HYDERABAD – GAC Accountability Workstream 2
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CHAIR SCHNEIDER: So with this, I'd like to -- if there's no more questions or comments, I'd like to move to the next agenda item, which, as I said, is agenda item number 3, which is the second process which has kept us very busy and will continue to keep us busy in the coming months, which is about enhancing ICANN's accountability and where we've had -- and you see this also in the briefing papers, and in the briefing papers -- in I guess the hundreds of briefing papers and emails you have received from the secretariat but also from some of the members from the GAC in the so-called CCWG ACC or ACCT, Cross-Community Working Group on Accountability, where we have completed -- with the transition, we have completed the so-called Work Stream 1 that was basically comprising all the elements that the community felt were necessary to be completed or at least to -- to set up on track at the time when the transition was -- was about to be -- to be made. So the elements that were considered as without these elements, the transition would not or should not be possible. Whereas we have a Work Stream 2 that is comprising all the elements that were not considered necessary for the transition to happen but that does not mean that they are of

lesser importance than the ones in Work Stream 1. And this year, earlier this year, the processes of Work Stream 2 have been set up and a number of subgroups have been created and we have assigned or reassigned five representatives or members of the GAC that participate in the Work Stream 2. These five representatives come from Argentina, Brazil, Canada, Denmark, and Iran. And of course we have had some discussions about expectations and about the roles and procedures under which they could and should participate in -- in these processes, and -- of the cross-community on accountability. And so I'm happy to invite them to give their feedback and their -- and their views from what has happened so far so that it will help the GAC to understand what has happened; in particular, the last step, which is the meeting of the physical meeting of the Cross-Community Working Group that has happened two days ago here in Hyderabad.

But of course quite a number of other GAC members is participating, not as members but as so-called participants. This is an open process again where everybody who is interested can participate in such a Cross-Community Working Group. So a number of other GAC members and observers are following the work as participants, and I'd like to give you the opportunity to say a few words, those who want, on where we are with Work Stream 2.

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Argentina, please.

ARGENTINA: Thank you, Chair. Good morning, everyone.

As you have rightly pointed out, the second stage of this accountability process has been focused in several topics. And just for you to have in mind, I will just read the list. If I'm not mistaken it's nine: diversity, guidelines for good faith contact, human rights, jurisdiction, ombudsman, review of CAP, which I don't remember what it is, SO/AC accountability, staff accountability, and transparency.

As you can see, if -- there are five members appointed by the GAC, members of the group, but there are many, many participants from the GAC in different -- in these different groups. As you can see, there are more than five.

So what we did at the beginning of the process of this Work Stream -- Work Stream 2 was to try to include or encourage the participation of GAC members in the different subgroups.

Each subgroup has different involvement. I personally engage in two of them. One is SO and AC accountability, and diversity. So they are involving in different rhythms and different paces because of different things, especially the development of a first document to work with, a draft document to start the work.

And some of us have been engaged in other ones. So we are not in all of them participating actively.

So I can tell you my experience in these two groups that I have been working with. So far, they have some documents that we have agreed, especially the more involved is SO/AC accountability and diversity; started a little bit later because we didn't have a concept paper to start to work with but it's going on.

The meeting that we had on November the 2nd, I have some notes here. The idea of the meeting was to review the involvement of the different nine groups. The idea is to create monthly reports of each of the subgroups from now on, to review the level of participation and the level of engagement of the different participants in the group.

There were several questions about how to measure active participation: if you are just in the call, you make contributions, you speak up, or you just follow the work.

There was an important mention about a possible overlap between the next ATRT3, which will start in early 2017, and the focus of the different sub-works -- sub-working groups of the Work Stream 2. That is something to have in mind, especially of the volunteer overlap. So those that are volunteering in the sub-working groups of Work Stream 2 perhaps would not be able to

follow up with other new areas of work that may arise with ATRT3.

What else?

There was an important process in the meeting, which was the new ICANN CEO, Goran Marby. He made a very interesting contribution and dialogue about the role of the ICANN staff and the -- the accountability of the ICANN staff towards the community. It was very important. He stayed with us quite -- quite a while during the meeting, and we had a chance to ask questions to him about transparency and possible complaints, about the role of the ICANN staff. Also, we talked about role of the ombudsman. He did special mention about that.

And for the -- Then the last part of the meeting in the afternoon was dedicated to updates of the different working groups.

Some of them did different perspectives and summaries of what they have been focusing on. And I don't know, perhaps other colleagues that were in the meeting and are members of different working groups would like to make some comments. Thank you.

CHAIR SCHNEIDER: Thank you. I have Iran, Canada, and Brazil on my list so far. So Iran. Thank you.

IRAN: Thank you, distinguished colleagues. Thank you, Chairman. I have participated in four group. These are jurisdiction, human rights, SO/AC accountability, and to some extent ombudsman. The situation is SO/AC accountability after about 11 meetings end up two things. One thing, they have put one issue aside. That is something which has been the output of the first stream of Work Stream 1 which is called mutual accountability. In my personal view, this mutual accountability was a question raised and we will have -- I'm sure that this is something that doesn't work.   Mutual accountability is considered accountability between all SO and AC. Apart from having some sort of review to see whether there is any difficulty or to just exchange experience, there would be no possibility to have formal mutual accountability. The situation in GAC is quite exceptional. We are accountable to our government.   I am accountable to the government of Iran.   I am not accountable to any other government. And my government is not accountable to any other government. This is the sovereignty of rights. So for GAC, even if the situation for everybody else would okay, for GAC would be absolutely difficult that a government could be accountable to, for instance, commercial house of the GNSO or to the business constituency of the GNSO or to the IPC of GNSO. This doesn't work.   This is my personal view.   And view of

government. And it has been understood that such that for GAC it might be quite different. But that is up to you.

However, the second part after ten meetings is that they will send you questions which have several parts and they have commented -- commented many, many times and fortunately now a little bit is put in (indiscernible), it's four months. Not converting GAC to Work Stream 1 to discuss everything from scratch. They're asking some questions. I don't want to go into that. You will receive that, and we have to at some time to reply to that. A time limit was assigned for reply. 30 days. Whether we will be able within that 30 days to reply to that, I don't know. It is up to the chair. So we will receive this question, and that is part of the meeting of the day before yesterday. That question has been blessed, agreed on the second reading, and you will receive that.

With respect to the jurisdiction issue is, in my view, over-complex. Super complex. There are several issues. First one is something Work Stream 1 identified as GAAP analysis. That means there is some legal gap in the jurisdiction identified in Work Stream 1 and it should be analyzed. Working group after several meetings put the subject, for instance, aside.

The second issue is that whether or not the place of incorporation should be changed from California, United States,

to somewhere else. I am not talking of the necessity or otherwise. I'm talking discussion on that. That was also put it aside for the time being.

The issue that now that they are discussing is different layers of jurisdiction. And that they are continuing to discuss various issues relating to the law, which law, the venue, place of discussions, type of the court, and so on and so forth. We are at the very beginning. A considerable exchange of view happened. Some of the GAC participants which are not member are very, very active. We appreciate their participations very actively, and it is foreseen that in the next three months we might have something on that.

I as a representative from my government put on the statement saying that we expect some outcome from this group. Our expectation is not a status quo. To what extent, I don't know what happened.

The third group is human rights, and human rights, there are also discussing so many things, many, many convention, covenant, international agreement. They have a board, and apart from that there are issues that relating to the bringing some of the elements of a U.N. studied case which is called Ruggie Principle. John Ruggie was one of the -- was the professor or person working that and was engaged by the

United Nations to draft something on the application of human rights and he drafted something and his report has two parts. One part related directly to the States, which is not ICANN, and the other part is business enterprises, which could be possibly ICANN and on that we are discussing. There are several elements. Unfortunately up to now, among all those two subsections, number 13a and number 15a may be -- our secretariat later on, if you decide to put that Ruggie principle on the site of the GAC that people know what is it, but even on that two there is no agreement yet.

So a lot of things to be done. The chairman of the group is very, very kind, very patient, but in my view too many jurists, too many lawyers, too many solicitors, and so on and so forth. And even between the two jurists or two solicitors, in one country there's 180 degree difference. One says I don't agree with any international public law because there is another terms. One agree with a private law. There is a big discussion and so on and so forth. How far we can get out of that, I don't know. This is the second part of the -- it is also reflected in the second part.

In the second meeting of the group, physical meeting, you said chairman, there were other issues. One issue which was completed is the issue of IoT. Oversight team, implementation oversight team, which provide supplementary information on the IRT, Independent Review Process, which was established at

the first stream, Work Stream 1, but there is a need -- or there was a need for supplement that and that supplement was discussed and there was a GAC member in that -- or GAC participate in that. I don't know the name, and it was completed. It was a second read in the meeting of the day before yesterday and now it is subject to be published after some formality. That is a good part of that that is finished.

The remaining group, they have not given any report, but there was also report of the transparency, which the CEO of the ICANN made some presentation also. He also talked about establishment of an office which is called complaint office. The people said, don't call them complaint office, call them feedback office. But term doesn't matter. He wants to establish something that community could come and directly reflect whatever their problem and problem be resolved and also maybe the staff, if they have something. So there is discussion but there is -- the document was not approved and it is still under some discussions.

With respect to the general transparency, it was also discussed, the document transparency, the document disclosure. How much should be -- which document should be excluded from the disclosure. They mentioned those which are harmful, that were discussed which were things that are considered harmful. What is the criteria of harmful. And then the contract, which contract

should be totally open. They were discussed. There should be a level of the contract below that, there would be no need to open and above that maybe. These are not discussions not yet committed. I'm sorry, Chairman, I went a little bit long, but I have to report to the GAC as you have identified. Thank you.

CHAIR SCHNEIDER: Thank you, Iran, for this very useful and relatively detailed information. We know that there's a lot more behind it, so you got quite a good sample of a level of details that I think is very useful.

Just to pick out one element that we've heard, we will receive -- as one of the SO and ACs of this process, we will receive these questions that Iran has talked about and will have a 30 days' deadline to answer these questions about the accountability of, I guess, us as a GAC. If I get this right, these -- these invitation to answer the question will come in the next weeks, so that we'll have before the end of the year some 30 days to answer this. This will mean some intersessional work for all of us. And in case we may have different views on answering the questions, we may require to electronically, virtually, whatever, try and find agreement in the GAC on answering these questions. So there is some concrete work ahead of us. And please take note, when people talk about accountability, of course, we are here

representing governments but also governments are in various different ways accountable to people, to businesses, to enterprises, and we are more than just the assembly of individual governments. We are one -- let's say institution that is accountable as GAC as a whole to other people as well. So that notion of accountability has several layers. One is accountability towards the inside, towards those that send us here. But the other is accountability towards the outside and, of course, it also depends on how you interpret accountability, whether this is meant as you have to do what other people tell you or you have to explain your actions, you have to be transparent about how you work and so on and so forth. So there's different notions behind this. So this is not trivial. It's not easy. And yeah, we should take this seriously, I think, and yeah, spend time on this in the next few weeks when we get these questions and try to come up with something that we can all agree. I'll stop here. I'll give the floor, because we have quite a number of list of others. Next is Canada, please.

CANADA: Thank you very much, Mr. Chairman. And I think my colleagues from Argentina and Iran have already covered quite a bit, so I will just build on what was said. And follow on sort of -- focus on the key outcomes of the meeting.

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So as mentioned, there was plenary support to distribute the document with the survey questions, the SOs and ACs and the responses will help to inform the work of the subgroup. There was also recognition that some SOs and ACs such as the GAC, for example, may not be in a position to answer all the questions, so a preamble will be added to suggest that in such cases SOs and ACs may modify or interpret the questions in a way that enables them to answer them. And as mentioned yes, we will have 30 days following the end of the Hyderabad meeting to provide responses.

The results of plenary support to post the public comment guidelines developed by the independent review panel, implementation team that was tasked with drafting detailed rules of procedure for the IRP enhancements from Work Stream 1. There was also a good plenary discussion on the first draft report on the subgroup on transparency. I think the CCWG co-chairs were pleased with the initial draft and the co-rapporteurs will now go back and try to reflect the discussion over the next week and outline considerations to engage ICANN legal. The jurisdiction discussion was limited to a status update from the co-rapporteur of the subgroup and the CCWG co-chairs emphasized the need to refocus work by prioritizing a pragmatic discussion of issues first and solutions second. And I believe our colleague from Switzerland made a very constructive suggestion

to engage stakeholders outside of the subgroup that have had tangible experiences with jurisdiction disputes and ICANN. So this was considered as another possible way forward.

And then as Olga mentioned, the CCWG meeting also included a session with the ICANN CEO Goran Marby to discuss the new complaints officer position that Goran announced on his blog. Some CCWG members are concerned that having the position hosted within ICANN's legal department may create a conflict of interest, given the sort of inherent duty of the legal department and sort of protecting ICANN. And so Goran was receptive to having the discussion further and to listening. And I believe that's -- that's one thing that will sort of be picked up in the staff accountability subgroup. Thank you very much.

CHAIR SCHNEIDER: Thank you, Canada, for this complementary information. Brazil.

BRAZIL: Thank you, Chair. Thank you, colleagues. I think the reports that have been given here were quite complete. Doesn't leave me anything to say. Let me just give some comments on the work on the -- of the jurisdiction subgroup that I've been following more closely. As the delegate of Iran has rightly pointed out, there was some, let's say, difficulties at the

beginning of the activities of this work, of this subgroup, to kind of define the actual scope of the work. But after some -- some meetings the subgroup has decided to initiate the activities by elaborating a little bit more -- a little bit more about -- on the different jurisdictional layers. And so the -- the layers that have been identified as the ones worth considering and -- and working on is the -- well, the layers -- the layer of the place of incorporation of ICANN, the layer of the place of where the head -- the ICANN's headquarters are located. The layer related to the, let's say, jurisdiction of the places where ICANN have a physical presence and also layer related to dispute resolution. So the influence of national jurisdictions into dispute resolutions. And specifically in this last layer we have, let's say, somehow decided to initiate work and debate on this last layer, so there's a document that has been, let's say -- it's yet still in draft version and where we are, let's say, considering things like choice of law and choice of venue. So, let's say, these are, let's say, the first steps that have been taken.

One comment on the -- with regards to the place of incorporation, I mean, there was a decision, although, I mean, maybe it's not appropriate to put this as a decision, but perhaps we are not discussing at this moment within this group whether we should consider relocating ICANN or changing the place where ICANN is incorporated. And actually, it's not the

appropriate time. Actually, right now the group should be devoted to find issues related to all this -- this thing, jurisdictional layers. And eventual decision to recommend a change of place of incorporation, of location of headquarter, would be actually only the last step, a recommendation step. So it's not something to consider right now.

Right now, it's just an assessment, evaluation of all the, let's say, eventual problems that are related to all these jurisdictional layers, and eventual decision of recommendation is only in the last step.

And final -- finally, a general comment. I think the expectation is that the Work Stream 2 is to finish by June 2017, but my personal opinion is that given the complexity of some of the work subgroups, I think perhaps we may consider extending, let's say, the activities and work of some of these groups.

That's it. Thank you.

CHAIR SCHNEIDER: Thank you, Brazil.

Denmark.

DENMARK: Thank you. And thank you to colleagues who have spoken before me. And I won't repeat what have been said, so I would be brief.

Only to say, once again, which also Olga touch upon, there will be this dashboard telling the information how long are the different subgroups in that process. And that was actually during the meeting at presentation of that and with actual data. And I think that it will be good if the secretariat could send that paper around which gives a good presentation.

It's -- The presentation overall say that the different subgroups have done between 10 and 40%. I think 40% sounds quite a lot.

My only impression, and I think this has been the impression of many, is that there have been a slow start. And of course many have been tied up with the IANA transition. So hopefully, things will start now really to take -- take off.

So that will be -- will be helpful.

Another observation is, of course, the secretariat help in drafting documents is no longer there. So it's rather much up to participants, and it have up to now been, unfortunately for them, but the equal chairmen or rapporteurs who have made a lot of jobs. I know from GAC side or many GAC members have looked for more secretariat help because it's, of course, not so

easy to draw up documents if you are not a native English speaker. But hopefully we will be there.

I share, perhaps, what Pedro said that it might be difficult to -- to reach the deadline. But anyway, at the moment, all of the eight subgroups are in green, so we are on track. Some of them are advanced, especially the diversity. There have only been a few meetings, and they're primarily built on the good contribution which have come from different parts of parties in France. So I'm looking forward to that.

As to -- to Goran's participation in the meeting that have been mentioned, it should also be mentioned that Goran Marby was quite open to participate in future meeting, so the CCWG might have a good exchange of view especially on the case of staff accountability.

CHAIR SCHNEIDER: Thank you, Denmark. Next is Egypt.

EGYPT: Thank you, Thomas. And, actually, I have nothing to add. I just have a question, but allow me first to thank colleagues for their extremely informative reports, and also to thank ACIG for the very useful briefs.

I was reading the brief yesterday and it mentions that the CCWG had divided the issues into complex and less complex categories. Obviously no simple category.

But anyway, I'm asking this to know how -- how -- what was the criteria to do this categorization? Do we know how this was categorized? Because I can see, for example, diversity on the complex issues which I thought it might be less complex. But anyway, I'm just asking to know whether it's the nature of the topic, the time frame needed, or some controversial issues that popped up during the discussions.

Thank you.

CHAIR SCHNEIDER: Thank you for this question. And as you see also there are different timelines attributed. Some results are -- outputs are expected by the next meeting in Copenhagen and some are expected by the meeting after in June.

So Kavouss from Iran has his hand up.

IRAN: Yes. Thank you, Manal, for the point that you have raised. I think that some say it was discussed, but I don't think that formally CCWG made complex, less complex because it's very,

very difficult. In view of some people, some issue is very complex; in view of other, may not be very complex. But something by nature in the view of individual was considered complex, like jurisdiction. I don't that. Everybody know, whenever you go to jurisdiction, it's complex. But that does not mean that diversity is not complex.

But I don't think that there has been such a formal decision that more complex, less complex.

It no doubt that some thing will take longer, but I don't think it has been some formal distributions, also formal distinction within the issue.

Thank you.

TOM DALE: Thank you, Thomas.

Yes, just to add to that comment and to respond to Egypt the formulation there I think was suggested originally by the rapporteurs of the various subgroups. This is about two months ago in a presentation to the plenary of the CCWG that were doing that for planning purposes. In fact, this is what they wanted do in Helsinki.

But I think since the brief was prepared a couple of weeks ago, and certainly in the meeting two days ago of the CCWG, they may have moved on to a more flexible timeline. But as Iran has quite rightly pointed out, it was never a rigid categorization. But they did adopt it briefly, but I think they found it rather difficult and -- at the moment. It will become clear when we respond to the request from Denmark to circulate the new dashboard formula that the CCWG has prepared for presenting information on the work, and we'll do that very shortly.

Thank you.

CHAIR SCHNEIDER: Thank you. I have Olga from Argentina, and then we will go into the coffee break. I just have the opportunity to have one of the co-chairs here with us. And before giving the floor to Olga, let me quickly give the floor to -- to Thomas Rickert who is one of the three co-chairs of this accountability group.

Thank you.

THOMAS RICKERT: Thanks very much, chair. And welcome to all of you.

Just to comment on the difficult or less complex categorization. This is in no way meant to rank the importance of the topic -- topics that we're discussing.

We have asked the rapporteurs to self-assess how difficult it would be for them to produce a report that we can put out for public comment. And there are certain topics where the rapporteur said, well, we think we can do this earlier. So it's merely a project management tool, because we are aware of the fact that the community can only digest that many reports in public comment periods at the time. So we want to make it easy for the community to follow and sequence the output from the CCWG to comment on. And that's the only purpose.

So, please, don't be confused by this. We do not discriminate any of these topics. We've always made it abundantly clear that all topics in Work Stream 2 are important topics. They're not being put on the back burner, but just had to do the categorization of Work Stream 1 and Work Stream 2, and now with the ten topics on our plate for Work Stream 2, we needed to find ways in order to make the workload manageable. So that's the whole idea behind it.

CHAIR SCHNEIDER: Thank you very much, Thomas, for this clarification. And of course the co-chairs will continue to be available for questions

and comments, as they have been in the first -- in the first work stream as well.

So we are slightly over time, so please, Argentina and the U.K., be brief.

ARGENTINA: Very briefly. Thank you, Chair.

I would like to raise again an idea that we had at the beginning of this process, is having a Web space or a Wiki or something from the GAC from us that we are participating in the different sub-works to briefly inform the GAC. So all colleagues could go there, one only -- if all of us start sending messages to the whole list, it will be very messy and very complicated. So the idea we had at the beginning is having a space in the GAC website or elsewhere where we can do some report, brief report, so everyone could be on the same page.

What I think has been difficult in this process is that there are several, many working groups, and we are not all in all the working groups. So we don't know, really, where we are.

So if that could be done.

I remember asking Tracey about the new website of the GAC, and it is when in the future maybe that we could have that, or in the present GAC Web space. If you want, I can coordinate that.

Thank you.

CHAIR SCHNEIDER: Thank you, Olga. That's a -- for reminding us about tools that we may look into, to what extent they are available and usable. And we'll take note and come back on this.

U.K., Mark, please.

UNITED KINGDOM: Yes, thank you, Chair. And thank you very much for the colleagues who have reported on the subgroups. Extremely helpful.

And my intervention is exactly on the issue of keeping us informed of the many tracks that are in process here, which helps with reporting to ministers, reporting to colleagues across our administration in the U.K., and also when I meet with stakeholders.

So a bulletin, periodic bulletin along the lines that Argentina has proposed. Using the dashboard, as Denmark reminded us of the

existence of that, will be extremely helpful at regular, periodic intervals for briefing purposes.

Thank you.

CHAIR SCHNEIDER: Thank you.

So this is our first exchange here on the accountability Work Stream 2. And as I said, please be prepared to follow what will come electronically because we will have to do some work intersessionally, the first one being the answering of these -- of these questions.

Kavouss, and then we go into the coffee break.

IRAN: Yes, very brief.

May I, as a member of the group, request kindly all GAC members to participate in the activity of the group.

Looking into the list of participants and looking into the chart and the note, we will see that we could be more present. Please kindly do that. We need you. We need your contributions. If we don't contribute, our voice is not heard. Please kindly consider that.

Thank you.

CHAIR SCHNEIDER: Thank you. This is something that I urge you to take serious. And those who can, please do participate and make your voice heard.

Thank you.

So with this, thank you very much for the first one and a half hours. I think we're now warmed up on our first day, and we'll be even more warmed up after we have some coffee or tea.

Thank you.

We meet at 11:00.

[Coffee break]