
SAN JUAN – GAC Participation in CCWG-Accountability WS2 Update
Sunday, March 11, 2018 – 13:30 to 14:30 AST
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CHAIR ISMAIL: So good afternoon everyone. If we can please take our seats we will be starting shortly. Thank you. So welcome back everyone. We are starting our GAC discussion and agenda item 13. On cross community working group on accountability WorkStream 2 scheduled at 1:35 on Sunday 11 March for 60 minutes, and again I remind everyone to please state your name and affiliation whenever you request the floor. Thank you. So Tom would you like to take us through the brief first and then we can open the discussion.

TOM DALE: Thank you, Manal, and good afternoon everyone. Given the continuing turn over of GAC membership, and the fact that there are again a number of new members here, I have been asked to just quickly give you some background, on how we, both the GAC, and indeed ICANN, arrived at the current position as regards something called CCWG WS2 so I've about been asked to move away from the acronyms and put the matter in context before asking the GAC members who before I inform you further. So we are looking here at GAC participation in a cross

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community working group, and the GAC is what is called a chartering organization of the group, and we are the cross community working group and ICANN procedures the chartering organizations help to write the terms of reference and participate, and take a view on the final recommendations and report of the group. Now the GAC is one of a number of ICANN organizations, which are chartering organizations of this cross community Working Group. Now, this is WorkStream 2 of our accountability work. What happened to WorkStream 1 some of you may wonder so I am I'll go back. The Working Group is working with enhancing ICANN accountability particularly to the community. The reason there was a Workstream 1 and why significant changes were recommended and implemented by this group 2 years ago, or accepted the implementation is continuing, the WorkStream 1 activities were adopted by the Board in 2016, and the GAC was a member of that first stream of work. That accountability work, which made which gave the ICANN community significant new powers in relation to the ICANN Board and its budget, in a thing called the empowered community of which you may have seen some previous briefing that was required to be done by 2016 because of the transition of the IANA function, that is the Internet's sort of core addressing functions. Transition from oversight by the U.S. government to oversight by the international community through ICANN, and part of that was making ICANN more accountable so a form of

recommendations were put into place however a number of other recommendations to make ICANN more accountable were to be continued in a second stream of work and it's this second stream of work to make ICANN more accountable that you're being asked to consider at this session. The GAC has been actively represented by a number of members through both streams of work, and continues to be so. The issues that the group is now moving to finalize in a single draft report, which will go out for public comment sometime in the next two months much the issues concern ICANN jurisdiction. The accountability of particular supporting organizations and advisory committees, including the GAC, but all of the others, the question of ICANN application of its obligations in relation to human rights, diversity across the ICANN community, transparency of ICANN operations, the role of the ICANN ombudsman increasing the accountability of ICANN staff, and the community engagement process, which is a process which is supposed to be gone through before formal complaints are taken up to another level. Now, some of that work was substantially completed last year in the lead up to this meeting. A number of sub groups have finalized their recommendations, there was a meeting of the entire Working Group on Friday two days ago in which a number of GAC members participated, and it's at this point I think its reasonable, Manal, to ask some of those members to provide an update because the GAC has five

formally appointed members of that of this cross community Working Group. They are Argentina, Brazil, Iran, Canada, and Denmark. And I know at least four of those countries are present in this room and indeed were present at the meeting on Friday I know because I was there as well. So the normal practice with this group has been to ask the GAC members involved to provide an update of the most recent meeting and where things go next. So I will leave that introduction at that point Manal and see if P yeah over to you.

CHAIR ISMAIL:

Thank you very much, Tom, and I think now I will see if any of the GAC participants would like to brief us on the latest updates in light of the meeting that took place here on the Friday I think. So, Denmark please go ahead.

DENMARK:

Thank you, Manal. I can at least start, and thank you to Tom because he gave a very good introduction and framing what we have on the agenda here. I sent around to GAC a dashboard on Friday during the meeting there was a little break so I at the time and he will, encourage colleagues to look at the dashboard. It's a report on how work are progressing and the 8 topics which are discussed under the WorkStream, as Tom said on the meeting on Friday there was four topics which haven't been through the

second reading, and those subject was staff accountability, diversity. The ombudsman's office and jurisdiction, and all of the topics under WorkStream 2 is important for GAC but especially the jurisdiction and the diversity. During the meeting the CCWD came to consensus not on the full consensus on the jurisdiction but there was sufficient consensus so that it will now be possible to make a final report and as Tom said it is fortunately the final report will go out for public hearing in beginning of April, and there will be the usual 40 days hearing period. And we have the possibility members GAC members and others to comment on it. I will say that it is not foreseen that we should comment on the substance. The substance have been out for public hearing before. Now it is more if there's inconsistency between the recommendations or interdependency. That is the primary purpose of the public hearing. After the public hearing, the CCWD will analyze it and have its final meeting in the next ICANN meeting in Panama, and there agree the final report. Then it will go to the chartering organization and among others. GAC and afterwards, it is foreseen that it is transmitted to the Board, which then have the implementation to do. There's many recommendations and there's of course a lot of work to do by the ICANN Board but also on the different ACNSO among other we are going to look into the diversity issue, and look what is important for us, and keep track of that. During the implementation it was discussed and

agreed that there will be an implementation team to assist the ICANN in implementing these recommendations. So that is the process, and of what I can see could be relevant is that when GAC as a charter organization we will be faced after the meeting in Panama, to see whether we agree or disagree or whatever position we will have there. As I mentioned, I could see that two subjects have been important for our government, the diversity and there have been certain supports for and so called office of diversity. It was it didn't attract sufficient support in the CCWD as many members think that this is an implementation issue and it is not up to the CCWD to decide the issue of this. We should focus on the requirements, and then we should leave it to the implementation power how to organize it. On the jurisdiction, which is important for government, there's two things in the report. There's the trade sanction part and there's things where registry applicable law and venue, which is in there, which is rather important part for industry at least non U.S. industry to have hopefully other possibility in the future, which applicable law could apply to their contracts. As to jurisdiction, I will let other members speak about that, but at least it was during the meeting noticed that at least 4 governments was not in agreement with the recommendations, and I think although it was positive step, some government would like to see more done with the jurisdiction, and perhaps was seeking immunity or partly immunity in part of this, so that is my report. As a

member of the CCWD and for from a Danish point of view, we are very very satisfied with the result. We think it's amazing good result that we did the job, first IANA transition and then the WorkStream 2, and especially we have been focussed also what is important for our domain name industry and we think the recommendation on applicable law and venue is very well, come from conditions outside the U.S. so I will stop my reporting and I'm sure that many many others will also supplement this. Thank you.

CHAIR ISMAIL:

Thank you very much, Denmark, for this very informative reporting. So, any other updates from other GAC participants, whether the nominated members or even other GAC participants who are following the process yes Brazil please.

BRAZIL:

Thank you, Manal, and thank you to Denmark for this very comprehensive presentation which we certainly concur with everything that was said by Denmark. I focus my comments on the jurisdiction sub group report. As Denmark has indicated, on Friday it has gone through two readings, one in the morning, one in the afternoon, so now it's ready to be included in the overall report that is being submitted for a second round of public consultation. As a result of the comments that were received,

some areas in the text were improved, the language, however, the overall situation that emerged from interest the work of the sub group remains substantively the same, so there will be a report containing 2 sets of recommendations, and but this will not be a full consensus report. I think this is important to note, that although in the context of the sub group there was certainly a veri... of support for the report containing sets of recommendations those were not endorsed by all the members including my own. We filed a minority opinion that is being sent attached to the report expressing objection to the report. Not because we oppose the two sets of recommendations. We could certainly live with those recommendations and indeed support those recommendations as we think they would improve on the disciplines for regarding jurisdictions. However the reason why we were objecting the report and we were forced to do that is that unless we express our objection, it would be understood that we are fully satisfied with the whole outcome of discussion that is we are satisfied that our concerns were adequately addressed and this is not the case. As you may recall, and we have had discussions on this in previous rounds Brazil and others since the start of this exercise, expressed our understanding that one of the main issues, or possibly the most important issue, was together with establishing mechanism that would allow for the U.S. government to step aside as it has been done and we applaud that that would also touch on the legal

form of operation of the organization which was and remain attached to the U.S. jurisdiction. That's still something that flows from the previous regime. That flows is closely attached to the way ICANN was established unilaterally by the United States so the U.S. government role has been replaced by the mechanism being established, however the jurisdiction has not been affected, and the concrete, and very the concrete result, the consequence of that is that if any issue is going to be judicially dealt with by the end of the day it will be up to a federal judge in California to decide, among the parties. And, of course, that may affect interests that are seen, perceived by others as on sovereign interest and we don't agree to that since we have not agreed the first place to be governed by the U.S. law, so again, it's nothing against any particular countries. Just the overall concept that as government we would not we do not feel compelled to accept the situation to which we are not part, in the design of those rules, and therefore we have challenged this. And in the context of the sub group work it was not possible to address these set of issues that concern and that is what Denmark referred to seeks some can kind of community ... aspects of its operation that would impinge on sovereignty assessments and so on and so forth. There was no traction within the group to discuss this, however at the when the group was already in its very late stage there was a clear recognition that those jurisdictional issues from the perspective

we have been expressing our concern, will not go away. That there is still a need to continue to discuss topics associated to jurisdiction, particularly that issue of possible immune its and how to make sure that by having the U.S... by default this will not impinge on sovereignty in a way that is seen as inappropriate. So the report itself acknowledges this, acknowledges there are differences of opinion, and recommends that discussion will go on in other contexts. Of course the mandate of the that was given to the sub group within the CCWG work group did not allow for that but there is recognition that the issue has not been definitely solved. There are concerns that have not and there is a call for this to continue. In the course of the first public consultation there were a number of other parties that also expressed the same opinion, so the final wording we decided upon on Friday also makes reference to that, that even in this public consultation that need was acknowledged and endorsed by some parties so this basically is the situation vis à vis the subworking group on jurisdiction report. It is there. It has been approved by consensus, under that strange notion of consensus that prevails within the ICANN context. It's through consensus but for our decision it's consensus even in the presence of objection but within that those rules of engagement the report was adopted by consensus. Certainly we could again support the recommendations there but the gaps that are in the report and

its failure to address an issue that for us is the most crucial issue since day one we have expressed have obliged us to oppose the report and a number of other GAC members have also done so so at some point after the public consultation the report will be submitted to the chartering organizations including the GAC. They will have an opportunity to come back to those issues at a later stage. Thank you.

CHAIR ISMAIL:

Thank you. Thank you very much, Brazil. I wonder whether there are any further you the dates from other countries or members and I'm also wondering whether I understand there were four countries objecting to the jurisdiction. We've heard a very detailed position from Brazil which highlights a few good things that at least the recommendations in the report are not objectionable. They are good, but not enough, and that we need to find a process to continue the discussion. So yeah, I would like to know whether other countries are sharing the same position or there are other points of objection. Thank you. So yeah Argentina please.

ARGENTINA:

Thank you, madam chair. I would like to thank Denmark for the extremely detailed explanation of what is the status of the working group. I usually do that, that for the for myself and I

share it with the group, with the GAC, but I couldn't do that for personal reasons that day. I couldn't stay the whole day in the meeting, but thank you very much Denmark for that. That was very complete, and explanatory. And also, our delegation would like to concur with Brazil. We felt the same lack of inclusion of all the things that were of high relevance. I following this issue for more than 12 years, I think that the lack of this jurisdiction issue about the legal establishment of the organization, and what Benedicto explained very well. I'm not a specialist in that area. I think it's very important that it's stressed in the document that it's not there, and I personally thought that it was an important input for the document when it comes to the GAC. While other governments will be able to review that and see that objection. So this is why we supported that and we saw we have been following the process, and we didn't see that really included in the final document, so we think there is value in the objection, and in not opposing to it, but giving given a good sign of for the full document, but stressing that there are some issues that still need to be discussed, and taken in consideration. And we thought there was value in that stressed in P the document when it comes to the GAC as a chartering organization. Thank you.

CHAIR ISMAIL: Thank you very much Argentina and I think you have been reporting enough so we don't blame you for not reporting on this one. I have Portugal and then France. Portugal please.

PORTUGAL: Thank you. Well, first of all, I would like to thank Denmark for all the details presented, and to the chair. Concerning this subject well we feel and we share the same concern presented by Brazil on jurisdiction so we have a problem here, and so while we don't we... with the proposal, and we just share the same concerns very well-presented Brazil thank you.

CHAIR ISMAIL: Thank you Portugal. France please.

FRANCE: I will be speaking French. [Interpreter Speaking] thank you let me make 2 comments. I would like to thank the colleague from Denmark. France was not able to show agreement with the recommendations for two reasons. First one is substantial reason. The other one has to do with the procedure. First, regarding WorkStream 2, we believed that some recommendations, and some viewpoints are taken into consideration more than others, and the report shows quite imperfect effectually the discussions that we have held, and

those who expressed different positions, quite strongly, have not been account on the report. Now regarding the account and the substantial issue France has repeatedly expressed support to what Brazil has just explained, and now we would like to know how the discussions with CCWG will continue. We realized it was necessary to begin to start discussions on very technical issues, and the report does not deal with very important legal issues, so it is important to consider what are the work tracks or the work areas of the WorkStream 2 that will be dealing with the jurisdiction issue. It is for this reason that France was unable to express its approval for this recommendations, and then we can also make some points about diversity but we have a different way of looking at consensus depending on the topics. As far as jurisdiction is concerned. We haven't fully understood how consensus was assessed. Thank you.

CHAIR ISMAIL: Thank you France. Much would you like to talk about diversity while you have the floor?

FRANCE: No [Interpreter Speaking] France speaking. Not now. No, I don't want to introduce any changes to the agenda.

CHAIR ISMAIL: Updates, comments? Yes Canada please.

CANADA: Good afternoon. For the record it's Luisa Paez. I would like to thank you for the detailed update Denmark and as well thank all GAC appointed members and all the members that participated in the cross community working group dedicating a lot of time and resources on this quite complex and difficult issues along with other GAC appointed members. Canada was present at the face to face meeting of the cross community Working Group on accountability on Friday. We the final set of recommendations and the reports we recognize the strong engagement of many members and the GAC as a whole in this almost 3 year multistakeholder process. Canada can attest the public comments and interventions from governments helped guide and enhance the consideration of this complex sensitive and multifaceted issues. We also believe the process to reach the final WorkStream 2 recommendations has been methodical transparent and inclusive. We see this as another example of an effective multistakeholder policy making, and as such we recognize the challenge in addressing the vast range of considerations and stakeholder perspectives from the whole ICANN community. We also believe ICANN accountability will be undoubtedly enhanced by the suite of recommendations of this cross community working group and accountability and lastly

regarding next steps, the GAC will have to decide how it would like to endorse these recommendations as a chartering organization, as was mentioned previously. And just one idea that we could approach this if we would like to is similar at the same way we approached during the Marrakesh 2016 meeting where we are able to within the GAC community express the different points of views, but then hopefully to endorse the recommendations. I will leave it at that, and thank you.

CHAIR ISMAIL:

Thank you very much Canada. And if there are no further requests for the floor, I think this takes us nicely to the following topic on this agenda item, which is how we want to organize ourselves to respond as a chartering organization, as highlighted by Tom, by Denmark and by Canada GAC is a chartering organization of the cross community Working Group, and we will we are obliged to have a say on this, so I would like to open the floor on this topic, and how we would like to organize ourselves so that by the time we are asked for our input, we are ready to provide it. So any in other words, will we be ready to endorse the report, to move forward? Brazil please comment.

BRAZIL:

Thank you Manal. I think it's very I than thank you for inviting the group to consider this because although we it might take

some time for the report to come to the GAC and others for their formal input, and advice, I think it's it's timely for us to start considering how want to address this because basically the report is finished as Denmark has said, in the course of the upcoming second round of consultations there is not an expectation that substance will be changed fundamentally. So I think it's we have before us already the all the elements that will be brought to the attention of the GAC. So in that regard, I would assume, Manal, that might be important for us to devise a way, you know in which we can give thorough consideration of the report. The co chairs. CCW chairs recommended... when the full report for the goal this will be more than anything else more a formality than anything else. But I would say that in the case of the GAC since they are, particularly in regard to jurisdiction, I continue to focus on that part of the report there were a number of GAC members that have expressed very strong concern, so I think we will need some time to digest and prepare a common position in case there would be a common position on this, that part of the report. In order not to be surprised and not to be in a position that will have very limited time to consider the issue when it comes for formal approve or formal consideration, so I certainly I do not have a suggestion for that as of now, but I think it's very timely that we could, at the end of the this meeting have established some time line or some

procedure that we will adopt for considering the report. Thank you.

CHAIR ISMAIL:

Thank you Brazil. And, yeah, definitely we will not going to come up with a position right away, but rather as you rightly mentioned devise a way forward and have a process to have this ready by the time we are asked to provide our input. So any further comments or remarks on this? Suggestions? So yeah Tom please.

TOM DALE:

Thank you, Manal. I just wanted to draw member's attention to the time line that was included in the brief, and which I believe is still being roughly or broadly followed by the Working Group. Which is that public comment period for the consolidated report, that is all of the recommendations not just the ones on jurisdiction, but that all of them in a single report is likely to be out for public comment from the 18th of April to the 18th of may or thereabouts, so the as a number of members have said, there is not an expectation that there will be you know, substantive comments to take on Board about the, you know, the recommendations but rather making sure that there are no inconsistencies or trying to work out any interdependencies perhaps with other work that's going on in ICANN. There's

always a lot of work going on but the public comment period for benefit of members ICANN has a fairly formal public comment process but any individual, including any government, can and often do make submit their own comments to that process, so I just note that's one other avenue if you wish to have things on the record but just bear in mind what the GAC participants have said about substance stands as opposed to fine tuning and it's not clear at this stage I don't think at precisely what point before the Panama meeting that a final document will be with the GAC and with the other chartering organizations to consider, but sometime between May and June. But as GAC members indicated it's unlikely major changes will be made, and the material will be consolidated into a single report at some point, but as regards support from the secretariat of course that, as we did with WorkStream 1 albeit with more people, we will be happy to work as directed by the GAC leadership to assist members, but it is a member driven exercise, not a secretariat one of course. Thank you.

CHAIR ISMAIL:

Thank you Tom. And very good points, first that individual GAC members of course can still weigh in their views individually, and also that the report is going to be adopted as a whole, or I mean the commenting is going to be on the whole thing, so it's a point to be considered as well to look at on recommendations of

the different tracks. So just to make sure I understood the time line correctly, so if we are trying to work it backwards we should be ready by May, June time frame roughly? So it's

TOM DALE:

The members who were there on Friday may wish to address that directly, but my understanding is that they would be seeking as much of an indication as they can, as much of an indication as possible from a chartering organization's before the Panama meeting. Of which would indicate perhaps sometime in towards the end of may, but having said that, again looking back to the WorkStream 1 process that finished in Marrakesh. What the working group wants is one thing, but a number of the organizations in the Marrakesh process did say they have to wait until the Marrakesh meeting itself and that's what a number of groups that had to adopt a final position ... this were others as well that said well we will take our time and meet when we can. So if the GAC wish to do that there is precedent for that but at that point yet because the document hasn't been public comment, if I can... to prose, and the GAC has not yet had a substantive discussion perhaps about wording that might move towards you know, a final view, but clearly it would not be a good idea to arrive in at ICANN62 and say what are we going to do about this? I'm sure members won't do that

but the precise timing should become clearer as the public comment process begins. I think thank you.

CHAIR ISMAIL:

Thank you, Tom, and actually the time line is very clear as well on the in the brief and on the screen, and sorry for overlooking this. Yeah, so basically we still have time, but its good to start the exercise early, and be ready on time, so this is just a brief to make sure that we are all on the same page, and to kick start the process, and the thinking, and we can definitely work on this intersessionally so we can arrive at ICANN62 with an agreed way forward. So I look forward to your active participation intersessionally on this until we arrive at the common GAC position as a chartering organization. So Brazil, please?

BRAZIL:

Just two comments in regards to the time line because I participated and Friday at the Friday meeting, and I see some slight differences here. First of all I think it's minor thing perhaps something the CCWG will address through a video conference or another forum but formally we did not go through the first reading plenary of the draft final report as such. I think that will be done in had the course of this meeting or immediately after. I'm not sure. And then also there was when the co chairs showed on screen the next stages there was a

specific moment in which the SO's and AC's would be consulted and I don't see it reflected on the screen in that time line but I think it's also very important to be apprised whether exactly it is expected for the issue to come back to the group, and to the others SO's and AC's it's not there. But I think it's just some minor things that should be further clarified so we can have clarity on the way forward.

CHAIR ISMAIL:

Thank you very much Brazil, for the clarification, and actually, the briefs were compiled and circulated 3 weeks before the meeting so things were not that clear yet, but definitely we will be revisiting the time line, and sharing more accurate and updated one for members to consider and start working according to. So any further comments or requests for the floor? Okay. Then we look forward to working on this intersessionally. We are doing great in terms of timing. We have finished earlier than expected, so let me then conclude our GAC discussions on cross community working group accountability WorkStream activities, and so the session is now adjourned. We will proceed with the next agenda item shortly. Just waiting for a signal from the technical team. Thank you.

CHAIR ISMAIL: So, in fact, we have like 8 minutes so maybe people can stretch, and we can invite Don to the panel and other universal acceptance.

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