JOHANNESBURG – GAC Meeting to Discuss CCWG Accountability WS2 Matters
Wednesday, June 28, 2017 – 10:30 to 11:30 JNB
ICANN59 | Johannesburg, South Africa

CHAIR SCHNEIDER: Dear colleagues, please take your seats. We need to move on. We know that time is extremely scarce nowadays but we need to move on. Thank you.

So this is the session about the Work Stream 2 of the cross-community working group on enhancing ICANN's accountability. We are very happy to have our dear best drummer in ICANN ever, Thomas Rickert, co-chair of the working group here with us, and he will update us on some of the latest developments and time plans and processes, and also he's, of course, ready and happy to discuss substance with us, so let me not lose time and give the floor to Thomas.

And please get back to your seats, take your coffee with you without spilling it, and sit down. Thank you very much.

THOMAS RICKERT: Thanks very much, Chair, and good morning to all of you. It's good to be back with the GAC.

I had sent a couple of slides, so would it be possible to bring those up in the Adobe room, please?

So what I plan to do is not to take too much time with the presentation but just to give you a quick overview of where we are, and then I will speak to two topics in a little bit more depth, because I trust that these are of relevance and interest to this group, one of which is the latest developments in the jurisdiction sub-team and the other is the overall approval process for Work Stream 2 recommendations.

As you do know, the subgroups -- or the Work Stream 2 work is divided into several sub-teams which you see in the -- on the slide in front of you, so we have sub-teams that are working on recommendations and then we have work in the plenary.

So what you will see during this presentation is a little update on the work taking place in the sub-teams and the progress that we are making at the plenary level.

Next slide, please.

What you see in front of you now is an extract from a document that we're publishing on a monthly basis, which is the CCWG dashboard. If you want to inform yourself or report to your home bases on the progress that we're making, this is a go-to document that you can refer to because it shows the completion status of all the individual sub-teams, so it's quite handy. It's just a couple of slides long.

And what you can see here is percentage of completion, which certainly is not perfect but at least it gives you an indication of where we are with the different topics.

Then you'll find this green and red marker. There is something that you might find funny, that we have green and red, and the reason for that is that we originally had a time plan and we're measuring things against this original time plan, but then we asked for more time, and I will speak to that in a moment. And so it would be red based on the original time plan, but it is still green with the revised time plan. And we used this way of visualizing this because we were uncertain, until very recently, whether the extension that we asked for would be granted. And now it's safe to say that we have an extension for a year, and therefore, based on the revised schedule, all the different tracks taking place in the sub-teams are on track.

We will have another slide offering information on the status of public comments, and thankfully we have now moved to that particular slide.

So what we do in the CCWG -- we've done that in Work Stream 1 and we continue to do that in Work Stream 2 -- is that whenever we produce documents, these would not be agreed on in a single session but we would do two readings of documents produced by the sub-teams in front of the plenary.

So the sub-teams would be working on documents until they are satisfied with the result. So if the sub-team is happy with a paper they're producing, they pass it on to the plenary, so you can expect everything that you see as completed here as having been assessed as good quality work by the sub-teams.

And so the "Jurisdiction" that's not a jurisdiction recommendation but it is the so-called jurisdiction questionnaire, which I'm sure all of you have seen, where we've asked the community to come up with examples of where they see issues with the jurisdiction framework inside ICANN.

So this questionnaire itself had two readings. It was put out for public comment, and that public comment period is closed.

The same for the first transparency set of recommendations.

The good faith conduct recommendations have had its public comment period. Now, you might ask yourself: What is good faith conduct? We're all acting in good faith, aren't we?

And just to refresh your memory, because that might be a little bit cryptic, you might remember that we have a community power to dismiss individual directors of the ICANN board or the ICANN board as such. And for those in the community that bring forward such requests to, let's say, fire one or multiple directors, there is the risk that the director affected or the directors

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affected might try to retaliate and say, "Well, the way -- what you're saying is inaccurate and you're slandering me by trying to get me out of the ICANN board," and therefore, in Work Stream 1 we've come up with a mechanism whereby the individuals from the community get indemnified by ICANN in case they are facing legal action from a director or multiple directors concerned.

But there might be cases where there is actually slander, where inaccurate information is displayed, where expletives are used or other issues occur, and therefore we try to agree on a process whereby we say, "Okay, if you as a community member play by the rules and these are the good faith conduct rules for the dismissal process of directors, if you do not slander, if you use accurate information only and so on and so forth, then you're going to be indemnified by ICANN."

Another sub-team that we've made considerable progress with is SO/AC accountability, so they've also put out a set of recommendations for public comments and the public comment period is closed.

On diversity, there was a questionnaire. Again, not the full set of recommendations but just something to inform the recommendations to be produced at a later stage. And on that questionnaire, the public comment period is also closed.

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On human rights, it's still open and we received already -- and I'll get back to that on another slide -- some feedback from the ICANN board as well.

For the remaining sub-teams, we do not yet have initial reports that have been completed by the sub-teams, let alone shared with the plenary for first readings.

Next slide, please.

The implementation oversight team for the independent review process has completed its public consultation on the draft -- draft supplementary rules earlier this year. They're now working on implementing these updates and you can expect another public comment period on these supplementary rules later this summer.

So if you have not taken a look at those, please do, because there are some interesting aspects in there that are currently being refined so that you know exactly what's happening there.

I think I should also mention that there's a separate group that we will touch upon in a moment, and that is the CEP subgroup, on the cooperative engagement process, and those two processes are interrelated, and therefore, you should be looking at those together because as you know, the CEP phase is taking place before the IRP is taking place, and therefore, you know,

time limits and other procedural aspects play a role for both of them.

Next slide, please.

On SO/AC accountability, as you know, there has been some discussion, and this goes back to the concept of watch the watchers. We have asked for all the power that the U.S. government had in its oversight role over ICANN with the U.S. government, and now we've handed over this power to ICANN's global stakeholder community. And the question is how do we make these groups more accountable? And there have been a couple of recommendations. There was a public comment period and there was some feedback which raised some questions that we started to discuss in the -- in the plenary.

So there was a recommendation to expand the scope of ATRT of these periodic reviews, and there were concerns that, you know, ATRT is already packed, and we should not add additional tasks to that effort.

Then there were concerns about volunteer bandwidth because one of the recommendations was there should be annual reports by volunteers, so the SOs and ACs were -- that commented were concerned that we would burden too much the volunteers that already have too much on their plate.

Then there were some concerns with transparency requirements that we had. There was another recommendation that was made in Work Stream 1 for consideration on a so-called Mutual Accountability Responsibility Roundtable. And that idea originally got some sympathy or traction because that would be a nice feature to -- to hold the community accountable. But then discussing this more with the parties concerned and also inside the groups, you know, the subteam said, well, this should not be mandatory. It should be optional. And even on the optional concept of the Mutual Accountability Roundtable, there were concerns because the "M" in the MART acronym stands for mutual, which would mean that, let's say, the GAC would be accountable to the GNSO or the GNSO would be accountable to the ASO. And people thought that the SOs and ACs concern should rather be accountable to the target groups, to the community parts that they represent in the ICANN community and not vis-a-vis each other, which is why the acronym has been modified from MART to ART, accountability roundtable. And that's something that's still under consideration. But it did not get strong support, I should say.

And then if some of the recommendations to make SOs and ACs accountable don't get sufficient support from the community, that begs the question what remains. You know, shall we use the independent review process against actions of SOs and ACs

which did not get sufficient support. But then there is the open debate on what processes should be used so that agreed parties can take action against the doings or omissions of SOs and ACs.

So there's something in the making. You should keep your eyes open on that. But this is still subgroup's work under way.

Next slide, please.

I already spoke about the good faith conduct subteam. There was a lot of support in the public comments. There was just one concern from the Address Supporting Organization because obviously they have a different definition of community, and they have different internal decision-making processes than the other SOs and ACs in the ICANN community. And, therefore, they were asking how we could make this work with their operational procedures.

We saw the ASO earlier this week. I think we could add transparency and explain more about what the process is about, and I'm quite confident that we will bridge these -- this gap and get all the concerns removed. But in principle what I can say is even though ASO had concerns with the -- with the recommendations produced by the subteams, they were fully aligned with the rest of the community on the general idea of these recommendations.

Next slide, please.

Human rights. The recommendations have been published for public comment. There is no analysis of the public comment so far, but I should applaud the Board for working on that topic as well. So I think that's a -- that's an excellent sign of how we make sure that we get feedback from the ICANN organization during the process so that we avoid issues later on in the process where it's more difficult to fix things.

Next slide, please.

Jurisdiction. I think this is probably the topic that many of you have been eagerly awaiting to be discussed. And I would like to -- to take this opportunity to give you an explanation of what happened and maybe shed some light on the things that have been discussed on mailing lists. Mailing lists are excellent but they're not always the best communications tool, and sometimes that leads to confusion or even friction. But what I can say is that after the -- after we had a good and long discussion on the subject during the all-day face-to-face meeting here in Johannesburg, I think the CCWG understands better as a plenary what we're trying to achieve, and I also think many of the concerns that had been raised earlier in the subteams' calls as well as on the plenary mailing list could be removed or at least limited.

Now, I explained -- the starting point for my explanations to the plenary were this. In policy-making work in ICANN there is no clear route to consensus. PDP working groups and other groups, as I'm sure this group as well, are meandering towards consensus.

The observation of many participants of the jurisdiction subteam as well as from other parts of the community was that this jurisdiction subteam was not only meandering but moving in circles, and that led to some participants complained that they would not really be willing to invest time in this group because they didn't see any progress.

There were two issues that came up every other meeting. And the co-chairs felt that we should give some guidance to the subteam to help find a direction to continue the work in a constructive fashion.

So there was one idea that was brought up every now and then, and that was relocating ICANN away from California to some other country in the world.

The second point that came up every now and then was providing total immunity to ICANN. You know, we do know that there are forms of legal establishment, such as the Red Cross, where an organization is immune. But that would require a completely different form of incorporation. And since these two

ideas came up frequently and since these ideas led to disruption in the overall discussions in the jurisdiction subteam, what we did is -- as co-chairs is analyze the discussions over the previous months, look at who said what, and determine whether certain ideas had sufficient traction, as we call it, to have a chance to become a consensus position of the whole group. Not only of the jurisdiction subteam, but even later -- also later in the process as -- as a CCWG plenary position.

And what we found is that the vast majority, not only of individuals but also of groups these individuals represented, were not in favor of further analyzing and discussing the relocation of ICANN. And also, they were against the notion of making ICANN a totally immune organization.

Let's not forget we have jointly, including many government representatives in this group -- in this room, worked on community powers to hold ICANN, the organization, accountable. And making ICANN totally immune would make these community powers impossible. And one of the general themes of our Work Stream 2 work was that we would not undo what we agreed on in Work Stream 1. And, therefore, the procedural guidance, let me put it that way, to the subteam was that the subteam should not further work on relocating ICANN, and it should not further work on concepts based on total immunity, but it should work on concepts based on the existing

setup as ICANN being a not-for-profit organization in California and look at issue-based responses or remedies within this legal concept; i.e., ICANN being headquartered in California and also being subject to California law. And that's basically what we did all the way through; that we would look at -- at issue-based solutions.

Some said that they would have loved this decision to be taken at a later stage, but actually there were no -- no signals that the whole team would lean towards moving ICANN out of the U.S. or towards total immunity. And things like partial immunity -- and this has been subsequently clarified in our communications -- partial immunity would still be a perfectly possible solution. Whether it's workable or not is not for me to determine. Whether it reaches consensus in the subteam or in the plenary is not for me to determine at this stage, but what I can say is that there was no intention whatsoever by the co-chairs to direct the group not to further explore partial or relative immunity. And one of the ideas -- one of the areas of concern was OFAC; you know, the regime that would prevent ICANN and its contracting parties to contract with certain listed countries, entities, or individuals.

So there was the need or the wish by some in the subteam to seek immunity on these OFAC-related issues or get a permanent

permit from OFAC so that the limitations stemming from the OFAC regime would be removed.

And also, you know, other privacy concerns in geographic and reserved indicators would be issues that would require individual remedies.

So I hope that this has helped clarify a little bit what happened, because there were some high-handed debates.

What we saw in the plenary discussions earlier this week is even some of those that had raised concerns agreed with the notion that we should focus on the way forward that I've described. And let's not forget the subteam needs to come up with its recommendations first. Then they need to go through the plenary. So there is an opportunity to make him- or herself heard during the plenary discussions. And then there will be a public comment period for which a report can be -- a minority statement can be put into the report. So even those that do not agree with the recommendations have a chance to make their voice heard. And then it's perfectly possible that the public, during the public comment period, sympathizes with a minority statement and makes the whole group reconsider; right?

But we are trying to build a house, and at some point you need to make a decision whether you want to build the house out of wood, concrete, or adobe; right? And before you have that clear

vision you can't really talk about what type of windows you will put in there because otherwise the statics of the house might fail.

So I think we are in good shape for the jurisdiction subteam to continue its work on the basis of what we've established in Work Stream 1, not undo Work Stream 1, and look at issues-based recommendations.

Next slide, please.

I think I should be quick here. There is -- the diversity subteam is working on recommendations, so you should watch out for -- for those, because there will be a second public comment period before everything is going to be finalized according to our working principles.

Next slide, please.

On the ombudsman subteam, these slides will be shared with the GAC, I'm sure. I'm not going to go through that in order to not speak too much here. There was an independent study done on the -- on the sub- -- on the role of the ombudsman, and what we can say is the ombudsman in ICANN is a one-of-a-kind ombudsman so this is a concept you find nowhere else. But what the subteam is working on is clear limitations of what the

ombudsman can and can't do. So watch out for those -- for those recommendations.

Next slide, please.

So the transparency subteam is also working on a set of recommendations. You should watch out for -- for those. There was a public comment period.   The report -- the public comments are being analyzed at the moment. But what we can say is that there are some significant concerns raised by ICANN legal, particularly with -- with regard to the concept of contracting. There was a notion of open contracting that was proposed, and ICANN claims that there is -- that this would limit ICANN's ability to find partners and contract with those. So this is still under consideration.

Next slide, please.

Staff accountability. It's work in progress. I should leave it there. There's still discussions going on.

Let's move on to the next slide, please.

CEP, I've already mentioned earlier that's the cooperative engagement process taking place before an IRP is started. And this was a tough one because it was very difficult for Edward Morris, who is the rapporteur of the CEP, to find information about CEP because a lot of involved parties were not willing to

speak about what happened because they didn't want information about the processes to go public.

In order to actually get information, he then chose to offer anonymous interviews with those that are experienced in the area of CEP, and 11 interviews have been conducted. There was a presentation during the plenary earlier this week, and we're now discussing things such as timeline and how the timeline should be related to the IRP timeline. And then there are some transparency issues.

There is the idea of having a first phase of the CEP without involving lawyers so that the parties themselves can try to figure out what the issue and find a solution, but I think it's fair to say that in our discussions, that idea did not get too much support because we think that ICANN and the parties concerned might not be willing to let their staff speak without lawyers being in attendance because that might -- might be detrimental to the outcome if it comes to a CEP or an IRP at a later stage.

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So this is our financial reporting. If you have questions on that, we can respond to those via email or we also have Bernie Turcotte with us who is managing this so ably.

What I can say is, and I think we've mentioned this to the GAC previously, you know we've asked for an extension to have another year to finalize our recommendations, but we did not spend all the money that we have asked for in the initial phase. So the CCWG budget will not be increased because of the extension. And for staff support and other costs that ICANN is incurring, this is still within the transition budget. So the overall expenditure has not increased. That's the good news.

I think it is on us as a community, and I'm also looking at GAC representatives here, we need to make sure that we energize ourselves after this hugely exhausting Work Stream 1 to get our work done by next summer. Because whether or not we're going to get additional funds for a further extension is probably unlikely. At least we do not know.

And it is a possible scenario that at that time, if we ask for more time and more money, that the CFO and ICANN Board says, "Well, you had your opportunity. We're not going to fund this for longer. And if you want more enhancements or improvements to take place, let's do them in the periodic reviews that we're doing anyway."

So we might miss a huge opportunity to get things fixed that we can fix if we don't get our act together and deliver within this time frame given. Because when we do this in the periodic

reviews, it might be more difficult, but at least, and that's for sure, it will take longer for accountability enhancements to be enacted.

So I think for those -- and I'm not looking at anyone in this room but there might be some in the community who say, Well, let me filibuster this process. Let me make it stretch out longer. And ultimately from just waiting long enough, I might get my will at the end of the day. That concept will not work because if we don't get consensus on improvements, we might end up getting nothing. Nothing is maybe too much said because we have achieved an awful lot but at least we possibly can't go further with accountability improvements than we already got.

So let's seize the opportunity. Let's use this time. Let's work in a collaborative and collegial fashion in order to get really good and firm accountability enhancements done.

Next slide, please. I have already spoken to the extensions. That's fine. So let's please move on. Let's please move on to the next slide. Let's please move on. And yet the next slide. And that's going to be the next slide that I'm going to speak so, and that's the approval process.

Approval of Work Stream 2 recommendations is a complex matter. And we're thinking about this quite a bit because we have different layers of complexities. We need to reach

agreement on individual subteams' recommendations. We need to get the plenary to agree to that. We need to conduct public comment periods on the individual packages. But then everyone will say, Okay, I am not going to give you green light before I see the overall package, right? Because only if the package is adopted by the CCWG, we can put it in front of the chartering organizations for their approval and ultimately then to the board for their approval.

And what we must avoid is that some of these -- one of these parties comes back at the very end of this process and say, Well, I don't like Recommendation 17 of the staff accountability recommendations, right? And, therefore, we need to have a process in place.

And I urge you to take this at heart and really work by it, whereby we have the subteam recommendations first. So if you have an issue with one of or multiple of the subteams' recommendations, put your comments in in the CCWG or during the public comment period.

Then we're going to put that together and send that to the CCWG and also to the board and the chartering organizations for their input. Then we're going to put the package together. And once we put the package together and people have not previously raised concerns with individual subteams' recommendations,

we plan only to look at inconsistencies. So we are not planning to unpack the work results of the subteams that underwent public comment periods earlier. But we're only looking at flaws, interdependencies, where we made mistakes but, let's say, between the ombudsman and the IRP. Maybe time frames don't work.

Then we would try to consolidate and remove those issues. But we will, for the essence of time, put other substantive comments that we receive on individual packages, we will say to those commenters, let's please -- please put that info during the periodic reviews such as ATRT later. But we can't afford to reopen the discussions on the individual subteams.

So we are only looking at independencies. Then when any independencies hopefully will not be there; but should there any, we are going to remove those. Then there will be a final public comment. Then it go to the chartering organizations and then to the board. And I think when we're at that stage, we're going to open up a couple of bottles of champagne.

Thank you so much.

CHAIR SCHNEIDER: Thank you. So let's immediately use the rest of the time for discussion. So the floor is yours.

Okay. Argentina was first, then Russia. Keep your hands up. I'll note them. Let Argentina go.

Keep your hands up, please.

ARGENTINA: Thank you. Good morning. And thank you for your presentation, Thomas. The summer in my country starts on the 21st of December. Would you be so kind to make a reference to the -- for some of us live in the southern hemisphere. So it could be good for all of us to know exactly July and that. Thank you.

CHAIR SCHNEIDER: Thank you. Russia.

RUSSIA: Thank you for your report. We understand that you have a very big job. And we understand your point that you think that jurisdictions cannot be considered right now. But we cannot share this point of view. Because as we remember, it was decided during Wave 1 that it is so complicated issue and we are lack of time and then became the issue of Wave 2. Now it's not the issue in Wave 2, and we don't understand this.

How we see it -- and we made the answering on the question regarding this issue. We think that OFAC risk is the fundamental

risk for the stability of Internet users worldwide. And we think it should be considered very seriously.   And we think that it directly interacts with the issue of jurisdiction of California law.

And the immunity mechanism can help somehow with this issue to avoid the problem in the future. They said the problem is with stability of Internet, which is the fundamental for ICANN.

And we really think that this issue should be analyzed in details, and lawyers should be also be involved in this process. And even it's -- well, you think it is not the high priority right now, we think it should be included and analyzed somehow. At least we will really regret if it will not happen. Thank you.

CHAIR SCHNEIDER: Thank you, Russia.

I have China, Iran, and Brazil. China, please.

CHINA: I would like to take this opportunity to thank the work that has been done by the working group of WS2.   Taking this opportunity, I would like to first echo some of the points made by distinguished representative of Russia. I would also like to make a short comment on the jurisdiction issue.

In the whole process, I think the jurisdiction issue attracts most of the attention from all stakeholders within ICANN. We think this problem is important and even sensitive. And this issue is related to the legitimacy of ICANN as an international institution.

And I think it is also a critical issue for the process of ICANN -- of ICANN's globalization. One of the practical problem now we are facing as GAC members is that an international agreement made by each of the governments within this occasion may be affected by the law cases ICANN are facing.

I think -- we think that maybe this situation is problematic. The international political agreement or consultation we think perhaps could not affect by the local law, the local jurisdiction. Thank you.

CHAIR SCHNEIDER: Thank you, China. We'll collect your views and then give Thomas a chance to respond. Next is Iran.

IRAN: Thank you, Thomas. And thank you Thomas. Two or one, I don't know. Thomas, Thomas.

You have a very optimistic way thing that jurisdiction is in good shape. No, it is not in good shape. We are just having a little bit

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of light at the end of this long tunnel. Limited immunity need a lot of discussions. And I don't agree with the definition of "majority" and "minority." Peoples of -- millions of the peoples, only four or five countries, should not be seen as minority and considerable number of the people from handful number of countries should not be considered as majority. We should work together. Either ICANN is a multistakeholder inclusive or is not multistakeholder inclusive. So I don't understand this minority and majority. We have to satisfy needs of those peoples and countries.

35 meetings have been spent, and we are just at the beginning of the work. I don't know how far we can go. But we need to find solution for that.

At the very beginning, we talk about remedy and then we defined a problem. But the problem was defined from the very beginning. One of them is OFAC. OFAC was not designed for DNS. It was designed in 1940 for something else, and it was extended to DNS. It's not.

So, Chairman, yes, it is not your duty to push the meeting, but it is your duty to encourage the group to find a good solution. That is something we expect from the co-chairs. So please kindly consider that. We need to find a solution for the

problems, workable solutions for the problems. And that is very important for us.

Nine other issues is not important as much as for jurisdiction. Jurisdiction is the key point.   Establishing accountability is senseless, totally.   It's creation of management inside another management. They did it; I don't care. But jurisdiction, we care. We have to find a solution to the problem of the people. Please kindly, carefully watch, carefully conduct the meeting and try to find solution for the problems. Thank you, Chair.

CHAIR SCHNEIDER: Thank you, Iran.

Brazil.

BRAZIL: Thank you, Thomas. Well, what I'd like to say is that we have agreed with the proposal that was just a few minutes ago explained by Thomas Rickert as a way forward and for the sake of moving ahead the work in these subgroups, let's say, by avoiding discussing recommendations that would imply the relocation of ICANN and that would in a way imply the change, a total change, an overhaul in the way it is operating now.

So, again, we think it is a kind of pragmatic approach in light of the deadlock that emerged in the group in which we have been participating as one of the members designated by the GAC.

And we think that by allowing the possibility of discussing the issues and having the possibility even on the basis of, let's say, taking the default format of the -- the default California incorporation as a default model but to allow for exploration of some ways to address concerns.

From day one, those discussions, even in the first phase of the transition discussion, my delegation, the others made clear that for us from the perspective of government operation vis-a-vis ICANN, it would not be feasible to not be legitimate; that we would participate in the context of the organization in which any dispute settlement could be forwarded to an internal court, a national court, without our, let's say, agreement or having been subject to any internal decision-making that would give a green light to that.

So we think that it is still feasible in that new setting. The subgroup will work to explore ways in which the dispute settlement mechanism. Of course, addressing the scope for this and the issues is something to be decided but that would create a situation in which it would be a carve-out, let's say, of this default regime that would allow some comfort for foreign

governments to operate in ICANN but with the comforts that in case any dispute settlement arises that has a direct bearing to national interests not to be addressed automatically by U.S. court but to be guided by agreed rules by everyone on a way to address this.

We don't think this concept of immunity implies that ICANN will not be accountable. There will be accountability in that regard because the rules would provide for the way it would be addressed so it's not the same thing, I'd say, that there will be no way of assessing any harm or any other negative consequences.

So this is, let's say, an attempt to move forward within the group. That does not mean that at the end of the work of the group this will satisfy completely our concerns. But it's -- let's say it's just to allow the group to move ahead, to investigate concrete issues. And the final outlook will have to be seen by us. It will have to be seen by the wider concern. It will come back to the GAC for discussion.

So we think that a pragmatic approach is just to allow the group to proceed in a way that we think in principal might address our concerns.

Having said that, I think -- and we have expressed this -- that in some way it was a way to avoid a deadlock but it inverts in way the natural order of things we had previously established

because we had -- the subgroup had initially decided, first, to discuss the issues, discuss possible remedies, and then talk about how this could be addressed. So in a way we are ex ante already establishing and limiting some outcomes for the group.

Taking the analogy proposed by Thomas Rickert, think about the house. We have established that the roof will have such and such characteristics before starting the foundations of the house.

So it is, again, a pragmatic approach to avoid a deadlock, but it doesn't seem to us to have been the logical way to proceed. But we think it may be the realistic way to proceed as of now.

So we are looking forward to being engaged in the group, to be looking for solution. Again, that does not mean that we are agreeing to the final conclusions. This is something that will have to be examined in due time. Thank you.

CHAIR SCHNEIDER: Thank you.

South Africa.

SOUTH AFRICA: Thank you very much, honorable chairperson. Thank you to the representatives as well.

I think as other colleagues have indicated, (indiscernible), Iran and China, the issue of jurisdiction is very key. And in a sense, I think one is quite disappointed in the articulation that we've heard now because at the end of the day, some of these principles which we constantly are reminded of, especially when it comes to cooperation, usually ingrained in terms of ensuring that those who are within the arena of participating in international activities, they are -- as much as you enjoy that diversity, you also respect issues of sovereignty. And sovereignty is key to jurisdiction.

Now, I'm saying this from a point of view of also, you know, a country who has been quite affected by this issue. And I think the more recent case, without ever having to go over the years, is the issue that pertained even to the recent case of .AFRICA.

I think basically the issue has been raised quite a number of times by government that when you are discussing issues of such a nature, you want to be able to refer back to your own laws, in your own countries, rather than being propelled into a situation where you have no choice but to resort to laws of other countries. Besides the issue of the sovereignty, also it has an impact in terms of the resources because essentially, I think, resources will be better spent if you don't have to actually engage in travel and all other associated costs and retention of

lawyers who have that international experience, who ultimately will also impact on your budget.

So, basically, I think that as much as the group has done a lot of work, they should keep in mind this fact that if we are bringing people on board, it shouldn't be a case of choosing when to look at what's the majority view now and what's the minority view and then making a decision based on that because, you know, I think that's almost, like, an easy way out. Rather, look at a compromise which will try to accommodate these very valid concerns.

And just to round up, Chair, I think most of us who participate in the GAC are doing so because we are trying to say as much as we may not be particularly happy about a lot of aspects relating to the whole issue of a surrounding Internet and its governance in particular, but we are willing to come to the party, we are willing to have a forum where we listen to each other and we engage so that at some point or another, we are able to find a solution which is accommodative of all of us. Thank you.

CHAIR SCHNEIDER: Thank you very much, South Africa.

So we indulge the patience of our friends from the GNSO. His presentation was three minutes longer than expected so it's

actually his fault. No, no, it's always, of course, a shared responsibility. He's one of yours, so I'm allowed to say that, and he knows me.

A quick response from Thomas to the issues that have been brought up in particular on jurisdiction. Thank you.

THOMAS RICKERT: Thanks very much, Chair, and thanks to all of you for your contributions. I would like to particularly express my thanks to Benedicto because he has summarized and brought up a couple of points that I otherwise would have now included in my -- my summary.

First of all, it is not the case that we have stopped discussions on jurisdiction or that further debates on finding practical solutions have been suppressed. In fact, we are applying the same working methods as we did in Work Stream 1, when we had various junctions where we had different options for the group to further look into and pursue, and we then took away some of the options that did not have a good chance of getting to a consensus position.

This is what we did here.

And let's please remember, jurisdiction is a multilayered term. Place of incorporation and jurisdiction of incorporation are just

two aspects of this. We can still look at contracts, by which law -- by which country's law should the contracts be governed, how should dispute resolution work, and in response to the South African representative who mentioned .AFRICA as a case, even if ICANN was relocated elsewhere, then there might -- that might be a country not -- not easy to reach for many other countries, so we might be exchanging the U.S. for another country, causing the same level of issues.

And the issue of IRP or dispute resolution can be addressed based on the current setup that we have. That is, you can change language for dispute resolution. You can change the applicable law for dispute resolution. So these -- these issues can be addressed within the current setup.

Also, OFAC was mentioned as an issue. Other countries also have comparable systems. The E.U. where I'm coming from also has sanctions lists there.

So you don't get rid of that issue, per se, by moving ICANN elsewhere, but it is true that these are issues that need to be worked on, and work on issue-based responses is still perfectly possible, and the idea of partial immunity, as I've said, is not removed.

So let's try to work on responses on resolutions for the issues that we have, and as we've said in Work Stream 1, let's try to

make this work under California law, and only where we see issues with that, we need to discuss responses, and so far, all the accountability features that we needed could be implemented and I'm sure that solutions for many of the issues that have been identified by the subgroup can be resolved that way.

Part of the multistakeholder model is that not everyone gets everything they want.

As we said in conclusion for Work Stream 1, we have not made everyone happy but we've made everyone equally unhappy, and I do hope that we can say the same after we've concluded Work Stream 2. Thank you.

CHAIR SCHNEIDER: Thank you, Thomas. This is, of course, something that discussions will continue and have to continue, so let me ask our colleagues from the GNSO to come up to us and join us for the next meeting.

Thank you very much to Thomas, and we're all aware that this is not an easy job that you are having, and we generally are extremely satisfied. Not always on the issues, but on the way you conduct the meetings and conduct the process together with your co-chairs. It is amazing, and so I'd like to just let you go with thanking you for that. Thank you very much.

[Applause]

[END OF TRANSCRIPTION]