



Montreux +5 Conference

Chairs' Conclusions Geneva, 13 December 2013

Distinguished Representatives,
Ladies and Gentlemen,
Dear Colleagues and Friends,

We would like to thank all of you most heartily for your participation at this conference and for the meaningful and constructive discussions that have taken place over the past three days. We would also like to thank the speakers for the quality of their presentations, which provided a valuable basis for our discussions. Our gratitude and appreciation also goes to the Geneva Centre for Democratic Control of Armed Forces for its work in the organization of this conference and the preparation of its report on the implementation of the Montreux Document and the challenges it presents.

As Professor Avant put it so well, the Montreux Document may be both nothing new and all new at the same time! What is not new is that the Document is a restatement of well-established rules of international law. What is all new is that it is the first document to specifically address this issue at the international level and translates international law into the specific domain of private military and security companies. What was also new was that it has been the starting point and the spark setting off international and national efforts to ensure respect for IHL and IHRL.

These three days have been an opportunity to confirm general support among States and international organizations for the Montreux Document and the need to ensure its implementation. It has also been an occasion to take stock of the recent progress made in regulating PMSCs as well as the influence and catalysing effect of the document.

The main focus of the Montreux Document is on situations of armed conflict. Our discussions here have also demonstrated, however, that the Document is relevant to post-conflict and complex environments. In addition, the question of its relevance and applicability to maritime security has been repeatedly raised, albeit prompting a range of different opinions. Some take the view that the

Montreux Document already addresses the needs of the maritime sector. Others feel, however, that the standards outlined in the Document need to be further adapted to the specificities of the sector, while others insist that standards developed in other fora — in particular the IMO contact group — sufficiently address this issue.

The discussions also highlighted the following major challenges which call for further action.

Promoting further support for the Montreux Document

Currently, forty-nine States and three international organizations support the Montreux Document. This is already a substantial number. We are confident, however, that this number could be higher. Promotion of the Montreux Document will therefore remain an important objective.

As mentioned during the conference, the ICRC together with Switzerland and host Governments and in collaboration with DCAF have organized several outreach workshops with the aim of increasing awareness of the Montreux Document and promoting further support. These workshops paved the way to this conference by highlighting the benefit to be gained from governments and stakeholders sharing experiences. More work will be done to increase the number of States supporting the Montreux Document especially from the South. The next workshop will be in Senegal. This has been confirmed over the past three days along with the need to address from a regional perspective the issues and challenges raised by the activities of PMSCs, especially in those parts of the world with fewer participating States.

With regard to increasing support for the Montreux Document, the growing interest of international organizations deserves our attention. The European Union, the OSCE and NATO have now joined the initiative. These organisations will undoubtedly act as a vector for promoting and enlisting support for the Document on a much larger scale.

Need for implementation of the Montreux Document

The need to implement the rules and good practices set out in the Montreux Document was at the centre of our discussions during this conference. In this regard, the importance of taking the following steps was underlined in both the background report and the statements of participants:

- To ensure that PMSCs respect IHL and IHRL in their activities and that those responsible for violations are held accountable, it is essential that States enact adequate national laws and put in place robust regulatory regimes. In this regard, it is also essential that States clearly determine which services may or may not be performed by PMSCs. During the conference, several States noted that their national legislation already restricts the services that PMSCs may perform. It was particularly interesting to note that many States clearly prohibit PMSCs from performing any combat related activities. Others generally agreed with the idea that inherent State prerogatives should not be undermined, while allowing for some flexibility

regarding exceptions. Although clear progress has been made, States that have not yet done so should prioritise the determination of services that PMSCs may or may not provide.

- The multinational nature of PMSC activities has also been highlighted as an important challenge for national legislation, which generally does not apply extraterritorially. For instance, some States whose domestic law prohibits their nationals from working for PMSCs abroad have pointed out the difficulties they face in ensuring that other States and foreign companies respect their law abroad. In this respect, specific cooperation, as well as further discussion on how to address this complex legal issue - including through an internationally binding instrument - would be useful.
- Ensuring that existing licensing and authorization systems are able to effectively perform their tasks is also a highly effective way for States to ensure respect for the Montreux Document. Furthermore, sufficient resources are essential for, *inter alia*, proper screening, investigation of past conduct, compliance with relevant regulations, licensing with regard to weapons and ammunition, and assessing whether PMSC personnel are adequately trained.

Finally, participants highlighted the important role of civil society in raising awareness of the flaws in national laws and regulatory frameworks and in advancing the availability of remedies and recourse for victims.

Switzerland, the ICRC and DCAF are committed to assisting States in the implementation of their international legal obligations and the rules and good practices set out in the Montreux Document. In particular, the ICRC Advisory Services remain available to provide the necessary legal and technical assistance to States in this regard.

Different layers of regulation

The Montreux Document spells out existing obligations of States and good practices under international law. Regulation of the industry is an additional and complementary layer of regulation. In this sense, soft law instruments can help clarify obligations and help States translate international rules into national law or policies.

Effective implementation of the ICoC by the industry is an important part of the regulatory framework. Signing the Code is the first step in a process leading eventually to full compliance. If all clients of private security companies – in particular governments and international organizations – require in their contracts that all services be performed in accordance with the ICoC, this ‘soft law’ instrument will progressively become mandatory.

For example, the Swiss Federal Act on Private Security Services Provided Abroad (which was adopted in September this year by the Swiss Parliament) states that companies which are based in Switzerland but provide security services abroad as well as companies contracted by Switzerland are

obliged to sign up to the Code. Other countries stipulate in their procurement legislations that only companies that have accepted the Code may be hired.

This multi-layered approach, combining soft law instruments, self-regulatory instruments and national legislation is innovative and has proven to be both effective and efficient. It may also provide a model for regulating other areas where many different actors are involved, such as natural resources and environmental issues.

However, as mentioned by some, a soft law approach might not be sufficient to address some specific issues, such as jurisdictional matters and mutual legal assistance. For this reason, some participants indicated that it could be useful to negotiate a binding instrument in these areas. Providing effective remedies and accountability is crucial to ensuring that the regulation of the PMSC industry is both legitimate and credible.

This is a concrete area where the efforts conducted within the United Nations are complementary to what is being done in the context of the Montreux Document. They both aim to uphold IHL and international human rights law.

The need for further dialogue: A Montreux Document Participants' Forum

Participants in the Montreux+5 Conference have expressed their interest in institutionalizing the dialogue among Montreux Document participants. Many expressed their readiness to provide advice to the ICoC Association on national and international policy and regulatory matters as provided for by Article 10 of the articles of Association.

Most Montreux Document participants were of the view that such a forum should go further than this advisory function and establish a permanent structure for Montreux Document participants, allowing States to discuss and exchange information on challenges they face, notably in the national implementation of obligations related to PMSCs. Such a forum could provide a centre of gravity for the Montreux process as well as a venue for informal consultations among supporters of the Montreux Document. It would also enable them to share lessons learned and good practices.

Montreux Document participants agreed that any forum established for these purposes should be "light" and create synergies with existing fora. However, they agreed that an institutional structure could gather and disseminate information, facilitate coordination and communication among endorsing states, and act as a repository for research and the compilation of a list of good practices.

More in-depth discussions are necessary to identify what kind of additional functions such a forum should perform for the benefit of Montreux Document participants. Switzerland and the ICRC will therefore convene informal discussions in Geneva next year on the establishment of a Montreux Participants' Forum. The first discussion will take place in the first quarter of next year.

Before closing the meeting, I would like to thank DCAF for its valuable support in the organization of the Conference and for the excellent background paper that helped frame our discussions during these last three days. We would also like to thank the members of EDA-Event for all their work in making our Conference a success and our stay so pleasant.

And, finally, a thank you to all of you for your attention and active participation. We wish you a safe journey home and we look forward to continuing our discussions among Montreux Document Participants in Geneva very soon.