ICoCA Special Board Meeting - Minutes
30 June – 1 July 2015

Present (Board)
- Alan Donohue
- Rémy Friedmann (Chair)
- Mark Knight
- Amol Mehra
- Andrew Nicholson
- Michael H. Posner
- Margaret Ellen Roggensack
- Bertil Roth
- Aly Sagne (1 July only)
- Sophia Willitts-King (30 June only)
- Sally Bentley (FCO, UK, alternate for Sophia Willitts-King) (30 June only)
- Ryder Thomas (FCO, UK, alternate for Sophia Willitts-King) (1 July only)

Present (Secretariat - ICoCA)
- Andrew Orsmond (Executive Director)
- Helen von Dadelszen (Operations Manager)
- Nelleke van Amstel (DCAF, Acting Project Officer)

Present (DCAF)
- Anne-Marie Buzatu (DCAF)

Support
- Sienna Merope-Synge (Center for Business and Human Rights)

AGENDA POINTS

1. **Opening of Meeting and Discussion of Agenda**
2. **Approval of Prior Meeting Minutes**
3. **Secretariat Update**
4. **Board Attendance**
5. **Committees Updates**
6. **2015 and 2016 Budgets and Staffing Plan**
7. **Fundraising Strategy**
8. **Membership**
9. **Communications and Outreach**
10. **Grievance**
11. **Reporting, Monitoring and Performance Assessment (RMPA)**
12. **Certification and Standards Educational**
13. **AGA Planning**

1. OPENING OF MEETING AND DISCUSSION OF AGENDA

The Chairman opened the meeting at 8.35am, and asked the Operations Manager to draw up the minutes. The Chairman took note that each of the three stakeholder pillars was represented by at least two Board Directors and that at least 8 Directors were present. He therefore declared that a quorum was present according to Article 7.6 of the Articles of Association (AoA), that the meeting was duly constituted, and that the Board could validly adopt resolutions in compliance with the law and the Articles of Association.

The Chairman confirmed that the agenda and supporting documentation had been circulated to the Board in advance. The Board approved of the agenda, with minor adjustments to timing and order of the items to be discussed.

The Board requested the Secretariat to amend the minutes of the March and early June minutes to remove the names of those companies reviewed and approved for membership.

2. APPROVAL OF PRIOR MEETING MINUTES

The Board confirmed that they had received and reviewed the draft Minutes of the 04-05 June Special Board Meeting.

The Board voted to approve and publish the minutes from the 04-05 June Special Board Meeting.

After further discussion, the Board requested the Secretariat to amend the minutes of the March and early June minutes to remove the names of those companies reviewed and approved for membership, recognizing that such discussions were held in Executive Session and that the Register, maintained by the Secretariat and published on the ICoCA website, should be the sole public record of those companies that had been approved for membership.

3. SECRETARIAT UPDATE

3.1 Certification Procedure Vote

The Executive Director confirmed that the General Assembly had voted to approve the proposed Certification Procedure, and noted a relatively high percentage of participation in the vote among the members of each of the pillars. No eligible disapproval votes were received.

The Board discussed the fact that some comments were also received and reviewed by the Secretariat. The Board recognized that the draft Certification Procedure had been submitted to members for comment on a few occasions prior to the vote, and that there was no procedure to accept comments on the final vote. Nonetheless, the Board noted that it would be good practice to take note of comments, if for no other reason than to be aware of members' concerns and views.

The Board resolved to announce the results of the vote to the General Assembly and other interested stakeholders.

The Board further confirmed that, in accordance with Article 3.3.1 of the Articles of Association, with the approval of the Certification Procedures effective as of 30 June, 2015, members companies would have until 1 July 2016 to become certified in accordance with those procedures.

3.2 Prior Action Points

The Secretariat reported that each of the Action points from the 4-5 June Board meeting were being followed up on and will be reported on in due course.

4. BOARD ATTENDANCE

Following discussions the Board resolved that Government Directors of the Board could invite "alternates" to Board meetings, but that such alternates must be limited to persons who are regularly in touch with the respective Director and who are fully briefed on the issues before the Board and the Association and prepared to participate in the discussion.

The Board also resolved that, while they cannot designate "alternates," the CSO and Industry Directors of the Board could invite "support" personnel to Board meetings, with the following conditions being met:
- *A person designated as "support" personnel must be engaged by the same organisation as, and report directly to, the Board Director they are supporting;*
- *The Board must be notified in advance of the individual's attendance, and the individual's name and position must be provided to the Board;*
- *The attendance of support personnel must be at no additional cost to the Association; and*
- *The individual must sign the [Non-Disclosure Agreement](#) and agree to maintain confidentially of the discussions held.*

The Board further directed the Secretariat to amend the 4-5 June board minutes to reflect this decision on the naming of "support".

The Board also recognized that the above discussion was without prejudice to the Board's ability to invite external experts to attend meetings and to present to the Board regarding certain discrete subjects, where their expertise added to the discussion. However, the Board agreed that such presentation and participation by outside experts should be limited to specific agenda items only, and are not an invitation to attend the entirety of a Board meeting (or day), due to a concern that otherwise the presence of outside persons would affect the working environment of the Board and the nature of the discussion and exchange between Directors.

5. COMMITTEE UPDATES

5.1 Executive/Personnel Committee
The Executive/Personnel Committee reported that they had discussed the scope of their responsibilities and saw the committee's principal role as providing oversight of the Executive Director and Secretariat personnel, as well as broad strategic guidance and coordination, without replacing the other committees' responsibilities. With regard to personnel oversight, the committee plans to institute a formal performance evaluation system for the Executive Director position and ensure that a similar system is created for the Secretariat staff. With regard to strategic guidance and coordination, the committee intends to ensure that each of the working groups and committees has a plan of action and is moving forward. The committee plans to confer again by telephone in August.

5.2 Audit/Finance Committee
The Audit/Finance Committee reported that finalizing 2015 and 2016 budgets was a priority and would require Directors responding promptly by email. The committee reviewed the expectation that they would receive and review both budgets by mid-July and would make recommendations

to the full Board shortly thereafter. The budgets would be shared with the General Assembly for informational purposes.

5.3 Legal Committee

The Legal Committee reported that their current priority is reviewing and redrafting the Association's request for privileges and immunities under Swiss law. The Executive Director described a preliminary meeting with the Section of Diplomatic and Consular Law within the Swiss Federal Department of Foreign Affairs, which is coordinating the submission of the request to the Swiss Federal Council. During that meeting, the Section Chief noted that preliminary feedback from other elements of the Swiss government suggested the need to narrow the scope of the request. The final decision to grant privileges and immunities rests with the Swiss Federal Council and this could take some time to be approved – therefore the committee will move to expedite its work as soon as possible.

5.4 Communications Committee

The Communications Committee requested the Board to discuss the Communications and Outreach needs and approach during the latter part of the Board meeting.

5.5 Certification Committee

The Certification Committee reported that now that the Certification Procedure had been approved, they would turn their attention to issuing the draft recognition statement for PSC.1 for comment. The Committee also reported that ISO 28007 was currently being assessed, that it would likely require further additional information compared to PSC.1, and that the Committee hoped to be able to provide further information about that analysis in the near future.

6. 2015 AND 2016 BUDGETS AND STAFFING PLAN

The Secretariat reported that the 2015 and 2016 budgets were being finalized and will be presented to the Audit/Finance Committee by mid-July. As noted in the Finance Committee report, once the committee has reviewed and commented on or revised the budgets, the Board will then be requested to review and approve these electronically. A Board call will be held, if necessary.

The Secretariat also reported that the Staffing Plans are being developed and will be submitted to the Executive/Personnel Committee by mid-July. The Board will then be requested to review and approve these electronically with a call being held, if necessary. It was noted that as the requirement for additional staff be engaged was becoming urgent.

A number of Board Directors also stressed the importance of being able to provide key Association documentation in languages other than English. The cost for this can be extensive and therefore needs to be included in the budget. It was noted that the provision of translation may be a requirement for some funders, including the Swiss government. Additional conversations need to be held regarding which documents are required and into which languages.

7. FUNDRAISING STRATEGY

The Board discussed the need to look at diverse funding sources to ensure the long-term sustainability of the Association. The adjustment of the membership dues levels and efforts to seek further government contributions will continue to be explored as the Association moves from a start-up to more mature state.

A sub-committee of the Board (Mike Posner, Meg Roggensack, Andy Nicholson, Alan Donohue and Rémy Friedmann) was tasked to develop a 3-5 year strategy and marketing document which would help in providing the real costs and benefits of the Association. This document could be used to start funding and/or involvement discussions with additional state and non-state clients. This document will be presented to the Board in October 2015.

8. MEMBERSHIP

8.1 Industry Membership Application Review
The Executive Director provided an overview of current membership and pending applications for membership, which the Secretariat continues to process in line with the AoA and Membership Requirements instructions.

The Board met in Executive Session and reviewed and discussed 7 applications for membership in the Industry Pillar.

The Board resolved that membership is granted to 6 companies on a transitional basis (as provided in Article 3.3.1 of the Articles of Association).

All companies approved will be provided with an explanation regarding the certification procedure and that the transitional nature of membership requires that companies will need to be certified in accordance with the ICoCA Certification Procedure before the grace period provided in Article 3.3.1 expires or their membership will expire.

The Board directed the Secretariat to follow up with the remaining applicant as to whom additional information or demonstrated satisfaction of all Membership Requirements is requested. The Board resolved that once this information is satisfactorily provided, the Secretariat is authorized to grant membership on a transitional basis without the need for the Board to review these applications again (except as the Secretariat may believe is necessary).

The Board discussed questions raised by some member companies regarding the date that their membership in the Association would be deemed to have been established. The Board noted that Article 3.3.1 of the Articles of Association had granted membership "on a transitional basis" to companies that endorsed the Articles of Association and continued to "meet all obligations of membership," but that that language was drafted (and therefore some companies had established membership) prior to the General Assembly approving the Membership Requirements document (which instituted the requirement for members to complete an application form and provide data about their operations and implementation plan). Notwithstanding the intervening Membership Requirements, the companies that endorsed the Articles of Association at or shortly after the Constitutive General Assembly in Geneva in 2013 and had since continued to comply with all Membership Requirements saw important value in having their membership recognized as of its earliest date.

The Board directed the Secretariat to assign a membership date based on the first date the company established membership (e.g. 20 September 2013 for those companies who signed the AoA into existence), assuming that the company had continued to maintain its membership and comply with all requirements established since that time. Companies that had not done so, however (for example, by failing to submit their applications for membership by the May 15, 2015 deadline) would have their membership established as of the time the Board approved their application, regardless of whether they had previously endorsed the Code.

The Board was reminded that the statuses "Signatory Company," "Founding Member," and "Certified Member" are not formally recognized by the Association. Companies who signed the Code, or who endorsed the Articles of Association, but have since failed to submit a membership application are no longer meeting the obligations of the Code and therefore are not members and should not be representing themselves (directly or indirectly) as such. The Secretariat will start following up with any companies still using these terms publically, request that they cease doing so, and invite them to become members.

The Board further directed the Secretariat to follow up with any companies who are not approved members but who are displaying the ICoC or ICoCA member logo on their materials, inviting them to be members but requesting them to stop displaying the logos.

The Executive Director reported that a number of applications were still under review by the Secretariat but are not yet ready to be submitted to the Board. The Secretariat will continue to work with these companies and will submit them to the Board when they are sufficiently completed.

The Board resolved that in light of the acceptance of the Certification Procedure, membership applications received after 1 July would require a more explicit Implementation Plan, including an affirmative statement regarding how they propose to become certified within before 1 July, 2016.

Finally, the Board discussed a number of cases where a company has applied for membership, but does not fit into the criteria of a PSC, as defined in the Code and the Articles of Association. The Executive Director noted that this was most likely the result of requirements imposed both in U.S. contracting law and in the new Swiss law relating to PSCs, requiring PSCs as well as certain of their suppliers of services and business partners to be "members in good standing" of the ICoCA.

The Board discussed the potential implications of support services companies (including, for example, those providing training and personnel recruitment services to PSCs) being included as members. After considerable debate, the Board resolved that it would not make sense to expand membership eligibility, at the present time, beyond those companies providing Private Security Services (as defined in the Code), but that the Board would revisit this issue in the future.

8.2 CSO Membership Update

The CSO Directors on the Board reported that they were currently reviewing two CSO applications and revisiting one previously received application. A call of CSO members was held on 29 June and the need for an outreach strategy needed to be developed.

8.3 Observer 2015 Fee Setting

The Board discussed the requirement in the Membership Requirements Document to set an annual Observer fee, as well as the authority of the Board to waive that fee for Observers in certain categories (as provided in Part 5, number 5 of the Association Membership Requirements).

The Board resolved that for 2015 the Observer fee would be $1,000 USD.

The Board then met in Executive Session to discuss whether to waive the Observer Fee for certain Observers, guided by the categories contained in the Membership Requirements Document.

The Board resolved to waive the 2015 observer fee for a number of observers based on the factors contained in the Association Membership Requirements, and directed the Secretariat to invoice 2015 Observer fees during the Third Quarter of 2015.

The Board reviewed and approved a new Observer application and directed the Secretariat to follow up with the applicant.

9. COMMUNICATIONS AND OUTREACH

9.1 <u>Montreux Document Forum</u>
The Chairman informed the Board regarding a meeting of the Montreux Document Forum Working Group on the ICOCA in Geneva on 2 June. In advance of this meeting a number of questions were put forward to the group (available in [Appendix 1](#)).

Key outcomes of this meeting are the need to follow up with Greece, France and the Netherlands who are all interested in being more involved in the Association. The EU should also be engaged.

It was further suggested that the Montreux Document Forum participants might be interested in having a side meeting event at the 2015 AGA. Members of the Government Pillar will further discuss this idea.

9.2 <u>Procurement Language</u>
The Board discussed and agreed that it would be worthwhile to develop model language that countries could use in their procurement policies (as a requirement or "positive factor") and/or laws. Amol Mehra noted that the International Corporate Accountability Roundtable is mapping procurement policies around the world and will share this with the Board in preparation for the effort to help develop industry-specific procurement language.

10. GRIEVANCE

The Grievance Working Group reported having held a preliminary discussion, during which they had decided to request that DCAF to undertake some research regarding other grievance mechanisms which the Association could learn from. The Board will be provided with the resulting report.

11. REPORTING, MONITORING AND PERFORMANCE ASSESSMENT (RMPA)

The RMPA Working Group reported to the Board regarding the status of discussions on the development of Article 12 functions.

11.1 <u>Status of proposal to U.S. Dept. of State (DRL)</u>
The Executive Director reported that a revised funding proposed for the development of the Monitoring function had been submitted to the US Department of State. The proposal outlines three distinct phases in the development of this function but leaves room for the RMPA Working Group to develop the details of the function. The group had met and endorsed this proposal.

11.2 <u>Development Process</u>
Working Group members from each of the pillars outlined their priorities and approach for the RMPA function, which included consultation at every stage in the development, to create buy in

and develop a publically credible process where good companies continue to perform within the code and others are encouraged to improve their performance. Further information regarding the development timeline will be worked out in the coming weeks, and made available on the ICoCA website.

The RMPA Working Group noted that they would be meeting again immediately following the Board Meeting to continue discussions and agree on next steps, and would have regular meetings by telephone and, where necessary, in person in the coming months in an effort to continue timely development Article 12 functions.

The Executive Director briefed the Board regarding outreach to Observers who are clients of PSCs in an effort to include them in the Article 12 process. The Board discussed and agreed on the criticality of this outreach, noting the concerns expressed in the past by clients regarding the potential impact of Article 12 functions (particularly in-field monitoring) on clients and the desire of the Association members to ensure that clients are comfortable with the objectives, functions, and outputs of the Association's RMPA processes.

12. CERTIFICATION AND STANDARDS EDUCATIONAL

The Board invited a representative from MSS Global, a company accredited to certify companies to both ANSI/ASIS PSC.1-2012 and ISO 28007, to explain the procedure companies go through in order to get certified to standards (e.g. PSC.1). The representative answered various questions from Directors of the Board.

Following the presentation the Board discussed the need to continue to explore other standards and additional pathways to Association certification.

The Certification Committee noted the need to continue to also function as a Working Group in the consideration of alternative national and international standards as well as other solutions to the cost and other barriers currently preventing wide-scale certification to existing industry-specific standards. The Committee/Working Group will conduct regular meetings to discuss and recommend various options and will provide further information to the Board for consideration.

13. AGA PREPARATION

The Board discussed a number of items that would need to be put before the General Assembly for vote at the AGA. These included:
- An Amendment of the Articles of Association to allow for General Assembly proceedings to take place via electronic means;
- The potential need for an extension of the "phase-in" time for certification contained in Article 3.3.1 of the Articles of Association, depending on the outcome of continued development of certification processes and recognition of standards;
- Approval of formal Board nomination procedures for each pillar; and
- Selection of new Board Directors.

The Secretariat will prepare draft language for these matters for the Board to consider and approve so that they can be distributed to members prior to the AGA. The Secretariat noted that any items for vote at the October 8 AGA would need to be distributed to members no later than the close of business on September 7.

The Board will further discuss the content of the AGA during upcoming Board calls.

Appendix 1: Questions submitted to the Chair of Montreux Document Forum Working Group on ICoCA

We hereby submit the following questions for the consideration of the Working Group in preparing for the meeting on 02 June:

I.   As you may know, in accordance with its Articles of Association the ICoCA is responsible for certifying that the systems and policies established by Member Companies of the Association meet the ICoC's principles and standards, and that these companies undergo monitoring, auditing, and verification procedures. We have prepared draft certification procedures, and anticipate that the members of the ICoCA will vote on adopting those procedures in the very near future. In considering how these procedures might relate to and take into account existing national regulatory and licensing systems, it would be helpful to understand the following:

   a.   What kind of procedures do Montreux Document participants apply for granting authorizations and for ensuring that Private Military and Security Companies (PMSCs) comply with relevant national law, international humanitarian law and human rights law?
   b.   What resources are allocated by Montreux Document participants to this function?
   c.   Do Montreux Document participants grant authorizations by company or by context?
   d.   Do Montreux Document participants provide an opportunity for PMSCs to respond to allegations that they have operated without, or in violation of, an authorization? If yes, what kind?

II.   As we consider our efforts to broaden participation in the ICoCA by Montreux Document states, it would also be helpful to understand:

   a.   What factors, in the view of Montreux Document participants, are keeping States from joining the ICoCA?
   b.   What steps can the ICoCA take to help address these issues?

Of course, in addition to the above questions we would also welcome the opportunity to answer any questions that the Working Group members may have. Should any members wish to submit questions to us in advance, we will do our best to prepare a more thorough response in preparation for the discussion.