Multiple Layers of Jurisdiction

1. Jurisdiction of incorporation.
   a. This refers to the jurisdiction in which an entity is legally incorporated.
   b. ICANN is legally incorporated under the laws of California, as a public benefit corporation (a type of non-profit corporation). This is reflected in ICANN's Articles of Incorporation.
   ~~1.~~c. PTI is also incorporated in California, and the Empowered Community will be incorporated in California as well. These are required by the current Bylaws (adopted 1 October): see 6.1 on the EC; 16.1 on PTI.

2. Jurisdiction of Headquarters Location.
   a. This refers to the jurisdiction in which an entity's headquarters is physically located.
   ~~a.~~b. ICANN's headquarters is in Los Angeles County, California. This is required by Section 24.1 of the ICANN Bylaws, which states "The principal office for the transaction of the business of ICANN shall be in the County of Los Angeles, State of California, United States of America."
   c. The new bylaws adopted 1 October are very explicit on this matter - see 6.1 on the EC; 16.1 on PTI and 24.1 on ICANN. If there comes a time that the jurisdiction should/needs to be changed there is now a mechanism for doing so in 25.2 (fundamental bylaw). These were agreed in WS1, in the proposal and adopted as such.

3. Jurisdiction of other places of physical presence.
   a. This refers to other places where an entity maintains an ongoing physical presence sufficient to subject the entity to the laws of that jurisdiction. Under US law, this would generally be referred to as maintaining a "permanent establishment for the conduct of business."
   ~~2.~~b. ICANN has permanent establishments in Singapore and Istanbul (described as "hub offices"); Beijing, Brussels, Geneva, Montevideo, Seoul, and Washington, D.C. (described as "engagement offices").

I guess that any jurisdiction where ICANN has important assets may be considered from a "stress test" scenario, i.e. the risk of interventions by any branch of the Government of those jurisdictions directed to unduly influence the operations of the organization..

~~3.~~4. Jurisdiction for Interpretation of Contracts, etc. (Choice of Law), including contracts with contracted parties, contracts with other third parties, and actions of the Empowered Community.
   a. This refers to the jurisdiction whose laws will be used to interpret the rights and responsibilities of parties to a litigation, arbitration or other dispute resolution mechanism.

  b.   Choice of law may be specified in an agreement. If no governing law is specified, the governing law will be determined in the dispute by the judge, panel or other decision-maker.

  c.   ICANN's base Registry Agreement for New gTLDs does not specify a governing law.

 ~~a.~~

Under choice of law, I would highlight the following topics: potential flexibilities to attend and address the different legal frameworks applicable to where contracting parties are established, especially when there are potential conflicts between commitments derived from ICANN and such national/supranational legal frameworks; freedom to choose applicable law, etc.

Who has the freedom to choose the appropriate law???

5.   Jurisdiction for litigation of disputes (Venue).

  ~~4.~~a.

   ~~a.~~i.   Contractual disputes with contracted parties.

   ~~b.~~ii.   Contract disputes with other third parties.

   iii.   Enforcement of actions of the Empowered Community.

  b.   This refers to the type of proceeding (e.g., litigation, arbitration, IRP, etc.), the provider of that proceeding, and the physical location in which the proceeding will take place.

  c.   ICANN's base Registry Agreement for new gTLDs specifies arbitration using the International Chamber of Commerce in Los Angeles California (or, if the registry is an IGO, Geneva, Switzerland).

Under venue or venues: multiplicity of venues and of providers of dispute resolution mechanisms (be it judicial or arbitration). Flexibilities as to standards, election of providers, language of proceedings, freedom to choose for the parties.

They are belligerent, so how they will reach agreement on the chosen standard, provider and language?

~~c.~~   I guess that under "venue" we would need to consider the IRP and other internal redress mechanisms and how well they address the needs of a global stakeholder community, in terms of their composition, the language of proceedings, the venue(s), the providers, etc..

 ~~5.~~6.   Relationships with the national jurisdictions for particular domestic issues.

7.   Meeting NTIA requirements.

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As my audio link in today's meeting was not satisfactory, I take the liberty to submit in writing a somewhat different approach:

Jurisdiction as per articles of incorporation, US legislation or ICANN fundamental bylaws

 1.   Incorporation

2. Headquarters
3. Fiscal status
4. Federal requirements (DoC, NTIA, California or other)

Additional jurisdictions which might facilitate ICANN's duties and services outside the USA
1. Human resources management (employment, visas, insurance, pension…)
2. Relations with contract or other parties
3. Dispute settlement
4. Initiatives centered on the global Internet user community, not specific to the USA
5. Link to, and Interaction with different jurisdictions outside the USA
6. Relations with sovereign states, as necessary (NOT in replacement of GAC, which remains the venue for their participation in ICANN's policy process)
6.7. If necessary, Fund (yet to be set up) for the management and use of funds from auction of gTLDs.