



26.11.2018

Fifth Plenary Meeting of the Montreux Document Forum (MDF) 2 September 2019, Geneva

Chairs' Summary

1. Introduction

The fifth plenary meeting of the Montreux Document Forum (MDF) took place on 2 September 2019 in Geneva, Switzerland. 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 Cordula Dröge, Chief Legal Officer) as initial co-Chairs of the MDF. The present summary has been prepared by the co-Chairs and provides a brief account of the discussions during 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 fifth plenary meeting of the MDF was divided into two sessions. The first session was open to all States, international organizations and invited representatives from civil society and the Private Military and Security Company (PMSC) industry. The second session was open only to Montreux Document participants. A number of presentations delivered during the meeting are available on the website of the MDF under www.mdforum.ch.

The co-Chairs opened the meeting with a brief presentation on the role the MDF has played for the last 5 years and the challenges that should be considered in order to ensure the continued added value of the initiative and sustainability of the MDF. Following this introduction, a keynote speech was delivered by Dr. Ulrich Petersohn, Senior Lecturer and Associate Professor in International Politics at the University of Liverpool, on “**Contemporary Use of PMSCs in Armed Conflicts – Market for Force, Trends and Conflict Dynamics**”. Following the keynote speech, a panel of two experts was convened on the challenges related to the use and regulation of PMSCs in the maritime context. The second session of the Plenary focused on organizational matters among Montreux Document participants.

2. Keynote speech: Contemporary Use of PMSCs in Armed Conflicts – Market for Force, Trends, and Conflict Dynamics

The aim of the first session was to provide an overview of the contemporary use of PMSCs in armed conflicts. Dr. Petersohn first introduced his theoretical approach to the market dynamics related to PMSCs before elaborating on trends in PMSC contracting between 1992 and today. He underlined that there is an increasing demand for PMSCs to provide services in the field of surveillance and cyber as well as for PMSC support to military operations, including combat services. In addition, Dr. Petersohn underlined that there is an increasing risk of private contractors becoming involved in inter-State rivalries. Dr. Petersohn highlighted that the Montreux Document provides a solid basis to regulate PMSCs activities but stressed the need to widen the number of participating States and to improve implementation. Concerning implementation, he suggested to create a list that identifies PMSCs that do not comply with the relevant regulation in order to assist States in their contracting and procurement process. The [Contract Guidance Tool](#), developed by the Montreux Document Forum Secretariat, may be instructive for States wishing to establish or update their processes related to hiring PMSCs.

3. The Regulation of Private Military and Security Companies in the Maritime Context: Challenges and Good Practices

The co-Chairs recalled that over the past two years, the MDF Working Group on the use of Private Military and Security Companies in Maritime Security, under the chairmanship of Portugal, has conducted significant work exploring how the Montreux Document can be usefully interpreted in the maritime sector.

The first presentation of the panel was given by Mr. Jon Huggins, adviser in maritime security for international agencies, governments and industry, on **“Replacing public security by private security? The impact and sustainability on the use of PMSCs in the maritime sector”**.

Mr. Huggins first gave an overview of different services provided in the maritime security sector (i.e. floating armouries, vessel protection, escort vessels) and related concerns (i.e. policies for floating armouries, rules of engagement, training) in the maritime sector. He then provided examples of recent incidents involving armed security at sea, highlighting certain high-risk areas (Indian Ocean, Gulf of Guinea and South East Asia). To respond to these incidents, guidance documents on oversight at sea have been developed by the International Maritime Organisation and other institutions. However, it remains very difficult to impose governance at sea and Mr. Huggins highlighted these challenges through a case study on one State. He concluded by stating that whether or not one was for or against PMSCs, they will continue to be used in the maritime sector and should be regulated to ensure high standards, professionalism, and respect of human rights.

The second presentation was given by Mr. Gray, founder and co-director of the maritime private security company Maritime MNG Ltd, on “**The interaction between shipmaster, crew and private security guards on board**”.

Mr. Gray first underlined the crucial role played by the master of the ship in the regulation of PMSCs. As the flag State of a ship – which is exercising jurisdiction over the vessel – may not have the means to control it, the master of the ship has the ultimate responsibility for its safety and security. However, the master’s power is limited by the rules pertaining to the use of lethal force. According to the latter, lethal force can only be used when there exists a threat to life (such as in case of self-defence) and the use of such force is considered proportionate. Mr. Gray highlighted the challenges related to the implementation of these rules, which can be found in a number of documents related to maritime security, such as the guidelines of the UNODC Global Maritime Crime Programme. These include training PMSCs in self-defence, clarifying how the principle of proportionality applies in practice and ensuring that States assert their jurisdiction to regulate the use of force by PMSCs at sea. Mr. Gray then gave some examples of some good practices that can be adopted by States to ensure the implementation of these rules. He suggested setting up stringent rules on the authorisation of the purchase of weapons by PMSCs; guaranteeing PMSC personnel receive training in the use of such weapons; ensuring appropriate maintenance of weapons and weapon systems; and setting out clear rules on the use of force.

4. Report of the Chairs of the Working Groups

The aim of session 2 was to discuss the next steps to support the promotion and implementation of the Montreux Document and to address other matters related to the work of the MDF.

The chair of the MDF **Working Group on the International Code of Conduct Association (ICOCA)**, the United States of America (USA), reported that since the last plenary in 2018 two Working Group meetings have been organised. During these meetings, Montreux Document participants were informed about recent and future activities of the ICOCA as well as the adoption of the Association’s strategic plan. The latter describes the main goals the Association aims to pursue in the next four years, which includes aiming to diversify and expand ICOCA’s membership. The chair recalled that although ICOCA does not substitute State regulation of PMSCs, it is a practical tool to ensure that activities of PMSCs comply with international law and the MDF Working Group serves as useful forum to provide advice for the Association’s activities.

The chair of the **Working Group on the use of private military and security companies in maritime security**, Portugal, reported that since the last plenary meeting in 2018, three Working Group meetings have been organised. The Working Group is currently drafting a reference document on the elements for a maritime interpretation of the Montreux Document. The chair explained that the next steps aim to initiate outside consultations on the second draft of the Reference Document in order to finalise it by the next plenary meeting. The Montreux Document participants took note with appreciation of the work achieved by the Working Group on the

maritime interpretation of the Montreux Document and approved the chair's proposal to initiate outside consultations.

The co-Chairs thanked Portugal and the USA for all their work and commitment as Chairs of the Working Groups.

5. Discussion of Next Steps/Yearly Planning

Follow-up to 2018/2019 MDF regional outreach (OAS, CARICOM and SICA)

DCAF presented the various regional outreach activities that have been undertaken by the MDF Secretariat in the Latin and Caribbean region (LAC) since the organisation of the last plenary meeting. These activities included:

- Presentation by the co-Chairs of the Montreux Document to the Central American Integration System (SICA) in December 2018;
- Supporting the organisation of a multi-stakeholder workshop on the regulation, oversight and governance of the private security industry by the Implementation Agency for Crime and Security of the Caribbean Community (CARICOM IMPACS) held in Trinidad and Tobago;
- Providing national advisory support on the on-going drafting of private security legislation in Trinidad and Tobago;
- Promoting the Montreux Document through engagement with the Organisation of American States (OAS) and its member States, including by organising a breakfast discussion with the co-Chairs on the relevance of the Montreux Document in the Americas.

Possible MDF regional meeting in 2020

Following the successful organisation of a regional MDF meeting in Costa Rica in 2018, the co-Chairs suggested complementing future MDF plenary meetings with regional meetings. The idea would be to organise regional meetings every two years, open to all MDF participants and to States from the region, in order to strengthen outreach in regions in which the Montreux Document does not yet enjoy strong support, focus on challenges that are particularly relevant in one region and facilitate national expert participation. This would imply the organisation of a MDF regional meeting next year alongside a short plenary meeting in Geneva.

The co-Chairs inquired whether MDF participants supported the suggestion to complement short plenary meetings with regional meetings and if any participant would be interested in hosting such a meeting. MDF participants responded positively to the suggestion. The co-Chairs thanked the MDF participants for their support and announced that they will explore options for regional meetings with participants bilaterally.

Ensuring sustainability of the MDF and strengthening implementation support

The co-Chairs recalled that despite the broad support for the Montreux Document – consisting of 56 States and 3 international organisations – the initiative has so far heavily relied on Switzerland for financial contributions. To ensure the sustainability of the MDF in 2020 and beyond, the activities of the MDF and work of the MDF Secretariat require a stable and more diversified funding base. To respond to this challenge, the MDF Secretariat is currently elaborating a fundraising strategy and presented its preliminary findings to the MDF participants. The co-Chairs also reminded MDF participants that in kind contributions are very welcome, including logistical support for the hosting of a regional MDF meeting.

Elections of the Chairs of the Working Groups

Montreux Document participants re-elected:

- Portugal as chair of the Working Group on the use of PMSCs in maritime security for a period of two years;
- The USA as chair of the Working Group on the ICOCA for a period of two years;
- The USA as a member of the Group of Friends of the co-Chairs of the MDF for a period of two years. The Group of Friends is currently composed of Madagascar, Costa Rica, China, the EU and NATO.

6. Any Other Business (AOB)

Exploring synergies between the Montreux Document and other intergovernmental processes on the regulation of PMSCs

The co-Chairs reminded Montreux Document participants that paragraph 4 of the UN Human Rights Council Resolution 36/11 invites the co-Chairs of the MDF to make contributions to the work of the *United Nations Open-ended intergovernmental working group to elaborate the content of an international regulatory framework without prejudging the nature thereof, relating to the activities of private military and security companies* (IGWG on PMSCs). They informed Montreux Document participants that the co-Chairs were considering submitting a written contribution to the Discussion Document concerning elements for an international regulatory framework relating to the activities of PMSCs. The aim of the submission was to highlight that rules of international law apply to regulate the activities of PMSCs, in particular IHL and IHRL.

The co-Chairs invited Montreux Document participants to share their views on whether they identified any potential synergies between the MDF and other intergovernmental processes. A number of Montreux Document participants stated that they intended to make a submission to the IGWG.

The co-Chairs recalled that they have not been elected as co-Chairs on a permanent basis. They invited MDF participants to consider the opportunity of becoming co-Chairs but also indicated their willingness to continue in the meantime. Montreux Document participants re-confirmed Switzerland and the ICRC as co-Chairs for another year.

7. Conclusions

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

- The co-Chairs will move forward with the new strategy of holding bi-annual regional Montreux Document Forum meetings. They will be in contact with MDF participants in the once they have a clearer idea of where and when such a meeting could take place.
- The work of the two Working Groups will continue in the coming months and the co-Chairs encouraged participation.

Switzerland and the ICRC sincerely thanked DCAF, the Secretariat of the MDF, for its excellent support in the organisation of the plenary and MDF activities.

The co-Chairs also thanked all Montreux Document participants, in particular the members of the Group of Friends of the co-Chairs and the Chairs of the Working Groups, for their participation to the 5th Plenary Meeting.