ICANN

Moderator: Brenda Brewer
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Coordinator: The recordings have started. You may proceed.

Mathieu Weill: Thank you very much. This is Mathieu Weill for the transcript. I'm the CCWG appointed Co-chair of the working group. Oh, hold on a second.

And I'm very pleased to welcome you all to this fourth and last call of the Stress 18 sub group.

I'd like to start this call with the traditional roll call. I'm seeing a number of colleagues in the Adobe Connect room. Would there be anyone who is on audio only that we would add to the roll call?

No? So we have everyone on the call.

Okay so our task in this group just as a reminder is to report to the CCWG about options with regard to the Stress Test 18 bio change discussion with a clear perspective and timeframe which is that we need to finalize our submission for the draft report which is due to be issued next week.

As a consequence as we said last time this is our last opportunity to discuss in this format. And after that we will have to report to the CCWG and the call from the CCWG taking place at 6 UTC tomorrow.

So during the last call we said that we were narrowing our options to on the one hand building upon the proposal from Denmark. There was a proposal by (Finn) that was building upon an initial proposal by (Julia).

And so that was one of the areas, one of the options and the other obviously staying as the CCWG second report option.

Since then we have received a slight adjustment from the Denmark proposal which is on your screen which is the European GAC member's proposal from (Mark Carvell) from the UK government.

We have also received and we had noticed during the call a - an abetment from Brett Schaefer from the formal proposal which still needs to be discussed but was met on the list with some support and some reluctance.

And finally we have received a contribution from Phil Corwin regarding the addition of a new provision to address a concern about the potential way for the GAC to basically be designing policy which we will need to assess.

I also would like to point out that the European GAC members proposal was - had something - is missing one of the aspects of the formal Denmark proposal which was the requirement for the GAC advice to have a clear rationale. And I'm not sure whether that was intentional or not. But I received suggestions to add this to the - to this proposal.

So my suggestion to move forward on this call and remember that at the end of the call we'll have to decide what we report to the CCWG would be to look at those various options and try to assess whether we're - we do have the most traction or at least what are the relevant options to be shared with the CCWG so that the core group can make an informed decision.

But let me start with this proposal to add the requirement for the GAC advice to have a clear rationale and check whether, maybe recheck with the European GAC members who were behind this proposal on the screen whether that's a friendly amendment.

I am seeing some support from Avri in the chat but I don't know if (Mark) or anyone else would comment on that? I've seen some support from Greg Shatan.

So (Finn) is supporting that and Pedro is - hand is up. Pedro?

Pedro Ivo Silva: Yes thank you Mathieu. I think you all can hear me. Well my - actually it's a question I did in the last call. And I'll put it again my understanding is as you said is that while this proposal would include a provision in the general section about the requirement of having a clear rationale for advice and we fully support it.

But there's another element from the original Denmark proposal that I haven't seen in this follow-up proposal but from the European colleagues that I think it's important, I think should be preserved which is the requirement which is indicated by the sentence in this context, each advisory committee has the right to determine its particular definition of consensus.

So I will add to the question that there should be the requirement for the rationale that is also should be preserved in the general section of the bylaws. Thank you.

Mathieu Weill: Thank you Pedro. You're right that was part of the general session of the bylaws in the previous suggestions.

And I am sensing some support for that as a principal and with your precision about where to add it in general.

Brett I saw your hand up and now down. Was that intentional? No Brett you're back? Please.

Brett Schaefer: Sorry, just a second here. Yes my chat was not working correctly so I'm not seeing everybody's comments here now. So I wasn't seeing my head raised or lowered. So it will up and down is sort of a test here.

If in terms of the clause suggested by (Finn) that the advice from the GAC be clear and straightforward I don't see any problem with that. Thank you.

Mathieu Weill: Thank you Brett. So I think we can consider this a - an agreed-upon requirement that we have that in the proposal. And if we - Steve would you like to comment on that as well?

Steve DelBianco: Only briefly Mathieu...

Mathieu Weill: Please.

Steve DelBianco: ...and that's to make it - thank you and it's only to suggest that clarity of advice from any AC is obviously essential in clarity. Let me just give you all an example.

You all recall the GAC advice on Triple X. And the GAC advice was the words there is no active support in the GAC.

And the clarity requirement pops out at me then because a lot of us who aren't familiar with diplomatic protocols we didn't know whether that meant the GAC opposed or the GAC supported, right?

So clarity is about being clear whether an advice supports or opposes. That's clarity. And rationale is something a little bit different.

Rationale would be the reasoning behind the decision. And that reasoning is essential for the community, the broader community and for the board then to take on board that advice and formulate its response whether to implement, whether to suggest changes or whether to even reject it.

And without rationale it's so much more difficult for the community and board to handle it particularly where some governments didn't approve the advice that came over from the GAC.

So let's say clarity of the advice and rationale are both important but they're not the same thing. Thank you.

Mathieu Weill: Thank you Steve. So I would suggest that we take that as requirements definitely and move to the more difficult conversations that on the other item.

I think the proposal that's currently on your screen is from the European GAC members is somehow building upon the existing CCWG proposal in the way that it's actually restricts the ability for GAC to define fully in all manners the way consensus advice can be provided.

And at the same time it provides the relevant flexibility and autonomy for the GAC to do so within the limits that are in the proposal about either the - without a very - with a very clear definition of a very small minority of GAC members which is a strong limit compared to the existing CCWG secondary report proposal which was only referring to consensus with no specifics about it.

So I think the intent is to provide a balance between this flexibility that had been required by a significant number of governments in the public comment number two and some of the commenters in our group.

I would - should say in public comment to end during the Dublin meeting and the obvious concerns about the ability for non-consensus advice to be provided the same influence as consensus advice.

So we're walking a fine balance here. And I think we need to assess whether this particular balance is sufficiently well-defined so that it can - everyone in this group and in the CCWG can live with it. Because obviously it is not going to be everyone's preferred option. Probably it's going to be no one's preferred option.

But the question here really for us and then for the CCWG is whether this is with this kind of clarification it is something that we can live with, something that no one is going to die in the ditch for.

So I think that would be - that was the intent to have some comment on this. And I'd like to get a sense of their group here of how whether this particular way of finding the balance is acceptable hopefully or if it's not what would be an accessory to slightly adjust it and keeping it acceptable for everyone.

If anyone wants to comment on that. Brett is first. Brett?

Brett Schaefer: Thank you Mathieu. I think as I mentioned before we've had several conversations off-line here all about how exactly to handle GAC advice.

And I think that the friendly amendment that I offered before on this matter it is very important to a number of different people.

First of all the GAC has said over and over again that they intend to provide advice by consensus whenever possible. And that that consensus whenever possible would be without objection.

And we're talking about here as a GAC consensus with a very small minority of objections.

But as we know under GAC operating principles they can change those operating principles with a simple majority vote.

And what we're trying to do is protect the board from potential in the future in reference future grouping this against the possibility that the GAC may change its operating principles to define consensus in a way that would be a simple majority or 2/3 majority were you would have actually a substantial minority of governments or a number of very important governments that would object to the GAC advice and avoid the possibility that the board may have to enter into a good-faith negotiation to find a mutually acceptable

solution with GAC advice that does not have unanimous or near unanimous support.

And I think this is why this concern has been raised. As you know GAC operating procedures are currently to operate by consensus unanimous without formal objection wherever possible and I think this is very consistent with that.

Nothing in the future would prevent the GAC even if it changes operating principles from providing advice to the board. This would simply or define whatever it wants to.

What this would do is say the board is only obligated to enter into good faith negotiations to find a mutual solution if there is actual unanimity for in terms of the UN consensus the lack of formal objections.

And I think that's reasonable. It's consistent with the current GAC procedures and I think it helps protect the board from difficult situations in the future. Thanks.

Mathieu Weill: Thank you Brett. I think you've really recapped a concern that has been voice a number of times already.

My understanding from reading this European GAC members proposal is that this is actually providing a way to mitigate a little bit this concern because it is whatever the GAC - and if the GAC were ever -- and it's been consistent that they said would not be acceptable -- moved to a simple majority voting with these proposals currently on your screen that simple majority vote would not suffice to get the board to force the board to get into the mutually agreeable solution.

Because what the definition is that there would need to be a consensus with objections only from a very small minority of GAC members. So I think that's - my understanding it was that this concern was trying to address in this proposal. The next is Roelof. (Unintelligible).

Roelof Meijer: Yes Mathieu. This is Roelof Meijer for the record. Well as co-chair you make my point exactly. I don't know if that's good or if that's bad.

But departing from the same angle is Brett I come to a completely different conclusion and that with Stress Test 18 we wanted for the outcome of Stress Test 18 we wanted to prevent GAC getting too much influence if it changes its operating principles.

And I think this proposal does exactly that because it makes a clear distinction between true consensus and near consensus advice as compared to all the other ways that the GAC eventually could come up with an advice.

So my opinion is that this proposal indeed exactly covers the problem that we first say and that we were addressing with Stress Test 18.

And probably it's nobody's perfect solution but as the best solution we can get I think it's quite a good one.

Mathieu Weill: Thank you Roelof. I'm seeing agreement from Avri and Brett in the line. Brett I give the floor to you back right away but we'd encourage others to voice their views as well so that we spread the different points of views as wide as possible in our group.

Brett Schaefer: Sure, just a few short points. Just two short points. First the definition of very small minority obviously is very - is ambiguous. To me that means two or three countries. Other people it might be ten, other people it might be 15 because that would still be 10% of the GAC as it currently stands.

So a very small minority doesn't necessarily mean anything specific.

Second if as I said before even if you have GAC advice with objection presented to the board nothing presents - prevents the GAC from (unintelligible) that vote advice of the board nor does it prevent the board from engaging with the GAC to try and resolve that issue.

What we're seeing here is that there shouldn't be an obligation in that instance and that is the key difference here. Thank you.

Mathieu Weill: Thank you. And since you had a second time I guess Roelof can have a second bite as well. Roelof?

Roelof Meijer: Thank you Mathieu. Yes maybe I can just suggest that we remain far from saying that a very small minority can be something like 15 or 20. Maybe if it's 15,000 or 150,000 or $1.5 million then yes 15 is very small minority.

But in the present situation in the GAC and in any future situation in the GAC I think we are all pretty clear about what a very small minority is.

And if any day there is going to be a huge difference between what the GAC considers to be a very small minority and what the rest of the community considers to be a very small minority I'm sure that the community will have the final say.

Mathieu Weill: Thank you Roelof. I'm seeing some comments in the chat and I would like to ask whether all of us would like to work views on this? Steve?

Steve DelBianco: It's Steve DelBianco. And in response to some questions from GAC members, good questions from GAC members at the Los Angeles Intercessional we prepared a rationale from the Stress Test team for why we had said only consensus advice would trigger a mutually acceptable solution angle.

And it was to avoid placing the board of ICANN in a position of getting advice where some significant number of governments objected to the advice.

If they actually objected to the advice we put the board in a position of arbitrating amongst sovereign governments.

I think that rationale met with wide agreement that the last thing we wanted to do was to place ICANN's board in a position of dealing with several governments who strongly objecting to a piece of advice that came over from the GAC and trying to find a mutually acceptable solution where the governments themselves didn't have consensus.

So I'm only repeating the rationale that we surfaced just before Dublin and discussed in Dublin with wide agreement.

And given that rationale it does make it awkward that a very small minority might have strong objections.

And that is why on the last couple of calls we've tried to put some concept to that. And I would say that if we require the board to seek a mutually acceptable solution in the case where governments, some number of

governments feel strongly against it we are really exposing the board to an untenable situation.

The final word on how to react to this will come when all the different ACs and SOs react to the proposal that this subgroup puts in front of the full CCWG in their final report.

But we clearly haven't solved the problem that that rationale sought to avoid with the text that we have on the screen right now. Thank you.

Mathieu Weill: Thank you Steve. Could you elaborate exactly how the existing CCWG second report proposal would address this?

Steve DelBianco: Yes. The second CCWG report suggested that in the - only were the GAC had consensus -- and it does not define consensus firmly -- so there is an understanding that that consensus could be something less than unanimity in the GAC. Since the GAC preserves the ability to define its own consensus.

So the text on the screen is somewhat tighter than what we had in our second draft report by suggesting a very small minority. And yet the text on the screen also elevates to 2/3 the board rejection requirement in the case where the GAC did have unanimity.

So we continue to add different things and sometimes we will strengthen on one side and weaken on another. And I realize that's pretty typical in negotiations of language of this type.

But we do have two different factors. The 2/3 rejection. And some people have commented specifically on that.

I'm just reentering the notion of our rationale so requiring the GAC to have consensus is to avoid placing the board in an impossible position among sovereign governments.

Mathieu Weill: Thank you Steve. Next is Greg.

Greg Shatan: Thank you, Greg Shatan for the record. My concern is that this will essentially turn into a rough consensus option for the GAC.

And the proposal here gives this rough consensus option the same level of due deference there we currently give or that the ICANN board currently gives to essentially full consensus advice and proposes giving even greater amount of deference to advice that's full consensus supported as opposed to the current level of deference.

So to my mind in a lot of ways it's kind of is moving in the wrong direction. I'm sure GAC members will disagree strongly.

But for me, you know, it seems like what we're doing here is giving GAC a very enticing option of having less supported advice yet the same amount of deference we currently give fully supported advice and giving fully supported advice and even greater amount of deference.

I'm not sure if anything but momentum is providing any impression of support for this outside of the GAC.

I'm certainly within my own constituencies experiencing a lot of resistance trying to find any support for this.

You know, personally I always try to look for compromise and getting to yes. I'm, you know, I deal with transactions primarily in my real life and if the transaction doesn't happen that's a failure. So I try not to fail.

But here I'm just concerned that where we're just letting the momentum and the time pressure and the kind of the particular balance of speakers on and participants in this group convinces that there is more support for this whole concept than we'll actually find out in the wild.

So that's what I've got to say. Thank you.

Mathieu Weill: Thank you Greg. Phil?

Phil Corwin: Yes thank you. And I just posted in the chat I'm questioning why we even need this fourth paragraph in its present form.

The default threshold for any board decision is that at least a majority of the board support something or opposes something. Obviously there's a minority of the board in that position they lose.

So rather than, you know, have this phrase very small minority of GAC members with all the uncertainty of what that means, is that one nation, three nations, ten nations who's going to decide, I mean the board's going to decide.

Anyway why not just have something that says any other advice that is non-consensus advice of any form, any other advice approved by the GAC may be rejected by a majority vote of the board.

That makes it clear the only advice that where the board has to meet a 2/3 threshold for rejection is full consensus advice and everything else whether

it's too nations objecting, ten nations or even the GAC has gone to a majority vote system for making, providing advice in the future the board can accept or rejected by a majority vote which is the default position and the board gets to take into account the number of nations that objected and the basis of their objections before it takes that vote.

So I think we being this very small minority language and it's going to make acceptance of this very problematic. Thank you.

Mathieu Weill: Thank you Phil. I would note that with that removal the scope of advice, potential advice if the GAC ever chose to go to a simple majority voting which I find quite unlikely would be significantly enlarge.

And that would exactly fit the concern that was voiced by Brett before that. So I expect that was the reason for not going that route. Avri you're next.

Phil Corwin: Well just in quick response whether the GAC provides advice by simple majority or by consensus vote but not full consensus some nations objecting in all of those situations the board is going to take up the advice and decide on it by a majority of votes anyway.

So it's just stating what the reality is going to be. Thank you.

Mathieu Weill: Thank you Phil. Avri?

Avri Doria: Yes this is Avri speaking. First on Phil's comment I agree that there is a problem with very small minority. I tend to want to see a number there. I don't think we need to go percentages.

I think picking a number, you know, three, five, six it doesn't personally matter to me at this point. But I think keeping that 3% the idea that there may be more states joining at some point in the future yes but it takes a lot of them at 3% to change the consideration.

So I would actually advocate leaving this in but actually putting in an absolute number.

In terms of the overall support of this I think one thing we have to think about is that this needs to be seen by everybody in the full context of the whole report.

We are focusing just on the nitty-gritty of this. You know, some people have talked to their constituencies and stakeholder groups. I don't know how broad that discussion has been with the full level of explanations from both sides on it.

So if this is the compromised point that can be found I think when we're talking about within the CCWG there are certainly individuals myself among them outside the GAC that support this.

I know that I am at odds with my stakeholder group at the moment on this or at least the five or six people in my stakeholder group talking about it.

But, you know, I don't believe that that will necessarily remain the case in terms of the overall community.

So this is what we can reach. This is what we can reach. And the representative will be able to add, you know, their dissenting views if necessary.

So and now the other one I wanted to comment on is we often mention that once we before the 2/3 was rejected. And at that point it was a different situation.

You know, having turned something down a year ago or more does not mean that it can never be reconsidered again.

And so again if it's reconsidered within the context of the whole thing reconsider that this only applies in full consensus and that we have locked in at that point in bylaws the fact that full consensus of the GAC is the most significant and anything else will be looked at with less.

And so and that was also something that we never resolved. And so this does resolve an open issue which may, you know, change some people's views (unintelligible) in the overall (unintelligible). Thanks.

Mathieu Weill: Thank you very much Avri. Roelof?

Roelof Meijer: Thank you Mathieu, Roelof Meijer. Yes a few points. First I think it was Greg who said but I'm not sure so correct me if I'm wrong but who suggested that those who are in favor of this proposal are saying and that there will be a lot of community support for it.

So far I haven't heard anybody who is actually supporting this proposal say that. But I've heard a lot of people who are not supporting the proposal saying that it will never be accepted by the community. So I think we are divided on that.

And then the best way to find out is to put it forward to the community but as Avri says then in the context of the whole proposal and that not in an isolated way as we are now discussing it.

Secondly I had an earlier break when Avri was talking so maybe she made that point. But when Phil said that we could skip the fourth paragraph I'm not sure that if he realized that in the fourth paragraph which is now the fifth paragraph will have a strange sentence in it because it is dealing with exactly the two situations -- full consensus advice and near consensus advice.

It's clear that the GAC wants those two types of advice to get the same treatment in the sense of if it is rejected that the board will try in good faith in a timely manner and in an efficient manner to find a mutual acceptable solution.

And my third point is -- and I made it in an email that I sent earlier today -- in this whole discussion we seem to be departing all the time from a situation where we assume that the GAC advice is something we would not like to follow, we being the community and where the board is with us.

And I find it especially a little bit strange because in a lot of other discussions we had so many of us arguing that the board in most cases is against the community.

But I would just like to submit that there's a very likely case that that GAC comes up with sound advice that the community would like to follow and that there might be one or two governments who are against that advice.

And that it's possible that there is a majority, a simple majority in ICANN board also against that advice. And that's the other situation where I think this proposal brings forward a solution.

On the aspect of the GAC board if it's not a full consensus advice having to negotiate or deal with the countries I don't think that's true. Because if we follow this proposal that's a proposal from the GAC how to deal with GAC advice.

So the ICANN board can always say no, no we're not negotiating between governments. We're just following the GAC advice on how to deal with GAC advice.

Mathieu Weill: Thank you Roelof, a complex situation right now. Thomas would you like to offer some thoughts?

Thomas Rickert: Thanks very much Mathieu. Hello everyone. It is challenging indeed. So let me try to summarize where I think we are where we came from and also offer a way forward possibly.

When we started all of this we wanted to make sure that there's no possibility for the GAC to change its operating principles in no time and then force the board to react to something which is not consensus anymore.

Certainly we don't want to impose or dump on the GAC any - in any sort of fashion what the GAC does and how the GAC comes to its consensus positions. But we want to define what the board's reaction should be to GAC advice or whatever signals might be coming from the GAC.

Now some think that we are not specific enough in terms of defining the level of support that - and advice must enjoy inside the GAC. And let me speak to that in a moment.

So I think what is needed is in our aim to make things clearer and not unduly increase government influence to the board we need to be as clear as possible or as little ambiguous as possible.

The second point is that we talk about the simple majority versus 2/3 majority in the board needed to reject GAC advice.

So this 2/3 requirement that came in is deemed by some as making it unduly hard for the board to reject advice, others flag that it increases the GAC's influence too much. Yet others claim that it might be contradiction to what Fadi stated in Congress a few months back.

So how can we possibly resolve this and how can we make sure that they views are getting maybe a little bit more balanced?

Remember 2/3 majority inside the board means 11 board members versus nine board members for a simple majority.

So we're not talking about a lot large where we've seen previously that the board usually takes unanimous decisions on GAC advice.

So, you know, maybe we should step back a little and not get too hung up about the 2/3 versus simple majority issue?

So why don't we drop the idea of 2/3 and make it a little bit more flexible with when it comes to the determination of support inside the GAC?

So if we, you know, just think about this for a moment, let's not differentiate between UN consensus-based advice and other advice inside the GAC. But let's just talk about advice that enjoys broad support in the absence of significant objection inside the GAC.

I think that's what we're trying to say in plain language. It would then be up to the board to determine whether there is broad support and the absence of significant objection.

And I think that the GAC should be transparent about how the decision on the advice came about inside the GAC in order to allow for this determination to be made by the board.

And while I agree that it's a general term it doesn't have a specific number it allows for the board to act.

And everybody who's working with legal text knows that legal text do use general language. In many cases the application of those text work but in other cases they don't work. And then the parties that feel grief by this should use the IRP and see what - and have checked whether the board has accurately construed the bylaw language.

So my suggestion would be we drop the notion of 2/3 thirds and we clarify the language of support that is needed inside the GAC.

We drop the idea of having two different classes of GAC advice that need different treatment. But whenever GAC advice enjoys broad support in the GAC in the absence of significant objections then a simple majority board

decision is required to reject the advice and then we would need to enter into the process of trying to find a mutually acceptable solution.

Mathieu Weill: Thank you Thomas. You were suggesting some form of middle ground between those proposals the second report and these GAC member's proposal which is so dropping the 2/3 language so a single type of advice but was some flexibility in the definition of consensus was mention of broad support and something in-between this absence of significant objection or various minority of objections.

I am seeing that you are going to propose that language but would like to hear comments on that if there are any Brett?

Brett Schaefer: With respect to Thomas and I appreciate his effort to trying to square the circle. The Stress Test 18 language is what happens at the GAC redefines its own definition of consensus to how would the board reject - react to that.

I don't think his language of absence of a significant objection get us very much closer to a resolution for that stress test.

That was the whole reason why we wanted to insert the current operating procedure of 47 definition into the bylaws in the first place. Thank you.

Mathieu Weill: Thanks Brett. Roelof while Thomas is trying to work it on the wording. Roelof?

Roelof Meijer: Yes I think - similar point. Can you hear me?

Mathieu Weill: Yes I can.

Roelof Meijer: Okay, similar point. I think we're way past it. And in fact I think we start the discussion then - unless I understood Thomas wrongly but I think we have passed that station already and we couldn't solve it. And that's why we actually came on the 2/3 and then the different varieties of advice.

So I don't think that will bring us anything that we can actually solve. Thank you.

Mathieu Weill: Thank you Roelof. Jorge you're next.

Jorge Cancio: Hello. Good afternoon. Do you hear me?

Mathieu Weill: Yes Jorge welcome.

Jorge Cancio: Jorge for the record. I was a bit reluctant to intervene because I'm looking to remain as constructive as possible.

But I have to share a feeling which I have after these days of discussion that from the beginning some countries beginning with (Julia)'s proposal last Monday I think and with (Mark)'s last facilitation proposal last Friday with being trying to bridge the gap as much as possible to some of the persons and colleagues who have expressed concerns.

We have tried to address that concerns on an objective and mutual basis. And for instance I think it was only last Wednesday when we had a counterproposal by Brett Schaefer.

When we moved to on last Friday to a text that was basically the same text that Brett Schaefer had proposed we started to see council proposals which meets so-called friendly amendments to that text which were not productive at

all from a GAC perspective. And I think that was very clear from the beginning.

During this weekend we have received some other counterproposals which go in the same line opening new issues which had not been discussed by this group and in my opinion are not within the agreement of this group.

And so I have the feeling short to sum up this story that when we receive proposals to bridge the gap we just receive reactions that move the target of bit longer or a bit farther away.

I think it's not a constructive way of trying to solve a problem. It's definitely very difficult to reach an agreement on this basis. And I would suggest the co-chairs that they check the temperature of the room on the proposals we have on the table.

I don't know if also that on the proposal that Thomas Rickert just made and see to each and every of these two or three proposals what degree of support we have in the subgroup.

Because otherwise we can come up with new compromise solutions with new tries to bridge the gap. But if the strategy and the tactics are to move the target every time a little bit farther it will be impossible to reach a compromise solution. Thank you.

Mathieu Weill: Thank you Jorge. And I appreciate your suggestion to of a way forward and taking the temperature. Certainly will be, you know, something we need to do very soon. Pedro?

Pedro Ivo Silva: Yes Mathieu. Very, very briefly I want to express my agreement with Jorge's statement intervention.

I think since Dublin the GAC and also together with other colleagues from other stakeholder groups we have been making a continuous effort to try to bridge the gap between the different positions within the CCWG on this matter.

I think the GAC communiqué already represented a major concession from governments. We agreed the requirement of the consensus then further the proposal put forth by Brazil was again our new intention and you try attempts to bridge that gap.

And we have seen the sequence of events to in good faith bridge the gap.

But I think what I see and I fully agree with Jorge I see that new requirements are being or new level of intention to impose let's say certain definitions on the GAC or to limit the GAC ability to work is being put on the table. And I think as Jorge said is not being constructive at all.

I think we cannot go further than that as you said. This is our last meeting and I think we need to as Jorge suggested maybe try to put the different proposal on the table right now and see what is let's say the preference for that. Thank you.

Mathieu Weill: Thank you very much Pedro. And at this point I'd like to recognize that we are certainly have come to a significant point in our discussion where it's clear that there are different options that we need to define which ones we refer to.

I would first like to get some feedback from the - I will ask as some feedback on the - in the room and everyone's on the issue room so we'll use the green checks and red cross approach to take the temperature on basically the European GAC members proposal with the addition of the clear rational close.

Then I'll look - we'll be looking at the middle ground proposed by Thomas Rickert which we'll see on the screen shortly and look how these support and objections if there's a significant difference in favor of one of them.

Thomas would you like to - are we ready to look at the writing of Thomas Rickert's proposal if we can have it on screen?

Thomas Rickert: I've sent it to staff a couple minutes back and I've pasted it into the check section as well although. I'm just noticing that I forgot the first sentence which is remain on which remains unaltered.

So it would read at the advice of the Government Advisory Committee on public policy matters shall be duly taken into account both in the formulation and the adoption of policy.

Now I certainly in this suggestion we should also use the transparency or rational language offered by Steve so that's not in there yet.

And then it would continue in the event that the ICANN board determines to take an action that is not consistent with the Government Advisory Committee advice is also informed the committee and state the reasons why it did not follow that advice.

Any government that Governmental Advisory Committee advice which enjoys broad support of the advisory committee members in the absence of

significant objection may only be objected rejected by the majority vote of the board.

In this case the Government Advisory Committee and the ICANN board will try in good faith and in a timely manner in a timely and efficient manner to find a mutually acceptable solution.

So that's basically what I outlined during my last agenda. And I think while you think about this let me again remind you that we're talking about the difference between mine and the 11 board members required for rejection.

So giving up the 2/3 thirds requirement is a little bit of a sacrifice for the GAC I agree. At the same time if we proceed perceive it that way we could take away some of the concerns or perceived concerns based on (unintelligible) that I mentioned earlier one of them being, you know, a bigger influence of the GAC combined with Fadi's testimony in Congress a while back.

Also, you know, since we're only having the simple majority advisory it is a little bit easier and if you wish for the board to reject these votes.

But wouldn't you agree that they board will never take a decision lightly to reject GAC advice anyway. So it would carefully analyze the level of support and the level of objection inside the GAC and then possibly try to find a solution with the GAC anyhow.

So in my view having heard all of the arguments in the last couple of months I think that it could be a suitable a compromise.

And again when it comes the question of who determines what is broad support or what is significant objection it is not common in the legal world to

leave terms general and abstract so that they could apply it to a variety of circumstances and let the board use its best judgment to determine based on the information by the advisory committee. And I trust that we would be fine.

But I can't resist quoting and shouting out to Phil Corwin who said can the rocker language be made downloadable?

I first read rocket language because it might be so good and I hope that some of you agree that it is. Thank you.

Man: Thank you Thomas. So the main difference is that it has this new Rickert's language does not have the two-third level which was getting some, raising some, concerns and obviously (unintelligible) the Dublin input from the GAC so that's departing from this and it has a slightly more flexible definition of consensus then the existing Operating Principle 47, that's the main aspect. Bret would you like to say a word and then I'll try to go for taking a temperature Brett?

Brett Schaefer: Thank you. If Thomas would replace the words of significant with the word formal so it would read support of government advisory in the third paragraph, any government advisory committee advise which enjoys broad support of government advisory committee members in the absence of formal objection may only be rejected by a majority vote of the board. I would be perfectly fine with this. Thank you.

Mathieu Weill: Yes Brett, I expect you would be but with all do respect, it would certainly not acceptable from what I understand from the GAC members because they would be an (extra) departure from the Dublin input about the ability to define the way of consensus. So I don't think this is a friendly amendment and would --

Brett Schaefer: But Mathieu, it's perfectly consistent with Operating Principle 47 as it currently stands.

Mathieu Weill: Yes, but the key aspect Bret -- Bret, what we've heard in this discussion is that Operating Principle 47 is something that it has been maybe discussed within the GAC at some point because there's strong commitment from the GAC towards consensus decision making that there's a clear input to our group that has been made very clear around all of the public comments that (some) in the GAC, a significant number, want some flexibility and the amendment that you're suggesting would remove any level of flexibility and that is why I believe it would not be friendly and I'm saying this that that is exactly what Jorge was referring to and it's -- and I'm a bit sad that we have not been able within all of these subgroups to recognize these concerns from each and every party at this point.

So can we move back to the GAC European members proposal to take the temperature on it, I would like to have it on the script for that. Okay, so can I ask on this European GAC members proposal which has the two-thirds as a triggered, the two levels of board approval required and two different levels of consensus. Can we have a show of green (ticks) of red crosses in the AC room to take the temperature and see how much we would have support or objections? I know there's --

Thomas Rickert: Mathieu, this is Thomas so you're going to offer this and then my revised language?

Mathieu Weill: Absolutely Thomas. Absolutely Thomas. I'm giving you some time. There's seven green (ticks) and one, two, three, eight green (ticks), and one, two, three, four, five, six, seven red crosses. There is nine and seven at this point

and so that's -- I would call it the temperatures taken. This is a very split view on this particular one. Can I ask that you clear your green (ticks) or red crosses and in the meantime we will show the Rickert proposal? And I see Thomas is already moving to the Rickert proposal by changing his green (tick). Can we have the Rickert proposal on the screen please?

There's a little bit of time (necessary) to shift screens. Can I have some acknowledgment from staff that they're moving back to the Rickert proposal on screen please because I'm not seeing any movement? Yes, it's coming. Okay, so that's the Thomas (rockets) proposal with no longer two-third (board) threshold required and a definition of consensus which is (road) support in the absence of significant objection and can I ask please that you provide your green (ticks) or red crosses at this point?

I'm getting a little bit of time and I note Jorge's comment in the chat, explanation, that it's only the only other way to achieve compromise that he's offering a green (tick) and I think that's a general period for many that if it's ever a green (tick) then it suits me not the preferred way forward and I see Keith and Phil are also supporting this so we are at ten in agreement and two in disagreement. Federal is mentioning that it's not in a position right now to make, or provide, an input.

I heard someone wanted to speak. Did I hear correctly? Okay so we are -- Yes, Roelof, would you like to say something, we are at ten three at this point.

Roelof Meijer: Okay, I just want to check or maybe make this perfectly clear that the only significant difference, so there's some taken out, but the only significant difference between the proposal and this, would you call it the Rickert proposal is that the condition, that if rejected, the board will in good faith and a timely and efficient manner to find a mutually acceptable solution in the

Rickert proposal is only developed for consensus advice and in the other proposal it is valid for (who consensus) advice (any) consensus advice. That is the only practical difference.

Mathieu Weill: Thank you Roelof. My -- I mean, I will confer with Thomas's co-chairs about this but our -- my impression would be that this -- the Rickert proposal provides maybe a slightly higher potential for being unacceptable for compromise for all sides and therefore should be investigated but I see Thomas' hand is up now.

Thomas Rickert: Yeah, let me just briefly go on the record saying that, you know, we are now in the phase where we need to compromise and I've seen that some have added reservations of this that they would support this language as a matter of compromise. So I think some of you might feel like this is choosing the lesser evil and I sympathize with that but Roelof, in response to your previous intervention, I agree that the difference is not a big one, but let me quote Phil again, he said that the suggestion I made is much less of a lightning rod in the community and congress. And I think it's exactly those unintended side effects that people were concerned about. So if we can remove some of the concerns then I think we're closer to consensus and, again, thanks everyone who has changed their views and has said that, okay, it was the Europe GAC reps, proposes my third option, I would be okay with supporting this. I guess it's the spirit of compromise that has always been a feature of the (CCWG). Thank you.

Mathieu Weill: Thank you Thomas and indeed I think there's -- I'd say it's a promising way forward and we will certainly report it without (while you're) recognizing and acknowledging the (contributions) that led to this European GAC member proposal as well. Roelof?

Roelof Meijer: Yeah, thank you Mathieu and sorry to be on the likes of (unintelligible) yeah I just in reaction to what Thomas said, I just made that point because in my opinion in any case if there's a significant group as part of the (motorcycle) community that faces the ICANN board, I think if the advise is rejected it will be a good standard procedure to try, in good faith and in a timely and efficient manner to find a mutual acceptable solution. So I don't see this as a threat that increases the power of the GAC. I think this is just common good practice to do that if you get advice from a particular stakeholder group that has significant support. That's just my case so I know the GAC so I can live with both versions but I just don't understand why we are so afraid of this (close) that in good faith and in a timely and efficient manner we will have to try to find a mutually acceptable solution.

Mathieu Weill: Thank you very much Roelof. Greg last intervention and I'll try to take (stock) and explain the way forward.

Greg Shatan: Just briefly in response to Roelof I disagree with what he said and I think that the, what we call the (unintelligible) language here in the GAC section of the bylaws is unique and significant and I don't think it's just best practice. And in practice it results in a particular treatment for GAC advice which none of us are objecting to at least for consensus GAC advice. But to try to say that it is insignificant I think is to understate the significance of it and not a useful way forward. Thank you.

Mathieu Weill: Thank you Greg. So, based on this feedback, and I want to thank you all for making this difficult (course) and I'm very much aware of the reservations that where expressed in the chat about the ability to -- for the green (ticks) or red crosses to be representatives of your respective communities or countries. But I think what I'm taking from there is that in terms of report to the (CCWG) number one, is some clarity gained on the requirements underlying this

discussion that we'll certainly have to recap for the whole group and that includes the necessity for a clear advice, clear rational of the advice from the GAC as well as from other advisory committee.

I take from this discussion that the two-third threshold for the board has been creating some concern for some stakeholders about also was part of the GAC Dublin input as well. And I would offer that we provide the (CCWG) with a comparison of the existing second (unintelligible) proposal, the GAC's European members proposal as well as the latest Rickert proposal indicating that our initial assessment during the call, and obviously that has limits, is that there might be a slightly higher potential for consensus and compromise in this last proposal but obviously subject to everyone checking with their respective communities and I (search) it could be a useful way to demonstrate how that we are making progress and taking the input from the second (public) comment in Dublin into account to demonstrate that we should take that into our draft report at the (CCWG) level.

And I'm seeing Phil's hand is raised now. Phil?

Phil Corwin: Well, I'm seeing Greg's in front of me. Did Greg want to go first?

Mathieu Weill: It was an old hand.

Phil Corwin: Oh old hand. Okay, as I understand it, from the discussion notes what's going to be forwarded to the (CCWG) is both the European GAC proposal and the Rickert or as I mistyped (rocket) proposal. Since the European proposal will be presented, I just wanted to raise the language I circulated last night briefly and just explain its purpose. Is that okay?

Mathieu Weill: Yeah, I think now that we've -- that's an extra item we need to discuss, yes.

Phil Corwin: Okay. Well, this is meant as a purely friendly amendment of the European proposal for requiring a two-thirds board rejection so in some circumstances it's going forward and the language would be -- the language of the first paragraph would be the advise of the governmental advisory committee on public policy issues related to matters under deliberation or implementation within the ICANN community and then it reverts to the rest of the language.

This has been -- this merely memorializes what the GAC's procedure has been, the GAC and all of the instances I know of have been providing advice on matters which are already under discussion in PDP's or other formal avenues within the ICANN community or where a PDP is being implemented. And the prime example is the new (TLD) program. I think we have to -- you know, not to restate things but the issue of formalizing the boards current practice of rejecting, of requiring, at least a two-thirds board vote to reject advice, GAC consensus advice, was very controversial and broadly rejected by the ICANN community within the past year. It caught the attention of congress and (Fody) was asked about it and reassured congress that it was off the table.

So it's going to be focused on by both the community and the congress and we've heard from (Fody) this morning that NTIA is telling him, this was on an (SLNAC) leaders call, just before hours that NTIA is telling him that the Dot Com Act is likely to be enacted, passed by the senate and enacted next month so this would assure both the community, this language I'm suggesting, would assure both the community and congress that the GAC could not, no it's own, provide advice that has not been deliberated on or decided to be implemented by the broader community. It wouldn't prevent it from providing advice on that matter, it would just not require the board to reject it by a two-thirds vote

and it would, in fact, encourage the GAC if it came up with issues on it's own to perform outreach to the rest of the community.

So I'll stop there, it's a friendly amendment but I think it's an important amendment if the two-thirds vote proposal goes forward within the (CCWG). Thank you.

Mathieu Weill: Phil, let me ask you a clarifying question and it's only a brief response I'm expecting. Should this be considered a friendly amendment and integrated? Would that lead you to prefer the two-third option and approve it because you were not in favor of this earlier. Or would that not change your preference for the option which it did not -- the two-thirds is not there?

Phil Corwin: Well, I can't give you a simple yes/no. It would make the two-thirds proposal much less problematic for me and I would be happy to state publically that it's a much less concern to me personally if it goes forward. I think the alternative presented by Thomas this morning still presents much less potential problems down the road than the European GAC member's proposal.

Mathieu Weill: Thank you. Does anyone -- any of the European GAC members want to say, react, to say whether they find this a friendly amendment or whether I'm seeing some discussion on that in the chat because, I guess it's presented as a friendly amendment and we should check that. I'm seeing that (Raphael) is not exactly feeling this is a friendly amendment. He's mentioning that it's his new additional issue that raised at a late stage and Jorge seems to be in agreement with that.

My personal feeling Phil is that it's indeed adding a new strain on the GAC because it's restricting consideration of GAC advice by the board and as such I

find it difficult to believe that the GAC would find it friendly. (Megan), no that's not related.

Okay, I think we're a bit over time already but my -- and I appreciate your intent Phil and I know exactly what you're trying to address here. However, I'm going to say that it's -- with the Rickert proposal and language we may have a way forward that is probably more promising. So I would suggest we leave it at that at this point.

Okay so I think we've made everything we could at this point. What remains to be done and will be done in the next few hours is summarize the options that we discussed, the requirements, I will certainly add a couple of considerations from a sharing point of view in terms of assessment where the temperature was; not providing any figures because I don't think figures are very relevant but I think there was some form of clear indication of the type of support and objections we could have and move it separated quickly to the (full) (CCWG) because consideration of the way forward is going to be on the agenda tomorrow and I think we will certainly take that onto the full group tomorrow and hopefully find a way forward for our third proposal. It will certainly not be an enthusiastic compromise report. I will certainly have you say that it's a complex issue and hasn't been -- the options for considerations will not satisfy everyone but I hope we can find a way to convince everyone that it's an appropriate way forward; something that's not worth (dying in the) ditch for and that way we will provide a good way to demonstrate how constructive the (unintelligible) (stakeholder) model might be and I want to -- I will certainly recognize the efforts from all on this call who provided constructive proposals to try and understand and accommodate the other parties views in these discussions and let's all remember that it will be so sad, actually, and so detrimental to the stakeholder model that we're trying to promote if the success -- if our efforts, the whole (CCWG) efforts were

jeopardized by this particular issue and I think it's very important that we find closure on that.

So with that I will now thank you all for your -- for being available for all of those calls in this group. It's been a very professional and respectful discussion and I do hope that we can bring you to a close tomorrow in the (CCWG). So thank you very much everyone and talk to you tomorrow or actually very soon. Bye.

Woman: Thank you Mathieu, bye.

                                        END