HYDERABAD – ICANN Bylaws changes and role of the GAC (session 2)
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CHAIR SCHNEIDER: Dear colleagues. I think we have to resume because we have an important piece of work ahead of us. So please take your seat. I'm just going to walk out to get more people in. Don't take my walking out as not starting but I'm just trying to get other people back in. So we'll start in one minute.

Thank you.

Okay. Thank you all. We are resuming, so please take your seats.

We've already alluded to -- to this, and actually already started to work on this item, which is item 4, if I'm not mistaken, the continuation -- the continuation on item 4, which is a very important element of our work starting now, but not ending now. It's about the implement -- implementing the changes in the bylaws and the consequences for the GAC. Trying to get a common sense about what that means and what to -- what to do with it.

Tom has put together a few -- a few questions that you've already received in the supplemental paper on item 4 that has

been distributed about a week or a little more ago. So we have basically three key groups of issues. One is the GAC advice and possible consequences on -- on the definition of GAC advice, definition of consensus, definitions of objections, and so on and so forth.

Another group is the GAC appointments to external bodies, external meaning external to the GAC but not external to ICANN, of course, where we have a number of situations where we have to and will have to in the future appoint people to such bodies. And we should have something like a clearer guidance or criteria, whatever you want, that help us make these appointments.

And then last but not least, the role of the GAC in empowered community.

So we have, like, a little less than two hours now to work on this. There -- I think there are two topics that are a little less complex. One is the advice to the Board and the other one is -- probably the least complex is the GAC appointments to eternal bodies, which is something that we hopefully agree rather quickly on an idea on how to do that. Whereas I think we all agree that the question of the GAC's role and how to exercise that role in the empowered community may probably be the most complex one.

So our proposal is that we start with the appointment to external bodies, spend half an hour max now on this to see where -- what do we have to do now, what do we have to do in the long term, and how far can we go in this -- this 30 minutes, and how far can we go here in Hyderabad. And then we spend another 30 minutes on the issue of the GAC advice, and then we spend one hour on the empowered community.

So that's the proposal. I hope that's fine for all of you. And if there's no objection, then we'll let Tom read the questions on the appointment to external bodies that we try to answer here.

Thank you.

TOM DALE: Thank you, Thomas.

Good afternoon, everybody. This is the best time of the day for general alertness, so I'm sure that I have your full attention. Thank you.

This is a continuation of agenda item 4. So in speaking to the slide that you see on the screen, I'll be running through the questions that we put in a document that was circulated to you on I think the 26th of October, last week. It's supplementary to the main briefing pack and it's headed again, item 4, ICANN Bylaw Changes and the role of the GAC, key questions for the

GAC to consider. And these are only suggestions from the secretariat based on the guidance of the GAC leadership group, of course. You may have other questions that you think the GAC needs to consider, and -- and this is an opportunity for those to be raised.

But to -- to start with the appointments to external bodies, as Thomas has indicated, this may be the least contentious, perhaps, for the GAC at the moment.

The -- The two questions that we posed in the -- in the supplementary document were, firstly, what procedures does the GAC need to adopt for appointments to external bodies? If there is no consensus on an appointment from the GAC, should it be resolved through simple majority voting by GAC members?

And the second question is what criteria should the GAC apply for appointments? For example, diversity, experience, and expertise.

Now, this slide breaks that down into the issues I noted in the session this morning, which is who the GAC appoints, that is what criteria the GAC wants to appoint, and how the GAC appoints, the procedures to -- or the process to -- to do that.

As regards how to implement any procedures about who and how, that's, I would suggest, a second issue as was noted by

some people this morning. It doesn't really depend on the operating principles or things like that. My understanding at the moment is we're being asked to talk about what the GAC wants to do and then a way to do it can be found.

So I'll just add one -- one further comment. The GAC, you'll recall, did put some effort into reaching agreement earlier this year on a set of guidelines for GAC participation in Cross-Community Working Groups. Now, that was mainly concerned with -- and that document has been on the GAC website for some time, from back in June.

That document that you agreed was mainly concerned with things like not representing the GAC. Representing in individual countries, reporting back to the GAC, and so on, for those participating in cross-community working groups. It did, though, include some aspirational statements from the GAC concerning diversity, and that was the diversity not just of the GAC appointments but also GAC attempting to improve the diversity of the group to which appointments were being made as well. But that was as far as that document went. But it is an agreed GAC consensus document, so I thought it was worth reminding you that. And that may be a basis of some further work and some guidance for the GAC.

However, to conclude, the two questions are procedures for appointments and criteria for appointments.

And at that point I'll hand back to the chair and see what next.

Thank you.

CHAIR SCHNEIDER: Thank you, Tom, for these -- again, for this very useful introduction.

So I think we have two -- two levels. One is interim -- interim measures or interim appointments, and the other one is longer term criteria or whatsoever. But I think we should try to avoid, like, to be in a situation where every few months we have to take interim decisions. So that I think is good for now but we should try to avoid that that becomes the -- the standard procedure. So we really have to start thinking about -- about criteria or principles or reflections of how -- that would allow us to, in case we have to designate or appoint somebody without having a physical meeting, that would allow us to electronically agree on a person or several persons that would be appointed or nominated by the GAC to work in another body.

So let me -- let me basically not spend more time, us talking, but let me give the floor to you so -- with these two questions. What

procedures does the GAC need to adopt? I'm reading from Tom's screen. Can you just -- yeah. Thank you.

What procedures does the GAC need to adopt for appointments to external bodies? If there is no consensus on an appointment, this is a question, what if you don't agree? What do we do then? Should it be resolved to a simple majority? That's just a proposal. We have to also face the situation what do we do in case there's no agreement on who should be appointed? What do we do then? This hasn't happened so far, but it may.

And then what criteria should the GAC apply for appointment; in other words, diversity, experience, and expertise? So the floor is yours.

So don't hesitate to think out loud if that's what you would like to do. We need to -- These are new processes. We need to come up with new things based, of course, as Kavouss has said this morning, on past experience. That's always useful, but that may not be enough.

So the floor is yours. Thank you very much.

Iran.

IRAN: Thank you, Chairman.

I agree with you that we could not go for other provisional and provisional; however, up to July 2017, we are very, very busy. If we have not been properly active in some group, I hope we will be. So let us have some provisional arrangement up to maximum end of ICANN 58. Two ICANN meetings. Two times three and a half months.

And for appointing people during these days, you use the same approach that you used before, in consultation with the management team, or whatever you call, vice chair, so on, so forth. And you know and maybe your colleagues know everybody's expertise and diversities and other elements. You suggest some appointments and you try to get the agreement of the people.

Electronically.

Last time you were very, very democratically active. You went for the consensus. But should, because of the circumstance, you would have -- perhaps you should take some sort of majority, whether simple majority or other type of majority. That could easily discuss at this meeting. And then leave the rest of the matter for later.

Certainly we need to have the criteria. And some of this criteria may be difficult to apply equally. You could not apply equally

diversity in -- with respect to the expertise, and so on, so forth, because at the end, somebody should reflect what is going on.

You should not ignore diversity, geographic distribution, gender balance, and all of these things, but there are some other elements which (indiscernible).

So this is for this meeting, and as far as the appointment or continuation appointment of GAC representing the empowered community, as I suggest this morning, we renew our confidence to you to continue to act minimum up to ICANN 58, and in my view, even up to ICANN 59, because that also need to be carefully discussed. But we should not -- we don't have such time and luxury to get into the discussion because so many things.

I'm just looking for the practical point of view.

Thank you.

CHAIR SCHNEIDER: Thank you, Iran, for breaking the ice. I see Indonesia and Palestine. Palestine was first, I am told. So Palestine and then Indonesia.

PALESTINE: Thank you very much. I thank Mr. Tom for this clarification.

As far as the mechanism of the selection of any member of GAC to represent us in any outside group, there is clarity as far as the process. But my question is regarding diversity. Do you mean geographic diversity or gender diversity?

And additionally, besides the process, the person who is involved and interested in this subject and wants to be involved in this group, do they get an appointment from the chairman? And there is also the choice, either through voting or through the general consensus.

CHAIR SCHNEIDER: I think you raise actually a number of important issues. First of all, those people appointed or nominated or whatever to different parties may have different roles. For instance, the CSC liaison is not a person that takes any decisions or conveys any decisions on behalf of the GAC. It's a role of conveying information, of transporting data bits from the GAC to the CSC and vice versa. And it's clear that this person, unless entitled to do so, will not speak on behalf of the GAC but it's -- it's like a liaison role which is something different than, for instance, the -- if I understand the role of the representative of -- of -- what's the word, decisional participant in the empowered community administration, the role of that person is to convey decisions of a decisional participant into this body, whether we say like

everybody supports that we discuss about something or not or that we accept a petition or whatever that is. So their -- their role is a different one, and we may need different -- we may define or put together these roles a little bit more clearly than Tom has in the papers. You have the examples of the -- of the different bodies where we now or in the future have to see how we -- how we organize ourselves, and then it's also a question of is it a representational role, is it a reporting role. So we have to be clear per body what the role of these persons or that person is. That's -- that's one element.

The other element is also what you say is with regard to diversity and this is up to us, it is up to you to say we want to have a criteria that says if it's more than -- if it's more than one (indiscernible), one person cannot be from different regions or different genders, so if it's more than one persons, these elements of diversity are important and should be considered in whatever way. Region, origin, gender, background of knowledge, experience, whatsoever. So this is exactly what we are trying to gather and so that we have something that we can continue to work on after this meeting on criteria, on elements that we may then have to see how to weigh them, how to prioritize them also again in -- with regard to a particular function that is needed or legitimation that is needed and depending on the function. But these are exactly elements that

it's up to you to say this is what -- what we think should be considered and this is maybe not necessary or not helpful. I hope that answers your questions. The next is Indonesia.

INDONESIA: Thank you, Tom. Just adding some more input. I think, first of all, I think most of us or not all of us are also familiar with how IGO works to get that kind of agreement extension -- agreement for many, many activities or many decisions. Most of us has been in the ITU plenipot, for example, and knows how we do make decisions. So if we have to put people on some external bodies, I think we can do most similar to what we have done in many IGOs. We can -- whoever member are interested, they can ask to sit together the external bodies. But if external bodies because of some reason only can host, say, two people, and if there are more than two people, two GAC members, then the rest will just get (indiscernible), they're supporting these two people. And if it is a decision that it will go to the GAC meeting, either face-to-face like this or through electronically decisions, I think this is one that we can do.

If you look at many IGO team/ITU team, for example, (indiscernible) are really interesting on particular topics will certainly come to become a member of the team. Say we are talking about satellite slots. Some countries might want to sit in

the team and talk on the team of satellite slot while others doesn't care because they don't want satellite slot or the satellite slot they have is already enough for them. So it depends on the -- on the importance of the issue for these countries. But again, at the end of the day, when a decision has to be made, then it goes to the plenipot meeting. Here we can do it electronically, and then we can have the decisions.

Now, if it is for majority, then we can just put it in the what you call it, in the bylaws that it will be a (indiscernible) majority and we can just do that together.

Now, regarding the criteria that you mentioned, their expertise, experience, well I -- we can just assume that everybody here is -- who looks after the ICT regulation and policies of their country should have more enough expertise and experience when otherwise you will have a lot of difficulties to judge all these 100 members or so from their expertise and experience. So I think it's fair enough if we see that everyone can have -- actually have enough expert experience and it's just a method of having set up a small GAC team. If there are more than the number of people who should sit on the external bodies, they discuss it together as a team, you know, to share experience, to share informations. Then they can bring it to the -- to the GAC meeting like this electronically so we can have a face-to-face plenipot initial

meeting. We can have electronically plenipot and sharing meeting. Thank you, Tom.

CHAIR SCHNEIDER: Thank you, Indonesia. Further comments, views. Denmark and Palestine. Sorry, Argentina was first. Those who are sitting closest are the easiest ones to forget. Sorry for that.

ARGENTINA: I know. No worries. As I said this morning, I think this is an important moment for the GAC to enhance the participation of governments in the new structure of ICANN. I think we should build an online place where we put a list with all the different appointments that the GAC must do to external bodies, the skills needed for each of them, the quantity of appointees. If it's only one, it will be difficult to achieve diversity, but we can rotate. So it should also state for how long or if it's up to us for how long we want to appoint this representative. If it's five or something like that, then we can achieve or try to achieve diversity. Which knowledge is needed or which experience is needed for -- for occupying that activity. We should -- there should be an open call for interest permanently and depending on the terms of appointment. And if needed, we should vote, like what we do for chair and vice chair. And if not, the slots should be occupied by those who have interest. I don't think that's very difficult,

and it could be clear for all of us to have a place to check that information. And I think we are a large group now. We are 160-plus. So we could easily find those volunteers to do that work. Thank you.

CHAIR SCHNEIDER: Thank you. Before I give the floor to Denmark, one issue is maybe to note is also if we have an idea about how much resources a particular job that is to be filled is taking, because there's a difference also for people in deciding whether they can actually fulfill a role if it's two hours a week or ten hours a week or one hour a year. So this is maybe an element that we also need to consider, how intense is a job that somebody needs to be appointed. Denmark.

DENMARK: Thank you, Thomas. I don't think it will be practical if we have the same criteria when we appointed people to the different posts. When I look at those, I will see that people in the SSC are -- review stability is more technical and there I will say that expertise is quite important. There's other things where it's more -- more political, it's more important that we have diversity of views. So that depends on that. And who is going to represent us in the EC. For our point of view it will be the chairman who should be there all the time. We don't think it

should be a member or vice chairman. If the chairman cannot go there, we think it should be vice chairman which is selected by the chair at that time in order to represent he or her.

So perhaps we should work a little more and as Kavouss says, it's perhaps too early to look into that. The diversity dimension is important, and we might be inspired what come out of the subgroup on Work Stream 2 on this matter and perhaps we can borrow or steal some of the ideas they have there.

How to -- the process, I think the process should still be as we did with the appointment on the Work Stream 2, try to find a solution where we do not have to vote. But if we have to vote, it should be a majority as we are going to vote on if there was two running for chairman we would have to vote and which would be majority (indiscernible) for that. Thank you.

CHAIR SCHNEIDER: Thank you, Denmark. Palestine.

PALESTINE: Thank you, Tom. As a start, as far as representation for the GAC into the outside groups, I believe that the representative of GAC in those groups, we are representing our own governments. So if his role, as my colleagues have said before, who is just to transmit the decisions and the information and the data,

perhaps that representative can do that role. And maybe this is a definition that we have to put as far as the role of this person in the bylaws and what we're going to get out of this representative, we have to put it down. We have to know what is his role in this exterior group and what is he going to offer and how to do it in a smooth way. And therefore, I am inviting our president to put something on the ground, something that is concrete that will really avoid having a long discussion in this matter.

CHAIR SCHNEIDER: ... Palestine. So after a quick and intense consultation with my secretariat force here next to me, here is a proposal. Thank you. That helps us to see what you would like to see. I think there's a -- first of all, we need to look at each of these, we need to identify it. And as I said, they're already there in the paper, but we need to like go through each of the cases one by one as they are different and we may still -- and then we can try and identify criteria. We may use the same criteria for all the cases, but with completely different priorities. From 0 to 100, so we don't have to invent criteria for everything new, but the elements, we can use them as elements and then say in this case we agree that this is fundamental, this is nice to have, this is not possible, and so on and so forth. So if it's okay for you, we will then, Tom and I with the leadership team, we will take this and come up -- take

the elements that are already there in the paper and put them together in a way that you see first draft proposal on how we propose you to -- to put that on paper, what you've just given us as guidance. Tom, do you want to add something or -- one thing that we need to solve because it's -- the issue of the representation in the -- there are so many names in my head it's difficult to know which one is the right one. The EC administration, the representative of the GAC and the EC administration. So in Work Stream 1 it was the chair that we discussed this in Helsinki, I think, that it was the chair until the end -- or until this meeting, so we have a proposal from Iran that has got some support by others. Do we want to extent this interim solution until 58 which would be the next meeting or 59 which would give us a little bit more time, like June or July next year? That would be a concrete thing that we would need to solve, or if not, what else would you want? So let me ask you the question, what about extending, would you agree or would you oppose to extending this interim solution until ICANN 59 so that we have like half a year's time to work on this? Any objections? Okay. Thank you. That's -- thank you for your trust. I hope I will never use -- have to use this thing, but so -- U.K.

UNITED KINGDOM: Yes. Thank you, Chair. First of all, I think the proposal you've just come up with in terms of a way forward in setting out

common criteria but perhaps prioritizing the criteria differently according to the requirements of the external body, I just had -- have a -- one question relating to appointments. Does the opportunity to step forward extend to the GAC observers? I may have missed that point. Is it -- I mean, my whole approach to the -- the role of observers of the GAC is that they have equivalence really. They can't participate in voting for elections. That's perhaps the most obvious difference between members and observers.

My second point, and this also intersects with the discussion about the GNSO and involvement in PDPs and so on, is that in order to encourage people to step forward from their customer role of representing their government and engaging in quite a responsible role as an interlocutor for the GAC with these external bodies, whether solely or within a team of two or three, depends, of course, that's -- that's quite a leap for many. And the provision of some support from the secretariat to help them undertake that function as a -- an appointment -- appointee to an external body is something we ought to consider because it then might help overcome the barriers that you are wanting to identify to participation. And my -- my previous experience in other committees and so on is that you tend to get the same people volunteering for these kinds of roles within, you know, a core group, within the wider pool of possibilities and that, of

course, is counter to diversity and so on of all these principles we want to apply.

So I just -- I'm not sure whether it's the point -- point to do it, but I just flag that as a sort of issue that we ought to consider, how we as a committee and working with the secretariat can support the appointees when they're -- when they're made. Thank you.

CHAIR SCHNEIDER: Thank you for these very pertinent points. With regard to the second question, if we get enough funding for the secretariat they can give us any support that we like them to give us so that is actually fairly simple. You just need to share the burden of funding the secretariat. That's not a joke, by the way.

The first one is a very -- is a very good question that we need to answer.

In my personal view, but you decide it, in my personal view I wouldn't see a reason, per se, why to exclude them from having a role unless it would become obvious in a particular role that there is a reason why an observer couldn't do it. I don't know whether that helps. But -- So basically, let's stay as open and inclusive as we can unless there's a reason for which we -- we have to say this is something that an observer cannot do for a reason, whatever that is. There may be cases.

But, please, we don't have the time now to -- we have to stop here, but this is something that please express your views electronically on the -- on the issue of -- of observers versus members in general, and so on. And we'll stop here on this part. So let's move to the next, if that's okay for you.

That is the GAC advice to the Board. So, Tom, please frame the whole thing briefly again so that we find our way into this set of issues.

Thank you.

TOM DALE: Thank you. Yes. That's the right slide. Thank you, Gulten.

The questions that we circulated with regard to GAC advice to the Board were two. The first one you see on the slide there is whether the GAC should maintained procedures that we adopted at the Helsinki meeting for preparing advice in the communique. That is firstly that authors of draft text should make particular efforts to ensure that draft advice is clear and unambiguous, and to draft an accompanying rationale. We made a first attempt at that in Helsinki and we're always trying to improve on it. And, secondly, that the ACIG secretariat should prepare a zero draft for consideration by GAC members at least a week before the meeting. And we've done that again here.

So that's a question about continuing or fine-tuning or improving or adding to those basic procedures about improving, if you like, the presentation and quality of advice.

The second question is probably far more problematic and has more issues attached to it, and that is whether the GAC -- how the GAC could or should deal with the issue of one or a small number of objections from members which would effectively prevent GAC advice from becoming GAC consensus advice, as defined in the bylaws. Does the GAC wish to consider defining what a formal objection is and perhaps putting a time limit on the number or a numerical limit on how long such an objection by one or two or small number of GAC countries could -- members could hold up what would otherwise be consensus advice. That's a big question, but it's one that's posed in more detail in -- in the briefing. And I know Thomas has spoken about it before.

So those are the two questions that we're suggest are issues in the short-to-medium term.

Thank you.

CHAIR SCHNEIDER: Thank you, Tom.

I think the -- the whole formal aspects about rationales and so on, I think this is fairly clear. We try to -- to provide for these rationales. We try to make the GAC advice clear and unambiguous.

So what I would be particularly interested in is your sense, your feeling with regard to the second part of the question, with regard to this definition of are there requirement for the GAC to state whether or not a particular piece of GAC advice is -- has been adopted by consensus advice as defined in the bylaws as full consensus in the absence of formal objections, noting or remembering the discussions about this issue of formal objections and some to be defined, maybe, (indiscernible) manner on how to deal with a very small number of objections over a certain period of time. So this is something that I know is very -- has been debated very intensely and is something that we should try and get a common understanding on what to do with this now in this new situation.

So I'm curious to hear your viewers in particular on these aspects of the advice work.

Switzerland.

SWITZERLAND: Thank you, Chair.

As you said and as it is explained in the briefing, this concept of formal objections has some bearing now that it's important to understand how the Board will react to different kinds of advice. So probably it would be good to -- to have this conversation and to see what makes an objection formal and what is an objection, and also other aspects that were mentioned in the brief and that are included also in the recommendation 11 of the CCWG Accountability that was adopted in -- in Marrakech and which made explicit mention to this concept and how the GAC would have autonomy in dealing with these formal objections.

Thank you.

CHAIR SCHNEIDER: Thank you, Switzerland.

Other views, comments, questions?

Denmark, is that a hand up or just a finger? It's a hand. Okay. Thank you.

DENMARK: Sorry. I was a bit tired so I couldn't take it higher up.

I -- I remember that during the Work Stream 1, at least in the CCWG there was this discussion on Stress Test 18, and I think it was a couple of GAC members thinking about and have actually

produced some text which allowed that a small number of countries do not need to be within the consensus advice. But if I remember rightly, it was at that time rejected in the CCWG.

And as I understand it, but it could be, of course, looked into more, my understanding was that the Stress Test 18 and the bylaws was -- meant the consensus rules more or less as in the U.N. That's my understanding, but others may have more to add on that.

Thank you.

CHAIR SCHNEIDER: Thank you, Denmark.

United Kingdom.

UNITED KINGDOM: Yes, thank you, Chair. My immediate thoughts on this is that if you try to define what a formal objection is, it is a statement on record of not supporting a proposal or a recommendation. So there is a clear record of nonsupport. If you were to look at a way of objecting informally, you could do that by not registering support but abstaining. There are ways of sort of avoiding a formal objection in order to facilitate process, as we have seen in the past in ICANN experience.

So those are my immediate thoughts. Maybe that's helpful. Thank you.

CHAIR SCHNEIDER: Thank you.

Iran and New Zealand.

IRAN: Thank you, Chairman. I understand we are discussing GAC consensus advice but not GAC advice; am I right? Because we have to distinguish between the two. GAC consensus advice should be a strict application of the bylaw. Whether is right in bylaw or is wrong, it is something that has been approved, and it is mentioned quite clearly that in the absence of any formal objection. Even one single objection will stop that.

But the issue which was discussed when we said that it may be impossible to have any advance if this strict application is made, it is said it is up to GAC to develop procedures to avoid that a single country block everything. That is the question.

Any consensus advice must be in the absence of any formal objections. But how to avoid that a particular country continuously present one objections and does not allow us to have any consensus advice?

If we go according to the paper proposed or suggested by Tom, instead of "any," to do something else and associate a criteria to that, that is another issue. So you have to discuss the matter, whether you want instead of "any" to have a criteria and say that GAC advice with x percent of agreement is considered as consensus advice. It is up to the meeting.

But we have to, for the time being, apply the bylaw. And that is one single objections block the advice, consensus advice. But other advice could be two, three, five objections; doesn't matter. But the consensus advice is the one that if the Board reject that, then it should return into discussion with the GAC to find a solution. Other advice, Board is not obliged to get to any discussion with GAC if does not agree with that with 60% of the vote. So we have to distinguish between these two. The problem is that how we could avoid that one single country put an obstacle to any GAC advice? GAC consensus advice. That is a criteria which we developed, it was discussed in various meeting, in Stress Test 18, and that is up to us to either convince ourself or have a criteria to do that. That is the issue.

So when we finish that, I come to the procedure that Tom mentioned. He talk about this preparation of advice. Perhaps we should put another element that this advice also should consider, to the extent practicable any PDP on the matter. We heard today what was said. The people said that the GAC advice

was without considering the PDP totally. I'm not saying that we following that 100%, but I say that we should look to see if there are PDP, to what extent we should take that into account.

The way now we prepare our advice, we never look to that. I don't think that.

And also, you should not put all burden to our distinguished secretariat. Maybe in future, once you have so many vice chair, you put one of the task to the vice chair as well to make this check that the advice is consistent with the bylaw and the advice is taking, to the extent practicable, any PDP on the matter. And then procedure to avoid this one single blocking, it is something we have to discuss.

Thank you.

CHAIR SCHNEIDER: Thank you for -- for bringing back to us some key elements of the discussions that we had a few -- a few meetings ago.

I have New Zealand, Norway, and Canada on my list. And Spain. Thank you.

NEW ZEALAND: Thank you, Chair.

New Zealand considers that formal objection is an important function of consensus as we've constructed it. It's why the bylaws draw the distinction of formal objection.

This is a high bar, and we've seen cases where governments do not support an issue in the GAC who have chosen to abstain in the interest of consensus. We have not actually seen, at least in the time I have been here, any member consistently blocking concensus.

However, if a sovereign government considers an issue important enough that it chooses to block consensus and insists that their view be conveyed to the Board, we consider this must be respected. We're not individuals; we're here to represent governments. We must be able to communicate our public interest.

The Board must still consider this advice and take it into account.

Now, I'm wary we might be at risk of repeating all the Stress Test 18 arguments here, so I'll go directly to do we want to define what formal objection is. I think the U.K. may have alluded to a solution. It could be quite simple. The chair can ask during the development of advice whether an objection constitutes a formal objection, understanding the consequences this would have for the advice GAC can give. And then they would be able

to say straight away this is the consensus advice or this is the advice of some countries and some other countries.

Thank you.

CHAIR SCHNEIDER: Thank you. That would -- Things that you may consider in this regard, in case we would say, okay, we have consensus advice with no formal objection and we have other advice that may have objections. The question is, for instance, do you name the country or the countries, like this happens in other institutions, or not, and so on and so forth. So that is probably -- there's more things to come, to think about in such a case.

Norway, please.

NORWAY: Thank you. Thank you, Chair.

I think I'd like to also echo some of the things that was said by the U.K., that if we're going to work with any objection material, it needs to be something that is traceable, that you can see afterwards that somebody had a formal objection, at least, so it has to be in written form, and so on.

I remember we had a discussion about consensus earlier. We worked on the U.N. definition of consensus. We looked into that.

Maybe we can try -- or maybe the secretariat also can look into some of the formalities around objections that works in other foras and try to fit it, of course, into the GAC working methods and how we work in the GAC. And maybe we can work intersessionally with something on that. Because I think we -- we don't have to -- to do the work from zero if we can get some help from other definitions that are effective and could fit the purpose.

Okay. Thank you.

CHAIR SCHNEIDER: So this is the pool that is being filled for us for the spa after the session behind the curtain. That will go down and we'll all have a nice spa here behind us.

Thank you for this. And we take note, as you rightly say, there are different ways in different IGOs, whatever, institutions on how to deal with reservations, objections, whatever they are called, and it will be interesting to gather some information about what there is that we don't have to invent. And maybe there's something that we can say this actually suits our purpose, and may be -- may be suitable.

So I think we will take note of this and we will task our able secretariat and support staff to help us, help us on this.

Canada.

CANADA: Thank you very much, Mr. Chairman.

We support the proposed way forward to continue providing a rationale for GAC advice. And I apologize for taking us back a bit. I just wanted to -- to make a couple points on this.

We believe that this will help improve the robustness of GAC advice and facilitate effective implementation by the Board.

To the extent possible, we should aim to keep the rationale section brief and to the point, and to treat it as an opportunity to explain the desired effect that the advice seeks to accomplish, rather than providing a detailed account of the history on the issue.

With regards to the matter we are discussing now, defining what constitutes a formal objection, we agree with the points raised by New Zealand. We do not believe that this is necessary.

The Board only needs to be able to distinguish whether GAC advice is approved by full consensus or not. And decision-making by full consensus is a long-established GAC practice and does not need to be redefined.

Thank you.

CHAIR SCHNEIDER: Thank you, Canada.

Spain.

SPAIN: Thank you, Chair.

Looking at the briefing note that has been prepared, I think it's -- it's a very sensible exercise of trying to get GAC to consensus by putting a limit, a time limit to the objection raised by one or a few countries. I think that this is wise. But I wonder how to decide in a certain case whether to give that country, that member time to reconsider its position, to compromise or to go directly to the other option that is given, simple advice, not consensus advice.

Maybe one -- one criteria could be if we think that the positions are too far away and it's not possible to get to an agreement no matter how much we wait, maybe we can go directly to the second option.

The second option, that is known consensus advice, had the advantage of forcing the Board to take that into account and to respond to the GAC, stating the reasons why it has not considered the advice. Better than simply expressing the

different views that are in the room, because that will not constitute GAC advice, and the Board does not have even to look at it or consider or respond to it.

So I think it's -- it's a good approach. Only I could try to put in relationship the first option with the second one and try to find a way to decide which one to choose at every case.

Thank you.

CHAIR SCHNEIDER: Thank you, Spain.

Palestine.

PALESTINE: Thank you very much.

I think that there must be a kind of redefining what is meant by consensus of the -- what has to do with the recommendations for -- to be submitted to ICANN later.

I have also another question. In case the Board of ICANN will reject any of the recommendations of GAC, does this mean that they have to put it into their consideration, at least? That's my only question.

CHAIR SCHNEIDER: I'm not sure what -- things have gotten a little lost in translation, particularly in the last part, but I understand what you say. Basically the board has to take into account, whatever that means, it has to take into account all advice that the GAC is making. In the new bylaws now, that is nothing new. That is what has been there before. Now what is new is that the obligation of the board to -- to come to the GAC, talk to the GAC, and try and find a mutually-agreed solution is now limited to in the bylaws to what is formally what is GAC consensus advice as defined blah, blah, blah. We've had this. So this is -- this distinction is new. Before that it was only one thing for GAC advice. That was not defined. It was -- the GAC itself would define in its operating principles how to define advice.

Now this is moved to a -- for the -- for the special procedure that the board has to come and talked to the GAC, this is now moved there. And the other thing is still not defined, what is GAC advice. That is not necessarily full consensus with no objections. And if we go back to the proposal of the CCWG --

[Music]

Nice.

[Laughter]

If --

(Singing) If we go back to --

Sorry, interpreters. If we go back to the proposal of the CWG and look at the provisions that were there as part of the package or whatever you call it about how to deal with formal objections to keep some leverage about preventing one single country from blocking an issue internally or over a long period of time, this is maybe might be worth to go back to this for those that don't remember exactly what the purpose was -- is it 6:00 already, and we'll continue like for one more hour, so we hope that this will stop sooner or later because otherwise, yeah, we'll have to find a new approach to hearing each other. So I think we have to stop here. We take note that we tried to -- the question, we -- we have heard a few opinions about what -- how to deal with it. What for sure we'll do is we'll look into how this is dealt with in other institutions. That may help us see more clearly what possibilities we do -- we do have and yeah, we'll come up with something and we'll invite you for comments. We will have to decide at the end of this -- of the next hour what to focus our remaining sessions on. So this is not -- nothing is concluded here. This is just like a first -- not reading but hearing of your views, and I suggest that we now move to the third element, the probably most complex element, which is the GAC participation in the empowered community, the way it is now set up in the bylaws and trying to understand what that means and how the

GAC should implement in concrete mechanisms that role as it is defined in the bylaws. So Tom, your introduction on that third element. Thank you.

TOM DALE: Thank you. So go back to the -- I think it's the third slide, Gulten, if that's possible, please. It would be slide number 3, I guess. Yeah, that's the one. The soundcheck next door seems to be quieting for me, so thank you.

The --

CHAIR SCHNEIDER: Oh, well.

TOM DALE: All right. Quite a bit of base there. That's good. The questions that we put in the brief -- in the supplementary briefing document, I'll run through them all and then you might wish to consider which ones you want to run through. The first is who should represent the GAC in the empowered community administration. I think some guidance has been given on that from earlier in this session, so we'll move on. The second was who should be able to petition the GAC to seek a review of certain board actions. Should any GAC member be able to

submit a petition to the GAC or indeed should anybody, any stakeholder at all be able to come to the GAC and say we have a concern about this. We would like the GAC to support it going forward for review.

The next question is how will the GAC determine whether to agree to escalation of a petition that comes to the GAC from whoever, or secondly, a petition is submitted to another decisional participant. So remember, the decisional participants act as a group. If -- if there's agreement for a particular request for a review, a petition to go forward, then usually the support of more than one participant is needed. So the GAC may be asked, do you support this -- this request for a review, a petition that has gone to, for example, the GNSO concerning a particular action of the board. So that's the question that's being asked there.

The next question is how will the GAC determine whether and how to participate in community discussion. That could be working on convening a community -- a phone call, a conference, or it could be a slightly more formal community forum. So how will the GAC decide whether it wants to participate in that. And in what way.

Next is how the GAC will determine whether to support or object to or abstain from actions supported by another decisional

participant. In particular the use of a community power by all decisional participants. Now, this is at the very end of the escalation process, of course. And the options there for all participants are quite clear, support, object, or abstain. And if the GAC or any other participant makes no -- has no position that will be regarded as an abstention under the bylaws.

And finally, again this is a question asked by the bylaws. Should the GAC adopt new procedures for notifying its constituents of relevant matters concerning the empowered community or our current procedures for the GAC to communicate with its constituents, are they sufficient? So those are the questions, one, two, three, four, five, five questions that we have suggested need to be considered by the GAC starting now, but, of course, finishing whenever you decide. Thank you, Thomas.

CHAIR SCHNEIDER: Thank you. Maybe just -- just to make sure that we're all clear, what, for instance, a petition is. So if you could just tell us quickly how that concretely works. Like in practice how does anybody petition to the GAC or another decisional participant and what are the options or the obligations maybe even of such a decisional participant in treating a petition so that we have this a little bit more clearly in our heads. Thank you.

TOM DALE: Thank you, Thomas. The concept of a petition is embedded in the new bylaws as the -- the very first point for requests for review from the community. Now, that could be requests for review of an action by the board or indeed the starting point for removal of board members or the board. But in the case of removal of board members or the board, the procedures in the bylaws are actually -- actually provide a higher bar for support for taking it further. However, for quite a wide range of issues on the review, a petition is simply a proposal for any member of -- of the -- any person at all, full stop, to make a case in writing to a decisional participant for review of certain actions. So they have a grievance, if you like, about something that the board has done, to put it crudely. Then the petition process is simply a means of them submitting it in writing to the GAC, to the GNSO, to the ccNSO, whoever, the decisional participant of choice, if you like, a request in writing for their petition to be taken further and to be put to the community process, the community consultation and discussion process. They need the support of a decisional participant to do that so that the petition is that very first trigger point for many of -- but not all of these procedures. It is up to each decisional participant to work out their own procedures for how they will deal with those petitions. And they -- that's all the bylaws say. So the GAC would be quite within its rights under the bylaws to adopt procedures to say it would only accept petitions from certain categories of stakeholders, for

example, or it would -- it would -- it would adopt its own criteria for deciding that a -- that a petition had no merit, for example. Those are matters that can vary from participant to participant, as I understand the bylaws. Thank you.

CHAIR SCHNEIDER: Thank you, Tom. I tried put it in very simple terms. If somebody comes to the GAC and says, I don't like this decision of the board, are you with me? Do you also not like it and do you think we should discuss this with the other SOs and ACs. That's at least a little -- so this is something like the essence, I think. First question, who should be able to come to the GAC and tell us, I don't like this, please if you agree, then help me move this to the discussion level. That's question number 1. Question number 2 is, how do we determine whether we agree or not if somebody comes to us and says do you agree that we should move this to a level where we discuss this because we think there's something wrong or problematic with the decision of the board, if you take that example. How do we decide whether or not to support if another SO or AC comes to us and says we decided that we think something is problematic that the board did or decided or did not do and we want to raise this to the level before we discuss this. Are you with us? Do you also want that this is going to be discussed? So this is like the questions that we need to -- that we need to answer. So -- and what are the procedures for this.

So I stop here and I hope we'll get an interesting and clear debate. I see U.K. and Iran and Spain and Brazil, and then we take it from there.

UNITED KINGDOM: Yes, thank you, Chair. Your question is -- one of your questions, the first one I think it was, is who should be able to come to the GAC with a -- somebody external to the GAC, who should be able to come to the GAC to seek the support of the GAC for a petition. Well, I could envisage quite a challenging scenario, if it was open to anybody, any stakeholder we might be quite inundated with such requests. Some may be quite trivial. Others may well be substantive and meriting attention. But we'd have to have a process to sift all of that and that would be a burden on the GAC.

So my instinct is that a -- a stakeholder from another constituency would need to go to that constituency to get the support of it, be it the GNSO or the -- and then it would be for the leadership of that supporting organization or advisory committee to communicate a request for GAC support and then we would have a very manageable kind of practice, I would have thought. Hope that's helpful. Thank you.

CHAIR SCHNEIDER: Thank you, U.K. Basically again concretely we can say -- and it is actually what you already do now. If a GAC member says, I have an issue here then the GAC discusses it. If the GAC -- the question is do -- it's just formalized now for this particular perspective. Can a GAC observer come to the GAC and say, Houston, I have a problem. Can we discuss this? Or can we ask that this be discussed in the framework of this empowered community? So that's one -- do we let anybody from outside the GAC that doesn't need to be a member or an observer come up to us or do we say like, it needs a member and observer to take something up and then that needs to take responsibility to bring it forward to the GAC and ask do you support that we discuss this and accept that petition and ask for any to be discussed at the next level. So that's I think the options that we have. Like members only, observers as well, anybody who is not a member or observer, these are the three options. Iran, then Spain, and then Brazil.

IRAN: Thank you, Chair. And thanks to Tom to engage in this. I think most of the answer to your question is found in the supplemental report of the CCWG submitted to the community and then converted to the bylaw. Unfortunately it was converted in a manner that is not very easily traceable. But if you go to the main report, it is an annex and define who should

make a petition and where and it's talking of anybody. It's not member or non-member or observer and so on and so forth. But I don't want to give that, and I think in future if Tom wants to make, it should clearly cross-reference and quote the section either of the bylaw or of the annex of the third report which is submitted to the Morocco meeting and exactly the words which has been discussed for hours and hours and hours and we should not try to put it in a different way. Of course, we would have difficulty. I don't think that you can find a simple solution to the question you raised now. Until we take the paragraph as it is either in the bylaw or in the third report together with all discussion which has took place. And I don't think that you can find it easily. But something is quite clear, that decision to take or not take a petition, it is mentioned in accordance with procedures of dot SO and AC. It depends on your procedures. If your procedure is based on simple majority, you go to simple majority. If your procedure is other type of majority, you go to that other type -- it is left to the SO and AC. But I think we should have quotation of the bylaw and of the third report exactly word by word to see not have anything which give rise to any difficulty. Otherwise we start to have another CCWG in July 2014. Thank you.

CHAIR SCHNEIDER: Thank you, Iran. Spain.

SPAIN: Thank you, Chair. I need to ask some questions to understand the questions made. Before I'm able to answer them, one of them is -- are these questions refer to the situation where the GAC adopts a petition and addresses it to the empowered community or when there is a petition formulated by some other constituency who needs the support of other decisional participants in order for -- for the issue to be discussed. This is the first question.

The second question I have is, if we are in the first situation that is that there is no petition already and the GAC considers that it needs to formulate a petition, why do we have to be so formalistic so any one of us formulate the petition and then put that forward to the GAC and the GAC said adopt it or not according to its own procedure? Couldn't that be something that comes up like any other issue in the GAC and we adopt a decision? That's a -- does it really need to be -- to come from a member, an observer? It's something that I do not -- is it mandated in the new bylaws that you have to put our name on the -- on the person suggesting the petition? Okay.

CHAIR SCHNEIDER: Thank you. Well actually, we need to have procedures for both. For the left -- what you see on the left, which is if something is

coming up in the GAC-- like if we don't want to define who has the right to bring up something in the GAC that would be a petition from the GAC, then we can leave it up. This is completely up to us. As Iran has said, we're free in defining these procedures. But we have to understand what they are, and probably somebody will come up with a petition that will be a name on that paper or whatever. So you will know who that is, and then you will have to decide is that person eligible for doing that or not. But this is -- it sounds like very complicated but it's actually very simple again. Once we've taken the decision, we need to play a few examples through and see what makes sense.

But we need to have clarity on who can do it or not and these are just three examples. Either we say only a member can do this or we say members and observer can do it or we say anybody can do this, and the GAC will need to -- because the thing is if somebody makes a petition, the GAC is obliged to respond to that entity or person. So if you're saying anybody in the world can make a petition, we may get 1500 petitions a week that the GAC may need to -- I'm exaggerating, but we need to be aware of. So if we say this needs to be channeled through a member and/or an observer, that of course gives us some predictability, probably, of the process.

So we need to take a decision. This is not rocket science, but we just need to know what we want.

On the other side, of course, the case is different. As you say, if this process has happened in another SO or AC and then they come to us and they say we decided to support this petition; what about you? Are you supporting this, too?

This is the case that you have on the right, on the right side of the slide.

We need to know how to process a request that comes in from another SO and AC, how to take the decision, and then give the answer back to that, I think, if I'm not mistaken, to that SO or AC.

So these are two -- as you rightly say, these are two different processes for which we need to have clarity on how to do this.

Brazil, Palestine, Norway, and -- wait a second, Jamaica. Yeah.

Brazil, please.

BRAZIL: Yes, thank you, Chair.

I'd like to stress a few points of a broader nature.

During ICANN's meeting in Marrakech, the GAC took a unanimous decision to become a decisional participant in the empowered community structure. Due to that decision, ICANN's own bylaws were modified in order to accommodate the new decision dynamics that would have the GAC as a decisional

participant. Among other things, new thresholds were established for powers to be used by an empowered community.

If GAC's role were to change in any way, the whole decision-making process within the empowered community will have to be considered. And that's point one.

And point two, within the new empowered community structure, governments account for roughly 20% of the total quorum. Although not the dominant one, this participation offers an opportunity for policy-making conversations to be taken into account by ICANN.

Brazil believes that country members should not miss this opportunity to enhance their participation through GAC in ICANN's decision-making, as Argentina just stressed a few moments ago. Not only with advice, but engaging further as a decisional participant in the empowered community.

Point three, if GAC has to fulfill this commitment to become an effective decisional participant within the AC, I think some consideration is to be given to its own decision-making process. ICANN is a very complex organization with different communities represented and different dynamics in terms of decision processes and results.

GAC's own dynamics is, as usually happens with IGOs, very complex and Byzantine, which does not always help in terms of efficiency. As the GAC is going beyond its traditional role as an advisory committee to become an effective participant, I think we should discuss some of its own bylaws, particularly with regard to consensus decisions as we have been doing. While we should strive to reach consensus in all the different steps in the AC decision-making process, we think the GAC should consider making decisions based on qualified majority when unanimity is not possible to be achieved.

As we have seen moments ago when discussing acronyms protections for IGOs, even when GAC does its homework, its role within ICANN is not a very easy one. So I think we cannot afford to be ineffective.

Thank you.

CHAIR SCHNEIDER: Thank you, Brazil.

Palestine.

PALESTINE: I would like to thank Mr. Tom because he answered a lot of my questions, but in case there is a petition from one of the GAC

members, I would expect that either they would raise it up to ICANN, or not. But in case the petition comes from outside of ICANN, then there is -- you have to deal with the excessive amount of things that are submitted and there have to be like a box that would -- should be receiving the comments and complaints from others. And I thank you.

CHAIR SCHNEIDER: Thank you, Palestine.

Norway.

NORWAY: Thank you, Chair. On the question who can raise issues and topics within the GAC, our initial thought is at least that we need to have, to some extent, to have procedures or formal procedures for this, as also the U.K. said; that otherwise, we could be flood with a lot of topics and it will be -- And also to underline the point of being a member or an observer in the GAC.

Being part of the community is important to be able to bring something up. And, therefore, we have to underline that this is part of the game. You are in the GAC in you raise things directly within the GAC.

When it comes to other SOs and ACs, of course they bring things up to their own constituencies and then they bring things forward to you as the leader, the chair of the GAC. That's the way to formalize questions to the GAC as such. And for all other special interests that don't have any AC or SOs to go to, I think they have to talk to members of the GAC to have members of the GAC to raise questions within the GAC. It needs to be formalized this way so we have the source of who is raising things and we have some order in what we use our time on and spend our time on discussion.

Thank you.

CHAIR SCHNEIDER: Thank you.

Jamaica.

JAMAICA: On the question of who should be able to come to the GAC, the initial instinct, our thinking is it really should be members and observers.

I note a previous statement that others will have a route through the other ACs and/or SOs. And the question I have is whether we are absolutely sure about this, and whether some discussion

with the other SOs and ACs would be appropriate at some stage to ensure that no one is excluded.

So that is just my thinking on the issue.

CHAIR SCHNEIDER: Thank you.

United States.

UNITED STATES: Thank you, Chair.

I think it's fair to assume that procedures are going to be necessary for determining who can submit a petition. I think perhaps something that could put it in perspective is first looking at how the GAC would determine what raises to the level of the GAC getting involved. The understanding is that for the empowered community to be invoked, it would be under exceptional circumstances.

That being the case, clear criteria by which the GAC would get involved, on what sorts of issues, might be a first initial discussion to have before determining who can submit a petition to the GAC, because there could be circumstances in which we decide, based on certain criteria, that it would be

important for the GAC to engage in petition from someone besides a GAC member.

So I just wanted to leave it there and perhaps focus the discussion on what would necessitate the GAC getting involved.

CHAIR SCHNEIDER: Thank you, United States.

By the way, we do have some examples in -- in the briefing paper. The end of the section about -- there's an attempt to play through a few examples where you see what that could mean. Because depending on the particular power that is -- that is in mind when somebody -- in case that all the preliminary steps would not work, there is a difference also procedures, a there is a difference in thresholds, and so on and so forth. The issue of the GAC carve-out is something that would then also come into play, and so on and so forth.

But we have some examples that may be worth going through until -- until we meet the next time, because as you rightly say, it's a little bit difficult to work on this in theory. Some things get very easy if you have a concrete -- concrete case that you can play it through.

Switzerland.

SWITZERLAND: Thank you, Chair. I just was looking at the relevant text in the briefing paper that the secretariat prepared, and I see that on page 15, the specific section in the bylaws is quoted, which is section 6.1, letter G, where the -- our obligations to this respect are spelled out and where each decisional participant, this means also including the GAC, is asked to adopt procedures for exercising this right, and including on who can submit a petition to such decisional participant, the process for an individual to submit the petition, including whether a petition must be accompanied by a rationale.

I think that this obligation -- or this possibility, because it's a possibility whether we provide for the obligation of providing a rationale, speaks to the concerns or to the ideas put forward by our colleagues from the U.S. and the U.K., and other distinguished colleagues, that really it cannot be a frivolous petition. We are talking here about really exceptional powers, but also powers that have to be operational to be effective.

And so we -- I think it's important to bear this bylaw provision in mind. And I think it would be a very good idea to establish the obligation of providing the petition with a rationale.

And this rationale, of course, talking about the GAC. After all, we are governments and we are in charge of public-policy issues,

international law implications. Probably, the rationale should be linked to such issues to such public-policy or international law or national law considerations.

As to who can submit a petition, I think that it should probably be only GAC members and observers. And if an individual makes a case to a GAC observer or to a GAC member and this one decides to sponsor and to endorse that pre-petition, so to say, then it would be a petition of that GAC member or that GAC observer, and that country or that organization would be responsible for really coming up with a rationale and convincing the rest of the GAC that this really has merit.

Thank you.

CHAIR SCHNEIDER: Thank you.

So what I'm -- what I'm sensing is that there is a feeling that we need some kind of filter to what comes in, and that filter should be support from at least one member or observer that would then basically put this forward to the GAC. I'm trying to see your reactions, whether I get that feeling right. We would note this, and that would then -- we'll be trying to think about or discuss after then how to maybe prepare a paper that captures these elements that we can present to you before we continue, then,

the discussion next time. So I'm trying to capture elements where we seem to have a common understanding.

With regard to -- One second, Canada. I'll get back to you immediately.

With regard to -- That's like how can put things forward, who and how are things put forward to the GAC.

With regard to how the GAC decides if something comes from another SO and AC, or AC, and we need to decide whether we are with them or not or we don't think we have anything to do with this at all or whatever, it is less clear to me what kind of procedure we should have for this one. So if you could -- in case you consider the first question rather clear, you could stay on that one for a little more or -- I don't know, Tom, if you have a clear picture of what the essence is with regard to how to take on petitions from another SO and ACs. So we need to be a little bit more clear on that one and then we will try to move on to the next question.

So maybe, Canada, if you have a clear idea, and Iran, on the second question, how to -- what to do when another SO and AC comes to us and says this is what we came up with; what do you think?

Thank you.

CANADA: Thank you very much, Mr. Chairman. I'm afraid I would like to take us back a step, if you don't mind.

I think before we consider the procedural paper for engagement, it would be helpful to determine the conditions around GAC engagement, as I think this will be really helpful in informing the procedures.

And I think we may have had a different understanding of the Marrakech communique than our colleagues from Brazil, but it was our understanding that the GAC accepted a qualified decisional role in the empowered community with the conditions to be determined later.

And this was done to ensure that the GAC was not written out of the empowered community mechanisms in the final accountability proposal.

However, the GAC still has flexibility to determine how or in what capacity or at which stages and on which issues it engages. The number of decisional participants is adjustable, and as long as the GAC publishes clear and transparent criteria around its engagement. I don't think this would create additional uncertainty.

It is our view that the GAC should only exercise its decision-making role in extremis. This does not mean giving up the GAC's qualified decisional role but, rather, reserving it for when there are clear and ambiguous public-policy implications.

Being decisional by default in every case we believe risks undermining the GAC's primary role as an advisory committee. And perhaps I'll stop there.

Thank you.

CHAIR SCHNEIDER: Thank you, Canada. I think we have taken note, and I think this is a fair point.

What we are trying to discuss now is not in the sense -- we will have to have that discussion about the bigger framework and what are the issues with regard to public-policy relevance, and so on and so forth. I guess you are trying to go in that direction.

What we are trying to sense now is what do we concretely do? And whether you consider, let's say, the mechanisms that we are trying to develop here is not about taking a decision on substance, on dismissing a board member or objecting to a decision by the Board. It's trying to develop mechanisms that allow us to participate in the dialogue on the lower -- on the lower steps.

So this is -- I think there are two different things. So we are trying to figure out how we can concretely engage in this structure up until including participation in the -- in a community forum that the -- where the purpose is to discussion an issue or a decision or whatever. And that is way prior to taking a decision on an action, if you want. So I'm trying to make that distinction. I hope that is clear.

But of course, you are right, we have to come back to have that discussion because this is not -- we don't yet have a fully shared view about the circumstances. So thank you for making this point.

I have Iran and then China.

Iran, please go ahead.

IRAN: Thank you, Chairman. I think the point raised by our distinguished colleague from Canada reference to the communique in which we express our views in regard with this community empowerment was that we agree to exercise our power under the conditions yet to be specified. But if we decided on particular case to exercise our power, we should have a procedure how to exercise that.

These are two different things, and they are not mutually exclusive.

So nothing prevent us to sit down and draft something relation to Article 2 of Annex D, procedure for exercise of AC's right to reject a specified action.

And then the reference was made to article 6.1.G by Switzerland which is absolutely correct. It is up to us as an AC to have our internal procedure how to deal the matter.

What I don't understand that what does it mean that a petition coming from another SO or AC to us? On what? Because we may misunderstand the situation. The issue that we could have petition are explained in paragraph -- sorry, section 6.2.1 from A to J. And I don't think that any AC or SO bring something to the GAC and saying what? Saying they have difficulty with the appointment of the director of ALAC? Bring it to the GAC? Why it come to the GAC, brought to the GAC?

So I think we're misunderstanding of the situation. We should be quite clear. So nothing from other SO and AC comes to GAC. We will receive something from the GAC, and it is not on any subject, on subject mentioned here. We are not saying because GAC decided on this two years ago and now I have a petition and that is waste of time. We should refer to this paragraph A to paragraph J on this, and that is the way that petition comes

from the GAC. And that anybody does not mention observer or non-observer. No doubt it should have a name. No doubt should be accompanied by -- requisitely by another internal support to be brought to the other petition, and it's up to us to agree on that. Once the petition is agreed according to our internal procedures, then it goes to other SO/ACs and to see whether we could have agreement of other according to the procedure. But I think something is mixed up. We have to read the bylaw which is unfortunate there is a very, very complex language. The most simplest language is the annex 2 and 3 of the previous CCWG report three, and we have to take that one is quite clear. This language is very complex to understand. So we would like to make decision between these two. These are two different things, and it can go in parallel. Thank you. But it should not leave one for the other.

CHAIR SCHNEIDER: Thank you, Iran. So we'll give you some homework. You all read until we meet next time, you all read the respective sections in the bylaws. And if you can also, of course, everybody is free to go back to the proposal for the CCWG. The thing is legally binding is what is in the bylaws. That's -- the other is additional background information that helps us interpret maybe ideally what we now have in the bylaws. And, of course, Iran is right in the sense that there are two discussions. One is that the one

that we haven't had yet is what Canada raised is the bigger framework that helps us decide if how blah, blah, blah, we are going to participate. The other one is the concrete mechanisms about how to participate in a concrete case which is, as we say, not only -- not mutually exclusive but actually we need to have both discussions. So we need to start with one, and we start with this one because I think we need to get a more practical sense of what this is, how this could work. Because otherwise, the other discussion is even more theoretic, and if we start with the other discussion, we have done that like for the last one year and that was very difficult. My hope is that if we get into the concrete what does this actually mean, start with this first, that may help us with the other discussion. So that's at least the logic that I'm trying to follow. I hope this is understandable and acceptable. So next is China, please. Thank you.

CHINA: Thank you, Chair. I'm going to speak in Chinese. Thank you, Chair, for giving me the opportunity to speak. On this issue we believe that the discussion right now we are undertaking is very important because it has everything to do with how GAC would be able to participate in the mechanism to empower communities and to enable GAC and its members to better play their roles. Especially in the new mechanism. Many GAC members have previously mentioned or provided very

wonderful suggestions. I would like to hereby offer two thoughts for the consideration of present GAC members. One, I believe GAC is a working group -- advisory group among governments. What we're discussing right now as for GAC -- how GAC would participate in the empowerment mechanism, every step of it is concerned with GAC decisions. There are three phases to it. One is the petition being raised. Two, if there is a question, then there should be a procedure allowing the question or the issue to be upgraded to the higher level, and then phase three will be the follow-up action. For every phase decisions have to be made by GAC. In the entire process we believe within GAC itself the design of the mechanism transparency is a very important element and it includes two things. One, the information exchange should be transparent because for GAC it won't be possible or feasible for every member to closely involve himself -- himself or herself in the decision-making process. Representatives probably should be elected -- or liaisons should be elected to participate in the empowerment mechanism, ensuring all information is transparently and clearly communicated to all GAC members, including ideas within the GAC and also transferring the information and ideas to other ACs or SOs.

Two, as I mentioned, every phase requires a decision. Therefore, relevant procedures or proceedings should be clearly -- made

clearly available to GAC members, allowing the person to participate. And that's -- following that I would like to offer one suggestion to facilitate our discussion. Given that we've spent quite some time on this issue and ideas have been offered, maybe we can draft a discussion paper. Of course, that would need the kind of facilitation and support by the GAC secretariat. If such discussion paper can be drafted, maybe our deliberation, either here or at future occasions, will be better facilitated. Thank you.

CHAIR SCHNEIDER: Thank you, China. Actually, listening to this discussion, and if you allow me to think out loud for a few seconds, this is not really different in how we come up with GAC advice. Somebody puts an idea forward, a text or an issue that has been listened to by the GAC, and if there's traction, we decide to discuss it. If we have discussed it, we decide to formulate -- start formulating a text or working on a text that has been offered to us as a draft or zero draft. So it's basically in terms of what it actually means, it is very similar. So we take decisions in the GAC to -- as an advisory body to start discussing something, to start working on a text and so on and so forth. So it's actually -- this is what I'm starting to realize, it's actually -- what we're discussing now is a similar comparable exercise.

The only difference is at the end. First of all, the difference is that at some point in time we come together with other SO and ACs to discuss something, not just in the GAC but with the others. This is a community forum level, of course, where we need to take a decision whether or not we participate in that dialogue, and then at the end of this it's a decision that -- whether the GAC would support or not an action which is different from the -- from the -- us giving advice. But up to the community forum, it's basically what we've been discussing so far is actually the same like we -- what we do when something comes up in the GAC that will be in the end a piece of advice.

Let me look at the clock. We have like 10 minutes left. I have the U.K. on my list. I'd like to spend, after the U.K., a little -- the last ten minutes, so U.K. please be brief, a little bit of time on the question number --

UNKNOWN SPEAKER: Number C --

CHAIR SCHNEIDER: No, the D. The question number D. So U.K. you have the floor and then I would like to move on to the next one. Thank you.

UNITED KINGDOM: Okay, Chair. Thank you. I was just going to give a thought or two about the situation when another SO or AC comes to the GAC to seek support for a petition. First of all, petitions may have very obvious public interest aspects to them and clearly then it would be for -- appropriate for the GAC to consider. Others may not -- it may not be so apparent, but my feeling is that the GAC should consider any such request because once you start to discuss the ins and outs of a particular petition, you can then identify how it may be consequential effects, especially if it were to progress through the escalation path which do have public policy requests. So to that question, do we react to all petitions. My gut feeling is that we would. And not in the expectation that we will be flooded by SO- or AC-endorsed petitions.

Secondly on process, there should be a window for the GAC -- all GAC members and observers to consider the petition before coming back to a GAC plenary process to decide whether to support it or not. So you need to allow a window for that that fits within the time frame of the escalation path, which is going to be a challenge. And that may obviate the -- sorry, that may not be consistent with the timing of physical meetings. So that's a point to bear in mind. We may have to take decisions virtually, if you like, and that then raises -- certainly raises questions

about the quorum for a decision. Okay, I'll leave it there. Thank you. We're short of time, yes.

CHAIR SCHNEIDER: Thank you, U.K. This is a very pertinent point because we are looking at the timelines for these steps. It is highly likely that if something like this comes up it will not fall in a period where we have a physical meeting, so we will have to -- unless we convince everybody that there's some modifications. But I think these timelines are now in the bylaws, if I'm not mistaken, so that is not -- sorry, that's going to be difficult.

Denmark, one minute, and then I'd really like to spend a few more minutes on the next question. Thank you.

DENMARK: I will be brief and practical. If we receive a petition from another AC, I think it's -- it is up to the chair, with the help of the secretariat, to see whether this have public policy interest or not. And then on that basis, to send it out to the GAC to say whether you agree that we are supporting it or whether we should abstain. And as time is short, then if -- if there's an objection, then it's -- objections then it's not consensus on that point. I think that is the only practical solutions. We cannot tell

about quorum because much of this will be in email. So we got to see on certain practical issues. Thank you.

CHAIR SCHNEIDER: Thank you. I think in the end everything will not be in the hand of the chair but in the hand of the GAC. But the chair may make suggestions in order to speed up things, if I understand you right. There's a difference in the -- in the logic. So -- but we are in the same line.

So just to -- we have like five, six minutes left.

(Session continues in transcript entitled ICANN Bylaws Changes and Role of the GAC - Session 2 Part 2)