



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

Outreach briefing note:

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

Are private military and security companies (PMSCs) active in maritime security contexts?

In response to piracy and other maritime security threats, the shipping industry has increasingly relied on private maritime security personnel to protect vessels, cargo, and seafarers. In 2016, the cost of contracted maritime security services totaled over 700 million USD in East Africa and over 345 million USD in West Africa.¹ This trend has resulted in a proliferation of weapons at sea and a high potential for the use of force. If the activities of these armed maritime security teams continue unregulated or if the awareness of existing regulations is not ensured, the actions of some actors could increase incidents of violence at sea and negatively impact human rights.

What is the Maritime Working Group within the Montreux Document Forum (MDF) and why was it established?

The Maritime Working Group serves as a platform to discuss the relevance of the Montreux Document (MD) to maritime security and how the MD could assist States in regulating the PMSC industry in maritime contexts.

The MD is geared towards private military and security services provided on land: primarily in armed conflicts but also in post-conflict situations and other comparable situations. Indeed, at the time of the launch of the MD in 2008, the prevalence of PMSCs in maritime contexts was marginal. Today, however, the protection of merchant ships from security threats like piracy and armed robbery at sea is one of the top business sectors of the PMSC industry. This expansion in terms of the operational area of PMSCs – from primarily dry land to including the oceans – triggered a debate on the applicability and pertinence of the MD in the maritime context. It is against this background that the MDF, co-chaired by Switzerland and the International Committee of the Red Cross (ICRC), agreed to establish a working group on the use of private security companies in the maritime environment. The Working Group was formally established by paragraph 13 of the *Working Practices of the Montreux Document Forum as adopted on 16 December 2014*, which states 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 is currently chaired by Portugal.

¹ Oceans Beyond Piracy, The State of Maritime Piracy 2016: Addressing the Economic and Human Cost, <http://oceansbeyondpiracy.org/reports/sop/summary>.

How can States get involved?

The Maritime Working Group is part of the MDF and is preferably a platform for States and international organizations that participate in the MD. Becoming a participant to the MD does not create any new legal obligations and has no additional financial costs. Joining the MD is a simple process: States and international organizations are invited to communicate their support for the MD to the Swiss Federal Department of Foreign Affairs through an official letter or diplomatic note. States and international organizations can use the following template to express support: <http://www.mdforum.ch/en/get-involved>. Participating States can become involved in the Maritime Working Group by attending and contributing substantively in meetings and by collaborating with the Chair of the Working Group on the priorities and activities set out by the Working Group. There are no obligations or requirements of States' participation; however, MD participants are warmly welcomed to take an active role in the Maritime Working Group's activities.

What is the Maritime Working Group's position on the use of maritime PMSCs?

The Montreux Document, its Forum, or the Maritime Working Group do not condone nor condemn the use of PMSCs, which is generally a prerogative of flag States, and dependent on national laws where applicable, consistent with international law. Instead, it intends to bring together States, international organizations, and companies to discuss and explore practices for States on how to regulate the maritime security industry and promote accountability in the protection of maritime trade, if the decision has been made to contract PMSCs.

Who can attend the meetings of the Maritime Working Group?

The meetings of the Working Groups of the MDF 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. Working Group meetings are convened on the initiative of the Chair and/or on request by MD participants.

What are the objectives of the Maritime Working Group for its initial two years?

Following initial discussion, the Maritime Working Group decided to undertake four objectives for 2018-2019:

1. Establishing itself on the maritime security scene, by carrying out the mandate referred to in the MDF working practices and initiating communications and interaction with specialized international bodies.
2. Supporting the MDF in addressing possible ambiguities regarding the application of the MD to maritime security. The Maritime Working Group will work towards developing a reference document intended to make the MD more readable from a maritime security perspective. This project is not intended to create a standard setting document or to propose a specific regulatory approach for the use of maritime security, but would provide a resource for States seeking to use the MD specifically to support regulation of PMSCs in maritime contexts.
3. The Maritime Working Group will be launching an open-ended exercise on a compilation of practices regarding the regulation of PMSCs in maritime contexts. In this way, the Maritime Working Group seeks to support MD participants in more effective implementation of the MD in maritime contexts through discussing and exchanging practices for the prevention and deterrence of, *inter alia*, piracy, robbery at sea and hostage taking.
4. The Maritime Working Group will promote the MD and the MDF in the context of maritime security, by pursuing an outreach plan especially aimed at flag States and/or States located in high risk areas where the presence of private armed security is more common. In addition to MD Participant States, this outreach will also target other States to encourage participation in the MD and in the Working Group. This initial approach is without prejudice to the Forum reaching out to other target States in the future, namely States with particular interest in the cargo and/or personnel on board ships.