Janis Karklins**:**	Good afternoon Ladies and Gentlemen, distinguished members of the Review Panel, for you (inaudible 0:00:31.7) Bonjour, how we say in French, so welcome to the meeting with GAC. We were planning upon your request meeting, one hour open session and one hour closed session. After receiving the list of questions you would like to discuss with us, we identified that only one question merits to be discussed behind the closed doors.
	And therefore we would suggest that the proportion of the open and closed would change and we would take up questions we consider should be answered in the open session and then when we come to the, address of all them and then when we come to question which we think should be answered in the closed session we break for a while and then take it up afterwards, if that suits you?
Brian Cute:	That works fine, thank you.
Janis Karklins**:**	And of course we have already 20 minutes late, as usual, and we need to finish in time because there is a function awaiting us which we cannot miss.
Brian Cute:	Thank you very much Janis, my name is Brian Cute, I am the Chair of the Accountability and Transparency Review Team. Hello again to all of you, who we met with earlier today.
	Let's get right to the work, we have, since we made introductions last time around, we have, the letter that was sent to the GAC, and thank you very much Janis, for organizing responses to it, in advance so we can have an efficient exchange here, if we do start running out of time, we may want to prioritize certain questions to have a discussion on. Obviously within the letter, the questions focusing on the GAC's role are going to be central to our thoughts. So with that, if you want to begin the responses to the questions in the letter.
Janis Karklins:	How we will structure this, we have asked the individual GAC members, coming from different parts of the world to kick off the discussion with the introductory remarks and then if there are questions, or other GAC members would like to add something, so they would come in the debate. So and then, on the first question:

'What is encompassed within the phase public policy matters and the formulation and the option of ICANN policies, can you provide some examples of GAC's statements that constitute advice on public policy matters on the formulation adoption of the policy, can you provide some examples of GAC input that falls outside this category.'

I will call on Bill Dee from European Commission to kick off this debate.

Bill Dee: Thank you Janis and I will try and keep my comments brief so other GAC colleagues can chip in as well. The comments that I'd like to make is that there are essentially two perspectives on what constitutes public policy, first of all there's a GAC perspective, in our opinion. And there each governmental or public administration has to decide for itself, if something raises public policy concerns. This is a principle of national sovereignty but this is also the real world, actually, different governments place different emphasis on different aspects of, in this case, internet policy.

So there isn't a uniform, universal definition, that we can offer, its nature of national governments and parliaments, they will decide over a period to attribute importance of policy attention to issues, and that will vary over time. The other perspective, in our opinion or in my opinion, I think shared by the colleagues, is the Board perspective and that's different in the sense that the Board have a legal obligation under the bylaws to consult the GAC on any proposal that raises public policy issues.

And therefore its different, they have a legal obligation to determine how they are going to decide if something raises public policy issues, and there it seems to us that, in retrospect, it may have been useful at some point if the Board had perhaps consulted, or maybe they have consulted and we're unaware of it, with their legal counsel about how they're supposed to fulfill this legal obligation under the bylaws. And that's difficult for GAC members to comment any more on, I think that you'd have to ask the Board on that, but that's a particularly important aspect of this issue of how you define public policy issues.

During our discussions, I think we decided as well that its important to recall that the GAC didn't draft the bylaws, and therefore in the terms of the references to public policy and the bylaws, we are very much at the mercy of the Board actually who are responsible for reviewing them and updating them. A public policy from our perspective, will vary from

government to government and we'll have to actually deal with issues on ad hoc basis and determine for ourselves if we feel it raises public policy issues for our administration which is significant to warrant our intervention in a particular issue and policy making process.

But we'd stress that we also think that its important to pay attention to the fact that the board have a responsibility for making a determination on what constitutes public policy because that's what the bylaws say, the bylaws don't require us, I think, to make that determination, they have the legal obligation. But this isn't to be negative, I think, it's an observation that we made and we think it's important in the interpretation of this particular issue.

Particularly in light of the fact the bylaws, they only refer to public policies in the same way they refer to us giving advice, which is something we will come to in a moment, there is no definition provided in the bylaws, and there is also no limitation given, as to how they might be interpreted and I think that's probably part of the problem. Thank you.

Janis Karklins: Thank you Bill. Anybody else wants to add something? France?

Bertrand, France: Thank you Janis. Just one specific comment, that in this question the phrase 'public policy matters in the formulation and adoption of ICANN policy', it would be interesting for the Review team to take into account the two levels, one is public policy issues in the policy itself but there are also public policy issues regarding the procedure through which a policy is being developed in terms of inclusiveness, real capacity of the different actors to participate, fair treatment of the different results. So it's just a comment at that stage, to say that when we say public policy matters, it can deal either with the substance or with the process.

Janis Karklins: Thank you. Do members of the Review Team want to ask questions of clarification or. I must maybe clarify when we received the list of issues on 4 pages out of 3 with the questions; we understood that it would not be possible to give a GAC answer to those questions, because of the GAC procedures. So it would take us about 9 months of work to arrive to the GAC answer to the questions. So therefore we divided those issues to different GAC members and what you hear is the perspective of members of the GAC and not necessarily the GAC consulted on

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concerted position because we simply, we're not in the position to provide GAC answers to that, because of our procedures.

Brain Cute: Thank you Janis, that's noted and understood. I guess one question, before I ask the question, needless to say, should the GAC wish to make any written contributions to the Review Team, that would welcome as well, whether its responsive to the questions in the letter or some other statement, I would say we have to deliver recommendations by the end of December and looking at our work streams, I would think anything we receive in the next 3 months would be fairly timely for us to integrate, so any statements the GAC would prefer, I'm sorry?

Louie: Including partial answers.

Brian Cute: Including partial answers, thank you Louie, would be more than welcome, in whatever form. I guess one high level question I would like to ask Bill or anyone on the GAC is, do you see the affirmation of commitments itself as having any impact on the answer to question 1? One way or another?

Janis Karklins: Bill, go ahead.

Bill Dee: I think that's a really good question, but it's one I'd like to think about before I answer. Thank you.

Brian Cute: Fair enough. Well let me put a finer point on it. Oh I'm sorry. Mel?

Mel: I'm sorry, I'm definitely I'm not going to answer but I feel weird being on the two groups, I was just going to add to what you've said, if you'll allow me. That we can also go out of script, I mean its not a Q&A session, we definitely want to hear from you, this is only to share with you how we sort and if you have, and to guide our discussion, but definitely if things that's not written here we would be very much interested to hear.

Brian Cute: Agreed. Let me put a finer point on it. I am going to echo some discussions I've heard in other fora, with respect to the affirmation of commitments and some in the community, beginning to articulate a notion that there's this animal called Global Public Policy that is now, within the four corners of the affirmation of the commitments that ICANN is charged with reflecting that, as it reflects the public interest.

How do you feel that notion interplays with your description of public policy, in response to the question?

Janis Karklins: Italy, Stefano.

Stefano: Thank you. GAC represented from Italy, actually the real point is the understanding and the definition of the public policy and I concur with European Commission when he is saying that the Board has to define and to understand what are the public policy issues in taking decisions in ICANN. But also it is true that the governments may see, may have different evaluation of what is public policy.

And then we live in a multistate (inaudible 0:12:31.3), multistate (inaudible 0:12:33.2) organization where maybe even in the community there are, let's say, conflicting interest in the different constituencies and then, as a consequence of that, some public policy could be called in order to justify opinions of the different constituencies.

So this is in any case a real difficult situation that of course the Board has to understand and then to take it off when taking decisions, so in certain cases we have to say that the devil hides in details, because we may have an understanding on very general problem but sometimes when going to the flow of the decision making, then we discover more difficulties. Thank you.

Janis Karklins: European Commission?

Bill Dee: Thank you, just very shortly, yes I think that Stefan is right and a very good example of cyber crime, I think that everybody in this room would agree that it's a global public policy that we should try and do our best to mitigate the opportunities for people to commit crimes online and to try and catch them and the rest of it. But when you go down to the detail, actually, in policy sometimes differences emerge in different jurisdictions about legal provisions.

And so the global policy level, there can be a clear consensus, child protection is another area where I think you would find no descent at the top level, but sometimes in the way we are required to interact with the rest of the ICANN community or with the board, and in the way we work, actually sometimes differences emerge which require us to be able to express different national positions, or positions of our public

administrations. And that will necessarily, I'm moving onto the next question actually, which is probably not a good idea, unless you'd like me to? OK.

Janis Karklins: Go ahead.

Bill Dee: Which is, *sometimes,* which I'll read it, sure:

Sometimes GAC communiqués include statements minority views, how the GAC expect ICANN to handle those under the bylaws.

And the answer I would offer there, is, we'd expect the Board to handle in the same way that any private corporation with international activities would, and that is by accepting that there are different rules regulations and policies applying in different countries and that you have to tailor your behavior as a private corporation to respect these differences.

You know the GAC can and does go a long way to try and reach a consensus position and I think we're very successful on the whole in many areas, if you look back over the years in terms of our communiqués and our principles document, a lot of our output is consensus driven, the majority, it's very rare actually that we don't have a consensus. But when we don't have a consensus, because it's the real world, and because there isn't enough overlap for us to negotiate some sort of compromise, I think we'd expect the board to take all of the views into account before making a decision.

And the same way that I said earlier on, if you walk into a room of 10 people and you ask them for their advice on what you should do, they will give you different opinions, you leave the room and you think about it and you make a decision, and that decision will, may include or reflect the advice you are given by some of those people and disappoint others but that appears to be the legal responsibility the board are charged with, is to take advice, take it into account and then make a decision.

And I think we all understand in the GAC that the Board do have the legal right to reject the advice of the GAC event if its consensus, clearly in a case where there are minority views and there may sometimes be opposites views that can be communicated to the Board. Whatever the decision the Board makes, it's going to disappoint some people. I don't

think that's an enormous problem in itself, actually. So the last comment I'd make actually, just because I've written it down here.

And we talked about it earlier is that I think both these first two questions are kind of pointing in the same direction that the answers to these kind of definition questions and procedural questions may require some look again at the bylaws relating to the GAC, because they are, you know, 12 years old now and there have been one or two revisions I think, certainly one revision.

But this exercise, this giant working group exercise is being very useful I think in highlighting that there are substantial differences interpretation between the board and the GAC on some fairly fundamental issues, like what constitutes advice. Now for an advisory committee, that's fairly basic. So maybe we need to go back and see if additional clarification formally needs to be incorporated into the revision of the bylaws relating to the activities of government's public administrations in the GAC. Thank you.

Janis Karklins: Thank you, I have Bertrand, France.

Bertrand, France: Just a quick answer to the question that Brian was asking regarding the impact of the AOC. Generally speaking the major impact that we see, or that France sees, from the AOC is the reaffirmation very clearly of the public interest dimension of the mission of ICANN and I think it has already had an impact in the general nature and ambience of the discussions since the adoption, so this is the main shift of re-focusing the organization on its public interest mission, and global public interest is about the definition of public policy.

Janis Karklins: Thank you, Norway, (inaudible 0:18:40.3).

Norway: Thank you Chair. Just a quick comment to what European Commission mentioned regarding respect to the different legal systems in the different countries. I just want to point out in the ICANN articles of incorporation the paragraph 4, it is also mentioned there that ICANN should carry out its activities in conformity with, among other things, also local law is mentioned there, so of course there are also some obligations there in that paragraph. Thanks.

Janis Karklins: Thank you, UK, Mark?

Mark:	Yup, thank you Chair, just two quick points. First of all on the AOC, I think it was very important that it made explicit that public interest concern but it was implicit before so I do not think it has any kind of direct impact in terms of what the GAC does, what it has already or always done and will continue to do. I think that is kind of unchanged, but I think I am echoing what Bertrand said in terms of a clear statement of the public interest which is very important.
	With respect to situations where the GAC cannot reach a consensus, I think it is important that we do not reach a situation where a GAC position, which records minority diversion views, is then disregarded by the Board, or the GAC couldn't reach a consensus on this so we move on, we don't take account of what the GAC has said, so it's important for the Board to take full account of advice, even where there is diversion to views for whatever reason, national laws or whatever as Norway has exemplified. Thank you.
Janis Karklins:	Thank you. Next question is, so Heather from Canada. Where is Heather? Elected Interim Chair.
Heather:	Thank you Janis. There are two questions here, so the first one is concerning the notion of formal GAC advice, presumably versus informal GAC advice. I guess I have comments to make somewhat similar to the European Commission's closing comments and that this notion of formality does not exist in the bylaws and in terms of the GAC or how governments would look at the advice they generate, they don't look at it as being either formal or semi-formal or informal.
	And so one, so in order to answer that question, then we would need to understand where its coming from and it does seem to have importance for the Board in previous exchanges they have had with GAC regarding our advice, and it's possible that is the legal consideration at the Board but that is not clear to us, so as I say, we really don't think of our advice as being formal or otherwise and, to repeat a comment I made earlier, as the joint working group was meeting with the review team, advice is advice is advice.
	Regarding the second question, we did discuss this briefly and as a GAC, just before we met with you, and we're not particularly clear on what this question means or what is it that the review team is aiming to un-earth in

asking this, so I am actually going to return this to the review team, and ask you what you have in mind?

Male: Well I can give you one version, we are a team of 12, my read of it is and it ties a couple of threads together actually, could you, is it up in the screen again? Ah okay it's really two separate questions, as you can tell, whether there is a need for formal advice, question 1; and if there were, would that enhance the embrace or support by the public.

One of the (inaudible 0:23:32.6) issues we're looking at is, how does ICANN make decisions, what is that process, what are its strengths, what are its weaknesses what do we need to make recommendations on in terms of improvements and then how does that translate into satisfactory, dissatisfactory within the community and the public. So I think at a high level that's what we were asking, maybe at the time not fully appreciating the active discussion on advice that you were having, that you've helped clarify this afternoon. Does anyone else want take a crack at that? Fabio?

Fabio Calasanti: Well probably another consideration in asking that question was, is there an easy way of improving the situation and the, for what concerns, the way in which the ICANN Board deals with GAG advice, we know that we were confronted with this strange position of the ICANN board claiming that they had never been advised or that there was a doubt about what was advised. So probably one easy way was to say, well if GAC from today onwards were to put a stamp 'official advice' on any document it produces, that clearly would deprive ICANN of any excuse.

But I am now obviously exaggerating the position but behind this there was the idea, well should GAC perhaps had been trying to adopt its advice in a more formal way. I understand, from your answer, that its probably difficult for GAC to have more formal procedures, and at the end of the day one has to live with the reality that there is, that whatever the GAC finally arrives at, has to be considered advice, as you said this morning, advice is advice is advice, end of story, and we shouldn't be looking for anything else in that direction.

Janis Karklins: Though I would say we need also to be selective in the reading when the communiqué says that GAC met with the GNSO or ccNSO, that is just a relaying of information , that is not advice, but if GAC says that we examined the question and position which transpired from that, is that

and that and that, that certainly is advice, so we need also to understand that there is information session, parts and then there is a substantive parts.

So, shall we move onto the next question? So Maria? Maria (inaudible 0:26:23.5) from Sweden.

Maria: OK, thank you very much Janis. I will read a question:

Do members of the GAC think there is a shared understanding between the GAC and Board? On the circumstances in which ICANN is obligated to (inaudible 0:26:39.2)*, sorry, notify the GAC of appending matter raising public policy issues.*

And as far as I can understand, and several of my other GAC colleagues can say that the answer is 'no'. Which means that there is no such shared understanding and of course it's therefore very important that the review team dig into this issue in order to clarify the process. So if I immediately move to the next question:

How well does this mechanism work?

So, as my answer above that the question is no, so there are no such understanding and therefore of course no agreed and mutually understood mechanisms. And that of course needs to be highlighted and it's also interesting of course to think about if it is the case that mechanism should be formulated where this could take place and how it should work and with whom and what kind of environment.

So as my impression is that there are no such mechanisms, of course it's hard to answer to the other question, specially as this has come clear to us, the GAC, that according to the Board 'the GAC does not clearly indicate when they are providing advice', and this is something we discussed this morning in the joint working group meeting, and of course this is a huge problem itself, especially after these many years of GAC/ICANN board interaction, I have to say.

Anyway according to my GAC colleagues, also there seem to have been, it seemed to have happened once, 6 years ago, that we actually get some notification about public policy matter, but that is something I don't know so much about, so to the question about what I think the process

worked, or failed to work, is simply that there are no processes at all and that certainly needs to be highlighted by the review team. Thank you.

Janis Karklins: Thank you Maria, any additions to that what Maria has said? Please Larry.

Larry Strickling: This is Larry Strickling, but I assume folks must have some examples of where you felt you should have been consulted and weren't, is that not the case, and if so could we hear some of those?

Janis Karklins: We had a conversation earlier and I explained that according to the Board, being a liaison to the Board, I have heard a number of times that Board considers that the presence of GAC liaison to the Board that the Board resolutions constitutes sufficient notification for the GAC to act upon and to provide policy advice. I understand, here among the GAC members, this is not necessarily seen as sufficient communication between the Board because that is not overly clear.

I recall 4 years ago, we established a joint working group, GAC / Board joint working group, which was looking at the questions of communications between ICANN Board and the GAC which at that time, apparently, or was perceived, completely broken. And the result of that working group was better understanding how GAC and Board should communicate and how timely the questions have been put or how timely the documentation should be provided to the GAC in order GAC being in a position to examine questions. So, that is my recollection from the results of this working group we had a couple of years ago. Suzanne.

Suzanne: Thank you Janis. And Larry, of course you've asked a very very good question that we actually, in our discussions here to prepare for this exchange, didn't really focus on, because we read the question very literally. Is there a shared understanding, on the circumstances in which ICANN is obligated to affirmatively notify the GAC? So we've literally focused on that and said 'Gosh, there doesn't appear to be one', but since you've asked for an example, I am going to go on a limb here and my colleagues will correct me if I'm wrong, I have every confidence you will.

When the Board endorsed the GNSO recommendations on the introduction of new gTLD's, it would have been perhaps very useful at that time, for the Board to have reviewed those recommendations and

perhaps identify that there were a few proposals, such as morality and public order, if I may, such as trademark protection, such as consumer protection, any number of things, sensitive strings, things that the GAC had actually already addressed way before the GNSO completed their recommendations, we issued a set of principles in March 2007. The Board resolution in June 2008, I believe, simply embraced all of those recommendations as presented and instructed the staff to draft implementation proposals.

And so conceivably that might have been a very constructive moment, when the Board could have said, 'well, wait a minute, we know the GAC is not a part of the formal GNSO policy development process, but we also know that introducing new gTLD's, because the GAC already told us this last year, has a lot of public policy dimensions, perhaps this is a good time to formally notify them that we would appreciate their views', so I don't know whether my colleagues around the table agree with me, but I personally think that it's probably a very good example of when that should have happened. Thank you.

Janis Karklins: Thank you, UK and Pakistan, and then France.

Male: Just a quick comment, I strongly endorse the views of my colleague here, thank you.

Janis Karklins: Thank you, UK, Mark.

Mark: Thanks, I would accord with what the US has said, and a kind of related example, was the expression of interests which was decision taken and following the GAC meeting, on the last day of the ICANN meeting in Seoul, the GAC had already finished and it was a proposal to accelerate, a kind of fast track for new gTLD's and it was going to go into, swing into action really before the following GAC meeting, and the GAC was completely bypassed on that, so I think that's a glaring example of where we were not even alerted or consulted immediately following that decision to press ahead with the expression of interest. I mean ultimately the proposal was dropped but we were quite, well I was quite shocked that that had happened while we were on the planes going back, from the meeting. Thanks.

Janis Karklins: Thank you Mark. France?

Bertrand de la Chapelle: Well actually Mark was alluding, has just alluded to what I wanted to raise. The expression of interest was a typical case where the GAC, as explicitly mentioned, that the process should have included a consultation of the GAC, I think I remember either we made a separate comment or it was included in the GAC communiqué. I think it is a perfect illustration of the fact that in that case, there was indeed a misunderstanding of whether that specific decision had public policy implications or not.

In various discussions with the Board or Board members or even with staff, there was a comment that basically was merely implementation issue and it didn't have a policy dimension so therefore was no need to trigger this formal request, whereas on the other hand our contribution indicated that the process that was followed for this discussion of the expression of interest at public policy dimension in terms of the involvement of the different actors.

So the expression of interest is a case study that needs to be, that would deserve to be examined in a certain way, not that it was our fault, but it was a typical example of difference of appreciation and in more general terms, we would certainly encourage the team to use the whole gTLD, the new gTLD process at the various stages as one of the major test cases to analyze how the decision making work flow has been working. Not as the exclusive topic but this is clearly the main process where its easy to track the different stages. Thank you. And the (inaudible 0:36:24.8) is clearly an interesting sub-test case.

Janis Karklins: Thank you, Bertrand. Denmark?

Julia, Denmark: Thank you. I would like to just concur with US, UK and France on this issue. Thank you.

Janis Karklins: Thank you Julia. Norway?

Norway: Thank you, I just also wanted to support that. Just briefly also refer to the GAC communiqué after the October meeting 2007 in Los Angeles, where we specifically commented that the GNSO presented principles and recommendations for the gTLD's did not reflect the GAC principles regarding gTLD's, we flag that in our communiqués, so supporting those comments. Thank you.

Janis Karklins: Thank you (inaudible 0:37:18.7). Brazil?

Male/Brazil: Thank you, Brazil would support this suggestion made by France, sounds very important test case, we should follow. Thank you.

Janis Karklins: Thank you. Any other questions of clarification from the review team side?

So then we move onto the next question:

Does the mechanism provide adequate transparency about the policy formulations and adoption process so as to ensure that the GAC is able to consider and provide advice on activities of ICANN, as they relate to concerns of government particularly matters where there may be an interaction between ICANN policies and various laws and international agreements or where they may affect public policy issues. Please provide specific examples of these mechanisms failed to provide adequate transparency to the GAC.

And Bertrand I will ask you to kick off the debate.

Bertrand de la Chapelle: Thank you Janis. A few quick points, the general underlying element of this question is the way GAC participates in general in the policy development process. Most of the discussions we've had so far, deal with the way GAC gives input to the Board. The major challenge is that before something gets to the Board, it goes through many many stages of working groups, policy developments iterations within the GNSO, for instance, and then it goes to the GNSO council and then it moves upwards.

And so we have a major challenge in designing how to interact and to influence and to participate in the policy development process itself and one of the difficulties is that the policy development process within the GNSO is something that is handled at the GNSO level, some progress has been made where observers from the GAC can participate one way or the other in the working groups, but the format in the policy development process is not really incorporating easily input from the GAC and one way to bring input from the GAC is potentially to send advice to the Board that would trickle down.

But the reality that there is no hierarchical link in that direction that would allow the Board to tell the council to do something and give it to

the working group, and so the first message in that question is the evolution of the policy development process, and the identification of the best ways for the GAC as a whole and governments, individually to participate at the earlier stage, is one key focus of the work, or could be a key focus of the review team.

The second thing, quickly, is the notion of overload, and here the GAC is not alone in considering that the process is leading to incredible information overload, it is extremely difficult to follow all the activities and I would just mention the vertical integration policy development process where, basically following 1,600 mails on one sub-subject is extremely hard, except for the actors who are extremely directly impacted by the outcome of the discussion, and so it has nothing to do with the issue of capture, which is another topic, it is a question of the system itself and the decision making process is leading automatically to this overload and this is a topic that needs to be addressed.

And finally this is connected to the first notion, the input that the GAC can do should be oriented towards the Board but also to other methodologies, for instance, we have began to give input and comments through the public comment space and one message that we would like to share is that we're not absolutely sure, to say it mildly, that when the summaries of comments are being made by the staff, due weight is being given to comments that are formally expressed by governments and so in this respect, that's an element that is connected to the very consultation process and here I would make.

And therefore France, a very concrete suggestion, it would be interesting in our view that the review team does, or asks, someone, maybe the staff, to do a quantitative evaluation of the different public comment processes to see how many comments are being made on the different topics and how diverse the contributions are, whether there is a user representation of the same contributors whether some consultations have raised comments by only a very limited amount of people and so on, so quantitative analyses in that respect of the public comments process would be useful.

Mel: Bertrand, just a very quick remark, we've been meeting the various communities stakeholders since the morning and we've heard the message of that the process is extremely overloading, there are many public comments period running simultaneously, so we would very much

appreciate any ideas or suggestions that we should consider in our recommendations within the PDP, doesn't necessarily mean that this should be now, but even whenever available, but if you are -

Bertrand de la Chapelle: If I may make just one suggestion. The main challenge is that most of the consultations are taking place in a sort of parallel process like there is a subject that is being put on the table and then comments are (inaudible 0:44:04.2) and its very hard to make a comment on another comment, if you see what I mean, it's not like a forum, it's not an interaction between actors.

So if you want to reply to a comment you have to say 'this is a reply to the comment that was posted by somebody else', at the same time, the moment you do an interactive mailing list, you get the vertical integration thing where things are bouncing back and forth and so there are two elements probably to explore, one is to allow a minimum of interaction that can take place at physical meetings but also on short periods of burst of interaction around very specific questions.

And the second thing, whenever there is a mailing list or working group, PDP, it is probably useful to do regular stocktaking of where we are and that could be the staff, or the secretariat, or it can be the participants themselves and the template is very simple, for at every stage, you list what other things that are now agreed, the things that have progressed since the previous one and the topics that need to be explored later on, so that when you cannot follow the whole range of exchanges, you have a way to track progress. It's hard to do; it's a discipline but having shorter period of interaction is facilitating that is just a suggestion.

Brain Cute: If I may, and this is for anyone on the GAC. What I'm hearing in the last 20 minutes is two fundamental issues, one is how does the GAC get notified of emerging policy issues and whether it's through the Board and whether that's adequate or, it seems as though, one can conclude that putting observers into the community structure and PDP structure as an attempt to find that early warning of policy issues that are emerging and the bylaws provides a structured relationship between the GAC and the Board only, not the GAC and the other organs of the community.

But two separate issues, early notification on the one hand and consideration of GAC advice on the other, and again the bylaws create a clearly defined structured relationship between the Board and the GAC

only. Is there a sentiment that the extension of the GAC in its interactions with other organs of the community a) has been productive in addressing either of those two questions or areas and b) should we be considering some restructuring of the GAC's interaction with the ICANN body in the form of the bylaws.

Janis Karklins: Norway and then the US.

Norway: Yes thank you Janis, I think the comment here is appropriate also what (inaudible 0:47:03.0) was saying, I think the deadline for comments of input of the processes is also a key issue here, because like we have experienced on several occasions that, like for example GAC has been asked to provide advice or at least the public comment period has been, sort of the deadline has been put in between meetings so according to our operating principles we are not able to provide any GAC advice since we have to have a face-to-face meeting etc.

Of course, on some occasions we have been extended that deadline to be able to provide input, so they have to, well somewhat accommodated those on some occasions, but I think there is a mismatch here on the expectations of having input from the GAC and the ability for the GAC to provide that input. Thanks.

Janis Karklins: Thank you (inaudible 0:48:01.1), United States.

Suzanne: Thank you Janis, and thank you Brian, I think you have hit on frankly what we now understand much more clearly around our table as a threshold problem, threshold question. The bylaws provide for the GAC to provide advice to the Board only. Over time we have of course really opened up our doors and have embraced joint work with the ccNSO, which was extremely constructive, meetings with the ALAC, with the ASO, with the GNSO, all of which is very very helpful, however we are very mindful of the fact that none of those bodies have any obligation to consider GAC advice.

That doesn't say whether they are unwilling, I am not suggesting that at all, however they have no obligation, and their processes are not structured to sort of recognize that there is public policy advice coming from the GAC, we probably want to take that on now. That does not exist, so there is a really fundamental disconnect between the way the bylaws have structured the provision of GAC advice and a way the policy

development processes are structured. So I noticed you asked a question, you know, it's the early stages of policy development.

We actually literally have no formal official recognized means of doing that. So whatever happens now, is completely informal and I would suggest, I know Bertrand has sometimes said 'well if we get in early in a lot of these GNSO working groups', I think the majority of us would find that incredibly challenging, because it's not necessarily an efficient way of conveying GAC views even if you convey individual views, so that is our threshold problem and I think it goes to revising the bylaws in a couple of areas, not only the direction of GAC advice, but the policy process itself.

Janis Karklins: Thank you. So, Netherlands?

Netherlands: Yes thank you Janis. And thanks for the possibility to the review team to have this opportunity to discuss these important issues. I think you just ended with a good conclusion that two important things is the notification of the GAC of issues about public policy issues and on the other hand the way this, our advice is taken into consideration and even if this sometimes advice that has been asked for by the board or advice that we came up ourselves.

And to Norway, had some practical input about deadlines of advice, sometimes in between meetings, the same goes for documents that comes sometimes very late in the process. Sometimes very big, huge documents like the DAC and other, I think that everybody struggles with the same problem. Sometimes it happens that it comes so late that as GAC we are not prepared enough because we have to go back in our home towns to other departments or other ways to collect advice that we are not able to decide in one meeting, it means that we postpone it to another meeting which is 3 months later, so that is a practical thing but it might be taken into consideration. Thank you.

Janis Karklins: That is exactly the reason why GAC cannot work maybe like other organizations where individuals can provide their personal opinion or the opinion of the companies they own to the given issues. So none of the GAC members around the table represent their individual opinion, so many of them go back and have fairly elaborate procedure at home in consulting different agencies which are involved in some countries, this consultative process is more cumbersome or administration is bigger and

in some countries this is not that cumbersome where administrations are small. But nevertheless that is the overall obligation to act on behalf of the administration and that requires some consultation process and that slows down the work of the GAC. We're trying to explain this specificity to the other supporting organizations and advisory committees and I think there is some degree of understanding why GAC does work as it works.

So shall we move onto the next question, which is about GAC liaisons and Suzanne (inaudible 0:53:09.2) from the United States to answer the question.

Suzanne: Thank you Janis. The question is:

Has the GAC appointed non-voting liaisons to ICANN SO's and other advisory committees, if not, why? And if so has it worked as an early warning system to identify issues that may raise public policy concerns.

I am going to defer to our GAC vice-chair of the joint working group but actually we have text that we were discussing earlier today that provides you with a little bit more background as to your history. We have had a number of liaisons in the past to all of the other SO's and AC's but we are currently at a point where we only have one formal one to the ASAC and there are a number of reasons for that, but I'm just going to, and that's why I mentioned the report because some of those are laid out and you may find that helpful.

But one of the biggest problems I think we have run into is a tendency to for the other parts of the community to see that one GAC representative as representing the GAC, and this for us is a fundamental problem and a fundamental challenge so other than the GAC liaison to the Board who actually formally transmits the communiqués and any positions that we develop and of course the membership then has the confidence that the chair is conveying a consensus position, if you are serving however in these other liaison capacity, I think we normally see ourselves as being an information channel just to help pass things back and forth.

Others have more often seen it as well, we're getting a government prospector, we can check a box. That's all we need, and they can maybe join us in a working group and represent the GAC, so that's been very challenging because we don't have mechanisms to do that on all of these

variety of different issues, so it also became rather burdensome for some individuals to do their day job in capital, represent their country at a GAC meeting and serve the liaison function.

But I do think we are very willing to revisit that issue, I think there is a great deal of interest in finding a way to maybe de-fob the liaisons on the GAC side so we have a rotating, more people can share the burden, but we also think if we're talking early warning, we may want to look at something that involves a little more reciprocity, that there could be liaisons from the other SO's and AC's into the GAC, there could also be broader understanding within and among ICANN staff.

So that there's better support for the GAC and better understanding what some of the concerns are that might get flagged in any given GAC meeting, you wouldn't have to rely on, sort of, the sole GAC liaison to the Board, which we, certainly a lot us, came away from this morning meeting, I think Janis has confirmed this, that a majority of the Board seems to think that's the channel. And that's it; we don't need to do anything else. So we are relooking at this but I think there are some questions and some challenges and again, I find, I think we would endorse the concept of more reciprocity. Thank you.

Janis Karklins: Thank you Suzanne. What you said there, I would like to just add two additional elements. When we decided to suspend the liaisons to the different organizations, we equally decided to increase the frequency of face-to-face interactions during our meetings with other supporting organizations, and advisory committees. We have regular meetings with the GNSO as a GAC GNSO, we have regular meetings with the ccNSO and ALAC, with the GNSO meeting, every meeting because of the current new gTLD program which is of common interest, with the ccNSO.

And with the ALAC we're meeting every second and also with the NRO we're meeting every second meeting, simply because of the limited time at our hand. Another event coincided with the decision to suspend liaisons and that was the opening of the doors of the GAC meeting and since already a year and a half, GAC is meeting with open door policy and all those who are interested to follow our discussions can come in easily and sit in.

And I note that there is a considerable level interest in the community about GAC considerations because I do not recall any meeting where we would be alone in the room, since we adopted this open door policy. So in a sense this reciprocity is addressed with this open door policy, those who are interest sit in and listen in and certainly they bring back, what they have heard in the GAC to their respective constituencies. So are there comments on this? I see none, then we can move on.

We have next question on, let me see where we are, we have next question:

On considering these mechanisms, does GAC have any obligation to proactively identify issues that my raise public policy concerns at the early stage of discussions? And New Zealand representative, Frank March is prepared to answer this question.

Frank March: Well actually I think we had quite a discussion about this area earlier and on the surface the answer to the question is 'of course' so that raises the issue of what was underneath the question. What was the purpose of asking the question, so we got to the point of throwing it back at you and saying 'what do you mean by this question?'

But I think actually its emerged in the discussion we've had, the question has been, in a sense, already answered, in that the real issue perhaps underlying this question is, having the GAC involved at an early stage, in policy formulation in order to, in public policy issues emerge at an early stage and identified at an early stage.

In fact this has happened and you can put some of the comments earlier around the other way and ask the question, when has the GAC offered advice which has been ignored by the Board or other constituencies within ICANN and that's also been identified in some of the earlier discussion, particularly around the new GNSO process and the issues that we raised, which were not dealt with because they were raised as part of our communiqué and nobody was obliged to pick up on them, so it's not a question whether GAC has an obligation to proactively identify issues, we do and we do. But the engagement of the community doesn't seem to exist and that's where that gap developed, I believe. Thank you.

Janis Karklins: Larry.

Larry Strickling:	I, this is Larry Strickling, I have a question that kind of wraps up all of the sub-questions in question 2, and that is, realizing that maybe the GAC can't speak as the GAC in response to this but I'd be interested in getting a sense of the room from the number of the countries represented here, would it be your recommendation, as an individual country, that the review team look at whether or not to recommend bylaw changes to more, create more of a structure for how the GAC plays with the supporting organizations and advisory committees.
	And if so, I'm interested in understanding what GAC status would be at that level, we heard from the other constituent groups we've talked to about (inaudible 1:02:04.2) stakeholder, everybody's ideas are of equal weight and would you all expect that we would not follow that policy at this supporting organization advisory committee level but yet kind of try to carve out a special role for GAC at that level just as you have at the Board level.
Janis Karklins:	Larry, may I start this. I think that this is a fundamental question which was at the heart of discussion in World Summit and Information Society and this is a question also very much present today in ITU discussions, becoming to plenipotentiary meeting on the role of the governments and internet governance in general, so there are specific questions related to a technical management of domain name system and as I see and I have been arguing this very frequently, and particularly we had here a couple of meetings ago, it was I think in Egypt, where secretary general of ITU was present.
	We came to the conclusion, at least I came to the conclusion, that there are two different models of engagement, one is inter-governmental model, purely inter-governmental model where governments are in the driving seat, and they make decisions and as in ITU sector members all follow those inter-governmental decisions. This multi-stakeholder process differs from inter-governmental process that the governments are not in a driving seat, they are not making decisions.
	We accepted ICANN model where governments are providing advice and our advice is treated slightly differently from other inputs, from ASO, and so there are no bylaw provisions that these inputs should be examined and taken into account or if rejected then trigger specific procedure. So from the other hand, the specific treatment already puts

GAC in a position where some people in a community see that we're more equal than others.

So I think that first of all, the fundamental question is, do we believe in ICANN model which we created 11 years ago, whether that is the right model to continue managing, and I personally believe that this is the right model for management of DNS, technical management for DNS, where governments are involved on their advisory capacity but certainly if we accept that then the question is how, what quality governments can bring to this process and how much resources we are ready to devote in order to assure our input is qualitative, so that would be my answer to your question. European Commission.

Bill Dee: Thank you, and a very interesting question, or two questions I think. The first one was, do you think, if I am correct, should we be looking at revision of the bylaws, yes sorry, should this be recommendation, actually that's the conclusion. I think I am personally coming to with the discussions we had this morning is that, a lot of it is just language and semantics and lack of clarity and the need for common understanding between the Board and the GAC.

So yes definitely to that one, I think on the second question, if I can paraphrase it, should there be, should this work towards the special role for the GAC within the ICANN constellation, if I can call it that, I think the answer should be yes, actually, and if we just take the example of security and stability related issues for the internet, that's clearly one area actually where governments may well need to have more than just a purely advisory role where they can be, that advice can be rejected.

I think that's something that the ordinary tax payer and internet user out there, would probably expect from this kind of relationship with private sector organization, which has private sector leadership but there has to be some red line somewhere. And I think that's because a lot has changed since 1998, I think the internet is now a lot more important and it's a lot more critical, actually, as an infrastructure than it was when ICANN was created, so looking at the bylaws again and looking at the role of the GAC and whether there are certain areas where it would be appropriate to reflect the increasing public policy interest in things just as security, I think would be appropriate and logical. Thank you.

Janis Karklins: Thank you, Italy and then France.

EN

Stefano: OK, the question that has been raised right now, is a very basic question and I also support the idea that maybe some adjustment of bylaws could help in render the present GAC more efficient, but it is not simply that, I think that we have to convince all the governments to invest more, also in the GAC resources, I mean, (inaudible 1:08:18.2) representatives and then also sensitization in the countries because it's not that in a multistate called organization like ICANN is, you verified, I'm sure, that the workload of the GAC members is quite high and will increase.

So this is something very important to take into account, but we have to limit the (inaudible 1:08:54.7), the proposed (inaudible 1:08:56.6) at least in our opinion, to render the present GAC more efficient as I said, I had some talk with countries that are thinking in a different way and for example, think that the GAC or the GAC chair in the border should have a sort of veto power, so this is something that is not feasible and is not going, certainly in a good direction, at least for our perspective, so the real point is to render the present multi (inaudible 1:09:38.1) take all the situation more efficient. Thank you.

Janis Karklins: Thank you Stefano. France.

Bertrand de le Chapelle: Thank you, I think it is a, this question is a core question, it's clearly one of the axis, as we said before, that it's going to drive part of the discussion of the review team because it deals with the way policies are being developed, in this respect there are two different elements. One element is the actual participation of government representatives in the policy making itself, i.e. in working groups.

And here I would like to contrast two different experiences, one was the idea of (inaudible 1:10:26.8) ccTLD working group that was actually not a PDP by the ccNSO with input by others, butt was a joint group. I know that within the GNSO there was some grumbling regarding the involvement and it probably could have been done better. However the group itself really worked collegially and there was intense work, it was a proportion and only part of the different actors but the group really worked hard to produce something that was then finally vetted by the different structure, including the GAC.

Like the working group brought back what was produced and it brought back the result on an iterative matter so that the GAC, as a structure,

could at every step say yes this is going in the right direction, yes go a little bit more in this direction. So that the individual governments who were participating in the process, could continue and push forward. And so this was a very interesting experience because it was a real cross community exercise.

Another experience is the different working groups that some of us, I included, have tried to participate in, very warmly welcomed by the GNSO, it was in the Whois team, it is on the PDP reform working group, on the working group reform meeting and process, it's been following the virtual integration and so on. Here there is a huge question which is that participants are mostly as observers and the work load is extremely intense and very difficult to follow, it's the overload thing that I was mentioning.

And so in here we are discussing the way the GNSO works which is extremely intensive and the way governments can participate in those topics, for instance we believe that on the vertical integration it would have been extremely useful to include the expertise of competition authorities, or people who are aware of the way competition authorities in national governments function, because this is fundamentality a discussion about the competition landscape and how you organize the respective roles in the secondary market.

And so maybe there is one direction which is to consider that in the reform of the PDP working group model for the GNSO, involving actually governmental representatives that may not be the actual GAC representative but the specialized actors in the government would be an interesting way to explore, finally the third comment I would like to make is, the policy development process that currently is Annex A of the bylaws for the GNSO, is very well adapted for the so called 'picket fence.'

And, sorry the word escapes me, consensus policies, it's about updating the existing regime, we're wondering after all the years that we've been going through regarding the new gTLD program, whether it was appropriate to have the new gTLD program developed as a PDP of the GNSO itself. Or whether it wouldn't have been better to have a community level PDP, a new type of process that deals with real high level policies, because in that context, the development of the new gTLD program really impacts on every single actor, and it would probably have

been better to say, the PDP process for the GNSO is about updating the regime for the G's.

But when a general policy has to be adopted of the amplitude of introduction of new gTLD's, it should have been a community wide PDP where the governments and the maybe the CC's and others would have had a say. So the third suggestion is to explore the opportunity or the interest of introducing a mechanism which is at the level of the whole community that is a specific PDP when there is a major issue that really impacts all the different actors. Thank you.

Janis Karklins: Thank you Bertrand. Other comments on this? Germany, sorry Norway and then Germany.

Norway: Yes thank you Janis, just a quick response to the questions from Larry and also want to echo what the European commission said that bylaw amendments should be considered and also, we also feel that governments do have in certain areas, special responsibilities, for example, as the commission mentions, security and stability of infrastructure, so it might be considered that government should have a special roll in certain areas. Yes, thank you.

Janis Karklins: Thank you, (inaudible 1:16:05.6). Germany?

Hubert: Yes thank you, I also would like to echo the position of the European Commission and also what Janis had said regarding on the special role of the governments. I also think yes, we have, and I just want to make one remark, as government we are not in a possibility to change our legislation. We are bound by our legislation and that makes it, as far as I see, also a difference between ITU and the situation we now have fear in ICANN, because in ITU we go to our plenipotentiary conference, we sign our treaty and afterwards the governments abound to apply these regulations even if they have to change the national laws afterwards. Within ICANN we are not in such a comfortable situation, we have to adopt our national domestic laws, and therefore we are also bound by this legal framework, we are internally facing, and that makes our position a bit more sensitive. Thank you.

Janis Karklins: Thank you Hubert. So I think we could close this part of the discussion and co-chair of the meeting suggest that maybe it is time to switch the gear and maybe after a 2 minute (inaudible 1:17:44.0), break, close the

door and ask all those who do not belong to the GAC and to the review team, leave the room in order to allow us to go to the closed session. Two minutes (inaudible 1:18:03.4), break and that is the time and those who do not belong to the GAC and review team could leave the room. Thank you.

--End of recorded material--