



## **Presentation to the OSCE 733th Forum for Security Cooperation Security Dialog on Private Military and Security Companies**

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Draft speaking notes by Amb. Jürg Lindenmann, Switzerland

### **Introduction**

#### *What is the Montreux Document?*

- Official title, long but telling: “**Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict**”.
- The Montreux Document is intended to promote respect for international humanitarian law and human rights law whenever Private Military and Security Companies (PMSCs) are present in armed conflicts.
- It is an intergovernmental document. It has been drafted by States – with the support of the ICRC – and is addressed to States.
- The Montreux Document is not an international treaty. It recalls already existing obligations. It does not create new ones.
- States are already subject to the international legal obligations contained in the Montreux Document, regardless of their support for the initiative.
- Rules and good practices assembled in the Montreux Document derive from well-established principles of international humanitarian law and human rights law. Other branches of international law, such as the laws of state responsibility and international criminal law, also serve as a basis.

#### *Reasons and Objectives*

- There was a sharp increase in the use of PMSC's in the last 15 years.
- For some time, there was confusion about their legal status of PMSC and obligations of States in the use of PMSC. In particular, there was a rather widespread misconception that private military and security companies operate in a legal vacuum, a void.
- The Montreux Document intends to clarify the situation by recalling and compiling applicable international legal obligations related to PMSC operating in armed conflict.
- The Montreux Document does not take a stand on whether the use of PMSCs in armed conflict is a good or a bad idea. The point of departure is that the use of PMSC in armed conflict is a phenomenon that needs to be dealt with. The motive is humanitarian: The MD enhances the protection afforded to people affected by armed conflicts.

## **Presentation of the Montreux Document**

- The document is divided into two parts.
- *Part I* recapitulates existing rules of international law relevant in this area, namely, the Geneva Conventions and their Additional Protocols, international human rights instruments, and the customary law governing these spheres.
- It highlights the responsibilities of contracting (countries that hire PMSCs), territorial (countries on whose territory PMSCs operate) and home States (countries in which PMSCs are based).
- *Part II* contains a set of good practices designed to assist States in complying with the obligations set out in Part I through national administrative, legislative or other measures.
- These good practices are in essence recommendations. Beyond clarifying and reaffirming international law, the MD indeed encourages the adoption of national regulations on PMSCs designed to strengthen respect for international law, and offers guidance on how this could be done.
- The Montreux Document is intended to have a practical bearing on the interaction between states and PMSCs. It translates existing international legal obligations into good practices. These good practices are designed to help governments to establish effective oversight and control over PMSCs. The good practices cover a number of practical areas, including: authorisation systems, contract provisions, and licensing requirements, as well as suggesting a number of effective methods for states to oversee the PMSCs they come into contact with.

## **Expression of Support**

- From an initial 17 States in September 2008, the number of Montreux Document participants has now risen to 47 States and one international organization, the European Union. This growing support for the Montreux Document has been reflected in various implementation activities.
- All States and international organizations are invited to communicate their support for the document to the Swiss Federal Department of Foreign Affairs. In doing so, they do not commit themselves to new legal obligations. They declare their political support for the Montreux Document's main thrust: that international legal obligations have a bearing on PMSCs and must be complied with.

## **New support within the OSCE**

- The following OSCE States have joined the Montreux Document since last time Switzerland presented the Montreux Document during the Security Dialog:
  - Belgium;
  - Bulgaria;
  - Croatia;
  - Finland;
  - Iceland;
  - Lithuania;

- Norway;
- Slovenia.
- We are grateful to them for their support.

### **The way ahead: “Montreux+5 Conference” and beyond**

- At the occasion of the 5<sup>th</sup> anniversary of the MD, Switzerland and the ICRC jointly organize, in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF), a “Montreux+5 Conference” to be held in Montreux, Switzerland, 11-13 December 2013.
- All States and international organizations (representatives of the industry and civil society) are invited to attend this conference and to register as soon as possible. Invitations have already been sent out.
- The conference will provide a valuable opportunity for States and international organizations to share experiences in respect to regulation of private military and security companies (PMSCs) and to identify ways to support both implementation and wider endorsement of the Montreux Document.
- The Montreux+5 Conference will also discuss how the International Code of Conduct for Private Security Service Providers (I come back to this in a second) may assist in the implementation of good practices of the Montreux Document.
- Finally, the conference will represent an occasion to discuss the need for further dialogue, ensuring respect of international law. The idea of a more regular and potentially institutionalized dialogue (possibly the creation of a forum among Montreux States) will be discussed at the conference.
- On the first day of the conference, time will be dedicated to general statements by Governments. This represents an opportunity to communicate support for the Montreux Document.

### **International Code of Conduct for Private Security Service Providers**

- In parallel to the Montreux Document (which is a State driven initiative), Switzerland is also involved in an initiative driven essentially by the private security sector itself: the International Code of Conduct for Private Security Providers (“ICoC”).
- The ICoC is a multi-stakeholder initiative, convened by the Swiss government, composed of private security companies, civil society organizations and governments.
- Self-regulation and effective implementation of the industry is an additional and complementary layer of the regulatory framework.
- When the ICoC has been launched, in November 2010, there were 58 signatory companies and this number has since increased to about 700. By signing on to the Code of Conduct, these companies have undertaken to respect all current legislation, including local, regional and/or national laws, human rights and international humanitarian law, and they have agreed not to enter into contractual relations with states or other entities if by doing so they break sanctions imposed by the United Nations Security Council.

- Only a few weeks back, the establishment of an ICoC Association was decided. The association is governed by a multi-stakeholder Board with equal representation of the three stakeholder pillars: industry, governments and civil society. The purpose of the association is to govern and oversee the implementation of the Code and to promote the responsible provision of private security services. Its main functions are to provide and support certification, monitoring and complaints resolution.
- I mention the ICoC initiative, because there is sometimes confusion between the Code and the MD. The two are thematically closely linked (though even here, there are differences: MD is geared to situations of armed conflict; the ICoC is also applicable in peace time). But the two initiatives are distinct. The only direct link there is that a State wishing to be eligible on the Board of the ICoC Association must have previously expressed its support for the Montreux Document. But there is no link the other way around: Expressing support for the Montreux Document does not mean that a State supports the Code.

### **Conclusion and Potential Role of the OSCE**

- The support for the Montreux Document is growing steadily. As in the past, Switzerland will continue over the coming years to try and gather even larger support.
- At the same time, the focus will be more on practical implementation of the Document. We believe that there are opportunities for identifying more and better methods and tools for sharing good practices and for deepening cooperation.
- The OSCE could play a decisive role in promoting the Montreux Document by expressing its political support, by encouraging OSCE participating States to utilize the Document or by engaging in discussions and activities related to the issue.
- The OSCE is especially well placed as an organisation to deal with these matters, also on the basis of its important work on the OSCE Code of Conduct of Politico-Military Aspects of Security.
- It is our firm intention to continue the dialogue and our common work on regulation of PMSCs in the future. Switzerland will continue to be involved in the promotion and dissemination of this Document and is ready to assist any States wishing to do the same.