

SIXTH PLENARY MEETING OF THE MONTREUX DOCUMENT FORUM

19 NOVEMBER 2020, ONLINE

CHAIRS' SUMMARY

1. INTRODUCTION

The sixth Plenary meeting of the Montreux Document Forum (MDF) took place on the 19th of November 2020. It was organised online for the first time, allowing representatives to join from capital. The meeting was chaired by Switzerland (represented by Ambassador Nathalie Marti, Deputy Director of the Directorate of International Law at the Swiss Federal Department of Foreign Affairs) and the International Committee of the Red Cross (represented by Dr. Cordula Droege, Chief Legal Officer and head of the Legal Division) as co-chairs of the MDF. The present summary provides a brief account of the discussions during the meeting. This includes 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 sixth Plenary meeting of the MDF was open only to Montreux Document participants (hereafter, MD participants).

The co-chairs opened the meeting with a brief presentation underlining the objectives and relevance of the MD today, and introducing the two elements of the agenda the meeting would focus on:

- the proposed reform of the MDF;
- the Reference Document – Elements for a maritime interpretation of the MD.

The co-chairs highlighted that on 29 September 2020, the Republic of Malta became the 57th State to officially support the Montreux Document and thanked Malta for its support. The regional meeting for the Middle East and North Africa, which was initially scheduled for March 2020, could unfortunately not take place due to the current circumstances. A meeting focussing on the Middle East and North Africa will be convened in early 2021 in an online format.

2. DISCUSSION ON THE REFORM OF THE MONTREUX DOCUMENT FORUM

The co-chairs introduced the (attached) non-paper, which had been distributed to participants beforehand. The non-paper summarized the co-chairs' proposal for an amendment of the Working Practices of the MDF. The co-chairs shared also the following analysis with participants.

Following its foundation in 2014, there had been five Plenary meetings of the MDF held in Geneva. There had also been one regional meeting in Costa Rica in February 2018. The MDF also facilitated the development of several tools, such as the *Legislative Guidance tool* and the

Contract Guidance Tool, to assist States and international organizations in the implementation of the rules and good practices of the Montreux Document.

Support to the Montreux Document had grown significantly, from 17 States in 2008 to 57 States and 3 IOs in 2020. However, the involvement of participating States in MDF plenary meetings had decreased. In particular, few regulatory practitioners were attending Geneva-based meetings, although the MDF was originally meant to facilitate exchange among them.

To address these developments and evolving needs of participants, the co-chairs suggested transforming the MDF to make the Forum more flexible and thereby allow to address challenges as they arise. The fixed rhythm of meetings would be replaced by **more flexible calendar**. **Meetings would be convened *ad hoc***, as needs arise, and through ways and means **allowing for participation of the concerned practitioners, which may include for example, organizing digital exchanges or meetings in specific regions**.

Jonathan Cuénoud, Legal Advisor on IHL at the Swiss Federal Department of Foreign Affairs, summarized the **amendments proposed by the co-chairs to the Working Practices**, and previously circulated to all MD participants, and required to implement this reform:

Regarding the **Plenary meetings**, the changes proposed by the co-chairs were reflected throughout the document, namely in **new paragraphs 2, 3, 5, 6, 7, 12, 13, 15 and 16** as well as **former paragraphs 3, 4 and 5**. Plenary meetings would be convened as needed to take organizational decisions or to address new and important challenges. Administrative decisions might also be taken by written procedure, namely emails.

In terms of the **Working Groups**, the changes suggested by the co-chairs were mainly reflected in the **new paragraph 7**.

Prior to the meeting, one MDF participant had proposed an amendment to the text, for the chair's two-year term to be renewable under written silence procedure. In line with **new paragraph 12**, the MDF would elect the co-chairs or chairs of the Working Groups by digital means, including emails. Communications would be addressed by the co-chairs to all MD participants and leave enough time for them to respond.

Concerning the **regional meetings**, the co-chairs acknowledged the value of organizing regional MDF meetings to address challenges specific to certain regions and to reach out to States in regions where the Montreux Document does not yet enjoy wide support. It would still be possible for MD participants from a specific region to organize regional meetings in collaboration with and support of the co-chairs and the Secretariat.

As there would likely be fewer MDF plenary meetings, the **Group of Friends of the co-chairs** would no longer be convened, as reflected in **the former paragraphs 2 and 5**.

Regarding the **Secretariat**, the co-chairs suggested that the DCAF would keep its role as the Secretariat. Its functions were reflected in **new paragraph 11**. The Secretariat would still be funded through voluntary financial and in-kind contributions and the co-chairs encouraged MD participants to contribute adequately to the funding needs.

The purpose of the MDF would remain unchanged, as provided for under **paragraph 1**: the MDF would keep providing a venue for informal consultation, coordination and communication among MD participants in relation to outreach, implementation and good practices.

Subsequently, Ambassador Nathalie Marti opened the floor for a discussion on the proposed way forward and the changes proposed by the co-chairs. Several MD participants welcomed and supported the proposals for amendments put forward by the co-chairs. Such proposals were seen as allowing for greater flexibility in the exchanges between MDF Participants. No MD participant opposed the proposals or put forward any further amendments. For this reason, the co-chairs concluded that the changes proposed seemed agreeable to all MD participants, and that the new version of the Working Practices could thus be adopted.

3. REPORTS OF THE CHAIRS OF THE WORKING GROUPS

The chair of the MDF Working Group on the International Code of Conduct Association (ICoCA Working Group), the United States of America (USA) reported that the ICoCA Working Group held a productive meeting on the 18th of November 2020. The topics of discussion were the impact of COVID-19 for PMSCs and issues related to the medical context. The ICoCA Working Group agreed to hold future meetings on specific topics with outside speakers in order to enhance States' participation and provide advice to ICoCA. The next meetings scheduled would focus on new technologies. ICoCA looked forward to these future productive meetings. ICoCA was also considering how its work could continue in-between sessions.

The chair of the Working Group on the use of private military and security companies in maritime security (Maritime Working Group), Portugal, stated that the last meeting of the Maritime Working Group was held the 10th of November 2020. The topic of the discussion was the Reference Document, which was now finalized and ready for presentation to the 6th Plenary meeting of the MDF. The chair highlighted that the Maritime Working Group had set four objectives in its plan of action. With the finalisation of the reference document, these original objectives are achieved.

4. REFERENCE DOCUMENT – ELEMENTS FOR A MARITIME INTERPRETATION OF THE MONTREUX DOCUMENT

The chair of the Maritime Working Group, Portugal, highlighted that the development of the Reference Document (from mid-2018 to November 2020) was made possible thanks to many stakeholders. The chair of the Maritime Working Group presented the Reference Document to the Plenary of the MDF as a Chair's Document in order to respect the position of participants unable to form consensus on endorsing the document. However, the chair underlined that the

Reference Document was a product of consultation, discussion and feedback by MD participants and other stakeholders in maritime security, including experts on international law, experts on PMSCs, members of the shipping industry, members of the private security industry (including members of the ICoCA), international organizations and civil society organizations specialising on maritime security. The chair also highlighted the contributing role of DCAF in the preparation of this document.

The Reference Document was developed in four drafts. The Maritime Working Group tried to keep the Reference Document as concise as possible, focusing on aspects of the Montreux Document most relevant in the maritime sphere. The process allowed compromise solutions, albeit without compromising the quality of the document. The final version was circulated to MD participants on the 17th of November 2020. The chair then briefly presented the structure of the Reference Document. The main objective of this document was to be a guiding tool that States, and other relevant actors could use when interpreting and applying the Montreux Document in the maritime context. The chair highlighted that the good practices set out in the Reference Document could not be understood as universal practices common to all participants, which might have different practices and legal frameworks. Nonetheless, they offered a useful guidance.

The chair explained that the future of the Reference Document and of the Maritime Working Group was to focus on dissemination, including publishing the Document online on the MDF website, and potentially in print, and considering translation to different languages; and outreach activities for the Maritime Working Group, the MDF, and other public and private actors. The chair considered the regional meetings to be a great setting to disseminate the Reference Document.

Several MD participants took the floor and welcomed the Maritime reference document and congratulated the chair of the Maritime Working Group for its outstanding work. Several MD participants expressed that, by making the Montreux Document more readable from a maritime security perspective, the Reference Document would be a useful resource for States and other relevant stakeholders seeking to use the Montreux Document specifically to support regulation of PMSCs and/or their personnel in the maritime context.

5. ANY OTHER BUSINESS

The co-chairs invited MD participants to consider the opportunity of becoming co-chairs of the MDF. In the meantime, if agreeable to all, Switzerland and the ICRC were willing to continue to act as co-chairs.

6. CONCLUSIONS

The co-chairs thanked all MD participants for their participation to the 6th Plenary Meeting and closed the 6th Plenary meeting of the MDF.

Co-Chairs' Proposal on Certain Reforms of the Montreux Document Forum

Non-Paper of 22 September 2020

Background

Since its finalization in 2008, the Montreux Document has become the international reference document on States' legal obligations and good practices related to operations of private military and security companies (PMSCs) in armed conflict. With the establishment of the Montreux Document Forum (MDF) in 2014, participating States created a *platform to discuss implementation challenges and promote the Montreux Document* to other States. The MDF has facilitated the development of guidance to assist States with the implementation of the rules and good practices of the Montreux Document (e.g. the Contract and Legislative Guidance Tools). Support for the Document has grown significantly (from 17 States in 2008 to 56 States and 3 International Organizations in 2020). However, despite the aims of the MDF involvement of participating States in MDF plenary meetings has decreased, with few regulatory practitioners attending these Geneva-based meetings.

Reform proposed by the Co-chairs

To address these developments and changing needs of participants, the Co-Chairs suggest transforming the MDF into a *platform for exchanging good practices and addressing future challenges* as they arise. This means concretely:

- **Plenary meetings:** Instead of organizing annual plenary meetings, the Co-Chairs would envisage convening plenary meetings or virtual exchanges as needed either to take organizational decisions or to address new and important challenges. There would no longer be regular plenary meetings in Geneva. Moreover, the Co-Chairs suggest that administrative decisions (election of chairs of working groups, submission of working group reports; confirmation of co-chairs, etc.) may also be taken by written procedure (emails).
- **Working groups:** This adapted way of operating would reflect, to some extent, the dynamic of the MDF working groups (on the International Code of Conduct Association and on the use of private military and security companies in maritime security). These groups have convened – and should continue to convene virtually or face-to-face – as needed for specific purposes and with defined objectives. The Co-Chairs suggest that the working groups would continue their work as long as there is an interest by States to participate in and to chair these groups.
- **Regional meetings:** The Co-Chairs see the value of organizing regional MDF meetings to address challenges specific to certain regions and to reach out to States in regions where the Montreux Document does not yet enjoy wide support. Regional meetings could be organized by Montreux Document participants from a specific region in collaboration with and support of the Co-Chairs and the Secretariat.
- **Group of Friends of the Co-Chairs:** The Co-Chairs anticipate that the suggested changes will likely result – unless circumstances change – in fewer Montreux Document meetings and related activities. The Co-Chairs would therefore suggest to no longer convene the Group of Friends, whose role is to assist and advise the Co-Chairs in the organization of these meetings and related activities. Rather, the Co-Chairs suggest discussing future activities and meetings with all MDF participants.
- **Secretariat:** The Co-Chairs suggest that the DCAF will continue as the Secretariat to perform support functions as necessary, including on the national implementation of the Montreux Document.

The changes proposed by the Co-Chairs require certain changes in the “Working Practices of the Montreux Document Forum”, which the Co-Chairs hope will be agreeable to all Montreux Document Participants.