

Tuesday

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Cross Community Working Group on Enhancing ICANN Accountability

Work Stream 2-Human Rights Subgroup

Meeting 32

19:00 UTC

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[Captioner standing by],

>> NIELS TEN OEVER: Hello, everyone! I can start. Would you be so kind to record the meeting. Thank you so much. I can start and welcome everyone ranging from Alabama to Australia to the Cross Community Working GROUM on Enhancing ICANN Accountability Work Stream 2-Human Rights Subgroup, meeting 34, August 29, 19:00 UTC. It is a pleasure and honor to have you all today again to discuss today the second reading of our message to the CCWG Plenary. And perhaps with that, also achieving the next important milestone of the work we've been doing together over this time. But, please, do not let me get ahead of myself. Let's first start out with the Administrivia. If you could please be so kind to take the roll call from the Adobe Connect and if there is anybody on the audio bridge who is not in the Adobe Connect

room, would you please make yourself known so you are also noted in the archives? With that done, does anyone have an update to their statement of interest? No updates to the statement of interest. Then we have apologies from Bastiaan Goslings, Matt Shears, Jorge Cancio, Seun Ojedeji, who could not make it with us, but I see we still have a quorum and sufficient people on the call, so it's great to continue our work.

Then does anyone have an addition to the agenda? I see Greg is seeing the agenda sideways. I am not. It might mean that either I or Greg's screen is tilted or there the singularity is upon us or otherwise. Any how, depending on the -- not depending on the rotation of the agenda, but does anyone have an addition or change to suggest for the agenda? No suggested changes for the agenda, so then I propose we continue with the second reading of our e-mail to the CCWG Plenary, which will be the cover letter for our reading of the -- with an overview of our analysis of the public comments, as well as the new version of the framework of interpretations plus considerations document with the minimum changes that we've made.

So I'd like to ask, I can start with you, please be so kind as to pull up the document that was shared on the list. It was the Word document. Kavouss's hand is up, Kavouss, please come in.

>> KAVOUSS ARASTEH: Yes, good morning, afternoon, evening to everybody. Just to inform you that tomorrow [indiscernible] I will make a statement with respect to the non-application of procedure in relation with the activity of the drafting group and I don't want to waste your time, but I want not to hide anything from you, I will make it tomorrow in the Plenary, I will inform the culture and we would like to maintain our friendship without being further accused or further offended, so we take the silence, question bite our tongues during the meeting, but we have been wounded, the Governments, so we will take up this matter tomorrow in the Plenary. Thank you

very much and no further comment. Please go ahead.

>> NIELS TEN OEVER: Thank you very much, Kavouss. We're greatly interested in the statement and, of course, we've received from Jorge ancio the statement which was the minority statement which was then supported by the Government of Brazil, who is an observer in this group, and by Kavouss, if I'm correct. Right, Kavouss?

>> KAVOUSS ARASTEH: Yes. Just to remind ourself that being the observer does not mean that the observer could not raise the flag or could not talk. At any moment before the meeting or during the observer for a particular subject of his or her interest could ask that the statements be changed from observer to participant, this has been done in other cases. [Indiscernible] observer that I don't have the right to raise any matter. I imply that, no, this is not true. If the matter touches your own views, views of your own Government, even being observer you can ask that you be allowed to make a statement. So having to observer does that equal not making any statement and it should be really understand by the people and because this was [indiscernible] has always been like this. Being observer or participant is voluntary information and at any time somebody could [indiscernible] temporarily or permanent change in [indiscernible] from observer to participant and make a statement if the real interest is on the state. Thank you.

>> NIELS TEN OEVER: Yes, thank you, Kavouss. Even though it is in the rules that observers do not have rights to post to the list, I did not want to make a process point of it and I think I'm happy to -- that we submit that also on behalf of the Government of Brazil. If people have no other procedural problems with that. I see Greg's hand is up. Greg, please come in.

>> GREG SHATAN: This is Greg and I have not gone back and read the charter, but I don't believe that the summary that was just given is exactly accurate. I do agree that observers can change to participants and once participants have the same rights

as other participants. But as observers, they do not have those rights. I think it should be noted that, as you just noted, Niels, that we, in fact, bent the rules in favor of allowing participation by certain observers, in spite of the accusations of having been wounded or failing to take their issues into account. You and the group by extension were actually more accommodating than a technical reading of the rules would have allowed. So I think that should be commended rather than criticized. I also don't think it's a precedent that should be considered. I don't think that should be considered as a precedent for the future as otherwise the status, different status have no meaning in the subgroups. So I think it was the right thing to do at the time in order to be as accommodating as possible. But, you know, I see the point that Robin is raising and Anne as well. I think we need to look at whether a minority statement can be raised by an observer. I suppose it can be raised by a participant. But at some point, I think we have to stop, you know, just ignoring the rules because the rules are meaningful and the ones we have all agreed to work with. Finally, I would say that I think the drafting team does not deserve to be accused of that, of which it apparently is or will be continue to be accused of. I think it's quite unfortunate. And whether we're going to talk about who is wounded here [lost audio] complaint about it [lost audio] rather than choose [lost audio]

>> NIELS TEN OEVER: Kavouss?

>> KAVOUSS ARASTEH: Yes, with all due respect, I don't agree with that statement, the statement of the other people that defend the action which was taken which was not appropriate. Who is [indiscernible] moderate it [indiscernible], but just for the information of the people, when we had meeting 84 of the CCWG of the [indiscernible] at the polls or polling or vote casted in favor or against [indiscernible] many observers even participated in the vote or polling. I have the list of all, even Board members participated in that. So I don't agree with that. [Indiscernible] please

do not waste your time here. This is not the appropriate moment to discuss what we could say is a major disagreement on the process and I will discuss it tomorrow and I don't want to say it here because it has no help because still I will be in the minority because neither Thiago is participating nor Jorge and the other observer [indiscernible] so I will be alone and I do want to be surrounded by distinguished colleagues, so please go ahead with your agenda. We will discuss it tomorrow. Just put it in the record that in my view the procedure of discussion or discussing the issues, contentious issues that are arising from the public comment were not properly followed. This is not your mistake, you have done it properly, but [indiscernible] didn't want that. I don't want to get into that discussion now. Please go ahead with your agenda and perhaps you can finish it as soon as possible tonight. Thank you.

>> NIELS TEN OEVER: Thank you very much, Kavouss. Anne is in the cue. Anne, go ahead.

>> Thank you, Niels. This is Anne. I do think there is one procedural question we do have to address. I appreciate that Kavouss does not want to waste anyone's time and, again, I do especially appreciate the active participate of Kavouss and Jorge and also Mark, but purely as a point of procedure, I don't actually think that a minority view submitted by Brazil can truly form properly a part of the report of the Work Stream 2 work of Human Rights. And my view on that is influenced not only by the procedures, the rules of engagement as to minority views, but I'm also thinking I do believe Brazil is one of the designated members of the chartering organization and so I'm wondering, it seems the comment is much more properly submitted at the Plenary level given the observer status. But, I mean, Brazil is a voting member of the chartering organization of the [indiscernible] at the Plenary level.

>> NIELS TEN OEVER: I thank you very much and so the minority statement was

submitted by Jorge Cancio who is an active participant and supported by Kavouss, who is also an active participant in the Subgroup, and was then supported by Thiago from Brazil who is an observer. So we are now discussing whether -- not whether we should accept the minority statement, but whether the minority statement could be signed by an observer and I don't think we should make a big procedural point over adding one name or less underneath it and we will further discuss this in the Plenary.

>> It's Anne again, Niels. I'm sorry, I thought Brazil had a separate minority statement. I certainly withdraw my comment. I don't want to make a big deal out of that either. I thought there was a separate minority statement.

>> NIELS TEN OEVER: Okay.

>> I apologize. Yeah, sorry.

>> NIELS TEN OEVER: No problem. Thanks much. Kavouss, please come in.

>> KAVOUSS ARASTEH: Yes, I think it arises as a misunderstanding. At this point in time I am not deferring to minority and majority. I will raise that issue tomorrow at the Plenary. Tonight we have 8 people or 9 attending here. I see the list. I don't understand if 5 of 8 think that yes and 3 says no and we have majority/minority. Majority has specific connotations, but my point will be tomorrow that the establishment of this group and discussion of the group did not follow the procedure. And I see people raising their hands. That is all right to do that, but I think that we have to avoid that. Let's leave this discussion until tomorrow. I'm not [indiscernible] to majority and minority, that's an issue for tomorrow, and [indiscernible] that the small group [indiscernible] the issue of the public comments. That is what I see and I feel that procedure was not followed. But if you want to spend the whole one hour on this, it is up to you, but I suggest that you leave it as it is and go ahead to read your covering letter and then finish and we will see what will

happen. I don't think [indiscernible] we are condemned to the minority because we are minority, Government of minority, always. If you compare others with others, they are always majority. Look at the Governments attending the meeting. Two, that's all. And look at the 7 or 8. So we have the minority. So we are an absolute minority in every meeting. So [indiscernible] that the people refer to minority/majority. So this is irrelevant, unfortunately. But once again, please kindly go ahead with your agenda. Thank you.

>> NIELS TEN OEVER: Thank you, Kavouss. Then Greg and after that I would like to continue to the reading of the text. Greg, please come in.

>> GREG SHATAN: Greg Shatan for the record. First, I'll note the old saying that, [indiscernible] wife has just shown up. So that's part of the process. Second, in talking about a minority statement, we're doing so because a report from a Subgroup is either the report that is endorsed by rough consensus within the Subgroup or it could be full consensus and if there is a rough consensus, there is an opportunity for a specific, additional part of that report, which is called a minority statement. It has no other name. And if it's not a minority statement, then it doesn't -- and it's not the statement of the Subgroup, then it shouldn't be in the report. So that is why we're talking about a minority report.

As to whether any group is in a minority in any given time, most of the time when we have consensus or full consensus, obviously with full consensus, there is no minority, everyone is in the same group. And whenever there is disagreement with people from different groups, then whoever is in the minority or majority, whoever is part of the consensus or not, will differ. I think given any organization is always in the minority is perhaps rhetorical, but not true. There are certainly times when intellectual property owners feel like they are always in the minority, but it's not true either. I don't -- I avoid saying that. I try to persuade, as everybody else does, in

order to form a consensus and when my persuasion is not useful, not taken up, then I'm either in the minority or I move along and I will note that I've never been part of the minority statement. I consider building of consensus and support of conclusions that are reached to be of paramount importance in the multi stakeholder process. But that's just me. Thank you.

>> NIELS TEN OEVER: Thank you very much, Greg. I would like to continue, but I see Kavouss's hand is up and I, of course, don't want to leave Kavouss just there. Kavouss, please come in.

>> KAVOUSS ARASTEH: Yes, Niels. I think the basis of the report which came to the meeting and so-called by majority agreed with minority statement was not proper. There are two issues here. The way that this group tackled the situation, considered the public comments, this is one issue. The other issue is the meeting in which that report which was, I think, arranged with the absence of procedures was approved by majority. And I will check to see how many people in that majority there were and the minority and so on and so forth. I know there were four minority. And I will know how many there were in the majority. I don't think that we are over [indiscernible]. I think maybe five to four maximum. I will check the name of the people. No doubt, Niels, unfortunately or fortunately, you have not participated in the views and the Secretariat views will not usually be taken because they are neutral people. And some people outside of the group that watch the situation, they also should not be counted. So the participants were five and the minority were four. I don't think that you could say five to four is majority/minority is equal. So I don't agree with that. Perhaps we will discuss the whole evening on this. I put again at the end of your meeting a statement that there was no consensus. Some people say that there was some relative consensus or there was some rough consensus, but I would explain and reiterate that there was no consensus on the matter. And I will argue that

tomorrow at the Plenary when everybody attends. Thank you.

>> NIELS TEN OEVER: Okay. So after that, let's continue with the reading of the text in front of us and see if we can finalize our second reading of that.

I see Anne's hand is up. Anne, do you want to come in?

>> Yes, thank you, Niels. Just very quickly, in light of Kavouss's comments, it strikes me that we will need to have an agree or disagree count on the ticks at the second reading here. And I know some people have also weighed in on the list as far as their agree/disagree ticks. And I think that if we are talking about a question of fact of whether there's majority or not a majority, it will be important for us to have everyone weigh in on a tick, agree or disagree. Thank you.

>> NIELS TEN OEVER: Thank you very much, Anne.

>> KAVOUSS ARASTEH: I have to comment on that.

>> NIELS TEN OEVER: I'm sorry, Kavouss?

>> KAVOUSS ARASTEH: Allow me to comment on that, please.

>> NIELS TEN OEVER: Okay, Kavouss, go ahead, but this is the final -- let's --

>> KAVOUSS ARASTEH: I don't agree that we raise the tick. Tick [indiscernible] voting. We should not go to the vote. I don't think that. Even polls [indiscernible] the charter it is quite clearly mentioned that every effort should be made to avoid division of the group, so I don't think we should go to the tick. And then conclude that according to the tick there was one against and everybody in favor. This is not correct. Literally this is not correct. This is not [indiscernible] ticks or calls or veto or voting is the [indiscernible], but not the small group. I'm sorry, I disagree with that, with all due respect, my distinguished friends. Thank you.

>> NIELS TEN OEVER: [Indiscernible] as it is in the charter it is up to the Rapporteur to call when there is consensus or not and we have different instruments to see and determine how we can achieve register that. But let's first have a look at the

concrete text and not lose ourselves on discussion of process.

So let's have a look at the text and I'll read it to you and then I'll ask you per paragraph whether there are any comments.

So the Cross Community Working Group on Hen Hansing ICANN's Accountability Human Rights Subgroup would like to sincerely thank those who have taken the time and effort to submit public comments to the framework of interpretation and considerations during the public comment period.

The sup group has analyzed and discussed the comments at great length and came to the following conclusions:

The mandate of the group does not include suggesting any changes to the ICANN bylaws. This including the bylaw on Human Rights. As such, any comments that would require changing the bylaws cannot be accepted. This is the case for comments recommending changes in the hierarchy of core values as outlined in the bylaws or for comments pertaining to the use of the term "applicable law" which is part of ICANN's Human Rights bylaws.

The Subgroup recognizes that the documents mentioned in the footnotes are not necessarily an exhaustive list of Human Rights documents, and, therefore, the text has been changed from "including" to "including, but not limited to" for purposes of clarity.

Finally, no new references to any instrument in general or the UN guiding principles for business and Human Rights in particular have been added. The conclusion of the Subgroup is that the current proposed wording is a careful balance between the different opinions held in the ICANN community, tick lay considering the remit of the ICANN's mission.

The HR Subgroup has developed a document which lists response to each of the major comments submitted to the public consultation and is included in this e-mail for reference by the CCWB-accountability-WS2. This will be published on the consultation website as part of the standard process.

As such, the HR Subgroup is submitting --.

I see Kavouss's hand is up.

>> KAVOUSS ARASTEH: I see something I don't see on the screen talking about the balance. Could you put that in the chat or make it quite clear because I do not support that idea. There was a balance, there was no balance. There was a [indiscernible] of different things, I would say, but it was not balanced. The key public comments were not taken into account we cannot call them balanced. For the first time in Work Stream 2, none of the public comments were taken into account with respect to this reference to the Human Rights principles by [indiscernible] so I can't call them balanced. So please kindly record my disagreement with that and report that was no agreement [indiscernible] I don't see that sentence clearly, but please indicate that either in the chat or some record. But in any case, I have heard that, it was proposed by some distinguished colleagues who are in the majority, that there is a balance, but I don't agree with that balance, so please convey my disagreement with that portion of the report. Thank you.

>> NIELS TEN OEVER: Thank you very much, Kavouss. I think your [indiscernible] the careful balance and the reason it did not change is exactly because it is such a careful balance, it's also a fragile balance that we achieved over a year of working hard together. So by changing that, even though the points were made and reiterated during the public comment period, we have discussed those also before. Everyone made the changes when the comments were made during the public comment period. We would risk that the whole document would come apart and we would

start the discussion over again, for which we simply do not have the time seeing the deadline in Work Stream 2.

I see Anne's hand is up. Anne, please come in

>> Thank you, Niels. This is Anne for the transcript. I wanted to propose a possible compromise. I have struggled with the issue of whether or not we have to state, you know, consensus with minority view or no consensus and this is based on looking at the CCWG rules of engagement, but I consider it's a possible that we don't have to necessarily use the word "consensus" in Work Stream work. And if that's the case, I wouldn't object to a change in the word "balance" to, for example, the word "consideration" in the interest of compromise. Proposed wording -- represents careful consideration of the differing opinions. The question for me is, at which point is the finding of consensus required? Is it at the level of our work in Work Stream 2? Or is it at the level of the Plenary? Thank you.

>> NIELS TEN OEVER: Thank you very much, Anne. We haven't used the term "consensus" and as Jorge Cansio has indicated, they have submitted the minority statement that will be submitted as part of this work, so changing it in two places might also be confusing, so it is clear that some people disagree with some parts of the later process. In the text we remove that as a have not to that situation, that's why we put "balance" and that's where we are. In his comments, Jorge used the term -- let me quickly pull that up. I'll look that up while the others go on the call. Kavouss, please come in.

>> KAVOUSS ARASTEH: Yes, Niels. I don't have any difficulty if you refer that the outcome of Work Stream 1 on this matter was a balanced view, but we have [indiscernible] comments. So that balanced view is not or should not constitute to be considered as a balanced view because they are public comments. So you cannot take for granted that because there was a balanced view in the Work Stream 1, it

continues to be a balanced view in Work Stream 2. You have to separate that. If you separate your sentence saying why the outcome of the work has [indiscernible] on the matter was a balanced view, however, continue that due to the public comments, the group could not reach a consensus on the proposed amendment to that part, which was balanced in Work Stream 1. This is my problem. I am not putting in question the work of Work Stream 1. It is finished. I don't want to go back, I respect that. I'm not like some people that go back and try to [indiscernible]. That was okay. But that balance situation could not be taken for granted to also represent or demonstrate a balanced view now because there were public comments. And for some reason that I explained tomorrow at Plenary, those public comments were not properly considered and taken into account. So if you try to separate your sentence, referring to the balanced views of the Work Stream 1, but referring that however this balanced view should -- could not be continued to be valid, I have no problem. So let's make a difference between the two. Thank you.

>> NIELS TEN OEVER: Thanks, Kavouss. But the careful consensus was not just part of Work Stream 1, but also part of Work Stream 2 which lead up to the public comments. And then some members who took part in the discussion decided to reiterate the arguments they made in the discussion that lead to the consensus to reiterate those arguments and when [indiscernible] we achieved the consensus based on those arguments and the weighing of other arguments, now it is said it is not carefully adjusted. So I think we have considered in quite a lot of detail and spent quite a lot of time on that and that's why I think it is a very mild and good description to say it's a careful balance. So the text that Jorge proposed said that the group feels the current proposed wording is a minimum common denominator text between the different opinions held in the ICANN community. I think that does not do justice to the work and the road that we've traveled together in such constructive fashion. But

I'm very eager to hear the comments from Greg and Kavouss on that. Greg, please come in.

>> GREG SHATAN: Thank you, Niels. And thank you, first, Niels for correcting the factual predicate of the previous statement. Another thing that I think needs to be understood is that sometimes things are carefully considered and [indiscernible] taken into account and don't [indiscernible] change being reflected in the document. Dually taking something into account does not mean that you accommodate it. It means you consider it, you discuss it, you look at it, and I think we've probably looked at this as carefully as we've looked at anything in the history of this particular Subgroup. So saying that something was not dually taken into account because the end result just did not move, is to confuse the process with the conclusion. The process was honored. The conclusion was arrived at by the group and obviously there were some in the group who disagreed with that, but it's still the conclusion of the group as a whole. It was the conclusion we came to before the public comments. We looked at the public comments and considered them carefully and took them into account and took into account the views of others who were involved and we came to the conclusions that we came to. It's all entirely proper. I think it's unfortunate that it's being challenged, although I understand everyone is free to challenge whatever they wish. But I think Niels has done an excellent job procedurally and substantively in guiding this group through a number of carefully considerations and folks with different views. And I, for one, wonder, first, whether a statement of support at tonight's Plenary is appropriate for members of this Subgroup. And secondly, whether our report should respond to the minority statement which states a number of things which I agree both as a matter of fact and a matter of analysis. And right now it sits unrefuted. Although obviously unagreed to as it is a minority statement. Thank you.

>> NIELS TEN OEVER: Sorry, I was talking to my muted mic. Thank you, Greg.

Kavouss, please come in. And after Kavouss, I would like to close the cue and start measuring we are okay with this text. Kavouss.

>> KAVOUSS ARASTEH: Yes, you can decide to close and not allow me to talk, I have no problem because I have not been allowed to talk in other meetings, but I have no problem if you decide on that. But I agree partly to what Greg said. The public comments were considered, but it was no consensus to take them into account. That should be clear. There was no consensus to take them into account. But we have considered, we have examined them carefully, and we are considered them. This is the meaning of consideration. But the meeting or the group did not agree by consensus to take them into account. So that is lack of consensus to take it into account and that is a fact. If you mention that, I have no problem. The outcome of the work has been [indiscernible] representative balance of the view and [indiscernible] in view of the public comments that was reconsidered, carefully examined, but the group did not reach any consensus to take those into account. I have no problem. But I could not agree that the group decided not to take them into account. No, the group did not reach any consensus to take them into account and those are the facts. Rather that consensus which is majority or minority or anything else, but we have not this consensus to take them into account. This is quite simple. This is something I have done for years and years and decades. We cannot argue with that. You consider it, but no consensus was reached to take them into account. And please explain that. Please reflect that. No consensus was reached in regard with taking the public comments into account. Thank you. If you do that, I will much appreciate it.

>> NIELS TEN OEVER: Thank you very much, Kavouss. I think we should stop the discussion on the process. I think there's been a lot of exchange here in the call and

in the chat and I think this is a -- and it's been forewarned that we'll also discuss this in the Plenary, so let's further discuss it there. But for now to round up our part of the process and for which we are gathered today, I would like to ask who has -- whether there are people that have problems with the current text as it lies in front of us to be the cover document to send to -- for our documents to send to the CCWG Plenary.

I see Kavouss's hand is up.

>> KAVOUSS ARASTEH: I think you are going to vote. I don't like that. [Indiscernible] you are going to vote who is in favor of that. Or who is opposed of that.

>> NIELS TEN OEVER: No, I'm asking whether people --

>> KAVOUSS ARASTEH: [Indiscernible] vote. You said how we reflect that

>> [Overlapping conversation]

>> KAVOUSS ARASTEH: There were group consensus on this [indiscernible]. There was no consensus on this [indiscernible]. That's all. Without going to the definition of consensus, there was no consensus on this.

>> NIELS TEN OEVER: Kavouss.

>> KAVOUSS ARASTEH: Thank you. Okay.

>> NIELS TEN OEVER: I'm very sorry, Kavouss, but it is not up to you to decide whether it's a consensus or not, it's up to the Rapporteur of the CCWG. I was asking people, without going into a vote now, to see who has a problem with the text as it is lying in front of us. There are no fundamental problem --

>> KAVOUSS ARASTEH: I disagree with the voting. I disagree with the voting. Please kindly consider not to go to the vote.

>> NIELS TEN OEVER: Kavouss, I did not ask for a vote.

>> KAVOUSS ARASTEH: This is vote, you say who is in favor.

>> NIELS TEN OEVER: No, I asked who has a problem with the text. And no one said --

no one said anything.

>> KAVOUSS ARASTEH: I have a problem with the text. I have a problem with the text. And the three Governments, they have also a problem with the text. Jorge mentioned that in the statement. Thiago mentioned that. And maybe some others. So there are disagreement with the text. Sorry. [Laughter].

>> NIELS TEN OEVER: And we have been able to discuss that all week on the mailing list and we've also there has been counter proposals of the Governments that have not been supported and I do not see other people who have any problems with the text. So with that, I think the Governments have been able to have -- to voice the fact that they are not pleased with this in their minority statement, it was part of the process, which is part of what we will submit to the CCWG. And now I'd like to ask people to give a green tick who are okay with the text as it lies ahead as a covering letter for sending it to the CCWG Plenary.

Greg's hand is up. Greg, please come in.

>> GREG SHATAN: Thanks, Niels. I support both your process and the text in front of us. I would say, however, that there is an alternate path available to us, which is if there is a conclusion that, in fact, there is no consensus on the text of this cover note and no consensus on our report, that the group report should instead be substituted with a one line e-mail that says the group failed to reach consensus and has nothing further to say to the Plenary. Either we have something we have agreed on and we have adopted and we are sending up, or we don't. There's room for minority statements in the body of the report. That's been accommodated. And the report as a whole with that minority statement is being taken up to the CCWG. If we're going to talk about not having a consensus, then I think we need to scrap the report and this e-mail and just report that that's the case. I don't believe that's the correct conclusion. I don't believe that's the conclusion you have come to, Niels, but it is a

conclusion that's been advanced and if that is the conclusion that's adopted, that would be the outcome from that conclusion. One which I do not support, but one which I think we need to recognize. Thank you.

>> NIELS TEN OEVER: Thank you very much for that suggestion, Greg, but it was not my conclusion seeing seven people in support of the current text. I feel sufficiently confident to say this is the consensus of the work, also having seen a discussion on the mailing list. And I feel confident that we can go ahead with this. And, of course, we'll continue the discussion in the Plenary.

I see Kavouss's hand is up. Kavouss, please come in.

>> KAVOUSS ARASTEH: Yes, Niels, I think we are pushing for something which is against practice. Standard practices. If you say not voting, but saying who does not have difficulty, clearly people they should mention that they do not have difficulty. Then you raise the second question, who has difficulty? Again, the people. Then the third one, who has abstention? That is important. That is very important. You cannot take the silent majority as agreement. There are three or four people, I know them, that are in favor of that. One, two, three, four, or five. That's all. [Indiscernible] I don't know. They have to mention that they have in category one have no problems or category two, they have problems, or category three, they have no views on the matter for the time being. This is important that you report to the Plenary. I'm sure that if the people clearly mention then there would be room for us to discuss it at Plenary because the argument that I would launch will be very, very [indiscernible] in the Plenary, so those people who do not have any view will be really happy because there are some [indiscernible] or some missing points. So if you want, please, I know it is up to you, you are the chair, we fully respect you, here is this question -- questions, who does not have a problem? Name them. Who has problems? Name them. And who is abstentions? That is very important. You cannot take abstentions

as either agreeing or disagreeing. You have to have whom. There are many cases people have abstentions and that is part of the democracy. So you cannot ignore that. Or you avoid totally this. You think there was no consensus. Leave this process to the Plenary of CCWG. But you say you want to do that, that is your prerogative, I have no problem. But I suggest if you don't do that, if you do that, do it in the ways I mentioned. Who has no problem? Who has problems? Who is abstention? Thank you.

>> NIELS TEN OEVER: Thank you very much, Kavouss. I know enough. I thank you all very much for your time and attention for this 34th meeting. I'll go ahead and compile the report and the text and will share it to the Plenary. I'm greatly looking forward to sharing with you all the discussion we'll have on furthering this work in the Plenary. Thank you all very much for working so constructively with this over time. I think our work is not done yet, but maybe for the time being. I'm sure we'll see each other again soon in the Subgroup, in the Plenary, and hopefully as well in Abu Dhabi. Thank you all very much for your work and thank you for your [indiscernible] to the group.

>> CHERYL LANGDON-ORR: Thank you, Niels.

>> NIELS TEN OEVER: Thank you, Cheryl. Bye.

>> CHERYL LANGDON-ORR: Bye.

CART Disclaimer: This rough edit transcript, which may contain missing, misspelled or paraphrased words, is only provided for your immediate review and is not certified as verbatim and is not to be cited in any way. Tuesday August 29, 2017 Cross Community Working Group on Enhancing ICANN Accountability Work Stream 2-Human Rights Subgroup Meeting 34 19:00 UTC CART Disclaimer: This rough edit transcript, which may contain missing, misspelled or paraphrased words, is only

provided for your immediate review and is not certified as verbatim and is not to be cited in any way. [Captioner standing by], >> NIELS TEN OEVER: Hello, everyone! I can start. Would you be so kind to record the meeting. Thank you so much. I can start and welcome everyone ranging from Alabama to Australia to the Cross Community Working GROUM on Enhancing ICANN Accountability Work Stream 2-Human Rights Subgroup, meeting 34, August 29, 19:00 UTC. It is a pleasure and honor to have you all today again to discuss today the second reading of our message to the CCWG Plenary. And perhaps with that, also achieving the next important milestone of the work we've been doing together over this time. But, please, do not let me get ahead of myself. Let's first start out with the Administrivia. If you could please be so kind to take the roll call from the Adobe Connect and if there is anybody on the audio bridge who is not in the Adobe Connect room, would you please make yourself known so you are also noted in the archives? With that done, does anyone have an update to their statement of interest? No updates to the statement of interest. Then we have apologies from Matthew sheers, Sebastian [indiscernible] and Cheryl who could not make it with us, but I see we still have a quorum and sufficient people on the call, so it's great to continue our work. Then does anyone have an addition to the agenda? I see Greg is seeing the agenda sideways. I am not. It might mean that either I or Greg's screen is tilted or there the singularity is upon us or otherwise. Any how, depending on the -- not depending on the rotation of the agenda, but does anyone have an addition or change to suggest for the agenda? No suggested changes for the agenda, so then I propose we continue with the second reading of our e-mail to the CCWG Plenary, which will be the cover letter for our reading of the -- with an overview of our analysis of the public comments, as well as the new version of the framework of interpretations plus considerations document with the minimum changes that we've made. So I'd

like to ask, I can start with you, please be so kind as to pull up the document that was shared on the list. It was the Word document. Kavouss's hand is up, Kavouss, please come in. >> KAVOUSS ARASTEH: Yes, good morning, afternoon, evening to everybody. Just to inform you that tomorrow [indiscernible] I will make a statement with respect to the non-application of procedure in relation with the activity of the drafting group and I don't want to waste your time, but I want not to hide anything from you, I will make it tomorrow in the Plenary, I will inform the culture and we would like to maintain our friendship without being further accused or further offended, so we take the silence, question bite our tongues during the meeting, but we have been wounded, the Governments, so we will take up this matter tomorrow in the Plenary. Thank you very much and no further comment. Please go ahead. >> NIELS TEN OEVER: Thank you very much, Kavouss. We're greatly interested in the statement and, of course, we've received from Jorge ancio the statement which was the minority statement which was then supported by the Government of Brazil, who is an observer in this group, and by Kavouss, if I'm correct. Right, Kavouss? >> KAVOUSS ARASTEH: Yes. Just to remind ourself that being the observer does not mean that the observer could not raise the flag or could not talk. At any moment before the meeting or during the observer for a particular subject of his or her interest could ask that the statements be changed from observer to participant, this has been done in other cases. [Indiscernible] observer that I don't have the right to raise any matter. I imply that, no, this is not true. If the matter touches your own views, views of your own Government, even being observer you can ask that you be allowed to make a statement. So having to observer does that equal not making any statement and it should be really understand by the people and because this was [indiscernible] has always been like this. Being observer or participant is voluntary information and at any time somebody could [indiscernible] temporarily or

permanent change in [indiscernible] from observer to participant and make a statement if the real interest is on the state. Thank you. >> NIELS TEN OEVER: Yes, thank you, Kavouss. Even though it is in the rules that observers do not have rights to post to the list, I did not want to make a process point of it and I think I'm happy to -- that we submit that also on behalf of the Government of Brazil. If people have no other procedural problems with that. I see Greg's hand is up. Greg, please come in. >> GREG SHATAN: This is Greg and I have not gone back and read the charter, but I don't believe that the summary that was just given is exactly accurate. I do agree that observers can change to participants and once participants have the same rights as other participants. But as observers, they do not have those rights. I think it should be noted that, as you just noted, Niels, that we, in fact, bent the rules in favor of allowing participation by certain observers, in spite of the accusations of having been wounded or failing to take their issues into account. You and the group by extension were actually more accommodating than a technical reading of the rules would have allowed. So I think that should be comended rather than criticized. I also don't think it's a precedent that should be considered. I don't think that should be considered as a precedent for the future as otherwise the status, different status have no meaning in the subgroups. So I think it was the right thing to do at the time in order to be as accommodating as possible. But, you know, I see the point that Robin is raising and Anne as well. I think we need to look at whether a minority statement can be raised by an observer. I suppose it can be raised by a participant. But at some point, I think we have to stop, you know, just ignoring the rules because the rules are meaningful and the ones we have all agreed to work with. Finally, I would say that I think the drafting team does not deserve to be accused of that, of which it apparently is or will be continue to be accused of. I think it's quite unfortunate. And whether we're going to talk about who is wounded here [lost

audio] complaint about it [lost audio] rather than choose [lost audio] >> NIELS TEN OEVER: Kavouss? >> KAVOUSS ARASTEH: Yes, with all due respect, I don't agree with that statement, the statement of the other people that defend the action which was taken which was not appropriate. Who is [indiscernible] moderate it [indiscernible], but just for the information of the people, when we had meeting 84 of the CCWG of the [indiscernible] at the polls or polling or vote casted in favor or against [indiscernible] many observers even participated in the vote or polling. I have the list of all, even Board members participated in that. So I don't agree with that. [Indiscernible] please do not waste your time here. This is not the appropriate moment to discuss what we could say is a major disagreement on the process and I will discuss it tomorrow and I don't want to say it here because it has no help because still I will be in the minority because neither Thiago is participating nor Jorge and the other observer [indiscernible] so I will be alone and I do want to be surrounded by distinguished colleagues, so please go ahead with your agenda. We will discuss it tomorrow. Just put it in the record that in my view the procedure of discussion or discussing the issues, contentious issues that are arising from the public comment were not properly followed. This is not your mistake, you have done it properly, but [indiscernible] didn't want that. I don't want to get into that discussion now. Please go ahead with your agenda and perhaps you can finish it as soon as possible tonight. Thank you. >> NIELS TEN OEVER: Thank you very much, Kavouss. Anne is in the cue. Anne, go ahead. >> Thank you, Niels. This is Anne. I do think there is one procedural question we do have to address. I appreciate that Kavouss does not want to waste anyone's time and, again, I do especially appreciate the active participate of Kavouss and Jorge and also Mark, but purely as a point of procedure, I don't actually think that a minority view submitted by Brazil can truly form properly a part of the report of the Work Stream 2 work of Human Rights. And my view on that

is influenced not only by the procedures, the rules of engagement as to minority views, but I'm also thinking I do believe Brazil is one of the designated members of the chartering organization and so I'm wondering, it seems the comment is much more properly submitted at the Plenary level given the observer status. But, I mean, Brazil is a voting member of the chartering organization of the [indiscernible] at the Plenary level. >> NIELS TEN OEVER: I thank you very much and so the minority statement was submitted by Jorge Cancio who is an active participant and supported by Kavouss, who is also an active participant in the Subgroup, and was then supported by Thiago from Brazil who is an observer. So we are now discussing whether -- not whether we should accept the minority statement, but whether the minority statement could be signed by an observer and I don't think we should make a big procedural point over adding one name or less underneath it and we will further discuss this in the Plenary. >> It's Anne again, Niels. I'm sorry, I thought Brazil had a separate minority statement. I certainly withdraw my comment. I don't want to make a big deal out of that either. I thought there was a separate minority statement. >> NIELS TEN OEVER: Okay. >> I apologize. Yeah, sorry. >> NIELS TEN OEVER: No problem. Thanks much. Kavouss, please come in. >> KAVOUSS ARASTEH: Yes, I think it arises as a misunderstanding. At this point in time I am not deferring to minority and majority. I will raise that issue tomorrow at the Plenary. Tonight we have 8 people or 9 attending here. I see the list. I don't understand if 5 of 8 think that yes and 3 says no and we have majority/minority. Majority has specific connotations, but my point will be tomorrow that the establishment of this group and discussion of the group did not follow the procedure. And I see people raising their hands. That is all right to do that, but I think that we have to avoid that. Let's leave this discussion until tomorrow. I'm not [indiscernible] to majority and minority, that's an issue for tomorrow, and [indiscernible] that the small group [indiscernible] the issue of the

public comments. That is what I see and I feel that procedure was not followed. But if you want to spend the whole one hour on this, it is up to you, but I suggest that you leave it as it is and go ahead to read your covering letter and then finish and we will see what will happen. I don't think [indiscernible] we are condemned to the minority because we are minority, Government of minority, always. If you compare others with others, they are always majority. Look at the Governments attending the meeting. Two, that's all. And look at the 7 or 8. So we have the minority. So we are an absolute minority in every meeting. So [indiscernible] that the people refer to minority/majority. So this is irrelevant, unfortunately. But once again, please kindly go ahead with your agenda. Thank you. >> NIELS TEN OEVER: Thank you, Kavouss. Then Greg and after that I would like to continue to the reading of the text. Greg, please come in. >> GREG SHATAN: Greg Shatan for the record. First, I'll note the old saying that, [indiscernible] wife has just shown up. So that's part of the process. Second, in talking about a minority statement, we're doing so because a report from a Subgroup is either the report that is endorsed by rough consensus within the Subgroup or it could be full consensus and if there is a rough consensus, there is an opportunity for a specific, additional part of that report, which is called a minority statement. It has no other name. And if it's not a minority statement, then it doesn't -- and it's not the statement of the Subgroup, then it shouldn't be in the report. So that is why we're talking about a minority report. As to whether any group is in a minority in any given time, most of the time when we have consensus or full consensus, obviously with full consensus, there is no minority, everyone is in the same group. And whenever there is disagreement with people from different groups, then whoever is in the minority or majority, whoever is part of the consensus or not, will differ. I think given any organization is always in the minority is perhaps rhetorical, but not true. There are certainly times when intellectual property owners

feel like they are always in the minority, but it's not true either. I don't -- I avoid saying that. I try to persuade, as everybody else does, in order to form a consensus and when my persuasion is not useful, not taken up, then I'm either in the minority or I move along and I will note that I've never been part of the minority statement. I consider building of consensus and support of conclusions that are reached to be of paramount importance in the multi stakeholder process. But that's just me. Thank you. >> NIELS TEN OEVER: Thank you very much, Greg. I would like to continue, but I see Kavouss's hand is up and I, of course, don't want to leave Kavouss just there. Kavouss, please come in. >> KAVOUSS ARASTEH: Yes, Niels. I think the basis of the report which came to the meeting and so-called by majority agreed with minority statement was not proper. There are two issues here. The way that this group tackled the situation, considered the public comments, this is one issue. The other issue is the meeting in which that report which was, I think, arranged with the absence of procedures was approved by majority. And I will check to see how many people in that majority there were and the minority and so on and so forth. I know there were four minority. And I will know how many there were in the majority. I don't think that we are over [indiscernible]. I think maybe five to four maximum. I will check the name of the people. No doubt, Niels, unfortunately or fortunately, you have not participated in the views and the Secretariat views will not usually be taken because they are neutral people. And some people outside of the group that watch the situation, they also should not be counted. So the participants were five and the minority were four. I don't think that you could say five to four is majority/minority is equal. So I don't agree with that. Perhaps we will discuss the whole evening on this. I put again at the end of your meeting a statement that there was no consensus. Some people say that there was some relative consensus or there was some rough consensus, but I would explain and reiterate that there was no consensus on the

matter. And I will argue that tomorrow at the Plenary when everybody attends.

Thank you. >> NIELS TEN OEVER: Okay. So after that, let's continue with the reading of the text in front of us and see if we can finalize our second reading of that. I see

Anne's hand is up. Anne, do you want to come in? >> Yes, thank you, Niels. Just very

quickly, in light of Kavouss's comments, it strikes me that we will need to have an agree or disagree count on the ticks at the second reading here. And I know some

people have also weighed in on the list as far as their agree/disagree ticks. And I

think that if we are talking about a question of fact of whether there's majority or

not a majority, it will be important for us to have everyone weigh in on a tick, agree

or disagree. Thank you. >> NIELS TEN OEVER: Thank you very much, Anne. >>

KAVOUSS ARASTEH: I have to comment on that. >> NIELS TEN OEVER: I'm sorry,

Kavouss? >> KAVOUSS ARASTEH: Allow me to comment on that, please. >> NIELS

TEN OEVER: Okay, Kavouss, go ahead, but this is the final -- let's -- >> KAVOUSS

ARASTEH: I don't agree that we raise the tick. Tick [indiscernible] voting. We should

not go to the vote. I don't think that. Even polls [indiscernible] the charter it is quite

clearly mentioned that every effort should be made to avoid division of the group, so

I don't think we should go to the tick. And then conclude that according to the tick

there was one against and everybody in favor. This is not correct. Literally this is not

correct. This is not [indiscernible] ticks or calls or veto or voting is the [indiscernible],

but not the small group. I'm sorry, I disagree with that, with all due respect, my

distinguished friends. Thank you. >> NIELS TEN OEVER: [Indiscernible] as it is in the

charter it is up to the Rapporteur to call when there is consensus or not and we have

different instruments to see and determine how we can achieve register that. But

let's first have a look at the concrete text and not lose ourselves on discussion of

process. So let's have a look at the text and I'll read it to you and then I'll ask you per

paragraph whether there are any comments. So the Cross Community Working

Group on Hen Hansing ICANN's Accountability Human Rights Subgroup would like to sincerely thank those who have taken the time and effort to submit public comments to the framework of interpretation and considerations during the public comment period. The sup group has analyzed and discussed the comments at great length and came to the following conclusions: The mandate of the group does not include suggesting any changes to the ICANN bylaws. This including the bylaw on Human Rights. As such, any comments that would require changing the bylaws cannot be accepted. This is the case for comments recommending changes in the hierarchy of core values as outlined in the bylaws or for comments pertaining to the use of the term "applicable law" which is part of ICANN's Human Rights bylaws. The Subgroup recognizes that the documents mentioned in the footnotes are not necessarily an exhaustive list of Human Rights documents, and, therefore, the text has been changed from "including" to "including, but not limited to" for purposes of clarity. Finally, no new references to any instrument in general or the UN guiding principles for business and Human Rights in particular have been added. The conclusion of the Subgroup is that the current proposed wording is a careful balance between the different opinions held in the ICANN community, taking into consideration the remit of the ICANN's mission. The HR Subgroup has developed a document which lists response to each of the major comments submitted to the public consultation and is included in this e-mail for reference by the CCWB-accountability-WS2. This will be published on the consultation website as part of the standard process. As such, the HR Subgroup is submitting --. I see Kavouss's hand is up. >> KAVOUSS ARASTEH: I see something I don't see on the screen talking about the balance. Could you put that in the chat or make it quite clear because I do not support that idea. There was a balance, there was no balance. There was a [indiscernible] of different things, I would say, but it was not balanced. The key public comments were not taken into

account we cannot call them balanced. For the first time in Work Stream 2, none of the public comments were taken into account with respect to this reference to the Human Rights principles by [indiscernible] so I can't call them balanced. So please kindly record my disagreement with that and report that was no agreement [indiscernible] I don't see that sentence clearly, but please indicate that either in the chat or some record. But in any case, I have heard that, it was proposed by some distinguished colleagues who are in the majority, that there is a balance, but I don't agree with that balance, so please convey my disagreement with that portion of the report. Thank you. >> NIELS TEN OEVER: Thank you very much, Kavouss. I think your [indiscernible] the careful balance and the reason it did not change is exactly because it is such a careful balance, it's also a fragile balance that we achieved over a year of working hard together. So by changing that, even though the points were made and reiterated during the public comment period, we have discussed those also before. Everyone made the changes when the comments were made during the public comment period. We would risk that the whole document would come apart and we would start the discussion over again, for which we simply do not have the time seeing the deadline in Work Stream 2. I see Anne's hand is up. Anne, please come in >> Thank you, Niels. This is Anne for the transcript. I wanted to propose a possible compromise. I have struggled with the issue of whether or not we have to state, you know, consensus with minority view or no consensus and this is based on looking at the CCWG rules of engagement, but I consider it's a possible that we don't have to necessarily use the word "consensus" in Work Stream work. And if that's the case, I wouldn't object to a change in the word "balance" to, for example, the word "consideration" in the interest of compromise. Proposed wording -- represents careful consideration of the differing opinions. The question for me is, at which point is the finding of consensus required? Is it at the level of our work in Work Stream 2?

Or is it at the level of the Plenary? Thank you. >> NIELS TEN OEVER: Thank you very much, Anne. We haven't used the term "consensus" and as Jorge Cansio has indicated, they have submitted the minority statement that will be submitted as part of this work, so changing it in two places might also be confusing, so it is clear that some people disagree with some parts of the later process. In the text we remove that as a have not to that situation, that's why we put "balance" and that's where we are. In his comments, Jorge used the term -- let me quickly pull that up. I'll look that up while the others go on the call. Kavouss, please come in. >> KAVOUSS ARASTEH: Yes, Niels. I don't have any difficulty if you refer that the outcome of Work Stream 1 on this matter was a balanced view, but we have [indiscernible] comments. So that balanced view is not or should not constitute to be considered as a balanced view because they are public comments. So you cannot take for granted that because there was a balanced view in the Work Stream 1, it continues to be a balanced view in Work Stream 2. You have to separate that. If you separate your sentence saying why the outcome of the work has [indiscernible] on the matter was a balanced view, however, continue that due to the public comments, the group could not reach a consensus on the proposed amendment to that part, which was balanced in Work Stream 1. This is my problem. I am not putting in question the work of Work Stream 1. It is finished. I don't want to go back, I respect that. I'm not like some people that go back and try to [indiscernible]. That was okay. But that balance situation could not be taken for granted to also represent or demonstrate a balanced view now because there were public comments. And for some reason that I explained tomorrow at Plenary, those public comments were not properly considered and taken into account. So if you try to separate your sentence, referring to the balanced views of the Work Stream 1, but referring that however this balanced view should -- could not be continued to be valid, I have no problem. So let's make a difference between the

two. Thank you. >> NIELS TEN OEVER: Thanks, Kavouss. But the careful consensus was not just part of Work Stream 1, but also part of Work Stream 2 which lead up to the public comments. And then some members who took part in the discussion decided to reiterate the arguments they made in the discussion that lead to the consensus to reiterate those arguments and when [indiscernible] we achieved the consensus based on those arguments and the weighing of other arguments, now it is said it is not carefully adjusted. So I think we have considered in quite a lot of detail and spent quite a lot of time on that and that's why I think it is a very mild and good description to say it's a careful balance. So the text that Jorge proposed said that the group feels the current proposed wording is a minimum common denominator text between the different opinions held in the ICANN community. I think that does not do justice to the work and the road that we've traveled together in such constructive fashion. But I'm very eager to hear the comments from Greg and Kavouss on that.

Greg, please come in. >> GREG SHATAN: Thank you, Niels. And thank you, first, Niels for correcting the factual predicate of the previous statement. Another thing that I think needs to be understood is that sometimes things are carefully considered and [indiscernible] taken into account and don't [indiscernible] change being reflected in the document. Dually taking something into account does not mean that you accommodate it. It means you consider it, you discuss it, you look at it, and I think we've probably looked at this as carefully as we've looked at anything in the history of this particular Subgroup. So saying that something was not dually taken into account because the end result just did not move, is to confuse the process with the conclusion. The process was honored. The conclusion was arrived at by the group and obviously there were some in the group who disagreed with that, but it's still the conclusion of the group as a whole. It was the conclusion we came to before the public comments. We looked at the public comments and considered them carefully

and took them into account and took into account the views of others who were involved and we came to the conclusions that we came to. It's all entirely proper. I think it's unfortunate that it's being challenged, although I understand everyone is free to challenge whatever they wish. But I think Niels has done an excellent job procedurally and substantively in guiding this group through a number of carefully considerations and folks with different views. And I, for one, wonder, first, whether a statement of support at tonight's Plenary is appropriate for members of this Subgroup. And secondly, whether our report should respond to the minority statement which states a number of things which I agree both as a matter of fact and a matter of analysis. And right now it sits unrefuted. Although obviously unagreed to as it is a minority statement. Thank you. >> NIELS TEN OEVER: Sorry, I was talking to my muted mic. Thank you, Greg. Kavouss, please come in. And after Kavouss, I would like to close the cue and start measuring we are okay with this text. Kavouss. >> KAVOUSS ARASTEH: Yes, you can decide to close and not allow me to talk, I have no problem because I have not been allowed to talk in other meetings, but I have no problem if you decide on that. But I agree partly to what Greg said. The public comments were considered, but it was no consensus to take them into account. That should be clear. There was no consensus to take them into account. But we have considered, we have examined them carefully, and we are considered them. This is the meaning of consideration. But the meeting or the group did not agree by consensus to take them into account. So that is lack of consensus to take it into account and that is a fact. If you mention that, I have no problem. The outcome of the work has been [indiscernible] representative balance of the view and [indiscernible] in view of the public comments that was reconsidered, carefully examined, but the group did not reach any consensus to take those into account. I have no problem. But I could not agree that the group decided not to take them into

account. No, the group did not reach any consensus to take them into account and those are the facts. Rather that consensus which is majority or minority or anything else, but we have not this consensus to take them into account. This is quite simple. This is something I have done for years and years and decades. We cannot argue with that. You consider it, but no consensus was reached to take them into account. And please explain that. Please reflect that. No consensus was reached in regard with taking the public comments into account. Thank you. If you do that, I will much appreciate it. >> NIELS TEN OEVER: Thank you very much, Kavouss. I think we should stop the discussion on the process. I think there's been a lot of exchange here in the call and in the chat and I think this is a -- and it's been forewarned that we'll also discuss this in the Plenary, so let's further discuss it there. But for now to round up our part of the process and for which we are gathered today, I would like to ask who has -- whether there are people that have problems with the current text as it lies in front of us to be the cover document to send to -- for our documents to send to the CCWG Plenary. I see Kavouss's hand is up. >> KAVOUSS ARASTEH: I think you are going to vote. I don't like that. [Indiscernible] you are going to vote who is in favor of that. Or who is opposed of that. >> NIELS TEN OEVER: No, I'm asking whether people -- >> KAVOUSS ARASTEH: [Indiscernible] vote. You said how we reflect that >> [Overlapping conversation] >> KAVOUSS ARASTEH: There were group consensus on this [indiscernible]. There was no consensus on this [indiscernible]. That's all. Without going to the definition of consensus, there was no consensus on this. >> NIELS TEN OEVER: Kavouss. >> KAVOUSS ARASTEH: Thank you. Okay. >> NIELS TEN OEVER: I'm very sorry, Kavouss, but it is not up to you to decide whether it's a consensus or not, it's up to the Rapporteur of the CCWG. I was asking people, without going into a vote now, to see who has a problem with the text as it is lying in front of us. There are no fundamental problem -- >> KAVOUSS ARASTEH: I disagree

with the voting. I disagree with the voting. Please kindly consider not to go to the vote. >> NIELS TEN OEVER: Kavouss, I did not ask for a vote. >> KAVOUSS ARASTEH: This is vote, you say who is in favor. >> NIELS TEN OEVER: No, I asked who has a problem with the text. And no one said -- no one said anything. >> KAVOUSS ARASTEH: I have a problem with the text. I have a problem with the text. And the three Governments, they have also a problem with the text. Jorge mentioned that in the statement. Thiago mentioned that. And maybe some others. So there are disagreement with the text. Sorry. [Laughter]. >> NIELS TEN OEVER: And we have been able to discuss that all week on the mailing list and we've also there has been counter proposals of the Governments that have not been supported and I do not see other people who have any problems with the text. So with that, I think the Governments have been able to have -- to voice the fact that they are not pleased with this in their minority statement, it was part of the process, which is part of what we will submit to the CCWG. And now I'd like to ask people to give a green tick who are okay with the text as it lies ahead as a covering letter for sending it to the CCWG Plenary. Greg's hand is up. Greg, please come in. >> GREG SHATAN: Thanks, Niels. I support both your process and the text in front of us. I would say, however, that there is an alternate path available to us, which is if there is a conclusion that, in fact, there is no consensus on the text of this cover note and no consensus on our report, that the group report should instead be substituted with a one line e-mail that says the group failed to reach consensus and has nothing further to say to the Plenary. Either we have something we have agreed on and we have adopted and we are sending up, or we don't. There's room for minority statements in the body of the report. That's been accommodated. And the report as a whole with that minority statement is being taken up to the CCWG. If we're going to talk about not having a consensus, then I think we need to scrap the report and this e-mail and just report

that that's the case. I don't believe that's the correct conclusion. I don't believe that's the conclusion you have come to, Niels, but it is a conclusion that's been advanced and if that is the conclusion that's adopted, that would be the outcome from that conclusion. One which I do not support, but one which I think we need to recognize. Thank you. >> NIELS TEN OEVER: Thank you very much for that suggestion, Greg, but it was not my conclusion seeing seven people in support of the current text. I feel sufficiently confident to say this is the consensus of the work, also having seen a discussion on the mailing list. And I feel confident that we can go ahead with this. And, of course, we'll continue the discussion in the Plenary. I see Kavouss's hand is up. Kavouss, please come in. >> KAVOUSS ARASTEH: Yes, Niels, I think we are pushing for something which is against practice. Standard practices. If you say not voting, but saying who does not have difficulty, clearly people they should mention that they do not have difficulty. Then you raise the second question, who has difficulty? Again, the people. Then the third one, who has abstention? That is important. That is very important. You cannot take the silent majority as agreement. There are three or four people, I know them, that are in favor of that. One, two, three, four, or five. That's all. [Indiscernible] I don't know. They have to mention that they have in category one have no problems or category two, they have problems, or category three, they have no views on the matter for the time being. This is important that you report to the Plenary. I'm sure that if the people clearly mention then there would be room for us to discuss it at Plenary because the argument that I would launch will be very, very [indiscernible] in the Plenary, so those people who do not have any view will be really happy because there are some [indiscernible] or some missing points. So if you want, please, I know it is up to you, you are the chair, we fully respect you, here is this question -- questions, who does not have a problem? Name them. Who has problems? Name them. And who is abstentions?

That is very important. You cannot take abstentions as either agreeing or disagreeing. You have to have whom. There are many cases people have abstentions and that is part of the democracy. So you cannot ignore that. Or you avoid totally this. You think there was no consensus. Leave this process to the Plenary of CCWG.

But you say you want to do that, that is your prerogative, I have no problem. But I suggest if you don't do that, if you do that, do it in the ways I mentioned. Who has no problem? Who has problems? Who is abstention? Thank you. >> NIELS TEN

OEVER: Thank you very much, Kavouss. I know enough. I thank you all very much for your time and attention for this 34th meeting. I'll go ahead and compile the report and the text and will share it to the Plenary. I'm greatly looking forward to sharing with you all the discussion we'll have on furthering this work in the Plenary. Thank you all very much for working so constructively with this over time. I think our work is not done yet, but maybe for the time being. I'm sure we'll see each other again soon in the Subgroup, in the Plenary, and hopefully as well in Abu Dhabi. Thank you all very much for your work and thank you for your [indiscernible] to the group. >>

CHERYL LANGDON-ORR: Thank you, Niels. >> NIELS TEN OEVER: Thank you, Cheryl.

Bye. >> CHERYL LANGDON-ORR: Bye. CART Disclaimer: This rough edit transcript, which may contain missing, misspelled or paraphrased words, is only provided for your immediate review and is not certified as verbatim and is not to be cited in any way.