

The Montreux Document & the International Code of Conduct

Dr. Nils Melzer

Swiss Chair of International Humanitarian Law, Geneva Academy
Research Director, Business & Human Rights, University of Zürich

Regulatory Responsibility of States

- Primary responsibility for regulation, oversight and accountability is with States.
- States may, most notably:
 - Introduce national laws / regulations / policies
 - Strengthen / extend their civil & criminal jurisdiction
 - Regulate governmental & private contracting
 - Establish licensing regimes & procedures
 - Restrict or prohibit operation in & from their territory
- International efforts support and complement, but do not replace, the responsibility of States.

Main International Initiatives (Overview)

Montreux Document	International Code of Conduct	UN Human Rights Council
States	Companies	States
International Organizations		- Working Group on Mercenaries (Experts) - Intergovernmental Working Group (States)



The Montreux Document



Origin: Based on their traditional humanitarian commitment, Switzerland & ICRC co-launch the “Swiss Initiative” in 2006.

Aim: Promoting respect for humanitarian and human rights law.

Process: 4 informal workshops + 4 governmental meetings bringing together wide range of experience & expertise.

Result: “Montreux Document on pertinent international obligations & good practices for States related to operations of private military and security companies during armed conflict”.

Nature: Impartial, non-binding understanding accepted by 17 States, incl. US, UK, Iraq, Afghanistan (today: 42 States + EU).

Conclusion: PMSC do not operate in a legal vacuum.

The Montreux Document

Part I: Legal Obligations (re-statement)

- **All States** (respect HRL, ensure IHL-respect, universal jurisdiction)
- **Contracting States** (can outsource functions, not responsibility)
- **Territorial States** (duties derived from territorial sovereignty)
- **Home States** (duties derived from territorial sovereignty)
- **PMSCs** (national law) **and their personnel** (IHL, ICL)

Part II: Good Practices

- **Purpose:** To promote lawful & responsible conduct of PMSC
- **Provide:** Non-binding guidance and assistance to States
- **Encourage:**
 - Restriction of outsourcing & regulation of contracting
 - Establishment of authorization systems
 - Establishment of jurisdiction & accountability mechanisms

International Code of Conduct (ICoC)

2010: 58 PSC (today 464) signed a corporate commitment to:

- Conduct operations in compliance with IHL / HRL
- Good management practices
- Working towards an independent oversight mechanism

I. Principles of Conduct:

- General commitment to humane treatment, dignity and privacy
- Rules on the use of force
- Prohibition of torture, inhuman & degrading treatment, sexual exploitation, trafficking, slavery & forced labour, discrimination

II. Principles of Management:

- Selection, vetting and training of personnel (and subcontractors)
- Authorizations for possession and use of weapons & equipment
- Systematic incident reporting
- Grievance procedures & meeting liabilities

Working Towards Oversight: Temporary Steering Committee

- **Task:** To develop an Independent Governance and Oversight Mechanism (IGOM) for the ICoC.
- **Structure:** 9 members (3 States, 3 Civil Society, 3 Industry).
- **Process:** Regular meetings, support by working groups.

- **Draft IGOM Charter (Consultation January-March 2012):**
 - Multi-stakeholder Governance
 - Board – Plenary – Secretariat
 - Certification of compliance with ICoC-based standards
 - Performance assessment: ongoing monitoring (HQ / field)
 - Ensuring grievances are addressed
- **Revised Draft IGOM Charter expected for late 2012**

Keeping up to Date:

Montreux Document

Website: www.eda.admin.ch/psc

- List of supporting States
- Key documents

ICoC / IGOM

Web: www.icoc-psp.org

- List of signatory companies
- Key documents
- Timeline next steps