

Minutes, ICoC Steering Committee Meeting 1-2 September 2011 in Washington DC

Attending:

- Chair: Mark DeWitt, Triple Canopy
- David Dutton, Australia Department of Foreign Affairs
- Margaret Belof, UK Foreign Commonwealth Office
- Nils Melzer, University of Zürich Centre for Business and Human Rights
- Josh Dorosin, US Department of State
- Christopher Mayer, US Department of Defense
- Sylvia White, Aegis
- Michael Clarke, G4S
- Meg Roggensack, Human Rights First
- Chris Albin-Lackey, Human Rights Watch
- Andy Orsmond, Human Rights First
- Rémy Friedmann, Switzerland Department of Foreign Affairs
- Anne-Marie Buzatu, DCAF
- Thomas Haueter, DCAF

Introductory matters

Welcome by current Chair: Mark DeWitt

Discussion of Monitoring/Assessment & Certification (Working Group 1)

- Initial discussion that the IGOM should have the authority to decide who meets the requirements to provide independent monitoring . The goal of pro-active monitoring is to identify the kind of situations that can lead to problems and then to make recommendations how to avoid/mitigate them. A reactive monitoring with a compliance perspective would be triggered if there is an incident and would be followed with recommendations for how companies can address the problems to be compliant with the Code. The IGOM should accomplish both of those monitoring types.
- Certification is at company headquarters' level with audits and reports about system and policy. A performance assessment is necessary to see if a company is actually implementing those system and policy measures. In-field monitoring could be risk-based, a response to an incident, or part of the grievance mechanism.
- The point was raised that the IGOM's mandate was to support and ensure company compliance with the Code and not with the law. The monitoring is part of the "certification" process for the company: how the companies implement the standards and procedures.
- Point of confidentiality: the professional that conducts the monitoring will report back to the IGOM, the IGOM afterwards will add this information to already existing information and will conduct an overall assessment: who will look at this information which might include confidential information?

- Discussion about the level of detail contained in the Charter and if it needs to make reference to the necessity of a stage two audit. The Charter could rather commit companies more broadly to be subject to monitoring.
 - The relationship between the grievance mechanism and the monitoring/assessment was discussed: the grievance mechanism could be one of the triggers leading to a special audit.
 - It was noted that the three Working Group reports use different terminology regarding monitoring etc. The TSC will try to unify the wording, always keeping in mind the Code language.
 - Certification by the ICoC was discussed and the need to identify gaps with national standards, namely with the ASIS standards.
 - The costs of certification were discussed as well
- ⇒ **IGOM should have the authority to decide about monitoring/assessment and the certification body**
 - ⇒ **a remote and an in-field monitoring/assessment is necessary. This will be conducted on some sort of risk based approach such as environment based risk analysis and company based risk analysis.**
 - ⇒ **The IGOM should remain flexible with regards to standards and make necessary referrals to national standards**

Discussion of IGOM Grievance Mechanism (Working Group 2)

- There is probably the greatest divergence of opinion between civil society and industry stakeholder groups. This is also reflected in the Working Group 2 report. However there is some scope to move forward. A well functioning grievance mechanism will be an essential part for the credibility of the IGOM.
 - The links between special audits and the grievance mechanism serving as trigger were mentioned. However some were reluctant to see special audit as an essential part of the grievance mechanism since it is wrapped up with certification.
 - The grievance mechanism should facilitate between the two parties and if this does not work refer to a mediation process which might be outsourced to mediation experts with a particular skill set. IGOM should take on the role of a facilitator with oversight capabilities rather than a body that passes judgments.
 - Publication of information and reports will be an issue, since some information must be transparent and some must be kept confidential.
- ⇒ **There was consensus that if a complaint is made it should be dealt with by the company first. In some circumstance that won't be appropriate (internal grievance mechanism exhaustion requirement, with well defined exceptions).**
 - ⇒ **There was consensus that the grievance mechanism should include something like a referral function.**
 - ⇒ **A summary of the grievance mechanism functions would be:**
 - **A complaint triggers two avenues: 1. Compliance review, 2. Notice advisory/referral with options for the claimants. Afterwards facilitation of the IGOM for remedy.**

- **The Charter should allow the IGOM to use good offices to try to consult with parties**
- **Special audit is not uniquely a feature of the grievance mechanism**
- **A judicative function is not a part of the IGOM grievance mechanism (but there has to be some outcome of failure if a resolution is not achieved, e.g., there should be an incentive to participate in good faith in a mediation)**

Discussion of IGOM Structure, Powers and Responsibilities (Working Group 3)

- It was discussed how the Signatory Companies relate to the IGOM, along with government participation and a possible fourth stakeholder group: clients, including non-state clients. There was some agreement that the clients could be part of the plenary meeting, but some discussion if they should be on the board.
 - There was emerging consensus that the plenary could amend the Code at the recommendation of the board, but the primary decision making body will be the board. Voting options were extensively discussed with some agreement that consensus voting is not a viable solution.
 - The costs of the plenary should if possible not be included in the IGOM running costs.
 - The plenary could also be held biannually to save on costs.
 - The different board options were extensively discussed and there was no consensus which board option would be the best. There was also discussion about the limitation of government participation on the board, given that the US has some legislative constraints on such participation.
 - Different voting options for the board were discussed, with models taking into account a qualified majority within the different stakeholder groups.
 - Discussion about the budget of the IGOM lead to estimates in the range of 800'000 USD comparable to ISOA numbers. Financing will require a realistic discussion of costs, considering the size of the industry and their turnover. Assigning a percentage of contract value (such as .25% or .5%) to the ICoC was discussed, but the feeling emerged that it is not feasible, at least not during the start-up phase. What is certain is, that it will be important that clients support the initiative.
 - It was discussed how to reach out to and include clients, also as a possible fourth stakeholder group.
 - Further the participation of the different stakeholder groups was discussed. In the case of civil society there will be some criteria needed to describe what civil society is and if they are eligible to represent civil society in the ICoC
- ⇒ **There was agreement that the TSC should decide the voting options of the board but that some authority needs to be reserved to the IGOM.**
 - ⇒ **There was some emerging consensus that the board will consist of the three stakeholder groups, with a total of 12 people (these seats might be filled only with time). It will be left upon the board to elect an independent chair or take one out of the 12 board members.**
 - ⇒ **There was agreement that the plenary should be able to amend the Code but not clear how the other stakeholder groups should participate in the plenary.**

ASIS/ANSI Standards Development Update

- Marc Sigel joined by phone to outline the ASIS/ANSI standard process and its development. A rough estimate of the timeline is that in October/November an edited version will go public and certified standards will be ready by the beginning of the next year. Approved standards and people capable assessing those standards will probably be ready by the end of 2012. Regarding costs issues it was mentioned that the greater expenses in management system are incurred while implementing the standards, not while undergoing the certification.

Funding and Outreach Discussion

- Outreach discussion included how to engage with all the signatory companies in their different geographical locations. DCAF will put together a table with events related to PSC in the next months to identify possible synergies.
- Funding discussion included a voluntary trust fund as well as other resources such as government start-up funding. It was mentioned that funding will be necessary not only for staff resources but also for activities: a minimum must be secured so the IGOM can function.
- A discussion about percentage based dues based on contracts didn't find much agreement. It will be more workable to demand dues based on company size and turnover.