BUENOS AIRES – ATRT 2 Wrap-Up Session
Wednesday, November 20, 2013 – 17:00 to 18:00
ICANN – Buenos Aires, Argentina

BRIAN CUTE:

This is ATRT 2. We're going to start our face-to-face meeting that's scheduled for 17:00. We are at the point of our process now, in Buenos Aires, where we're going to discuss any modifications that we're going to make to the Draft Report, based on the inputs we received from the community this week.

What I'd like to do, in the time that we have, everybody's got their hard copy hand out of just the recommendations and the Draft Report – I'd like to go through them one by one.

I'd like to agree or identify on some form of consensus on what changes we're going to make to these recommendations based on the inputs we heard this week. When we agree to that we'll then have an assignment of who's got the pen to make those edits after BA and circulate to the Team for full Team review. If everyone's okay with that approach why don't we jump in?

We're going to start with the GAC-oriented draft recommendations. Larry has to catch a plane and he's here, so we want to take advantage of that. Those would be number six, first page. Increased transparency of GAC-related activities. Let's just go one by one. Go ahead Larry.

LAWRENCE STRICKLING:

I think the first thing to ask people their views on is the use of the word, or the phrasing that the "Board should request that the GAC consider", I

think those of you who were with us this morning heard [Minal? 00:02:14] make a comment about how she thought the word "request" might be too directive.

I'm not sure how other people feel about that; as to whether or not we want to find a softer way to phrase that? I'd like to toss that out there to see if others have a reaction to that. To me, "request" does not imply in my mind a directive that the GAC has to do it, but she was sensitive to it. The word "suggest" might be a little softer. I guess the question is what other people thing.

JØRGEN ANDERSEN: I participated in a short conversation with [Minal] and Larry afterwards, and I can confirm the description Larry has given. I think [Minal] herself gave a proposal that "the Board should work together with GAC in order to…" This and this. That was what she preferred.

LAWRENCE STRICKLING: Right, which I actually thought brought the Board into it more intrusively.

JØRGEN ANDERSEN: Yes, but I don't think, Larry, that her concern was the comment you made about this indirect approach via the Board to GAC. That was not her concern. I think her concern was the word "request" and that was why she proposed the other phrasing.

LAWRENCE STRICKLING: I've got Alan and Carlos.

ALAN GREENBERG: I thought that "the Board work with the GAC" was far more intrusive, in saying the Board had a responsibility in actually carrying it out, which I didn't think was appropriate. I thought I heard someone say, "Why don't you just send it to us and ignore the fact that the AOC says we go to the Board, and also making it more difficult for the Board to report back?" My inclination is to ignore those subtleties or niceties and simply make the recommendation to the GAC. That's my inclination. The other one is to ask the Board to pass this onto the GAC, some words like that.

SPEAKER: As a GAC Member I understand it differently.   There are Working Groups, there is a Board/GAC Working Group that tends to deal more with issues that might require an amendment of bylaws, while there is an internal GAC Working Group on Operating Principles, which has been converted into the GAC Working Methods. I don't think it's intrusive.

When you say, "They should work it out," for me it means work it out in terms of if this is an internal GAC issue then it could be solved internally, in terms of the operating principles, or the so-called working methods. If not, if it requires a revision of a different instrument, then it should go to the Board/GAC Working Group, which has worked very slowly, let's say.

To work it out in the respective Working Group… "The Board and the GAC should consider a number of actions to make deliberations more transparent and better understood to the community." The way they

said it sounds intrusive, to me doesn't sound intrusive. They should work out what level of change that requires.

LAWRENCE STRICKLING: I think we'll just keep this one open for the time being. I think the sub-parts of #6.1 in terms of the GAC 101 sessions, publishing agendas for meetings, updating the website, opening conference calls to other stakeholders, structuring GAC meetings and working inter-sessionally in establishing agenda-setting calls… I didn't hear any feedback from anybody suggesting that that was inappropriate. I'd propose we just leave those. I don't think we've gotten any comments that suggest that's not appropriate.

#6.2, I think on the issue of open meetings, what I heard this morning was two interventions from Iran and UK that basically restated what we have written here, so I don't see a reason to change that. Any different view? #6.3, the issue about developing and publishing rationales, I think we heard some pushback about their ability to publish rationales.

I heard Mark Carvell from the UK suggest they might set up a session where they come in after the communicaé is issued and be there to explain it. Maybe we want to soften the word "publish" here in terms of disclosing. Unless people feel really strongly that we want it in writing…

ALAN GREENBERG: I think "disclose" is good. I don't see how they can do it in any other way than writing, but it takes the demand off of us and puts it onto them to be more innovative.

BRIAN CUTE: Or "communicate". "Disclose" has a connotation that something's being hidden.

ALAN GREENBERG: "Communicate" is fine.

BRIAN CUTE: "Communicate". They can determine the form.

LAWRENCE STRICKLING: Any other on that? #6.4 was a direction to the Board. This was a part of the ATRT 1 Recommendation (10) that hadn't been done by the Board. Again, I heard nobody suggest we shouldn't continue to insist on that. Any different views? Lise?

LISE FUHR: It's not specifically on this one, but the Board was not happy with the wording where we said the Board should make GAC do things.

LAWRENCE STRICKLING: Right, but this is the Board. This is a direction to the Board.

LISE FUHR: Yes, but on the other ones have we changed the wording? We say in #6.2 and #6.3 that the Board should request that GAC… So we should write that we would request that… Or…

LAWRENCE STRICKLING: That's the one I think I reserved on. That was what we were talking about on #6.1 with [Minal's] comment too. Okay. #6.5, I thought we didn't' get any feedback today on this, but I remember there was some issue about the bylaw things. Fiona Alexander, we've changed this language a couple of times?

FIONA ALEXANDER: Yes, we changed it based on staff input, so we just need to go back and double-check. Bill Graham's point was that there is a package of bylaw amendments and they were holding that off. I think the text reflects that, but I think you might want to make the point a little clearer, because I think the edited version that [inaudible 00:10:10] gave us, which is "the Board should do this as quickly as is feasible" or something like that, takes it into account. We probably just need to explain that to them.

LAWRENCE STRICKLING: Okay. #6.6 I think is the one that created the most reaction from the GAC Members today. They obviously had… Certain speakers had a strong negative reaction to the idea of a code of conduct. I think there was issue taken with some of the suggested elements of such a code. I have no problem and would recommend we drop the word "code of conduct" but I'd replace it with the idea that the GAC should consider creating at least a set of expectations among Members, so that the issue is having Members commit to each other that they'll come prepared for meetings.

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They'll come with the ability to speak on behalf of their capital and things like that. So it's not stated in terms of any obligation to anybody other than their fellow GAC Members, to help ensure that they have productive meetings when they have them.

BRIAN CUTE: One of the things we also heard was, "What was the rationale behind this recommendation?" If someone could refresh my recollection as to what the rationale was behind it?

LAWRENCE STRICKLING: Well, it came from the comments, not from GAC Members but others. I didn't have a chance to go back and read the original comment received, but I think part of it is a sense that the GAC operates in a somewhat chaotic fashion and maybe a code of conduct might help that issue.

FIONA ALEXANDER: There are a variety of commenters in the written submissions and in Durban that raised this as a concept, which is why I think you all asked them this specifically. The specific suggestion for a code of conduct came from Nominet, I think, in their comments to the Review Team's initial consultation.

BRIAN CUTE: Carlos?

CARLOS REYES: Two very short comments. It was in Durban the feeling they were asking for transparency and accountability for everybody so why not GAC? It was not very focused. I get the feeling, on the second point, Larry, when you say that it develop a code of conduct for its Members. I think that's very similar to the discussion we had with the performance of the Board; that the Board said, "okay, evaluate the Board as a whole, not its individual Members.

"If you want to evaluate individual Members it's the NomCom issue or the 360', whether they're going to be re-elected." The way I heard it this morning is there should be a code of conduct of the… There should be clear procedures of the operations of the GAC, not just when they read the code of conduct and they come from the public service they think it's an individual liability.

So I would revise "code of conduct for its members" and change it for "clear, transparent procedures of the GAC as a whole". Thank you.

JØRGEN ANDERSEN: Following up on Brian's question about what was the rationale behind this, maybe you could change the text slightly, starting with "in order to meet the concerns expressed regarding this and this, it is proposed that GAC consider developing rules of operation, codes of conduct or similar to…" and continue it as it is.   "These codes of conduct, rules of operation, might include this and this…" as mentioned.

BRIAN CUTE: I think that's a very good direction to go. My follow on question would be we need to look carefully at our record to see whether it was just

Nominet. Let's check the basis of that if we're going to insert that language, to make sure we have a firm one.

ALAN GREENBERG: My recollection is that our last interaction with the GAC, at least one person said we should have a code of conduct for something like that. I said at least one. The words are clearly red flags. Another GAC Member yesterday said, "Maybe instead of a code of conduct we should say they have to take an oath when they start sitting on the GAC." He thought that was great. I would have thought that's much more inflammatory, so there are different perceptions here.

To frame it in "why", if you recall, in the timeframe we're talking about, there were allegations that at least one GAC Member was making claims on behalf of their country, when it was understood that that person had a personal interest in the subject, but saying, "This is a country position," instead.   That's one of the things that brought out some of these demands. That's not something we're likely to put in a Report.

AVRI DORIA: I tend to think that both for the Board and the GAC, in terms of this, please don't put requirements on our Members as something we should carefully avoid.   Not that we should carefully avoid putting in the obligations. We should carefully avoid not putting obligations. No, we should do it carefully. Yes, I know, I'm getting twisted, that's why I switched it. We should indeed, we just have to do it carefully.

I think we're talking about a set of normative guidelines. I don't know if that's wording that works, but it seems that's what we're requesting,

both of the GAC and of Board Members when we review them, it's something normative; that they measure themselves and we get to measure them against them.

BRIAN CUTE: If I could add, there's clear comfort with the phrase "working methodologies". In fact it's a phrase that's been adopted and is being used, to the extent that helps. I'll also point out that I thought I heard pretty strong negative reaction to the explicit mention of conflict of interests. Did others hear that as well? Is that something that we should reconsider, being explicit about that?

ALAN GREENBERG: I heard it as well and have very negative feelings about removing that one, because I think that's a critical one. Someone did suggest that what we should do is suggest that everyone in ICANN have a code of conduct, and then the GAC would have to adopt it too. I'm not sure we can do that on the short term.

AVRI DORIA: In that, I'm not sure why we don't really request of them what we request of all of us, which is not conflict of interest, except for the Board or financial, but its declared SOIs, as is done by others, anyone in Working Groups, anyone… They just have to post what their interests are. You're not disqualified for it, it's just something you declare.

JØRGEN ANDERSEN: I think what caused the reaction on this particular point is that when you're a government employee it's beyond doubt that there is no conflict of interest. It's written in the legislation that if there is a COI you have to step down and not participate in dealing with an individual case. Everybody knows that.

If it's mentioned explicitly it raises a red flag and people don't understand: "Well, are you suspicious about my ability to act as a civil servant serving my government?" Probably. I don't really see why we should enter into that kind of conflict.

LAWRENCE STRICKLING: Are you okay with Avri's suggestion, that we change conflict of interest to statement of interest, which all of us signed to participate in ATRT?

JØRGEN ANDERSEN: I don't think it changes very much actually.

LAWRENCE STRICKLING: Okay. By the way, I do think there are GAC representatives who are representing countries, who are not government employees, who could have conflicts of interest.

CARLOS REYES: There are also different levels of liability. I, as a regulator, have a much higher level of liability than a permanent.

SPEAKER: But, could it be conflict of interest in the case where representatives are not government officials? I think that would accommodate much of the opposition we heard.

AVRI DORIA: Yes. Not only is there what you mentioned, but also, do we know for a fact that all governments have that same level of conflict of interest [tenure? 00:19:41] out, or is that not… There's no treaty that requires all governments to have that same conflict of interest level, I assume, so that's why… The statement of interest may be as simple as, "I am a government minister of…" Period. Or it may be, "I am an engineer that works for a company that has been assigned by the government to attend the GAC."

LAWRENCE STRICKLING: Again, keep in mind that none of these are requirements. All of these are suggestions that the GAC can choose to include or not include. They don't even have to do this, it's just that this would be suggested to them. They have total control over whether this is done and what's included and whether they do do it. I think in that sense the list is less provocative than they made it seem today, because I think they were taking it as a direction, that they had to do it.

BRIAN CUTE: I don't want to belabor, but one more stab at how we could do this? Could we state the potential problem, that in keeping with the practices of the Board of Directors, should the GAC identify an issue concerning a

COI, the GAC should consider developing mechanisms to address that? Something along those lines?

LAWRENCE STRICKLING: All right. I appreciate all the discussion. We'll take this back and see if we craft something that will work for everybody. #6.7, the issue of the high-level meetings. Again, I understand the GAC has already moved forward, agreed to doing a high-level meeting next year in London. I didn't hear any pushback on that one. Yes, Larisa?

LARISA GURNICK: I just wanted to interject that the GSE Team actually has some feedback and some items they'd like to discuss with the ATRT 2. We're about to schedule that. Coming up there are several recommendations that are related to the GAC as well as their coordination and work with the GSE Team. So there will be some follow up on that. Just so you know.

LAWRENCE STRICKLING: Including #6.7 that we just talked about?

LARISA GURNICK: Yes.

LAWRENCE STRICKLING: Okay, and then #6.8 and #6.9 both involved GSE as well. I didn't hear anything today on either of these from the GAC, but we'll await feedback from the GSE. Then the question of #6.10, which is a

formulation of the GAC and the PDP that's somewhat similar to the one that is included later on when we get to the PDP recommendation.

Maybe it's just a question of the folks who are doing the PDP wanted to look at the #6.10 and see how they liked that formulation compared to the one that's drafted in #10.2. Then I think that's it on the GAC. Oh, I would say this, I think we are going to get some feedback on this issue of how better to engage the developing world. It does seem like maybe there might be some additional things that we might add into #6.9, but it will await discussion with the GSE and the written comments before we do that.

BRIAN CUTE: Thanks Larry. Yes? Olivier?

OLIVIER CRÉPIN-LEBLOND: Before we close off on the subject of the GAC, I haven't had any chance this week to be in the GAC room, but today, on the session, I had a chance and the French delegate spoke in French. From the few words I heard and from what I saw as interpretation, I was very concerned about the quality of interpretation, or the lack thereof. For things to be… I was not shocked.

I actually wrote this one down. It said, [speaks French 00:24:01] – "this thing strikes me", which is what it is. It's not "shocks me" and that nuance I think is very important, because in the current negotiations and discussions that they're having in the GAC, I think this is dangerous, to have such poor interpretation. It would just lead to misunderstanding, and no wonder they take until 2:00 in the morning to draft…

No, because they'll go around the "shock" thing. I'm very concerned. He didn't say "shock" in French. He said, "One thing that strikes me is the lack of participation," but how it was interpreted was, "One thing that shocks me is the lack of contribution, and I was shocked by this." I think, "Wow, okay."   Actually it said, "This method shocks me."   It sounded as though it was wanted that small countries had lack of participation.

It just sounded very… It was not well said basically. I just wonder in the parts where we deal with interpretation and so on, I don't know what interpreters they're using, but I do know that the United Nations place very, very strict guidelines on their interpreters.

Now, I'm not going to ask for UN-approved interpreters for the ALAC, but for the GAC I think that if we want this organization to function properly, the quality of interpretation in the GAC, because of the issues being discussed, needs to be top-notch. I'm not quite sure that we're getting that now.

LAWRENCE STRICKLING: How about a rule that they can't go to music night? [laughter] Maybe they just had a bad night. I don't know.

JØRGEN ANDERSEN: Thank you Larry. Just to be sure that I understood you correctly, I heard you say that all the interventions we heard on various meetings about the outreach issue, the inclusiveness issue, might lead to changes in #6.9. I suppose it's the third bullet point in #6.9, or what were you aiming at?

LAWRENCE STRICKLING: Yes, I don't know that we'd change what's here, but I think there might be an opportunity to add even some additional thoughts. One person came up to me and said, "What we need is a GAC Academy to help train Members of the GAC who are new to this organization coming from the developing world." I think some of these thoughts are in here, but maybe not as directly as some specific ideas like that.

JØRGEN ANDERSEN: Well, yes, I think you're right, but when we discussed this recommendation I think that we took two parts into one particular paragraph in this paper. We took the outreach vis-à-vis governments, but we also dealt with outreach vis-à-vis other stakeholders.

I think that what we heard today, and I don't know whether it was mostly directed to the PDP participation, but there is a general aspect of problems related to lack of participation from stakeholders in third world countries, and even other countries as well. Not only governments. I think that when we made the original text, that was reflected in the third bullet in #6.9.

LAWRENCE STRICKLING: Right, that is much… #6.9, third bullet, is broader than just GAC, as is the fourth bullet as well. I wouldn't propose to depart from that or retreat from that one iota.

BRIAN CUTE: Okay, we've got 40 minutes left in our session. If we need to go over I hope we can, but it would be nice if we could keep to our time. That being said, I'd like to go back to the beginning, to number one. Let's go through the rest of them in sequence.

LAWRENCE STRICKLING: I'm sorry to upset your order, but I ask that we actually take up Recommendation (10), which is the PDP. I'd like to make a case that we make this significantly stronger than it is now. In particular, I think #10.4, the bullet points there… What I heard in this discussion the last few days – and I think we heard a lot of it in Durban – is that there is still this fundamental problem of the Board stepping in on top of what people think have been settled bottom-up processes.

I appreciate the work that the drafters did on #10.4 to at least require the Board to state what it's doing, but I'd at least put on the table today, and we don't have to decide it today, the idea that maybe we can go stronger and just say, "The Board shouldn't be doing this. They shouldn't be upsetting…"

There ought to be a presumption that when they get a bottoms-up statement, whether it's characterized as policy or implementation or whatever else, if it's been derived from a bottom-up process and it's consensus, the Board presumably should follow it and maybe make a stronger statement on it. Then, from that, perhaps that's some process beyond that.

BRIAN CUTE: Thanks Larry. Alan?

ALAN GREENBERG: If you ignore for the moment the current case of the Trademark+50, which is deemed to be policy by some, implementation, whatever, there are relatively few cases of the Board every doing this. There are one or two very subtle cases where they adjusted a knit. I personally don't think they should have adjusted the knit, but I'm not sure it warrants an AOC recommendation or ATRT recommendation over it.

There are enough people on the Board, I believe, who will say we shouldn't be touching anything, but I think we can make this recommendation with impunity and get what you're asking for without us implying that they have been doing it. I may be wrong but that's the way I read it.

LAWRENCE STRICKLING: Yes, I think that what I was suggesting was not that we criticize past behavior, but that we lay out a very strong presumption of conduct, which I think is almost implicit in the recommendation that's drafted. I think we ought to go the next step and actually state it as the presumption.

ALAN GREENBERG: That's an interesting way of doing that, and I'll try. I'm not trying to wordsmith here, but, "We presume that's the outcome, but the Board should clarify indeed what the Board believes on this." Something like that? No?

LAWRENCE STRICKLING: I guess what I would say is, "We would say we set a presumption that when there is bottom-up consensus policy, the Board shall follow it." Then if you want to add what you have here, which is, "When the Board doesn't follow that, here's what they need to do in order to justify departing from the presumption…"

ALAN GREENBERG: That's pretty much already in the bylaws. If something comes from the gNSO with a super majority, it takes a super majority of the Board to overturn. So the Board has the discretion of at least rejecting. It's not 100% clear if they have the discretion to change. That's never been tested. Let me try to rework it and you'll have an option to go at it.

BRIAN CUTE: Two points to keep in mind: I think we heard from the Board themselves that they are in active discussion about the scope of their role, and whatever we put forward should respect that that conversation's taking place. Number two, I think the case of vertical integration is the corner-case where there was effectively no result from the bottom-up process and what's appropriate for the Board to do in that scenario is also what triggered most of this discussion. So take that into account too Alan.

ALAN GREENBERG: I will. If you remember the discussion with the Board at the last meeting, there are some Board Members who said they should have tossed it back to the gNSO again, and should not have made… I'm not sure how effective that is, but nevertheless…

BRIAN CUTE: It may be for us to offer a forward path, it may be for us to recommend that the Board sort this out with the community and offer clarity. Let's go back to #1. Actually, #1, #2, and #3 are related. This is developing objective measures for determining the quality of ICANN Board Members in the success of Board improvement efforts. #2, developing metrics to measure the effectiveness of the Board's functioning and publish materials used for training.

#3, conducting qualitative and quantitative studies that determine if the qualifications of Board candidate pools improved once compensation was available. I think the feedback that I captured, primarily, was that the Board was saying very strongly to us, "Focus this on the Board's function or performance, not individual Director's performance." That seemed to me to be a modification we could make to these recommendations. Reactions to that?

ALAN GREENBERG: I'm not sure we have three recommendations out of it anymore, but I agree with the intent.

BRIAN CUTE: So reshaping so we're focusing on the Board performance and measures against Board performance? Okay.

ALAN GREENBERG: We did hear that trying to measure whether it's possible or not is unclear. Trying to measure the pool available, which could be subjected

BRIAN CUTE: I want to ask a question about #3. I wanted to ask to test, is this a viable recommendation? Compensation was instituted a few years back. If you were to have genuine metrics you would have started at that point in time. The other question I'd ask is, "What useful data does this provide to the organizations, other than conceptual?" Alan?

ALAN GREENBERG: There are so many other changes in play with the NomCom, with the way the Board is run, that I don't think you can separate compensation from the other things at play and judge whether it's the critical thing or not.

BRIAN CUTE: So you're saying that you don't see the utility of it. Avri?

AVRI DORIA: I do, and I certainly think you can go back, because you know what the pool was in the past, or at least NomComs do. You can get a confidential person in to do that kind of thing, so the history is there. You can set a baseline from before and after. There are definitely objective things you can measure. You can measure a number of applicants. You can measure diversity of applicants.

by this, but not individual Board Members selected, yes. So the pool we may want to think of, although I don't know how we'd word it.

There are a lot of qualities of the applicant pool that can be measured. Now, does that mean a better Board? No, but it may be a more diverse pool. It may be a deeper pool. Also we need to go back and look at all the amazing reasons we had for why it was absolutely necessary to give these people money and to say, "Well, you know, it's now mixed in with other things and it's impossible to measure if it made things better," I think that's problematic.

BRIAN CUTE: Okay, let's be succinct in our points. Not to you, Avri, but we only have a limited amount of time. Carlos?

CARLOS REYES: From what I heard, the case is still that many people still don't take the money. So the question is, is it transparent which people take the money and which don't, yes, okay, period. Thank you.

SPEAKER: I think it's very important in order to see if we moved anything. Whether I agree with Avri, it's… We should keep it.

OLIVIER CRÉPIN-LEBLOND: I agree with Avri. It should be kept for reasons of diversity, because yes, it might have not enhanced the quality of Board Members, but certainly when one deals with the diversity worldwide, for some Board Members they would require the money to be able to be on that.

BRIAN CUTE: Okay. Who drafted these? Maybe I did. Do we know who drafted these? Was it me? Okay. With that input, and preserving #3 for the time being… We don't have the full Team here either, so I wouldn't reach a conclusion either way.

OLIVIER CRÉPIN-LEBLOND: If I could just add, the purpose is because there has been some discussion as to whether SO and AC Chairs would eventually, at some point, get compensated for the amount of time they take, because many SO and AC Chairs – the gNSO Chair and another one that I know – work an enormous amount for ICANN and might need compensation in the future. Certainly having this measure is something that might help in future deliberations maybe five years from now. Who knows?

BRIAN CUTE: Okay. I'm going to take on the editing of this. I heard consensus on focusing it on just the Board's performance and not individual directors. I'll make those changes. Larisa?

LARISA GURNICK: Brian, you're going to hear from the staff on the implementability topics here. It would be really useful if maybe you could think about changing the word "qualifications" to reflect some of these points, such as diversity and other measures, that would be more specific and give a perspective of the kinds of things that can be measured.

BRIAN CUTE: I'm not sure I follow exactly the thrust.

LARISA GURNICK: Right now, this states "qualifications". If you were to specify the qualifications could represent things such as… Make it a little more inclusive of other metrics of what you mean by qualifications, such as diversity and others? Qualifications by itself might be tough.

BRIAN CUTE: Got it. Thank you. Okay. We'll take that on. #4, David?

DAVID OLIVE: You've been on NomCom, right? My understanding was that all of the documentation, every facet of the collection of information during the NomCom has to be destroyed at the end of the NomCom. Is that not the case?

OLIVIER CRÉPIN-LEBLOND: It should be destroyed from individual computers.   Whether it's destroyed from the database or not is unknown. In fact, I can tell you – I don't think I'm breaking any secret – that I don't think it's destroyed year-on-year. That is because there were some cases where someone was selected and then the next person along has to be selected, so they need to keep the records for a short amount of time, until the next NomCom is able to go into position. But it's unclear.

BRIAN CUTE: It's an important question. Let's find out what the facts are on that. It could drive this recommendation one way or another. That's a to-do.

Moving onto #4, develop complimentary mechanisms for SO/AC consultation on administrative and executive issues to be addressed at the Board level.

Two questions: did we get any direct feedback on this one that suggest we should change it? I didn't hear any myself. Question: are we clear in this recommendation of what we're asking for? Alan?

ALAN GREENBERG: I've never quite understood the word "complimentary" in this context.

BRIAN CUTE: Lise?

LISE FUHR: I was just thinking, the one who wrote these, and we didn't hear anything on it, they could revisit it again and have a look at it and see if it's understandable.

BRIAN CUTE: I'm not sure who wrote this. I'm nervous that it may be me. I'll take it on board. Let's keep moving. #5, I don't think we got any comment on that one at all. Correct? Olivier?

OLIVIER CRÉPIN-LEBLOND: Just confirmation, I think it was you on the previous one. I'm looking at the templates.

BRIAN CUTE: Thanks. Larisa?

LARISA GURNICK: Brian, on that one actually I think there is a slight difference of interpretation. Legal staff walked away with the understanding that specific examples would be provided to help them respond to this recommendation, as opposed to the other way around.

BRIAN CUTE: Yes, that's understood. To the extent that we can get examples of where this was in a question, we can do that. Even if we weren't able to do that there's nobody but the ICANN Legal Department or ICANN itself, who could actually address this question as framed. The community just can't answer this question. So understood that that's a request. We'll try to get an example to provide to the staff and put into the Report. Let's note that. Alan?

ALAN GREENBERG: There was one thing I asked about, very often things are redacted until, and they confirmed that there is no process of going back and seeing if the redaction is still needed after the fact, unless someone calls attention to it and asks. We may want to incorporate that.

BRIAN CUTE: Okay, if you can find that example that we can bring into the record, that would be great.

ALAN GREENBERG: I think it was us asking ICANN Legal at one of our meetings.

BRIAN CUTE: Okay. We haven't asked to find an example of where the question has come up. If we can do that, great. Let's try to do that. Okay, moving from #5 past the GAC to #7. Okay, explore mechanisms to improve public comment through adjusted time allotments. Forward planning regarding the number of consultations given, anticipated growth and participation, and new tools that facilitate participation.

We did get some strong feedback on this. I recall from the Commercial Stakeholders Group some very strong feedback that this was maybe the crux of the issue, not what tools the community has available, but the timing, the windows, the 21 days and 21 days… Does that sound about right? Did we get anything that would make us edit this, modify this? Alan?

ALAN GREENBERG: We did get comments, and I expect we're going to get more, that we should be more explicit that comments that are consolidations of groups, be it the commercial stakeholders group, the IPC or the ALAC, should be given particular attention in making the decision on what the time levels are. I don't think we need to be prescriptive and say, "Give them more time or elongate it," but I think we should highlight the issue of those who are trying to consolidate input from a lot of people or a lot of groups.

BRIAN CUTE: Lise?

LISE FUHR: There was one thing that you should turn the question around, saying, "What is done with the comments?" because they're saying these comments went into a black hole and they never knew what happened to them. I don't know if that's to be addressed in this one or later, but that was one of the strong comments I wrote down.

BRIAN CUTE: I think I took note. It was on the comment summaries – that they be done in such a way that other ACs and SOs are able to use them in some form. It was something along those lines. I'll look back on the notes and see if it makes sense to work in… Yes?

LISE FUHR: Well, it was also, did they use the comments or not, or do you listen or do you act according to what's said in the comments?

BRIAN CUTE: You mean does the Board act? Yes? I think one thing we should do, now that you mention it, we did look at the Board resolutions over the last three years as to how fully they provided a rationale. We should look back through that to see how often they cited comment. I think that would be a good data point, and we might build on that depending on what we see. Does that make sense? Yes? Okay. Carlos?

CARLOS REYES: Something different. I have the draft of the Buenos Aires communicaé in my hand already and it says, "The GAC noted that each Member already operates within their own government's code of conduct framework regarding ATRT 2," so that might be solved there. They've already said it.

OLIVIER CRÉPIN-LEBLOND: They've put this in the communicaé? Goodness, we touched a point, huh?

BRIAN CUTE: Okay, #8, to support public participation, ICANN should review capacity of the language services. Did we get any specific input on this one that would cause us to modify it? Alan?

ALAN GREENBERG: With a slight changing of words to widen it to support public participation, Olivier's comment is quite relevant.

BRIAN CUTE: Which was…? Remind me?

ALAN GREENBERG: The shocking comment. If we widen it to include public participation and ensure the comprehension of ICANN whatever, we can include…

BRIAN CUTE: Didn't we already get at that in some form?

ALAN GREENBERG: Only in written. That was only translation, I believe, not interpretation.

BRIAN CUTE: Okay, so translation and interpretation. Add interpretation. That covers what we're looking at? Okay.

LISE FUHR: Brian, this was mine and Fiona's, and we'll try and have a look at it.

BRIAN CUTE: You've got this? Excellent. I'm going to ask everybody to try to… When you edit any of these, can we circulate it back no later than a week from today to the group, for us to look at the edits? It's not that much work. It's a few words here and there. In red line, please.

LISE FUHR: Yes, with tracking changes, right?

BRIAN CUTE: Yes. Since [Sharla] put together this document, which is just the recommendations, we'll circulate this soft copy and then folks, take your assignments, make your edits in red line and then circulate back to the list if you would. Okay, let's move on. #9, let's take these as a group. Well, let's take the first two, #9.1 and #9.2. Actually, they're slightly different.

Let's start with #9.1. Did we get any feedback that would cause us to modify #9.1, other than this is very important, which I know the ALAC underscored? Nothing? Okay. #9.2, convening a special community committee to discuss options for improving accountability. These are the appeals mechanisms.

We've received input from Becky Burr as well. I think we're going to get more input to put into our factual basis on this question. I'm not sure that the conclusion is going to change, that there's a diametrically opposed view here on whether improvements were made or not. Carlos?

CARLOS REYES: I would be careful with the "special community committee". We heard from the Board that this is really very important to them. We had a very negative result from the external expert group last time, so I would really leave it as… I don't know, "consult with the Board" or something that doesn't lock it in a special procedure that's not optimal. We are aware that they are very aware of that, so I'd be as neutral as possible in terms of the vehicle. Thank you.

BRIAN CUTE: Point taken. Avri?

AVRI DORIA: I think we should keep the "community committee" but we may want to replace "special" with "cross community committee". I don't know what "special" means, but "cross community" we kind of know what it means.

BRIAN CUTE: I think that we know that engagement of the community on this review is what's key, whether it's a committee… Don't lock into form. The community has to be engaged in a meaningful way, right? Okay. All right. Alan?

ALAN GREENBERG: A couple of things. What I heard from the Board is there is a strong belief among some Board Members that something needs to be fixed. I also seemed to hear that they're not likely to take it up themselves unless they're told to, so it's really important to keep this. I'd change the word "restructuring" to something a little bit more flexible.

For instance, if you're looking at the reconsideration issue, it's not restructuring, it's changing the grounds under which you can do something. I don't think that's quite restructuring.

BRIAN CUTE: I think the safe thing to do would be to look back to ATRT 1, because that's the origin of this work, and see if there's phraseology there that makes sense, and/or take Alan's heed about using something other than "restructuring". You know this right, Avri?

AVRI DORIA: Carlos and I do.

BRIAN CUTE: Great, thank you. #9.3, Ombudsman's role. Any input that would cause us to modify this? Make your point if you would?

AVRI DORIA: In terms of increasing the Ombudsman's role I think we got nothing but support. I think we do need to make sure that at least a group of us talk to him while he's here, since we put all these things that we want to be done to the Ombudsman and we never set up… I don't know if we even tried or if he tried, but we should at least stop in his office and try and talk to him – just to make sure he's cool with it all.

SPEAKER: You forgot the Ombudsman in Buenos Aires, after nagging him the whole Durban period?

BRIAN CUTE: Nothing to change this draft. Larisa?

LARISA GURNICK: I just want to point out that certain changes to scope of his work would have to be a change to the bylaws.

BRIAN CUTE: Understood completely.

ALAN GREENBERG: Brian, I did talk to the Ombudsman and strongly suggested that he put a comment in supporting it, or otherwise.

BRIAN CUTE: Okay, let's come back to that. We're talking about drafting right now, we'll come back to it. We might have a minute… We have three calls to go, conference calls. Maybe we'll bring him into a conference call, but your point is taken Avri. As for drafting, you got it. #9.4, develop transparency metrics and reporting. Modifications to this one based on input? Didn't hear any. Okay.

ALAN GREENBERG: We did hear that it's something that's being supported in the metrics review that's being done, saying there should be an annual report.

BRIAN CUTE: Yes. Support is support, unless support augments for editing purposes. Do we change it for editing purposes because of that? Okay. #9.5, establish a viable whistle-blower program. Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. I've noticed something in there. I'm not quite sure whether that was an error in transcription or something. It said a "professional audit of its whistle-blower policy to *insure* that the program meets the global best practices". It's got an 'i' on the version that I've got. Maybe that's been fixed, but there's a difference between insuring with an 'i' and ensuring with an 'e'. It's a very big difference in that context.

BRIAN CUTE: That's something that spellcheck doesn't catch. Thank you. Okay, yes?

AVRI DORIA: I have one thing that I'm in the middle of confirming and this was a Larry comment – the One World Trust and/or Brooklyn Center. I believe it's One World Trust and was referred back to Brooklyn, so I think there's a small change to make there.

BRIAN CUTE: You've got the pen. Thank you. Alan?

ALAN GREENBERG: They don't call it a whistle-blower program, so we shouldn't refer to it as an audit of its whistle-blower program. They've explicitly said it's not a whistle-blower program, it's a something else. We should use whatever terminology they do.

BRIAN CUTE: Or we could say "establish a whistle-blow program" and refer back to those reports and use their terminology. We have free-range here.

ALAN GREENBERG: All I'm saying is don't refer to it as "its whistle blower program" because that's…

BRIAN CUTE: Avri's going to do the research? Okay. #10, we covered this off just before Larry left, correct?

ALAN GREENBERG: We covered some aspects. There are other aspects that we didn't.

BRIAN CUTE: Okay. Are there other inputs we got on this that would…?

ALAN GREENBERG: A couple of small things. Number one, we heard pushback on "facilitators" so I'll put a footnote in or something saying that's essentially a placeholder word for external people helping the process. "Facilitator" itself is objectionable to some people. First bullet of #10.1.

BRIAN CUTE: Olivier?

OLIVIER CRÉPIN-LEBLOND: I don't know but throughout that meeting I couldn't help thinking that there was a bit of a confusion as to their understanding of "facilitator", thinking that a "facilitator" was going to be a mediator rather than to be someone who would help them hold the pen on things. I've seen gNSO Working Groups already have staff facilitating work by being able to put together tables, etc., and doing a lot of the legwork.

I don't know what the pushback, with regards to having more people being able to do that, is all about. If on the other hand it means mediation, that's a different thing.

ALAN GREENBERG: I understand the pushback.

BRIAN CUTE: I understood the pushback from [Klauss] to be outsider versus insider.

ALAN GREENBERG: Outsiders who come in with touchy-feely methodologies, which some cultures would find very, very difficult to deal with.

BRIAN CUTE: What's the suggested modification in brief?

ALAN GREENBERG: Change the wording or put a footnote in to say we're not locking into a specific type of professional service, but professional services in general.

AVRI DORIA: Yes, essentially it's funded options for facilitation, and then we can note somewhere that that could mean training or… Blah.

BRIAN CUTE: Thank you. Well done. Okay, any others that modify #10.1? Nothing? Okay. Have you got this one Alan?

ALAN GREENBERG: I have it.

BRIAN CUTE: Okay. #10.2.

ALAN GREENBERG: We already have instructions to merge #6.10 into it to make sure we're covering all of the concepts.

BRIAN CUTE: Who's got the pen on this? Okay. #10.2 is covered. #10.3.

ALAN GREENBERG: #10.3 or somewhere, I think we want to talk about both education, making information available in understandable ways, and perhaps inreach of trying to attract more people. We shouldn't be focusing just on the people, the reports that aren't there, but the others that we know aren't there.

BRIAN CUTE: I agree with you. We heard consistently that the way these things are communicated, the wording, the packaging, the communication platforms, is critical for understanding and access. I'm not sure if this is the right home but I think we all heard that. Lise?

LISE FUHR: I think we could maybe divide #10.3 into two because you have the global participation and you also have… What Mikey said – I think his name was Mikey – that you have the same 20 people doing Working Group stuff. It's not only the global part that's not good enough, it's also

that we need more people coming in and out, so it's not the same 50 people being in the Working Groups.

BRIAN CUTE: So is that different from the way this is communicated, so as to be understandable and to draw people in? Are you talking about actual outreach to draw more participants, as a separate element?

LISE FUHR: Yes. I'm talking that we should try and have a more diverse pool, because we have the same 50 people within the ICANN community who are participating in the same Working Groups.

ALAN GREENBERG: We're focusing on what the Report said. There's been another problem identified. That is that the pool just isn't big enough. Even if we're only taking North Americans it isn't big enough. I think I understand what to do.

BRIAN CUTE: Do you have what you need?

ALAN GREENBERG: Yes, on that one. The last item I have is the item that we had as a note or a footnote saying, "Why wasn't the last bullet of #10.3 applicable to ICANN in general?" We heard support from ALAC, SSAC, and I know it's coming from NCSG. So I think that's something that, if the group is willing, I can expand into a full recommendation.

BRIAN CUTE:	Everyone okay with that? Okay, carry on. #10.4 we covered? I think we touched on this. We'll go to #11. I think I remember that… I was looking for the one on policy versus implementation, and I'm wondering if it's what #4 is, in disguise. Yes, that's the executive function. There it is, in the parentheses. Just jumping back to that, my suggestion was going to be that we drop that all together.
	There's a Working Group engaged. Chuck was speaking to the fact that a Working Group has been set up and is well populated. In the research I did there was a very good discussion at the ICANN Beijing meeting. I think we all recognize that it's difficult to draw a clear distinction between the two. It may be an impossible task. My person view is that because of the confusion its' created in the community over time, it's important to try hard to do that.
	I think that work is underway, and now knowing there's a Working Group that's going at it, my mind has shifted that the work is there and we need not have a recommendation, necessarily. Avri?
AVRI DORIA:	I guess I disagree in that first of all the Working Group is really just looking at gNSO again. I think we perhaps want to reword it, and I know it wasn't mine but I could possibly take a crack at making suggestions, because I think that what we want to make sure doesn't get lost is a continuation of ATRT 1's concerns, and just making sure that the breadth is wide enough to not just be gNSO specific.

BRIAN CUTE: Okay. I take that point. I'd also suggest that the other way we can approach this is in our assessment of implementation of ATRT 1. We can also make suggestions about forward going work, without offering a recommendation. I'm just pointing that out, but why don't you provide a formulation to me, and we'll work that through. Okay.

AVRI DORIA: Yes. I just don't want to give up on it yet.

BRIAN CUTE: That's fine. Alan?

ALAN GREENBERG: My recollection – and I don't remember the details of the ATRT 1 – was that there were some strong statements saying that although the Board ticked it off as complete, we had reason to believe it was far from complete. So I think we need to make sure the assessment says that.

BRIAN CUTE: Okay. Moving to #11. Olivier?

OLIVIER CRÉPIN-LEBLOND: I was just going to come back on this policy versus implementation thing, and I agree with Avri totally. Is there any way of the ATRT suggesting that this should be done on an ICANN-wide level, rather than just on a gNSO level?

I'll tell you why, because the ALAC had a meeting with the Board earlier, at some point, and there were some Members of the Board that were vehemently against the idea of a cross-community Working Group on policy versus implementation, because they said, "Only the gNSO does policy." It's all in the transcripts.

BRIAN CUTE: Okay, we can take that into consideration. Okay, #11, effectiveness of the review process. These are our observations on how to improve this review process. Did we get any feedback that would cause us to modify these recommendations? Olivier?

OLIVIER CRÉPIN-LEBLOND: I have noticed a confusion between the overall review processes and the ATRT 2 review process. Brian, you yourself corrected someone with regards to the AOC mandated ATRT review. I think we might not have made the case for the difference between the two in there. It might just require one sentence to basically say, "ATRT 2 is mandated. It's not something you can change." The others might be something that could be changed.

ALAN GREENBERG: The AOC is scattered throughout the whole thing. Where it's missing is the title, I think.

BRIAN CUTE: Thank you. Okay, got it. Anything else? Okay. #12, financial accountability and transparency. Lise?

LISE FUHR: As you yourself noted, there should be some more words put in it so that it's covering financial planning, I think it was?

BRIAN CUTE: "Proper financial planning" was the phrase suggested by [Cherine]. Yes, Jørgen?

JØRGEN ANDERSEN: Yes. Following up on Lise's remarks, I think that what's important, and my perception, is that there is a wish to combine the activities and the financial figures in a more explicit manner than what's been done previously. It's not exactly what's written in your Report, but there was a very strong wish for improving things.

I think that Steve himself said this, at one of our face-to-face meeting in Los Angeles or wherever it was. So I think that we could at least improve #12.4 to reflect this, if you agree?

BRIAN CUTE: Terrific. Lise?

LISE FUHR: Well, there also was a remark in the ccNSO group about not having a benchmark every third year but every year on staff compensation. I don't know if we should write that in now, but…

BRIAN CUTE: I'm just reacting, not with my Chair hat on, that sounds prescriptive and every year doing a benchmark study seems too frequent to me. I've got my own organization and that sounds… Alan?

ALAN GREENBERG: My reaction to this whole set of recommendations was that it was too prescriptive and too much detail. On the other hand, the Board said, "Dandy, we have it almost done anyway."

BRIAN CUTE: Yes, Jørgen?

JØRGEN ANDERSEN: I think that we should add that Lise and I had a very good conversation with Xavier. Larisa was there as well, and I think that the reaction we got from Xavier was that this recommendation is very much inline with what's going on right now in ICANN, and there's no conflict. So it will support and maybe also even enhance the planned activities to far, so I think that we're on the right track.

BRIAN CUTE: I agree. Lise?

LISE FUHR: Well, Jørgen and I will give you a new… We'll try to rewrite it.

BRIAN CUTE: Thank you. Fiona, did you want to weigh in? Okay. Everyone has their assignments. Do your best to get the red lines in by next Wednesday. Before we go, just recognition of two things. As Larisa's alerted us, staff is going to be providing inputs to us on the questions of implementability of all these recommendations, and we're going to be receiving public comments that we have to factor in as well.

Again, I suggested that in terms of structuring that, in terms of assignments, the Chairs of the respective work streams take a review of inputs that relate to their subject matter. I think the drafters who've got the pens for this purpose, and who helped draft the Report, can continue to hold the pens, but should work with the Chairs of the work streams.

As input comes in, we look at the content and ask ourselves, "Does this modify the Report?" and importantly, if we make any modifications, we really have to have the facts and the citations underneath it. There will be a global edit of this document before it goes out, to make sure that the facts and the citations are sound.

Again, on that point, if you're going to provide anything to the list that might modify the Report, and you can, please identify the source. If it's a quote, put the quote in, but put the source, either the constituency or the individual, so then the drafter can then just grab, drop it into the Report and not have to go back through transcripts, looking for a citation. Anything else we should be considering? Larisa?

LARISA GURNICK: Brian, you and I already talked about this, but I do want to highlight concerns about timing. Public comments are going to be delivered by December 13th. The Board would like to weigh in with a more formal response, as will staff. As Jørgen and Lise pointed out, we had a really good dialogue on the financial recommendation, which pointed that it takes a few rounds of back and forth, in some cases, especially when it's more complex, to get to a clarity and an understanding.

I'm not sure that we have enough time for that. I just wanted to highlight that the timeline is a bit troublesome, from the staff perspective.

BRIAN CUTE: Thank you. Understood. Okay, anything else? Olivier?

OLIVIER CRÉPIN-LEBLOND: Thank you Brian. Just a point of clarification: are we going to get to discuss the performance of the One World Trust?

BRIAN CUTE: Larisa? Sorry, I forgot, but I'd asked Kristina if she could provide – for One World Trust – a draft of their report to the Review Team prior to December 20th. I forget what I asked for, and I remember her saying that she would be able to provide that to us. December 20th is effectively our cut-off date. Do you recall when she said she could provide us with a draft of their report?

LARISA GURNICK: I will have a call with Kristina tomorrow. I need to confirm the timeline. They've had an unfortunate illness in their staff that we're working around, so I'll get an update as to when the draft report might be available.

BRIAN CUTE: Okay, so let's find that out and then that will come to the Team. To your point, Olivier, we're hopefully going to see that draft, be able to think it through. We've got three full-Team conference calls and hopefully we're in position to have a good conversation that can be distilled into the Report. That's the plan. Okay? All right, anything else? Thanks everybody. Thanks for your time. I'll see you on the conference call.

[END OF TRANSCRIPT]