ICANN Transcription

IGO Work Track

Monday, 09 August 2021 at 15:00 UTC

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JULIE BISLAND: All right. Good morning, good afternoon, and good evening, everyone. Welcome to the IGO Work Track call, taking place on Monday, the 9th of August, 2021 at 15:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom Room. If you're only on the telephone, could you please let yourself be known now?

All right. And we have no apologies for today's call. All members and alternates will be promoted to panelist. As a reminder, please select "panelists and attendees." Or if your selection shows "hosts and panelists" or "everyone," please select "everyone" in order for everyone to see your chat. Attendees will be able to view chat only.

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Statements of interest must be kept up-to-date. If you need assistance updating your statements of interest, please e-mail the GNSO Secretariat. All documentation and information can be found on the IGO Work Track wiki space, including recordings and attendance for the calls. Please remember to state your name before speaking. And as a reminder, those who take part in the ICANN multistakeholder process are to comply with the Expected Standards of Behavior. Thank you and over to our chair, Chris Disspain. Please begin.

CHRIS DISSPAIN: Good morning, good afternoon, good evening, everybody, and welcome to our work track call. So Julie, just so you know, I can’t start my video because it says the host has stopped it. I don’t mind that but it might be good if I could turn it on at my choice, if that’s feasible.

JULIE BISLAND: Try now.

CHRIS DISSPAIN: Ah. There we are. Thank you. That's brilliant. Thank you. I'm sure everyone's delighted to be able to see me. Thank you for that. So welcome, everybody. We've had a good exchange by a number of people on the list and I sent a note to everybody earlier on today, setting out what I'd like to do.

So for me, this call is about three things, really. The first is whether or not there is comfort with going out with an initial report, with some bracketed text in it. I've said in my e-mail what I think those two bracketed texts would be. There'd be some explanation about each one of them as to why they're there and so on. That's one.

Number two would be for us to see if there are—leaving aside those two points, whether there are any other red flags for anybody in the rest of the text or whether we can at least live with it going out for public comment. Because let's be clear. What we're talking about here is not agreeing it is a final set of recommendations but rather sending it out as an initial report for public comment. Obviously, there is a significant amount of work that needs to bed done to this document to turn it into a document that goes out for public comment.

That's something that we can discuss later, as the third point, which is how do we get that to happen. How long does it take? And when would be—I can't remember the dates we set—we will

be allowed to send this out for public comment, based on the current moratorium.

So before we move on to that, given that I've said one, the logistics of getting it ready for public comment; two, anyone got any red flags; and three, dealing with putting bracketed text in as a matter of principle and can we do that? Apart from those three matters, is there anything else that anybody else wants to cover?

I'm very happy to have a discussion about the e-mail exchange, about what Jay said in his explanation and the comments that have been made since then, if anybody feels that they need to. Kavouss, I can see your hand. I'll be with you in a second. If anyone feels that they need to specifically, rather than just deal with it via, as I said, bracketing the text and coming back to it once we've got public comment, happy to do that. Kavouss, please go ahead. Kavouss, I can't hear you. There you go.

KAVOUSS ARESTEH: Yeah. Do you hear me now?

CHRIS DISSPAIN: Yes. Now I can hear you, Kavouss.

KAVOUSS ARESTEH: Okay. Yes. Good morning, good afternoon, good evening, and good time. I have noted that, in my absence these one or two meetings, you have deleted something that I proposed in the definition of IGO. I am not happy with that.

CHRIS DISSPAIN: Okay. I'm not sure that we deleted it, Kavouss. I think we were trying to get a clearer understanding of what it was that it would actually cover.

KAVOUSS ARESTEH: I can tell you. First of all—

CHRIS DISSPAIN: Hold on. Just before you do, can we just get the specific place in the text where it goes up on the screen. Maybe they've already—

KAVOUSS ARESTEH: IGO definition in the first page. "IGO complainant refers to …"

CHRIS DISSPAIN: Okay. Excellent. Go ahead, Kavouss.

KAVOUSS ARESTEH: Yeah. First of all, it said that an intergovernmental organization, having received a standing invitation. I don't know to what extent you are familiar with the UN system. Sometimes, there is no standing invitation but there is admittance or admission text, or admission clause. So you should add "receiving admission or a standing invitation." Sometimes, there is no standing invitation. There is admission, saying that, "The following organizations are admitted." So there is no invitation for that. This is a general

invitation, either in the charter or so on and so forth. That is something you need to add—adding “admission” to the standing invitation because not always having this.

But this is not the main point. The main point is that when we say that “participate as an observer in the session and the work of the United Nations General Assembly.” And I added “including in the meetings of its specialized agencies.” Sometimes, international organization is not invited or admitted to General Assembly because they have nothing to do in General Assembly. By they are attending the specialized agencies. There are many. WIPO is one of them, ITU is another one of them, WTO, and so and so forth.

I don't know why this “including its specialized agencies” has been dropped. This is important. There are many international organizations. They do not attend or are not invited in the UN general assembly but they are attending in the specialized agency. And for them, it’s very important and they attend under their domain names. This is the second point.

And I have the third point. That is that in the text, sometimes you refer to “binding arbiter” or “binding,” sometimes to “voluntary binding.” So we need to see which one is what. Sometimes it’s voluntary binding, sometimes it is not voluntary binding, or we should have throughout the text one single, straightforward definition.

And lastly, your chart is much better than your text. So we have to check whether the chart or diagram corresponds to the text or vice

versa. If there is any discrepancies, we have to correct that. Thank you.

CHRIS DISSPAIN: Of course. Thank you, Kavouss. So let me take your points and respond to them. First of all, dealing with the last one. Yes. Obviously, the document, once drafted properly, will need to be checked and make sure that the chart and the document are as one.

In respect to your comments on widening the definition of an IGO, where we left was that there were some concerned when we talked about the last time that putting the words in that you had suggested might lead to a significant widening of the group that would be considered to be IGO complainant.

I sent a note, asking you if you could provide some examples of intergovernmental organizations that would not be covered by the current wording—the wording that it is currently—but that would be covered by the change of the wording that you have suggested, or that you did suggest.

I think we're still at the point where we need to understand that. We need to understand what additional organizations that are not covered by the current a, b, and c would be covered by your changed wording and whether we are comfortable having them covered. Are you able to do that, Kavouss—to provide some guidance as to the sort of organizations that you would consider, that would be included with your additional wording? Can you help with that?

KAVOUSS ARESTEH: I threw the monkey to your shoulder because it is said “in the United Nations General Assembly.” I said that it’s not always United Nations General Assembly but it is in the specialized agency. Still, they are intergovernmental organizations. They are not invited or they may not be having a standing invitation to attend the General Assembly but they will attend a specialized agency. Are you excluding them? This is the text. That is it.

CHRIS DISSPAIN: No. I’m asking you to give me an example of some agencies that would not be covered by the current definition.

KAVOUSS ARESTEH: Many agencies that are not invited to the United Nations General Assembly because they have nothing to do with the General Assembly.

CHRIS DISSPAIN: I agree. But you mentioned, for example, the ITU and WIPO. Both of them, presumably would be covered—

KAVOUSS ARESTEH: I said some of them. ITU is not invited but it is admitted. It is not invited.

CHRIS DISSPAIN: Yes. But it's also covered by—

KAVOUSS ARESTEH: Yeah. But it is not only the ITU. There are other intergovernmental organizations. [Inaudible] that I say something, that ITU is an example. Arabsat, for instance, international organizations established by the government and so on and so forth, they do not attend the General Assembly at all. But they attend other organizations. They attend WTO, they attend ITU, and so on and so forth. So a specialized agency is not … The only thing, you could add "including a specialized agency, as the case may be."

CHRIS DISSPAIN: Let me try and take it through bit-by-bit so that we clearly understand. Are you saying that there are specialized agencies that are not established by treaty and which possess international legal personality? You're saying that there are some of those agencies, yes?

KAVOUSS ARESTEH: Not always, they treaty. They are not always treaty. There are some agreements. It's not treaty. Yeah.

CHRIS DISSPAIN: Excellent. Okay. So there are some organizations that are not covered by a, which says, "an international organization established by a treaty, which possesses legal personality." Good. Then, b says, "an intergovernmental organization, having received

a standing invitation to participate as an observer in the sessions and the work of the United Nations General Assembly." You are saying that there are some people who don't have a standing invitation but are … So how do they attend if they don't have a standing invitation?

KAVOUSS ARESTEH: Yeah. They attend in accordance with admission to the United Nations General Assembly. There is no invitation. There is admission. That's all. That means, "The following are admitted." And they give the list of them. But they do not have any standing invitation. So the term "standing invitation" is troublesome for me—standing invitation. If it had "admission/standing invitation—" both of them.

CHRIS DISSPAIN: Okay. Yes.

KAVOUSS ARESTEH: It's the first one. Yeah.

CHRIS DISSPAIN: Yeah. I got that. Is it feasible that an organization could be admitted to the United Nations General Assembly on an ad hoc, one-off basis, and therefore—

KAVOUSS ARESTEH: No. It depends on the situation. Sometimes, they are admitted if the agenda relates to the scope of activities. It is something like that. I can give you one example, for instance.

CHRIS DISSPAIN: Please.

KAVOUSS ARESTEH: There are some organizations like [ECOW]. They could not have a formal participation somewhere. But if the agenda relates to their scope of activities, they have the admission to not only attend but take the floor, submit the document, and so on and so forth because that is their specific area of activities. So we should not go to all of those details. As I mentioned, saying that "in the specialized agencies, as the case may be." And we do not go all the cases and so on and so forth. That is the situation. I don't think that, [widely], people are afraid of international organizations. I don't understand that.

CHRIS DISSPAIN: The challenge is that the term "standing invitation—" the language "standing invitation—" was actually taken from the GAC's criteria for the IGO list, so the definition that the GAC used to set up the general principle of IGO name protection. If you remember, the names themselves are already reserved. It's only the acronyms about which we are talking here because the names themselves are reserved. And they are reserved in accordance with the GAC's criteria for what is an IGO. That is where the term "standing invitation" comes from.

KAVOUSS ARESTEH: But we are discussing the IGOs now and nothing prevents us to complete and clarify this situation. I don't know at what time that definition was agreed by the GAC, who are agreeing with the GAC, whether it's still covering the situations, because the time is changing, situation is changing. And I don't think that we should have some sort of stagnation. I don't understand what is preventing us to say "standing invitation/admission."

CHRIS DISSPAIN: The answer to that question, Kavouss is it's not about prevention. It's about understanding. And it's about understanding whether or not the widening of the definition would lead to a whole new group or a different group of organizations that we don't automatically understand as IGOs being included in this policy recommendation. That's all. I'm not saying no. I'm saying it's about understanding what that would come—an example or some examples of organizations that wouldn't be covered by what is currently written.

Rather than you and I batting the ball backwards and forwards here for the next 20 minutes, let's try this. Mary, and Steve, and Berry, I'm guessing that if we were to scroll down through this document—I don't want you to but if we were—we would find the wording that was the drafted wording that was put in place to cover the original thoughts that Kavouss had. If it's not there, I know it will be findable elsewhere. Could we get that wording and let's get it into an e-mail to the e-mail list that we can get clear about what it is we're talking about and see if we can agree the

expanded wording or some form of changed wording on the list, rather than discussing it in great detail here.

Is that feasible, Berry or …? Yeah. I understand you'll have to go to the old edition, Berry. But I'm concerned and I don't want us to lose … Thank you. Good. I don't need to see it now, Berry. I just want us to find it for later. Kavouss, recognize that we have not dealt with it. Recognize that it needs to be dealt with and that your points are still outstanding. Let us find the wording and we'll come back to it, either on this call, or if not, on the list. Okay?

KAVOUSS ARESTEH: Could Secretariat provide me a list of United Nations General Assembly standing invitations to any organizations? There is no such list.

CHRIS DISSPAIN: It is in the chat. It's right here, Kavouss. Do you have access to the chat or would you prefer me to send you an e-mail? I'm going to send you an e-mail anyway. Mary's put it in the chat. It's a list. It's undocs.org. But I'll send you an e-mail with the list and you can have a look at it at your convenience. Just let me do that now. Okay. That's on its way to you, Kavouss. Super. Okay. We'll find the wording and come back to it. Thank you, Kavouss, for reminding us. And as I say, we'll find the wording and get back.

Okay. Jay, you have a hand up. Go ahead.

JAY CHAPMAN: Thank you, Chris. Good morning, everyone. I have a question—and really, perhaps, just more seeking advice than maybe a specific recommendation. If we could look at proposed solution number one, where we refer to an IGO complainant, and in the next paragraph, additionally, and following the explanatory text to the UDRP—that quote that we have underneath there. "Where the complainant is an IGO complainant, it may show right to the mark by demonstrating that the identifier which forms the basis for the complaint is used by the IGO complainant."

I've gone back and looked at that word "used." And I'm wondering if we can't—I don't know—quantify, bulk that up. And again, this is where I'd be seeking more of advice than anything else. I guess what I'm wondering is if there's a particular situation. For example, if someone's actually going for trademark, do they just get to show that they threw up a sign in front of the office party that said, "This is our office-palooza," or something like that, "So now we're going to seek a mark." Is that sufficient to get a trademark?

As opposed to just a basic term of "used," are there some quantifiers that we can put around that, that are very consistent with what, maybe, a trademark might be? Maybe I'm deferring to Susan or someone like that who might know what that is. I'm just throwing that out there. Thank you.

CHRIS DISSPAIN: Thank you, Jay. I appreciate the question. First of all, let me say that it says … It's not just "used." It's "used to conduct public activities in accordance with its stated mission." So respectfully, I'm not entirely sure that your … Unless its stated mission is to

have office parties, and that may well be the case, I suppose, I don't think your office party example would fly.

That said, perhaps if Susan … This was put together by Paul, and Susan, and Brian. So Paul, and Susan, and Brian, if any of you would like to comment on that, bearing in mind that, Jay, to be fair, this has actually been there for quite some considerable time. But nonetheless, Paul, go ahead, please.

PAUL MCGRADY: Thanks, Chris. Jay, great question. But I don't think that the concern is a real one because it does, as Chris noted, make reference to that it's being used to conduct their public activities in accordance with the stated mission. So, for example, I don't want to pick somebody who's not an IGO. But I think as UNICEF as somebody who would qualify under this definition because of its connection to the United Nations. If all UNICEF had ever done was throw an office party, then I don't think it would qualify. But I think it will be able to show lots of history of using UNICEF in conjunction with its stated mission. So it would not have a problem qualifying under this definition.

So I think the way that it's written, it was designed to exclude frivolous uses, and make the use requirement to be significant, but to be slightly different than the traditional common law use analysis, if that makes sense. Thanks.

CHRIS DISSPAIN: Okay. Is there anything else that anyone wants to cover at this stage? We're going to move on and I'm going to ask you two

things now. The first is … Thank you, Jay, for your comment. The first is are there any red flags? And secondly, can we deal with the bracketed text, as a principle, for now? I did see a hand from Susan but it's gone down again. Susan, are you trying to put your hand up and failing?

SUSAN ANTHONY: I guess I've put my hand up and down a few times because, first, you anticipated what I was going to say and gave the answer. And then, Paul reiterated the answer and provided some clarification. And then, I raised my hand a third time to ask Jay if that addressed whatever concern he had and that I was trying to get a better grasp of his concern. And then, I saw he said, "Fair enough. Just wanted to ask."

But since we've moved on to red flags, I think what's been bothering me—and what's been bothering me all week—and I don't know whether this qualifies as a red flag. It qualifies as a red flag for me. I want to make sure in this exercise of this work track, that we don't lose sight of the problem I think we're trying to solve.

And Yrjo really put it best in his e-mail going back and forth, about we're really trying to sort out a problem where we have fraudulent representations that have potentially disastrous consequences. I don't remember the precise words that he used but it was eloquent. I really feel, sometimes, like the work track is getting away from that. I just wanted to be a red flag reminder. Lowering—

CHRIS DISSPAIN: Sorry. Did you have something else?

SUSAN ANTHONY: No. Lowering my hand.

CHRIS DISSPAIN: Okay. Sorry. That was it. You were saying lowering your hand. Thank you. I agree. We have discussed, at a number of stages along the way of this discussion, the key issue for IGOs. And where we came to … Thank you, Kavouss. I don't know whether your hand is up or down. But if it's up, I'll come to you in a second.

Where we've got to is that we felt that writing a specific piece that dealt solely and specifically with the catastrophic things that Yrjo's pointed out, that Brian's mentioned in the past, and you've just said was not the right way to go and that what we needed to do was to write something that worked alongside the current UDRP, rather then trying to create a special class of action, if you will, for IGOs in certain circumstances.

I think I'm getting that right. But if I've misspoken, or I've said something wrong, or that's not other people's understanding, then please put your hands up and pick me up on it. But I think we have had the discussion. We did talk about it and there was a general feeling that we were better off to make something as close to the UDRP as possible that covered all bases, rather than trying to create a very specific …

We talked about, in fact, in respect to what would have to be bad faith and all of that stuff and decided that it was best to simply

have the same requirements for a UDRP claim by an IGO that there were for a normal complainant. But I'm happy to circle back onto that and discuss it again, if anybody wants to. I'm going to go to Kavouss, whose hand is up, and then to Yrjo. Kavouss, go ahead, please.

KAVOUSS ARESTEH: The second question that I raised was, in the text, sometimes you refer to "binding voluntary arbitration," sometimes "binding arbitration." Which one is correct? Both of them?

CHRIS DISSPAIN: No. The decision of the arbitrator is binding. The choice to go to arbitration, currently, is voluntary. If there's confusion, Kavouss, we will pick that up when we redraft the document in its final form to be considered by this group before it goes out and make sure that there is a clear understanding of what it is that we're suggesting. So thank you for picking that up. But in fact, the decision of the arbitrator would be binding because that's by agreement. And there may well be some references in the text somewhere to it being a choice whether to go to arbitration or not so maybe that's where the voluntary comes in. Okay?

KAVOUSS ARESTEH: I have another question and it is about the panelists. One panelist or three panelists? I am not in favor of one-man show because one panelist may be influenced by himself, influenced by environment, and so on and so forth. So it would like to maintain

three panelists and then have some way of decision-making majority but not one person. Thank you.

CHRIS DISSPAIN: Thank you very much. I think that the general feeling in the work track has been that that level of detail is something that would be left for implementation. But let's make a note that the point has been raised and see if we want to cover it when we come back with a drafted document. Thank you, Kavouss. Yrjo, go ahead please.

KAVOUSS ARESTEH: My last question is Implementation Review Team. It has been left for future. Who is party of that? How will they be elected? How many there are? Which organization?

CHRIS DISSPAIN: It's a matter for the GNSO to decide, Kavouss, I think—not us.

KAVOUSS ARESTEH: Without consulting others? The GNSO is the master of everybody? Because IGO is not part of the GNSO. IGO mostly is the GAC people. So I think the Implementation Review Team is an important issue—should have representation of the community. Isn't that right?

CHRIS DISSPAIN: I'm sure it will. Does anyone on the staff, before I go to Yrjo, want to just answer Kavouss' question regarding how an Implementation Review Team is put together? Mary, I know you're in a noisy environment. Can you do that? Or do you want Steve to do it or Berry to do it?

STEVE SHENG: Chris, I can take a first crack at that.

CHRIS DISSPAIN: Thank you, Steve.

STEVE SHENG: Sure thing. IRT in the past, or Implementation Review Teams, they are open to whoever want to volunteer. They're not limited to or excluding anyone, like the IGOs or anything like that. Traditionally, they're open membership. So if you have an interest in the implementation, you're invited, although preferably, the members of the IRT are going to have had experience in whatever policy development effort the implementation originated from. But it's not restricted. It's just a strong preference to have experience in the topic if you're going to take part in the IRT.

CHRIS DISSPAIN: Thank you very much, Steve. Yrjo, the microphone is yours. Please go ahead.

YRJO LANSIPURO: Yes. Thank you, Chris. I apologize if my e-mail was—if the expression was not clear.

CHRIS DISSPAIN: No. It was very clear.

YRJO LANSIPURO: I didn't want to create a special category for catastrophic thing. I certainly want to have the problem solved as a whole. And, of course, why I took up the catastrophic thing is just to say that for the end users at least, why this issue is important is that we want to avoid situations where IGO abbreviations are used in domain names by somebody who is not entitled to it and then there may be … In some cases, there may be bad consequences. Thank you.

CHRIS DISSPAIN: Thank you. And I very much appreciated that that was the intent and the tenor of your intervention. Thank you for that. Okay. Not seeing any other hands in respect to what we're going to call red flags. Let's ask this question of the working group, then. Is there any reason why we cannot take Brian's suggestion in respect to the arbitrator being the final decider on law and Jay's suggestion that the registrant should have the right to make an application to a court and still go to arbitration in the event that that application does not hear the substantive issue?

Is there any reason why we can't bracket those two suggestions, put them in the document? It goes out for public comment with an

explanation saying that these are not agreed consensus suggestions but rather ideas that have been put forward by, in one case, Brian, and in another case, Jay, and see what response we get when we go out for public comment? Yrjo, I'm guessing that's an old hand. It is, indeed. Brian, go ahead, please. Brian, your microphone is open but we can't hear you. Okay. You're going to dial in. So while we're waiting for you to do that, let's go to David. David, go ahead, please.

DAVID SATOLA: Good morning, everyone. Can you hear me?

CHRIS DISSPAIN: Yes. We can.

DAVID SATOLA: Great. Thank you. On the general issue about putting text in square brackets, that is indicated to be not a consensus opinion of the work track but language to be reviewed and commented on during public consultation. I don't have any objection to that.

As to the first portion to be put in square brackets, though, I do … About the registrant having the ability or the right to seek judicial determination, I do want to repeat I think that that's just not how it would work. We may need to rephrase or work on the language that we put into that square bracket.

At least in the United States, it's not the court who would be able to make that determination. Anybody's entitled to go to court at

any time. In the United States, at least with respect to the World Bank, it is a well-documented and well-understood rule of law that only the District Court of the Federal District of the United States of America would be able to hear any case brought against the World Bank, regardless of whether if it's our paperclip supplier or somebody else, staff member or whatever.

And then, it's not really for the court to make the determination. It is for the IGO to determine whether to waive or not, to allow the case to go through. That's just a fact. That's how it works. So I think to put it in the square brackets, in the way it's phrased, you're going to get comments. And you're going to get comments that it's not a reflection of current law or practice. So again, on the general point, I don't have a problem with putting these issues out for public comment but I think we do need to—at least with respect to the first one, we will need to put it in a more neutral way because the way it's put right now is just not a reflection of the reality of how it would work. Over.

CHRIS DISSPAIN: Okay. Thank you, David. Thank you for the first point. On the second point, which is your point about substance, etc., let's listen to what Brian and Paul have to say. They may want to address some portions of that. We'll come back to that if they haven't. Brian, hopefully we can hear you now. Please go ahead.

BRIAN BECKHAM: How is this.

CHRIS DISSPAIN: That's clear as a bell, Brian.

BRIAN BECKHAM: Great. Thanks for bearing with me. I agree with what David mentioned. I didn't want to put him on the spot but I wonder if he might be able to help us at a textual level with the suggestion. Certainly, he's more familiar with these issues than some of us.

I was going to make a suggestion. On the current draft that I have on my screen—and I appreciate this is a work in progress and its notes are taken as we have our phone calls. But the way it reads now, it says, "To address this second issue, the IGO Work Track proposes the following recommendations." Obviously, this is a proposal from one working group member. So I think with a little massaging, it can be made clear that this is a proposal by a working group member, not a proposal of the working group.

CHRIS DISSPAIN: Completely.

BRIAN BECKHAM: At the same time. I think it would probably be fair to put the … I don't want to use the word "counterproposal" but the other proposal that we've been discussing equally in square brackets, just so that people that are looking at this and providing feedback to us would have a fuller picture of the discussions that we've been having.

CHRIS DISSPAIN: I'm not with you. What's the other bit that would go into square brackets, then? Because I'm not with you. The only difference is that … You're talking about Jay's suggestion, right?

BRIAN BECKHAM: Right.

CHRIS DISSPAIN: The current proposal, absent his suggestion, is simply that it can go to court but you can't come back to arbitration.

BRIAN BECKHAM: Maybe it's a just a matter of the way it looks on the screen. It just looks like—

CHRIS DISSPAIN: I'm sure it is.

BRIAN BECKHAM: Yeah. The only point I'm trying to make is that it should be clear that there's two threads of discussion that we've had. I'm sure we can—

CHRIS DISSPAIN: I agree. Completely agree with you. And indeed, that is exactly correct, Brian. Thank you. That's why I've been saying, clearly, the document now needs to be … Assuming we get to the end of this call in comfort, this document needs to be taken away, redrafted

as a proposed document to go out. And dealing with all of those things, it will include, “Does it correctly say what it should say?” So I agree with you. Thank you. Both should be included. Thanks for that. Paul, you’re up.

PAUL MCGRADY: Thanks, Chris. Sorry about that.

CHRIS DISSPAIN: There you go. Yep. There you are. Got you now.

PAUL MCGRADY: My mouse decided to die so I couldn’t get unmuted. I’ve never had a mouse die on me before—at least not like that. I guess I don’t have a comment. I’ve got a question because David something that reinforced how little I know about how immunity works.

The implication seemed to be that in order for the case to move forward, the IGO would have to consent, as opposed to how I think I’ve always thought about it, which is a plaintiff would file a case and then the court would either, on its own, decide that it had jurisdiction or not. And the IGO, if it showed up at all, would be to argue that the court didn’t have jurisdiction, as opposed to what David said about an IGO having to consent before anything could move forward. So I’m hoping we can get him back on the line and just talk to us a bit more about what the process would look like. I just need to learn.

CHRIS DISSPAIN: That's precisely my question. Hopefully, David, if you could be prepared to come back and talk to us about that because I had understood … Kavouss, I know your hand is up. I'll get to you in a second. I had understood that it meant exactly what Paul said, which is that I can go and reissue my proceeding if I chose to do so. And you would be arguing whether you would argue in a letter or you'd argue in whatever, rather than what I think you were implying, which is that the court would actually refuse me the right to issue the proceedings. But maybe I've misunderstood. So I'm going to go to Kavouss first because his hand up and then, David, come to you to see what you have to say. Kavouss, please go ahead.

KAVOUSS ARESTEH: Yes. I have two comments. The first comment is relating to the area before the chart, saying that the registrar shall continue to maintain the lock on the disputed domain name during [inaudible]. Yeah. And then, it goes on, saying that "If the parties raise concerns to the arbitral tribunal that the law of the …" so on and so forth—so when they could agree on the law, mutually. If they don't agree, it is not very clear what is the situation, if they don't agree on the mutually on the law to be applied.

CHRIS DISSPAIN: That's one of the areas where we were intending to have bracketed text, Kavouss. One suggestion is that you revert to the current principle, which is that the law would be the law of the registrant or the registrar and that the choice would be the choice

of the complainant, as to whether it is the law of the registrar or the registrant, complainant being, in this case, an IGO.

The second suggestion, which is a suggestion from Brian and is currently in square brackets, is that if the parties cannot agree, then the arbitrator, the arbitrators, the panel, would decide what is the appropriate law to use to consider the matter. Those are the two suggestions.

KAVOUSS ARESTEH: If you allow me, I want to comment. It should not be interpreted that I am member of the GAC, and Brian a member of the GAC, that I support it. But what he said is absolutely right. If they don't agree on the law, why the complainant—here, IGO—should agree either on the registrar or registrant? Why? I think the most appropriate way—

CHRIS DISSPAIN: Because that's the current situation.

KAVOUSS ARESTEH: No. [inaudible]. The most appropriate would be the arbitration. If you don't agree with each other, someone else will [inaudible], not obliging IGO to agree with registrar or registrant. This is not correct.

CHRIS DISSPAIN: I appreciate the comment. Did you have a second point that you wanted to make?

KAVOUSS ARESTEH: Yeah. The second comment is when you go down, you have principles one, two, and three. In principle two, it said that who should not be panelists. Why should? I think he not be panelist. When you say "should," should is generally an optional case. It should be, it should not be.

So because you use, at the beginning of the paragraph, "shall apply," here, at the second condition, "the arbitral tribunal should consist of …" I don't know whether it's a "should" again, one or two. This "should" is a condition. It's not the obligation. But the second line says "who should not be panelists." I suggest changing it to "who shall not be panelists." This is important. If it is panelists, it is influential consequence. Thank you.

CHRIS DISSPAIN: Thank you, Kavouss. The point has been noted. And I agree with your point about the definition of "should" and "shall." Thank you. David, please go ahead.

DAVID SATOLA: Okay. Can you hear me?

CHRIS DISSPAIN: Yes, indeed.

DAVID SATOLA: Great. So to clarify the point—it's a fair question—it is both. There's going to be a jurisdictional element and a waiver element. So if the court, or the registrant, or the registrar is, say—and I'm just making this up—a state court in Missouri or the federal court in the Southern District of Wisconsin, if there is one, both the state and the federal court, in the case of the World Bank—and I don't know about other IGOs—is going to kick it to the Federal District Court of the District of Columbia. That's jurisdictionally what's going to happen. I don't know about the other 198 countries and how their jurisdictions would handle it.

CHRIS DISSPAIN: Really?

DAVID SATOLA: Yeah. I'm sorry. I ran out of time over the weekend to look at it. But I think that's something to bear in mind, that it's not just simply … And if I could just address that point quickly, I did, in my note over the weekend, or at the end of last week, suggest that for the registrant, this is probably going to be a one-off thing. But for the IGO, this might be a recurring thing. So it's really important that we get as much certainty as we can in this process.

CHRIS DISSPAIN: I get that.

DAVID SATOLA: So the jurisdictional part is one. Then, if there's jurisdiction asserted, it is then up to the IGO to waive their immunities if they want to proceed with the case. And sometimes, there are cases where IGOs say, "Yes. This is an important matter for us. We feel strongly enough about our case that we want a good precedent." But it is the choice of the IGO to waive the immunity or not. It would have to be pretty egregious for a court to take away that defense. And immunity is a defense. So it's ours to waive or not.

As I said very early in these work track meetings, I don't think there's any possible way, in this post-COVID age, that the use of our domains would be seen as not mission-critical to our mandate. So I have no doubt that it would be included within our functional activities and therefore included in our immunity defense. Did you have a question, Chris?

CHRIS DISSPAIN: Yeah. I did. So help me out, just so that I'm clear. Are you saying that if I was to issue proceedings against you, against the World Bank …? And I realize we're talking about in the States here. So I issue proceedings in whatever state court of wherever. Are you saying that it's automatic that that court would say, "We cannot hear this. It needs to go first somewhere else?" Or are you saying that is what you would plead? That's a fair question. I don't know the answer exactly. But eventually, it's going to end up in the Federal District Court in the District of Columbia.

CHRIS DISSPAIN: I completely understand that. But the question is whether you have to plead that.

DAVID SATOLA: Let me answer it this way. I don't know that making it ambiguous in the rules that we're developing is going to help the registrant get their "day in court" because it's not going to be in the local jurisdiction unless they're located in the District of Columbia. And whether it's through pleadings or the court taking judicial notice ab initio that this is the rule in the United States under federal law, it's going to end up in the District of Columbia Federal Court.

So I don't know whether we'd have to go through the effort of going out to Wisconsin and pleading, and then the court saying, "Oh yeah. We didn't know that. Thanks for telling us that. Jurisdiction it over to the District Court." Or whether the court would take notice itself and say, "Under thus and such federal statute, we can't hear it."

CHRIS DISSPAIN: I understand that and I'm with you completely from the point of view of this is got nothing to do with what I think is the right or wrong answer. But just common sense says that if that is the law, then that is what will eventually happen. I get that.

The question, I think, when you come back to the wording is a slightly different one, which is if the wording is that the registrant can go to court and doesn't, all we're really talking about here is the registrant doesn't lose the subsequent right to go to arbitration. So the key about the going to court thing is actually nothing to do,

per se, with Jay's additional point but actually more to do with the fact that the registrant has the right, even if they lose the right to go to arbitration by doing so—the right to say, "I'm going to go to court."

So it's not about the bracketed text, as such. It's actually about how we word—whether we need to consider rewording the bit that deals with the registrant's right to go to court, if they choose to do so, if the UDRP decision is found to be against them, irrespective of whether they lose the right to go to arbitration after that or not. Would you agree with that?

DAVID SATOLA: I would agree that, for the purpose of addressing the text in the first bracketed set of language, I would agree that it's a matter of wording and that we could probably come up with some more, for lack of a better word, neutral description of that process.

CHRIS DISSPAIN: Okay. Good. All right. I think we can … Go ahead.

DAVID SATOLA: As I said in the text, I'm happy to work with whomever on that wording later in the week. I'm on leave today and tomorrow but I'll be back in the game on Wednesday.

CHRIS DISSPAIN: That's fantastic. What I'm going to suggest we do is that we actually get the document—we take this current document away

and it gets put into a format that is acceptable, that fits within the normal way that these documents go out for public comment.

And then, in that context, we then get it back up for everybody to look at and start wordsmithing it. Otherwise, I think we're in danger of getting lost as to where we are. I'm already occasionally losing focus on which bit we're talking about. So I think getting the wording right, from the point of view of the actual introduction, the document itself, etc., is going to be helpful. And then we can come and look at it. Completely agree. And any help you can provide would be great to deal with the specific wording on this particular issue. So thank you, David. Alexandra, yes. Please go ahead.

ALEXANDRA EXCOFFIER: Sorry. Hi, everyone. Could I see the rest of the clause on screen, please?

CHRIS DISSPAIN: Which clause are you talking about? The one that's—

ALEXANDRA EXCOFFIER: The bracketed one about second-level arbitration, "shall have the option to agree to submit the suit to binding arbitration … continue …" Okay. Just one little detail. Not that I agree with this option to have this additional arbitration possibility but what happens if, then, at that point, the registrant declines arbitration. Can we then say that the original UDRP decision stands?

CHRIS DISSPAIN: Yes. Absolutely.

ALEXANDRA EXCOFFIER: Just something missing from the clause. Okay.

CHRIS DISSPAIN: Yep. But no. Completely. If that's not covered, it should be. So yes. There has to be an endpoint. This is part of the issue with recommendation five in the original PDP, was there is no endpoint. It's an Escher staircase. Thank you, Alexander. Does that cover your point? We'll get it picked up in the notes and make sure that it's dealt with. Is that okay?

ALEXANDRA EXCOFFIER: Sure. To clarify and just to say that I would be happy to participate in the redrafting of it as well.

CHRIS DISSPAIN: Understood. Thank you very much. Kavouss, go ahead.

KAVOUSS ARESTEH: Yes. I have another question. The text below the rationale for recommendation one, in the redline, to the middle of the text, to the track change, it's mentioned that "it should first ..." Whom are we referring as it? He? She? Who should first? We say "it." What are you talking about, it? Are we talking about the IGO? What does it mean? Whom referring to, this it—this demonstrative adjective, it. "It should first …" Whom we are talking about?

CHRIS DISSPAIN: You're going to have to help me, Kavouss. Oh. I've got you. Hang on a second. Found it. Recommendation five, "where the affected IGO claims immunity from the jurisdiction of a court, the IGO Work Track agreed that it—" it, being the IGO Work Track. "The IGO Work Track agreed that it should first set out to determine how and which IGOs are able to file a case."

KAVOUSS ARESTEH: No, no, no. It said that "the IGO Work Track agreed that it should first …" That is who?

CHRIS DISSPAIN: Yeah. It, the IGO Work Track.

KAVOUSS ARESTEH: The IGO Work Track?

CHRIS DISSPAIN: Yes.

KAVOUSS ARESTEH: Ah. "IGO Work Track agreed that it should first …" Okay. If it is understood as such, no problem. Thank you.

CHRIS DISSPAIN: It is. Thank you, Kavouss. Appreciated. Let me suggest, then, that we … I'm going to ask Mary, and Steve, and Berry now whether or not you guys are in a position to take away what we've got, to put together a document that would be the draft of our initial request for public comment, which would include the rational for recommendation two, which is currently absent, and get that back to us. And I'm going to suggest that that might take longer than the next couple of days, few days, and that maybe we should consider giving you a break for next week—from a call next week—and getting a draft document out by the end of next week for us to …

It's not just a clean document, Mary. It's a document that's in a shape and a format that you would normally expect to see going out for public comment, which unless I've misunderstood, you have said to me—or if it was not you, Berry has said to me that the current document needs to be revamped to actually achieve that purpose.

So if I've understood that correctly, that's what it would be, with a rationale for recommendation two, with the square brackets in an attempt to explain the context of those square brackets. And then have us look at that document and work on any text that we're uncomfortable with or that we think needs work. Does that make sense to everybody? Does that not make sense to anybody? Mary's saying the current document will be the basis and the core. Yes. Agreed. Berry, go ahead.

BERRY COBB: Thank you, Chris. As Mary noted, she'll work on the draft that we see on the screen in the Google Document that makes up the core of the document that will eventually go out for public comment. I might recommend that we continue, at least for another week, if not two weeks, to maintain the version that we have in Google Sheets as a master document to compile any suggested edits, so on and so forth.

The reason I state that is our template that we actually use, which is the formal document that will go out for public comment as an initial report, it doesn't live very well in Google Docs. So all of the other stuff is background for how we got here, who the roster is, attendance—non-important stuff compared to the core of the content here. So I'm hopeful we can live in Google and—

CHRIS DISSPAIN: I agree. Respectfully I don't think … The fact that a document doesn't work well in Google is just a fact of life, frankly. But nonetheless, I take what you say. My point is more that I think that people need to be able. I get the attendance stuff and all that. I get that. But I think that people do need to be able to see it in the context of what is going to be going out. And I don't care if the text is excised from a template and put into this document. But what I would like is for people to be able to read the document as if it were what is going out for public comment—at the beginning, with the introduction, with all of the stuff that go in it—because that actually helps to get a handle on what people are being asked to look at, to get a handle on.

Most of what I'm saying comes from a conversation that I had with you, and Mary, and Steve the other day where you said there is a standard way of doing these documents that this document will need to be pushed into. All I'm saying is I want us to be able to see in front of us, textually, what this is likely to be—I don't care whether it's actually using the template of the document or not—because I think it matters to people. Steve, go ahead.

STEVE SHENG: Thanks, Chris. To your point, fully understood. What you're expecting and what we understand to be needed is an initial report, in essence—what it's going to look like to be published. So I think that's pretty clear. But to just put a little more, hopefully, clarity around what timing would look like, what staff was looking at in the background is allowing at least a couple of weeks for the work track to be able to see the initial report in its entirety. Hopefully that sounds like a reasonable amount of time.

So the date for this group to public its initial report is the 7th of September. So if you work back from that, we would be looking at … Let me see what the dates are. I think around the 23rd meeting for this group is about two weeks' time to allow for the group to review it.

CHRIS DISSPAIN: That's correct.

STEVE SHENG: What we'd be looking at on the staff side, for being able to finish the initial report, is something like the 20th or so of August.

CHRIS DISSPAIN: Yeah. So what I'm suggesting, to be clear, is that we don't … I want the document out as quickly as possible but I don't think we necessarily need a meeting next week. I'm challenged with a meeting anyway but that is not the reason why I'm saying this. I actually think that if we can get it out to everybody and get people to look at it, discuss it on the list, etc., take in input, and look at amendments and then have the next … My question is how quickly do you think you could get us an initial draft. Is it feasible to do that early next …? Sorry. Not early next week. Is it feasible to do that in the next, shall we say, 10 days?

STEVE SHENG: On behalf of Mary, who is in a noisy place, and who will be doing the bulk of the drafting, she says that's reasonable. So the 20th or so would be a reasonable target.

CHRIS DISSPAIN: That would be one, two, three, four, five, six, seven, eight, nine, ten. Yeah. The 20th gives us literally the weekend. So if we could maybe try and do … If we could try and get it done—out by the 18th, 19th at the latest, that would be brilliant. Okay? I'm going to take the silence to mean grudging acceptance. Kavouss, your hand is up. Please go ahead.

KAVOUSS ARESTEH: I generally agree with what you said. First of all, that type of draft should include or take care of what we have discussed today. And second, and more important is, in case of nonmutual agreement on the law, we have to decide what we do. Registrar and registrant or arbitration?

CHRIS DISSPAIN: No, Kavouss. What we've agreed is that we're going to put the text out with both suggestions and ask for public comment.

KAVOUSS ARESTEH: You want to put both cases—that the choice of law, if not agreed, registrar/registrant, one version, and arbitration, another version?

CHRIS DISSPAIN: Yes. In other words, do exactly what public—

KAVOUSS ARESTEH: I don't agree with that. If you put that in the public comment, every say registrar/registrant because those who comment are registrar and registrant.

CHRIS DISSPAIN: Respectfully, Kavouss, if that's what the public comments are—

KAVOUSS ARESTEH: No, no. We have to agree here. We should not go to that one. No doubt, that will be totally imposed by the registrars and

registrants—that's all—but not by the other people, IGOs. So I think we have to discuss it further.

CHRIS DISSPAIN: We'll see.

KAVOUSS ARESTEH: You have to discuss it further.

CHRIS DISSPAIN: Well, we don't have the time to discuss it further. What the group has coalesced around is a draft of the document that has a number of clauses—two specific areas—that have alternative suggestions in them. One is the suggestion of Brian's that the arbitrator decides. I know I keep calling it Brian's suggestion. It's just easy to hang on that. And the second one being a suggestion of Jay's regarding being able to go to court and then go to arbitration.

But you have a very interesting point, for which thank you, that it important. That is this. Mary, I wonder if we could … In order to help those who are interested in looking at the wording, I wonder if we could deal with the relevant text in respect the going to court bit, by having you guys create that, and then get that out as text in e-mail to the list for people to have a look at so that suggestions can be made as to how, if at all, that could be reworded. That enables David and others who might want to think about it to actually suggest ways that that could be reworded, rather than

waiting for the full document itself. If you could do that, I would be grateful.

I'm not sure that there's any other text that that's necessary. Oh, yes. There is. The other one is Kavouss' text in respect to what is an IGO? If perhaps you could create that block of text based on the previous suggestions from Kavouss and get that out to the list so that we can ask questions on the list, and consider that, and maybe do a bit of research to see what other organizations would be covered by that in the event that we were to agree that text. Thank you. Kavouss, your hand is still up. Go ahead.

KAVOUSS ARESTEH: Yes. Sorry, Chris. We should be consistent with what is possible, what is not possible. Either you put in the entire text, reference to arbitration or not. If you put reference to arbitration, therefore you should not push the IGO in case of non-agreement mutually on the law. They accept either registrar or registrant. So what is the usefulness of the arbitration? So I think this is an important issue. I cannot agree we leave it to the public comment.

CHRIS DISSPAIN: I didn't say that.

KAVOUSS ARASTEH: And I said to you that I am 100% sure that the people agree registrar and registrant [inaudible].

CHRIS DISSPAIN: I didn't say that, Kavouss.

KAVOUSS ARASTEH: So you have to take out every arbitration from this text. If you have arbitration, the issue should be left to arbitration to select the law if there is no agreement—

CHRIS DISSPAIN: No, we won't be doing that, Kavouss. What we will be doing is we will be leaving the text to suggest that we introduce the possibility of arbitration and that there are two suggestions from the Work Track. One suggestion from the Work Track is in the event that law cannot be agreed between the parties—which is in itself a departure from the current standard for a UDRP. Current standard for the UDRP does not allow for the law to be agreed between the parties. If the parties cannot agree, then one suggestion is that we should revert to the current situation with respect to jurisdiction, which is that the jurisdiction at the choice of the complainant should be—in this case the law—either of the registrant or the law or the registrar.

The alternative suggestion—which is a significant change from the current status quo with respect to the UDRP—is that we should allow for the law that the arbitration is heard under, is dealt with under, to be a decision of the arbitrator.

Now, to be clear, I did not say that we would leave it up to the public comment to decide. What I said was we will put those two things in and we will look at the public comment when it comes in. But ultimately, this working group, if it can agree, will decide what

by consensus should happen. But for now, it's going to go out in that format so that it's clear to everybody some people in the working group think one thing and some people think another. There's nothing wrong with that, and that's the basis upon which many public comments actually work.

I'm conscious that we are coming towards the end of the call. Are there any other comments or questions? I believe that we've got a way forward. Berry, thank you for highlighting that in the agenda. I believe that means that we would not have a meeting next week, but we would have a meeting the week after. I'm sure that those who use August as holiday time will be grateful for that.

Anybody else got any other comments that they'd like to make? Okay, let me say this. First, I want to thank everybody for being so willing to be straightforward and to be willing to agree to the path forwards. Secondly, we do still have a lot of work to do with the document. The exchange over the last few days has been really valuable and useful, and it's great that people are prepared to put pen to paper figuratively and not just rely on these face-to-face meetings. So I would be very grateful if as a group we could look at the texts that come out, bearing in mind there'll be several—there'll be the law text, the arbitration text, the text on what is an IGO, and then the final document. And please contribute on the list, and please feel free to agree and disagree on the list.

And especially to those who don't speak very often or don't say very much, your opinions are just as valuable and important.

And with that, if there are no further burning issues, which there are not, I'm going to give us all back 15 minutes and call the call to an end. Thank you very much indeed, everybody.

JULIE BISLAND: Thank you, Chris. Thanks, everyone. This meeting is adjourned. Please disconnect your lines at this time. Have a good rest of your week.

[END OF TRANSCRIPT]