



The Working Group on the use of private military and security companies in maritime security (Maritime Working Group)

## **First exchange on the Working Group on the use of Private Military and Security Companies in Maritime Security**

*Background document for the meeting on 30 January 2018*

### **I. Foreword**

According to paragraph 13 of the *Working Practices of the Montreux Document Forum as adopted on 16 December 2014*, the Maritime Working Group is to serve as a forum to look into the relevance of the Montreux Document (MD) to maritime security. The *Working Practices* establish that the Working Group may exchange views on the interaction of the MD with relevant international organizations and initiatives on maritime security, as well as discuss ways to assist States in implementing the MD.

The Maritime Working Group does not seek to condone nor condemn the use of Private Military and Security Companies (PMSCs), which is a prerogative of flag States. Instead, it intends this to be an opportunity to bring together States, international organizations and companies in the search for good practices for States on how to regulate the maritime security industry and for an accountable protection of maritime trade. This is considered to be the most significant added value that the Working Group can and will have.

### **II. Priorities and possible outputs for 2018-2019**

The priorities set for the Working Group's first two years should take into consideration the following challenges:

- a.** Addressing possible ambiguities regarding the applicable international law and the MD itself: the Working Group should work towards making the MD more readable from a maritime security perspective. This means to provide orientation for a better discerning of the applicable law and for a more uniform interpretation of legal terms and relevant legal frameworks.

- b.** Exploring better good practices, solutions and policies for maritime security: discussing and exchanging good practices on regional capacity building and effective cooperation for the prevention and deterrence of, *inter alia*, piracy, robbery at sea and hostage taking, thereby supporting States and international organizations in the implementation of the MD in maritime context.
- c.** Establishing the basis for communication and collaboration with specialized international bodies: the Working Group should engage in productive exchanges with bodies with successful experiences at proposing and upholding quality standards for the use of private maritime security services, such as the International Maritime Organization (IMO).

In light of these challenges, the following central proposals for outputs to be obtained by the Working Group by 2019 may be considered:

- a.** The full implementation of a plan of action to outreach States, international organizations and PMSCs (including gathering new participant States for the MD in regions where maritime security issues are of greater concern).
- b.** A reference document for a maritime interpretation of the MD: an appealing and comprehensive guide that may answer frequent doubts concerning the interpretation of the MD from a maritime perspective. It is particularly critical to engage States and to identify and understand the roles of the different States involved, within the terminology in the MD.
- c.** A compilation of the Working Group's findings on good practices regarding the operation of PMSCs in maritime context. This may serve as a guide on how to deal with PMSCs in the maritime security framework (including contracted maritime security models and systems of oversight). Consultations should be done with States, Organizations (*e.g.* the IMO) and/or states that have had experience in the field.
- d.** Guidelines for the Working Group's interaction with relevant international organizations, bodies and initiatives on maritime security.

### **III. Topics for discussion at the meeting**

- **Valuing inputs from participants and other relevant stakeholders**

In preparation of the Working Group's first meeting, the Chair invited all participants to the Montreux Document Forum (MDF) to put forward their proposals for the Working Group's functioning and initial activities and outputs. In order to make the consultation procedure simple and more uniform, a four-question survey was forwarded<sup>1</sup>. Replies were taken into account for the drafting of this paper and will be presented at the Working Group's first meeting.

Additionally, it is important that the Working Group makes the most of the unique structure of the MD and the MDF and reaches out to the PMSC industry, civil society and other relevant international bodies. From its early stages, the Working Group should identify and consult all these stakeholders – in order to obtain expertise, vital information concerning the “who”, “what”, “where”, “why” and “how” questions, along with other relevant information – and make sure its outputs offer practical and significant value for everyone involved.

- **Rules of procedure and functioning**

The Working Group will need to decide on rules regarding its procedure and functioning. These rules should both reflect and serve the Working Group's mandate and coordination terms, as well as promoting effective communication and the appropriate assignment of tasks.

There was a suggestion for opening the Working group to observer States, consistent with the Forum's practice of being open to the participation of States which do not yet support the Montreux Document.

- **Drafting the Working Group's plan of action for 2018-2019**

In order to fully establish the Working Group and to promote it among relevant stakeholders and initiatives, a plan of action for 2018-2019 should be drafted and agreed upon by participants to the MDF. A primary draft of the plan of action will be presented for discussion in the meeting.

---

<sup>1</sup> (1) What are your views and expectations on what the Working Group should accomplish in the next two years (*i.e.* activities and outputs)? (2) What are your views and expectations on what the Working Group's working practices should be (*e.g.* interaction with the MDF and the ICoCA Working Group)? (3) What are your views and expectations on the Working Group's interaction with States that do not yet support the Montreux Document, other relevant international bodies, PMSC industry, clients, and civil society? (4) Are there any other suggestions or ideas you wish to convey at this moment?