
JOHANNESBURG – GAC Operating Principles Review

Thursday, June 29, 2017 – 11:00 to 12:00 JNB

ICANN59 | Johannesburg, South Africa

CHAIR SCHNEIDER:

So we'll have to continue with the next session, which is on the operating principles.

As promised, however, I would like to just give the floor to those who wanted to speak before when we were discussing the GAC implementation of the bylaws. I think we need to be clear about what the priorities are that we should try and solve. I think the issue of advice and maybe different ways of advice that the new bylaws would allow first is not something we should discuss urgently, so we will defer that to a later stage.

I think the issue of the U.S. with regard to -- that we seem to be actually at stage 4 of the bylaw process is a valid point that we probably have to look at. We may not have the time to spend discussion today, so we have to somehow get to grips what we will do in the next 21 days. I think that's the key here. So, again, our proposal would be to go with the proposed -- on the basis of the proposed principles and guidelines at interim for this particular case, review this at our next meeting and try to agree on something less interim or at least interim for a longer term, maybe for a year or so, so that we could gradually develop into something stable and agreed.

I'll stop here so those who had their hands up, please try and make short interventions and try and focus your statements on how we're

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going to -- what are we going to do in the next 21 days. I think that's the key for now.

Denmark.

DENMARK:

Thank you, Mr. Chairman. Not to repeat myself too much, but we would appreciate if we take decisions and that is the principle 2 in the paper from the secretariat on a case-by-case basis.

We might next time have certain other criteria, but we think it's -- for this time, it will be enough case-by-case basis.

As I said before, I didn't hear Chris Disspain said anything about public policy things. I know it had been said by others that the CEP will be better off by this new procedure, if I understood right. And I will urge the chairmanship to look into the transcript, was that Chris Disspain said that the CEP have the necessary time also in the existing procedures. What happened is that there's less time to other things. So that point I cannot -- I haven't heard that it have public policy interests from the board side. But I might be wrong and have a bad memory, but that is not what I heard. But please look into that. Thank you.

CHAIR SCHNEIDER:

Thank you, Denmark.

Just for the sake of helping us understand, could you quickly explain what the CEP is so that we are all on the same level of information and know what we are talking about. Thank you.

DENMARK: The cooperative evaluation -- engagement process, yes. That was -- yeah. It was the board can try and look into the matter.

CHAIR SCHNEIDER: Thank you. I have Canada next.

CANADA: Thank you, Mr. Chairman. I just wanted to put our view on the record because there seem to be some different opinions about whether the bylaws amendment has public policy implications. Like Denmark, we believe that it's simply about the ICANN board creating a new committee of the board. This is an administrative matter related to the way that the board organizes itself. So we don't believe it has direct public policy implications.

In the draft principles, the interim principles that we have before us, indicate that the GAC will participate if there are public policy implications. And we do think it's really important that the GAC's engagement in the Empowered Community is transparent to the rest of the community and provides a degree of predictability about when the GAC will engage.

And by test driving this proposal, as was suggested, while we clearly heard Chris Disspain tell the community that there are no public policy implications, I think we may be creating a precedent that we will engage on an ad hoc basis in operational matters of ICANN. Thank you.

CHAIR SCHNEIDER: Thank you.

Iran.

IRAN: Thank you, Chair. We have discussed informally at the coffee break, it is not quite evident whether we should succinctly say it is not public policy. If we took into account -- or take into account the efficiency arising from this modification for the reconsideration case and reconsideration could also include public policy. So it is public policy.

So I don't think that we could engage at this last minute on these sort of things and try to have regular amount of concern concerning the situation of whether we participate, not participate.

This is a test trial. Let's do it, and let's not complicate it. And there is no precedence. You clearly mention it is a test drive, and that is a test drive. Thank you.

CHAIR SCHNEIDER: Thank you.

Switzerland.

SWITZERLAND:

Thank you, Chair.

And I think that test driving doesn't imply that we accept from the start that there is a public policy implication. As we are seeing, there are members who have different opinion. I guess that this is on the record that the leadership when making their proposal will look into those opinions, will look into the transcript of the community forum, and will also consider what is the fundamental bylaws amendment about. And then they will make a proposal to the GAC. And that's the opportunity, according to the procedure, that is being proposed for GAC members to agree or disagree with the proposal made by the leadership group.

And, thus, we are in stage 4. If this agreement is strong, it's clear that we would need to have a full discussion. And if we don't reach an agreement after that full discussion, the default position is to abstain.

So I don't really get the problem because the test driving really provides that all this can be solved and can be discussed applying the procedure that is forcing for stage 4 in the brief. Thank you.

CHAIR SCHNEIDER:

Thank you, Switzerland.

Well, in any case, we will not solve this today. Otherwise -- unless you want to spend the evening with me here in this room or anywhere

else. We need to know what we will do in the next 21 days, so we will come with a proposal from the leadership team as quickly as we can, and then we can discuss this electronically and we may have to have -- I think that's quite predictable right now -- something like a teleconference. One. We can't have two in different time zones, so we'll have to see what time zone that will be in or what hour of the day to discuss this.

Now, we have two things.

One is the agreement on the operational elements, the operating principles, if you like, of this.

And the other one is the agreement on the substance or on the actual yes or no using the operating principles that we are developing here on the fly of these things.

So we may not need full consensus to define our operating principles here, but we should be, nevertheless, mindful to somehow have a convergence of views -- let me put it that way -- on how we move these forward. Because we have 21 days, as I said, and as Switzerland has outlined.

If we then, applying our procedures, have no agreement on the substance and we have an agreement that the agreement on the substance should be -- at the last stage should be based on consents, we may -- if there's objections at the end, we may decide to abstain because that will be the result of this procedure.

So -- but for sure, I would say make yourself available wherever you are, if you are on holiday, for a telephone call that may be at any point in time of the day somewhere around 15 to 20 of July, because that will be probably somewhere around the time where we would need to know what to do.

I'll take two or three more and then we need to move on. Netherlands and Iran and then Denmark.

NETHERLANDS:

Yes. Thank you, Chair. I think we don't see also the problem. And if there will be a potential problem, it could be also the other way around. If we set a precedent saying we'll not react on this, we will not get involved because we don't think this is public interest, that's also a precedent.

So I think both ways, you send a signal to the community.

I think both the signal of sending -- the signal that you say, "Okay, this doesn't matter to us, this is not public interest" may even be worse than the other signal. Thank you.

CHAIR SCHNEIDER:

Thank you. Iran?

IRAN:

Thank you, Chair.

We would wish very much to be in your conference call. I am not available within 15th to 22nd of July. I am in Indonesia. And I don't want in the middle of the night, 2:00 in the morning, I will be asked whether I agree or don't agree. So either before 15th or after 22nd. I'm very much interested in these discussions. Thank you.

CHAIR SCHNEIDER:

We can do a doodle.

There are some constraints on us setting up this time. We need to have the material before. We need to have some exchanges in writing. I'm personally basically out of office also from the 15th, but it's not necessarily in my hands or in our hands here to decide about that date. That needs to be somehow the best of all the worst options, given the time lines and the availability of material and so on and so forth.

So we'll do our best, but we cannot invent days that don't exist in the calendar.

Denmark and then U.K. and then we have to stop this. Thank you.

DENMARK:

Thank you, Mr. Chairman, and sorry to come back.

You asked me what was the CPE, and that triggered that I said the wrong words. It should be the reconciliation process. I'm meant during my intervention. I'm open for any telephone conference, even though we, Denmark, do not think it is public policy interest. We have

-- well, we can live with this suggestion, but we would not like this to be a precedent. We would like to have a full discussion in the GAC afterwards what should be our role in this, but this is not any important thing but we think it's an internal matter. But the bylaws is as they are and one may think in the future to not get the Empowered Community involved in those kind of detailed matters. Thank you.

CHAIR SCHNEIDER: Thank you. U.K.?

UNITED KINGDOM: Thank you, Chair.

Very briefly, very much support the Netherlands' point. And just to remind colleagues here what I said earlier about the fundamental bylaw change before us as being of public interest. How the board deals with reconsideration requests regarding board action or inaction is very much intersecting with ICANN's accountability, transparency, and respect for due process and so on, and that's a public interest issue, in our view. Thank you.

CHAIR SCHNEIDER: Thank you. So I think this is as far as we can go today, and we'll do our best to come up with a follow-up as soon as possible, with whatever our resources permit, and then we need to have somehow a discussion in these 21 days. There's no other way to do that.

Iran.

IRAN:

Thank you, Chair. Perhaps for this case, because it is a test drive, you may, when you come to the outcome, put something that this would not put in any case any precedents for future discussions.

Allow us to do this trial test because we have to be trained how to do it, and the leading -- or leadership also to be trained how to do it. It's not an easy one. This is the most easy one, no substance, but suppose that you have a very complex one. You have to know how to do it. So let us do that one as an exercise, put that, but not put any precedents for future cases. Thank you.

CHAIR SCHNEIDER:

Thank you for this helpful remark. So with this, we need to move over to the operating principles. We have roughly 25 minutes left, if I'm not wrong. Yes.

Before giving the floor to Olof, just a quick reminder on the bases.

We have two work streams on the operating principles. One is a longer-term holistic review that has been -- we've been trying to go with it for quite some time. We have at least developed like a systematic basic understanding in the last two -- last meetings.

Then we have another urgent limited review targeting the election process, where we've had a concrete proposal that was put out of the Copenhagen for the sixty- -- 60 days review period. We've had some comments, we've had some feedback, and we are now trying to get

this adopted, and that's the main goal of this half hour. We get -- try to get this adopted so that we can have the elections at the next meeting, based on these revised bylaws, with a view to make sure that everybody, no matter whether you're ill or whether your plane has been delayed or whatever happened last time, is actually able to cast a vote.

So I'll stop here and hand over to Olof for further details. Thank you.

OLOF NORDLING:

Thank you very much, Chair, and as has been circulated --

Well, first of all, this has been up for the 60 days review period. It was announced in Copenhagen and then been -- received comments. Not very many, but a few. And those were taken on board in a final, final draft Version 4, as it was, which was then out for a final, final review by you a couple of weeks ago.

Very shortly, but -- or at least there were no objections to the very last version, which is the one you see on the screen now in clean.

There are, in certain cases, only drafting changes that don't change the substance at all, but I would say that we should scroll down to those who are about the election of chair and vice chairs, meaning 31 and onwards.

So maybe -- I mean, potentially you have, well, read this and provided the comments that you wanted to provide, and then reread it and found it acceptable.

So maybe we don't even need to read through them here loudly, but I'm really in your hands.

Can we accept it, as it has been circulated for the 60 days?

I've got Iran.

IRAN: Thank you. In the light of its implication for the voting for the chairmanship, and in the light of what you said, comments were not substantially major changes, perhaps of some sort of I would say editorial or quasi-editorial, I suggest that we approve that unless objections at this meeting are expressed. Thank you.

OLOF NORDLING: Thank you, Iran.

So can we make a call for adoption here? Going one... (Off microphone.)

Oh. Sorry. New Zealand. I need new glasses.

NEW ZEALAND: Thank you. Could I request that we go back to Principles 9 and 10? I just want a clarification on what the differences there are between the normal meeting and the emergency meeting. Thank you.

OLOF NORDLING: So Gulten, could you scroll back to Principle 9 and 10, please?

The difference between the two --

Well, there's no change in the difference between the two since whenever these Principles 9 and 10 were conceived, once upon a time.

Iran, please.

IRAN:

Olof, I don't have any difficulty. They are two different things. They might happen that an emergency case, and there was some of those cases that were received by the chair that if we do not reply in the time limit, we may lose some of our (indiscernible), so I think two different things and there is no confusion between the two. Thank you.

CHAIR SCHNEIDER:

Is that explanation satisfactory to New Zealand?

NEW ZEALAND:

Thank you. Yeah, I was just hoping to clarify. The timing for the emergency meeting versus the normal meeting seems to be the same, so what is the difference?

CHAIR SCHNEIDER:

Thank you. Actually, these elements are not changed, if you look at the current valid operating principles. It's maybe not a very good term to call it "emergency meeting," but the 28 time line for announcing -- this is mainly about announcing the meetings -- and the 10-day deadline for announcing, and I think a week for a teleconference call

and so on, these things are not changed. We may change it when we go for the holistic review, and we also may try and improve some wording, but I think we should focus on what is really relevant and the small changes that we did for the election that are really specific to the election process and try to get this done. Again, noting, as I think it's Principle 33 says, we only need a simple majority to amend the operating process, but of course we try to have everybody on board. Thank you.

OLOF NORDLING:

Thank you, Chair.

And could we perhaps go back to Iran's proposal that we do accept it?

Going once...

Going twice...

Thus, sold to the GAC by consensus, I believe. Thank you.

And following that, of course, we will update the posted operating principles, including the new ones, as soon as possible.

CHAIR SCHNEIDER:

Thank you, Olof.

So we have finalized and ended the one process about the revision of only the aspects that relate to -- to the election process, which is something that we started three years ago after the last election with more than one candidate proposed.

So now we will -- And that helps. So that means that now we can actually concentrate, hopefully with more resources, on the holistic review that was not proceeding that quickly because of things like the IANA transition and other elements that took away some of our resources. So we're really trying to speed up that process. But maybe just to recap where we are, Olof, we have agreed in past meetings about a canvas of the structure of the operating principles that would be more logic than the, let's say, naturally but not necessarily strategically grown current principles.

And you have a slide for our memory that I think would just display the logic that we've agreed -- I think it was in Copenhagen, on this.

So, Olof, go ahead. Thank you.

OLOF NORDLING:

Yes. Thank you.

Could we change to the other slide with the outline of the high-level principles, as it was called?

And just as an introduction, this is, just to refresh our memory, circulated for the Copenhagen meeting by email by Michelle Scott-Tucker. So -- And outlining the -- a potential structure to make it a little more structured than we have it right now on the operating principles, dividing it up operating chapter.

Yes. Okay. So with headlines like this, so it's perhaps much to say that we're high-level principles. This is, rather, the headlines for these high-level principles.

So first, starting with the scope, what the GAC is and does, following with information about the membership, who can join the GAC, including commitment to outreach, what members are, what observers are, and how the representations would be done.

Then the next chapter would be the conducting the work of the GAC with commitment to transparency, commitment to participation by all members. Quorum requirements, how the face-to-face meetings are -- should be conducted, working online, how that should be done, and the establishment and functioning and closure of working groups.

Next slide, please.

And the GAC leadership and its roles and responsibilities, about the GAC chair, about the vice chairs, numbers and mandate periods and such, working groups and their chairs and co-chairs, and topic leads. That's a proposal to have that as a separate category.

Then the election of GAC chair and vice chairs, which we were recently mentioned. The terms of office and the election rules and procedures.

Then next chapter would be about the meetings. The agenda, how that should be structured, how the minutes should be established and what they should cover, and what kind of record keeping should be done.

So next slide, please.

Chapter on the working groups, on their formation, on the chairs and co-chairs, membership, who can be member of it, the activities, and how do you close them.

Then we have a chapter on GAC advice to the ICANN Board, popular topic today; about the consensus requirements, or perhaps not, communicating GAC advice, how that should be done, with what vectors, and so on, and how it should be tracked in relation to what Board activities and the like.

Next slide, please.

Then a heading on interaction with the ICANN community. How to appoint representatives or members to cross-community working groups and review teams and the like, and the roles and responsibilities of GAC appointees to such activities, how to provide GAC input to community activities, and how to retrieve or seek community input to what GAC does, and liaison functions to the GAC and potentially also from the GAC.

Then a heading on the GAC participation in Empowered Community. Another heading on the secretariat. And of course provisions for revision of the operating principles.

These were just for refreshing our memory, a suggestion as put forward by Michelle. And why not start from there and see what we can do, if -- perhaps modify this or enhance the proposal in various ways.

Manal, please.

MANAL ISMAIL:

Just an initial reaction and a general remark. I would suggest that we keep the operating principles at a high level and leave the details to be drafted elsewhere. And if this is agreed, I would suggest that we keep the title for the working groups under the -- the GAC working methods as it shows right now, but delete the separate section on GAC working groups.

So if we can go back to -- I don't remember which slides. But what I mean is that the GAC working groups already shows under GAC working methods, so it's one method that we are using to accomplish our work, but then there is a separate section called GAC working groups, and I presume that this would include more details, which I don't know the operating principles is the place to detail them.

Thank you.

OLOF NORDLING:

Thank you very much. And I think that rings a bell for many of us, realizing that, well, high-level principles, that's good, and operating principles is excellent, but there are plenty of more detailed provisions that perhaps don't fit in -- in the operating principles and are not on a level of principles but are, rather, administrative procedure.

So I guess the suggestion is actually to have another kind of document which is presumably also easier to change which captures the

administrative procedures that we need to -- for practical purposes and logistics and the like, which don't qualify as principles and could be more easily changed as well.

That has been proposed before, and I think there is support for it.

Iran, please.

IRAN:

Thank you, Olof. I think under the quorum, although we may not use that, we need to have quorum and its associated implementation mechanism. Because you need to know how you have knowledge to having or not having quorum. This is this one.

And something is to be also considered, conduct of the meeting. This is very important. I (indiscernible) somewhere; have not seen. In the conduct of meeting also there is issue of point of order that may raise am I any delegate and categories, and so on, so forth. One category maybe does not agree with the ruling and that need to be (indiscernible) by the chair.

So I don't go into detail but conduct of the meeting, this is an important topic that should be mentioned somewhere appropriate. I don't propose any location for that, but that is this.

Thank you.

OLOF NORDLING: Thank you for -- for that comment. And of course there is also potential to make reference to existing rules that many organizations use, like Roberts' rules and the like, even if they may be a little bit overly proscriptive. But point taken, yes. That needs -- The quorum, whether that should be in the operating principles, the high-level principles -- certainly the quorum requirement should be there, but the conduct of the meetings. Is that something that should be in the operating principles or, rather, in administrative procedures?

IRAN: Anyplace. I don't have any particular, whether operating principle because operating principle may be tied up with a particular procedures to change, and so on, so forth. Maybe (indiscernible) procedures. But that is important, conduct of the meeting. Very important.

Yeah, thank you.

OLOF NORDLING: United States, please.

UNITED STATES: Thank you. And I apologize, I wasn't thinking of my question when I was going through the slides.

Could you refresh my memory as to whether or not included in the high-level principles there is a general code of conduct for the participant, the GAC participants?

OLOF NORDLING: Let's have a close look.

CHAIR SCHNEIDER: Olof, if I may jump in. Actually, we had at an earlier meeting, I forget whether it was in Hyderabad or in Copenhagen, we had a one-page slide that had the high-level principles and some draft future subtitles on one page.

I'm trying to find it now. I found a list in an email of Manal from 11th of March, I found a list on the presentation -- Manal, I found a list of high-level principles. But that one-pager was actually very useful to have the bigger picture on one slide. And we'll try and find that again and -- as an orientation.

With regard to the request from the U.S. about a code of conduct, I don't remember that we've ever had this so far, but I think it may be something that we should think about so that we have some rules and identify some red lines of behavior that we agree we shouldn't cross, and other -- ICANN has basically this. The question is should we refer to ICANN or do we have to develop our own? But that we have some clarity about how to -- to deal with each other, that is definitely something that we may -- we may use.

Thanks.

OLOF NORDLING: If we go back to -- I think it would be the first slide, there is, well, not a code of conduct but a couple of pieces of code of conduct; notably, conducting the work of the GAC, commitment on transparency, commitment to participation by all members. So could perhaps be condensed into a code of conduct.

Iran, please.

IRAN: Olof, I do not suggest we create a code of conduct for GAC. We are under the ICANN. ICANN have a code of conduct, which is announced. There is a website. And at every meeting there is reference to that. If you go to electronic meeting, you should click on that, that you have seen the code of conduct and comply with that. So I don't think that we should start another (indiscernible) discussion on code of conduct and not converting GAC to any other things. Otherwise, there will be many other issue which comes in, and we don't want to complicate the matter.

Thank you.

OLOF NORDLING: Thank you. To be considered. And I believe we're reaching time for -- to switch to next session.

CHAIR SCHNEIDER: Basically, yes, but we can I think have a few more -- we can take a few more.

I see the UK and South Africa.

OLOF NORDLING: Oh, yes. UK, please.

UNITED KINGDOM: Thank you, Olof, and thank you all for comments. I do have sympathy with Manal's point about it separating out high-level principles from the more sort of operational aspects, if you like. Rules of procedure perhaps is the term to use for the setting up of working groups, the conduct of meetings, agendas, quorum, and so on, appointments of members, leadership. A lot of that can be collated under rules of procedure, but we have some -- a set of high-level principles which will be -- if you sift through, you could probably pick them out, you know, commitments, what we commit to do, our commitments to -- the ICANN Code of Conduct, for example, could be one of the commitments in the high-level principles so that we have a link. We establish that link. So I have sympathy with that approach.

And in terms of management and so on, Olof -- the rules of procedure, as Olof pointed out, I think, it will be easier to adjust them probably as the committee continues to evolve and our work evolves in a different way perhaps in the future. Thank you.

OLOF NORDLING: Thank you. Brazil and South Africa. Perhaps in the wrong order, but please.

SOUTH AFRICA: Thank you very much. The U.K. has actually covered my point because I wanted to raise the issue of the rules of procedure that I think is the term that we actually understand to cover all those issues in terms of conduct and what have you. Thanks.

OLOF NORDLING: Thank you. Brazil, please.

BRAZIL: Yeah, thank you. I'd like -- yes, I think I would say something similar to what South Africa has just stated because I think as governments we should adopt and be guided by the rules that we as governments, we consider are necessary. I think we should not be too much concerned about replicating what other parts of the community are doing or to try to align to what the ICANN leadership expects from us. I think we are government. We should expect the culture of government. I think in the context of government operation, we usually talk about rules of procedure. I think we don't need -- I may be wrong -- some kind of Code of Conduct because as government representatives we know we should not be -- the kind of behavior, I think, is somewhat shared and expected. So I sometimes am concerned about the discussions we have in the GAC, that we seem to be eager to -- to demonstrate to the community that we are also aligned with all the criteria parameters. We are government. We should be guided by what governments think is necessary. Thank you.

OLOF NORDLING: Perhaps if I may try to draw some conclusion here to perhaps review this -- the outline of the proposed high-level principles and address those comments that's been raised and also start separating out a rules of procedure document and at least to come up with perhaps a very first draft of such to circulate to the GAC for your consideration. Could that be a next step in this case?

CHAIR SCHNEIDER: If I am not mistaken, what we -- what we agreed the last time as next steps were basically one element was to depart from the currently existing operating principles and to put them -- allocate them or whatever you call it under these headings and take that as a departure, which makes now more sense because now we have agreed on the revised version because before we couldn't really do it because there were some changes that were pending. That we will take these guiding -- these high-level principles as the logical structure and then put the existing text on it, and then we can, as a next step, maybe indicate what elements we propose to retain or what elements we propose -- or we think that they are going to too much detail and we propose them to be moved into a separate document, that we will then -- but also have an agreement on how do we work on that one, what is the process for revising that document, because before we have clarity and under (indiscernible) of that let's say subordinate document, it is difficult. We can highlight like the level of high -- of abstractness or details of the current text and then once everything is

in one document, we will then have to go through everything and see where do people want to make changes, where do they not want to make changes, and that's then the core of the work.

But the idea was to use this structure that we are having now, that we agreed to, and allocate the current elements of the operating principles at the right place and then take it from there. Thank you.

So is that still okay? And again, if resources permit and if we get interaction and support from the GAC as a whole, we'll try to move this on intersessionally with the leadership team and secretariat and support, but we also need support from the GAC. Otherwise that will be difficult. Okay. I think that -- that's it for this session.

[END OF TRANSCRIPTION]