



Schweizerische Eidgenossenschaft  
Confédération suisse  
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Confederaziun svizra



ICRC

Federal Department of Foreign Affairs FDFA

Bern / Geneva, 23 November 2012

To Montreux Document Participating States /  
International Organization

### Montreux Document+5 Conference and Questionnaire

Dear Montreux Document Participating State / International Organization

The *Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict* will reach its fifth anniversary in late 2013. This represents an important opportunity to take stock of the progress over the last five years and, looking forward, identify ways to support both the implementation and wider endorsement of the obligations and best practices contained in the Montreux Document. For this purpose, Switzerland will organize – in cooperation with the ICRC – a "Montreux+5" conference on private military and security companies, to be held between 5<sup>th</sup> and 7<sup>th</sup> December 2013.

The aim of this conference is to enable the 43 States and 1 International Organization to share their experience in the implementation of the obligations and best practices contained in the Montreux Document. In order to ensure the conference most effectively meets the needs of States/International Organization, Switzerland and the ICRC, in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF), will take stock of the current status of the implementation of the Montreux Document. By seeking to understand current challenges and identify existing good practices, this should enable targeted discussions at the conference on concrete tools and approaches that may help States and international organizations.

To assist with the preparation of the conference please find below the guiding questionnaire which has been prepared by DCAF on behalf of the Swiss government and the ICRC. Its purpose is to solicit input and examples of how States/International Organization have put into practice the Montreux Document and to capture where implementation challenges remain. While not all of the questions below may be relevant for each State/International Organization, they should be used as a guide to structure responses. Answers should include references to the specific regulatory approach through which the implementation of the Montreux Document has been carried out - for example national laws, policies and procurement and/or contractual requirements. The information provided through the answers to the questionnaire will be used to prepare background materials and reports for the conference.

In order to provide us with sufficient time to analyze the information received and to prepare a background document for the conference, we would ask each State/International Organization to respond with the relevant information by **31 January 2013** to [felix.schwendimann@eda.admin.ch](mailto:felix.schwendimann@eda.admin.ch) from the Swiss Ministry of Foreign Affairs.

In your response, we would greatly appreciate if you could identify designated Montreux Document focal points within your government/organization, also specifying lead departments on Montreux Document matters.

We thank you in advance for taking the time to complete the attached questionnaire, and look forward to your continued collaboration.

Yours sincerely,

Federal Department of Foreign Affairs  
Directorate of International Law DIL  
Director



Valentin Zellweger

ICRC  
Director for International Law  
and Cooperation



Philip Spoerri

Attachment

## **Annex: Guiding Questionnaire<sup>1</sup>**

### **Section One: Determination of Services**

1. Provide examples, if any, of how you have determined which services may or may not be contracted out to PMSCs. If you have done so, please specify what and how services are limited, and how you take into account factors such as whether those services could cause PMSC personnel to become involved in direct participation in hostilities. Please indicate by what means you do this (e.g. national legislation, regulation, policy, etc.). [GP 1, 24, 53]

### **Section Two: Authorization to Provide Military and Security Services – General and Procedure**

2. Indicate if you require PMSCs to obtain an authorization to provide any one or more private military and security services. This may include whether PMSCs and/or individuals are required to obtain licenses. [GP 25, 26, 54]
3. Is a central authority designated for authorizations? [GP 26] If so, please provide details.
4. Provide details of procedures for the authorization and/or selection and contracting of PMSCs and their personnel [GP 2, 28, 57]. Please include details of how you ensure adequate resources are applied to this function [GP 3, 27, 58] and examples of how such procedures are transparent and supervised [GP 4, 29, 59].
5. To what degree have you sought to harmonize any authorization system with those of other States [GP 56]?

### **Section Three: Authorizations, or selection and contracting of PMSCs – Criteria, Terms and Rules**

6. Provide details on criteria that have been adopted that include quality indicators to ensure respect of relevant national law, international humanitarian law and human rights law. Indicate how you have ensured that such criteria are then fulfilled by the PMSC. [GP 5, 30] If relevant, please indicate if lowest price is not the only criterion for the selection of PMSCs. [GP 5]
7. Describe how the following elements, if any, are considered in authorization or selection procedures and criteria. Please also indicate to what degree they are included in terms of contract with, or terms of authorization of, PMSCs or their personnel [GP 14, 39, 40, 67]:
  - a. past conduct [GP 6, 32, 60]
  - b. financial and economic capacity [GP 7, 33, 61]
  - c. possession of required registration, licenses or authorizations (if relevant) [GP 8]
  - d. personnel and property records [GP 9, 34, 62]
  - e. training [GP 10, 35, 63]
  - f. lawful acquisition and use of equipment, in particular weapons [GP 11, 36, 64]
  - g. internal organization and regulation and accountability [GP 12, 37, 65]
  - h. welfare of personnel [GP 13, 38, 66]
  - i. other (please describe)
8. To what extent is the conduct of any subcontracted PMSC required to be in conformity with relevant law? Please include requirements relating to liability and any notification required. [GP 15, 31]
9. Do you use financial or pricing mechanisms as a way to promote compliance? These may include requiring a PMSC to post a financial bond against non-compliance. [GP 17, 41]

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1 This request for Guiding Questionnaire follows and draws heavily on the obligations and good practices found in the Montreux Document. Where a question relates to a specific Good Practice, this is indicated in square brackets.

10. When granting an operating license to PMSCs, do you impose any limitations on the number of PMSC personnel and/or the amount/kinds of equipment employed when performing PMSC services? [GP 42] If so, please provide details.
11. Please describe any rules/limitations on the use of force and firearms. For example, these may include use of force "only when necessary and proportionate in self-defence or defence of third persons", and "immediately reporting to competent authorities" after force is used. [GP 18, 43]
12. Please provide information on any rules in place regulating the possession of weapons by PMSCs and their personnel. [GP 44, 55]
13. To what degree are personnel of a PMSC, including all means of their transport, required to be personally identifiable whenever they are carrying-out activities under a contract? [GP 16, 45]
14. Please indicate to what degree contracts with PMSCs provide for the following:
  - a. the ability to terminate the contract for failure to comply with contractual provisions;
  - b. specifying the weapons required;
  - c. that PMSCs obtain appropriate authorizations from the Territorial State; and
  - d. that appropriate reparation be provided for those harmed by misconduct. [GP 14]

#### **Section Four: Monitoring Compliance and Ensuring Accountability**

15. Provide details of how you provide for criminal jurisdiction in your national legislation over crimes under national and international law committed by PMSCs and their personnel. This may include details on if you have considered establishing corporate criminal responsibility and/or jurisdiction over serious crimes committed abroad. [GP 19, 49, 71]
16. Provide details of how you provide for non-criminal accountability mechanisms for improper or unlawful conduct of PMSCs and their personnel. This may include contractual sanctions, referral to competent investigative authorities, providing for civil liability and otherwise requiring PMSCs, or their clients, to provide reparation to those harmed by PMSCs. [GP 20, 50, 72]
17. In addition to the criminal and non-criminal mechanisms referred to above, do you have other administrative and other monitoring mechanisms to ensure proper execution of the contract and/or accountability of the PMSC and their personnel for improper conduct? [GP 21]
18. Provide details of how you monitor compliance with the terms of any authorization given to a PMSC. These may include establishing an adequately resourced monitoring authority, ensuring that the civilian population is informed about the rules by which PMSCs have to abide and available complaint mechanisms, requesting local authorities to report on PMSC misconduct and investigating reports of wrongdoing. It may also include establishing close links between your State's authorization-granting authorities and your State's representatives abroad and/or with other States. [GP 46, 68]
19. Provide details of how you impose administrative measures or sanctions if it is determined that a PMSC has operated without or in violation of an authorization. This may include revoking or suspending a license, removing specific PMSC personnel, prohibiting a re-application for authorization, forfeiting bonds or securities, and/or financial penalties. [GP 48, 69]
20. Provide details of how you provide a fair opportunity for PMSCs to respond to allegations that they have operated without or in violation of an authorization. [GP 47]
21. Provide details of how you support other States in their efforts to establish effective monitoring of PMSCs. [GP 70]
22. In negotiating with other States agreements which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel (e.g. Status of Forces agreements), please provide details on how you take into consideration the impact of the agreement on the compliance with national laws and regulations, and how you address the issue of jurisdiction and immunities. [GP 22, 51]

23. Please provide details of your cooperation with the investigating or regulatory authorities of other States in matters of common concern regarding PMSCs. [GP 23, 52, 73]

**Section Five: General Information**

24. Please list any other measures you have in place for overseeing and/or contracting with PMSCs, and briefly describe how they are implemented or enforced.
25. Please describe any specific challenges you have encountered as a State or international organization in relation to PMSCs.

