
BARCELONA – GAC: ICANN63 Communique Drafting Session (4)

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MANAL ISMAIL GAC CHAIR: So we now have some text on the screen, so if you can please take your seats. So you will find an e-mail from Fabien, because you will need to refresh your browsers so that you can see the updated text. Otherwise, you'll keep seeing the old text. So having said that, we now have a proposed text for the part on jurisdiction, and this reads, "With regard to recommendations on jurisdiction, there is no consensus within the GAC to either approve or reject them in their present form. Some GAC members support the recommendations and others consider that the wording of recommendation 4.3 does not indicate a clear path forward towards addressing the risks associated with ICANN's subjection to U.S. jurisdiction."

The following paragraph was deleted, and then, "The objecting countries, however, would withdraw their objection if the Board fully implements all three recommendations on jurisdiction, in which case the GAC would be in a position to approve these recommendations." And the rest of the text has gone. So it's a pretty short, concise text. Any immediate reactions? I see U.K. and Brazil. U.K., please.

UNITED KINGDOM: I would like to introduce the proposed amendment before we hear other views, if I may.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

MANAL ISMAIL GAC CHAIR: Sure. Sure, I'm sorry. So, I have the U.K. first and then I'll get back to you.

UNITED KINGDOM: Okay, it was just a point of order because I think it's natural that if someone is introducing the text, they should have the opportunity to explain why and where it comes from.

MANAL ISMAIL GAC CHAIR: Sure.

UNITED KINGDOM: But if you want --

MANAL ISMAIL GAC CHAIR: Sure. I'm sorry, I proceeded with reading it, I'm sorry. So, we will hear an explanation of the rationale, so you would like to respond? Okay.

UNITED KINGDOM: This is also a point of order, I guess; a point of our process. Very happy to hear the explanation, but I wanted to make the point first that I think it would be helpful to have a bit more time offline to work on this. This is text, which is being proposed by one country, which has not been discussed in this small group. The small group was making

some progress, and there's other text that we were discussing which is not on the screen.

I'm a little surprised that the small-group activity has been stopped and we are now looking at a new proposal from one country. I think we were making progress. It would be helpful to have some more time to see if we can continue making progress. But I'm happy to hear Brazil's proposal. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U.K., and I understand the small group included everyone concerned, but, Brazil, please, if you want to provide us with the rationale behind the text.

BRAZIL: Yeah, I think the point raised by U.K. is fair. I was at some point part of this small group. I thought we had had some discussions. We were heading towards some agreed formulations, so what I was trying to convey to Tom, but if it was not the case, of course, we should refer to the small group. And I would like to be part of the small group, in case there was some progress being made. I would be like to be appraised of what the progresses are. If I can just briefly comment what the rationale is behind this.

In my view, it is clear that we should not -- that that's why I suggested changing, if we can go up a little bit -- I suggested changing the way we will address the issues because I think it's not correct to say that some members support and other members do not support the

recommendations. I think the problem we are having, particularly in regard to 4.3, is not that there is no support for that. It's the interpretation on the way it is worded and was formulated, it does not give comfort to GAC members that have in the past expressed particular concerns about these portions, that this does not indicate a clear path forward. That's why I suggested to change and to start saying, with regard to the recommendations, there is no consensus within the GAC to either approve or reject in their present form.

And then I would go on, saying some GAC members support the recommendations as they are, and others consider that the wording of recommendation 4.3 does not indicate a clear path towards addressing the risks associated with ICANN jurisdiction to the U.S. jurisdiction. I think this is the crux of the matter. And then I thought, in the small group, we were heading towards a situation or to a common understanding that in case the Boards decide to implement all three recommendations equally in spite of the difference of wording, if there is a decision on the Board to promote those three recommendations and there are ways the Board could do it by inviting the community to come together and discuss it, to launch a process, then in that case the GAC would be in a position to approve these recommendations.

Actually, what we meant here, as I see on screen, would be to say, "The objecting countries, however, would withdraw their objection if the Board fully implements all three recommendations on jurisdiction and therefore launches the actual process." It's not only to implement recommendations because the recommendations at the present

wording just asks for consultation, but to launch in which case the GAC would be in a position to approve these recommendations.

I thought this was one core idea that was formulated in different ways by participants in the small group. For example there was an alternative formulation to say that we would approve, provided the Boards give a more positive tone and say instead of withdrawing the objection to say the GAC as a whole could approve, provided the Board implements fully -- but I think the idea is that in case this is what the small group has been heading after I left, we would gladly be able to join, so, if I can, I'll just ask to go down a little bit. So we retain the last paragraph. And we say, "In this context," so in the context that we call for the Board to implement all three resolutions, all three recommendations, "The GAC has provided consensus advice to the ICANN Board."

So basically we are linking that part of the communique with the advice part. I think the rationale is very clear. And then we move to the advice part. Again, I did it in good faith with Tom, trying to put on paper what I thought was the consensus we were heading to. But I understand the group has gone on with the discussion. I would like to, of course, be part of this small group, if I may, in regards to the interest we have in this topic, and I look forward to further discussing with colleagues. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. So, having heard the rationale, would the small group be in a position to just comment on this text on the screen? Or

do you want to take it offline again? I mean, can we work on the basis of the text on the screen and reflect the progress made by the small group, if it needs modifications on the text we have? U.S.?

UNITED STATES:

Thank you, Chair. This is Ashley with the U.S. I think in consideration of all the work that was going on with the small group, I think it's best to take it offline since there was some considerable progress moving forward rather than trying to work with a text currently on the screen. Thanks.

MANAL ISMAIL GAC CHAIR:

Thank you. So would this be right away? So can we have 15 minutes, or less? 10 minutes? So how long do you need to provide us with a new proposed text? I'm just a little bit concerned because it's quarter to 6:00 now. Yes, Australia, please.

AUSTRALIA:

Thank you, Chair. I feel it would be just a few minutes. I think considerable progress was made in the small group. We were just finalizing some text that we felt had passed everybody's views, but we hadn't had an opportunity to share that with Brazil. So I think a couple more minutes would be very good. Thanks.

MANAL ISMAIL GAC CHAIR: Okay. So, 10 minutes to receive new text on the jurisdiction, and if you manage to finish earlier, please let us know. We're ready to start at any time. Thank you.

(Break)

MANAL ISMAIL GAC CHAIR: So I'm being asked whether we can finish by 7:30 because that's the cut-off hour of the facility, so shall I confirm?

(Break).

MANAL ISMAIL GAC CHAIR: So I can hear a happy ending.

(Break).

MANAL ISMAIL GAC CHAIR: Okay. We are all set. So we'll go through the new proposed text. "The GAC wishes to express its appreciation for the diligent and productive work performed by the CCWG accountability Work Stream 2, its co-chairs, its members, and all its contributors. The GAC considered the CCWG final report and recommendations. and supports recommendations with regard to the same list. If these

recommendations are accepted by the Board, the GAC will work with the community in monitoring their implementation, particularly with regard to diversity, human rights, and the impact of transparency recommendations on ICANN's dealings with government.”

I think this is more or less the same text. “The GAC approves the recommendations on jurisdiction in the report, although some GAC members would prefer the recommendations on jurisdiction to go further to mitigate the risks associated with ICANN’s subjection to U.S. jurisdiction. The GAC therefore approves the report, provided that the Board will implement the GAC advice below.”

Then the GAC advice reads, “The GAC advises the Board to initiate a multi-stakeholder process on the basis of consultation with the ICANN community to address the issues regarding jurisdiction that were not resolved in the CCWG Work Stream 2. Rationale: issues relating to ICANN jurisdiction were not resolved in the CCWG Work Stream 1 process, but were instead included in Work Stream 2. As the CCWG jurisdiction sub group notes, there remain several aspects of this issue that were not concluded in the Work Stream 2 process and there should be a path forward for these concerns.” Anything -- yes Brazil?

BRAZIL:

Thank you, Manal. I think this indeed reflects what we have been discussing. We think it’s a very concise and very straightforward message stating what are the -- in a very elegant way. I think the difference is, at the same time, proposing a way forward. The only thing I would like to suggest and to propose, and I'd like to seek

colleagues who participate in these small group's indulgence, if we look into the advice -- can we have the advice on screen? -- again, the text on screen reflects what we had discussed but, on second thought, we would prefer, since we are making a very huge step in the text, we say, "We approve the reports provided the advice is implemented."

We think the text of the advice should be very clear about what it means. So we would propose an alternative language when it says, "On the basis of consultation," maybe you can put in brackets, "In consultation," instead of, "On the basis of consultation." In consultation. I think if it we say, "On the basis of consultation," it may give too much flexibility that even the initiation of the process will depend on and will be framed by a consultation, and our intent is to say that the Board should initiate a process, of course in consultation with the community.

So this is something I would like to propose. I don't think we should start discussing it now, but I leave it as it is, and maybe if we have some more time to receive reactions from colleagues or in plenary as you wish, Madam Chair. Thank you.

MANAL ISMAIL GAC CHAIR: U.K., please.

UNITED KINGDOM: Thank you, Chair. And thank you to everyone who took part in the small group. We were all really trying as hard as we could to find a compromise, and I think everybody has made compromises here to try

to reach consensus, and it's probably difficult for all of us. The text, including the words, "On the basis of consultation," is something that we can support. I don't think we can support the latest suggestion to change it to, "In consultation." I'm speaking as a country, which started this meeting by saying very clearly, "We do not want any multi-stakeholder process at all. We think the job is being done." But we recognize others have a different view and so we've compromised a lot. But this text, as it stands, is now a very delicate compromise and we think it would be better at this stage to stick with the language we agreed in the small group. I think if we reopen it now, it will be very difficult for many of us. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you U.K., and I truly appreciate the compromise being done by both sides. So, U.S.?

UNITED STATES: Thank you. Ashley with the U.S. I just wanted to concur with what Paul from the U.K. has said, for slightly different reasons in that I think we really run the risk if -- it wasn't so much the words, "In consultation," but the explanation of why those words were preferred, which is that ICANN unilaterally impose on the community a discussion. And I don't think that's in the spirit of the multi-stakeholder process in which we're referring to, and that it's really important that we have the buy in of the other stakeholders, otherwise it's not a discussion. It's something else. So I would support sticking with what was agreed upon in the small group. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U.S. So Brazil, can you live with the proposed text on the screen?

BRAZIL: We suggest we move to another section of the text. Maybe another section will also require a compromise. Thank you.

MANAL ISMAIL GAC CHAIR: So I'm sorry, Brazil, I'm not clear with the proposal. Should we leave it at this right now or --?

BRAZIL: I suggest that we leave the words bracketed and we come back to this when we finalize review of the whole text.

MANAL ISMAIL GAC CHAIR: Okay. So, moving on to -- what do we have next? The human rights section, yes? So we have the initial text as proposed by Iran and then the Green text is a modified version after Iran has consulted with other colleagues concerned about the topic. So, Iran, are you seeking the floor? Yes, please, go ahead.

IRAN: Yes, I thank you very much, Manal. First of all, we highly appreciate the comments that we received from Canada and the European

Commission. We had a chance to approach colleagues in this session, and at the end we have just provided a more modified version of the text, as you see. Let me just raise some explanations here to clarify certain points. The first point is the concern about procedure that this has been rather late to propose this paragraph, to be introduced into the text. The point was that we received several requests from Iranian NGOs and startups before we came here, that they expressed concerns about the human consequences of the sanctions on the ordinary people. So we actually felt the necessity to express our concern here, and we apologize if that was not in accordance with the procedure.

The second point is that we do not want to change the framework of interpretation as it is mentioned in the report. So we emphasize here that by touching upon the framework of interpretation, we want to raise these concerns. So we do not want to change the framework of interpretation, we do not want to break the consensus over the report. It's just the sort of remark that we want to be highlighted here and ICANN would take it into consideration. And we have also specified that it's quite relevant to the DNS and TLD affairs. So it's not just a general comment, it's regarding Canada's comments. We have also modified that. So I hope that there would be consensus over this. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you very much, Iran, and thank you for responding to the three concerns. I have the European Commission.

EUROPEAN COMMISSION: Thank you, Manal. Georgios Tselentis for the European Commission. Regarding our concerns again, I think what we tried to discuss during the break was to first understand what were the issues, but still, what we have here is that the process for discussing those things was not respected in the sense that it is a very important issue that also deserves the appropriate discussion with the appropriate groups, and then to be brought up for a GAC communiqué.

And in this sense, we appreciate the comments that were made now to the GAC from Iran, but we still believe that the process needs to be revisited and we need to have some more clarity and discussions on the issue at the appropriate place and then have it as a comment. I don't believe that by just consulting the two members of the GAC that raised the concerns about the issue, because we were unaware of the discussions and as it was shown, there were no discussions substantive of the issue. The issue is covered. So for us, the process issue still stands.

MANAL ISMAIL GAC CHAIR: Thank you, European Commission. I have Denmark next.

DENMARK: Thank you, Chair. We also have difficulties with the process. It wasn't introduced in our discussion, and then we couldn't have a discussion and understanding this -- so from a procedure point of view, we have difficulties with that. Looking also on the ccWD, although I have not participated in all the human-rights meetings, but in the plenary

meeting -- I cannot remember if this was brought up in the context of human rights. The only place where we have talked about sanction was in the jurisdiction as we have discussed before. There seems to be a launch or suggested new process where jurisdiction can be addressed and that might be more fruitful to put it in that context in the future, but not here in our communique. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you Denmark. So, Iran, please.

IRAN: Yes, in response to Denmark. It's exactly our intention to actually bring this to attention that the matter of sanctions could also be discussed under human rights and not only under jurisdiction, because it's also a matter of human rights and its also surprising -- we understand the problem of procedure, and we actually respect that.

But it's also surprising that our European colleagues and Canadian colleagues who should support the expansion of the scope of human rights are actually objecting to this matter. We propose that some GAC members indicated that this should be mentioned. I don't think that that could be a problem.

MANAL ISMAIL GAC CHAIR: Thank you, Iran. European Commission.

EUROPEAN COMMISSION: In response to what was said here. It's not, again I say, an issue on the substance. Of course we support the expansion of the scope, but as I said, maybe a further discussion is more appropriate. I don't know how we can phrase this in order to open the issue for further discussion. And not to be treated in the limited manner as it is here, and last minute protests in a GAC communique. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, European Commission. Sorry, Iran.

IRAN: Thank you, Manal. Thank you, European Commission. We fully understand the views expressed, but first of all, we have paraphrased the text by some GAC members who indicated that these are the views of some GAC members. And there is many precedents that in the GAC communique we have these expressions which indicate the views of some members. This is the situation, and this is a universal, international organization, and they need to observe that.

However, Manal, I suggest that maybe at the end, in order to address the issue raised by European Commission, we say that ways and means to address the issue need to be explored. This is the maximum that could be said that yes, we would not close the door and we would wish that this should be explored. How we should explore is up to the discussion. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Iran. Australia, please, and then European Commission.

AUSTRALIA: Thank you, Chair. I don't wish to comment on the sentiments related in this text at all. This is just a comment purely on process. The communique is meant to be a reflection of the GAC's discussions, and I have to join with my colleagues from Canada and the European Commission. This wasn't a substantive discussion of the GAC during this week, and, yeah. Thank you.

MANAL ISMAIL GAC CHAIR: I take your point, Australia. It was just brought to my attention that it was discussed yesterday, but obviously it was during the communique drafting session, but not in a plenary. So, Iran.

IRAN: Thank you, Manal. I think we should have a further treatment for all parts of communique. We have a very, very long text relating to WHOIS compliance which are fully in favor. But it was discussed very briefly in the working group yesterday morning. And when we came to GAC, we didn't oppose that. So we do not want to have hours and hours and days of discussion in any specific paragraphs.

The issue was raised yesterday, discussed, and our colleagues approached the European Commission and our Canadian colleagues to further explore the situation. And now, more modification was added by saying that some GAC members' ways needs to be explored.

I don't think that we need more discussion at this stage. Otherwise, the whole issue will be dropped. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Iran. And apologies, European Commission, I overlooked the order of speech. You were requesting the floor, I'm sorry.

EUROPEAN COMMISSION: Yes. I think that some GAC members when we started -- this, again, is like if we refer that there was a substantive discussion. And some GAC members believed or expressed an opinion on something and some others didn't. Again, I see the effort here and I appreciate the effort added by the last sentence, that the issue needs to be addressed.

And this, again, needs to be explored further in the appropriate manner. And this is what we said. We just say that in order to make a comment in the communique as it is, we have to have a background discussion in the appropriate group. And this is missing. That's why we were talking about procedure again, for the nth time, not about substance.

MANAL ISMAIL GAC CHAIR: So, just trying to help out here. If we say some GAC members brought up the issue, would this address the problem? I mean, it was brought up. It was not discussed. Flagged the issue. Raised the issue. Trinidad and Tobago, please.

TRINIDAD AND TOBAGO: So just as far as procedure is concerned, and I know this is a debate which is going on a little far, however, I do understand a simple point. If it was discussed in a working group but not brought to the plenary, then it's not really before the plenary. And therefore, it wasn't discussed, for want of a better word. So that's where the procedure comes in because what this is a reflection of what took place in the plenary. So that's my simple point.

MANAL ISMAIL GAC CHAIR: Thank you, Trinidad and Tobago. So any reactions to the text on the screen? Yes, Iran.

IRAN: Thank you, Manal. We have no problem to say raised or indicated. But what is now -- colleagues mentioned that they have not discussed. It lies in the last paragraph that ways and means to address need to be further explored. So this is added to the last part. It means that it was raised, the issue. We have the right, any GAC member has the right to raise the issues. And then, for further discussion, this is the last portion of the paragraph saying that ways and means to address the issue need to be further explored. And we leave it as such. Thank you.

MANAL ISMAIL GAC CHAIR: U.S., please.

UNITED STATES:

Thank you. And I'm not going to speak to substance, but just process as well, which is that I fail to understand why this text is here. And largely because this is in response to a report and discussions associated with that report and our views on that report. This issue was not discussed in the context of the framework of interpretation or the human rights discussion in the CCWG Work Stream 2. I think we're trying to fit something in that doesn't fit. And I just wanted to make that clear.

If there was a reference here to there were concerns about the jurisdiction portion of the Cross Community Working Group session specific to sanctions, that would make sense. That would make sense and it would fit here and I think we would perhaps even address some of these procedural concerns that are being addressed. But I think the only thing that we are doing at this point is indicating that we're not responding to the report. Thank you.

MANAL ISMAIL GAC CHAIR:

Thank you, U.S. So, in terms of the Human Rights subgroup and the framework of interpretation, has this issue been discussed? Jorge, would you be in opposition to tell us about the process itself? I mean, was this specific topic raised within the subgroup of Human Rights? I'm sorry to put you on the spot.

JORGE CANCIO:

Thank you. I think that the Secretariat made notes of what was discussed during the Human Rights and International Law Working

Group. So perhaps they can check in their notes or check the transcript. But I don't really remember that we were discussing this.

And beyond that, I think that it is a very useful rule we have for the communique drafting that we include in the communique only things dealt with in plenary. So I think that otherwise -- and I remember when this rule was let's say, implemented. This avoids that we enter into new discussions in the communique drafting on issues not dealt with in plenary. So I think we should stick to that rule. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Jorge, for commenting on the process. Iran, are you seeking the floor?

IRAN: Thank you, Manal. I think we should not get into the substance of what this means, the discussions. But the issue was raised in the address that they, His Excellency, the Deputy Minister in the High-Level Governmental meeting is part of the GAC meeting, and it was addressed. It was mentioned. And not everything was discussed. That is the reason we put this last portion, that ways and means to be further explored. I hope that we will not be pushed to say that there was no consensus on the human rights framework of interpretation. We have the right to say that because if we have some concerns and our concerns are not addressed, that means there is no consensus on the acceptance of that report.

So I will leave it to the distinguished colleagues to decide which way they want. This is the most mild way that we present that. Some GAC members raised the issue. And then say what the issue is. And then mention the ways and means to address that should be further explored. Otherwise, we could say that we have no agreement to the report of the framework of interpretations. We have the right to say that. Therefore, we say that no consensus was reached on this report. Whether we say it should be communicated or should not be communicated, that is another issue. But absence of consensus is this one. Thank you.

MANAL ISMAIL GAC CHAIR:

Thank you, Iran. Just a point of clarification regarding, again, the High-Level Governmental meeting. This is a separate event and it has its whole agenda -- I mean, we're not reflecting here all the discussions that took place at the High-Level Governmental meeting. We're just reflecting things that took place during GAC plenaries. So I'm just cautious not to open the door that we're reflecting everything that was discussed during the High-Level Governmental meeting here.

So I'm inclined that we move on now and then again see a second iteration later just to make sure that we made a full iteration through all the things that we need to discuss in the communique because time is becoming late. So what do we have next? Yes, please.

TOM DALE: Thank you, Manal. Just to start going again from the beginning through the draft GAC Consensus Advice. The first item concerns ICANN accountability in relation to the jurisdiction recommendations. And you'll recall, there is some alternative wording still in square brackets which Brazil, I think, requested discussion be deferred. So at the moment, there's a choice between on the basis of consultation, and, in consultation. So that's the first one. Keep going?

MANAL ISMAIL GAC CHAIR: Yeah so, are we ready to choose between on the basis of consultation and in consultation? Brazil.

BRAZIL: In the communique, should we not go through the other sections before going back to this question? Thank you.

MANAL ISMAIL GAC CHAIR: Okay. We were just going in order. But if you need more time on this, we can move on to the following GAC advice.

TOM DALE: Thank you. The second element of draft GAC Consensus Advice concerns two-character country codes at the second level. And at the moment, it reads as you see on the screen. The only remaining issue in contention, according to my understanding, but that may be incorrect, was the need to in point number two to clarify the precise process that the ICANN resolution in Hyderabad effectively

discontinued. And there is a reference there. Is that complete, Fabien, or are we still working on that? Sorry.

So there's a reference there to try and pin that down as requested, as I recall, by Switzerland. And the last time this was discussed, as far as I'm aware, there were no further issues raised on either one, two, or three. So that's where it stands at the moment. Thank you, Manal.

MANAL ISMAIL GAC CHAIR: Thank you, Tom. I can see U.S. seeking the floor.

UNITED STATES: Thank you, Chair. So perhaps another alternative here -- and I have to agree now looking at this again. I don't believe there is ever any reference to this process being an authorization process. I believe we've referred to it actually in our own GAC advice in the past as a notification process. So perhaps that could address the concerns. Thank you.

TOM DALE: Thank you. Manal, if I can just clarify with the United States. As the text that's in red or purple on the screen refers to or would refer to it as, the change from the pre-existing notification and agreement procedure. Would notification and agreement procedure be sufficiently precise? Thank you.

UNITED STATES: Again, I've seen no reference to that in any of our documentation or even our past GAC advice. And I would recommend that we stick with what we've agreed to, for the sake of time tonight, to terms that we've used. Because similar to what Jorge had said before, I'm afraid that if we start referring to things, we set ourselves down a path of confusion. Because again, I don't recall any references to a notification and agreement procedure. It was referred to as a notification procedure. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U.S. Fabien, please go ahead.

FABIEN BETREMIEUX: So just checking the record of advice on the matter and I can find a reference to notification in the Singapore communique of February 2015. And so I'll just read the sentence. The GAC advises the Board to amend the current process for requests to release two-letter codes to establish an effective notification mechanism so that relevant governments can be alerted as requests are initiated.

MANAL ISMAIL GAC CHAIR: Okay. Thank you, Fabien. So any reactions to the text on the screen? Can we move on? I see nodding and I see Brazil.

BRAZIL: Thank you very much, Madame President. Just to leave it in the record, authorization process is an expression that ICANN

Organization itself has been using and was using until it retired the authorization process. If you go and have a look at the ICANN website, tracking the changes that suffered the authorization process, you will see that this is ICANN language. But I take the points raised and understand the concerns raised by the U.S.

And perhaps, I think a more neutral language in which we wouldn't be using words as notification or authorization or agreement could be a release process. And we would be introducing the expression, release process, in the language that is currently in red. So it would read, the change from the pre-existing release process indicated in the specification 5.2, sentence one, to a new curative process under specification 5.2, sentence two. Thank you.

MANAL ISMAIL GAC CHAIR:

Is everyone okay with this proposal? Okay. Moving on. Three -- ensure that its direction to the ICANN CEO to engage with concerned governments to listen to their views and concerns, and further explain the Board's decision-making process. Which is again, a quote from the Board's resolution as indicated on the screen, is fully implemented including direct engagement with those governments in order to address their concerns. Anything with this text? Okay.

So we will just add, as you can see on the screen, of the registry agreement. Just to be factually right. India?

INDIA: Yeah, just for the sake of completeness, in order to fully address their concerns.

MANAL ISMAIL GAC CHAIR: I'm sorry, which part of the text are you referring to?

INDIA: Is fully implemented, including direct engagement with those governments in order to fully address their concerns.

MANAL ISMAIL GAC CHAIR: Okay. There is a proposal to add, fully, here. Any comments? Moving on. I think the IGO thing is agreed. So no comments on this part.

Then Follow-up on GAC Advice. Yeah, I think we have agreed to stick to the heading as it has been previously communicated to the Board which is GDPR and WHOIS.

BRAZIL: Point of order, Manal.

MANAL ISMAIL GAC CHAIR: Yes, Brazil.

BRAZIL: Did I hear that we have agreed on sticking to the same title from previous GAC advice?

MANAL ISMAIL GAC CHAIR: I mean, this was the conclusion of the discussion we had before the break. If I misunderstood -- yes, India.

INDIA: Just to be clear, I don't think we need fresh follow-up advice for this item. I mean, already we have, I think, given up ample amount of advice on the matter. And I think in the past three communiqués, if you note, we are consistently giving out advice on the subject. At this point of time, I don't think there is any occasion or any provocation for us to want to give up any follow-up advice on the matter.

So personally, if you ask me, we'd be better off doing away with this follow-up advice altogether because probably by giving up too much of GAC advice, we are somewhere trying to undermine the value of and the gravity of GAC advice. So it is my suggestion. Of course, I am open to suggestions from other members, but I think that at this point of time, no further follow-up advice is called for on this subject. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Raul. I'm not clear because this is a follow-up advice, not a fresh or a new GAC advice, so it shouldn't --

INDIA: And that's precisely why I say it, that there is no value to be had by giving this advice or by omitting to give it. And so I think that we,

following the principle of minimization and try and give out the minimum advice possible. I don't see the pressing need for giving out this advice as such. Especially in its current form in terms of retaining its wording and the titling as it was in the previous advice. So I'm not very happy with this idea. And I would rather do away with giving out any follow-up advice altogether. Thank you.

MANAL ISMAIL GAC CHAIR: So U.S., you are seeking the floor?

UNITED STATES: Yes, thank you. Thank you, Chair. So I agree wholeheartedly with Raul on the issue of making sure we don't be repetitive in GAC consensus advice. That being said, we agreed to the structure for the very purpose of being able to reiterate past advice by having this follow-on advice section. And, in fact, we've never followed up on this advice before, so it would be the first time we've done it.

But what I'd also like to point out which we haven't gotten to yet, is that as part of this package of basically keeping with the text, we went back to address the concerns that were raised by Turkey and Jamaica. And in the other issues sections, instead of continuing to refer to this as GDPR, we're going to refer to it as WHOIS and something along the lines of other national and regional data protection legislation. And also noting there that the GAC considers the importance of other national and regional data protection laws. So to try and fully capture the comments here, because when you look at the follow-up section,

you really do have to be true to what the past advice was. I mean, it doesn't make sense to try and reword what past advice was because that can create some confusion as well.

So that's the rationale behind it. I understand the sensitivities that India has and I agree with it. I just think for the sake of responding to follow-on advice and maintaining the importance of that follow-on advice, we need to refer to the text, the heading as it was, just to be consistent with the text itself. Thanks.

MANAL ISMAIL GAC CHAIR:

Thank you, U.S. And I think the very fact that we have a section called Follow-Up on Previous GAC Advice, already indicates that we are in principle agreeing to follow-up on previous GAC advice. So I think it's a little bit late to start challenging the whole structure of the communique. Although, it's a fair point and we can take it and discuss it through the BG. I can't remember the new name right now, but the Board GAC Working Group which already came up with the proposal for this structure. India, please go ahead.

INDIA:

So just to follow-up on that point. I don't think that unless we are saying something new or addressing some issue which we haven't addressed already earlier, I really don't think just because there is a section provided in the format in the nature of follow-up advice, so we should just randomly go on delivering advice.

MANAL ISMAIL GAC CHAIR: I'm sorry, India. I'm not saying this. I'm saying that in principle we don't have a problem. Because you're saying we shouldn't be providing follow-up advice. I'm saying that this is new and needs to be discussed and this is not the appropriate time. But that in principle, and we've done this before, we can follow-up on previous GAC advice. And, in fact, it doesn't have to be something new. Otherwise, it will not fall within the follow-up section.

INDIA: So the point I am trying to make is that if there's nothing new to be said, then we would rather not say anything. We would rather keep the section vacant rather than just reiterating what we have said earlier or repeating ourselves and undermining ourselves through the process. We should rather keep the section blank and wait for the Board to respond. The Board should respond to our earlier advice.

And I think at this point of time, it is not entirely clear what our ask of the Board is. Because as far as they're concerned, they have already constituted a process through the community and they are waiting for the process to get completed. So, I think frankly, this is not the appropriate time even for a follow-up advice. And we should just let it play out the way it is playing out and then respond at the appropriate time. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Raul. So again, on the structure thing, we can discuss it definitely. You are making a point that needs to be discussed in

principle whether GAC should be following-up on previous advice or not in principle. The point that we can discuss here, whether the GDPR itself as a topic, whether we need to follow-up on previous GAC advice here. So I have the U.S. first.

UNITED STATES:

Thank you. And just perhaps to clarify a bit why it is important to reiterate this. As we discussed through the week, there have been some criticisms as to this universal access model and whether it's necessary. And we found it was very important to reiterate that the GAC finds it necessary because there are some parties, I think within the NCSG in particular, who don't see the value of this conversation. And we see it as absolutely critical if we actually want to ever get to the conversation of access, that's where the conversation of developing an access model will take place.

So that's the rationale behind it and if it needs to be more clear I'm happy to work with Raul to do so. But I think if access is important as I thought we've all understood, I just wanted to make clear that that was the reason. Thanks.

MANAL ISMAIL GAC CHAIR:

Thank you, U.S. India.

INDIA:

So just to respond to that. I have three suggestions. Number one, as has already been pointed out that the context has been terrified that

we are issuing some advice in response to some criticism which we have received ostensibly.

So number one, was this issue discussed in the plenary earlier? I'm not aware of whether it was discussed in the plenary. Number two, in any case, if this is the provocation for us issuing the advice, then we could either say we simply reiterate our earlier advice without specifying anything else or without advancing. Or if we want to clarify and specify what that advice is, then I would rather feel happy with issuing new advice rather than reiterating the old advice.

So we have a three-point course of action to contend with. Number one, there should be a fulsome discussion on the subject that should the GAC be giving advice in response to provocations or criticism by just some small community or some small section of the community within the ICANN structure. I mean, are we to be reduced to a reactive kind of organization? Or probably more deeper and graver thoughts goes into the motivations for us giving advice to the ICANN Board?

And that also touches on and ties in with my worthy colleague, Ana Neves from Portugal who had also commented upon this very subject, that the GAC should not be reduced to a merely reactive organization. But it should rather be proactive and have its own agenda-setting capability rather than merely responding to events.

I mean, the way we are giving our advice to all and sundry to small provocations, it's likely that it is going to seriously undermine the value of GAC advice. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, India. Your views have been noted. And just to note that in terms of agenda, we had maybe three plenaries on this specific topic and we also have co-organized and participated to a cross community session on this topic. So in terms of agenda, we have devoted so much time on this topic. I have the U.S. first. I'm sorry. U.S.

UNITED STATES: Thank you. Yes, so just also to clarify that during our GDPR session yesterday, which is part of full plenary, we actually asked for input on what our GAC advice should be and this was one of those points that was discussed and agreed to. So I'm a bit confused by the conversation.

And to be clear, this was not a reaction to a single group. This was the need to reiterate the importance of something that is central to the GAC concerns. So again, perhaps I'm not fully understanding India, but I thought we were all on the same page here. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U.S. Again, just to be clear, I'm talking about the process. If there is a consensus view that we should not be providing advice on the GDPR topic, then this is something else. But I do not see, at the moment, that this is a consensus view. And we need to move on, India. So, India.

INDIA: So my take on that would be that probably this is not the right time to offer our advice and whether it is follow-up advice or new advice. I mean, the situation doesn't warrant that we issue any advice at this moment on this subject. And that's my point of view. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, India. So any support that we should not be providing advice on GDPR? Okay, I see none. But again, as I said, I take your point. It's worth discussion and I do recommend that we take it through the Board GAC Working Group. Thank you.

So anything on the substance? So again, the text reads, we emphasize the GAC consensus advice from ICANN62 that urged ICANN to take all steps necessary to ensure the development and implementation of a unified access model that addresses accreditation, authentication, access, and accountability, and applies to all contracted parties. We welcome ICANN's efforts to facilitate the necessary community discussion through the unified access model papers and emphasize the need to drive these discussions towards concrete and timely results. Any comments?

Okay, moving on.

TOM DALE: Thank you, Manal. The next section of text in the Follow-Up to Previous GAC Advice was submitted, I think, by Brazil and Columbia, I believe. It reads as follows: The GAC welcomes the 16 September 2018 Board Resolution on the dot Amazon applications directing the ICANN

President and CEO to support the development of a solution that would allow the dot Amazon applications to move forward in a manner that would align GAC advice and inputs on this topic.

The GAC notes that the rationale of the 16 September 2018 Board Resolution states that the Board is taking this action today to further the possibility of delegation of the dot Amazon applications while recognizing the public policies issues raised through GAC advice on these applications. The GAC recalls its latest advice on the matter where the GAC recognizes the need to find a mutually acceptable solution for the Amazon countries and for the applicant, and calls upon the Board to continue facilitating work that could result in such a solution. GAC Communique Abu Dhabi. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Tom. Any comments? Okay, moving on. Okay, so this is new text. Okay, go ahead, Tom.

TOM DALE: Thank you, Manal. We're just sharing the reading duties perhaps so that we both have a voice later in the evening, perhaps to celebrate the conclusion of the communique.

This is text which was submitted, I believe, by Switzerland. It reads as follows: Protection of the Red Cross and Red Crescent Designations and Identifiers. The GAC welcomes the progress made in the process of reconciliation between the GAC's consistent advice and the GNSO's past policy determinations on the issue of the protection of the Red

Cross and Red Crescent designations and identifiers. And marks its appreciation for the inclusive consultative process conducted under the auspices of the GNSO's reconvened working group on the Red Cross and Red Crescent names.

The Board is encouraged to adopt the GNSO council's recommendations which regard the reservation of the list of names of 191 national Red Cross and Red Crescent societies in relevant languages as well as of the international organizations within the international Red Cross and Red Cross movement. The GAC notes that the issue of the acronyms of the two international organizations within the movement, ICRC and IFRC, were not covered under the above mentioned GNSO process and recall standing GAC advice that the temporary protections presently accorded to these acronyms remain in place until such time as an appropriate resolution of this issue is reached. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Tom. Any comments? Yes, eSwatini.

ESWATINI: I'm not sure if it is a typo, the Red Cross and the Red Cross movement. Second paragraph from the bottom.

MANAL ISMAIL GAC CHAIR: Yes, thank you. Thank you eSwatini. Any other remarks? Okay.

TOM DALE:

And just continuing scrolling down, there is one final item which concerns the GAC's endorsement of the attachment which is, you'll recall, a follow-up to or proposed follow-up to the joint statement by ALAC and GAC on enabling inclusive, informed, and meaningful participation at ICANN. This was, as I mentioned earlier in the day, this has been adopted by ALAC. This document was circulated to you after the meeting that the GAC had with ALAC a few days ago.

And the GAC members were asked to reflect on it by the Chair. So the drafting at the moment has the document as an attachment as an outcome of the meeting with ALAC, but it is not formal advice. It's a statement which the GAC has made jointly with ALAC and is submitting to the Board. Thank you.

MANAL ISMAIL GAC CHAIR:

Thank you, Tom. So any objections to adopting the joint statement? I don't see any. So, Tom, do we need to -- I asked for any objections to adopting the statement. Non were expressed. And I'm just wondering whether we need to fine-tune the language to reflect that it has been adopted somewhere. Maybe later in a new version.

Any objection to the text as it stands on the screen? If not, then I believe we have two pending issues -- the jurisdiction, whether we write, on the basis of consultation, or, in consultation. And the human rights. So would colleagues like that we have the text on the screen and start resolving those two issues? Or would like to discuss? So can we get the jurisdiction on the screen, please?

So yes, Brazil, please.

BRAZIL:

Thank you, Manal. We have given a look at the text as it appears on the screen and we think the differences behind the alternatives are much larger than just the words. I think there is a very clear understanding on our part that it is a huge step for us, I mean Brazil and others who have consistently indicated that the concerns we had in the discussion, jurisdiction was not addressed. It's a huge step for us to, at this point in time, say that we approve the report, that we approve those recommendations.

We thought that there would be a way to do it provided they would be linked to a very strong message to the Board that the recommendation regarding a way forward in the discussion of pending issues should be there. We don't think it would be to the detriment of other parts of the community as we understand basically relating to what took place in the sub-working group, there is, I'd say, no big interest on the part of those other -- the other parts of the community, there's no big interest.

But I'm not sure there will be an objection to engage. The reason, and I think a proof of that, is that the report, the CCWG report container recommendation in that regard was endorsed by everyone and no one objected to this. So we don't think we are saying something, we would be proposing something new, something that comes as a novelty for anyone at this point in time.

On the other hand, if the approval we would be ready to give provided this would be there. If the second part of the equation remains very weak language or language that can be interpreted as just pushing the issue forever and basically saying that nothing will happen, we prefer to revert to the position and to state very clearly that there are different views in regard to jurisdiction recommendations and that these did not enable the GAC to achieve consensus either to accept or to reject.

I think at this very late stage, I don't think it would be worthwhile to pursue, the attempts to reconcile language. On our part again, we could not accept a result that would not provide a clear path forward. And we understand sensitivities on the parts of other colleagues. I think this is understood. But in that context we are not ready to continue to explore some consensus language. So I'd like to turn to my colleague to propose an alternative text for that part of our communique.

Perhaps I could send the text to the Secretariat, but I will read it aloud. It's a short statement of facts that would be in the informative part of the communique. And it would read as follows. I'll read it relatively quick and then I'll send it to the Secretariat.

The GAC is not a position to approve the recommendations on jurisdiction. Some GAC members supported the recommendations. Other GAC members consider that they fall short of the objectives and visage for Work Stream 2 and only partly mitigate the risks associated with ICANN subjection to the U.S. jurisdiction. The reasons why these

members object to approving the recommendations are documented in the dissenting statements admitted to the CCWG by Brazil, supported by Argentina, China, France, Iran, and Russia.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. So any reactions or comments? So we will receive the text over email and put it on the screen. U.K., please.

UNITED KINGDOM: Thank you, Chair. Well, I think after all the work that we did in the small group and all the progress that we made, it's very disappointing to see that we're just going back to opening positions. It's a real shame at this late hour to be back to this old language. I presume that means we will have no GAC advice on this topic at all? And so we would need to delete that from the text. And then consider how we best reflect the fact that there is no consensus. It's a great shame. We did a lot of work. Many of us accepted things that we were very uncomfortable with.

The colleague from Brazil describes the drafted advice as weak language, I think. It does not look weak to me. It's much stronger than I would like it to be. And from the discussions we had in the small group, I genuinely think that it provides Brazil with the way forward that they are looking for.

So it's a disappointment really that we're just going back to our positions and we will have no consensus and we will have no advice. I would just ask Brazil if they can just maybe pause and think again

about taking this path because it would be a shame for all of us I think.
Thanks.

MANAL ISMAIL GAC CHAIR: Yeah. I think we were really close and we were almost there and it would be a pity if we don't manage to find a way forward. Brazil, I see your hand. Thank you.

BRAZIL: Thank you, Manal. I share the sentiment that was expressed by the U.K. You will remember that from the beginning of the discussion, we have tried to be as constructive as we could. We initially tried to explore the possibility of asking the CCWG to revisit the text. We even, on the basis of that, we had discussions with the co-chairs and we tried to explore that possibility. In the end, I think we all agree it was not feasible.

We also then tried to explore that other possibility to address directly the Board. That was an alternative that would have been the easiest from the start to say no and to stick to our position. We have been trying to come to some kind of modus operandi that would allow us to join consensus.

However, I'd like to say that this is not a position that we have been defending this meeting alone. We have been talking about this for four years. So we are at the end of a process that has been unfolding for a long, long time. So it's not -- although we are very sad and frustrated as well, we do not think we should compromise the integrity of the

positions we have been defending. We think that if we accept language that in our view remains weak, in regard to the GAC advice, and considering that even if it's a consensus advice, it's not 100 percent sure that this will entail concrete direction.

We think we would be giving away a very consolidated stance in that regard. And approving a report we have been consistently saying, for the reason I will not repeat, that were not acceptable to us, so we would be going back on that in exchange for nothing. We don't have any assurance that anything will take place. And on the basis, take into account the way the Board has been reacting to some of our advice, we are really concerned that if we do not have a very strong message coming from the GAC as a whole, nothing will happen.

So this is a very -- I share this sentiment. It's very sad. It's a shame that we cannot come to a consensus. But in our case, I think, again, as we say, consensus for the sake of consensus does not mean anything if you're not addressing the important issues that you have to address. So we could certainly look again into the issue and try with colleagues to find some way out, but to be very frank, I don't think we will, at this very late hour, actually a different solution. But I stand to be corrected. I'd like to close my participation in ICANN in a very positive mood. And certainly, I would be looking to ways we could try to breach any difference. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. Switzerland.

SWITZERLAND: Thank you very much, Manal. Looking at the text, if I understand it correctly, we have really the point of disagreement is whether we have, on the basis of consultation, or, in consultation with the ICANN community. Is this correct, Madame?

MANAL ISMAIL GAC CHAIR: Yes.

SWITZERLAND: Okay. I participated in the small group, but I wasn't present all the time. So perhaps Brazil could explain a little bit more, elaborate on what is their concern with, on the basis of consultation, so that we perhaps can do that last mile or last millimeter, as it seems to me at least, to bridge this difference and that we have this positive outcome for our outgoing fellow member of the GAC, Benedicto Fonseca, and we don't get an outcome which would be a shame as Paul said before. So I think we are there. Perhaps elaborating a little bit on what is the concern more precisely can help us to find a new formulation for this bit.

MANAL ISMAIL GAC CHAIR: Thank you, Switzerland. Brazil, please.

BRAZIL:

Thank you, Jorge. Well, as I said before, I think it's not only the words. It's, I think, the spirit behind the words. What we were aiming at would be language that would give a strong message to the Board that this needs to be done. And as I understand and I see the reluctance to accept an alternative wording indicates that the spirit is not shared by others because they want to provide some language that can be seen as giving some leeway or some more flexibility for this to take place. Again, I'm not saying that the other parts of the community should not be consulted. I think, of course, they should.

The only thing, I think the decision to initiate the process is something that cannot wait and cannot be dependent on a positive reply from everyone because this would not be there. If you start the process by asking GNSO and ccNSO if they want -- they will say probably no. So it's different to say to initiate the multistakeholder in consultation necessarily of those parties, or to on the basis of the consultation to start. So I think behind the words there is a spirit of what we mean.

Maybe, and I'm relating to language that has been kindly proposed by the distinguished representative from Iran who reminds that when the IANA transition process established, was launched, the language we had was a decision to convene the multistakeholder process to develop a proposal. So maybe if we can say something around that and we don't mention on the base of consultation, but to convene a multistakeholder process blah, blah, blah.

That might be a way that could -- but again, I think the spirit behind what is being proposed is something very important. If we are not

sending a strong message, I don't think it could be acceptable for us who have been for years and for hundreds of hours and meetings trying to push this forward. We don't want an exchange for the approval of a report. We have sensitivities we have just to accept the process that is proposed even by us in very weak terms.

But maybe we could look into the language that started the whole process and see if there could be some common ground in that regard. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. U.K., please.

UNITED KINGDOM: Thank you, Chair. I will make one final effort to see if we can agree. I think the points about the consultation for many of us is that it needs to be a meaningful consultation, not just an exercise that is then ignored. It needs to be a meaningful consultation and the Board should respond to the consultation because this is a multistakeholder effort. So my suggestion would be, as I say, a final attempt, to say acting in consultation. Acting in consultation. To make it clear that it is a meaningful consultation. And perhaps with that, we might, at this late hour, be able to move forward. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U.K., for the constructive proposal. Iran, please.

IRAN: Thank you, Manal. I think perhaps the safest way would be we take the language of the letter of NTIA in 14 March 2014 to ICANN and asking the process. And the language, I have it here, mentioned NTIA asked ICANN to convene a multistakeholder process. And then it says here, to initiate a multistakeholder or initiate a process to convene a multistakeholder and go with the remaining parts. So with this language, the standard came from NTIA in 2014, and the entire Work Stream 1 and Work Stream 2 was based on this language.

MANAL ISMAIL GAC CHAIR: I'm sorry, Iran, can you repeat the exact language again so that Tom can put it on the screen? I think maybe we can start a new bullet.

IRAN: To initiate the process to convene a multistakeholder to develop and so on and so forth. That is the beginning. Not talking on the basis of.

MANAL ISMAIL GAC CHAIR: To convene a multistakeholder what exactly?

IRAN: A multistakeholder process.

MANAL ISMAIL GAC CHAIR: So initiate a process to convene a multistakeholder process?

IRAN: No. Initiate a process to convene a multistakeholder.

MANAL ISMAIL GAC CHAIR: It's missing something. A multistakeholder --

IRAN: Yeah. If you don't want to talk about this [inaudible] to convene a multistakeholder. Take out the initiate. The letter says to convene a multistakeholder process. And then continues the rest. But delete, to initiate. To convene a multistakeholder process, and then continue the sentence. Delete the rest. This is not consistent.

MANAL ISMAIL GAC CHAIR: So you're basically suggesting that we delete, on the basis of consultation, and, acting in consultation, also?

IRAN: Yes. This is a distraction to the ICANN when we say there to convene a multistakeholder they know what they do. Usually they do consultations. Usually. That is what they have done for the Work Stream 1 and the IANA foundations. So we don't need to explain to ICANN what they do. They know what they do. And that is what NTIA told to ICANN. NTIA did not say to ICANN to base on the multistakeholder consultation. We just need to convene. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Iran. Okay, so proposal now, we have two proposals now. Proposal from the U.K.: acting in consultation. And proposal from Iran that we just delete, on the basis of consultation, and, acting in consultation. And I see Argentina.

ARGENTINA: Thank you, Madame Chair. We agree with the proposed text by the distinguished representative of Iran. I think it's not reflected in the screen. It should say, convene a multistakeholder process to address the issues regarding jurisdiction that were not resolved in the cross community.

MANAL ISMAIL GAC CHAIR: Argentina, the proposal was, initiate a multistakeholder process.

ARGENTINA: No, no, no. No. Initiate a process to convene -- no, it starts, to convene a multistakeholder process -- you can delete it in point two -- a multistakeholder process to address, and the rest is the same. Why is this proposal more consistent? Because if I can convene a multistakeholder process should be in consultation and acting in consultation and all the variations that were expressed. So it's more concise and it covers the spirit of the multistakeholder process that ICANN does. So we see it as more adequate. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you very much, Argentina. So, U.K.

UNITED KINGDOM: Thank you, Chair. Well, we have been spending a lot of time making step-by-step compromises to try to meet each other in the middle. The new suggestions, I do not think are compromises at all. They are simply the opening position at the beginning of this week that we heard from Brazil.

I would still like to hear a response from Brazil to my proposal because I think it might be a way forward. If it's not, I would suggest that we delete all of the GAC advice and we go back to the language that Brazil had proposed. We've got some amendments we'd like to make to that language. But it would be good to get a response to my suggestion on acting. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U.K. So, Brazil.

BRAZIL: Thank you, Manal. And I'd like to react to everything that is on the screen. I think what is in [inaudible] two, small two, does not correspond to anything that was proposed here so I think it should be deleted. Because I think Mr. Kavouss was clear in saying that he was proposing the same language that was proposed by NTIA, which prompted the whole exercise, that says to convene. Not to initiate, to convene.

So in regard to what was proposed by the U.K. before, I think it would be a step forward I think in addressing our concerns. However, looking at the language that was proposed by Iran, which I think is not something new. It's new in the context of the negotiation we are undertaking here, but it's not new in the sense it is the language that started all the process, all the discussions we are having. And this is a language that was tested and I think was not subject to any kind of reservation. And that enabled the system, the ICANN community to engage in the way we have been engaging.

So my preference at this point in time would be to take [inaudible] two. I think this is something, again, that was there from the start that guided us through our work. I don't see -- maybe if the U.K. or the others have -- I'd like to hear what would be the objection to say, to convene a multistakeholder process. Especially because this is what the language that was agreed and started the whole process. I don't see a reason to have any concerns about that. And as it was explained, a multistakeholder process by ICANN has characteristics and will be addressed accordingly. I don't think we should be -- we do not need to be prescriptive about how this will take place.

So I think that would be a way out, to have the advice. Otherwise, I think we could revert to the language that was read out by Thiago before. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. So may I suggest that we make a pause and you negotiate -- I mean both the acting and consultation. I think we're

almost there. It would be a pity, after all this, that we don't come up with GAC advice on the matter. So maybe we can quickly -- U.K., I'm sorry. You're seeking the floor?

UNITED KINGDOM:

Thank you, Chair. It's very late now. We negotiated for some time in good faith and I'm sorry that what we are seeing is colleagues going back to their opening positions. And I think it's disappointing, but if that is what is happening, my proposal would be to delete all of the GAC advice here and go back to the paragraph proposed by Brazil explaining why there is no consensus. I think it's too late now at this time. As I said, we already negotiated in good faith and made many compromises. And just going back to opening positions is not helpful. I think it's time to stop. Thank you.

MANAL ISMAIL GAC CHAIR:

Brazil.

BRAZIL:

I am forced to concur. The same good faith was there in my delegation from the start. Not only today but in the last four years. And we have been expressing very clearly and transparently what our position is, what are the red lines, so it's for anyone to assess whether this would address or not the concerns. Again, I think we are not reverting to any opening position. I think we are exploring some new language.

And I thank Mr. Kavouss from Iran for proposing this and recalling this I think is something that could help us out. In our dealings, we sometimes refer to precedents. Some precedents are good, some are bad. I think in this case this is a good precedent, a language that accommodated a process and enabled full participation of all parts of the community.

So I thank my U.K. colleague and others for their participation also in good faith. I think it's not a question of good faith or not. It's a question that sometimes we cannot overcome differences. And this is something we should look straight in the face and say that it is. So I think we -- I agree at this point in time it's worthless to keep pursuing any attempt to reconcile this. I think we should revert then to the language that was read out by Thiago. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. So I suggest we move on to the human rights part so that if we need a pause we can take it and then come up with a clean version and draft. I'm sorry, U.K.

UNITED KINGDOM: Thank you. So could we indicate that there is no GAC advice in the document just so we've recorded that? I don't know, with square brackets or whatever. A strikeout.

MANAL ISMAIL GAC CHAIR: I'm just parking it until we go through the human rights thing and maybe we can give it a final try.

UNITED KINGDOM: Okay.

MANAL ISMAIL GAC CHAIR: Thank you. So the human rights part. So now we have the current text on the screen. I will try to propose a way forward of this. I hope it helps. But maybe some GAC members raised the need to have ways and means to address this issue. And we specify the issue, of course, but I'm talking about the language in principle whether this is accepted, that some GAC members raised the need for this to be looked at.

Sorry, I'm just probing the floor in principle. I'm not ready with concrete text. U.S., please.

UNITED STATES: Thank you. Just to clarify, this is still in the section that was intended to explain our views on the CCWG report. So my understanding is that this whole section would be replaced with whatever we agree to in terms of we were not able to reach consensus. That paragraph that was proposed by Benedicto. So this whole text would go away, all of it would go away.

MANAL ISMAIL GAC CHAIR: Good question. So if we're not providing advice on Work Stream 2, the whole thing would go away? I assume so. So let's target to finish by eight. And let's pause now and try to make a final try and target eight. Thank you. [AUDIO BREAK]

So can you please take your seats so that we can try to finalize. We now have the text that has been helpfully provided by Switzerland. And it reads: The GAC advises the Board to convene a multistakeholder process acting in consultation with the ICANN community to address the issues regarding jurisdiction that were not resolved in the Cross Community Working Group Work Stream 2. Is this Swiss bridge accepted by everyone? Okay, going on.

BRAZIL: No, no. Sorry. I would like to thank Jorge for this, for this attempt. Again, I revert to what I said before. We are concerned about the message we are sending and the spirit of the message. So maybe we should bracket it and I don't know, sleep on it. Is it possible?

MANAL ISMAIL GAC CHAIR: But we don't have any GAC meetings tomorrow.

BRAZIL: If we don't want to have one. But if we need one, we can have one. It depends. I don't know. I think we need to have some more consultations in order to respond to it. But we'd like to thank Switzerland for that.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. So the proposal is that we find finalize it over email or convene tomorrow at some point in time. So first of all, is everyone okay with parking this until tomorrow and having nightmares?

BRAZIL: If I can suggest, I think I see no one in the room with the intent to come back tomorrow on this. Neither ourselves. So maybe we could address it, finalize by mail as you have suggested. I think there could be two alternatives. The one, the Swiss proposal, but again, the same Swiss proposal without the text, acting in consultation with the ICANN community. I think those are the two alternatives that are to be seen by each group whether there is flexibility or not to accept. So I think maybe the answer to you would be there would be two alternatives there. Thank you.

MANAL ISMAIL GAC CHAIR: Is this accurate? Okay. So are we okay to sleep on both proposals until tomorrow? U.K., please.

UNITED KINGDOM: Thank you, Chair. We don't think we should be extending our meeting beyond the scheduled time into tomorrow. This is not a good way for the GAC to organize its business. We think that Switzerland have done a good job in trying to make a bridge between the two sides. And we could live with the language that Switzerland has suggested if it gets

us to an agreement. But it seems to us that others are going back to their original positions and sleeping on it is not going to change that.

And we would suggest now deleting the advice and going back to look at the paragraph from Brazil which explains that we have no consensus. If we don't have consensus now, I don't see how we will get consensus in the morning. We should observe the timetable that we agreed for our meetings and we should accept that we are, unfortunately, in this position and reflect it properly in the communique.

So we suggest deleting the advice and going back to the paragraph suggested by Brazil and having a look at that. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U.K. So, Argentina.

ARGENTINA: Thank you, Madame Chair. And thanks to Switzerland for proposing an alternate text. But we think that the second sentence on the screen, convene a multistakeholder process to address the issues regarding jurisdiction that were not resolved in Cross Community Working Group Work Stream 2 is quite clear. And any multistakeholder process that ICANN starts is always in consultation with all the parties involved. So it's self-explanatory.

And just to remember, the Beijing Communique was finished at 5 am and we missed we missed the gala that day. Some of us were there.

And so it's not such a big thing to be here eight-twenty or trying to find a way out of this text. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Argentina. U.S.

UNITED STATES: Thank you, Chair. So I, unfortunately, have to not agree with the last intervention largely because of the way it was explained to us for why this was acceptable which was basically moving forward with the process without the input and buy-in from the other stakeholder groups.

I think if we clarify that people recognize that yes, convening a multistakeholder process would also require getting first their buy-in and agreement to have this process, then perhaps we could agree. But that's not how it was explained. Thank you. And I have to perhaps agree with Paul here that perhaps it's now time to just move on and consider, just recognize that we can't consensus. Thanks.

MANAL ISMAIL GAC CHAIR: Thank you, U.S. So any further requests for the floor? If not then we force them to delete the advice. Iran, please.

IRAN: Thank you, Manal. Just a wish to remind ourselves that several years ago, with respect to the GAC advice relating to that one and that one.

There was a similar situation. Some people proposed, let us not have any advice. Then European countries say, okay, we don't have advice, we don't have communique. This is a very important issue, this jurisdiction.

And I don't think simply we say no advice. I'm sorry to give you a very simple example. If somebody is ill, instead of treating that, killing that, it's not good. We have to treat that. So I don't think that we go ahead with the no advice. Just reporting what is happening. I'm not suggesting anything. Thank you.

MANAL ISMAIL GAC CHAIR:

Thank you, Iran. I'm equally dissatisfied, but unfortunately, this is the only consensus we have reached. So this is the text that would then go into the communique. The GAC is not in a position to approve the recommendations on jurisdiction. Some GAC members support the recommendations.

Other GAC members consider that they fall short of the objectives -- probably, or objects -- objects envisaged for Work Stream 2 and only partially mitigate the risks associated with ICANN's subjection to U.S. jurisdiction. The reasons why these members object to approving the recommendations are documented in the dissenting statement submitted to the CCWG by Brazil, supported by Argentina, China, France, Iran, and Russia.

BRAZIL:

It is objectives instead of objects. I'm sorry.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. Indonesia.

INDONESIA: Just a small [inaudible] for all of us and also for [inaudible], Manal. This type of this consensus happened many times, actually. And in many, many previous cases, what we did is we also put in our communique the dis-consensus that we have. Some countries would like A, some countries would like B. And so if I may suggest, we can put it like that, the wording is such that there is some differences in agreement in this particular topic. So it just shows the fact that we have. And perhaps it is not the focused advice, but still, it's just what we have. Then it can be communicated that we had no decision, no focused final decision yet.

And another one is that it also happened in many other meetings, you see. Not only in ICANN, but also in other meetings. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Indonesia. I think this was the gesture of the text. And I'm afraid, although you make a good point, but it's very late to start drafting new text and discussing it. Yes, I have Denmark and Argentina.

DENMARK: Thank you, Madame Chair. The first sentence, I think we should make it perhaps a little more clear by saying that GAC is not in a position to

approve or reject the recommendation. So we are saying that clearly that there is two positions. Thank you.

MANAL ISMAIL GAC CHAIR: Okay, Argentina.

ARGENTINA: Thank you, Manal. Just a clarification. We agree with the suggestion by Denmark. The reference to the dissent in the statement submitted to the Cross Community Working Group, the list of countries is longer. I can send it by email if you want.

MANAL ISMAIL GAC CHAIR: So can you read it now for the sake of time?

ARGENTINA: Sure. Argentina, Benin -- are you taking notes? Oh, you're taking notes. It's in alphabetic order, right. Brazil. It's already there. Chile, Commonwealth of Dominica, France is still there, Guinea, Mali, Nigeria, Paraguay, Peru, Portugal, Russia is Russian Federation, and we still have three more. Democratic Republic of Congo, Uruguay, and Venezuela. Thanks.

MANAL ISMAIL GAC CHAIR: Thank you, Argentina. Any other comments on the text on the screen? Iran, please go ahead.

IRAN: Sorry, we need a comma after Iran. That's the only comment.

MANAL ISMAIL GAC CHAIR: Thank you. So we're done with the jurisdiction part. We'll move on to the human rights. So this is new text that reads: Some GAC members raised the need to find ways and means to address the right of citizens of the concerned countries regarding DNS and TLD affairs to prevent the negative impacts of unilateral coercive measures and sanctions.

Is this text accepted? I'm just pausing for everyone to read the text. Any comments? Shall we move on? Yes, U.K., please.

UNITED KINGDOM: Thank you, Chair. We haven't commented on this topic so far, but I think we would agree with those who pointed out that this does not reflect what happened in our meeting. And from a procedural point of view, we think it would be better to delete it. Thank you.

MANAL ISMAIL GAC CHAIR: So there is a proposal for deletion. Any objections to deleting the whole text? So we're deleting this whole part? Yes, Iran, please.

IRAN: I think we can express that some other countries find this inappropriate because it was not discussed enough. But I think this is our right that our concern would be mentioned in the communique.

And it was also obvious from the discussion over jurisdiction that it's not very easy to address the topic of sanctions under jurisdiction either. So it's also something interesting. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Iran. Your points are noted. Thank you. U.S., please.

UNITED STATES: So can I seek clarification? Is Iran agreeing or are they insisting that it remain? I wasn't clear on the last intervention. Thank you.

MANAL ISMAIL GAC CHAIR: Iran, please.

IRAN: Yes, we insist that it remains. But it can be added that some others thought that it should have been discussed further.

MANAL ISMAIL GAC CHAIR: I have a request for the floor first from Russia and then -- yes, Russia, please go ahead.

RUSSIA: Thank you. We also insist on remaining the text. Maybe we can move it to another part of the communique, for example to Other Issues. But we clearly discussed it and it needs to be indicated in the communique.

MANAL ISMAIL GAC CHAIR: Any objections to moving the text elsewhere in the communique? U.S., please.

UNITED STATES: Again, speaking just procedurally -- first of all, thank you, Chair. But speaking procedurally, I think if we're going to be in line with respect to where this was discussed and how it was discussed, and in keeping with the rules that we've all agreed to in terms of communique drafting, if it wasn't discussed in plenary, then it's not to be reflected in the communique.

I think perhaps one thing, at least I'd be willing to consider, I don't know about the rest of my colleagues, is to maybe look back to the High-Level Governmental meeting section of this communique and perhaps as a starting point, perhaps we could consider noting the interventions made by representatives and perhaps having a link to the different statements or whatever is available to us in order to ensure that not only Iran's concerns, but all the concerns that were raised during the High-Level Governmental meeting. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, U. S. So any reactions to the U.S. proposal? Iran, please.

IRAN: Thank you, Madame. The situation and difficulty raised by some GAC members and counter-statements by other GAC members is not an

issue to be discussed or to be referred to in a hyperlink. My colleague mentioned that you add to the end of that one, some other GAC members indicated that this issue has not been fully discussed. Fair enough. Two sides of the situation. But you could not put it in a hyperlink.

MANAL ISMAIL GAC CHAIR: Iran.

IRAN: Yes, this is fair enough. We can accept that.

MANAL ISMAIL GAC CHAIR: Australia.

AUSTRALIA: Thank you, Chair. Just to go in on a procedural issue, I don't think we should be suggesting that -- I'd be happy to move the text to the High-Level meeting where it was raised. I think we should be keeping to a factual account of what was discussed in the communique. So rather than having some other members were of the view that it had not been sufficiently discussed where that's kind of revisiting a discussion, if we just move the text to the High-Level meeting, I think that would resolve my concerns anyway. I'm not sure what others think about that. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Australia. U.S.

UNITED STATES: Thank you, Chair. So I definitely agree with my colleague from Australia in terms of it's much better placed in the High-Level Governmental meeting. But what I am concerned about is that it is recognizing the views in interest of one intervention and not those of others.

I'm scrolling up now to the text and the high level governmental meeting to see how, I don't recall how the text is in there but what I would recommend, if we're moving it to this section, if we can also can include a high level and I don't mean a lot but a summary of some of the other points that were raised during that conversation as well, to ensure that we balance this and make that we're not giving precedence over one -- the views of one intervention and not those of the others. Thank you.

MANAL ISMAIL GAC CHAIR: I think it's going to be very difficult to put new text now. Iran.

IRAN: Thank you, Manal. Some distinguished colleagues refer to a procedure, which procedures are they referring? Can they kindly identify which procedure is that? We have some recent procedures. We don't have that. We are operating under the operating principle. Which procedures they referring to kindly? Thank you.

MANAL ISMAIL GAC CHAIR: US, please.

UNITED STATES: I'm not sure if that was directed to the United States, could Iran clarify?

MANAL ISMAIL GAC CHAIR: Iran, please, if you can clarify which intervention exactly are you referring to?

IRAN: One which distinguished colleagues referred to the procedures. Which procedures they referred?

MANAL ISMAIL GAC CHAIR: If you can just provide some context?

IRAN: Some countries?

MANAL ISMAIL GAC CHAIR: Some context.

IRAN: When we discussed this issue and our colleagues proposed the second part of the sentence, some other member of the view that, this issue

had not been sufficiently discussed, then one delegation or one GAC member referred to a procedure. I'm asking what procedure?

In fact, it was our distinguished colleague from Australia. Usually I don't refer to any name or any country but you are asking the question, now I have to mention. Distinguished colleague also mentioned that procedure, so what procedure? This is two sides of the view. One view is that one, the other view is that one. It's always like this.

MANAL ISMAIL GAC CHAIR: If I understand correctly, probably the reference was that it was not discussed here, it was discussed or raised at the high-level governmental meeting and that's why the suggestion to move the text to the right section of the communique. Iran, please.

IRAN: It was discussed here more than one hour and 45 minutes, so I you couldn't say it discussed here. We do not refer into the high-level governmental meeting and so on and so forth here, it was just discussed here several times, we could not say it was not discussed here.

MANAL ISMAIL GAC CHAIR: I think the reference was to the point when this was initially raised but yeah. US.

UNITED STATES: Thanks. I agree that I think the primary concern here is that it's where the conversation happened, in this case it was in the high-level governmental meeting and with respect to the reference to whether or not it was discussed at Plenary, our GAC Secretariat support always provides an issue paper on GAC communique drafting and I believe it's that text that specifically says, that communique text is limited to discussions that are had in plenary. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, US. There is no acceptance that we move this to the high-level governmental meeting section unless we provide other things that were discussed there as well. Am I reading your intervention right US? Currently there is a proposal to move this text on the screen to the high-level governmental meeting section in the communique, any objections? US.

UNITED STATES: If my colleagues from Iran agree to moving it, I'd be happy to take a few minutes to try and draft a couple of sentences that puts it a bit more in context and in fact there were other statements made to try and reach compromise on this issue. With that being said, I still am not in a position to agree to having it in the current because quite frankly it was not a subject of human rights in the context at the Cross Community Working Group. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, US, your point is noted and if possible, to provide the text that would make the sentence acceptable to the US, this would be very helpful. Any other comments on this part? Until we received the text -- we have read the GDPR section just once and there was a request that we go through it again paragraph by paragraph, which we didn't do at the very beginning, we are going to do this now. The text reads, the title is as agreed, WHOIS Data Protection Legislation.

So, the text reads, "The GAC reviewed development across ICANN with regard to WHOIS access and compliance with the European General Data Protection Regulation GDPR and GAC members participated in Cross Community Sessions and expedited policy development process EDPD. The GAC had an exchange of view with the Non-Commercial Stakeholder Group and the Intellectual Property Constituency on developments with regard to the EDPD and Unified Access Model." Brazil, please.

BRAZIL: Thank you, Madam Chair. Just to bring inline the text of the first paragraph with the title of the section, Brazil asks for the replacement of the reference to the European General Data Protection Regulation for Duplicable Data Protection Loss. Thank you.

MANAL ISMAIL GAC CHAIR: Is this okay? Any objections? Jamaica.

JAMAICA: Thank you, Madam Chair. It's not really an objection, it's really just a clarification because I agree with my colleague from Brazil that we did discuss other data protection laws and I still maintain that, that we ought probably to be discussing, maybe I just don't remember but my recollection of when we got to this point was that and most of the discussions tend to be around the GDPR.

No, I don't have a difficulty with a language that also indicates that in those discussions we said that ICANN should not just look at compliance with GDPR but with wider data protection legislation but I think for fidelity purposes we still need to reference the GDPR in our discussions and then explain that it was expanded just beyond GDPR, my suggestion.

MANAL ISMAIL GAC CHAIR: Would it be Applicable Data Protection Laws Including GDPR?

JAMAICA: That would be acceptable for me or the other way around, GDPR and Other Applicable Laws, either one is fine.

MANAL ISMAIL GAC CHAIR: Any objection? Can we move on? Bangladesh, please.

BANGLADESH: Madam Chair, thank you very much. If we delete the word Applicable, then it would be more generic. With Data Protection Law Including

GDPR because applicable, again there will confusion with the applicable.

MANAL ISMAIL GAC CHAIR: There is a proposal to delete the word applicable. Any comments or objections to the text as it stands? Moving on. “Protecting the public in the context of the domain name system requires balancing data protection and the legitimate and local practices associated with protecting the public, including to combat illegal conduct, promote cyber security and user confidence in the internet, protect consumers and businesses and prevent the infringement of intellectual property.

Prior GAC advice and current ICANN bylaws recognize these vital interests, moreover the article 29 Data Protection Working Party and European Data Protection Board have recognized that ‘Enforcement Authorities Entitled by Law should have access to personal data in the WHOIS directories’ and stated their expectation that ICANN should ‘develop a WHOIS model that will enable legitimate users by relevant stakeholders, such as law enforcement.’”

LAUREEN KAPIN: I just want, as a point of order, I think our footnote referencing those particular dates of the letters involved has somehow disappeared from this version, I just wanted to note that we actually have references to the dates of those letters for clarity. I’m happy to resend it but I do notice that it’s missing.

MANAL ISMAIL GAC CHAIR: Yes, we have them, we will put them back, sorry for the unintended deletion. Brazil.

BRAZIL: Thank you, Madam Chair. Brazil would like to ask for the addition after confidence in the third line of the second paragraph, the addition of the following language, “and consumer trust”. And Brazil would ask for the deletion of what comes after the comma, of what comes after internet until after property.

The reason why Brazil ask for the deletion of this is, we are referencing here that one of the issues to be taken into account is to prevent the infringement of intellectual property but we have already said at the beginning of this paragraph or of this sentence that one of the proposes is to combat illegal conduct, which covers intellectual property infringement. We don't see the need of referencing intellectual property separately. Thank you.

MANAL ISMAIL GAC CHAIR: Any comments? Yes, US please.

UNITED STATES: Thank you, Chair and I appreciate Brazil's attempt to streamline the text but it's actually very important to the United States that we maintain a reference to intellectual property because it is very important and it's often left out of the conversation with respect to

their legitimate and lawful interest. If at all possible, if we could maintain that reference it will be greatly appreciated. Thank you.

MANAL ISMAIL GAC CHAIR: Brazil, any problems with keeping the text? Yes, please go ahead.

BRAZIL: Brazil wouldn't have a problem keeping the reference to intellectual property in that part of the text on the condition that subsequent reference to intellectual property, which comes further down, that section be deleted. Thank you.

MANAL ISMAIL GAC CHAIR: Is this something we are still to come across later in the text?

BRAZIL: Yes.

MANAL ISMAIL GAC CHAIR: Okay, then we leave this as is until we reach the other occurrence. Moving on, "The current temporary specification has created a fragmented system for providing access consisting of potentially thousands of distinct policies, depending on the registrar involved. This lack of consistent policies to access nonpublic information poses delays.

If investigations are delayed or stopped, the unlawful conduct continues to harm the public with negative results that include physical and financial harm. Hence, time is of the essence for implementation of a final specification governing gTLD directory services and developing a unified access model for third party access to nonpublic WHOIS data.” Any comments? Brazil.

BRAZIL:

Thank you, Madam Chair. Brazil would like to ask for the replacement of the word unlawful which appears in the forth line in that paragraph by the word potentially and the reason is, we’re not always in the position to determine beforehand whether the action is indeed unlawful or not, particularly if we take into account that one of the parties that might want to gain access to data refers to -- are in fact no law enforcement agencies but are cyber security officials who are not in a position to determine whether action is lawful or not. Thank you.

MANAL ISMAIL GAC CHAIR:

Thank you, Brazil. Is proposal accepted? Okay, moving on. “Existing requirement in the temporary specification governing gTLD registration data are failing to meet the needs of the law enforcement and cyber security investigators. Survey results show a clear trend that since its implementation the temporary specification has significantly affected law enforcement and cyber security professional’s ability to investigate and mitigate crime.” Yes, Brazil.

BRAZIL: Brazil would like to ask for the addition of the following text after the word ‘are’ -- immediately before failing to in the first line of that paragraph, and the text would be “Making it more demanding for.”

MANAL ISMAIL GAC CHAIR: Where exactly? The text would read, “Governing gTLD registration data are...”

BRAZIL: “Making it more demanding for...” would like to ask for the deletion failing to. Meet the needs of the, we were going to ask for the deletion of failing to until the, failing to meet the needs of the. Deletion until the word the and then more text immediately after investigators, you will have to scroll down the page. To gain access to personal data. And final addition to this paragraph, after the last work crime, the addition would be, using information that was publicly available in the WHOIS system previously. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. Can we scroll up a bit so that we have the full paragraph. Thank you, Tom. European Commission.

EUROPEAN COMMISSION: Can I ask Brazil please to justify also their reasons for their latest additions and deletions?

MANAL ISMAIL GAC CHAIR: Brazil, please.

BRAZIL: Thank you. In response to the question, as regards to the first suggested amendment. Brazil doesn't perceive that law enforcement are always prevented from gaining access to information if they resort to the appropriate mechanism in accordance to applicable laws. Brazil's understanding is that in fact the adoption of temporary specification has made it more difficult for them to gain access but not necessarily that their needs, which are need to be informed by the applicable laws, we do not believe those needs are unqualifiedly compromised. If I can ask you a question, what would be the objection that you would have in relation to the text that was suggested? Thank you.

MANAL ISMAIL GAC CHAIR: Yes, please Cathrin.

CATHRIN BAUER-BULST: Yes, thank you Manal, and thank you Thiago for this reasoning. I think the reasons that lead us to believe that there is a need to pass a little bit more a strong message here because this language now is extremely, let's say it's extremely reluctant to take a position as to whether it's a positive or a negative development and what we have seen from consulting law enforcement agencies around the world is that the WHOIS information is an absolutely essential part for their investigations, that can be replaced by other information, that they're

not having access to that information that that leads to a delay for a significant proportion of investigations and a significant additional proportion of investigations, I believe it was in the area of 26% was discontinued entirely because of the affect of the temporary specifications.

When we talk about the needs of the law enforcement agencies here, it's not their personal interests in gaining access to this data, but it is their public role in protecting the safety and security of individuals by preventing and prosecuting crime and if we say that it has made it more demanding for them, that's a completely different tone, which is why we believe that the previous language more appropriately reflects a significant concern that has come out of the discussions, the GAC and elsewhere.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil.

BRAZIL: Thank you, Madam Chair. Thank you very much, Cathrin, for you explanation. The difficulty we have with going forward with the language needs of the law enforcement agencies is because we believe that the needs are informed by the law. The need of law enforcement agencies is to follow and abide by the law and the adoption of the temporary specification has not foreclosed the possibility as such for the law enforcement and officials to gain access to data in a accordance with applicable procedures.

What it has done to our understanding, is it made it more difficult for law enforcement officials to gain access to information that was previously publicly available but it doesn't necessarily mean that that information for those law enforcement officials to gain access to that information that was publicly available, it doesn't necessarily mean that those access previous to the changes were necessarily based on a right to gain access to that data. If I'm explaining myself not to unclearly.

The point is, if I can try to restate it in a slightly more straightforward way. The laws that law enforcement officials rely on in order to gain access are still there and they allow those agencies to gain access to data. What is happening on the other hand is that data that was previously available for law enforcement officials without the need for them to follow any due process is now being precluded. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. I have Laureen.

LAUREEN KAPIN: I hear what you're saying when you're talking about the law still providing access but that is not what this language is talking about. This language is not talking about the GDPR, this language is talking about the temporary specification and the temporary specification has certain insufficiencies, most particularly that it requires reasonable access but doesn't define what reasonable access means

and doesn't have any consent, uniform method for law enforcement to obtain that reasonable access.

This comment is, as your explanation, it sounds like your objection is if this comment were saying the GDPR has failed to meet the needs of law enforcement, in which case I would totally agree with you, that is not the right comment to making, this is directed towards the temporary specification. What we heard again and again, both through these surveys and through law enforcement representatives and cyber security professionals is in fact the temporary specification is not meeting the needs.

MANAL ISMAIL GAC CHAIR: Thank you, Lauren. Just a point of order and then we will continue.

TOM DALE: Thank you, Manal. I've been informed of a number of logistical issues which I think need to be drawn to your attention. The scribing service, they will cease in about 10 minutes. The record of the meeting will be maintained though, there will be recordings continued and they can be updated in the transcript and due course.

The room itself will not be available after 10 o'clock, which is just under one hour away, so that is the end of the GAC's use of this room, that is how it is. It maybe that interpreter services may have to finish sooner than that. Just a note of appreciation for the interpreters working late to the extent they already have. I thought I would just pass that information on, it's quite important. Thank you, Manal.

MANAL ISMAIL GAC CHAIR: Thank you very much, Tom. With this in mind, is the text on the screen acceptable? Any suggestions or remarks? Laureen, please.

LAUREEN KAPIN: Well, we stated our problems with the changed text.

MANAL ISMAIL GAC CHAIR: Brazil, can we revert back to the original text?

BRAZIL: Is it possible for the US and the European Commission to proposal alternative text?

UNITED STATES: Since we have a problem with the premise -- we think that the premise of your comment is based on mistaken interpretation of what we said, therefore we don't have a proposal for changed text because the premise of your remarks was interpreting this as a comment on the GDPR when it's not, it's a comment based on the insufficiency of the temporary specification.

BRAZIL: I suggest we move forward and then we come back to this after we've discussed this offline. I'm going to go towards Laureen so I can get a better understanding of our differences there. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil. Moving on, we have the bullets first. The current WHOIS systems ability to meet law enforcement needs has been drastically reduced. Investigations are delayed or discontinued. Many cyber security professionals do not know how to request access for nonpublic information. Many of those seeking access have been denied access. Brazil.

BRAZIL: Brazil's comment goes to the first bullet and it relates somehow to the previous comment and our suggestion would be to that this bullet reads as follows, the current WHOIS systems ability to facilitate law enforcement authorities' access to personal data has been significantly reduced. Thank you.

CATHRIN BAUER-BULST: I just want to know that this language is taken verbatim from the RDS2 Review Team Survey of investigators and explain or to address your suggestion or your concern about the need of law enforcement, one could perhaps insert, meet law enforcements investigative needs to clarify, which I believe is also in the original survey question. We are not stating the question and the result that we got from the survey if we change the wording.

MANAL ISMAIL GAC CHAIR: Thank you, Cathrin. Brazil.

BRAZIL: I understand this point is related to the previous one so we move forward and then we discuss those two issues together.

MANAL ISMAIL GAC CHAIR: Similar concerns exist for those involved in protecting intellectual property, therefore we think it would be useful for ICANN to provide a dedicated platform for the collection of evidence on the impact of the temporary specification. Brazil.

BRAZIL: Thank you. This is part of the compromise Brazil offered in the exchange it had previously with the US. This statement of which deletion we would suggest and then it would start, the GAC think it would be useful to ICANN to provide and we suppress similar concerns exist for those involved in protecting intellectual property.

MANAL ISMAIL GAC CHAIR: I'm sorry, WIPO.

WIPO: Thank you, Chair. Respectfully, also noting that this not in the in-vice section, we think this a factual statement and we would very much prefer that it stays. The concern being that there's a considerable focus rightly on the needs of law enforcement, we there's a risk that the interests of IP enforcement and the consumer protection angle

behind trademark law may be left behind in the discussions. Thank you.

MANAL ISMAIL GAC CHAIR: Brazil, is this acceptable?

BRAZIL: Brazil considers that the reference to intellectual property rights is already present in the very first paragraph of the section therefore we will oppose repeated reference to these. Thank you.

MANAL ISMAIL GAC CHAIR: Cathrin.

CATHRIN BAUER-BULST: Thank you very much, Manal. I think we're talking about two different things here because the references here are to the specific concerns for those involved in protecting intellectual property, some of which are reflected in the surveys that we have referenced before. It's a completely different sentence here which makes it very difficult to delete this reference.

In the spirit of compromise, rewording that could be considered is that we go to the previous section where there was a reference to intellectual property that was seen as being an additional to what had already been clarified as illegal conduct, instead we could say illegal conduct, including infringement of intellectual property, so that we

move it up to clarify your concern that we're not separating out intellectual property infringements from the rest of illegal conduct and the we leave the sentence where it belongs with a completely different sentence. Would that be something that Brazil would be able to accept in the spirit of coming to an agreement on this non-advice text?

MANAL ISMAIL GAC CHAIR: Brazil.

BRAZIL: Thank you. This is acceptable, yes.

MANAL ISMAIL GAC CHAIR: Thank you, Cathrin and thank you, Brazil. Cathrin can you please repeat again because we don't have the transcription anymore so if you can.

CATHRIN BAUER-BULST: Including to combat illegal conduct -- it's in the third line, illegal conduct, such as infringement of intellectual property, and promote and then you continue on with, promote cyber security. Then you would cut the reference to and prevent the infringement of intellectual property there at the end of the sentence.

MANAL ISMAIL GAC CHAIR: Thank you, Cathrin. Brazil.

BRAZIL: Thank you. We also requested the deletion of, reference to protect consumers and business, which was the result of us putting and consumer trust, the sentence would end after internet. Thank you.

MANAL ISMAIL GAC CHAIR: Is this okay, Lauren?

LAUREEN KAPIN: I just have a quick question. Don't you want to protect businesses too?

BRAZIL: Yes, but then these are examples. As you can see, all those interests are expressed as part of something. There's the word including, we're including this, this and this is not exhaustive.

LAUREEN KAPIN: We can table this and put it with our list of issues we're going to caucus on. My observation here is that your -- it's not even a list but your two big buckets of entities that you usually protect are consumers and businesses, that's just the typical two big buckets that you want to include because consumers does not include business and they're entitled to protection too.

MANAL ISMAIL GAC CHAIR: Brazil, are you requesting the floor?

BRAZIL: Sorry, Madam Chair, I was just considering whether -- yes, it would make sense to keep reference to business. If this is so much a big deal for the US, yes, we can keep it there. Thank you.

MANAL ISMAIL GAC CHAIR: We are really under pressure to finish. They are going to switch off the lights. I'm sorry, I got distracted for a minute. Moving on, the GAC welcomes the progress made by the EPDP and emphasis the commitment of the GAC to contributing to the swift delivery of a comprehensive RDS policy.

In view of the complexity of the subject matter, the GAC is of the opinion that there none the less exists a risk that the comprehensive policy may not be in place before the temporary specification expires, therefore the community should consider how to mitigate this risk.

The GAG remains committed to working with the community and the expedited policy development process EPDP to ensure that third parties are able to have timely and predictable access to redacted WHOIS information in manner that complies with GDPR and other data protection laws. Although the EPDP charter tasks the team with defining what is meant by reasonable access, community work on developing a unified access model should proceed in parallel and can complement the EPDP's efforts. Brazil.

BRAZIL: Brazil would like to ask for the deletion of GDPR and other data protection laws and that it be replaced by reference to the applicable data protection laws. Thank you.

MANAL ISMAIL GAC CHAIR: I have another request of the floor from India.

INDIA: I support the recommendation made by Brazil. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, India. Is this acceptable? Okay, moving on. The GAC notes the importance of recognizing and taking into account other international data protection legislation. Iran.

IRAN: Thank you, Manal. I think we should replace notes with emphasis because notes means a different connotation in the language. A little bit more than notes. Thank you.

MANAL ISMAIL GAC CHAIR: Any objections? Any other comments? Brazil.

BRAZIL: In relation to the two outstanding issues, given that these texts appear where they appear in the communique and as a gesture of compromise, Brazil will revert to the original text. Thank you.

MANAL ISMAIL GAC CHAIR: European Commission.

EUROPEAN COMMISSION: Thank you, Manal. We're not only losing the scribes, I'm also losing my voice. I think the sentence now no longer makes sense because it was drafted before a background of us talking about the GDPR and the rest of the section and now that we have deleted exclusive reference to the GDPR in the previous paragraph, there is no such thing as other nation, regional and international data protection legislation because that's already referenced before. I'm wondering whether this sentence should not delete because it just creates confusion?

MANAL ISMAIL GAC CHAIR: Any objections to deleting the last sentence? Okay. Then I think we will hold on for a few minutes until you discuss the text. I'm sorry, Brazil, go ahead.

BRAZIL: Thank you, Manal. It is precisely in relation to the text, as I said before in my intervention, for the sake of compromise and considering that this text does not appear in any advice part of the communique, Brazil would gladly revert to the original text and we're speaking here of those two outstanding issues, when we discussed whether it would be okay to keep reference to the needs of law enforcement officials and

can revert to the original text on the understanding that this is obviously not advice text. Thank you.

FABIEN BETREMIEUX: Thiago, just to make sure, the second one is this one, using information that was previously, that was publicly available in the WHOIS system previously?

BRAZIL: The second one would be the first bullet immediately after this and I don't think that there was any objection to the inclusion that we suggested.

MANAL ISMAIL GAC CHAIR: Any other comments on the GDPR part? Iran, please go ahead.

IRAN: Manal, could you kindly mention why the text of the GAC emphasized so on and so forth was deleted? This was discussed in EPDP team, this was discussed in a small group of GAC, two GAC members, three alternates and then that was agreed that in additional GPDR we have to look other law and regional, international and so on and so forth, nothing is limited to that. Does it appear elsewhere?

MANAL ISMAIL GAC CHAIR: No, I think it was the deleted because we -- it was said that it makes no -- I mean we deleted things in the previous text so it doesn't make

sense to that sentence as it stands now after we deleted the reference to GDPR and data protection laws.

IRAN: Put it elsewhere, right?

MANAL ISMAIL GAC CHAIR: It's implicit in the text. It hasn't been moved elsewhere, it has been deleted and it's not implicit in the whole text. Laureen.

LAUREEN KAPIN: Maybe I can provide a little clarification. The changes that were made deleted references to the GDPR, particularly and instead made more general references to applicable data protection law i.e. laws of all jurisdictions not just the EU, therefore it was felt that this no long necessary. I hope that's helpful.

MANAL ISMAIL GAC CHAIR: Thank you. Iran, I see nothing and thank you Laureen for helping me to clarify this. Anything else on GDPR? We have the high-level governmental meeting section. We have received the text that should go into the section under high level governmental meeting.

BANGLADESH: Madam Chair, I'm sorry for the intervention. If you kindly scroll down, just two lines, we say the GAC...

MANAL ISMAIL GAC CHAIR: Just a second, Bangladesh. Which section are you referring to?

BANGLADESH: Part two just from the screen. We included data protection laws, including the GDPR. If we include data protection law including the GDPR, I think the lines that we proposed to strike that will remain. I may be wrong because I want to say, if this is para is specifically for GDPR, then we can strike that particular line but if this para is in other laws also, then that last line may remain because that will give respect to the other nations too.

MANAL ISMAIL GAC CHAIR: Cathrin, please.

CATHRIN BAUER-BULST: Yes, thank you very much Manal. Just to clarify, the reference is now to the applicable data protection laws, so it doesn't include, including the GDPR but rather it just refers to data protection laws general and there is no specific reference to the GDPR. Against that backdrop, it seems odd to then speak of other international, national and regional data protection laws because if they're not applicable and we have a generalized reference before then the question is raised, how those should be taken into account, given that we've already referred to the ones that should be applicable in the previous section.

That’s why that sentence no longer made sense logically and that’s we thought it might be useful to cut it out, given that there was no specific priority or prominence given to the GDPR in the previous section but rather the text was universal in its recognition of the need to comply with all applicable data protection legislation.

MANAL ISMAIL GAC CHAIR:

Thank you, Cathrin. Moving back to the HGLM part. The proposed text reads, “The views of one intervention were discussed in the context of the communique drafting, in this context some GAC members raised the need to find ways and means to address the right of citizens of the concerned countries regarding DNS and TLD affairs, to prevent the negative impacts of unilateral cohesive measures and sanctions. Some other countries do not share those views.” I think this already and agreed text. Do we have anything else? We are just checking if there is anything else in the communique that needs to be finalized.
Trinidad and Tobago

TRINIDAD AND TOBAGO:

Sorry, Manal, Carol Douglas for the record. Just on a very quick point, unilateral cohesive measures, if there a specific meaning, I plead ignorance, I’m not aware of the term. If this is a specific term, note a specific meaning, then it may be useful for the benefit of the reader, whoever reads this document, to understand what those specific words means. That’s all. Thank you.

IRAN: Thank you for your questions. Yes, there is a term and there is a special report for human rights council and also the special report of United Nations for unilateral cohesive measures. We have this term and use it, it's very known. Thank you.

MANAL ISMAIL GAC CHAIR: Thank you, Iran. Switzerland, sorry to keep you waiting.

SWITZERLAND: Thank you so much. I have two questions for clarification and forgive me if this is the wrong moment, just interrupt me. The first thing is, as we have included this text now under the high-level group meeting, is the recommendation on the FOI accepted and the part on the CCWG because we had taken it out because we were discussing this part? That's the first question.

If you indulge me, regarding the text we had on the minority or dissenting statement of Brazil, I have a clarification question because I don't find the list of countries in any source documents, so perhaps any of those countries of Brazil can provide the source where that list is documented? Thank you.

TOM DALE: Thank you, Manal, thank you, Jorge. In relation to the second point [inaudible] who had suggested those names is not here anymore we will ensure that the list of countries whose support was indicated in the CCWG for that statement from Brazil corresponds to the list

countries in the communique, so we'll make sure that they are aligned on the public record because the list of countries is on the public record.

That statement is an annex to the CCWG report. Your first question I think if I may suggest an answer Manal, yes, my understanding is that the text at the top of the screen would replace the previous text, which was under the accountability section. Thank you.

MANAL ISMAIL GAC CHAIR: Yes, Switzerland.

SWITZERLAND: But the intent of the question was that when we started this discussion on this text that is now under the high-level group meeting, we took out under those recommendations that are approved by the GAC, the recommendation on human rights. The bullet is missing, my question is, do we include it.

MANAL ISMAIL GAC CHAIR: Sure, we will put it back of course. Thank you. I have Senegal and then Trinidad and Tobago. Senegal.

SENEGAL: Thank you, Madam Chair. As far as the list of countries supporting Brazil is concerned, bear with us for a minute please. I was saying that regard that list of countries I move that that list would be deleted so

that the document would be more impersonal, so that we can focus on Brazil's proposal to delete the entire list of countries instead of just removing just one piece. I don't know if I'm being clear or not.

Tom, could you please display that paragraph on the screen that lists the countries that support Brazil's proposal? Can you please show this on screen, it would be clearer? This list of countries I'm referring to.

My suggestion is that we finish that sentence after Brazil and to delete the rest in order to make this report more impersonal in print because we have listed all these countries and some of them are not in the room right now. I think that it would be like doing some propaganda or advertising and that is not our intention. I suggest that we delete the list of countries.

MANAL ISMAIL GAC CHAIR: There is a suggestion to delete the countries and leave only Brazil. Brazil, please.

BRAZIL: Brazil objects Senegal's proposal because precisely that is the context that we wanted to be seen in that part.

MANAL ISMAIL GAC CHAIR: Thank you, Brazil.

CAROL DOUGLAS:

Thank you so much for the explanation. I was just simply saying in a nutshell that if these words have specific meaning as opposed to the ordinary meaning, so when we use a word, we would use the ordinary Oxford dictionary meaning but when we use words like in this case and their capitalized and they have a specific meaning, it would mean therefor that anybody who reads this document, without the benefit of the specific meaning would be lost and be seeking to find what is the definition of those specific words.

All I was saying is that if those words do have a specific meaning, then there's value in having a definition and that could be in the form of a footnote, where somebody reads the document and sees that footnote and then is referred to that footnote which will then explain the definition. But, thank you very much for the explanation. Thank you.

MANAL ISMAIL GAC CHAIR:

Thank you, Trinidad and Tobago. Your suggestion is noted. Any other comments on any parts of the communique? Okay, then this concludes the Communique Drafting, concludes the day today and concludes the GAC meetings throughout the week. Thank you very much and sorry to keep you that late. Have a good night and thank you to support staff. Thank you to interrupters and sorry to keep you that late as well and thank very much for technical support as well.

UNITED STATES: I'm not going to be here tomorrow, so I just wanted to say bye to Tom publicly and thank you so much for all that you've done, you've been a great assistance to everyone.

TOM DALE: My last words to GAC are safe travels and good bye.

MANAL ISMAIL GAC CHAIR: Thank you, Tom.

TRINIDAD AND TOBAGO: Before everyone leaves, again it would remise of me if I didn't thank Manal for her excellent work and her vice chairs for very tirelessly, hardworking, excellent job. Thank you so much.

[END OF TRANSCRIPTION]