

# WORKING GROUP ON THE INTERNATIONAL CODE OF CONDUCT ASSOCIATION

7<sup>TH</sup> OF SEPTEMBER 2021, ONLINE

## CHAIR'S SUMMARY

### 1. INTRODUCTION

The 14<sup>th</sup> exchange of the Working Group on the International Code of Conduct Association (ICoCA Working Group) was attended by Montreux Document Participants, the Co-Chairs of the Montreux Document Forum, Switzerland and the ICRC, the Montreux Document Forum Secretariat, DCAF, as well as the Chairman of the Board of Directors and the Executive Director of ICoCA, and a guest speaker from the OECD. The meeting was conducted in an online format, which facilitated the participation of several State representatives from capital.

### 2. OPENING STATEMENT BY THE CHAIR (UNITED STATES OF AMERICA) OF THE ICoCA WORKING GROUP

During the opening remarks, Mr. Phillip Riblett, representing the United States of America as the Chair of the Working Group, noted that the mandate of the ICoCA Working Group is to serve as the advisory forum of Montreux Document participating States to ICoCA and to promote dialogue between participating States and ICoCA.

### 3. OPENING STATEMENT BY THE CHAIRMAN OF THE BOARD OF DIRECTORS OF THE ICoCA

Subsequently, the Chairman of the Board of Directors of ICoCA, Mr. Frédéric Chenais, provided an opening statement to participants. The Chairman acknowledged the importance of the presence of private security providers (PSPs) in several contexts. The Chairman noted that governments are increasingly calling on private security services to supervise activities abroad or to ensure the security of

embassies or cooperation offices and staff in fragile contexts. Also, more governments are mandating PSCs to support them in managing migration by ensuring border security or managing detention facilities. In the context of COVID-19, private security services have also been broadly requested. In this regard, Mr. Chenais stressed that it is of paramount importance that governments raise awareness regarding not only the risks but also the opportunities of the private security sector and ensure that human rights are respected. Finally, the Chairman pointed out that engagement with the ICoCA would not only help implementing the obligations of the Montreux Document, but also the UNGPs and the obligation of States to protect human rights.

#### **4. HUMAN RIGHTS DUE DILIGENCE AND PRIVATE SECURITY**

##### **4.1. UPDATE FROM THE ICOCA EXECUTIVE DIRECTOR**

Mr. Williamson, the Executive Director of the ICoCA, updated participants on recent outputs of the association, namely: the launch of an online training on prevention against sexual exploitation and abuse for private security providers (PSPs) and the publication of guidance for PSPs for conducting human rights impact assessments. Thematically, next year ICoCA will be focusing on new technologies, questions of deprivation of liberty (including detainees of asylum seekers, detentions centres and others) and the issue of duty of care vis-à-vis PSPs.

Mr. Williamson noted that the private security landscape has evolved dramatically in terms of where PSPs operate, the impact of their operations in humanitarian law and human rights and the responsibilities of corporate entities including PSPs within the supply chain. While traditionally the narrative was focused on military-type security operations in armed conflict situations, nowadays, the role of PSPs would be increasingly related to fragile contexts or areas where there is weak governance, weakened rule of law, or simply a level of risk in terms of lack of oversight on the part of government actors, regional as well as national. The issues include allegations of human rights abuses relating to operations of PSPs.

#### **4.2. INTERVENTION FROM BENJAMIN KATZ, POLICY ADVISOR, RESPONSIBLE BUSINESS CONDUCT UNIT AT OECD**

Mr. Katz provided a thematic input on the OECD due diligence guidance for responsible mineral supply chains (hereafter, the OECD guidance) and its links with private security. The impetus for the OECD guidance is that, while natural resource extraction can be a source of growth of jobs and of government revenue, it can also be tied to serious human rights and business integrity risks, as well as environmental risks.

The OECD guidance presents a nexus with the Montreux Document, as both instruments concern businesses in conflict affected and in high-risk environments and fragile settings, although the OECD guidance is primarily addressed to companies while the Montreux Document is addressed to States. The OECD guidance takes a supply chain approach, covering many different risks. It covers settings in which the regulation of private military and security companies (PMSCs) becomes very pertinent, especially where widespread grievances due to a company's operations are a major issue for local communities. The Montreux Document looks at how these risks can be managed across home, territorial and contracting States, which is complementary to the OECD guidance that looks at upstream and downstream risk management for companies in different segments of the supply chain.

Concerning thematic and practice links, the fact that the Montreux Document is clear on defining the scope of PMSCs based on the rule of law is also very relevant to the OECD guidance in the sense that it does recognize the important role that PSPs have in ensuring the rule of law in the supply chains of mining sites. The handling of complaints and grievance mechanisms are also important features of both. Moreover, reporting is an area covered in both instruments to ensure that PMSCs are tracked in terms of their compliance and held accountable.

#### **5. DISCUSSION**

The Chair of the Working Group subsequently opened the floor for a discussion among Montreux Document participants. Being mindful of the purpose of the Working Group, which is to advise to ICoCA, the Chair of the Working Group proposed two questions for consideration during the discussion: (i) Has your government's National Action Plan on business and human rights addressed private security? (ii) How can ICoCA support governments on matters related to human rights due diligence in private security?

One participant inquired about the impact of PMSCs in the humanitarian field and asked for further development on the future work of ICoCA related to new technologies. The Executive Director of ICoCA responded that ICoCA has identified gaps as well as recommendations for improving the situation and the actions of procurement processes and oversight because they could be a potential risk for many humanitarian agencies. PMSCs that are not properly regulated can have a negative impact on humanitarian action in country, especially in development environments. With regards to new technologies, ICoCA will assess the need for restrictions and recommendations with regards to PSPs that are now going into the field of cybersecurity.

Another participant stressed its commitment to ensure that companies abide by all relevant laws to respect human rights in their operations and to adopt voluntary best practices and internationally respected guidelines on responsible business conduct. With regards to the questions set forth by the Chair of the Working Group, the participant believes that ICoCA can support governments in the development of policy objectives on matters related to human rights due diligence in private security, particularly since it is an emerging area.

Further, a Montreux Document participant acknowledged a few examples of cases where allegations of human rights violations or abuses relating to PSPs immediately attracted public attention and had quick economic and financial consequences. PSPs offer many diverse services and operate in very different contexts, and this

diversity naturally affects the interpretation of the good practices that will particularly be paramount in each context.

Additionally, a participant commented that the ICoCA oversight mechanism, together with the International Code of Conduct (ICoC) principles and provisions, promotes the highest standards in the private security industry and allows a legitimate industry to conduct business effectively. These are reinforced by the certification of a company's systems and policies by accredited, independent certifying bodies of the ICoC. These commitments were set out in the national action plan on business and human rights of the participant.

In closing, the Chair of the Working Group invited Montreux Document participants to further engage bilaterally with the Association, and to discuss priority areas of interest for the ICoCA.

**In case there are further questions or comments, please refer them to the Secretariat of the Montreux Document Forum: [secretariat@montreuxdocument.org](mailto:secretariat@montreuxdocument.org).**