

**ICANN**

**Moderator: Brenda Brewer  
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1:00 pm CT**

Leon Sanchez: Welcome everyone to this CCWG (unintelligible) Accountability Meeting Number 81.

So we will be having a call with a schedule break, a ten minute break at some point. So let's get started with this.

The roll call will be taken as usually per those attending the Adobe Connect Room. But if there's someone that is not in the Adobe Connect Room that is on the phone bridge kindly please state your name at this point so we can add you to the roll call.

Seun Ojedeji: Yes, this is Seun. I'll (unintelligible).

Leon Sanchez: Thank you Seun. You have been added to the roll call. Anyone else on the phone bridge that is not in the Adobe Connect Room?

Okay hearing no one else I remind you to kindly mute your microphones if you are not speaking. This will help us to have a better meeting.

And if you haven't filed your Statement of Interest by this date I strongly encourage you to file your Statement of Interest.

If you have any problems accessing the Web site for doing so you can contact staff and staff will be happy to assist you in filing your Statement of Interest.

So with no further delay I would like to turn to my Co-chair Thomas for the next agenda item. Thomas?

Thomas Rickert: Thank you very much Leon and good morning, good afternoon, good evening everyone.

The next item on our agenda is another aspect of Recommendation 1. And that is the question of the GAC being a decisional participant.

And we had the first reading on that topic exactly one week ago. And the conclusion that we reached during the first reading was that the GAC should be included as the decisional participant.

So we would like to confirm with the group that we can - that we - this result will be the same for the second reading.

So let me ask whether there are any interventions. And I see a queue forming. So let us move to the queue. Robin is first and then Brett.

Robin Gross: Hi. This is Robin Gross for the record. Can you hear me?

Thomas Rickert: Yes we can hear you all right.

Robin Gross: Great. Oh there's an echo on the phone line. Is it - is there an echo on the bridge too?

Thomas Rickert: There's an echo. Please those who are not speaking do mute your microphones.

Robin Gross: Oh, boy. There seems to be an echo. Okay. I'm not sure if I should proceed or if you want to...

((Crosstalk))

Thomas Rickert: Please do Robin.

Robin Gross: Okay. Okay so I'm - would like to object to this particular aspect of the recommendation to no surprise to anyone is NCSG has been all along.

I think it is a grave mistake for us to be making this kind of a fundamental change in ICANN's design to have governments as decisional authorities within the governance structure of ICANN and a lot of the key functions and operations removing board members and approving budgets and things like that.

ICANN was specifically set up to be private sector led meaning governments wouldn't have a say in these decisions.

And now we are explicitly overturning that prior design choice and saying no we think this group of people, the CCWG is changing ICANN such that now governments have a very significant role in its governance.

And I think that, you know, we need to be aware that this is what we're doing. And it's really going to come back to haunt us when people realize this is what's happening.

I mean GAC hasn't even said themselves that they want or approve of this kind of decisional authority. And yet we're thrusting it on them just because we're all so tired of process. We want to get done with whatever's in front of us. I think this is a terrible mistake.

And if GAC has not even said that it even wants this or it even approves of this I can't for the life of me understand why we are insisting that we must change ICANN's fundamental structure in this way. Thank you.

Thomas Rickert: Thanks very much Robin. And let's please remember that the position that you've just confirmed has already been recorded during previous calls. So as we are on the second reading let's see whether there are new arguments for other points that get traction so that the group's previous consensus needs to be revisited.

But Robin your objection to this point is well recorded. Next is Brett.

Brett Schaefer: Thank you. One is I don't believe that this is actually the second reading. We didn't really have an elaborate discussion because the GAC had not provided its formal comments on the recommendations in terms of Recommendation 1 and Recommendation 11 at the time that we were supposed to discuss this last week.

So I would suggestion that this actually a first reading of those two things.

Second I want to highlight or at least expound on one of the points that Robin made earlier which is that the GAC actually hasn't informed us whether they're going to be an active participant in the Empower community or not.

The December 21 statement says that the GAC anticipates that it would intend to participate in the proposed community mechanism but it has the following qualifications and it lists those qualifications. But it doesn't say that it actually will participate.

And the most recent comment, formal comment on the third draft from the GAC says that it doesn't have a consensus on it whether it's going to participate or not.

So we are proceeding with the idea that the GAC will participate but lacking any certain knowledge that it actually will.

This raises problems as we discussed before in terms of the community powers. If we say that GAC is a voting participant in this proposal but they end up not being the voting participating the thresholds are an issue.

If we have GAC as a voting participant, a decisional participant in the Empower community but it finds itself unable to actually reach a decisions on almost all matters that also raises questions in terms of the thresholds.

And I think we need to as a community move forward with the recommendation that GAC actually be advisory to the Empower community, we move forward with four groups, voting participants and have GAC advisory as we are with SSAC and RSAC.

And then if GAC does in the future decide to engage fully as a decisional participant that can be discussed and added as an amendment to the decisional participants in the Empower community which is already encapsulated and provided for in the bylaws as we're drafting them or at least in the transition proposal as we're drafting it.

So I think that that is a very reasonable way to proceed in terms of the GAC's failure to give us a definitive answer on whether it's going to be a full decisional participant or not. Thank you very much.

Thomas Rickert: Thanks very much Brett. And let me just briefly respond to your point which was echoed by Paul that this cannot qualify as a second reading.

Please remember this discussion that we're having is a discussion whether the GAC should be allowed as a decisional participant in our scheme. And therefore it's a question of more general nature.

So this discussion we could have and we already had previously during the first two reports basically and respective public comment periods.

So this question could be discussed by our group last week. And we're now confirming the consensus or correction for revisiting that consensus.

Next in line is Kavouss. Kavouss please the floor is yours.

Kavouss Arasteh: Thank you. I think you're on second (I think). And the second I think is not the first thing we should avoid to have a full explanation providing the right assistance from exercising the right. We need to provide the right for GAC to participate. And it is up to GAC to decide whether they participate or not participate.

But one simple question. If the other SO and AC touch the issues relating to the GAC and GAC is not allowed to participate how you deal with the market?

I tried to be short as possible. And I request you Thomas and Mathieu and Leon to reply (unintelligible). If you change Article 11 and GAC is (touched) and GAC has no right to comment in so what you do with that? Thank you.

Thomas Rickert: Thanks very much Kavouss and thanks in particular for your request to others to be brief and being a good role model for them.

Let's move to the next speaker in the queue and that is Olga please.

Olga Cavalli: Thank you Thomas. Can you hear me?

Thomas Rickert: Yes we can hear you all right.

Olga Cavalli: Thank you. Thank you very much.

Just to brief I would like to support what my colleague Kavouss has just expressed.

Argentina is of the belief that the GAC must have the right to participate as other SOs and ACs will do. Then the GAC will decide what is best for its group.

But at the first stage of this decision we should have - the GAC should have the right to participate.

Argentina doesn't think that it's a mistake having the governments in this position.

On the contrary we believe that it would be totally imbalanced not having the governments in this position participating. Thank you very much.

Thomas Rickert: Thanks you very much Olga. Pedro is next.

Pedro Ivo Silva: Hello? Can you hear me?

Thomas Rickert: Yes, hello Brazil.

Pedro Ivo Silva: Hello. Yes, thank you. Yes well I - while it seems that some colleagues who had talked before have are suggesting that we should interpret lack of consensus of the GAC in the same way as if the GAC had rejected its participation in decision making steps.

And it's not true actually. Well the GAC did not reject this. It could just not reach a consensus about it.

So I think I believe we would really commit a grave mistake if we would react as if the GAC had formally objected to this recommendation, the Recommendation 1.

And secondly I would just briefly like to draw your attention to the fact that there was really substantial support for Recommendation 1 in the public consultation - 48 comments in favor, eight against. And of those eight actually five were actually related to this issue of power distribution between SO and AC and the GAC as decision of participants.

So of course it's true that we need to respect this objection presented but we need to bear in mind that this recommendation made its way through to our third report and there was really substantial support of the community to it.

That's it. Thank you.



Thomas Rickert: Thank you very much Pedro. Next in line is Sebastien. And I would like to close the queue after Sebastien.

Sebastien Bachollet: Thank you Thomas. And I will be very short because I just want to support what Alan wrote in the chat and what Steve DelBianco write in the chat too. It's my - it was my main two arguments.

And I really think that we are building a new body. Don't try to apply the same way of life and of organization of the other body within ICANN. If not we are just duplicating the bodies and that's not good.

And let's try to be innovative. And it's what we are trying to do since the beginning.

And once again I support both Alan and Steve comments on the chat. Thank you.

Thomas Rickert: Thank you very much Sebastien. Let me try to take stock of the discussion that we had.

First let me note formally Robin's objection which was supported by Brett and Paul. It looks like the group of those objecting to the inclusion or possibility to include the GAC as a decision of the party is coming from a group of people that have previously raised objection. So we do not see an increase in objection, i.e., there doesn't seem to be more traction for revisiting the previous consensus on that point.

Now Pedro you had also refreshed our memories on the number of commenters that had spoken in favor of including the GAC as a decisional party or at least offering the opportunity for the GAC to be one.

I would also like to reiterate that it's - it will be possible for Robin and others to add minority statements to the final report in order to record and evidence their position.

In response to what I think it was Brett said I would like to go a little back - a little bit back in history with respect to two other groups in our community, i.e., SSAC and RSAC who are not decisional participants.

But the big difference here is that the GAC has not rejected inclusion in this decision-making scheme while SSAC and RSAC have formally responded to us that they wish to be excluded.

So I think that the responses of other groups have been different so that doesn't suggest that we have precedence for dealing with the GAC in another session than we are about to confirm now.

So with that I would like to confirm the result of the first reading for our second reading. And that means that the GAC is an eligible decisional participant. And with that we can close this agenda item and I would like to hand back over to Leon.

Leon Sanchez: Thank you very much Thomas. And the next agenda item is the one on SO and AC accountability, Recommendation Number 10.

And at this point the conclusions from the first reading are in the screen now. And we have discussed that from the comments received of the third comment

- public comment period SO and AC accountability is definitely an issue that needs to be taken care of.

And would we would like to confirm is whether these comments can be handled as part of Workstream 2 deliberations.

Our report suggests that SO and AC accountability should be taken care of on Workstream 2. And I believe that there have been other comments lately by the GNSO and the GAC also in these subjects, especially in regard to and also the ALAC I believe that comments on SO and AC accountability in regard to having the incumbent SO or AC being reviewed, part of the review team.

So I think that is something that we have heard from different chartering organizations so far. And I believe that that is also an issue that could be of course further explored and discussed as part of our Workstream 2 work.

And at this point I would like to hear your input on whether this comment that we received in the public comment period are actually something that we can handle as part of our Workstream 2 plan.

And for some queue I have Alan Greenberg. Alan?

Alan Greenberg: Thank you very much. Just to note the ALAC did suggest that as part of Workstream 1 in our version of the bylaws that we add a - not a comment but a condition in the section of the bylaws on reviews. And that is particularly Article 4 Section 4.1 that the review should include a review of accountability of the appropriate AC and SO.

I don't think the ALAC would object strenuously if we decided to do that in Workstream 2 but since it is part of the - of a bylaw revision that we're doing now it wouldn't be inappropriate to do it.

If we're agreeing to do it we might as well put it in the bylaws and say so.  
Thank you.

Leon Sanchez: Thank you very much Alan. Anyone else with a comment on SO AC accountability? I remember that there was a couple of comments very valuable especially from Kavouss regarding the proposed (stock) overview of the GAC.

And I remember that the challenge there is that of course is reviewing (Wolf)'s (unintelligible) dates. So I would like to listen from someone in the GAC if you have any input as to how we should manage this issue on Workstream 2.

And I see Kavouss has kindly raised his hand. Kavouss could you please take the floor?

Kavouss Arasteh: Yes Leon I think you need to add what I said in a qualifier after what you want to say saying that however GAC members have a special status because they are responsive to their government. And government they do not have the situation that be responsible for the third party.

This is a sovereign right of the government and has been recognized. I want to be sure to respect what I said the other day. Thank you.

Leon Sanchez: Thank you very much Kavouss. And I guess that this would definitely lead us to including this kind of language in Workstream 2 as part of our Workstream 2 work.

And of course we would develop a discussion around the issue that you have kindly pointed.

And I see Thomas Rickert hands. Thomas?

Thomas Rickert: Thanks very much Leon. And I've put myself in the queue to maybe add some thoughts to the idea of SO AC accountability with respect to the GAC.

Certainly it is not our role and even it would be most inappropriate for our group to try to prescribe what sovereign governments should or should not be doing.

However the GAC as other groups inside the ICANN community do have a role in this community and they interact with other parts of the community.

And we have recently seen very encouraging improvement in particularly the GAC's interaction with other parts of the community. Let me point out the fact that we know have a GNSO liaison to the governmental advisory committee.

Let me say that the GAC and the GNSO have established a steering group that works on improving the collaboration between the two groups when it comes to policymaking in particular to avoid that the GNSO is working on policies all the way through to then find out in the last minute that there are issues in the GAC.

So there are a lot of signals and I'm sure that there are examples for other parts of the ICANN community as well where the GAC as a group -- I'm not speaking of the governments represented in the GAC -- but where the GAC as a group inside the ICANN community is showing to be accountable to the rest of the community by trying to be more transparent about their own procedures, trying to come up with concerns earlier in the process.

And maybe that's something that the GAC members represented on this call could comment on. You know, maybe that could be a starting point for writing up some ideas for ICANN or for GAC accountability that can be worked on and reviewed on a regular basis without interfering with the internal policymaking and decision-making processes inside the GAC.

Leon Sanchez: Thank you very much Thomas. I see Farzaneh's hand is up. Farzaneh?

Farzaneh Badii: Yes hello. Farzaneh Badii speaking. So I have a just a clarification. Are we still planning to insert amendment to the Section 4 for after - at the (unintelligible) 4 for of the bylaws?

Because if we are planning to do that -- and I wanted to say this last week but I could not speak -- if we are planning to do that we have to be very clear with the community.

Because in our third proposal in our public comment when we sent out the proposal for public comment we did - really did not state the whole article.

So the stakeholder groups might not know what sort of changes can be made. For example the board unilaterally can ask for independence a review of this structure and can decide on all these things.

So just a clarification, if we have not - if - we are not going to amend the bylaws then - and the Article 4 of Section 4 then I do not have any other comment.

Leon Sanchez: Thank you very much Farzaneh. And our recommendation as part of Workstream 1 is to include the reviews of SOs and ACs accountability mechanisms in the independent periodical structural reviews that are performed on a regular basis. And I'm reading this from our - the report.

And this recommendation can be implemented to an amendment of Section 4 of Article 4 of the ICANN bylaws.

And I mean, that tradition hasn't changed. So we would be still opposing that as part of our report.

And what we're trying to do here is just to confirm that the comments that we received on the third public comment period are in fact something that we can deal with as part of our Workstream 2 workstream.

And so I hope that clarifies your question. And next on the queue I have Olga Cavalli.

Olga Cavalli: Thank you Leon. Can you hear me?

Leon Sanchez: Yes we do.

Olga Cavalli: Thank you very much. I would like to thank Thomas for his comments about the search of the GAC for more transparency and inclusion in its deliberation.

And as an example actually we've listed - maybe we could are some examples of this apart from the GAC GNSO interaction we just think is relevant.

We for the first time in the history of the GAC we opened a document that we - internal document of the GAC that we are working in one working group to the whole community for comments.

We did that one year ago. It's a document of other protection of geographic names in new gTLDs.

As you may recall there were many conflicts because some names from the communities in Latin America were taken as new gTLDs by companies from other countries and there were conflicts.

So we - what we want to avoid in the GAC and in this working group is conflicts in new rounds.

So the document was open to public comments. We received more than 70 comments. And we are still working on analyzing all of them. So that was for the first time an internal GAC document open to the whole community.

And we hope to repeat that experience that in my modest opinion was very successful. Thank you.

Leon Sanchez: Thank you very much Olga. Next on the queue I have Chris Dispain.

Chris Dispain: Hi Leon. Thank you. I just wanted to note that I've just sent the board's - noted the board's current comments on this to the list. It's generally supportive.



But I wanted to raise one specific point which was that comment just makes for - you're - we're clear that the implementation - sorry, that the reviews are independent, the SO and AC reviews are independent. That's as I said, it's encompassed in your comments. But I just wanted to raise it verbally as well. Thanks.

Leon Sanchez: Thank you very much for this Chris.

And I see Farzaneh you have your hand up again?

Farzaneh Badii: Yes. Sorry (unintelligible) speaking. I do have an objection to including this amendment in the Article 4 of 4.

I do not have any objection to their SO AC being accountable and also a review process. But I do believe that it is a grave mistake to insert it where we have suggested it before.

And I do ask you to reconsider and I - yes, that's about it. Thank you.

Leon Sanchez: Thank you very much Farzaneh.

So I guess we have heard from many commenters that if we are going to actually take this step on SO AC accountability as it has been firmly recommended and supported by commenters I believe that maybe we should add some kind of language into our final version of the report that, in fact, includes the GAC's review. And I would like to, of course, listen to any objections, but first, I would like to go with Steve DelBianco who has his hand up.

Steve DelBianco: Thank you, Leon. As one of the folks who worked on the incorporation of the Affirmation of Commitments reviews into the bylaws, I wanted to remind folks there's something that is already in our proposal, and this is in Annex 9 where the accountability and transparency review team - we always abbreviate that as the ATRT. You've given a list of things that it examines when it does an accountability and transparency review.

And I'll paste into the chat what of the items that does involve GAC's interaction with the board? It isn't about evaluating whether the GAC itself is transparent or accountable, but only whether the GAC's interaction with the board and recommendations, assessing the role and effectiveness of the GAC. That's what we have in our third reading now for the Affirmation of Commitments ATRT review.

And if you wanted to broaden that a bit - and it's not the same thing as an organizational and structural review; I realize that. I'm trying to point out that we do have an aspect of this review. It could even be made stronger to look at not just the way GAC interacts with the Board of Directors in that way, but how does the GAC interact with the rest of us?

How - what is its role and effect in this in interacting with the Empowered community and working groups, cross-community working groups that we put together? And if we were to do that, I'll paste into the chat a small amendment - it's in brackets right there - that could be done over in the AOC review section, which is Recommendation 9, so that we would ask the ATRT when it gets together every five years that it should do a review -- a (unintelligible) effective and what the role of the GAC is in interacting with the board and with the whole rest of us in the broader community.

So I offer that as one idea to strengthen the scrutiny that we do on GAC's interaction with us, but it isn't, I understand, the same thing as the organizational or structural review. But this is something we've already baked into our recommendations and we could make it even stronger. Thank you, Leon.

Leon Sanchez: Thank you very much, Steve. I believe that the suggestion that you make is quite interesting and actually constructive so I would like to call for any objections on adding to our next portion of the report -- this language that Steve has pasted into the chat box. Are there any objections to including this in our report?

Okay, so I see no objections. I see Olga Cavalli's hand is still up, but I guess that is an old hand. Olga, could you please confirm?

Yes, thank you. So I see Brett Schaefer's hand is up. Brett.

Brett Schaefer: Hi, thanks, Leon. I'm actually not here to speak for myself. I'm here to speak for Farzaneh Badii. Apparently, she made a comment in the chat and she's not able to speak directly on the phone bridge for some reason and she says that her comment is getting buried beneath all the GAC discussion.

And so I just wanted to offer an opportunity for someone to find that comment and raise it so that it can be voiced. I'm having trouble myself. So if that could be done, I would appreciate it. Thank you.

Leon Sanchez: Thank you very much, Greg. I see that in the notes (Farzaneh's) objections is already record and he (unintelligible) have been able to actually share her thoughts twice with the group. So I am not sure what she means by - that her

comment is being buried in the GAC discussion because we already have it in the notes twice, actually.

So - oh, yes, she's acknowledging that it has been actually on record. So I think that we have a way forward and the way forward would be to actually make the clarification on the amendment to Article 4, Section (unintelligible) and include the suggested language by Steve DelBianco on our next report. And, of course, confirm, at this point, if there are any objections on dealing with the comments received in the third public comment period as part of our Workstream 2 plan.

So can I have, please, if there are any objections to addressing the comments received in the (unintelligible) period as part of our Workstream 2 plan? Okay, so I see no objections and with this, I think I will turn back to my co-chair Thomas for the next agenda item.

Thomas Rickert: Thank you very much, Leon. So it's now time for us to begin our second reading on the reconsideration process. That's Recommendation Number 8.

We have gone through the point that you find at the beginning of this document during the last call and they have been confirmed by the group, and this is now to confirm that the group has not - that there are no new agreements by the group in order to revisit that previous consensus. So we have concluded that the three concerns raised during the comment can be dealt with during the implementation phase and these are that the requests for - the request for reconsideration process should not be regarded in isolation, but that it is part of a mechanism or set of other mechanisms.

Then there was a concern raised with respect to the role of the (unintelligible) that he should be sufficiently equipped and knowledgeable for substantive

evaluations required for this process. And certainly, there was the point that the reconsideration request must be transparent and fully communicated to our ICANN stakeholders. And these points were regarded as items that can be included during the implementation phase.

So let's see whether there's any further need for discussion on this point. If you would like to speak to this point, please make yourselves heard. Let me pause for a few more seconds.

This is the second reading of Annex 8 -- the request for reconsideration process. Kavouss. Kavouss, it's your - to speak. So the hand is lowered.

Okay, so we are ahead of schedule which is a good thing. We've made good progress. The next item on the agenda is Recommendation Number 11.

So let me check where the Mathieu is already with us because this was one for Mathieu to chair and Mathieu indicated that he would be joining the meeting a bit later. So he doesn't seem to be on the call, which is why I would suggest that we move on -- that we don't take the scheduled break because that is way too early and I think everyone is still very fresh.

So let's - can we please bring up the document on Recommendation Number 11. And Steve, as reporter for that topic, would you be kind enough to do a quick recap of where we are and then we go through the remaining questions one by one.

Mathieu Weill: Thank you, Thomas. All of you have in front of you, on the Adobe, six discussion points that we would like to cover today. And the six discussion points were arrived at by going over the comments that came in from the 90

groups that submitted public comments as well as the chartering organization comments that we receive.

They are arranged in an order that we will soon enough get to the real pivotal questions -- Number 5 and 6 -- but along the way, what we have tried to do is address concerns that were raised in the public comments and the chartering organizations. For instance, if a registry constituency suggested that they had three concerns with Recommendation 11 and they articulated their concerns in the public comment they submitted, so with that in mind, you'll see that Items 1, 2, 3 are meant to address some of those registry constituency concerns as well as others that were expressed by the IPC and other groups.

Number 4 on this list will allow us to dive into some concrete suggestions made by our lawyers and we'll be able to jump to the next page to do that. And then if we quickly get through 1 through 4 -- the easy part -- we would get to 5, which, as I set it up last week, Number 5 is really a judgement call that those of us in the CCWG community and our chartering organizations have to make the judgement as to whether requiring the board to have two extra votes to reject GAC advice as an appropriate tradeoff for requiring the GAC to lock in a very strong consensus method into the bylaws for advice that gets the special treatment.

So, Thomas, was that - if it's okay with you, we can go into Number 1 first and then just walk through it.

Thomas Rickert: Yes, let's please do that.

Mathieu Weill: Great.

Thomas Rickert: Any comment on the first item?

Mathieu Weill: The first item, Thomas, is meant to clarify for Legal Counsel, when they draft our bylaws, is that nothing about the change we're making to Rec 11 is intended to modify the conditions under which recommendations or obligations for the board to consider and vote on GAC advice. We are simply adding a phrase and it limits the condition under which the board GAC would jump into that special mode of trying to find a mutually-acceptable solution.

And if any of you want to refresh your memory, you can jump to Paragraph 4 on page 4 - Paragraph 4 on page 4 in this document, and you'll see the bylaws from Article 11J with underline, bold for what the new text is. So Thomas, anything to add on Item 1?

Thomas Rickert: No, I think that was quite comprehensive. Are there any other comments from the group on that point?

Steve DelBianco: Why don't we go to Number 2, then? Number 2 was our concern that was expressed by many in the public comments that our third draft wasn't strong enough in requiring that a rationale be provided whenever an advisory committee provides formal advice to the board. We had used words like "make best efforts to include a rationale" and there was overwhelming comments to say, "no, let's make it a requirement for all advisory committees that when they provide advice to the board, that they include a rationale".

So this doesn't apply just to the GAC; it's to any advisory committee that advises the board. We also clarified that it would be the board that would determine whether that "rationale" was adequate for the purposes of the board to exercise its obligations to take into account and whether the board was going to act on that advice. It knows that it cannot do so in the violation of bylaws.

So that rationale -- the adequacy of the rationale is something that the board itself, who's the recipient of the advice, ought to be able to determine.

Thomas, any questions about Number 2? We're making it a firm requirement in the bylaws.

Thomas Rickert: Thanks, Steve. Kavouss has raised his hand. Before moving to Kavouss, let me just reiterate for everyone's benefit that, to me, it's a very important point that we're not asking for a rationale only for the GAC. So there's no special treatment for the GAC.

This is a request for all advisory groups to offer a rationale that allows for the board to understand the reasoning behind the advice. I think we've confirmed earlier that it is just appropriate for the advisory group or the respective advisory group to offer information on why they came to the advice that they're issuing.

So I think these two components of point Number 2 need to be born in mind when we're having this discussion because there have been allegations earlier that we would, especially, single out the GAC and I think, Steve, you've made very clear that there's no intention whatsoever to create additional burdens for the governmental advisory only. In fact, this is just to add transparency to the whole process. Kavouss.

Kavouss Arasteh: Yes, no problem about providing rationale. But my question to Steve is the second part. The board should determine whether rationale is adequate.

That means you one, two step. One step is discussing rational; the other step is discussing the substance of the advice. Suppose that the rationale is not adequate; what would be the next step?



Before going into the substance of the advice, the board decide their rationale is not adequate. What they do? Did they turn it back to the GAC? What they do? Thank you.

Thomas Rickert: Thanks very much, Kavouss. Pedro.

Pedro Ivo Silva: (Unintelligible), Thomas. Thank you. If you would allow me, I would like to go back to Point 1 again because, sorry, I missed this. I had, actually, a clarifying question because maybe it's my poor comprehension of the English language, but I'm a bit troubled by the last sentence, "this recommendation shall not create any obligation that ICANN is bound to implement any advice that is not rejected by the board".

My understanding is that if the advice is not rejected by the board, ICANN is bound to implement it. So I'm a bit confused about the way to - about this wording here, so I would like to see clarification on that. Thank you.

Thomas Rickert: Thanks very much, Pedro. And I originally intended to allow for Steve to respond to all questions that might be raised, but I guess that - since you are going back to the first point, Steve, would you care to respond to that point as well as to (Kavouss's) concern with the answer?

Steve DelBianco: Okay, thank you, Pedro. The way Number 1 is phrased is in response to concerns that were raised by the intellectual property constituency who, in their reading of Rec 11, thought that it was creating brand new obligations for implementation. We got our lawyers to confirm that the obligation for ICANN is to duly take into account the GAC advice.

That's the obligation in the bylaws. We're doing nothing to change that to duly take into account. And then if the board determines that it's going to act inconsistently or reject that advice, it needs to have a vote to do so and after it does so, it needs to explain the rationale and then enter into an obligation to try and find a mutually acceptable solution.

So what we're saying with that last sentence, Pedro, is that the way we have structured Recommendation 11 doesn't make any changes relative to the current bylaws about what ICANN's obligations are. This was to remove some doubt that crept in that somehow we were changing the level of obligations that ICANN had by virtue of asking it to make a decision -- to determine to take a decision.

And, Pedro, you'll see when we get to the second page on our lawyer's advice, our lawyers quite clearly said that the current bylaws say that the board might determine to take an action, but the only way under California law that a board can determine to take an action is by voting. That's how it decides. And all we had done was change the threshold of the voting but we did not invent a new requirement that the board vote on GAC advice.

That has always been there that the board has to duly take it into account and determine whether it should act consistently with the advice. And we're not making any changes to that sequence of obligations with the bylaws change in Recommendation 11. Now, Kavouss, let me turn to your question, which was Question 2 - Point 2.

And you - Kavouss, you brought up the second half of the sentence about the board should determine whether the rationale is adequate. We did discuss this last week. The determination of adequacy came up because some on this group said well, what is adequate?

Do we need a definition of adequate? And I think that the sentiment of the group was that the board itself is the recipient of the advice, and if the board determined that the rationale was not adequate for it to take action -- to duly consider the advice -- that the board would politely request that SSAC, would you please give us a better rationale, would you explain in detail what you mean here, or they might turn back to the GAC and say, "We don't believe the rationale answers some grave concerns we had had with regards to the bylaws".

I'm just giving you examples. So the board itself would say this rationale is not adequate for us to make the decision on how to act on this advice, so we're going to ask you for clarification. So I think that's an informal process and it's not one that I believe we need to put into the bylaws.

Thank you, Thomas.

Thomas Rickert: Thank you very much, Steve. And for those who are on the audio bridge only, there's an interesting discussion going on in the chat window. Actually, Kavouss, our board liaison, is pointing out that the board sometimes struggles with the sequence of happenings during ICANN meetings when the board meets the GAC early in the week and the GAC then later publishes its communicate and there have been previous instances where the reasoning for the GAC advice was not clear to the board.

So there seems to be traction for the idea of the board meeting with the GAC after they have issued their communicate in order to be able to discuss things and be more constructive. So I think these are all positive signs and please do forgive me. I'm paraphrasing what's been said in the chat, so I hope that I've accurately reflected the spirit in which this - in the chat window was held.

We are still discussing the second question with respect to the rationale. And Olga's hand is up. Olga, the floor is yours.

Olga Cavalli: Thank you. Thank you, Thomas. Well, I had similar concerns to my colleague Kavouss and somehow Pedro triggered the same question to me.

I am not sure if I understood the explanation. As Pedro said, my English is also limited and I'm not a lawyer so this is extremely challenging for me. But I thought if I could get from the comments made by Steve, this is not changing much.

So maybe this sentence is - the last sentences in 1 and 2 are - could be taken out, especially the one about the rationale. That's extremely confusing. Thank you very much.

Thomas Rickert: Thanks, Olga. It is my understanding that we all agree on the idea of what we're trying to encapsulate in these points. It seems like we haven't been able to remove uncertainties with what is meant by this, and I think that the discussion that we just had is quite enlightening. So Steve, if I may land you with additional work, maybe you can add one or two sentences along the lines of what you've been discussing - you've been explaining to the report to shed more light on the areas of concern.

But it is my impression that we're making good progress on this. And I hope that Kavouss and Greg can confirm this. So I would suggest that we hear Kavouss and Greg and then we turn to a volunteering board member, hopefully, to see what their position on this point would be.

Kavouss.

Kavouss Arasteh: I think with the explanation given by Steve, this does not mean that the ICANN reject or start rejection of the process. They ask clarification and that is a positive point -- that clarifying the situation because sometimes the GAC advises a more or less ambiguous and so on and so forward because they want to have consensus.

I think seeking clarification is a normal process. I have no objection if the sense is only seeking clarification. Thank you.

Thomas Rickert: Thanks very much, Kavouss and thanks for confirming that the - that we're obviously getting closer to resolution. Let's - Greg.

Greg Shatan: Thanks. This is Greg Shatan for the record. Since Steve noted that the last sentence in the Item 1 was inspired by the intellectual property constituency's comments, just speak, you know, briefly in support of it. I think it's important to us and to other that have agreed with us that there's - that if there's GAC advice that is neither carried out by the board nor inconsistent actions taken after the appropriate vote by the board, that advice is, essentially, dormant or in (unintelligible) and the board has the option at any time afterwards to either follow it and move in accordance with it or to, you know, act inconsistently with it based on taking that vote.

There's - so there's - that's the way I think it's operated up until this point in time, and that's - that shouldn't change. So, if there is - and so I think the basic point is that we are continuing the status quo and that the phrasing that's been put into the draft bylaw itself isn't intended to change that. Thank you.

Thomas Rickert: Thanks very much, Greg. And as indicated earlier, is there any board member on this call that wishes to speak to this point? A word of confirmation that we're on the right path is also much appreciated and welcome.

Let me then ask for objections on these two points. There doesn't seem to be any but we will again ask for objections when we take stock after having gone through all of the five questions. So that allows us to move to the third question. Over to you, Steve.

Steve DelBianco: The third one is in response to something that was raised initially by the registry constituency and their public comments, but it was echoed by a few others. The registries put it this way. They said one requirement to support Rec 11 was that any GAC advice accepted by the board or any mutually-agreeable solution agreed by the board and the GAC must be consistent with ICANN bylaws.

That struck a lot of us as obvious because we - one of the basic principles we have here is that the community or any aggrieved party has the standing to challenge the board action or inaction as being inconsistent with ICANN's bylaws. And if the community -- the Empowered community -- brought the challenge, met our threshold, then ICANN pays the legal fees, if any, for the community to be able to bring that challenge.

And that has nothing to do with where the board's action or inaction came from. Any advisory committee providing advice to the board is unconstrained as to what they can advise the board. But our bylaws are bound to the board of Directors.

They tell the Board of Directors you need to be consistent with the bylaws and we've created a new ability to challenge the board any time it acts inconsistent

with the bylaws. So the point of 3, it's a clarification that I don't think needs to make it into Article 11 of the bylaws.

It's already well-reflected in the entire IRP section, which refers extensively to the core values and mission statement and the rest of the bylaws. So we did discuss this last week, we took improvements from Malcolm and from Kavouss and from Alan Greenberg to the language here that it's any aggrieved party or the Empowered community will have standing to bring an IRP to challenge whether a board action or an inaction is inconsistent with its bylaws.

And that would hold whether or not it was acting on GAC advice, SSAC advice, or on just a whim of the moment. So that clarification was, we believed, essential to address at least one constituency's concern but I know that it was echoed by others. Thomas.

Thomas Rickert: Thanks very much, Steve. Let's open it up for discussion. Malcolm.

Malcolm Hutty: Sorry, can you hear me? I - thank you - I support this. The statement that it's inconsistent with the bylaws, the point that's being addressed here is the fear that somebody might interpret a requirement to act on Advisory Committee advice to - take precedence over other aspects of the bylaws that might otherwise prevent the board from acting in that way.

And the intent of this is to ensure that this - that any such requirement isn't intended to modify or supersede other aspects of the bylaws. So I support this but when we say "must impact in a way that is inconsistent with the bylaws", that should be understood as meaning the bylaws, other than the clause that requires the board to act in accordance with the Advisory Committee advice. I'm sure that the lawyers are perfectly capable of implementing that in a way

that works well and possibly even may not need particular additional language.

But I hope that the - that that is clear from the language as - for the lawyers.

Thomas Rickert: Thanks, Malcolm. And as you know, our lawyers are attending the call so they'll take good note of your statement, I'm sure. But it's also captured in the notes that staff take. And so I'm quite confident that your suggestion or your encouragement in terms of drafting will make its way to the implementation phase. Any further interventions with respect to this point? Greg.

Greg Shatan: I'll state only briefly that I think this probably is an echo of concerns about the changes and amendments that we're making to the mission and core values. And this, you know, may be more appropriately taken up there than here. I think clearly the, you know, the ICANN cannot act outside its scope and mission. But the issue really is whether advice that GAC has given in the past or may wish, you know, to give in the future that it believes is consistent with the mission as it has stood for X number of years is somehow now going to be prohibited.

So I would - we may end up revisiting that discussion on that point. So that's why I believe it's even, you know, relevant here and for that matter why it's worth saying and confirming. Thanks.

Thomas Rickert: Thanks, Greg. And let me congratulate you on this concise statement. Well, I couldn't resist to say that. Thanks very much, Greg. And as you rightfully point out there is a link to the mission discussion. I think we should bear your point in mind when we continue the discussion on the mission. So it looks like we do have consensus on this third point so let me ask - let me ask whether



there are any objections to confirming the third point. There doesn't seem to be any.

And let's now move to the fourth item. Over to you, Steve.

Steve DelBianco: Thank you, Thomas. The fourth item is the last of our very easy ones and it references the next two pages of the document you have in front of you where we have pasted in advice that Rosemary and Holly and their colleagues sent over to us over the weekend. Rosemary and Holly were asked to look at some of the concerns that were raised about does this require voting, what is the obligation of the board, what is the steps mean for the Rec 11 changes?

And very grateful that Holly and Rosemary came up with a set of clarifications. And the fact that they were happening in parallel with the decisions we were making last week on the calls is probably a reinforcement that we're on the right track here.

So if you are able to scroll please, to the top of Page 2, you'll see that in the yellow text there is the comments from Rosemary and Holly. And then in red what I did there is tried to summarize an email discussion list that occurred since the weekend over this notion of the phrase, "duly taken into account." And that is the obligation for the Board of Directors of ICANN when it receives GAC advice is to duly take it into account.

And that has been in the bylaws for over a decade. And nothing we are putting in Recommendation 11 changes the effect of duly taken into account. Recommendation 11 only addresses the board's obligation to go and try and find a mutually acceptable solution and only for the GAC advice that was approved for the formal approval without a single formal objection from any country.

So we are not affecting the duly taken into account at all and therefore we don't believe there's any need to change the phrase, "duly taken into account." And Holly and Rosemary were good enough to offer some other ways to perhaps phrase it. But there's no a significant ambiguity and we're not making a change on something that's worked fairly well for the last 10 years.

So our suggested reply to that is not to change Recommendation 11. And then Holly and Rosemary went on to find that there's really no meaningful legal distinction between voting and determining to take an action. I think we covered that a few moments ago on Page 1, this notion of Rec 11 doesn't create any new obligations to vote, the voting is how the board determines to take actions.

And then Holly and Rosemary went on to discuss potential ways of rephrasing it as well as an analysis of what they believe Rec 11 would lead to in terms of a sequence of requirements. And I do believe in both cases that their clarification is helpful and should help to address some of the concerns that were raised in the public documents.

So, Thomas, there isn't any recommended action on Rec 11 coming out of the lawyers' memo. It's extremely helpful in clarifying things. And I don't believe we need to make any changes to Rec 11 just from what's on that page.

Thomas Rickert: Thanks very much, Steve. And let me take this opportunity to thank our layers for being very helpful with this. And we've carefully assessed their input, nonetheless at this stage the recommendation is to not make any changes based on that legal memo. And let's see whether there are any objections to proceeding on that basis. Kavouss, you have raised your hand. Please.

Kavouss, your hand is lowered. I'm not sure whether you are passing -  
Kavouss, the hand is up again.

Kavouss Arasteh: Do you hear me please?

Thomas Rickert: Yes, we can hear you now.

Kavouss Arasteh: I said that if we do not get into the legal interpretation what does it mean determine and voting, what is it you account, what is the taking into account duly? I have no problem to leave it as it was before. Thank you.

Thomas Rickert: Thanks very much, Kavouss. And thanks for supporting the suggestion that Steve made, i.e. to leave the language as it is after having assessed the lawyers memo. So with that I don't see - I don't see any objection to proceeding as Steve suggested. In fact there is support in the chat to that recommendation that Steve made and that allows us to move to the next point. Steve.

Steve DelBianco: Number 5 is the discussion of the 2/3 board threshold which would be 11 votes of a board of directors of 16. In order for the board to reject GAC advice if that GAC advice was approved in general agreement of GAC members in the absence of any formal objection. The present bylaws, as written today, say nothing about the nature of the GAC advice that triggers the board's obligation and of course it allows the board to determine to take an action according to the majority and with a 16-member board of directors that is nine votes.

So the effective number five, and five is the - what we'll call the - I think a compromise position that was arrived at on the American Thanksgiving, November 28, just before we published the third draft. And it was an attempt to recognize that in Dublin the GAC brought up the notion that the 2/3

threshold to reject its advice was quite important to the GAC. It was part of the Dublin communiqué. And this compromise here increased from simple majority to 2/3 but it also raised that the strong formal consensus level that the GAC has in its operating principles today but is not in ICANN's bylaws.

So the trade here, the exchange, the compromise was that we would tell our board of directors that an obligation to discuss and try to find a mutually acceptable solution would only apply when GAC advice was approved with broad support in the absence of a formal objection. That would avoid placing our board of directors ever in a situation where it had to arbitrate on advice where a significant number of governments didn't support the advice. It would have to be advice that was broadly supported without an objection to trigger this obligation.

And by raising the standard of the GAC decision consensus, raising that standard, for purposes of this obligation, Number 5 brings up the recommendation in Rec 11 that the board would require 11 votes instead of 9 to reject that advice and trigger that obligation.

So there's been much discussion about whether the language was appropriate, whether we had created new obligations. I hoped to dispose of all that in Items 1, 2, 3 and 4 on this page. And having done that, when you come to Number 5 it's the simple question about whether that's an appropriate threshold, 11 votes, given that the GAC would then be required to adopt its advice under that strong level of consensus. And I did not in here on the last sentence, a note for all of you that the existing bylaws of ICANN do not make any reference to the degree of consensus that GAC advice would need to have to trigger this special obligation of ICANN's board of directors.

So, Thomas, what we've done so far is to tee this up in a way that we can just discuss the merits of the extra two votes in exchange for the very formal consensus agreement and not worry about whether we have introduced new obligations in any other way. And by teeing it up that way I hope that we can have a reasonable conversation on Number 5 and if 5 is supported we don't need to get to Number 6. So I'll turn it back over to you.

Thomas Rickert: Thanks very much, Steve. And I think you've done a magnificent job in explaining the difference between the current interaction between the board and the GAC and in pointing out how minute, if I may say so, the changes are. Let's also refresh our memories on how we got where we are with this recommendation and particularly with this point.

We have had numerous meetings over months. We had special meetings particularly focusing on this very Stress Test 18 related threshold question. And this is the outcome of months long community deliberations. And I anticipate that those who are queuing in order to speak will make reference to arguments that have previously been exchanged on the role of the GAC and a perceived shift of balance. But let's bear in mind that this is actually the outcome of a community process.

This is a recommendation in its - which in its current form has been supported by chartering organizations. And two chartering organizations have remained silent on this in the sense that they have not rejected the consensus or they have not rejected the recommendation.

So I would really like to ask all of you when taking the microphone to keep that in the back of your mind. We will not be able to make everyone happy with this recommendation. But this is what the multistakeholder model is truly about, finding compromise and finding solutions and ways forward that

everyone can live with. And to me the lack of rejection is a clear indication of the willingness to live with a solution that is not ideal.

So having said that let's move to the queue and the first one to speak is Kavouss.

Kavouss Arasteh: ...was already said. But I would like to add one argument. If there would be, in future, any hope that GAC support this recommendation it is for the 2/3 majority. If you take out there would be very little hope that in future GAC make any consensus to this recommendation. At least to say there is no consensus. But still I hope that they will do provided that these 2/3 remains because this is the major and most important element of this recommendation. Thank you.

Thomas Rickert: Thank you very much, Kavouss. Alan.

Alan Greenberg: Thank you very much. The ALAC has not formally discussed this but from my personal point of view I think it's a marvelous compromise. Thank you.

Thomas Rickert: Thanks very much, Alan. Paul.

Paul Rosenzweig: Well, it is an unfortunate compromise. I think one that was adopted at a meeting that did not - that was representative, it was a straw poll on the American Thanksgiving as Robin has pointed out in the - on the chat. But I think I would just restrict myself to making the very simple point, it is a change. It is a change that empowers the GAC from where it is today. If the GAC were to want to seek advice of the board today it would have to operate under its own operating procedures by full consensus. And the board would reject that on a majority vote if it chose to.

There is no getting around the fact that we are granting greater authority to the GAC in doing this. And that that actually contravenes the NTIA's requirement that we avoid increasing the power of governmental authorities. Now we can dress it up all that we want and say that, you know, perhaps the GAC could have changed its own Operating Procedures and of course it can. But from reality today to reality tomorrow it's a change.

And I can almost hear the objections from NTIA, from Congress to this change. I think of no better way of circuiting the transition than to adopt this recommendation. I realize I am sure that that will not carry the day in this discussion but the record should reflect that if we go forward now we do so knowing full well that we are risking the transition all together over placating the views of what I perceive to a minority of GAC members.

Thomas Rickert: Thanks very much, Paul. And certainly it's perfectly appropriate for you to put your concerns on the record. Let me just, for the sake of completion - or of completeness, add to that that we have worked on ways to improve ICANN's accountability for the whole community.

So the role of all component parts or constituent parts of the community has changed and in doing so we have given all SOs and ACs the opportunity to have a slightly different mandate than the mandate they have now. And we've discussed this previously but I think that the vast majority in this group is of the view that we're not changing the relative balance of powers inside the community.

Let's move to Greg then.

Greg Shatan: Thanks. Greg Shatan for the record. Speaking in this instance in my role as President of the Intellectual Property Constituency, and, you know, which,

you know, is a subpart of the GNSO and I think our views are, you know, expressed, as Keith says, you know, come in and summarize the GNSO's views. But the IPC, as a whole, is opposed to this change and believes that it would tilt the playing field and give further a message of tilting the playing field and a presumption of acceptance that goes beyond what's there.

I'm not going to make any, you know, predictions about what happens in Washington. I'm not a Beltway person. But I do think that it is a change, and we do think it is a change. I was on the Thanksgiving call and it was skewed in terms of population on that call and also the very last issue to be solved. I think we were all suffering from what we in the corporate law business call deal fatigue by that time. And all wanted to get away. So sin in haste and repent at leisure may apply to this.

Last I would say that this did happen on a day which is associated both with turkeys and with stuffing. And I think that perhaps there's a little bit of the taste of both of that on this. As much as I, you know, love a good compromise do not see this one as one where that - where compromise can be found in this. The 2/3 is just too meaningful. Thank you.

Thomas Rickert: Thanks very much, Greg. Since you are the second person to comment on the meeting where we discussed Stress Test 18, and I think there was also one comment in the chat making reference to that, I would like to ask Mathieu to provide some information on that very meeting to hopefully shed some light on how things came about at that point. Mathieu.

Mathieu Weill: Thank you, Thomas. I was just checking the notes of this meeting Number 70. And to confirm that there were 21 members out of 27 attending that meeting plus 43 participants. And certainly not any group being over-represented at any rate, a significant number of the US-based group - members and



participants were also attending. And so I think it was not an unusual meeting by any rate.

And I would like to - if my notes are correct I don't think it's correct to say there was polling because there was a call for any objection and there was no objection in the call. And later on we had obviously a minority view on this when we finalized the third report from Robin Gross. And then you know what the comments look like. So I think in terms of process it's important to remember this fact. Thank you.

Thomas Rickert: Thanks very much, Mathieu. Let's move on in the queue. I think Kavouss' hand is an old hand so let's move to Malcolm now.

Malcolm Huty: Thank you, Thomas. Okay, in line with your course of order I'm going to restrict myself not to - to avoiding old arguments and simply pointing out things that directly address the things that you and - and Mathieu and Steve DelBianco just said.

Firstly, Steve DelBianco gave numerical changes that this would be a change from 9 to 11 votes. Now I understand that Steve is just trying to make it more simple and more real for people to understand how the votes are at the moment. Actually that is not accurate. It is a change from a 50% vote to a 2/3 vote, which according to the board's current composition, happens to be 9 to 11. But if the board composition should change, as may happen at any time, including, for example, at any moment by the resignation or incapacitation of a director, then the calculation would change.

So it is entirely foreseeable, of course in the future, that the (unintelligible) of the, you know, the relative board weight between bodies may change that

some but bodies may get voting rights that don't have them at the moment and so on and so forth. So this is a vote change from a majority to a 2/3 position.

And certainly characterizing it as a change from 9 to 11 rather than majority to 2/3 does ignore the viewpoints that some have expressed, and I am one of them, that the real problem in this is not merely the change in the voting thresholds but actually the signal that it sends that things should be - to the board members - to each individual board member that the expectation here is to comply unless there is an extraordinary reason not to go along with the GAC advice. And that is a change that this signals, by moving from a majority to a super majority. That is obfuscated by saying 9 to 11.

Okay, Thomas, you have also said that there have been no objections from any of the chartering organizations to this point and that that - and that you have urged us to accept that we should consider that as highly significant a degree of support for this. I must say I think at least in the case of the GNSO you are seriously misleading that. The GNSO has said very specifically that it is not giving final approval or final rejection to any of the point - recommendations that have been raised at this time because they have not been finalized, and has given feedback instead.

And the feedback it has given on this point is that there is very widespread opposition to this within the GNSO and it is unlikely to be able to be something that they will be able to do other than oppose it if this goes through in its form. So I think it is - I think your reading of the GNSO position that you have just given sort of consideration of this working group, Thomas, really mistakes where GNSO lies on that. And that needs to be taken firmly into account.

Finally, regarding your point, Thomas, that this was the result of a bottom up process, that there's a settled community process, I think you - you didn't quite say settled - but you invited us to believe or to take the view that this is the ultimate outcome of a community process that really must be respected. But actually, this is the outcome of the decision in a single meeting and a single meeting that took that decision without even having given formal advance notice that that decision - that this particular proposal was going to be on the table in that meeting.

So the feedback that has been received in response to this, the negative feedback, is the first opportunity that has really been available to people to say no. Now I understand, Thomas, if you - that you wish to wrap this up and that things that have been said are arrived at and achieve consensus many times within this working group, you don't wish us to reopen. And I support that.

I very much hope, when it comes to the mission discussion, that you will continue to apply the same standards for that to the prohibition on the regulation, which has survived three successive drafts of this community's report and therefore should have the highest level of - threshold before we overturn it.

And I don't think this particular one deserves the same treatment because this is the first opportunity that people have had to object to it. So I think that the level of support that you were asking for, in order to overturn this, in the introduction that you just gave, Thomas, is inappropriate. I think that we should take those points into account. I've tried to restrict that to the rules of order that you've given. Thank you.

Thomas Rickert: Thanks very much, Malcolm. There would be a lot to say in response to what you were mentioning. Let me just confine myself to one point and that is that I

did not say that there was no opposition to this recommendation. I said that there was no rejection of this recommendation, which is a significant difference. So I think that my reading of the GNSO's response was appropriate.

Let's move on with the queue, which I'd like to close after Kavouss. Next is Olga.

Olga Cavalli: Thank you, Thomas. Can you hear me?

Thomas Rickert: Yes we can hear you all right.

Olga Cavalli: Thank you. Thank you very much. My comments are somehow aligned with the comments made by my colleague, Kavouss. You may recall that this idea of the 2/3 threshold came from GAC advice, which means that the GAC had consensus about this 2/3 threshold which Argentina of course supports. And just as a general comment for the whole participants in the call, this is a very important issue for the GAC. So if we all want this to be moving forward with government support this 2/3 threshold is a very important and we should keep it. Thank you very much.

Thomas Rickert: Thanks very much, Olga. Robin.

Robin Gross: Hi. This is Robin Gross. Can you hear me okay?

Thomas Rickert: Yes, we can hear you, Robin.

Robin Gross: Okay. I will try to be brief because you've heard a lot of this before. And I just want to support Paul's comments and Greg's comments and Malcolm's comments and others who are trying to raise the flag here that this is a big

problem, this particular recommendation, this is a significant empowerment of governments that came together at the very end of a very long process and wasn't in our earlier draft proposals when there was a similar proposal to this out - the board public comment in 2013. It was unanimously rejected by the community.

Fadi swore to Congress last year that proposals just like this were, quote, off the table, and here somehow we've put it into the table - back on the table. I agree that this seriously risks the success of the entire transition. And, you know, just marching forward without dealing with this concern will be a big mistake for the success of the overall proposal and the success of the overall transition.

This is something that GAC hasn't even said that it wants in its comments. Again, this is another situation where if the GAC can't even come to an agreement amongst itself that it needs this I don't understand how it gets into our proposal at all even if one would agree with the substance of it, just simply on a procedural point of view it just doesn't make sense.

So I will leave it at that. But, again, NCSG will continue to raise very strong objections to this recommendation as probably the most important one to kill the whole proposal. Thanks.

Thomas Rickert: Thanks very much, Robin. And I'd like to ask our speakers to be as brief as they can. Next is Keith.

Keith Drazek: Sorry, Thomas. This is Keith. Had to get off mute. Thank you very much. I've typed into chat what I'm going to say here but I wanted to read it just to make sure everybody understands the, I think, seriousness and implications from the GNSO perspective.

Let me preface my comments by noting that the Registry Stakeholder Group, of which I am a part, said that it could support the 2/3 with the inclusion of three additional criteria. And it appears from our previous discussions that those three additional criteria are likely to be met. So the registries I can say appreciate that. But I want to note that those three additional criteria may not be enough to sway the rest of the constituent parts of the GNSO.

So my comment was that the GNSO comments and the individual comments submitted by the GNSO's constituent parts make clear that there is majority opposition to inclusion of the 2/3 threshold particularly in the context of the GAC participating as decisional in the community mechanism.

And if the 2/3 threshold were to remain, I believe the GNSO would likely oppose Recommendation 11. The GNSO supports incorporating the definition of GAC consensus for Board obligations in the absence of formal objection as required by NTIA but does not support the increase of Board obligations to 2/3.

If the 2/3 threshold were removed and returned to a simple majority, I believe the GNSO would support Recommendation 11. The GNSO will vote and will require a simple majority of each House, that's Contracted Party House and Non-Contracted Party House. And there is not currently majority support in either House to agree to 2/3.

So I'm just putting this down and putting this out there so people understand that the GNSO as a whole today does not support the inclusion of 2/3. Thanks.

Thomas Rickert: Thanks very much Keith. Please don't add yourself to the queue anymore. You know, I had previously closed the queue but since we haven't heard from

Andrew, we're going to hear him. Just in terms of process we're going to listen to what Pedro and Andrew have to say. And then we're going to have our ten-minute break and after that we're going to continue our conversation. Pedro.

Pedro Ivo Silva: Can you hear me?

Thomas Rickert: Yes. We can hear you.

Pedro Ivo Silva: Okay. Thank you Thomas. Well, when listening to some colleagues that talked before me, not all of them but some of them, it reminded me of an expression in Spanish actually that says ((Spanish Spoken 0:02:28)), which translates to if there is government, I'm against, which - well in the context that is normally used.

Basically means no matter the situation, no matter the subject under discussion, if there are government involved, I'm always against. So unfortunately that's my perception. That kind of I would say pre-conceived judgment in regard to governments has been present in some viewpoints expressed in this group.

And well according to my view it hasn't allowed that discussion evolve as they should and especially with respect to Stress Test 18. And more specifically to the full consensus requirement related to the stress test and also to the 2/3 threshold.

I won't talk about the full consensus requirement although it's something we are not in agreement with and we have objected Recommendation 11 because of that. We still think that Stress Test 18 is not necessary.

But with regards to 2/3 threshold, I think that issue of the, you know, that I mentioned about the pre-conceived judgment also applies. I mean, as you know, PDP recommendation can be rejected based on the 2/3 threshold. It sounds reasonable and I think there's broad community support for that. I mean at least I don't see any objection discussion about this.

But why is it so problematic when it's this same 2/3 applies to GAC advice? I mean why are the 2/3 perceived as an increase of power when exactly the same criteria is applied to other constituencies?

So to me I mean it means - I think that the GAC has been unfairly targeted in these discussions. And I think this is a result of an extremely negative reconstruction of government and that has unfortunately prevailed in some few points that have been expressed here. Thank you.

Thomas Rickert: Thanks Pedro. And Andrew had raised his hand and after Pedro's - after Andrew's intervention, we're going to have our break.

Andrew Sullivan: Oh, you probably didn't see this but in the chat I said that in the interest of time I'd just send a note to the list.

Thomas Rickert: Thanks so much for that. And with this, we can now have our ten-minute break. So we're going to reconvene at 2047 and continue our conversation. Thank you so much. And we can pause the recording please.

<<<10 minute break>>>

Mathieu Weill: We will continue in a few seconds. Can we get the recording restarted please?



Thomas Rickert: So the recording has been restarted and I got word that Jorge Cancio who is only on the audio bridge wants to speak. Go ahead. Jorge, are you on the call?

Jorge Cancio: Hello. Do you hear me?

Thomas Rickert: Yes, we can hear you. Please proceed.

Jorge Cancio: Okay. Sorry for the inconvenience. I'm in a train so it's a bit difficult and I apologize if you hear too much noises. I was listening to the conversation and I was a bit struck by the apocalyptic tone of some of the intervention and also by other aspects.

So I would like to comment that first of all we are talking - when we talk about Recommendation 11 and the Stress Test 18 we are talking about a deal which was struck in the community after very long and detailed conversations with many different propositions, proposals coming - going back and forth and with a lot of experts from all interested parties to reach a good compromise.

In the end this deal or this compromise is so bad or so good, it depends on how you look at it, that both sides - and I mean the GNSO and the GAC, which are the ones most directly concerned are quite divided or quite unhappy to a certain degree on the deal.

But I think that it's meaningless if now one part of those who made the compromise say that they would support compromise if only the parts which interest them are left within the deal and the parts which don't interest them are taken out. I think that when you have a compromise it's a package and you cannot pick and choose what you like most.

So I think it should be clear that the 2/3 is as important to the deal as the full consensus requirement enshrined in the bylaws. So I would really urge colleagues not to reopen this issue or not to fall into apocalyptic tones because this is a compromise we reached in the community, which still isn't liked by both (poles) or by both extremes in the discussion but which probably is best we could get.

And also I would like to urge colleagues to think over their principles of their intuitive negative attitude to the GAC and to the government because after all these months of discussion, I think that they should know better.

They should know better that there's no hidden danger but it's one part of the community, which is willing to engage; just doing its best to work with all parts of the community and which was part of this deal as it was part of many other deals we've been making along the last months. So thank you. Thank you for your patience and this was what I wanted to share with you.

Thomas Rickert: Thanks very much Jorge. As you stated, there are fundamental disagreements on this point. Objections have been raised. And applying our usual working methods, we would discuss alternatives that have been suggested by the group. And that leads us to Point Number 6 on the screen in front of you.

And I would like you Steve to kindly introduce that and then we're going to discuss this alternative suggestion.

Steve DelBianco: Thanks Thomas. So those of you on the phone, just please scroll to the first page again. We have been discussing and debating the relative merits of Number 5. And Number 5 is again what we put in the publication of Rec 11. It was this (Thanksgiving compromise).

Number 6 reflects an alternative to Number 5. Number 6 suggests that the present threshold for the GAC, which is the absence of any objection in its operating procedures, would be brought into the bylaws but under the present Board threshold of a simple majority to reject that advice and enter into the obligation to try and find a mutually acceptable solution.

So where Number 6 comes from is two places. It comes from a significant number of comments received on our third draft where commenters indicated they did not support the 2/3 but did support locking into the bylaws the strong consensus requirement that the GAC uses today in its own operating principles.

The other place Number 6 comes from is the Stress Test Work Party who over a year ago when it was putting together stress tests and got to Number 18. The Stress Test Work Party published in February of 2015 draft language to address Stress Test 18.

And that draft language included the phrase that we would indicate a definition of consensus for Stress Test 18 and that only consensus advice from the GAC would merit the special treatment and that we would amend ICANN bylaws to give due deference only to GAC consensus advice while adding a definition of consensus.

Now that was about a year ago and the rest of Number 6 meant to suggest that it puts part of it in there as Jorge just said. It puts part of what's in Number 5 but not both parts that were agreed to in November.

Number 6 alone drew a number of objections from governments. And I believe that's what led to governments coming up with advice in Dublin where they emphasized many principles that was important to the GAC but also

brought the 2/3 back, which hadn't been talked about for over a year because a lot of you do remember that the GAC had wanted 2/3 requirement as a standalone.

Back in October of 2014 the community spoke quite loudly that that was not an appropriate standalone concession to GAC advice and we rejected that bylaws change and the Board took it off the table.

Many of you referred to that as something Fadi Chehade said to the U.S. Congress Committee in February that that was a standalone proposal. In Number 5 it was meant to be a trade or exchange, a quid pro quo.

So Number 6 Thomas is not part of a package. Number 6 is the distinct alternative to Number 5 that preserves the strong consensus in the absence of an objection but does not change the Board's threshold. It would still be nine votes or a simple majority. Thank you Thomas.

Thomas Rickert: That's very much Steve. Let's hear views from the group on that Point Number 6. The support objection to that way forward or proposed way forward. Paul and then Brett.

Paul Rosenzweig: Yes - well, you know, obviously this is more consistent with my own views. I suspect that it too will hear great objection from Jorge and Pedro and Olga. So I am intervening both to express support for Number 6 as my preferred alternative and then to ask you and/or Mathieu to advise me what process you intend to follow for resolving this tension since, you know, I do not see it as answerable and I do not see it as resolvable by continued discussion.

So on the merits I support Number 6 completely and substantive and procedurally I ask you if you have a way forward.

Thomas Rickert: Thanks Paul. We will propose a way forward when we take stock of this conversation. But let's hear others that have put themselves in the queue. So Brett is next.

Brett Schaefer: Thank you Mathieu. I assume that this conversation is also incorporating Paragraph 5, which is very closely related to Point 6 in regards to the subject of consensus advice from the GAC.

Paragraph 5, which is on Page 4 of the document in the Adobe says that the Government Advisory Committee has the autonomy to refine its operating procedures to specify how objections are raised and considered.

For example, disallowing a single country to continue an objection on the same issue if no other countries would join in an objection. And then when transmitting that advice to the Board, the Government Advisory Committee has an obligation to confirm lack of any formal objection.

My objection here is the for example clause in the parenthesis, which seems to approvingly give an example or a path for the GAC to provide advice to the Board and circumvent the very consensus requirement that we're requiring in the paragraph above it, the suggested bylaw text.

And I think that that example should be taken out specifically because it is in or seems to contravene the very intent of what we're trying to do here. Thank you.

Thomas Rickert: Thanks very much Brett. Kavouss. Kavouss, it's your turn. Please do speak. There seem to be audio issues for Kavouss, which is why I suggest we move

to Olga first and then get back to Kavouss. Olga. Can I ask somebody I the group to...

Kavouss Arasteh: Do you hear me please?

Thomas Rickert: Yes. We can hear you now, yes. Please.

Kavouss Arasteh: I said that Number 6 alone is not an alternative to Number 5 because Number 5 is together with Stress Test 18. Number 6 is an alternative if we have clearly suppressed Stress Test 18. Could Steve please kindly clarify that before we mention our support for six or not? Thank you.

Steve DelBianco: Shall I clarify Thomas?

Thomas Rickert: Thank you Kavouss. Please do.

Steve DelBianco: Yes. Thank you Thomas. It's Steve DelBianco, the original author of Stress Test 18. Either five or six are responsive to Stress Test 18. Stress Test 18 said wow, look at this. The bylaws don't (unintelligible) GAC advice getting the special treatment. Has to be consensus GAC advice. It makes no mention at all.

And it's up to the Board of ICANN in having to arbitrate among governments who have divided opinion on their advice if the GAC should change to a simple majority. So Stress Test 18 has to be addressed and NTIA insisted on that as well on three separate occasions.

Kavouss, Number 5 addresses Stress Test 18 one way. And Number 6 addresses it a different way. But they're both satisfactory and ensuring that

ICANN's Board would not be forced into arbitrating among the divided set of governments giving advice; that the Board had to figure out a way to navigate.

Thomas Rickert: Thanks very much Steve. Looks like (Olga) still has all your issues. She mentioned in the chat that she has a similar question to the one that Kavouss asked. So we can take that resolved.

I'm not sure whether Brett and Paul's hands are old hands. I think they are. So the hands are lowered. Any further interventions on that point? Steve.

Steve DelBianco: Yes. Thank you. This is Steve DelBianco. Brett Schaefer is making a point that it's only sensible from Brett's perspective that it is potentially confusing to many on this call.

Brett was respecting to Paragraph 5, which is several pages into this document. He wasn't speaking about Point Number 5 on the discussion on Page 1.

Brett was bringing up the notion that we acknowledge in Paragraph 5 that the GAC just like any advisory committee or SO can make it's own rules about how it comes to decisions. And it can do so.

So for instance, the GAC could come up with some sort of rules on how an objection is carried for how many days or how many iterations of the voting that happens in the GAC. That's none of actually our business.

We just need to make sure that the Board of ICANN understands there's been informal objections because if there have been, then it wouldn't merit this special treatment under Item 5 or Item 6.

So Brett, that language was not intended to go into the bylaws. It's simply an explanation. And I'm glad it's there because it points out the fact that any advisory committee can create rules and procedures about how it does things.

But ultimately if advice is given to the Board, it's going to have to include a rationale and there will have to be an indication that there were no formal objections if it is coming from the GAC.

Thomas Rickert: Thanks very much Steve. I see no further hands raised. So with that, we should end our conversation on this Recommendation Number 11 for today. We can confirm that we have reached agreement on Points Number 1 to 4. We do not have consensus on Points Number 5 or 6, which is why we are going to poll on this during the next meeting. So we will put that in the agenda.

As you know, polling amongst members of the CCWG is something that is foreseen in our charter. We have indicated at the very beginning of this process that we would try to merely work on a consensus basis in this group and that we would only use polling, i.e., the only place where we - where there's a distinction between members and participants as a matter of last resort.

We do see no other alternatives than escalating to that method of reaching a decision inside this group, which is unfortunate. We would have preferred to avoid that. But we will need to bring this discussion to a close and therefore please do be prepared for polling at the upcoming meeting. Please ensure your participation at the next meeting so that we have a good turnout of members in order to be able to conduct the polling.

One thing for sure we can't leave this item twisting in the wind. So we need to bring this to a close. And it is perfectly appropriate for this group to continue



discussions on this item between today and the next meeting. And maybe some of you feel encouraged to try working on (trials) of compromising on this point in order to avoid the polling. But this is where we are today.

So with that, we can close this agenda item. And I would like to hand over to Mathieu for the next point.

Mathieu Weill: Thank you very much Thomas. This is Mathieu Weill speaking. And I feel I owe the group an apology for showing up late on this meeting and only taking the floor when it comes to AOB. So that sounds a little awkward.

But I think there's been a lot of progress made today from what I read in the notes. And it's perfectly expected and we've been there before to come to assess that there's some diverging views on this Recommendation 11. So it's - I think I still have a lot of hope that our group's ability to find compromise even in difficult polarized situations will once again show up.

I'd like to see whether there's any other business that anyone wants to address. The next call is scheduled for February the 2nd (Chris), as you're mentioning in the chat.

And I'm seeing no other business and as a consequence, I think we can adjourn this call. And our next call is on February the 2nd. Thank you very much everyone. And have a good day, night, wherever you are. Thank you.

Woman: Thanks everyone. Bye.

Thomas Rickert: Thanks everyone. Bye. Bye.

END