
SAN JUAN – GAC Discussion: IRP Standing Panel
Tuesday, March 13, 2018 – 11:00 to 12:00 AST
ICANN61 | San Juan, Puerto Rico

CHAIR ISMAIL:

So this is the start of GAC session 23 on IRP, the independent review process scheduled to start at 11:00 for 60 minutes on Tuesday, March 13. Before we get into the brief of the IRP, I would like that we discuss a couple of issues that emerged during this meeting. They were not scheduled but things that emerged during the week.

So we have two things. First the GAC elections to replace Milagros as a vice chair. She has a whole term remaining, because the term of the vice chair ends at the end of the Japan meeting, so it's a whole term. So to let you know that we will be running those elections and see if you have any comments.

The other issue is the email we received from [indiscernible] of the mailing list asking for the IGO of the names that are reserved, again, not scheduled, so we thought to table it here for table colleagues. I see two requests here, one to review the list and the other one is to a process to release from the list. And the reason we put it last minute is that I found support also on the mailing list to have this discussed. So Brazil.

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BENEDICTO FONSECA FILHO: On our side I would like to catch up on the first one you raised regarding the election of a new vice chair. First of all, I would like to express how much we will miss our good friend from [indiscernible] from Peru but we understand she has other commitments, but we will certainly miss her good advice and her representation of the region in the GAC leadership.

The second point is would like to request to you or the secretariat some more specific indication on how this process will unfold. What will be the timing for the election, as we understand from ambassador milagros, she might not even be here for the Panama meeting, so we think we have some urgency to move in the sense of having new elections. Of course we understand there is no established rule regarding regional representation at the GAC leadership; however, I would like to state and also in coordination with other colleagues from the region, that we would certainly make an effort among the region to offer one single candidate representing Latin America, the Caribbean, and we would expect this candidate could be accepted by the GAC in order to maintain balance in the GAC leadership. We know there are exceptions to that but we think it to be important even in an informal way to maintain the balance. So again, just reiterating the two things, to request clarification on the process and to indicate the willingness of the Latin America region to offer a candidate.

CHAIR ISMAIL: Thank you, Brazil. Can you please, Rob, take us through the process?

ROBERT HAGGARTH: This is part of the theme of the operating principles we will provide later this week. The GAC operating principles do provide to you all to replace a vice chair if they cannot complete their term. In terms of process, and also, I think Benedicto has mentioned that you would like to name someone from the same region. The principles don't provide region by region. One thing would be to open a nominating period, recognizing only about a third attend the meetings in person, to give appropriate notice to the rest of the committee, and after that nominating period, we would then be able to assess a staff, whether there are more nominations than just for the one seat. Then we would have to find a way to pull together an election. The operating principles aren't clear whether the election would be via electronic voting or hands raised at the next meeting in Panama, so I think that would be something for the leadership to talk about. I think the most judicial course of action would be to open a nominating period, depending on how the other regions felt, and perhaps we wouldn't even need an election. Those are the overall issues, Manal, in terms of how you might want to explore this.

Delighted to support whatever transition change you guys would like to adopt.

CHAIR ISMAIL: Thank you, Rob. So if I may ask, is there a minimum nomination period required or is the nomination –

ROBERT HOGGARTH: I don't think that would be appropriate, because you were looking to replace at the beginning of the term. My interest is to ensure appropriate notice for the people who aren't here.

CHAIR ISMAIL: This was exactly my point. The nomination period we normally pass through is very long, so if not mandated somehow by the operating principles, then we can try to do this as quick as possible.

ROBERT HOGGARTH: We will do it based on your guidance and the shortest period appropriate under the operating principles.

CHAIR ISMAIL: So any further? Yeah, Brazil, please.

BENEDICTO FONSECA FILHO: So thank you for the explanations. The only thing in light of the urgency we have to replace the ambassador, Manal. In place of the rules allowing for such flexibility, I would like to propose independently of who would be elected -- of course we would strongly suggest someone from the region to maintain balance, but independently of who it would be, we would like to propose we could agree in this meeting for the timeline that would allow for the election to take place at the beginning of the next -- so for the Panama meeting we have not a vacant seat. If it's up to us and we have flexibility for that to allow for maybe three, four weeks for nominations and then agree on a process or at the very beginning of our Panama meeting to be sure the process will be fulfilled in time for the Panama not to be affected by the lack of one vice chair.

CHAIR ISMAIL: Thank you, Brazil. So any comments? Would three weeks as a nomination period be reasonable? Yeah, Argentina?

OLGA CAVALLI: Given the fact that we have some flexibility, do we need to make it a face-to-face meeting or we could use online ballots as we did for the previous election? Given the need to replace one vice chair, perhaps we could work as previously, and we are talking about one seat, and perhaps if there are few candidates or only

one, maybe we don't need elections. Perhaps all the process could be done before just to help the leadership team have the full team complete. Thank you. Just a suggestion, only that, thinking out loud.

CHAIR ISMAIL: Thank you. So the question is could we fulfill everything online, basically.

ROBERT HOGGARTH: We've had the practice, we certainly could.

VENEZUELA: Our administration considered taking into account the practice we had followed last year and the year before last to have geographical representation regarding [indiscernible] of the GAC. As Brazil expressed, we think it's important that even though the vice chair leaving her seat is from the Latin America region, we should preserve and maintain the balance within the leadership, within the GAC leadership so that the candidate should come from the Latin America. I think we could work online as to be transparent. Some people from Latin America has no visible attending meetings but they may submit online ballots, so we support that suggestion. Thank you very much.

DOMINICAN REPUBLIC: We agree with the government of Venezuela's position. We agree the candidate should belong to the Latin American region and concur to the extent possible we can use online ballots to ensure anticipation of GAC members.

CHAIR ISMAIL: The Republic of [indiscernible]

UNIDENTIFIED SPEAKER: Was wondering if it would be possible in this communique to include a paragraph regarding this election and in this paragraph already placed the timing to present the candidate that could be, for example, two weeks and set the date for the electronic voting right away to put it in the communique. Thank you.

CHAIR ISMAIL: Actually, I mean, we could put in the communique that we are having exceptional elections to fulfill the remaining period of this term. But, I mean, I don't see a need to put specific dates in the communique. I mean, we have agreed on this here and we can -- I mean, I'm looking --

UNIDENTIFIED SPEAKER: The reason why I'm suggesting this is because even though the principles do not state it that way, the spirit of those principles is to have a fast track, because otherwise it would not state in the following session. So if that is the case and we interpret it in a way that it was meant to be a fast track, why not include in the communicate the timing for the presentation of candidates and a date for voting? I don't see why not. That way we can fulfill this issue as soon as possible.

CHAIR ISMAIL: Yeah, I mean, we are going to do it anyway. But we can have it in the minutes, if you'd like. Would the minutes be okay? Having it in the minutes? Would this address your concern? I mean, we can put it in the minutes of the meeting.

UNIDENTIFIED SPEAKER: No, and I would like it and am proposing to include it in the communicate as something we have agreed.

CHAIR ISMAIL: Yeah, I mean the minutes is for us to make sure that we keep our promises and remember what we agreed here. The communicate is something for the public. I mean -- so. Is it for the public to come and tell us that you haven't kept the dates you said? I'm in your hands, at the end. So please, if other GAC

members have views on this, I think the minutes are equally good. Please, first, and then Netherlands.

TRINIDAD AND TOBAGO: Just to add my voice, to support the fact it can be done electronically as far as representation is concerned and also expeditiously -- requirement that there be five chairs so at the next meeting we do have that seat if a vice chair is unable to attend. And diversity being the last point -- of 21, I do support the view that in like manner that representation should be from -- at least as diverse -- it is currently diverse and has somebody from a region, that it be maintained as far as possible.

CHAIR ISMAIL: Thank you. Netherlands?

NETHERLANDS: I think I agree with you in terms of the decision-making process. Let's say to the outside world we have communiques, we could make a reference there's a change coming up in representation, but I think process and timing is something for us, and we can put it down very good as a decision between us, and I think that would be sufficient.

CHAIR ISMAIL: Thank you, Netherlands. France?

FRANCE: We have a lot of work to do to replace the leadership team and of course it's important, we want each region to be represented as much as possible. When it comes to the follow-up, I think it is usually that the GAC staff, ICANN GAC staff, would send an email telling everyone about the upcoming elections. So maybe in addition to put it in the minutes, we could commit to send an email after this meeting so make sure an election will happen on the dates we chose. But I agree with the other speakers; maybe it's not necessary to put it in the communique, because that's really about us communicating with the outside world. So maybe make sure an email is sent after this meeting with the date of the elections would be a good way forward.

CHAIR ISMAIL: So yeah. So -- let's put all the details we agreed in the minutes that's reflected in the communique and reflect that this is going to be expedited elections to replace the outgoing vice chair, and we will do it inter-sessionally as we agreed. We said we will have a three-week nomination period, right? And then the elections will take place electronically. Rob?

ROBERT HOGGARTH: I know this is the first meeting for many of you, my second officially with you. Very quickly picked up on the spirit of collegiality and cooperation. In view of that three to four week time frame, we will come out with a note right after the meeting as [indiscernible] has suggested, at the end of that period, we will evaluate whether an election is even needed. Again, as part of the spirit of collegiality as Benedicto and others have stated from Venezuela and the Dominican Republic, members have indicated their desire to continue the diversity, so that might influence other members of the GAC to say yes, this is your seat, not going to put nominees on top of that. If an election is then needed we will then proceed with the appropriate efforts to get out the ballots and other information. One of the reasons for a longer election cycle is to give everyone an opportunity and we need quorum, but we will let you know by the end of the meeting based on our calculations the date of the election period could be. And that way while we are still here you can give us feedback on whether you think that's appropriate.

CHAIR ISMAIL: Thank you, Rob. And as you mentioned, we might not even need elections after all, but the essence is that we make it as fast and as quick as feasible. US?

UNITED STATES: Election's still a mystery to me, I think we totally support replacing Milagros is important and diversity and having a candidate from that region. I assume since there will be a full GAC election that nominations can come from other parts of the GAC, but we will attempt to try and have a focus for that region. But we're still in a position to nominate even though we're not from the region, other people. Sorry, I am phrasing this very poorly.

CHAIR ISMAIL: Yes, right. So we are having GAC wide elections. I urge GAC colleagues to be mindful of the geographic diversity. It's already in our operating principles that geographic diversity is going to be considered. So if we are okay on this, I would like to move forward. Yeah, Egypt.

EGYPT: Would it be okay to come to the second point at the beginning; would that be fine now? Okay. So first, would like to say that Egypt supports the need to address the request that was put forward by the African Union in the letter, email addressed to the GAC yesterday. Which actually sounds legitimate and necessary, but as a new GAC representative, it would be useful if there could be clarification on the status of the reserved name

list and whether any process [indiscernible] at the time of the release of those labels to the rightful holder. Thank you.

CHAIR ISMAIL:

Thank you, Egypt. So with this let me make sure that everyone knows what was in the email that [indiscernible] sent where he asked for raising the issue of release of IGO list and asking GAC to consider updating and reviewing the list with the aim of obviously substituting the existing one with a more current one and issuing advice of the board to release the IGO list. Having said that, I've been trying to look at a previous GAC communique to see where exactly this is coming from, and obviously there was a GAC advice in the Toronto communique stating that -- and allow me to quote here. Under the title of protections of intergovernmental organizations. So I'm quoting while the GAC continues its deliberations on the protection of the names and acronyms of intergovernmental organizations, IGO's against inappropriate third party registration, the GAC advises the ICANN board that in the public interest, implementation of such protection at the second level must be accomplished prior to the delegation of any any new gTLD's and new rounds at the second and top level. The GAC believes that the current criteria for [reading] [refer to slide]

So this means the GAC provided advice that as a criteria take the acronyms under .int and have them reserved under old gTLD's. The request now is review this list and obviously find a process to release names from this list.

So would this background information -- I hope it's helpful. I will open the floor for discussion. Yes, please, WIPO?

UNIDENTIFIED SPEAKER: Thank you, chair. I think probably this is a question better put to ICANN staff or the board, but briefly just to bring colleagues up to speed on what has been a rather lengthy and complicated process, this list that was agreed was I think if we look at the operative final sentence on the screen from the Toronto communique, this list was developed for interim protection, and that was pending further work. So where we are today, that interim protection is still in place, the further work is still continuing. There was a letter sent from ICANN to an applicant suggesting that work on this may be concluded in the first quarter of the 2018, but as things stand today, this is an interim protection that's in place and the idea was always that these names would be available for registration pending implementation work by GNSO working group and that the list itself could be amended further to discussions among the GAC

and that updates to the list would be provided to registrar operators.

CHAIR ISMAIL: Thank you, WIPO. So a quick response to the first part of your --

UNIDENTIFIED SPEAKER: This is a question to ICANN rather than GAC. What I understand is when this request said to ICANN, they said we cannot do anything because we are obliged to GAC advice, so that's how it came back to GAC. Yes, please, WIPO.

UNIDENTIFIED SPEAKER: I think maybe this is a case of misunderstandings triggering further misunderstandings. Maybe it's best if we discuss offline with interested GAC members and ICANN staff to avoid getting into too much nuance of the long history of discussions on this file over the years.

CHAIR ISMAIL: Thank you, WIPO. So I thought we might have staff to -- yeah. So can we have a brief from staff as well on -- yeah, I mean, we have dedicated this slot for the topic and arranged for staff to be here, so it would be good to have the full discussion and then decide the way forward.

FABIEN BETREMIEUX: This is Fabien Betremieux from the GAC support team at ICANN. What I can do is try to provide a high-level overview of the status, but I think Brian was quite eloquent at summarizing it. Maybe I can go through those bullets to ensure it's clear bullets to ensure it's clear to everyone. When we talk about the list of the IGO's, provided [indiscernible] after the GAC advice in the Toronto communique -- 22 of March 2013. As Brian mentioned, this led to the reservation on an interim basis at the second level of new gTLDs of this list of acronyms, so it's reflects in the registry agreement in section 6 of specification 5, and this is consistent with a -- the last ICANN board new gTLD program resolution of July 2014, there were a streak of board decisions because those board protections were put in place and extended and extended another time so the last relative resolution is that one. And following that board resolution, those protections are still in place. And as Brian explained, in an interim form, until differences between GAC advice and GNSO policies on these very topic can be reconciled. And this was the purpose of a specific board resolution that dates back to -- let me get my date correct here -- it's 30 April 2014, the last bullet on this slide, and looked at GNSO policy and GAC advice and how it could reconcile those two pieces of advice from the GAC and from the GNSO development process. And this is where in

that board decision there was a separation of the protection of IGO full names and acronyms, IGO full names, because the subject of implementation of policy [indiscernible] and acronyms for reconciliation and continued dialogue between the GAC, the GNSO and the board. And the dialogue is ongoing, as I believe Brian referred.

So this is the status. And this is I think why a reference to GAC advice and board decision was made when it comes to making any modification to the current status of those acronyms which today are still reserved from registration.

So Manal, if you will allow, I will stop here and show the list of the string of decisions that happened on this issue and avail myself to maybe provide a clarification of any of these, but this is everything relevant I think that happened in the recent history on this issue.

CHAIR ISMAIL:

Thank you, Fabien, thank you for this background. Any further comments or questions on the topic? Rwanda please.

RWANDA:

When you look at the letter sent from the African Union, they are asking for a particular release. So I'm asking if following the legal aspect and also the procedure and looking at the

importance of their request, if there can be just a particular release on this aspect while waiting the full procedure continuing.

CHAIR ISMAIL: Thank you, Rwanda. My understanding is that the list is one thing. I mean, we cannot have specifics out of the list, but let me hand this over to ICANN seeking advice.

UNIDENTIFIED SPEAKER: Thank you, Rwanda, [indiscernible] I understand that not only the African Union has tried to benefit from the [indiscernible] of the acronym at the second level, I understand from previous discussion I had with my colleague from gTLD [indiscernible] tried to register and not possible at the second level. So the idea is to go through a board to address requests for the future and does not ask every GAC meeting the ability for new organization to register its acronym at the second level. The idea is to have a process which would be used in the future for other requests, not only this one.

CHAIR ISMAIL: Thank you, [indiscernible]. Do I have further requests for the floor? Kenya.

KENYA: Thank you very much, just needed a clarification from ICANN. Does it mean that this particular request from the au will be accepted or presented to the board even as [indiscernible] coming up for a procedure for future requests? I think that's important because the adoption of Africa by the [indiscernible] is an endorsement in itself and the capability of the use of that name, important to get clarity given that we know coming up is procedures from a [indiscernible] aspect is actually a lengthy process.

CHAIR ISMAIL: Thank you, Kenya. So let's take the rest of the interventions, and then I will hand it back to ICANN. WIPO please.

UNIDENTIFIED SPEAKER: And when I make this intervention, I'm looking to our ICANN colleagues to help correct me if I am mis-remembering this, but as I recall, the notion of the rest was always subject to the ability of the GAC to provide updates to that list. That would be in one sense if a new intergovernmental organization was created by governments and IGO could be added to that list and could seek to be removed from that list, so maybe in that sense this is a practical matter of the GAC invoking the possibilities that was

always foreseen for making updates to this list. And if it's the collective wish of the GAC to remove an IGO from the list, as I understand, that would be possible and the GAC would simply inform ICANN of that update. Thank you.

CHAIR ISMAIL: Thank you, WIPO, very helpful. I see confirmation from ICANN [indiscernible]

NIGEL HICKSMAN: Nigel Hicksman, government engagement. There are two different aspects to this matter, and the GAC has been debating these aspects for a number of years, as Manal and others have indicated. The issue on names of IGO's is something that is not subject to implementation in the sense of ICANN. In other words, the names of the different international government organizations are reserved at the second level in a permanent sense. What is needed here or what has been suggested, and as WIPO has said, is that over the years the names of international governmental organizations change. Some IGO's are created, some disappear. The original list given by the ICANN organization perhaps has errors, perhaps not complete and some work by the IGO's, is indicated that further work needed in this area if we are to bring this list up to date. For that to happen, the GAC has to ask the organization to, if you like,

facilitate bringing those names up to date and adding new names where appropriate. That is a separate matter from the request from the African Union in relation to the acronym .au. And I think the understanding of that has been adequately addressed by WIPO and my colleagues, that is a separate matter.

Where an organization wants to use its own acronym -- and as mentioned, this isn't the first time this has happened. And at the moment, as has been said, those acronyms are reserved at the second level in this agreement that the board came to make sure they are reserved on a temporary basis until a final solution reconciling the GAC advice with the PDP process of the GNSO is reached. Thank you.

CHAIR ISMAIL: Thank you, Nigel. Cyrus?

CYRUS NAMAZI: Thank you. Also with the ICANN organization. On top of what my colleagues said, I want to highlight and continue on what the gentlemen Brian from WIPO said. The GAC does have the rights and abilities to update the protected acronym list for temporary protection pending the policy outcome. So with that the GAC should be able to update the list with new names, new IGO's or

review names from the list. But I would like to highlight in the case of removing an IGO acronym from the list, that essentially goes into the open Internet, meaning that anybody will be able to register. So this is quite prudent for all the IGO's who may choose to volunteer to have their acronyms removed from the list, which may be fine by them, but understanding there are implications to that.

And number two is that there shouldn't and won't be an ability for that IGO then changing their mind to go back on protected list, because that would open the process for gaming and such which we don't want to be subject to. Just wanted to highlight this for the respective colleagues in the GAC to be mindful of other implications of simply being removed from the list. You can do that but there are implications to it that you all should have mindful of. Thank you.

CHAIR ISMAIL:

Thank you, Cyrus, this is very helpful as well. Australia?

AUSTRALIA:

Just wanted to acknowledge that au is also Australia's two letter country code. We don't object to the African Union being able to use [indiscernible]

CHAIR ISMAIL: Thank you, Australia, an important point to note. So just to make sure to recap what I have heard, that if the GAC advises that -- I mean, do we need to restate that names could be added or released from the list? Or is this already what is in place? I mean, do we need to request that the list be made available for release or...

I'm just trying to figure out exactly what the GAC needs to -- what is what exactly we should be asking. Of course with the caveat you mentioned that any label released from the list is going to be available at all gTLD. Yes, please, Cyrus.

CYRUS NAMAZI: From my perspective, I think this is an operational issue that the GAC whenever it wishes can just provide the ICANN organization with an updated list, perhaps as a red line of it so we know what's been removed and added, and we will just add that to the Web page where we actually keep this list for everyone to be able to see it. And then the process can follow itself, that have come out of the list and can be registered and names added and subject to this temporary protection. Thank you.

CHAIR ISMAIL: So, yeah, I mean, we will not be providing an updated list at this stage, if I understand correctly. We will just trying to make sure

that whether the list -- I mean, whether someone could release the acronym from the list or does this need some action from the GAC side first?

CYRUS NAMAZI: Yes, it needs action from the GAC because the list was provided to us by the GAC, so could be as simple as communication from GAC to the board, to the organization to request such and such acronym to be released. Just to highlight, the names have already been released subject to policy, so this was just for the acronyms of IGO's.

CHAIR ISMAIL: Thank you for the clarification. So would the GAC be confident that we put something into that respect into the communique? Yeah, Kenya?

KENYA: The issue raised that once the GAC for example recommends the removal of the second level or [indiscernible] from the IGO list, then it's available to everybody or anybody. Since we know clearly that the intent is for the African Union to use the au as part of Africa's second level, is it possible for the GAC to also request that the same is operationally and technically reserved

for the African Union so it's not in the open for anybody to register? Thank you.

CHAIR ISMAIL: Thank you, Kenya.

CYRUS NAMAZI: I don't think that would be a prudent statement for the GAC. That would imply certain legal rights that is the subject of the policy debate going on. So I wouldn't recommend that personally.

CHAIR ISMAIL: Thank you, Cyrus. So now, I mean the situation is we can put something in the communique stating that -- I mean, I don't have concrete language now but something along the lines that we do not object to IGO's seeking release of their acronyms from the list with the caveat that it's going to be open under all gTLD's and up to each and every one of the IGO's to make their own decision whether they would like to release it or not. Is that a sensible way forward? Is this a bad way forward? [laughing]

So I think it's lunchtime. So if there are no objections, I would recommend that we put some very basic language just for the sake of giving IGO's who would like to release their names, their

acronyms, I'm sorry, that they do so, again, with the caveat that it's going to be open under all gTLD's and other requests like reviewing the list and things like that I understand are still pending, the ongoing work like WIPO mentioned earlier.

So with this, I thank you all. I don't think we have time for the IRP brief, but there is a public session tomorrow, and I'm sure we can find the time to update you quickly tomorrow on the topic. So thank you, everyone. And this concludes our session for now, and hope to see you all after lunch at 1:30 for our meeting with the ALAC. Thank you.

[LUNCHEON RECESS]