

Minutes, ICoC Steering Committee Meeting 13-14 July 2011 in Washington DC

13 July 2011, Attending:

- Chair: David Dutton, Australia Department of Foreign Affairs
- Mark DeWitt, Triple Canopy
- Margaret Belof, UK Foreign Commonwealth Office
- Nils Melzer, University of Zürich Centre for Business and Human Rights
- Josh Dorosin, US Department of State
- Lisa Hole, US Department of Defense
- Ian McKay, US Department of State
- Sylvia White, Aegis
- Michael Clarke, G4S
- Jason Pielmeier, US Department of State
- Meg Roggensack, Human Rights First
- Chris Albin-Lackey, Human Rights Watch
- Véronique Haller, Swiss Department of Federal Affairs
- Anne-Marie Buzatu, DCAF

BEGIN 8:30 EST

Introductory matters

- Welcome by Current Chair, David Dutton

Day 1: Assessment of Progress

First Order: Detailed Reports from Working Groups

Agreement to begin with WG3 report (on Independent Governance & Oversight Mechanism Structure, Governance, and Funding) as it may influence the other Working Group report discussions (discussion on WG3 resumed in the afternoon when chairs James Cockayne and Melike Yetken dialed in)

- WG3 report main themes:
 - Governance structure – what functions are appropriate for what body
 - Participation – how to ensure balanced and appropriate
- WG3 report discussion points:
 - Should take a functions-based approach that is flexible enough to be scaled up or scaled down as required
 - Agreement that WG3 should identify cost elements of recommendations, such as staff, venue, expenses, etc.
 - Discussion of need to find “sweet spot” of what companies, clients and other stakeholders can pay to support an effective oversight institution
 - General discussion about governance structure with a “tripartite” (companies, states, civil society) Board, a Plenary of Signatory Companies with some level of participation by other stakeholders and a Secretariat to take care of day-to-day business
 - Discussion that states such as the US face challenges to participate in non-state bodies
 - Recognition that it may be appropriate for clients as a 4th stakeholder group to have some role
 - Discussion of possible venues for an eventual institution, with Switzerland expressing its openness for the institution to be located there
- WG2 (Resolution of Third Party Grievances)report main themes:
 - Five possible elements identified –
 - Referral function: to refer aggrieved parties to appropriate dispute resolution venue (public or private). Emerging consensus that this should be included.
 - Mediation: pre-established independent (completely voluntary) mediation mechanism. This could be performed through accreditation of independent mediators rather than having permanent staff. Also emerging consensus that this should be included.
 - Arbitration: requires consent of parties and can be binding. Little discussion so far about this element.

- Special Audit: very close to work of WG1, and would likely proceed along the same lines as WG1. Main issue to be identified is threshold for triggering a special audit. Little discussion so far about this element.
 - Fact-finding function: triggered in response to a complaint in order to determine whether there was a violation of the code, possibly leading to referral for resolution of the complaint. Differentiated from special audit in that triggered by a particular incident rather than by pattern of company practices. Little discussion so far about this element.
 - WG2 report discussion points:
 - Discussion about voluntariness / elective nature of some of these options
 - Discussion about dividing up parts of complaints—there may be aspects that are not relevant to the ICoC and thus they should be carved out. For example, the UK national contact point (NCP) of the OECD has this ability.
 - Additionally, separating investigations from remedies helps to simplify discussions, however important to get in touch with the affected community and establish a dialog—should make distinction between a financial award and the looser notion of a grievance which may not be financial, but more along the lines of allowing a community to feel like being consulted.
 - Discussion that internal mechanisms should be exhausted first for many grievances before reaching the ICoC.
 - General question as to what is needed for an internal grievance mechanism to be effective, particularly for very small companies that may not have the resources to have an effective internal grievance mechanism
- WG1 (Assessment, Reporting, and Internal & External Oversight) report main themes:

WG1 broke up into three subgroups –

- A: Assessment--Process, nature and components of certification, initial thoughts:
 - Screening and vetting probably better laid out in an ISO management standard
 - Effectiveness of these standards measured by HRIA tool
 - ISO may not be appropriate for all companies, so may need to have a “demonstrated equivalent” that is developed by the IGOM
 - Envision certification as a gradual approach with interim steps, such as being “committed”, being a “participant” and finally “certification”

- B: Transparency in reporting, initial thoughts
 - Considering two basic types: 1) confidential and 2) public, divided up according to the stage where the company is: 1) informational, 2) bridge reporting until certification achieved, and 3) sustainment
- C: Internal and External Oversight
 - Fleshing out what it means to be “assessed as compliant with the Code”, and suggest to the TSC to choose words that better express this
 - Discussion of relationship of ANSI / ISO standard to ICoC, with reiteration that former isn’t designed to measure impact in the field and ICoC oversight should fill that gap

Second Order: Lunch briefing with experts Doug Cahn and James Cockayne on standing up multi-stakeholder initiatives (MSIs)

- Discussion about standing up effective MSIs, main discussion points
 - A temporary independent facilitator, or temporary board, could help stand the institution up and then bow out—both the FLA and the GNI did this
 - What is created should have the capacity to change and grow, and doesn’t need to be the full-fledged version at the outset. It is critical, however, to determine what must be agreed upon at the initial phase. the intial phase should not begine before reaching agreement on an accountability system that includes an independent field assessment of pscs' outcomes against the code.
 - In previous MSI experiences, most effective approach to implement standards is to have a hybrid process, with both implementation within company (e.g. implementing a management system) – as well as a process to measure outcomes (e.g., field audits) , where there is a relationship of a bad outcome to a process to remediate. Field audits should take into account information received by the company through its grievance or other mechanisms for understanding its impacts. however, whether to have rigorous independent field audits should not be dependent on whether such information is received by the company. Don’t want to be too formulaic in designing precisely how outcomes are to be assessed, because what works in once community/area of operations doesn’t necessarily work in another.
 - Clear that you need an independent external assessor for success of these audits. Can put in place an initial framework, and then grow and evolve to improve. No one wins when companies fail.

- In private security business, it is often the PSC's client that is affecting the community more than the PSC itself, so this should be taken into account when devising community feedback systems

First Order continued: briefing by WG3 co-chairs James Cockayne and Melike Yetken

- Four issues identified by WG3:
 - 1) Need to identify cost drivers and cost elements
 - 2) Need for process to engage private sector actors who employ PSCs in two ways: 1) outreach to companies who are clients of PSCs, and 2) as possible eventual "signatories" in some fashion
 - 3) Relationship between three stakeholder groups and what that means for decision-making procedures
 - 4) Location of mechanism and secretariat, and feeling that it was useful to consider the factors that would impact that decision
- WG3 report main discussion points
 - Identified different stakeholders' roles in governance as important issue under consideration
 - Next two WG3 calls will address governance structure and legal form including which jurisdiction
 - Discussion about bringing in private clients of PSCs into the process, with suggestion that the VP's could provide an avenue for this—this could be part of an outreach plan

Third Order: Discussion on additional guidance to Working Groups

- WG1: relationship between the regime created under the ICoC and regime created under other national standards' exercises
 - Two processes are separate by need to be harmonized in order to not have divergent models
 - Threshold question: what is the nature of ISO audits and can these be relied on in whole or in part to audit ICoC standards—TSC would like a more concrete briefing on the ANSI standard process including ANSI auditing
 - Concerned that from timing point of view, do not know yet what ANSI standards will look like, so don't know how much gap between ICoC and ANSI standards

- Could imagine innovative procedures where engage with NGOs on the ground to provide feedback, and also to compare with companies' reporting practices—e.g., if an NGO reports a weapons discharge, verify if company has included it in its reporting
- This goes back to the culture of the company, which should be one in which near misses are reported and what points in the management are the weakest, as well as at what points information is not getting through
- What the TSC wants from WG1 is a sense of what regime is right for the code and what the system should look like from an ICoC perspective. As both ANSI and ICoC processes are ongoing there are opportunities to inform each of these processes
- In order to keep costs low and monitoring workable, the IGOM's proactive assessment in relation to a SigCo's initial certification could be limited to the evaluation of systems and procedures (largely according to ANSI/ISO standards) without aiming at certifying compliance in terms of actual human rights impacts. In turn, it would be important to have a very accessible and flexible reactive (grievance) system, which would allow the IGOM to initiate field-monitoring / special auditing whenever it receives information of negative HR-impacts or otherwise deems warranted.

Fourth order: report on WG chairs call

- Identified 3, possibly 4 cross-cutting issues to be examined by all WGs
 - 1) Funding
 - 2) Special audits
 - 3) "Exclusion" (ultimate penalty)
 - 4) Investigations
- When WG reports finalized, may want to have session with few invited experts to ask specific questions

END: 17.00 EST

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Day 2: Mapping out the way ahead

- *First Order: Draft charter framework*
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- Discussion of level of detail that should be in draft charter, agreement that there will be some phasing in of different functions but recognition that some important details will be locked in at the beginning to avoid problems down the road
- Agreement that there is a tremendous amount of substance coming out of the WGs and that charter / operational plan should capture this as much as possible
- Discussion about states' roles and responsibility in eventual institution, including US government reps difficulties in serving on a private entity in a fiduciary responsibility—would basically require a change in US legislation to allow this
- Discussion about timeframe going forward—TSC should aim to release both draft charter and operational plan at the end of September 2011 – mid October 2011 for 30-days public notice and comment

Second order: consultation and outreach to stakeholders

- October 2011 post release of draft charter / operational plan, should aim to have preliminary consultations among all stakeholder groups

- Discussion about holding a “plenary” or joint session in early 2012 to review and provide input to draft charter—companies would at that point be committing themselves to the next stage of certification / participation in grievance mechanism—this was included in the ICoC.
- Discussion to finalize and adopt charter at second conference to be held some time later (e.g., 3 months later)
- Outreach and funding efforts should be conducted simultaneously
- Discussion to include “4th stakeholder” – clients (both private and public) in outreach efforts
- Action point: to identify different ways to reach out to private clients and send these to DCAF
- UPR in October in Geneva and UN Legal Advisor meeting also in October in NY may provide opportunities to engage with more states

Third order: considerations for standing up IGOM

- ICoC paras 11 & 12 – upon adoption of the charter the IGOM becomes operational—procedural question: who adopts what?
- Under an NGO paradigm, first a multi-stakeholder board would be elected, and then the board would adopt the charter

Fourth order: lunch briefing with Fund for Peace on PSC registration database – “Private Security Database” (PSD)

- PSD is not formally associated with the ICoC, but can be some crossover, especially when it comes to grievances
- Could also be called a reporting, or complaints, or grievance or accountability or redress mechanism, etc.
- Other industries have set up similar processes, such as the IFC or Oxfam mining ombudsman, or the Canadian CSR counselor which is setting up a complaints mechanism for Canadian companies
- It would be project-centric, and would depend on where operations are taking place—there would be very different grievance mechanism depending on the area of operations
- First phase of the process is wide stakeholder engagement
- Second phase is implementation
- Biggest sticking point is funding

Fifth order: resumed discussion on WG guidance

- Guidance to WG 1
 - o Question for WG1: does “certification” mean one thing for all operations or do you need multiple certifications for multiple operations?
 - o Question for WG1: regarding “audits” what are the standards for audits and how much depends on specific area of operations?

- Question: what is the relationship of audits to certification?
- Suggestion that have a system-based review as well as an auditing approach based on an ANSI-type model, and have a very reactive outcomes approach that is the province of ICoC oversight
- Suggestion that any auditors have experience in conducting human rights review, such as human rights impact assessments (HRIA), and suggestion that it would be useful to meet with persons carrying out HRIAs
- Comment that typically those conducting audits are different from those analyzing the audits—the auditors are usually just collecting information
- Suggestion that need to look at self-assessment tools that can prepare companies for the outcomes-based assessment / monitoring
- Comment that the ICoC refers to 1) auditing, 2) certification, 3) monitoring and 4) reporting—reporting would include self-assessment.
- Ask WG1 to provide more detailed guidance on what is effective monitoring and reporting

Sixth order: Plan going forward

- Revised tentative workplan:
 - TSC will release draft charter at the end of September
 - 30-day consultation period
 - Release revised charter towards the end of October
 - January plenary conference to finalize text
 - Standing-up conference ~3 months later (April / May 2012)
- Suggestion to establish another working group specifically on funding, perhaps after draft charter is released
- Tentative dates for next meetings: 1&2 September in Washington DC, 26-28 September in London
- Incoming chair for 1&2 September meeting: Mark DeWitt

Seventh order: AOB

- Maritime security: it is a rising industry, and should determine how relevant the existing ICoC is to maritime security, as well as to identify what if anything needs to be added to meet special requirements of private maritime security
- Recognition that para 7 of ICoC specifically refers to maritime security as an area of future work
- Draft agenda for 1& 2 September:
 - WG chairs will be invited to have discussion on all WG outputs and to answer specific questions from TSC
 - Presentation of DCAF and ADH's research on Maritime security
 - Update on ASIS process and where standards are

- Set-up funding and finance committee
- Develop more concrete options for outreach
- Discuss operational plan

END: 17.15 EST