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HELSINKI – GAC Human Rights and International Law Working Group Meeting
Wednesday, June 29, 2016 – 08:15 to 09:15 EEST
ICANN56 | Helsinki, Finland

MARK CARVELL: Good morning. This is the meeting of the working group on human rights and international law. Thank you very much for coming at this early hour. It's much appreciated.

First of all, to introduce myself, my name is Mark Carvell from the United Kingdom government. I'm one of the co-chairs of the working group, along with Jorge Cancio, from Switzerland to my left, and there is a third co-chair, Milagros Castanon from Peru, who hasn't arrived yet but we're expecting her to arrive shortly.

So you have the luxury of three co-chairs for this important area of work.

And just to recap, especially if you're new to the GAC and new to this particular working group, a little bit of the history. The working group was established last year, I think. It really came together at the Singapore meeting, as I recall. And work proceeded from that meeting to prepare terms of reference, which were agreed at the Marrakech meeting earlier this year. And you can see the terms of reference on the GAC's website under the working group's heading.

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Briefly, to summarize the terms of reference, the working group will focus on ICANN's policies and procedures which relate to human rights and relevant international law. Its objectives are to consider any steps that ICANN could take to ensure the technical coordination of the Domain Name System is managed in a way which respects human rights and relevant international law consistent with ICANN's Articles of Incorporation; in particular, Article IV.

Secondly, our objective is to cooperate with the other advisory committees and supporting organizations, and, indeed, the wide roster of constituencies in ICANN on issues relating to human rights and international. And as you may be well aware, there is a cross-community working party on corporate and social responsibilities -- on ICANN's corporate and social responsibilities to respect human rights. Very long title. I think we'll probably refer to the acronym from now on, the CCWP. And, indeed, we will have a meeting with the CCWP, which is chaired by Niels ten Oever, who some of you may know. We'll have a meeting tomorrow at 3:00 in room Veranda 1, I think it is. So I hope you will be able to join that. And that is an opportunity for us to connect with the Cross-Community Working Party for us to hear how their work is progressing and for us to report on our work in the cross-community -- sorry, in the GAC Working Group on Human Rights and International Law. So we have that

sort of channel of direct interaction with a -- with a community work party. So that's a second objective which is set out in the terms of reference.

And the third objective, which I think is very important and relevant to our discussion this morning, is participation in work streams that are going on, being undertaken or work streams that will emerge where human rights and international law are going to be very relevant.

So those are our sort of, in summary, our principle objectives, and we would come on to the substance of the meeting to discuss how we're going to do that with the work plan, which is on the screen. We'll turn to that very shortly.

Our working methods are broadly to undertake some analysis and consideration of issues relating to human rights and international -- relevant international law, and make proposals, which we would then submit to the GAC for approval as inputs into other processes in the wider community, in the work streams and PDPs, and so on, which -- where our focus of activity will be, as we will discuss with the work plan shortly.

And we will meet as a working group at every GAC meeting, and we will hold ad hoc interaction with other processes going on as a working group. And as I mentioned, there is the linkage that

we're creating through discussions with the Cross-Community Working Party, the CCWP, as an example of that.

As reference points, perhaps, it's worth stating in this context one of the key ones, which some of you may be familiar with, is the U.N. Guiding Principles on Business and Human Rights, which, in our terms of reference, we identified as a potential framework for examining ICANN's respect for human rights and relevant international human rights law. So those U.N. Guiding Principles are worth looking at.

And relating to that, I would just draw your attention to a report which has come out very recently by the U.N. special rapporteur on promoting and protection of the rights of freedom of opinion and expression, David Kaye, U.N. special rapporteur, he has just produced his 2016 report, and in that he takes a first look at the private sector's role in -- in the digital age in respect of human rights and identifying where potential guidance is needed.

It's a first report, as I understand it. There will be -- David Kaye will be producing a series of reports. And that does reference ICANN. If you look at that report, you will see that he surveys the range of actors in the digital area, and included in that is ICANN and ICANN's role in respect of coordinating and allocating domain names and expanding the Domain Name System, and so on.

So that's a kind of real affirmation, really, of how what we are all contributing to here in ICANN has resonance in terms of rights -- in particular, freedom of expression and opportunity, as we look ahead to the work. So it's a useful -- I think we're going to post that report on our website. Are we intending to do that? We will do that, and it's worth taking a look. And as I say, that is an ongoing series of reports that the U.N. special rapporteur will prepare.

So that's, in summary, the context for the work of the working group. And since Marrakech, we, the co-chairs, in consultations with the GAC membership, have put together a template work plan, what you see on the screen. In fact, it goes on to two pages. But we will go through this shortly. I'll turn to Jorge to work our way through the work plan.

And we also issued a call for volunteers from the working group to lead on the items of areas of work listed in the work plan. As you may have seen, we issued that call, and that's something for us to now take forward in terms of setting this work plan into action. We need to have leads who will engage with the various processes, the PDPs and so on, and to report and to develop opportunities for the working group to put together potential inputs and proposals which, as I said earlier, we will then work through the GAC plenary in order to then proceed to submit them into those processes.

So that's essentially the stage we're at. And if there are any questions on that in terms of context, please raise your hand now and we'll -- or comments you'd like to make on the way forward, please raise your hand now. Otherwise, I'll turn to Jorge to introduce the work plan in more detail and to work through it.

I don't see any hands raised, so -- so with that, I'll turn to Jorge.

JORGE CANCIO: Okay. Hello. Good morning to everyone. And thank you again for coming this early to this meeting.

Before I go into the work plan you've got on your screen, I just would like to complement what Mark introduced with an overview of the points we will discuss during this short session.

First of all, we have to go through the -- through the work plan as finalized intersessionally, see the gaps we have to be filled and try to see how we best allocate the many, many volunteers I expect we will have for the different items.

Second point is to confirm who will take over the liaison activity with the Public Safety Working Group, which was -- is also on the work plan but was in our terms of reference as a consequence of consultations with some of you during the process of finalizing our terms of reference.

Third point was also to discuss a possible invitation to IGO members to summarize the relevance of the Human Rights and International Law Working Group to the work on rights. And then we have possibly the main discussion item, which is about what is going on in the CCWG on accountability in regards to issues relevant to this working group.

And finally, just as a point of confirmation, to discuss very briefly what we will be doing during our Joint Working Group with the CCWP on Human Rights and Corporate Social Responsibility, who we are meeting this Thursday, as Mark said, in Veranda 1 from 15 hours to 1545.

So this was in -- this draft agenda was in our email to you of June 7th.

If there is no comment, we will proceed with it.

Thank you.

So the first point is to talk about the work plan. I guess you have had a look at it. Do you have any general questions on the work plan? Kavouss.

IRAN: Good morning to everybody. Thank you, Mark. Thank you, Jorge, for the presentation, for the work so far that has been

done. I have a small question to raise. Mark asked whether there are volunteers. No hand was raised. Perhaps it was too early in the morning. Maybe in other later stage there will be more hands, but what I'm asking that shouldn't we put our efforts and focus, our activities, on an area which we may get a more expanded information on this human rights? The group dealing with that, whether you call them CCWP or part of the CCWG accountability doesn't matter, was the second largest group for Work Stream 2 after the jurisdiction and the time of the many colleagues are very limited. But this is not the main point. The main point is that the richness and the -- the degree of information that we can get within or from that group with more larger participation of many experts on this very complex issue, is it different what they do or do we have two different applications for DNS in GAC viewpoint or from GAC viewpoint and from ICANN viewpoint or from community viewpoint or all of them are going to one direction?

I think it might be advisable if you can put our efforts in one area. There is considerable amount of work already done on Work Stream 1 under the chairmanship of one of the co-chairs. Sanchez. Leon Sanchez. And then there are something in the report. However, everything was postponed until we have Framework of Interpretation of human rights. I think that will be not quite productive if we divide our efforts. If you call for some

meeting, virtual or something similar of that, and if somebody's working on that group, it may not be available to this group and vice versa. Or we may do two different things, two different understanding. Because our understanding of the issue is limited because it's based on few people -- very few that are attending but better in that group there are at least 42, plus observer, up to 65 and 70 people. So more input, more information. I'm asking question. I'm not against your group. It's very good. But I'm asking, what is the most appropriate way to avoid duplications and concentrate all our efforts on the very important area of human rights in the ICANN or in the Internet activities. This is a simple question, and perhaps we should see whether we have an answer to that. Thank you.

JORGE CANCIO: Thank you very much. Any other general comment? Well, I feel this comment from Kavouss is very pertinent and it speaks to how we were intending to organize this session. And also to how the work plan is presented. In the end, it's a flexible instrument and it depends -- and it's focused on -- on the activities that are ongoing in the wider community and what it provides for is -- it's a forum within the GAC to channel our inputs on human rights and international law issues to these processes that are ongoing in the -- in the wider community. And as Kavouss rightly mentioned, the efforts in the CCWG accountability, which as I

said were the -- all the main discussion point for our session today here, are probably the most relevant in the present moment. So with this, I would like to go over the different items in the work plan and just ask you to consider whether you would be in a position to volunteer to the different items. As you see, we have items 2-4, participation in the main policy development processes going on in ICANN. Perhaps you don't have to answer today. If these processes are just starting, to a great extent you may reflect on the possibility of participating actively in these PDPs in the coming weeks from here to Hyderabad and propose yourself, volunteer, if you are willing to follow one of -- of these items. So item number 2 is participation in the new gTLD subsequent procedures, it should say, not subsequent rounds, PDP. The third is the participation of -- in the new WHOIS PDP, which is our Registry Directory Services PDP. And the fourth in the review of the rights protection mechanisms. Nevertheless, if there is anyone already volunteering at this moment, anyone interested? No? Not yet? You have to reflect more? Okay. So take your time and come back to us and inform us.

And then, of course, we have the item number 5 which is the more pressing issue which is the participation of fellow working group members or GAC members in general in Work Stream 2 of the CCWG where probably the most important topic for this working group is the development of a Framework of

Interpretation of the human rights commitment which was included in what was the recommendation 11 of the Work Stream 1 report of the CCWG accountability which was included as a bylaw provision in the bylaws adopted by the board on May 27 which will enter into force whenever the transition is -- comes into effect. This would be starting in October, if everything goes as planned. And there is, as Kavouss said, already a work about to start in the CCWG accountability. The colleagues there from the CCWG accountability will develop a Framework of Interpretation of how to interpret the commitment on human rights which has been included in the bylaws. So we expect a clear and a short document to be developed by this working group, and then this recommendation would have to be adopted by the board and the -- by the chartering organizations and the board to be implemented later on. But now it's the time for anyone interested to participate in that work. It's in the CCWG accountability in a subgroup which is being formed for that where the discussions will take place. Of course, chartering organizations, and the GAC is one of them, will be consulted on the draft and the proposals. But if you want to really have a direct influence on how this Framework of Interpretation is formed, it's the time to engage and participate actively in the CCWG accountability on this subgroup.

So any questions on this point?   On the Framework of Interpretation? Kavouss, thank you.

IRAN: Thank you, Jorge. Just for information of colleagues, I have registered as a participant for the time being for that group. I have asked for three groups, but one is this one. The other one is jurisdiction. What -- I am suggesting that whatever work we do should be not in the way that we are competing with that group. Should be contributions or sometimes complementing that and that would be very important. We would not like to have two different outcomes, sometimes maybe -- maybe contradicting. There might be a contradiction in the way that they think of the issue. It is better if there are different views. These different views we express in that group or be fed to that group in order that the outcome of the group of Framework of Interpretation would cover points of everybody. But not to have two different views which may mislead the leaders. So maybe we have to consider in the objective of this group that contributions and in a complementary manner or whatever manner to that group with a view not to have any competitions and not to have any overlapping and not to have anything -- contradictions to that output. This is very important. Thank you.

JORGE CANCIO: I think this point is very well noted and at least for our point of view we are completely in agreement and this is the -- also the meaning of this participation is to also act as a liaison in order to -- to get the discussion which is ongoing there, to get the relevant information here and to enrich the -- the point of view and the -- and the possible inputs of our colleagues which may actively participate in the CCWG accountability. But I think Mark wanted to make a comment.

MARK CARVELL: Yes, thank you, Jorge, and thank you, Kavouss. I think you're hitting on an important functionality of the working group here is that we can provide the channel for coherent and effective inputs into the work of the subgroup and as you rightly say, there are members of the GAC who have registered, like yourself, either as active participants or observers. And so the working group I think is an opportunity for the members to understand how that work is progressing of the working group. We can share reflections on the discussions which will be, as you say, involving a lot of people and perhaps difficult to understand in terms of the volume of contributions that might go into -- I expect to go into that subgroup's activities. So I -- what I anticipate is that the members and the leads that we might

identify in the work plan 4 engagement in the CCWG subgroup on human rights will convey back to the working group how that work is progressing in terms of developing the Framework of Interpretation and where, from -- in particular from a governmental perspective and the perspective of the IGOs with their deep expertise as well in this area, can inform and contribute to the effectiveness of that subgroup's work. So that's how I see us in this working group contributing in a very efficient and effective way to the work of the subgroup and help that work progress to formulating a coherent Framework of Interpretation that takes full account of relevant and international law and so on. So that's how I see it going forward. And that's why we're looking really for colleagues in the working group to help with that process, to when we next meet and also intersessionally to convey, you know, this is how the work is going, this is where we -- we see opportunities to contribute to discussions deploying our expertise and knowledge and also our network out to external experts as well. Thanks.

JORGE CANCIO: Thank you very much, Mark. Very useful remarks. Wanawit, did you have a comment?

WANAWIT AHKUPUTRA: I tried to put something in as well for I think on the page 1, if you can go back to the page 1. I think you can, I think, ask to work on the new WHOIS PDP on the GNSO as we -- because they're in the requirement phase and I do see some of the points we follow-up since the PDP on the translations and transliterations that had been done and conclude that I think we could be about to participate in that three, I think the task number three.

I would like to urge the GACs from the country that use the ASCII types of the address theme to read the final report on translation/transliteration because a summary is that that treaty questions that the GNSO would like to give the answer first whether it's required to translate into one language, which means English. Is that mandatory to do?

Secondly, who bear the cost of that translation/transliterations? And that the main issue, that the PDP process of translation/transliteration did earlier than the -- now they call new WHOIS PDP or whatever you like to call it.

But I think that's still the different point of view in the PDP process. And (indiscernible) Thailand participate since the first meeting of that PDP. So I agree it's important that we have to be early engaged.

The most important thing is our point been taken into the PDP, even though it's just a GAC Thailand, is not GAC consensus on

that. But at least (indiscernible) so it will be documented and it's there that we already have our opinion and we make our point known even though the consensus is not go for translation. Does that mean contact information inside the WHOIS still be in the local language? That are the issues.

And that plenty of document need to read. And I think for the GAC, I think we need to work in the teams. And a lot of issue I do share the feeling you have is most like coming to the (indiscernible) train that's running maybe 200 kilometers an hour when you participate in. That are the part are difficult, but I think you can start to engage.

And I think we have a core team that we can discuss and then spread the work, that the most important thing is not meaning that you have to follow every subjects. I cannot follow all. I just only try to follow when they start to talk about this localization language issues.

And it would be great if you have a team to support in the working groups and then you just point out what are the subject matter that you really focus that will help. So in that way we can work together in the team. That what I feel. Thank you.

JORGE CANCIO: Thank you very much, Wanawit.   You may take this as your intent to try to participate actively in Item Number 3.   That's very, very much appreciated.

I think we're having also a very interesting discussion on -- on how to participate on this other also pressing issue of the framework of interpretation in the CCWG accountability.

I -- before we go to Kavouss, I just wanted to mention that we already have some active participants of the GAC within the CCWG in general. I would like to urge colleagues to also sign up for the subgroup on the framework of interpretation.   As Wanawit said for the WHOIS work, it's very important to be there from the beginning to engage with the community to understand the other points of view to participate actively there. That will really permit to develop a framework of interpretation and when it comes to the chartering organizations, including the GAC, will be understandable and acceptable to all.

So with this, I would like to ask you if there is already anyone from you who is participating in the CCWG accountability who would be willing to engage into the subgroup?   And we have Kavouss and then Milagros.

IRAN: Thank you, Jorge. You refer to some part of what I wanted to say.

In that group working -- cross-community working party, we, means GAC, are one of the six chartering organizations finally would comment on that. There are others who might have different view on the issue. We have contracting members on that, non-contracting members, registry, registrar. You have the contractual, non-contractual, IPC, service provider, and many things. So our views may be reflecting the views of governments. But in addition our views, should also be matched or finally included in a way that we have a general view of human rights and framework of interpretation which covers viewpoints of everybody in a collective manner. So this should be taken into account.

Other things is that from the topic point of view, jurisdiction and human rights, there are two complex issues requires considerable amount of background, background in order to comment, background in order to actively participate at the meeting. Because in the activity of CCWG, we have three categories of participations: Passive participations, listening only. Then you have active participations, contributing. But sometimes contributing should be the direction that is consistent with the background issues understand the discussions in order to have a more positive output.

So the volunteer for that requires a lot of preparatory work at home in order to be aware of what issue is discussed, what are the things. There are considerable amount of information in Work Stream 1. I suggest, perhaps, some of the colleagues may wish also to look at those material which provide them some preliminary information where we are, what were we discussing. For instance, when we say "international conventions," which international conventions? There are many. When we say "human rights," what are the human rights? All of the things. You have right to education. You have right to many things. You have right to speech. You have right to free flow of information, many other. So we have to be aware of all of those things in order that be properly heard at the meeting and positively contribute that we finally go to the convergence of the views.

Anything that I -- because of lack of knowledge, I'm talking myself, diverting the discussion and so on and so forth may not be welcome. So we have to be more prepared for that.

So this is a call for real homework before participation at the one-hour or two-hour discussions. That is very, very important. So material that Mark referred, for instance, is important to look at those reports. This is one report. There are other reports as well. If you or others have any information like that, please kindly provide that. Post it somewhere and call the people to look at that one. And if within that very long report, there are

areas more important to focus. If you can identify, please kindly identify for the benefit of the others. That is very important. Thank you.

MARK CARVELL: Yes, thank you very much. That exactly is the kind of function that I see the working group performing, collating the relevant materials and the knowledge and tapping into the expertise that GAC members and IGO observers who are closely involved in conventions -- relevant conventions and so on is very important. I agree entirely. We will develop that functionality through the working group and use of the Web site and our mail list.

Now I will turn to Milagros. Yes, thanks.

MILAGROS CASTANON: First of all, Jorge and Mark, I'm very sorry because I was late, and all of you as well.

And I wanted to go back to what Jorge just said and what Kavouss said as well. The framework of interpretation is extremely important. It's very important that we all get involved in this working group, this subgroup. And not only because of the content -- the final contents of the framework of interpretation but also because as far as I'm concerned, there's -- there are a few questions that arise from the idea of a

framework of interpretation, which I have already -- Peru has already expressed through the comment period for the bylaws.

We don't know, for example, if this framework of interpretation will have the same legal standing as the bylaws. If it's a framework of interpretation of the bylaws, it shouldn't have the same legal standing. So the bylaws require even more importance. And it's also important to point out that to this respect the bylaws as far as, for example, international law is concerned are not well written.

They lack accuracy. I don't want to waste everybody's time with my repeated comments. We have already posted them in the Web site for commenting the bylaws.

We find them a little ambiguous, and I presume that this ambiguity is one of the issues that will be taken care of through the framework of interpretation.

Regarding what you just said, Kavouss, about conventions, that's another error that has been made when describing the extent or the -- (non-English word or phrase) -- of ICANN with international law.

In this regard, the sources of international law which are -- one of them are conventions. Only one of them. But, you see, it's

not well written because either -- you cannot choose one from the other.

I have made, on my own, a list of applicable laws known today. I remember Suzanne Radell also insisted on knowing what were the applicable laws, and I made it a point to research surrounding this preoccupation of Suzanne, and there is a list that I can share with you but it is not a conclusive list, not only because there is not one complete binding framework, international framework for the Internet, but also because there is many -- there are many soft laws that are being taken into account for the application of Internet in the lack of an international framework, a legal framework.

And finally, addressing also one of your preoccupations, Kavouss, another issue that we have raised is the evolving nature of law. That is, this concept does not only apply to international law, it applies to law -- it applies to national law, but in this case I'm going to refer to the evolving nature of -- notion of international law. That has to be included, because this is a body of rules that will continue evolving and we cannot make a conclusive list, even -- and even worse, when all the sources of international law are not being pointed out.

Thank you.

JORGE CANCIO: Thank you so much, Milagros.

I'm reminded that we have six minutes left and we still have to cover some of the issues, so I think we cannot enter into substantive discussion right now. We have to still cover a couple of administrative issues.

I think that what Milagros was commenting on now are very important substantive points which we need to engage with the working -- with the work in the CCWG on the framework of interpretation in order to make those points, to discuss it with the rest of the community, to channel it into that work, as we said before.

We would like to urge colleagues to focus on this item of the work plan. As I said before, colleagues who are already a part of the CCWG to consider signing up for this subgroup. Colleagues who are still not members or participants in the CCWG but who want to effectively contribute on this, that they consider to participate here because it's open to everyone. And then I will take a very short comment by Indonesia, but a very short one, and then we will go over to the last points we have before we have to wrap up. Thank you.

INDONESIA: Thank you. Just very short comment that I agree that -- I fully agree that international laws are so many and difficult to review all of them.

Moreover, there are countries who follow some international law, some don't follow it. Some agree with Budapest convention, some doesn't agree. Some agree with WTOTIA or -- ITA or some -- doesn't --

What I think can be -- can be accommodated -- considered by the working group is that how we can make bylaws. We certainly avoid to have collision or different approach with the different regulation with the other international laws. Perhaps the one that was presented yesterday for -- relating to accreditation for operators related to law enforcement agencies as presided by -- I forget -- during the law enforcement session yesterday, I think we can consider to be followed.

For example, there are bylaws. If you follow it, you get one credit. If you don't follow it, you get zero credit. 1,000 bylaws, you follow many, you get better credit than if you cannot follow them.

Whether you do not follow it because there are international regulations that the country has to follow or local regulation that the country also has to follow, but then the organization have the -- its own bylaws, and if you follow the bylaws and --

you get credit for that. Of course the bylaws have to be -- have to be reviewed, you know, on a timely basis.

But that's an approach that might be useful to be considered in the working group. Thank you.

JORGE CANCIO: Okay. Thank you very much. That is noted.

And it also gives me a segue to one point we had on the agenda, which is the liaison activity with the public safety working group. According to our terms of reference, we should coordinate with them. If you don't disagree, we will take this over as co-chairs, as it was included in the -- in the work plan. So this will be, then, accordingly.

And while we haven't had time, really, to discuss the issue of the invitation of IGOs to making inputs, but we make call to observers present in the room and in the meeting from IGOs to approach us if they think they can make relevant inputs to these lines of work of this working group and we could then try to come up -- come back with proposals to the working group before Hyderabad. Right?

And the last point we had is again to remind you that we are all invited for the joint session of the CCWP on corporate social

responsibility and human rights in ICANN and our working group tomorrow at 15 -- 15 hours in the room Veranda 1.

And the CCWP, as you know from previous meetings, is doing very significant efforts and work on related topics, and it would be very interesting to have as many of you as possible in that meeting in order to share in the -- this common interest explained by Kavouss repeated times that we all converge and share our points of view and we don't engage into parallel efforts but we try to converge on cross-community efforts in this regard.

With this, I would give the floor to Mark or Milagros, if you want to conclude the meeting.

MARK CARVELL: Thank you, Jorge.

Well, yes, we -- our time is up so we will have to conclude, but just to underline, there's the opportunity to meet again with the CCWP, and also to underline the opportunity to register your interest with the CCWG accountability subgroup on human rights. If you go to the CCWG page, you can then register your interest and join the discussions of the subgroup on human rights as they now launch, and I'm sure there's going to be quite a lot of substantive work between now and Hyderabad.

Okay. And look again at the opportunities to volunteer to report back from the PDP processes.

My thanks also to Wanawit for stepping forward on new registry services work. That's very helpful.

Okay. So I'll finish there.

Milagros, did you want to conclude as the co-chair, with a comment? No?

Okay. Well, thanks very much, everybody, for attending. Thanks for your inputs. Look forward to working with you in the future.

Okay.   We'll conclude the working group meeting there, and thanks very much again. Thank you.

[END OF TRANSCRIPTION]