



Third Plenary Meeting of the Montreux Document Forum (MDF)

Background Information

This document will provide background information on the Third Plenary Session of the Montreux Document Forum (MDF) to be held on 27-28 April 2017.

Session 1: open to all States, international organisations and civil society

The aim of this session is to raise awareness of the Montreux Document (MD) and of other existing initiatives to regulate private military and security companies (PMSCs) as well as to promote dialogue on opportunities and challenges for the regulation of PMSCs.

- 1. Welcome and introduction by the Co-Chairs of the MDF**
- 2. Keynote speakers: overview of the industry and challenges for regulation**

There will first be a welcome and introduction by the Co-Chairs on MD and on the work of the MDF, followed by presentations by two keynote speakers on the industry and challenges for regulation at the international and regional levels.

- 3. Perspectives on opportunities and challenges for the regulation of private military and security companies: where do we stand?**

This panel will look more closely at the current state of regulation of PMSCs. The discussion will draw on the Mapping Study on national implementation carried out by DCAF as well as on reflections concerning other initiatives at the international, regional and national level. Based on this, challenges and opportunities related to the regulation of PMSCs and perspectives for the way forward will be discussed during the interactive discussion.

Session 2: open to all States and international organisations and, on invitation to panel 7, civil society

The aim of this session is to discuss good practices and implementation of the MD, including existing guidance tools, and to have a discussion on the use of PMSCs by humanitarian actors.

- 4. The Legislative and Contract Guidance Tools to assist States in regulating PMSCs: introduction and discussion on practical national implementation tools**

Item 4 will serve to introduce the existing guidance tools that have been developed in the framework of the MDF to assist States with the implementation of the rules and good practices of the Montreux Document. This introduction and discussion will serve as a basis for exchanges

during the two breakout sessions, in particular on issues related to terms of contract and authorization.

5. Small group breakout sessions: exchange of experiences on the regulation of PMSCs by Contracting, Territorial, Home and all other States

6. Wrap-up of breakout sessions by rapporteurs

Item 5 will consist of two breakout sessions that will be held in parallel in smaller groups and each will address the same topics. The small group format seeks to encourage more targeted and active discussions on specific implementation issues through a number of guiding questions. In item 6, there will be a wrap up by the rapporteurs.

During the second MDF plenary meeting held in January 2016, MD participants considered that the exchange of experiences on the implementation of the rules and good practices of the Montreux Document should continue within the MDF in order to help them to identify possible solutions to common challenges. During the second plenary, MD participants considered the first set of good practices provided in the MD, it is thus proposed, under item 5 to consider the second set of good practices contained in the MD. First, the breakout sessions will consider the good practices on terms of contract and terms of authorization, which address the need to include clauses in the contracts of PMSCs (by Contracting States) as well as in the authorization granted to PMSCs (by Territorial and Home States) to ensure respect for relevant national law, international humanitarian law (IHL) and international human rights law (IHRL). Clauses should include, for instance, requirements relating to the respect for quality criteria considered when selecting, contracting and authorizing PMSCs, as discussed during the second plenary meeting. With regard to Territorial States, good practices relating to the rules on the provision of services by PMSCs and their personnel seek to ensure that there are appropriate rules in place, for instance regarding the use of force and firearms and the possession of weapons.

Second, the breakout sessions are also encouraged to consider good practices related to monitoring compliance and ensuring accountability. These address aspects such as the provision of criminal jurisdiction by States for crimes under international and national law committed by personnel of PMSCs, nationally and abroad, as well as the establishment of corporate criminal responsibility for these crimes. They also address the importance of establishing non-criminal accountability mechanisms for improper or unlawful conduct as well as administrative and other mechanisms to monitor compliance with terms of contract/authorization and to take action in case of non-compliance. As previously discussed in the MDF, a number of challenges arise from jurisdictional issues, the extraterritorial application of national legislation and the multinational nature of PMSC activities. Importantly, the good practices recommend that Contracting and Territorial States address jurisdictional issues when negotiating agreements to guarantee proper coverage and appropriate civil, criminal and administrative remedies for misconduct, in order to ensure accountability of PMSCs and their personnel. Finally, the good practices encourage cooperation between investigating or regulatory authorities of Contracting, Territorial and Home States on matters of common concern regarding PMSCs.

Finally, the breakout sessions will also address other aspects relating to the implementation of the Montreux Document. One of the issues that has emerged, for instance, relates to third country nationals and their recruitment to work for PMSCs abroad despite this being prohibited by the States of nationality of PMSC employees. There are also concerns associated with ensuring respect for the rights and well-being of foreign nationals abroad. The MD contains obligations of, and good practices for, Contracting, Territorial and Home States relevant to

address these issues. Although it does not contain specific good practices for all other States, it does set out the obligations of these.

Guiding questions:

Terms of contract/authorisation and rules on the provision of services by PMSCs and their personnel (Montreux Document Good Practices 14-18, 40-42, 43-45 and 67)

1. Are the following elements included in terms of contract with, or terms of authorization of, PMSCs or their personnel, and if so, in what way: past conduct; training; lawful acquisition and use of equipment, in particular weapons; welfare of personnel? What other elements found in the Montreux Document are taken into account?
2. What rules/limitations on the use of force and firearms as well as on the possession of weapons by PMSCs and their personnel are included in terms of contract/authorization?
3. To what degree do PMSC contracts provide: the ability to terminate the contract for failure to comply with contractual provisions; that PMSCs obtain appropriate authorisations from the Territorial State; that appropriate reparation be provided for those harmed by misconduct?

Monitoring compliance and ensuring accountability (Montreux Document Good Practices 19-23, 46-52 and 68-73)

1. How do you provide for criminal jurisdiction in national legislation over crimes under national and international law committed by PMSCs and their personnel (e.g. providing for corporate criminal responsibility and/or jurisdiction over serious crimes committed abroad)?
2. How do you provide for non-criminal accountability mechanisms for improper or unlawful conduct (e.g. contractual sanctions, referral to competent investigative authorities, civil liability, reparations to those harmed)?
3. How do you cooperate with the investigating or regulatory authorities of other States in matters of common concern regarding PMSCs (e.g. establishment of mutual legal assistance programs between Contracting and Territorial States)?

Other aspects related to the implementation of the Montreux Document

1. What other measures have you put in place for overseeing and/or contracting PMSCs, and how are these implemented and enforced?
2. What other challenges have you encountered with regard to the regulation of PMSCs? How can these be addressed?
3. Have you addressed the issue of third country nationals at the national level and if so, how (e.g. measures to ensure that PMSCs and their personnel observe applicable national laws)? What measures has your State taken, or could take, in cooperation with other States to address this issue?

7. Use of PMSCs by humanitarian actors: informal exchange with the United Nations and civil society

Following up on the interest expressed by MD participants during the Constitutional Meeting of the MDF in December 2014, the aim of this panel is to have a thematic discussion on the challenges related to the use of PMSCs by humanitarian actors, for instance relating to the fact that the clients of PMSCs are not necessarily States. In addition to looking at practical challenges and good practices related to the regulation of PMSCs and to the role that those

contracting PMSCs can play, this panel will address the relevance of the Montreux Document in this regard. As noted in the preface of the Montreux Document, although primarily addressed to States, its good practices may be of value for other entities such as international organizations and NGOs. In addition to the Montreux Document, other international initiatives, including some of those highlighted in item 3, can guide humanitarian and other actors in responding to the challenges posed by the use of PMSCs.

Session 3: open to Montreux Document participants only

The aim of this session is to discuss concrete steps forward to support the promotion and implementation of the MD and to address other matters related to the work of the MDF.

8. Concrete steps for the way forward: supporting the promotion and implementation of the Montreux Document

The aim of item 8 is to foster an exchange among MD participants on existing initiatives, lessons learned and the way forward to increase support for the MD and to work towards its implementation, as well as to ensure the added-value and relevance of the MDF. It will seek to identify potential topics of interest to address within the MDF, needs for the development of new tools as well as in relation to training, technical assistance and cooperation. It will also address ways to build on outreach at the national, regional and multilateral levels.

Since its establishment, the Forum has enabled MD participants to have exchanges on issues related to outreach and implementation, and to share good practices and challenges on the regulation of PMSCs. Furthermore, a number of tools have been or are being developed to assist States in the implementation of the rules and good practices of the MD (Legislative Guidance Tool and Contract Guidance Tool). In addition, the MDF, through the International Code of Conduct Association (ICoCA) WG, has allowed interested MD participants to more closely follow the work of the ICoCA on certification, monitoring and complaints procedures and to provide advice on these issues. The work that has been carried out through the MDF has shown the utility of the Forum with regard to its stated objectives. The MDF is a positive example of a Forum where States are able to exchange challenges they face, as well as good practices, on the implementation of their obligations relating to the activities of PMSCs. However, it is necessary to ensure that discussions within the MDF continue to be substantive and that they address the concerns and needs of MD participants. In addition, it is important that possible future tools help address specific implementation challenges and respond to the needs identified by MD participants. Furthermore, it is important to continue reflecting on concrete measures to ensure a more geographically diverse and active participation within the MDF and to promote further support for the MD. Diversity would ensure that the issues identified for discussion as well as any tools to be developed are relevant for, and address, a wide variety of concerns and needs representative of the existing challenges in different regions of the world. These aspects could also contribute to greater participation and engagement in the MDF. In turn, enhancing the utility of the MDF would also contribute to increasing ownership and ensuring more diverse and active participation. Finally, the role that MD participants and the MDF can play to further promote the MD, the MD and its implementation, including through the provision of financial and/or in-kind contributions, should also be further explored.

Guiding questions:

1. How can the added-value and relevance of the MDF be ensured going forward, particularly as an avenue for working on the implementation and promotion of the MD?

2. What thematic issues related to the implementation of the rules and good practices of the MD should the MDF address? What other stakeholders, if any, should be involved in these discussions?
3. Is there a need to develop additional tools to assist in the implementation of the MD rules and good practices? If so, which ones, and what should their structure and content be?
4. What are the needs of MD participants relating to training, technical assistance and cooperation? What role can the MDF play in responding to these needs? For instance, should the MDF establish a system to identify training/assistance needs and to match these with States or organizations that would be willing to provide training to other MD participants? What financial and/or in-kind contributions could MD participants contribute in this regard?
5. Concerning outreach, what are your thoughts on how to ensure a more diverse and active participation within the MDF and to increase support for the MD? What role can MD participants and/or the MDF play to promote the MD to other States and regional and international organizations? What types of activities should be carried out?

9. Report of the Chair of the Working Group on the International Code of Conduct Association

10. Election of the Members of the Group of Friends and Chairs of the Working Groups

11. Any other business

12. Conclusions and next steps (by the Co-Chairs of the MDF)

The final items will serve to receive an update of the work of the ICoCA Working Group, as well as to elect new members of the Group of Friends of the Co-Chairs and the Chairs of the Working Groups. It will also provide an opportunity to discuss any other business and to provide conclusions to the meeting and identify potential next steps.