

**ICANN**

**Moderator: Brenda Brewer**

**November 20, 2015**

**8:00 am CT**

Mathieu Weill: Hello everyone. Thank you for joining this call. Can we have the recordings started?

Coordinator: The recordings are started.

Mathieu Weill: Thank you very much. I would like to thank you all for joining this third call of the Stress Test 18 subgroup of the Cross Community Working Group on Enhancing ICANN's Accountability. And also thank everyone for the substantive discussions that took place on the list in the last couple of days. We are doing our meetings with short turnaround time but always get substantial input on list in between so that's very good to note.

And as Mark is saying, I think we should certainly think of this meeting as a great opportunity to nail the issue and make sure that we can report to the cross community working group about a way forward to assess whether it's supported by the whole group.

I'd like to open the call with the roll call. We'll use the AC room participant list. But I would like to know whether there are any participants who are on the audio only?

Tarak Kamel: Yes, Tarak.

Mathieu Weill: Barack, thank you.

Fiona Alexander: Fiona. I'm also on the audio.

Mathieu Weill: Thank you, Fiona. Welcome to both of you. Anyone else? Okay I took note on the list that Izumi was sending her apologies as well as some general guidelines about where the numbering community was standing on the issue which is extremely helpful. And would like to also start with a quick recap of where we were during the last call and where we should start this one.

During the last call we have had a number of discussions regarding the potential for a definition of consensus which would include percentages or accounts within the GAC. I think that since then it has been somehow finding some pushback on the list on the argument that it was probably - I think it was (Franz) mentioning opening a Pandora's Box but also probably leading to some considerations of the nature itself of the GAC. So David Martinon from France is joining in audio only. That's for the record in the chat.

So far it's an idea that is not in the document that I circulated this morning. The document I circulated a few hours ago does - is based on the Denmark proposal with some comments added as to and especially one in the Section 2 about the rejection threshold for the board in case they want to act in a manner that's not consistent with the GAC advice.

Denmark proposal was that the threshold be set at 2/3 and there was a variant introduced by Brett which would introduce the form of staggered approach to this where the GAC advice that would be supported by a consensus as currently defined in the Operating Principle 47, so without any formal objection, would - could only be rejected by a 2/3 majority of the board but if it was consensus advice but not according to that definition, then a simple majority would be required from the board. That's the - what I refer to as the staggered approach for the rejection threshold.

And I think a lot of the email exchanges that we've had in last few - couple of days were related to this variant. And so I tried to recap in the table which is on Page 2 of the document on your screen what I found were the main differences between those proposals. And it's basically differences on the one hand about the definitions of consensus and on the other hand on the decision thresholds that are needed for the board to act in a manner that's not consistent with the GAC advice. And I put three different variants here to include the CCWG second report which is obviously our baseline scenario at this point in the cross community working group.

So that's the starting point for the call today. I'd like to first check whether there is any potential idea that would not have been captured and would need to be brought back into the discussion for today. If anyone feels there is need to move that idea forward. Pedro.

Pedro Ivo Silva: Yes, hello. Can you hear me?

Mathieu Weill: Yes perfectly, Pedro.

Pedro Ivo Silva: Okay thank you very much. Well first of all I'd like to comment our colleagues in the group for the very collaborative and positive approach we

have seen in the past days in the list coming up with compromise solutions that is intended to reach a common solution that I think everybody would agree to.

I have one comment and one question. First comment is that with regards to the proposal put forth by Denmark I guess that between the second paragraph or let's say the first paragraph in red and the second one in red there was one sentence in the original proposal from Denmark so right after the end of this first paragraph in red, which stated that in this context each advisory committee has a right to determine its particular definition of consensus. And I'm not seeing that sentence in that - in this text here.

And after - I understand that after this sentence then we would include the text that appears in the second red paragraph which, let's say, tries to indicate some - let's say some borders, some limits to that definition of consensus. So this is one comment.

The question I have is actually a question to Brett. And whether in the proposal he put forth it is intended to - that the general portion of the proposal by Denmark it would also be part of your proposal or it's just the amendments in Section 2, Item 1 J, that's the question. Thank you.

Mathieu Weill: Thank you very much, Pedro. And to answer your comment on this particular sentence which would fit into the two red paragraphs on the screen, which said indeed in this context each advisory committee has the right to determine particular definition of consensus.

In the Denmark original proposal it was then followed by a footnote. It was my understanding that it would maybe a consistency issue to bring all of the - both of these into the same text. But certainly there was no intent to contradict

the statement that each advisory committee has the right to determine definition of consensus. So we should probably at some point but I don't think that's going to be the most contentious issue address this.

This question you were raising was to Brett about whether - if I can make sure I understand correctly, it would be comfortable with the Denmark definition of consensus - the determination of consensus being part of an edited version of its proposal. And I don't know if, Brett, you feel comfortable answering this question at this point or want to think about it.

Brett Schaefer: Correct me if I'm wrong but the text that we were sharing previously has a blanket statement saying that the ACs have the ability to decide their own consensus. And the footnote was added to that particular phrase, correct?

Mathieu Weill: That is correct.

Brett Schaefer: So that's already in the bylaws. I said earlier in previous exchanges I don't think that the footnote clarifies that to any degree at all because I think that by staying at, you know, you're essentially repeating that phrase in the footnote or in the additional text and then you're further confusing the matter by saying that a consensus doesn't mean this and a consensus doesn't mean that but it doesn't really clarify what exactly a consensus is.

So I would prefer to keep the existing text in the bylaws and then just focus on the changes, if any are adopted, to Section 2, Item 1J which is relating to how the board treats advice from the GAC and the leave the GAC to decide for itself how it wants to decide consensus and only focus on how the board receives that advice and how it treats it once it receives it.

Mathieu Weill: Okay so...

((Crosstalk))

Mathieu Weill: Thank you. Any other comments?

Delila Rahmouni: Yes please.

Mathieu Weill: Yes.

Delila Rahmouni: Hello? Yes, it's Delila Rahmouni. I replaced today David. Concerning...

Mathieu Weill: Okay.

Delila Rahmouni: Yeah. Concerning the definition of the consensus what I think and as expressed by Pedro and David, the best solution is to try to not to give a very narrow definition of the consensus because it is an internal function in the rule of the GAC. And if we fix it in the bylaw probably it would be something to (have) changed after.

Mathieu Weill: Okay. So that's actually (unintelligible) right proposal that there is - to remain open about the definition of consensus and about as far as the bylaws go which is consistent with the current CCWG proposal. I think, Brett, your...

((Crosstalk))

Delila Rahmouni: But what about the footnote?

Mathieu Weill: And the footnote is a particular attempt to clarify. And I want to...

Delila Rahmouni: Okay.

((Crosstalk))

Mathieu Weill: Are you saying you're supporting the version of something in the spirit of the footnote?

Delila Rahmouni: So no, the proposal of Denmark is...

((Crosstalk))

Mathieu Weill: Okay.

Delila Rahmouni: The proposal of Denmark is good.

Mathieu Weill: Okay. Perfect. Brett, I assume that's an old hand so I would move to Greg.

Greg Shatan: Thanks. And it's Greg Shatan for the record. First to answer your question about whether there's anything in here - document here that hasn't been captured or in this document that's been raised on the list yesterday I raised several conditions that had been raised earlier by the ICC which we would consider minimum conditions for considering anything greater than a majority vote by the board in considering GAC advice.

First that it would have to be what we termed GAC consensus advice, by which we mean the current definition of consensus before the GAC and not anything less than that. Also that the consensus advice needed to be drafted in an open session and it's consistent with ICANN the accountability and transparency.

And third, that there needed to be a written rationale for this advice and we know there's an issue caused by advice without adequate rationale. I'm not sure if that's what's meant by the advice must be clear but I think it actually splits the statements of a requirement of a rationale would be necessary.

And last certification that the GAC advice does not contravene any national or international law or treaty. Those are the ideas that I put forth. And in terms of the IPC's concerns about moving upward from the majority approval in exchange for basically a commitment to the status quo these would be as the minimum conditions at this point we'd be prepared to accept. And I think, you know, these need to be further considered in order to move forward.

I wish that I could be more conciliatory but it seems like we're almost trading something for nothing here. And I did go back to my constituency because I wanted to make sure that I was not only speaking for myself or speaking worse, in contravention of their concerns. And in fact I found both constituencies went a good deal more further than mine or at least were more strongly stated than I was.

So frankly the concern, you know, moving above the majority for any reason, you know, still raises great concern (unintelligible) the commitment to the status quo on one side should require nothing more than commitment to the status quo on the other side, commitment, you know, nobody here is asking if that the board be required to have a super majority vote or even a majority vote to accept GAC advice. So it seems that we have I think a mismatch.

And consider that we started all of this because we were...

Mathieu Weill: Thanks, Greg...



((Crosstalk))

Greg Shatan: ...we were, you know, the concerns that we started with have been (unintelligible) lost and replaced by an almost opposite set of concerns. Thanks.

Mathieu Weill: Okay thank you, Greg. So you're expressing the concerns of your constituency with regard to the 2/3 change. And I think one of the points that was mentioned in Izumi's email which I found an extremely good practice for us in this group is she said those are preferences. And I think we certainly encourage ourselves to stay at the preference level at this point until we try to find some common ground.

And I've heard a lot of common ground with the current way forward when you said regarding the written rationale, regarding a number of options. But certainly your point on the 2/3 majority is taken, it's already - it was actually a source of a lot of debate already on the list.

Brett, I think that's a new hand this time.

Brett Schaefer: Yes, it is.

Mathieu Weill: Please.

Brett Schaefer: First of all, thanks. I want to thank Greg for explaining the views of his constituency. I think that Keith Drazek also raised in an email yesterday concerns in a different constituency. Phil Corwin has raised concerns in his constituency. And I think also Steve DelBianco did in the BC or for the BC. I think it would be useful to hear all of their perspectives in this call to get them on the record and so that everybody can explain and explore those views.

For myself I just want to say I offered the proposal as a compromise but I offered it with a bit of uncertainty myself because it's hard for me to fully endorse the compromise text that I offered until I know how the GAC is going to or is not going to participate in the community mechanism.

If it - as Paul and I submitted in our comments to the second draft, we believe that the GAC would have an unacceptable increase in its authority if it votes to participate in the community mechanism and has the ability to offer advice in a preferential fashion to the board. And we suggested that the GAC would have to choose. If the GAC is strictly advisory to the community mechanism then I would be comfortable with the proposal that I put forward in terms of the 2/3.

If the GAC is going to be an active participant in the community mechanism then I would actually endorse the other proposal I put forward yesterday, removing the GAC's ability to provide preferential advice to the board. And so my position is rather contingent on the GAC's position and participation in the community mechanism.

And so that's one of the reasons why I was urging the chairs to reach out to the various constituencies to figure out whether they were going to fully participate or whether they would not. And I don't believe that we have heard back from anybody but SSAC. I could be incorrect and maybe RSAC has gotten back to us. But we certainly haven't heard the GAC.

I was speaking to somebody yesterday and from what I understand the GAC hasn't even discussed this in terms of its participation or potential participation in the community mechanism which strikes me as a very troubling thing since we're moving forward to a final draft in just a few days.

And we therefore don't really have the information necessary to fully decide where our positions are going to be on such important matters as this. And so just to conclude here, I want to reiterate I think we should hear from the various constituencies who have - and people who have gone back to their constituencies and sort of weighed their opinion.

And second, I think that we need to have clarity in terms of whether the GAC is going to participate in this whether before I can really endorse one proposal versus another on this matter. Thank you.

Mathieu Weill: Thank you, Brett. And I understand your - the way you're putting it into the context of the broader cross community working group proposals and recommendations and would however try and maybe encourage us to focus on our remit that was really how to address the Stress Test 18 discussion.

Brett Schaefer: So, Mathieu. Mathieu, if I could just clarify, this is very important because, as I mentioned in my email the other day, and as Paul reiterated this morning, the process that we're outlining here a large GAC majority, unanimous GAC position puts forward advice to the board. The board - a minority of the board is supportive of it. You know, but not insufficient to get 2/3 to reject it.

Then the only recourse for the community to oppose GAC advice and oppose by a majority of the board is to exercise community powers. If the GAC is actually going to be participating in the community mechanism that makes reaching various thresholds to exercise those powers much, much more difficult. And so I think that is a critical part of our equation here.

Mathieu Weill: Okay so my summary was that the proposal that you made is actually a conditional proposal, conditional upon things that are outside of our Stress

Test 18 discussion and I can certainly understand that. But I think it's a good thing to understand that at this point.

Jorge, you're next.

Jorge Cancio: Hello, Mathieu. Do you hear me?

Mathieu Weill: Yes.

Jorge Cancio: Just was carefully looking at what colleagues have said. I think that if we stay on the level of specific concerns we will be able to reach an agreement. I'm rather reluctant to accept the general premise of considering the GAC as a danger or as a sort of problem for the community. I think that that is not the right approach. We are talking about a process and a future framework where the GAC is part of a community who has been showing that during all this process and the CWG and in the CCWG.

So I would beg and urge colleagues to really change their approach to this because it's really not helpful for colleagues in the GAC who are really making a very big effort from the consensus we had in Dublin to reach a compromise with other CCWG colleagues. So I would share that as a general remark because efforts are really being (unintelligible) to arrive at the (unintelligible) position.

As to the specific concerns mentioned by Greg, I think that especially in the proposal by Julia many of these concerns are being addressed and we have listened very carefully to them. The 2/3 rule is linked to a commitment of consensus. It's not just consensus in very general fashion as we may have it in other SOs or ACs. But it's in Julia's text consensus is (unintelligible) to very stringent requirements.

So we are really showing that the reason this commitment that we believe (unintelligible) threshold of consensus threshold which is not attained by any other SO and AC. The mission, and we are all part of the CCWG, the mission of ICANN is being narrowed. And it's being described in more stringent terms.

Any action of ICANN outside that mission it's actionable through an IRP. It's not any more formal procedure, it's also a substantial plan which either (unintelligible). And one of the standards in the articles of incorporation and the bylaws with respect of international and national or local law. So I think all the points that Greg made in his email and which stem from the IPR constituency back in 2014 are being addressed.

A need for clear rationale is also part of the discussions we have had in the CCWG. And it's reiterated into the proposal. And if there is the need to make it clearer I think we would all be able to arrive at a agreeable wording on that.

So I think if we look into the concerns we look at them in an effective manner, in a neutral manner and we forget this picture of the GAC as a menace or as a danger to the community but as a legitimate part of the community, legitimate part of the community which is accepting a very high commitment to consensus, which is accepting a clear advisory role, which is accepting participation in an escalation procedure which just recognizes it one part amongst seven other parts or amongst five other parts of the community if we look at that in this view, in this spirit of consensus and our final (unintelligible) I think the concern should be considered that way. Thank you very much.

Mathieu Weill: Thank you very much, Jorge. And I think that you rightly highlighted (unintelligible) there is between the IPC conditions and the Denmark proposal. I still see a distance between the definition of consensus that is highlighted - that was highlighted by Greg as the current definition of Operating Principles 47 and the definition that was provided in the footnote by Julia and Denmark.

And I think that one aspect where we should as a group really focus on whether there's room for some common ground compromise on this without - by focusing on the underlying reason why we are so concerned about the commitment to consensus and not the particular definitions themselves. So that's an item that I'm flagging for I think our discussion.

Steve, you're next.

Steve DelBianco: Steve DelBianco for the Business Constituency. I wanted to remind everyone that in the early part of this year, roughly in January or February, the Stress Test Working Group came up with a solution for Stress Test 18 that involved requiring the board to seek a mutually acceptable solution where GAC advice is supported by consensus as defined in the Operating Principle 47. That was the initial reaction which was to preserve the status quo.

In discussions in Istanbul and Frankfurt we became aware of the GAC wanting some flexibility and that is when we reverted to the language in the second draft report which just says that as long as the GAC advice is supported by consensus. So that afforded some flexibility to the GAC. And then we followed up after the second report with some rationale to be sure we explained it's really about avoiding putting the board in a position of arbitrating amongst sovereign governments who have divergent views.

That put us in what we thought was a relatively good spot going into Dublin with the new rationale. But what emerged from Dublin was the GAC's strong desire to have the board be forced to get to 2/3 in order to reject GAC advice. So the BC I think rightly views that as a new request from the GAC in response to the fact that we had lowered the threshold to just consensus and given new rationale that the GAC came back with a new request.

And in that spirit the BC takes a look at if the GAC wants a higher threshold for the board to reject well then the advice that gets that higher threshold ought to have a higher level of consensus. And that is why we discussed items like 97% or 3% objection on our last call. And all that is, is trying to quantify because very small minority as was indicated on the Denmark proposal it doesn't - it's not explicit enough, it's not meaningful enough to give us any appreciation for what the GAC might move to.

So I am happy to abandon any idea on 3% objections. I understand that that's objectionable. But we are still left with a need for something stronger than the Denmark language which, to us, seems awfully ambiguous and vague and I realize that may be on purpose in order to give you the flexibility that you desire. But our strong desire is to say that if you want to raise the ante to 2/3 something more has to be required of the GAC in reaching advice that merits a 2/3 consideration. And if percentages aren't it then let's consider definitions like the one that Brett put forward. Thank you.

Mathieu Weill: Thank you, Steve. So what I'm hearing once again is the close relationship between the call for 2/3 and the need for stronger definition of consensus and the two being closely interrelated so that I think that's one of the item that we have in this discussion and that's the reason why I provided this table on Page 2 is that if there's this feeling that those two are one is a sacrifice from one side and the other a sacrifice from the other side then it seems to be quite of

not (unintelligible) right now to find the - a good common ground. So certainly put a thought about how to maybe think a little bit differently about it and find some new ground.

Brett, your hand is back up. Please.

Brett Schaefer: I'm sorry. Basically to reiterate and underscored the point raised by Steve here in that consensus is central to this issue. We can't move forward on a proposal until we agree that consensus, in my opinion, is the absence of formal objection unless that is agreed by the group then I don't think that we have any agreement here. Thank you.

Mathieu Weill: Okay, Brett. So just a couple of points. Two points on the two parameters of this discussion, on the 2/3 versus simple majority of the board, my understanding is that we are speaking of a difference of two board members from 9 to 11. And that so far the any decision - all decisions so far that were taken by the ICANN board not to act in a manner consistent with ICANN dealing with GAC advice were rather consensus based in the board.

On the other hand, it's also I think important to really all of us have in mind that the status quo is of the GAC decision making on advice is based on operating principles that could be changed by a simple majority vote of GAC members if the GAC went to this point. So I think we really need to find a way to clarify our underlying concerns and maybe try and see whether - based on the existing CCWG report or based on the Denmark report or there would be any way to bridge a little bit of the gap that we are seeing in the discussion right now.

Brett, is that a new hand or an old hand? Old hand.



I will turn to my fellow cochairs to see whether they have any particular thought to share with the group at this point. Thomas or...

((Crosstalk))

Thomas Rickert: Yes, can I be heard?

Mathieu Weill: You can.

Thomas Rickert: Great. Now, Mathieu, I'd like to build on what you said a minute ago. The difference is really 9 versus 11 board members required to reject GAC advice. And I'm wondering, you know, we're now in a very, very critical phase of our work. We need to find the right words to enshrine a compromised solution. I fully appreciate that this is an evolutionary process. Things that have been said a few months ago might not be applicable today.

Nonetheless it is my view the we should all think about what sacrifices we can or should make. And I would fully agree with the concerns shared by Greg and others that a 2/3 majority might have a very high symbolic, at least, impact on the GAC's role. But if the 2/3 is important to bridge the gap why not keep it for the instances where GAC advice is unanimous.

As we've heard the board rejected GAC advice previously unanimously. So do we really think the practical impact of that compromise is high I dare to doubt. And maybe we can, you know, as part of a puzzle, and we have other pieces of puzzle yet to be resolved, maybe we can keep in the back of our heads that we would actually limit the 2/3 rejection requirement to unanimous GAC advice.

And let's talk more about the cases that might be more likely in operationalizing all this. The cases where we have one or more objections inside the GAC where GAC advice is not unanimous. And let's try to find a solution for that. And I think that if we do - if we can find a suitable compromise, a suitable language to deal with the cases where there is no unanimous support inside the GAC that's the real thing we have to solve.

And then I think we might be able to say, okay, the 2/3 for the cases of unanimity in the absence of objection inside the GAC that's something that we can live with. Thank you.

Mathieu Weill: Thanks, Thomas. We would sort of set this as a starting point and then try to see how we would manage the other types of advice. Greg, your hand is back up.

Greg Shatan: Thanks. Greg Shatan again. I guess I would - when I look at the 2/3 requirement I look at it a little bit differently. As I see it now, up to 50% of the board could wish to reject or oppose GAC advice and yet that GAC advice would still be accepted since it requires a majority to reject it. Now we'd have a situation where a majority of the board is against the advice and opposed to it and yet if required to accept it without any kind of, you know, consultation - the consultation right only fits in when 2/3 of the board wants to reject it.

So the idea that, you know, majority plus one which is to outright reject the advice at this point doesn't result in a rejection, it only results in a new deference process, but would be important to accept that without any kind of consultation process or a majority plus one is opposed seems like that advice has been somewhat forced on the board in such a way rejection is not rejection but only a due deference process. Thank you.

Mathieu Weill: Thanks, Greg. I'm not fully sure I captured that and am computing it correctly. Am I understanding that what you're saying is that there could be a simple majority board decision to engage into the mutually - I mean, the finding the mutually agreeable solution process but in the end if the board decided to really go against the advice it would need a 2/3 majority? Is that what you're saying?

Greg Shatan: No, what I'm saying is that...

((Crosstalk))

Greg Shatan: ...under this proposal if a super majority, but not 2/3, of the board wished to reject the GAC advice, it would not be rejected but it would be accepted without any consultation process even though...

Mathieu Weill: All right.

Greg Shatan: ...most of the board was - much of the board was against it. The 2/3 majority to reject only brings us to the consultation process. Recall that there is no process by which the board can reject GAC advice and not - to not have the consultation unless it's completely non-consensus advice which is still I don't think that is adequately captured here either that there is something that the GAC could call advice which the board could reject without a consultation process coming from it. Thank you.

Mathieu Weill: Thanks, Greg. Thomas.

Thomas Rickert: Greg, am I understanding you correctly that you - as others may ask for more equality in refining how GAC advice is begin dealt with, if that were the case, and if I haven't misconstrued what you were saying, would it be a solution for

you to say that if there's a 2/3 or if - that GAC advice must have the 2/3, you know, when it is unanimous without any objection in addition to that we would say that if - let's say 1/3 or 40% or 50% of the board is against following GAC advice the board can request a consultation process. Could that do the trick?

Greg Shatan: Now I'll have to think about that a little bit. But it seems to me that the consultation process is triggered by rejection. Are you saying that there would be a consultation process that could be triggered even if the board doesn't have the votes to reject the - reject the advice? That's an interesting thought, since right now the board has no ability to call for a consultation process unless it first rejects the advice.

Thomas Rickert: But, you know, maybe we can establish that balance that you're missing by thinking about that a little bit more. If I understand your concern correctly you're saying that it's dangerous to require a high threshold for rejection if only a smaller fraction of the board has material concerns about implementing GAC advice. And then I suggest let's just find the right words to say that. I think that...

((Crosstalk))

Greg Shatan: What I'm saying is that...

Thomas Rickert: ...any reason for the board not - for the GAC not to be willing to enter into a process of finding a mutually acceptable solution if there are grave concerns inside the board.

Greg Shatan: I'm saying something slightly different which is, I'm concerned that the board is being required to accept GAC advice where a majority would vote to reject it. Majority plus one.

Mathieu Weill: That would need to be checked, that's not my reading of the bylaws is that the - there would be only - of the proposal is that it would be only a 2/3 threshold to actually consider acting in a different manner and get into the mutually agreeable solution process but there's nothing said about the end of the process. But that's probably a good - taking us too much into a room where we don't have any recent input or anything solid at this point.

So my view at this point of the call is that some of the ground that was apparently being found around some of the variants around the Denmark proposal are now more clearly conditional due to the 2/3 threshold. It's - we are facing difficulties moving toward each other instead of moving away from each other at this point in some of the discussions.

So what might be useful would be to look at two of the key approaches and check on each of them how we could take the best of each and sort of try and bring them closer. Our group is tasked to assess options and come back and report to the full CCWG and certainly one way of doing this would be to take the Denmark proposal and collectively think of how it could be brought as close as possible to the conditions and that everyone has been very careful to lay out today which is extremely useful.

So what would be the closest way we could bring that to and do the same for the reference model so far, which is the CCWG second report. To give an example of what this would mean for the CCWG second report which is very simple and has been pasted in the chat earlier. And only it's a minimal change approach. And it can - it is only saying that the due deference - not the due

deference, the mutually agreeable solution process is triggered when the GAC advice is supported by consensus but without mentioning anything about how this consensus is assessed.

And maybe there could be some of the proposals or ideas that are underlying the Denmark proposal that could be brought into this to improve it and make it acceptable or actually something that everyone can live with or do it the other way around with the Denmark proposal. And my intention (unintelligible) the fact that there's been a long chat, input from Finn with a compromise approach that I'm trying to paste.

Can we somehow get that on the screen? And, thank you, get this into some format where I can live with it. Okay so the approach that's proposed - that's moved forward by Finn is saying that any GAC advice approved by GAC consensus meaning the practice of adopting decisions by general agreement in the absence of any formal objections may only be rejected by a vote of 2/3 of the board.

And any advice approved by the GAC with objections from a very small minority of GAC members but falling short of consensus may be rejected by a majority vote for the - of the board. And in both instances the GAC and the board will try to - in good faith and so on to find a mutually agreeable solution. That's the edited version of the Denmark proposal proposed by Denmark. Pedro. And thank you, by the way, Finn.

Pedro Ivo Silva: Yes, hello. Thank you, Mathieu. Just like briefly state that we - well in Brazil here we still have to (unintelligible) to assess proposals that have been sent but at this point I think we can indicate sympathy for this (unintelligible) or I don't know how to mean but the (unintelligible) threshold approach. I think it goes in the right direction.

And I would say in this regard there's this new proposal that Finn has just submitted I think goes in this direction as well. And I think - and I would ask colleagues within this group to consider this as a possible way forward as a compromise solution. So just want to flag that sympathy for that approach. Thank you.

Mathieu Weill: Thank you, Pedro. Anyone else want to provide some nonbinding first sight reaction to that proposal? Obviously it's still very recent one. So Greg is saying he doesn't see the compromise in the proposal. Greg, your hand is raised.

Greg Shatan: More particularly what I see in this proposal is that the board would require to meet a higher threshold to reject GAC advice given that the current thresholds of consensus and that the GAC - and that the board's current threshold to reject GAC advice would be applied to GAC advice with a lower threshold of consensus. So this, you know, seems all kind of going one way.

Mathieu Weill: But, Greg, just the point I think that's made is that the current level of consensus is not in the bylaws. It could be changed by the GAC without going through the rest of the community at this point.

Greg Shatan: So we're trading kind of two current concessions for the promise of a future - that nothing bad will happen in the future if one considers lower versions of...

((Crosstalk))

Mathieu Weill: My reading is - and it's just a personal reading - is this is the way for the GAC to say we are deeply committed and we're taking this commitment to consensus to a level where we would accept to put it into the bylaws which

goes far - which is far from obvious - which is not the case now and it's far from obvious in terms of government commitment towards a private corporation if you're familiar with this. But that's just my reading.

Maybe next is Jorge. Jorge, I can't hear you now. Are you still on mute? We heard you right last time.

Jorge Cancio: Do you hear me now?

Mathieu Weill: Yes, we can hear you now.

Jorge Cancio: Okay sorry. Sorry for the technical problems. Definitely as to this combination of Brett's proposal and of I think tweaking of the text I think we would really have to look into it very carefully. I don't know what are the timeframes you are looking into or you are foreseeing for this discussion to be closed because as I see it definitely on the 2/3 threshold the GAC would be obliged without any degree of flexibility to stick to the Operating Principle 47.

We have repeatedly made the point that threshold, although it may be positive and we are really supported for the time being, in the future it could be a trap for the GAC as regards delegates or single delegates or very small minorities of delegates holding the GAC hostage in very important issues. And probably it's a scenario which is not very probable now because now the GAC could react with a change of the operating principle. So the incentive to develop such a kind of behavior from any members of our committee is checked by that flexibility.

So I think we would need to know what is the timeframe in order to be able to look into this very carefully because after all as you all know the GAC called for flexibility, for autonomy of advisory committees in refining their



definition of consensus. And this would certainly nail us down to one single option without very many meaningful ways of changing that in the future. So it would need a lot of consideration. Thank you.

Mathieu Weill: Thank you very much, Jorge. Before I turn to Phil I had a request to speak from Steve who's on audio only. Steve.

Steve DelBianco: Thanks, Mathieu. Steve DelBianco. Jorge, I would encourage you to think creatively about the - a different way to look at what you just said. I believe the GAC can, under this proposal that Finn just put forth, the GAC can change its operating principles at any time. And yet the GAC realizes that at some point in the future where it has a controversial piece of advice, and it really wants to force the board to go to 2/3 to reject it, then all the GAC need do in that situation is simply show that there was the absence of any formal objection for that particular piece of advice. It doesn't have to revert to the old operating principles. It doesn't have to change any principles at all, it can just say that it's late on a Wednesday afternoon in a particular city where we're having an ICANN meeting and the GAC says, you know what, we need to raise the bar on this one. We feel so strongly about this that we can achieve the absence of any formal objection and we're going to note that in the advice that we send over to the board. And by doing that, you force the board under this new proposal from Finn, you force the board to go to two-thirds to reject and if the board did reject they would have to try and find a mutually sensible solution.

So it's not a constraint on the GAC's changing of its operating principles. It simply preserves the GAC's autonomy to change its principles for advice but then you have an option just like you have an opt-in for the decision model. Here you would have an opt-in for the two-thirds and you could do that at any time the GAC (feels) strongly about it's advice and could come up to text that

had no formal objections. So I think it's more positive than the way you framed, but I appreciate you giving it some consideration. Thank you.

Mathieu Weill: Thank you Steve. Phil?

Phil Corwin: Yeah thank you and I'm happy to finally be connected through my laptop. I think this approach is promising. I do think it needs some wordsmithing. The phrase very small minority, I think that's subject to, you know, what does that mean and what if there's a larger minority that objects. We don't know where the dividing line -- maybe it should just say any non-consensus device because we've already defined consensus in the previous sentence as needing approval without any objections. So, I'm not sure we need to get into what a very (small) minority is and if there's a significant minority, let's say half a dozen nations, raising objections. You know, we don't -- now that the board can reject it by majority vote since it's no longer without objection, they can take all of those facts into account when they address the advice not just what the advice is but the degree of support within the GAC and the degree of objection.

So, that's my suggestion there is that we drop the very small minority language and go to any non-consensus advice approved by the GAC or something similar. The one other issue I wanted to raise, and I'm not necessarily -- it may be sufficient to the accountability measures we're having and the ability of the board to reject my majority but I just wanted to note, up till now the GAC has always provided advice in reaction to initiatives coming from elsewhere in the community.

We've gotten a lot of GAC advice, for example, on the new TLD program which was a GNSO initiative. I have a concern, not a burning concern, insurmountable or, you know, nonnegotiable but that in the future a GAC

might decide to initiate its own advice independent of any ongoing ICANN process on -- regarding a public policy matter and that would have the potential to what the GAC in effect initiate a form of a policy development process outside of the normal GNSO process. So I just wanted to raise that issue for participants' consideration. I don't have any consideration, any proposal today, but I do want to put it on the radar screen. But, again I think this language in front of us is good, has the elements of compromise where the GAC is basically buys itself to a definition of consensus with no objection and the board, in that case, was required to meet a two-thirds threshold to review it if we get addressed as very small minority language and clear up any confusion it might cause. So thank you very much, I hope those statements are useful. Thank you.

Mathieu Weill: Thank you very much Phil. Brett, you're next.

Brett Schaefer: Thank you. I've had a couple people contact me off the regular list here and express some concern that the obligation between -- of the board, to try and reach out to the GAC and trying to (face) in a timely efficient manner to find a mutually acceptable solution should only be the case on consensus device and not on non-consensus device and that if the board rejects non-consensus devices up to the GAC to negotiate amongst itself its own members and then trying to reach a resolution to find a consensus and only in that case would the GAC have to negotiate with the board if the advice is rejected.

So I just wanted to throw that out there. I'll send around a slightly modified version of (syntax) to reflect that to the (unintelligible). Thanks.

Mathieu Weill: Thank you Brett and indeed I think based on the initial reactions on (Ken)'s proposal, there are certainly an interest to assess it and if need be suggest amendments for our consideration.

I think that's one way of approaching this and once again, thanks (Martin) for providing us with this adjusted version in the spirit of finding a common ground and this gives raise to some interesting also perspectives and exchanges that I hope everyone keeps in mind about how this is actually room for compromise. We really need to understand each other's perspective here.

In terms of timeframe required by Jorge, the (CCWG) call is on Tuesday. What we need and we don't have any room to maneuver here is to provide in advance our assessment of the proposal and recommendations if need be but (at least an area) for the (CCWG) to (learn) how best to approach the (third) report.

I don't think we're in the position right now to rule out the (CCWG) second report where we have a promising option to refine and assess. So the finalization of the discussion in terms of third report -- what we need to find is a way to -- is how the third (CCWG) report will address the (unintelligible) recommendation. I think we are clear that there will be a recommendation, there might be the same proposal (unintelligible) for the recommendation or the second report proposal which could be actually -- we still have the opportunity to, if need be, to suggest smaller amendments so that it captures the inputs we've received during the public comment obviously but also since then and essentially the GAC input and I'd like to -- I think we should not rule out this option to slightly enhance the second report proposal which is currently meeting a number of the GAC (Dublin) input conditions because it leads to the advisory committee the need to define consensus and probably the only one that is not met in this proposal is the two-third majority voting for the threshold of the ICANN (born) discussion but for the rest I think we're quite close. So, I think that's also an area of discussion that still needs to be considered and we'd like to make sure we take the opportunity of the little

time we have now to assess whether there are any options to actually bridge the gap by saying, okay, this part of the (Denmark proposal) could be brought into the existing one in the (CCWG) and that's -- so I would like to know whether there are any people in the group who had given any thought on enhancing this second report proposal or mapping it to the GAC (Dublin) input?

Phil and Brett, I think your hands (here are old ones).

Man: Old hand, sorry.

Mathieu Weill: Okay. If I take the (Dublin) input one-by-one it was number one, each and every advisory committee ensures that the advice provided is clear and reflects the consensus view of the committee. I think we have agreement on that. Whatever the scenario and maybe we could enhance the second (report) on that because this clarity of rational was captured elsewhere then in the (unintelligible) recommendation.

The autonomy and the definition of consensus for the advisory committee was already recognized by the second report. The value that the board attributes to receiving consensus advice I think was acknowledged as well and then the two-thirds majority was certainly not part of this proposal, that's very clear.

So, any thoughts on that, on the second report proposal? Any shortcomings or -- I'm always mindful that we don't forget the baseline or the full back scenario here. Brett?

Brett Schaefer: Well, I think that it's worth noting that we've traveled quite a bit further toward the GAC position and recommendations then what was the case in the second report where it would be just the majority rejection of GAC advice and

insistence that that advice be unanimous and that minority or divided GAC advice, non-unanimous GAC advice, would not trigger any kind of negotiation for the board and GAC to enter into a good faith effort to try to find a mutually acceptable solution.

So, I think that the proposal, even the modified one presented by Finn and slightly modified again by myself, is a substantially more toward the GAC' position than the second draft position was.

Thanks.

Man: Thank you. So (unintelligible) deny it. I'm just thinking about the option of us not finding an agreement. Okay, I'm noting Mathieu's comment that the Version 2 text would be a (fallback) scenario when you included a search. I see that we have now in the screen the -- is it probably Finn's proposal with Brett's friendly amendment.

Mathieu Weill: Correct.

Man: Okay. And are there any comments on that? I see Jorge's comments in the chat that it could not be accepted. Could you elaborate on that Jorge?

Jorge Cancio: Hello.

Mathieu Weill: Yes, we can hear you.

Jorge Cancio: Hello, so it's preliminary (reactions) but this (announcement) really takes away the (wait) to advise for the second threshold advised by the GAC which I am the (unintelligible) defined at the very high level of consensus with only a very small minority of GAC members opposing and that was in Julia's

original proposal (meant) to be the level of a threshold with which the board would need to reject this two thirds and then in any case we would have the mutually accepted solutions for the future.

So, in this (friendly) amendment that we said from Brett, I think probably it wouldn't be considered (friendly) by many GAC colleagues because it takes away the weight and the value of almost full consensus GAC advice. Because it's the -- what's -- rejected by a (unintelligible) of the board and it wouldn't suggest the mutually accepted solution. I can understand that GAC advise, which is not supported either by full consensus on the (unintelligible) and that's almost (unintelligible) at this time (unintelligible) operating principles (47) and or GAC advise, which is almost full consensus which was (as defined) by Julia in her proposal that those kinds of advice is needed in any case a mutually accepted solution (unintelligible) and that's, I think, a clear red line from our consensus position from (Dublin).

I can understand if the consensus or the agreement in the GAC results showed those two levels of advice we don't need the mutually accepted solution because as accepting the premise put forward by (unintelligible) and (this last question now). There we would have a significant minority in the GAC and we'd put -- we would put this (in) the board in front of a situation where they would need to decide to accept advice from a majority or a minority of the GAC. That to sum up and to make this short, the second threshold since the second proposal is the same threshold as what's included in Julia's original proposal. That threshold was intended to trigger two-thirds of the boards (unintelligible) and in any case the mutually accepted solution.

If we now move to a situation where with only a very small minority of GAC (unintelligible) opposing to GAC advice we eliminate the mutually accepted solution (unintelligible). We are going well beyond any redline we had before

starting this conversation. So I would (search for us) not to go down that path.

Thank you.

Mathieu Weill: Thank you Jorge and based on the comments in the chat, I -- my initial feeling, and once again it's just an initial feeling and everyone's being cautious to say they would need time to assess it is that the Finn's proposal before amendment was creating a bit more of an (optimism) in terms of ability to find really common ground across everyone here in the group and with the Brett amendment at this point but we will certainly need to keep track of this proposal from Brett which I think is consistent with previous proposals that he made.

Brett, you -- was that a new hand?

Brett Schaefer: Yes, it is. Well, first of all I think it's important for members to go back to their constituencies and weigh the support with this new (text) before we move forward anywhere. If we make a recommendation to the CCWG that lacks support or receives considerable objection then we're basically moving back, again, and I would urge Greg and Keith and others who have done that already to go back and see if that happens.

The reason why I made this change or this friendly amendment is that I don't think that the board should be put in a position of negotiating between various GAC members. If there is a divided position put forward to the GAC, to the board, I'm sorry, and the board decides to reject it, it shouldn't be put in a position of negotiating between different camps. It should be up to the GAC to negotiate internally, find a consensus position and if the GAC's -- and if the board still had an objection to that advice then it would enter into negotiations with the GAC to try and find a mutually acceptable solution. And, I will add that that doesn't prevent the board from -- I mean, that doesn't prevent the



GAC from offering different advice, it doesn't prevent the board from willingly or voluntarily entering into negotiations but it removes the compelling nature of the text right now to enter into those negotiations if it does reject non-consensus advice. And so I want to just clarify that. Thank you.

Mathieu Weill: Thank you for the clarification Brett.

I think we've now reached a point where we probably are not going to make much more progress during this call on this because we have a new proposal that needs to be assessed. The conditions have been (set) clearly by everyone during this call. The -- I think we have a good view of where we stand in terms of profit we certainly need to give you, each of you, some time to consider the Finn proposal and if need be provide draft amendments bearing in mind that if we were not able to reach a certain level of -- it could go further to the (CCWG) but if there was no consensus found in the (CCWG) on that approach, then we would need to backtrack to second report and I would also like to offer an opportunity for each of you to assess how this approach could be enhanced in a consensus manner as well.

So we have basically two options now and I would certainly -- I would encourage everyone to try and fine tune them to the best of which we've all heard is the common interest. I think we're in a sub-group right now where it's critical that each of us tries to really think for the whole group and not only for their constituency and try to find how we can bring all of our concerns together in refining these proposals.

We're not very far, I think the difference between the various proposals is rather thin. There are some principle options as we said, two-third or one-half, of the board is not that many but I think it's important to realize that the time

is running really short. I can offer to have a last call but that would be really the last call at the end of this call we would, as co-chairs, decide how to report to the (CCWG) and put that on the agenda for how to move forward with the third report. I think we could probably offer to have a call on Monday probably around (14 GTC) might be feasible. And I think if we could do that, that could really be (our last) opportunity to find agreement or at least bring as close or before reporting to the (CCWG). At this point I could hardly see an outcome that would be easy to find consensus about in the cross community working (with) itself and at the same time I see -- I am hopefully that with the fruitful proposals put forward by Finn then there might be a way to find disagreement and break this deadlock.

Are there any comments on this (proposed way) forward, I'll try to recap in writing after the call so that even people who were not part of the call can take part in the discussion?

(Thomas), I know Leon you cannot speak is there any (insights) you would like to offer before we close this call? That's a no.

Brett, I don't know if it's a new hand?

Brett Schaefer: Old hand, sorry.

Mathieu Weill: And Jorge?

Jorge Cancio: Hello, (unintelligible) do you hear me? Just to come back to the discussion. I think that on (the) call on Monday. (We) arrange this time on Monday we should look into the proposals which are (deemed most) important in this discussion and I think that Julia's proposal is certainly on the table and I think

that in the constructive (unintelligible) we will be willing to look into carefully into Finn's renewed proposal of what Brett originally proposed.

But I would certainly urge (Philip) not to go beyond that line because there we won't find any (common ground). We have compromised, we have possible agreed solution as (reach out our hands) every (unintelligible) to the ground set by Julia's original proposal and just the proposal just (unintelligible) but if we go beyond we will lose very precious time we have invested into this and we will lose this opportunity which is really very important.

Thank you.

Mathieu Weill: Thank you very much Jorge and I think that's a good way to conclude this call. I thank you all once again for taking the time to participate in this discussion and we'll try to recap that shortly so that we can have fruitful (unintelligible) before we reconvene on Monday at (14 GTC) unless, yeah, that -- plan it for Monday at (14 GTC). Thank you again and I wish every one of you a (studious) weekend. There's going to be some (CCWG) activity over the weekend and I hope you get your time to rest and get your energy back because we need to be (simply) relaxed and ready to (lesson) each other for a fruitful conclusion of this (for ICANN). Thank you very much everyone and enjoy the few days before we reconvene.

Thank you.

Woman: Thanks (unintelligible), thanks everybody.

Woman: Thank you (unintelligible).

END