

Minutes, IcoC Working Group #3 Meeting—Monday, 20 June 2011 via teleconference

Attending :

- Sylvia White, Aegis (UK)
- Ian Ralby, ADS Security in Complex Environments Group (UK)
- Phil Rudder, WSI International (USA)
- Doug Brooks, ISOA (USA)
- Whitney Grespin, ISAO (USA)
- William Imbrie, DynCorp International (USA)
- James Cockayne, Center on Global Counterterrorism Cooperation (USA)
- Doug Cahn, The Cahn Group (USA)
- Ian Proud, UK Foreign Commonwealth Office (UK)
- Melike Yetkin, US Department of State (USA)
- Andrew Clapham, Geneva Academy of Intl. Humanitarian Law and Human Rights
- Glynne Evans, Olive Group,
- Andy Orsmond, Human Rights First
- Jeffery Goldberg

BEGIN 11 :00 DC / 16 :00 UK/ 17 :00 GENEVA

Discussion of 3rd Column of “Functional Allocation Matrix” -- Development of code and standards on roles / functions of plenary / board / secretariat

The following views were expressed in a tour-de-table approach.

- Speaker 1 :
 - Would consider that the plenary be made up of the signatory companies, and that any amendment to the Code would have to be carried by a super-majority of the plenary in order to follow the same process as the original adoption of the Code
 - In the process so far, governments have had a key role in the drafting, although there hasn't been a formal situation where they can veto the text
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 - Adding an annex on maritime security would only work if we followed a similar implementation path
 - Governments didn't want to be formally associated with the adopting of a text
- Speaker 2 :
 - Many occasions when governments insisted on certain drafting elements and these were accepted by the companies.
 - Don't think need to go to every SC to get their approval for every change, rather should inform signatory companies as a group of a proposal and open for comments and if no major objections, then adopted by consensus

- Speaker 3 :
 - Agrees with Speaker 2—if there's going to be a change to the code or standards, then we need a similar process to what we did to make the code
 - Every company will need to discuss whether they agree or disagree
 - The board will set up the mechanism to make these kinds of working groups happen
 - The secretariat would implement that part of the code and standards
- Speaker 4 :
 - Important distinction in how we articulate government level participation
 - Governments aren't actually signatories to the code
 - Questions in terms of what the plenary does, what is a quorum, what are the rules of procedure, as well as how do companies associate themselves to amendments once they are agreed
 - In terms of government participation, could envisage governments as observers to the plenary, but with a more substantive role on the board
- Speaker 5 :
 - Question of the plenary—we're not in agreement on who constitutes the plenary
 - Is it just industry with NGOs and government as observers ? might they have limited voting points on specific areas / functions ?
- Speaker 6 :
 - Plenary may have to vary depending on the specific function that the plenary is playing
 - May have some participation and voting rights—not exactly clear who is in this plenary
 - Probably should be some sort of government role as observers in the plenary, and then can talk about proxy voting, what is a quorum, but first need to have in mind what we are trying to implement and what are our goals
- Speaker 5 :
 - The plenary should consist of all interested parties / stakeholders, then we should define what are particular powers of different stakeholders, who can vote at what time, who plays what role (vote by everybody, 2/3 vote, etc.)
- Speaker 6 :
 - We need to make sure that if this is truly going to be a multistakeholder initiative, that we've identified the right stakeholders
 - If this is going to be an MSI, all pertinent stakeholders should have the opportunity to place their views on the table, including anything as important as amending the ICoC
 - We have the need for an efficient initiative, but we also want to maintain the integrity and credibility of a multistakeholder approach
 - The issue of who has a seat at the table is both relevant at the plenary level and the board level—defines the issue of who has a voice. There should be multi-stakeholder participation in both the board and the plenary
 - It could be that the board is the entity that votes. Input is given by the plenary. This could be an efficient mechanism
- Speaker 7 :

- If NGOs and governments aren't participatory members of the board, then we have to allow them to propose changes through informal means
 - Need a process that will allow a change to go through if the vast majority approves of it
- Speaker 8 :
 - Whatever kind of government system that is put in place, it's very important that each stakeholder still has an input—very important for the credibility
 - In general, better solutions are reached in multistakeholder initiatives
- Speaker 9 :
 - The concept of developing a hierarchical structure could be very helpful with the concept of duties and powers of each body
 - Ex: board at the top, then secretariat and plenary under the board
 - Under the plenary would be different working groups, and under the secretariat would be different administration bodies that are in charge of day-to-day operations
 - Also a "board of advisors" could be helpful
- Speaker 10 :
 - The code was thought to be an industry led process, but a great part was created by governments and civil society
 - Became a multistakeholder initiative in the last steps—looking at the language of paragraph 11
 - Owners of the code need to be the industry
 - You need to think more broadly as to what a plenary might be—very immature industry ; doesn't have any global structures
 - Proposal to have the board as the operation arm, with a two-part plenary under the board: 1) 1 part just industry members, 2) 2nd part including other stakeholders. 1st part may discuss industry issues beyond ICoC
 - Compliance with the code should be under the board's responsibility, as well as developing notes and guidance on the principles
- Speaker 11 :
 - Suggestion of a fourth category in of actors: a council of signatory companies
 - Distinction between code and standard:
 - Code : any proposals to amend need to be similar to the current multistakeholder process
 - Standard : needs to be done in a more formalized process ; plenary would have the options for giving the « thumbs up » for using the international standards (or national standards)
- Speaker 12 :
 - For the multistakeholder notion to be legitimate, each stakeholder needs to have an active role
 - We need to explicitly find a role in the appropriate place for each stakeholder

Ending Comments/Responses :

- Speaker 5 :
 - The decision-making process needs to be efficient—dealing with the whole plenary when making decisions will be too time-consuming
 - Also, not everyone in the plenary may not have the resources to be heavily involved
 - Board should be a multi-stakeholder board that takes most of the decisions
 - Plenary should be involved in major decisions—when there is a major change to the code or rules
 - If it's only industry it will lose its legitimacy
- Speaker 3 :
 - Board should identify the issues and set the agenda. Should be multi-stakeholder body
 - The question of how multistakeholder involvement in the actual decision making will occur? (i.e. majority vote, consent, proposals, etc.)
 - Best way is multi-stakeholder discussion where there is an open and transparent process—holding a vote may not get you where you want to go, but multi-stakeholder working groups can get you more where you want to go
- Speaker 6 :
 - Decision making in multi-stakeholder format to ensure that each stakeholder group has an equal representation with respect to key votes such as modifying or adopting a key vote
 - Each stakeholder group has the ability to say that its not prepared to move forward through a super-majority process: absence of supermajority of any stakeholder group acts as a veto, e.g., so if one stakeholder group is against it, then it doesn't pass
 - Ex of where this institution has been used :
 - Global Network Initiative (Microsoft, Google, Yahoo)
 - Best Example: Fair Labor Association
- Speaker 10 :
- How were these organizations funded ? How does funding work in the FLA?
- Speaker 6 :
 - Funding in FLA is predominantly from the company/industry side
 - Funds are placed in a trust that is controlled by the governance body-not in the individual caucuses
 - Many organizations will be reluctant to fund something that involves so many for-profit representatives
 - Hard and fast voting rules often has the practical effect of driving consensus
 - Actually ends up promoting the kinds of conversation that would be ideal where we're operating by consensus and we come to mutually accepted agreements