

Minutes, Steering Committee Meeting #6—29 June 2011

Held by Teleconference

Attending :

- Meg Roggensack, Human Rights First (USA) - Chair

- David Dutton, Australian Department of Foreign Affairs and Trade (USA)
- Margaret Belof, UK Foreign Office (UK)
- Mark DeWitt, Triple Canopy (USA)
- Sylvia White, Aegis (UK)
- Joshua Dorosin, US State Department (USA)
- Michael Clarke, G4S (UK)
- Andy Orsmond, Human Rights First (USA)

Non TSC-member Chairs of Working Groups

- Melike Yetkin, US State Department (USA)
- James Cockayne, Center on Global Counterterrorism Cooperation (USA)

- Anne-Marie Buzatu, DCAF (Switzerland)
- André du Plessis, DCAF (Switzerland)
- Michelle Hess, DCAF (Switzerland)

BEGIN 10:00 / 15 :00 UK / 16:00 GENEVA

- Welcome by Outgoing Chair, Michael Clarke
- Welcome by Current Chair, Meg Roggensack
- Agreed agenda
 1. Working Group Reports
 2. Presentation on format and content for bylaws and charter
 3. Recap of unclear items, planning for next meeting

1. Working Group Reports

The Chair welcomed the chairs of the various Working Groups and asked them to provide a brief update on the work done.

Working Group 1: Assessment—Mark DeWitt

- 3 subgroups had been established to investigate three areas
- Subgroup A: Assessment/Certification
 - A paper had been prepared by Chris Mayer that goes through the procedural steps of assessment, relationship between code & national standards, bridging strategies, answers to specific questions

- Discussion was ongoing on this, including on what kind of information will go to the IGOM from a company while they may be going through a certification process under a national standard. There had been some discussion of the idea of “Demonstrated Equivalence” between different national standards where the IGOM would determine how the national standards were in compliance with the ICoC
- If a national standard isn’t in place, the IGOM would perhaps maintain a level of control in the absence of standards
- Subgroup B: Transparency and Reporting
 - The basic notion of a reporting structure had been considered, with the IGOM defining the form and substance of reports for consistency. There were potential issues if a SigCo had signed a nondisclosure agreement with a client.
 - There were possible categories of reports—public reports and confidential reports
 - 3 areas of reporting: information reporting, bridge reporting, sustainment reporting
 - Informational reporting: SigCos would provide an initial registration report with basic details (point of contact, details about internal grievance mechanisms, etc.) These reports should be publically available and updated annually
 - Bridge reporting: SigCos filing periodic reports (monthly or quarterly), creates transparency regarding implementation efforts; the IGOM could also look to third parties for more information. Bridge reporting probably would not be publicly disclosed in its raw form.
 - Sustainment reporting: reports that would be provided by SigCos on a regular basis once they have completed all phases of assessment/certification and operate in accordance with the ICoC
- Subgroup C: Internal & External Oversight
 - This subgroup had so far come back with questions regarding what their scope was and how they should approach their questions
 - An initial report will be provided prior to the next TSC meeting

Working Group 2: Third Party Grievances—Andy Orsmond

- There had been a few Working Group calls and one briefing from Rachel Davis on the Ruggie process and its relevance for grievance mechanisms
- There had been a feeling that perhaps there wasn’t as much consensus on the issue of a third party grievance mechanism as the concept paper might have indicated
- It had been important to discuss the possible functions of grievance mechanisms. Five functions had been initially identified as possibly playing a role:
 - Referral Function—the mechanism might refer complainants to a company grievance procedure, to a mediator or arbitrator, to a private council, etc. It could also act as a gatekeeper or informational source who directs parties in other directions, or at least makes them aware of other options for resolving grievances. There was some concern that the mechanism perhaps shouldn’t be working in conflict with criminal or civil prosecution processes

- Fact Finding Function—an attempt to determine what the facts are and conduct an investigation. This was an area with little consensus so far and there were concerns over costs, the security of investigators and its legality in some jurisdictions.
- Arbitral Function—private dispute resolution process which might include various options for remedies. This was an area with little consensus so far and there were concerns that the IGOM should not be in the position of issuing sentences or sanctions
- Mediation Function—the mechanism would be or facilitate the mediation of a dispute in an attempt to bring parties to a resolution themselves. There was general willingness that this would be one possible function of the grievance mechanism
- Special Audit Function—for the moment this would be a function that could best be taken up by a separate sub-group that could discuss this with WG 1
- Funding and cost is a key issue, especially for industry.

Working Group 3: Governance—Melike Yetkin & James Cockayne

- Have consulted experts from Harvard University which had helped direct the discussion of the group
- The mandate of this WG was 2 issues—internal governance and creating a legal entity
- The WG has a Work Plan outlining the themes of discussion for each week’s discussions through July 8th
- Within the next couple weeks, they are expecting to produce preliminary conclusions around the areas where consensus has emerged—covering governance, appropriate jurisdiction etc
- There is further work in 3 areas—internal governance (specific rules relating to the plenary, board and secretariat), funding, and legal forms

All three Working Groups expressed concern that the working groups won’t be able to produce a consensus output by July 21st, feeling that this could rather happen by early August. The Working Group chairs hoped the TSC would allow them an additional month.

The TSC felt that Working Groups should have some kind of feedback in writing by 11th July in time for the next TSC meeting on 13 & 14 July in DC, even if it’s not final.

There was agreement to dedicate a portion of the July meeting to considering more in-depth where the WGs are and to also provide some guidance regarding where they might focus their energy. This would also be an opportunity to look at where some overlap is emerging.

The WGs would still have until 21st August to produce a final report (including areas of consensus and areas where there may not be total consensus but there will be clear options).

As there are issues that bridge between WG, it was agreed to have the chairs of the WGs should discuss the issues that bridge across groups – e.g. the relationship between the grievance mechanism’s special

audit function and auditing of companies generally and the general question of funding. The initial discussion would take place on Friday 1 July, and the results would be discussed in the next TSC meeting.

2. *Outline of Charter Prepared by Josh Dorosin*

Josh Dorosin outlined a draft charter he had circulated. The draft provided only headings for various sections, and did not provide any substance beyond section headings. After discussion, the TSC decided to table the document and wait for Working Group input. The document may be used for reference purposes as work continues.

In considering the schedule, the TSC considered that the by-laws and charter likely would be released at the end of September rather than the end of July, but it was decided to take a more in depth look at the overall timetable during the next TSC meeting on 13 & 14 July.

3. *Structure for next meeting & Other Issues*

Logo & Stakeholder Outreach

Agreed to discuss at DC Meeting

What will this ultimately lead to?

There was discussion on what the process was aiming towards. An endorsing conference? There was discussion on whether an endorsing conference would itself bring into force an IGOM or if there is going to be some necessary transition period. There was discussion on other MSIs and how it is perhaps envisioned that this body would include representatives from different stakeholders. It was agreed to discuss at the next TSC meeting how other MSIs got from drafting to the initial stages of governance, including considering whether it might be useful to have others from the outside come in and advise on this (maybe from WG#3, for example).

Question of experts at DC Meeting

There was discussion on whether experts, such as Doug Cahn, should be invited to come and give their perspective at the July meeting in DC. Some felt that it would detract from what the TSC has to achieve.

Next Meeting:

It was agreed to have one representative from each group work together on an agenda for the next meeting so that the agenda meets the needs of each of them.

END 12:00 DC / 17:00 UK / 18:00 GENEVA