

Temporary Steering Committee (TSC) for the International Code of Conduct (ICoC)

Minutes

30 November to 2 December 2011

DCAF and AdH, Geneva, Switzerland

Attending:

Sylvia White, Aegis (Chair)

Margaret Belof, UK Foreign & Commonwealth Office
Michael Clarke, G4S
Mark DeWitt, Triple Canopy
Josh Dorosin, U.S. Department of State
David Dutton, Australian Department of Foreign Affairs and Trade
Rémy Friedmann, Swiss Federal Department of Foreign Affairs
Chris Mayer, U.S. Department of Defense
Nils Melzer, University of Zurich
Jason Pielemeier, U.S. Department of State
Meg Roggensack, Human Rights First
Renata Sousa, Swiss Federal Department of Foreign Affairs

Anne-Marie Buzatu, DCAF
Thomas Haueter, DCAF
André du Plessis, DCAF
Andrew Clapham, ADH

Day One: Wednesday, 30 November 2011

Opening discussion on several issues, including the role and involvement of non-State clients in the process to date, in the immediate future and in an eventual governance mechanism. Discussion also focused on outreach to such clients, how Signatory Companies may require adherence to the ICoC in their contracts, and how to better engage them. The Steering Committee also considered how to deal with the concept of complex environments in the eventual oversight mechanism. Discussion included whether to establish a definitive list of such environments, to leave the decision to a future board or Executive Director, to allow Signatory Companies to self-declare what they consider to be such environments, to use other existing lists (such as a failed states index), and/or to authorize the mechanism to provide guidance on the issue on request.

There was then consideration of conflict of interest rules for board members who would also represent a company, and whether indeed board members would be representatives of their companies or operating in an independent capacity.

The TSC considered the legal location of the eventual mechanism, noting Switzerland's strong interest in hosting the mechanism. Discussion ranged on other possible locations and also on how to allow other States to express an interest in hosting. Consideration was given to how national law establishment requirements may impact the governance mechanism and whether there was a need to retain legal counsel at this stage to consider this more thoroughly.

Day Two: Thursday, 1 December 2011

The TSC worked through various sections of the draft of the charter that was circulated in advance of the meeting. In general it was agreed there was a need to separate transitional provisions from the provisions relating to the finally-established mechanism. It was also agreed as a general principle that each stakeholder group of TSC members would be responsible for identifying the transitional provisions relating to its specific group.

The following sections were considered and amended:

- *Affiliation of Governments*
- *Affiliation of Civil Society Organizations*
- *Participation Criteria for PSCs*
- *Certification Criteria and Procedures*
- *Performance Assessment Criteria and Procedures*

Day Three: Friday, 2 December 2011

The TSC discussed again the possible location of the mechanism and requested the Swiss government to make a formal proposal over the next few weeks as well as deciding to inform other Montreux Document countries that they may also make proposals if they wished to host.

They also considered what accompanying documentation should go out with the draft charter in January, noting that there should be some explanation of the upcoming process of establishment as well as on the content of the charter.

The TSC then continued to work through various sections of the draft of the charter that was circulated in advance of the meeting.

The following sections were considered and amended:

- *Reporting, including Reporting Criteria and Procedures*
- *Guidelines on Accreditation for Independent External Auditors and Monitors*

The TSC considered in more detail issues relating to how the mechanism would be funded and discussed ways to get a more concrete figure of the actual costs, including ensuring there was more than one estimate prepared. The need for establishing a trust fund vehicle to take receipt of capital funds contributed by governments was discussed.

There was also further discussion on outreach to different stakeholders between the draft being issued in January and March 2012, when comments should all have been received. It was noted that there would be potentially be an event in London on 6 March 2012 and that each of the stakeholder groups would consider what events were necessary for their constituencies. The UK and US were noted as major places for outreach, but there was also discussion on outreach within Africa and the Middle East in particular. There was also consideration of how the TSC would receive comments, consider them, input changes into the charter and reissue it.

It was agreed that the re-worked draft would be circulated and that the TSC would meet by phone on December 8, 2011 to discuss outstanding issues, including liability, termination and the name of the mechanism. They agreed to meet in person again in Washington DC over five days: 9 to 13 January 2012 to finalize the draft and accompanying documentation. It was noted that those who cannot make five days in DC should try and attend at least for the last three days of that week. Chris Albin Lackey will chair that meeting.

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