
JOHANNESBURG – GAC Session on the Implementation of new Bylaws (Session I)

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CHAIR SCHNEIDER: Please take your seats. We have to continue.

The next item that we have on our agenda is an important one. Of course all the items are important, but this one is particularly important. And so this is about the GAC implementation of the new ICANN bylaws, something that we've discussed already a number of times, which is -- and is a fairly complex issue, and -- but this is like the -- a decisive moment, because, for the first time, we will have a so-called community forum that is tabled -- or scheduled tomorrow morning, and so we need to know what we are supposed to do or what we would want to do as part of that forum.

And there are a number of other questions that you've all received and proposals that you've received in the briefing paper that is built on past briefing papers, so again, this is nothing really new, but we are making progress every time, every meeting, and getting a more clear picture of what actions are to be taken for the GAC as part of the empowered community, and I will give the floor to Tom, who has been working on this, together with me and with some others quite

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intensely in the past, and he will quickly run you through the issues that we should have a look at together.

So thank you, Tom, for going through the slides. Thank you.

TOM DALE: Thank you, Thomas.

I know that many of the GAC members believe that I get paid by the number of emails that I send you, and --

CHAIR SCHNEIDER: Which is true, of course.

TOM DALE: Yeah.

-- and in an imperfect world, unfortunately that has -- continues to be the main method of business communication.

You have received a number of emails from the secretariat, from myself, in -- over the past month concerning the operation of the ICANN empowered community because the empowered community is now starting to do a number of things, and so you have received, firstly, some detailed proposals in the briefing for the session now which try to pick up where the GAC left off at the meeting in Copenhagen.

You have also received separate advice from me concerning the community forum being held tomorrow to look at the proposed amendment to one of the fundamental bylaws. And in the last few days, you've also received an update from me via email concerning the fact that as the ICANN board has now approved its budget and operating plan for the 2018 fiscal year, then that also triggers a period during which members of the empowered community can, if they wish, propose a challenge to block that budget and operating plan.

So things are happening.

So the slide that you have there starts by summarizing some of the issues in the briefing.

The -- as I hope you're now all aware, the GAC is a decisional participant, and in fact has been since October of last year, with a number of rights and obligations.

The operations of the empowered community are now transparent through -- with ICANN's support at that link there, which is in your briefing as well.

Its work to date -- well, this needs updating. It's dealt with a number of formal sessions concerning confirming board appointments, establishing the community forum which is being

held tomorrow, and also it will now be monitoring any proposals concerning the ICANN budget and operating plan.

And as those of you who have been following the matter for the last several GAC meetings, of course specific procedures for exercising the GAC's rights and obligations have not yet been agreed by the GAC.

Could I have the next slide, please, Gulten?

The question of the GAC representative in the empowered community administration should be addressed because the GAC, you may recall, had previously agreed that the GAC chair should be the representative in the empowered community administration, but subject to review at this meeting here in Johannesburg.

As I've noted just now, the empowered community is now, with ICANN staff support, more transparent. Its emails, its correspondence, its deliberations are now open. And the secretariat will do its best to keep you informed of those developments. However, the continuing representation of the GAC is something that should be considered and hopefully decided on at this meeting.

The suggestion in the briefing is that the GAC chair will continue in the role, supported by the ACIG GAC secretariat.

Could I have the next slide, please?

The GAC started to consider, at the meeting in Copenhagen, a number of possible principles to guide the GAC's participation in the empowered community. Those are summarized on the slide as follows:

That the GAC should adopt a flexible approach and adjust their participation and engagement as necessary based on experience. And it is, of course, still quite early days in this work.

Secondly, the GAC would engage with issues that have direct or indirect public policy implications, and there was some discussion about how to make that judgment and you may wish to resume that discussion this morning.

Thirdly, that the GAC would participate in the early stages of the escalation process, and that includes things such as deciding whether or not to support petitions and the community forum-type platform, which is happening here, with a view to trying to resolve particular issues rather than having them go to exercise of community power.

And then that the GAC would treat each potential exercise of a community power on its merits.

And the proposal for this -- to be agreed at this meeting, hopefully -- but it's up to you, of course -- is that those draft principles which are detailed in the brief be agreed by the GAC.

The next slide, please.

The community forum, as a number of people have mentioned already this morning, is dealing with an amendment to a bylaw, and because it's a fundamental bylaw, an approval process has to be gone through by the community. The board is proposing a new board committee, an accountability mechanisms committee, that would handle reconsideration requests. You -- some of you may be aware that reconsideration requests are an internal ICANN review mechanism of particular decisions and, indeed, the GAC has used the reconsideration process itself before.

The proposal to set up a new committee does need approval of the community because it changes a fundamental bylaw. The community forum which is being held -- I think it's 8:00 a.m. tomorrow, in fact, in this room -- is the next step under the bylaws process.

The GAC's options with regard to the proposed bylaw change are to support approval of it, to reject approval of it, or to abstain.

The proposal in the briefing is that the GAC should support the bylaw amendment in principle for reasons that are explained in the brief, and -- but also to seek the views of all GAC members because not all GAC members are present here physically at this meeting and to take a final position within 21 days of the end of this meeting.

If I could have the next slide, please.

The need for GAC procedures to deal with Stages 1, 2, and 3, the early stages of the process -- this is procedures, as opposed to the principles that were highlighted earlier -- again picks up on proposals that were discussed and seemed to have some support at the meeting -- at the GAC meeting in Copenhagen.

The proposed procedures are for active participation by the GAC in these early stages, to avoid escalation of a particular issue, to try to allow for some flexibility. Again, given the untested nature of much of the machinery that we're talking about here.

The proposal is that a draft response will be prepared by the GAC Leadership Team to -- for the GAC to support, object, or abstain to particular issues at this stage, or at these early stages of the escalation process. That would normally be decided by written procedure, which means essentially the GAC mailing list, but if three or more GAC members object to the proposed approach, then the issue would be considered and decided by the GAC by

teleconference or, if possible, a face-to-face meeting, but bearing in mind the time frames that are in the bylaws for a decision to be made.

And the proposal there is that the GAC would agree to those proposed -- proposed procedures for the Stages 1 through -- 1 to 3 of the escalation process, and those are detailed further in the briefing document for this Agenda Item 2.

Could I have the next slide, please?

For Stage 4, the GAC's or, indeed, any decisional participant's exercise of a community power, a number of possible elements for discussion have been suggested in the brief, recognizing that this is still an area where there is some range of views in the GAC and that it's unlikely that a decision would be reached within the GAC on this issue at this meeting.

Some possible elements for discussion suggested in the briefing are that in order to exercise a community power -- for example, blocking the budget or removing a board member -- that a consensus GAC position would be sought; that any formal objection would trigger a full GAC discussion; and that if a consensus position is not possible, then the GAC will abstain from the exercise of the power in question.

The suggestion in the briefing is that the GAC work towards finalizing its procedures for Stage 4 by the end of ICANN 60, which is the next meeting in Abu Dhabi.

The next slide, please. I think there's one more.

The issue of GAC advice to the ICANN board was discussed at the meeting in Copenhagen. Again, it's unlikely that the GAC will have the time or perhaps the inclination -- it's up to you, of course -- to reopen this issue immediately, but we have noted for the record that as previously advised, the changes to the bylaws effectively, if not explicitly, create three different categories of GAC advice now: GAC consensus advice, which is defined in the bylaws because it has particular implications; GAC advice, which is not consensus advice, which is -- has been suggested to be described for working purposes as broad agreement with one or more objections; and finally, the existing provision in the operating principles where the chair can convey the full range of views of GAC members to the ICANN board, although this is not, strictly speaking, GAC advice.

Again, as with the previous issue of formal exercise of a power, the suggestion is that the GAC work towards finalizing its approach to different categories of advice by the end of the next meeting.

Could I have the next slide? Thank you. Which I think is the last one.

To move all this forward, at the present time the GAC chair has been the lead on these issues, supported by the ACIG secretariat, and this is not getting any easier, given the chair's other commitments and the growing complexity of this issue because, as I said at the beginning, the empowered community is up and running and doing a lot of things, and to keep across it, we are suggesting, requires the involvement of more GAC members than just the chair. And that includes working on some of these issues intersessionally, if at all possible, with the support of the ACIG GAC secretariat.

The proposal is that a three- or four-member steering group or similar body be formed here to work to resolve specified issues not just generally but issues that you agree need to be worked on and proposals brought forward at the next meeting and hopefully resolved by the end of that meeting.

That last slide is, in some ways, the most important one to put before you because -- as I said, for a range of reasons, including the chair's commitments and, indeed, the reduced resources available to ACIG, which is, you know, a part of 1.0, which is me, requires that if at all possible, a range of GAC members commit to that intersessional work supported by ourselves.

That's a summary of the briefing that was circulated, Thomas.
Thank you.

CHAIR SCHNEIDER:

Thank you.

Well, actually, this is something that is a general challenge or -- yes -- situation that we need. In addition to the chair and the vice chair and the support, we need GAC members to be active to devote some time on some specific issues to take the lead, and some responsibilities on a number of things, because otherwise, we will simply not get the work done in a quality that we would want it to be.

So this is a recurring issue and -- yeah. So please think about what you can do to participate actively in the work of the GAC, of course.

So we've heard quite a range of issues that we need to discuss and resolve at some point in time. Some things are more urgent than others, as we know, and given that we have this first-ever community forum that will take place tomorrow morning, of course we propose to concentrate on that part.

One thing is the -- that is probably a fairly quick thing is the question of who shall represent the GAC in the so-called empowered community administration, which is the, let's say,

administrative organ of the empowered community where there is no substance discussed in that sense, but the only issue is to have one person per decisional participant per SO/AC that will transmit messages from the SO/AC to the community or to ICANN staff, and for the time being, we have agreed that this is the GAC chair that will have that role, and the proposal is would continue with this -- that the GAC chair would continue to take on that role. We've had previous discussions before. I don't know until when we agreed that this should be the case.

UNKNOWN SPEAKER: (Off microphone.)

CHAIR SCHNEIDER: So we agreed that -- in some previous meetings that we would rediscuss this at this meeting, so maybe if we can have your quick views on this, whether you would like to continue or whether you think that something would need to be changed.

I see Denmark, Norway, Iran. So please try and make your statements as short as you can. And China. Thank you.

Denmark, please.

DENMARK: Thank you, Chair, and thank you to 1.0 for the draft of this paper, which is a good paper for our discussion.

There's only one thing which I can see, is that the decision is split up between two meetings, and from our point, it's important that nothing is agreed before all are agreed. And especially the last point is some of the -- rather important. So from a procedural point of view, the decision that we take in this meeting, according to our view, should only be valid up to the next meeting, where we hopefully can agree on every point on our involvement in the empowered community.

As to the chairman, we welcome that the chairman will represent GAC in the empowered community.

CHAIR SCHNEIDER: Thank you, Denmark, and I think that probably everybody will be able to go along with what you said. Norway, next.

NORWAY: Thank you, Chair. Yes. We can also agree with Denmark, even though we think that it might take some time then to get the whole package fixed. Let's say that.

So -- but if we can continue then to put the draft principles for the GAC involvement through the chair, and also then the draft

principles, as we see them as very flexible and a good starting point and not in danger of being a big, well, fuss in the GAC, we think we should say yes to what is put on the table, at least for the next meeting, up to the next meeting.

So we think it's important to have an informed and engaged GAC chair in this empowered community, so it's critical that we have a representative in that community and we think the GAC chair is the right one.

As we said, the GAC -- the draft principles are flexible, referring to Point 4, and we realize that we will have continuous discussion for our involvement in the various stages of the process, but as for now, we need to put the GAC chair in that position again. Thank you.

CHAIR SCHNEIDER: Thank you, Norway.

Iran.

IRAN: Thank you, Chair. We also echo the two previous speakers that until the next time that we decide GAC chair, Thomas Schneider by name, would assume that responsibility. Then we decide later on based on the circumstances and conditions. Thank you.

CHAIR SCHNEIDER: Thank you, Iran.

Next is China.

CHINA: First of all, I would like to thank Tom for preparing this briefing paper. And I think in general, I would like to agree with the approach proposed in the briefing paper. I would also like to echo the point -- points made by the previous speakers.

And next I have two points. One is please forgive my ignorance. I have a question regarding the 21 days. It says, The GAC has 21 days from the end of the ICANN meeting to take a position. I would like to ask where does this 21 days come from? Is this defined by bylaw? I think right now because we have many GAC members in the room and many are not in the room, I think 21 days is sometime -- is short for the whole GAC, for each of the GAC members to review and to take a position. What we can do to maybe do some work in advance to give GAC members more days to inform them to take the position.

And my second point is related to the three formal objections threshold. I think with regard to this, I agree with kind of having a kind of threshold to trigger the full discussion. Otherwise, the

GAC maybe not able to deal with the workload generated by the processes.

However, we maybe want to -- we may want to discuss the how to -- how to decide such a threshold.

Right now I'm not sure whether the three formal objections is a good threshold. I would like to flag this out to hear the views of other GAC members.

Thank you.

CHAIR SCHNEIDER:

Thank you, China.

And, of course -- well, first of all, to respond to you, there has been some error in communication. One of the messages from ICANN where they said it was 28 days, in case somebody has seen that, that was obviously wrong because as it says in the bylaws that we worked very hard upon until last year, it is a 21-day deadline. I would need to check whether this is starting from after the day of the forum or after the end of the ICANN meeting. But we'll sort that out. But in any case, you are very right, this is a very short period, not just for us in the GAC but for everybody. But that was what was agreed during this accountability reform. And we will have to live -- like everybody else, we will have to live with this 21 days. As you say, it is, of

course, very important that we are -- we use the time before community forum to prepare and inform about the issues and help us make up your minds so that we are already, let's say, warmed up when this 21-day period starts.

Last comment on the number of three, this is something that we -- of course, this hasn't been tested yet. This was something after a number of reflections that was felt, like, should be a small number but not zero and then you could also take five. But we felt that maybe three is something that we could use as a start and then see how this develops in the future.

Next I have Brazil, then the U.S., then France, and then Switzerland and then South Africa. Thank you.

BRAZIL:

Thank you, Thomas. And thank you, Tom, for preparing this together with you. I would like to have some clarification on exactly what would be the pending issues for us to decide because I think in regard to the GAC advice to the board, we have, of course, the consensus advice, the GAC advice, and the range of views. So I consider that the issues that should be discussed there refer -- I think we have been discussing how to make sure the consensus advice, may be with some conditions we can overrule some objection, I think basically that's what we've been discussing here.

Because for the GAC advice that is not consensus, I am not sure if there are any issues we should be discussing because if it is not consensus, the general rule would apply. And for the range of views, the same. So I'd like to be -- to have clarity on exactly what would be the pending issue here.

In regard to the advice and our participation in the empowered community mechanism, I'd like also to second in a way what was -- the issue that was raised by China because I understand that in regard to the empowered community, we have not decided on -- we are still to decide on the conditions for our participation. So we are -- according to the bylaws, we are obliged to provide consensus advice to trigger the consultation mechanism. But we can also provide GAC advice without consensus.

So in regard to the empowered community mechanism, I don't consider we are bound by the rule of consensus advice, otherwise we should abstain. I think it's up to the GAC to decide -- and I would -- maybe slightly different from what China has asked because I think China was referring to the three or four objections that would give rise to consultations among the GAC. But I think the proposal is that at the end of the consultation, if there is not full consensus, should abstain.

And in our view, this should not be the case. I don't think the GAC should refrain from participating in the absence of full consensus. I would propose that we should discuss a very high threshold. We have been saying this in other meetings. Something around 90%, 95%. So in a collective group of more than 120 -- I don't know how many we are today -- so if we have five or six objections even after lengthy discussion, I don't think that would impede us to participate in the empowered mechanism. So this is something I would like to know if it is still under discussion. Of course, there are elements that are being, that would be something slightly different from what is being proposed.

But I think we have had this discussion before. But I understand these were not conclusive, and I think that would be part of the pending topics for discussion until next meeting.

And I would also like -- like other colleagues to support the idea that the GAC chair would represent the GAC in the empowered mechanism. Thank you.

CHAIR SCHNEIDER:

Thank you, Brazil.

You, in fact, raise a number of issues that we should keep separate for getting -- having -- keeping our minds structured.

One thing is that in this case that we are having tomorrow as a community forum, that was not -- a discussion of the process wasn't triggered by an SO or an AC that is not happy with something that's being done or not being done. It is something that is because it is a proposal or a decision, rather, of the board to change its committees and their tasks, that they are obliged to undergo this process because it's a fundamental bylaw change. So this is a special rather simple case.

What you were referring to with petitions is the fact that we as GAC, like all the other decisional participants, can bring issues into this community process. And we have had already some discussions about how this procedure would work in the GAC in previous meetings. Since we will not use these procedures now, I think we should not focus on that particular question. But, of course, we will have to have this on black and white as a sort of package that it clarifies all the cases. And as I say, we've already had some discussions and actually quite a convergence of views on how we deal with requests that the GAC should raise something and bring something in and then move on. So this is one of the elements.

The other element, as you say, is how does the GAC decide whether or not in the later course of this process whether or not something should be brought up to the community forum or then in case that that wouldn't solve the problem, to move it to

the next level. And, of course, I think the consensus in the GAC was that in the lower steps that are mainly encouraging interaction, discourse, dialogue to solve problems, the threshold to support such a dialogue should be fairly low. Whereas, the closer it gets to the final stage where in the end the yes-or-no decision on a particular issue should be taken, we would go towards very high threshold that may be full consensus at the very end of this. But these are things that we're all -- they're all alluded to in this paper and also previous papers that one of which you have attached to this briefing.

But for the time being, we're trying to see, like, what is absolutely needed for our participation in this forum. We can also discuss, for instance, how -- or we should discuss probably how we would participate in tomorrow's forum, i.e., whether it is only the chair who is allowed to speak or whether we allow individual members and observers to interact, which is something that I personally would think is the appropriate thing to do because this is about a dialogue. So I wouldn't see a reason why to limit the participation in this dialogue to the GAC chair because it does not -- there's a decision that will be taken tomorrow. There is a dialogue that will go on about this proposed bylaw change. And in my understanding, we should keep this open to everybody to be part of that dialogue. So these are the things that I would like to hear from you today.

We also note that we have another session after tomorrow as part of this week's schedule where we can look at how we -- how this discussion was going, how this dialogue was actually held, and then draw any conclusions. And in particular then, we would need to decide what we do in these 21 days and how we get to a decision of whatever is necessary, what the GAC should do within these 21 days.

I'll stop here and continue with the list. United States, you are next.

UNITED STATES:

Thank you, Chair.

Honestly, I'm a bit confused with respect to the extent of the conversation we're having right now. But just to be clear, I'm going to limit my intervention to what I understood to be the comment from Denmark as well as the issue of the GAC's representation in the empowered community.

So to Denmark's comment, again, if I understood correctly, the U.S. would agree that the agreement on the process points, we would like that not to be piecemeal and for that to happen all at once, whether at this meeting or next meeting. But they are all somewhat interrelated, and I think it would be most appropriate to kind of know that we are agreeing to everything as a package.

On the latter point of the GAC representation in the empowered community, we fully support the GAC chair being the representative. But it is not clear at least to me that the responsibilities, the accountability, all the different process points and expectations for that role is actually articulated somewhere in writing. So what we would like to do, if this does not exist is, to add to our list of things to work on, just an articulation so it's very clear as to what the expectations and role of this representative is. Thank you.

CHAIR SCHNEIDER:

Thank you, United States.

And, in fact, you're right. I was only trying to get some feedback from you on this particular question and then the discussion evolved. So let's try and take one after the other. That may be easier for all of us.

With regard to your last question about the exact proceedings and responsibilities, there are some documents around that have been elaborated by ICANN about what exactly the role of this EC, empowered community, administration and the designated people there, we have shared this with the GAC at the time when they were produced and published. But, of course, we -- also as we need to, we currently have actually, go back to them and see what is actually asked of us. But, as I said,

before, there is no, let's say, substantive power or flexibility given to that person. That person is only the messenger of the decisions or of the communications from a particular SO or AC into the structures.

So that person only can -- is only designated to transfer a message and has no influence on the message itself. So that is the key point to retain. But we can, of course, go into the details. But that is the very clear key point. So that person can only transport a message agreed by the SO or AC to the empowered community. That person has no right to influence or change anything in between. So that is the key point.

Next is France.

FRANCE:

Well, thank you. Thank you, Thomas. As you said, it is a very important item indeed. There is a community forum tomorrow. So GAC really needs clear rules to be able to fully participate to the empowered community.

First we'd like to support -- or join previous speakers and support that the chair continue to represent the GAC in the empowered community. I think it's a mechanism that works.

Now regarding the other item, the principles for GAC participation, well, as you know, some countries would have

wanted more involvement of the GAC in the empowered community; some others will have wanted less. We've been discussing that for more than a year now since the Marrakech meeting.

And what's in the briefing now is really a compromise, which most importantly favors a flexible and future-proof approach as well as a gradual approach for decision-making at the different stages of the escalation process in the empowered community. So we fully support it, and we hope that the GAC will endorse most of these principles, if not all of the principles that I suggested by ACIG in this meeting. Thank you.

CHAIR SCHNEIDER:

Thank you, France.

And as you see it in the brief, and it has been presented by Mr. 1.0 -- I like that expression, sounds like a James Bond movie -- they are on page 2 of the briefing. You see the four principles as they currently are, assuming that this is like a rolling draft that is agreed for the time being with the option to in the end be modified as a part of a package. But that's something that we move along with.

And then you have on the one hand the principles and then you have the procedures, which is then following on page 3 and

further on for the, let's say, dialogue-oriented part of the process, and then on page 4, on the last stage of the process. So this is what we're talking about. And as France has said, we have discussed this since, I think, more or less -- started to discuss this in Dublin in October 2015 and has more and more converged into something that everybody can live with as a basis for participating in this for the time being. But that's not yet the end of the story, so this is still work in progress based on the experience that we will make.

Next is Switzerland. Then I have South Africa. Then I have Canada. Thank you.

SWITZERLAND:

Hello, good morning. Jorge Cancio from Switzerland for the record.

If I may ask the secretariat to put on the screen page 1 of the briefing paper because there we have the issues we are discussing. I think it would be very helpful to see them on screen. And then I would go issue by issue and give our feedback to those because I think that if we go issue by issue, it's clearer what decisions we take here and what decisions we may take perhaps later on.

CHAIR SCHNEIDER: Thank you, Switzerland.

Is that the end of your intervention? No, okay.

[Laughter]

I'm trying to follow this. So basically we are still discussing only the issue about the GAC chair to represent the GAC in the empowered community. But maybe we can shortcut this and basically can ask if somebody is against continuing as we did so far. And if nobody objects, we could take the first point as decided.

Does that help to speed up things? Yes, it seems to. Okay. So we consider the first item as agreed.

Then we would go to the second one. And let's try to -- let's ask the following speakers to concentrate on the second one. So that is Switzerland, part 2 of that intervention. Then South Africa, Canada, Iran. Thank you.

SWITZERLAND: Thank you very much for giving me again the floor. I will be very brief. I support Number 1. I didn't object, so... I support you being our representative.

We also support the principles for GAC participation in the empowered community that are for agreement here in Joburg. And as it is very brief, I will go to the other points very quickly.

We also agree with the application of the principles to the community forum.

We also agree with the application of the principles to the community forum. We also agree with the GAC procedures for engagement at stages one, two, and three. And as to five and six, this goes to discussion in Abu Dhabi according to the proposal, but we are very much in line with what is in the briefing.

And lastly, we agree that for those issues under five and six, a small group would make sense, so we agree with that proposal and we are at the disposal of the leadership team to take part in such discussions.

Thank you.

CHAIR SCHNEIDER: Thank you, Switzerland.

South Africa.

SOUTH AFRICA: Thank you very much, honorable chairperson.

I wish that I could intervene with the same precision that the delegate from Switzerland did, but I would like -- as much as I would like to make your way easier, I think I still have some -- there are some questions of clarity.

As much as one is in agreement, of course, with the proposal made in terms of the chair, what one would like to get back to is the proposal that was there which was alluding to the fact that there is going to be a Steering Committee consisting of this certain number of people. And what -- we would like to have some clarity as to the composition, the terms of reference, and what your view in terms of that Steering Committee. But also, I think Brazil touched on an issue that we -- one would like to touch on, which is the issue of -- in terms of what will be discussed, in terms when you're looking at the pending issues. Because I think the indications, of course, are that the issue of the consensus is key. But then when one looks at the debates that have been going on, even in terms of responses from the GNSO, it looks like there are other issues which relate to advice from the GAC and how that advice is received or the issue which pertains to what is deemed as advice from GAC. I think there are some questions if you look at the Helsinki communique that have become quite apparent and would probably need to be addressed.

So, Chair, in essence, I think the underlying concern there with the Steering Committee is the issue of how do you comprise that. Was there representativity? Have you looked at the criteria, and so forth? Basically.

Thank you, Chair.

CHAIR SCHNEIDER:

Thank you, South Africa. And thank you for asking these questions because others may have similar questions, too. And whatever is not clear, please do raise it. So don't hesitate to ask questions, just to make that very clear.

I'll try to answer them. First of all, this notion of Steering Committee. This is -- This is not anything that will have a formal role in -- in proceeding of any substantive issues. This is just an invitation to the GAC to continue to work on this until the next meeting because we need involvement. It's basically an ad hoc working group, if you want to call it, of people that have some time between now and -- and Abu Dhabi in October to help us finalize these things, discuss things, try and see where a potential final decision could be -- how this could look like. So it's just an internal, informal thing helping us move this forward because we have been working on this for quite some time.

We've been trying to move this forward intersessionally. That has proven to be difficult because we are all very loaded with a number of workstreams also outside of ICANN, so we have come to the conclusion that if we want to finalize this and have clarity at the end of Abu Dhabi, we should do more intersessional work. And basically we need a number of people from the GAC, ideally that have, let's say, diverging views so we can pre-shape a proposal by Abu Dhabi on the questions that will still be -- or the issues that will still be open in order to have an agreement on this.

So this is no formal group. It's just open to everybody who wants to participate. That will help us develop this whole thing further so we can, as has been expressed, adopt it and clarify it as a package in Abu Dhabi. So that's the goal of this group, whatever you call it. So it's nothing that has any -- any official functions or roles to be defined. It's just basically a support for -- for the leadership team to work on this.

And then I think your last points about GAC advice and reactions of the GNSO and so on, I think we need to keep in mind what we are talking about here.

So the general, normal, traditional role of the GAC is to give advice to the Board. This has got nothing to do with our engagement in this so-called empowered community structure.

This is something that won't change. We will give advice to the Board. The Board will have questions. We'll say yes or no and then tell us how they will implement or not the advice, and then we can struggle with the Board whether we agree on how this will be implemented.

The GNSO will react to our advice. They will tell the Board and everybody else what they like about that and normally what they don't like about it, and so on and so forth. That will not be affected at all by this. This is really just the discussion on how to clarify the GAC's participation in this accountability mechanism that was created as part of the accountability reform that went together with the IANA transition.

So this is just for cases where somebody raises something formally and wants to trigger a discussion among this empowered community, and then with a potential decision at the end, or -- because there's dissatisfaction -- a very strong dissatisfaction with something that is being done or not being done in particular by the Board. Or, if like in this case that we're having now, the Board comes up with a proposal to change, modify the structure of ICANN or of the Board in a way that requires a bylaw change or a fundamental bylaw change, it's like if you -- on national level, if you -- the government proposes a change in a constitution, that will need to go through a certain process in order to be validated by -- by the entire community.

So I hope that makes it clear that what we are discussing now is the participation of the GAC in this newly created accountability mechanism, which is -- has got nothing to do with the traditional role and our key, main role of an advisory committee giving advice to the Board and engaging in a number of work streams with others. But these are two separate things.

I hope that clarifies the situation. If not, please come back.

Brazil, would you want to respond directly to this? Because I have some others --

BRAZIL: Yes.

CHAIR SCHNEIDER: Okay. Yes, go ahead. Thank you.

BRAZIL: If I may. It's just a point of clarification because I think that would help us all to understand where we stand. Because I -- I understand we are focusing now on a step-by-step approach towards providing for the rules of participation of the GAC in this empowered mechanism.

But my understanding is that because in 21 days we'll have to express ourselves, so in a way this precipitates a decision. We

cannot wait, let's say, until the next meeting to decide on what will be our approach towards that first decision that is called for. That's why I think there's some confusion. Because, for example, now on the screen we see some -- we are talking about an escalation process, and there are things we have to decide. But we are now faced with a very concrete, very practical matter that in a few days we must express ourselves.

So my question, and that was part of my previous intervention, and I understand maybe others have the same concern, in 21 days, once you get all the answers from us, if there is no full consensus, what will be the approach? Will the GAC abstain? Will some kind of -- I think this is something that, in a way, again, precipitates a decision that we were working in a more paced way, but we should -- maybe we can decide for this first case to go for a full consensus, but that does not impede that we will discuss later on some higher threshold. But I think we need to come out of this meeting with a very clear idea of what will happen in different scenarios that can emerge as a result of that consultation in a very few days before next meeting.

Thank you.

CHAIR SCHNEIDER: Thank you, Brazil. And of course you're absolutely right.

So the idea of all this is to have an interim procedure that will agree for this particular case, and then in Abu Dhabi we have some more knowledge about how this went, what was problematic, what was maybe not problematic, even though we thought that it may be, and so on. So this is all an interim thing, and in Abu Dhabi we have a longer meeting. We will have more time to look at how this went and try and find the time to finalize this.

Okay. Thank you.

Next I have Canada, then Iran, then Brazil, and then Denmark.

So Canada, please.

CANADA:

Thank you very much, Mr. Chairman. Just a note for the record that we also support the GAC chair representing the GAC in the empowered community as the elected representative of the GAC. We believe the chair would be the best place to represent a holistic GAC perspective.

Regarding the GAC's approach over this meeting and the next, we support comments made by Denmark, Norway, and the U.S. We have put our position on the record on various occasions, and we continue to believe that the GAC should only exercise its decision-making role in the empowered community in

exceptional cases when there are clear and unambiguous public-policy implications.

We would like to see this made more explicit in the principles which imply that the GAC will always participate since any issue can have indirect public-policy implications.

We believe that GAC participation in the empowered community at all stages, but most importantly at the decisional stage where the community exercises powers, should be based on the GAC's existing and longstanding practice of full consensus.

We recognize that participation in the early stages of the empowered community is often subject to time constraints and requires some degree of agility on the GAC's part. However, we're concerned that using a formal process to advance a GAC discussion is overly burdensome and is not really setting ourselves up for a constructive outcome.

Since the objective is really to give concerned members an opportunity to discuss proposals by the GAC leadership, we'd suggest replacing objections with "requests to discuss."

Thanks.

CHAIR SCHNEIDER: Excuse me. Could you indicate more clearly where -- what particular part of the text you would like to make an amendment?

Is it with the procedures or with the principles? If you could indicate this to us. Thank you.

CANADA: Thank you, Mr. Chairman, for the opportunity to clarify. I believe it's in the next session where we talk about the three objections required to trigger discussion by the full GAC membership. So since the objective of the discussion is really to trigger -- of the objection is to trigger the discussion, we can just have members indicate that they wish to discuss.

Thank you.

CHAIR SCHNEIDER: Thank you. Okay. That's -- that's noted.

Iran.

IRAN: Thank you, Chair. I think we need to be conscious that the empowered community, EC, has been discussed for more than 14 or 15 months. It is difficult to digest that so quickly in a big meeting like what we had before and now, and we should be

careful to read Annex D of this bylaw. We cannot come and change 21 day, 30 day, 7 days, because it has been agreed and we have no experience yet whether is good or not good.

Let us try first, and then if it is, in our view, that these are short, we have to discuss with others, and we have to take necessary action, which is very, very complex. It has been discussed for days, this 21 day. The starting is clear and the ending is clear, saying that 11:59 of the hour of the location of the head office of the ICANN. It is very clear here. Please read them carefully. This is number one.

Number two, Chairman, as you have rightly mentioned, you have to take one by one but not do the whole thing. It is very difficult. The first one we are certain that the chair will participate. I would like to add one qualification to that, one qualifier to that. If you bring the first one, please, saying that we agree that the chair, I would add that "until otherwise decided subsequently." You will be there but if you decide in future to have GAC chair plus or something else related. This is just for this time. So I would like that distinguished, Tom. Add that one, "unless otherwise subsequently decided." This is for number one.

Number two, with respect to the forum, as you mentioned it is very important and we have to decide and the same thing apply,

we give you this authority and as you mentioned clearly, you're just a faithful messenger. You do not add anything to that nor redact anything from that. Just make the focal point between GAC and the ...

And then, the third one is, people talking about policy. Let us take the issue of tomorrow. Tomorrow is creation of a mechanism for reconsideration. Is it policy or is not policy? In my view it's policy, but people say that no, it is not policy. So it is very difficult to say what is policy, what is not policy. We have discussed it elsewhere, outside ICANN, and it is a still ongoing discussion. So let us take, as usual, the most pragmatic way, case by case. Tomorrow maybe we'll discuss in the forum. You will represent us and you convey the message that we have decide to that. And, in fact, in one of the discussions or several discussions one of the existing GAC vice chair, Mark, mentioned that GAC would wish to participate in all forums, because it is exchange of views. It is not decision-making. You just discuss to see the views are held by the people. When we come to the decision-making in the step 5, that is another issue. Consensus, not consensus, policy, not policy. So let us clear this point and take the actions with respect to the other points. Let us clearly take out for the time being GAC advice, consensus, full consensus, and non-consensus, so on and so forth. But there is

some important point. And I think some people, they are very anxious to raise their hand. They want to discuss.

It was mentioned in Marrakech that each constituency like us should take necessary action to avoid one or few members captured the entire community. This is something we have to do. One veto capture everybody. Say no, we don't agree because there's no consensus. You have to find a way. And Tom proposed -- or not Tom. You and Tom, everybody, proposed some mechanism what would be the action. We have to discuss that, and we have to not this -- put this impression that we are divided. Everywhere that I hear GAC are divided. GAC are two groups, group 1 and group 2. Let us not have that one. Let us work together. Let us try to resolve the matter. Let us not to ignore the interest of the entire community because of one or two interests. So we have to come back to that, and we cannot do, chairman, all of this at this meeting. We have to do it step by steps. Thank you.

CHAIR SCHNEIDER:

Thank you. And actually, we are already running into the next session for quite some time. Just one thing I would like to make clear about tomorrow, I don't think it makes sense that tomorrow I should speak on behalf of the GAC on the substance because we haven't discussed as GAC whether we are in favor or

not of this proposed bylaw change. So I have no -- it doesn't make sense if I speak on behalf of the GAC.

How I understand the purpose of tomorrow's meeting is mainly to ask questions, to listen to the dialogue. It's a dialogue. The decision will have to be taken by us in the 21 days after. But tomorrow I will -- I would see that you all, if you have questions, if you have opinions, you bring them into the dialogue. So this is not something that should be monopolized by me. And even if there are diverging opinions, at this stage of the dialogue, that is the purpose of a dialogue is to hear different views or answer questions and try to learn from each other and understand. So this is how I see the GAC's participation in the community forum tomorrow. Of course, it's only one hour and we'll not be able to talk for five hours in a one-hour session that we share with the rest of the community, but I will not necessarily take the floor and speak on behalf of the GAC on the substance because that -- we haven't discussed this and I don't think it is my role. In the course then of communicating a decision within these 21 days, then that will be me who would then convey the message as the designated member in the EC administration. But for tomorrow's dialogue, my understanding is that whoever is interested, ideally as many as possible, you go there, listen to what others bring up in terms of questions or views, listen to what the board, probably they will question the board in the

sense of why are you doing this, is this really necessary, please explain. This is how I assume that the discussion will go. And you may fully participate in this dialogue, and that's it for tomorrow. And then we have another session on Thursday, or Wednesday, Thursday where we come and say okay, do we -- I will try and test from you whether you think that we should support this. We have a consensus to support this. If that's the case, it's then probably fairly easy to see how we convey the message or whether we will do a formal -- we'll have to do a formal message to all GAC members and seek clarity, whether there will be any objection for us to support it. That will be the case if you feel that it seems like we have no objection to the proposal of the board. If there were some objections, we should sense this and we would -- I would ask you to be explicit on Thursday so we can see okay, we need to have a process in this 21 days to sort out what can we -- what can we do? But this is how I see it. I think actually we have to stop now. I still have Brazil, I think Denmark, and the U.S.A. on the list. But are you fine with closing this now because we have another -- and as I said, this is only the beginning of the discussion. We'll know better after tomorrow's first community forum and we'll have some time on Thursday to see what to do with it then. So if that's okay with you, thank you very much for your flexibility. And this is, of course, a very complex and important issue, so we all need to be really concentrated, focused, and try to

understand ourselves and then the rest of the processes. So this is, of course, not -- not so trivial.

[END OF TRANSCRIPTION]