

The Montreux Document

A Mapping Study on Outreach and Implementation



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra



DCAF

a centre for security,
development and
the rule of law



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About DCAF

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) is an international foundation whose mission is to assist the international community in pursuing good governance and reform of the security sector. The Centre provides in country advisory support and practical assistance programmes, develops and promotes norms and standards, conducts tailored policy research and identifies good practices and recommendations to promote democratic security sector governance.

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List of Acronyms

AU	African Union
CCTV	Closed-Circuit Television
CoESS	Confederation of European Security Services
DCAF	Geneva Centre for the Democratic Control of Armed Forces
EASO	European Asylum Support Office
ECOWAS	Economic Community of West African States
EU	European Union
EUPOL	European Union's Police Mission
ICL	International Criminal Law
ICoC	International Code of Conduct for Private Security Providers
ICoCA	International Code of Conduct for Private Security Providers Association
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IHRL	International Human Rights Law
LAC	Latin America and the Caribbean
MD	Montreux Document
MDF	Montreux Document Forum
MENA	Middle East and North Africa
MNCs	Multinational Companies
NATO	North Atlantic Treaty Organisation
OAS	Organisation of American States
OEIGWG	Open-ended Intergovernmental Working Group
OSCE	Organisation for Security and Co-Operation in Europe
PCSAP	Privately Contracted Armed Security Personnel
PMFs	Private Military Firms
PMSCs	Private military and security companies

PSAs	Private Security Agencies
PSCs	Private Security Companies
PSOs	Private security Organisations
SSR	Security Sector Reform
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human rights
UNLIREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNMIL	United Nations Mission in Liberia
VPs	Voluntary Principles on Security and Human Rights

Executive Summary

In 2018, the Montreux Document will be commemorating its tenth anniversary. Developed as a result of a joint initiative launched by Switzerland and the International Committee of the Red Cross (ICRC), 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* (Montreux Document or MD) is the first intergovernmental initiative of its kind, seeking to dispel the misconception that private military and security companies (PMSCs) operate in a legal vacuum. In 2013, participants to the initiative established the Montreux Document Forum (MDF) to support national implementation of the MD as well as to reach out to more states and international organisations (IOs) to actively support it. As a platform for informal coordination among participants, the MDF has strengthened dialogue on good practices, challenges, and lessons learned and provided practical guidance tools and support systems for implementation efforts.

However, the PMSC industry has evolved significantly since the Montreux Document's launch, marked by new operational contexts, an expansion of the industry into new regions, shifting clientele and numerous challenges in reforming national legislative frameworks. To ensure continued progress on the implementation of the MD and how it responds to new challenges, it is important for the Forum to address these current issues facing states and IOs in their interactions with PMSCs. Building on these shifts, this Mapping Study provides food for thought for MD participants and seeks to support the articulation of a new vision for the effective regulation of PMSCs in the coming years. As a departure point for discussion, the study seeks to inform Montreux Document participants on how the MDF institutionally could further support implementation of effective regulatory and oversight frameworks on PMSCs.

The objectives of the mapping study are to:

- a. **Evaluate the current state of the PMSC industry by researching its geographical dispersion and growth trends;**
- b. **Assess progress, gaps, and regulatory challenges in implementing the MD on a national governance level;**
- c. **Shed light on new operational contexts of PMSC activity as well as emerging industry technologies; and**
- d. **Provide a basis for discussion on future MDF activities to further support the implementation of the Montreux Document.**

Background: Progress and Ongoing Challenges in Outreach and Implementation of the Montreux Document

Since its launch in 2008, multilateral and individual state efforts to regulate PMSCs have advanced the implementation of the Montreux Document. Support for the MD has also grown significantly; participation has more than tripled, growing from an initial 17 states in 2008 to 54 states and three international organisations in 2017. This growth can be attributed to extensive multilateral and bilateral outreach efforts, for instance through six major regional conferences co-organised by Switzerland, the ICRC, and the Geneva Centre for the Democratic Control of Armed Forces (DCAF), which have covered Latin America, the Pacific, Northeast and Central Asia, Southeast Asia, as well as Francophone and Anglophone Africa. These events and outreach initiatives (among others) have led not only to an increased understanding of the MD and its rules and good practices, but also to increased support and greater interest from a diversity of national and international actors, including human rights commissions, parliamentarians, civil society organisations, national committees on international humanitarian law, and regional organisations. PMSCs, industry associations, as well as private clients of the PMSC industry are also increasingly recognizing the Montreux Document as a guiding text in this issue.

As a result of this extensive programme of engagement, states and IOs have made considerable progress in implementing the obligations and good practices of the Montreux Document. As an example of this progress, the United Nations Department of Safety and Security (UNDSS) has integrated MD good practices throughout its *Guidelines on the Use of Armed Private Security Companies*; the Economic Community of West African States (ECOWAS) recommends member states to become participants to the Montreux Document in its *Policy Framework on Security Sector Reform and Governance*. Likewise, the Organisation for Security and Co-operation in Europe (OSCE), European Union (EU), and the North Atlantic Treaty Organisation (NATO) have adopted policy documents relating to regulation or procurement of private security services.¹ A number of states have also integrated Montreux Document good practices into their licensing, contracting, and authorisation systems.²

9.2 % of MD states are from the Africa region

14.8 % of MD states are from the Asia Pacific region

22.2% of MD states are from Eastern Europe

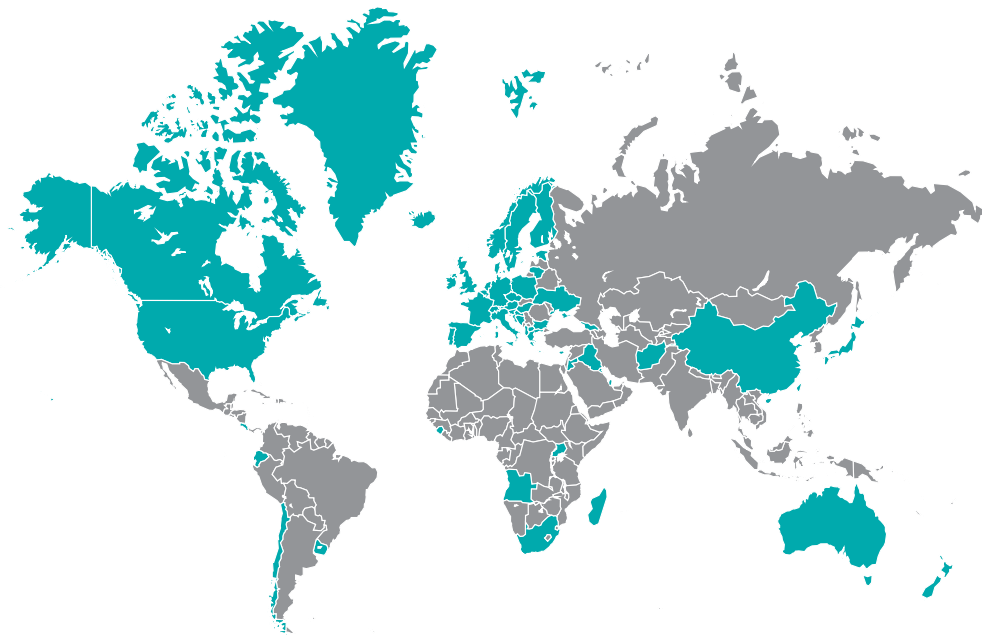
7.4 % of MD states are from Latin America and the Caribbean region

46.3% of MD states are from the Western Europe and Other States region

Table 1. Proportion of MD participation across regions

¹ Organisation for Security and Co-operation in Europe Parliamentary Assembly, 23rd Annual Session, Baku, 2014; Resolution on the OSCE Code of Conduct on Politico-Military Aspects of Security: Awareness Raising, Dissemination, Better Implementation and Outreach, Helsinki Final Declaration, 5–9 July 2015; Council of the European Union, EU Concept for Contractor Support to Operations EEAS 0075/14, Brussels, 4 April 2014; NATO, Policy on Contractor Support to Operations C-M (2007)0004, 12 January 2007; NATO ACO Directive concerning the contracting with Private Security Companies, No. 060-101, 16 May 2014.

² Benjamin Buckland, and Anna Marie Burdzy, *Progress and Opportunities, Five Years On: Challenges and Recommendations for Montreux Document Endorsing States*, (Geneva: DCAF, 2013).



Map 1. MD Participation across regions³

AFRICA REGION: Angola, Madagascar, Sierra Leone, South Africa, Uganda

ASIA PACIFIC REGION: Afghanistan, China, Cyprus, Iraq, Japan, Jordan, Kuwait, Qatar

EASTERN EUROPE REGION: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Lithuania, Poland, Slovenia, Ukraine

LATIN AMERICA AND THE CARIBBEAN REGION: Chile, Costa Rica, Ecuador, Uruguay

WESTERN EUROPE AND OTHER STATES REGION: Australia, Austria, Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal Spain, Switzerland, Sweden, United Kingdom, United States of America

INTERNATIONAL ORGANISATIONS: European Union, North Atlantic Treaty Organisation, Organisation for Security and Co-Operation in Europe

³ The MDF country groupings were formed on the basis of the United Nations official groupings and adapted for the purposes of this study. See Annex II for more information.

However, despite these advances and developments, significant challenges remain in ensuring effective implementation of the MD. In terms of outreach, official support for the MD is concentrated heavily in Western Europe and other States region, with 37 state participants and all three IOs from this area. Only five African states participate in the MD. Similarly a mere four states across the Latin America and the Caribbean region are participants, while the Asia Pacific Oceania and Eastern Europe region has eight MD participants.

More than a decade has passed since the discussions on the MD began in 2006; it is therefore important to recognise that the context of the industry has also changed significantly. Indeed, the industry does operate in armed conflict situations. Nevertheless substantial numbers of private contractors operate in non-conflict settings, such as fragile or complex environments where the rule of law may be weak. It is clear that the Montreux Document good practices may be instructive for post-conflict and for other comparable situations. However, effective promotion of the Montreux Document faces significant challenges in communicating this message. Furthermore, much of the industry today offers solely domestic private security services in contrast to transnational companies offering more military-like services. It is unclear to a number of stakeholders how these companies fit within the scope of the MD. Numerous states take issue with the negative implication that the term “military services” carries, due to its connotations with mercenarism. These issues have created challenges for garnering further support for the MD.

With respect to the implementation of legislative and regulatory reforms related to PMSCs, these practical advancements can be difficult to achieve. National draft laws take time to pass and it can be difficult for states to give priority to these questions ahead of other issues in security sector reform (SSR). A 2010 study commissioned by DCAF on *Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants* highlighted a number of common challenges in regulatory efforts, namely unclear determination related to which services PMSCs may and may not provide, the absence of mechanisms for extraterritorial accountability, a lack of state resources needed for implementation, and weak monitoring and oversight mechanisms.⁴

Building on these shifts, this study seeks to inform MD participants on the strengths as well as the key remaining challenges in MD outreach and implementation, and is designed to capture legislative practice by national authorities in their capacities as contracting states, territorial states, home states, as well as all other states. Although the MD also applies more broadly, such as to all other states in their regulation of PMSCs, these other categories will not be covered by this study. Additionally, the study seeks to identify themes and geographical regions that could benefit from further research, implementation, capacity building, outreach and knowledge sharing. As such, the study intends to promote discussion in the MDF as well as offer momentum and direction for the coming work of the MDF related to the implementation and promotion of the MD.

⁴ Benjamin Buckland, and Anna Marie Burdzy, *Progress and Opportunities, Five Years On: Challenges and Recommendations for Montreux Document Endorsing States*, (Geneva: DCAF, 2013), Challenges 1–3, Challenge 5, and Challenge 6.

1. The Montreux Document and the Scope of the PMSC Industry

In order to inform outreach and implementation efforts of the Montreux Document Forum, an essential element remains to build understanding of the regional concentrations of industry operations.⁵ Which regions or states are emerging centres of PSMC activity? Where does the industry operate relative to Montreux Document participants? Understanding more about the regional PMSC industry landscape will also provide rationale for the location of future outreach efforts.

The **global PMSC industry** is flourishing, representing a worldwide value of approximately USD 100–165 billion per year with annual growth rates between 7–8 percent.⁶ Although each region is unique and industry characteristics within individual states vary greatly, the growth of the industry can largely be attributed to two factors. First, high levels of foreign investment across the world, such as in extractive industries and privatised critical national infrastructure have led businesses to source security from PMSCs in order to fill security gaps. Secondly, private security industry growth has also been driven by situations of recent or current armed conflict or other situations of violence, which have, in some cases, led to a lack of trust in public security. In a number of states, national public security institutions are overwhelmed by demand. This further increases the clientele of PMSCs, which now include humanitarian non-governmental organisations, peacekeeping actors, and development agencies.

In the **LAC region**, the growth of the PMSC is due to citizen insecurity and perceptions of insecurity, urban development, and economic growth. Due to the diversity of states in the region, the size and ownership of companies varies greatly from country to country. PMSCs in the LAC region provide a wide range of different services with their main clients comprising extractive industries, banks and other businesses, governmental agencies, public infrastructure, and private individuals. With some exceptions, PMSCs here rarely provide services of a military nature.⁷ As a main challenge that has been identified, regional statistics suggest that PMSC personnel in the LAC region are more heavily armed, in comparison to other regions of the world. The LAC region has the highest ratio of firearms to PMSC personnel outside of conflict-affected areas, exceeding the European ratio of PMSCs to small arms by at least ten times.⁸ Registered firearms across a sample of 17 LAC region countries exceed 650,000. Nevertheless, some states are endeavouring to place limits on the possession, use, and sale of firearms by PMSCs.⁹

⁵ For complete information on the methodology of the quantitative analysis of PMSC industry, see page 28-29 and Annex IV.





⁶ Nicolas Florquin, “A Booming Business. Private Security and Small Arms,” in *Small Arms Survey 2011: States of Security* (Cambridge: Cambridge University Press, 2011).

⁷ UNLIREC Public Security Program and DCAF Public-Private Partnerships Division, *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context* (Geneva: DCAF, 2016), 10.





⁸ Nicolas Florquin, “A Booming Business. Private Security and Small Arms,” in *Small Arms Survey 2011: States of Security* (Cambridge: Cambridge University Press, 2011), Key Findings: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2011/en/Small-Arms-Survey-2011-Chapter-04-Annexe-4.1-EN.pdf>.

⁹ Seguridad Privada en el Perú: Un estado situacional. SUCAMEC UNLIREC. Lima, 2016 <http://www.ppps.dcaf.ch/en/seguridad-privada-en-el-per%C3%BA-un-estado-situacional>; UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and accountability in an evolving context*, 22.





Western Europe and Other States Region

-  **30** States in the region total
-  **25,363** PMSCs minimum
-  **3,051,335** Personnel minimum
-  **25** MD Participants





Eastern Europe Region

-  **23** States in the region total
-  **20,487** PMSCs minimum
-  **658,469** Personnel minimum
-  **12** MD Participants





Latin America and the Caribbean Region

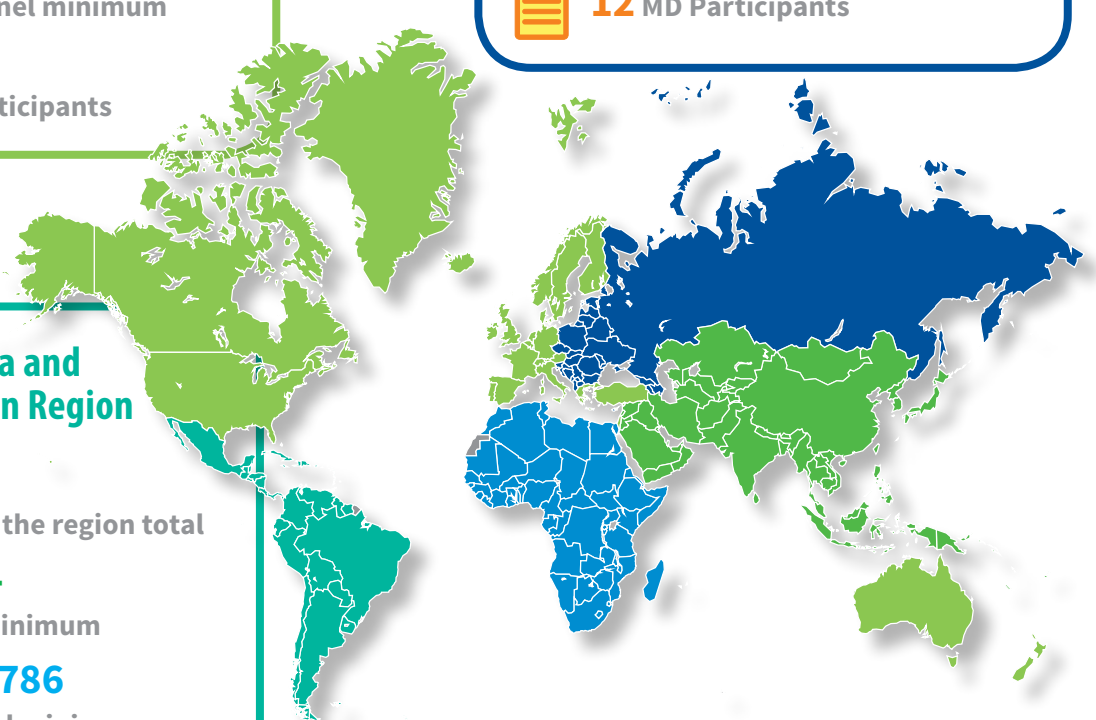
-  **33** States in the region total
-  **16,174** PMSCs minimum
-  **2,450,786** Personnel minimum
-  **4** MD Participants

Asia Pacific Region

-  **56** States in the region total
-  Insufficient data on PMSCs
-  Insufficient data on personnel
-  **8** MD Participants

Africa Region

-  **54** States in the region total
-  **16,077** PMSCs minimum
-  **4,965,711** Personnel minimum
-  **5** MD Participants



The PMSC industry in the **Africa region** is particularly impacted by the socio-economic context: increasing urbanization and high levels of unemployment, coupled with a growing clientele base due to the rising presence of multinational industries. Complex security environments marred by armed conflicts or other situations of violence further increase the needs and demands for private security services around critical national sites such as extractive industries' operations. The majority of PMSCs in the Africa region represent small domestic companies; the entry of large international PMSCs has led some states to introduce legislation restricting the foreign ownership of PMSCs.¹⁰ In North Africa states, the presence of foreign-based international PMSCs endures, as diplomatic representations as well as development agencies rely heavily on the private sector for guarding.

The economic development of the **Asia Pacific region** as a whole has provided a basis for the expansion of PMSCs, whose services are contracted by commercial and public industries, as well as shipping companies.¹¹ PMSC activities in the Southeast Asia, Central and Northeast Asia are generally characterised by the guarding of people and property, rather than the provision of more typically military services. In particular, the region's emerging extractive and energy markets are (or will be increasingly) relying on PMSCs' services for the protection of their infrastructure. Post-Soviet states in the region have also come to terms with the need to provide employment alternatives to a large number of downsized military and police personnel. Coupled with the rapid expansion of commercial industries, this has paved the way for a high growth of the private security industry. In a number of states, PMSC personnel outnumber police officers.¹²

The Western Europe and Others States region represents a high concentration of contracting and home states for PMSCs. One study covering this region found approximately 1,289 private security companies per country.¹³ In terms of industry particularities, states tend to have significant militaries, and therefore a large pool of retired/demobilised military expertise.¹⁴ Additionally, with national military budgets decreasing across the region, demobilised service personnel often find employment in the PMSC industry, bringing with them high levels of expertise.¹⁵ Similarly, in the **Eastern Europe region**, the PMSC industry is primarily focused on guarding commercial premises and private security personnel largely originate from demobilised military personnel. In Southeast Europe, PMSCs are contracted significantly for the protection of critical national infrastructure. Though largely publically owned, critical national infrastructure in this sub-region relies heavily on private protection services.

¹⁰ Alan Bryden, ed., *The Privatisation of Security in Africa: Challenges and Lessons from Côte d'Ivoire, Mali and Senegal*, (Geneva: DCAF, 2016)

¹¹ Geneva Centre for the Democratic Control of Armed Forces, *The Montreux Document on Private Military and Security Companies: Proceedings of the Regional Workshop for North East and Central Asia*, (Geneva: DCAF, 2012),

¹² Nicolas Florquin, Dauren Aben, and Takhmina Karimova, "Blue Skies and Dark Clouds: Kazakhstan and Small Arms", in *Small Arms Survey Occasional Paper 29*, (2012),

¹³ Confederation of European Security Services. *Private Security Services in Europe, CoESS Facts And Figures* (Brussels: CoESS, 2013).

¹⁴ Geoff Burt, and Eric Muller, "Foreign Ownership Bans And Private Security: Protectionism Or Security Sector Governance?," *Centre for Security Governance Papers 7*, (2016).

¹⁵ Ase Gilje Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies," SSR Paper 3, (Geneva: DCAF, 2011), 7.

Two main growth factors are common across all regions:

- ↘ **High levels of foreign investment, especially the presence of the extractive industry, leading businesses and industries to source security from private companies.**
 - ↘ **Situations of recent or current armed conflict or where the state is experiencing weakened governance, leading to a lack of trust in public security institutions and further increasing the clientele of PMSCs.**
-

2. Montreux Document Implementation and Gaps in National Legislation

The implementation of the MD rules and good practices on a national level undoubtedly requires time, and is dependent on many operational factors in given national contexts as well as pre-existing legal frameworks. This study assesses MD “implementation” by participating states based on the legal frameworks that exist currently and based on a number of good practices translated into key indicators. While some states may already have relatively comprehensive regulations on PMSCs which may require less effort to update in line with the MD, it may be a longer process for other states with dated, less comprehensive or non-existent national legal frameworks.

To inform dialogue and debate in the Montreux Document Forum, eight key indicators of successful national implementation have been isolated, and divided into three categories of roles and responsibilities; procedures, systems and processes; and monitoring and accountability. The indicators have been developed on the basis of the challenges identified during the Montreux+5 Conference, the major report prepared in view of the event, as well as feedback and discussions held with Montreux Document participants. The key indicators represent measurable elements of legislation rather than the status of how legislation is implemented in practice. The key indicators are not intended to be exhaustive or limiting; but seek to identify main gaps in implementation of MD rules and good practices as well as industry trends and common patterns across national laws. Collating the results and assessing MD participating states’ national legislation will then enable the identification of main gaps in the implementation

Eight Indicators of Montreux Document Implementation

ROLES & RESPONSIBILITIES	PROCESSES, SYSTEMS AND PROCEDURES	MONITORING & ACCOUNTABILITY
<ol style="list-style-type: none">1 Specific legislation on PMSCs (provisions on licencing and registration)2 Determination of services: distinction between private and public security service provision3 Extra-territorial jurisdiction of the law	<ol style="list-style-type: none">4 Required identification of personnel and means of transport. Prohibition of active-duty public security from working in PMSCs5 Firearms and weapons licencing and registration regimes for PMSCs6 Dedicated policy on the use of force and firearms by PMSC personnel	<ol style="list-style-type: none">7 Monitoring of PMSCs8 Suspension and/or revocation of the licence, registration, or contract in case of misconduct

of MD rules and good practices, as well as industry trends and common patterns across national law that could be incorporated into future outreach and implementation efforts.

By focusing the unit of analysis on the national legislation of Montreux Document participant states, the key indicators do not fully measure the extent to which good practices of the MD have been concretely implemented and therefore are not reflective of the status of national regulation as a whole. However, states are invited to consider these key indicators in defining their relationships with PMSCs, recognising that a particular good practice may not be appropriate in all circumstances and emphasizing that the selection of key indicators does not mean to imply that states should necessarily follow all these practices fully. The key indicators also do not encompass the implementation efforts of international organisations. Indeed, international organisations play valuable roles as conveners and standard setters in their respective regions. However, the key indicators focus on national actors' efforts at implementation as international organisations do not have the same systems of legislation lending to the scope of analysis in this study. For further detail as to the rationale for the key indicators chosen, see Annex IV.

General Assessment Criteria

Evaluation A

The national legislation positively includes the relevant good practices of the MD.

Evaluation B

The relevant good practices of the MD are included in the legislation to some extent.

Evaluation C

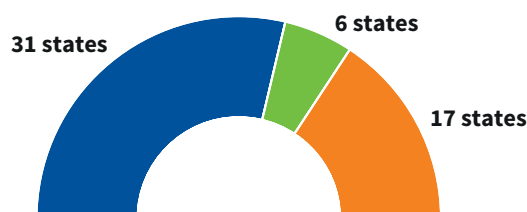
The relevant good practices of the MD are not yet included into national legislation. For instance, this could mean that no legislation specific to PMSCs or relevant to PMSCs has been passed.

ROLES AND RESPONSIBILITIES

- 1** Does the state have a law specifically addressing PMSCs operating within or from its territory, such as a law that sets provisions for licensing or registration?



- 2** Does national law maintain a distinction between private and public forces with respect to determination of services?

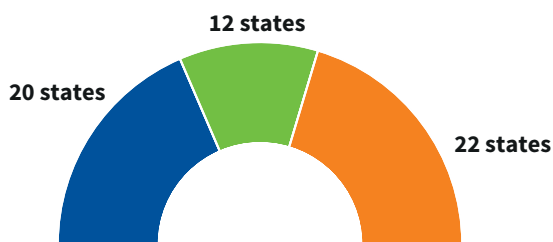


- 3** Does the state provide for extra-territorial jurisdiction of the law?

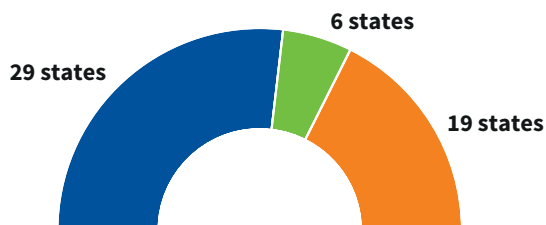


PROCEDURES, SYSTEMS, AND PROCESSES

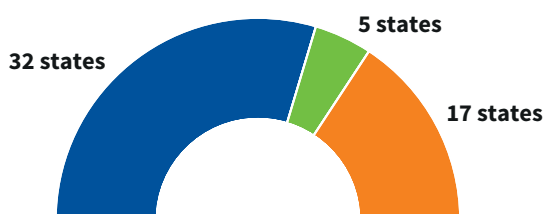
4 To further distinguish between public and private security, does the national law require that PMSCs are personally identifiable? Does the law prohibit active-duty public security personnel from working in PMSCs?



5 Does the state have a law that provides a firearms and weapons licencing and registration regime for PMSCs?

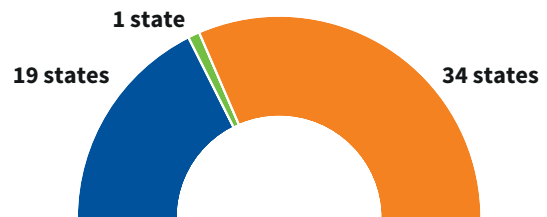


6 Does the state have a dedicated policy on the use of force and firearms for PMSC personnel?

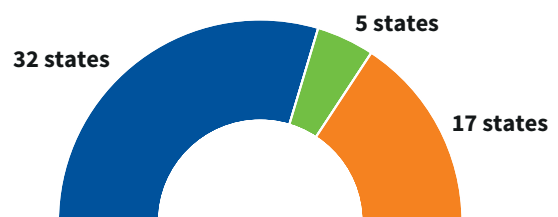


MONITORING AND ACCOUNTABILITY

7 Does the law provide for a dedicated public regulatory body for PMSCs or other monitoring functions?



8 In cases of non-compliance, does the national law provide for suspension and revocation of the licence, contract, or registration?



Roles and Responsibilities

As a starting point, the existence of a law specifically addressing PMSCs is fundamental as the industry has significant potential to impact the human rights of local populations and violate IHL. This indicator alone does not provide for a holistic assessment of the national legislation but it offers an important departure point, indicating the political importance attributed by national authorities to the issue of regulating PMSCs. In fact, most MD participants have passed relatively recent laws to address the industry. About 60% of MD states have passed one or more new bills to regulate PMSCs since the year 2000. Other states have added amendments to pre-existing military or defence law. **Only 27% of MD states have national legislation for PMSCs that pre-dates 2000**, which indicates that these states have adapted older laws to fit new contexts, or perhaps that these states have fit the regulation of PMSCs under the umbrella of a pre-existing framework. The question that emerges is to what extent the legislation is applied and enforced.

About 60% of MD states have passed one or more new bills to regulate PMSCs since the year 2000. Other states have added amendments to pre-existing military or defence law.

It is similarly important for national legislation to clearly outline the permitted services that PMSCs may and may not provide as well as to provide for extraterritorial jurisdiction of the law. Due to the nature of their work, police officers and other public security forces perform duties, such as detention, arrest and interrogation, which PMSC personnel should not necessarily be performing. A state should therefore ensure a clear distinction between public and private security by defining the roles and responsibilities of PMSCs vis-à-vis public security forces. **Though there is a distinction between public and private forces both in assigned duties across roughly 70 percent of all MD participants, there is still a great deal of overlap in functions.** Private security personnel are frequently approached for help in cases of emergency, contributing to a blurring of roles and responsibilities. National legislation is especially effective if it provides accountability in the home state, where PMSCs are headquartered or based, as well as oversight of PMSCs and their personnel in the territorial state, where the PMSCs are operating. The MD also puts particular emphasis on contracting states; especially in cases where PMSCs operate in situations of armed conflict or other situations of violence, the territorial state is often incapable of responding. This is especially relevant where PMSCs are operating in situations of armed conflict, where the rule of law may be weak or the institutions may be fragile or ineffective.

Procedures, Systems and Processes

In order to further distinguish amongst public and private security actors, it is a good practice that PMSC personnel remain clearly identifiable. In this regard, the Montreux Document recommends that PMSC personnel carry clearly visible identification and that their means of transport are also easily distinguishable. Across all states, this good practice performed strongly, with **32 states in total providing guidelines for personal identification of PMSC personnel.** These same States prohibit active duty public security personnel from working for PMSCs during their off-hours. This practice is sometimes referred to as moonlighting or paid-duty assignments.

32 MD states require a use of force policy and weapons training for PMSCs and personnel and restricts the weapons that may be carried while on duty.

The use and storage of firearms and weapons, and more broadly the use of force by PMSC personnel is of particular concern under the Montreux Document. Legal frameworks governing the possession and use of firearms and other weapons revolve around three main issues: the types of weapons that PMSC personnel are allowed to use; the rules and regulations related to licensing and authorising the possession of weapons by companies and use by personnel; and the requirements related to stockpile and inventory management. 32 MD states require a use of force policy and weapons training for PMSCs and personnel and restricts the weapons that may be carried while on duty. Licensing and registration regimes are also crucial in ensuring responsible management and storage of firearms and other weapons. Indeed, **29 Montreux Document participating states have established firearms and weapons licensing and registration systems that stipulate rules for after-hours equipment storage. However, in 35% of the MD participating states (19 states), it was found that current laws fail to include provisions for weapon and firearm licensing and registration regimes.** Although a majority of MD states have adopted laws to include more general weapons and firearms regimes, these do not automatically provide for appropriate regulation of the PMSC industry in regard to their firearms and other weapons. For example, while states tend to have legislation restricting the types of equipment that PMSCs are allowed to use, few states have national laws which define or restrict the volume of equipment that PMSCs are permitted to hold.

29 Montreux Document participating states have established firearms and weapons licensing and registration systems that stipulate rules for after-hours equipment storage

Monitoring and Accountability

On the ground monitoring of compliance with national legislation is crucial for effective accountability and oversight of PMSCs and their personnel, as well as providing reliable information on PMSC activities. **Of the 54 MD states surveyed, 19 have specific provisions for monitoring of PMSC compliance with legislation, licenses or regulations by a regulatory national regulatory body. As a second step in monitoring, 32 states have legislation containing clear provisions for cancelling contract or removing a PMSCs's licence/ registration to operate under specific terms of misconduct. One third of MD participants (17 states) do not have such a mechanism.** It is important to note that these administrative provisions do not take into account national criminal and civil proceedings or other access to remedy provisions in legislation which are important in any effective regulatory system. These good practices of the Montreux Document were beyond the scope of the Mapping Study. The

Of the 54 MD states surveyed, 19 have specific provisions for field monitoring of PMSC compliance with legislation, licenses or regulations.

revocation or suspension of a license, contract or registration is not intended to be the sole or automatic reaction to all cases of non-compliance. It is up to each state to determine the gravity and seriousness of the infraction to merit this response.

3. Current and Emerging Themes in the Global PMSC Industry

The need for more effective implementation of the legal obligations and good practices contained in the Montreux Document at the domestic level has been highlighted by states and international organisations who have pointed out that different operational contexts of PMSCs significantly impact attempts to reform national regulation and oversight mechanisms. As PMSCs are providing an increasing diversity of services in areas such as in weapons management, detention centre management or security support to international development efforts, Montreux Document participants have debated their relationships with PMSCs and how national efforts at regulation can be more effective.

To date, the Montreux Document Forum has proven itself to be a useful platform for participants to the initiative as well as industry and civil society stakeholders to discuss common challenges and potential solutions for more transparent and effective PMSC regulation. These thematic challenges have been discussed in addition to the dialogue on the progress and challenges in implementing the rules and good practices of the Montreux Document, namely the determination of services, extraterritorial applicability of legislation, and monitoring of licensing, contract and authorisation systems. Responding to the interests of participants, the MDF has addressed three main themes:

- **Links between other initiatives in the field of PMSC regulation:** Recognising the links between voluntary multi-stakeholder regulation initiatives and international standards related to PMSCs, as well as their complementary nature, MD participants established the Working Group on the International Code of Conduct Association in order to increase discussion and communication, and to provide advice to the ICoCA on national and international policy and regulatory matters with the aim that other initiatives are in line with the MD and international obligations.

MD participants have also discussed the international draft convention on PMSCs. In 2010, the United Nations Human Rights Council adopted resolution 15/26 to establish an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, including their accountability. The Open-ended working group takes into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Open ended working group is currently discussing this draft convention and gathering consensus on the proposed text.

- **The use of PMSCs in maritime settings:** The MDF Plenary has considered the applicability of the MD in private maritime security as well as state experiences in regulating these companies in contrast to land-based contractors. The MDF has also considered the need to take into account the work undertaken by specialised international organisations which have developed a framework of international rules and standards for maritime security (notably the International Maritime Organisation). International shipping comprises an important element of the global economy, as over 90% of global trade is carried out by international shipping providers. Due to the economic significance of this industry and the insecurities caused by piracy, private security for vessels has increased in frequency and cost over the past decade. About 40% of ships sailing the Horn of Africa now carry armed guards.¹⁶ Due to violent attacks by pirates, as early as 2008, the Gulf of Aden was labelled as a “war-risk” zone for maritime activity, and insurance companies began to charge a premium for insurance on vessels travelling through this area.¹⁷ Piracy attacks in the Gulf of Aden may be decreasing, but other areas of the high seas have become more vulnerable, such as the Gulf of Guinea and in South East Asia where attacks rose, accounting for 60 percent of all incidents in 2016.
- **Third country nationals and the legal interpretation of “applicable national law” under the MD:** The MDF plenary has also considered the issue of third country nationals employed by PMSCs to work elsewhere in the world. During the December 2014 plenary meeting of the MDF, participants raised concerns about the international labour market, specifically with workers being recruited into multi-national PMSCs in violation of their national home state labour laws.

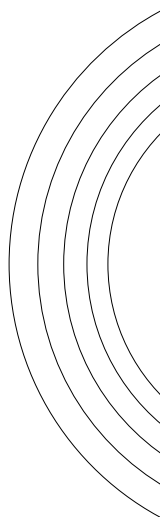
Looking forward, there has been growing awareness amongst MD participants as well as the conveners and partners of the initiative that there is a lack of knowledge regarding the new operational contexts of PMSCs. In fact, the human rights and IHL impacts of this industry are generally poorly understood amongst national stakeholders. A lack of effective company certification or monitoring creates uncertainty around how staff are trained or vetted or the weapons held by PMSCs – with evident consequences for the safety and security of clients as well as wider populations, particularly in these new operational contexts. This is particularly significant in contexts where PMSCs draw demobilised state security personnel. Moreover, a lack of transparency within the industry threatens the labor rights of employees, making them vulnerable to unfair treatment and inadequate terms and conditions. The privatisation of security is an ‘orphan issue’ that is not the subject of meaningful advocacy or policy debate. Regulatory and especially capacity gaps mean that parts of the industry fall outside of democratic accountability.

New Services and Technologies in the PMSC Industry

PMSCs are increasingly present in **detention centres** (including by providing operational support to refugee and asylum-seeker centres). As the demand for private security in refugee and asylum seeker processing and detention centres grows, human rights organisations are increasingly concerned about the relative lack of monitoring and oversight being carried out.

¹⁶ Floating Armouries: Cruisin’ with Guns,” *The Economist*, 23 January 2016.

¹⁷ Joel Christopher Coito, “Pirates vs. Private Security: Commercial Shipping, the Montreux Document, and the Battle for the Gulf of Aden,” *California Law Review*. 101:1, (2013), Article 3.



Abuse of detainees has raised serious ethical questions as refugees and asylum seekers have been subjected to medical negligence and psycho-social harm. Facilities with armed guards lead to concerns over the use of force in unstable crowd situations when refugees and asylum seekers become desperate, facing food shortages, poor hygiene and overcrowding in camps. Criminal detention management and the transport of detainees for extradition purposes are functions which have been traditionally carried out by the state, but are increasingly also being contracted out to PMSCs. One 2013 study found that at least 11 states have privatised criminal detention to various extents.¹⁸

The **protection of humanitarian personnel** is a critical challenge for the international community as violence against humanitarian actors and operations has grave consequences on aid organisations' operational capacities as well as on the vulnerable populations they serve. In 2015, 287 aid workers were victims of major attacks, contrasted with 125 in 2004.¹⁹ Due to the increasing dangerousness of their work, aid workers have taken measures to reduce their vulnerability and risks, including by hiring private security providers. The UN, for example, contracts PMSC services for the protection of staff and premises, risk assessments, and security training.

In some states, the **cooperation between law enforcement and private security in combating terrorism** is viewed positively as offering a number of benefits to both sides, including "creative problem solving; increased training opportunities; information, data, and intelligence sharing; "force multiplier" opportunities; access to the community through private sector communications technology; and reduced recovery time following disasters." On the other hand, problems persist in engaging with PMSCs in this security issue such as accountability gaps, misinformation, the mistrust of PMSC personnel, and the need to distinguish more clearly between public and private security roles.

The role of PMSCs as agents of **support for security sector reform initiatives** has not been adequately explored. As an overarching issue that crosses into many themes of PMSC operations, private security companies indeed offer services in SSR, such as in peacebuilding, training of public security forces, as well as supporting de-mining activities and humanitarian reconstruction.

PMSCs are increasingly obtaining contracts to **critical national infrastructure protection** and when outsourced to private contractors, these roles are sometimes called non-public police functions or plural policing. Such security functions are carried out by a network of PMSCs and police, where the roles are often complementary and mutually supportive. For instance, in Albania, the government remains the largest consumer of private security, procuring nearly 9% of the annual budget of the Ministry of Interior for guarding public institutions, including critical infrastructure. Airports, nuclear energy facilities, public transportation systems and hospitals are some examples of critical infrastructure being guarded by PMSCs.

New technologies and services in privatised cyber security are also an emerging theme in the industry. As part of their service offer, PMSCs today operate surveillance systems, such as closed-circuit television (CCTV) or facial recognition technology and the demand for these

¹⁸ Cody Mason, "International Growth Trends in Prison Privatization," The Sentencing Project, (Washington, D.C., August 2013) <http://sentencingproject.org/wp-content/uploads/2015/12/International-Growth-Trends-in-Prison-Privatization.pdf>.

¹⁹ The Aid Worker Security Database, *Aid Worker Security Report, Figures at a Glance*, (2016), www.aidworkersecurity.org.

services has increased significantly. For instance, the growth in the use of CCTV has been substantial. The British Security Industry Association (BSIA) estimated in 2013 that the UK had between 4 million and 5.9 million private CCTV cameras.²⁰

4. Recommendations for the Way Forward

The View in Montreux+10

2018 will commemorate 10 years since the launch of this important intergovernmental initiative on regulating PMSCs. As we approach this date, it is clear that the landscape of the industry has shifted since the Montreux Document was signed. The MD was initiated in the wake of large scale conflicts in Iraq and Afghanistan, with serious violations of human rights and IHL by PMSCs which perpetuated the idea that PMSCs operate in a vacuum of accountability, and where states lacked clarity as to their responsibilities in this area. When it comes to PMSCs, the unique structure of the Montreux Document remains one of the biggest opportunities for improved respect of human rights and international humanitarian law. The context and operational realities of the PMSC industry have indeed shifted. However, thanks to its compilation of pertinent international rules and good practices which act as a blueprint for national regulation, the Montreux Document sustains political effort and attention to this issue which cross-cuts into a number of foreign policy priorities.

This mapping study has sought to take stock of the scope of the Montreux Document by mapping the current PMSC landscape, and linking this with state efforts to implement the MD rules and good practices. While addressing the various contexts where PMSCs operate, this report provides a much needed review of the challenges initially identified in the MDF and a re-examination of obstacles to implementation as we look to Montreux+10 and beyond.

Recommendations

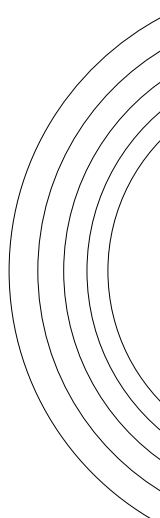
a. Granulated Research and Knowledge-Building

The MDF could support knowledge-building and further research around the issues of PMSCs contracted in refugee and asylum centres and criminal detention centres, the use of PMSCs by humanitarian actors, the roles of PMSCs in counterterrorism initiatives, security sector reform initiatives, and in the protection for maritime trade, and additionally PMSCs' operational support within critical infrastructure such as airports and nuclear power plants. Furthermore, the MDF could consider new PMSC technologies and equipment (including security cameras, facial recognition technology, and drones) which could benefit from further research and discussion.

b. Rethinking Outreach Efforts

Much remains to be done to increase support for the MD in regions outside of Europe and North America; here, the MDF could focus future efforts in engaging and energizing current MD participants from underrepresented regions. The MDF could consider the following potential points of entry to realise these goals:

²⁰ David Barrett, "One surveillance camera for every 11 people in Britain, says CCTV survey," *The Telegraph*, 10 July 2013.



- **Regional outreach:** In order to engage more actively with states from the Latin America and Caribbean, Middle East and North Africa, and Africa regions, regional outreach hubs could be created in coordination with MD participant states acting as contact points for their respective regions. These hubs could perform an awareness raising role, address specific concerns on the legal content of the Montreux Document, and support states in accessing documentation and other resources.
- **National and local level engagement and capacity building:** National or regional roundtables could be organised with stakeholders in identified states to perform outreach and to support representatives directly responsible for the implementation of IHL, human rights, and the Montreux Document, especially in underrepresented regions. These roundtables could integrate the relevant administrative/regulatory authorities and integrate perspectives from communities. This would give MD implementation a ‘bottom-up’ momentum where field-level challenges of regulating PMSCs are then better understood by states’ law and policymakers. This engagement would stand in complement to the more traditional ‘top-down’ models of international engagement that have been carried out in previous years.

c. Programme of Implementation Support

At the end of 2013, Montreux Document participants identified a common need for the development of practical implementation tools to support integration of MD good practices into national legislative frameworks. Following the development of the Legislative Guidance Tool and the Contract Guidance Tool, practical resources now exist to support states in tackling law and policy challenges. Furthermore, support for the implementation of these guidance tools could take shape in a holistic programme of capacity-building, training activities, advisory support, and mentoring. Such a programme of implementation support could be funded by voluntary contributions from Montreux Document participants and could consider the development of new guidance tools to further assist states and IOs in implementing the MD.

Key considerations in this programme of implementation support could include:

- **Increased cooperation among states:** As set out by the Montreux Document, states are encouraged to support each other in their efforts to establish effective monitoring and oversight of PMSCs. The MDF could consider how these forms of cooperation could be fostered, for example through the development of mutual legal assistance programs or other partnerships among Montreux Document participants which could create increased accountability.
- **Monitoring and oversight:** The Montreux Document Forum could consider how to bring national human rights institutions, parliaments and civil society into dialogue with the MDF initiative in order to support monitoring and oversight processes, and also to promote general awareness-raising on this issue.
- **Development of other guidance tools:** The Montreux Document Forum could also consider what further tools may be necessary to further support implementation of the rules and good practices of the MD, such as:

- New guidance on mechanisms to support monitoring and oversight of PMSCs;
- Development of training programmes on IHRL and IHL for PMSC managers and their personnel;
- Use of force training and development of standards for storage and handling of firearms and weapons.

Introduction

1. Background

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* (henceforth “Montreux Document” or “MD”) was developed in 2008 as a result of a joint initiative launched by Switzerland and the International Committee of the Red Cross (ICRC).¹ The Montreux Document is the first intergovernmental initiative of its kind, in that it seeks to dispel the misconception that private military and security companies (henceforth “PMSCs”) operate in a legal vacuum by recalling states’ international legal obligations and by proposing good practices to assist states in implementation. This study will show that since the launch of the MD, multilateral and individual state efforts to regulate PMSCs have advanced the implementation of human rights and international humanitarian law (henceforth “IHL”). As a practical and realistic contribution which promotes respect for IHL and human rights law, the MD provides a blueprint for governments to effectively regulate PMSCs. To further reinforce these efforts, the Montreux Document Forum (henceforth “MDF”) was established in 2014 to support national implementation of the MD, as well as to bring more states and international organisations to actively support it. The MDF has since strengthened dialogue on good practices and lessons learned related to the regulation of PMSCs and provided a support system for states and international organisations in implementation.

However, as this study will illustrate, the PMSC industry has evolved significantly since the Montreux Document’s launch: new operational contexts, diverse areas of geographical industry expansion, shifting clientele, and diverse challenges in national legislative frameworks. Thus, consideration of the current issues facing states and international organisations in their relationships with PMSCs is critical to ensuring the continued added-value, relevance, and utility of the Montreux Document as well as the MDF, and its responsiveness to participants’ needs with respect to implementation and outreach support.

Building on these changes, this Mapping Study was commissioned to provide food for thought for MD participants and ultimately support the articulation of a new vision for the MDF in the coming years. As a starting point for discussion, this study seeks to inform Montreux Document participants on how the MDF could further support implementation of effective regulatory frameworks on PMSCs. To reach this goal, the study illustrates state efforts in implementing the Montreux Document nationally and identifies the themes, operational contexts, and

¹ Federal Department of Foreign Affairs, FDFA Switzerland, *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*, (17 December 2008) <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law/private-military-security-companies/montreux-document.html>.

geographical regions that could benefit from further research, implementation, outreach, and capacity building. In his opening statement to the 2013 Montreux+5 Conference, which commemorated the five-year anniversary of the signing of the Montreux Document, Federal Councillor Didier Burkhalter, head of the Federal Department of Foreign Affairs of Switzerland stressed, “the challenges ahead will require states to cooperate closely, exchange information and offer each other mutual assistance. Regular dialogue between states and international organisations that have endorsed the Montreux Document may well help us achieve full compliance with international humanitarian law and human rights.”² In this spirit of cooperation, this study seeks to engage a more thoughtful discussion amongst MD participants on future MDF activities to further grow and implement the Montreux Document.

The PMSC industry has evolved significantly since the Montreux Document’s launch: new operational contexts, diverse areas of geographical industry expansion, shifting clientele, and diverse challenges in national legislative frameworks.

Towards Montreux+10: Montreux Document Progress at a Glance

In 2018, the Montreux Document will be commemorating its tenth anniversary. Since its signing, the relevance of the Montreux Document has been evidenced by the widespread support received by the initiative. Indeed, participation has more than tripled, growing from an initial 17 states to 54 states and three international organisations in 2017,³ and support for the Montreux Document grows continuously.⁴ This growth in participation can be attributed to extensive multilateral and bilateral outreach efforts. Since 2011, Switzerland, the ICRC and the Geneva Centre for the Democratic Control of Armed Forces (DCAF) have organised a series of six major regional conferences, covering Latin America, the Pacific, Northeast and Central Asia, Southeast Asia, as well as Francophone, Lusophone, and Anglophone Africa. These events gathered 72 states from around the world, leading not only to an increased understanding of the MD and its rules and good practices, but also to increased support and greater interest from different actors (including human rights commissions, parliamentarians, and civil society organisations). Further, the ICRC has been promoting the Montreux Document through its regional delegations and by supporting National IHL Committees and similar bodies (through seminars and bilateral dialogue with states).⁵ The Swiss Federal Department for Foreign Affairs has also carried out bilateral discussions to encourage states to join the MD, by engaging with in-country embassies, or with permanent missions in Geneva. Another key aspect of outreach has been engagement with regional groups, for example dialogue with the Africa Group in the United Nations Office in Geneva and through the Organisation Internationale de la Francophonie. These efforts have allowed Switzerland, the ICRC and DCAF to raise awareness among states to ensure that PMSC operations and activities are carried out in compliance with IHL and international human

² Didier Burkhalter, “Private Military and Security Companies: five years after the Montreux Document,” (Opening statement during the Montreux +5 Conference), Montreux, Switzerland, 11 December 2013.

³ For an up-to-date list of participants, visit: <http://www.mdforum.ch/en/participants>

⁴ Montreux Document Forum. “Estonia becomes the newest state to officially support the Montreux Document,” 25 June 2016, <http://mdforum.ch/en/estonia-becomes-montreux-document-participant>.

⁵ “Regulating Private Military and Security Companies: What can National IHL Committees Do?” Side event at the 2016 Universal Meeting of National Committees and similar bodies on international humanitarian law, 1 December 2016; ICRC, “International Humanitarian Law: Madagascar Supports Montreux Document”, 5 August 2015, <https://www.icrc.org/en/document/international-humanitarian-law-madagascar-supports-montreux-document>.

rights obligations as set out in the MD. Importantly, the Montreux Document is not intended to prescribe a one-size-fits-all solution. States are rather encouraged to tailor their response to PMSC activity in the way that best meets their needs and contexts and in line with their respective obligations under international law.

International organisations have also become more active in supporting and implementing the Montreux Document. Currently, the Montreux Document is supported by the European Union (EU), the North Atlantic Treaty Organisation (NATO) and the Organisation for Security and Co-operation in Europe (OSCE). Notably, the OSCE has reinforced its support for more effective oversight of PMSCs on several occasions. In July 2014, the OSCE Parliamentary Assembly called on participating states to enhance oversight as a means of increasing accountability within the PMSC industry.⁶ Furthermore, within the July 2015 Helsinki Resolution on the OSCE *Code of Conduct on Politico-Military Aspects of Security*, the Parliamentary Assembly again reaffirmed its commitment to further dialogue on the regulation of PMSCs.⁷ Likewise, the EU and NATO have adopted policy documents relating to their procurement of private security services which reflect the good practices contained within the MD.⁸ International organisations have the potential to be leaders in their respective regions by encouraging the regulation of PMSCs. In this regard, it is noteworthy that 24 of 28 EU member states are participants to the Montreux Document. Similarly, two-thirds of Montreux Document participants also belong to the OSCE.⁹

The EU, NATO, and the OSCE have adopted important policy documents relating to the regulation of PMSCs.

Regional organisations and other international organisations not yet participating in the Montreux Document have also taken important steps to integrate the MD's rules and good practices in their policies and procedures. The Economic Community of West African States (ECOWAS) has included in its *Policy Framework on Security Sector Reform and Governance* recommendations for its member states to become participants to the Montreux Document.¹⁰ The *UN Department of Safety and Security Guidelines on the Use of Armed Security Services from Private Security Companies* has also integrated Montreux Document good practices throughout its guidance, including direct reference to the selection and management of armed private security companies, as well as the selection of company personnel.¹¹

⁶ Organisation for Security and Co-operation in Europe Parliamentary Assembly, "23rd Annual Session," Baku, 2014 <https://www.oscepa.org/meetings/annual-sessions/2014-baku-annual-session>.

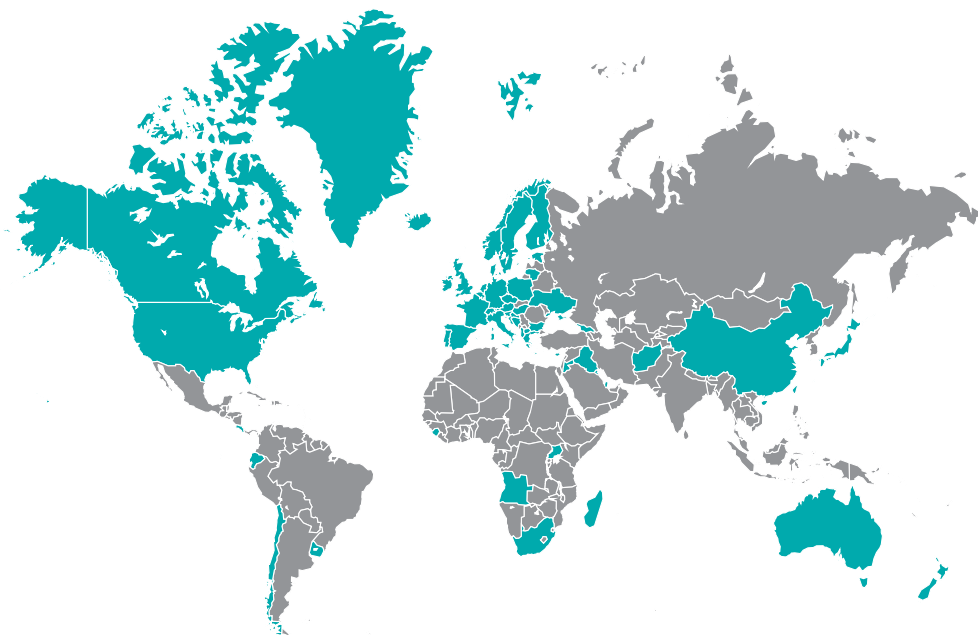
⁷ Resolution on OSCE Code of Conduct on Politico-Military Aspects of Security: Awareness Raising, Dissemination, Better Implementation and Outreach, Helsinki Final Declaration, 24th Annual Session of the OSCE Parliamentary Assembly, 5–9 July 2015, <https://www.oscepa.org/meetings/annual-sessions/2015-annual-session-helsinki/2015-helsinki-final-declaration/2284-09>. The Montreux Document was also discussed at the July 2016 workshop on the OSCE Code of Conduct on Politico-Military Aspects of Security. The event included 100 participants comprised of Parliamentarians, ombudsman institutions, oversight committees, military and defence advisors from the following states: Albania, Algeria, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Czech Republic, Finland, France, Georgia, Greece, Germany, Kazakhstan, Kyrgyzstan, Malta, Norway, Romania, Russia Federation, Serbia, Slovenia, Spain, Sweden, Switzerland, Tunisia, Turkey, UK, US; additional OSCE Field Offices for Bishkek, Yerevan, Ukraine, and Bosnia and Herzegovina attended.

⁸ Emmylou Boddi, Anna Marie Burdzy, and Nelleke van Amstel, *Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting 2015–2016: A Scoping Study*, (Geneva: DCAF, 2016); For the EU, see: Council of the European Union, *EU Concept for Contractor Support to EU-led military operations*, EEAS 00754/14, Brussels, 4 April 2014; For NATO, see: NATO, *Policy on Contractor Support to Operations C-M(2007)0004*, 12 January 2007; NATO, *ACO Directive concerning the contracting with Private Security companies*, N° 060–101, 16 May 2014.

⁹ For an up-to-date list of participants see <http://www.mdforum.ch/participants>.

¹⁰ ECOWAS, *Policy Framework for Security Sector Reform and Governance*, Article 36.

¹¹ United Nations Department of Safety and Security, *Security Management Operations Manual, Guidelines on the Use of Armed Security Services from Private Security Companies*, 8 November 2012, Art. F (25).



Map 1. MD Participation across regions

AFRICA REGION: Angola, Madagascar, Sierra Leone, South Africa, Uganda

ASIA PACIFIC REGION: Afghanistan, China, Cyprus, Iraq, Japan, Jordan, Kuwait, Qatar

EASTERN EUROPE REGION: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Former Yugoslav Republic of Macedonia, Georgia, Hungary, Lithuania, Poland, Slovenia, Ukraine

LATIN AMERICA AND THE CARIBBEAN REGION: Chile, Costa Rica, Ecuador, Uruguay

WESTERN EUROPE AND OTHER STATES REGION: Australia, Austria, Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, New Zealand, Norway, Portugal Spain, Switzerland, Sweden, United Kingdom, United States of America

INTERNATIONAL ORGANISATIONS: European Union, North Atlantic Treaty Organisation, Organisation for Security and Co-Operation in Europe

Implementation and Practical Guidance Tools

In the last two years, the MDF has centred its focus on supporting practical implementation of good practices. The need for more effective national implementation was highlighted at several discussions, such as the Montreux +5 Conference, as a key way forward for the participants to the initiative.¹² In consideration of this, MD participants agreed to establish the Montreux Document Forum as a first step to promote more active implementation.¹³ The MDF is a platform for communication and cooperation among MD participants. By providing a venue for informal consultation, the MDF seeks to support national implementation of the Montreux Document, as well as to bring more states and international organisations to actively support it. The MDF further aims to strengthen dialogue on lessons learned, good practices, and challenges related to the regulation of PMSCs.

Furthermore, MD participants have also been actively involved in the development of practical guidance tools, such as the *Legislative Guidance Tool for States to Regulate PMSCs*.¹⁴ This practical handbook provides guidance for lawmakers to develop or update national legislation related to PMSCs and seeks to assist states in addressing fundamental questions related to regulation, such as: Which types of security functions should and should not be outsourced to private companies? How does the state monitor the activities of PMSCs? How do states respond to abuses of human rights and violations of IHL by PMSCs where they do occur? Who should be monitoring PMSCs and their personnel? What mechanisms for effective remedies are developed to help victims?

More recently, MD participants have been actively contributing examples of experiences and good practices to assist in the development of the *Guidance Tool for Contracting with Private Military and Security Companies*. This Contract Guidance Tool provides practical support for relevant contracting officers, agencies or other actors, drawing on international norms and standards, on how to structure their procurement and contracting procedures for private military and security providers. By translating knowledge and research into the format of a practical tool, this constitutes a new element of implementation support for the actors writing contracts with PMSCs.

Ongoing Challenges

Notable advances and developments have been made in the initiative, including though implementation and outreach efforts. Nevertheless, significant challenges remain in ensuring effective implementation of the MD. Official support for the MD is largely limited to the Europe and North America region, with 35 participants from the Latin America and the Caribbean region (LAC). Meanwhile, only five African states participate in the MD. Similarly, a mere four states across LAC are participants, while the Asia Pacific and Oceania region (including Middle East and North Africa) has ten MD participants.¹⁵

Securing further official state participation in the MD initiative remains vital due to increased

¹² Montreux Document Forum, “Chairs’ Conclusions”, (Montreux +5 Conference, Geneva, Switzerland, 13 December 2013) http://www.mdforum.ch/pdf/2013-12-13-Montreux-5-Conference-Chairs-Conclusions_en.pdf.

¹³ See Montreux Document Forum website: www.mdforum.ch.

¹⁴ Federal Department of Foreign Affairs, FDFA Switzerland and DCAF, “Legislative Guidance Tool for States to Regulate Private Military and Security Companies” (Geneva: DCAF, 2016), <http://mdforum.ch/pdf/Legislative-Guidance-Toolkit.pdf?v=2>.

¹⁵ For an up-to-date list of participants, visit: www.mdforum.ch/participants.

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- 9.2 %** of MD states are from the Africa region
 - 14.8 %** of MD states are from the Asia Pacific region
 - 22.2%** of MD states are from Eastern Europe
 - 7.4 %** of MD states are from Latin America and the Caribbean region
 - 46.3%** of MD states are from the Western Europe and Other States region
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Table 1. Proportion of MD participation across regions

use of the private military and security providers across many states worldwide. For instance, the industry has greatly expanded in Africa in recent years. In the LAC region, PMSC personnel carry more small arms than PMSCs operating in other regions.¹⁶ Therefore, involving more states in the MD initiative as the industry expands is crucial to ensuring effective oversight as well as to limit the use of force and firearms.

Furthermore, as a decade has passed since the discussions on the MD began, it is important to recognise that the context of the industry has changed significantly. Indeed, the industry does operate in armed conflicts situations. Nevertheless, substantial numbers of private contractors operate in non-conflict settings. It is clear in the Montreux Document that the existing obligations and good practices contained therein may be instructive for post-conflict and for other comparable situations.¹⁷ However, effective promotion of the Montreux Document faces challenges in communicating this message. Furthermore, much of the PMSC industry today offers solely domestic private security services (for example guarding of people and property), in contrast to transnational companies offering more military-like services. It is unclear to many stakeholders how these companies fit within the scope of the MD.¹⁸ Despite the all-encompassing definition of PMSCs under the MD, some states do not see domestically operating private security companies as conforming to this definition, and as such, consider that the MD is irrelevant for them. This poses an immediate barrier for further state support for the MD, which constitutes an outreach and awareness issue that the initiative must overcome. Numerous states also take issue with the negative implication that the term “military services” carries, due to its connotations with mercenarism,¹⁹ which poses another obstacle to garnering state support for the MD initiative. The Montreux Document makes clear that mercenaries are defined

¹⁶ Nicolas Florquin, *Small Arms Survey 2011: States of Security*, (Cambridge: Cambridge University Press, 2011), 114.

¹⁷ Montreux Document, Preface, para 5.

¹⁸ As observed in discussions at (inter alia) 2014 Senegal Regional Conference on the Montreux Document, 2015 Ethiopia Regional Conference on PMSCs.

¹⁹ Mercenaries are defined in IHL. Article 47 of Protocol I additional to the 1949 Geneva Conventions, applicable in international armed conflicts, describes a mercenary as someone who: (1) is especially recruited in order to fight in an armed conflict; (2) in fact takes a direct part in hostilities; (3) is essentially motivated by the desire of private gain; (4) is neither a national of a party to the conflict nor a resident of a party to the conflict; (5) is not a member of the armed forces of a party to the conflict; (6) has not been sent by a state which is not a party to the armed conflict on official duty as a member of its armed forces).

under international law and this definition excludes most PMSCs personnel.²⁰ Nevertheless, in some circumstances, it is possible that PMSC personnel may meet the conditions for definition as mercenaries. If this is the case, they will not be entitled to combatant or prisoner-of-war status in an international armed conflict. Another challenging message to communicate is that the MD does not endorse nor condemn the use of PMSCs in any particular circumstance; it merely recalls the legal obligations and recommends good practices if the decision has been made to contract PMSCs. However, again, the initiative faces challenges in addressing these issues of legitimacy, especially as the PMSC industry evolves in nature and activities.

Furthermore, in practical terms, the reform of national legislation related to PMSCs can be difficult to achieve. Draft laws take time to pass, and it can be difficult to give priority to these initiatives ahead of other issues on the security sector reform (henceforth “SSR”) agenda. A study which reviewed the first five years of MD implementation discussed some of the challenges to applying the good practices of the MD at the national level. These implementation challenges included unclear determination of services, the absence of mechanisms for extraterritorial accountability, a lack of state resources needed for implementation, and weak monitoring and oversight capabilities.²¹ The study, *Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants*, highlighted that some of these challenges could be addressed through supporting national oversight, building capacity for state civil and criminal legal proceedings, and increasing the resources and capabilities of state agencies to manage and oversee PMSC activity within their territories. Efforts to address this have been undertaken both at the level of the MDF, by sharing of experiences, good practices and further dialogue, as well as through specific national implementation support projects, such as those described above, including the development of the Legislative and Contract Guidance Tools.

Rationale for this Mapping Study

Building on the shifts in the PMSC industry, as well as the evolution within the MD initiative, this study aims to inform MD participants on the strengths as well as the key remaining challenges in MD outreach and implementation, and is designed to capture legislative practice by states in their capacities as contracting states, as well as territorial and home states. Additionally, the study seeks to identify themes and geographical regions that could benefit from further research, implementation, capacity building, outreach and knowledge sharing. As such, the study intends to promote discussion in the MDF as well as offer momentum and direction for the coming work of the MDF.

²⁰ Montreux Document, p. 40.

²¹ Benjamin Buckland, and Anna Marie Burdzy, *Progress and Opportunities, Five Years On: Challenges and Recommendations for Montreux Document Endorsing States*, (Geneva: DCAF, 2013), Challenges 1–3, Challenge 5, and Challenge 6.

The objectives of the mapping study are to:

- a. Evaluate the current state of the PMSC industry by researching its geographical dispersion and growth trends;
 - b. Assess progress, gaps, and regulatory challenges in implementing the MD on a national governance level;
 - c. Shed light on new operational contexts of PMSC activity as well as emerging industry technologies; and
 - d. Provide a basis for discussion on future MDF activities to further support the implementation of the Montreux Document.
-

2. Structure and Methodology

Structure

The study is organised into four Chapters:

Chapter One: The Montreux Document and the Scope of the PMSC Industry compares the geographic concentration of Montreux Document participants with the global distribution of the PMSC industry. The section then considers elements pertinent to future outreach: what states, regions, or commercial sectors are missing from outreach activities to date? What states and geographic regions are experiencing new challenges with PMSCs?

Chapter Two: Montreux Document Implementation and Gaps in National Legislation assesses national legislation and on-the-ground implementation of the MD in the 54 MD participating states. This Chapter uses eight key indicators to determine to what extent states' national laws are consistent with the Montreux Document. These indicators have been developed on the basis of key good practices contained in the Montreux Document. For instance, key indicator 2 asks whether the national legislation creates a distinction between what services PMSCs can perform and which services are restricted to public security. Key indicator 7 asks if the national legislation contains provisions on the monitoring of PMSCs. This Chapter then serves to identify the main gaps in implementation of MD good practices (to the extent that good practices are included in national legislative frameworks), as well as common patterns across national law that could be incorporated into future outreach efforts.

Chapter Three: Current and Emerging Themes in the Global PMSC Industry considers current emerging global security issues in order to identify areas of PMSC operations that could be addressed in the future. The Chapter commences by exploring themes canvassed within the Montreux Document Forum including the interaction of the Montreux Document with other international initiatives to regulate PMSCs, the issue of private maritime security, and the legal interpretations for 'applicable national law.' The section then examines

Eight Indicators of Montreux Document Implementation

ROLES & RESPONSIBILITIES	PROCESSES, SYSTEMS AND PROCEDURES	MONITORING & ACCOUNTABILITY
<ol style="list-style-type: none">1 Specific legislation on PMSCs (provisions on licencing and registration)2 Determination of services: distinction between private and public security service provision3 Extra-territorial jurisdiction of the law	<ol style="list-style-type: none">4 Required identification of personnel and means of transport. Prohibition of active-duty public security from working in PMSC.5 Firearms and weapons licencing and registration regimes for PMSCs6 Dedicated policy on the use of force and firearms by PMSC personnel	<ol style="list-style-type: none">7 Monitoring of PMSCs8 Suspension and/or revocation of the licence, registration, or contract in case of misconduct

emerging themes in terms of services offered by PMSCs and their operation contexts, such as support across refugee and asylum centres, providing security for criminal detention centres, counterterrorism, PMSCs in SSR initiatives, protection for maritime trade, and additionally operational support within critical infrastructure such as airports and nuclear power plants. Lastly, this section will consider new PMSC technologies and equipment (including security cameras, facial recognition technology, and drones) which could benefit from research.

Chapter Four: Recommendations for the Way Forward concludes the study with recommendations for future activities and support initiatives which could be undertaken by the MDF and MD participants to enhance outreach and implementation of more effective regulation of PMSCs.

Methodology

The study was developed on the basis of comprehensive desk research from a variety of sources as well as consultations and interviews with experts on PMSC regulation. The research conducted also included drawing on the *Montreux Document Implementation Needs Analysis (2015)*²², the questionnaires and research obtained through the report prepared for the Montreux+5 Conference *Progress and Opportunities: Challenges and Recommendations for Montreux*

²² *Montreux Document Implementation Needs Analysis*, (Geneva: DCAF, 2015).

Document Participants (2016);²³ the feedback and reflections gathered during the Montreux Document Forum Plenary Meetings (2014 and 2016) and primary research projects conducted by the Geneva Centre for the Democratic Control of Armed Forces (DCAF). Throughout the research process, the authors also interacted with a number of Montreux Document participants. The study has used research and data figures collated since January 2010. This recent timeframe for data collection is important as PMSCs make up a rapidly evolving industry both in terms of operational capacity as well as the sheer number of personnel. As the MD was signed in 2008, recent data has been sought in order to effectively measure the possible impact of the Montreux Document today.

With respect to the scope, this study adopts the Montreux Document's approach and analyses the operations of PMSCs in a diversity of contexts: situations of armed conflict, post-conflict and other complex situations, as well as peacetime. The Montreux Document was developed to address the involvement of PMSCs in situations of armed conflict and therefore recalls the main international legal obligations of states applicable to this type of situation, namely IHL. However, the Montreux Document also contains statements and good practices derived from international human rights law, the law of state responsibility and international criminal law (henceforth "ICL"). These branches of international law apply in case of armed conflict but also remain relevant outside these situations. Thus, although the Montreux Document's formal scope of application is armed conflict, "existing obligations and good practices may also be instructive for post-conflict situations and for other, comparable situations."²⁴

The scope of the study also encompasses PMSCs as providing a wide range of services that may be military or security in nature. In reality, many companies provide a variety of services which can range from more typically "military services" to more typically "security services." However, in line with the Montreux Document, this study avoids any strict delimitation and seeks to capture the diversity of services provided by PMSCs in order to provide a more complete picture of the industry and the challenges for Montreux Document implementation (See section 3 below).

Accurate and detailed data related to PMSCs is often inaccessible due to a general lack of transparency within the industry,²⁵ making it difficult to evaluate whether companies and their clients are abiding by applicable national and international law. The lack of information is due to several issues: subcontracting without knowledge of the original procurement authority,²⁶ contracts and licenses not being publically disclosed due to national security concerns, commercial confidentiality agreements or the informal operation of the PMSC industry – either in grey or black markets.²⁷ Within these methodological constraints, this Mapping Study has made every

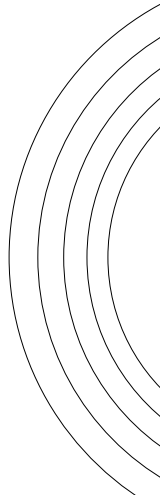
²³ Buckland, B. S. and Burdzy, A.M., *Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants*, Second edition (Geneva: DCAF, 2015).

²⁴ Montreux Document, Preface, para 9.

²⁵ Sié Chéou-Kang Center for International Security and Diplomacy at University of Denver and the Geneva Centre for the Democratic Control of the Armed Forces (DCAF), *Transparency and Governance of Private Military and Security Services: Workshop Report*, (University of Denver: 30 May–1 June 2012), <http://www.du.edu/korbel/sie/>.

²⁶ Boddi, Burdzy, and van Amstel, *Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting 2015–2016*, 30.

²⁷ A great diversity of sources indicates the informality of the private security sector. See for instance: Alan Bryden, ed., *The Privatisation of Security in Africa: Challenges and Lessons from Côte d'Ivoire, Mali and Senegal*, (Geneva: the Geneva Centre for the Democratic Control of Armed Forces, 2016). Chris Kwaja, "Informal Security Provisioning in Nigeria: Implications for Security Sector Governance," *Centre for Security Governance*, 4 April 2014, <https://www.ssrresourcecentre.org/2014/04/04/informal-security-provisioning-in-nigeria-implications-for-security-sector-governance/>; Tessa Diphooorn, " 'Surveillance of the Surveillers': Regulation of the Private Security Industry in South Africa and Kenya," *African Studies Review*, 59:2 Forum on Surveillance in Africa (September 2016): 161–162; Franziska Klopfer and Nelleke van Amstel, eds., *Private Security in Practice: Case Studies from Southeast Europe*, (Geneva: DCAF, 2016); Franziska Klopfer and Nelleke Van Amstel, eds., *A Force for Good? Mapping the Private*



reasonable effort to offer an accurate picture of the global PMSC industry.

3. Key Concepts: Defining Private Military and Security Companies

As there is no universal term to define a private military and security service provider, there is significant variation in the language used to refer to PMSCs. Terms used to refer to the actors associated with this industry include: private security companies (henceforth “PSCs”), private security agencies (henceforth “PSAs”), private military firms (henceforth “PMFs”), peace and stability operators, civilian security forces, manned guarding, cash-in-transit forces, privately contracted armed security personnel (henceforth “PCASP”), private security organisations (henceforth “PSOs”), stability maintenance organisations, and corporate private security corporations. This research study has therefore considered all private business that provide military and/or security services, regardless of how they describe themselves.

For the purposes of this study, PMSCs are defined as followed, under the terms of the Montreux Document:

*PMSCs are private businesses that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, the provision of armed guards and the protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to, or training of, local forces and security personnel.*²⁸

This definition focuses on the types of activities that should be regulated, rather than on categorising any specific company as a PMSC. An inclusive definition is best able to cover companies that deliver specific services, regardless of where they function, how they operate, or how they self-identify.

The Montreux Document provides further relevant definitions:

- **PMSC personnel** are defined as “persons employed by, through direct hire or under a contract with, a PMSC, including its employees and managers.”²⁹
- **Contracting states** refers to “states that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC.”³⁰
- **Territorial states** are “states on whose territory PMSCs operate.”³¹
- **Home states** are states of nationality of a PMSC. This includes where a PMSC is registered or incorporated; however, if the state where the PMSC is incorporated is not the one where it has its principal place of management, then the state where the PMSC has its principal place of management is the home state.³²

Security Landscape in Southeast Europe, (Geneva: the Geneva Centre for the Democratic Control of Armed Forces, 2015), 15–16, 52–55, 63–64, 97.

²⁸ Montreux Document, Preface, para 9.

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

The Montreux Document and the Scope of the PMSC Industry

1. Introduction

Since the 2006 intergovernmental consultations which led to the negotiation and signing of the Montreux Document, key questions have arisen concerning the geographical distribution and operational characteristics of the PMSC industry today. In order to inform outreach and implementation efforts of the Montreux Document Forum, an essential element remains to build understanding of the regional concentrations of industry operations. Which regions or states are emerging sources of PMSC activity? Where does the industry operate relative to Montreux Document participants? Understanding more about the regional PMSC industry landscape will also provide rationale for the location of future outreach efforts. To provide a basis for discussion, this Chapter will identify wide trends in the global distribution and characteristics of the PMSC industry and highlight the geographical representation of MD states, pointing to pertinent pathways for future outreach efforts.

This Chapter provides an overview of the global characteristics of the PMSC industry in five regions:¹

- Africa region;
- Asia Pacific Region;
- Eastern Europe Region;
- Latin America and the Caribbean Region;
- Western Europe and Other States Region.

¹ The MDF country groupings were formed on the basis of the United Nations official groupings. See Annex II for detailed notes on the regional groupings used in this study.

2. Key Findings from a Regional Analysis of the PMSC Industry

a. Latin America and the Caribbean Region



The Latin America and Caribbean (LAC) region is made up of 33 states and has an active PMSC industry, hosting over 16,174 companies, which collectively employ more than 2.4 million personnel.² Four states in this region are participants to the MD: Chile, Costa Rica, Ecuador, and Uruguay.³ With the exception of Antigua and Barbuda, Cuba, and Suriname, recent data on the PMSC industry could be found for all the countries of the region.

The last decade has witnessed a steady growth of the sector across the region. As an example, the number of private security personnel in Colombia in 2016 totalled 244,757. This represents a 126% increase over ten years.⁴ Meanwhile, the Chilean PMSC industry grew 46% between 2010 and 2015. Chile is home to 140,000 private security personnel and 1,521 companies.⁵ This growth can be linked to a variety of factors, which differ from country to country, including: increased levels of crime and insecurity, heightened perceptions of insecurity among the emerging middle class, changing emphasis in approaches to public and citizen security calling for redeployment and re-allocation of policing resources, as well as the prolonged economic growth in the extractive and other sectors experienced in many countries of the region.⁶ It is nevertheless worth noting that the growth of the PMSC sector in the region is not necessarily linked to crime levels.⁷ Many PMSCs have not taken over the tasks traditionally in the domain of public forces, but have rather found new market opportunities where the public forces were previously absent.⁸ Characterised by their capacity to adapt to and evolve with the specific characteristics and needs of their environment, PMSCs in the LAC region provide a wide range of different services and count amongst their main clients extractive industries, banks and other businesses, governmental agencies, public facilities, and private individuals. With some exceptions, PMSCs in the LAC region rarely provide services of a military nature.⁹

² UNLIREC Public Security Program and DCAF Public-Private Partnerships Division, *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context* (Geneva: DCAF, 2016), 12. Reliable data could not be found for Antigua and Barbuda, Cuba, and Suriname.

³ See Montreux Document Forum website: <http://www.mdforum.ch/en/participants>.

⁴ UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and accountability in an evolving context*, 5 & 13.

⁵ *Ibid.*

⁶ *Ibid.*, 11.

⁷ Colombia, Brazil and Chile for example presented a stable or even decreasing criminality, and no statistical relationship could be found between the growth of private security and the increased of crime and homicide in Argentina. UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and accountability in an evolving context*, 11.

⁸ Such as for example industrial plants, companies' offices or private neighbourhoods. *Ibid.*, 12.

⁹ *Ibid.*, 10.

The LAC region has experienced a sharp increase in foreign investment through multinational companies (henceforth “MNCs”).¹⁰ MNCs often require sophisticated security services to support the logistical aspects of their commercial operations, in particular extractive industries.¹¹ If public forces are unable or unwilling to meet these demands, international business often turn to private security to fill the security gap and boost their ability to operate, particularly where they have operations in complex security environments. There is therefore also a clear link between the growth of the PMSC industry and the high levels of foreign investment in the region.

In the LAC region, clients of PMSCs are diverse, including extractive industries, banks and other businesses, government agencies, critical infrastructure, and private individuals.

The PMSC landscape is as diverse as the countries of the region. Brazil, for example, has the largest number of PMSCs with 2,581 companies and the largest number of PMSC personnel with an estimate of 583,100 employees. In comparison, smaller states, such as Saint Kitts and Nevis, Grenada, and Saint Vincent, have much smaller numbers of PMSCs.¹² PMSCs figures vary from country to country not only because of their enormous size difference, but also because of the different nature of their national context. Market concentration among the PMSCs of the LAC region states is also very diverse, some being dominated by a few national and multi-national firms, while others are highly fragmented.

Regional statistics also suggest that PMSC personnel in the LAC region are heavily armed, in comparison to other regions of the world. The LAC region has the highest ratio of firearms to PMSC personnel outside of conflict-affected areas, exceeding the European ratio of PMSCs to small arms by at least ten times.¹³ Registered firearms across a sample of 17 LAC region countries exceed 650,000.¹⁴ Nevertheless, some states are endeavouring to place limits on the use of firearms by PMSCs. For instance, in Argentina, the percentage of armed security services provided by companies dropped from 10% in 2009 to 6% in 2015, while the Colombian regulatory authorities adopted in 2012 a position in favour of unarmed PSCs.¹⁵

¹⁰ Conservative figures suggest that income from such companies saw a 303% increase over a ten years period. See: Carin Zissis, “Weekly Chart: Tracking FDI Flows in Latin America,” *The Americas Society/Council of the Americas*, 18 June 2015. <http://www.as-coa.org/articles/weekly-chart-tracking-fdi-flows-latin-america>.

¹¹ World Bank Data from 2013 shows that the LAC region received approximately 27% of the world’s total mining, oil and gas exploration spending. For example, by 2014, Canadian mining companies had invested \$81 billion across the region. See: The World Bank Group, “Mining Leaders from Argentina, Mexico, and Peru Focus on Building Trust with Communities,” *World Bank News*, 25 March 2016, <http://www.worldbank.org/en/news/feature/2016/03/25/mining-leaders-from-argentina-mexico-and-peru-focus-on-building-trust-with-communities>.

¹² Saint Kitts: 10 PMSCs and 600 personnel; Grenada: 8 PMSCs and 817 personnel; and Saint Vincent: 9 PMSCs and 381 personnel. UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and accountability in an evolving context*, 13.

¹³ Nicolas Florquin, “A Booming Business. Private Security and Small Arms,” in *Small Arms Survey 2011: States of Security* (Cambridge: Cambridge University Press, 2011), Key Findings: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2011/en/Small-Arms-Survey-2011-Chapter-04-Annexe-4.1-EN.pdf>.

¹⁴ Seguridad Privada en el Perú: Un estado situacional. SUCAMEC UNLIREC. Lima, 2016 <http://www.ppps.dcaf.ch/en/seguridad-privada-en-el-per%C3%BA-un-estado-situacional>.

¹⁵ UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and accountability in an evolving context*, 22.

b. Africa Region

 **54** States in the region total

 **16,077** PMSCs minimum

 **500,000** Personnel minimum

 **5** MD Participants

Across the 54 countries making up the Africa region, desk research for this study has identified at least 16,077 PMSCs, with at least half a million personnel.¹⁶ Only five states in this significant region are MD participants: Angola, Madagascar, Sierra Leone, South Africa, and Uganda.¹⁷ The size of the sector is influenced by a variety of regional security factors and by shifting demands of specific national contexts. Among others, the increased presence on the continent of large transnational companies – in particular extractive companies – has significantly increased the demand for private security services. Internal tensions, political instability and a marked increase in terrorist attacks have also contributed to the growth of the sector.¹⁸ These growth factors nevertheless all reflect a common underlining cause: the evolution of PMSCs in Africa responds to the gaps resulting from inadequate state security provision.¹⁹

With a sector evolving and adapting quickly to new demands, the PMSC industry has also found a market in niche areas, which are highly context dependent. In South Africa, for example, private security companies have been used increasingly in the protection of wildlife reserves or endangered species. The world's largest rhino farm, maintaining a herd of 1,200 rhinos, is protected by private security personnel.²⁰

The populations in the region are increasingly urbanised, with large numbers of youth and high levels of unemployment. In such contexts, the booming private security sector presents an important source of jobs. In complement, PMSCs view this demographic as a source of inexpensive labour. In post-conflict environments, the PMSC industry also constitutes an employment opportunity for demobilised combatants, contributing to their re-entry into society, thereby rendering efforts to ensure regulation and appropriate vetting mechanisms crucial.²¹ As one example, this type of labour transition was reflected in the policies of the national authority responsible for the disarmament, demobilization and reintegration (henceforth “DDR”) of ex-combatants in Côte d’Ivoire.²²

¹⁶ No data could be found for Algeria, Cabo Verde, Chad, Eritrea, Guinea Bissau, Guinea Conakry, Lesotho, Malawi, Morocco, Sao Tome and Principe, Sudan, the Gambia, and Zambia. Contact DCAF for the complete regional profile.

¹⁷ See Montreux Document Forum website: <http://www.mdforum.ch/en/participants>.

¹⁸ Bryden, A., ed., *The Privatisation of Security in Africa: Challenges and Lessons from Côte d'Ivoire, Mali and Senegal*, (Geneva: DCAF, 2016) 1 & 20.

¹⁹ *Ibid.*, 8.

²⁰ Agence France Presse, “S. African Private Army Protects World’s Largest Rhino Farm,” *Capital News*, 2 March 2016, Kenya News section.

²¹ United Nations Disarmament Demobilisation and Reintegration Resource Centre, “Module 6.10: DDR and Security Sector Reform”, in *The Integrated Disarmament, Demobilization and Reintegration Standards*, (14 December 2009), 16; Organisation for Economic Co-operation and Development, *OECD DAC Handbook on Security System Reform*, (Paris: OECD, 2008), 219.

²² Cote d’Ivoire, Decree No 2012-787 of 8 August 2012 on the establishment, responsibilities, organisation and functioning of the Authority for the Disarmament, Demobilization and Reintegration of former combatants (ADDR). See also Bryden, *The Privatisation of Security in Africa: Challenges and Lessons from Côte d'Ivoire, Mali and Senegal*, 53.

The majority of PMSCs operating in the Africa region are domestic, smaller-scale companies. The presence of large international PMSCs has led some states to introduce legislation restricting the foreign ownership of PMSCs.

The vast majority of PMSCs operating in the Africa region are domestic, small-scale companies,²³ but large international PMSCs are also present, particularly in North Africa. For instance, the leading security company G4S is active in 26 countries of the region. These international PMSCs usually stand out from domestic ones, being larger, better equipped, and more experienced.²⁴ The presence of international PMSCs has led some states to conduct industry reviews and introduce legislation restricting the foreign ownership of PMSCs. For example, the Nigeria Security and Civil Defence Corps, a Nigerian government agency, has launched plans to collect detailed information for all foreign security companies which operate within its territory, with the aim of informing the revision of the legislation to ensure that domestic and foreign PMSCs have equal constraints on their operations. This is a way of protecting domestic businesses and ensuring consistent human rights accountability.²⁵

In Egypt, although estimates about the number of private security firms in existence vary as PMSCs register as other commercial entities, one company – Care Services, established in 1979 – now employs nearly 5,000 security personnel.²⁶ Across the region, PMSCs are also hired to protect diplomatic representations, such as in Libya where the EU contracts local firms to protect its representation in Tripoli.²⁷

Similar to the analysis of the LAC region where high levels of multinational companies are contributing to the growth of the PMSC industry, the same correlation is found in the Africa region, in particular with large extractive industries – mainly diamonds, gold, oil, and minerals. PMSCs are often contracted to protect mining operations sites as well as the trade routes surrounding the industry and the transfer of shipments. The economic dependence of a state on natural resources increases its demand for security to guard physical assets and maintain operational capacity. In Angola, for example, oil, gas, and diamond exports are the leading cause of economic growth.²⁸ Within this context, protection of these operational sites by PMSCs has become a national security concern and a topic of discussion within Angola's national legislative body.²⁹ Complex security environments further increase the needs and demands for private security services around extractive industries' operations. As an example, between

²³ For example, Angola's PMSC industry is entirely domestically-owned, and many of these companies are indigenous to the State. Lisa Rimli, "Case Study Angola", in *Private Security Companies and Local Populations: An Explanatory Study of Afghanistan and Angola*, ed. Ulrike Jonas and Adrian Schuster, Working Paper 1 (Bern: SwissPeace Foundation, 2008), 39.

²⁴ Bryden, *The Privatisation of Security in Africa: Challenges and Lessons from Côte d'Ivoire, Mali and Senegal*, 21.

²⁵ Daily Post Staff, "NSCDC Orders Submission of Names, Addresses of Expatriate Security Firms," *Daily Post Nigeria*, 28 July 2016, News Section, Nigeria edition.

²⁶ Sarah Carr and Mohamad Adam, "Private security firms attempt to fill a gap left by a weakened security apparatus." *Egypt Independent*, 9 April 2013; See also Alessandro Accorsi and Giovanni Piazzese, "The Falcon has Landed: The problematic rise of Egyptian Private Security," *Middle East Eye*, 13 February 2015.

²⁷ European Parliament, "Question for Written Answer to the Commission Vice President/High Representative, EEAS contracts with private security companies – the cases of Libya and Iraq", E-0049983/2012, 9 July 2012
<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-004983&language=CS>.

²⁸ African Development Bank Group, OECD Development Centre and UNDP, "Angola Economic Outlook", in *African Economic Outlook 2016 – Special Theme: Sustainable Cities and Structural Transformation*, 15th ed, (New York, 23 May 2016), 269
<https://www.afdb.org/en/countries/southern-africa/angola/angola-economic-outlook/>.

²⁹ Christopher Kinsey and Andreas Krieg, "The Role of Commercially Provided Security in Africa's Patrimonial Security Complex," *Brazilian Journal of Strategy & International Relations*, 3: 5 (2014), 69–96.

2007 and 2009, Shell, which operates oil fields across Africa, spent around 40% of its 1\$ billion global security budget on personnel to support its operations located within Nigeria.³⁰

The Africa region is also significant for many PMSC operations in the context of international peacekeeping operations and counterterrorism (See also Chapter III). The United Nations, the African Union, and the Economic Community of West African States (ECOWAS) have hired private security companies to support peacekeeping operations.³¹ PMSCs operating within these contexts typically provide operational support, including logistical, risk analysis and convoy protection. State-sponsored multilateral peacekeeping operations are typically difficult to organise and sustain. PMSCs can assemble more quickly and can be more effective in adjusting to heightened security needs.³² PMSCs can often support some aspects of peacekeeping operations within a quicker time span and at a lower price. Notably, the United Nations Mission in Liberia (UNMIL) highlights how PMSCs can also be hired to support post-conflict recovery. UNMIL has brought forces together from ECOWAS, humanitarian organisations, and civil society actors to support regional peacebuilding.³³ In partnership with UNMIL, the United States contracted DynCorp, a PMSC, to train and support the Liberian army.³⁴ However, once established in the area, DynCorp was awarded additional contracts, such as training the local police forces and maintaining operational support for the Liberian army. This trend reinforces the importance of ensuring that states and international organisations alike strongly consider each company's human rights record and training during the procurement process, particularly when PMSCs are being deployed to complex or conflict-affected environments where the rule of law might be weakened.

With respect to counter terrorism, the role of PMSCs is currently actively debated in West Africa. PMSCs have both supported the operational capacities of national armed forces as well as filled security gaps in view of increased terrorist attacks. For instance, PMSCs were involved in supporting Nigerian security forces in combating Boko Haram.³⁵ In Mali, the majority of services provided by private security consist of surveillance and security of buildings, the protection of persons and property, escorting humanitarian convoys and the transportation of cash. However, the growth of the sector intensified in stride with concerns over terrorist attacks, namely, the 2016 attacks in Bamako.³⁶ There were 263 licensed companies in Mali by the end of 2015.³⁷ Despite the growing importance of PMSCs in the global security sector in the Africa region,

³⁰ Ejiiofor Alike, "Nigeria: Shell Spent 40 Percent of Global Security Budget on Nigeria," *All Africa*, 21 August 2012.

³¹ For the UN see: United Nations, Office of the High Commissioner for Human Rights, Working Group on the use of mercenaries, *Study on the use of private military and security companies by the United Nations*, 2014; Ase Gilje Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies," SSR Paper 3, (Geneva: DCAF, 2011); For ECOWAS and the AU, see: Azeez O Olaniyan, "Unorthodox Peacekeepers and Responses in Africa," in *From Market for Force to Market for Peace: Private Military and Security Companies in Peacekeeping Operations*, ed. Sabelo Gumedze, (ISS Monograph no. 183, 2011) 5–15; Eric George, "The Market for Peace," in *From Market for Force to Market for Peace: Private Military and Security Companies in Peacekeeping Operations*, ed. Sabelo Gumedze, ISS Monograph 183 (Pretoria: Institute for Security Studies, 2011), 17–38; ECOWAS "Lessons from ECOWAS Peacekeeping Operations: 1990–2004", Report of the ECOWAS Workshop, 23 March 2005, available at <http://www.un.org.ezproxy.library.ubc.ca/unowa/unowa/reports/ecowas110205.pdf>, 32

³² Leslie Hough, "A study of peacekeeping, peace-enforcement and private military companies in Sierra Leone," *African Security Review* 16, no. 4 (2007).

³³ UN Secretary General Kofi Annan in a 2003 report on Liberia praised regional States for building a positive security climate: Benin, Gambia, Ghana, Guinea-Bissau, Mali, Nigeria, Senegal and Togo, as well as the United States. http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2003/875

³⁴ For a background of the UNMIL, see <http://www.un.org/en/peacekeeping/missions/unmil/background.shtml>

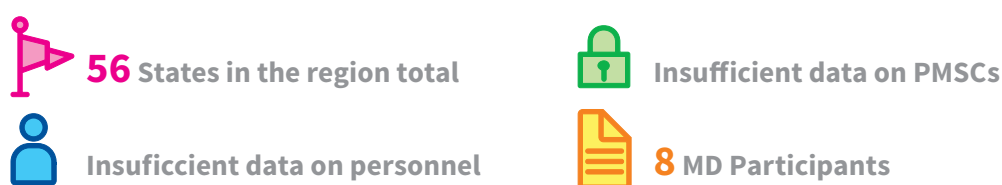
³⁵ Remote Control Project, *Nigeria's Private Army*, (London: Oxford Research Group, May 2016).

³⁶ Bryden, *The Privatisation of Security in Africa: Challenges and Lessons from Côte d'Ivoire, Mali and Senegal*, 80–82.

³⁷ *Ibid*, 82.

research highlights that there is a general lack of knowledge and analysis of the sector. The scarcity of data reveals two widespread issues in this regard: the lack of transparency within the industry,³⁸ and the deficiencies at the level of the regulatory authorities, including weak regulatory environments as well as insufficient capacities.³⁹ Available data shows great diversity between the different national PMSC sectors across the region. For instance, South Africa has the largest private security industry of the region, with 8,144 private security companies registered in 2014. Data on the PMSC industry in South Africa is updated and readily accessible through the national regulatory authority. In contrast, Sierra Leone's smaller private security industry amounted to only 30 companies in 2005 (more updated statistics could not be found).⁴⁰

c. Asia Pacific Region



According to the country groupings set out by the Montreux Document Forum, the Asia Pacific region comprises 56 states, of which 8 are MD participants: Afghanistan, China, Cyprus, Iraq, Japan, Jordan, Kuwait and Qatar. This diverse region is composed of states with very different PMSC landscapes. For example in 2011, Kazakhstan had registered a total of 7,000 PMSCs, employing 77,500 personnel.⁴¹ India counted in 2015 approximately 15,000 PMSCs, employing no less than 5 million personnel, while Cambodia and Tonga, having a very high ratio of police to inhabitants, counted only 70 (2015)⁴² and 15 PMSCs (2012) respectively.⁴³ As in other regions, the quality of accessible information is dependent on the national context.⁴⁴

The economic development of the Asia Pacific region as a whole has provided a basis for the expansion of PMSCs, whose services are contracted by commercial and public industries, as well as shipping companies.⁴⁵ The PMSC sector in the region is generally characterised by gradual domestic growth, with a clear specification in the guarding of people and property, rather than the provision of more typically military services.⁴⁶ In particular, the region's emerging extractive and energy markets are (or will be increasingly) relying on PMSCs' services for the

³⁸ *Ibid*, 127.

³⁹ *Ibid*, 132.

⁴⁰ Tessa Diphoorn, "The Diversity of the Private Military and Security Industry in Sub-Saharan Africa: A Background Paper," in *Report of the Ethiopia Regional Conference on Private Military and Security Companies*, (Geneva: DCAF, 2016).

⁴¹ Hal Foster, "New Kazakh law regulates private security industry and weaponry," *Central Asia Newswire*, January 19, 2011; Atyrau office of Interior Ministry, "O litsenzirovanii i deyatel'nosti chastnyh ohrannyh predpriyatii," quoted in Erica Marat, "Research Paper: Regulating Private Military and Security Companies in central Asia and Russia", in *The Montreux Document on Private Military and Security Companies: Proceedings of the Regional Workshop for North East and Central Asia*, (Geneva: DCAF, 2012), 37.

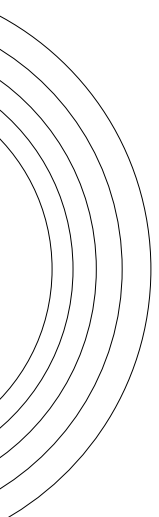
⁴² Jayantee Saha, and Chris Rowley, *The Changing Role of the Human Resource Profession in the Asia Pacific Region*, (Oxfordshire, UK: Chandos Publishing, 2015), 51.

⁴³ Presentation by Taniela Faletau, *Pacific Regional Roundtable on the Montreux Document*, (Canberra, 8–9 May 2012).

⁴⁴ There is for example virtually no information about the PMSC industry in Turkmenistan, and PMSCs regulations are not publicly available in Uzbekistan. Marat, E. "Research Paper: Regulating Private Military and Security Companies in central Asia and Russia", 45.

⁴⁵ Geneva Centre for the Democratic Control of Armed Forces, *The Montreux Document on Private Military and Security Companies: Proceedings of the Regional Workshop for North East and Central Asia*, (Geneva: DCAF, 2012), 12.

⁴⁶ *Ibid*. 12–19.



protection of their infrastructure.⁴⁷ In Papua New Guinea, there has been a significant increase in the contracting of PMSCs for protection of extractive industry sites.⁴⁸ Recent infrastructural development in the region also encouraged the growth of PMSCs. Uzbekistan, for example, relies on private security to protect the construction of a state railroad system connecting central Asia to China.⁴⁹ For its part, China, being one of the world largest global overseas investors,⁵⁰ plays an important role in the world's PMSC industry, with over 16,000 companies operating outside of the Chinese state, sometimes in complex or conflict environments, such as Iraq, Nigeria or the Horn of Africa,⁵¹ and requiring support of private security.⁵² A whole range of PMSCs in the region also have become highly specialised, providing expert technical expertise to both private and public clients.⁵³

Many states in the region, such as Kazakhstan,⁵⁴ Mongolia,⁵⁵ Kyrgyzstan⁵⁶ and Tajikistan⁵⁷ have developed new regulation on PMSCs within the past 15 years, either directly or through commercial regulatory frameworks. Post-Soviet states also needed to provide employment alternatives to a large number of downsized military and police personnel. Coupled with the rapid expansion of commercial industries, this has paved the way for a high growth of the private security industry, complementing and in some instances competing with the state's provision of security.⁵⁸ For instance, in 2010, there were about 3,000 PSMCs in Kazakhstan that employed nearly 60,000 people, a threefold increase compared to 2001.⁵⁹ Meanwhile, the Kazakhstani Ministry of Internal Affairs reported that the sector employed some 77,500 guards, 21,500 of whom worked for just two companies, the Kazakhstan Temir Zholy railway operator (14,000) and KazMunaiGas (7,500).⁶⁰ These numbers suggest that there are roughly as many private security guards as police officers in Kazakhstan.⁶¹

There is a lack of reliable data regarding the numbers of PMSCs operating in this region, particularly in Middle Eastern states, with the exception of Iraq and Afghanistan where more reliable information can be found regarding the high levels of international PMSCs which were present throughout the 2000s.⁶² The United States and United Kingdom continue to be primary home and contracting states for PMSCs operating within these states.⁶³ Notably, there were 100 PMSCs registered and licensed with the Iraqi Ministry of Interior in 2010 (72 of which were

⁴⁷ Marat, E. "Research Paper: Regulating Private Military and Security Companies in central Asia and Russia", 24.

⁴⁸ Presentation by Ruth Koddy, *Pacific Regional Roundtable on the Montreux Document*, (Canberra, 8–9 May 2012).

⁴⁹ *Ibid.*, 13.

⁵⁰ Jamil Anderlini, "China to Become one of World's Biggest Overseas Investors by 2020," *Financial Times*, 26 June 2015.

⁵¹ Ben Marino, "China's Public Sector Looks to Private Security for Help," *Financial Times*, 26 November 2013.

⁵² Andrew Erikson and Gabe Collins, "Enter China's Security Firms," *The Diplomat*, 21 February 2012.

⁵³ Saha and Rowley, "The Changing Role of the Human Resource Profession in the Asia Pacific Region", 50.

⁵⁴ Nicolas Florquin, Dauren Aben, and Takhmina Karimova, "Blue Skies and Dark Clouds: Kazakhstan and Small Arms", in *Small Arms Survey Occasional Paper* 29, (2012), 15–16.

⁵⁵ Galbat Lkhagvamaa, and Ju-Lak Kee, "Current Condition of Private Security Industry in Mongolia" *Advances in Social Sciences Research Journal*, 3:11, (2016), 214–222.

⁵⁶ Erica Marat, "Regulating Private Security Companies in the Central Asian States," *Central Asia Policy Brief* 1, (May 2012).

⁵⁷ *Ibid.*

⁵⁸ Saha and Rowley, "The Changing Role of the Human Resource Profession in the Asia Pacific Region", 29 and 23.

⁵⁹ Florquin, Aben and Karimova, "Blue Skies and Dark Clouds: Kazakhstan and Small Arms", 15–16.

⁶⁰ Hal Foster, "Kazakhstan Strengthens Penalties for Pipeline Oil Rustlers," *Central Asia Newswire*, 15 October 2010; Florquin, Aben, and Karimova, "Blue Skies and Dark Clouds: Kazakhstan and Small Arms", 15–16.

⁶¹ The police numbered 69,529 in 2008. Florquin, Aben, and Karimova, T., "Blue Skies and Dark Clouds: Kazakhstan and Small Arms", 15–16.

⁶² Moshe Schwartz, *The Department of Defence's Use of Private Security Contractors in Afghanistan and Iraq: Background, Analysis and Options for Congress*, (Congressional Research Service, 13 May 2011), 3.

⁶³ 2003–2011 45 PMSCs in Iraq were based in the US, 18 based in the United Kingdom; 6 from United Arab Emirates; 5 from France; 4 from South Africa; Canada, Germany and Israel with 2 each; and Australia, Barbados, Czech Republic, Kuwait and Spain with 1 company each. See Jordi Palou-Loverdos and Leticia Armendariz, "The Privatisation of Warfare, Violence and Private Military and Security Companies: A Factual and Legal Approach to Human Rights Abuses by PMSCs in Iraq," *Nova* (2011), 35.

foreign companies).⁶⁴ As of July 2016, approximately 2,500 private security personnel were contracted in Iraq by the United States Department of Defence alone.⁶⁵

Similarly, in Afghanistan, private security personnel contracted in 2016 by the United States Department of Defence numbered 28,600.⁶⁶ However, Afghanistan does not have a central national registry for PMSCs, which make it difficult to trace PMSCs once they are deployed, or whenever the companies reorganise, reconstitute, or subcontract. In 2010, Afghanistan issued *Presidential Decree 62* ordering the disbandment of all PMSCs and the transfer of all security services to the newly created Afghan Public Protection Force (APPF). Under this transition process, the plan was that security for all public places, private companies, and convoys in transit were to be transferred to the APPF, with the exemption of diplomatic offices, international organisations, and NGOs. However, demand for private security has overwhelmed the finite supply, and in 2014, the APPF was absorbed into the Afghan National Police to perform strictly state functions. Thus, PMSCs continue to offer many security services in Afghanistan.

While quantitative data on PMSCs in this region is lacking, anecdotal evidence suggests a thriving industry. In Iraq, the total number of armed personnel of licensed PMSCs in 2011 was about 35,000 (according to the Iraqi Ministry of Interior).⁶⁷ As a point of comparison to public security, there were 303,000 agents in the Iraqi Police and another 45,000 in the Iraqi Federal Police.⁶⁸

Other states in the region are likewise experiencing a growth in the demand for private security services. In Gaza, three companies are now licensed to operate, with one offering martial arts and firearms training.⁶⁹ In the Arab Gulf, the Ministry of Interior of the United Arab Emirates is creating an electronic system for linking private security firms and the National Security Institute. The project will streamline training of private security personnel, licensing, and communication between the department and firms. About 32,000 private security personnel enrolled in the National Security Institute from January to the end of August this year, and the institute offered around 1,014 specialised training courses during the same period.⁷⁰

In MENA states facing either recent or current armed conflicts (whether international or non-international), or states suffering from weakened governance, PMSCs flourish to fill a (perceived

In states facing either recent or current armed conflicts (whether international or non-international), or states suffering from weakened governance, PMSCs flourish to fill a (perceived or otherwise) security vacuum.

⁶⁴ Schwartz, *The Department of Defence's Use of Private Security Contractors in Afghanistan and Iraq: Background, Analysis and Options for Congress*, 3. In 2011, the UN Working Group on mercenaries was informed by the Iraqi Ministry of Interior that 117 PMSCs were licensed by the Iraqi Ministry of Interior: of these 89 companies were Iraqi and 28 were foreign. A/HRC/18/32/Add. 4, 12 August 2011, para. 12.

⁶⁵ Heidi Peters, Moshe Schwartz, and Lawrence Kapp, *Department of Defense Contractor and Troop Levels in Iraq and Afghanistan: 2007–2016*, (Congressional Research Service, 15 August 2016) <http://www.fas.org/sgp/crs/natsec/R44116.pdf>

⁶⁶ *Ibid.*

⁶⁷ United Nations, Human Rights Council, "Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination" A/HRC/18/32, 12 August 2011.

⁶⁸ *Ibid.*

⁶⁹ Nidal al-Mughrabi, "Muscle Men Ring up Dollars with Gaza Private Security Firms," *Reuters World News*, 30 November 2016 <http://www.reuters.com/article/us-palestinians-gaza-security-idUSKBN13P1F2>.

⁷⁰ "Ministry to have e-link with private security firms," *Gulf News Government*, 4 October 2016 <http://gulfnews.com/news/uae/government/ministry-to-have-e-link-with-private-security-firms-1.1906571>.

or otherwise) security vacuum. Weak public security institutions in a number of states cause some actors to find that public security is inadequate, thus turning to PMSCs to ensure protection of businesses, international institutions or embassies, critical infrastructure, people and valuable goods. A parallel phenomenon results from the presence of humanitarian workers in armed conflicts. Indeed, concerns over the safety of humanitarian workers and NGO staff have been a further factor driving the increased use of PMSCs, placing international organisations and NGOs amongst their clients.⁷¹

d. Western Europe and Other States Region



At least 3 million PMSC personnel are found in the 30 states comprising the Western Europe and other states region, employed by at the very least 25,000 companies.⁷² Over 46% of Montreux Document participants, 25 participants in total, are found in this region.⁷³ Generally speaking, these states are characterised by high GDPs and relatively high levels of military expertise within their respective national armed forces. By extension, this also benefits the private security industry, which is known to hire highly-skilled former army personnel.⁷⁴ States in this region tend to have significant militaries, and therefore a large pool of retired/demobilised military expertise.⁷⁵ Additionally, with national military budgets decreasing across the region, demobilised service personnel often find employment in the private security, bringing with them high levels of expertise.⁷⁶

The Confederation of European Security Services (CoESS) maintains a database of industry figures, which represents an ideal regional grouping for comparative analysis.⁷⁷ In a study covering 22 European States in the region,⁷⁸ CoESS points to approximately 1,289 private security companies per country. Across the region, France, Germany, and the United Kingdom have the highest numbers of PMSCs based in their territory.⁷⁹ Europe-based PMSCs generally operate either domestically or abroad. Patterns show that in this region PMSCs' primary functions are guarding people and premises. However, the region is primarily composed of states which are

⁷¹ Geneva Centre for the Democratic Control of the Armed Forces, *The Montreux Document on Private Military and Security Companies: Report of the Ethiopia Regional Conference on Private Military and Security Companies*, (Geneva: DCAF, 2016), 14.

⁷² Importantly, this does not include the number of formal companies in Canada and the United States, as only numbers of personnel could be found. This does not include any data for Andorra, Armenia, Holy See, Iceland, Liechtenstein, Monaco, Montenegro, Republic of Moldova, Russian Federation, San Marino, and Ukraine. Contact DCAF for the complete regional profile.

⁷³ See Montreux Document Forum website: <http://www.mdforum.ch/en/participants>.

⁷⁴ Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies," 7.

⁷⁵ Geoff Burt, and Eric Muller, "Foreign Ownership Bans And Private Security: Protectionism Or Security Sector Governance?," *Centre for Security Governance Papers 7*, (2016)

⁷⁶ Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies," 7.

⁷⁷ For more information on CoESS, the European PMSC industry representative, visit <http://www.coess.org/>

⁷⁸ CoESS States include: Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Germany, Ireland, Italy, Luxemburg, Macedonia, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, the Netherlands, Turkey and the United Kingdom

⁷⁹ Based on open-desk figures collected for this research. PMSC totals for: France 9,659; Germany 4,000; United Kingdom 2,500. To see the full table of data, contact dcaf.ppps@gmail.com

classified under the Montreux Document as ‘home states for PMSCs’. It is also noteworthy that there is a high ratio of industry associations linked to private companies, which has led to better industry organisation and self-regulation in the region.⁸⁰

While the region is mainly composed of home states for PMSCs and, to a lesser extent, contracting states, territorial states are rare. To highlight some examples, the European Union’s Police Mission Afghanistan (EUPOL-Afghanistan) contracted private security to fill personnel shortages and to logistically support ground-missions in Afghanistan.⁸¹ By 2008, individual EU member states hired PMSCs to guard their respective Police Training Centres in Afghanistan. The German Police Project team protected its centres with Saladin Security Afghanistan, which is a subsidiary of Saladin Security UK, while the German Foreign Ministry employed four different PMSCs to operate in Kabul at the time.⁸² The Swedish embassy in Kabul is likewise guarded by private security forces from the ‘Vesper Group’, whose personnel receive diplomatic status and are allowed to use force in cases of self-defence.⁸³

Many transnational contractors prefer to hire personnel from the Western Europe and Other States region, recruiting highly skilled labour and staffing their operations with experienced foreign personnel. Research nevertheless indicates that transnational PMSCs often play a delicate balancing act between recruiting foreign with top-level security experience, and hiring local personnel, with local contextual knowledge, particularly when operating in complex and fragile environments, where an entirely imported workforce might compromise the PMSC’s ability to understand the area’s unique security context.⁸⁴

Along with emerging trends related to terrorist threats and growing global insecurity, new trends are contributing to the growth of PMSCs, which, while less prolific, are also pertinent. For instance, the provision of security for mass sporting events has gained importance. Notably, large-scale events such as the 2016 Olympics in Rio de Janeiro, the 2010 FIFA World Cup in South Africa, the 2012 London Olympics, or the 2016 Euro Cup in France produce similar effects as the explosion of investment and foreign economic activity within a sub-region. States hosting events of this scale often lack the number of personnel required to support this influx of activity, and are required to contract additional security services. For example, the 2016 Euro Cup in France saw the recruitment of an additional 90,000 personnel across 60 PMSCs to meet the tournament’s security needs.⁸⁵

⁸⁰ Industries have been known to take the lead in self-regulation where State regulation is lacking. Examples include the UK and Serbia, both which had self-regulatory systems in place for PMSCs. The initiative for the International Code of Conduct, an association that combines company initiatives with State governments and civil society organisations, also came in part from the industry itself, demonstrating an interest to clarify obligations.

⁸¹ Elke Krahmann, and Cornelius Friesendorf, *The Role of Private Security Companies (PSCs) in CSDP Missions and Operations* (Brussels: European Parliament Policy Department B Directorate-General for External Policies, April 2011) 12.

⁸² PMSCs contracted by the German Foreign Ministry in Kabul included: Kabora, LANTdefence, Asia Security Group, and Servcor. Krahmann and Friesendorf, *The Role of Private Security Companies (PSCs) in CSDP Missions and Operations*, 12.

⁸³ Andreas Bergman, “The Regulation of Private Military and Security Services in Sweden,” *National Reports Series* 02:10, (16 December 2010), 7
http://psm.du.edu/media/documents/reports_and_stats/think_tanks/privwar_national-report_bergman.pdf

⁸⁴ Megan Lynn Becker, “To Build or To Buy: Understanding the Determinants of Security Privatisation in Developing States” (PhD diss., University of California San Diego, 2016), 22–23.

⁸⁵ “Silver Linings: Migration, terrorism and austerity help contractors to prosper,” *The Economist*, 25 June 2016, Business section, Print edition.

e. Eastern Europe region

 **23** States in the region total

 **20,487** PMSCs minimum

 **658,469** Personnel minimum

 **12** MD Participants

Over half a million PMSC personnel are found in the 23 states comprising the Eastern Europe region. In a number of states in the region, the PMSC industry has expanded rapidly and official numbers often do not adequately capture the size of the industry or numbers of PMSC personnel. For instance, in Albania, companies tend to declare only some employees to avoid paying social security contributions. Some PSCs also hire persons who do not have a licence to work as private security employees – usually retired police and military officers. The banking sector, comprising over 550 offices throughout Albania, is also estimated to employ several hundred security staff who are registered as regular bank staff.⁸⁶ The number of companies has decreased due to a ban on subcontracting; many companies have merged with their former subcontracting partners, and now larger companies with a larger employee base are commonplace, while the total overall number of companies has decreased.⁸⁷ Across the Eastern Europe region, the growth in PMSCs is primarily due to the post-war instability created by the Balkan conflict of the 1990s, increased privatisation following the end of the Cold War, and the demobilization of national militaries. In Bosnia and Herzegovina, the need for private security provision developed due to high crime rates, low faith in state security provision, and increasing privatisation, leading to the need for protection against theft and armed robberies.⁸⁸ The manufacturing industry, the retail sector, international NGOs and local embassies are the main clients of PMSCs.⁸⁹ In Croatia, due to the gradual downsizing of the public police force, the ratio of private security personnel to police is almost equal. The ratio of private security companies to civilians in Croatia is 1:276. Recently, in response to the flow of refugees, asylum seekers, and migrants, a number of states in the Eastern Europe region as well as the Western Europe and Other States region have also begun relying on cooperative arrangements between private and public security to provide security support for borders as well as in detention centers.⁹⁰

⁸⁶ Arjan Dyrnishi and Gentiola Madhi, “Albania,” in *A Force for Good?* Klopfer and Van Amstel, ed, 14–15.

⁸⁷ Ibid.

⁸⁸ Michael Page et al., *SALW and Private Security Companies in South Eastern Europe: A Cause or Effect of Insecurity?* (2005), 17-18. 6. David A. Kassebaum, “Question of Facts- the Legal Use of Private Security Firms in Bosnia,” *Columbia Journal of Transnational Law* (1999–2000) 38, 19.

⁸⁹ Ibid.

⁹⁰ Marja Novak and Maja Zuvela, “Slovenia to use private security firms to help with migrant flows,” *Reuters*, 26 October 2015; Nikolaj Nielsen, “Private Security firms cash in on guarding EU borders,” *EU Observer*, 25 September 2013.

3. Conclusions

As a general observation flowing from the overview of the PMSC industry across the five regions presented in this Chapter, the PMSC industry is active in all parts of the world and globally growing and evolving. It is clear from the preceding overviews that each region presents a very different private security landscape, with diverse and context specific factors contributing to its development. Large differences can even be observed within each individual region – in some cases even within sub-regions or within individual states – either in terms of the size of the industry, its clientele or the type and nature of services provided. However, an exhaustive mapping of the industry to achieve a complete and accurate understanding of PMSC activities and their concentration is difficult due to the lack of available data regarding many states. Despite these differences, it is clear that the PMSC industry across the world is flourishing, presenting an overall recent and rapid growth. The worldwide value of the industry is approximately USD 100–165 billion per year, with annual growth rates between 7–8 per cent.⁹¹

While recognising the diversity of states and experiences across such vast territories, some common industry trends nevertheless seem to emerge.

Two main growth factors are common across all regions:

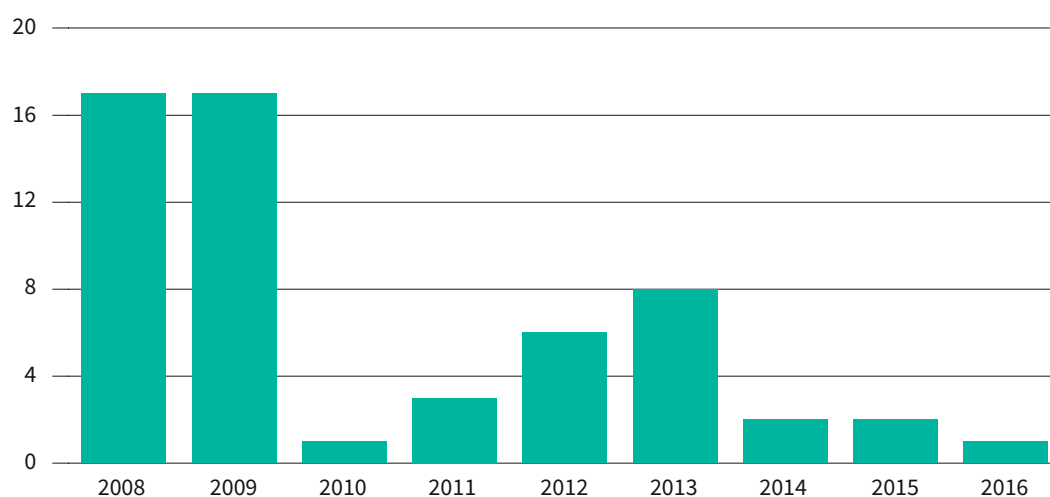
- ↘ **High levels of foreign investment, especially the presence of the extractive industry, leading businesses and industries to source security from private companies.**
- ↘ **Situations of recent or current armed conflict or where the state is experiencing weakened governance, leading to a lack of trust in public security institutions and further increasing the clientele of PMSCs.**

Furthermore, each region presents specific characteristics which help paint a picture of the current PMSC landscape globally. For example, international peacekeeping operations also foster very specific needs for private security, to protect personnel and premises. Other trends are also emerging in unique and context-specific cases, to fill in exceptional needs, such as wildlife and environmental protection in South Africa, or where PMSCs are used to respond to extraordinary punctual occurrences where the public forces of a state are not sufficient, such as we have seen with mass sporting events.

Considering the distribution and characteristics of the PMSC industry outlined above, what linkages may be drawn with the distribution of MD states? The majority of MD participant states are found in the Western Europe and Other States region which also represents a very high

⁹¹ Nicolas Florquin, “A Booming Business. Private Security and Small Arms,” in *Small Arms Survey 2011: States of Security* (Cambridge: Cambridge University Press, 2011).

concentration of host and contracting states for PMSCs. The distribution of the MD participants does show that all regions are represented by the Montreux Document. However, the regions where the industry is most dynamic are those with the fewest MD participants. This indicates that a key part of the picture is missing. Thus, one of the main challenges for the MD remains that key regions of PMSC activity are underrepresented in the initiative’s map. Granted, as shown in the graphic below, participation has not stalled since the launch of the Montreux Document in 2008, as the number of participating states continues to grow. Indeed, since 2008, the number of MD participants has more than tripled, indicating excellent progress in outreach and promotion. Nonetheless, the number of new states joining annually has fallen to less than two per year for the third year in a row. Much remains to be done by all participants to the initiative to ensure the Montreux Document reaches regions where the PMSC industry has potential to impact IHL and IHRL implementation.



Number of states joining the Montreux Document

While it is difficult to gauge specific industry trends in the absence of global national data, regional security characteristics are emerging that help identify entry points for further regional and sub-regional outreach to bring the MD to address specific issues of concern to the various governments, specifically in the LAC, Africa, and the Asia and Pacific regions, where further outreach efforts are most needed. This will assist in connecting the main premise of the Montreux Document with those states who have yet to officially support the initiative and to assist in the implementation of MD good practices at a national level across the regions by both MD-committed and non-participating states.

Montreux Document Implementation and Gaps in National Legislation

1. Introduction

The Montreux Document is composed of two parts. The first section recounts the international legal obligations of states in relation to their engagement with PMSCs. Section two contains a list of good practices related to PMSCs¹ which provide a practical blueprint for contracting states, territorial states, and home states in implementing international rules into effective national regulatory frameworks. The implementation of the MD good practices undoubtedly requires time, and is dependent on the overall pre-existing national legal framework. While some states may already have relatively comprehensive regulations on PMSCs, which will require potentially fewer inputs to update legislation in line with MD, it may be a longer process for other states with dated, less comprehensive national legal frameworks for regulating PMSCs. In all cases, joining the Montreux Document as a participant implies a level of political support for its main thrust; that international legal obligations have a bearing on PMSCs and must be complied with. By extension, joining the MD reflects a state's interest to undertake national implementation of the MD good practices in legislation.

To inform implementation support efforts in the Montreux Document Forum, this Chapter assesses to what extent national laws take into account MD good practices. To this end, this Chapter individually reviews the national legislation of the 54 MD participating states on the basis of eight key indicators of successful national implementation of MD good practices. The indicators have been developed on the basis of the challenges identified during the Montreux+5 Conference, the major report prepared in view of the event, as well as feedback and discussions held with Montreux Document participants.² Divided into three categories of roles and responsibilities, procedures, systems and processes, and monitoring and accountability, the key indicators represent food for thought to inform further discussion in the MDF and are therefore not intended to be exhaustive or limiting. Collating the results and assessing MD participating states' national legislation will then enable the identification of main gaps in the implementation of MD good practices, as well as industry trends and common patterns across national law that could be incorporated into future outreach and implementation efforts.

¹ For more information, see: <http://www.mdforum.ch/montreux-document>. For a discussion on the rules and international legal obligations of the Montreux Document see: Marie-Louise Tougas. "Commentary on Part I of the Montreux Document on Pertinent International Legal Obligation and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict," *International Review of the Red Cross* 893 (2015).

² Buckland and Burdzy, *Progress and Opportunities Five Years On: Challenges and Recommendations for Montreux Document Participants*; For more information about the Montreux Document Forum Plenary Meetings 2014 and 2015 See: <http://www.mdforum.ch/en/meetings>.

This Chapter has the following objectives:

1. To assess implementation of the MD good practices across national legislative frameworks of MD participant states;
2. To identify the strengths and weaknesses of regulatory frameworks across MD participants;
3. To identify gaps in the implementation of MD good practices, as well as industry trends and common patterns across national law that could be incorporated into future outreach and implementation efforts.

Eight Indicators of Montreux Document Implementation

ROLES & RESPONSIBILITIES	PROCESSES, SYSTEMS AND PROCEDURES	MONITORING & ACCOUNTABILITY
1 Specific legislation on PMSCs (provisions on licensing and registration)	4 Required identification of personnel and means of transport. Prohibition of active-duty public security from working in PMSCs	7 Monitoring of PMSCs
2 Determination of services: distinction between private and public security service provision	5 Firearms and weapons licencing and registration regimes for PMSCs	8 Suspension and/or revocation of the licence, registration, or contract in case of misconduct
3 Extra-territorial jurisdiction of the law	6 Dedicated policy on the use of force and firearms by PMSC personnel	

2. Methodology

This study focuses exclusively on national legislation as the unit of analysis. Indeed, it is difficult to measure the extent to which the good practices of the MD have been concretely implemented. Furthermore, broad government policies or strategies also have a bearing on PMSC regulation. However, this study only takes into account legislative frameworks and does not include broad policy or other state regulatory efforts as these are beyond the scope of feasible research.³ This study does not take into account legislation not yet passed by parliaments. Therefore, the key indicators are not intended to be reflective of the status of national regulation as a whole. Additionally, this study recognizes that there can exist a number of other political, social, economic, and environmental factors which affect how and when states translate their support

³ States restrict the behaviour of PMSCs in ways beyond what is called for within the MD, for example on data privacy. These efforts, if they do not have direct impact on the selected key indicators, have been excluded from the research. One example of this includes China's data protection law, which stipulates that public and private authorities must keep their video data secured behind a proper firewall and must be protected at all times from public access or disclosure. See: Regulations of Liaoning Province on Public Security Protection by Technology, "Privacy Law in Greater China," Mainland China, 1 April 2015.

for MD into national laws – and how a state’s participation in this political process relates to implementation efforts at a national level. For instance, some states use the process leading up to its formal communication of support to Montreux to engage in law reform initiatives, whilst for other states, pledging official support for the MD provides a platform for reform to then take place. It is understood that a state may not have the capacity to implement all the good practices, and that no state has the legal obligation to implement any particular good practice, whether that state is a contracting state, a territorial state, or a home state. This study is in line with the Montreux Document’s recommendation that states are invited to consider these key indicator good practices in defining their relationships with PMSCs, recognising that a particular good practice may not be appropriate in all circumstances and emphasizing that the selection of key indicators does not mean to imply that states should necessarily follow all these practices fully.

Furthermore, this Chapter does not encompass the implementation efforts of international organisations within the key indicators. International organisations play valuable roles as conveners and standard setters in their respective regions and, as set out in the introduction to the study, the EU, OSCE and NATO have made important recommendations for member states with respect to implementation of the rules and good practice contained in the Montreux Document. Moreover, on an institutional level, these organisations have taken important steps when they contract PMSCs.⁴ However, this study focuses on national actors’ efforts at implementation as international organisations do not have the same systems of legislation lending to the scope of analysis in this study.

Surveying the legislative frameworks of MD participant states against key indicators will enable an assessment of MD participants’ current legislative compliance with MD good practices. For each key indicator, evaluations – from A to C – are applied and tallied for analysis to assess performance. The attributed evaluation will correspond to the following assessment criteria:

General Assessment Criteria

Evaluation A

The national legislation positively includes the relevant good practices of the MD.

Evaluation B

The relevant good practices of the MD are included in the legislation to some extent.

Evaluation C

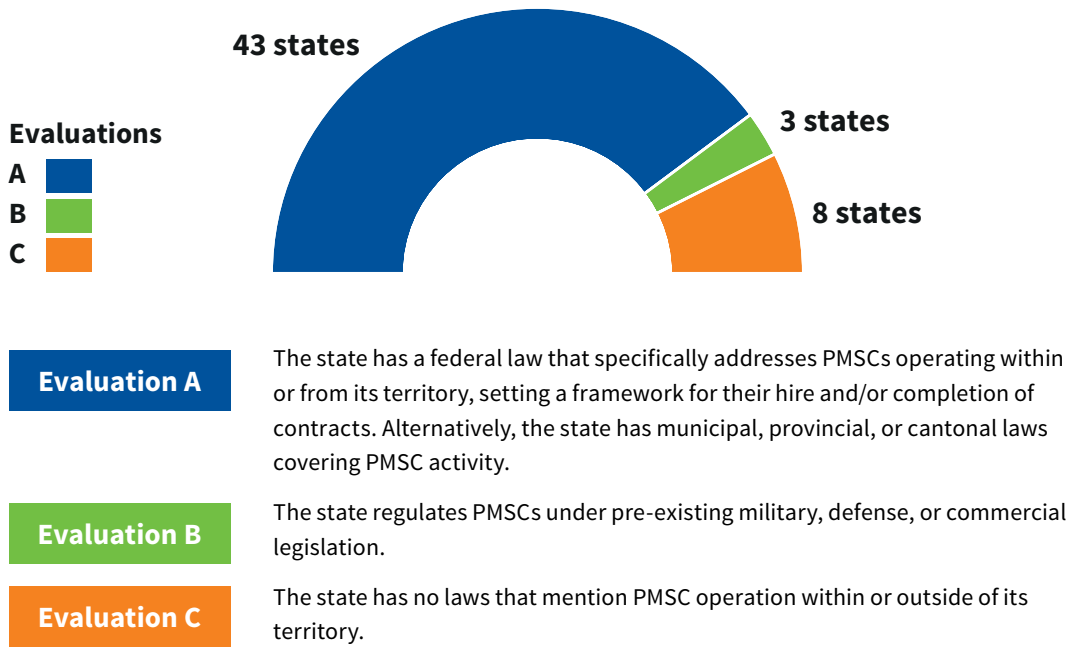
The relevant good practices of the MD are not yet included into national legislation. For instance, this could mean that no legislation specific to PMSCs or relevant to PMSCs has been passed.

⁴ Boddi, Burdzy, and van Amstel, *Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting 2015–2016*.

3. Assessment of the Key Indicators

Roles and Responsibilities

1. Does the state have a law specifically addressing PMSCs operating within or from its territory, such as a law that sets provisions for licensing or registration?⁵



As a starting point, the existence of a law specifically addressing PMSCs operating within or from a given state's territory is fundamental and in most cases, is also linked to political will and the importance attributed to regulation of PMSCs by a state. This indicator alone does not provide for a qualitative assessment of the national legislation but it offers an important departure point.

States receive the highest evaluation (Evaluation A) if they have a national law that specifically regulates PMSCs operating within or from their territories. In particular, this includes states that have recently adopted a new law or upgraded an existing law to respond to new needs and challenges presented by the evolution of their domestic private security sector. This also includes states which regulate PMSCs through cantonal, provincial or municipal jurisdictions.

Evaluation B is attributed to states that have amended pre-existing military or defence legislation to also include PMSCs within their scope or states that regulate PMSCs under existing commercial laws (such as export/import restrictions). These solutions usually provide a more general legal framework, which is less likely to take into account the specificities and particular needs and challenges of the sector, and therefore carries the risks of gaps or confusion as to the applicability of the law emerging. The lowest evaluation (Evaluation C) corresponds to states that do not have any law regulating PMSCs' operations.

⁵ Montreux Document, Good Practice 1.

As highlighted in Chapter I, the PMSC industry is booming and rapidly evolving to the local contexts in which it operates. This growing importance of the sector is reflected in the strong Evaluation A received by most MD participant states.

Of the total 54 MD participants, 46 states received an A or B evaluation, meaning that they had a specific law regulating PMSCs at either federal, cantonal, municipal, or regional level at the time of research, or that they regulated PMSCs through specific dedicated legislation or military, defence or commercial law.⁶ Most MD participants also have passed relatively recent laws to address the industry. About 60% of MD states have passed one or more new bills to regulate PMSCs since the year 2000. Other states have added amendments to pre-existing military or defence law.⁷ Only 27% of MD states had national legislations for PMSCs that pre-date 2000, which indicates that these states have adapted older laws to fit new contexts, or perhaps that these states have fit the regulation of PMSCs under the umbrella of a pre-existing framework. Four MD states have sub-national oversight of PMSC industries within their respective jurisdictions (some in addition to national regulation).⁸

As the good practices set out in the MD are not intended to be a one-size-fits-all solution, states should pursue the regulatory and legislative solutions that fit their specific needs and legislative context. However, having legislation that is up to date can help to address the emerging security challenges in ways that older state laws may not be able to adapt to. Three states in the Montreux Document community have regulations that provide for private security providers under existing commercial law.⁹ States which regulate their PMSC sector under commercial law risk not being able to adapt their legislative frameworks to address the diverse and growing challenges of the PMSC industry. Frameworks for grievance resolution mechanisms against PMSCs may operate more slowly in a commercial law context, and likewise may not have provisions for both civil and criminal violations of the law.

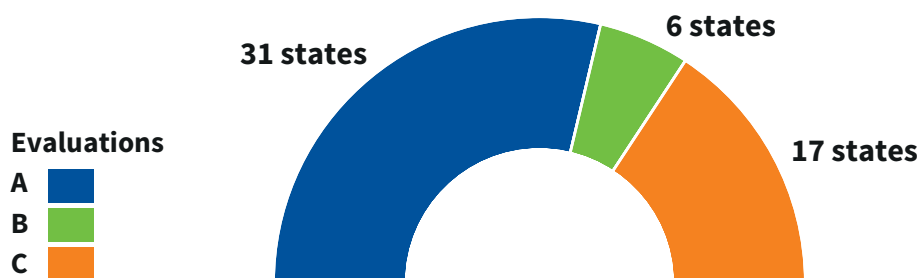
⁶ Contact DCAF PPPs for Key Indicators data.

⁷ Jordan provides for PMSC oversight as a function of the executive branch. Burt and Muller, "Foreign Ownership Bans and Private Security: Protectionism Or Security Sector Governance?"

⁸ The following states have cantonal or provincial frameworks that vary by region: **Australia** does not have one single national framework regulating PSCs, but rather eight separate regimes in six states and two territories; **Bosnia and Herzegovina's** *Law on Agencies and Interior Services for Security of Persons and Property* (2002, amended 2008) regulates the private security industry in Federation of Bosnia and Herzegovina, whereas the *Law on Agencies for Protection of Persons and Property and on Private Detective Activities* (2002) regulates private security in Republika Srpska; In the **United States**, for private security companies operating domestically, regulation occurs at the state rather than the federal level. Several states have no specific regulations for private security companies, others have Codes of Conduct (e.g. issued by Virginia's Private Security Services Advisory Board), and others exclusively regulate certain private security services (such as security guarding or private investigations). See: United Nations Office on Drugs and Crime, Criminal Justice Handbook Series, *State Regulation concerning Civilian Private Security Services*, (Vienna: UN Office at Vienna, 2014); In **Canada**, for instance, the province of Ontario has the *Private Security and Investigative Services Act*, (2005), the province of Quebec has the *Private Security Act* (2015) and British Columbia has the *Security Services Act* (2007).

⁹ The following states regulate PMSCs under national commercial law: **Madagascar**: *Law n°2003-044* of 28 July 2004 on the labour code, *Law n°2003-036* of 30 January 2004 on commercial enterprises, *Law n°2004-009* of 26 July 2004 on markets, *Law n°2015-039* of 03 February 2016 on public-private partnerships, *Law n°69-011* of 22 July 1969 on firearms regulations; and *Law n°2007-024* of 21 November 2007; **Czech Republic**: For private security companies, *Act on Licensed Trade* (Act no. 455/1991 of the Official Gazette); For PMSCs, particularly the export of military goods or services: *Act on Foreign Trade in Military Material* (Act no. 38/1994 of the Official Gazette). The compliance of these Acts is supervised by the Ministry of Industry and Trade; **Austria**: *Industrial Code (Gewerbeordnung, GewO)*, which is also the only legislation to contain some provisions specifically designed for private investigators or guarding businesses. In addition, the *Austrian Criminal Code (Strafgesetzbuch)* as well as the *Weapons Act (Waffengesetz)* and the *Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch)* are of relevance.

2. Does national law maintain a distinction between private and public security with respect to determination of services?¹⁰



Evaluation A

The national legislation maintains a clear distinction between private companies and public security forces with respect to determination of services.

Evaluation B

The national legislation maintains some overlap between the services that public security and private companies provide.

Evaluation C

The national legislation provides no clear distinction between public security forces and private companies.

Due to the nature of their work, police officers and other public security forces perform duties, such as detention, arrest and interrogation, which PMSC personnel should not necessarily be performing. A state should therefore ensure a clear distinction between public and private security by defining the roles and responsibilities of PMSCs vis-à-vis public security forces. This can be achieved by defining the permitted and prohibited activities (determination of services):

- **For contracting states:** Which services may or may not be contracted to PMSCs;
- **For territorial states:** Which services may or may not be provided by PMSCs on the state's territory;
- **For home states:** Which services may or may not be exported.

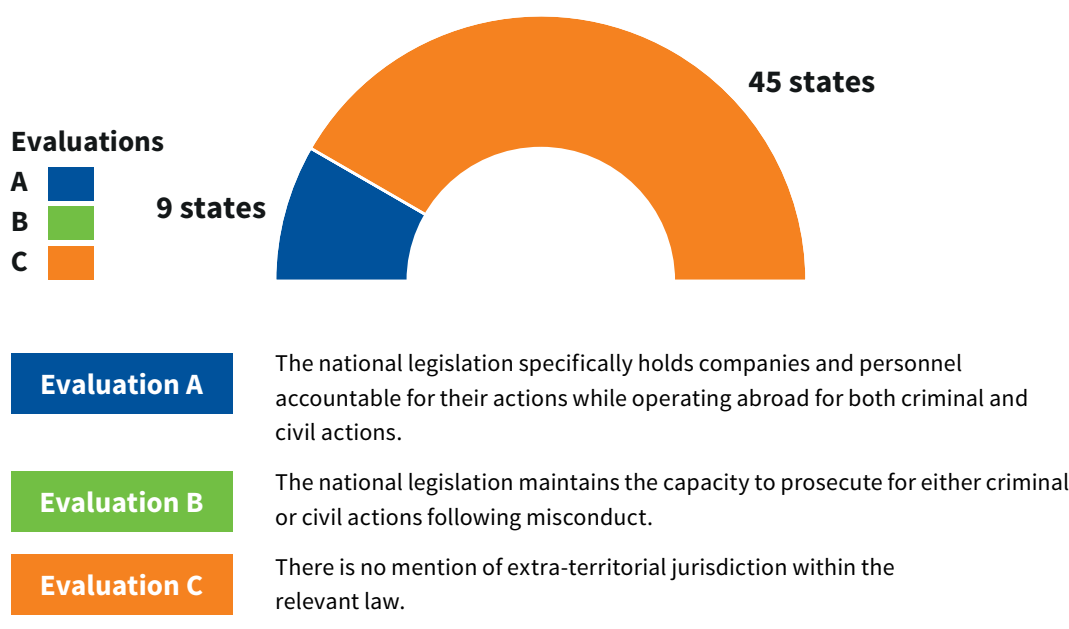
Creating and maintaining a distinction between public forces and private companies reinforces the state's monopoly over the use of force by making clear which aspects of security are under exclusive control of the state, and which aspects can be outsourced to private companies. States should also give special consideration to services that could cause PMSC personnel to become involved in direct participation in hostilities in situations of armed conflict and if services contracted to PMSC personnel have a high risk of human rights abuses. A distinction between private and public forces can also help a state regulate on which basis former public security officials (army officers, police etc.) can work for PMSCs.

MD participants have addressed this issue in different ways. In 31 out of 54 MD states, private security personnel report incidents to the police as a part of their responsibilities. However, they are not permitted to carry out roles traditionally reserved for public security personnel, including, in particular, arrest and detention. Under some legislation, guards have the right to

¹⁰ Montreux Document, Good Practices 1, 24 & 53.

temporarily detain suspects or identify alleged criminals for the purposes of alerting public authorities. Across MD participants, the language restricting the activities of PMSCs varies from “cannot perform state functions”¹¹ to “only when absolutely necessary.”¹² Belgian PMSC personnel, for example, cannot perform the same tasks as public policing officials.¹³ Other countries regulate the work of PMSCs in armed conflict, and restrict this to providing technical expertise, supplies, and operational support. Most MD participant state laws also provide for rules regarding the participation of active or former public security officials in PMSCs. Uruguay, for example, prohibits active police officers from serving as private security guards.¹⁴ Though there is a distinction between public and private forces both in assigned duties across roughly 70 percent of the MD participants,¹⁵ there is still a great deal of overlap and private security personnel frequently are approached for help in cases of emergency, contributing to a blurring of public and private security.¹⁶

3. Does the state provide for extra-territorial jurisdiction of the law?¹⁷



This indicator measures to what extent the state has clarified the applicability of domestic legislation to PMSCs operating abroad. National legislation is especially effective if it provides accountability in the home state, where PMSCs are headquartered or based, as well as oversight of PMSCs and their personnel in the territorial state, where the PMSCs are operating. This is especially relevant where PMSCs are operating in armed conflicts or other situations of violence, where the rule of law may be weak or the institutions may be fragile or ineffective.

¹¹ Poland Ministry of the Interior, *Law on Private Detective Services*, Chapter 1, Article 2.1.
¹² Costa Rica permits PMSC use of force only when absolutely necessary. El Ministro de Seguridad Pública, Decreto N 33128-SP/2006.
¹³ Confederation of European Security Services. *Private Security Services in Europe*, CoESS Facts And Figures (Brussels: CoESS, 2013), 15.
¹⁴ Ministerio del Interior de Uruguay, Chapter 2 Article 18. 2000.
¹⁵ Contact DCAF PPPs for Key Indicators data.
¹⁶ Florquin, “A Booming Business. Private Security and Small Arms,” Key Findings <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2011/en/Small-Arms-Survey-2011-Chapter-04-Annexe-4.1-EN.pdf>
¹⁷ Montreux Document, Good Practices 19–23, 49, 51, 52, 70, 71 & 73.

Conditions of weakened governance leave local populations vulnerable to violations by PMSCs and their personnel. In these situations, it is imperative that states reduce the possibility of an accountability vacuum by asserting their jurisdiction over PMSCs that are operating within or from that territory.

The Montreux Document stipulates that states should provide for criminal jurisdiction over serious crimes committed by PMSC personnel abroad and that states should cooperate with investigating or regulatory authorities.¹⁸ States should therefore clarify their national legislation when PMSCs are based in one state but operating abroad. In this respect, national legal frameworks still carry significant gaps in regulation pertaining to jurisdiction. Only nine of all participant states have legislation specifically providing extraterritorial jurisdiction of the laws that govern PMSCs.¹⁹ In Switzerland, for example, a specific national law applies to natural and legal persons that provide private security services abroad, or services in connection with private security services provided abroad; it also applies to those who establish, base, operate, or manage a PMSC in Switzerland and to those who exercise control from Switzerland over such a company.²⁰

Overwhelmingly, this indicator received a lower score than any other key indicator.²¹ However, states that have scored well in this key indicator typically achieved high scores in other indicators. This data suggests that legal assurance of extra-territorial jurisdiction is a complex measure and states with less advanced regulation of PMSCs are less likely to include this, or indeed might not view this aspect as a security priority.

¹⁸ Montreux Document, Good Practices 19b, 51, 52, 71 & 72.

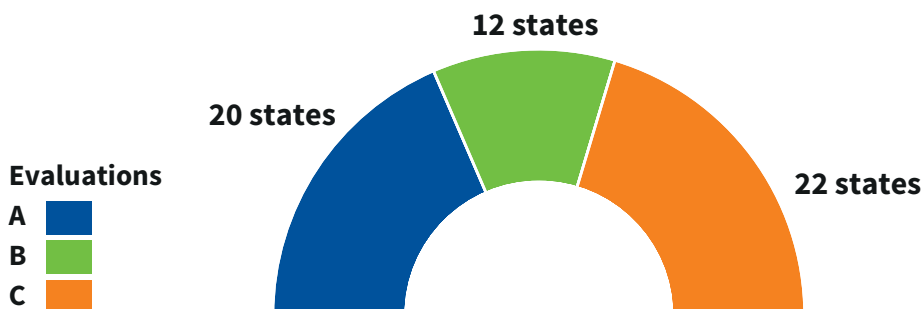
¹⁹ The following states provide for extraterritorial jurisdiction in their legislation: **Albania:** *Law no. 75 On Private Physical Security Services* (10 July 2014), Art. 10C of *Criminal Code*; **Estonia:** *Security Act of Estonia* (2004), Chapter 12 Section 61; **Lithuania:** *Law on Security of the Person and Property* (2011); pertaining to accountability: Article 1.10, paragraph 1 of the *Civil Code*, and Article 4–5 of the *Criminal Code*; **Slovenia:** *Private Security Act* (11 March 2011), Art. 63; **Portugal:** Article 65 of the *Code of Civil Procedure*; **South Africa:** *Private Security Industry Regulation Act Private Security Industry Regulation Act as amended by the Private Security Industry Regulation Amendment Bill In January 2013*, (for a consolidated version, see: http://www.saflii.org/za/legis/consol_act/psira2001451/) applies regardless of the place of commission – thus covering violations committed outside of South Africa – as long as the violation was committed by a security service provider registered or due to register in South Africa. The *Regulation of Foreign Military Assistance Act* (1998) and the *Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act* (2006) contain similar provisions. See also: Malan M. and Cilliers J., “Mercenaries and Mischief: The Regulation of Foreign Military Assistance Bill” *Institute for Security Studies*, Occasional Paper, (1997); **Spain:** Article 5 of the *Organic Law 23/1992 of Private Security* (23 July 1992); *Organic law 6/1985, of 1 July, Judicial Power, Official Bulletin of the State* (2 July 1985). See also: Abrisketa, J., and Gómez Isa, F., *The Regulatory Context of Private Military and Security Services in Spain*, (Bilbao: PRIV-WAR, 2009), National Reports Series 05/09, p. 6; **Switzerland:** *Federal Act on Private Security Services Provided Abroad (PSSA)* (2015); **United States:** 2006 amendment to the *Uniform Code of Military Justice, Military Extraterritorial Jurisdiction Act (MEJA)*. For a further discussion see, Geneva Centre for the Democratic Control of Armed Forces, *Private Security Governance Database*, “United States of America Factsheet”: <http://www.ppps.dcaf.ch/en/private-security-governance-database>, 2017.

²⁰ Switzerland, Article 2 of the *Federal Act on Private Security Services Provided Abroad*, (27 September 2013).

²¹ Contact DCAF for Key Indicators data.

Procedures, Systems, and Processes

4. To further distinguish between public and private security, does the national law require that PMSCs are personally identifiable? Does the national legislation further prohibit active duty public security from working in PMSCs? ²²



Evaluation A

The national legislation requires uniforms, markings and other identification to identify PMSC personnel and means of transport. The national legislation further prohibits active duty public security from working in PMSCs (moonlighting).

Evaluation B

The national legislation requires uniforms, markings and other identification for personnel and means of transport but does not prohibit moonlighting.

Evaluation C

The national legislation does not require uniforms, markings and other identification and does not prohibit moonlighting.

Especially in situations of armed conflict, it is a good practice that PMSC personnel remain clearly identifiable. In this regard, the Montreux Document recommends that PMSC personnel carry clearly visible identification and that their means of transport be easily distinguishable. These practices are also important outside of situations of armed conflict and relate to key indicator 2 pertaining to the distinction between public and private security roles. Identification of PMSC personnel while they are on duty provides both clients and the wider community with increased opportunity to pursue accountability for any misconduct that may have occurred. PMSC personnel who wear visible identification affixed to their uniform provide the community with more clarity regarding legal recourse if their rights are violated. Additionally, ID cards serve as a critical tool to support performance monitoring of PMSC personnel in various contexts.

The majority of national legislation requires that PMSC personnel be listed in a central registry which is available to law enforcement agencies at all times.²³ A good practice employed by a number of states to ensure individual accountability with on-the-job performance is to require PMSC personnel to carry ID cards.²⁴ As a good practice example, Uganda passed a legislation in

²² Montreux Document, Good Practices 16 & 45.

²³ Norway, Greece and Croatia PMSC personnel must have ID cards always but are not required to wear them on the outside of their clothes. **Norway:** *Act relating to Guard Services* (2001, 2004, 2011); **Greece:** *Law regulating the private security industry, no. 2518/1997*, (enacted in 1997 Updates and/or amendments by *Law no. 3707/2008*, in 2008); **Croatia:** Chapter 5, Article 50 of the *Law of 9 April 2003*.

²⁴ Montreux Document, Good Practices 16 & 45.

2013 which directs private security personnel to carry ID cards which indicate their duties and responsibilities and the applicable use of force rules. The same Ugandan law also provides for a national fingerprint database of PMSC personnel.²⁵ PMSC personnel in Ecuador receive an identification card after completing 120 hours of training and obtaining an accreditation from the Ministry of Interior.²⁶ Likewise, national laws in Chile require that PMSCs wear an ID card while on duty, which not only identifies the personnel but also the type of firearm(s) they are authorised to carry.²⁷

Across all states, this key indicator frequently received a positive Evaluation A or B,²⁸ with 32 states in total providing guidelines for personal identification of PMSC personnel within their national laws. Some states have stipulated varying identification requirements based on the services that PMSCs provide,²⁹ whereas others impose very direct conditions, including that ID cards be affixed to the outside of the uniform in a clearly visible location.³⁰ Additionally, some states regulate what types of vehicles PMSCs may use and how they may be marked. Of these regulations, the most common is to have a company logo and a vehicle registration number on the vehicle in a font that is large enough to be seen from a distance. Some states go even further, by requesting that identifying information be printed on the roof of company cars so that they can be identified from an aerial view if needed. Additionally, wearing uniforms is an effective means of ensuring a clear distinction between public and private forces.

Another area of concern occurs when active military and police personnel work in PMSCs. This can cause potential conflicts of interest between the public and private security with potential impacts on human rights. Many national regulations prohibit active government officials performing security tasks, while others restrict retired military or police personnel to specific roles in PMSCs. Nevertheless some countries allow active police personnel to work as private security providers when off duty. This is sometimes referred to as paid-duty policing.

²⁵ Uganda Police Forces, "Police Tightens Control Over Private Security Companies," 14 December 2013 <http://www.upf.go.ug/police-tightens-control-private-security-companies/>.

²⁶ Federal Department of Foreign Affairs, FDFA Switzerland and DCAF, "Legislative Guidance Tool for States to Regulate Private Military and Security Companies", 35.

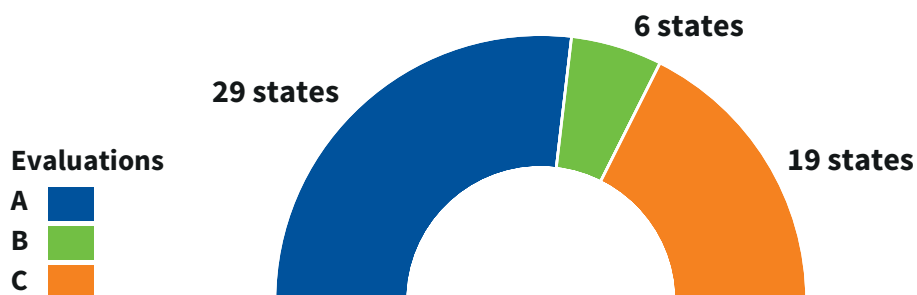
²⁷ United Nations, Human Rights Council, "Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination" A/HRC/18/32, 12 August 2011.

²⁸ Contact DCAF PPPs for Key Indicators data.

²⁹ The UK only requires PMSC ID cards for front-line services. Confederation of European Security Services. *Private Security Services in Europe*, CoESS Facts And Figures, 243.

³⁰ For example, South Africa requires up-to-date photo ID that is visible to anyone interacting with the guard. Contact DCAF PPPs for Key Indicators data.

5. Does the state have a law that provides an effective firearms and weapons licencing and registration regime for PMSCs?³¹



Evaluation A

The state has a weapons and firearms licence and registration system that covers PMSCs and personnel with proper rules for after-hours equipment storage, and that is updated at least once per year.

Evaluation B

The national legislation provides for a licensing regime, but it does not offer firearms/weapons registries or ensure proper storage.

Evaluation C

There is a lack of any mechanism in the national legislation for appropriate weapons and firearms licensing, registration, and storage.

Not all Montreux Document participants authorise PMSCs to equip personnel with firearms. The Montreux Document additionally does not endorse or encourage the arming of PMSC personnel; instead, it seeks to provide practical guidance to states if the decision has been made to allow PMSCs to carry arms. Legal frameworks governing the possession and use of firearms and other weapons revolve around three main issues: the types of weapons PMSC personnel are allowed to use; the rules and regulations related to licensing and authorising the possession of weapons by companies and use by personnel; and the requirements related to stockpile and inventory management.³² Licensing and registration regimes are crucial in ensuring responsible management and storage of firearms and other weapons. In the event of an incident, identifying individuals who are involved is easier if each firearm is registered as assigned to specific personnel. Effective registration and licensing regimes should additionally provide means for safe storage when not in use. Taken together these good practices reduce the likelihood for unnecessary or inappropriate use of force and lessen opportunities for firearms abused or illicit circulation.

Ensuring that these processes are in place can also provide support for formal investigations in both criminal and civil legal cases where firearms have been used. Additionally, this works to reinforce the state's monopoly on the use of force by making these firearms harder to divert from official channels, and by directly connecting each firearm to a specific company and/or its personnel.

³¹ Montreux Document, Good Practices 11, 36 & 64.

³² UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context*, 30.

Indeed, in 29 Montreux Document participating states, national legislation pertaining to firearms and weapons licensing and registration is robust and complete. These states require that companies keep detailed weapons and firearms registers; some states additionally require that PMSCs carry out regular weapons and firearms storage inspections.³³ In contrast to company requirements, some national legislation only requires licences and registrations by the personnel who are armed. For instance, Croatia regulates not only weapons and firearms licensing but also maintains strict technical requirements for after-hours weapons or firearms storage.³⁴ In Costa Rica, private security personnel may use the range of weaponry permitted for civilian use up to a permitted inventory ceiling; private security companies can acquire new small arms if they can document a new client contract justifying the requirement for additional weapons, over and above existing inventories.³⁵ The highest number of permitted small arms currently held in inventory in Costa Rica is 262.³⁶ In Angola, the national legislation specifies that private security personnel – when authorised explicitly by the head of their company – can carry light weaponry, subject to the control of the General Commander of the National Police.³⁷ The relevant company must provide the National Police’s Provincial Command with an inventory of weaponry and ammunition, and this record should be updated on a quarterly basis.

35% of the MD participating states received Evaluation C, reflecting that current laws fail to include provisions for weapon and firearm licensing and registration regimes. Although a majority of MD states have adopted laws to include more general weapons and firearms regimes, these do not automatically provide for appropriate regulation of the PMSC industry in regard to their firearms and other weapons. For example, while states tend to have legislation restricting the types of equipment that PMSCs are allowed to use, few states have national laws which define or restrict the volume of equipment that PMSCs are permitted to hold. This lack of clarity in national frameworks sometimes leads to inappropriately armed private security personnel, for example when PMSCs have disproportionately high numbers of firearms held by personnel. In the LAC region, it is for instance common practice to assign weapons to client posts, with the weapon passing from one private security guard to the next during shift changes. Such practice implies that the number of armed PMSC personnel might be superior to that of a simple calculation of weapons per agent.³⁸

Inadequate weapons and firearms management can encourage black markets and weapons trafficking. There are several patterns linking PMSCs to the illicit circulation of weapons, including PMSCs serving as fronts for illegal arms purchases, irregular documentation of weapons that might not be accounted for in national registries, inventory loss, stockpile theft and robbery, or even theft from PMSC personnel on duty.³⁹

³³ Uganda’s *Police Instrument No. 11* (2013) provides for the Inspector General of Police (IGP) to personally inspect armoury storage and firearms stock every four months to ensure compliance. Costa Rica’s *Ministro de Seguridad Pública* (2006) requires PMSCs to submit weapons and firearms registers to the IGP every four months. PMSCs in Qatar are expected to submit updated registers every two years. Contact DCAF PPPs for Key Indicators data.

³⁴ Normative Acts of the Guild, *Private Protection Act*, Croatia. (9 April 2003).

³⁵ UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context*, 32.

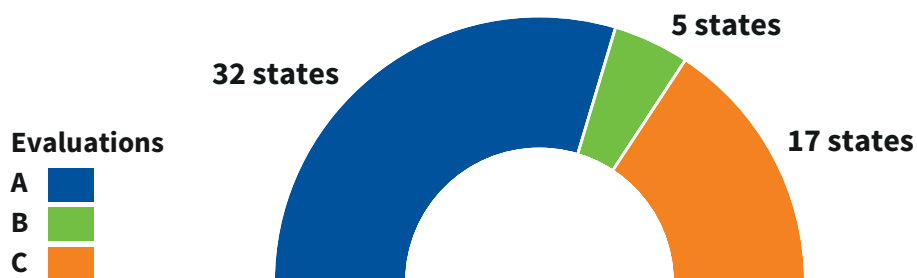
³⁶ *Ibid.*

³⁷ Angola, Article 18 of the *Law on Private Security* (2014).

³⁸ UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context*, 19.

³⁹ *Ibid.*, 63ss.

6. Does the state have a dedicated policy regarding the use of force and firearms by PMSC personnel?⁴⁰



Evaluation A

The national legislation requires a use of force policy and weapons training for PMSCs and personnel, and restricts which weapons may be carried while on duty.

Evaluation B

The national legislation limits the use of force, but it does not have clear provisions for restricting firearms use by PMSCs.

Evaluation C

The national legislation does not regulate the use of force and firearms by PMSCs.

The cases of misuse of force and firearms by PMSC personnel can be related to a great diversity of contexts such as workplace shootings, targeting of protesters or communities, and illegal use of force in the course of guarding valuables. An effective policy for the use of force sets out clear expectations for PMSCs and civilians while providing the latter with protection from human rights abuse and IHL violations. At a minimum, a use of force policy must conform to the following principles:

1. Force may only be used in defence of self or others against imminent threat of death or serious bodily injury;
2. The force must be strictly proportionate to the threat faced or the seriousness of the offences, and the legitimate objective to be achieved; and,
3. The force is necessary under the circumstances and is the minimum required to negate the threat, in particular it is the lowest amount of force necessary to negate the threat or otherwise achieve the objective sought; and there is no other reasonable alternative available.⁴¹

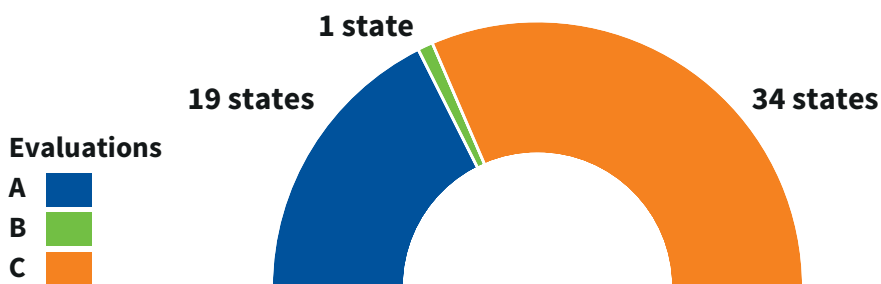
⁴⁰ Montreux Document, Good Practices 10a, 18, 35a, 37a, 43 & 63a.

⁴¹ Use of Force Policy Minimum: The personnel deployed by the PMSC are not authorised to use force, other than to defend him/herself or others against imminent threat of death or serious bodily injury, where there is no other reasonable alternative available. However, personnel deployed by the PMSC are authorised to employ non-deadly force under the following circumstances: to defend him/herself or others against imminent threat of bodily injury; to maintain order and security and prevent damage to Client's premises or property; to detain or prevent the escape of a person who constitutes a threat to order and security and/or who has committed a serious crime. United Nations Security Management System: Security Policy Manual. *Use of Force Policy*, (New York; United Nations Department of Safety and Security, 8 April 2011) http://procurement-notice.undp.org/view_file.cfm?doc_id=80536; UN Code of Conduct for Law Enforcement Officials (CCLEO) of 1979 and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (BPUFF) of 1990.

States vary greatly in their guidelines for use of force by PMSC personnel. For instance, in Uruguay, personnel of PSMCs are not allowed to carry firearms unless they apply for specific approval.⁴² Norway does not allow PMSCs to carry firearms unless they are providing maritime security on board a vessel with the Norwegian state flag.⁴³ Cyprus is the only state that specifically administers fines for personnel and companies that violate the national law for use of force.⁴⁴ China’s legislation limits the use of firearms by PMSCs, and specifically describes under what context they may be carried by on-duty personnel.⁴⁵

Many states extend their definition for use of force beyond firearms to include less-lethal weapons such as batons, pepper-spray, and trained dogs. For example, in Belgium, the law on the use of force allows PMSCs to use dogs under strict conditions and only in “preventative” settings.⁴⁶ Some PMSCs only provide armed guarding services in cases of cash in transit or maritime security operations. Further, in the wake of the terrorist attacks in France, dialogues have commenced to grant specified personnel “enhanced security officer” status to allow and encourage more PMSC personnel to carry firearms while on duty.⁴⁷ French authorities predict that by increasing armed security personnel, this could provide a quicker response time when incidents occur, while also increasing the general public’s sense of security.⁴⁸

Monitoring and Accountability



Evaluation A	The national legislation provides for administrative, managerial, reporting, or unannounced and systematic inspections of PMSC personnel and PMSC headquarters.
Evaluation B	The national legislation provides for annual inspections of PMSCs, or for receiving complaints from citizens regarding misconduct by PMSCs.
Evaluation C	The national legislation does not provide for systematic monitoring of PMSCs.

⁴² Uruguay, Ministerio del Interior, Decreto 275 (1999), Chapter 4, Article 17.

⁴³ Confederation of European Security Services. *Private Security Services in Europe*, CoESS Facts And Figures, 146.

⁴⁴ *Ibid.*, 50.

⁴⁵ China, *Regulation on Administration of Use of Guns by Fulltime Guards and Escorts* (2002), promulgated by Decree No. 356 of the State Council of the People’s Republic of China, (27 July 2002).

⁴⁶ Confederation of European Security Services. *Private Security Services in Europe*, CoESS Facts And Figures, 20.

⁴⁷ “Guns in France: Now security guards could be armed,” *The Local*, 4 March 2016.

⁴⁸ *Ibid.*

7. Does the law provide for a dedicated public regulatory body for PMSCs or other monitoring functions?⁴⁹

Monitoring compliance with national legislation on-the-ground is crucial for effective accountability and oversight of PMSCs and their personnel, as well as providing reliable information on PMSC activities. An effective government-led monitoring system will help to ensure PMSC's compliance with national legislation, IHRL, and IHL. Monitoring of PMSCs and individual personnel is critical to ensure that they comply with provisions for operation in national law, while assuring community safety from criminal or civil misconduct on behalf of PMSCs.

Of the 54 MD states surveyed, 19 have specific provisions for on-the-ground monitoring of PMSC compliance with legislation, licences or regulations.⁵⁰ China established an independent monitoring system for PMSCs within its law with the power to compel PMSCs to cease operations in the case of wrongdoing.⁵¹ National law in Switzerland requires that PMSCs become members of the International Code of Conduct Association, which is a voluntary regulatory association with a function to monitor and receive complaints against PMSCs.⁵² South Africa has achieved a sophisticated monitoring and regulatory framework through its national-level industry authority, the Private Security Industry Regulatory Authority (PSIRA).⁵³ In Costa Rica, the Ministry of Public Security's Directorate for Private Security Services is authorised to review private security companies' weapons storage conditions and make recommendations for improvement. If private security companies are found non-complaint, they are faced with administrative sanctions, including revocation of permits.⁵⁴

Monitoring for compliance with the relevant law varies and can also include administrative mechanisms such as requirements of company reporting. In Belgium, PMSCs send a yearly report on their activities of the Ministry of Interior, which is then presented to the parliament.⁵⁵ In Uganda, licensed PMSCs must submit quarterly reports concerning their operations to the Inspector General of Police (IGP). The IGP must then issue annual performance certificates to PSCs, which are categorised as exemplary, very good, good, satisfactory or poor.⁵⁶ In Angola, the authority responsible for the monitoring of PMSC activity is the National Police, which has powers of regular and ad hoc supervision and inspection of company operations.⁵⁷ The Provincial Command of the National Police is furthermore responsible for maintaining a file of licensed security personnel as well as registered PMSC weaponry, and the 2014 Law on Private Security specifically envisions that anyone can report irregularities relating to private security activities to the police. Although the responsibility for regulation lies with the National Police,

⁴⁹ Montreux Document, Good Practices 21, 23, 46–48, 52, 68, 69 & 73.

⁵⁰ The following states provide for on-the ground monitoring of PMSCs: South Africa, Uganda, China, Japan, Qatar, Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Poland, Estonia, Slovenia, Belgium, Denmark, Finland, Greece, Ireland, Spain, and Sweden. Contact DCAF for Key Indicators data.

⁵¹ China, *Order of the State Council No. 564: Regulation on the Administration of Security and Guarding Services*, (13 October 2009), Art. 3.

⁵² Switzerland, *Federal Act on Private Security Services Provided Abroad*, (27 September 2013).

⁵³ For more information, see: <http://www.psira.co.za/psira/>.

⁵⁴ UNLIREC and DCAF, *Armed Private Security in Latin America and the Caribbean: Oversight and Accountability in an Evolving Context*, 32.

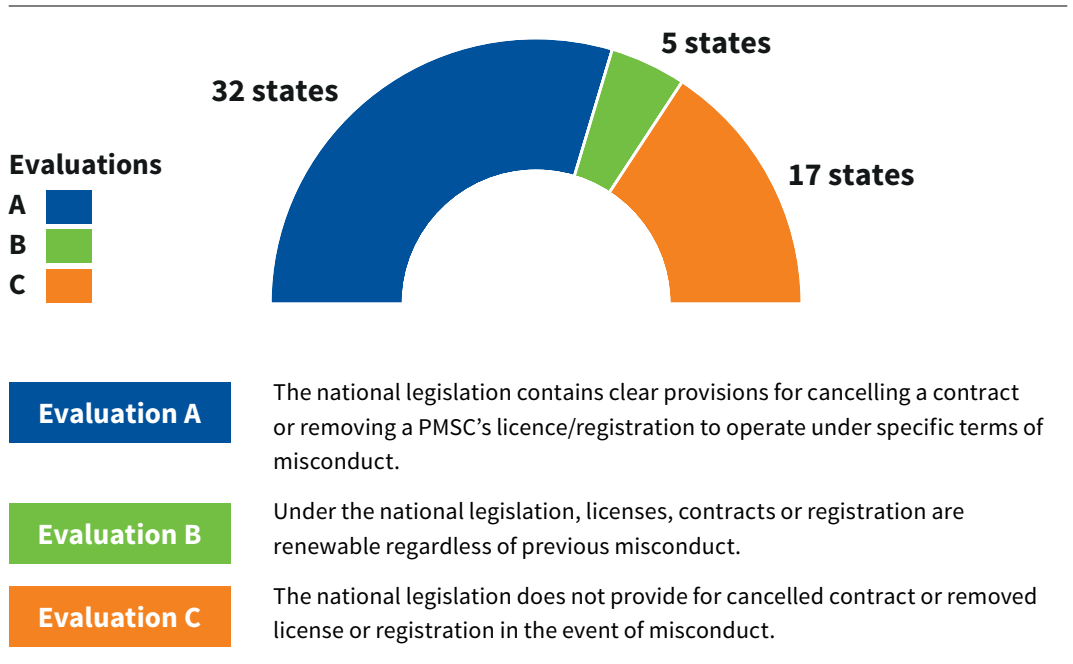
⁵⁵ Belgium, *Law on Private Security Services*, (19 April 1990), Article 14.

⁵⁶ *Uganda Police Regulations*, Article 38. The Police Regulations are not publicly available. All references to the Police Regulations are drawn from: UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, *Status Report on Anglophone Africa: Comprehensive study analysis of National Legislation*, (OHCHR: Geneva, 2013), 19.

⁵⁷ Rimli, "Case Study Angola", 40.

the 2014 national legislation specific to PMSCs places the burden of compliance notification largely on the company.

This indicator correlates strongly with key indicator 8 which relates to compliance mechanisms which remove licences and/or contracts if PMSCs or their personnel are found to be non-compliant or negligent in their duty. States that received a B or C score regarding key indicator 7 were also less likely to have a mechanism for removing a licence or a contract for non-compliance in place (see key indicator 8 below).



8. In cases of non-compliance, does the national law provide for suspension and revocation of the licence, contract, or registration?⁵⁸

This indicator measures the provisions in national legislation which act as the second step in monitoring and oversight of PMSCs. The revocation or suspension of a license, contract or registration is not intended to be the sole or automatic reaction to all cases of non-compliance. It is up to each state to determine the gravity and seriousness of the infraction to merit this response. As shown above, effective monitoring provisions were a challenge for Montreux Document participants, with only 19 states successfully scoring an Evaluation A. In contrast, provisions for removal of the contract/license/registration are higher. The weaker performance in terms of monitoring provisions indicates that there are fewer ways to adequately assess whether misconduct has occurred. If monitoring mechanisms are not in place, then clauses for suspension or revocation of license, contract and registration will be meaningless.

Of the 54 MD states surveyed, about 30% do not have a legal framework for removing a company’s licence in case of negligence or misconduct on behalf of a PMSC or its personnel.

⁵⁸ Montreux Document, Good Practices 20, 21, 48 & 69.

Given that 37 MD states have legislative provisions to ensure accountability, research shows a strong performance generally by states for this key indicator; however, challenges remain with 17 states making no provisions in this regard.⁵⁹

The authority to remove licences or registrations is one of the strongest tools that states can rely on to ensure effective monitoring and accountability of PMSC activities. In Germany, for example, PMSCs have to register with the German Commercial Register and contracts include obligations of conduct as well as results and allow for termination of the contract in case of breach.⁶⁰ Several states have licences specific to tasks that the PMSC and its personnel are authorised to perform or services they can provide. In Angola, the suspension or cancellation of PMSC operating licenses by the General Commander of the National Police acts as an important means of accountability.⁶¹ In Bosnia and Herzegovina, the respective Ministries of Interior perform oversight of the industry. Either the cantonal authorities or the Federation Ministry can revoke registration licenses if irregularities, such as the absence of written contracts, employment of non-registered personnel, or the performance of tasks beyond those authorised by the court registration, are detected.⁶² Similarly, the Republika Srpska law sets out criteria for supervision by the Ministry of Interior and Public Security Centres, and temporary banning or revocations of licenses as well as time frames for each step.⁶³

States may also choose to set expiration dates on a PMSC or personnel licence, requiring the companies to re-apply periodically for a licence to continue operating. One of the recommended MD good practices for compliance on the ground is regular, unannounced inspections of PMSC companies and personnel.⁶⁴ Improved industry-wide compliance with licenses, regulations, or contractual terms can be secured in a number of ways. This could include rejecting an application for a new licence, suspending an existing licence for a specific period of time, or permanently removing a PMSC's authorisation to operate within that state's territory.

⁵⁹ For instance, in Finland, once a PMSC becomes licensed, that licence cannot become invalid. Ministry of the Interior Finland, *Private Security Services Act* (2002).

⁶⁰ Ralf Evertz, "Germany," in *Multilevel Regulation of Military and Security Contractors: The Interplay between International, European and Domestic Norms*, ed. Christine Bakker and Mirko Sossai, (Oxford: Hart Publishing, 2012), 224.

⁶¹ See Article 38, and Article 39 for sanctions, *Angola Law on Private Security* (2104).

⁶² Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, *Law on Agencies and Interior Services for Security of Persons and Property, no.78/08*, (2008), Articles. 23, 43–48.

⁶³ Bosnia and Herzegovina, Republika Srpska, *Law on Agencies for Protection of Persons and Property and on Private Detective Activities*, (2002), Articles. 53–64.

⁶⁴ Montreux Document, Good Practices 9, 34 & 62.

Current and Emerging Themes in the Global PMSC Industry

1. Introduction

The need for more effective implementation of the legal obligations and good practices contained in the Montreux Document at the domestic level was highlighted in discussions by Montreux Document participants where states and international organisations addressed how different operational contexts of PMSCs impact attempts to reform national regulation and oversight.¹ As PMSCs are providing diverse services in areas such as in weapons management, detention centres or security support to international development efforts, Montreux Document participants have debated their relationships with PMSCs and how national efforts at regulation can be more effective. Building on the reflections in Chapters I and II, this section considers the major thematic challenges to PMSC regulation. The section gives an overview of the issues raised in the Montreux Document Forum to date and identifies new challenges facing states and international organisations that can be addressed in the future. By identifying emerging global security issues, this Chapter seeks to illustrate the new services increasingly provided by PMSCs. The Chapter first summarises the current issues addressed by the MDF, and then examines the growing and diverse areas of PMSC operations: contractor support in refugee and asylum centres; contracting of PMSCs by humanitarian actors; operational support to counterterrorism; PMSCs in security sector reform; protection of critical infrastructure; protection for maritime trade; and finally the issue of PMSCs in cyber security.

2. Looking back: Thematic Focus in the Montreux Document Forum

The Montreux Document Forum is a crucial platform for participating states, international organisations, and industry stakeholders to discuss common challenges and potential solutions for supporting national implementation of the Montreux Document. Since its establishment in 2014, the Montreux Document Forum has addressed three main themes: other initiatives in the field of PMSC regulation; maritime security; and third country nationals and the legal interpretation of “applicable national law” under the MD. These thematic challenges have been discussed in addition to the dialogue on the progress and challenges in implementing the rules and good practices of the Montreux Document, namely the determination of services, extraterritorial applicability of legislation, and monitoring of licensing, contract and authorisation systems.

¹ Montreux+5 Conference, Switzerland, December 2013; Constitutional Meeting of the Montreux Document Forum, Switzerland, December 2014.

a. Other Initiatives in the field of PMSC Regulation

Following the creation of the Montreux Document, there was a strong conviction amongst different stakeholders involved in voluntary regulatory initiatives that companies also needed to be directly included in efforts to regulate the industry. The International Code of Conduct for Private Security Providers (ICoC) was created on the initiative of Switzerland to outline core human rights principles for companies and their personnel and to set out policy and management rules, such as vetting and training of personnel, weapons management and grievance procedures, thereby outlining corporate good practices. The ICoC requires companies to comply with these principles and not to enter into contracts where performance would directly or materially conflict with them. Along with the ICoC Association (ICoCA),² which acts as the independent oversight mechanism for the initiative, the ICoC prescribes principles for companies to directly implement in their operations. This offers one way for states to implement the rules and good practices of the Montreux Document; by requiring compliance with the ICoCA.³ Recognising the links between the two initiatives as well as their complementary nature, MD participants established the Working Group on the ICoCA, in order to increase discussion and communication, and to provide advice to the ICoCA on national and international policy and regulatory matters. MD participants participate in meetings of this working group on a voluntary basis and participation is not an expression of support for ICoCA nor does it imply membership in it. Against this background, the ICoCA Working Group can offer guidance to the ICoCA with regard to specific legal obligations and good practices contained in the Montreux Document and to how they are interpreted and implemented by Montreux Document participants. Since 2014, there have been five meetings of the Working Group.

As PMSCs are providing diverse services in areas such as weapons management, detention centres or security support to international development efforts, Montreux Document participants have debated their relationships with PMSCs and how national efforts at regulation can be more effective.

MD participants have also discussed the international draft convention on PMSCs. This initiative originated in 2010 when the United Nations Human Rights Council adopted resolution 15/26 to establish an open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies, including their accountability. The Open-ended working group takes into consideration the principles, main elements and draft text as proposed by the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The Open ended working group is currently discussing this draft convention and gathering consensus on the proposed text.

² See the International Code of Conduct for Private Security Providers' Association, www.icoca.ch; See also Annex I.

³ For a further discussion, see: Nelleke van Amstel, and Tillman Rodenhauer, "The Montreux Document and the International Code of Conduct: Understanding the Relationship between International Initiatives to Regulate the Global Private Security Industry," *Public-Private Partnerships Series 1*, (2016); See also, Buzatu, A.-M., "Towards an International Code of Conduct for Private Security Providers: A View from Inside a Multistakeholder Process," SSR Paper 12, (2016).

b. Maritime security

The MDF Plenary has considered the applicability of the MD in private maritime security.⁴ During the discussions, MD participants shared their experiences on regulating maritime security, and raised considerations related to the number of overlapping jurisdictions involved in maritime contexts, which is often more complex compared to land-based operations. Participants also discussed the need to take into account the work undertaken by specialised international organisations which have developed a framework composed of international rules and standards for maritime security (notably the International Maritime Organisation). There has been an expressed interest within the MD on examining potential complementarities of the MD with existing maritime instruments and whether, and how the MD could be used as an additional tool to provide guidance in the process of regulating PMSCs which are operating in maritime settings.⁵ To further the dialogue and discussion on this issue, the MDF has discussed the creation of a Working Group on PMSCs in Maritime Security. However, at the time of writing, a chair has yet to be selected.

c. Third country nationals and the legal interpretation of “applicable national law” under the MD

The MDF plenary has also considered the issue of third country nationals employed by PMSCs to work elsewhere in the world.⁶ During the December 2014 plenary meeting of the MDF, participants raised concerns about the international labour market, specifically with workers being recruited into multi-national PMSCs in violation of their national home state labour laws.⁷ In an attempt to gain a clear and practical understanding of the issue, the MDF discussed that the term “applicable national law” as stated in the MD, includes primarily the law of the territorial state, of the home state and of the states of nationality of PMSC personnel, and/or the national law of any state that criminalises certain international crimes based on the principle of universal jurisdiction.⁸

The above three issues have been discussed at the level of the MDF as various MD participants have expressed an interest in these common themes, where states continue to face challenges in regulation and implementation. The issues have been central to MDF discussions since 2014.

3. Looking Forward: New Services and Technologies in the PMSC Industry

The PMSC industry has been steadily expanding into sectors that were previously occupied by distinct government functions.⁹ However, there is a lack of knowledge regarding these new roles for PMSCs. In fact, the Montreux Document itself set out that military and security services

⁴ Montreux Document Forum, “Chairs’ Summary”, (Proceedings of the Montreux Document Forum Plenary, Geneva, Switzerland 29 January 2016); For a further discussion on the Montreux Document and maritime security, see: Petrig, A., “Looking at the Montreux Document from a Maritime Perspective,” *Maritime Safety and Security Law Journal* 2 (2016), 1–20.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ United Nations Office on Drugs and Crime, Criminal Justice Handbook Series, *State Regulation concerning Civilian Private Security Services*, (Vienna: UN Office at Vienna, 2014); See also: Simon Chesterman, and Angela Fisher, *Private Security, Public Order: The Outsourcing of Public Services and Its Limits*, (New York: Oxford University Press, 2010).

provided by PMSCs include “armed guarding, protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.”¹⁰ However, current research is lacking regarding PMSCs’ interactions with these and other sectors, and what impacts PMSCs might have on the human rights of affected populations, and on IHL and the security and military sectors in general. The growth in PMSCs and the broadened scope of their activities in many countries require appropriate mechanisms for regulation and oversight to ensure compliance with national and international rules and regulations. Additionally, PMSCs are integrating new technologies into their operations, and understanding these advances better will help to build an accurate profile of the industry and chart future efforts in MD outreach and implementation. This section seeks to explore the expanding services offered by PMSCs and offers indications for future attention by the Montreux Document Forum.

a. Operational Support to Refugee and Asylum-Seeker Centres

Many states are struggling with the influx of refugees and asylum seekers¹¹ who might be victims of armed conflict, persecution, and civil unrest throughout the world. These armed conflicts and other situations of violence are significant in driving population movements. In European states, for instance, reports indicate that public security forces are straining under the current challenges, and that in a number of states, registration of new refugees and asylum seeker arrivals is operationally supported by PMSCs.¹² Notably, the UK now has about 4,000 designated immigration detention beds (spaces allocated in detention centres) compared to between 200 and 300 beds 15 years ago. The UK detains nearly 30,000 asylum seekers and undocumented migrants a year and has outsourced the management of these detention facilities to PMSCs (except for four facilities that are managed by the national prison service).¹³ Similarly, the European Union’s agency for asylum-seeker support and resettlement, known as the European Asylum Support Office (EASO), contracted private security firms to help meet local security needs, such as providing perimeter security, in response to government officials expressing “serious safety concerns” at these security hotspots.¹⁴ Papua New Guinea and Nauru are likewise reception sites for asylum seekers where private security guards assist in offshore processing of applicants seeking asylum in Australia. Private security contractors also provide

¹⁰ Montreux Document, Preface, para 9.

¹¹ Refugees are defined under the 1951 *Convention Relating to the Status of Refugees* and its 1967 Protocol. “A refugee is a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him — or herself of the protection of that country, or to return there, for fear of persecution” See Article 1A(2). <http://www.unhcr.org/about-us/background/4ec262df9/1951-convention-relating-status-refugees-its-1967-protocol.html>; An asylum-seeker is an individual who has sought international protection and whose claim for refugee status has not yet been determined. “As part of internationally recognised obligations to protect refugees on their territories, countries are responsible for determining whether an asylum seeker is a refugee or not. This responsibility is derived from the 1951 *Convention Relating to the Status of Refugees* and relevant regional instruments, and is often incorporated into national legislation.” See UNHCR Asylum Trends 2014 <http://www.unhcr.org/statistics/unhcrstats/551128679/asylum-levels-trends-industrialized-countries-2014.html>.

¹² Staff Writer, “Silver Linings: Migration, terrorism and austerity help contractors to prosper,” *The Economist*, 25 June 2016, Business section, Print edition.

¹³ The Migration Observatory, “Immigration Detention in the UK,” 1 September 2016 <http://www.migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>.

¹⁴ Apostolis Fotiadis, “New Security on Greek Islands Reduces Access,” *News Deeply*, 15 June 2016.

security support to the centres.¹⁵ States as diverse as Canada¹⁶ and South Africa¹⁷ are choosing to supplement current operations with the private sector to service their detention facilities.

As the demand for private security in refugee and asylum seeker processing and detention centres augments,¹⁸ human rights organisations are increasingly concerned about the relative lack of monitoring and oversight being carried out.¹⁹ Abuse of detainees has raised serious ethical questions as refugees and asylum seekers have been subjected to medical negligence and psycho-social harm. Facilities with armed guards lead to concerns over the use of force²⁰ in unstable crowd situations when refugees and asylum seekers become desperate, facing food shortages, poor hygiene and overcrowding in camps.²¹

b. Other Detention Centres

Criminal detention management and the transport of detainees for extradition purposes are functions which have been traditionally carried out by the state, but are increasingly being contracted out to PMSCs. Among different examples, the United States, United Kingdom, Mexico, Peru, Chile, Brazil, Argentina, and Uruguay have to some extent privatised criminal detention as a means of either increasing detainee capacity or cutting costs.²² Concerns have been raised that divesting the state of this function creates a heightened risk for possible violations to occur due to demand for cost-cutting measures within these detention centres.²³ These risks include poorer quality of living for detainees, diminished access to health and counselling services, and a lower ratio of employees to detainees which would otherwise serve to protect detainees from harm while in custody.²⁴

One 2013 study found that at least 11 states have privatised criminal detention to various extents, with Australia, Scotland, England and Wales and New Zealand holding the largest proportions of prisoners in private facilities.²⁵ Moreover, the levels of contractor responsibility over different functions in prison detention vary. For instance, in France, the state has entered a

¹⁵ For further reading on the issue in Australia, see Refugee Council of Australia, “Recent Changes in Australian Refugee Policy,” July 18, 2016, <https://www.refugeecouncil.org.au/publications/recent-changes-australian-refugee-policy/>; Madeline Gleeson, *Offshore: Behind the Wire on Manus and Nauru*, (Sydney: New South Wales, 2016); BBC News, “Australia Asylum: Why is it controversial?” August 3, 2016.

¹⁶ Global Detention Project, “Canada Immigration Detention Profile,” March 2012, <https://www.globaldetentionproject.org/countries/americas/canada/>; David Pugliese, “Private Security to Join Refugee Mission,” *National Post*, 21 November 2015.

¹⁷ Global Detention Project. “South Africa Immigration Detention Profile,” June 2009 <https://www.globaldetentionproject.org/countries/africa/south-africa/>.

¹⁸ Nikolaj Nielsen, “Private Security Firms bid on Greek Asylum Centres,” *EU Observer*, 2 April 2014; Global Detention Project, Briefing: Multinational companies providing immigration detention services, (Prepared for the UN Working Group on the use of mercenaries, 29 November 2016) <https://www.globaldetentionproject.org/wp-content/uploads/2016/11/GDP-WG-Mercenaries-presentation-Nov-2016.pdf>.

¹⁹ Theodore Baird, “Who is Responsible for Harm in Immigration Detention? Models of Accountability for Private Corporations,” *Global Detention Project Working Paper 11*, (February 2016); Lawyers for Human Rights, *Monitoring Immigration Detention in South Africa*, (Pretoria: LHR, December 2008), <http://cmr.jur.ru.nl/cmr/docs/South%20Africa.pdf>; Association for the Prevention of Torture, “Migrants in Detention,” (Geneva: APT, 2014), <http://www.apr.ch/en/migrants-in-detention/>.

²⁰ Baird, “Who is Responsible for Harm in Immigration Detention? Models of Accountability for Private Corporations,” 14–15; ‘Lawyers for Human Rights, *Monitoring Immigration Detention in South Africa*, 2 & 5.

²¹ Anton Troianovski, Manuela Mesco, and Simon Clark, “The Growth of Refugee Inc.” *The Wall Street Journal*, 14 September 2015.

²² Geoff Ramsey, “Private Prisons: a Questionable Model across the Americas”, The Washington Office on Latin America. 9 September, 2016, <https://www.wola.org/analysis/private-prisons-questionable-model-across-americas/>; See also: BBC News, “Prison ratings: ‘Serious Concern’ over two private prisons,” 25 July 2013.

²³ US Department of Justice, Office of the Inspector General, “Review of the Federal Bureau of Prisons’ Monitoring of Contract Prisons,” August 2016, <https://oig.justice.gov/reports/2016/e1606.pdf#page=2>; Cody Mason, “International Growth Trends in Prison Privatization,” The Sentencing Project, (Washington, D.C., August 2013) <http://sentencingproject.org/wp-content/uploads/2015/12/International-Growth-Trends-in-Prison-Privatization.pdf>.

²⁴ Dave Davies, “Investigation into Private Prisons Reveals Crowding, Under-staffing, and Inmate Deaths,” *National Public Radio*, 25 August 2016 <http://www.npr.org/2016/08/25/491340335/investigation-into-private-prisons-reveals-crowding-under-staffing-and-inmate-de>.

²⁵ Mason, “International Growth Trends in Prison Privatization”, 6.

public-private partnership in which civil servants remain responsible for the management and security of private facilities.²⁶ In contrast, the United States has fully privatised a number of prisons.²⁷

Regulatory gaps exist across different countries with privatised prisons. For example, in the United States, 26 states have arrangements with private extradition companies for prisoner transport. However, these private companies often lack the training that regular police officers receive. Transfer of prisoners across state borders as part of extradition services and security management capacities of prisons are frequently contracted to PMSCs. Lack of training results in significantly less accountability.²⁸ Private extradition companies operating within the United States are not obligated to report escaped prisoners to federal regulators, and no federal system exists for tracking companies' long-term performance. Inadequate staffing and training creates serious concerns. Notably, privately run prisons have been found to be more violent for both staff and detainees.²⁹ Additionally, prisoners in private detention centres are at risk for sub-standard healthcare and hygiene. For instance, in England and Wales, twice as many prisoner complaints were raised in private facilities than in publically operated ones.³⁰ These issues require attention and highlight the need for further scrutiny and regulatory control in all contexts where PMSCs oversee or support detention and extradition programs.

c. Use of PMSCs by Humanitarian Actors

The protection of humanitarian personnel is a critical challenge for the international community as violence against humanitarian actors and operations has grave consequences on aid organisations' operational capacities as well as on the vulnerable populations they serve. In 2015, 287 aid workers were victims of major attacks, contrasted with 125 in 2004.³¹ Humanitarian actors may be simply caught in the cross-fire of armed conflict, or purposely targeted because of the political effect they are perceived as having on the ground, even if their activities are conducted in an independent, neutral and impartial manner as dictated by the humanitarian ethic.³² In other situations, humanitarian actors may be attacked because of the economic value of the goods they provide.³³ The threat against healthcare workers, medical transports and the wounded and sick they care for is one of the most serious humanitarian issues.³⁴

²⁶ Sandro Cabral, and Stéphane Saussier, *Organizing prisons through public-private partnerships: A cross country investigation*, (Salvador, Brazil: Universidad Federal de Bahia & Paris: Sorbonne Business School, 2012).

²⁷ *Ibid.*

²⁸ Eli Hager, and Alysia Santo, "Private Prisoner Vans' Long Road of Neglect," *The New York Times*, 6 July 2016. E.

²⁹ Scotland's Addiewell Prison has been found to be the most violent in the country in 2011. Jack Mathieson, "Scotland's Flagship Private Prison the most violent in the country," *Scottish Daily Record*, 10 March 2011.

³⁰ Mason, "International Growth Trends in Prison Privatization", 10.

³¹ The Aid Worker Security Database, *Aid Worker Security Report, Figures at a Glance*, (2016), www.aidworkersecurity.org.

³² Julia Brooks, "Protecting Humanitarian Action: Key Challenges and Lessons from the Field," Advanced Training Program on Humanitarian Action (ATHA), Harvard Humanitarian Initiative, October 2016; Christopher Spearin, "Assessing the Relationship Between Humanitarian Actors and Private Security Companies," in *Private Actors and Security Governance*, eds. Alan Bryden and Maria Caparini, eds., (Zurich: Lit Verlag GmbH & Co., 2006), 231–246.

³³ *Ibid.*

³⁴ The 32nd International Conference adopted a resolution calling for continued cooperation between relevant stakeholders to address the humanitarian consequences of violence against the wounded and sick, health-care personnel, facilities and medical transports in armed conflicts and other emergencies, especially at the national level. The key practical recommendations identified during the global consultation process with experts were confirmed as a basis for continued efforts to promote preparedness to address violence against the delivery of health care. 31st International Conference 2011: Resolution 5 – Health Care in Danger; available at: <http://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-5-2011.htm>; 31st International Conference 2011: Resolution 5 – Health Care in Danger; available at: <http://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-5-2011.htm>

Due to the increasing dangerousness of their work, aid workers have taken measures to reduce their vulnerability and risks, including by hiring private security providers. The UN, for example, contracts PMSC services for the protection of staff and premises, risk assessments and security training.³⁵ Different UN agencies hire PMSCs through its Security Management System framework, making clear that the primary responsibility for the security and protection of UN personnel, eligible family members, and the premises and property of the UN, rests with the host government. In exceptional circumstances where armed security services become necessary, these should be provided by the host government, alternate member states,

Due to the increasing dangerousness of their work, aid workers have taken measures to reduce their vulnerability and risks, including by hiring private security providers.

internal UN system resources or security officers recruited directly by a mission or another UN organisations. When this is not possible, private security companies may be considered.³⁶ The World Food Programme serves as an illustration of a UN agency that has relied on a broad range of security services supplied by a private security company, namely for extensive security risk assessments.³⁷ With respect to humanitarian aid actions funded by the EU, the EU Commission's Humanitarian Aid and Civil Protection Directorate General (DG ECHO) has developed a Generic Security Guide that includes procurement procedures for the hiring of armed guards.³⁸

The contracting of PMSCs by humanitarian actors is an understudied issue with much research available only through anecdotal sources. However, significant challenges are evident in the procedures and processes of humanitarian actors' contracting policies, leading to a need for the development of guidance and sharing of good practices. Humanitarian actors face reputational risks associated with PMSC personnel misconduct, which subsequently may impact the ability to deliver urgent humanitarian services. PMSCs might reduce humanitarian organisations' vulnerabilities in particular contexts, or assist in better defining the threat, but this does not resolve the roots of the existing insecurities and may in fact exacerbate tensions, especially if contracted personnel are using firearms or other weapons. In certain contexts, the use of armed guards or other PMSC services may affect the local populations' perceptions of the humanitarian actor, by "militarising" or "securitising" the humanitarian activity, and affecting its neutrality and impartiality.³⁹ Continued reliance by organisations' on ad hoc approaches to contracting of PMSCs risks strategic incoherence, negative publicity and even legal liability due to unclear procedures and policies for PMSC contracting, particularly when it comes to the use of force and firearms.

³⁵ Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies".

³⁶ United Nations Security Management System, "Guidelines on the Use of Armed Security Services from Private Security Companies," 8 November 2012, A(1-4); For a discussion on the process of UN procurement of armed private security, see Boddi, Burdzy, and van Amstel, *Putting Private Security Regulation into Practice: Sharing Good Practices on Procurement and Contracting 2015-2016*.

³⁷ Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies", 15.

³⁸ Humanitarian Aid Department of the European Commission, *Generic Security Guide for Humanitarian Organisations*, (Brussels: ECHO, 2004), 58.

³⁹ Jean S. Renouf, "Humanitarian actors' risk management in complex environments: are private security companies a solution?" *European Interagency Security Forum*, (6 December 2016), 13.

d. Counterterrorism

The role of PMSCs in counterterrorism is a cross-cutting issue, linking to the increased use of private security in domestic guarding of people and premises (such as banks and hotels), critical infrastructure protection, as well as humanitarian organisations and diplomatic representations. In a number of contexts, the increased reliance on private security for these vulnerable sites stems significantly from the threat of terrorism. Yet, the role of PMSCs in counterterrorism has developed and grown below the radar of many governments. In Botswana, efforts to engage different ministries and the public on how to address the threat of terrorism, such as through multi-stakeholder seminars organised by the armed forces, have not included local private security companies,⁴⁰ even though at least 2,377 private security companies are operating in the country.⁴¹ In the US, 1,931 private companies work on programs related to counterterrorism, homeland security and intelligence.⁴² In the UK, the PMSC industry is involved in training and terrorism risk analysis with the building of a training centre intended to bridge the knowledge gap of public forces when it comes to counterterrorism.⁴³ (See also Chapter I.)

In some states, the cooperation between law enforcement and private security in combating terrorism is viewed positively as offering a number of benefits to both sides, including “creative problem solving; increased training opportunities; information, data, and intelligence sharing; “force multiplier” opportunities; access to the community through private sector communications technology; and reduced recovery time following disasters.”⁴⁴ Other commentators have in contrast, pointed to problems in engaging with PMSCs in this security issue such as accountability gaps, misinformation, the mistrust of PMSC personnel, and the need to distinguish more clearly between public and private security roles.

The international community has expressed concern on the subject of counterterrorism, IHL, and human rights. In Security Council resolution 1456 (2003) and later resolutions, the Council has said that states must ensure that any measures taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights and IHL. In line with the Montreux Document and in contexts of armed conflict, states are obligated to ensure respect for IHL by PMSCs they contract and by taking measures to suppress violations of IHL and to implement their obligations under human rights law.

e. PMSCs and Security Sector Reform

The security sector reform discourse promotes sustainable shifts in security sector governance, derived from an understanding that security is based on the broader concept of governance that brings together all actors with a stake in security provision. SSR therefore involves a broad range of activities from the development of a more robust legislative framework for security provision, management, and oversight, to reforms focused on specific security institutions such

⁴⁰ Mpho Molomo, and Zibani Maundeni, “Botswana,” in *Promoting Partnerships for Crime Prevention between State and Private Security in Southern Africa*, ed. Sabelo Gumedze (Pretoria: The Private Security Industry Regulatory Authority, 2015), 80.

⁴¹ As quoted by the Chairman of the Security Association Botswana (SAB) Mr. Gaolatlhe Modongo, in an interview on 6 March 2014 in Gaborone: *Ibid*, 71.

⁴² Dana Priest and William M. Arkin, “A Hidden World, Growing Beyond Control,” *Washington Post*, 10 July 2010.

⁴³ Press Association, “Private Sector to fund counter-terrorism training centre,” *The Guardian*, 13 September 2015.

⁴⁴ United States Department of Justice, Bureau of Justice Assistance, “Engaging the Private Sector to Promote Homeland Security: Law Enforcement-Private Partnerships,” (Washington, D.C.: Bureau of Justice Assistance, September 2005), vii.

as police, military, intelligence and border authorities as well as ombudsperson institutions, parliaments, or the justice sector.⁴⁵ Undoubtedly, PMSCs fall within the SSR agenda as the corporate security sector strongly influences prospects for peace, security and socio-economic development.⁴⁶ The Montreux Document encourages good governance of the security sector in this respect, calling on states to ensure that accountability, transparency, and rule of law govern all PMSC activities and operations.

However, what is less clear is the role of PMSCs as agents of SSR. As an overarching issue that crosses into many themes of PMSC operations, private security companies indeed offer services

PMSCs indeed offer services in security sector reform such as in peacebuilding, training of public security forces, as well as supporting demining activities and humanitarian reconstruction efforts.

in SSR, such as in peacebuilding,⁴⁷ training of public security forces,⁴⁸ as well as supporting demining activities and humanitarian reconstruction.⁴⁹ The United Nations has contracted PMSCs for services such as demining and ordnance disposal during peacekeeping operations.⁵⁰ The UN Department of Political Affairs has also relied on PMSCs for support in different projects, such as in voter registration and election planning in Afghanistan, in a partnership between Afghan officials and UN advisers. In this process, Global Strategies Group worked with the United Nations and the Asia Foundation in the preparations for several Afghan elections in 2002 and 2004. The main task of the company was to identify and assess potential voter registration sites and locations for JEMBS provincial offices.⁵¹

There is a significant lack of knowledge and analysis when it comes to activities of PMSCs in security sector reform. Nonetheless, this sector has genuine potential to affect broader democracy and human rights. As an important point of discussion, the Montreux Document Forum could contribute analysis and clarity to this subject.

⁴⁵ OECD, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice* (Paris: OECD, 2007); For more information, see DCAF, SSR Backgrounders: <http://ssrbackgrounders.org/>.

⁴⁶ Anna Richards and Henry Smith, *Addressing the Role of Private Security Companies within Security Sector Reform Programmes* (London: Saferworld, 2007); for more information, see DCAF Public-Private Partnerships, www.ppps.dcaf.ch.

⁴⁷ The US government outsourced its post-conflict involvement in Liberia to two US-based companies, Dyncorp International and Pacific Architects and Engineers (PAE), to the tune of \$95 million. The task of these private operators was to vet, recruit and provide basic training to the new Liberian armed forces, as well as provide specialised advanced training, equipment, logistics and basic services. PAE also provided logistical support for regional peacekeeping in the West African sub-region. Chris M. A. Kwaja, "Private Military/Security Companies and Peacebuilding in West Africa," in *From Market for force to Market for Peace: Private military and security companies in peacekeeping operations*, ed. Sabelo Gumede, 76.

⁴⁸ Deborah Avant, "Privatizing Military Training" *Foreign Policy in Focus* 7:6 (2002); Deborah Avant, *The Market for force: The Consequences of Privatizing Security*, (Cambridge: Cambridge University Press, 2005).

⁴⁹ For example, see G4S Mine Action: <http://www.g4s.com/en/Media%20Centre/CSR%20Mini%20Studies/Mine%20action/>

⁵⁰ The tasks performed by private actors in peacekeeping operations are normally restricted to support functions and some security functions rather than those of a military nature. Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies" 15.

⁵¹ Ostensen, "UN Use of Private Military and Security Companies: Practices and Policies", 18–19.

f. Operational Support to Critical Infrastructure

Natural disasters, armed conflicts and other situations of violence, as well as general criminal activity can all disrupt critical infrastructure which populations depend on, such as airports, ports, nuclear energy facilities, public transportation systems and hospitals. Traditionally, protection of critical infrastructure has also been regarded as a state function. However, with the rise of insecurities, the threat to civilian targets of this nature remains high. PMSCs are increasingly obtaining contracts to protect critical infrastructure and when outsourced to private contractors, these roles are sometimes called non-public police functions⁵² or plural policing.⁵³ Such security functions are carried out by a network of PMSCs and police, where the roles are often complementary and mutually supportive.⁵⁴ For instance, in Albania, the government remains the largest consumer of private security, procuring nearly 9% of the annual budget of

Airports, nuclear energy facilities, public transportation systems and hospitals are some examples of critical infrastructure being guarded by PMSCs.

the Ministry of Interior for guarding public institutions, including critical infrastructure.⁵⁵ In the United States, 80–85% of critical infrastructure is owned or operated by the private sector⁵⁶ and, correspondingly, all 16 sectors of American critical infrastructure are protected by public-private security partnerships.⁵⁷ In contrast, Bulgarian critical infrastructure is primarily state-owned, but tenders are also regularly announced for private security contracts.⁵⁸

Nuclear energy facilities are drawing more attention in the security sector because of the sensitive nature of dual-use technologies. With renewed awareness of the danger that an unsecured nuclear facility can pose to its surrounding population, the power companies that operate these civilian energy facilities are increasing perimeter security and hiring additional guarding staff.⁵⁹ One private company, G4S Nuclear Security Services Corporation provides contracts for manned guarding of up to 90% of US nuclear facilities.⁶⁰ The government of India protects its nuclear facilities with a combination of public and private personnel.⁶¹ As another

⁵² Malcolm K. Sparrow, “Managing the Boundary between Public and Private Policing,” *New Perspectives in Policing*, Harvard Kennedy School and National Institute of Justice, (September 2014); Sabelo Gumedze, ed., *Promoting Partnerships for Crime Prevention between State and Private Security Providers in Southern Africa*; CoESS, “Critical Infrastructure Security and Protection: The Public-Private Opportunity”, White Paper and Guidelines by CoESS and its Working Committee on Critical Infrastructure, (Wemmel, Belgium: CoESS, 2016).

⁵³ Law Commission of Canada, *In Search of Security: The Future of Policing in Canada*, (Ottawa: Law Commission of Canada, 2013), xiii; Sabelo Gumedze, ed., *Promoting Partnerships for Crime Prevention between State and Private Security Providers in Southern Africa*.

⁵⁴ Gumedze, ed., *Promoting Partnerships for Crime Prevention between State and Private Security Providers in Southern Africa*.

⁵⁵ The Ministry of Interior budget in 2014 was ALL 17,022,880,000, or EUR 121.6 million. Franziska Klopfer and Nelleke van Amstel, eds., *Private Security in Practice: Case Studies from Southeast Europe*, 13.

⁵⁶ George W. Bush, *The National Strategy for Securing Homeland Security*, (Washington D.C.: The White House, July 2002); George W. Bush, *The National Strategy for the Physical Protection of Critical Infrastructures and Key Assets*, (Washington D.C.: The White House, February 2003).

⁵⁷ United States Department of Homeland Security, “2015 Sector-Specific Plans,” Critical Infrastructure Security <https://www.dhs.gov/2015-sector-specific-plans>.

⁵⁸ Rositsa Dzhhekova and Anton Kojouharov, “Mission Critical, Mission Impossible – The Role of PSCs in Protecting Critical Infrastructure in Bulgaria,” in *Private Security in Practice: Case Studies from Southeast Europe*, eds. Franziska Klopfer and Nelleke van Amstel, (Geneva: DCAF, 2016), 55–66.

⁵⁹ Patricia Wiater, “On the Notion of ‘Partnership’ in Critical Infrastructure Protection,” *Symposium on Critical Infrastructures, European Journal of Risk Regulation* 6:2 (2015), 255–262.

⁶⁰ G4S USA, “Nuclear Facility Security,” Nuclear Industries Regulated Security Solutions <http://www.g4s.us/en-US/Industries/Nuclear/>.

⁶¹ Sitakanta Mishra and Happyymon Jacob, *Nuclear Security Governance in India: Institutions, Instruments, and Culture*. Sandia Report, (Albuquerque: Sandia National Laboratories, January 2015), 11.

example, the French Nuclear Centre of Excellence, an organisation that is focused on high level expertise for nuclear security capacity building with focus on training of those personnel working in the nuclear facilities, interacts regularly with private security industry representatives to ensure that facilities can benefit from high levels of expertise from the PSMC sector, namely the French National Council for Private Security, an industry association for PMSCs.⁶² With respect to national security as well as environmental and community safety, poorly trained or inattentive PMSC personnel create significant gaps in effectively guarding these sensitive sites. Furthermore, nuclear facilities can be targeted by terrorist attacks. Adequate vetting of PMSC personnel is therefore crucial.⁶³

Similarly, airports are an additional pillar of critical infrastructure in which security is increasingly being contracted out to private companies.⁶⁴ In the United States, labour shortages and an underfunded public airport security system has led to increased privatisation. 22 airports now use private contractors instead of Transportation Security Administration (TSA) officers.⁶⁵ However, the TSA still leads the process when airports turn to security privatisation. The TSA chooses and manages the contractor and implements its oversight and monitoring protocols.⁶⁶ The European Union has also addressed this issue with EU-wide required minimum standards for training of PMSC personnel who operate in airport settings, as well as extensive background checks.⁶⁷ Without comprehensive vetting of personnel, facilities may fall risk to the “insider threat” through espionage, material theft, or terrorist attacks which may be harder to detect and prevent than a traditional offensive from the perimeter of the site.⁶⁸

Commentators have pointed to both risks and benefits in such partnerships, concluding that private security activities require thoughtful regulation in this field.⁶⁹ Across different states, laws pertaining to the PMSC industry do not take adequately into account the sensitive nature of critical infrastructure and foresee stricter requirements for licenses.⁷⁰ In other cases, the private security sector is not adequately professionalized with higher levels of training and technical capabilities. This makes partnerships with police in securing critical infrastructure a significant challenge.⁷¹

http://www.sandia.gov/cooperative-monitoring-center/_assets/documents/sand2015-0233.pdf.

⁶² French Nuclear Centre for Excellence, “Commitment and Actions”, (IAEA International Conference on Nuclear Security, Vienna, Austria, 5–9 December 2016).

⁶³ Eric Schlosser, “The Security Form that Employed the Orlando Shooter Protects American Nuclear Facilities,” *The New Yorker*, 27 June 2016.

⁶⁴ Sam Harnett, “The pros and cons of privatising airport security,” *Marketplace*, 11 August 2016.

⁶⁵ Mary Wisniewski, “Long Airport TSA lines cause pain but privatisation may not be the Cure,” *Chicago Tribune*, 23 May 2016.

⁶⁶ Harnett, “The pros and cons of privatising airport security.”

⁶⁷ Regulation European Council No. 2320/2002 of the European Parliament and of the Council of 16 December 2002, “Establishing common rules in the field of civil aviation security”, Official Journal of the European Communities, L 355/1. 30 December 2002.

⁶⁸ Jeff Pegues, “Insider Threat highlights Security Loopholes at U.S. Airports” *CBS News*, 24 May 2016.

⁶⁹ Sparrow, “Managing the Boundary between Public and Private Policing”, 9; Gumedze, *Promoting Partnerships for Crime Prevention between State and Private Security Providers in Southern Africa*; CoESS, “Critical Infrastructure Security and Protection: The Public-Private Opportunity”; Klopfer and Van Amstel, *Private Security in Practice: Case Studies from Southeast Europe*.

⁷⁰ In Bulgaria for instance, one private security company owed EUR 3.5 million in taxes but won public contracts for securing critical infrastructure. Another company has been awarded several public tenders due to the low price it offered, but at the same time the company has been delaying salary and social security payments for months. Klopfer and Van Amstel, *Private Security in Practice: Case Studies from Southeast Europe*, 53.

⁷¹ Molomo, and Maundeni, “Botswana”, 262–268.

g. PMSCs in the Maritime Perspective

International shipping comprises an important element of the global economy, as over 90% of global trade is carried out by international shipping providers. The global merchant fleet comprises a total of 50,000 merchant ships that are registered across 150 states.⁷² Due to the economic significance of this industry and the insecurities caused by piracy, private security for vessels has increased in frequency and cost over the past decade. About 40% of ships sailing the Horn of Africa now carry armed guards.⁷³ Due to violent attacks by pirates, as early as 2008, the Gulf of Aden was labelled as a “war-risk” zone for maritime activity, and insurance companies began to charge a premium for insurance on vessels travelling through this area.⁷⁴ Though the

Piracy attacks in the Gulf of Aden may be decreasing, but other areas of the high seas have become more vulnerable, such as the Gulf of Guinea and in South East Asia where attacks rose, accounting for 60 percent of all incidents in 2016.

MDF has touched on the topic of PMSCs in maritime security, the application of the Montreux Document to the issue has not been thoroughly explored⁷⁵ and further attention on maritime security could be beneficial due to the evolving nature of the issue.⁷⁶ For instance, some commentators speculate whether the recent trend of declining incidents of piracy point to an overall diminishing tendency. Indeed, piracy attacks in the Gulf of Aden may be decreasing,⁷⁷ but other areas of the high seas have become more vulnerable, such as the Gulf of Guinea and in South East Asia where attacks rose, accounting for 60 percent of all incidents.⁷⁸

The application of the Montreux Document could be discussed further, especially with respect to flag states,⁷⁹ which are beginning to pass regulations specifically on maritime security. However, many states apply the same procedures for land-based PMSCs as for maritime private security companies. While each state is encouraged to pursue options for PMSC regulation that best fit their needs, restrictions on the use of force, jurisdictional accountability, and respect for human rights currently vary widely between territorial waters, flag states, and in practice on the high seas.⁸⁰

⁷² International Chamber of Shipping, “Shipping and World Trade,” Overview <http://www.ics-shipping.org/shipping-facts/shipping-and-world-trade>.

⁷³ “Floating Armouries: Cruisin’ with Guns,” *The Economist*, 23 January 2016, Middle East and Africa section, Print edition.

⁷⁴ Joel Christopher Coito, “Pirates vs. Private Security: Commercial Shipping, the Montreux Document, and the Battle for the Gulf of Aden,” *California Law Review*. 101:1, (2013), Article 3.

⁷⁵ Anna Petrig, “Looking at the Montreux Document from a Maritime Perspective,” *Maritime Safety and Security Law Journal*, 2, (2016).

⁷⁶ S&P Global Platts, “Global Piracy Focus Shifts to Gulf of Guinea, Spike in Crew Abductions,” 29 August 2016 <http://www.platts.com/latest-news/shipping/singapore/global-piracy-focus-shifts-to-gulf-of-guinea-27658353>; Oceans Beyond Piracy, “Gulf of Guinea 2016 Trends,” <http://oceansbeyondpiracy.org/publications/gulf-guinea-2016-trends>.

⁷⁷ Cassie Werber, “Piracy on the High Seas is on the Decline, and so is the Anti-Piracy Industry,” *Quartz*, 18 April 2016; Keith Wallis, “Maritime Security Guards Adapt to Decline in Somali Pirate Attacks,” *Reuters*, 4 December 2014.

⁷⁸ *Allianz Global Corporate and Specialty, Safety and Shipping Review 2016*, (Munich: Allianz, 2016) 3, 246 http://www.agcs.allianz.com/assets/PDFs/Reports/AGCS_Safety_Shipping_Review_2016.pdf

⁷⁹ For more information on UNCLOS, see http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

⁸⁰ Caroline Liss, “(Re)Establishing Control? Flag State Regulation of Antipiracy PMSCs,” *Ocean Development and International Law* 46:2 (2015); Anna Petrig, “Regulating PSMCs at Sea: Operational and Legal Specificities,” (presentation at the Intergovernmental Working Group on Private Military and Security Companies, Geneva, Switzerland, 14 December 2016); DCAF, “The ICoC and Regulation of Private Maritime Security Companies,” (report on a meeting held in Geneva, Switzerland, 4 July 2014).

Floating Armouries

The issue of PMSCs storing their weapons and equipment on naval armouries in between contracts has also not been widely addressed, even though management of firearms and other weapons is a significant part of the Montreux Document's rules and good practices.⁸¹ In 2012, a UN report identified 18 floating armouries; other reports put the number at between 12 and 20.⁸² In 2014 the UK Government published a list of floating armouries that UK PMSCs were licensed to use, stipulating 31 armouries.⁸³ As this number only represents floating armouries licensed for use by UK companies, there may well be other armouries in operation. PMSCs are likely to frequent these regulation-friendly firearms holding ports to avoid undergoing long waiting periods for export control licences or other delays in weapons-related acquisition.⁸⁴ In 2012, the UN Security Council commented on the political instability that floating armouries bring to maritime trade, stating that this highly profitable business has expanded beyond the provisions of mere armed escorts to the leasing of arms, ammunitions, and security equipment and may constitute a threat to regional peace and security, rather than being part of the solution. Experts estimate that approximately 7,000 weapons are owned or leased and circulating within private security companies on the high seas.⁸⁵

h. Privacy and PMSCs: New Technologies and Services in Privatised Cyber Security

Security Cameras, Facial Recognition Technology & PMSCs

As part of their service offer, PMSCs today also operate surveillance systems, such as closed-circuit television (CCTV) or facial recognition technology. In general, the demand for these services has increased significantly. For instance, the growth in the use of CCTV has been substantial. The British Security Industry Association (BSIA) estimated in 2013 that the UK had between 4 million and 5.9 million private CCTV cameras.⁸⁶ The majority of CCTV footage used by police in the UK is sourced from private security companies.⁸⁷ Similarly, in Belgium, the most used technology by PMSCs is CCTV, telecommunications technology, and remote surveillance equipment.⁸⁸ In Botswana, public-private partnerships in this field have also proliferated. Private security companies have developed niche expertise in fitting alarm systems and automated security. Botswana police rely on PMSCs' specialised services in CCTV and vehicle tracking devices to monitor and investigate crime.⁸⁹

⁸¹ Montreux Document good practices 10, 11, 35, 36, 63 & 64.

⁸² See HS Puri, "Chair of the Security Council Committee Pursuant to Resolutions 751 (1992) and 1907 (2009)," (Resolution of the Chair at the Report of the Monitoring Group on Somalia and Eritrea, Geneva, Switzerland, 13 July 2012); Seacurus "Insurance Bulletin", March 2012, http://www.seacurus.com/newsletter/Seacurus_Issue_13.pdf; Oscar Rickett, "Piracy Fears over ships laden with weapons in international waters," *The Guardian*, 10 January 2013 <https://www.theguardian.com/world/2013/jan/10/pirate-weapons-floating-armouries>.

⁸³ United Kingdom Secretaries of States for Business, Innovation and Skills, Defence, Foreign and Commonwealth Affairs and International Development, "Strategic Export Controls", *Reports from the Business, Innovation, Skills, Defence, Foreign Affairs and International Development Committees to Parliament*, Session 2014–2015 (October 2014), 54 <http://www.parliament.uk/documents/commons-committees/Arms-export-controls/2014-15-Cm8935.pdf>.

⁸⁴ "Floating arsenals: The boats full of guns for hire against pirates," *BBC News*, 18 December 2014.

⁸⁵ Puri, "Chair of the Security Council Committee Pursuant to Resolutions 751 (1992) and 1907 (2009)."

⁸⁶ David Barrett, "One surveillance camera for every 11 people in Britain, says CCTV survey," *The Telegraph*, 10 July 2013.

⁸⁷ Stephen Ranford, "The picture is not clear: How many CCTV surveillance cameras in the UK?," *British Security Industry Association*, (21 August 2015).

⁸⁸ Confederation of European Security Services. *Private Security Services in Europe*, CoESS Facts And Figures, 12.

⁸⁹ Gumedze, *Promoting Partnerships for Crime Prevention between State and Private Security Providers in Southern Africa*, 70.

Since this technology is largely installed and operated by PMSCs,⁹⁰ this has generated concerns regarding privacy and security and how PSMCs may not be adequately safeguarding these risks. Facial recognition technology is also increasingly being used to identify individuals during criminal investigations, or to pre-emptively identify potential terrorist threats.⁹¹ A possible consequence of unsecured cameras is the long-term implications of either security personnel or third-party users to access and store this vast quantity of digital data for later use and analysis. Moreover, surveillance data that is both personally identifiable and openly available presents high potential of risk to customers who are not aware of these violations to their privacy.

Drones and PMSCs

The use of unmanned aerial vehicles (drones) has risen substantively since the start of the 2000s. For instance, the US has increased its use of surveillance as well as armed drones from 167 in 2002 to more than 7,000 in 2011.⁹² Drones are used increasingly across a number of contexts from direct support to combat operations, counter-terrorism surveillance to monitoring of borders and illegal migration.⁹³ Operating surveillance drones or armed drones is typically reserved to government agencies due to the risk of being involved in the conduct of hostilities in situations of armed conflict. However, as a result of the high demand for drone technology, the resulting correlated demand for drone pilots, and the high cost of traditional overseas deployment, this sector is increasingly turning to PMSCs to maintain capacity.⁹⁴ In 2012, contractors filled 75 to 100 percent of maintenance jobs for some categories of drones.⁹⁵ In Japan, one private security company offers autonomous drone surveillance as a service to protect factories, large facilities, public events, and to deter crime.⁹⁶ A technology company which invested in drone technology announced in 2016 that it has developed drones specifically for private security and property surveillance, with additional features such as auto-pilot functions and cameras that are equipped with facial recognition technology.⁹⁷

The use of drone technology by PMSCs increases concerns as drone operators often engage in the conduct of hostilities in situations of armed conflict.

The use of this technology by PMSCs increases concerns under the Montreux Document rules and good practices, as drone operators often engage in the conduct of hostilities in situations of armed conflict. The issue raises numerous ethical questions related to protection of civilians. Moreover, it can have serious consequences on the protection of the civilian population. Under

⁹⁰ The BSIA estimated that 96% of CCTV within the country are installed and owned by private security firms. Staff Writer, "Silver Linings: Migration, terrorism and austerity help contractors to prosper," *The Economist*, June 2016, Business section, Print edition.

⁹¹ Catherine Chapman, "Facial recognition technology raises privacy concerns," *NBC News*, 6 November 2016.

⁹² Anna Mulrine, "Unmanned drone attacks and shape-shifting robots: War's remote control future," *The Christian Science Monitor*, 22 October 2011.

⁹³ Katharine Pena, "Accountability for private security contractors drone operations on the U.S.-Mexico Border: Applying Lessons Learned from the Middle East," *Public Contract Law Journal* 44:1 (Fall 2014) 137-156.

⁹⁴ Laura Dickinson, "Drone contractors: An oversight and accountability gap," *Just Security*, 21 July 2015; Abigail Fielding-Smith and Crofton Black, "Privatised War: Identifying the companies involved in Pentagon Drone Operations," *The Bureau of Investigative Journalism*, 30 July 2015; Abigail Fielding-Smith and Crofton Black, "Reaping the Rewards: How Private Sector is Cashing in on Pentagon's 'Insatiable Demand' for Drone War Intelligence," *The Bureau of Investigative Journalism*, 30 July 2015.

⁹⁵ Kerik D. Clanahan, "Drone Sourcing? United States Air Force Unmanned Aircraft Systems, Inherently Governmental Functions and the Role of Contractors," *Federal Circuit Bar Journal* 22, (2012).

⁹⁶ "Japan's SECOM uses drones for surveillance of work sites," *Nikkei Asian Review*, 11 December 2015.

⁹⁷ Lora Kolodny, "Drone startup Aptonomy introduces the self-flying security guard," *Tech Crunch*, 22 August 2016.

the Montreux Document's good practices pertaining to determination of services,⁹⁸ states should take into account factors as to whether a service (such as operating drones) could cause PMSC personnel to become involved in direct participation in hostilities. There is a lack of transparency about the roles of contractors in this field. Furthermore, the issue of drone operations by PMSCs also raises questions related to effective oversight by the state as well as parliaments. Where a public military official monitors PMSCs' drone operations and compliance with contractual terms, management and oversight is not always effective and the public-private partnership is often unclear.⁹⁹

4. Conclusions

Since its establishment in 2014, the Montreux Document Forum has gathered to discuss important issues of concern to states and international organisations seeking to better regulate the PMSC industry. This Chapter sought to discuss a number of operational contexts of PMSC activities, services and technologies that are being offered as a response to emerging security concerns. The Chapter has aimed to bring forth research that will inform the MDF on new areas of PMSC activity which are both relevant to participants, and worthy of attention and discussion.

Detailed empirical research should be performed to inform the MDF on the activities of PMSCs across these different operational landscapes, particularly in areas of current concern internationally, such as issues related to the operation of detention centres (both refugee & asylum seeker and criminal detention), the role of humanitarian actors in contracting PSMCs, counterterrorism, security sector reform, protection of critical national infrastructure, and also the implications of new technologies being introduced within the optic of private security governance. These additional research efforts, coupled with the improved efforts to gather data that accurately reflects the geographical distribution of PMSCs currently, will be invaluable to inform further outreach efforts as part of the MD initiative. As this Chapter is intended to provide food for thought rather than be an exhaustive list, Montreux Document participants should gather to discuss other potential issues in the PMSC industry and the consequent implications for more effective implementation of the Montreux Document.

⁹⁸ Montreux Document Good Practices 1, 24 & 25.

⁹⁹ Dickinson, "Drone contractors: An oversight and accountability gap,"; Fielding-Smith and Black, "Privatised War: Identifying the companies involved in Pentagon Drone Operations,"; Fielding-Smith and Black, "Reaping the Rewards: How Private Sector is Cashing in on Pentagon's 'Insatiable Demand' for Drone War Intelligence,".

Recommendations for the Way Forward

1. The View in Montreux+10

2018 will commemorate 10 years since the launch of this important intergovernmental initiative on regulating PMSCs. As we approach this date, it is clear that the landscape of the industry has shifted since the Montreux Document was signed. The MD was initiated in the wake of large scale conflicts in Iraq and Afghanistan, which perpetuated the idea that PMSCs operate in a vacuum of accountability, and where states lacked clarity as to their responsibilities in this area. Over time, the conveners and participants of the Montreux Document have made significant efforts in both outreach and implementation and have increased the level of accountability and oversight of PMSCs. Since the launch of the initiative, the message of the MD has been brought to different regions of the world through six regional conferences that have gathered over 72 states. With the creation of the Montreux Document Forum in 2014, participants established a platform for tackling their challenges in implementing the MD. Throughout its plenary meetings, the MDF has addressed three main challenges to effective MD implementation: determination

When it comes to PMSCs, the unique structure of the Montreux Document Forum remains one of the biggest opportunities for improved respect of human rights and international humanitarian law.

of services, extraterritorial applicability of legislation, and monitoring of licensing, contract and authorization systems.¹ Working together with Switzerland, the ICRC and DCAF, the Montreux Document Forum has developed important practical tools to assist states in overcoming these challenges through the Legislative Guidance Tool for States to Regulate PMSCs and the Guidance Tool for Contracting with PMSCs.

Amidst this activity, there has also been an acknowledgement that the regulation of PSMCs requires continued political effort and attention. As noted by the Vice-President of the ICRC during the 2013 Montreux +5 Conference, it is clear that despite the “undeniable progress that has been made during the last five years, this does not necessarily mean that no issues remain. PMSCs continue to operate on a scale that is unprecedented. These activities diversify the existing security context and increase the availability of firearms which poses a continued threat to civilians. The tasks they perform are constantly evolving, adapting to new requests by their

¹ See specifically, Buckland and Burdzy, *Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants* (Geneva: DCAF, 2015), Challenges 1–3, Challenge 5, and Challenge 6; See also, Montreux Document Forum website: <http://www.mdforum.ch/en/implementation>.

contractors, and some continue to generate humanitarian concerns.²² In this sense, the unique structure of the Montreux Document remains one of the biggest opportunities for improved MD implementation as it combines viewpoints from participating states and international organisations, with additional sharing of good practices for overcoming evolving challenges.

With these advances in mind, this mapping study has sought to take stock of the scope of the Montreux Document by mapping the current PMSC landscape, and linking this with state efforts to implement the MD rules and good practices. While addressing the various contexts where PMSCs operate, this report provides a much needed review of the challenges initially identified in the MDF and a re-examination of obstacles to implementation as we look to Montreux+10 and beyond. Indeed, great progress has been made, as states continue to develop national legal frameworks to clarify the determination of services with respect to the activities that PMSCs may and may not perform.³ Similarly, most states now have federal/municipal laws that specifically address PSMCs, setting a framework for licensing and registration.⁴ However, this study has revealed that despite this progress, the issue of extraterritorial jurisdiction of legislation is an enduring challenge. Furthermore, the main implementation challenges facing states today relate also to monitoring of PMSCs' compliance with licenses, contracts, and registrations as well as the need to ensure proper identification of PMSC personnel. State implementation of MD good practices related to policies on the use of force and firearms as well as the registration, storage and handling of firearms and weapons also require further efforts.⁵

Coupled with these legislative and regulatory challenges, this report highlights new services and technologies offered by PMSCs. It also shows that the regions with the highest PMSC activity – Latin America and the Caribbean, the Asia Pacific region including Middle East and North Africa states, and the Africa region – have the lowest levels of Montreux Document participants. These regions are also experiencing high levels of foreign investment, especially through mining and other extractive industry activity, as well as increased insecurity and weakened governance due to current or recent armed conflict or other situations of violence. These conditions are driving the market for PMSCs. Consequently, the Montreux Document could have a positive impact on regulatory efforts and the greatest relative benefit in the affected regions. With these developments in mind, this mapping study seeks to offer indications for a future focus of the Montreux Document and the MDF in order to support states.

This mapping study has considered several issues across the ters:

Chapter one assessed the number of PMSCs operating across different regions, and compared this data to the geographic concentration of MD participants. Indeed, one quarter of the world's states are MD participants indicating a substantial momentum of political support for the initiative. However, MD participants are composed mainly of European and North American states. Meanwhile, PMSCs are active all over the world, providing security to multinational companies' operations, extractive industries, as well as wherever states are experiencing situations of armed conflict or experiencing weakened governance. PMSCs

² Christine Beerli, ICRC, "Private Military/Security Companies: Rules should be implemented," (Keynote address presented at the Montreux+5 Conference), Montreux, Switzerland, 12 December 2013.

³ See: Chapter II, Key Indicator 2.

⁴ *Ibid*, Key Indicator 1.

⁵ *Ibid*, Key Indicator 4 and 5.

are also diversifying into other areas of security provision such as mass-sporting events and environmental protection.

Chapter two considered the implementation of MD good practices across the 54 states using a range of eight key indicators. These indicators were chosen on the basis of key obligations and good practices contained in the Montreux Document as well as feedback from participants and experts. Across MD participants, these key indicators have shown diversity in the level of implementation of the Montreux Document good practices. For instance, regarding key indicator three, extra-territorial jurisdiction is yet to be included in national frameworks by most states. Only 9 MD participants have included in their legislation clauses on holding companies accountable for their actions abroad. Interestingly, the states that scored well for ensuring that extra-territorial jurisdiction is detailed within the law, also received a higher score across all categories. This reflects the efforts by some states to adopt a comprehensive approach to translating the good practices of MD nationally. One third of the 54 MD participants have no legal framework detailing a system for weapons licensing and registration among PMSCs and the majority of states have no reference in their laws to provide for a regular system for monitoring the compliance of PMSCs with licenses and registrations.

Chapter three considered current MDF outreach, such as interaction with the International Code of Conduction Association, consideration of a working group on the use of PMSCs in maritime security, and discussion of the issue of third country nationals and the legal interpretation of “applicable national law” under the MD. This Chapter examined how emerging areas of PMSC activities may create new challenges and opportunities in the efforts to implement the MD’s rules and good practices. For example, PMSCs are increasingly being contracted to perform duties within different contexts ranging from refugee and asylum centres and criminal detention centres, to the protection of critical national infrastructure, and the provision of security for maritime trade. This Chapter concluded with insights on new technologies such as security cameras, facial recognition, and aerial drones which could further complicate PMSC activities and the impacts of the industry on human rights and IHL. As the work of PMSCs increasingly extends to include these features, this offers food for thought on how the MDF can help states translate the MD good practices into national implementation initiatives that embrace new operational realities.

2. Recommendations

a. Granulated Research and Knowledge-Building

The Montreux Document Forum represents a valuable opportunity for participating states and international organisations to discuss emerging themes in terms of services offered by PMSCs and their operational contexts. The research conducted in this study has provided a departure point for discussion in the MDF, illustrating a snapshot of these emerging themes. With this research as a baseline, the Montreux Document Forum could support knowledge building and further research around the issues of PMSCs contracted in refugee and asylum centres and criminal detention centres, the use of PMSCs by humanitarian actors, the roles of

PMSCs in counterterrorism initiatives, security sector reform initiatives, and in the protection for maritime trade, and additionally PMSCs' operational support within critical infrastructure such as airports and nuclear power plants. Furthermore, the MDF could consider new PMSC technologies and equipment (including security cameras, facial recognition technology, and drones) which could benefit from further research and discussion.

Secondly, as evidenced by the methodological constraints experienced while carrying out this study, accurate information on the state of the industry is rare, especially in regions underrepresented within the MD initiative. For the Montreux Document Forum to carry out meaningful outreach and implementation efforts, reliable data and research is fundamental. Field-based surveys across global regions would be useful to obtain updated data on the composition and characteristics of PMSCs operating within these territories. Discussions within the MDF could benefit from detailed empirical research on the characteristics of PMSCs and their clients across the diversity of MD participants. DCAF would be ready to conduct this research and facilitate this dialogue as requested.

b. Rethinking Outreach Efforts

This study also has sought to provide food for thought in the Montreux Document Forum on how the message of the Montreux Document could be communicated more widely and broadly to states and IOs not yet supporting the Montreux Document. Much remains to be done to increase support for the MD in regions outside of the Western Europe and Other States region. The MDF could focus future efforts in engaging and energizing current MD participants from underrepresented regions. Through the MDF, Montreux Document participants could be engaged to create networks or outreach hubs with their neighbouring states and relevant international organisations active in the respective regions. The MDF could consider the following potential points of entry to realise these goals:

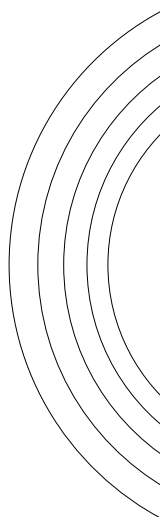
- **Regional outreach:** In order to engage more actively with states from the Latin America and Caribbean, Asia Pacific, and Africa regions, regional outreach hubs could be created in coordination with a MD participant states acting as contact point for their respective region. These hubs could perform an awareness raising role, address specific concerns on the legal content of the Montreux Document, and support states in accessing documentation and other resources.
- **National and local level engagement and capacity building:** National or regional roundtables could be organised with stakeholders in identified states to perform outreach and to support representatives directly responsible for the implementation of IHL, human rights, and the Montreux Document, especially in underrepresented regions. These roundtables could integrate the relevant administrative/regulatory authorities and integrate perspectives from communities. This would give MD implementation a 'bottom-up' momentum where field-level challenges of regulating PMSCs are then better understood by states' law and policymakers. This engagement would stand in complement to the more traditional 'top-down' models of international engagement that have been carried out in previous years.

c. Programme of Implementation Support

At the end of 2013, Montreux Document participants identified a common need for the development of practical implementation tools to support integration of MD good practices into national legislative frameworks. Following the development of the Legislative Guidance Tool and the Contract Guidance Tool, practical resources now exist to support states in tackling law and policy challenges. These tools should be widely disseminated to address the current challenges faced by states as evidenced by the performance results from the analysis of key indicators of Montreux Document implementation. Furthermore, support for the implementation of these guidance tools could take shape in a holistic programme of capacity-building, training activities, advisory support, and mentoring. Such a programme of implementation support could be funded by voluntary contributions from Montreux Document participants and could consider the development of new guidance tools to further assist states and IOs in implementing the MD.

Key considerations in this programme of implementation support could include:

- **Increased cooperation among states:** As set out by the Montreux Document, states are encouraged to support each other in their efforts to establish effective monitoring and oversight of PMSCs and to cooperate with investigating or regulatory authorities of states as appropriate in matters of common concern regarding PMSCs. The MDF could consider how these forms of cooperation could be fostered, for example through the development of mutual legal assistance programs or other partnerships among Montreux Document participants which could create increased accountability.
- **Monitoring and oversight:** The Montreux Document Forum could consider how to bring national human rights institutions, parliaments and civil society into dialogue with the MDF initiative in order to support national monitoring and oversight processes, and also to promote general awareness raising on this issue.
- **Development of other guidance tools:** The Montreux Document Forum could also consider what further tools may be necessary to support implementation of the rules and good practices of the MD, such as:
 - **Monitoring and oversight of PMSCs:** The MDF could consider whether new guidance is necessary to support states and IOs in developing effective national monitoring and oversight systems or strengthening current state institutions tasked with this role. This guidance could include vital background material which is pertinent the PMSC legal and operational landscape in a given national setting, and could include mechanisms to support monitoring and oversight where channels for lodging grievances are also tabled.
 - **Training:** The MDF could also consider how to include MD good practices into national training programs of PMSC personnel. As part of this, it could be beneficial to scope the diversity of training programmes in MD participants as well as the training requirements that are integrated into national licensing, contract and authorisation systems and to build knowledge on gaps and challenges.



- **Use of force:** The MDF could discuss the status of current national use of force rules and whether further support is required to develop standards for PMSC personnel use of force and firearms as well as after-hours storage of firearms, especially in between contracts or when PMSC personnel are not on duty.

Other International Initiatives

The International Code of Conduct for Private Security Service Providers

Two years after the launch of the MD, private security industry stakeholders pledged to create a dialogue for corporate accountability within the PMSC industry. The International Code of Conduct for Private Security Providers (ICoC) united industry actors, participating states, academics and civil society organisations to advance Montreux Document good practices into industry standards that can be practically carried out within their respective operations. Drawing on the provisions of the Montreux Document, the ICoC, which is the result of a multi-stakeholder initiative launched by Switzerland, addresses private security companies directly. It requires its signatory companies to ‘commit to the responsible provision of security services so as to support the rule of law, respect the human rights of all persons, and protect the interests of their clients’. The ICoC applies primarily to security services delivered in ‘complex environments’, however, the standards and recommendations are relevant in non-complex-environments. Its governing body, the ICoC Association (ICoCA), is a multi-stakeholder initiative with three equal pillars representing states, private security service providers, and civil society organisations. Launched in 2013, the ICoCA is mandated to promote, govern and oversee the implementation of the ICoC;¹ it achieves this task through three branches: certification, reporting monitoring and assessing performance, and handling complaints on alleged violations. Currently ICoCA membership consists of 7 governments, 93 private security companies and 18 civil society organisations. The regional representation is becoming more diverse as well, with a recent surge of companies signing the ICoC headquartered in Asia and the Middle East.”²

Draft Convention on PMSCs

The UN Human Rights Council gathered in 2005 to create the Working Group on the use of mercenaries, which served to better understand the phenomenon of mercenaries in situations of armed conflict while creating a platform for identifying and developing responses under state and international law.³ In 2010, the UN Human Rights Council proposed a Draft Convention that would form the basis of an international binding instrument to promote human rights and IHL wherever the PMSC industry operates. To further the debates on the draft convention, the

¹ For up-to-date information on the ICoCA, visit: <http://www.icoca.ch/en>

² Anne-Marie Buzatu, “The International Code of Conduct and its Oversight Mechanism,” in *Private Military and Security Companies: 35th Round Table on Current Issues of International Humanitarian Law*, ed. Benoit D’Aboville, (International Institute of Humanitarian Law: San Remo, 2012), 49. <http://www.iihl.org/wp-content/uploads/2015/12/PMSCs.pdf>

³ To learn more about the 2005 UN Working Group on the use of mercenaries, visit: <http://www.ohchr.org/EN/Issues/Mercenaries/WGMercenaries/Pages/WGMercenariesIndex.aspx>

UN Human Rights Council voted to establish an open ended intergovernmental working group (OEIGWG) to host a discussion over the content of the draft Convention – which is still awaiting legitimisation through a majority consensus – and to make recommendations to the UN Human Rights Council on further action to regulate PMSCs.⁴ Complementary to the Montreux Document, the discussions within the OEIGWG on the need to continue regulating PMSCs and to ensuring their accountability for human rights abuses and IHL violations can serve to close regulatory gaps and to improve respect for the rule of law.

The Voluntary Principles on Security and Human Rights

The Voluntary Principles on Security and Human Rights (VPs) are a set of human rights guidelines designed to support companies, especially within the extractive sector, in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights. Participants in the Voluntary Principles Initiative – including governments, companies, and NGOs – agree to proactively implement or assist in the implementation of the Voluntary Principles. For contexts where companies rely on private security, the VPs set out voluntary principles to guide private security conduct.⁵

Since 2010, governments, companies, and NGOs have pledged support for the VPs and continue to align national, corporate, and operational policies to improve human rights in extractive environments through the implementation of VPs.⁶ The substance of the VPs is additionally reflected in the UN Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework (UNGPs).⁷ Companies that operate within or support extractive industries are traditionally transnational in nature with mining operations taking place removed from corporate offices and regular formal oversight. Together, the Voluntary Principles and the Guiding Principles serve to inform extractive companies of the operational risks to human rights abuses, IHL violations, as well as to provide on-the-ground guidance for proper corporate conduct.

⁴ The open-ended intergovernmental working group with the mandate to consider the possibility of elaborating an international regulatory framework, including, inter alia, the option of elaborating a legally binding instrument on the regulation, monitoring and oversight of the activities of private military and security companies. For more information, see: <http://www.ohchr.org/EN/HRBodies/HRC/WGMilitary/Pages/OEIWGMilitaryIndex.aspx>

⁵ See Voluntary Principles on Security and Human Rights, <http://www.voluntaryprinciples.org/>.

⁶ For up-to-date information on the Voluntary Principles, visit: <http://www.voluntaryprinciples.org/>.

⁷ For up-to-date information on the UN Guiding Principles, visit: <https://business-humanrights.org/en/un-guiding-principles>

Regional Groupings

Africa Region (54)

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Swaziland, Tanzania (United Republic of), The Gambia, Togo, Tunisia, Uganda, Zambia, Zimbabwe

Asia Pacific Region (56)⁸

Afghanistan, Bahrain, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Cook Islands, Cyprus, Democratic People's, Republic of Korea, Fiji, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Jordan, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Lao People's Republic, Lebanon, Malaysia, Maldives, Marshall Islands, Micronesia (Federated States of), Mongolia, Myanmar, Nauru, Nepal, Oman, Pakistan, Palau, Papua New Guinea, Philippines, Qatar, Republic of Korea, Samoa, Saudi Arabia, Singapore, Solomon Islands, Sri Lanka, State of Palestine, Syrian Arab Republic, Tajikistan, Thailand, Timor-Leste, Tonga, Turkmenistan, Tuvalu, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen

Eastern Europe Region (23)

Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, Montenegro, Poland, Republic of Moldova, Romania, Russian Federation, Serbia, Slovakia, Slovenia, The former Yugoslav Republic of Macedonia, Ukraine

Latin America and the Caribbean Region (33)

Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela (Bolivarian Republic of)

⁸ Kiribati and Cook Islands and the State of Palestine are not included in the UN regional group list; however, this study will categorize them geographically under the Asia Pacific region.

Western Europe and Other States Region (30)⁹

Andorra, Austria, Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Holy See, Iceland, Ireland, Israel,¹⁰ Italy, Liechtenstein, Luxembourg, Malta, Monaco, Netherlands, New Zealand, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey,¹¹ United Kingdom of Great Britain and Northern Ireland, United States of America

⁹ Under the UN regional groups, the United States of America is an observer in the Western Europe and Other states group, the Holy See is a permanent observer to the UN; this study will categorize them geographically under the Western Europe and Other States region.

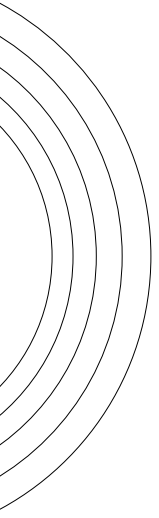
¹⁰ In May 2000, Israel became a full member of the UN Western Europe and Others Group in the headquarters of the Group in the US, thereby enabling it to put forward candidates for election to various UN General Assembly bodies. In 2004, Israel obtained a permanent renewal to its membership

¹¹ Under the UN regional groups, Turkey participates fully in both Western Europe and Other Group and the Asia Pacific Group, but for electoral purposes is considered a member of Western Europe and Others only.

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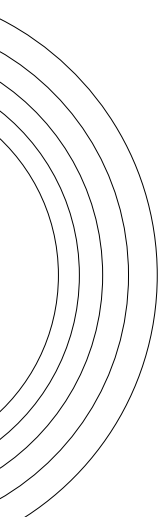
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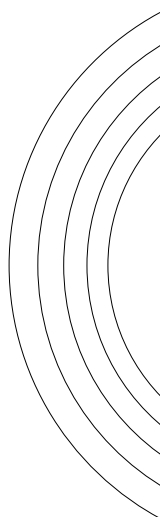
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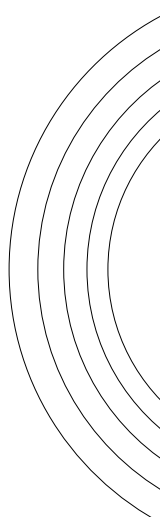
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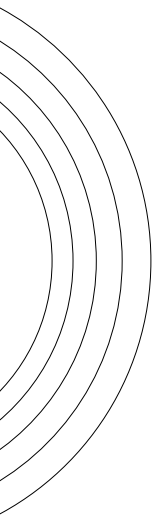
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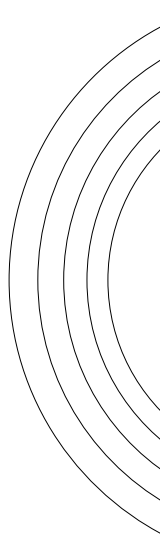
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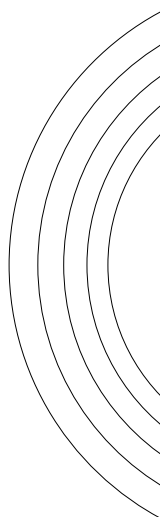
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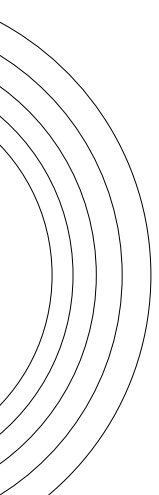
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Notes on Methodology

With regards to Chapter I, the figures for PMSC and PMSC personnel in the regional profiles were drawn from a survey of secondary sources in the region, including through a review of official government data, journals, monographs and other secondary literature, media articles, and more in-depth case studies.¹²

PMSCs were identified under the following parameters and included in the collected data: private security companies, private security agencies, private military firms, peace and stability operators, civilian security forces, manned guarding, cash-in-transit forces, private security organisations, stability maintenance organisations, and corporate private security corporations.

PMSC personnel were identified under the following parameters and included in the collected data: guards, private security agents, private security personnel, privately contracted armed security personnel, PMSC personnel, PSC personnel.

With regards to Chapter II, the key indicators of Montreux Document implementation have been chosen on the basis of the challenges identified in the report prepared for the Montreux+5 Conference: *Progress and Opportunities: Challenges and Recommendations for Montreux Document Participants*.

SECTION	CHALLENGE (MONTREUX +5 REPORT)	CORRESPONDING KEY INDICATOR (MAPPING STUDY)
Roles and Responsibilities	1. Imprecise constraints on which functions PMSCs may or may not perform	Key indicator 2: Determination of services: distinction between private and public security service provision.
Roles and Responsibilities	2. Inadequate applicability of domestic legislation to PMSCs operating abroad	Key indicator 3: Extra-territorial jurisdiction of the law.
Procedures, Systems, and processes	3. Insufficient resources dedicated to authorisations, contracting, and licensing systems	Key indicator 1: Specific legislation on PMSCs (provisions on licensing and registration). * This indicator measures the existence of the national legislation on the presumption of the minimum resources were dedicated to draft and pass the law.

¹² For a complete regional profile of the PMSC industry, please contact DCAF.

Procedures, Systems, and processes	4. Low standards for authorisations, contracts, licenses	Key indicator 4: Required identification of personnel and means of transport. Prohibition of active-duty public security from working in PMSCs. Key indicator 5: Firearms and weapons licencing and registration regimes. Key indicator 6: Dedicated policy on the use of force and firearms.
Monitoring and Accountability	5. Weak monitoring of compliance with terms of authorisations, contracts and licenses	Key indicator 7: Monitoring of PMSCs.
Monitoring and Accountability	6. Gaps in criminal and civil legal accountability	Key indicator 8: Suspension and/or revocation of licence, registration, or contract in case of misconduct. * Criminal and civil law were beyond the scope of the Mapping Study.

The attribution of assessment criteria to the key indicators is on the basis of the contents of the relevant legislation or regulation. This study does not assess to what extent the law is successfully implemented throughout the security sector. For instance, with Key indicator 2 (extraterritorial jurisdiction of the law), a number of states have legislation that provides for alien tort claims statutes that give national federal courts jurisdiction to hear lawsuits filed by non-citizens for torts committed in violation of international law. A number of states have other similar criminal law provisions. This study does not take into account whether the application of the law has been restrained or whether the legislation has been tested and is fully implemented and functioning in the judicial process. These nuances are extremely important; however, such determinations may be deemed subjective and politicised and therefore beyond the scope of this study.

