



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

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Meeting of 30 January 2018

Chair's Summary

1. Welcome and opening remarks by the Chair of the Working Group

Mr. Mateus KOWALSKI, Director of the International Law Department, Department of Legal Affairs (Ministry of Foreign Affairs of Portugal)

Mr. Nuno CABRAL, Permanent Mission of Portugal in Geneva

The first exchange of the Maritime Working Group was attended by 13 Montreux Document Participants as well as the Secretariat. In the opening remarks, the Chair welcomed Montreux Document participants to this first Exchange of the Maritime Working Group and gave an overview of the background documents submitted to the Working Group, which included the *Agenda*, the *Background document prepared for the meeting on 30 January 2018*, and the *Plan of Action – Draft Document for Discussion*. The Chair noted these documents were intended to be departure points for discussion in order to set out a common roadmap for the Working Group amongst Montreux Document participants.

2. Priorities and outputs for the Working Group in 2018-2019: presentation

Outline of priorities and main outputs that may be considered by the Working Group in its first two years and presentation of replies to the survey of December 2017.

The Chair first thanked delegations for considering the survey circulated in December 2017 as well as for the written feedback already provided. The Chair then presented the main priorities and proposed outputs of the 2018-2019 Chairmanship:

a. Outreach:

The Chair proposed to develop and implement a plan of action to conduct outreach to States, international organizations, civil society, and the PMSC industry. Noting the underrepresentation of African States in the Montreux Document, the Chair discussed that much remains to be done to increase support for the MD in this region. In order to bring more States, in particular from Africa, to support the Montreux Document, the Chair noted that the issue of maritime PMSCs and the Working Group itself could be a useful mechanism for increasing engagement. By involving those States directly affected by maritime security concerns and regions where maritime security issues are of greater concern, this could be an important opportunity for increasing overall support for the Montreux Document. Furthermore, the Chair outlined that the plan of action for this outreach could be specifically targeting the audience of contracting States, coastal States, as well as flag States. Finally, the Chair underlined the intention to engage industry stakeholders such as ship-owners and PMSCs, identified experts and civil society, as well as international organisations, most notably the International Maritime Organisation (IMO) and the Contact Group on Piracy off the Coast of Somalia (CGPCS); Portugal is the co-chair of the Piracy Legal Forum of the CGPCS. This engagement with outside experts will be proposed to the Plenary for approval in accordance with Article 9 of the Working Practices of the MDF.¹

Capitalizing on a number of outreach activities undertaken by the MDF in recent years (such as the Regional Conferences in Senegal and Ethiopia, as well as bilateral outreach efforts undertaken by the Co-Chairs and the Secretariat, the Chair expressed eagerness to become a force multiplier through Portugal's partnerships and diplomatic networks. In addition, the Chair discussed the regional organisations and other meetings and forums in which Portugal takes part either as observer or member State, underlining the opportunities for sensibilisation and awareness raising related to the Montreux Document and its application in maritime settings. The Chair mentioned that the outreach plan of action could identify opportunities in the African Union, the Economic Community of West African States, and the meetings of the G7 Friends of the Gulf of Guinea Group (G7 ++ FOGG).

b. Reference Document for Maritime Interpretation of the Montreux Document:

The Chair also discussed a proposal to develop a concise reference document on the relevance of the Montreux Document in maritime settings. This document would serve to answer questions concerning the interpretation of the MD from a maritime perspective. The Chair noted that 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. In order to avoid duplication and to ensure synergy with established maritime forums, it is important to ensure the reference document is well situated amongst existing international frameworks governing private maritime security companies as well as established good practice guidelines.

¹ Article 9: Working Group meetings are open to all MD participants on a voluntary basis and, subject to a decision by the plenary meeting, to observers and expert stakeholders. Participation in the MDF plenary meeting is without prejudice to participation in the working groups. *Article 3 of the Working Practices of the Montreux Document Forum: The MDF plenary meeting is open to all MD participants and the International Committee of the Red Cross (ICRC). Other States, International Organizations as well as other relevant actors, such as expert stakeholders, may be invited by the MDF as observers.*

c. Compilation of the Working Group’s findings on good practices:

The Chair also proposed the development of a database or list of existing national legislative and oversight frameworks regarding the operations of PMSCs in maritime contexts. This compilation may serve as a guide for States drafting legislation or regulation on PMSCs in the maritime environments (including contracted maritime security models and systems of oversight). In order to ensure a broad survey, consultations could be undertaken with States, Organizations (*e.g.* the IMO) and/or States that have experience in the field.

d. Guidelines for the Working Group’s interaction with relevant international organizations, bodies and initiatives on maritime security:

Finally, the Chair included a proposal to set out working practices or rules of procedure for the Working Group, notably and as mentioned above, for interactions with observers and other experts.

4. Plan of action for 2018-2019: discussion

In the ensuing discussion related to the priorities and outputs and the plan of action, one Montreux Document participant recalled that the issue of private maritime security companies was discussed during the 2013 Montreux+5 Conference as well the 2016 Plenary Meeting of the Montreux Document. The MD is mainly targeted for PMSCs in land-based settings but contains references to other comparable situation; for this reason the MD is relevant in maritime settings. The discussions during this panel as well as the subsequent paper, *Looking at the Montreux Document from a Maritime Perspective*,² could be useful for the Working Group to take into consideration in its work.

Regarding outreach, Switzerland, as Co-Chair of the Montreux Document Forum, recalled the Regional Meeting of the MDF taking place in Costa Rica on 27-28 February 2018 and that all Montreux Document participants as well as all States in the Latin America and Caribbean Region have been invited to attend this implementation focused meeting. One State inquired how the Chair envisions outreach to take place at various events: whether this would be done on the basis of existing ongoing events related to the maritime security or new meetings would be organized. This State raised that it would be important to coordinate on this matter.

A number of delegations expressed that the reference document on the maritime interpretation of the Montreux Document would be very useful. One State mentioned that this would be a useful first step.

One State inquired about whether the compilation of ‘good practices’ would require consensus and agreement from Montreux Document participants; the State posited whether this could be simply a compilation of legislative, regulatory, and oversight practices regarding maritime PSMCs. One State expressed general support for the priorities and outputs proposed in the background documents. This State also placed particular emphasis on balancing substantive work and outreach: the more substantive the work, the more useful it will be to engage with other competent bodies in this issue. This State also put forward that sharing good practices on the regulation of PMSCs in maritime settings would be a useful place to start and would in fact support addressing the challenge of making the Montreux Document ‘readable’ from a maritime perspective. At the same time, the Montreux Document is not limited to armed conflict situations and its obligations and good practices are useful in other contexts; the State expressed that since maritime domain

² Anna Petrig, “Looking at the Montreux Document from a Maritime Perspective,” *Maritime Safety and Security Journal*, no. 2, 2016.

often takes place outside armed conflict, the Working Group could take into consideration the Law of the Sea.

A number of States raised a point of clarification: whether the compilation of good practices would be deposited on the proposed database as proposed in the Draft Document for Discussion. To this, the Chair responded that the format of this compilation is an open question and will be determined following further consultation with MD participants.

In response to the other comments, the Chair clarified that the main purpose of the proposed compilation of good practices is to understand how States are currently regulating maritime PMSCs. This would be a mapping of how relevant States are regulating maritime PMSCs as a neutral assessment and would not imply the endorsement of Montreux Document participants of any particular practice. The Chair also acknowledged the Regional Meeting taking place in Costa Rica; the Secretariat, MDF co-Chairs, and Portugal will discuss how to raise the maritime PSMC issue with relevant identified states in San Jose. The Chair emphasized its intended 'light' approach to meetings and agreed with delegations regarding the benefits to coordinate and capitalize on existing events relevant to the topics covered by the Maritime Working Group.

5. Working methods: discussion

A number of States expressed that a document outlining the working methods/rules of procedure for the Working Group would be beneficial. One State inquired as to whether this document would be a product of the Montreux Document Forum by consensus or whether this would be a proposal put forward by the Chair. Another State inquired about the limits, powers and competencies of the mandate of the Working Group and expressed that light/soft law rules of procedure would be welcomed. This State also expressed the great importance of subsidiarity of the Working Group; its mandate should fit within the broader picture of initiatives and frameworks on maritime PMSCs.

One State raised a question regarding the distribution of labour within the Working Group as well as how the Chair envisions the activities proposed in the Draft Document for Discussion to be carried out.

Several States expressed their support for engaging with other actors, in particular the IMO in order to build on rather than duplicate on previous efforts. One State expressed that engaging with UN entities, the IMO, and the CGPCS would be helpful as early as possible. This will give significant depth to the added value for the Working Group. One State raised the remark that the Montreux Document Forum is first and foremost a forum for intergovernmental discussions amongst participants of the Montreux Document. In order to avoid confusion, it would be important for the Chair of the Working Group to keep in mind that the ICoCA is another forum for States to have direct dialogues with industry and civil society.

In response to these comments, the Chair reiterated the intergovernmental nature of the Working Group and clarified that any interaction deemed desirable and interesting, would take place with the full knowledge and agreement of Montreux Document participants and without jeopardizing the core identity of the MDF. The Chair also confirmed its commitment to transparency and accountability to Montreux Document participants and that consensus will be promoted at all times. The Chair also recalled to participants that DCAF, as the MDF Secretariat can be relied upon for all communication and inquiries as well.

6. Any other business

Switzerland and ICRC as the Co-Chairs of the Montreux Document Forum raised that the next plenary meeting of the Montreux Document Forum will be held on 6-7 June 2018.³

7. Conclusions and next steps

The Chair of the meeting concluded by announcing that the next formal meeting of the Working Group will take place in September or October 2018. An additional discussion may be scheduled on the sidelines of the MDF Plenary meeting. The format and modalities of this will be announced.

³ Please note this is a correction to the originally proposed date.