

Minutes, ICoC Working Group #3 Meeting : 27 June 2011 via teleconference

Attending :

- James Cockayne, Center on Global Counterterrorism Cooperation (USA)
- Melike Yetkin, US Department of State
- Doug Brooks, ISOA (USA)
- Dough Cahn, The Cahn Group (USA)
- Andrew Clapham, Geneva Academy of International Law and Human Rights
- Glynne Evans, ADS Security in Complex Environments Group (UK)
- Will Imbrie, DynCorp International (USA)
- Andy Orsmond, Human Rights First (USA)
- Erica Razook (Open Society Justice Initiative)
- Phil Rudder, WSI International (USA)
- Sylvia White, Aegis (UK)
- Margaret Belof, UK Foreign Commonwealth Office (UK)
- Ian Ralby, ADS Security in Complex Environments Group (UK)
- Estelle Mayer, Saracen (South Africa)

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

Points for Discussion

- 1. Jurisprudence capture**
- 2. Internal Governance**
- 3. Funding/Fundraising**

- We need to be aware that whoever funds this process is going to essentially own a good portion of the process
- We want to encourage companies to be apart of the ICoC, not discourage because of high membership costs
- Suggestion for fees to assigned as a portion of contracts; fees would be paid through the industry's clients
- Going through the size of the contracts provides a more honest basis
- Essential to get governmental support
- Raising the question of whether signatory companies should have to pay a fee to sit in the plenary
- The industry is fairly large at the moment, but we can't expect it to remain at this size
 - We need to be prepared to expand & contract based on events / size of market
- Possible external funding?
 - We can't rely on one single force for funding
 - We need government funding that is long term, rather than short term
- Funding from a variety of sources is important for the credibility of institution
- Fundraising :

- Different stakeholder groups will have different capacities to make contributions
 - We need a process that doesn't just equate funding with a stakeholder's level of control in the process
 - Independence between funding and decision-making is important
 - Govt. funding could be used for start-up costs for companies who don't have the funds to pay membership fees
- Governance :
 - Need a balance between all of the stakeholders being represented in the decision-making process while also ensuring that companies do not have to meet unrealistic demands
 - Distinction between ordinary and extraordinary decisions—keeps efficiency while also ensuring that each group is involved in the more challenging decision
- Jurisprudence:
 - Very important to view this initiative as an opportunity to learn
 - Builds a spirit of continuous improvement, encourages participation, and ultimately leads to better practice
 - Suggestion of a report that articulates a series of activities that can be shared publicly
- This might be an opportunity to develop a code in ways that other initiatives have not done
- The idea of jurisprudence capture is going to be very important, especially if we want people to really use the code
- MSIs must be sustainable—thoughts on funding :
- Important to keep in mind the nature of this industry—it's a very immature industry; there won't be a lot of money out there from the companies
- If all governments are going to be equal shareholders, it's hard to have an incentive for funding
- If clients are essentially going to pay for membership fees (through a percentage of their contracts), they need to be asked if they're okay with this charge
- On Jurisprudence→A key instrument would be an executive board that incorporates the secretariat and represents the stakeholders
- We need to decide what the money is actually going to be used for—operations & maintenance, costs for auditing or certification, the costs of investigations, etc.
- If there is an expense to do this, it needs to be an allowable expense under a US contract (or other national contracts)
- This expense hurts competitiveness for companies—the industry would have concerns about how much they have to pay
- There has to be a sustainable source of funding that we can count on, not just voluntary
- Funding can be voluntary at the beginning, but we need steady funding as well
- On the issue of Jurisprudence—is this the type of issue that could be dealt with by a working group in the plenary?
 - Suggestion of a working group in the plenary that proposes changes or amendments to the standards
- Important to have people with good operational experience looking at the reports as they come in
- Funding—it is possible to structure some distance between the source of funding and the decision making

- The 1% fee would probably be best applied to governments
- If the civil society wants to play a role in the plenary, maybe they should pay a fee as well
- This fee doesn't necessarily have to be financial—could be contribution of services
- If a company is being investigated or accused, the body needs a very clear process where the company can present its side of the story as well as listen to what has been discovered
- Jurisprudence: learning lessons through one another
 - Maybe an email where companies can receive advice on improving their behavior, or a forum for giving advice at plenary meetings
- Having clients helping to pay for fee might not be feasible for the companies
- We need to be realistic about what we can hope to achieve; industry is not in a position to fund this on its own
- The suggestion of sanctions for companies that violate the code—sanctions could be fines
- Each stakeholder group that participates in the board could have a fee assigned to them
- Source of funding and functions of funding need to be considered
- In ANSI standards meeting there was a provision found that wasn't in accordance with national laws
- The sanctions & punitive aspect of mechanism needs to be addressed separately from code maintenance
- Though this is a multistakeholder process, the non govt. orgs that are clients don't have any representation—we should see what the clients want and need from it
- What about the Swiss Govt?
- Jurisprudence—need a committee of legal experts
- There does need to be some careful consideration of the legal aspects
- Internal Governance: working group out of the plenary
- There needs to be a position for industry, NGOs, and government to identify funding
- Dispute resolution process is extremely important—critical component: auditing and certification scheme that is credible and independent
- Melike and James will report to TSC about what this WG has done so far and where we see this process going
- Next call: Tuesday, July 5th