



The Working Group on the use of private military and security companies in maritime security (Maritime Working Group)

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Meeting of 2 September 2019

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### Chair's Summary

#### 1. Welcome and opening remarks by the chair of the Working Group

The fifth exchange of the Maritime Working Group was attended by Montreux Document Participants, the Co-Chairs of the Montreux Document Forum, Switzerland and the ICRC, the MDF Secretariat, DCAF, as well as invited maritime experts. The meeting allowed for a presentation of the second draft of the *Reference Document – Elements for a maritime interpretation of the Montreux Document*, followed by a discussion among Montreux Document Participants. The opening remarks were held by Mateus Kowalski, representing Portugal as the current Chair of the Working Group.

#### 2. Presentation of the second draft of the *Reference Document - Elements for a maritime interpretation of the Montreux Document*

The Chair first recalled the last meeting on 12 June and thanked delegations for submitting feedback on the first draft of the Reference Document. The comments have been integrated in the second draft, which was circulated to participants prior to the present meeting. The Chair of the Working Group noted that the following feedbacks have been integrated in the Reference Document:

- Streamlining of the Reference Document

To keep the focus of the text predominantly on elements of the Montreux Document most relevant in the maritime context, this approach shall prevent the creation of a text that artificially reiterates the Montreux Document.

- Focusing on Flag State angle

Together with the Coastal and Port State, the Flag State forms part of the Territorial State addressed in the Montreux Document. In the maritime context, the Flag State bears the main responsibility of regulation. Further, its responsibility exhibits more clarity in international law in comparison to Coastal and Port States.

- Extension of sources

The base of sources the Reference Document is built on was extended. However, the Chair specified that the broadening of the base of references to the document, listed on page 30, is ongoing and will be further expanded in the next draft.

Finally, the Chair of the Working Group illustrated the next step in the development of the Reference Document. As a way forward, the next step will constitute a phase of broadened consultation. Next to an opportunity for comments from participants, the aim is to open for comments from organisations outside of the Montreux Document Forum, including academia, civil society organisations, and importantly the shipping industry as well as PMSCs themselves. Last, the Chair explained his plan to ask the Montreux Document Forum Plenary to take note of the Reference Document in the Plenary meeting that took place in the afternoon of the same day.

### **3. Discussion of the second draft of the *Reference Document – Elements for a maritime interpretation***

After the presentations of the second draft of the Reference Document, the Chair opened up the floor for discussions. The Chair especially welcomed feedback on the substantive parts of the document, as well as questions regarding the procedure.

One participant, explaining that the second draft is currently being considered in capital, asked for clarification on when comments could be provided for the third draft. The Chair explained that next to the collection of comments from academia, industry and civil society, MD participants are welcome to submit comments at any time.

A further Montreux Document Participant asked for clarification on the application of the document in armed conflicts versus in other security situations. The Chair welcomed the comment, proposing to elaborate on the relationship of armed conflicts and other security environments in the introduction of the Reference Document. Secondly, the participant mentioned that since one needs the Montreux Document to read the Reference Document, it may be sensible to consider developing a comprehensive document. The Chair noted the input yet recalled the conclusion of the last Working Group meeting that the Montreux Document should not be reassessed in this forum. A number of participants have advised against a proliferation of documents. The Secretariat to the Montreux Document Forum further underlined that although it is sensible to be cautious to maintain the application of the Montreux Document in terms of armed conflicts, a lot of recent MDF activities have been on the human rights applications of the Montreux Document and its relevance to other situations of armed violence or simple peace time situations. From the perspective of the MDF Secretariat, the Reference Document is a very useful practical tool, rather than being a legal interpretation of the Montreux Document in the maritime context. Additionally, the Secretariat shared the understanding of a certain document fatigue but emphasized that the Reference Document is meant to complement other developed tools, such as the Legislative Guidance Tool and the Contract Guidance Tool. The aim is therewith to produce a useful support for States in regulating private security companies, especially part two of the document on good practices specifically addressed the practical application of the document.

Subsequently, another attendee voiced their appreciation of the evolvement of the document, specifically endorsing the new structure. Further, two participants inquired for more details on the process forward. Mr. Kowalski explained that a list of experts that will contribute to the document is currently being drafted. Once the experts and entities are selected, they will be circulated among the members of the Working Group for their approval, before contacting. The Chair is hoping to receive expert inputs until the end of the year. The Chair of the Working Group also welcomes comments by Montreux Document Participants on the second draft until the end of the year. The incorporation of these comments and preparation of the third draft is scheduled around February/March 2020, depending on the comments received.

#### **4. Any other Business**

Mateus Kowalski recalled the event “The Montreux Document on Private Military and Security Companies: 10 Years on”, organised jointly by the Permanent Missions of Portugal and Switzerland at the UN Headquarters in New York in October 2018. The event, attended by close to 50 delegations, proved very useful in raising awareness of the Montreux Document in United Nations General Assembly forum, combined with multiple interlinkages of issues related to the Montreux Document with topics discussed in New York daily. The Chair informed the participants of the plan to organise a follow-up event this year in the framework of the 74<sup>th</sup> session of the United Nations General Assembly 6<sup>th</sup> Committee (Legal Committee). The Chair also updated the Working Group on other outreach efforts. On 20 June in Mauritius, Portugal presented the Montreux Document and its relevance for regulating maritime PMSCs during a meeting of the Contact Group on Piracy off the Coast of Somalia. The Piracy Legal Forum of the Contact Group is chaired by Portugal and Mauritius. There was significant interest in the Montreux Document and how it applies to the prevention of piracy. Finally, the Chair mentioned that Portugal was a candidate for a second term as the Chair of the Maritime Working Group, to be voted on during the Plenary.

#### **5. Conclusion and next steps**

As a way forward, the Chair suggested to report back to the Plenary on the activities of the Working Group, focusing on the development of the Reference Document. The Chair further reiterated the plan to ask the Plenary to take note of the document, possibly with appreciation. Additionally, Portugal as the Chair of the Working Group aimed to ask the Plenary to approve the next steps in the development of the Reference Document, discussed during the Working Group meeting.

In summary, the Working Group welcomes comments from participants on the second draft of the Reference Document until the end of the year. Around February/March 2020, another Working Group meeting will be planned to discuss the third draft of the Reference Document. Thereafter, the Chair hopes for the Montreux Document Forum Plenary to adopt the Reference Document in 2020.

**In case there are any further questions or comments, please refer them to the Secretariat of the Montreux Document Forum ([s.kung@dcaf.ch](mailto:s.kung@dcaf.ch)).**