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## **Fourth Plenary Meeting of the Montreux Document Forum (MDF) 6-7 June 2018, Geneva**

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### **Chairs Summary**

#### **1. Introduction**

The fourth plenary meeting of the Montreux Document Forum (MDF) took place on 6-7 June 2018 in Geneva, Switzerland. In the year of the 10th anniversary of the finalization of the Montreux Document, the plenary meeting sought to take stock of the current state of the regulation of private military and security companies (PMSC), discuss recent developments and emerging issues in the PMSC field, and provide a space for an informal exchange among Montreux Document participants on the implementation of the Montreux Document.

The meeting was chaired by Switzerland (represented by Ambassador Daniel Klingele, Deputy Director of the Directorate of International Law at the Swiss Federal Department of Foreign Affairs) and the International Committee of the Red Cross (ICRC, represented by Dr. Helen Durham, Director of International Law and Policy) as initial co-chairs of the MDF. The present summary has been prepared by the co-chairs and provides a brief account of the discussions during the meeting, as well as general orientations and indications for the way forward. It is the sole responsibility of the co-chairs and does not purport to reflect a consensual view of participants.

The fourth plenary meeting of the MDF was divided into three sessions. The first session was open to all States, international organizations and invited representatives from civil society and the PMSC industry. The second session was open to all States and international organizations as well as to those representatives from civil society who were invited to participate as panellists in the meeting. The third session was open only to Montreux Document participants. A number of presentations delivered during the meeting are available on the website of the MDF under <http://www.mdforum.ch/>.

## 2. PMSC regulation 10 years after the finalization of the Montreux Document

The aim of the first session was to see where PMSC regulation stands 10 years after the finalization of the Montreux Document and to look at recent developments and emerging issues in the use of PMSC.

The co-chairs opened the meeting with a brief presentation of the process that led to the development of the Montreux Document and the MDF and the reasons for it. Following that, a first keynote speech was delivered by the ICRC's Vice-President Gilles Carbonnier on '**The Genesis of the Montreux Document and its Current Relevance**', and a second by GardaWorld International Protective Services' General Counsel, Sylvia White, on '**The Evolvement of the Industry**'.

Mr. Carbonnier recalled why the Montreux Document was developed and reiterated the main objectives of this intergovernmental process. He highlighted the significant growth of support for the Montreux Document by States and International Organizations. Mr. Carbonnier addressed the role of the Montreux Document in clarifying the international legal regime applicable to PMSC and in demonstrating that these companies do not operate in a legal void under international law. He then discussed the good practices listed in the Montreux Document and their usefulness with regard to national implementation and regulation of PMSC under domestic law. Mr. Carbonnier concluded by highlighting the need to: 1) focus on national legislation and implementation; 2) broaden support for the Montreux Document via further outreach; 3) explore the usefulness of the Montreux Document outside armed conflicts; and 4) understand the Montreux Document in the broader landscape of initiatives on PMSC regulation.

Ms. White presented her views on the evolvement of the PMSC industry over the past decade. She explained that in 2008, there was a false perception that the industry lacked rules and that it was operating in a legal void. Ms. White then explained why parts of the PMSC industry developed international standards for private security services, and, more generally, have an interest in complying with business and human rights standards. She also emphasized that the focus of the industry is on security services – not military services – and that most companies provide exclusively defensive services. Finally, Ms. White suggested possible next steps for effective industry regulation, which include educating and engaging with PMSC customers (both government and commercial) to ensure that they demand responsible security services; the need for PMSCs to become members of the International Code of Conduct Association (ICoCA) and subject themselves to the ICoCA's monitoring and reporting; and continuing to improve joint efforts on business and human rights.

### **3. Report on and follow-up to the MDF regional meeting in Costa Rica by a representative from Costa Rica**

Following the keynote speeches, Maricela Muñoz Zumbado, representative from Costa Rica, provided an **overview of the Montreux Document Forum regional meeting**, which was held in Costa Rica in February 2018. She highlighted that the regional meeting was a great success, that attendance was high and that the discussions showed considerable progress with regard to PMSC regulation in the region and the usefulness of the Montreux Document in situations outside of armed conflict. Ms Muñoz Zumbado also explained the numerous challenges remaining in the region. She highlighted that formal recommendations were not adopted during the regional meeting, but that the following next steps were identified: continuation of raising awareness of the Montreux Document; assuring follow-up of the regional meeting; gaining support from regional organizations in promoting responsible PMSC regulation; and providing support to national regulators.

### **4. Recent developments and emerging issues in the use of PMSCs**

Still during session 1, participants also had the possibility to look more closely at **recent developments and emerging issues in the use of PMSCs**. As a background for the discussion, three experts were invited to present on specific issues. First, Tim Maurer, Co-Director of Cyber Policy Initiative at Carnegie Endowment for International Peace, presented on how PMSC are used in the cyber realm, with a particular focus on offensive cyber operations. Afterwards, Christopher Kinsey, Reader in Business and International Security at Kings College London, discussed challenges and questions relating to private military services. As a third panellist, Anna Marie Burdzy, Project Officer at the Geneva Centre for the Democratic Control of Armed Forces (DCAF), presented on the need to develop guidance for States and PMSC regarding the regulation of the use of force by PSMC personnel. Following the presentations, the discussion evolved around the relevance of the Montreux Document with respect to future services and activities of PMSCs. Participants also discussed specific issues related to the regulation of PMSCs in cyber space. Some delegations expressed that they would find guidance on the use of force useful and supportive of their implementation efforts.

### **5. Overcoming Challenges in the Implementation of Montreux Document Good Practices**

Session 2 aimed at providing an opportunity to exchange about particular challenges relating to the implementation of the Montreux Document, its relevance outside situations

of armed conflict, and at situating other processes and initiatives that work on the regulation of PMSCs. The session was divided into three panels.

The first panel focused on **overcoming challenges in the implementation of Montreux Document Good Practices**. Dimosthenis Chrysikos, Crime Prevention and Criminal Justice officer at the UN Office on Drugs and Crime (UNDOC), discussed the key tools of UNODC to promote international cooperation and mutual legal assistance in criminal matters and their relevance to the operations of PMSC. Obafemi Ajibola from the New Nigeria Foundation presented the work of the [Private Security Governance Observatory](#) as an example of the possible contributions of civil society organizations to the monitoring and oversight of PMSC. Mr. Ajibola outlined how the Observatory supports building capacity of civil society organisations to reinforce dialogue and to identify practical ways to improve and strengthen monitoring of PMSCs. Ian McKay, attorney-adviser at the United States of America's Mission to the UN in Geneva, concluded this panel with an overview of the US' experience in defining training requirements for PMSCs in the licensing and hiring process for US government contracts. In the discussions following the panel presentations, participants described their State's experience regarding training and recruitment of PMSC personnel. The discussion also focussed on how PMSC monitoring is undertaken by States, with delegations highlighting their monitoring efforts, and how monitoring by States and civil society organizations can complement each other.

## **6. The relevance of the Montreux Document in situations other than armed conflicts**

The second panel discussion of session 2 examined the **relevance of the Montreux Document in situations other than armed conflict**. Tilman Rodenhäuser, Legal Adviser at the ICRC, recalled that the Montreux Document focuses primarily on the use of PMSC during armed conflicts and contains a number of statements that are based on international humanitarian law, which apply only in times of armed conflict. He also underlined that other statements reiterate norms of international law that apply to the use of PMSC at all times and that the good practices in the Montreux Document are relevant irrespective of whether PMSCs are used in times of armed conflict or outside armed conflicts. Maricela Muñoz Zumbado, representative of Costa Rica, highlighted the added value of the Montreux Document for States when regulating private security companies operating outside armed conflict by presenting the experience of Costa Rica. Ms. Muñoz Zumbado discussed that the Montreux Document has been very useful for Costa Rica, a country with no armed conflict and indeed no armed forces, to improve national legislation in line with international good practice. Simon Williams of Oceans Beyond Piracy provided an overview of the current threat posed by piracy and how PMSCs are employed to protect vessels against various forms of crime. He emphasized the complexity of regulating PMSCs on vessels, which often necessitates collaboration and coordination

among various States. The ensuing discussion initially focused on the phenomenon of 'floating armories'. The discussions also emphasized the pragmatism that underlies the Montreux Document and the fundamental premise of the Montreux Document, which is that States cannot contract out their responsibilities by using PMSCs.

## **7. Situating other processes relating to the regulation of PMSCs**

The third panel of session 2 sought to **situate other processes relating to the regulation of PMSC**. Gabor Rona, Chairperson of the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, emphasized the working group's objective of preventing human rights violations by PMSCs, ensuring accountability for their actions, and providing remedies for victims. Rona presented the various activities of the working group over the past years, including a study on PMSC regulation in various countries of the world, the handling of individual complaints, and the organization of expert meetings. Jamie Williamson, Executive Director of the International Code of Conduct Association (ICoCA), presented the mandate and development of the ICoCA, its main functions (certification, monitoring, complaints handling), the Association's recent field monitoring missions, and its thematic focuses. Williamson emphasized that among those countries in which ICoCA members operate, only one fourth are Montreux Document supporters. Mr. Williamson expressed the need and potential added value of joint outreach efforts among the ICoCA and MDF initiatives. Frédéric Chenais, Programme Officer, Human Rights and Security Division of the Federal Department of Foreign Affairs, Switzerland, presented the objectives and work of the Voluntary Principles on Security and Human Rights. He explained the roles that States, companies, and civil society organizations play in this multi-stakeholder initiative, and emphasized possible complementarity between the Voluntary Principles and the Montreux Document. The discussion focused on the relationship between the different initiatives, and on the question of the impact that these initiatives had on the conduct of PMSCs.

## **8. Report of the Chairs of the Working Groups**

The aim of session 3 was to discuss the next steps to support the promotion and implementation of the Montreux Document and to address other matters related to the work of the Montreux Document Forum.

The chair of the MDF **working group on the International Code of Conduct Association**, the United States of America, reported that since the last plenary meeting in 2017, four working group meetings have been organized. During these meetings, Montreux Document participants were informed of amendments to the ICoCA Articles of

Association, had the possibility to provide feedback on these, and were frequently informed of the ICoCA's operations and strategic planning. Working group meetings have enabled informal exchanges between Montreux Document participants and the ICoCA's executive director. It was reiterated that attending working group meetings does not imply, or require, States to be ICoCA members.

The chair of the **working group on the use of private military and security companies in maritime security**, Portugal, reported that since the last plenary meeting in 2017, two working group meetings have been organized in order to discuss the goals, working methods, a plan of action, and an outreach document for the working group. Portugal also reported on outreach it conducted especially to African States that are engaged in the fight against piracy. The plenary meeting unanimously endorsed a 'Plan of Action' for the working group, which sets out the activities that the working group will undertake in the coming year. Portugal announced that the next working group meeting will discuss a first draft of a reference document for a maritime-focused interpretation of the Montreux Document.

## **9. Discussion of next steps and yearly planning**

### *Follow-up of the MDF regional meeting in Costa Rica*

Engagement with States from the Latin America and Caribbean region has accelerated strongly with the MDF regional meeting in Costa Rica. For the first time, the Montreux Document Forum gathered outside Geneva. The meeting assembled different government agencies from States supporting the Montreux Document and from other States, showing that effective PMSC regulation needs to involve different national agencies, including technical national regulatory bodies; Ministries of Defense; Ministries of Interior and Police, Ministries of Foreign Affairs, and Ministries of Justice.

Following the meeting, the Central America Integration System and the Caribbean Community has engaged directly with the MDF to strengthen its capacity and knowledge in regulating PMSCs. Several individual States have also contacted the MDF Secretariat to seek technical support and advice on how to implement the Montreux Document, underlining the relevance of the Montreux Document and the usefulness of the implementation guidance developed within the MDF (e.g. The Contract and Legislative Guidance Tools).

### *What role can regional organizations play in promoting the Montreux Document*

With regard to the role that regional organizations can play in promoting the Montreux Document, representatives from regional organizations emphasized that such organizations can be particularly useful in engaging their members to support the Montreux Document, that such organizations can provide a regional forum for States to discuss challenges in the regulation of PMSCs, that they can develop their own regional codes of conduct for PMSCs, and also establish reporting schemes. Other Montreux Document participants stressed that focusing outreach on regional organizations can indeed be promising and effective. For instance, Portugal, as chair of the Maritime Security working group, highlighted that it will engage certain regional organizations regarding maritime security. Another suggestion was to engage with regional organizations in Asia, such as ASEAN.

### *Ensuring sustainability of the MDF and strengthening implementation support*

To provide an example of a fundraising tool that can help to ensure sustainability of the MDF and enable work in outreach and implementation, DCAF presented its Security and Human Rights Implementation Mechanism (SHRIM). The SHRIM is a multi-donor trust fund committed to improving security and human rights good practice. The Governance structure of the SHRIM ensures transparent and cost effective management with a minimum of bureaucracy. A steering committee comprised of the mechanism's donors and DCAF is responsible for setting the SHRIM's strategy and priorities; for approving the mechanism's annual work plan, budget, and project proposals; and for monitoring activities. A small unit located within DCAF's Public-Private Partnerships Division supports the steering committee as a secretariat.

In follow-up to this short briefing, Montreux Document participants supported the idea of receiving a draft proposal for a multi-donor trust fund for the MDF, which will be prepared by DCAF.

## **10. Election of members of the Group of Friends**

Montreux Document participants reelected Madagascar as member of the Group of Friends of the Chair for a period of two years. The co-chairs informed Montreux Document participants that no State from Eastern Europe applied for the position of member of the Group of Friends of the Chair. It was agreed that Switzerland and the ICRC would continue consultations with Montreux Document participants interested in taking up this role. Montreux Document participants interested in becoming members of the Group of Friends were invited to indicate their interest to the Swiss Mission in Geneva at any stage.

The membership of China, the European Union, and the United States of America continues. Costa Rica's membership ends in December 2018.

### **11. Any other business**

The co-chairs recalled that they were elected during the constitutional meeting held in December 2014 as initial co-chairs and indicated their willingness to continue for another year. Montreux Document participants re-confirmed Switzerland and the ICRC as co-chairs.

### **12. Conclusions**

In closing the meeting, the following next steps were outlined by the co-chairs:

- The next Montreux Document Forum plenary meeting will be held in 2019.
- Montreux Document participants are invited to indicate their interest in topics to be discussed at the next plenary meeting to the Swiss Mission in Geneva at any stage.
- Montreux Document participants interested in becoming chair of one of the Working Groups in 2019 or to join the Group of Friends of the Chair are invited to communicate their interest to the Swiss Mission in Geneva at any stage.
- The next meetings of the Working Groups will be convened by the respective chairs after the summer break.

Switzerland and the ICRC sincerely thank all Montreux Document participants – and all other stakeholders that attended the 4<sup>th</sup> Plenary Meeting – for the time dedicated and for the continuous support for the MDF.