MARRAKECH – ALAC and Regional Leadership Working Session Part 1
Sunday, March 06, 2016 – 09:45 to 12:30 WET
ICANN55 | Marrakech, Morocco

UNIDENTIFIED MALE: This is Sunday, March 6th. The ALAC and Regional Leadership Working Session, 9:45.

UNIDENTIFIED FEMALE: ALAC and Regional leaders at the table, please. We're about to start. Thank you.

ALAN GREENBERG: Ladies and gentlemen, we're starting late. I have an absolute hard stop at 11:00, so I would like to start this meeting now. I will express a fair amount of dissatisfaction that a meeting that is starting at the luxurious time of 9:45, we can't seem to get more than half the people in the room 15 minutes after it's started. To those of you who are here, thank you. To those of you who are not here and not listening to me, not much I can do about it, but I'm issuing a level of dissatisfaction to the extent that the people who are missing are associated with you, please let them know.

Alright. The agenda is a moving thing. The items that we will start with right now are the ALAC questions, or the issues for the

GAC and the Board. If we finish these prior to 11:00 we will go back into the CCWG discussion and continue that one. We will again start by using a count-up timer. If you feel you're speaking for too long, take a look at it and see how long it's been. If necessary, we will go to the countdown timer with rude sounds at the end. Any questions before we start? Thank you.

Can we have the questions for the GAC…they are there. These are not questions, these are topics. The GAC has accepted these. They have suggested they might come back with something of their own. They have not yet. I don't think we have a lot to discuss, but I would like to hear from people who would like to present or talk about these things. Or if you'd like me or somebody to explain more what they mean, because if you don't know that, then we can do that, too.

The first item were brief updates and I say "brief" because from our point of view it's just a matter of saying what's going on. The GAC may well have things to formally discuss on these, in which case of course the schedule will be adjusted suitably. But we have not assigned specific times.

The first is an update on where we are on CCWG Accountability. By the time we meet with GAC we may well have ratified the whole proposal, we may not have. So that will be a matter for [porting]. As we know, the GAC is in interesting discussions on

where they are and they may want to report where they are, but they are not planning to make a formal decision until after our meeting, I believe. When exactly is our meeting with the GAC? Does anyone know? It is Tuesday. Correct. So last I heard they were not planning to make a formal decision until Wednesday but they may have adjusted their schedule because of requests for decisions earlier.

The second item on the brief updates is the gTLD Safeguards. Now, you will recall that this is something that's been going on off and on since the Beijing meeting when the GAC issued a communique. At the Los Angeles meeting a year and a half ago, we issued advice to the Board to essentially freeze all new gTLD activities until the issues were addressed. They chose not to follow that advice. We have had a number of interactions since then, the Board initiated a number of discussions with both members of At-Large and other parts of ICANN. That came to nothing. The new gTLD committee, and now the Board, has been quite divided on whether this is an issue that the Board should be addressing one way or another or not. The original request that came through the business constituency which we supported was that – and it came before most of the contracts were signed – was that ICANN take some action to make sure the contracts are changed to reflect the sensitivity of some gTLDs. Since that time, most of these contracts have been signed. There

is no practical way to unilaterally change contracts. We are now requesting that we at least convene a group to investigate the sensitive TLDs and use it as information going forward in creating any new rounds, or in the CCT review committee to help guide them as to what kind of problems to look at. That was the request we made and you saw a letter from me that we had agreed to on the previous ALAC meeting that came out last week.

Following a significant number of discussions at this meeting my guess is – and it's a guess – is the Board may respond to us by suggesting that they not convene a committee or a group as we requested but forward the problem to both the CCT review committee and the new gTLD PDP – the PDP that's working on future rules – to do that investigation and incorporate the results into their output.

From my perspective, that's a good response. It says, "We don't convene yet another committee that we then have to staff, but we do require that the work be done and factored in." Because otherwise the work of this new committee could only then be sent to them. It does presume that one of those groups will actually do it, which is perhaps an act of faith, I'm not sure. I don't know how the Board would word such a request should they [inaudible] to do it. But from my perspective, that would be an adequate way of addressing the problem, but I'd like to hear

from you because it's going to come up at the GAC meeting and it will come up again at the Board meeting. So the question is, "Is that a reasonable way forward?"

Olivier has been my partner in crime in a lot of this so I guess I'll ask for comments from Olivier first but then open up the floor to anyone else.

OLIVIER CRÉPIN-LEBLOND: Thanks very much, Alan. I actually had a question regarding the potential answer that we might receive of sending this to the PDP on the next round of applications. Does this fall within what's called at the GNSO the "picket fence"? In other words, is this a policy issue or is this an implementation issue? I know that we had discussed this in the past and there were some that were saying, "Well, we need to have a PDP on this." And our view originally was that this was not liable to be either fixed or tackled as a PDP because it was outside the picket fence.

ALAN GREENBERG: Okay. You've asked an either-or question and the answer is yes. Or no. It applies equally. My belief is – and it's supported by a number of senior ICANN people – is that the current PICs are outside of the picket fence. That means we cannot use a PDP to alter an existing written contract. But there is nothing

prohibiting a PDP on the next round from setting a different set of rules and including both PICs and perhaps stronger PICs in line with the GAC Safeguards as part of the framework for new gTLDs – for future gTLDs.

OLIVIER CRÉPIN-LEBLOND: So that's interesting because haven't the PICs been something that was added to the contracts when ICANN came closer to actually signing the contracts? I don't think that PICs were part of the original GNSO 2007 PDP to create this and I'm not sure whether they were part of the applicant guidebook. But the reason why I'm mentioning this is that I have already heard voices in the GNSO saying, "Well, the next round thankfully we'll be able to get rid of PICs altogether."

ALAN GREENBERG: This is now becoming a political discussion. Assuming the new gTLD committee looking at the future rounds says that there shall be no PICs, that there shall be no differentiation in TLDs, given our current interpretation of policy and implementation, which has been developed in the last couple of years, I believe the Board would be hard pressed to again invent PICs and impose them. The argument that PICs are policy, under today's definition of policy which is different from five years ago, is a moderately strong argument. So if the PDP on the next round

determines that we do not need anything like PICs, it may well be correct that we don't have them. That is why some of us have said it's not going to be sufficient five years from now to complain that we didn't do it right if we're not participating in that PDP if there aren't voices, if the only voices in that PDP are the ones saying "Down with PICs, we don't need them, they were an abomination, they should never have been invented and we're going to kill them," then that is what will happen.

So now we're getting into a different discussion from the particular one on the PICs on the last round. But, yes, it is quite possible they could disappear and it's not clear, they could be reinvented as they were last time.

OLIVIER CRÉPIN-LEBLOND: My point, Alan, was that we might be saying well, we've worked on this, then we're being told, "Okay, go and look over there," and then from over there we're being told, "Go and look over there somewhere else." And effectively what we're being given is the merry-go-round – we'll go around and then it comes back to us and it's, "Oh, there is no PICs." And that's where I have a concern that we are losing ground, or we might be losing ground somehow. Anyway, I'll let Alan speak.

ALAN GREENBERG: Let me rephrase your question for you. You're asking, If the Board forwards it to the new gTLD PDP, what belief do we have that they will do an honest evaluation and incorporate the results? And of course the possibility is their evaluation will say there's no need for it. We know there's significant people on that group who have already said there is no need for them, and the GAC should not have given their Beijing advice at all. So that's quite a valid answer and I would suggest that if at the Board meeting – and in theory we're talking about the GAC meeting right now, but we've drifted into it because it's a joint issue – I think you would be well put if the Board suggests that that's how they're going to address our concern – that you raise that issue, that it doesn't give you a warm feeling that we're sending it over to the people who have already said we don't want any.

[UNIDENTIFIED MALE]:   [inaudible]

ALAN GREENBERG: I think we've just gotten a volunteer speaker for that subject in the Board meeting.

In any case, within the GAC meeting our letter said that assuming the GAC is still interested in this, then we are requesting a committee. If the GAC has lost interest and is willing

to drop the subject then I don't think we have much strength to defend it. So I think the subject within the GAC is – Is there still an interest? And if indeed the Board suggests that it be handled in one of the other groups, how does the GAC intend to participate in that process?

Alright. We spent much more time on a brief update than I was planning to. Oh, I'm sorry, Holly. Go ahead.

HOLLY RAICHE: It is a related issue and that was not only the issue of the PICs but also the confusion from gTLDs, what kind of structures are going to be in place – and maybe this is a question for the GAC and for the Board – if you remember when we looked at some of the gTLDs and the names, the ruling on some was not consistent with the ruling on others of the names. So is there a mechanism to actually deal with…in the new gTLD if there is a second round – that confusion problem as opposed to the PICs problem? Because they're different. If you remember, some of the ruling was that those names are very similar and therefore the two can't stand and then there were other rulings that seemed to be completely contradictory to that. Is there a mechanism to deal with that for this round? Do you remember the inconsistent rulings? You must.

ALAN GREENBERG: I was just waiting for you to finish the question before I answered it. I think if there was one lesson learned from the last round it is that you cannot have a system of external adjudicators who come up with conflicting rulings. I think the Board learnt that lesson. I think the GNSO has learnt that lesson. I have some level of faith that the new rules will address that particular issue. But I think it's completely unconnected from this one. But of all the problems that need to be addressed, that one I have more comfort with that it will be addressed properly.

Alright. Next item, and going on to the ones that are not brief updates. Sorry, Olivier. Go ahead.

OLIVIER CRÉPIN-LEBLOND: Yes, thanks Alan. Some of you might be wondering what does this whole issue about PICs, why are we so intent on looking at these things, and one of the problems is that many of the new gTLDs are now being used quite extensively for spamming and for phishing – pretending that they are your bank, pretending that they are your doctor or your whatever it is. And when we initially discussed this with the new gTLD program committee, the response that we had from registries in contracted parties was, "There is no problem." The thing is we've looked at the statistics and just like we've predicted, it is crazy how quickly the new gTLDs have been taken up by people that will send malware

and basically the stuff that will affect our end users very negatively indeed.

ALAN GREENBERG: Thank you, Olivier. Okay. The question was…the next one is the impact of [inaudible] strategy on the GAC and the ALAC. I don't think that it's going to be a very substantive one. There is a moderate chance that for the upcoming [B] Meeting there will be some restructuring done because of the change of locale, and I happen to know that from the GAC's point of view they don't have a real problem with it. I didn't know at the time this was written, so I don't think this is going to be a very substantive discussion.

Last one is the new gTLD round that we've been talking about. I have a very strong concern here. If you recall what happened last go-round, the GAC issued a number of principles for new gTLDs, and the GAC and the GNSO – people seemed to think the GAC and the GNSO did not interact during the process developing that policy. That's not the case. They did, in fact, interact. The GAC routinely, however, said, "Look at what we said. Read our principles. Make sure you follow all of our principles." It was only after the policy was about to be implemented several years later that they started raising issues. I have some level of concern because this time around, last time

I checked, there were a couple of GAC observers – that is, they received the mailing list) – on this PDP, but no GAC members. And, although we know no one can act on behalf of the GAC, having GAC members who are aware of issues that are of concern to countries, I believe, is very important that they participate and the intent of this item is to push that idea home and try to figure out ways the GAC can participate so they're not in a reactive mode afterwards.

Now I certainly can present all of these items to the extent anyone else feels comfortable of talking to any of them, I would far prefer that I'm not the only voice being heard. So I'm not asking for volunteers at this moment, but please, if you have an interest in presenting any of these or being one of the multiple presenters of any of these, let's talk privately.

Anything else regarding the GAC? Seeing nothing, let's go on to the Board.

UNIDENTIFIED FEMALE: [inaudible] they are all approved [inaudible]

ALAN GREENBERG: I think so. Well, it's not a matter of "approved." We've already published the schedule. Holly?

HOLLY RAICHE: Just a question. Is it too late – is there anything to do with the transition that we should be talking to them about at all?

ALAN GREENBERG: Isn't that the first item?

HOLLY RAICHE: Oh, sorry. Yes.

ALAN GREENBERG: Can we have up the questions –the issues for the Board. Thank you.

Alright. The first one, and it is our presenting the current status or anything else we have to report at that time. By the time we are meeting with the Board I'm presuming we will have made a decision. They also put on their agenda feedback regarding the CCWG Accountability report, so I think those two basically overlap. We know the Board has said that they are prepared to unilaterally accept what is in the report and I think they're eager to find out if everyone else is. And as I said, by then I'm presuming we will have made a decision and announced that decision, so I don't think that's going to be a very substantive discussion. You never know.

The second one is the issue that we were – sorry, Tijani. Go ahead.

TIJANI BEN JEMAA: Thank you, Alan. Yes, I guess that we will already have been decided about our position about the CCWG report, but the discussion will be perhaps good because they asked for it, and we have some points that we…I prefer to discuss it with them. Because we are not in a [contractual] position but we have some clarification to have from them and perhaps they have clarification to have from us.

ALAN GREENBERG: Surely if we have anything that we want to say, obviously if we're not ratifying something we have a strong obligation – in fact, based on the charter – to say exactly what we're unhappy with and what we would want to fix. I think we all understand what that would imply if that actually was acted on in terms of the transition. So it's not saying we won't do it, but it's less likely than otherwise might be. We have also had discussions on whether we will make a statement along with the answer and that's something we need to still discuss in this group.

Obviously, if we include a formal statement – which Leon has begged us not to do, but nevertheless – then I think we will have

to mention it and want to mention it at that point. It is conceivable that we could not make a formal statement but still want to raise a number of issues that the group as a whole has a level of discomfort with. I would like to be able to limit that to things that the group has a level of discomfort with and not just one individual. But obviously that's a decision we're going to have to make in the next 24 hours. Okay. Follow on? Follow on and then – Olivier.

TIJANI BEN JEMAA: Even if we have already approved the report without statement, the discussion is not harmful at all. It will not be something to report or to take into account as an official position of ALAC. It would be only clarification, for example, because I feel that we have very close positions and we don't have really a contradiction, so it is only – since they put it on the agenda and since we originally put it on the agenda, I think we have to keep it.

ALAN GREENBERG: There's no question it's on the agenda. Even if it's a 30-second item on the agenda. So it's certainly – it's not a question of whether it's on the agenda or not. Since we both put it there, it's too late to take it off. I would suggest, however, we defer any discussion of exactly how we present it until we decide what it is

our answer is and we can go back to a discussion of what do we say to the Board once we know what the substance of what we're saying is. Otherwise it's a hypothetical discussion at this point. Olivier.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. One of the things that took place yesterday in the GNSO room – since I spent most of the time there yesterday – was discussion of the CCWG Accountability, and it seems that one of the tricky issues is the number of changes, or the small changes, or big for some I guess, that the Board tried to introduce at the very last moment. I just wanted to make sure that the ALAC is clear on what our position is with regards to this, because it may be that the Board asks a question about that. I'm talking about the thresholds, the last points that the Board have made and which have… I can't say enraged, but certainly upset some people in the GNSO and even outside the GNSO.

ALAN GREENBERG: I don't have a list of them in front of me, but my recollection is for the majority of them they supported positions we had taken. So I think we're in general in alignment. The details of how they said it may have been somewhat different, but perhaps the most substantive one and the one that took the longest to resolve was

the voting threshold to remove the Board. And I think we took a very strong position of exactly the same thing. We used different words to do it, but I think our positions were very close to it.

OLIVIER CRÉPIN-LEBLOND: And the one about the GAC? The GAC not being able to vote on any matters that relate to the GAC?

ALAN GREENBERG: The Board accepted that. None of us liked the carve-out. I don't think the GAC did. I don't think the Board did. I know the Board didn't, or at least some members of the Board. And I know we didn't. But in the end as a group we all accepted that. Well, it remains to be seen whether the GAC accepts it. As a group, the Board accepted it and we accepted it subject to the carve-out of the carve-out – that is, the reduction of the voting thresholds. So I think our positions were similar. I think philosophically we thought it wasn't needed and shouldn't have been there and was detrimental to the relations between the various bodies. But the GNSO took a very strong position that they would likely not ratify if it was left unchanged, and that's the way the world unfolded. So I don't think there's any issue with us with the Board. Tijani.

TIJANI BEN JEMAA: Olivier asked about the GAC. Don't ask about the GAC, because the GAC will not take any position. They cannot have a consensus on anything. And I don't think that they will oppose because they cannot have a consensus about it.

ALAN GREENBERG: Since we're in a private meeting that isn't being recorded or broadcast… that's a joke. Someone told me that one of the things the GAC might do is , they may end up – and I'm quoting – not opposing the proposal. Now, I'm not quite sure how the GAC would vote on not opposing. It may mean no one formally said, "We oppose." Or someone said, "We oppose," and someone else vetoed it. Because essentially anyone has a veto. It's an interesting double negative statement that is very hard to interpret, but might sound – sounds positive, so I don't know what we're going to get out of the GAC and my life is complex enough to not put bets on it at this point. Wafa?

WAFA DAHMANI ZAAFOURI: Yes, if I well understood, that means that the GAC will vote for no supporting, so no consensus. So they will support? And if they will be in the empower to come [inaudible] it's the same thing, they are discussing if they will not be in the empower to comment the no consensus. So they will be in the empower to

[inaudible]? Reverse process – so they will be okay and they will be in the empower to [community].

ALAN GREENBERG:

I saw a definition once of a diplomat and I don't remember it exactly, the wording, but the essence was, "A diplomat is someone who can insult you to your face and make it sound like it's a compliment." Okay. The GAC is composed of 154 diplomats. How they will word their statements I do not know and I'm not going to try to guess right now. They have an interesting challenge. They are very divided with some people very strongly on either end. At the same time, the GAC pretty well cannot be seen as the organization that stops the transition. Can you imagine the situation that all of these countries who have been for years saying the US should not be controlling the Internet, be the ones that say the US should stay there? It's an untenable position. I would not want to be in Thomas Schneider's footsteps, or his shoes, and I'm not going to really predict how it goes forward. We do have a hard stop in 25 minutes, but I see a number of hands. Seun.

SEUN OJEDEJI:

Thank you. I just wanted to confirm the process here. I will discuss the [CCWG] now, or will there still be time to discuss the

GAC issue later, because I have some couple of points and I don't want to…

ALAN GREENBERG: We are discussing our discussion with the Board.

SEUN OJEDEJI: Alright. Thank you.

ALAN GREENBERG: And we seem to have drifted into a prediction of what the GAC is going to say to the Board. I'm not quite sure I remember how we got there, but I'm suggesting maybe we don't want to stay there for very long. I cannot see whose card is up there. Somewhere in the area, it may be Sébastien. Go ahead, Sébastien.

[UNIDENTIFIED MALE]: How will the Board respond to the GAC?

ALAN GREENBERG: How will the Board respond to the GAC? Okay, we don't know what the GAC will say and now we're asking to predict how the Board will respond to the unknown GAC statement. Maybe you'd like to take over the meeting and chair that part. Sébastien.

SÉBASTIEN BACHOLLET: Yes. The same. I would say the same question as Seun, but may I suggest that we stop the discussion on the content. We need to have time to discuss this issue during the CCWG sessions, and let's agree on what are the topics and if the topics need more discussion let's put it in the working time to do that. We need time to have this discussion. I have also some comments on that. I don't think it's the right time to do it. Please let's finish the schedule for this meeting with the Board and see what we keep and what we don't keep and then we will discuss the substance on other part of this meeting. Thank you.

ALAN GREENBERG: Thank you, Sébastien. That's what I've been trying to do, perhaps unsuccessfully. May we go on to item #2, which we have already discussed in some detail. The substance of item #2 is to comment on our rationale for sending the letter, that is, we believe even if the issues cannot be resolved by changing the contracts in some selected TLDs, we should understand them well enough so that if and when we go forward to a new round we perhaps can avoid similar problems.

I am predicting that the Board will come up with a proposed implementation of referring it to existing groups. My concern at that point is, will it really be addressed? Will there really be GAC involvement if we do it in that area, and since the GAC initiated

this overall issue I don't think we can avoid having GAC involvement in it, and it's not clear that will happen in either of those two venues. But I don't think we are going to reject it out of hand because it is a viable way of going forward. Again, that's my position. I will reflect what the committee's position is though. Comments on this?

I think we've made a decision.

Item #3 is our budget issues. There are two aspects to that. The first is the multiyear General Assembly and Summit planning we've been talking about. If you recall, we have been planning General Assemblies over the last number of years by making budget requests annually. Most of them. Some of them were made in the early years in a more ad hoc fashion.

The Summit requests were all done in an ad hoc fashion, that is, they were not done through the regular budget request but a special request to the Board. And that was done for a number of reasons, among other things the cost of a Summit is roughly the same size as the whole allocation of special budget requests to all ACs and SOs. The chance of us asking for something and getting the whole package to the exclusion of everyone else is not particularly large.

So it was done through other processes, but there were awkward processes. We have established a pattern of a General

Assembly roughly once every five years, and a Summit once every five years, and one General Assembly per region in the interim. I know some of us have talked about more often Summits – Fadi at the last one suggested we have a Summit every year. I haven't seen a lot of volunteers to organize that, nor do I think the overall community will be all that interested in spending that level of money every year. So I think the pattern we're on right now is not an unreasonable one. Should it be compressed to four years instead of five? Good question. But that's a minor change to it.

It has been suggested, however, that the only way to do that on a firm basis is to get a commitment from ICANN to do that level of funding on a regular basis, and we have been working – Olivier specifically has been working – on a white paper that you've all seen draft copies of, to essentially convince the powers that be to commit to that level of multiple funding.

Now ICANN Traditionally has said, "We fund a year at a time. We cannot fund any further. If the money doesn't get spent at one year, you're back to zero." That's a decision. Money in a bank account can be kept until the next fiscal year. It doesn't evaporate. So it's a conscious decision.

We have had messages from ICANN finance people for several years now that they are thinking of multiyear funding of various

things. That statement has been made more often recently. We have had strong indications from a number of very senior ICANN people that they would be sympathetic to this kind of request, so our challenge is to now finalize the document and present it relatively soon, and we're simply laying the groundwork with the Board as a whole, because although we've talked to individuals about it, we've never talked to the Board about it. And this is simply an opportunity to explain why we are doing it and say the document is coming soon.

I'm assuming that Olivier will do the main presentation on this since he's been the point man on it, but certainly other interventions are welcome. I see two cards – Tijani and then Sébastien.

TIJANI BEN JEMAA: Thank you, Alan. I think that our proposal to have a multiyear special request is perhaps an alternative, but the second alternative is to have a request to include in the budget of ICANN – in the core budget of ICANN – this activity. This is the way that it will not be something that may not evaporate, it will be included in the budget. And if we can convince, it is the time to do it, because after that with the new Accountability I don't know if we can pass such a decision. Thank you.

ALAN GREENBERG: To be clear, I believe what we're asking is exactly what you just said – is that we not do these requests. We may still have to say this is the year we want one in North America in the special budget request, we need some process for doing that. But what we are asking for is that overall funding be provided in the general ICANN budget to allow for this kind of expenditure. I didn't use those exact words, nor do I think Olivier's paper does, because we can't be too prescriptive how they implement it. But it's the commitment to have the end result that I think is the important thing. Sébastien.

SÉBASTIEN BACHOLLET: Yes. As a process, do you get a meeting with the Board finance committee prior to this discussion? Because I will caution you to do that straight on in front of the whole Board. You will have a clashback almost immediately from some members, and we need really to be conscious that – I can tell you that it took me, even if you didn't see it, a long time and discussion with a lot of people in the Board to have the finance of the second Summit. And I can tell you that some Board member are still there, and it was very difficult to convince them. Then if they discover that like that, and if it's not goes through a discussion with the Board finance committee we will be in trouble. It's a process issue. I totally agree with the proposal. I have no doubt that it's a good

way to go. Just how we will do it is also important. Thank you very much.

ALAN GREENBERG: For the record, there has not been, nor is there likely to be a discussion with the Board finance committee. There have been discussions with individual members. Tijani.

TIJANI BEN JEMAA: Another remark. Olivier, if you can make the presentation very simple – don't present the tables, please, because people will become confused. Make the proposal as – Olivier? – make the proposal as simple as possible so that everyone can understand it and can see what is the budget impact on it. If you put the table, they will be…

OLIVIER CRÉPIN-LEBLOND: If I may respond. So the latest version of the document has a simplified table which fits on one page, and it's much more easy to go through it. It doesn't have all the numbers, it doesn't have all the details. And thanks to Ariel's expert advice we've managed to make it understandable by a three-year-old. I'm hoping that Board members will be able to understand it.

ALAN GREENBERG: I wouldn't make that assumption. But it is not our norm to use visuals for these discussions, so I wouldn't think we're going to post tables of past GAs and past ATLASs in this particular meeting.

Sébastien, is that a new one or an old? Old. Anything else?

Alright. The next item – Item B – is identifying a number of requests and the special request is the name of the process that we go through to make requests prior to the budget, that are unique to us. And we made several of them this time that it makes no sense to have made. In one of them, we're not asking for money but we're asking for ability to use travel slots in a flexible way like every other AC and SO has, except we have special provisions on ours. We have discussed this with staff members interminably and been told, "No, sorry. That's the rule." Okay, that's #1.

#2 is we made a special budget request to give IT money to fix the language translation problem for LACRALO with Spanish/English. This is a problem we've been having since 2008, and it has not been resolved.

The third one was the new meeting strategy proposed that on the C Meeting, the last day be allocated the way we did in Dublin, that is for a combination of professional development team building to make sure we're off to a good start, yet we have

to put a special request in to fund it. I would have assumed if we have a new strategy that says that's how we use the Friday, we would have been asked, "How do you plan to use, and how much money do you need for it?" as opposed to us putting in an ad hoc special request.

And the last one, which is still under investigation because we're trying to find out the real facts, is we have asked for a strategy session Saturday which will include a hot lunch. There are a number of other groups in ICANN who routinely seem to be fed, and we don't. And the question is why is there an inequity?

Now, at this point I have been told that there is no inequity, they get special funding – not special funding, but it's sponsored by somebody. I've made some inquiries to find out what the reality is. Based on my history with the GNSO over eight years I strongly doubt that. But we'll see. That one may or may not end up on the list depending on what happens.

In none of these cases are we asking the Board to intervene and do something. The point is, we had to make a special budget request because it seemed to be the only way of getting people's attention. That says something's broken in the process. We should be able to get the attention and get problems resolved without going through the process of writing a two-page form and submitting it to the finance committee when the finance

committee has nothing to do with the particular area we're looking at. That's the issue, not resolution. Now I will tell you that our Board member is working hard to resolve the issues, and for that I'm grateful. But that's not why they were on the agenda.

So I really don't want to go into the details of the grievance we had one by one, but simply to point out that there's something broken in the system if we have to go to that level to get someone to pay attention to an IT problem, for instance.

Comments. Questions. Olivier…Tijani, I'm sorry. I don't seem to be really good at seeing vertical cards today.

TIJANI BEN JEMAA: Thank you, Alan. Alan, don't forget that we have only 60 minutes for this meeting, and the number of issues we want to discuss is very long, very high. So I am afraid to dilute, for example, the issue of the Summit, which is for us, for me, which has the most priority, the highest priority. Also, those concerns you just raised can be done through a letter to the Board. We are allowed to make advice to the Board but we can also share with them our concerns and we may have a response from them. So perhaps we need to dedicate this meeting to the issues that we feel they are critical for us. Thank you.

ALAN GREENBERG: I would suggest we address this by ordering the items differently and we still have the flexibility of doing that. We can't really just pull them off right now, nor do I believe we should. These items were all raised because we believe there's a level of dialogue needed, not just sending a letter over the wall. And for the record Olivier suggests we raise another issue with the Board of why is it that only staff gets water at these meetings, the rest of us have to… Olivier wants to say something on my comment.

OLIVIER CRÉPIN-LEBLOND: Thank you, Alan. No but there was a letter which you did send to Steve Crocker, I believe. Was it cosigned by…was it Tijani and you? Have you received a response?

TIJANI BEN JEMAA: We had a meeting with the appropriate people. They tried to address the issue, but the result I will not speak about it. But I say that there is an interaction. The result of the letter, there is an interaction, but what happened after…

ALAN GREENBERG: Sorry, Heidi was talking to me, I didn't hear the question. Yes we did get a response. We met with someone who was immediately

ICANN|55
MARRAKECH
5 – 10 MARCH 2016

relieved of that duty and we have heard nothing yet since from the people who now have that responsibility.

[UNIDENTIFIED MALE]: [inaudible] were relieved of their duty?

ALAN GREENBERG: Well, the responsibility was transferred somewhere else.

OLIVIER CRÉPIN-LEBLOND: I thought they got rid of the person who responded because they responded.

ALAN GREENBERG: No they didn't get rid of her. Let's not go into that subject at this point. Heidi reminded me that we have been advised that it would be a good opportunity to send our white paper in as a comment to the public comment on the proposed budget which just opened yesterday, I think. So we have a window to do that. So we will probably forward it to other places too, but we will submit it in that forum as well.

Alright, let's quickly – we only have five minutes left. Seun, go ahead.

SEUN OJEDEJI: Just to clarify, was the water then a joke or is any connection with the letter that Tijani was saying? The second comment I have was, is there relation to the B, you said, request we should not have to make – is the intent to challenge either staff or Board that this should have happened normally without us asking for it. Is that the intent we want to communicate to the Board?

ALAN GREENBERG: What I want to communicate to the Board is that the overall processes within the organization to fix problems or address issues is not always working. If we have to submit a budget request purely, even when there's no money involved, just to get someone's attention, there's something wrong. And that means we are wasting our time, our staff are wasting their time, in addressing issues that are not being fixed. The comment on water I am not planning to present to the Board, but it was one we certainly could present if we chose to. But no, we're not presenting that. That was a joke.

The new meeting strategy is off the agenda. We took that one off at the suggestion of a number of people. Consumer trust. Is that on new meeting strategy? Garth?

[UNIDENTIFIED MALE]:   [inaudible]

ALAN GREENBERG: Okay. The issue on consumer trust is we've had two interactions over the last little while. One during the CCWG and one an issue that Garth raised with compliance that implies that in some parts of ICANN there is a belief that consumer trust is not a priority issue. We're simply raising with the Board that we believe that it is a priority issue. It is, for instance, in the Mission of Compliance and we believe ICANN needs to think about how they bring farther focus to the overall issue. And Garth, I believe, is likely to be someone who can talk to that, but we need to talk about the details before the meeting on Wednesday. We have Garth and Tijani and I recall I do have to leave in three minutes. If the meeting wants to keep on going it can, but I have to leave. Garth.

GARTH BRUEN: Thank you, Alan. So I think there's one specific issue among the four from our letters, and that is their pledge to hire a Consumer Safeguards Director. And they have said they were going to do this and they said that they would have an announcement about it by this meeting. Haven't heard anything. So I think if we get to the bottom of that, we'll have a lot of our answers on how seriously they take this issue.

ALAN GREENBERG: Yes. We haven't had the time to talk, but we need to coordinate how we say it. As Tijani has pointed out we have very limited time in this meeting so we have to do something in a focused way.

[UNIDENTIFIED MALE]: [inaudible] stick to the one issue.

ALAN GREENBERG: Well, there's more than one issue because of the CCWG interactions also. But it's a combined thing. Tijani.

TIJANI BEN JEMAA: You almost said what I wanted to say. It is a very important point, but can be accommodate all of these points in 60 minutes with the Board? This is the problem. And now we have the Review Team about the consumer trust so perhaps we need to make use of our representative there.

ALAN GREENBERG: Noted. We will talk in the next day over the ordering of these items.

EN

The last item is the one on…the Board has raised and I'll quote what they said – "Diversity is considered to be a challenge in ICANN. How is your SO/AC" – in our case, our AC – "doing with respect to enhancing diversity in all of its dimensions? What can ICANN do to support it?" Well, I think we're, I won't say unique, but we certainly address diversity, #1 because we have no choice. Now, there are other organizations including the ccNSO and the ASO that are balanced because they also have regional representation, but I think to be quite candid, we do a much better job having real diversity than just nominal diversity.

My comment is a very short and simple one, that if we want diversity, we have to recognize that the diverse people we're looking for come with some extra rules. They tend to come from places where they don't have good communication, where we don't have good Internet connectivity, where we don't have telephone connectivity, where they don't have as much free cash as some of the other people might. They don't tend to be sponsored by rich companies. And if our attempts to be diverse do not factor in that the conditions that the diversity people – and I hate to put people in buckets, but – have to live with are different, then we're not going to succeed.

The same level of problem that we have with At-Large overall, given that none of us – I think none of us – have companies that are paying our way here, and companies that will upgrade us to

business class because it's a long-haul flight, or pay for an extra day in the hotel, disadvantages us. And if we want to make sure that the voices are heard, both from At-Large in general, and for the more diverse parts of At-Large so to speak, there has to be accommodation for it.

But I'm sure other people have other things to say and I'm going to turn the meeting over to Olivier. There is a 15 minute coffee break and they have been really religious about removing the coffee and everything exactly at the end of the time. We do not have coffee and refreshments in this room as we did yesterday, so I'll leave it to Olivier to see how long the meeting runs and report back to me on it.

UNIDENTIFIED FEMALE: I want to suggest that we [inaudible] put times down, approximate times and prioritize numbering [inaudible] times as well.

ALAN GREENBERG: We will be talking about this between now…And I pointed to Olivier there is some water in the corner there. You have to fetch it, though.

[SÉBASTIEN BACHOLLET]:   Maybe we can do the coffee break, because if it's open up there then let's go for the coffee break.

OLIVIER CRÉPIN-LEBLOND: So in my new capacity as chair of this meeting, and as a purely bottom-up thing, let's have a break to get the coffee.

ALAN GREENBERG: On the other hand, we really do need additional voices than mine on answering the Board's question. So somehow you have to figure out some time to do that.

OLIVIER CRÉPIN-LEBLOND: So Heidi will be standing outside the door and taking your name on what question you want to answer to the Board and we'll then let you out if you do answer one question. That was a joke.

UNIDENTIFIED FEMALE: Excuse me, we'll have coffee and tea in a short while. I've just asked for it.

UNIDENTIFIED FEMALE: Sorry, the tea break is upstairs. So if you want tea…if you want coffee now, there's a buffet as far as I'm aware there's a buffet of pastries and coffee and tea one flight up. Thank you.

(BREAK IN AUDIO)

ALAN GREENBERG: Ladies and gentlemen, we are about to reconvene the ALAC Working Session Part One, Sunday. Just to wrap up the session that I had to walk out on, I understand there were no further comments on what we would ask the Board to consider or what we want from the Board on diversity. If there is anyone who wants to either have a say in that discussion or have someone raise something, please talk to me privately.

I'm sorry, go ahead.

TIJANI BEN JEMAA: Are the issues to be discussed with the Board already defined? All those issues? We will not reduce them?

ALAN GREENBERG: Sorry, say that again. I missed the word.

TIJANI BEN JEMAA: The number of issues that will be discussed with the Board, I propose that we reduce them. Shall we keep them as they are?

ALAN GREENBERG: Okay, #4 is not there. It's invisible. You just think it's there. It was removed from the agenda, it just didn't get removed from that document. Okay. The other ones I suggested and didn't hear any other objections other than your suggestion that we reorder them, in other words, effectively prioritizing them and assign some estimated times to it. If anyone else other than Tijani feels we should omit any of the items, then either speak very quickly now or come talk to me privately. I see no one else right now. Then I'll take it that that is a reasonable thing to do, and that should address the issue of if we run out of time we run out of time, and the ones drop off the bottom. I will certainly talk to Tijani, if no one else, about what the order is.

We are now back on the CCWG, I believe. Can we have up the presentation. We are on the recommendation on integrating the Affirmation of Commitments into the by-laws. I think that is #9. You'll give me just one moment to pull it up on my machine so I can know what I'm talking about. Now I have not gotten on Adobe Connect in this session, and so we don't take any more time, if somebody else can be monitoring Adobe Connect. If there's anything that needs my attention let me know please.

Alright. With the withdrawal of the US Government from the NTIA process, there was a general feeling that we should also at the same time effectively cancel the Affirmation of Commitments, which is an agreement signed jointly by ICANN

and the US Department of Commerce. That was reinforced by the fact that the agreement itself was cancellable by either party on relatively short notice. So, although ICANN has signed the Affirmation of Commitments, in theory, the Board could cancel it should they choose. Given that there was a general belief that we should not be able to withdraw from the commitments that were there, and the belief that the US Government should be taken out of the loop in general, there was overall agreement to incorporate the Affirmation within the by-laws.

Now, the Affirmation of Commitments includes a number of specific commitments and it also includes the requirement – the commitment – to do a number of reviews, specifically the review on ICANN Accountability and Transparency, on WHOIS, on the resiliency and stability of the domain name system, of the root system, and…following a year following and thereafter, the release of the new gTLDs, a review on consumer trust, competition, and…

[UNIDENTIFIED FEMALE]:   Choice.

ALAN GREENBERG: Choice, sorry. My mind is going, apparently. That has largely been done, so there were a number of the Commitments that

were in the AOC that were already in the by-laws. Those obviously were basically left unchanged. There were a number of Commitments which were not in the by-laws, and those have been inserted. And the reviews themselves have been inserted. This was a moderately uncontroversial thing to begin with, but became more controversial towards the end for a number of reasons.

First of all, a number of parties – we were one of them, but the Board was another, and specifically Steve Crocker – objected strenuously to the inclusion of the WHOIS report – WHOIS review as it was stated in the Affirmation of Commitments. Two reasons. #1, it was using terminology which was obsolete at the time it was written and, stated as absolute requirements, things that are illegal under some national laws. So it clearly did not make a lot of sense to put into our by-laws things which were saying the wrong thing and recommending illegal behavior on the part of some parties. So that was more of a battle than I thought it should have been but it was addressed.

The second problem that was raised was a number of people felt that the details of these reviews should – other than perhaps the ATRT one – should not actually be in the by-laws, they should be in some ancillary document and a lot easier to change and flexible. There were a number of people who were adamant that they had to go into the by-laws, and that's where they've stayed.

There were a number of other changes made along the way. One of them was, the current implementation of the reviews is that the review teams are selected by the chair of the GAC and either the chair of the Board or the CEO, depending on which review it is, and they make the selection depending on the subject at hand. So in some subjects, the ASO for instance, has absolutely no interest and they were not included. Other ones, the balance was quite different.

The current proposal says that the selection will be done by the Chairs of the ACs and SOs, and there will be a review team of 21, or up to 21. Curiously, the document says this is based on the past history. The actual past history is there were never more than 13 AC and SO members. The interim document also suggested that there could be an unlimited number of participants who would be equal members as they were on the CCWG. That was removed, thankfully.

I believe personally the review teams are bloated and overloaded and they're going to have a hard time dealing with it. And I think giving the selection to the chairs is going to make it very, very, difficult for some chairs to say no to their own committees' desires. So since each group can have up to seven people, given the structure of the current GNSO, it's going to be very difficult for the GNSO chair to not demand that they have seven people on any review where they want it. So I think that is

somewhat ill-conceived, but I think it's not going to kill the organization. I think it will probably be changed within a year or two. It's one of those compromises that we were not going to win, and there were very few people on the CCWG who have actually participated in a AOC review, and one or two of those thought this was a dandy idea. I don't think there's anything there which is particularly crippling, although there are a few things that we didn't like.

Have I summarized that fully? I think I have. Any comments? I'll open the floor.

Seeing nothing, hearing nothing. Nothing on Adobe Connect.

Recommendation 10. Now 10 is an interesting one. The history is this. We are saying, to be blunt, we do not necessarily trust the Board. Therefore we need to see some level of oversight of the Board. The reason for not trusting the Board is, each of us who have been around for a while have at least one or two cases where we think the Board did something really dumb, and there should have been a way to fix it. The way to fix it is that we are empowering the community, the ACs and SOs, to effectively be able to override the Board. That presumes you can trust the ACs and SOs to, as a group, act in the benefit of ICANN and the public interest.

Clearly, several of the SOs have a specific remit and they quite justifiably are demanding things that their community wants. The same is true for ACs. We can make demands saying, "This is what users need," but there may be some overriding considerations. The Board has a requirement to a fiduciary duty to look at the interests of the Corporation and of the global public interest. So they're supposed to balance things. Each AC and SO has no obligation to balance things. Each of them is there to fight for whatever is right. The belief, however, is that if you put enough ACs and SOs together, they form a balanced unit. The question then is, are each AC and SO accountable to their own constituencies? Are we accountable to the global Internet user? Are the registrar's constituency or stakeholder group within GNSO accountable to all registrars? Is the business community which consists of a half dozen or small number of people accountable to the general business community of the world?

There's a general feeling that, yes, some of us might try to do a good job, others might do less of a job. In some cases there's really very little evidence of a problem. There's not a lot of argument that the ASO is not directly traceable to the people within the numbering community, and each of those numbering communities are pretty open organizations. Some organizations are in a better position to defend their accountability than

others. But the general feeling was, we have had very little focus within ICANN on accountability of the individual organizations. We focused it all on accountability of the Board. And as a component of an overall accountability when we're giving more responsibility to ACs and SOs, there is a belief that we had to give accountability, make sure they were indeed accountable.

Overall AC/SO accountability is part of Workstream 2. In Workstream 1 we are simply saying that the regular periodic reviews to which most ACs and SOs are subject – all of them except the GAC – that we factor in accountability as one of the considerations that should be looked at. And there's a new provision added that, although the GAC is not subject to these reviews – and that's a historic thing for a bunch of reasons, and we should go into if anyone wants to explore it further – that there is an obligation in the ATRT, I believe, to look at GAC effectiveness and make recommendations, which is effectively the same thing but through a different mechanism.

Questions or comments. In the past we have strongly supported the need for AC/SO accountability, therefore we were strong supporters of this recommendation. I don't believe we have had any specific comments. And I see Leon and Sébastien in that order.

LEON SANCHEZ: Thank you very much, Alan. Just to focus on this recommendation. What we should be looking at is to whether we support adding this as something that we should be looking further into [inadible] Workstream 2. I know that there are a number of questions around how we should enhance AC and SO accountability. Should it be to each SO and AC in reciprocity? Should it be to our constituencies? Those are a lot of questions that are around the concept. But we are not trying to answer those questions at this point, we are just trying to answer whether we should be enhancing AC and SO accountability. And if we so decide to support this recommendation then the corresponding work should be carried out as part of our Workstream 2 plan as it has been established in the final report. Just a clarification. Thank you.

ALAN GREENBERG: And as a clarification of the clarification, I don't think recommendation 10 actually says, "Does the Workstream 2 part work?" Recommendation 12 says that. But the net effect is the same. Sébastien.

SÉBASTIEN BACHOLLET: Yes, thank you, Alan. I guess one of my trouble here is that we still speak about the SO and AC, but in fact it's overall structure of each SO and ACs. It's for the GNSO, it's stakeholder group, it's

constituency. For us at At-Large ALAC, it's RALOs, and the member of the RALOs is the At-Large Structure. We need to take that into account. I appreciate the comments of Leon because I really think that one of the question is that, do we are just talking about accountability on our silo or do we talk about accountability across silos? And I think at the end of the day we need to know especially for a group like At-Large who is cross topics, we are not bound to one or the other addresses or domain names, whatever domain names are. We need to know that the others are accountable and in one way we need to be accountable to them and they need to be accountable to us. That's something I hope that we will be able to work deeper during the Workstream 2 phase. Thank you.

ALAN GREENBERG: Thank you, Sébastien. Anyone else? Seeing nothing, Recommendation 11.

Okay, this one is a messy one. It's a messy one for a number of reasons. Partly there was an evolution over time as to exactly what the implications of Recommendation 11 would be. The current formulation is related – well it always related to how the GAC gives advice to the Board and how the Board is obliged to react to that advice. You will recall that the ALAC can give advice to the Board. How the Board has handled that has varied over

the years. The by-laws are not specific. In the extreme, in the early days, we would send advice to the secretary of the Board or something and there was a deep conviction among some of us that they immediately dumped it into the bin. There was strong evidence that it wasn't even distributed to Board members in many cases.

The world has changed significantly since then. We now get acknowledgement, it is tracked, there's a relatively complex process that goes along with how advice is handled. There is an accepted ATRT2 recommendation not yet implemented, for reasons unknown to us common people, that the Board is obliged to respond to advice and if they don't follow it, explain why. They are, in fact, following that practice right now, but the by-law was never adopted. I don't think it's a conspiracy, I think people forgot.

The situation with the GAC is different. The Board, if the GAC gives formal advice – and I will be, for those of you again who haven't been following this very clearly – the GAC issues communiques. Up until the time of the new gTLD discussion it was not clear if this was advice. In matter of fact, the Board said if you don't use the word "advice," effectively it's not advice. So the GAC now uses the word "advice." However, if the GAC gives formal advice, however you recognize it, if the Board implements it, addresses it to the GAC's satisfaction, fine. If the

Board says, "We are not going to do that," then they must enter into discussions with the GAC to attempt to find a compromise. Ultimately they may still say, "No, we're not going to do it," but they can't do it without interaction.

The GAC currently gives advice based on consensus. As you know, every single part of ICANN defines consensus differently. The GAC's definition of consensus is in the GAC's Operating Principles, and it says, "Consensus is, in the presence of a desire to say something, with no formal objection, then that is a consensus decision." Translation: if one GAC member says, "I want to advise the Board to wear red pants," if any one GAC member objects, it cannot be given as a consensus. So a single formal objection is enough to kill GAC consensus. Silence is fine. That essentially says, any single government can veto. This is based on the United Nations General Assembly practices, so it's not an invention of the GAC, they're simply embodying practices that are used in international discussions on a regular basis.

Because the NTIA , when they said they were willing to give up control of IANA, they said governments must not be in a controlling position. The implication, although it was not stated clearly until very recently, was that the current definition of consensus for giving advice to the Board must not be changed. Now this is interesting. The Operating Procedures for the GNSO, because they established policy, are approved by the Board. Our

Operating Procedures are not. We are given free rein to set our own procedures, as is the GAC. We are now imposing a rule saying the GAC cannot change this rule for the purposes of formal advice. Clearly that was not viewed as being very nice by some GAC members. But it was initially believed that it was a requirement of the US Government and later confirmed it was a requirement.

We went through an immense number of iterations to try to find something that would be acceptable. About a year and a half ago, a Board GAC committee made a recommendation that for the Board to refuse GAC advice they had to refuse it with a 2/3 majority instead of a simple majority. There was no net effect of that because any time the Board was going to refuse GAC advice they were likely to do it with a near unanimity, if not unanimity. But it was symbolic. There was an uproar in the community, and the Board withdrew the recommendation to change the by-law.

The GAC reintroduced the 2/3 majority, again which is symbolic, but symbols are important, as a condition for accepting the "No change" in how the GAC develops consensus advice. That looked like it was going to go through until a number of people in the GNSO said, "Under no conditions will we accept increasing the GAC's power by increasing the threshold to reject their advice." We ended up with a compromise, in my mind a purely symbolic compromise, which allowed people to accept things without

losing face, and split the difference between 51% and 66%, and said 60% is acceptable. And that's where it ended up standing.

That worked until very near the end of the procedure, where the GNSO again raised an issue of, "But what if the GAC gives advice, the Board does something, the community objects to it and tries to use its formal powers…" – remember those powers from a few recommendations ago? – The GAC could use its objection to try to kill the rest of the community, stopping its advice from being followed. So it was suggested that, for community actions in response to Board action in response to advice from the GAC, that the GAC could not participate. They would not be one of the five anymore, there will only be four.

That was objected to clearly by some people. You can imagine that there were some GAC members who were not particularly happy with this. But there were GNSO members who were not happy with the opposite. So you're not going to make everyone happy. However, there was an implication. The implication is, if you only have four groups left over who can vote, the CCWG had decided a long time ago that a single AC or SO should not be able to veto. There are powers that require four ACs or SOs to enact the power. If you only have four left, that's unanimity, which violated the principle that we had established earlier. Most of us were willing to accept that, that we reduced the four to a three, with the exception of removal of the entire Board,

which was felt to be so traumatic that we could not allow just three units to do that.

So what we have ended up doing is essentially saying, in that one case it isn't reduced to three, it's still four and does require unanimity. For some of the other cases it is reduced. And that's where we stand. So if you are following it, I think we had a compromise to a compromise to a compromise to a compromise. There may be one more added in, I'm not sure.

Nobody is particularly in love with this. We, of course, still don't know how the GAC will respond to any of the recommendations, so I won't try to guess how they're going to respond this one. Clearly this is one of the more sensitive ones for them. The position the ALAC has taken from very early on in the discussions on the GAC is, "We want to see the transition, therefore we want to see the GAC moderately happy. We are not going to participate actively in the discussion." And we have maintained that pretty much throughout the process. We've discussed it ourselves privately, of course. But we haven't made formal statements with regard to that, and as I said, we've maintained that pretty solidly. So that's where we stand right now. I open the floor. Seun.

SEUN OJEDEJI: Thank you, Alan, for the introduction. Yes, I think the Recommendation 11 is – even though initially I was one of the people that felt it was not really necessary, but since it was added as a requirement now I am considering that it will actually on the long run save the ICANN Board some resources in having to engage the GAC every time, and also to improve the consensus [inaudible] into GAC, maybe it's good to go.

But having the understanding of consensus within the GAC, and the fact that going forward the advice that Board will actually be required to follow [with] GAC will be significantly reduced, I see no reason why, based on that understanding, we would still create a carve-out that says that GAC should not be able to defend that particular consensus advice.

And the reason why I'm saying this is because yesterday I was asking a simple question – permit me to go beyond my two minutes – I was asking a simple question yesterday about [why don't] we ask ALAC if we write an advice for Board and it's acted upon, whether and if the community issues a petition against that, whether [I/we] would be allowed to defend the advice. And yes, we [will]. It's just not fair. It's not logical. It's not in the interests of multistakeholder [inaudible] not to allow GAC to defend the advice.

The issue of conflict of interest has been raised and I just don't understand why it's referred to as conflict of interest. Any other part of the community could also [fight] for some of the powers. We had said that some part of the community needs to approve before such power can be exercised. For instance, [inaudible] policy. So I personally want to ask a question and my question is when we're going to be doing the voting? Because I personally don't think I want to support going on with a recommendation that has to do with the GAC carve-out. So I want to ask the clarification on how our voting is going to go – are we going to be doing it by recommendation by recommendation, or we're going to do all. Thank you.

ALAN GREENBERG: Thank you. In answer to that question, once we finish the review we will then decide how we're going to vote, or how we're going to address the issue, and I don't want to divert the discussion right now from that. The reason for the carve-out is – and I'm answering this question as opposed to going onto the next speaker because I think there's an important issue here. You said there is no reason, you cannot see why. There is a reason in the minds of some people. You're fully allowed to have whatever belief you have, but clearly there are other people who feel something very opposite and believe it is equally true.

So we're dealing with people's opinions that are different. There are those in – and specifically in the GNSO – who believe that since the GAC is in a preferential position to push for their advice, they shouldn't be able to formally object to someone else objecting to it. They can still defend themselves. They participate in the community forum, but they cannot essentially have their vote on it. So everyone is free to have their own positions, but let's not characterize something as being impossible when there are other people who equally feel strongly in the other direction. [inaudible]

UNIDENTIFIED FEMALE: GAC has to understand that ALAC represents the representative At-Large and that this group has to get the opportunity to express its needs, the needs of those, and that requires some freedom in dealing with ALAC. That should give a free hand to ALAC. This is what you say about advice. What I fear is that this advice becomes something that forces or commits others and becomes ordering and instructing, and that represents difficulty for the organizations. So that gives GAC an opportunity to have authority over ALAC and that will limit the ALAC's ability to represent its users.

ALAN GREENBERG: To be clear, the GAC has no authority over the ALAC now or in the future. Nothing we're doing changes that. And the Board always has the discretion to refuse GAC advice. It is advice, it's not an order. So just to be clear.

Next we have Tijani.

TIJANI BEN JEMAA: Thank you, Alan. As you've said, it is one of the most controversial point because what we have here is a compromise of compromise of compromise, etc., etc., etc. And I understand the point of Seun because what he is raising is that there is not equality between the stakeholders. This is the issue. And I understand him very well, but I repeat that it is a compromise of a compromise, so we need to go ahead. I already made a statement about it, a [inaudible] statement about it. So I have a point of view, but I think that the compromise is acceptable [inaudible], and we have to ahead with it. Thank you.

ALAN GREENBERG: Thank you very much. Next we have is Cheryl, and as an introduction to Cheryl, this you'll notice in the subject is Stress Test 18, that one of the processes we went through in the CCWG is set up imaginary scenarios of "What would happen if," and do the new accountability issues address the problem. And the

issue of GAC advice, and changing the method of consensus was one of the stress tests. It was one of the stress tests required by the US Government. Cheryl was the person who led the stress test effort, and it's not just on 18, the 493 other stress tests that we worked on. So Cheryl does speak with a bit of knowledge of the subject. Thank you. Cheryl.

CHERYL LANGDON-ORR: Thank you, Alan. And just a tad of knowledge. Just some. It is a requirement that under Stress Test 18 we are able to ascertain that, as a result of our accountability initiatives, we are not increasing the power and role of a government. You've got to think of it from that point of view to begin with. That's the critical test. That is a requirement. Governments cannot increase, be they GAC or At-Large or governments individually, cannot increase their power and influence in our multistakeholder model because of something we propose in our accountability framework.

So as long as we're clear on that, hopefully it makes the next stages of what Alan quite well described to you all, which is the debates and the discussions and the compromises on the compromises on the compromises. Some governments, and it is their right to do so, would like to change, at some future point in time if not now, the nature of what the definition under Article

47 of the GAC is of consensus. It is what it is now. As Alan described, GAC consensus means no formal disagreement. It's in the absence of formal disagreement that it goes on to consensus.

That's the GAC's business, and just as all of the ACs and SOs, when it gets down to that level of policy and process – when it moves to process – we have said during this whole thing, you follow the rules within that part of the organization. So it is the GAC's business, and that's all we want it to be. It's their business.

But what we don't want, and what recommendation #11 is all about, is to allow some future point in time, near or far, for a far more watered-down definition of "GAC advice" to happen without this constraint which exists now and works now, for consensus GAC advice in the absence of formal objection. Because consensus GAC advice in the absence of formal objection is the GAC is the GAC – capital 'G' – Advice – capital 'A' – that the Board by our by-laws has to treat differently to everything else from everyone else. That is what it is now. That is what it is planned to continue. There is no erosion of these extraordinary and additional rights and privileges. What it is, is a deliberate – and I personally believe necessary, not because of my own philosophy but necessary because the parts of ICANN would not be able to agree otherwise – so it's not my personal view, but it's necessary for the process here to continue and

succeed – that without recommendation 11, without constraining the GAC from having a situation where quite literally, and Seun you mentioned about Board resources – and it's a little bit more interesting than that – the Board has to treat with deference and due diligence GAC advice. They treat all of our advices now far more seriously than they ever did before, but it has to go through a very formal process for something - capital G GAC, capital A Advice – that doesn't change.

What does change, or what we are trying to make sure doesn't happen, is that if the GAC is divided, the different types of advice can come out and then the ICANN Board is put in the untenable situation where it has to choose which parts of the GAC it listens to. Should it listen to just one, or a triumvirate, or a small group? So it really is – Do I really regret having to do the carve-out? Yes. But you're either going to have one part of this organization unhappy or the other unhappy. With this, we probably have everyone equally unhappy.

ALAN GREENBERG: Thank you very much, Cheryl. I think one of the things Cheryl said is important and I didn't say it before – no, that I didn't make reference to. If we were to allow the GAC to give advice where the Board has to take special action and special consideration, that is not using today's method of consensus.

Any other method of consensus would allow the GAC to be split and still give advice. That puts the Board in the position of deciding which governments it wants to side with. A really, really, bad thing to have to do. Next we have Seun has his hand up again. I'd understand Sébastien's raised his hand in the Adobe Connect, and then [Hazur].

SEUN OJEDEJI: Thank you, Cheryl. I just want to be clear here. I really have no more problem with the Stress Test 18 recommendation 11. The explanation given by Cheryl is clear, the intent is clear, and I think it's a good thing to do. What I have a problem with is the carve-out, not the Stress Test 18 which is recommendation 11.

Alan, you mentioned that there is a reason why the carve-out is there. The question then, which I would like to put to the floor, is what's the reason, and do we believe as ALAC that that reason is important enough and is in line with two things. #1 our intent to ensure equal footing in promoting multi-stakeholder, our intent to promote the interests of Internet users and Internet community within ICANN? So if those two questions we could answer, we could respond to that. Again, all these thing I'm saying has nothing to do with either the proposal going forward, there are no red lines for me to make the proposal not go forward, but I think that we need to address that single issue.

Stress Test 18 is clear and out of [inaudible] the scope. Carve-out is a different thing that does not require…NTIA did not require the carve-out. Am I correct, Cheryl? Yes, so it would be good to have a view on that particular [aspect] and that's what I'm actually talking about, not Stress Test 18 at all. Thank you.

ALAN GREENBERG: Thank you. And to be clear, we don't have to have unanimity. People can disagree. It's allowed. We don't have the GAC rule in place where a single disagreement kills something. And personally, I'm grateful. We have a queue. I have…I've lost track now. We have Sébastien. We have [inaudible], and I've put myself in the queue. Have I missed anyone? Sébastien, you're on.

SÉBASTIEN BACHOLLET: I'm going to speak in French. First of all, a question of principle. In this room we should all be on equal footing. Two minutes for everybody, or you get rid of those two minutes. You didn't have the two minutes only for me and not for the others, so you have to apply the rules to everybody. The rule applies to everybody at the same level. Please start my two minutes now, surely use the timer. But I think it's quite insulting that you do not treat everyone equally in this room.

The issue we have – what do we want to do with ICANN? The issue of the role of governments. Yes, they have more power than ALAC. When they give advice to the Board, the Board has to look at it very closely. In the CCWG proposal, when GAC says something, we have to get rid of it. When GNSO, ccNSO says something, they have to be there. So it's not equal footing. The stakeholders are not treated equally, and the objective of our working group should be to make sure that everybody is at the same level.

And for instance, the advice that we do give as end users ALAC given to the Board be treated just like the advice coming from the GAC. What we also have to understand is that Alan said that we don't have to have a consensus with 15 people, but if we were working with the GAC, 200 representatives of all our ALSs would be present and we would have to have unanimous agreement with 200 representatives. That would be quite a difficult way of moving along. We have to understand that the way we function is different – 15 people on one side, 150 on the other – in order to find the consensus it's difficult with 15 people, of course even more with 150. It's good to give them some leeway. That makes sense.

Do we give them more power that way? I don't think so. The objective should be and is, I hope, to give power to all the entities, to all the parties, to the entire community. It's not

where you are that matters. That's why I have an issue with this document, which is more complex and doesn't enable us to be on equal footing. We have winners, and the winners are always the same. And they are not going to make a government be able to be heard. And for me, this "carve-out" as you say in English, is really an issue. It's an issue for me in this document. Thank you very much.

ALAN GREENBERG: For the record, the countdown timer was started in the previous speaker, not for Sebastien. It was started because we're now two minutes over past our break. I'm willing to continue with this, but it eats into our lunch and we will start after lunch at the same time. If people want to continue putting their hands up that is up to them. I have a speaker list right now of [inaudible] and me.

[UNIDENTIFIED FEMALE]:   Very briefly, I would like to speak about the consensus, what you have called "to be in consensus." What I would to suggest is we call it "agreement" rather. And this is a very unique experience that we did in Tunisia and you have probably followed that after the events that took place in Tunisia which have been the reason why Tunisia – and I don't really know how to say this in French and English, but it's a magic word and we can with that, that

consensus is something we cannot reach, like Sébastien said. Imagine that the framework is made of 100 or 200 people, how can we reach a consensus in that framework? Therefore "agreement" and trying to come with an output where each compromise a little bit, we each take a step forward and try to meet halfway.

ALAN GREENBERG: [Inaudible] closed. Our interpreters do have to leave in about three minutes. This is a very contentious issue, and to correct the record I didn't say that this group doesn't have to reach consensus. We do. I said it doesn't have to have unanimity. People can object. Those objections may end up causing us to reject something or accept something. Our rules are relatively well defined and I'll review what the rules are when we start talking about how to make the decision, but we do encourage people to actually think for themselves and make decisions. There is nothing wrong with people disagreeing as long as we do it with clear understanding of what we're saying. That's it.

I have no other comments right now. We will reconvene and discuss the methodology that we will use for coming to a decision. We reconvene at 13:30, 55 minutes from now. I please ask people to be here and be seated at that time. We are on a really tight schedule and when it takes 15–20 minutes to seat the

group and to have quorum, we have a real problem. So please be here, be ready to work at 1:30 – 13:30. Thank you.

This is a ALAC and Regional Leadership meeting, but to be blunt, it's the ALAC that has to have quorum to make a decision. I want everyone to be here, but if the ALAC is not here we can't proceed. Thank you.

Now that we're off the record, and I thank our interpreters for being indulgent with us, does anyone know where we can get lunch aside from that little place in the tent? And tech support, and our At-Large staff and the ALAC and the Regional Leaders and our visitors. If anyone knows where one can get lunch here I would appreciate knowing it.

[END OF TRANSCRIPTION]