Minutes, ICoC Working Group #3 Meeting: 18 July 12011 via teleconference

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

Jenny Stein, US Department of State (USA)
Ian Proud, UK Foreign & Commonwealth Office (UK)
Doug Cahn, The Cahn Group (USA)
Glynne Evans, ADS Security in Complex Environments Group (UK)
Sylvia White, Aegis (UK)
Will Imbrie, Dyncorp International (USA)
Phil Rudder, WSI International (USA)
Jessica Vogel, ISOA (USA)
Ian Ralby, ADS Security in Complex Environments Group (UK)

André du Plessis, DCAF (Switzerland)

Begin 11:00 DC / 16:00 UK / 17:00 Geneva

1. Readout of Temporary Steering Committee Meeting

The Chair reported back on the Steering Committee (TSC) meeting held in Washington DC the previous week (13 & 14 July). The following points were made:

- The TSC was thankful for the interim report submitted and asked the Working Groups (WGs) to continue along a similar line going forwards, with the 21st August being the next date to submit a report to the TSC.
- The TSC asked that all the WGs consider cost issues in their discussions and anz proposals
- The TSC had had preliminary discussions on the relevant stakeholder groups and the relationships between the potential different entities within a structure: a plenary, board and secretariat. The TSC had also considered how clients may be involved in the process better
- The TSC had had preliminary discussions on the location of the international governance and oversight mechanism. The TSC had said that preliminary exploration of the US, UK & Switzerland should be carried out. It was noted the Swiss government had been particularly proactive in research. This will be carried out on next week's WG#3 call.
- The TSC had asked the Working Groups to also consider the "act of creation" of the eventual mechanism

There were some questions relating to the timetable, including that it remained, in the opinion of some, a very ambitious one. There was also discussion on the degree to which a mechanism would need to be created fully-formed, or just with the ability to grow later, and whether there should be an independent chair of the TSC to take the process to the establishment of the mechanism.

2. Discussion of General Governance Structure

There followed a discussion of the general governance structure, including what would be the roles and responsibilities of the potential Plenary, Board, and Secretariat, and what would be the relevant

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ICoC stakeholder groups and how would they fit into the Plenary, Board, and applicable IGOM bodies. The following points/suggestions were raised by various participants:

There should be a multi-stakeholder board with all three stakeholder groups represented. There should also be a Plenary and a Secretariat. The relationship between each should be clarified.

The board could be about 15 people, appointed by the plenary with even distribution of each stakeholder group. It could meet quarterly and be responsible for day-to-day decision making. Others suggested a smaller board of 7 to 9 people, with recognition that it needs to be kept representative and efficient.

The idea of having an experienced independent chair (i.e. somebody not stakeholder group affiliated) was also discussed. There was discussion on whether this should be somebody with business experience and/or with experience of international humanitarian or human rights law.

The plenary would include all of the Signatory Companies and have Civil Society present. Industry clients could perhaps participate as non-voting members. It would meet, perhaps, once a year and have limited powers, roles & responsibilities. It should generally proceed by consensus, but it was noted that there needed to be a way to make decisions without consensus so that the mechanism was not held-up by those abusing the consensus process. There was discussion on a super majority voting pattern as one solution, recognizing that some decisions might need to always be by consensus.

The Secretariat would be where most of the work would get done, with an agreement between board and secretariat as to scope.

There was discussion that governments may not be able to act as members of the board for legal reasons. One solution was to have an advisory board for those unable/unwilling to be on a board. Another solution would be for retired members of government to be nominated by the government as a board member. It was noted that there were likely precedents for this arrangement. There was also discussion on the fact that governments have at least a dual interest: as a regulator and also as a client and that any structure should be mindful of this.

There was discussion on the various constituency groups and how they would choose members. Signatory Companies was an obvious pool for the industry. There was some discussion on whether the Montreux Document states would be the pool for governments, and also what would be the appropriate pool for Civil Society. Some proposed enquiring whether there was a UN HRC list of NGOs, or requiring Civil Society to publicly endorse the code in respect of their own interactions with private security before being on the pool.

The possible annual plenary was discussed as an opportunity for learning from other pillars, with some discussion as to what sharing this would be, noting that some participants would be competitors. It was highlighted that there needed to be incentives for companies for there to be wide buy-in by the industry. It was understood that the primary motivation would be that clients would only hire those under the code structure and there was discussion on getting more commitment from such clients, including client governments.

The question was raised as to who should be authorized to amend the code, and how. Suggestions included it being only Signatory Companies, perhaps only on the recommendation of the Board, though some noted that that would make the Signatory Companies only the rubber stamp of the Board.

The question was also raised as to who should make the ultimate decision on the exclusion of a Signatory Company, if it ever reached that point. It was widely felt that this would be a Board decision, though recognized that it would likely be a last resort solution.

3. Concluding remarks by Chairs

The chairs noted that there was emerging consensus in several areas and that they would prepare a list of these to be circulated.

There was a request for a briefing by the Chairs on experiences and lessons learned on establishing the Voluntary Principles accountability mechanism.

The next call was confirmed for Monday 25 July at the same time. This will be to discuss the legal form of the accountability mechanism. Participants were reminded to circulate by 22 July any thoughts on legal form.

End 12:10 DC / 17:10 UK / 18:10 Geneva