GAC Participation in Nomcom

Background information

Working Group – GAC Participation in Nomcom

February 3, 2015

1. To be discussed during ICANN Singapore meeting

After meeting in conference calls since the last ICANN meeting in Los Angeles, the working group would like to raise some ideas and questions during the next session about GAC participation in Nomcom in the next ICANN meeting in Singapore.

- There seems to be agreement among WG GAC members in develop GAC criteria for the selection of leadership positions within the Nomcom

- In relation with concerns rised by some GAC members about the confidentiality related with the work in Nomcom:
Could we find innovative solutions?
Could we consider ther examples: IGF MAG?other multistakeholder working groups?

- The discussion about GAC participation in Nomcom should be linked to a broader discussion about accountability and the balance participation of governments in the different processes and working groups whithin ICANN.

- Are there other concerns behind the GAC participation in Nomcom other than the confidentiality issue?
Risk of capture?
Others?
Which are the advantages and the disadvantages of the GAC participation in Nomcom?

- Is the appointment of a former GAC member in the Nomcom a possible solution?
How can the GAC liaise with him/her?

- Nomcom selection process, at the end, is made by consensus.

- About confidentiality: If the identity of the candidate must not be disclosed? Would it be possible to work with candidate´s generic qualities in a way that does not allow to identify them?

Part of the NomCom Code of Conduct that describes what does confidentiality means in Nomcom:
Available here:https://www.icann.org/resources/pages/2015-conduct-2014-11-14-en

"NomCom members will safeguard all internal NomCom communications concerning the candidates and treat them as private, confidential, and for the use of immediate Committee members and NomCom staff only, without exception.
NomCom members will not disclose outside of the Committee any of the discussions, deliberations, communications, records, and notes about the candidates. Further, NomCom members will not disclose outside of the Committee the identities of the candidates under consideration by NomCom, unless

NomCom as a whole has decided to do so and the explicit consent of the candidate(s) in question has been obtained.

2. <u>Draft Gideles for GAC – Nomcom candidates Criteria</u>

Criteria could include:

- Having worked for a sustained period of time for a national Government or IGO.
- Standing out for their dedication and achievements in advancing public interests in areas that are relevant for ICANN (ranging from IT development, IP rights or international relations to more internal matters such as financing, budgeting or auditing).
- Being experienced in building partnerships or agreements among different parties (either between Governments or between Governments and private sector organizations, for instance, by actively promoting private sector self-regulation or co-regulation arrangements).
- Geographic, gender and language diversity if the number of GAC selected members is higher than one.
- A combination of several of these criteria would make a perfect candidate.

These criteria should be met by a number of Board members appointed by the NomCom. Thus, selection criteria are effectively enforced.

3. <u>ALAC – Nomcom Candidate Criteria</u>

(Taken from the document developed by ALAC - Link to be included once online)

- Experience and skills that bear on gathering, understanding, and communicating the interests of individual users would be advantageous.
- Perspectives not otherwise reflected in the existing ALAC membership would be advantageous, as well as basic knowledge of the DNS. The NomCom's selections for ALAC are intended to diversify the skill and experience sets of the ALAC.
- Time Commitment The basic responsibilities of an ALAC member demand a time commitment of approximately 25-30 hours per month on Committee related activities, although some ALAC members report spending more time that that. This includes participating in online (email) discussions, commenting on/contributing to documents/proposed actions (drafted in English), participating in monthly ALAC telephone conferences (in English), held on the 4th Tuesday of the month, participating in ICANN Working Groups outside of the ALAC and meeting with/making presentations to, local and regional organizations.
- A commitment to ICANN's mission and an understanding of the potential impact of ICANN decisions on the global Internet community
- An understanding of the DNS and the impact of ICANN policy on end users
- Demonstrated capacity for thoughtful group decision-making and sound judgment
- An interest in bottom-up consensus policy building in a real-life environment

- An ability to chair or otherwise provide leadership and support for a multi-stakeholder group working to reach consensus

- Consumer protection and or consumer advocacy experience particularly in communications/telecommunication sector o Specific experience and/or expertise in internet-related policy development

- An interest in and knowledge of Internet governance issues. o Leadership experience in local or regional internet-related or DNS policy experience in gTLD or ccTLD activities including specifically issues relating to Internationalized Domain Names

- Ability to bring to the ALAC a National or Sub-Regional Internet userview or perspective not currently represented in the RALO or existing ALS demographic

- an ability to work and communicate effectively in English (although there is no requirement that English be the candidate's first language)In filling these positions, the NomCom will be seeking to identify ALAC members who reflect the global diversity of the Internet community and the wide range of technical, commercial and civil society activities that are impacted by the DNS.

4. Nominating Committee | Background Information and Code of Conduct 2015

https://www.icann.org/resources/pages/2015-conduct-2014-11-14-en

The document refers about confidentiality is as follows:

▪ NomCom members will safeguard all internal NomCom communications concerning the candidates and treat them as private, confidential, and for the use of immediate Committee members and NomCom staff only, without exception.

▪ NomCom members will not disclose outside of the Committee any of the discussions, deliberations, communications, records, and notes about the candidates. Further, NomCom members will not disclose outside of the Committee the identities of the candidates under consideration by NomCom, unless NomCom as a whole has decided to do so and the explicit consent of the candidate(s) in question has been obtained.

Summary of comments exchanged among members of the working group

	GAC participation in Nomcom
	30 January 2015
Spain	Including a government perspective in the Nom Com seems to be a widely supported view both inside and outside the GAC. Opinions differ on how to achieve this goal. Board current membership comes from the business (broadly understood as encompassing companies operating in the domain name system and in the IT sector) and technical communities and academia.[1] Government perspective is brought forth by the GAC Chair who is a non-voting member of the Board. Some other Board members have experience in working for or with Governments like Gonzalo Navarro and Markus Kummer (who is a career diplomat). In the past, other voting members carried or could have carried a Government perspective to the Board, because of having worked for Governments. Bertrand de la Chapelle (a career diplomat) and Paul Twomey (who even held the position of ICANN CEO for 6 years) are outstanding examples. However, they all had to overcome the prohibition for a Government official to become a Board member that Article VI, Section 4.1 of the Bylaws lays down. So, at the time when they were appointed as Board members and during their tenure, they had no ties with any Government or multilateral organization. It is curious that, in spite of the explicit exclusion of Governments of the Board, ICANN has sought and welcomed persons acquainted with Government views to join its governing body. We suggest this is recognized and organized in a way that this Governmental input is channeled through the GAC. Thus, GAC participation in ICANN would be upgraded and selection of Board members with Government background or experience would be carried out by the Governments' and IGOs' representatives themselves. Governments and IGOs are best suited to (1) identify candidates that meet this requirement and to (2) appraise their aptitude to bring forward truly governmental views to the Board. Moreover, letting the GAC choose its own representatives on the Board would guarantee all Governments and IGOs (at least, those represented at the GAC) have their say in the appointment, and depending on the number of positions filled by the GAC, gender, geographic and cultural balance could be taken into account. We are, thus, advocating direct appointment of Board voting members by the GAC. That would entail amending the Bylaws, the same as proposals made by the BWG-NomCom do. Prohibition for Government officials to be Board members in Article VI, Section 4.1 could be reviewed.[2] But, if this is considered too ambitious, we should demand that a number of Board members have a Government-like profile. Criteria to make up that profile could include: - Having worked for a sustained period of time for a national Government or IGO.[3] - Standing out for their dedication and achievements in advancing public interests in areas that are relevant for ICANN (ranging from IT development, IP rights or international relations to more internal matters such as financing, budgeting or auditing).

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[1] Drawing from https://www.icann.org/resources/pages/board-of-directors-2014-03-19-en, there would be 8 members from the DNS and IT sector, 4 consultants, 5 members from the technical communities and 2 University professors. The GAC liaison is the 20th Board member.

[2] There are different methods to avoid members so appointed to receive instructions by their national Government or IGO. For instance, the rules applied by the European Union member States to second national experts to the European Commission.

[3] This requirement could be met, among others, by a civil servant who takes a leave or time off from their Government without relinquishing its civil servant status or the possibility of going back to the Government later.

	- Being experienced in building partnerships or agreements among different parties (either between Governments or between Governments and private sector organizations, for instance, by actively promoting private sector self-regulation or co-regulation arrangements).
	- Geographic, gender and language diversity if the number of GAC selected members is higher than one.
	A combination of several of these criteria would make a perfect candidate. If direct election by the GAC of candidates fulfilling these criteria is not an option, they should definitely be applied by the Nom Com when selecting a number of Board members. The number of Board members to be chosen according to these criteria should be established. The GAC should discuss whether the "Government" outlook should be represented at the ccNSO and GNSO Councils and at the At-Large Advisory Committee through the positions filled by the Nom Com. Spain has signed a contribution together with some other countries and distinct economies to the public comment period of the BWG-Nom Com report since we are persuaded that failing direct election by the GAC, Government representatives in the Nom Com could better put forward and defend the enforcement of criteria such as the ones suggested above to ensure the nomination and selection of Board members with broad Government perspectives. Nonetheless, if confidentiality constraints cannot be eased and prove unsurmountable for the GAC to designate representatives in the Nom Com, the GAC should at least demand that criteria agreed by the GAC are respected by the Nom Com in the selection process, that the Bylaws set a fixed number of Board members that should meet these criteria, and that the Nom Com strives to look for candidates that have that Government-like profile.
Usa	Confidentiality requirements of the work of the NomCom pose serious challenges for GAC representation on the NomCom, because the views of all individual GAC members cannot be effectively represented by a single or even three GAC participants in the NomCom. Any positions and/or decisions taken by a GAC participant in the NomCom's deliberations could only be representative of that individual government, rather than of the GAC membership as a whole. That there is merit in providing a government "perspective" regarding the work of the NomCom and believe that we should focus on developing consensus GAC advice regarding the criteria against which the NomCom will evaluate proposed candidates. The challenge, as we see it, goes beyond asking individual governments to cede their decision making authority to another government -- it would actually involve GAC members agreeing to have individuals from other countries represent their governments. As far as I understand the NomCom rules and procedures, all participants contribute to the NomCom deliberations in their individual capacities.This is due to the confidentiality requirements attendant upon a process that actually reviews individuals who are nominated for consideration.If that understanding is correct, then any potential "GAC" representative wouldn't even be in a position to consult with their own government. This goes to the point others have raised about the value of having a "governmental perspective" included in NomCom deliberations. That would not actually be the case, according to the NomCom rules and procedures. Rather, the NomCom would be receiving the personal views of individuals who happen to be employed by a government. In my system, I'm expected to represent the official, cleared views/positions of the USG, and not my personal views, at GAC/ICANN meetings. It is for these reasons that the USG is supportive of the development of a GAC position related to the criteria we think would be useful for the NomCom to take into account as they conduct their interviews and assessments of the individuals nominated for consideration for ICANN positions, rather than trying to find a methodology to permit representation by individual GAC members to "represent" the GAC (which doesn't seem possible to us).

Iran	I do not understand why govermnets should accept the Multistakeholder Approach in which they(Govermnets) are marginalized and not having equal footing. We totally disagree with current approach, It is unconstitutiional, non democratic and even discriminatory
EC	GAC participation in NomCom is important, in particular since GAC has a crucial role in advising ICANN on public policy issues and that the ICANN board at occasions tends to disregard or misinterpret our advice. GAC members on NomCom would have to be elected, chosen, appointed by the GAC to represent public policy concerns as a whole and to take into account governmental concerns, not the specific national ideas of the individual GAC representative's country (as per GAC chair obligations according to the GAC operating principles). GAC principles or guidelines could be developed for the GAC members on NomCom in that regard. In this, GAC members should be able to elect a representative that can represent their views about the role of government in advising ICANN and helping to ensure that board candidates in NomCom take that into consideration when standing for a position in the ICANN board.
Argentina	Selection of the leadership roles in ICANN (half of the Board, GNSO.ccNSO and ALAC members) by the NomCom is of high importance for ICANN and it is a task that must be performed under the multistakeholder model concept: all stakeholders in an equal footing. If governments do not get involved in NomCom, there is no equal footing in the selection of leadership roles in ICANN.

5. Present composition of the NomCom:

15 voting members
5 ALAC
7 GNSO
1 ccNSO
1 ASO
1 IAB(IETF)
3 non-voting members
GAC
SSAC
RSSAC
1 non-voting Chair
1 non-voting Chair-elect
1 non-voting Associate Chair

The no voting GAC representative has not been appointed.

6. Proposed NomCom composition

The BWG NomCom recommends that the size of the NomCom be expanded to 23 to 25 members, along with a non voting Chair and Associate Chair, for a total of 25 - 27 individuals. In the case of the ASO, ALAC, ccNSO, GNSO members are to be appointed based upon the 2nd level of their organizational structure.

The members for the IAB (IETF), RSSAC, SSAC, and GAC would be appointed as indicated below.

Five members appointed from the At-Large Advisory Committee, with one from each Regional At-Large Organization
Five members appointed from the ccNSO, with one from each geographic region
Five members appointed from the ASO, with one from each geographic region
Four members appointed from the GNSO, with one from each Stakeholder Group
 Up to three members appointed from the GAC
One member each from the IAB (IETF), SSAC and RSSAC

7. Spain, Paraguay, Chile, Uruguay, the European Union and Argentina Comments about the Review of ICANN´s Nominating Committee (NomCom) size and composition.

These comments are submitted by Spain, Paraguay, Chile, Uruguay, the European Union and Argentina.

The undersigned fully agree on the importance of the Nominating Committee (NomCom) in the selection of ICANN´s leadership structure as well as in filling positions in the ccNSO and GNSO and the ALAC.

In accordance with what has been established by the Tunis Agenda of the Information Society, in its Paragraph 31,Internet governance must be based on the full participation of all stakeholders, from both developed and developing countries, within their respective roles and responsibilities.

As we consider the role of NomCom as a very important body for the selection of key roles within the ICANN structure, an active and fair participation of the Governmental Advisory Committee in it is relevant for sustaining the multistakeholder model of the Internet Governance.

Spain, Paraguay, Chile, Uruguay, the European Union and Argentina welcome the report prepared by the Board Working Group on Nominating Committee (BWG-NomCom) in relation to the size and composition of the NomCom.

Although this document brings new perspectives about the participation of the Governmental Advisory Committee in the NomCom, we believe that the GAC must have a fair representation in it.

The undersigned believe that the Governmental Advisory Committee representation in the NomCom must be composed by five representatives, in order to properly reflect regional diversity, and have three delegation votes.

While agreeing with this proposal, t**he countries and organizations endorsing this contribution** consider this big step forward in enlarging avenues to uphold public policy interests in ICANN should be accompanied by other measures to ensure that criteria to identify candidates with broad public policy perspectives are taken into account.

Spain, Paraguay, Chile, Uruguay, the European Union and Argentina.
Reference document:
https://www.icann.org/en/system/files/files/bwg-nomcom-21aug14-en.pdf
Comments space in ICANN website:

https://www.icann.org/public-comments/bwg-nomcom-2014-08-21-en

8. EXCERPT FROM GAC-BOARD JOINT WORKING GROUP (JWG) JUNE 2011 REPORT RE: GAC LIAISON TO THE NOMINATING COMMITTEE

GAC Liaison to the Nominating Committee: ICANN's By Laws provide for a non-voting liaison from the GAC to the Nominating Committee. The GAC Operating Principles do not specifically address this particular liaison function, although Article XI, Principle 44 provides that the Secretariat will undertake, among other things, liaison activities as necessary for the efficient functioning of the GAC.

Until 2007, the GCA Chair nominated individual GAC members to serve as the GAC liaison to the Nominating Committee (NomCom); there have been a total of four such liaisons. The confidentiality requirements of NomCom deliberations severely constrain the ability of the GAC liaison to provide the GAC with reports on the nature of his/her contributions to the work of the NomCom. Extensive discussions were held, facilitated by briefings by the Chair of the NomCom and the GAC liaison at the time, during ICANN/GAC meetings throughout 2007. It was ultimately determined that this particular liaison function was problematic for the GAC, in view of the constraints imposed by the NomCom procedures that hampered the ability f the GAC liaison to represent the broader views of the GAC.

The JWG is aware of the general support in the community for the inclusion of a government "perspective" in the deliberations of the NomCom. However, the essential challenge for the GAC membership remains: this particular liaison cannot represent the views of the GAC membership as a whole. This is not to say definitively that the GAC would disagree with the sentiment that a government "perspective" is helpful to the deliberations of the NomCom. It is rather to say that this issue touches directly on the issue of sovereignty, which cannot be transferred from one government to another.

Pending further discussions to confirm that, notwithstanding the representational challenges noted above, there is general agreement on the merits of including a government "perspective" in the NomCom process, the following options should be discussed and further elaborated:

> **Options:**
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> 1. Amend the ICANN Bylaws to clarify that this particular function is not a "GAC" function per se, but is a function that could be filled by inviting the GAC to identify possible candidates who are not currently serving as GAC representatives to fill that role[4].
> 2. Determine that including a GAC liaison is problematic and amend the Bylaws accordingly to remove any references to a GAC liaison to the NomCom.

If the Board decides not to amend the Bylaws, clarify through a public statement that: (a) the so-called "GAC liaison" is understood to represent the individual views of that particular government and not the GAC as a whole, while also considering amending the current confidentiality procedures for the NomCom that inhibit discussions between the "GAC liaison" and the GAC membership. Alternatively, the Board could clarify that, due to the inability of a single GAC member to effectively represent the views of the GAC, the

GAC PARTICIPATION IN THE NOM COM
Re: report of the ICANN Board Working Group on the Nominating Committee
https://www.icann.org/public-comments/bwg-nomcom-2014-08-21-en
        The report issued by the ICANN Board Working Group on the Nominating Committee (BWG-Nom Com onwards) proposes that the GAC have 3 voting members in the Nom Com and that they have altogether 1 vote. Currently, the GAC has a non-voting seat in the Nom Com which has been vacant for 7 years due to the constraints posed by the confidentiality rules (https://www.icann.org/resources/pages/2015-conduct-2014-11-14-en and https://www.icann.org/resources/pages/2015-procedures-2014-11-14-en) applying to nominees for the GAC.

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[4] This determination would require amendments to both the ICANN Bylaws and the GAC Operating Principles.