**Second Session of the New Open-ended IGWG on PMSCs**

**26 April 2021**

* About 15 years ago, the rise in the use of private military and security companies (PMSCs) in armed conflicts led to increasing concerns about the possible serious implications for the protection of the civilian population.

**MONTREUX DOCUMENT**

* In order to address this, Switzerland and the ICRC launched a joint initiative to promote respect for international law in 2006. It resulted in the adoption of the *Montreux Document on pertinent international legal obligations and good practices for States related to operations of PMSCs during armed conflict* by 17 States in 2008.
* The Montreux Document was developed as an answer to legal and humanitarian questions that arose from an increasing use of PMSCs in armed conflicts. At the time, there was a misperception that these companies might be operating in a legal void. To address this, the Montreux Document reaffirms and clarifies the existing obligations of States under international law with regard to PMSCs. It also identifies good practices to guide and assist States in promoting respect for the law. It does not endeavour to establish new regulations.
* The Montreux Document highlights the responsibilities of three types of States: those that contract the services of PMSCs, States on whose territory PMSCs operate and States under whose jurisdiction PMSCs are incorporated or registered. In addition, the Document also refers to the responsibilities of all other States, including States of nationality of PMSC employees.
* The focus of the Montreux Document is thus on the obligations of States, emphasizing their primary responsibility for ensuring respect for International Humanitarian Law (IHL) and International Human Rights Law (IHRL). However, as noted in the Montreux Document’s preface, its good practices may also be of value to other entities. Furthermore, although the Document was specifically developed to address the involvement of PMSCs in situations of armed conflict, its preface expressly mentions that “existing obligations and good practices may also be instructive for post-conflict situations and for other, comparable situations”.
* The objective of the Montreux Document is purely and only humanitarian. It recalls that rules exist and should be implemented, without endorsing or rejecting the use of PMSCs in any particular circumstance. As a result, it does not address policy issues such as whether the use of PMSCs is appropriate or ethical. This does not mean that these questions are not important nor that they should not be addressed in other fora. In this sense, the Montreux Document is only one part of broader efforts, including the discussions taking place within this Working Group, to regulate PMSCs. The Montreux Document shall not be seen as being the final word on all questions associated with PMSCs.
* The objective of the Montreux Document is today as pertinent as it was when the it was developed. Indeed, in contemporary armed conflicts, we continue to see PMSCs performing a variety of functions. These include:
	+ Providing logistics and support to armed forces;
	+ Guarding objects or persons, against different forms of crime or violence;
	+ Providing security for businesses, including the extractive industry, in conflict affected areas;
	+ Training military and security forces;
	+ Maintaining and operating technologically advanced weapon systems; and providing military services in actual combat operations.
* The Montreux Document has raised awareness on the importance of adopting and implementing adequate domestic legislation and regulatory frameworks and has provided guidance on how to do so. While several States have enacted domestic legislation on PMSCs, more States need to do so and others need to update existing national laws and corresponding regulatory frameworks to ensure that they are clearer and more robust. An area requiring further work is ensuring the accountability of and oversight over PMSCs and their personnel for violations of international and national law. A major challenge in this regard is the multinational nature of a large part of the industry, and cooperation among States remains essential.

**MONTREUX DOCUMENT FORUM**

* There is therefore a need to continue working towards the full and effective implementation of the existing obligations of States under international law.
* Recognizing this need, Montreux Document participants formally established the Montreux Document Forum (MDF) in 2014. Switzerland and the ICRC act as co-Chairs of this Forum.
* The MDF is an informal platform to discuss and exchange information on good practices and challenges related to the regulation of PMSCs. It aims to support national implementation of the rules and good practices contained in the Document, to develop practical implementation tools.
* Following its establishment in 2014, there had been six Plenary meetings of the MDF. There had also been one regional meeting in Costa Rica in February 2018 and a next Regional Meeting will be held online on 22/23 June this year. It will focus on the Middle East Region.
* The MDF also facilitated the development of several tools, such as the Legislative Guidance tool and the Contract Guidance Tool drafted with the help of the Geneva Center for Democratic Armed Forces (DCAF), to assist States and international organizations in the implementation of the rules and good practices of the Montreux Document.
* Support to the Montreux Document had grown significantly, from 17 States in 2008 to 57 States and 3 IOs today. However, last years, the involvement of participating States in MDF plenary meetings had decreased. In particular, few regulatory practitioners were attending Geneva-based meetings, although the MDF was originally meant to facilitate exchange among.
* To address these developments and evolving needs of participants, the co-chairs suggested transforming the MDF to make the Forum more flexible and thereby allow to address challenges as they arise. The fixed rhythm of meetings would be replaced by more flexible calendar. Meetings would be convened ad hoc, as needs arise, and through ways and means allowing for participation of the concerned practitioners, which may include for example, organizing digital exchanges or meetings in specific regions.
* By continuing to work on the implementation and on the promotion of the Montreux Document, the Forum will continue to play an important role in ensuring greater respect for international law and thus enable greater protection for persons affected by PMSC operations.
* Switzerland continue to encourage States and international organizations that have not yet done so to consider supporting the Montreux Document. To do so, an official letter or a diplomatic note can be sent to the Swiss Federal Department of Foreign Affairs.
* We also encourage Montreux Document participants to actively engage with and support the work of the Montreux Document Forum to contribute to the promotion and full and effective implementation of the Montreux Document.

**IGWG ON PMSCs**

* The Co-Chairs of the Montreux Document Forum appreciate the working documents which we see as a good basis for discussion. Let me formulate three general comments:
	+ First, the Co-Chairs of the Montreux Document Forum recommend that any international regulatory framework reflects and builds on existing rules of international law.
	+ Second, if ‘complex situations’ mentioned in the Discussion Document are understood as including situations of international or non-international armed conflicts as defined in IHL, the Co-Chairs of the Montreux Document Forum recommend that reference to IHL be included where relevant, in addition to international human rights law.
	+ Third, the Co-Chairs of the Montreux Document Forum would recommend focusing on the regulation of PMSC operations and different States’ responsibilities irrespective of the exact denomination of the company as a ‘PSC’, ‘PMC’, or ‘PMSCs’. Pertinent rules of international law bind States in regard to PMSCs, as well as the company or its personnel, regardless of whether the company is described or defined as a ‘private security company’ (PSC), a ‘private military company’ (PMC), or a ‘private military and security company’ (PMSC). Rather, the question of which rules of international law apply is determined by factors such as the context in which a company operates and the type of service it provides.
* As Co-Chairs of the Montreux Document Forum, we would like to again draw attention to the Montreux Document, which recalls existing obligations of States, PMSCs and their personnel under international law whenever PMSCs are present during armed conflict (part 1 of the Montreux Document), and presents a selection of good practices designed to assist States in complying with these obligations (part 2 of the Montreux Document). We hope that it may be useful for certain aspects of future work of this IGWG.
* The Co-Chairs of the Montreux Document Forum would like to take this opportunity to reiterate their appreciation of the inclusivity of the work conducted under resolution 36/11. We see the work of the IGWG on PMSCs as complementary to the work of the MDF.

Thank you for your attention.