



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

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

Meeting of 29 November 2018

Chair's Summary

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

The third exchange of the Maritime Working Group was attended by Montreux Document Participants, the Co-Chairs of the Montreux Document Forum – Switzerland and the ICRC, the Secretariat and a Representative of the International Code of Conduct Association. The opening remarks were held by Portugal as the current Chair of the Working Group. Participants were welcomed to the third exchange of the Maritime Working Group and a brief summary of the agenda was provided.

2. The Montreux Document from a Maritime Perspective

First exchange on elements of a Reference Document on the interpretation of the Montreux Document from a Maritime Perspective

Mateus Kowalski, Director of the International Law Department, Department of Legal Affairs of the Ministry of Foreign Affairs of Portugal and Chair of the Maritime Working Group, recalled that one of the aims of the Montreux Document Working Group on Maritime Security is to establish a Reference Document that is based on the Montreux Document. Further, the Chair explained the differences between land- and water-based private military and security companies. The Chair stressed that the peak of piracy and armed robbery attacks on boats in the Western Indian Ocean had fostered the development of the private security sector operating at sea. Mr. Kowalski illustrated this in numbers: in 2017, the cost of contracted maritime security in the Western part of the Indian Ocean and East Africa amounted to 219 million USD, respectively 215 million USD. This increased use of private military and security companies at sea and resulted in a proliferation of weapons and therewith of violence and use of force at sea.

Mr. Kowalski further explained that the new private military and security landscape triggered a debate on the applicability and pertinence of the Montreux Document in the maritime context, given the distinct nature of actors present. The Reference Document thus aims to build on and interpret the Montreux Document from a maritime perspective.

Important difficulties to interpret the Montreux Document from a maritime perspective according to the Chair of the Working Group

- Activities of maritime PMSCs differ from land-based PMSCs as they are mostly security focused.
- Maritime private military and security companies usually do not operate in situations of armed conflict. On the other hand, many other branches of International Law not foreseen in the Montreux Document are of importance for the Reference Document, especially the International Law of the Sea and International Criminal law.
- The three-State approach taken by the Montreux Document is not obvious in a maritime environment, partly due to the vitality of non-State actors in the maritime environment.
- Lastly, there are a high number of applicable jurisdictions and the consequent conflicts between them.

The Chair stressed that the Reference Document is not intended to be a standard-setting mechanism or an exhaustive exercise; instead, it aims to provide further guidance on the maritime environment to those that already rely on the Montreux Document. In terms of methodology and structure of the Reference Document, the idea is to base it on the Montreux Document and further develop the Document through literature and case-law review as well as a compilation of existing good practices. Therefore, the Chair of the Maritime Working Group will also consult with outside experts such as NGOs, outside fora, and at a certain stage with the maritime security industry.

Three actors are of specific importance according to the WG Chair

1. The clients in a maritime scenario are mostly constituted by private companies as opposed to States.
2. Territorial States are traditionally understood as the territory in which PMSCs operate in the Montreux Document. In the maritime sphere, this entity includes three States of interest;
 - i. Flag States, constituting the States with the most extensive capacity to regulate conduct on the ships
 - ii. Coastal States
 - iii. Port States.
3. Finally, the home State, being the State the PMSC is registered in, has an important role for the type of requirements that the operators have to meet, including training, background checks, etc.

The current form of the Reference Document does not reflect how it will be structured in its final stage. Some Montreux Document provisions currently included in the Reference Document can be ignored in the maritime environment and will thus be excluded at a later point.

Next steps for the Reference Document

- First draft ready to send out for participants' initial comments.
- Parallel, the Chair seeks to conduct consultations with relevant experts and the industry.
- One month before next Working Group meeting, the document shall be distributed to participants for their comments.
- First reading of the Draft of the Document in 2019 at a side closed door session at the time of the Plenary.

The discussion revolved around the consultation phase of the Document. A participant inquired on the possibility to respond to the draft before the next meeting. Participants mentioned that especially for the

second part on State practices, it might be useful to allow for States to submit their best practices beforehand. This was appreciated and deemed useful by the Chair of the Working Group.

International Code of Conduct Association from a Maritime Perspective

Anais Laigle, Project Officer at the International Code of Conduct Association, introduced the International Code of Conduct Association (ICoCA) from a maritime perspective. The Association is based on the International Code of Conduct for Private Security Providers (ICoC), which articulates obligations of private security companies and was developed in 2010. The representative of ICoCA explained that the ICoCA is a multi-stakeholder initiative with three pillars - governments, civil society organisations and private companies - which all sit on the board.

General information on ICoCA members

Ms. Laigle explained that there are currently 94 industry members of the Association, 16 of which only offer maritime security services and 28 which offer both maritime and land-based security services; meaning almost 50% of ICoCA members offer maritime security services. In 2017, the Association had 13 new members, 5 of which (mainly from India and China) provided maritime security services. Member companies operations are mostly on the West Coast of Africa, the Red Sea and the Gulf of Aden. These numbers are based on information provided by companies during their application process to the Association and may have changed since then, since business processes are quite flexible. After 2015, there was a decrease in member companies providing maritime security, likely to be related to the decrease in piracy off the coast of Somalia. Some companies have also dissolved or changed services. In terms of size, 23 of the 28 companies providing maritime security are considered as small (meaning annual revenues up to 20 million USD).¹

Certification

Ms. Laigle underlined that member companies must be externally certified to an ICoCA recognised standard, which comprise PSC1, ISO 18788 and ISO 28007 for maritime companies. The certification is one of the requirements for membership of ICoCA industry members. As of now, the members certified by ICoCA are mostly land-based, but there are a number of maritime security companies that have been certified to external standards without yet seeking certification by the Association. Ms. Laigle explained that the Association identified limitations in ISO 28007 in comparison to the ICoC, including the necessity to request more information on human rights related aspects, such as human rights risk assessment, anti-corruption and anti-bribery processes and grievance mechanisms. This might result in some challenges and additional efforts from maritime companies in adapting their processes to the ICoCA certification.

Complaints mechanism

Ms. Laigle briefly introduced the ICoCA Complaints mechanism. The Association processes alleged violations of the ICoC by member companies. So far, the Association has received 27 complaints, 8 of which since January 2018. The majority of those complaints related to maritime security companies, mainly concerning labour concerns. Most of the complaints were against non-member companies. When the complaint was against a member company, in almost all the cases, the ICoCA was not the main addressee of the complaint. And finally, none of the complaints alleged a violation of the ICoC. The Association recently published a guidance tool on how companies can establish effective internal grievance mechanisms. However, there is a need for more research on grievance mechanisms of maritime security companies.

¹ In order to portray the most recent data, the numbers in this paragraph were slightly updated retrospectively, as the General Assembly of ICoCA took place one day after the Working Group meeting.

Strategy

Ms. Laigle further mentioned that the Association's Board is currently drafting a strategic plan for 2019 to 2023 that shall guide and prioritise ICoCA's activities. Five general goals have been drafted, such as the development of effective systems to evaluate compliance with the ICoC and engaging with other relevant actors relevant to the Code. The plan has been reviewed by the General Assembly on 30 November 2018 and will be launched early 2019.

Challenges

Ms. Laigle explained that membership is extremely diverse, both in terms of services offered but also in terms of operating and domicile countries. Although this enriches membership, it adds further complexities relating to oversight and monitoring. Further, the Association aims to increase the role of insurance companies and incentivise them to work together with the Association on private security standards. Last, the strengthening of procurement is an important endeavour of the Association.

The presentation was well received by the attendees of the meeting. The Chair of the Working Group stressed the potential of stronger engagement and cooperation between the ICoCA and the Working Groups. Moreover, a participant inquired whether it would be possible to receive further information on standards for the certification of maritime security companies, which Ms. Laigle agreed to provide. In addition, a question on the complaints mechanisms came up. Ms. Laigle explained that the Association does not have a mechanism in place for non-members of the Association, yet it aims to channel complaints regarding non-members to the appropriate fora. The same goes for labour issues that are outside of the scope of the conduct. In terms of a violation of the Code by a member company, there is a procedure that allows the Association to seek information on the ground. Finally, it is worth noting that the ICoCA complaints mechanism does not offer any remedies but rather facilitate access to grievance mechanisms that may offer effective remedies.

3. Debriefing on the side-event “The Montreux Document On Private Military And Security Companies” in New York

Mr. Jonathan Cuénoud, Legal Officer, Directorate of International Law, Swiss Federal Department of Foreign Affairs, summarized the Montreux Document outreach event held in New York, organised on the margins of the UN General Assembly. Mr. Jonathan Cuénoud summarized the different points of the agenda of the outreach event. After opening remarks by Switzerland and Portugal, Christopher Harland, Deputy Head of Delegation of the International Committee of the Red Cross to the United Nations, gave an overview of the Montreux Document and the Montreux Document Forum. Dominique Favre, Deputy Head of the Swiss Mission to the United Nations, then touched upon some future issues. The second part of the agenda focused on the Working Groups of the Montreux Document Forum. First, Katherine Gorove, Attorney of the US Department of State, Office of Legal Adviser, briefly presented the Working Group on the ICoCa. Thereafter, Mateus Kowalski, Director of the International Law Department of the Department of Legal Affairs from Ministry of Foreign Affairs of Portugal, presented the Maritime Working Group.

In summary, it was a very interesting and substantial meeting. The Co-Chair of the MDF emphasized the hope that the meeting constitutes a first step in a process to increase the echo of the Montreux Document in New York, and will plan further step to follow up on the achievements. Last, Mr. Cuénoud stressed that the event illustrates that undiscovered outreach opportunities might be of significant potential.

4. Any Other Business

The Chair of the Working Group will determine the exact date of the next meeting with the Co-Chairs of the Montreux Document Forum and the Secretariat. Mr. Mateus Kowalski stated that as possible dates the end of March or April. Prior to the meeting, the Chair of the Working Group will reach out to participants for their best practices on governing maritime security companies. A first draft of the Reference Document shall be disseminated one month before the Working Group meeting. The chair emphasized that any other questions or suggestions are welcome.