

## Summary Note

Swiss FDFA- ICoCA -DCAF Side-event at the Third Annual Forum on Business and Human Rights, Geneva, 3 December 2014

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Title: 'Overseeing Private Security Operations in Complex Environments: Putting the International Code of Conduct for Private Security Service Providers into Practice'

Location/Time: Room XXII at 8:00

### Panellists:

- Mr. Rémy Friedmann, Chairman of the ICoCA Board of Directors, Senior Advisor, Desk Human Security and Business, Swiss Federal Department of Foreign Affairs
- Mr. Andy Orsmond, Executive Director ICoCA
- Mr. Alan Donohue, Board member of the ICoCA, Vice-President of International Legal Affairs for Triple Canopy
- Mr. Aly Sagne, Board member of the ICoCA, Managing Director of Lumière Synergie Développement
- Mrs. Alexandra Guaqueta, Members of the UN Working Group on Business and Human Rights (Introduction)
- Ms. Nelleke van Amstel, Project Coordinator DCAF, (moderator)

### Main points relayed by the presenters:

Alexandra Guaqueta introduced the topic of private security regulation through this particular initiative, the ICoC and its Association. The ICoC sets standard overall criteria that may inform industry specific regulation. It includes a grievance procedure for companies. Participating States are informed by pillar I of the UNGPs to ensure the protection of human rights from potential negative impact of these companies; they can see the ICoC as a vehicle of the UNGPs. This is part of a new generation of MSIs, which includes the following elements: a long process ensuring diligent consultative and technical work before the establishment took place; a strong governance and accountability structure accompanies the standard; it is inclusive and goes beyond the participation of a smaller group of movers; there is an incentive structure surrounding it, where obtaining contracts will depend on company participation.

Remy Friedmann set out the historic development of the ICoC and its link to the broader Swiss Initiative, which also includes the Montreux Document. The ICoC and its Association came into existence as a result of a multi-stakeholder initiative, launched as a part of the Swiss Initiative to enhance regulation of the private security industry and raise standards of their operations. It's related both to State initiatives on regulating PSCs, such as the Montreux Document and the Draft UN Convention, as well as to the UN's respect, protect and remedy framework. This is a new

generation MSI, where oversight and accountability are added, and the voluntary standard becomes pressing by inclusion in procurement policies or law, such as the recently passed Swiss legislation on PMSCs, which refers to the ICoC.

Andy Orsmond shed light on the practical working of such an MSI. Continuous communication and deliberation are at the heart of the process. This also creates the opportunity for participative discussions for all stakeholders. Currently, the ICoCA is developing its three core functions: certification of PSCs, performance assessment (including monitoring and reporting) of company compliance, and a complaints procedure. It was also emphasised that it is still early in the process of setting up the ICoCA; the process takes time, personnel and expertise. Additionally, it takes funding, and with that State and company commitment. Lastly it takes patience; it is a multi-stakeholder process to create all the procedures. Agreeing to a broad set of principles was one thing, but getting to the details of how to implement these principles is even harder.

Alan Donohue set out the PSC perspective on benefits of ICoCA membership. First of all, it was pointed out that the participation of an industry in this MSI is key for the buy-in of the industry, and at the same time offers an opportunity to articulate their commercial considerations. It also offer an opportunity to interact and have open dialogue with actor which are not usually interacted with outside contractual negotiations or complaints situations, such as CSO and governments. Such a collaborative process can bring out best methods of implementation of standards, and best practices. At the same time, industry benefits from the identification of agreed upon human rights principles, inclusive for all of industry, and standardized. The importance of non-state client, as a driver of demand of higher standards, should not be underestimated. Benefits for clients include clear selection criteria for contractors, and an assure to clients that all member PSC subcontractor operations are consistent with respect to human rights, legal obligations and good industry practices. For both the PSCs and their clients, there are also reputational benefits.

Aly Sagne outlined the specific problems with PSCs on the African continent, referring to post-conflict situations and the many extractive sites protected by security contractors; globalization, conflict and political instability, piracy and the presence of natural resources are all factors playing into the presence and use of PSCs. In particular the invisibility of PSCs in Africa is a problem; they are not clearly indicated, and therefore there is little knowledge of the size and content of the issue. This leads to a situation where there is a key role for private contractors in providing security. In terms of oversight, there is a lack of national legislations, and those existing are weak. Then, there are often relations between the government and the PSCs.

#### **Key issues of discussion** (raised by the audience)

- Can the ICoCA General Assembly be used as a platform to require companies to commit to adhering to national laws of the countries where they operate?
  - The ICoCA general assembly form a good platform to share concerns between the different pillars, hence States can voice concerns they may have to the PSC industry. Therefore, participation of governments in the ICoCA should be encouraged and seen in this light.
- Certification will look to existing industry standard's certification to base itself on. Does that mean that if companies lose their certification to, for example, PSC.1, they also lose ICoCA certification?
  - The ICoCA will have to be in close contact with certification bodies, and will independently also look at the implementations of the ICoC provisions, which are included in PSC.1. The loss of PSC.1 certification will possibly prompt a review of ICoCA certification, depending on the exact certification criteria, still to be established.
- What other efforts are made to encourage more States to participate? In particular, looking at the Swiss example, are any efforts made to encourage other States to follow this example of using the ICoC in hard law?
  - The government pillar of the ICoCA employs all possibilities to encourage other States to participate, in events, bilateral meetings and through demarches.