

Supporting the Montreux Document: Why and How?



Participating States: **56**
Participating International Organisations: **3**
(July 2019)

The Montreux Document is the first document of international significance to reaffirm the existing obligations of states under international law, in particular international humanitarian law (IHL) and human rights law, relating to the activities of private military and security companies (PMSCs). It also lists good practices designed to help states take national measures to implement these obligations.

The Montreux Document seeks to provide guidance on the basis of existing international law; it is therefore not a legally binding treaty and does not create new legal obligations. Regardless of their support for the Document, states are already bound by the international legal obligations contained in the Montreux Document, by virtue of international treaties and customary international law. The majority of the rules and good practices of the Montreux Document are drawn from IHL and human rights law. The Montreux Document enhances the protection afforded to victims of armed conflicts by clarifying and reaffirming applicable international law, and by encouraging the adoption of national regulations to strengthen respect for international law. The Montreux Document thus provides a blueprint for governments to more effectively regulate PMSCs.

Why Become a Participant?

The added value of the Montreux Document: useful good practices for strengthened respect of international law:

By supporting the Montreux Document, states and international organisations 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. The Montreux Document offers a detailed roadmap for states wishing to improve their policies and practices regarding PMSCs. It provides a tool which allows governments to implement effective oversight and regulatory mechanisms of PMSCs, for example through contracts or by the implementation of licensing/authorisation systems. The Montreux Document Forum has been created as a platform for informal consultation and exchange. Participants have the opportunity to share experiences regarding the implementation of the rules and good practices of the Montreux Document. In addition to fostering dialogue among participants, the Montreux Document Forum encourages all states and international organisations to actively support the initiative (<http://www.mdforum.ch/en>).

How to Participate?

Easy and simple process to express support for the Montreux Document:

Supporting the Montreux Document does not create any new legal obligations.. All states and international organisations are invited to communicate their support for the Montreux Document to the Swiss Federal Department of Foreign Affairs through an official letter or diplomatic note. There is no financial cost. States and international organisations can use the following template to express support: <http://www.mdforum.ch/en/how-to-join>

Scope and Application

1 The relevance of the Montreux Document to a wide scope of situations, especially situations of armed conflict:

In line with international humanitarian law, the Montreux Document is based on the principle that PMSCs operate in an armed conflict environment. Nevertheless, the Montreux Document is also meant to provide practical guidance in other contexts and it identifies good practices that are ideally put into place during peacetime. The use of PMSCs for the protection of merchant ships against acts of piracy is one example of a situation outside of armed conflict where the Montreux Document can provide guidance. The Document provides a practical tool for states in the process of elaborating or improving their national legal frameworks which address the domestic and/or international activities of PMSCs.

2 PMSC personnel can only be qualified as mercenaries in certain circumstances:

The definition of a mercenary is defined in the Additional Protocol I to the Geneva Conventions of 12 August 1949 (Article 47), applicable in international armed conflicts. Most PMSC employees do not fulfill the criteria of this definition, and therefore cannot be qualified as mercenaries. Nevertheless, in some circumstances, it is possible that PMSC personnel may meet the conditions for

definition as mercenaries. If this is the case, they will not be entitled to combatant or prisoner-of-war status in an international armed conflict.

3 The Montreux Document addresses private military companies as well as private security companies:

The Montreux Document intentionally avoids making a distinction between "military companies" and "security companies". In reality, many companies offer a broad range of services, which typically range from military services (such as armed guarding and protection of convoys) to typically security services (such as the guarding of residences). As a consequence, they are not easily categorized. From a humanitarian perspective, there is no universally standard definition. For this reason, the Montreux Document adopts a wide definition that encompasses all companies that provide either military or security services or both.

4 The Montreux Document is not an international treaty:

The Swiss government and the ICRC felt it was important to produce a meaningful and practical instrument within a relatively short timeframe. While an initiative for the elaboration of an international treaty has been launched, the Montreux Document aims to provide states with practical and immediate options for the oversight and control of PMSCs.

5 The Montreux Document does not legitimize nor condemn the use of PMSCs:

The Montreux Document does not endorse the use of PMSCs in any circumstance but seeks to recall legal obligations and to recommend good practices if the decision has been made to contract PMSCs. Like all other armed actors present on the battlefield, PMSCs are governed by international rules, whether their presence and activities are legitimate or not. The Montreux Document follows this humanitarian approach.

