
HYDERABAD – ICANN Bylaw changes and role of the GAC (session 2)

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TOM DALE: If I could ask people to resume your seats, we'll be starting very, very shortly. So, if GAC members can please resume your seats, we'll be starting the session very, very soon. Thank you.

CHAIR SCHNEIDER: Thank you all. We're resuming our meeting. Two organizational issues before we start going into the next session. One is, since we haven't really had the chance to meet with the new enlarged leadership team, I would like to ask all the vice chairs, the outgoing and the incoming ones, to stay with me at the end of the meeting. And we'll just get to meet each other and see how we plan to do the next steps in terms of organizing us for the coming months. Please, all the vice chairs, incoming and outgoing, don't run away. Stay with us for a few minutes. We may even stop a little earlier than scheduled with this meeting, so we'll all have time for lunch after that. That's thing number one.

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Thing number two is -- wait a second. We'll have the door prize. And, Olga, is there something important that you want to say now?

OLGA CAVALLI:

Very important. I would like to say that this is the last meeting with the GAC with our dear friend Pedro Ivo from Brazil. He has been fundamental with our work in Latin America and I think for the whole GAC. So he deserves a big applause.

[Applause]

All the best for your new career stage. Thank you.

CHAIR SCHNEIDER:

I suggest we make -- in the wrap-up session, we ask everybody who knows that it's going to be his or her last meeting, then we all can stand up. I think that's actually a nice thing that we could introduce as a tradition to thank everybody that is, unfortunately, leaving us.

So thank you, Olga.

Now to the secretariat and the door prize. Thank you.

TRACEY HIND: Thank you, Thomas. As you know, we have instituted a door prize over the last 18 months or so. And we do this by collecting your business cards, which helps us with the task of keeping good records about who attended the meeting.

Today, for this meeting, unfortunately, the bag that was up at the back of the room and had the business cards in it was taken by somebody at about five o'clock last night. So I'm assuming it was –

CHAIR SCHNEIDER: Our secret services are investigating into this case.

TRACEY HIND: I'm assuming it was none of you. I think I've crawled all over this facility and seen parts of it you don't want to see. But we -- yes, unfortunately, we don't have the bag because somebody has taken it.

However, the ever innovative ACIG secretariat through my colleague, Tom, here, has found a thing called "A Random Thing Picker," which is an online tool. Everybody who is here this morning's name has been entered into it. And it has randomly picked a winner for the door prize. And the winner is ... Tom?

CHAIR SCHNEIDER: The winner is not Tom, of course.

TOM DALE: Thank you, Tracey. What I did was put not names in, but rather the names of the countries who registered earlier and completed the attendance forms. I put that into a thing called Random Thing Picker. And it generated randomly the name of one country. So the winner of the door prize is ... Jamaica.

[Applause.]

So congratulations to our colleague from Jamaica.

And so it's actually worth coming to ICANN meetings. For those who have not known this before, I think this is the proof, to the GAC meetings in particular.

And, again, thank you for ACIG for inventing nice and human traditions that are actually giving this whole hard work a little of a human component and also for finding solutions in very hard moments of desperation when the plan doesn't work because somebody else interfered with it by accident or whatever. So thank you all.

With this I want to move on to our next session, which is another one on the bylaw changes and the role of the GAC. And let me give the floor to Tom so he will explain to you where we are and

what we what we propose to do as next steps and so on and so forth. Thank you.

TOM DALE:

Thank you, Thomas. To pick up where the GAC left off at its previous session discussing this set of issues, the understanding I have of the position -- and I must explain, as Thomas foreshadowed, that at that session it has been possible, due to the pressure of other issues, including the drafting of the communique and quite a number of other issues that the GAC has been involved with, it was not possible to substantially revise the document that you previously discussed. However, I believe we do have a sufficient sense of what the GAC is asking. So, if I can clarify that, as I said the other day, I believe that we're being asked to prepare some further research in a separate paper concerning GAC advice to the Board with particular reference to recording or the standing of formal objections and how that may be considered by the GAC. With regard to GAC appointments, we are similarly preparing a paper concerning both the process and criteria for appointments and scoping out a database so that the GAC has available to it information on the full range of appointments that will be coming up and the criteria and the external procedures that the GAC has to consider in doing that. And, in the meantime, GAC will continue to use its existing procedures for making appointments.

Thirdly, with regard to GAC and the empowered community, as you recall, the GAC has agreed that the GAC chair will continue to serve as the representative in the empowered community administration until the end of ICANN 59, which is the meeting in Johannesburg. And, with regard to the full set of issues covered there under bylaw 6.1(g), we are doing -- we've been asked to do a number of things and report back to the GAC. They are primarily to seek some advice from ICANN legal concerning the proposals and the questions that were being put to the GAC to ensure that we have a clear -- the clearest possible understanding of consistency with the bylaws.

And, secondly, we've been asked also, I believe, to consult with other supporting organizations and advisory committees on their approach, particularly to those lower levels of the escalation process concerning petitions and community forums to try to get some sense of common issues and how they might be tackled and if the GAC and others can learn from each other.

Finally, to prepare all three of those sets of issues in three particular papers, we believe we can do that, if it's satisfactory to the GAC, within about four weeks or so of this meeting. What happens after that is we will provide some number of options to the GAC and take your guidance as to what further work you want done between then and the meeting in Copenhagen.

So the next step of research and advice, including legal advice to you by the end of calendar year and then your guidance as to a plan between then and the meeting in March. That's what I think we're being asked to do, Thomas. Thank you.

CHAIR SCHNEIDER: Thank you, Tom. Yes, I think that's what we've been asked to do. But let's ask the GAC whether they think that's what we've been asked to do. This is a proposed resume of where we are and how we propose to you that we try to move this forward.

I see Brazil would like to take the floor and then Iran. Thank you.

BRAZIL: Thank you, Chair. A statement for the record.

So I'm going to read it to get it right.

"I would like to thank the GAC secretariat for preparing the briefing and discussion papers about the new rules of the GAC in the ICANN post-transition structure.

I would like to make a few comments on that subject. These comments reflects the position of the governments of Brazil, Argentina, Chile, China, Colombia, France, Guinea, Paraguay, Peru, Portugal, Rwanda, and Venezuela."

Okay.

"According to NETmundial multistakeholder statement, Internet governance " -- and I quote -- "should be built on democratic multistakeholder processes ensuring the meaningful and accountable participation of all stakeholders, including governments.

The WSIS+10 outcome document further recognizes that" -- and I quote again -- "the effective participation partnership and cooperation of governments, the private sector, civil society, international organizations, the technical and academic communities, and all other relevant stakeholders within their respective roles and responsibilities, especially with balanced representation from developing countries has been and continues to be vital in the developing of the information society.

"As a multistakeholder organization, ICANN has to adopt and refine mechanisms that allows for effective and meaningful participation of all sectors that have a stake in the coordination and management of Internet unique identifiers.

"Some issues raised during this ICANN meeting in Hyderabad, particularly the protection of IGO, INGO acronyms, have shown the need for governments to be early involved in PDPs as a manner to take policy development within ICANN -- to make policy development within ICANN more effective and legitimate.

Likewise, with the completion of the IANA stewardship transition, ICANN has developed new accountability mechanisms that require proper involvement of governments.

As of October 1st, 2015, the GAC" -- 16, sorry -- "the GAC is officially one of the five decisional participants in the empowered community and has now the duty, such as the other SOs and ACs, to develop the conditions under which to operate in this new structure.

Failure to do so not only would be detrimental to the governments but also to ICANN itself as it would impact ICANN's own legitimacy.

That being said, we would like to state our support for the following: Point 1: With respect to powers to be exercised by the GAC in the empowered community, it is our opinion that, as a matter of principle, the GAC should participate in the exercise of all powers, all seven of them.

"As all of them potentially relate to public policy and public interest aspects, occasional abstentions should be decided on a case-by-case basis, depending on the content of the issues brought to the GAC.

Point 2: With regards to the thresholds to adopt petitions from both internal and other decisional participants, we believe that

consensus should be sought whenever possible within the GAC. But, in case it cannot be achieved in the time frame established for the decision, simple or qualified majority should be considered, depending on the particular stage in the EC escalation process. Simple majority is, in fact, the current way the GAC approves changes to its operating principles and should, therefore, be adopted as an initial step of these new procedures. We firmly reject any solution that requires full consensus as a last resort as it might lead to the GAC's -- it might lead to GAC's deliberations toward that end by granting veto power to individual GAC members.

With a current membership of 170 governments, it would not be acceptable to have one country blocking the decision of all the others."

A final word on this statement. The text is being now circulated to other governments in other countries. And other countries may offer their support at the later stage, hopefully, during ICANN 58. Thank you.

CHAIR SCHNEIDER:

Thank you, very much, Brazil, for this statement on behalf of a number of countries that you mentioned.

Further comments and -- or questions on the way forward, an update in way forward presented by Tom? Spain.

SPAIN: Thank you, Chair. I think that point A, it's work in progress. We are improving our communiques and any other piece of our advice. And we should continue the same line.

As regards point B, I'm very much in favor of working out what would constitute GAC advice when we have not achieved full consensus, as this applies, shall in any case be considered by the GAC board -- sorry -- the ICANN board should in any case take that into account and respond to it. Thank you.

CHAIR SCHNEIDER: Thank you, Spain.

Iran.

IRAN: Thank you. Some small clarification. I think the point 1 seems to be sort of a question. In fact, it is not a question. It is a statement. Because it should be GAC so on and so forth. But there's no question mark at the end. Are you questioning, or you asking GAC to maintain procedures after Helsinki? So quickly clarify.

And, second, in the latter part of that, the GAC will maintain the position. What is this one? It is a conclusion of the A, at the last paragraph? Perhaps it should say, "GAC will, therefore, maintain."

Are you not -- we are not contradicting something? Because you're talking Helsinki meeting in general. And over there you're talking about Helsinki meeting relating to some particular things writing the advice. So could you kindly clarify the two issues, whether number one is question or whether number one maintaining the positions is relating to the preparation of advice. And the last part is confirmation of that is something else. This is quite necessary to clarify that. Thank you.

TOM DALE:

Yes. Thank you, Iran. To answer your first question, yes, it is intended to be a question. And my understanding from the discussion earlier in the meeting was that the GAC had substantively answered the question in terms of, yes, the procedures that were -- that the GAC started in Helsinki in terms of preparing the communique, that that's all -- and, to answer your second question, that's all it refers to is the procedures for preparing the communique. The -- not the substance, the procedure, the zero draft, the inclusion of the rationale and so on.

So that is all that is being suggested that be continued and improved on a continuing basis. However, I think, as Thomas pointed out earlier, this document was simply to commence discussion. It's not a document with any impact after this meeting. In fact, you'll never see it again, if you don't want to. The intention is to go away and prepare the additional materials that the GAC has requested. This is just an initial scoping document with some questions, which I believe the GAC has now answered.

But, obviously, if there's further guidance, then we'll listen to that, if that helps.

CHAIR SCHNEIDER: Spain.

SPAIN: Thank you. I feel like some -- forgot to say something between A and B. I skip that and that is that we should also have procedures to try to overcome, first of all, objections with the aim of achieving consensus. The idea that it was written on the briefings that we should give a deadline for countries that are objecting during the review to make their position more flexible or to try to negotiate a compromised proposal that can be agreed by all was very valuable. So I think that as next steps we

should try to work on how to overcome the objections in order to have a full consensus view. And as a second track in the event that this is not possible, how -- what would constitute GAC advice in -- in that sense? Whether we need qualified majority or simple majority. So I support working on these two lines. Thank you.

CHAIR SCHNEIDER: Thank you, Spain. Next is Indonesia.

INDONESIA: Thank you, Thomas. And I believe it's very useful for the secretariat to see procedures of other international organizations. However, please bring our attention that the many international organizations we only have consensus with is tied to our regulation back home, then it has to be signed in an organization treaty. And as you might be aware, many of us are also sitting in the ITU or sitting in other organizations, international organizations, and we will be -- well, also in ASEAN we are bound by the treaty that's signed by normally the minister of foreign affairs on behalf of the government, and in this case signed treaty is the one that we will refer to officially.

Now, set it aside, then we'll have -- we can always have consensus with this based on bylaws. But again, as mentioned

by several other colleagues, that will not be officially bound to the regulation in the government itself. Thank you.

CHAIR SCHNEIDER: Thank you, Indonesia. Further comments. Spain.

SPAIN: Thank you. I keep forgetting saying things. Only to say that these points could have an impact on GAC operating principles, just to take that into account. Thank you.

CHAIR SCHNEIDER: Thank you, Spain. Iran.

IRAN: Thank you, Chair. Unfortunately, my question was not replied. The second part of A is a conclusion of the first part because we say the GAC will maintain the procedures adopted at Helsinki and A also say the same thing, should the GAC maintain procedures adapted in Helsinki. What are we talking about? The second part is a reply to the first part, is a result of the first part? It's repetitious. So we have to be quite clear on that. Thank you.

CHAIR SCHNEIDER:

Thank you, Iran. This is -- just to make it very clear, this is just a guiding document that we have some written traces about things that we are discussing and we're -- and what direction the shared views go. So we will add the question mark at the end of the first paragraph of A to make clear that that was the question. And the second para with the one and a half lines is an informal preliminary understanding of something like an answer to the question that we take as a further help for us to guide works that we all see that we are on the same page. And that goes for all of these questions and sub-questions. This is just a guideline. I would urge you not to spend too much time on wordsmithing, not spend time on wordsmithing on this one at all. This is just for us to capture where we are in the discussions, but this is by no means no decisional paper or official or formal document. So it's really just a tool that we're trying to use for the sake of transparency and (indiscernible) of the discussions. So please, take it as that and nothing more. Thank you.

Further questions, issues. If that is not the case, are we all clear and agree, do we agree with the proposed next steps that we have indicated, so we'll digest this and try to -- yeah, with this document with all the input that we have, take this to the leadership team, and based with the elements that we -- that we now have that -- the next steps and come back in the next few weeks with identifying these next steps, I guess in a paper, a

paper that outlines the way forward, and wherever we have some progress or there's some things that we can -- we can present as proposals, as substantive proposals, on whatever elements that we have then we'll present that to you and then ask you for further guidance and for further discussions on this electronically, if that's how I can maybe summarize this.

Any further questions or comments? That does not seem to be the case, so we actually have a few minutes left. So I suggest we go to the wrap-up immediately because I think we're all a little bit exhausted from the past months and some of you may want to follow and digest what is going on in the world outside this room. So, yeah, I think we do not have to spend unnecessary time feeling -- do unnecessary time for the exercise. Yes, Iran. Please. Thank you.

IRAN:

Thank you. What happened to the questions we raised or being raised by the SO/AC which need to reply within 30 days? Have you made some arrangement for that or after the meeting you will talk with the vice chair and pose some sort of arrangement. Thank you.

CHAIR SCHNEIDER: Thank you. What exactly are you referring to, if you could clarify, please.

IRAN: The CCWG has sent a questions or questionnaire to all SO and AC with respect to the SO and AC accountability. And asked them to reply within 30 days. And I have reminded you once and you asked me to do it today. So either you take actions with the co-vice chair or so on and so forth or you want to just refer to that now. Because we need to reply to that within 30 days. Thank you.

TOM DALE: If I can just clarify, Kavouss, I was aware that the working group, that the subgroup was doing that. I have not seen the questions. Have they been sent and do you know who they've been sent to. Because I'm not aware that they've been received by the GAC chair or the secretariat. But obviously we are aware of the time frame, and I think Thomas was proposing to discuss that with the vice chairs, but as a matter of process, are you aware if the questions have been sent, formally?

IRAN: You can ask the chair of the CCWG or the secretariat of the CCWG. Thank you. But it was decided as such.

CHAIR SCHNEIDER:

Thank you. We are aware of this, and -- but as Tom said, we think they have not yet been sent formally but that will be coming, I guess, in the following days and then we will have to prepare an answer and share it with the GAC in these 40 days. So in that sense, thank you for reminding us that this is going to come in the next days and that we'll have to expect that sometime in November, late November, early December, we may have something like 14 days to try and agree, or whatever the process will be, electronically on replies to these -- to these questions. But that's -- that's related to Work Stream 2, if I'm -- so it's not exactly this issue about the bylaw implementation of Work Stream 1. So just to make that clear, these are two separate tracks, if I get this right. But, of course, we are aware, and thank you for reminding us that we all should be aware that in that regard there will be some work for us to be done, and we'll see -- we will have to see how it goes. We'll try to do it electronically. If we realize that we're all running in completely different directions, we may even have to set up a conference call to discuss something or we will have to say that there are different views on a particular question and maybe provide options. So we'll try, the leadership team with the secretariat, and, of course, with the members of the -- five GAC members of the -- in the CCWG because we have members in the CCWG that

are following this, they should also I think report -- keep reporting on what is going on and feed input about discussions that the GAC should know to the whole GAC, communicate their views to the whole GAC, and then we'll do our best in whatever exact structure. We didn't -- we did not really have the time to really think this through for obvious reasons because there's a little bit of work that has kept us busy, but we'll have to do that. And, of course, we're welcome to any proposals in particular from the five members that will report on what is going on. So let's all start thinking about how to do this. And once we receive them formally from the working group, we can then start, let's say, a formal process asking GAC members for views or ideally like preparing a concrete proposal for an answer that is normally the easiest way. And you can tell us what you like, what you don't. So this is how I, at this stage, see this. Thank you. Iran.

IRAN:

Yes, thank you very much for that. The second question that I already raised is the result of the joint GAC and GNSO recommendations for early engagement. What we do about that? Currently there is only one or maximum two people attending that arrangement. There are four PDP among the ten, which all of them are important, and we need to have some sort of moral commitment, if not other type of commitment to participate on that. Currently there is no one except Tom, which

is always attending one of them at least or maybe two, but there is no one else. So what we can do about that? They produced their PDP, they put in the public comments. If we don't reply in the public comments, then the PDP is approved by the board and then we complain. So that does not work.

CHAIR SCHNEIDER:

Thank you, Iran. I think the point is taken and agreed. So yeah, we need everybody to work, to share the burden. It's like with the secretariat. Working alone is normally -- no fun, not very effective. We need everybody to participate to the extent feasible. That is clear. Argentina.

ARGENTINA:

Thank you, Chair. I would like to support what our colleague from Iran has said, but I would like to go a little bit further. I would suggest we gather a group of volunteers to -- to organize the work and participate in the -- in the development of this PDPs and they have some organized reporting to the whole GAC. I would like also to take this opportunity to talk about the dynamic of the working groups. The working groups are a way to focus on some issues and not to take the whole discussion to the whole GAC because we are a big group and it may be complicated. So this is -- having chaired two working groups for more than two years, the experience shows that sometimes it

takes a lot -- a lot of time for the working group to give an outcome to the whole GAC. It diminishes the value of the working group working that way, so I would kindly ask for our colleagues working in working groups, try to be more dynamic and produce outcomes to the full GAC so we can have opinions from the whole group and not only being always talked in the working group dynamic. This is just a general comment. Thank you.

CHAIR SCHNEIDER: Thank you, Argentina. Any further comments before we go to the wrap-up of this meeting? Iran.

IRAN: Gentlemen, I'm sorry to come to that question again. Could you kindly ask one or two of your vice chairs to take the lead person for the preparation of the PDP with the GNSO group? Not to attend but leading the activities, encouraging the people and so on and so forth. Give some sort of dynamism to that. Could you assign that to one or two of the vice chairs. Thank you.

CHAIR SCHNEIDER: Yes, I can. Thank you. Can we move to the wrap-up then?

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