

Open-ended intergovernmental working group mandated to elaborate the content of an international regulatory framework on the regulation, monitoring and oversight of the activities of private military and security companies (Human Rights Council resolution 36/11)

Written Contribution by Switzerland and the International Committee of the Red Cross, as Co-Chairs of the Montreux Document Forum

Switzerland and the International Committee of the Red Cross (ICRC), as Co-Chairs of the Montreux Document Forum, participated in the 1st session of the *Open-ended Intergovernmental Working Group to Elaborate the Content of an International Regulatory Framework, Without Prejudging the Nature Thereof, Relating to the Activities of Private Military and Security Companies*, which took place from 20 to 23 May 2019 in Geneva, Switzerland. Pursuant to the *Note Verbale* sent on 19 June 2019, and in accordance with paragraph 4 of Human Rights Council resolution 36/11, the Co-Chairs of the Montreux Document Forum hereby submit – under their sole responsibility – this written contribution.

The Co-Chairs of the Montreux Document Forum appreciate the *Discussion Document: Elements for an International Regulatory Framework on the Regulation, Monitoring and Oversight of the Activities of Private Military and Security Companies*. At this stage, the Co-Chairs would like to submit general comments on the *Discussion Document*.

- International law provides a number of rules relevant to the operations of private military and security companies (PMSCs). While some rules apply directly to PMSCs or their personnel, other rules apply to States in their relations with these companies, i.e. States that contract the services of PMSCs ('contracting States'), States on the territory of which PMSCs operate ('territorial States'), States of nationality of the PSMC ('home States'), States of nationality of PMSC personnel ('States of nationality'), and all other States. Pertinent rules exist under different fields of international law, including international human rights law, international humanitarian law, international criminal law, and general international law principles on the responsibility of States for internationally wrongful acts. The Co-Chairs of the Montreux Document Forum recommend that any international regulatory framework reflects and builds on existing rules of international law.
- International humanitarian law applies in situations of armed conflict. When PMSCs are active in such situations, IHL may govern their actions. International humanitarian law binds States and may also apply directly to companies and their personnel if they are active in such situations. If 'complex situations' mentioned in the Discussion Document are understood as including situations of international or non-international armed conflicts as defined in international humanitarian law, the Co-Chairs of the Montreux Document Forum recommend that reference to international humanitarian law be included where relevant, in addition to international human rights law.
- Pertinent rules of international law bind States in regard to private military and security companies, 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. 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'.

As Co-Chairs of the Montreux Document Forum, we would like to draw attention to the 2008 '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), 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). Moreover, significant research has been conducted on mapping relevant existing international law rules that form the basis of the obligations re-stated in the Montreux Document,¹ and on collecting and elaborating good practices on developing national regulation on PMSCs² and on contracting services of PMSCs.³ The Co-Chairs of the Montreux Document Forum would hope that these documents may be useful for certain aspects of future work under resolution 36/11.

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, which we see as complementary to the work that has been done since 2006 to develop the Montreux Document and support its implementation.

¹ See, in particular, Tougas, Commentary on Part I of 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, *International Review of the Red Cross* (2014), 96 (893), pp 305–358.

² See DCAF, Legislative Guidance Tool for States to Regulate Private Military and Security Companies, 2016, available at <https://www.mdforum.ch/pdf/Legislative-Guidance-Toolkit.pdf>

³ See, for example, DCAF, A Contract Guidance Tool for Private Military and Security Services, 2017, available at <https://www.mdforum.ch/pdf/contract-guidance-tool.pdf>