have an obligation to prosecute war crimes and certain serious violations of human rights law.

### ***What rules apply to PMSCs and their personnel?***

All individuals have to respect international humanitarian law in any activity related to an armed conflict. PMSC personnel are no exception. If they commit serious violations of humanitarian law, such as attacks against civilians or ill-treatment of detainees, these are war crimes that must be prosecuted by States. While companies as such have no obligations under international law, their employees do.

On the other hand, international humanitarian law and human rights law also protect the personnel of these companies. The protection they are entitled to will vary depending on the type of activity they engage in. For instance, most PMSC employees are deployed as civilians in situations of armed conflict; in this case, they are protected against attack, unless and for such time as they directly participate in hostilities.

### ***Is an armed PMSC employee considered to be a civilian who therefore enjoys the protection all civilians are granted under the Geneva Conventions?***

In most cases, yes, but there are cases where they cannot be considered civilians. The status of PMSC personnel depends on their exact employment and functions. Most are not employed to fight, but rather to provide support functions (equipment maintenance, logistic services, guarding diplomatic missions or other civilian sites, catering, etc.). In these cases they are considered to be civilians. This means they are protected against attack unless and for such time as they directly participate in



hostilities. But it also means that if they take a direct part in hostilities, they can be prosecuted if domestic law criminalizes such conduct.

In rarer cases, PMSC employees are incorporated into the armed forces of a State or form groups or units under a command responsible to a party to an armed conflict. In such situations, they do not enjoy protection as civilians.

### ***Are PMSC employees mercenaries?***

Mercenaries are defined in international humanitarian law. Article 47 of Protocol I additional to the 1949 Geneva Conventions, applicable in international armed conflicts, describes a mercenary as someone who: (1) is especially recruited in order to fight in an armed conflict; (2) in fact takes a direct part in hostilities; (3) is motivated essentially by the desire of private gain; (4) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (5) is not a member of the armed forces of a party to the conflict; (6) has not been sent by a State which is not a party to the armed conflict on official duty as a member of its armed forces.

That definition excludes most PMSC personnel, most of whom are not contracted to fight in military operations. Many are nationals of one of the parties to the conflict. Moreover, it is difficult to prove the motivation of private gain; presumably, not all of them are thus motivated. Lastly, while some private contractors are reportedly very highly paid, it would be very difficult to verify if they receive a substantially higher wage than soldiers.

This being said, PMSC employees do sometimes meet the conditions for definition as mercenaries. If that is the case, they are not entitled to combatant or prisoner-of-war status in an international armed conflict.

### ***Who has the authority to prosecute suspected war criminals?***

The State in which a contractor is deployed will usually have authority (jurisdiction), because the crime was committed on its territory. However, PMSC employees may have immunity under a bilateral agreement, such as a status-of-forces agreement; such agreements usually cover the armed forces of one State that are present in another State, but are sometimes extended to civilians accompanying the armed forces and to PMSCs. Also, States experiencing armed conflict do not always have the practical capacity to prosecute crimes if judicial systems are weakened.

Other States can also exercise jurisdiction if one of their nationals commits a crime abroad. However, States have not always established jurisdiction under domestic law for such cases. And, even if they have established jurisdiction, the fact that the crime was committed abroad in a situation of armed conflict can pose

serious practical obstacles to criminal investigations, for instance when it comes to gathering evidence.

The combination of lack of jurisdiction and of practical obstacles can lead to impunity for the perpetrators. The Montreux Document makes some practical recommendations to avoid such an outcome. For example, it recommends that jurisdictional gaps be actively avoided when agreements are concluded between States.

### ***How does the Montreux Document enhance the protection of civilians in armed conflict?***

The Montreux Document raises awareness of the humanitarian concerns at play whenever PMSCs operate in an armed conflict environment. It reminds States of their obligations and offers them guidance on how PMSCs should sensibly be dealt with. Preventing violations and holding PMSCs accountable if they commit violations are at the core of the Montreux Document. But at the end of the day, the question is one of implementation. It is up to PMSCs and States alike to see to it that the protection of civilians is put into practice.

### ***Does the Montreux Document legitimize the activities of PMSCs?***

No. States disagree about the legitimacy of PMSCs and their activities, but PMSCs are present in conflicts and will likely remain so. For the Swiss Government and the ICRC, it was therefore important to tackle the issue and to recall international legal obligations without rejecting or welcoming the use of PMSCs. Like all other armed actors present on the battlefield, PMSCs are governed by international rules, whether their presence and activities are legitimate or not. The Montreux Document follows this humanitarian approach. It does not take a stance on the question of PMSC legitimacy. It does not encourage the use of PMSCs nor does it constitute a bar for States who want to outlaw PMSCs.

### ***How did the Montreux Document come about?***

The Montreux Document is the fruit of a joint initiative by the Swiss Government and the ICRC on the subject of PMSCs. It sprang from a desire to bring together the governments most affected by PMSCs in order to discuss the international legal framework that governs their activities. It also sought to draw up practical measures (good practices) that States could take to promote respect for international humanitarian law and human rights law by PMSCs.

Seventeen governments were involved in the development of the document: Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq,

Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Ukraine and the United States of America. It is these States that helped draft the document. From the beginning, the process has benefited from the valuable input of industry representatives, academic experts and NGOs. In addition to the governmental meetings, the Initiative held four expert meetings with high-level experts from all sectors in order to obtain the most detailed legal provisions and practical recommendations, based on concrete experiences and lessons learned.

### ***Why were only 17 States involved in developing the Montreux Document?***

PMSCs are not present in all countries to the same extent. The Swiss Initiative aimed to be practical and benefit from the input of those States most affected by the phenomenon or which had experience in dealing with it.

The Initiative also sees itself as a first step towards providing greater clarity and practical advice. The process was therefore meant to be light and produce a result in a reasonable time, considering that there was no existing instrument that compiled all the pertinent legal obligations relevant to PMSCs.

### ***Can others be part of the Montreux Document?***

Yes. Other States and international organizations are invited to communicate their support for the document to the Swiss Federal Department of Foreign Affairs, as set out in the preface to the Montreux Document. In doing so, they do not commit themselves to new legal obligations. They declare their political support for the Montreux Document's main thrust: that international legal obligations have a bearing on PMSCs and must be complied with.

### ***Why is the Montreux Document not an international treaty?***

The Swiss Government and the ICRC felt it important to produce a meaningful and practical instrument in a relatively short period of time. An international treaty would have taken many years to negotiate. Also, considering the very divisive nature of the issue and the strong political positions involved, a humanitarian, apolitical approach was more likely to have tangible and practical results.

# Proceedings of the Regional Conference for Southeast Asia

The Montreux Document is an intergovernmental initiative, launched cooperatively by Switzerland and the International Committee of the Red Cross (ICRC), to promote respect for international humanitarian law and human rights law wherever private military and security companies (PMSCs) are present in armed conflict. The Montreux Document encourages the adoption of national regulations on PMSCs designed to strengthen respect for international law. The Montreux Document also offers practical guidance in contexts outside situations of armed conflict as its good practices are best implemented during peacetime.

This report details the proceedings of the regional conference for Southeast Asian states, held in Manila, Philippines on 9–10 July 2013. The conference aimed to gain a regional perspective with regard to states' interactions with PMSCs and to identify national regulations with a view to sharing good practices. This event was convened by the Swiss Federal Department of Foreign Affairs, the Ministry of Foreign Affairs of the Republic of the Philippines, in cooperation with the ICRC and in collaboration with the Geneva Centre for the Democratic Control of the Armed Forces (DCAF) and the National Defence College of the Philippines (NDCP). The conference was attended by nearly sixty participants including representatives of eight governments from the region (Cambodia, Indonesia, Lao, Malaysia, Myanmar, Philippines, Thailand, and Vietnam), as well as local private security industry, civil society and international and regional experts.

The Montreux Document was endorsed by seventeen states when it was first adopted in 2008 and is now supported by fifty one states and three international organisations. To support outreach and raise awareness of the Montreux Document and its good practices, Switzerland and the ICRC launched a multi-year programme of regional conferences which were held in Chile (12–13 May 2011), Mongolia (11–13 October 2011), Australia (8–9 May 2012), Philippines (9–10 July 2013), and recently in Senegal (3–4 June 2014).