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## **Third Plenary Meeting of the Montreux Document Forum (MDF) 27-28 April 2017, Geneva**

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### **Chairs' Summary**

#### **1. Introduction**

The third plenary meeting of the Montreux Document Forum (MDF) took place on 27-28 April 2017 in Geneva, Switzerland. It sought to provide a space for an informal exchange among Montreux Document participants on subjects identified during previous MDF plenary meetings. The meeting was chaired by Switzerland (represented by Ambassador Jürg Lindenmann, 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 proposed by the Co-Chairs provides a brief account of 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 third 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. The second session was open to all States and international organizations as well as representatives from civil society, who were invited to participate as panelists under agenda item 7. Finally, the third session was only open to Montreux Document participants.

During the opening of the meeting, participants welcomed Estonia, which became the 54<sup>th</sup> State to officially support the Montreux Document (MD) on 6 July 2016.

Prior to the meeting, delegations had received the agenda of the meeting as well as a document with background information and questions to guide discussions. Delegations also had received copies of the draft Guidance Tool for Contracting PMSCs as well as the draft Mapping Study on MD Outreach and Implementation. Copies of relevant documents such as the Working Practices of the MDF and summaries of past meetings were (and continue to be) available on the bilingual website of the MDF at <http://www.mdforum.ch/>.

## **2. Overview of the industry and perspectives on opportunities and challenges for the regulation of private military and security companies**

The aim of the first session was to raise awareness of the MD and of other existing initiatives to regulate private military and security companies (PMSCs) as well as to promote dialogue on opportunities and challenges for the regulation of PMSCs.

In their welcome remarks, the Co-Chairs presented the objectives and scope of the MD, the progress achieved since its finalization in 2008 and remaining challenges, and the work undertaken by the MDF since its establishment in 2014. The Co-Chairs highlighted the complementarity between the MD and other existing initiatives, including discussions on the possibility to develop a convention to regulate PMSCs currently being held within the Open-ended intergovernmental working group established by the Human Rights Council. In order to continue to ensure the added-value and the relevance of the MDF, the Co-Chairs emphasized the need to guarantee the utility of the MDF as a forum for exchange among MD participants on PMSC regulation. They also recalled the desirability to develop a more geographically diverse and active participation in the MDF, particularly of non-Western States. The Co-Chairs emphasized that this would ensure that any tools developed and issues identified for discussion are relevant for, and address, a wide variety of concerns and needs related to the regulation of PMSCs and the implementation of the MD.

Two keynote speakers were invited to inform and stimulate an exchange among participants by giving an overview of the industry and challenges for regulation. The first keynote speaker, Dr. Laura Dickinson (George Washington University School of Law, United States of America) focused on the PMSC industry at a global level, identified various challenges for effective regulation at the international level, and provided some insights on how the United States regulates PMSCs nationally. The second keynote speaker, Professor Laurence Juma (Faculty of Law, Rhodes University, South Africa), concentrated on the shifting nature of the industry in Africa and emphasized the need for more robust national regulatory frameworks. He presented the MD as a roadmap for regulating PMSCs. The two keynote speakers concurred that the MD has made a significant contribution to resolving some of the complex issues surrounding the regulation of PMSCs. They also highlighted the potential of the MDF as a platform for exchange and capacity-building and as a catalyst to enable strengthening implementation at the national level, and to support the promotion of the MD. In this respect, they considered that there is room for further endorsements of the MD and Professor Juma stressed the importance of contextualizing the MD to address challenges specific to the African context and to continue working on regulation, including through engagement with regional organizations and to consider the possibility of holding an MDF meeting in Africa. The keynote speakers also encouraged the MDF to examine some pressing issues such as the need to move beyond PMSCs and to consider other contractors, including those providing training or assistance to local/partner forces, as well as to consider new domains of PMSC involvement (e.g. unmanned aerial vehicles, cyber security operations).

After the two keynote speeches, participants had the opportunity to look more closely at the current state of regulation of PMSCs, existing international standards and initiatives as well as the experience of Costa Rica in regulating private security companies. A background for discussion was provided by an expert panel, composed of Anna Marie Burdzy (Geneva Centre for the Democratic Control of Armed Forces (DCAF)), Rebecca Dewinter-Schmitt (Senior Managing Director, Human Analytics), Anita Ramasastry (expert member of the UN Working Group on the issue of human rights and transnational corporations and other business

enterprises) and Ambassador Christian Guillermet-Fernandéz (Director General of Foreign Policy of the Ministry of Foreign Affairs of the Republic of Costa Rica). DCAF presented a Mapping Study on Montreux Document Outreach and Implementation to inform the MDF on progress and remaining challenges facing Montreux Document participants. Presentations also focused on other international initiatives relevant for the regulation of PMSCs, such as ongoing discussions on the potential elaboration of a draft convention on PMSCs, the UN Guiding Principles on Business and Human Rights, the International Code of Conduct for Private Security Providers (ICoC), and the management standards of ANSI/ASIS PSC.1-2012 and ISO 18788:2015. Ambassador Guillermet-Fernandéz' presentation provided insights on the approaches, challenges, and progress in Costa Rica's national regulatory framework.

The ensuing discussion drew on the Mapping Study on national implementation carried out by DCAF and on reflections concerning other initiatives at the international, regional and national level, including the UN Working Group on the use of mercenaries. Some panelists proposed to work towards increasing the linkages between the different initiatives such as the MD, the International Code of Conduct for Security Providers, UN Guiding Principles on Business and Human Rights, UN Working Group on the issue of human rights and transnational corporations and other business enterprises. Finally, taking into account underrepresentation of MD participants in a number of regions, it was suggested that promoting further support for the MD should continue to be one of the main objectives of the MDF. In this respect, one delegation emphasized the importance of demonstrating concretely how the MD can be instructive for States in different regions and how it may benefit States regulating PMSCs in situations outside of armed conflict.

### **3. Implementation and good practices of the Montreux Document**

The aim of session two was to discuss good practices and implementation of the MD, including existing guidance tools, and to have a thematic discussion on the use of PMSCs by humanitarian actors.

DCAF introduced the existing guidance tools that have been developed in the framework of the MDF to assist States with the implementation of the rules and good practices of the MD. The Legislative Guidance Tool for States to Regulate PMSCs<sup>1</sup> was developed to provide guidance to parliamentarians, law and policymakers, and members of oversight committees to develop or update national regulation related to PMSCs. DCAF also presented the Contract Guidance Tool for Private Military and Security Services<sup>2</sup> which aims to provide guidance for states, international organizations, humanitarian organizations and non-governmental organizations, in their roles as clients, on structuring their contracts and contracting procedures for PMSC services.

This presentation served as a basis for exchanges that were held in smaller groups to encourage more targeted and active discussions on specific implementation challenges. By way of reminder, at the second MDF plenary meeting held in January 2016, MD participants considered that the exchange of experiences on the implementation of pertinent obligations and good practices listed in the MD should continue within the MDF in order to help participants identify possible solutions to common challenges. At the second MDF plenary meeting,

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<sup>1</sup> <http://www.dcaf.ch/Publications/Legislative-Guidance-Tool-for-States-to-Regulate-Private-Military-and-Security-Companies>

<sup>2</sup> The final tool will be available here: <http://www.mdforum.ch/en/implementation>

therefore, MD participants had considered the first set of good practices provided in the MD (Good Practices 1, 2, 6-13, 24, 28, 32-38, 53, 57, 60-66). The third plenary meeting considered the second set of good practices contained in the MD (in particular Good Practices 14-18, 40-42, 43-45, 67 and 19-23, 46-52, 68-73). Thus, the breakout sessions considered the good practices regarding terms of contract or authorization, those related to monitoring compliance and ensuring accountability, and other aspects relating to the implementation of the MD.

The discussions in the breakout groups revolved around several main themes. First, a number of participants raised the important potential of contracts to make progress in filling national accountability gaps. Participants discussed that clients have a responsibility to ensure that contracted PMSC personnel are adequately trained and vetted. In this respect, the need to ensure adequate training of both clients and companies as well as the need to monitor training and vetting was mentioned. A number of participants discussed the importance of a systematic approach to contracting under which effective communication between the authority in charge of the contracting process and the representatives charged with monitoring and implementing the contract should be promoted. Second, participants highlighted the frequent absence of administrative measures to ensure monitoring of PMSCs and for grievance resolution. Many States have only judicial (criminal and civil) procedures in the event of PMSC personnel misconduct; it was highlighted that administrative measures could be a good practice when it comes to improving accountability. Further, breakout group participants proposed that oversight processes promoting increased transparency within the industry could be encouraged with regular reporting to parliaments on the contracting and monitoring of PMSCs. However, the difficulty of gathering information to monitor accountability was also mentioned. Third, participants referred to the difficulties in defining PMSCs and what can be considered a military service, as well as the need to further consider newer types of services offered by PMSCs. Finally, the groups discussed the need for enhanced cooperation, coordination and sharing of good practices between national private security regulatory authorities as well as National Committees on International Humanitarian Law.

#### **4. Thematic discussion on the use of PMSCs by humanitarian actors: informal exchange with the United Nations and civil society**

During session two there was also a thematic discussion on the challenges related to the use of PMSCs by humanitarian actors, based on the interest expressed during the Constitutional Meeting of the MDF in December 2014. Three panelists were invited to provide their views on challenges related to the use of PMSCs by humanitarian actors: Lisa Reilly (Executive Director of the European Interagency Security Forum), Kate McGrane (Senior Humanitarian Policy Advisor at the Norwegian Refugee Council in Geneva), and Abraham Mathai (Chief Security Advisor of the United Nations Office of the High Commissioner for Human Rights, representing the UN Department of Safety and Security and the UN Security Management System).

Panelists reported that due to the increasingly dangerous operational environments and higher levels of insecurity, humanitarian actors have to take additional security measures, including hiring private security companies. The use of private security companies by humanitarian actors has increased over the last decade, especially for guarding services. In general, the panelists noted that the humanitarian sector relies on companies that deliver private security services, rather than private military services. Humanitarian actors contract private security companies only as a last resort, in exceptional circumstances, when it is not possible to ensure security through relationship-building with communities and when the territorial state is either unwilling or

unable to provide security.<sup>3</sup> Participants highlighted the reputational risks and the possible consequences the use of private security may, in certain contexts, have on the humanitarian principles and the local populations' perceptions of the humanitarian actors concerned. Different actors in the humanitarian sector have therefore developed guidelines aimed at avoiding these risks by providing a framework to facilitate consideration of, and decision-making on, the use of security providers.<sup>4</sup> Some of these guidelines refer to the MD and the International Code of Conduct for Security Providers. It was mentioned, however, that the MD does not address specific challenges related to humanitarian principles.

Before resorting to contracting private security, it was mentioned that, like States, humanitarian actors should ascertain themselves that the companies they contract are adequately regulated under applicable national laws and that their personnel has been trained to respect relevant provisions under national law, IHL, and human rights law.

## **5. Concrete steps for the way forward: supporting the promotion and implementation of the Montreux Document**

As part of session three, the aim of this discussion was to foster an exchange among MD participants on existing initiatives, lessons learned and the way forward to increase support for the MD, in order to promote more effective implementation, as well as to further increase the added-value and relevance of the MDF. The Co-Chairs introduced the discussion by stressing that, since its establishment, the Forum has enabled MD participants to discuss issues related to outreach and implementation, and to share good practices and challenges. Furthermore, a number of tools have been or are being developed to assist States in the implementation of the rules and good practices of the MD (Legislative Guidance Tool and Contract Guidance Tool). These tools were developed through a process of consultation and dialogue with the MDF, which is reflective of the utility of the Forum. At the same time, the Co-Chairs emphasized that a continuous effort by all MD participants is necessary to ensure that discussions within the MDF continue to be substantive and that they address the concerns and needs of all participants. Participants were of the view that it is necessary to identify concrete measures to ensure a more geographically diverse and active participation in the MDF and to promote further support for the MD. The Co-Chairs mentioned that greater diversity and representation would ensure that the issues identified for discussion as well as any tools to be developed are relevant for, and address, a wide variety of concerns and needs representative of the existing challenges in different regions of the world. This may, in turn, contribute to gathering greater participation and engagement in the MDF.

The following topics were mentioned as deserving further discussion within the MDF: the issue of how the MD applies to States of nationality of PMSC personnel, the question of mutual legal

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<sup>3</sup> During the discussion, one participant raised whether the use of armed private security guards at the UN offices in Peru has been authorized as per the established UN policy. The UN DSS has since clarified that the United Nations in Peru has never used armed private security companies.

<sup>4</sup> See for example: Engaging Private Security Providers, A Guideline for Non-Governmental Organisations, EISF Briefing Paper ([http://principlesinpractice.org/uploads/Library/Documents/RemoteManagementAndSecurity/eisf\\_engaging-private-security-providers-a-guideline-for-non-governmental-organisations.pdf](http://principlesinpractice.org/uploads/Library/Documents/RemoteManagementAndSecurity/eisf_engaging-private-security-providers-a-guideline-for-non-governmental-organisations.pdf)); IASC Non-Binding Guidelines on The Use of Armed Escorts for Humanitarian Convoys (<https://docs.unocha.org/sites/dms/Documents/Armed%20Escort%20Guidelines%20-%20Final.pdf>); UNDSS' Guidelines on the Use of Armed Security Services from Private Security Companies ([http://psm.du.edu/media/documents/international\\_regulation/united\\_nations/internal\\_controls/un\\_unsms-operation-manual\\_guidance-on-using-pmsc\\_2012.PDF](http://psm.du.edu/media/documents/international_regulation/united_nations/internal_controls/un_unsms-operation-manual_guidance-on-using-pmsc_2012.PDF)).

assistance among States in enforcing PMSC regulations, and maritime security. Participants expressed the view that the MDF is a useful platform to improve coordination and cooperation among participants, in particular on accountability and jurisdictional issues. In order to further discussions on particular subjects, one MD participant mentioned that MD participants could play a more proactive role, for instance by drafting and contributing expert background papers to be discussed during the plenary meetings. In order to continue raising awareness on the MD and contributing to discussions on the regulation of PMSCs, one MD participant highlighted the importance of continuing to invite non-MD participants and international organizations as well as civil society organizations to MDF plenary meetings. It was also mentioned that other stakeholders, notably the industry representatives, could be invited for further exchange during MDF plenary meetings.

With regard to increasing support for the MD and ensuring a more diverse participation in the MDF, one participant mentioned that the MD is widely perceived by States not yet supporting it as only relevant for situations of armed conflict. In this regard, participants stressed the importance of ensuring that the MD is correctly understood, in particular through outreach at the regional level. Participants also suggested that the distinction between private military and private security companies should be considered further in order to convince more States of supporting the MD. MD participants proposed that regional events on the MD could be organized, which could focus particularly on challenges faced by States in that region, for instance the issue of maritime security and piracy as well as the relevance of the MD outside armed conflict situations. Participants also expressed the view that de-localizing MDF plenary meetings would allow for improved interaction not only with States but also with regional organisations (such as the African Union and the Organisation of American States), and that it may lead to increased support for the MD in different regions. While budgetary constraints were mentioned as possible obstacles to de-localizing plenary meetings, some participants were of the view that a collective effort could potentially allow for overcoming them.

With regard to the need for additional tools to assist in the implementation of the MD rules and good practices, participants expressed the view that no new tools are necessary at this stage. This being said, they welcomed additional and more dedicated efforts on the provision of guidance on training, technical assistance and cooperation, including in the issues related to mutual legal assistance. For example, it was suggested that the ICRC could use the *Legislative Guidance Tool for States to regulate PMSCs* as a basis for its provision of technical support and advice to States on the establishment of a normative framework addressing PMSCs. In considering the issue of training, a number of questions need to be discussed to determine what is needed, for instance who is the audience, who should do the training, and what should be the content of the training? For instance, a distinction in terms of content should be made between, on the one hand, training to PMSCs aimed at circumscribing the normative frameworks governing their own action, from, on the other hand, training to PMSCs who themselves train public security forces. Furthermore, the value of training and how to ensure that such training is put into practice also need to be discussed. It was further mentioned that cooperation with other actors, such as the International Institute of International Humanitarian Law of Sanremo, could be explored in developing training packages. It was also emphasized that exchanges of practices among States could be a way to enable peer learning and assist States in developing PMSC regulations.

Finally, it was suggested that further research on the involvement of PMSCs in new domains, such as cyber activities, could serve to inform discussion within the MDF and allow for more effective implementation of the MD.

## **6. Report of the Chair of the Working Group on the International Code of Conduct Association**

Continuing session three, Mr. Jonas Westerlund of Sweden (Deputy Head of Security Department at the Swedish Ministry of Foreign Affairs and Chair of the ICoCA Working Group) presented the work undertaken by the ICoCA Working Group. Since the last MDF plenary meeting, the Working Group held its fourth and fifth meetings on 16 June and 7 September 2016. During the meeting of 16 June 2016, MD participants received updates on progress achieved on the procedures related to Article 12 (Reporting, monitoring and assessing performance and compliance) and Article 13 (Receiving and Processing Complaints) of the ICoCA Articles of Association. Additionally, a representative of the Transport Agency of Sweden was invited to share information on national legislation regarding the authorization of the use of armed security personnel on board Swedish-flagged ships. During the meeting of 7 September 2016, MD participants were invited to comment on the draft procedures of the ICoCA before their adoption during the ICoCA General Assembly of 29 September 2016. The Permanent Mission of Peru was invited to attend the second half of the meeting, during which DCAF presented a project on promoting the implementation of the ICoC and the MD rules and good practices in Latin America and the Caribbean.

The Chair's Summaries of ICoCA WG meetings can be found here: <http://www.mdforum.ch/en/working-groups>

On behalf of the MDF, the Co-Chairs expressed their sincere gratitude to the Government of Sweden, and Mr. Jonas Westerlund in particular, for serving as the Chair of the ICoCA WG since December 2014.

## **7. Election of the Members of the Group of Friends and Chairs of the Working Groups**

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.

MD participants reelected China, the European Union and the United States of America as members of the Group of Friends of the Chair for a period of two years. The Co-Chairs informed MD participants that the Czech Republic did not apply for a new term as member of the Group of Friends of the Chair. It was agreed that Switzerland and the ICRC would continue consultations with MD participants interested in replacing the Czech Republic and submit possible candidatures to all participants for election via a silent procedure. MD 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 Costa Rica and Madagascar continues.

The United States of America was elected as Chair of the ICoCA Working Group for a period of two years, replacing Sweden.

With regard to the Working Group on the use of private military and security companies in maritime security, no MD participant expressed an interest in taking up the function of Chair. Thus, the Working Group remains inactive. However, MD participants expressed an interest to have another thematic discussion on the issue of maritime security. The Co-Chairs indicated

that they will continue to engage with the International Maritime Organization in view of organizing such a discussion.

## **8. Any other business**

Two issues were raised by the Co-Chairs as any other business in session three:

- Participation of experts from capitals: The Co-Chairs proposed to consolidate a list of government focal points that are based in capitals and primarily responsible for the regulation of PMSCs at the national level. Having capital-based experts increasingly involved could help making the MDF a place for national practitioners to discuss practical challenges in regulating PMSCs and how to address them. On the basis of this vision for the MDF, MD participants were invited to complete a draft list of focal points to be circulated by the Permanent Mission of Switzerland.
- Financial and/or in-kind contributions: The Co-Chairs explained that in preparing the third plenary meeting, and in supporting the vision for the MDF described, it became clear that it would be important to explore the possibility of financial and/or in-kind contributions by MD participants, for instance to:
  - Support the translation of documents or tools.
  - Develop further tools, if considered necessary by MD participants.
  - De-localize MDF plenary meetings.
  - Finance the participation of experts from other delegations to plenary meetings in a spirit of capacity-building and in order to encourage a broader participation in the MD and MDF.

## **9. Conclusions and next steps (by the Co-Chairs of the MDF)**

In closing the meeting, the following next steps were outlined by the Co-Chairs:

- The next plenary meeting of the MDF will most likely take place in the first semester of 2018. Additional *ad hoc* meetings can be held if necessary, including via video- or teleconference. The Co-Chairs indicated that delegations are strongly encouraged, in addition to the attendance by experts based in Geneva Permanent Missions, to consider the participation of experts from capital tasked with the national regulation of PMSCs.
- The MDF could potentially take place outside Geneva. This option would be explored by the Co-Chairs in consultation with possible host States.
- MD participants are invited to indicate their interest in themes to be discussed at the next plenary meeting to the Swiss Mission in Geneva at any stage.
- MD participants interested in becoming members of the Group of Friends of the Chair to replace the Czech Republic are invited to communicate their interest to the Swiss Mission in Geneva at any stage. Candidatures will then be submitted to all MD participants for election via a silent procedure.



- The next meeting of the Working Group on the ICoCA will be convened by the US.
- With regard to the identification of a Chair for the Working Group on the use of PMSCs in maritime security, Switzerland and the ICRC will continue consultations with interested MD participants with a view to identifying a suitable Chair or Co-chairs for the Working Group for election via a silent procedure.

Switzerland and the ICRC sincerely thank all Montreux Document participants – and all other stakeholders that attended the 3<sup>rd</sup> Plenary Meeting – for the time dedicated and for the continual support for the MDF.