



Governmental Advisory Committee
Secretariat

29 SEPTEMBER 2003

EXECUTIVE MINUTES

ICANN Governmental Advisory Committee meeting XVI
Montreal, 22-25 June 2003

Chairman: Mr. Sharil Tarmizi, Malaysia.

List of participants attached (Annex 1)

1. *Welcome and new members*

The Chairman welcomed delegates to the 16th meeting of the GAC, and in particular the new members since the last meeting: Botswana, India, Nigeria, Palau, Uganda, Tunisia. He reported that Mali and Slovenia have also recently joined the GAC.

2. *Adoption of the agenda*

The Chair noted that two inter-sessional GAC conference calls had taken place in May and June that had discussed the draft Agenda. He proposed two changes: to bring forward the replacement of the ccTLD Liaison.¹ And to take the IDN point immediately after the meeting with ICANN.

The amended agenda was adopted - mover: Sweden seconded Canada and Niue.

Germany suggested discussing WSIS² Under "Any Other Business" and envisaged a possible GAC meeting in the context WSIS in Geneva in December 2003.

¹. Gema Campillos had announced that she would be leaving GAC work for other responsibilities in the Spanish administration.

². World Summit on Information Society (WSIS)

France suggested also that that GAC working methods and organisation be discussed under AOB.

3. Matter arising from the Rio de Janeiro Agenda

- Minutes of Rio de Janeiro de Janeiro meeting.

The Executive Minutes dated 16 June 2003 were approved and adopted without comment. Adoption moved by Netherlands and seconded by Kenya and Sweden.

- Action items arising from the minutes

The Chair noted that GAC Liaisons were now active and Working Groups had been launched. Outreach activities were continuing, and the challenge was to manage process and information dissemination. There were still gaps in membership, particularly from developing countries.

4. GAC Inter-sessional advice

GAC had provided inter-sessional Advice on 2 issues since Rio de Janeiro:

- domain name transfer issues
- ICANN's Evolution and Reform Committee (ERC) proposals for the country code names supporting organisation (ccNSO).

ICANN had also asked for GAC's opinion on the definition of ICANN's geographical regions. The Chair did not feel that this is an issue on which the GAC should intervene. No GAC Member expressed a contrary view.

Members felt that follow-up to the GAC advice on the **ERC ccNSO proposals** was important in order to facilitate participation in the new ccNSO by as many ccTLDs as possible.

France noted the limited opportunity given to the GAC to consider such important issues and suggested informing ICANN that a minimum of 3 weeks would be necessary if a GAC opinion was sought.

5. Reports from GAC Liaisons

Written reports had already been circulated, and during discussion short oral summaries were provided by GAC Liaisons.

- Mr. Mukhopadhyay, GAC liaison for the **gNSO** reported positive discussions and good progress. Mr. de Haan, liaison for the RSSAC, invited GAC members to suggest questions they would like him to raise with the committee, – e.g., deployment of DNSSEC and distribution of root servers (Anycast), for discussion in Tunis.

- Ms Campillos reported as GAC liaison to the **ccTLD community**. She confirmed that she had asked the wwTLD alliance to join their discussion list. This had generated some discussion, and some ccTLD Registries seemed to be sensitive about governmental participant in their discussions.

The Chair noted that Ms Campillos would be moving on to a new job after Montreal and commended her on her contribution to the GAC, both as GAC Liaison and Working Group Convenor and as contributor to many key GAC discussions and activities.

The European Commission proposed Mr. Martin Boyle (UK) as replacement for the ccTLD Liaison.

- Mr. Dale reported as liaison to the **Security and Stability Advisory Committee** confirming that information-sharing arrangements still had to be defined with committee. He also noted that the committee continues to focus on technical rather than policy issues e.g. DNS sec, access to root server keys, distributed denial of service, IPv6. The member for Hong Kong asked for information on spam-related activities that ICANN or the SSAC might be undertaking, and suggested that the GAC should also discuss and consider coordinated government action.
- Mr. Shaw, liaison to the **ASO** was not present. The Chair noted that links with the Regional Internet Registries (RIRs) had been insufficient to date.
- Mr Hill, Liaison to the **Technical liaison group** was also not present. He had separately reported that the IAB has been asked for input. He had noticed that it was difficult to track the activities of such a technical activities group, not least because no information appeared to be available via a dedicated website.
- Mr. Valdez, GAC liaison to the **ALAC** was not present, and the Secretariat provided a short report in his absence.

6. *Reports from Working Group Convenors*

- Ms Campillos, convenor for the **gTLD Working Group** confirmed that the first meeting had already taken place in Rio de Janeiro and now had 10 members. There was also close contact with the GAC liaison for the gNSO. The gTLD WG had provided advice to ICANN on the name transfer issue, and had defined draft terms of reference and a draft work programme for 2003 that they hoped would be agreed in Montreal. Key issues were creation of new gTLDs and implementation of WIPO II recommendations. The Chair thanked WG members and invited all GAC members to indicate their priorities to the WG.
- Ms Layton reported as convenor for the **Whois Working Group**, noting the significant interest among many actors about the existing and potential uses of WHOIS. She also confirmed that she and Mr. Papapavlou had been invited to sit on the ICANN preparatory committee for the Whois workshop in Montreal. There was now a need to decide how to organise work and confirm priorities after Montreal and before Carthage

- Mr. Aoki reported on the Working Group dealing with **IPv6**, summarising the written report already circulated.
- The Chair noted that there was unfortunately no convenor yet for the working group dealing with **IDN**, and invited WG members to appoint a convenor as a matter of urgency to allow the work to proceed.
- The Chair also noted the need to appoint a convenor for the Working Group dealing with **root server operation and security**, despite the large number of GAC members who were participating. Again, he urged members to appoint a convenor as a matter of priority.
- Mr. Hinojosa reported on the **ccTLD** Working Group, noting the high level of activity and productivity since Rio de Janeiro. There were 23 members and two key activities – dealing with the ERC assistance group’s recommendations on the ccNSO and reviewing the possibilities for updating the GAC principles for ccTLDs. He expressed thanks to Mr. Boyle, Ms Lebedeff and Mr. Papapavlou for their work as scribes/rapporteurs.

The Working Group had formulated GAC input sent to the ERC on 16 May, prior to the draft new Bylaws for a ccNSO being presented by the ERC on 13 June. More details on the preliminary work of the WG would be presented in the afternoon session under item 9. Regarding the GAC principles, a non-paper had been recently circulated by the WG, and would be further discussed by the WG under agenda item 12.

- Ms Campillos, ccTLD WG member, then made a presentation on the **ccNSO issues**, outlining the key issues – scope, policy process and participation in ccNSO. Martin Boyle (UK) member noted the need for support from the ccTLD community if the supporting organisation was going to be representative, and expressed concern that the current wording could be considered as hostile and unacceptable to many ccTLDs. He outlined a number of ccTLD concerns and stressed the need for ccTLD policy to be made at the lowest (most local) possible level.

The Chair concluded by inviting the Working Groups to submit their work programmes for approval in the Plenary session under agenda item 13.

7. GAC secretariat report

The Secretariat confirmed that a written report on its activities has been prepared, and thanked GAC Liaisons and Working Group Convenors for their work. The Secretariat also confirmed that it was continuing to liaise with ICANN, member countries and Afiliias about **country names under .info** and reminded GAC members that reserved country names must be registered before the end of 2003. The Chair will send a letter to all GAC members and non-member countries to remind them of current deadline.

Niue asked if it might be possible to extend the .info deadline, especially given the arrival of new GAC members and delays caused by Afiliias’ own procedures. The Secretariat agreed to consult with ICANN and Afiliias to see if an extension is appropriate.

The Secretariat will move in early July to new premises in Brussels. A substantial amount of GAC work now taking place through mailing lists. Denmark asked if there have been any offers of seconded staff to secretariat. The Secretariat confirmed that there were currently no firm offers and that a few GAC Members had expressed interest. The move to new premises will however, facilitate accommodating extra staff should the opportunity arise.

Spain asked if all GAC members have access to the on-line discuss area, and if not, suggested that this should be made possible. The Chair understood that this is possible and agreed that it should be arranged.

The Chair also noted that coordination at local and national level needs to be improved. For instance, the ITU ccTLD questionnaire in particular needed special attention; he encouraged GAC members to contact their ITU delegates to coordinate their positions. The chair also thanked the European Commission for the very significant support provided to Secretariat, and noted that the GAC as a whole needed to see how it could help Commission with resources. Manpower is one thing but financial contributions also need to be discussed.

8. *Meeting with ICANN*

8.1 *ICANN President and CEO; ICANN Chairman*

Paul Twomey, ICANN President and CEO, provided information of changes to ICANN's internal organisation, recent discussions with various constituencies, developments regarding WIPO II, processes for new gTLDs and other ICANN priorities. He also confirmed that the Kuala Lumpur meeting in 2004 had now been moved from June to July 2004.

Regarding IDN, Paul Twomey stressed ICANN's position that technical coordination and commitment to general principles were essential. Five registries have now committed to guidelines approved by the ICANN board in Rio de Janeiro de Janeiro. Four of these have contracts with ICANN. .info, .org, .cn, .tw and .jp.

Vint Cerf, ICANN Chairman, noted that technical issues were now stable but that implementation can still result in ambiguities about which names can be registered, and that this was a language specific issue. That said, any rules adopted locally would also have a direct impact on all Internet users world-wide. Paul Twomey particularly thanked the government of Japan for its' guidance to the JPNIC Registry.

He also confirmed that the review of geographic regions was a standard procedure required every 3 years by the ICANN Bylaws.

Vint Cerf thanked GAC for its input on the Whois workshop and welcomed the appointment of GAC Liaisons and the setting up of GAC Working Groups.

France noted that the ICANN Board had only implemented the 3rd paragraph of GAC advice on the WIPO II recommendations, and invited ICANN to provide an explanation to the GAC as required by the new Bylaws. Paul Twomey responded by pointing out that under the Bylaws, ICANN has to develop any process with all involved constituencies –

this does not mean that ICANN has to do what GAC requests without taking advice of other constituencies.

The European Commission expressed concern about the time taken to set up the WIPO II ICANN-GAC joint group, and the delay in clarifying its mandate. The expectation in Rio de Janeiro de Janeiro was that the need to implement the WIPO recommendations had been accepted by ICANN and that only the modalities of implementation needed to be considered.

Vint Cerf stated that ICANN was always concerned that all constituencies are properly consulted and wherever possible agree that proposed policies are in the interest of the Internet. A restriction on name registration is not an open and shut case. ICANN would like to further analyse if it is within ICANN's scope to implement the recommendation considering what legislation exists to support it. That could imply that it cannot be implemented on a regional and local basis.

On a separate issue, Niue noted that a review of ccTLD redelegation processes did not appear to be on the list of ICANN priorities. Paul Twomey confirmed that ICANN had just undertaken review of all outstanding cases, and he was satisfied that action was being taken wherever possible.

8.2 ICANN vice chair and chair of Evolution and Reform committee (ERC)

ICANN were represented in this session by Hans Kraaijenbrink and Alejandro Pisanty, both members of the ERC. Alejandro Pisanty provided background on the ERC's activities to date and thanked the GAC for its input on the ccNSO issue. He provided a summary of the ERC's views on ccNSO issues, emphasising that the ERC accepted that ICANN's role should be restricted to issues related to the stability of the DNS and shared the general assumption that policy making should be done at local level.

UK noted that the ERC had gone a long way in the direction required by GAC, but felt that the draft Bylaws were still needed redrafting. He expressed serious concerns that certain elements of the GAC advice has been ignored and that the GAC had been asked for a response in too short a period to make sensible input. UK noted that the GAC felt that the process should be as inclusive as possible, whereas much of the wording was fairly autocratic rather than conciliatory. It would be particularly difficult for certain ccTLDs to sign up to policies that are yet to be defined, and the need to have "binding" policies had not yet been properly demonstrated.

Denmark noted that the draft Bylaws had been received very late. Denmark also reminded ICANN that the new Bylaws governing cooperation between GAC and the ICANN Board required the Board, and not a Committee of the Board such as the ERC, to engage in a dialogue with the GAC where there was a difference of opinion.

France agreed with the UK and Denmark, noting that the three main outstanding problems with the proposed new Bylaws for the ccNSO were that the scope was not adequately defined, nor the criteria for membership, and the difficulties surrounding the binding nature of decisions.

The EU Commission noted that everyone wanted the ccNSO process to succeed, and that the working group meeting on the following day provided a further opportunity to discuss outstanding issues further. He was confident of a positive outcome. Canada

shared the hope that this process could be completed successfully soon, and thanked the ERC and the working group for its efforts.

Hans Kraaijenbrink was surprised by the UK comments, which he felt might be contrary to the GAC ccTLD Principles. The proposed ccNSO Bylaws merely say that anyone joining the ccNSO will abide by ccNSO policies. Bylaw provisions on GAC consultation (the Danish point) did not mean that the Board had to go to the GAC on everything. Alejandro Pisanty felt there was an expectation that rules developed by the ccNSO would be to some degree respected by its members.

8.3 *ICANN Chair of the Nominating Committee*

Ms Linda Wilson reported on the activities of the Nominating committee to-date. She noted that eight members of the Board had been appointed, three members of gNSO and five members of ALAC. These appointments would take effect at the end of the Montreal meeting. The three members of ccNSO had not yet been appointed.

8.4 *Evaluation of new gTLDs; status of RFP for sponsored gTLDs.*

Paul Twomey gave an update of the process followed by ICANN and of what is expected in the next phase. He indicated that the Final Report of ICANN's New TLD Evaluation Process Planning Task Force was accepted by the ICANN Board in August 2002, and an evaluation based on the criteria and procedures recommended in that final report was initiated during the first quarter of 2003. A comprehensive study is expected to be completed in October 2003.

Regarding the selection of a new TLDs, Paul Twomey recalled that at its December 2002 meeting, the ICANN Board had directed the ICANN President to develop a draft Request for Proposals (RFP) for the purpose of soliciting proposals for a limited number of new sponsored TLDs. A preliminary paper was posted for public comment in March 2003 at ICANN's Rio de Janeiro meeting that described proposed criteria and a proposed process for evaluating sponsored TLD proposals as a prerequisite to the design of a Request for Proposals. On 24 June 2003, a draft RFP was posted for community discussion and feedback. The ICANN Board is expected to evaluate this feedback and consider further action on this topic at its July meeting.

8.5 *WIPO II recommendations*

See under 8.1 above.

8.6 *Implementation of IDN*

Japan noted that local IDN implementation were now underway, but expressed disappointment about delays since the Rio de Janeiro meeting in gaining ICANN approval. The technical parameters had been resolved for some time, and it was not clear why ICANN had delayed giving Japan the green light. For this reason, Japan had raised

the matter at the last GAC teleconference, following which the GAC chair had expressed GAC concerns to ICANN. The ICANN Board subsequently provided the necessary approval on 20 June. The matter had however raised serious concerns about the relationship between ICANN and Registries. IDN implementation had in fact been easier for the Chinese and Koreans because they do not have a contract with ICANN yet. Ironically, having signed a contract with ICANN, the Japanese ccTLD registry seemed to have been disadvantaged.

9 *ccTLD policies*

9.1 *ERC recommendations for ccNSO*

9.2 *Bylaw amendments for ccNSO*

The Chair noted the two key issues for consideration - content and procedure. There was a need to get down to specific problems with the text and see which parts can be redrafted and where there are substantial differences of opinion requiring negotiation. We also need to determine whether further time is available, and if resolution is possible between the three parties.

Denmark also felt that it was necessary to reflect on the ICANN view (that this issue was not within the scope of bylaw on GAC consultation) represents a formal ICANN position and whether it is acceptable.

Germany agreed and suggested that from what had been said, it was the ICANN Board who would decide if the consultation procedure applies or not, and this is not what the GAC had understood. ccTLD issues are very important for governments and ICANN Board must consult GAC on key issues.

France also agreed, noting that there was insufficient time foreseen for the GAC to discuss the Bylaws properly in the next day's session. France proposed that the GAC should say that the draft Bylaws are not considered satisfactory by the GAC and expect Board to take GAC advice into consideration. If ICANN adopts Bylaws without appropriate consultation, GAC will need to reflect on implications. Alternatively, Board could defer decision and discuss with GAC in Carthage.

The European Commission agreed that there was sufficient justification for the ccNSO issue to be subject to ICANN-GAC consultation procedures as foreseen in the Bylaws. That said, it would be better to look at some substantive issues first before deciding what will be the outcome of the process. The GAC needs to be seen to be efficient. Substance counts for more than formal or procedural requirements.

Canada agreed to work on substance rather than procedure. The working group methodology has really allowed the GAC to get more involved in a complex issue.

Niue indicated that it was prepared to withdraw insistence about disputed managers not participating in ccNSO if this would assist progress.

The Working Group Convenor (Mexico) then provided background on the scheduled working group meeting the following day.

The Chair concluded by proposing that the members of the Working Group go into the meeting the following day prepared to consider specific elements the ERC appear to have ignored. He also noted that in cases where ccTLDs are comfortable with ERC proposals, governments should be clear about why they object.

10. *Internationalised Domain Names*

Matter considered covered in earlier discussion under agenda item 8.6 above.

11. *Recent developments in Member countries*

The Chair called for a tour de table:

Brazil confirmed that its ccTLD and the local government are discussing cooperation, and they would be circulating a background document shortly.

Palau confirmed that the ccTLD had recently been re-delegated to the local government.

Luxembourg provided background on the history of .lu. The current registration policy was relatively liberal and recent changes will also allow names using only numbers.

Germany confirmed that the national telecommunications act is under revision and that Domain Name management is being reviewed.

India noted that local discussions were taking place on public-private partnership. Internet exchange now set up in India. Greater take up of Internet-related services being facilitated by the introduction of the latest technology.

Uganda confirmed that a private company was running their ccTLD. No problems but a recent review of policy approach had been initiated to consider improvements including the possibility of promoting competition. Uganda was trying to improve access and develop local content but the number of subscribers was still quite low.

The **European Commission** confirmed that, following independent evaluation, a registry had been selected for .eu. The not-for-profit organisation was called Eurid, and comprised members from Belgium, Italy and Sweden. Discussions to set public policy rules will begin with EU member states in July 2003.

The Netherlands confirmed that its ccTLD now has 900,000 registrations. The law was being changed to provide further security for continuation of service.

Denmark confirmed that a review was underway to decide on policy options.

Norway recalled that its legal framework for its ccTLD would enter into force on 1st October 2003. Norway will circulate a copy of the relevant regulation to GAC members for information. A dispute resolution procedure was being set up -not using UDRP but drawing on some elements. ENUM- consultation underway. IDN policy nearly complete, implementation possible as early as early 2004.

Spain confirmed that a review of policy was underway for .es.

The **UK** noted that its consultation on a directive concerning privacy and electronic communications had now been completed. Requirements related to publicly available directories were also being introduced, but a specific exclusion for Internet domain names was being considered to allow for appropriate WHOIS access.

The representative from **the distinct economy of Taiwan** provided background on local IDN developments. IDNs were likely to be available for registration from June to September this year. Taiwan was also conducting ENUM trails.

WIPO noted that they had now received their 5000th UDRP case. The process is fully monitored by WIPO staff and apparently is given satisfaction to parties involved.

Malaysia had finalised a new national numbering and addressing plan and completed consultation on a second level domain name structure. They had also launched a dispute resolution policy in April (one case for consideration so far).

Trinidad and Tobago had almost finished a policy development process.

Korea's IDN service will start in July.

Sweden's Commission of inquiry into .se had delivered its report the previous week, suggesting a draft regulation based on the GAC ccTLD Principles.

Australia had also initiated a review of gov.au, to try and give State governments more involvement in registrar activities.

Portugal planned IDN implementation for late 2003. Also association of IPv6 addresses being introduced. Portugal was also encouraging former Portuguese colonies to participate in the GAC.

Poland confirmed that a scientific establishment was running its ccTLD registry. Plans were underway for both IDN and ENUM.

Italy had initiated a local discussion about the evolution of the ccTLD registry, currently managed by a national Research institute. A good level of cooperation with government existed and work was underway to identify possible improvements to the registry set-up.

Hong Kong confirmed that its ccTLD had been re-delegated from consortium to private company with government presence on the board. A second level domain had also been introduced.

Niue confirmed that the re-delegation procedure was continuing. Will meet with Palau and Tuvalu to discuss regional issues. Niue also intends to reply to the ITU questionnaire and has formally asked to join the ITU. He requested that GAC members ask their ITU colleagues to support the Nieu application.

France congratulated the EU presidency and the Commission regarding the creation of the European Network Security Agency. France noted with disappointment however that the redelegation of .tf as requested by the French government was still outstanding.

Kenya confirmed that its ccTLD registry was registering only about 50 names a week, but that but new software will facilitate on-line process and increase registration.

Botswana confirmed that its ccTLD registry had been in operation about 10 months. The decision to participate in the GAC was an indication of the Botswana government's commitment to participate in appropriate forums. The government also intended to sponsor a workshop in Botswana to bring together the local Internet community to discuss domain names. Botswana hoped that it could look to GAC colleagues for assistance in such matters.

Mexico confirmed that it was still reflecting on public policy options for its ccTLD, and suggested new topic on discuss area to post development notices.

The Chair welcomed these as useful suggestions for consideration, and thanked all GAC members for their contributions to the discussion.

12. Working Group Meetings

Held separately in parallel sessions throughout the morning of 23 June. See agenda item 13 below for reports.

13. Report from working groups

Chair invited representatives from the Working Groups to provide oral reports of their meetings and noted the need to try and agree on work programmes for future activities of the Working Groups.

- **gTLD working group:** report by Spain – part closed session, part open with GNSO council. Agreed draft Terms of reference and proposed work plan for 2003. Decided to focus on GNSO activities including responding to requests from ICANN board for advice, and preparation of document to identify main public policy issues related to introduction of new gTLDs (expected to be ready by Carthage). Christian Wichard (WIPO) had been selected as interim?? convenor to replace Gema Campillos as Convenor who was moving to a new job in Madrid. Also discussed WIPO II and WHOIS workshop with gNSO. The Chair thanked Spain for its summary and requested written report to be added to the official minutes.

During discussion, the Netherlands asked how GAC members could contribute to the discussion without becoming a formal Working Group member. The Chair confirmed that the Secretariat was looking at options for giving access to GAC members without becoming WG members.

France understood gNSO members had expressed strong reservations in the meeting about implementation of WIPO II recommendations and asked for clarification. Spain confirmed that one gNSO participant had raised this point, claiming that the concern was widely held within the gNSO. In response, the Working Group members had pointed out that its mandate was not to review a decision already made but to analyse problems of implementation.

WIPO noted that they had also discussed the process to appoint members of the ICANN joint Working Group. The Chair understood that each constituency would discuss with ICANN chair and make proposals. Volunteers already from GAC –

Brazil, Malawi, Sweden, ITU and WIPO.

The European Commission reminded GAC members that, in relation to the WIPO II proposal, it was important to see the joint Working Group established as soon as possible and to have a clear indication of the proposed timetable and expected deliverables.

The Chair proposed that the GAC continue to follow gTLD issues and prepare advice for ICANN on public policy implications. This was agreed.

- **Working Group on IPv6:** Japan provided an oral report, noting that the terms of reference and work programme had been discussed, although the view was that the GAC should not seek to intervene in a market-led approach to deployment. It had also been decided to propose changing the Working Group name to make it clearer that it was not a technical group, but an opportunity to share information and identify developments.

During discussion, Germany queried whether changing the name would extend the mandate for the group. Canada and Italy confirmed that this was not the intention, merely to clear up any potential confusion. Consideration had been given to sending a questionnaire asking for state of play in GAC countries about implementation of IPv6.

The Chair proposed allowing the Working Group to continue to be information-sharing point between members on IPv6.

- **Whois Working Group** – A thorough report was provided by the US. Draft Terms of Reference had been discussed, identifying policy issues, preparing briefing, educational activities, etc. Future activities included monitoring of committee on privacy, remaining in contact with gNSO and surveying GAC Members' ccTLD Whois policies. The terms of reference could not be finalised because most members of the working group were not present and there was also a need to be able to take account of the Montreal Whois workshop.

During discussion, WIPO pointed out that they have a Whois policy database available on-line.

The Chair thanked the Working Group for the progress already achieved on Whois matters, which illustrated what is possible with an initiative involving only a few GAC Members. The Chair also encouraged developing countries in particular to participate in the workshop.

- **Root server and security Working Group:** Report provided by Australia, who confirmed that there was still no convenor. Security issues were covered by a wide range of ICANN constituencies and if the working group were to continue therefore, it might be useful if it could make an analysis of what is happening throughout the ICANN structure and more generally, not least to see if there is interest in continuing WG. Best practice guide for ccTLDs on DNS security might be useful in the longer term. Mr. Dale, Australian delegate, also confirmed that he would be moving on, and so consideration would need to be given to replacing him as RSSAC liaison.
- **ccTLD Working Group:** report provided by Mexico, who confirmed that the meeting had been part closed, part with ERC, and part with ccTLDs. He reported on activities

of the working group to date, noting that GAC advice on the ERC recommendations had been provided on May 16. 5 priority issues had been identified – burden of proof (local vs global), scope, binding nature of the policies, redelegation and membership based on IANA database. Meeting with ccTLD community – good shared understanding of issues and common concerns. ERC – outlined views on discussion yesterday and presented a new version of the Bylaws. After comments, agreed to amend again. Copy now sent to GAC. There has been positive effort from ERC to take account of concern, but some issues still remain outstanding. It had also been agreed to submit a non-paper to the GAC as a whole on the question of the possible updating of the GAC principles for ccTLDs.

During discussion, improvements to the ERC proposals were welcomed but several delegations expressed concern about outstanding areas of concern where differences remained between GAC advice and ERC proposals. These were discussed at length and it was decided to review the situation again during the Montreal meeting as soon as revised draft Bylaws were provided by the ERC.

Concluding, the Chair reminded Working Groups to self-select Convenors in two cases – root servers and IDN. New liaisons were also needed for the ccNSO and RSSAC. The European Commission proposed Martin Boyle for the ccNSO. Canada seconded the nomination. Proposal agreed. The Chair took the opportunity to express thanks to Gema Campillos for her excellent contribution as liaison and working group convenor.

At-Large Advisory Committee: Brazil provided the oral report, in the absence of Peru who was the working group Convenor. ALAC had asked to have GAC liaison, and the Working Group members had suggested that the GAC would need to be kept informed especially when accreditation process starts. ALAC understand that GAC is the best connection for them between ICANN and WSIS. Two level structure – regional and local. Presentation to be circulated.

The Chair noted that ALAC might wish GAC to act as a conduit to bodies such as WSIS but that it should be remembered that the GAC only deals with issues under ICANN scope.

16. *gNSO/GAC Whois workshop*

The report has been circulated to GAC separately.

17. *Conclusions and Any Other Business*

Discussion of proposed new Bylaws for the ccNSO received from the ERC continued. The GAC noted that changes had been made to the draft to take account of several GAC concerns.

Participants discussed again at length, and it was decided that the Chair should deal bilaterally with the ERC to try and resolve outstanding difficulties and to communicate GAC Members' remaining concerns to the Board.

Finally, after report of the talks held between the GAC Chair and the ERC and further discussions between participants, GAC agreed to give its position as developed in the Communiqué, point 7.

At the last stage of the discussion, France dissociated from some positions as expressed in the Communiqué (see Annex 3).

As regards the organisation of the **WSIS** next December in Geneva, Germany proposed that the GAC should convene an open meeting in the margins of the WSIS plenary to present its activities to a wider audience, and to encourage wider participation. Such an initiative would be appropriate given the reference to Internet governance in the draft WSIS declaration.

Brazil announced that it had already considered inviting people to a meeting in Brazil for the same purpose in September (an email on the subject had been sent to the GAC mailing list in the previous few days). Brazil stressed the need to use all opportunities to promote the work of the GAC and explain ICANN, especially in developing regions.

Canada pointed out that it was not clear that Internet governance would survive in the WSIS declaration, and the US noted that the GAC was explicitly an ICANN body, so having meetings outside the ICANN framework could be confusing.

The Netherlands thought the German proposal was worth considering and suggested GAC delegates discuss the matter with WSIS colleagues in capitals. Suggested that someone drafts a paper on which to consult.

Denmark felt it would be useful to have a GAC presence at the WSIS meeting in Geneva, although careful consideration needed to be given to the organisation of such a meeting given the large number of potential stakeholders who might like to participate.

Mexico also thought that the German proposal was worth considering as an outreach activity.

The Chair concluded that there was significant support for the proposal but some delegates want time to consider and consult. He requested that Germany draft a note for discussion on next teleconference call, but Germany declined as being already over-committed.

At the request of France, **GAC's working methods** were also discussed. France proposed that for the next meeting, the GAC should have a two day plenary meeting including meetings with constituencies, with working group meetings if necessary the day before the plenary. This should allow the GAC to focus more on key issues.

The Chair suggested that GAC delegates consider the proposal for discussion during the next teleconference. He invited participants to be present at the next GAC meeting in Carthage and to be active meanwhile through on-line activity.

He warmly thanked Canada for hospitality and the excellent organisation of the meetings in Montreal.

Close of meeting 19.30.

Annex 1: List of Participants

<http://www.gac-icann.org/web/meetings/mtg16/Index.shtml>

Annex 2: Agenda

<http://www.gac-icann.org/web/meetings/mtg16/Index.shtml>

Annex 3: Dissociation from France

Annex 3 - Dissociation by France

The French delegation asks for the following text to be attached to the minutes of the GAC Montreal meeting:

"France cannot adhere to the sentence in § 7 of GAC's Advice given on June the 26th, according to which, concerning ccNSO, "the proposed bylaws (...) adequately reflect GAC's advice", since this affirmation is not true, as shown thereafter. GAC's advice, as it was given on May the 16th, dealt notably with the following points

1) ccTLD managers ccNSO membership

GAC's advice (§ 13) stated that in the projected bylaws "The analysis is not sufficiently clear on a crucial issue, that of delegation and redelegation. The basic rule should be that this is a question for national governments to decide according to national law : it should be stated at some point that the administration of a ccTLD can only be delegated or re-delegated to an entity designated, recognised or accepted by the respective government."

Moreover, GAC's advice (§ 18) touched upon the problem of contested delegation or redelegation, asking that in cases of this kind, the contestants should not be allowed to vote, nor to present candidates for functions inside ccNSO. In a subsequent passage (§ 27) GAC recommended that "A disputed registry manager should not be able to function as an advisor or representative". And yet, there is no mention at all of these questions in the proposed bylaws (article IX, section 4) : no condition whatsoever is imposed on ccNSO membership and involvement in its activities, except from the side of ICANN and ccNSO itself.

Consequently, the situation created by the Bylaws as they have been submitted to ICANN Board is in contradiction both with GAC's advice, as recalled before, and with GAC principles, which acknowledge that each government "represents the interests of the people of the country or territory for which the ccTLD has been delegated" (§ 5-1 of the GAC principles), must "ensure that the ccTLD is being administered in the public interest" (*ibidem*) and "makes a designation for the delegee" (§ 5-6). It derives from these principles that only a ccTLD manager recognised, or approved, or not challenged (according to the law in each country) by the relevant government should be allowed to be an active member of the ccNSO, as it has been affirmed in GAC's advice.

This point is evidently of a paramount importance for governments. So, it is absolutely impossible to pretend that the bylaws "adequately reflect GAC advice" when this advice is deliberately ignored on a point that GAC itself has deemed "crucial" (see quotation of GAC's advice upwards). This leads France to reject very strongly this formulation.

2) Procedural rules in policy development process

GAC expressed (§ 29 of its advice) a strong preference for the research of consensus because of "the fundamental nature of the issues that should be addressed by the ccNSO". In spite of this unambiguous position, vote has become the rule in the bylaws, whether at the ccNSO Council level or at the Board one.

3) GAC participation in policy development process

In its advice (§ 7), GAC insisted that "As part of process, the ICANN Board should consult GAC systematically on all issues that impinge directly on public policy. GAC's policy advisory role also applies to ccNSO public policy matters and the GAC would wish to maintain a constructive dialogue with the ccNSO." When discussing policy development process, GAC took "it for granted that GAC may also comment when a policy proposal is submitted to the ICANN Board" and explicitly asked "that GAC be consulted if the ICANN Board considers voting against a ccNSO proposal" (§ 25 of the advice). None of these two requests have been satisfied in the bylaws.

4) Exemption from policies

GAC's advice was that "Grounds for exemption might also include commercial and technical feasibility (...) For example requirements that place a major economic or technical burden in individual registry might mean that it is impossible for that registry to comply". This provision was particularly wise, bearing in mind the case of developing world ccTLD managers, who could have special difficulties to implement policies devised by and for stronger ccTLD. This clause has not been retained in the final version of the bylaws.

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A careful comparative reading of both GAC advice and final version of the Bylaws would show other divergences but the examples given above, pertaining to major points, bear out that GAC advice has not been taken into consideration in an appropriate way.

Finally, it must be stressed that when ICANN was created, it bore on complex balances between the stakeholders, among which the governments (considered also as guardians of ccTLDs). Many governments accepted to take part in ICANN only under the assumption that these balances would be preserved in the future. The present tendencies, as illustrated specially by the outcome of the reform in the cc field, seem to indicate that there is a risk that this would not be the case in the future, and this cannot be without consequences".