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SINGAPORE – GAC AM Sessions

Sunday, February 8, 2015 – 09:00 to 12:30

ICANN – Singapore, Singapore

CHAIR SCHNEIDER:

Good morning, everybody. Welcome back on a nice Sunday morning. It's great to have these kind of weekends together.

We have, of course, as you know, a very important session ahead of us. I hope we'll have a good discussion.

There will be a little bit of feeding you with information in the beginning, also to make sure that everybody's at least on some minimal level of information on what this is about and how this works and what the GAC's role is in this. But we will try and make sure that we have enough time to actually discuss or start the discussion. Also in this session we have 90 minutes and we try to allocate it in a reasonable way.

So we ask everybody to be short, but there's enough -- there's some things in the beginning that we thought is important to communicate. We're happy to have a number of very involved people here that will start informing us. And of course we're very happy to have Larry Strickling here who will actually start with saying a few words on the process and their expectations, hopefully.

Thank you very much.

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LARRY STRICKLING:

Well, thank you, Thomas. And let me start first by thanking Thomas and the GAC for the opportunity to come by and chat with you all this morning.

We had had some inquiries from some individual countries who wanted to sit down and talk with us about what's going on, and we thought it would be better to come and speak to everybody at the same time and have a good discussion, get your questions out. And I want to thank Thomas for recognizing that that would be an efficient way to proceed and inviting us to come this morning.

Thomas, I also want to congratulate you. This is your first meeting as GAC chair, and similarly want to congratulate the new vice chairs. And I hope this group has gotten off to a good start and will be very productive here for the next many meetings of ICANN.

I will just take a few minutes to set the stage. We're also going to hear from other folks who are involved in this process, especially Jonathan Robinson and Lisa Fuhr who are the co-chairs of the CWG or CCWG? CWG, okay. And so we'll be able to get everybody's comments out.

I also want to express the appreciation of the United States government for all of the work that all of the volunteers are doing, including members of the GAC in terms of taking this transition process so seriously and engaging so thoroughly and enthusiastically in developing a transition plan. We have always felt that this process itself will strengthen the multistakeholder model of Internet governance as people really get to see the power of this collaboration. And nothing we've seen so far in any way detracts from our view that ICANN and the



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multistakeholder model will be stronger when we get to the end of this process than it was at the beginning.

Let me touch on a few points that I know have been raised in some of the conversations and discussions around the transition.

First off, those of you who follow Inside Baseball in Washington, D.C. will know that our Congress last December put what we call a rider on our appropriation which basically directs ICANN -- or directs NTIA not to spend any of our appropriated dollars to complete the transition of ICANN before -- the IANA functions before September 30th of this year, which is the expiration date of the contract. And people have interpreted that to mean various things, and I had the opportunity last week at a conference in Washington called the State of the Net Conference that's sponsored by the Congressional Internet Caucus to speak to that particular issue. And prior to doing so, we had consulted with members of the both Senate and House Appropriations Committee staffs on both the republican and democratic side, and what I can report to you is what's clear from this act is that the transition won't happen prior to September 30th, 2015. Beyond that, though, we don't really see that this appropriations rider imposes any additional requirements or restrictions. It clearly has no impact on the work you and other members of the community are doing to plan for the transition. It clearly does not put NTIA on the sidelines, because this same legislative language imposed on us very strong reporting requirements where we're supposed to keep Congress apprised on a regular basis of what's happening. And beyond that, we have also determined that, you know, we will be using the opportunity over the course of this year to make it,



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as much as possible, providing at least some helpful questions to the process.

I'm very cognizant and very concerned about having me or anybody from the United States saying things about what's acceptable or not acceptable, because we don't want to in any way interfere with the deliberations of the multistakeholder community. But we also recognize that there's probably one chance to get this right, and what's going to be important is that we get a proposal coming out of this process that is as well thought through as possible and is one that can answer all of the various questions that people will want to raise about it when it comes out and is in the commune for discussion and evaluation.

So we will provide what we're calling informal feedback where appropriate, but we'll do it in the form of asking questions.

So starting with that, I've been asked many times what's the United States looking for in a plan, and I have consistently answered that by saying we're looking for a plan that preserves ICANN as a multistakeholder organization, and we made it very clear that as this transition proceeds, we don't think any set of stakeholders or individual stakeholder has any veto or the process, whether we're talking about government, civil society, or industry. But we have also made it clear that all stakeholders need to have a voice in this process, including the leadership of ICANN, because they are stakeholders and experts in this, and we think the process needs to engage everyone in helping to inform a proposal that will have the broad support of the community.



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Let me also say that we expect that the proposals that will come to us -- or the proposal that will come to us will be tested and validated by the community. Everyone needs to have confidence that any process, procedure or structure that's proposed in the transition plan will actually work. That will help facilitate our review of the proposal and make the process go that much more smoothly in Washington. So we're looking for a plan that's developed through a process that's open, transparent, inclusive, that is well thought through, and that can stand up to the types of questions and inquiries that it will generate in Washington.

I also want to, finally, just address the question of deadline. The contract expires on September 30th, but that is not in any way a deadline for this transition. Wage that date as a good target date because it's the date when the contract expires, but we've never intended it as a deadline. And I want to make it clear that if the community needs more time to come up with a good plan, they should take it. We can extend the contract for up to four years, and while I can't imagine why this process should require that length of time, if a few more weeks or months are needed as we get to the end of this, we can accommodate that.

But in no way do I want to remove from the community a sense of urgency about getting on with this and getting the process completed. It's important that people stay motivated, stay engaged, and stay focused on the task at hand, but at the end of the day, what counts more than anything else is to get a well thought through proposal, as I say, that answers the questions, works well, and is one that everyone can subscribe to.



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We're looking for a plan that has the broad support of this community, and that will be critical to the ultimate success of the transition.

So with that, I'll stop. We'll be taking questions from the group here after the other folks speak, and we'll be happy to address other issues that you may have.

So thanks.

CHAIR SCHNEIDER:

Thank you very much, Larry. That was very helpful in clarifying a few issues. And also thank you for staying along with us for the whole session.

We'll now move on directly to Elise who is one of the two members of the GAC in the CWG, the Cross-Community Working Group, and she will say a few words to you, and we'll then move on to Theresa and to the co-chairs.

Thank you.

Elise.

ELISE LINDEBERG:

Thank you, Thomas. I'm here. I'm down here.

I just wanted to give a brief status update from the GAC perspective of the work of the CWG. And for the new GAC members we have around here and for the record, my name is Elise and I am one of the Norwegian GAC representatives in the CWG and I am a member of the



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CWG together with my colleague Wanawit, who is up there, from Thailand.

And just to say that the CWG now currently consists of 132 people, 90 members and 130 participants. And I just want to say that many of the GAC members have participated in the group, not only the two members. So we have a lot of people around who is following the work on the CWG.

Since the first meeting in L.A. in October, there has been a lot of hard work going on in the CWG. You all followed the work sessions and you've seen we have had around 20 meetings in the main group, 25 subgroup meetings, and also face-to-face meetings in Frankfurt, and of course countless emails and online discussions, which we have tried to forward some of them to the GAC list, also, to give you all an idea what had been the main discussions in the group.

The CWG put out a draft proposal to the community for public consultation on the 1st of December, and before this draft proposal that was sent out, me and my colleague from Thailand have tried to keep the GAC informed about the main discussions and development in the CWG.

I have to underline that it has been a bit challenging to report back all the discussions, because it's been very dynamic. There's been a lot of detailed angles and scenarios that have been discussed, but I hope you have gotten some information during these weeks so you have been able to dive in and ask questions, and I had a few questions from -- from other GAC members.



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And we also received good and substantial comments from GAC members on the public hearing. And everything that has been asked online to us in emails or phone calls that we had, all the feedback that we have gotten from GAC members, also on the principles that the CWG has been working on, has been fed into the process and the discussions. Just so you know that your voice or your opinions have been heard, been taken part of the discussions in the CWG.

I will not go into the status of where we are today because Lise and Jonathan will do that, of course. I just want to say that on the 4th of February, we forwarded this document for discussions that was made from the CWG group to be a document to be used today as a basis for our discussion today. And I also posted some, I think, important issues from the GAC to consider to consider, and whether that is now or later at this GAC meeting, I don't know if we have the time, but it is to underline that one of the things that has been challenging and also that's one of the things that has made us go outside to ask for legal advice I think is based on that it is a principle of separability that is baked into the models that we are now working on.

That is, for me, the perspective I have on this. So I think that's something that it is important that the GAC discuss.

And also, it is important that the GAC now have a discussion on how we can follow-up on this process, be part of it, and how this could feed into the working methods of the GAC where we usually have physical meetings before we draft anything, GAC advice on this. But in this timeline we have now, we have to be creative and find a way to dive





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into this process and not stop it because of the GAC operating principles.

So how the GAC can be part of it, and also the principle of separability is something I think we should discuss.

Okay. I'll stop there, and you'll have the latest developments from the two chairs.

Thank you.

CHAIR SCHNEIDER:

Thank you very much, Elise. I will immediately hand over to Theresa who is sitting at the end of this table.

Theresa, thank you.

THERESA SWINEHART:

Thank you. I won't take very long, and certainly not be touching on the substantive discussions, but I just wanted to thank everybody for, really, their amazing time commitment and engagement in the process. I know we've spent quite a bit of time discussing the process. And thank the GAC leadership and Thomas who inherited this with his new tenure, and the work there, but also the GAC members who are participating in both the ICG process, the CWG process, and obviously the accountability process. I think this is an amazing opportunity to show partnership with all the other stakeholders but also to engage at the regional levels with your counterparts, and obviously at the national level to engage with other constituencies and with other agencies.



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So I just wanted to recognize and acknowledge that, and great appreciation on ICANN's behalf for this. It's a true commitment to a historical opportunity. And with that, also recognize the chair and the leadership of the community, Jonathan and Lise, obviously, who will be speaking next and the chairs for the ICG and CCWG on the accountability process. A lot of community involvement on all of this. So with that, looking forward to the discussions, and if we can answer any questions or be of any assistance, please let us know.

CHAIR SCHNEIDER:

Thank you very much. The co-chairs, please.

JONATHAN ROBINSON:

Okay. Thank you, everyone. Thank you for the opportunity participate and work with you and continue on this journey that was initiated by the NTIA announcement some time back.

This is a really great opportunity to work together with you and thank you to Elise and the GAC colleagues that have participated and to all of you who have followed and assisted her in her participation. It feels to me like a really great opportunity to do what we are supposed to do and to do it well, to work as part of a multistakeholder community and deliver possibly one of the most important products we've had to do for some time.

There's a lot of water under the bridge since October when we began our work, and we have to make absolutely sure, because, sure, for some of you, at least, we're full of acronyms in all of this and we often assume that everyone knows exactly what's going on. Through ICANN's role as



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coordinator and facilitator of this process, we have the overall coordinating group, the ICG, and then feeding into the ICG, we have the three proposals. Lise and I are working on one of those three proposals from the names community. There are already proposals with the ICG from the numbering and protocol communities. Some people have asked why -- it's clearly one of the big questions, is why the two proposals are in and one is not. By definition, the names proposal is a more complex piece of work to do, and there is also a requirement to bring along many different stakeholders and make sure that it broadly represents a more diverse set of stakeholders and interests.

The other things we've necessarily got to do is work with the other component of all of this, and that is the changes that are going on in relation to overall accountability. And so whilst this group that we're reporting to you on is focused on the transition proposal from the names group, it nevertheless needs to be coordinated and interlinked with the work that's going on on accountability.

Our output, as Elise mentioned, is via initially an initial proposal back in December. It was subject to public comment, and the two key documents we have for you at this meeting are the discussion document that was circulated to you on the 4th and a comprehensive slide deck that goes alongside that.

We will pick out now a set of around ten slides from that comprehensive slide deck, but for those of you that haven't had the opportunity to really go into this in as much detail as others, that slide deck takes you quite systematically through the evolution of this



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process and who's who, how it all fits together, the ICG, the naming community, CWG, the accountability group.

And so I hope that the discussion document, which ultimately seeks to ask the community a key set of questions and the presentation which goes alongside that will help you both here at the meeting and if you need to, in going back to your respective capitols to do the work that you need to do.

So let's have a look at some of the slides and see what that covers. We really go straight into the discussion document and highlight the purpose of the discussion document.

Two fundamental points, really. One is to inform the community of the work undertaken to date; that's since October when this group really got to begin its work in earnest. And I should say or at least remind all of us that this group -- the work of this group is based on a charter which defines the scope of its work.

The chartering organizations supported that charter and signed off on that scope of work. And the GAC is, indeed, one of those chartering organizations. So you are very much a part of this work. And we need to take into account and fully respect your input as one of the chartering organizations in this group.

And, therefore, the second part of the document -- of the discussion document is to seek your and the broader community's input on key issues in order to assist us in moving forward and in particular on issues that are most challenging and for which the group is not at all settled on



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its views. There's a link there to the discussion document. You, I hope, will have all received it by email as well.

Let's go to the next slide. So this discussion document covers many things. There's some of the history and evolution of the work. But, fundamentally, a key point which Elise touched on is that there is -- one of the things this group works on is a set of underlying or, in fact, you could say overarching principles to which the GAC contributed. And what one of the principles says is that, in an extreme situation, after many stages of escalation and at some eventual point, there should be the possibility of separating the IANA function from ICANN. So we have a set of different models, if you like, options within the model that we ultimately need to settle on. There are many common points on the model, and there's a slide on the various models or at least areas of significant overlap. And I'll come back to that in a moment. In focusing here on where there are areas of divergence, I wouldn't like you to be under the impression that the whole scope of the work is divergent. It is simply that, in this extreme scenario, at a point where ultimately there may be a requirement which some, frankly, find very hard to foresee at this point, that separation is required, a mechanism for separation is required. And that's probably the most intractable problem that the group is dealing with. So, in all cases -- and one of the fundamental common points within the group is a recognition that currently IANA is doing -- the IANA function has performed well. And that IANA function has performed well within ICANN and within the place that it currently sits.

So the models -- the models split into four different areas when considering this separability point. Two of the considerations are



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assuming that the -- a separated entity would have -- would require some form of externality to the ICANN -- to ICANN. And that's become known as an external solution. And the second is that there would be some form of internal solution.

So let's talk about what external means. External means that the transitioned entity cannot be ICANN. But ICANN would be granted the contract for the IANA functions immediately post transition. And the alternative would be that

NTIA would transition the functions including to ICANN which would continue to operate the IANA functions without a contract but subject to the community's ultimate right to require ICANN to transfer the authority for those IANA functions. So the common feature is, as I said, some form of ultimate separability after a series of currently unforeseeable and unresolved escalations.

Let's go on and look at those four different variants in some more detail. I'm sorry. First of all, let's just highlight some of the common points. Because, as I said at the outset, in focusing in on where the differences are, you might think that the entire proposal has significant differences. Indeed, on the contrary, there is significant commonality in thinking.

So there are four key areas that we think of which are generally common across the two different models. One is the prospect of some kind of review function, here referred to as a multistakeholder review team, a point where there would be a group of stakeholder representatives responsible for completing the IANA functions definition and deciding under limited circumstances when and if the



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functions should be moved from ICANN and/or to select a new operator. There is the concept of a customer standing committee. This is a small group of individuals responsible for overseeing IANA performance and predominantly comprised of those customers who make regular use of the IANA function, typically registries.

There is the concept of an independent appeals panel wherein should IANA either fail to perform an instruction as requested or perform an instruction not requested, there would be an opportunity for some form of independent appeal. And there's the concept of separability, which we touched on earlier.

Let's move on to the different -- to some detail on the different models. First of all, the concept of external models. In the first variant of an external model, so-called Contract Co. model, there is a concept here that because there is currently a contract between -- that governs the relationship, there is necessarily a future or successor contract. And, therefore, in order to have a successor contract, there has to be an entity with which or with whom to contract. And that contract -- that contracting entity is defined as a contracting company, should be a small lightweight structure whose primary responsibility is to be the vehicle who holds the contract.

As discussed in the point recognizing the common points, there would be some form of multistakeholder review team that would be likely to be -- that would be responsible for providing instructions to that contract company. There would be a customer service -- customer committee. And there would be an independent appeals panel.

Let's move on to the other external variant.



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Here the Contract Co. or the entity would not be a contracting company but would be a form of trust established under law. And the trust would have a Board of Trustees. The trust would receive some form of assignment or conveyance from NTIA relating to the rights and duties included within the stewardship role. And the primary purpose of the trust would be to select and contract for the IANA functions operator.

And the term of the -- that would be for a specific number of terms subject to termination under specific conditions.

The MRT that I mentioned before, CSC, and IAP would all be the same or very similar to that as mentioned under Contract Co. Let's contrast that and look at the alternative, which is the internal models.

And here we have two variants, one which is so-called bylaw model where the rights for contracting the IANA function would transfer to ICANN but subject to ICANN having amended the ICANN bylaws to create a so-called "golden bylaw." And the particular definition of that golden bylaw would be one that could not be unilaterally amended by the ICANN board. And that bylaw would guarantee that under certain conditions, ICANN would relinquish the right to perform the IANA functions to a third party. At that point of separation, a form of Contract Co. or trust would need to be -- or some other vehicle would need to be invoked. And there are variants then again of the multistakeholder review team, the customer committee, and the independent appeals panel.

Let's go on to the fourth variant which is the second of the internal models. And here the transition would require ICANN to enter into a





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declaration of trust to hold the rights of the IANA function in trust and to perform those functions for the benefit of the multistakeholder community.

The declaration of trust would not necessarily create a separate entity or company but would be a form of legally valid instrument. And there would be a guardian of the trust, which would be a cross community group similar to the MRT.

So, again, you end up with some form of variation to the MRT, multistakeholder review team, customer service committee, and the IAP.

So I've taken you through two internal variants, two external variants, and attempted to highlight what is currently one of the -- the primary area of challenge and discussion for the group.

Before I move on to the timeline, Lise is there something you'd like to add here? Let me pause here and give you an opportunity to come in.

LISE FUHR:

Thank you, Jonathan. Yes, well, as Jonathan presented the models and both have separability precedent baked in. But we also get a lot of feedback and some people feel very passionate about having a specific mechanism to separate. And others feel differently.

And some of the feedback we get on critical points about both models are, well, regarding the external model, we've had feedback that it's too complex. There's too many entities. It's creating a kind of mini ICANN.



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And there is a fear that this construction could be captured -- can be -- could be subject to capture.

If we look at the internal to ICANN models, there is also a fear that it's difficult to ensure that ICANN actually will let go of IANA if anything goes wrong.

And another point is that this model is heavily dependent on the accountability group's work. So that's -- and that's going to be a part of the solution, too.

So we're having diverse comments on this. And this is one of our most difficult tasks is to try and find a compromise regarding this.

Thank you.

JONATHAN ROBINSON:

Thanks, Lise.

So, to reiterate, the performance of the IANA functions is primarily a series of technical tasks which are performed reliably and adequately to date.

There are no doubt areas of improvement that could be made. But there are no critical issues. What this set of intractable or challenging points deals with is an ultimately foreseeable situation where there is a repeated inability to continue to perform those tasks in an adequate way. There's no indication that is happening or is even likely to happen in the foreseeable future. But just because that is the case doesn't satisfy many who feel that there should be an ultimate protection should that be the case.



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So we really are looking at the end of the road in terms of a series of problems, a series of escalations when we would need to deal with this.

Let me look at the timeline of the group and bring you back into where we are.

What we did was originally the ICG asked us to propose a proposal by January of this year. As we began to work through all of the inputs and all of the effort that was going on, it became increasingly clear that that was going to be, frankly, impossible to meet.

So we rebuilt a timeline which provided for a number of critical conditions to be met, and we called that currently a best case scenario. And it is, in our view, a best case scenario unless we can make some currently unforeseen changes. Let me point out to you three key areas that we are dependent on working well in order to meet this best case scenario.

When I describe those internal and external models, you will have seen that necessarily the formation of the trust, the formation of a contract company, some of the details in that necessarily need legal advice. And expensive and knowledgeable legal advice to know which of those vehicles is realistic and which can be undertaken without creating other risks and complications. So there is a requirement to specify relevant legal advice in order to properly evaluate the proposals as they currently stand.

That will take time and is currently anticipated in the timeline but is a risk. Clearly, with that level of -- at least in this area and there are -- not



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everything -- I shouldn't give you the impression that everything is resolved. It is just that this is the substantially intractable parts.

So obtaining consensus -- and consensus is what we seek to obtain -- we sort of go through a process of laying all of these issues out, trying to converge the ideas, and ultimately generating a consensus out of it. And that will take some time. And significantly -- and I think it's really worth highlighting this particularly to you in the GAC as a chartering organization, we need the chartering organizations to be able to approve the proposal in a timely fashion.

Or at minimum, not object to the proposal.

And I guess this was touched on perhaps earlier in reflecting that, you know, historically, the GAC has always had a requirement to meet in person -- you know, in -- I forget the term you use. But to convene together and -- physically, yeah, meet physically together. And to be able to deal with the proposal. So, if that is the case, that the necessary consequence of that is that either -- that the approval of both our and, to the extent it is required to do so, the consideration of the integrated ICG proposal will need physical meetings coincident with an ICANN meeting or an intersessional meeting to be arranged. So those are some key practical issues that manifest in the timeline.

The next slide shows the timeline. It's not realistic for you to look at that on screen here in any detail. But it is in the slide pack, and it is available for you to see. I think probably the most important high-level to make here is at the top you've got the CWG timeline. And we highlight things like ICANN meetings and different work streams and so on. You've got the current ICG timeline, although I understand that's

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been the subject of intensive discussion over the last couple of days. And the CCWG timeline, which is that group working on accountability. And, to the extent that there is a interdependence and requirement of the CWG of this group, the naming transition proposal on the accountability, the interlinkage between those two -- and Lise and myself meet regularly with the chairs of the accountability group and, indeed, have an open communication with the chairs of the ICG to make sure that there is coordination and common understanding at least of our different time scales.

So I think that's -- let me just check if there's anything else. But I think that's it from us. So we have some links here for you. And the discussion document does pose a series of questions. But, rather than us going into our questions, our specific preplanned questions, I think I'll pause here and hand the chair to Thomas to open up the discussion and any questions you might have. Thank you very much for your attention so far.

CHAIR SCHNEIDER:

Thank you very much, Jonathan, and all of you for this very understandably condensed way of presenting an extremely diverse and complex work. I think that helped me and others to see where you are, what are the reflections behind it, and to also help us identify a way forward.

I would also like to thank you for getting clarity on the timeline, because that was, of course, a big issue. And since governments work under some conditions and constraints with regard to the obligations to consult and so on and so forth, that is, of course, very useful for us to



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actually decide at this meeting how we can do our best to fit in that new timeline, which looks, at least, on first sight, reasonable to me.

And I'm also particularly pleased to see that the two timelines are aligned, because that makes sense. And understanding that this has not been easy for various reasons, but it seems like that, also, this is now working -- working well.

So with that, I will stop here.

There's another thing. To make things a little bit more complicated, even, and since our time is limited, we also have an update on the ICG which is the group one level -- it's the Coordination Group which is the group one level above this group that will collect the proposals. And since we have some members here of the ICG, we have five members of the GAC -- no, two. No, five, five, yeah. It's difficult with these numbers, we'd just like to very, very quickly give the floor to one or several of these to briefly explain, and then open up the discussion what the ICG is and what the role is. But at least be short. Try to take one minute maximum, but then we have the whole picture. And then we will be happily using the rest for discussion.

Thank you.

IRAN:

Thank you, Thomas. Good morning to you and everybody. In fact, it would not be one Swiss minute. It would be one minute but not Swiss minute. It would be difficult to talk about ICG in one minute.



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Nevertheless, ICG is known by everybody. This is the IANA Transition Coordination Group established of 30 members. Five of them are GAC members. We have our charter, and charter was established and was announced, and the timeline was mentioned to be 15th of January, receiving proposal from the three communities by that date.

Two of these communities, numbering and protocol and parameters, they sent the proposals by 6th and 15th of January, so they meet the deadline. The third group, which is the naming group, was discussing in detail as was mentioned by Jonathan, and from the very beginning they announced the ICG that it would be difficult for them to meet the deadline. At the beginning, ICG did not take that into account, but finally they said that you can't have the impossible mission.

Once we discussed the issue yesterday in the ICG, we were at the point that the more complete proposal coming from CWG, the better for ICG in order to treat that. Therefore, ICG is waiting for their proposals coming from the CWG by next months, whether 15th of June or earlier we don't know, and then we will proceed that.

In ICG, we had four physical meeting and we have several conference meeting, and the five GAC members are actively are participating at the meetings, physical and the conference call, and also the meeting needs considerable exchange of email exchange between the people until recently, but now we are in the more or less quiet time, because waiting for IETF proposal.

The two first proposals came in. They were examined by examiners or evaluators in the ICG, and they found to be more or less in line with what was requested. Few questions were raised. One of the questions



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was a question that two communities, numbering and parameters and protocol, replied differently. We asked them to coordinate with each other to have a coordinated reply, to be consistent with each other.

There were few other small questions raised, and that was sent to the two communities to reply to that.

Discussions yesterday was that some people in the ICG were of the view that the two proposals from naming -- from numbering and protocol should be sent out as soon as possible, possibly you are thinking to send it to the ICANN, to NTIA. There was another view that according to the charter of the ICG, that would have to send a complete proposals. And it is in the charter mentioned that, that the whole things fit together. So the review that it is not appropriate to send partial proposals.

People were thinking of incremental step. The other people in the ICG were this doesn't fit within the charter, and the people were thinking that, okay, we change our charter, and other views said that, no, we cannot change the charter at every moment. We should have a sort of stability.

So that is the situation in the ICG.

With respect to the timeline, it was mentioned that whether or not we announced that we have a deadline which was established in our timeline and we have to postpone it now by six months or nine months based on the CWG, finally it was mentioned better, we say that we stick to our timeline for the time being, waiting for the result of the activities of the CWG. Once the activities were submitted, then we update our





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timeline accordingly. For the timing, do we do not mention six months or nine months delay, and we would not announce that, but we say we're waiting for the third community. Once that proposal received, the timeline will be updated.

Certainly it would not be -- maybe not in a position to have a complete proposals within the deadline that was foreseen before, and that should be, certainly, the updated. This is with respect to that.

In relation to the accountability for CCWG, ICG has a liaison officer, two liaison officers, and myself is one of the liaison officers. We essentially discuss participating in the CCWG, and I would say that the work in that group going in a very, very good directions and very positively and constructively. They are discussing the whole issue of the accountability, and they have two track. One track is -- or two stream. Accountability required before transition take place or committed before transition take place, and accountability required in the long term after that. And for that, they are establishing various working area, and the working areas are working very extensively. And recently they establish two working parties, one working party dealing with empowering the community to participate and decide on decisions to be reviewed or to be modified, and the other working party dealing with the review and redress committee. These two working parties are also working extensively. This is a reply to -- Lise, too, mentioned -- the issue of accountability. In my view as a liaison of ICG to CCWG, that going in a good direction.

So Chairman, I respond to your challenge and I stop at this stage.

Thank you.



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CHAIR SCHNEIDER: Thank you very much. Our colleague from Iran will not be able to stay with us for the whole of our session. This why he was also referring now to the accountability work which we will not discuss here but in the next session.

Thank you very much.

Does anybody of the other ICG members in the GAC want to add something or has that been complete enough that we can -- Manal, yes. Egypt, please.

EGYPT: Yes, just very quickly that in addition to what Mr. Arasteh has already mentioned, we also discussed how to handle the comments of the community that were directly submitted to the ICG and that we decided that this should be pushed back again to the operational communities to make sure they are considered within their discussions.

And I think also we agreed to have a conference call after we return back from the ICANN meeting to further discuss and fine-tune the timeline in light of the discussions here.

So thank you.

CHAIR SCHNEIDER: Thank you very much.

Any more comments from ICG members?



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I don't see one, so that was the information, was quite a lot of information, but now we have everything together. So the floor is yours. Please, ask questions, make comments. Thank you.

Who wants to start? Indonesia.

INDONESIA:

Thank you, Tom.

My question is short, when the presentation was given. I just wonder was there any discussion as to what legal system will the ICANN, IANA, and also the oversee committee, whether it is the trust or the corporate, whoever, will have to follow. Will be possible, for example, the ICANN IANA is still in the California following the California legal system? And trust or the co. located in Indonesia and has to follow Indonesian legal system? And if something, problem happen, will it follow the arbitration in which country? In the country where the ICANN located or the country where the trust or the co., corporate, is located?

The second one is is there any -- is there any discussion relating to the possibilities for the organizations to adopt another legal system which is already adopted by many other international -- international governmental organizations? Like, for example, U.N. treaties, U.N. conventions, and so on.

Thank you.



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CHAIR SCHNEIDER: Thank you. I suggest we take two or three questions at a time and maybe there is some overlap and then we try to get the answers.

Brazil is next, and then I have Egypt.

Thank you.

BRAZIL: Thank you, Thomas. Even though I'm a member of the ICG, I think the comments made by Mr. Arasteh, by our colleague from Egypt, they clearly reflect what we -- the work we conducted in the ICG over the last two days.

I will prefer to comment, rather, on the CWG names proposal and bring up some suggestions.

And my first comment is that even though -- and since we are here in the GAC, is that for the sake of clarity and to avoid unnecessary concerns, we believe it will be advisable for the CWG group to specify the role of governments in this new proposed arrangement, not as oversight authorities or sole public-policy makers but as interested stakeholders on an equal footing without actors. We believe this should be very useful to us in the GAC and should be dually considered in the work of the CWG names.

And although some of these aspects need further elaboration, and we are confident you are working on that right now, we believe the architecture proposed by the group seems to be appropriate for the purpose of the IANA transition process.



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And more specifically, and with respect to the contract company organization, we believe that any institution replacing NTIA's role as IANA function contract administration should not be subject to the jurisdiction of a single country, this is very important to us, unless all stakeholders should so decide. So for us, the issue of jurisdiction is very key in this exercise, and, therefore, we believe the CWG should resort to international law expertise in order to evaluate different alternatives of juridical personality for the Contract Co. And I'm sure also -- you are considering that in the moment.

On the other hand, as for the Multistakeholder Review Team, the MRT, we believe it should include parties from all interested stakeholder sectors. Not only government, but civil society, private sector, academia, and technical community. And of course taking geographical and gender balance into account. This goes without saying.

As the MRT will have stewardship responsibilities towards the IANA functions operator, we believe its composition should not be necessarily based on the current multistakeholder model adopted within ICANN as distributions on SOs and ACs. Should be beyond that.

And, however, it's also important to be more precise about the scope of the work of the IAP. We raised this point on a paper that we submit to the group a few months ago, and we mention in this in our paper that a clear dispute settlement process should be defined by which parties should be encouraged to refer to the IAP as a last resort only. And the draft proposal should also contain concrete examples of how these dispute cases will work.

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So these are some specific comments that we raised before, and then we will leave that they should be continued discussed in the work of the CWG names, and we would appreciate some further comments of Jonathan and the other members.

Thank you.

CHAIR SCHNEIDER: Thank you, Brazil.

I have Egypt.

EGYPT: Thank you, Thomas, and thank you, everyone, for a very informative slides.

First I would like to ask about the critical conditions you mentioned, which most of which seems to be out of hands of the group. And apologies if I have missed this on the slides, but would you also consider the output of the accountability group as one of the critical conditions for you to finish?

I'm not sure I saw this on the slides, so this is one question.

The other one is Larry already mentioned the testing and validation of any proposal that's to be submitted. So, again, I'm not sure whether this was part of your timeline, but is this part of the timeline? And if yes, how is it going to be tested? I mean, the various elements of the new model.

Thank you.



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CHAIR SCHNEIDER: Thank you, Egypt. I suggest that we now give the floor for answering these questions, we had some questions of jurisdictional issues or comments about jurisdictional issues, about some specific parts of the proposal, about the critical conditions about testing. So whoever wants to take the floor, please indicate.

JONATHAN ROBINSON: So thank you for those interventions and questions, Indonesia, Brazil, and Egypt.

First, I think some of those were points that were inputs from us rather than necessarily questions, and we need to take those on board, and I talked with Lise. We will review the transcript and feed that back into the work of the working group. So to the extent that they were comments and inputs as to how we should work, that's helpful. And even if they were reminders, thank you for bringing this to our attention again.

In terms of jurisdiction of ICANN, that's completely -- that's outside of the scope of this group. In terms of jurisdiction of Contract Co., it's -- well, first of all, Contract Co. isn't necessarily an agreed solution, but the point is taken that it's a sensitive area. If, indeed, we go down that route, that's clearly going to be one area of sensitivity.

In terms of the appeal or arbitration, I think it's envisaged that that would be a form of -- I'm not an arbitration expert, but some form of access to an international arbitration entity rather than one which is specific to a jurisdiction.



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Brazil made some comments, I think, about similar jurisdiction and thinking about international expertise being sought, and that's a good point to have been made.

In terms of the role of governments, I would necessarily expect that that should come through the multistakeholder component of oversight. And I take your point that the ICANN model is not necessarily the full scope of how multistakeholder should be defined. So we need to be cognizant of that.

And then to Egypt's point about the different critical points, I think what we attempted to highlight there was it was less the scope of all critical conditions we face, but, rather, three key areas that are known impacts the timeline. But nevertheless, the accountability -- I take your point. The accountability is both a potential impact on the timeline and a dependency on which we are aware. But it's almost taken for granted, I guess, that that is the case. And within the charter of both groups, I think there's a recognition of the interdependence of the work. So thank you for that reminder.

LISE FUHR:

And I'd like to add in the slide deck, there is actually -- we have a figure of the linkage between this group and the accountability group. So that will kind of explain the condition, how the link is between our proposal and the accountability proposal.

And furthermore, you're asking about the validation and testing of the proposal. The ICG sent out a request for proposal, and that has -- I think it's five or six elements, and one of these is the implication after





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transition, and also that we have to fulfill the conditions that the NTIA set in the beginning of this.

So testing and analyzing the effects is part of our scope, too. Thank you.

LARRY STRICKLING:

I just want to ask you guys two questions. One is has anybody on either of these proposals given you a sense of how long it would take to implement any of these? It sounds like you need extra time even to settle on a proposal. But what is being predicted as to how long it would actually take to implement any of these, whether it's the external or internal proposal? That's question one.

Question two is: How would you answer the observation that everything you presented here this morning really looks to be more accountability? There was no discussion on how the actual IANA functions are performed for the naming community and how they need to continue to be performed post NTIA.

JONATHAN ROBINSON:

Thanks, Larry. I think it's a fair point on the time to implement. So, in effect, we presented four scenarios that -- each of which may take -- have different implementation time scales. So the short answer is we haven't done a whole lot of work on the implementation time scales at this stage.

I think what we attempted -- on the second point on accountability, what we attempted to present here was not the detail of where work



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has been done that there is agreement. And it has to be checked through against all of the functions. The way in which the work was initially done was it broke down into a series of detailed stems of the current functions performed and began to look at how each of those detailed functions might be replaced. What we've attempted to do here is hone in at a high -- a specific level the areas where we have particular challenges rather than where it might be more -- where we might have -- where it may be more of a simple replacement for the way in which things are done currently. But, nevertheless, a walk-through of every single function that's performed to date is a key test for the work that's done and that's acknowledged. Did you have anything to add, Lise?

CHAIR SCHNEIDER:

Thank you very much. Further comments and questions? I have Iran, then a colleague next to Iran. I forget which country you're from. And then Denmark.

IRAN:

Thank you, Thomas. It is a representative of GAC to ICG and ICG to CCWG. But, with respect to question raised by distinguished delegate of Indonesia, ICANN established a public expert group, five high-level individuals. They looked into the legal aspects, and they have nominated or designated seven legal advisors. These seven legal advisors now are available to CCWG. They are on the mailing list. They listen to the discussions, and they are required or expected and asked to provide legal views on the legal situation, including the restrictions and limitation of California law in relation to the transition actions and any



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subsequent issue should be made. And they were expected to provide a background document put in hand of the CCWG no doubt on the mailing list, which is open to everybody. So, therefore, you will know very soon the issue of the legal aspect to be applied to Indonesia. With respect to the question raised by distinguished delegate of Egypt about accountability, the CCWG, among the four working areas, they have established one working area is CWG. That means a link between the CWG and CCWG to talk about accountability and bring elements and issues of accountability required for transition into the CCWG to be dealt with in the overall accountability. And that coordination is currently very well being done. Thank you.

CHAIR SCHNEIDER:

Thank you, Iran. You belong together to the same delegation? It's also Iran. Is that right? Okay.

Then the next one is Denmark. Thank you.

DENMARK:

Thank you very much, Thomas. And thank you to Larry and Jonathan and Lise for explaining and commenting on the details here.

From our part, it is very important to have the possibility for separability. And from the outset when we have looked at that in the past, we have, of course, looked at how it is today and thought that the idea of having external in a way of Contract Co. was a proper one. We acknowledge fully that it is quite complicated. And I explained myself.



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But now we have four models. And, at least from government point of view, sometimes when we present that internally, we have pros and cons. We've heard a little bit from Lise that there was different views on captures. There was perhaps the question of implementations.

Will there at any stage be anything more specific on pros and cons of the different models? Also the internal -- what about the bylaws, the trust? What is the pro and cons? Are you able now or later on to try to sketch out these things? Thank you very much.

JONATHAN ROBINSON:

Thank you, Denmark. I will make my first attempt to respond to that. And Lise may come in with more.

What we've begun to realize -- I think it's really important to just reemphasize this. What we presented to you is a key area where we have a challenge. We also have a significant portion of the work where we have much less significant challenges.

So our current thinking -- and we haven't yet properly socialized or discussed this with the group -- is to start to work and concentrate on those areas where we have agreement. And it's kind of to Larry's point as well about going in and starting to really flesh out the detail on all of the basic functions and ensure that that part of the proposal gets rapidly built up and starts to look like it has substance. And, in parallel, then deal with this ultimate scenario and including fleshing out in the kind of detail you're saying so that they can be properly compared. But some of that depends on having adequate and effective legal advice. Because that could, for example, rule out one of those components.



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But I think we've got to be very careful both in our conversation with you and in the work of the working group that we don't get hung up on this whole area of what to do in extremis when there is a -- when and if there is a requirement for separability, which, as I said, I think a couple of times, is literally an extreme scenario that may never come to pass through all of those escalations. So there's a really fine line between getting that really important bit right but not focusing the entire energy of the group and, therefore, the community's input on only that area.

CHAIR SCHNEIDER:

Next, we have China.

CHINA:

Thank you, Thomas. And, firstly, we would like to thank -- express our appreciation for all the people involved in making this proposal and making this very informative briefing to our GAC representatives at this meeting.

And we have several comments and maybe a question.

And the first one is that we also have -- we think that the accountability and transparency is very important issue. And it seemed to us that, according to the current proposal, the MRT will undertake most of the decision making functions of IANA functions. And that we think that we have to also consider how we will deal with the issue of accountability and transparency of the new structure. And, secondly, we also have some concerns. We'd like to -- we also have some concerns on the jurisdictional issues that has expressed by previous speakers. We think that either this is a contract company or a charter agency. The location



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and jurisdictional framework there that they are subjected to is very important and is -- very important relation with legitimacy or these entities. And also, it's very closely related to the globalization of this Internet development

So we think that we have to have most serious considerations on these jurisdictional issues.

And, thirdly, we would like to know the -- about the IAP. We think the IAP seems to be a very important composition of this new structure. And we would like to have more information about it, the functions -- composition and the function of this IAP, so that I think for that we can have a better understanding on the effectiveness and the -- and is operation how the -- the operation of the IAP. And, finally -- and we think that the IANA transition is -- we are coming to a very critical stage. And we are more than willing to see that -- an updated timeline for this work. And we would urge that you finalize this work at an earlier stage. Thank you.

JONATHAN ROBINSON:

Thank you very much for that intervention.

So, in terms of -- I think it's really important to reemphasize that the day-to-day function operation of the IANA function is fundamentally a technical stroke administrative function. There are customers of that function. And on a day-to-day level, in our view, I think the CSC is absolutely critical. It's really about the CSC -- the customers getting the transactions and the performance that they require.



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When we originally named the multistakeholder review team, we talked about that as being a periodic review team. It was an opportunity for -- at different periods in time, a group to oversee and have as an escalation point for the CSC if there were any longstanding and unresolved problems.

That periodic review team got renamed the multistakeholder review team to reflect a sort of guaranteed requirement, if you like, that there would be some form of multistakeholder oversight or opportunity to have input.

So you also made the point about accountability and transparency. And I guess again I would focus in on the primary accountability of the IANA function is to perform the technical and administrative tasks in a timely and reliable fashion. So, for the most part, I would hope that the CSC would hold the IANA function to account to perform in that way.

On your point on jurisdiction, to the extent that a Contract Co. or similar is required, if it's clear that jurisdiction from other interventions is an important point -- and noted your point on the IAP. Again, to emphasize the IAP, it's -- the current thinking seems to be that the IAP would have a limited but very important role. And that is that recognizing that policy development takes place outside of the IANA function, this is not grounds to appeal policy decisions. It's a basis on which to deal with the eventual escalation that in some way an instruction was not followed or an action was taken place that contravened an instruction. So it's perceived to be a very important -- and acknowledge your recognition, China, of that importance -- but not wide-ranging function



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**LISE FUHR:** And I'd like to add that the IAP is potentially being divided into taking care of the gTLDs and recognizing that the ccTLDs are very different. So we might need to -- "divide" is a strong word, but have different procedures for those.

So this is going to be an issue for the next couple of meetings.

**JONATHAN ROBINSON:** I'm afraid I have to excuse myself. I was due to be somewhere else that -- I've already stepped out of the GNSO meetings for over an hour. So I'm just going to quietly slip away. But thank you very much for the involvement and the questions. And Lise will remain here for the last few minutes of the session.

**CHAIR SCHNEIDER:** I'll actually thank you, Jonathan, for coming here. Next we have Mr. Chang Jian Chuan, please.

**CHANG JIAN CHUAN:** Thank you, Chair. In my view, IANA transition may achieve the innovation of Internet. We support the transition plan that NTIA proposed. The new gTLD business model needs some changes to make profit. Maybe the transition is a right way to do that. But, on the other hand, the ccTLDs management are bound to (indiscernible) national role and should be discussed more carefully and seek consensus before the transition. Wish the transition could be done on time rather than being





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the case that the contract between the NTIA and ICANN to be extended two more years.

But I still want to stress that any changes about the ccTLD management mechanism should be carefully especially to avoid the scenario when this will affect those countries that are absent in these discussions we have whether online or in person. Thank you.

CHAIR SCHNEIDER:

Thank you very much. Actually, you raise an important point. We, of course, are aware that our linkage is not only between the CWG, CCWG but actually to other parts of the work that we have already started to discuss like the FOI working group and other things. Does any of you want to comment on this?

LISE FUHR:

I'd like to give a short comment. We're very aware of the CCs and the gTLD's difference. And I'd also like to say that we're trying to make outreach for all the countries that are not members of the ccNSO. So we have a ccTLD world list. So it's not only ICANN community that's being communicated with. We're doing outreach to all the registries around the world. Thank you.

CHAIR SCHNEIDER:

Thank you. Further I have Thailand and Japan.

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THAILAND: Hi. I would like to seek for maybe clarification about the geographical definitions. Because of there will be a number of panels coming up. And I'm sure we will make sure they have right diversity of the component of the panels. I'm not sure which definition of geographical we are following. Are we following the U.N. classification? Or ICANN by the RIR? Otherwise we will have the same problem as we had before when we tried to select the diversity from the representative. And we have confusion of what is the definition we should follow. So I'm not sure are we having that in considerations in this proposal?

CHAIR SCHNEIDER: Who would you like to get an answer about this process or in general? Maybe I can start.

That's a good point. That will keep us maybe occupied also in the future when we try to improve coordination on lower levels in the GAC. So the issue of what are the regions and why and what for? But maybe, with regard to this particular work, you have some comments on the question. Lise, thank you.

LISE FUHR: Well, you have the work of the CWG that has a very broad representation of countries. And I must say also if you're referring to the models that we're trying to make a proposal for the ICG, representation of the multistakeholder communities very much in focus. Thank you.



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CHAIR SCHNEIDER: Thank you. Japan.

JAPAN: Thank you, Mr. Chair. First of all, thank you for all the informative and useful explanation that IANA's transition issues. Regarding that, I have one question for Mr. Strickling about the domestic process change in the U.S. about slightly future issues.

And, after receiving the proposal from the ICG to the NTIA, what will the U.S. have complete procedure for the assessment or approval whether it will be acceptable or not? Will you pass the proposal to the Congress? Or also the review will make any criteria for assessment of the proposal for it. I'd be very grateful if you could provide. Thank you.

LARRY STRICKLING: Thank you for your question. So on your specific question about the role of Congress, they do not have a role in terms of approval this plan. We do not congressional approval in order to allow the plan to go forward. However, if you read any of our newspapers you'd know that members of our Congress are quite interested in this issue. Almost certainly they will want to hold hearings on the proposal when it comes in. I am sure that they will have people doing their own analysis and raising questions and issues that they will expect, you know, at one level need to be able to be answered. They will expect, I'm sure, representatives from the community to be able to answer their questions and concerns. So that will be part of the vetting process that will no doubt occur as a practical matter once the plan comes in.



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In terms of what we're looking for, you know, we said last March there are four criteria for the plan. Those still exist. And I encourage people participating in the process to keep those in front of them as they're evaluating these various proposals that are starting to emerge. What does it mean to security and stability to create a lot of new entities? Is that going to be destabilizing in and of itself? And if so, how does one protect against that if they want to proceed with that type of option?

We've also made it very clear that the transition plan has to meet the needs of the customers of the IANA functions. And again, how will these proposals do in terms of responding to the actual customer needs for these things?

So all of that, we will expect that the community, if they want to present the plan with the greatest chance of success, will present a plan that provides us very detailed answers to all of the criteria that we set forward so that when it's subject to public review in the United States, those answers will be readily apparent to people. If they're not, then we'll have an issue as we work our way through the process. But again, we have the four criteria, and we are looking for a plan that has the broad support of the community. A plan that comes to us -- And we're looking for a single plan.

I should -- Let me quash right now the idea that we'll accept a partial proposal. Don't even waste my time. The community needs to come up with a complete, comprehensive proposal on both the IANA functions and accountability and present it to the United States. And at that point, we will look to see that it's gotten the broad support of the community. So we don't want to see dissenting statements. We don't



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want to say still controversy coming. The community needs to find a way to work all those issues out before it submits a plan to us.

So....

CHAIR SCHNEIDER:

Thank you.

I've been informed that we have the co-chairs of the accountability group here with us. They will not -- They will also have to leave at some point in time, so we will need to end. I will give the floor to the Netherlands and Sweden and stop the list here. Then we'll move without a coffee break, I'm very sorry for that, also for myself, to the next session. Use the fact that the other co-chairs are here. We might make a coffee break once the chairs have to leave and then continue the discussion, including on the way forward on this one, because this is a very good exchange but we didn't have time to discuss how were we going to take this forward, how do we organize ourselves. This is something we need to do. So I'm sorry for this is a higher power with deadlines and cross-community availabilities of people. So I hope that is acceptable to you all.

So Netherlands and Sweden, please be short and then we move directly into the next session.

Thank you.

NETHERLANDS:

Thank you, Thomas. I'll be fairly short.



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Just coming back to the question of Jonathan saying or questioning what -- let's say the consequences of GAC being a chartering organization. What is expectation of the GAC?

I think that's something for us to discuss, but just to take a first step on that, I think we will not be in the possibility to approve or, let's say, agree on a model, because that's not our role. I think our role is advisory.

We have concerns, we of criteria to meet.

To be honest, I think The Netherlands has always said that we are not the designers of the model. We're not going to choose between internal or external. That's our view.

I think we have -- we will have to see whether the concerns -- which concerns are there. And I think we have heard a lot of concerns. Personally, our concerns also on the security and stability of the system. Will this model which is envisaged have new risks? Is it going to meet, let's say, the stakeholders' approval and also the vastness of what is now in the system?

So I think these are the things that we should concentrate on as the GAC. And I'm wondering if this also meets the expectation of the other constituencies from the GAC.

Thank you.



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CHAIR SCHNEIDER: Thank you very much. We will need a longer time to discuss this. I just want to take the comment or question from Sweden, and then move over.

SWEDEN: Thank you, Chair, and good morning, colleagues. It's a related comment and a question, I guess, for Lise as well.

It's been presented as four different models, but really it appears to be four versions of the same model that was presented in December. And I would like to ask if there is a convergence and a consensus on this basic model with these several new bodies and functions relating to what Mr. Strickling said earlier, with the MRT, the CSC and the IAP. Is there consensus on this basic approach to have these new functions and then just debate about the versions of how it should play out?

Thank you.

CHAIR SCHNEIDER: Excuse me, that a question to somebody sitting on the panel or is it a question to the GAC? To Lise, okay. Then answer, Lise.

LISE FUHR: Well, we were sending out the first proposal, the original one with the Contract Co. for public comment. And during these comments we got responses that the first proposal were too complex, so we try to flesh out where we were having what we called not consensus but we had some convergence, because we haven't tested the real consensus on the actual proposal yet.



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But we made, during -- among the group of the CWG, all the members or participants, we made a short survey of trying to find out where do we -- where do we agree on basic issues. And I must say there's pretty much agreement on you need some kind of MRT, if it's going to be a separate entity or within the internal ICANN. There is some -- a multistakeholder model needs to be there. And the Country Co. has a separate MRT entity where it's building within ICANN and the internal ICANN solution.

So I think the four models are very diverged, and one is actually building on the ICANN system, and the other one is building new entities outside ICANN, like the MRT, like a Contract Co.

So the multistakeholder is a basic principle in both models. You have a customer review team also that's in both models. But that could be built in in the ICANN structure. So it wouldn't be separate in the internal ICANN.

And I think those are the differences of the two models.

Thank you.

CHAIR SCHNEIDER:

Thank you very much.

We have to end here.

A question to the secretariat. Is -- Are the two co-chairs here? I don't see them. Why are you hiding over there? Okay. I get angry emails about the coffee break, so we'll make the coffee break after they have to leave because they have only -- and SMSs. They have only half an





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hour, about, if I get this right, to share with us. So really shouldn't miss the opportunity to have that exchange as well.

So first of all, thank you to Lise and also Jonathan and Larry, and let us welcome the two co-chairs of the second -- nice acronym -- Cross-Community Working Group. They only have 15 minutes. So then I stop talking and you start talking; okay?

All right. The floor is yours.

MATHIEU WEILL:

Thank you very much, Chair. My name is Mathieu Weill. I'm the CEO of the French ccTLD AFNIC, and I'm one of the three co-chairs for the accountability Cross-Community Working Group along with Thomas Rickert and Leon Felipe Sanchez from ALAC, who could not join this meeting but is actively engaged in co-chairing it as well.

I'm going to go very fast towards substance, but first of all I'd like to mention the appreciation of all group members for the very strong and active participation of GAC representatives within the Cross-Community Working Group. There are five GAC appointed representatives to this group: Suzanne Radell for the United States; Par Brumark for UE; Alice Munyua for the African Union; Olga Cavalli for Argentina; and Julia Wolman for Denmark. And we have an ICG representative -- liaison, who is Kavouss Arasteh, the Iran representative, as well as 20 other government representatives as participants to the group.

I'm going to go right to this presentation to give you an outline of where we are now in this group.



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This group started later than the other ones, since I think our charter was approved very early in December. And we're here to present the progress we've made so far to catch up with the other groups.

So the problem statement. The scope of our group is presented on this slide. Really, the overall catch-up message is this group is here to enhance ICANN's accountability in light of the transition that changes one fundamental aspect of accountability which is the contract with -- the various contractual relationships that ICANN currently has with the U.S. government, which are considered by many in the community as one of the key accountability mechanisms that holds ICANN in check.

So we have been launched with the precept of two work streams. One, work stream one, which is the obviously the main focus at this point, is focused on identifying mechanisms that must be in place or committed to before the IANA stewardship transition can happen. And we also have a work stream two which can extend even further.

If we go to the next slide.

So the group is pretty large. 161 people. 25 members, including five from the GAC, 136 participants, including 20 from governments, and 38 observers. And we have reasonably good regional representation, although Latin American could be improved, and quite a strong stakeholder group representation.

Moving on to the next slide. Thank you.

The first thing we set up doing was trying to make sure we spoke about the same things. So we have worked quite extensively on the definitions of -- within our scope. And that included a key question

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about what ICANN could be -- should be accountable to. And I'm putting this here because it's obviously very -- the highest relevance for governments as well as other stakeholders that it's about accountability to process, accountability to applicable legislations in jurisdictions where ICANN operates, to achieve certain levels of performance and security. And of course that's especially important for IANA. And also ensure -- I am spotting an issue with the slide. Ensure that the decisions are for the benefit of the public and not just for a particular set of stakeholders. And this has given -- been given a lot of attention and discussion within our group to capture those four areas of accountability.

Moving on, we've also, obviously, discussed about what accountability is and how it can be implemented. So it goes from transparency and consultation to checks and balances. And we've had extensive discussions to define exactly what review and redress means in that context. Basically, redress has a potential for a binding outcome to cancel or remand a decision. And there's a very important aspect as well about independence which is captured in the definition of accountability that forms the basis of our work, which is the NETmundial multistakeholder statement definition.

The next slide.

And finally, one other very important aspect in terms of definition and setting the stage is to whom should ICANN be accountable to. And the answer is -- the short answer is everyone and not just within the participants to the ICANN meetings, not just within the naming community or the numbering communities but also taking into account



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the indirectly affected parties such as potential -- certain industry sectors or certain Internet players such as ccTLD registrars who are not directly linked to ICANN.

Next slide, please.

I'm going to squeeze that one because it's going to be too detailed.

So this was the definitions. We are also very aware of the requirement towards our group that has been stressed a number of times by the U.S. government that this should -- we should provide stress tests about our solutions, so we have developed a number of contingencies that will form the basis that we will study on to test our proposals. They are grouped in -- There are 25 contingencies identified grouped into five categories, and in our work sessions this week, we'll start discussing actual stress test which are currently produced by one of our working groups.

So the five contingency categories are the insolvency of financial issues, the failure to meet financial obligations, legal or legislative actions against ICANN, failure of accountability systems, and failure of accountability to external stakeholders. And of course there's a lot more detail in the definitions document that is available on our Wiki. And I should mention that this is currently a document that is being put for review with the external experts, the advisors that were selected by the public experts group, of which Larry was one of the members.

I turn to Thomas for -- to give you an update on the requirement.



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THOMAS RICKERT:

Thank you very much, Mathieu, and welcome, everybody. My name is Thomas Rickert, I am the GNSO appointed co-chair of this Cross-Community Working Group. As Mathieu said, we have been looking at contingencies, because if you talk about accountability, it's important to understand what contingencies we need to find countermeasures for.

So after having done that, and previously, as you will recall from earlier updates, we had gone through the exercise of establishing a set or an inventory of ICANN's current accountability mechanisms, so that was one of the things we did. We also looked at what requests there were from the community coming out of the public comment periods that were held by ICANN last year, after the announcement of the U.S. government. And we took this further by now looking at what tools, what requirements are needed to empower the community sufficiently to base a robust accountability system on.

So having looked at the contingencies with the stress test, this side is more focusing on how -- how accountability mechanisms need to look like; i.e., what powers there need to be in order to ensure that everything will work as planned in the absence of the historical relationship with the U.S. government.

So we have agreed that we would condense this into two work packages or two work subgroups, one of which would be dealing with community empowerment and the other one would be dealing with review and redress mechanisms.

So if we could move to the next slide, please.



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Community empowerment means what powers does the multistakeholder community need in order to ensure that ICANN does not get out of control, cannot be captured, and so on and so forth. So we've identified a couple of main topics, and our group believes that if these topics are addressed, that we would be good to go for work stream one; i.e., these topics need to be either implemented or committed to prior to the transition. And that would be approval of the strategic plan, and the business and operating plan as well as the budget, because that's an important thing for ICANN to do to share with the community what they're planning to do. It would be approval of proposed changes to the bylaws. We had an awful lot of discussions about ICANN's mandate and there was the fear that ICANN might expand its mandate beyond its current mandate, and that could lead to issues and potentially also to capture.

So any bylaw changes regarding with respect to mandate would need to be reviewed by the community or challenged by the community. Then we are looking for tools to ensure that any action contrary to the bylaws needs to go back to the ICANN board for reconsideration. So we need to make sure that the ICANN board -- and whether ICANN acts in compliance with its bylaws.

Then we need to have a tool to invalidate certain board decisions, doesn't necessarily have to be each and every board decision depending on the escalation path for the subject matter concerned. But there needs to be a tool to have board decisions turned over in case they do not reflect adequately the views of the community or prior community work.



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And, lastly, there must be the opportunity for the ICANN community to have one or multiple board members dismissed. And I should be very clear on stating that we're not working on this as an evidence of distrust in the current board. But we're chartered with looking at contingencies and making sure that the organization is sufficiently robust in the post transition world. And, therefore, it is necessary that the community has tools to remove board members, if necessary.

We are discussing the mechanics of that. So that's not yet defined. But that's, obviously, one of the key topics.

So, if you look at this list, what you will see that there are, basically, three main topics. That is, there needs to be mechanisms for some very key decisions for the ICANN community to reverse board decisions, to call the board to action in case the board is inactive on certain issues in order to ensure that ICANN is doing what the community requests it to do.

And, if these things fail, then the ICANN community must have the powers to remove individual or multiple board directors.

Can we move to the next slide, please.

The second area would be review and redress mechanisms. Review meaning that we are looking at ICANN's procedures on a periodic basis to ensure that the organization improves. That would include things such as perpetuating the ATRT by potentially including it in ICANN's bylaws. So that's one of the remedies that the group is discussing. But, basically, it's a combination of ensuring that board decisions as well as other actions can be reviewed. And also, if need be, that there are



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redress mechanisms to turn over and invalidate board decisions or other decisions that ICANN has made.

We should be clear on our group focusing on last resort mechanisms. So not each and every decision needs to be tackled at the highest level. So it will -- it's quite likely that we're going to have an architecture where you have different subject matters concerned with different review or appeals processes with different escalation paths. And that -- these ultimate powers given to the community will only be invoked if there is a need for it.

You will have noticed that we've talked about requirements quite a bit. And we have not yet spoken about implementation.

If we could move to the next slide, please.

And that's something that we deliberately kept open. The group has discussed certain implementation models such as turning ICANN into a membership organization, having delegates from the ICANN community and equip those delegates with certain powers, to have an ad hoc or standing cross-community working group representing the whole community that would have certain powers. But we are not experts in California not-for-profit law.

So we chose to identify the tools that we need to provide for accountability. And we're now putting this in front of the specialized lawyers to say okay, this is what we need to have in terms of features. And you, please, tell us what the legal solution for achieving that would be.





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And we've made progress with that. We're not yet there. But we thought that it might be easier for us to talk about implementation measures after we have clarity on what the community requirements are. And I think that we've achieved quite a bit on that. And we hope to make significant progress on the implementation during this meeting. And I'm glad to say that we have some preliminary legal feedback today which we're going to share with the group in this very minute and which can then be the foundation for our further deliberations.

Now, I'm sure that you can read the timeline on the screen as badly as you could the previous timeline. But rest assured that we have taken huge efforts in coordinating with the cochairs of the CWG to make sure that the timelines are aligned and that we have good chances of coming up with the holistic approach that can then be finalized into a unique proposal as we move on.

And you will see that we have factored in the work of the two working parties that I made reference to. We factored in legal advice. We factored in public comment periods. So it's a cohesive timeline. It's a very ambitious timeline. I should not hide that fact. But we're -- we think that our group is best placed to come up with robust solutions in the very near future. So I think I should pause here. And I have to excuse myself because we have a meeting of the CCWG with the board, which is starting at 11:00. But you're in capable hands with Mathieu Weill. Mathieu will gladly respond to your questions. Thank you.

CHAIR SCHNEIDER:

Thank you, both of you. And, Thomas, let's continue the discussion later, of course, with you as well. Actually, I'm just realizing that I made



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a mistake and thought the first session was 90 minutes. So I somehow skipped the coffee break. So sorry for that. But we will -- I guess, how many minutes do you have to stay with us, Mathieu?

MATHIEU WEILL: I can stay for another 15.

CHAIR SCHNEIDER: 15 minutes. I suggest we make a short coffee break after this 15 minutes. Start with the comments and questions, use the time that we have with him, and make a short coffee break. Sorry for this. That was a misunderstanding.

Yes, we have Argentina.

ARGENTINA: Yes, Thomas. Thank you very much. And thank you, Mathieu and Thomas that just left and Leon Felipe for the great work that you're doing. I really commend you for that and to all the colleagues that participate with me and other countries in the work.

My comment is quite a general comment, a feeling that some of us have in relationship with the accountability of the process itself, of this work that we are doing in ICANN. The feeling that some countries or some of us have is that it is mainly focused in the structure of the ICANN itself now. So it's in between the SOs and ACs and the community that participates within ICANN.

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And, if you see the numbers, you have only nine participants from Latin America, which has a lot of reasons to me. And I'm not complaining for that specifically. But how accountable would it be the results once they're open to the final comments to the community if we don't get feedback from a wider community perspective? And also the multistakeholder vision of ICANN for the government. It's not so equal footing. Some of us think that governments do not have equal footing in all their activities within ICANN. So that's a general comment.

It's not I'm complaining. It's just a reflection about the work that we're doing.

And I would like to ask if -- when we will have the dates for the face-to-face meeting and where they will be and, if it could be, perhaps, in the Americas this time. Thank you.

CHAIR SCHNEIDER:

Thank you very much, Argentina. So, regarding the face-to-face meetings, that's one of the items we have on our agendas of the various sessions this week. And we expect to provide clarity on that.

You raised two points, one on engagement beyond the ICANN community. And I think we have a slight difficulty that we are facing competition, competition in terms of the number of working groups.

And it's probably harder for this particular accountability group to engage beyond ICANN community because it's focused on ICANN itself and not on the IANA function. And so this is definitely a challenge. We need to find a way to overcome. Hopefully, with the help of those members who are either geographically in the regions where we have

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lower participation or which have connections in the sectors and communities where we get lower participation.

But I think it is definitely a challenge we have to anticipate.

And you're right to put the -- you're rightly putting -- highlighting the issue of multistakeholder on equal footing. I think when Thomas was speaking about requirements, this is a topic that we'll have to come to quickly. And, hopefully, it's raised within the group and by many -- I've seen it raised already a bit.

And I'm not anticipating it's going to be an easy one to find consensus on.

But at least, once it's framed into the requirements and we know what we are -- I mean, what we're supposed to be on equal footing on, for what purpose it's about, I think this will probably help us find a common way forward.

CHAIR SCHNEIDER: Thank you, Mathieu. Next I have Spain.

SPAIN: Thank you, Thomas. And thank you, Mathieu. Nice to meet you.

I have two comments. On the issue of turning ICANN into a membership organization, on the one hand, I think it's very wise to seek expert advice on this issue because it's quite new. It could mean a big change in the way ICANN works and is a complex issue.



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But, on the other hand, I think that focusing too much in this model, in this direction, can alienate a big chunk of the community since this is kind of U.S.-centered model in the sense that you have to seek expert advice on U.S. laws on membership organizations so that there are a large number of people who are not knowledgeable about U.S. laws that don't understand what a membership organization is and are, by this very simple reason, out of the dialogue on this proposed solution. I could suggest not to dive into these kind of solutions that are going to be by nature limited to a very limited set of people who are able to have a conversation on what is a membership organization and what is the benefit for ICANN of turning into a membership organization.

And my second comment revolves around review and redress mechanisms. We attach a lot of importance to strengthening these mechanisms in ICANN, which we think are very necessary

And we bet to have both effective, independent, and affordable mechanisms. And I would like to see much more dialogue and proposals on this part of the debate and especially on ways to make those mechanisms affordable for community members that can be affected at some point in time by ICANN decisions. Thank you.

MATHIEU WEILL:

Thank you very much, Spain.

So taking the second point first, we haven't been able to show everything. But I can confirm that the effectiveness, the affordability, and the independence of review and redress mechanisms are points that belong to the requirements for our review and redress separate.



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So this is something that has been identified and without any objection from anyone as one of the targets for our group.

The first set of questions was related to the members -- type of member organization, how we investigate within the context of the California law. I think we are -- we sort of -- we have a constraint, which is ICANN is currently based in California. And so, as we look for what is possible or not possible, we are bound to at least look at what is currently possible in the current setup. And, if we ever find anything that becomes impossible, then that would raise the question about is this the right setup. And I think -- I mean, I'm not a legal person.

But I know we should never be afraid of looking at legal advice from anywhere, even if we're not qualified, and question it. Because it seems technical. But, if it stays technical, it is just not good legal advice because it has to be clear for everyone. That's really what we're striving for in the group. We don't have that many experts in California law or even U.S. law in the group, and we need to have participation from everyone. And legal advice is supposed to provide clarity about higher level principles than just getting us deep into the details for California law.

So, I mean, if the legal advice is not understandable for any participants or outside observers, then I think we should all raise our hands and say, "If it's not clear, it's not normal. There's something wrong."

So that's really -- I would really -- I mean, we'll have to be an organization somewhere. And member organizations are different in Brussels, in Spain, in the U.K., in Argentina. And so we'll have to get into the specifics at some point.



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CHAIR SCHNEIDER: Thank you, Mathieu. We have three more requests to speak. So we hope that we can -- maybe we gather the three questions and then you try and answer them. So it is France, Brazil, and Germany. Thank you.

FRANCE: Thank you, Thomas. I'm going to speak French.

Thank for the participation of all interested parties in any of the IANA transition working groups. The work they have done is really superb.

And, with respect to us, we can see that there are lots of problems that we have to face. And all that has been done so far. We are quite satisfied in the work that we have done regarding the multistakeholder model.

We have also discussed the relationship between the two processes so that the results of the process of enhancing ICANN's accountability will include different options regarding or within the framework of the IANA transition process. There's one key element that should be included in the agenda so as to organize the work to be done. And for many governments, this process of enhancing ICANN's accountability and IANA have to be provided time so as to find a solution.

Based on the presentation by our colleagues, there are certain principles that should be agreed upon. And I hope the GAC may support this idea before moving to the discussion of solutions that will come afterwards.



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I think, additionally, that there's a general principle summarized within the framework of the ICANN community in general, and it's related to the creation of an overseeing entity that will represent the multistakeholder model and the Internet world, and considering the external parties to the ICANN, the governments that we're representing. And I'm thinking about a General Assembly model, because that may be also a good idea for the representatives.

But I'm also thinking about a solution that may be supported and recognized by the GAC so as to facilitate the work of the group in the future.

The second principle, enhancing the mechanisms of independence, transparency, accessibility for everybody as Spain as saying, so as to review the decisions of the Board, should consider the second principle. And the third principle, and we French people really stress this because it's included in the long term, is the issue of a strict criteria that should be followed when we talk about conflict of interest.

I think this discussion will require a longer debate, a longer discussion, and it will be dealt with in the future.

I hope the GAC may think about how to work in the group all together so as to discuss certain issues and support the progress of the work of this group.

Thank you very much.



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BRAZIL:

At the outset, let me express Brazil's recognition, Mathieu, of the good work and the hard work being done, and keep up the good work, please.

And I just would like to reiterate a couple of points of concern that we already expressed to the group, and perhaps shared our views with the GAC colleagues.

And the first point is that as we mentioned, we believe that it's essential that the accountability review that you are currently discussing in the group should be performed as independently as possible from the current structure and decision-making process in ICANN. This should be the premise of the whole exercise in our view. And we're happy to see and we're happy to recognize that our points -- this particular point of concern is shared by many, many colleagues within the group.

And our second point of concern that we raised as well but I would like to reiterate is that we are particularly concerned that the recommendations of the group and the recommendation that will come up after a very long exercise and as a good work as I mentioned should be subject to the judgment of ICANN Board, in the end should be evaluated whether or not they serve the public interest. And for us, this is very sensitive, the idea that recommendations emanating from the community should be subject to the Board's evaluation based on the concept of public interest. And I think our view is that you should, in the group, continue exploring ways and means to see what are the options we have so this particular situation will not damage the whole -- I will say the whole legitimacy of the work currently being done in the



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group. Just pay attention to this issue that is, at least in our view, extremely sensitive.

But as I said, congratulations on the work currently being done.

Thank you.

CHAIR SCHNEIDER:

Thank you, Brazil. We have Germany and then I would like to give a final word to Mathieu and then have a coffee break.

Germany, please.

GERMANY:

Thank you. I will be brief. I have rather a final question of this entire session. I think in the end it is necessary that we bring together both approaches, approach of accountability on one side and on the other side, say IANA stewardship group's recommendation.

And I think from a public policy position, I think it is of utmost importance that both approaches are, in the end, coherent.

As far as I follow the discussion today and also on the list, I have the impression that there are slightly different approaches. If I see the IANA stewardship working group, you have already some -- let's say you discussed already some concrete models and ways forward. As I learned on the accountability group, there seems to be the approach that you have some requirements-based approach, and then leave it to lawyers to check out what is feasible under the jurisdiction question and what is possible.



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Is there really -- are we on a good way that both approaches will meet in the end to a way forward that we can use for our final -- final discussions.

MATHIEU WEILL:

Thank you very much. Those are extremely good and valid concerns that I'm going to capture and share with the CCWG. And as I'm trying to wrap up and free you for the coffee break, I just wanted to highlight a couple of points that I've heard.

First of all, I want to stress that there is a lot of cooperation going on with essentially the CWG on naming. We have weekly conference calls at co-chair level. We have a working group within the CCWG dedicated to liaising with the group and exchanging about how the accountability measures we might put in place could help interact with the CWG options that are yet -- that have been presented earlier by Lise and Jonathan. And tomorrow in our work session, I think it's starting at 4:45, and I encourage everyone to participate, there will be an update on the discussion document that was introduced earlier by Lise and Jonathan, and certainly a lot of interactions about this.

It's also only starting. We have made good progress so far but we are very aware of the challenges ahead. Some of the issues will be difficult to find consensus on. And what I'm hearing from the room here through the different concerns and questions that were raised is quite consistent with what I'm hearing from other parts of the community. And I think that bodes well for the ability to find a common way, because there's a lot of alignment between government and GAC input



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and other inputs from other parts of the community. And this is a very good sign for this part of the work.

And I'd like to, obviously, invite everyone to our sessions this week. We have a work session tomorrow afternoon. We have another one on Thursday morning. And we have an engagement session planned on Wednesday at 10:30. I'm not sure this is a good fit for the GAC agenda, but -- and obviously we will stay around and you have a lot of representatives in the group. And in French.

Thank you very much, friends, for the way you have encouraged us, and I really hope the discussion we're going to hold will lead us to great progress regarding the change or the enhancement of ICANN's accountability.

And I hope all this progress will help us move faster in the future.

I look forward to further exchanges this week.

CHAIR SCHNEIDER:

Thank you, Mathieu.

It is now 20 past 11:00. If it's okay, then we make a coffee break of 15 minutes, get something, and I call you back and we continue the discussion.

Thank you.

[ Coffee break ]



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CHAIR SCHNEIDER:

I hope you enjoyed the coffee break. But it is, actually, like, over. So please take your seats. We are resuming. Thank you.

So a request from the secretariat. The attendance list has been circulated, but it got lost somewhere among the handovers from table to table. So, if somebody sees it, please hand over the attendance list to the secretariat.

And please, come over here and sit down.

Thank you very much.

All right. Welcome back. Looking at the time, we have something like 40 minutes left before the lunch break. And we have allocated another 30 minutes in the afternoon for both of this -- what I'm suggesting to you is that we use a little bit more time to have a little more feedback on the substance of the accountability track and then would actually try and discuss and agree on a way forward, which I think we can do it for both tracks together. Because the procedural question, now that timelines are aligned of the two -- of the two tracks, I think we can discuss how the GAC is organizing itself for both tracks in one discussion, if you agree with this.

So I would like to invite you to give further views and comments on we have heard and read for those who have the time on the work that has been done so far on accountability.

So the floor is yours. Please make comments. Yes. The Netherlands, thank you for breaking the ice.



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NETHERLANDS:

Well, the Netherlands is minus 3 degrees now. So I'm happy to be here.

I would like to come back to my intervention during the last session. And that's the -- I think we should discuss in which way the GAC welcomes, approves, acknowledges the work of the -- I think -- not rather the accountability but the proposals for the IANA stewardship transition.

CHAIR SCHNEIDER:

Yes, I agree. As I said, we will have that discussion. But I would like to give the opportunity, if there's a wish to speak on the substance, on the elements of the work that we have been presented before the break of the accountability part, if people would wish. If nobody wants to say something, then we can go directly to the how do we organize ourselves discussion.

But maybe there's some wishes to express comments or questions or address comments or questions on the accountability on the substance from what we've heard and read.

Mark, U.K.

UNITED KINGDOM:

Yes. Thank you, Chair. And, first of all, it was a very useful account of where we are on accountability and the issues that still are being looked at. And I -- my question is about the implementation issues. And we heard about one proposal in terms of ICANN being transformed into membership organizations. But we didn't really hear about the alternatives to that, unless I missed it somehow. I recall from my



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tracking some of the accountability discussions -- and I was at the face-to-face meeting in Frankfurt -- that there was a proposal for a supervisory council or some entity along those lines which would be multistakeholder and extended beyond the ICANN community to take in other organizations active in the Internet ecosystem. So I think we need to know more about that and how that's going to progress and whether there is some likelihood of some conclusions from the CCWG's work on that during the course of the intensive work that's being undertaken during this time in Singapore. So that was my sort of one area where I think we need to understand a bit more in order to give a fuller account of the possible way forward for that.

And now my other point that came to mind was how is this combined proposal, single proposal, as Larry Strickling made clear, was the only one that would be accepted would be tested by the community before it's submitted to -- ultimately, to the NTIA?

I think there was a question about that raised by Egypt.

And I see in the timelines there is a provision for the ICG to undertake a period of testing. I really don't understand how that's going to develop and what kind of criteria NTIA will expect will have been applied in terms of protesting the single proposal. Thanks.

CHAIR SCHNEIDER:

Thank you for asking these questions. That actually brings me to a procedural issue that, now that Mathieu and Thomas are not here, I think it would be good if you could collect some comments including questions and somehow communicate it after this session or after this



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GAC meeting as a whole to the cross-community working groups. But this will not be a part of the advice to the board. So this is a separate communication track. But I suggest that the secretariat takes note of this and then we see how -- this is something to think about. How are we formulating our views, questions, to the working groups? Because they ask for input. And we are able to give input because we have views and we have questions. So we might not be able to answer this.

I can give you a little bit of at least my perception of the discussion on membership and supervisory council. The way I understand it, this is linked to the question on how to make sure that the board is accountable to the community. And in the current situation where you don't have membership structure, it's different than -- if you had a membership structure, then it would be maybe easier or clearer to hold the top of the organization accountable to its members. And then alternatives could be something like a supervisory council. So it's in the light of the question of how to make the board accountable to the community where ideas or, like, the table or a plate is being opened and several things are now discussed. This is how I understand it. But I think we can make a contribution there by, for instance, saying this is an important point. And ask for the options and pros and cons of the different options to be looked into in more detail. I guess that will be done anyway. But, if we show interest in this, of course, that would not be a bad sign.

Thank you. Any further? Yes, Spain.

SPAIN:

Thank you, Thomas.





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On the substance, I would like to raise the question of, if ICANN turns into a membership organization, could the GAC, government, be willing to be one of the members and appoint a member or two, whatever the number is, to the board?

And what the implications could be for governments to become a member?

For me, as the proposal is not all together clear, I cannot express a definite opinion. But, if I look at it from the perspective of the Spanish corporate law, I could advise against governments participating in a membership organization because that means that you become part of a college. And you are liable for any decision that college takes. It doesn't matter that you are only one member or out of a board that can be made of 20 people. If you have not opposed to a decision taken by the college, the body, you are liable for that decision. And I don't think that governments participating only in a minority position in that type of board would like to be liable. But that is, again, talking from what I know in the Spanish law. I don't know if the situation is the same in other jurisdictions.

And another comment on substantive issues is the possibility for the community to dismiss one, two, or multiple board members.

I -- I kind of understand this proposal very well, because so far the board acts as a college again. For me, it's difficult to know what's the role of individual board members. So I could not be able to dismiss one or two. And especially taking into account that the -- their deliberations are secret. We don't have minutes of their meetings. So we don't know what the position -- what each member's position is. They don't have



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specific roles to play apart from the ones that belongs to the NGPC or the board governance committee. But I don't know to what extent this solution is going to improve ICANN's accountability in this regard. Thank you.

CHAIR SCHNEIDER:

Thank you. If I also may just answer with from what I hear and think that they are discussing in the CCWG, they are just looking at, basically, nothing is taboo. They're really trying to have a broad layout, mapping of all kinds of alternatives and possible mechanisms existing anywhere in the world which does not mean that it's clear that it's going in this direction or that direction. This is the first point. So, whenever they discuss membership or other procedures for dismissal of board members, from what I hear is that there's -- they are looking at all of this. But there seems to be a tendency -- and again, one of the reasons for discussing this is trying to get some accountability mechanisms on the board members.

From what I hear is that dismissing single board members will be something that probably might not make sense. Because, as you say, first of all, you don't really know -- it's a collective entity. You don't really know who exactly did what in that. And, on the other hand, also, that might be abused to target one specific person and so on and so forth.

So I don't really think that this is a high priority when you look towards a solution.



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But the fact that everything is discussed is not -- is actually at least in my view is a positive signal that they're really looking at things in a broad way. But that doesn't mean that all these things are equally likely to actually proceed into the next steps. At least that's the way how I would tend to read the discussions that are going on. But it's good that we think things through and distill elements that might be useful and consensual in the end. Other comments? Questions? Netherlands?

NETHERLANDS:

Yes, thank you. Coming back to the proposals or intended ideas within this CCWG, I think I share the same concerns as Spain.

What I'm not certain about is this working group is acting not with a very defined charter, I think.

And my -- the problem I have is that generating ideas means that you have to first have a charter on what are your flexibilities in what you can propose. For example, if I hear a membership organization, I would also say that then you are looking outside the boundaries of the existing ICANN, let's say, corporate model. That means that also, I think, instead of only looking at membership organization, you could also look at, for example, international organization which is based on a host country agreement, which is also very much used model. So I think I don't see a direct direction or charter for this working group. And maybe in that case, we could also give some direction as a GAC, if it's not there, in the sense I just said. Looking out of the box, then you can -- you have also to look at other models. Thank you.



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CHAIR SCHNEIDER:

Thank you. Does anyone want to comment on the Netherlands' questions? With regard to the charter, I think the charter is as clear as it can be with an issue as broad as accountability and also the issue of overlap between the two working groups. I don't think it is a problem that there is some overlap. If they come to the same reflections and possibly the same objections, it actually shows that the work makes sense and both the good work.

With regard to discussing options, I think take it as an encouragement from the group to actually -- whoever you are, GAC member or not -- participate in the group and share your views and reflections and bring them up and see what others think. And I think this is the way to go forward. We can discuss whether -- and I think somebody else raised it before, to what extent the GAC is willing and able here to decide to formulate some basic principles like we did for the CWG. We tried to formulate principles that turned our work into reacting to the principles that the working group itself has formulated. We can go into a similar exercise on giving some directions from our side on maybe a quite abstract principle level. This is up to you if you think we can do this and should do this, bring it up and we discuss it. This is what I would answer.

Australia.

AUSTRALIA:

Thanks, Thomas. You've stolen some of my thunder.

Sorry. I had a couple of comments. One was to put -- to, I think, agree with your comments from earlier about it appears that the working



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group is casting its net pretty wide and looking at a number of issues that I guess I had hoped and assumed they would look at. So I'm actually quite encouraged. I'm encouraged to see that they're looking at if it's possible for the community to somehow get involved in the corporate planning and business planning and sign it off. And then, if the board doesn't follow it, can we call them up on it? If they still don't follow it, can we try to have some mechanism to try to get them to reconsider? And, eventually, if the board doesn't react, to have some sort of nuclear option. What exactly that looks like is still up to question. But I think it's useful that they're looking at it.

In terms of recalling individual board members, I agree we normally don't know how the board does vote. But particularly controversial board decisions like launching the new gTLD program saying, actually, we're finished -- actually, all the board members did sit up in front of the community and we saw how they voted. And some board members actually made statements in opposition to the decision that was finally taken. So there is a precedent where sometimes, for really, really controversial things, we actually do get to see how individual board members perform their roles and how they cast their votes. So just to put that out there.

In terms of your comment about principles, I'd be interested in whether colleagues thought it was useful for the GAC to, again, go down a principles type path to the accountability track.

And just to -- for colleagues who may not recall, who weren't involved earlier -- I forget the meeting now. Los Angeles perhaps, or London -- the GAC actually -- we got some input from a number of GAC members



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into a big document where there are a number of principles and ideas. We carved off a subset of those. So those which were seemed to be more directly related to the IANA transition and rolled those into that working group's principles document. We, therefore, already had a good start. There were a number of inputs from a large number of GAC members already on the table, if we want to pick them up and continue with them. And I'd be happy to help if others think that's going to be useful. The participants in the CWG may be able to give us more insight into whether principles were actually useful in that group or not. But I'd be happy to go down that path. I thought it was useful to at least focus the GAC's efforts initially at least.

CHAIR SCHNEIDER:

Thank you, Australia. And, actually, thank you for the role that you played in helping to get these principles together. And, actually, you're right. We have some principles that we started to collect that might actually be useful for the second track, which is the accountability part.

So I see that Norway is willing to comment on your proposal. And I invite others to also think about the proposal that has just been made by Peter from Australia. Thank you. Norway.

NORWAY:

Thank you. And thank you, Peter, for your comments on the principle. It was -- I think it was very important work. Because, as we started the process in the CWG, we started with this draft proposal that was put out and the principles. They went -- you know, in the -- in parallel.



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But, as the model becomes more complicated and the scenarios are more difficult and -- the principles are the things that are still standing there. So I think the principles will be very important to guide us through the process, even if it started as more -- let's say, something to help us through the work process as such, I think it will be important. I think we got a lot of our -- the GAC comments through. We got most of them into the principles. We have a few pending. And -- because we have met some resistance on a few of the last comments we made. So the principle is now -- I asked the persons who are responsible for them in the CWG if we can have them on the table for this meeting. And they're still pending. So they're not finished yet. But I think the GAC view is very well represented in the principles. And, as I said, I think it's going to be -- if the going gets tough, if it's going to be discussions on when are we actually -- what direction should we go in, I think the principles will be very useful. So I will, of course, as soon as I hear anything more about where the principle stands now in our last comments if we got them in or not, I will forward it to the GAC as such. But I think it's a good start, as you said, for what we are looking to achieve in both tracks on accountability. Thank you.

CHAIR SCHNEIDER:

Thank you, Norway. Other views on this proposal or other aspects? Yes, France. Please go ahead.

FRANCE:

Thank you, Thomas. Again in French.



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I think this is a great idea, as I said. I don't think we have reached the state at which we can define models. We are putting options at the table and we are setting principles so we are setting requirements. And I do recall that Peter engaged in a great -- in an excellent exercise at the end of which our conclusion was that there were many principles that the GAC wanted to put or lay at the table, at the negotiation table, which had been studied or considered previously by the CWG -- CCWG. We share plenty of these principles and I support this idea.

CHAIR SCHNEIDER:

... or try and take a decision on this this afternoon. So far the reaction to Peter's proposal seems to be positive. We would then need to find out how we would -- and until when we would get there. So we have 15 minutes left before the coffee break. Does anybody want to make substantive comments, proposals, questions on the substance or should we move to the like how do we organize ourselves part of the discussion now before -- yes, Spain.

SPAIN:

Yes. Out of curiosity, Elise, what are the two principles put forward by the GAC that have not been taken on board yet, that are meeting resistance. Thank you.

ELISE LINDEBERG:

Give it to me. I will find it. It's drowning in my email system, but I will find it. Thank you.





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CHAIR SCHNEIDER: While we wait for Elise to come up with the answer, other comments, questions? If that is not the case, then I think we can -- and Elise, you just jump in when you're -- by the way, is there any feedback questions coming from remote because we have some remote participants, GAC members who are not here. No, that does not seem to be the case. Okay. And also, this should be an encouragement to those participating remotely that you are being read and heard, so if you have questions and comments, please do make them. We will -- they will be brought to us. Just to make that clear. Elise, are you there yet or should --

ELISE LINDEBERG: No, I'm --

CHAIR SCHNEIDER: Peter. Yes. Peter has something to bridge that.

AUSTRALIA: On the -- on the names proposal, just as we're filling in time, I guess a procedural question, so the discussion paper came out so there's been this single proposal, the straw man as it was called and there was a public comment period. Now we have this discussion paper with the models that we've been talking about, the external and internal. There's a bunch of questions associated with that, ten questions, I think, and also two additional questions which were posed to the GAC by Elise. I'm wondering if we would find time to discuss those here. Or one of those, for example, is how could the GAC potentially organize itself into the bodies which are being talked about being created, which I think is similar to the point from Spain before, that if it turns into a membership



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organization, what does that mean for the GAC. Similarly if we set up an MRT that has a standing body would governments get involved or not. I'm not sure how to prioritize those ten questions and the additional two, but a process for thinking about whether the GAC will respond or individual countries will respond might be useful to discuss.

CHAIR SCHNEIDER: Thank you, Peter. I'm looking at the document. Is there a timeline that they gave everybody for answering these questions? Because I don't really see it in the document, but maybe it's communicated somewhere around it. Elise.

ELISE LINDEBERG: No, it's a question for the community to discuss.

CHAIR SCHNEIDER: For the time being, there's no timeline.

ELISE LINDEBERG: For this meeting. But of course we can forward it later. But it's to help us through the discussion at this meeting. But of course, there's so many questions. And if I can just ask one thing from the colleagues around here is that what we need, the members in the CWG at least, is some guidance on what we will do with the process. That's the most important thing now. Because we can ask for advice also online on different types of issues, but we need you to tell us what we will do as a chartering organization when it comes up that we need to -- to decide



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on something or to send something forward and so on. So that is at least what we need to look at this meeting. Thank you.

UNKNOWN SPEAKER: Elise, when is the meeting that you need that feedback from us?

ELISE LINDEBERG: No, it's -- we need to decide, I think, on this Singapore meeting what we will do in the GAC with the process that goes on in the CWG, where we're supposed to deliver -- or to send out the proposal for comments, I think by May-June and then to send something final to the ICG in June. And when we do that, as the CWG, we need to have the GAC on board with that process of sending it forward to the ICG. Meanwhile, as members or all the other participants cannot sit in that group doing that alone. You need to tell us how we will work with that.

CHAIR SCHNEIDER: Thank you. I think that means we need to have a clear understanding on what does it mean that we, as a chartering organization, have to endorse the proposal or the outcome, to what extent it can be an endorsement of the process, to what extent does it have to be an endorsement or a consensus on the substance or can we endorse it without having to consent on every single detail. Is it questions like this that you want to -- want to raise, is that it? Please.

ELISE LINDEBERG: Yeah, my question is, this proposal will be sent out like the final proposal, when we have worked through the models and get our legal



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advice, that will go out to the community on a public consultation to ask for comments. And I guess every and each GAC members or country can comment on that one. And I think some of us have those issues. Others have others. And maybe it will be difficult for all of us, because we don't have an intercessional meeting before this happens, I guess. We have a meeting after. So all of us have to look into and give our comment to that proposal. And maybe we, as the GAC, can just now agree on a process where we agree on the CWG delivering it to the ICG, as a proposal. So we don't decide collectively on all the details but that you can endorse the process as such so that we as CWG members from the GAC are not stuck saying that no, we don't have any instructions from the GAC, we cannot send this forward. You see? Because then we stop it. Just on process. So that is my concern. Because as you heard from the CWG chairs, co-chairs, they said that we don't need you to endorse it as such, you know, as the model. But we need you not to stop it or except it going further. So if I can ask that you look into the possibility of saying yes to it be forward to the ICG. They will take a decision. They will look into what comes from the naming, the protocols, the numbers, and sew it together the way -- in their best abilities. So it's not final anyway, but we need to forward something. Okay? I wasn't very clear, I guess, but that's because our process is not very clear on this one. Maybe you understood what I meant, Thomas.

CHAIR SCHNEIDER:

Thank you, Norway. Well, life is not very clear sometimes so we're all victims of life in the end.



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Before I give the floor to Sweden, I think there are several -- this has several elements. One is, what are we expected to deliver now? What kind of signal, in what form? This is one thing, but that will depend on how we imagine the process will be for later. So if I understand you right, is the -- the expectation of the working group is not that we endorse as GAC at some point in time collectively in a consensus every single detail of the concrete proposal, but we endorse the process that it has been right, we say yes to the process, we have been participating, and then this still allows the GAC to be part of the community that can publicly comment whether you are a government or you're a company or whatsoever. As part of that public period you can bring in individual detail of views on details. But that we would endorse the process and say we are fine with what happened so far and invite GAC members to comment. Is that like the -- the global thing? Anders, is it okay if I let Norway have an explanation first? Thank you.

ELISE LINDEBERG:

Yeah, I think that is what I ask, if it's possible. And also then of course we can say that we reserve every right to comment on the proposal as such when it arrives. You know, when it goes out to public hearing or after -- well, when the CWG works on this. It's not that we -- we endorse the whole model as such. We can type -- write something on this, so it's clear that this is only following the process and adapting to the whole process that we had agreed on being part of. Because when we are a chartering organization and we decided to be that and send someone of us into that group, we decided on going along with the process as such. We cannot sit as the GAC saying that. We cannot relate to the process. It's -- simply it's not workable for us. So --



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CHAIR SCHNEIDER: Thank you. I hope that is -- so we have Sweden and the Netherlands and Thailand and Egypt and U.K. Thank you. I hope we got everyone.

SWEDEN: Thank you. It sounds reasonable that we should welcome the consultation, the GAC could welcome the consultation, and as well have language to welcome individual member states to comment on this consultation. But then I'm thinking of the timing of when the consultation period closes because we -- it would be good for the GAC in the -- in June to be able to comment as well. So have you thought -- given any thought on when the consultation period should finish and when it's going to be handed over to the ICG?

ELISE LINDEBERG: These again are details to be worked out also in the CWG. We have a timeline that is posted on the document that you got, the briefing document or the discussion document. Then you have the timeline and details. I -- of course it -- it will be -- the GAC are used to commenting collectively when they have something solid in front of them, I see that. But at the same time, this is very, very complicated and I see that if each and every country has let's say ten comments to the proposal in the public consultation that the CWG is going to look into and sort together and try to measure and try to weigh those comments and make a final draft, a final proposal to go to the CWG, I mean, and then you should have a -- a GAC process also which needs a face-to-face meeting, we will hold up the process for sure. I think we will. I don't think we're going to



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be able to -- to have a go-through of all those comments agreeing on them, saying that okay, I delete mine if you do this and that and so on. I simply don't see how we can do it within this timeline. I think it -- we should, but let's face we have so few -- we have a few months now before we have to deliver something. And I'm not afraid of anyone being left out because everyone has the possibility to make a comment in the public -- public consultation. So no, Anders, I don't think -- I'm not seeing how we can do that collectively as the GAC. But please, if you have another idea, I -- I'm open to it.

CHAIR SCHNEIDER:

Thank you. With regard to the timeline, when we receive these timelines in the past few days, if we look at this, then the 21 -- the draft proposal should be of both groups in the end, should be ready by something around mid second half of May and then there will be a 21 days' comment period that would end before the Buenos Aires meeting. This is how I read the timeline, the best efforts, whatever you call it, timeline. So that would mean that we could make -- any GAC member like anybody else could make a comment in the public comment period and then after that is closed we will meet in the GAC and we can still see to what extent we can -- or to what level of detail we can have a GAC -- common GAC position on it that will be immediately after all the comments will be received so that will be somehow taken into account, although it's after the public comment period because you need some time to digest all this. So this is what I -- what I see in the timeline that we've been given so far. Is that -- does that answer some of your questions, Anders, because I would like to --



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SWEDEN: It does. It doesn't seem impossible for -- I mean, if during the public comment period countries give their contributions and then it closes, then the question is, will your group have something new to provide just before the GAC meeting so that the GAC meeting will be commenting on a new version or will the GAC meeting be commenting on a -- sort of converging on the comments that we have had as individuals.

ELISE LINDBERG: There will be comments in the public comment period. These will be looked into by the CWG. Then they will make the final proposal based on those comments. And then they will send this to the ICG. Do you mean that the GAC can dive in and give comments between the public comment period and before the final draft has been sent forward? Because I think the final draft should be there before the Buenos Aires meeting.

So that's the problem that we have when we need a face-to-face meeting to discuss this as the GAC.

But -- yeah.

UNKNOWN SPEAKER: I'm sorry; if I may. Would it be possible for the GAC to give our comments in parallel? So when it's handed over to the ICG, the final version handed over to the ICG, it's accompanied by comments from the GAC.





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ELISE LINDEBERG: Of course. If the GAC can do that, of course. If the GAC can collect ourselves and do that, of course. But how?

CHAIR SCHNEIDER: If I may jump into that discussion. This comment period is apparently 21 days. If we think that as GAC we will be able to get to something in 21 days, we can try.

Experience has shown that this has not always been very likely, but we can -- we can have the position that we'll try, as we tried with other things, and sometimes this worked, sometimes it didn't.

It's not absolutely impossible, also, depending on the divergence that we have among us, and in the rest -- with the rest of the community.

If you're fine, I think we don't have enough information to continue that discussion. Maybe we try to get some clarity, and Elise, especially, since you're the closest, and Wanawit, give us some information in email about what the actual dates, and timelines, and procedures are, because otherwise I think we will not get much further because we don't have the people here who may be able to answer this to us.

I have a list of speakers. It's now half past. We have half an hour in the afternoon. What I have now is Netherlands, Egypt, U.K., and Germany. Are you fine with stopping here and resuming at 2:00 sharp? Because we have half an hour. We might use a little bit more of the session afterwards, so we may have 45 minutes, if we are starting on time, to get us anywhere about how to move this forward. Is that okay?



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If we stop now, we begin sharp. Otherwise, we continue now and we'll be -- so on. You know this. But for the sake of the interpreters, I guess they also appreciate we stick to the timelines.

Is that okay? I don't see strong resistance. So okay. Then bon appetit.

Merci.

[ Lunch break ]

