
HYDERABAD – GAC Human Rights and International Law Working Group Meeting
Thursday, November 03, 2016 – 11:30 to 12:30 IST
ICANN57 | Hyderabad, India

MARK CARVELL:

Okay. We're going to start the next working group in a minute. It's the Working Group on Human Rights and International Law. So we'll start very shortly. Thank you.

Okay. I think we're settled in as the leadership team for the working group, so I think we'll start, as we've got just under an hour before we all head to a much needed lunch.

As I say, this is the meeting of the Working Group on Human Rights and International Law. Broadly, the remit of the working group is to focus on aspects of ICANN's policies and procedures which relate to human rights and relevant international law.

For those of you who are new, this working group was established at the Singapore meeting in February 2015, and we agreed the terms of reference. The GAC full plenary agreed the terms of reference for the working group at the Marrakech meeting in March this year. So since then, a work plan has been under way. Thereof interests a triumvirate of co-chairs of this working group which I'll introduce now.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

On my far left Milagros Castanon, the GAC representative from Peru. On my immediate left, Jorge Cancio, GAC representative for Switzerland. I'm Mark Carvell, the United Kingdom Representative.

And the agenda for this meeting, a draft of it, was circulated by Jorge -- middle of last month? Something like that. 17th. Roundabout the 17th of October, there was a draft agenda. And to summarize that, the draft proposed that we consider, first of all, the state of play for the development of the Framework of Interpretation of the human rights core value in the new ICANN bylaw on rights. And to help us with that, we have with us a guest presenter from the CCWG Human Rights subgroup. The chair of that subgroup, Niels ten Oever, who is on my right. So that's the first agenda item.

The second agenda item was -- is to introduce the report which is just issued on the application to ICANN -- on applications to ICANN for community-based new gTLDs. This report was distributed by our colleague from the Council of Europe, Lee Hibbard, two days ago? So it's very hot off the press, and I propose I'll introduce that because it's coming at the issue of community-based gTLDs from the human rights perspective. So it's highly relevant for this working group.

Thirdly, we have a kind of other agenda item. And I think this is an opportunity, Niels, for you to provide an update on the cross-community working party I think if you would like to do that. This is the cross-community initiative to look at ICANN's corporate and social responsibilities in respect to human rights. So it predates the Work Stream 2 and of course is a continuing exercise of cross-community stakeholder consultations, which has most recently prepared a paper on issues for new gTLDs procedures. Maybe you'll touch on that. Anyway.

So that's one item to cover under agenda item 3, and the floor will be open for colleagues from the working group to make other proposals.

So that's the draft if -- of the agenda. If there's agreement to that and no proposals to add anything to that agenda, we'll proceed on the basis of that as the formal agenda. And so I will kick off by turning to Jorge to introduce agenda item 1 on the FOI, the Framework of Interpretation of human rights core value in the bylaws.

Thank you.

Jorge.

JORGE CANCIO: Thank you. Thank you very much for giving me the floor. This is Jorge Cancio, GAC rep for Switzerland for the record.

As you know, as part of the Work Stream 2 of the Cross-Community Working Group on ICANN accountability, there is a subgroup working on a Framework of Interpretation which has as its mission to give interpretation, to give construction to the core value on human rights that was introduced in the bylaws in -- of ICANN as a result of the Work Stream 1 recommendations, which we all adopted as a community in Marrakech in last March.

So this has been very intense work in that subgroup of the CCWG Accountability, and we have the benefit and the honor of coming here with the rapporteur of that subgroup of the CCWG, Niels ten Oever. And I would very much like to give him the floor to enlighten us on the state of play of this very important effort for the ICANN community.

Niels.

NIELS TEN OEVER: Thank you very much, honorable co-chairs, for the opportunity to present work that we've jointly been doing with great input from several of the honorable representatives here in the room

on the development of the Framework of Interpretation for the human rights bylaw.

For your convenience, I created some slides, which I see ICANN staff is loading right now, to add a bit of structure to the -- to the intense discussions that we've been having with -- and constructive discussions we've been having.

So the Cross-Community Working Group on enhancing ICANN accountability, as you all know, is now in Work Stream 2, and we're working on providing a -- a Framework of Interpretation for the human rights bylaw.

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So as you know, the human rights bylaw, as you see it here on the screen, will only come into action when a Framework of Interpretation has been developed as set out in section 27.2, which you can see on the next slide, please.

So to -- The work for this has been mandated in the report by the Cross-Community Working Group on enhancing ICANN accountability, specifically in annex 6 and annex 12. And currently we are implementing that work.

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So the work we've been doing thus far is that we documented the historical context of the discussion on ICANN human rights bylaw, especially during Work Stream 1, so that it's clear for all new colleagues joining now in Work Stream 2 what discussions were that we've had and what agreements that we have made during Work Stream 1. Also to provide a bit more background to the -- to the CCWG report.

Because -- And after that, we went on to analyze the U.N. Guiding Principles on Business and Human Rights, because currently they are the main framework for the application of human rights on nonstate actors.

As you know, these principles have not necessarily been defined with ICANN in mind, so, therefore, we have been analyzing the relevance and the possibility of application and using that in our Framework of Interpretation.

Subsequently, we went on to develop a draft structure for the Framework of Interpretation, and we formed a drafting team which is creating weekly iterative updates that are being discussed on our weekly calls.

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So with the current freedom -- Framework of Interpretation draft structure, we stayed very close to the text of the bylaw, and we

also reached consensus that we really want to produce a Framework of Interpretation which is not a framework of implementation. So we should just guide the understanding and interpretation of the human rights bylaw.

So these are the different parts that we are currently discussing. The discussion up to now has been focusing mostly on the definition of respecting as well as applicable law. But we seem to be making good progress in all fields, which can be seen on the next slide, which is the new progress update template created by ICANN staff. Thanks very much for that.

On these slides that can be found on the CCWG wiki, you can regularly find the status of our group and what we are working on. And of course you're always very much invited to contribute to our work by becoming either an observer or a participant, joining the mailing list and joining our calls every Tuesday at 1900 UTC.

JORGE CANCIO: Thank you very much, Niels. Any questions, remarks, from the co-chairs?

UNKNOWN SPEAKER: Kavouss.

JORGE CANCIO: First Mark, then Kavouss, please.

UNITED KINGDOM: Thank you, Jorge, and thank you, Niels, for that update. And it's very good to hear that there's progress in -- on all the key elements, key issues, as you described. Maybe I missed it, sorry. Could you just explain what the timeline is likely to be in terms of progressing the work and consultation and so on as you see it. Thank you.

NIELS TEN OEVER: Thank you very much, Mark. The envisioned timeline right now is that we have a draft that the subgroup can present to the CCWG by February. So it can be presented to the -- as a public comment. I think in time for the Copenhagen meeting. We will be -- there is a differentiation within Work Stream 2 of simple and complex topics. Even though we strive for simplicity, there is a fair chance that human rights would fall in the complex work stream but that will mean that we aim to have all the work done in June the latest.

MARK CARVELL: Okay, thank you, Niels. So, there will be the opportunity for the GAC working group to articulate some views, reactions, in that process ahead of the Copenhagen meeting. Thank you. Jorge.

JORGE CANCIO: Thank you, Mark. We have Kavouss and then Milagros. Kavouss, please.

IRAN: Yes. Thank you very much, Niels. First of all, from my point of view, you are very good chairman. We really appreciate your patience and so on and so forth. And particular -- in particular when you say okay, come in, that means start and say something always. This is your -- (indiscernible) thing. I think the group sometimes going too far from what they have to do. I don't think that if somebody wants a glass of water should ask what is the meaning of water. Water is water. I don't understand that people says that what is the meaning of to address? Some people say to address means to deal with. Some people say to address to mention. But I don't have any problem to say to deal with, to mention, to indicate. I don't. The people asking what is the meaning of diligently. So these are the unnecessary questions. And more are saying what does it mean to respect? Hundreds of times the people they use respecting this, respecting that but never asked these questions. So these

are the things that are really disturbing and you have been very patiently listening to all of the people. And then there's the big issue that you brought in the absence of any other things, Ruggie principles, and people are opposed to that. Yes, Ruggie principles has two parts. One part relating to states, which is not our work. The other part relating to business enterprises. If and only if you could say ICANN could be business enterprise at least some of those applies. You try to pick up some of them, 13a and 15a, and still that there are oppositions say that not at all, doesn't apply and so on and so forth. So there is a group of people that want to make human rights group as a academia of research and going in depth and depth and depth or converted United Nation council of the human rights after so many years they are just stuck in the middle of nowhere. 78 members and so on and so forth. So I think the people should understand that you have a deadline. You can't have interpretation framework of human rights like the ccNSO six years. We have limited time. And we should limit ourselves to something which needs to be done and discuss the issue really needing to be discussed. We cannot go through all those booklets that was referred by people and get in these. We never get out of that. And then, I understood that from the interpretation some people, they totally changing the meaning of the bylaw by putting different voice. Changing take into account to considering which is totally two different views. Changing commitment to considering.

Changing should to may. Some people told me yesterday that in their understanding may is stronger than should. I don't have that idea totally, but this is this one.

So I think there is need a little bit of more collaboration among the people and limiting the time to remain high level, although we have to have the interpretation. But interpretation, first of all, should be within the envelope of something that we want to interpret. But not going outside the envelope. And number two, something which is absolutely necessary to be interpreted. And interpretation does not mean you change the sense of the directions of the idea and putting something else, i.e., those people who failed to put what they want in the Work Stream 1 now under the name of interpretation they want to come back and put it here. That is not correct. Thank you.

JORGE CANCIO:

Thank you, Kavouss, for these very useful remarks. Let's get also the input from Milagros.

MILAGROS CASTANON:

I prefer to speak in Spanish, if you don't mind.

Milagros speaking. I fully agree with Kavouss, totally. I would also like to say that I fully appreciate Niels' work and all of the group's work. You have really devoted plenty of time to this

task. You have worked thoroughly. However, there have been instances in which I wondered why you were taking a certain direction. Like Kavouss, I wonder, for instance, if there was any reason to question the scope of action for human rights within the ICANN framework. I have also read comments by group members indicating or doubting the scope of application of human rights because we're dealing with a private corporation. As far as I understand, when a country signs or upholds an international convention such as the universal -- sorry, the convention on human rights, this convention becomes part of the legal system at a federal level in that country. Therefore, it becomes applicable and it becomes the law of the land also for the private corporate sector. Against this backdrop the principles that we were mentioning are indeed very interesting but are not the sole reference to be taken into account. The main reference is the universal declaration on human rights, and as Kavouss was saying, you are going a bit too far for the sake of perfection. And perfection sometimes is simpler in topics such as this one. Thank you.

JORGE CANCIO:

Thank you very much, Milagros.

... on the substantive parts of the FOI exercise from the working group members. Yes, Indonesia?

INDONESIA: I just want to know better in the working group, you also mention about what ICANN will interact with the government that ICANN or the working group thinks that the government doesn't act in accordance to the, say, basic international human rights as defined by U.N., for example, what ICANN will do for that or is there anything -- is there any interactions that can be discussed between ICANN and the government. Thank you.

JORGE CANCIO: Thank you very much. And Kavouss, did you have a follow-up remark?

IRAN: Yes, I have follow-up what he said. But I don't think that ICANN intervene or interfere with any government, whether they have respected or not respected the human rights and so on and so forth. We are dealing with how ICANN implement the human rights within its mission and the core value. We are not dealing with the interface between ICANN and the government. I don't think that -- that would be unnecessary intervention with that.

JORGE CANCIO: Thank you very much. Indeed, what is at stake here is the Framework of Interpretation about a core value which is a guiding principle within the ICANN bylaws and which, of course, applies only to ICANN itself, not to the governments. So I -- I'm not sure whether that clarifies the remark from our Indonesian colleague.

We have another question over there. Thank you.

JAIFA MEZHER: Hi. I read the draft and I want to know what are the enforcement mechanisms.

JORGE CANCIO: Could you please state your name and country?

JAIFA MEZHER: Hi. I'm Jaifa from Colombia.

JORGE CANCIO: Thank you very much, Jaifa. So if there's any other question or any other remark or otherwise I will kindly request Niels to give some feedback to the comments made up to now. And then afterwards we may, as co-chairs, have additional comments. Kavouss, do you want to intervene before Niels?

IRAN: Yes, just want to say that what is given to us as a mandate, we are working on the Work Stream 1 and the instruction of the bylaw, there is no enforcement. So I don't think that we deal with enforcement. Respect, yes. But not enforcement. Not protect. ICANN cannot protect the human rights. And cannot enforce that. Just respect. So that is outside -- different from the government. We are not writing something for government. We are writing for ICANN. Thank you.

JORGE CANCIO: Okay. Thank you very much, Kavouss. I guess that is part of the -- of the answer Niels would give to this question about the FOI. With another remark, would it be before Niels' answers?

KENYA: Yes, before Niels' answer. My name is Kihanya. I'm from Kenya. I just wanted to follow up on the question by Colombia. Is -- what is -- what would be the eventual situation where there is a dispute in terms of the eventual conclusion on the Framework of Interpretation? If subsequent to that adoption, a question arises as to what the Framework of Interpretation meant if there is a query, what would happen beyond that? It follows the question by Colombia about -- about what happens beyond that.

JORGE CANCIO: Thank you very much. I guess the -- the answer to this could be best delivered by ICANN itself because this is -- we are talking here about the Framework of Interpretation of a core value of ICANN itself, and I guess that the redress mechanisms that are in force would apply in case of a dispute on the meaning of this core value and its Framework of Interpretation. But with this I would like to give the floor to Niels.

NIELS TEN OEVER: Thank you very much, Jorge. Thank you very much for your questions and the close interest with which you're following this issue.

Since I'm rapporteur of the group I will reflect on the discussions that we've been having and luckily we can closely follow the guidance that's already given in the bylaw itself which is the main thread for our work which very clearly elaborates that within ICANN's narrow scope and mission it will respect human rights and it is -- and it will not enforce human rights. So I think the question of enforcement with that has been answered by the bylaw itself. What these things exactly mean, we're now developing the Framework of Interpretation for it. But if you ask for enforcement, the bylaw is already excluding that. When you ask for resolution, I would follow the advice from -- from Jorge

Cancio here. But one thing that can already be found in section 27.1 is that an IRP cannot be used until there is a Framework of Interpretation. So there is a range of accountability measures. Some may be applicable to the core values, some are not. But we definitely know that the IRP cannot be used until the Framework of Interpretation has been developed and has been approved. That's in the section 27.1.

So I think with this, I've addressed most of the -- most of the issues.

JORGE CANCIO:

Thank you, Niels. Is there any follow-up comment or question? Otherwise, I think that Mark perhaps may share with us also the second bullet we had on this point of the agenda on the efforts to reaching out to U.N. working group that is dealing with the Ruggie principles with the U.N. guiding principles applicable to business enterprises. But I saw that Kavouss perhaps has a comment that goes before that.

IRAN:

Yes, before that. I think there is a -- there was lengthy discussions about applicable law, very lengthy. Public law, international public law, private law, international private law, and many, many others. And there is divergence of views

between jurists, lawyers, solicitors, which fortunately I am not part of this category. Some people say they do not understand at all what does it mean international public law. In their country that does not exist. So there is this many divergent views on a very specific issue, what is the applicable law. I hope Niels would find his way out of all of these things and also the group. I don't want to take the time, but this is one of the core issues that we have to discuss. What is the applicable law? What does it mean and so on and so forth? That is the important issue that we are -- sorry to just take -- just wanted to complete before you go to second item. Thank you.

JORGE CANCIO:

Thank you very much, Kavouss. I guess that here we are also getting into the field of the jurisdiction subgroup where the issue of international public law and what is private law depending on the legal traditions of the different countries is being discussed. But I guess that Niels is well aware of that discussion of applicable law is referenced also in there. But I -- I think that with this we could turn to this second item under this agenda point and let's see what Mark has to share with us.

MARK CARVELL:

Yes, thank you, Jorge. This relates to the guiding principles that were drawn up by the U.N. Working Group on Human Rights and

Transnational Corporations and Other Business Enterprises. This set of principles named after the U.N. special rapporteur, John Ruggie, known as the Ruggie principles, and arguably they would directly apply to ICANN. And Niels would probably confirm that the subgroup has, in fact, discussed that, the relevance of the Ruggie principles. And there is the opportunity to connect with the U.N. working group, and Jorge, as a participant in the subgroup, has made an offer to undertake that linkage through formulating a communication to the U.N. working group on what is happening in the ICANN process under Work Stream 2 with regard to the Framework of Interpretation.

So we have that as one opportunity which this working group, I'm suggesting, would endorse; that we undertake that linkage through providing Niels's group with a proposal for a communication along those lines.

So I put that before you as a proposal that we have already signaled through our participation in the subgroup that we undertake.

So does anybody have any comments on that?

I see Iran, Kavouss. Yes, please.

IRAN:

Yes, Mark. I wish I could have supported your views, but the views of the group are entirely different. Many people, they do not agree to any of the Ruggie principle to be applied to ICANN.

Niels tried very, very hard, at least, to pick up some of those which has general relevance, like 13a and 15a. People can have a look at that one. But even with that one there is disagreement. As soon as some people, they open their mouth saying that Ruggie principle, some other people say this is just for implementation but not for the policy. So we are not at the implementation stage.

And then they said that the Ruggie principles are optional principles. Could be and could not be implemented or taken into account.

So there is no at this stage agreement to apply any of Ruggie principle. Some people they want some of them, some people they want none of them.

If I am wrong, Niels, please correct me.

I have read all of the scripts and listened to the discussions, and that is that. There is no agreement. There is strong opposition for that by two or three people, they're pushing at every point that, no, we don't agree with that. Ruggie principle does not apply.

Thank you.

MARK CARVELL:

Thank you, Kavouss.

Before I invite Niels to comment on how this has played out in the subgroup from his perspective as the chair, my -- my view on this is that we're at the stage where some informed input into the subgroup' deliberations on the applicability of the Ruggie principles would be valuable and that the purpose of the communication, the link, the outreach to the U.N. working group is to facilitate that opportunity for some informed discussion based on an input from the U.N. working group.

So that's where I see the situation at the moment and the opportunity and the value of the opportunity.

But I turn to Niels, if you wish to comment on how this is playing out at the moment in the light of Kavouss's reflections from his participation.

Thank you.

NIELS TEN OEVER:

Thank you very much for the comments.

I think if we look at the -- the relatively short history of human rights since 1947, which has traditionally been applicable for

states, we've seen a very fast development for the applicability to nonstate actors. First with the U.N. global compact, and then with the U.N. Guiding Principles for business and human rights, which we only have since 2011.

So then the specific application to -- to bodies that are a bit differently shaped than an average company, it was to be expected that people have unclarities and are not completely clear how this could or should be done. And that inspires very interesting discussions that also help us develop this work.

So in a sense, we're also really doing pioneering work in the -- in the subgroup. And when you're pioneering, especially when you're pioneering, extra informed opinions can really help to shape the work.

So also to build bridges and to make further steps, I think input from other experts, such as yourselves, such as the working group, would be very much appreciated.

MARK CARVELL:

Thank you. Thank you, Niels.

Jorge, sorry. Your light came on before mine, I think marginally.

Please.

JORGE CANCIO: Sorry, sorry. I guess that Mark would say a similar thing, but please complement it.

Just to make clear that what is here under discussion is to endorse the action of the -- of the co-chairs of this working group, to help Niels as rapporteur of the subgroup to get in touch with the U.N. working group that is dealing with the U.N. Guiding Principles on human rights for business enterprises; to establish a link and to be able to ask, for instance, questions about their opinion on whether these U.N. G.P., guiding principles, apply or do not apply or to what extent they apply to organizations which may be considered different to a business enterprise by some.

So it's more an effort to help the subgroup in establishing that linkage and to have more informed opinions in our work in that subgroup.

But perhaps Mark may want to complement it.

MARK CARVELL: Jorge, I think you've captured the motivation and the contribution we can make to the work of the subgroup.

So does anybody have any further comment on that?

Kavouss, yes, I see your hand raised.

So as I said, we have a question here. Do we as a group endorse helping the subgroup in this way?

Thank you.

IRAN:

Yes, my (indiscernible) is that there is imbalanced participations. Very -- handful number of GAC participate in the group. Very, very few. Those who intervene are not more than three. Those who introduce in the chat, not more than four. Those attending the list, not more than five. So, and then the others are more numerous.

So if you want to have, I agree that if you put the contributions, we should come to the meetings, participate, discuss either in the chat or at the level of the intervention and defend what we are sending.

If you take silence, silence sometimes considered as agreement, which is not the case. So the participation -- I'm sorry to our distinguished GAC colleague of GAC members in the CCWG Work Stream 2, in particular in these two important group is very few. Apart from some people very, very active. Thanks to Jorge. He put a lot of efforts outside the meeting, in the meeting, in the chat, and in the conversation. Sometimes there are tens of email exchanged between him and otherwise, so on and so

forth, is very highly appreciated. But there are handful. Two, three. It is not sufficient.

If you want what you say to implement, we have to put more effort on that.

Thank you.

JORGE CANCIO:

Thank you very much, Kavouss. And I think you raise an absolutely essential point, and this is that we need more participation, more active participation from colleagues, especially from those who are members of this working group who have an interest in human rights and international law.

We are in the midst of a community effort in the CCWG, and we need active participation there to -- to go further and to -- to really make our point and express our opinions in this important work.

I think that once the draft is released for public comment, we will make sure from the co-chairs that this is put in circulation of this working group and we will try to come up with a GAC input, be it through a consensus position, if possible, or a speculation, at least. So to help all GAC members and all working group members to get our views known to the subgroup.

But apart from this very important point, I take that we are agreed that we may help Niels in reaching out to the U.N. working group. And with this, we had a third item in the -- under this point, which was discussion, consideration of possible input to the GAC plenary.

I think for the time being, we can inform about this agreement, and also about the discussion we had, but it is probably not the time yet for making a GAC input because, as I said, we have to wait for the public consultation process to have a stable draft where we can organize from -- from this working group hopefully a GAC input on this issue.

So with this, I think we could go to an exciting topic where we have a very thoughtful paper, just released, and this goes to point two of the agenda and the study of the Council of Europe about community-based applications and human rights implications.

So, Mark, would you like to present it shortly?

Thank you.

MARK CARVELL: Yes, thanks.

And this -- this is a major contribution to defining ICANN's approaches and strategies for expanding the Domain Name System. It's an important comprehensive, well developed piece of work which the Council of Europe commissioned. For those of you who have been following the GAC's consideration of the progress and, in a lot of cases, the lack of progress of applications for new gTLDs, which were coming from communities, communities which had very limited resources. If you had followed our handling of that particular public interest issue, you'd be well aware of a number of systemic problems and deficiencies of process which the experience of the current round has revealed with regard to applicants for community-based gTLDs.

And this report, which is just issued -- it came out just yesterday - - makes a number of recommendations to address those failures and deficiencies.

And with the aim, really, of anticipating what may well happen -- that is, a further process for expanding the Domain Name System -- anticipating how the vision that the GNSO originally had for the new gTLDs round of creating opportunities for communities to be able to set up their own top-level domain that would serve the interest of that community, enhance their ability to communicate amongst themselves as a community, to

be able to communicate to the wider world what the community was doing, what its opportunities and challenges were.

That opportunity which the GNSO had, if you look back in the early days of the formulation of the policy, very much to the fore was, in the event, I think most commentators would agree, lost - - that vision was lost, as the wholly commercial proposals that came through in the gTLD round largely displaced, particularly where there are cases of contention where you had commercial applicants competing with applicants from communities with limited resources to be able to fight their way through the contention process, many of those communities lost out or found themselves caught up in highly resource intensive processes to fight their corner.

So this report really does examine this issue in terms of opportunities for communities. And this is where the Council of Europe I think has made an important contribution to the work of the GAC and as this report disseminates further into the ICANN processes.

The Council of Europe, as many of you well know, is a grouping of 47 member states, plus there are five observer states: Canada, Japan, Mexico, U.S., and the Holy See. It has an Internet governance strategy. It's had one for four years and is now embarking on a further four-year strategy on Internet policy;

coming at issues of Internet governance very much from the rights perspective, from freedom of expression, freedom of assembly, and so on. Hence, the linkage to community-based gTLDs. Many of them are about creating opportunities for freedom of expression and assembly, as I described in the beginning.

So the Council of Europe is making a very active contribution here, which I hope this working group will support as the work goes forward. The Council of Europe -- I'm the U.K. representative in Strasbourg on the Council of Europe's Steering Committee on media and Information Society. The head of department of the council will be joining the GAC meeting over -- over the weekend, and he will talk about this in more detail to the GAC plenary and also introduce this important piece of work to the GNSO and to the Board.

So we have plenty of opportunities to enhance the visibility of this report and its recommendations, which will do a lot to demonstrate, if those recommendations are agreed and approved, to demonstrate how ICANN's commitment to rights actually delivered in practice.

So that's the significance of this report. So please look at it.

The ICANN community is already alert to it. And those of you who are following Facebook and other social media sites

commenting on ICANN process will have picked up that it's stirring a lot of interest.

For the GAC process, the report has only just issued.

So what we will propose as Council of Europe to the GAC plenary is that we have time between now and the Copenhagen meeting for GAC colleagues to comment on the report and its recommendations with a view to formulating advice to the ICANN community and to the Board at the Copenhagen meeting relating to the recommendations, if we agree them all.

So that is the status of the report. That is I hope how -- the significance of it is vitally important and how this working group can play a role in ensuring that the context of the report, the experience of the current round, and the recommendations that the report makes resonate in terms of rights, freedom of expression, freedom of assembly.

So sorry, that was a rather long introduction to this agenda item, but I just wanted to state the significance of it. And my sincere wish that you will find time to look at it. It's not a huge report. It makes some very crisp and clear recommendations. It was compiled by a lawyer, two people, Eve Solomon who's a lawyer, an international media consultant and Kinanya Pijl who is a Ph.D. research -- researcher in law at the European University Institute in Florence, so two very astute legal eyes have been

looking at this whole issue, the experience, and the way forward from legal and rights perspectives.

Have a look at it. If you go to the executive summary, it brings out the key issues, the experience and the challenges. It's based on a lot of interview work, some of which was done at Helsinki. One or two of you may have been interviewed by the consultants who wrote the -- the authors of the report. They may have interviewed you. They did a very comprehensive research involving active interviews and that the -- that is reflected in the quality of the report.

So that's the -- what I wanted to report. Does anybody have any comments at this stage? Kavouss. Yeah, thank you.

IRAN:

Yes, Mark, thank you very much. Rather comprehensive information. A few suggestions and perhaps questions. The suggestion is that you said that this recommendation will be studied by GAC members between now and Copenhagen. I think no problem with that. But it will be more appropriate that people behind this prepare a sort of the first draft of any advice should be given. We should see that in the form of advice. Not in the form of recommendation. Because recommendation may be going far beyond that. But advice would be different. And then putting in advice, we should look at the new requirement of

the bylaw that advice should be consistent with the bylaw and hope that it is or maybe and there also should be have rationale, definitely need to have a rationale. But the now question before the RAG is that whether there is the same interest in the other part of the RAG which are not belonging to Europeans part, the 46 or 47 countries. GAC has 166 members, and so on and so forth. They share the same interests, they have the same interests of the community-based gTLD and my last comment is that what is the reaction of other community of the ICANN, GNSO and others and whether you have some formal or informal reactions from the board member. Because at the end, if and if we have any advice which is consistent with the bylaw, we have rationale, we'll go to the -- to the board and board -- I mean, perhaps people will need to see whether they have any -- any concern that should be covered and also see what is the reactions of the other communities that always they said that the GAC has more fast track to have the advice whereas the others, they have slow track. They have to go to the PDP. They have to have the two times for publication in the public comments and sometimes three times and so on and so forth. But this is just for your information. You're behind that. Thank you.

MARK CARVELL:

Thank you, Kavouss. You made a set of very important points and well noted. One point I would just mention, that is that in addition to seeking inputs from all GAC colleagues, beyond the Council of Europe membership, of course, we will be proposing to the GAC plenary that we proceed to submit this to the PDP on subsequent rounds as an input now at this stage, not with GAC endorsement but in order to expedite the interaction from other constituencies and also to the CCT review under the Affirmation of Commitments. So I want to make that point. I had one more - - we'll have to close off after this -- oh, two -- three. We're running out of time. So if you could make your points very briefly in succession, we'll try and get through as much as we can. Thank you.

INDONESIA:

Thank you. I know it's very short time for lunch. Now, still related to my previous comments, comment is what ICANN do interaction with the government, but in the process of developing the human rights and addressing the law for the ICANN itself, what -- bearing in mind that the government, many government will have different view on those two topics, you see, about human rights and so one human right might okay for one country, might not okay for other countries. What the government can do then for that -- if they don't like what ICANN view, what -- regarding the ICANN's view on particular human

rights. What they are -- they can do. They block the -- they block something or block the content, block the applications or just okay, I will block some part of the Internet or things like that. That's the kind of things that perhaps should be considered when we making this process. Thank you.

MARK CARVELL: Okay. Thank very much. I have the U.S. next and then one on the far side. Oh, were they first? Sorry. Please, yeah. Sorry, I thought there was a flag over there.

NICOLA TRELOAR: Sorry, Nicola from New Zealand here. Thank you for raising our awareness with this report. It's useful for us to see a European view and to hear the ICANN community's views on this.

I just have two questions. One is, can you please circulate a link? I'm having a bit of trouble locating the document. And the other one is, what is the status of this within the Council of Europe. Is it an input or has it been endorsed or is it still under discussion. Thank you.

MARK CARVELL: Thanks. With regard to the second point -- we'll certainly ensure the link is circulated effectively. The second point, it's a report

commissioned by the Council of Europe. They offered to do this, as you may recall, before Helsinki, I think, and then made that offer confirmed in Helsinki. So the report was already commissioned by them. But the steering community in Strasbourg has not reviewed this report and its recommendations, so it doesn't have the stamp of the committee of ministers of the Council of Europe on it. That's the status. Hope that clarifies that point. Thank you.

I'll turn now to the U.S. for the final question. Thank you.

UNITED STATES:

Thank you. Ashley Heineman again from the U.S. Just a question and potential concern in terms of historical GAC practice. Is it typical, acceptable, appropriate, for the GAC to use as a basis of its advice the work of another group? I haven't read the document so I can't speak to it substantively, but just from the perspective of commenting or providing advice or endorsement on this body of work, is that something that the GAC finds appropriate? I can see it informing our views and advice, but calling out a specific document such as this, I'm just wondering if that's existing practice and have we given thorough consideration as to whether or not it's appropriate to have that as practice. Thank you.

MARK CARVELL: Yes. Thank you, Ashley. The Council of Europe are a GAC observer so they attend and participate in GAC proceedings. Of the 35 IGOs, I would suggest that the Council of Europe has been the most active of the IGOs. So they are contributing to the work of the GAC as an observer of this committee. And that's been made clear throughout. And if they offered to undertake work, which the GAC agreed to it doing, they have now delivered on that. So that's basically the situation as I see it. It is now for the GAC to consider the recommendations of the report and to agree, disagree as GAC members feel fit after due consideration. Jorge, I don't know, do you want to add anything to that? Or Milagros?

JORGE CANCIO: Not really. I think that, as you said, this is an input, while a developed input by one GAC observer and as Mark suggested the idea is to consider it with time until Copenhagen and in Copenhagen, of course, we, as GAC, may endorse it or take some parts of it or whatever we may see fit after the discussions, we may have had there and also online preceding the Copenhagen meeting. But we are totally out of time, and between you and your lunch, so I guess that unless we are -- we have a very pressing issue, I think that we may give one minute to Niels to very quickly update us about the work of the CCWP because he has been so gentle to be with us here for all of the meeting. But

then we have to close and take other discussions online. Thank you.

NIELS TEN OEVER:

Thank you very much, Jorge. I'll change proverbial hats from the rapporteur of the cross-community working group human rights subgroup to the cross-community working parties on ICANN's corporate and social responsibilities to respect human rights chair and invite you to our session today at 5:00 where we will present new work of the CCWPHR. There has been great work done by the Center for Communication Governance at the National Law University in Delhi on the human rights impact of the WHOIS and RDS proceedings. There's been work done by CIS India on the new TLD impacts on human rights as well as several other topics to discuss. So I'm greatly looking forward to seeing you there and to also working together synergetically on the topic of human rights in ICANN. Thank you.

JORGE CANCIO:

Thank you, Niels, to keeping to that one minute. And we have a very important more immediate session, lunch, which Olaf is going to talk about.

OLOF NORDLING: Absolutely. An important message regarding our subsistence. And contrary to popular belief, there are such things as free lunches. And the complimentary lunches will be served outside the glass doors on the north side of the building. So it would be to the right when you exit from here. Close to Hall 1. And to that end, you have received as well lunch coupons, vouchers with your registration, so please use those. And it's not only for today, it continues throughout the week. And with that, I think we can close because next session, which is the GAC working group on operating principles, will convene here starting at 1345 because that's when we have the support available.

MARK CARVELL: Thank you, Olaf, and very much appreciate that and appreciate everybody here who's been following the working group on human rights and international law. I hope you will contribute actively to the working group's work over the next few months leading up to Copenhagen and also contribute to the work of the subgroup, as Kavouss said earlier on. The subgroup is only going to work effectively with appropriate levels of diversity if people take part. So I'll finish off with that entreaty to you to take part. I'll close there. Have a nice lunch. Thank you. Free. Thank you.

[END OF TRANSCRIPTION]