

**ICANN
Transcription ICANN Copenhagen
GAC GNSO Facilitated Dialogue on IGO & Red Cross Protections (Session 1)
Saturday, 11 March 2017 at 8:30 CET**

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Bruce Tonkin: Welcome, everybody. This is something a little bit different. We're going to try a discussion on the topic of the Red Cross identifiers. And on one sort of corner of this table we have a delegation from the GNSO and we also have some Board members and some – and the ICANN CEO as well. And behind me we have a delegation from the Government Advisory Committee.

I'll start with just letting people just briefly say their name just for the record so that we know who's here at the table. And then I'll give a bit of a introduction as to why we're here today and the problem we're trying to solve, and then we'll hear from the GNSO on their policy recommendations as it relates to this topic, we'll hear from members from the Government Advisory Committee on the advice that they have provided on this topic. Then I want to hear from the GNSO on how they've taken that advice into account so far. And then we'll got into a discussion on trying to sort of resolve the differences in the two positions.

So perhaps if we can just start at the table there, just state your name for the record? My name, by the way, is Bruce Tonkin.

Göran Marby: For the record, Göran Marby, ICANN Org.

Petter Rindforth: Petter Rindforth.

Cherine Chalaby: Cherine Chalaby, ICANN Board.

Markus Kummer: Markus Kummer, ICANN Board.

Chris Disspain: Chris Disspain, ICANN Board.

Becky Burr: Becky Burr, ICANN Board.

Donna Austin: Donna Austin, Vice Chair of the GNSO Council.

Carlos Raúl Gutiérrez: Carlos Gutiérrez, GNSO Council.

Heather Forrest: Heather Forrest, GNSO Council.

James Bladel: James Bladel, GNSO Council.

Olof Nordling: Olof Nordling, ICANN staff support to the GAC.

Mark Carvell: Mark Carvell, United Kingdom representative on the GAC.

Jorge Cancio: Jorge Cancio, GAC representative for Switzerland.

Stéphane Hankins: Stéphane Hankins, International Committee of the Red Cross.

Mary Wong: Mary Wong, ICANN staff.

Ashley Heineman: Ashley Heineman, US GAC rep.

Bruce Tonkin: Right. Firstly I'd like to welcome everyone here at this early start this morning, and this is probably the room that's furthest from the hotel so well done on finding it at this hour of the day. And the room – I've just kind of adapted it so although on the outside it's got the GNSO label it just happens to be a room that the GNSO will be using later in the day but from my perspective this is just a room that has a bit of a U-shaped table and allows us to have more of a dialogue rather than a sort of presentation mode.

So what we're going to cover in the session today, I'm going to give a bit of a context from the mission of ICANN and the bylaws, and then what the current problem is we're trying to solve. As mentioned we'll hear from the GNSO, then we'll hear from the GAC, then we'll hear how the public policy advice has been duly taken into account, and then we'll get into a dialogue as to, you know, how we can sort of move the issue forward.

So next slide. What I've done is the ICANN bylaws are now many pages so I've just pulled out the parts of the bylaws that really relate to this topic. So if we – starting from the top ICANN's mission is basically ensuring that the unique identifier system works and specifically here we're talking about the domain name system. So ICANN coordinates policies that ensure that the domain name system is working and the criteria for creating a new policy is that uniform coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and stability of the DNS.

So next slide. Okay so then in addition to the mission ICANN makes a number of commitments in the bylaws. And one of those commitments is that the system is operated for the benefit of the Internet community as a whole, but also that in operating the DNS system, we commit to carry out activities in conformity with the principles of international law and international conventions and applicable local law.

We also commit to use a bottom-up multistakeholder policy development process and we also commit to take into account public policy advice from government and public authorities, so hence we have representatives from the Government Advisory Committee who are, themselves, representatives of individual governments.

And we also want to ensure that in our policy processes those entities that are most affected can assist in the policy development process. So in this case the entity that's most affected is the Red Cross and we have a representative from the Red Cross with us today as well.

Next slide. And then when we're doing policy development we're guided by the core values that are in the bylaws. And the ones that are perhaps most relevant, there's probably 10 or more values, but the ones that are probably relevant for this discussion today is that we want to ensure that the policy development process is used to assert in the global public interest. So we need to operate and find outcomes that are in the global public interest.

We also want to – in developing policies, we want to make sure that ICANN can operate efficiently. I've put this one in because I think it's probably relevant today as well that we should be working at a speed that's responsive to the needs of the global Internet community. And this particular issue has probably been around for, you know, a number of years. And so this is something that we have to get better at because we're perhaps not meeting this core value right now and hence we're getting together today to see if we can move the issue forward and resolve it.

And then finally, the core value here is recognizing that governments and public authorities are responsible for public policy and our role is to take that into account in our policy development work.

Next slide. Now the other thing that's interesting about ICANN is ICANN is not a government regulator, it doesn't create laws, and so when it creates

policies, those policies are basically incorporated into contracts or agreements between ICANN and gTLD registries and gTLD registrars. And what's unique about those agreements is you're signing an agreement but you're also agreeing in advance to comply with any future policies that are developed.

Now there's a scope – quite a narrow scope for what those policies can cover, and that often in the industry is referred to as the picket fence. So it's practically a narrow scope by which you can actually change somebody's contract after they've signed it.

And the ones that are particularly relevant here is that you can create a policy as long as the issue requires uniform or coordinated resolution across the industry necessary to facilitate the interoperability, security, and stability of the DNS. And the second one here that's relevant is that you can also create policies that help resolve disputes regarding the registration of domain names.

And it's important to understand that framework because if you think about at a very simple term, ICANN is a technical organization making sure that the DNS operates. It needs to adhere to applicable law, and then it needs to be efficient in the way that we adhere and conform to those laws, and often that's resulted in the policies for resolving disputes when there's multiple legal rights associated with particular names.

So ICANN itself doesn't arbitrate those legal rights, but it does actually implement an official – an efficient dispute mechanism so those legal rights can be resolved by, you know, relevant experts in that field.

So next slide. So now if we come to the problem that we're trying to solve here today, I mention that we need to ensure that when we allocate domain names, that when they're used they don't infringe the legal rights. So in this case the allocation management and operation of gTLDs must take into

account the need to ensure that neither the registration of a domain name at the second level nor the manner in which it is used infringes the legal protections accorded to the Red Cross and Red Crescent names and acronyms under the relevant principles of international law and international conventions and applicable laws enforced in multiple jurisdictions.

And what we have here today is we have the Board has received public policy advice from the Government Advisory Committee and it's also received policy recommendations from the GNSO in relation to protecting the names and acronyms of the Red Cross and Red Crescent movement. Generally today, I'll just kind of abbreviate that to Red Cross, but I'm using that in the context of the wider term which is International Red Cross and Red Crescent Movement.

So next slide. Next slide. So what I'd like to do now then is basically hand over to the GNSO delegation and just get a quick summary from the GNSO on what steps the GNSO has taken so far in its policy recommendations with respect to protecting these names. So, James, if you'd want to take that one or one of your team?

James Bladel: Thanks, Bruce. And just a note that we are also looking for Thomas Rickert who is the leader of that particular PDP and we're hoping to locate him this morning. So good morning, and thank you for the introduction. I'm James Bladel. And you've already met some of our folks from the GNSO.

The recommendations as part of our process, were submitted to the GNSO I believe in November of 2013 and were considered as that – part of that Council, as part of any – part of any completed PDP and were submitted to the Board. They passed the Council unanimously and were submitted to the Board. And I think that's important for two reasons.

One is that that it was – that was adopted unanimously; there was not a significant opposition to any part of those recommendations. And two,

because at the time difference that's elapsed here, we are a little bit encumbered by that in terms of our ability to piece back together what the different decisions that were made along the way and the various participants factors that were considered and the rationale that was developed during the course of that PDP. It's not more than four years in our review mirror.

We've been essentially in a holding pattern since. We have had some discussions both at the GNSO level, we've had some discussions with members of the GAC, we've had some discussions with members of the Red Cross and some of the IGOs to hear out their concerns. We've also consulted with staff on what we are capable of doing with a recommendation that is in this current state. But that is – that's kind of the gist of where we stand today.

Bruce Tonkin: Okay, thanks James. Chris is just asking what would you say the core recommendations are? Are you able to summarize the recommendations from the GNSO?

James Bladel: And this is the part where I would hand off to Thomas. But we do have a list of – Donna is raising her hand or if we can call upon Mary to walk through the...

((Crosstalk))

James Bladel: For the most part I think that the bulk of the recommendations...

Bruce Tonkin: Yes.

James Bladel: ...are not the focus of our discussions. There's just a few that I think that are relevant to this session. Donna, did you want to...

Donna Austin: So I think what's at issue with the Red Cross is that we – the PDP working group agreed to continue the reservation at the top level for – and the second

level for the Red Cross names, but when it comes down to the second level what the PDP working group referred to as the Scope 2 identifiers, they didn't agree to a permanent reservation at the second level for those names. The recommendation was that they're going to the Trademark Clearinghouse for a 90-day claims period. So and I think that's where we're inconsistent with the GAC.

Bruce Tonkin: Right. So you've basically – you've reserved I think it's four names is it that's reserved...

Donna Austin: Yes.

Bruce Tonkin: ...and then the other names basically you're saying they're not pre-reserved but they would be treated similar to other names through a Trademark Clearinghouse type process.

Donna Austin: Right.

Bruce Tonkin: Yes, okay.

((Crosstalk))

Bruce Tonkin: All right. I've got Thomas who I see has just joined us. I might – we'll come back to Thomas if we can perhaps have a representative from the Government Advisory Committee just sort of summarize what you see different or the public policy advice you don't believe is being taken into account. Thomas.

Thomas Schneider: Thank you. And welcome to the other Thomas.

((Crosstalk))

Thomas Schneider: You are.

((Crosstalk))

Thomas Schneider: Well, as James has said, there's a long history to this. The – we had representatives of the Red Cross that were participating in the PDP at that time and reporting to the GAC. We have a long standing series of GAC advice issued since then where we clearly state that we think that the protection is not sufficient in particular with regard to one element that is the – used to be 189, now 190 full names of the National Red Cross Societies, particularly because if there is an accident, an incident or something terrible happening somewhere, it happens quite frequently that somebody puts up a Website with the name of that national society trying to raise funds pretending to be that Red Cross there.

There are quite a number of cases that have proven that these names are abused. We're also convinced that there is not really a business case to use these names for anything else than actually those societies. So this is one of the key elements.

The other one is some of the acronyms – if I get it right – that we ask for protection, and maybe Jorge or Stéphane complete me if I'm missing something else.

Stéphane Hankins: Thank you very much, Thomas. Yes, I can maybe add a few words of – to complete what Thomas has explained. Basically the issue that is under consideration here relates to what the PDP had indeed, as Donna mentioned, defined as Scope 2 names. So the PDP recommendations in 2013 and indeed this is very long time ago, and there's been – there've been so many meetings.

But the PDP had identified a series of words and names that deserved reservation at the second level which were notably the words Red Cross, Red Crescent, Red Crystal and Red Lion and Sun, that were – these are the

names of the protected emblems of medical services and the medical mission in times of armed conflict. And these are protected words under the 1949 Geneva Conventions, which are universally ratified international treaties today. So that was the – the so-called Scope 1 words that were recommended by the PDP for protection and reservation.

And then there was a second group which was referred to as the Scope 2 names, which are the actual denominations of the Red Cross Red Crescent organizations. The International Red Cross Red Crescent movement is composed of 190 national Red Cross and Red Crescent societies and two international bodies which are the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies.

The Scope 2 names were intended to refer to the exact matches of the names of the respective organizations, International Committee of the Red Cross, International Federation in the six UN languages were requested from the side of the GAC and are still requested from the side of the GAC for permanent protections as well as the full names and identifiers of the international bodies and of the national Red Cross Red Crescent societies.

What the GNSO at the time determined was that the Scope 1 names would be reserved, but there was a decision by the GNSO Council at the time not to confer the protections to the Scope 2 names. So the – what is at stake here is the differences between the GAC's consistent advice for many – for several years now, that the Scope 2 names be permanently reserved, and the PDP recommendations at the time regarding these Scope 2, so the identifiers.

The identifiers of the Red Cross Red Crescent organizations are also, by nature, protected under the General Conventions because they incorporate the words Red Cross and Red Crescent. So this is not the – we can come back to that in the conversation, but essentially, these are protected names and words and they are protected also in their identification function; they are also protected because they identify the components of the movement.

So the legal grounding is international treaty law which has been adhered to and accepted by the entire international community today and that is where the discrepancy lies. So the issue at stake is the reconciliation of the PDP recommendations on the Scope 2 names and the GAC's consistent advice, which is grounded in public international law and grounded in the global public policy interests which those international treaties, again they're universally ratified 196 states have participated in the convention, the global public interest in those protections be guaranteed at the second level for also the Scope 2 names. So that is the issue.

Bruce Tonkin: Thank you. So I'll just try and summarize this a little bit in the diagram. So one approach to protecting names is to reserve them. And at the moment, they are temporarily reserved, so basically the specification in the agreement that registries and registrars use that – so this list of names in the reserve list cannot be registered at all.

And then the other option for protection is more of a – essentially a notice process where you would give notice to the party in some way that their name has been registered followed by some type of dispute process which is essentially saying that you've – a party has been notified that a name has been registered and then the party can see, you know, are there legal rights being infringed? If those legal rights are being infringed naturally they could go to a court of law, and exercise those legal rights.

Or what tends to happen in ICANN is the use of some form of dispute process to help resolve that conflict between the rights on that particular name. So I guess those are the two broad approaches for reserving it, or some form of notice and dispute process.

And then under the reservation I guess if we look at the difference perhaps between the two positions is the GNSO position is basically saying they will

reserve the exact matches of the names, which I think is Red Cross, Red Crescent, maybe you can help me with the other one, Stéphane? What?

((Crosstalk))

Bruce Tonkin: Red Lion and Sun and Red Crystal. And then in the – the GAC has advised us, and certainly the Red Cross would prefer it that in addition to reserving these names, we also reserve the names of 189, and I believe it's now 190, of the international – national – sorry, national societies.

James Bladel: So, Bruce, I have a question on that. So this, I mean, you know, you could have raised a small child in the time that, you know, we first picked up this issue until today. But we've seen this move from 189 to 190 names. How often does this change – this number change? Is it always increase? Do numbers decrease? And what's the process for – how would, let's say, some hypothetical ICANN process be notified that it went from 190 to 191? I really don't know how that works.

Stéphane Hankins: Okay, I didn't want to enter into the technicalities of how the International Red Cross Red Crescent Movement functions, but maybe just to begin to indicate that the statutes of the International Red Cross Red Crescent Movement, which define how a new national society is created and recognized are instruments that have also been adhered to and endorsed by governments.

Bruce Tonkin: So how long would that take...

((Crosstalk))

Stéphane Hankins: So basically there are certain conditions for a new national Red Cross or Red Crescent society to be established. So there are 190 national Red Cross Red Crescent societies operating in different countries around the globe so that includes the British Red Cross, the Danish Red Cross, the

Afghan Red Crescent, the Magen David Adom in Israel. And these are societies which have a government mandate to support the authorities in the realization of humanitarian activities in the domestic context.

And essentially to be recognized as a national society, an entity has to be recognized and created on the territory of a state. And the definition of what a state is, it's the states, parties to the 1949 Geneva Conventions. There are 196 states parties to the Geneva Conventions today, so it's easy to make the calculation, there are 190 national society and 196 states parties to the Geneva Conventions.

Which means that there are six...

((Crosstalk))

Stéphane Hankins: ...countries...

Bruce Tonkin: Yes.

Stéphane Hankins: ...which do not have a national Red Cross Red Crescent Society today. The process is a very complex process. It involves, you know, examination of different conditions and so on. But the list is obviously finite. There...

Bruce Tonkin: Yes.

Stéphane Hankins: ...are 195 states – members of the United Nations, 196 that are parties to the Geneva Convention, so you're not going to have something that's going to blow into...

((Crosstalk))

Bruce Tonkin: Yes...

((Crosstalk))

Stéphane Hankins: So basically what happened – just a minute – what happens is that when we started this process, and of course it was so long ago, there were 189...

Bruce Tonkin: Yes.

Stéphane Hankins: ...and since then the Red Cross of (Tuvalo) was recognized by the International Committee of the Red Cross, this is in the Pacific region and of course, you know, this is a region particularly at risk of humanitarian crisis. And of course we were pushing for a national society to be established, the government supported it and it has happened so we have 190.

Just to complete of the six states participating in the conventions that do not have a national society, there are two that are in the pipeline. So it's Marshall Islands Red Cross, for example. But it's not going to happen indefinitely because there are very strict principles for...

((Crosstalk))

Bruce Tonkin: So I think, James, in summary, it's a bit like country codes. So the ISO has a list of country codes that can be modified over time, but generally it's in proportion to the number of countries. So you were saying it roughly could get up to close to 200...

((Crosstalk))

Stéphane Hankins: No, no.

((Crosstalk))

Bruce Tonkin: Using...

((Crosstalk))

James Bladel: Yes, Bruce, I'm sorry, and I'm sorry if I'm belaboring this, and thank you for the background. But so it's just as hard to do this as to create another country...

Bruce Tonkin: Basically.

James Bladel: ...roughly. But is it possible, for example, and I'm thinking of this now from a party that might someday be charged with protecting these names, that the American Red Cross, for example, might also create a parallel national society for the American Red Crescent or the America Red Lion, so it's not a one to one relationship, that countries could adopt multiple national societies, is that a possibility?

Stéphane Hankins: There is a – I should have said that. There can only be one national society in each country.

((Crosstalk))

Stéphane Hankins: There is a fundamental principle within the movement that this – which is called the Fundamental – the Principle of Unity. There can only be one national society per country.

James Bladel: Thank you.

Bruce Tonkin: So only one per country. So there's quite a defined list essentially. It's a defined list – it may change. It sounds like a change might happen maybe once every 10 years or so. It's not a regular thing, and much the same as the country code list would change. Okay...

((Crosstalk))

Bruce Tonkin: Yes, sorry.

Petter Rindforth: Just to – also understand and to summarize, is it always so that the only addition is a national or regional addition? There is no risk or possibilities that there will be also new identification of the Red Cross name in these new – or we're only talking about the long list, we're only talking about country names, national identifications? Is that correct?

Stéphane Hankins: That is correct, yes, the – the Scope 2 names, as it has been defined, also corresponds – as it had been defined – also corresponds to the request that we formulated which is that for protections of the exact names or usual names of the national societies in existence.

Bruce Tonkin: So – also I just had a reminder from staff if you can state your name for the record just so that when they come to transcribe the audio they know who was speaking. So it was Stéphane speaking from the Red Cross and we had Petter...

Petter Rindforth: Petter Rindforth, yes.

Bruce Tonkin: ...Petter from the GNSO. I thought it was useful – this is actually what's been temporarily reserved, so just people who can get a sense of what the names look like. So if you just scroll up a little bit – scroll up a bit first, so the first thing is that we're talking about the names that are of the actual International Red Cross and Red Crescent movement itself. And if we scroll down through that list – just scroll down the page slowly.

So we have International Committee of the Red Cross, we can see it's in multiple languages there that's got the Movement International of the Red Cross. So this is basically variations. Now we're starting to see the names of the national societies there, so there's the Australian Red Cross, the Bahamas Red Cross. And notice there's Bahamas Red Cross is reserved

both as a single word and also with hyphens in between the names. And you'll see that is common across all of these.

So basically what's been reserved is they take the whole name, so you will see – there's a longer name there. The Barbados Red Cross society, we've reserved that as a single word with no gaps between the words and it's also reserved currently with the hyphens. So this is the temporary reservation that the Board put in place for these names.

If you can just scroll down through the page? So we're talking about there's the 190 names, but there's a couple of variations, one with hyphens, one without. And also you will see the names in the different languages that are relevant to that location. So if the location speaks – has like a national languages of English and French the names are in both languages.

Just keep scrolling through the page. You notice some of these are also in different character sets. Keep going down through the page. Just keep scrolling, keep scrolling. So there's quite a few names we're talking about here.

James Bladel: Yes, in addition, Bruce, sorry James speaking. In addition, you noted the hyphen or no hyphen, that's one permutation.

Bruce Tonkin: Yes, yes.

James Bladel: And you notice that some have a definite article "the" or missing or the local equivalent to a "the" and then – or missing that, and so that's another possible permutation. I'm just...

Bruce Tonkin: Yes.

James Bladel: ...I'm pointing out this because this multiplies the list each time we apply one of these...

Bruce Tonkin: And presumably, it would have a “the” in it if that’s the official name of the organization, I want to mention is that correct? Yes.

James Bladel: So for the Bahamas Red Cross or Bahamas Red Cross which is the official? Because they’re both on this list.

Bruce Tonkin: Okay, don't know. Stéphane?

Stéphane Hankins: Stéphane Hankins, RCRC, we had solicited each and every national society to provide us with the string to be – to be protected or reserved. And so this reflects what we had received and what our own delegations around the world had collected. There’s another permutation which we were forced to include at times, it’s the inclusion of the word “Society” because some national societies use...

Bruce Tonkin: So we see that actual example there now, so Ethiopian and Red Cross and Ethiopian Red Cross Society.

Stéphane Hankins: The official name is Ethiopian Red Cross Society but the usual name that is used in the activities and that is known in the community in Ethiopia is without the word “Society” so they submitted two versions. But we haven’t done that – it wasn’t done systematically as you can note on the list.

Bruce Tonkin: So you're saying essentially the list was produced by asking each of the 189, now 190) organizations for their usual use of the name and you protected essentially the exact match if it had “the” in it or a “society” in it or it could be the – if you like, the colloquial more commonly used name in that country.

Stéphane Hankins: Each national society has an official denomination which is the denomination that is used in official communications within the International Red Cross Red Crescent movement and also used in the international conferences of the Red Cross Red Crescent, which associate also

governments. So we systematically included the official name both in English and in the respective languages and fonts and where necessary included the – a usual version which generally is a shorter version without the use of the word “Society.”

Bruce Tonkin: Okay. Petter.

Petter Rindforth: Petter Rindforth, GNSO. I presume that you have internal regulations, what each new organization can call themselves both when it comes to the official name but also some regulations when it comes to the, as you call it, the public name that they use. Or are they free to come up with a new specific name and then you decide on the place when it comes on the table?

Bruce Tonkin: So I think what Petter is saying, it's can they choose any name or does the name need to include words like the equivalent of Red Cross Red Crescent in the local language?

Stéphane Hankins: Again, I don't want to go into big detail, but there are obviously regulations and strict regulations in this regard. And one of these obligations is for the name to include the designation of one of the recognized emblems.

Bruce Tonkin: So one of these four.

Stéphane Hankins: So one of these four.

Bruce Tonkin: Donna.

Stéphane Hankins: With one – there's one exception which is the Magen David Adom Israel, but there again I will not enter into detail, but the Magen David Adom in Israel, the national society in Israel, is recognized with that particular name but it uses internationally the Red Crystal, so I don't want to go into that level of detail.

Bruce Tonkin: Donna.

Donna Austin: Yes, thanks Bruce. Donna Austin. So this list is what's reserved...

Bruce Tonkin: Currently.

Donna Austin: ...in Specification 5 of the Registry Agreement?

Bruce Tonkin: We're actually looking at the contract at the moment.

Donna Austin: Okay.

Bruce Tonkin: But this is Specification 5, yes.

Donna Austin: And this is the list that was approved by the Board?

Bruce Tonkin: Yes.

Donna Austin: And the list was provided by the GAC to the Board?

Bruce Tonkin: Yes.

Donna Austin: Okay.

Bruce Tonkin: And then the GAC got its list from the Red Cross I think is probably the flow.
Yes.

Donna Austin: Right.

Bruce Tonkin: Is that correct, Thomas?

Thomas Schneider: Yes. Well probably it's more complicated than that.

((Crosstalk))

Stéphane Hankins: This is Stéphane again. And we have discussed this with Mary and other colleagues within ICANN staff, they are still within the list, which is included in Specification 5, a few questions that have remained and for which we've submitted some comments back to – back to ICANN staff. So that is not entirely finalized, but in terms of the numbers, this is what it will...

((Crosstalk))

Bruce Tonkin: I think the other thing I'd like to call attention to just so we've talked about the names, I noticed, if I just look at this page at the moment, there also appear to be acronyms like SPI and FRK, I'm assuming FRK is not the actual name, but some sort of abbreviation, is that correct?

Stéphane Hankins: These are the types – Stéphane again. These are the types of corrections that we need to include and we still need to tweak in that list.

Bruce Tonkin: Chris.

Chris Disspain: So I have a question. I understand the fundamental basis for the Red Cross's claim to the names, the international treaty law, etcetera. I'm not seeking to reduce the list in any way, but I'm asking specifically a specific question. I assume that actually only one of the – only the actual official name to which the protections under the treaty apply, I'm not suggesting that in usage the name that is used in the country isn't just as relevant, but I just want to make sure that we don't get mixed up here with what we're asking from what we're not.

At the fundamental level, what we must do is abide by the international law and treaty. So can you clarify that or are you suggesting that both versions of the name are equally protected at international law?

Stéphane Hankins: That is – Stéphane again. This is a complicated question because if we had wanted or if it were technically feasible, through some form of string similarity review, to reserve all formulations including the protected designations, Red Cross Red Crystal, Red Lion and Sun, Red Crystal, this is what in principle would afford the protections as they are recognized under international law.

So, you know, theoretically, and this is initially what we had, you know, we had hoped for, but we have been explained that it's not technically feasible, any string incorporating those words, should in principle not be open for registration. So whether it is the name – the words Red Cross or the words French Red Cross, or the words fund the Red Cross, these are combinations of words which by nature and because of the provisions of public international law, are not – or cannot – could not in principle be used or be the subject of misuse or unauthorized use.

Chris Disspain: Even on their own.

Stéphane Hankins: Because of the...

Chris Disspain: I just – just because of the impossibility of having a string similarity review, which would catch every string incorporating the protected words under the Geneva Conventions, and because the organizations within the Red Cross have an entitlement to use those words, under these treaties, we fell back into – we therefore moved into requesting the Scope 2 names, right?

So yes, the name French Red Cross or Afghan Red Crescent are protected under international law, they're protected both because they are – they incorporate the name of the emblems – the distinctive emblems of protection and they're protected also because they are the indicative name of the respective Red Cross Red Crescent organization. So we – the – what has been proposed the Scope 2 names, if you like, is a way of addressing the fact

that string similarity is – was not technically realizable. I don't know if I made myself clear...

Bruce Tonkin: Yes, I think I get that, yes. So basically you're saying it would be great to protect similar names but at the moment what we're asking for is the names of the organizations that are the official name of the 190 organizations. And then you're saying so the official name could be the Gambia Red Cross Society, but the more common name that's used in that country could be Gambia Red Cross and so you're essentially saying you want both of those protected if I understand it correctly. Just looking at this list.

Chris Disspain: So, Bruce, I don't want to push on the point – I just want to be clear, am I understanding you to say that those words, those names, are protected in international law so that therefore in essence, so on their own, so not used in conjunction with the symbol, but on their own. Because what you're saying then means that every pub called the Red Lion is actually breaching international law.

Bruce Tonkin: Any...

((Crosstalk))

Bruce Tonkin: What Chris is saying is the Red Lion, the English word Red Lion on its own is a fairly common use in English for the name of...

Chris Disspain: ...of a pub.

Bruce Tonkin: ...of a drinking establishment...

Chris Disspain: ...drinking establishment, sorry yes. Hotel, that's the thing. It's Red Lion and Son.

Bruce Tonkin: Yes.

((Crosstalk))

Bruce Tonkin: Okay good so thank you, that's a clarification that's important because I'm sure...

((Crosstalk))

Stéphane Hankins: Again, these are the names of the protected emblems of the medical mission in armed conflict. And the drafters of the 1949 Geneva Convention established a system whereby both the emblem itself and the name should be reserved.

Bruce Tonkin: Yes, so the flow – and one thing I should point out for the broader audience that if you go to the ICANN schedule for this meeting and you go to the session that's called the session at the time of the day, we also have the documents. So there's a problem statement and then there's also a briefing statement, and that briefing statement is about four or five pages long and that was developed jointly by the group here. And that goes into a bit of detail on the history.

But, you know, very high level the history is it started with sort of flags in a battlefield, and these are basically words that describe what that flag looks like. So there's a flag with a red cross on it, there's a flag with a red crescent on it, there's a presumably a flag with a red lion and a sun on it. And then there's a flag with a red crystal on it so essentially where those words come from.

And from there, what I heard Stéphane say is that the names of the national societies, the actual names of those national societies are then an extension of these four variants, so they generally have these words in their names which is certainly I can't tell the different languages but certainly in English I

can see on the screen generally you can see Red Cross is used in each of the names.

And then going further on from that there's the official name which is the Gambia Red Cross Society, which is the officially recognized international name, and then there's also the name that's on this list, which is the locally most – commonly used local name. But it's – I don't know what happened there. My screen locked.

So while I unlock my screen, are there any questions on – sorry, Heather.

Heather Forrest: Thank you, Bruce. Heather Forrest. I confess I'm not entirely sure about – I haven't followed as closely as I would like to and perhaps I blame jetlag. The issue of whether or not this list is indeed exact match, I'll park that and perhaps we can come back to that point.

In terms of the law, I'm following up on Chris's question just now, what do we need to do about the distinction that's made in Article 44 of the first Geneva Convention about times of war and times of peace? Because there is a distinction made there as to the use of these names and emblems during times of war by national societies and times of peace.

So how we deal with that given that, let's say, what the Convention purports to do, is make this a domestic law question in times of peace and domestic law questions we all know, we represent a number of different countries around the table, and this is a perennial problem that we have in ICANN in the trademark environment, in other places where we have different laws that apply in different countries. How do we deal with that here practically speaking from the perspective of making sure that our contracted parties are clear as to what they're supposed to do? Thanks.

Bruce Tonkin: Anyone from government side want to comment on that?

Stéphane Hankins: In terms of the Geneva Conventions, which are the international treaties which indeed states have an obligation to implement in their domestic legislation, they protect the emblems, they protect the designations of the emblems at all times. That's the thrust of the protection, which means that they are protected in times of armed conflict, obviously, but they are also protected in times of peace.

And the rationale for that of course is that any misuse of those names or those designations or unauthorized use is – has the potential, or at least that is the rationale, has the potential of undermining the protected function of the emblems in times of armed conflict. So there's no distinction to be made in terms of, you know, whether they are protected in certain circumstances or not, they're protected at all times, and national legislation should foresee that.

Some states of course, incorporates public international law directly into their legal order, others require implementing legislation, there are Geneva Conventions acts, for example that protected the emblems at all times in most common law countries, for example. So there's no issue there.

And maybe just to underline once more that these protections are not, they're not grounded in trademarks. The legal rights approach does not fully fit what we're talking about. What we're talking about is clear prohibitions under public international law on the usage of those names because of the public interest with which we have already highlighted this morning.

So I think that's the paradigm shift that has to happen is that the legal rights consideration for this or, you know, the trademark protection, it's not what grounds...

((Crosstalk))

Bruce Tonkin: There is a legal rationale, it's just what you're saying is it's not a trademark rationale, it's the rationale is through the Geneva Convention. So I think it's

very important, we are talking about legal rights, the different types of legal rights. And what you're saying is the legal rights that apply to the Red Cross are different to the legal rights in trademark law. They're still legal rights.

Stéphane Hankins: Yes, no I understand but the legal rights approach, I understand in this forum means something very specific and it has its specific remedies. That is why I'm using that wording. But as a lawyer I'm...

((Crosstalk))

Bruce Tonkin: Yes, I'm trying to tie it back to our bylaws so our bylaws refer to the applicable legal rights and those bylaws are talking generally, in other words the bylaws refer to international treaties and applicable legal rights under the most local laws, that's our bylaws, basically. Thomas.

Thomas Schneider: Thank you. And although it is extremely interesting to learn about the details of how the Red Cross is dealing with its symbols and names and by some countries where it operates which actually reminds me that I should maybe he didn't donate some money to the Red Cross because they are performing an essential function for some people living in places of crisis, maybe we should not go into further details about these issues but actually try and focus on let's say our part of the problem.

And for me it would be useful, I think we've now heard why the GAC has asked for protection of the names and identifiers that we are talking about, it would be useful for us to hear from the GNSO about maybe, and S. Thomas is here, who was leading I think the work at that time, about their reflections and rationale at the time where the decision was taken in the GNSO to grant some protection to some of the identifiers but not to all the ones that the GAC has been asking for so that we can try and understand, yes, where the difference lies between the GAC and the GNSO decision at that time.

((Crosstalk))

Bruce Tonkin: Perfect, because I think what we've done here is we've established what the names are and how they've been derived and now the question that Thomas asked really is the next thing I wanted to get onto really is basically what was the rationale from the GNSO for protecting, say, only these four names and not some of these other names that we have just been discussing? So I think what the GAC would like to hear is you obviously received input from I guess the Red Cross, you've reasonably received GAC advice at different points of the journey. What was your reasoning, if you like, from the GNSO as to why these additional names were not also added into protection?

Thomas Rickert: Thanks very much. And I apologize again for being late. I was under the firm impression that we start at nine, and I thought I was early. So I apologize for that. This is a couple of years back and it's extremely difficult to recollect exactly how things went at the time.

We have approached the topic at the top level, at the second level. We were discussing IGO INGO full names, we were discussing acronyms, we were discussing variations so there was an awful lot for the group to consider at the time.

We do or we didn't know at the time that there was GAC advice out there comprising the 189 names that have been temporarily reserved. In our deliberations, if memory doesn't fail me, we were primarily looking at the scope that has been enshrined in the Applicant Guidebook. And we were looking at the legal basis that we could get hold of at the time.

So we routed all our deliberations in what we could find in terms of international law. So we asked the parties concerned to help us with international overviews of either national or international laws that would grant such protections. We also reached out to ICANN legal counsel to come up with an overview of what protections are granted. So it is well possible that this overview at the time does not cover everything there is, or maybe

there is new evidence now for granting legal protections. But we have to live with what we had at the time.

And also in terms of scope, we were looking at exact match variations, etcetera. And what I can recall is that the group had a tendency to be willing to protect exact match names but it became more and more difficult the more we moved away from that, that means with hyphen, without hyphen, do we cover acronyms, what scripts and that variations of the names would we protect.

And again, I would need to confirm this with transcripts needed, we were working, as I mentioned, primarily based on the scope in the Applicant Guidebook. We have advanced the consensus call or preparation of the consensus call in our initial report substantially when Stéphane at the time, said, well, the scope of what we have at the moment doesn't fully reflect the 189 names. So it was very late in the process that there was a request made, although Stéphane has been clear that, you know, the 189 names have been mentioned earlier. But we were working off the scope of the Applicant Guidebook.

And I guess that's an important distinction. So we were sort of working on a framework for different sets of names to be protected. And at the time the request was made to also specifically look at the 189 names, again our deliberations were quite advanced. So we lived with what we had at the time, exact match names, protections at the top level, at the second level and then for variations or for lists that would be subject to change the group was willing to grant protections by adding them to the TMCH granting that 90-day claim period and sunrise protections.

And then again we have the curative side of things, because another part of our discussions at the time was that while there was no one in the group disagreeing with the fact that Red Cross Red Crescent working for the good cause, do need protection and that it is outrageous that the names and

variations thereof can be abused for fraudulent purposes, it was felt that regardless of what we do, the scope of the protections would be limited anyway because usually perpetrators would be using variations.

So there is no way for the group to be as forthcoming as covering whatever strings there might be and preserve them so that nobody can use them. But that for this specific type of patterns of abuse, and we've also looked into that, what names are being abused for illegal purposes, that reactive mechanisms, curative mechanisms, you know, a suspension of domain names and taking away domain names from bad players, would be the closest to reality and the best protections that these organizations really need.

Bruce Tonkin: Yes, so just to elaborate on that a little bit, a comment if I recall one of the I guess national disasters, it was a cyclone I think in - which was called cyclone Katrina or Hurricane Katrina in the US. And a lot of the Website names that people were using to try and fraudulently get donations were variations of the word, Hurricane Katrina.

But then the Website itself may well have copied the Red Cross logo or something like that and put it on the Website. But the Red Cross itself wasn't in the name of the Website. The name of the Website was usually related to the event if you like, like cyclone or - I don't know - I'm not sure cyclone is the right word, whatever word you use in the US, but big storm and then the location is commonly how the abusive names are set up. And then the content of the Website may well include emblems and things from the Red Cross to try and trick people into giving funds.

So Thomas, it sounds like, to kind of get in the context at the time, you were looking not just at Red Cross but you were looking at the broader topic of Red Cross and IGO names, so you were looking at a fairly general level in trying to come up with a solution across the lot, is that right?

Thomas Rickert: And even INGO names. So we were looking at the top level, we were looking at the second level, we were looking at, you know, names of all these organizations that you just outlined, just exact match full names, acronyms and variations thereof. So there was an awful lot of different topics so we approach this by looking at what is the scope of or what are eligible terms, what are the criteria for establishing eligibility, what exemption procedures would we need and all that. We were looking at preventative and curative mechanisms.

And I guess that was quite a lot of work to be done for the working group at the time. And I guess that if you look at this resolution that was passed, and since Mary was the author of the resolution at the time basically I'm out of meeting the findings of the group into a text, you will find that there are patterns that the group was - looked at what the legal basis and if there is a legal basis we would grant reservation, i.e. adding the list to Specification 5 for exact match names, and then for the second level exact match names would be reserved for certain strings, and then for other strings you would have the TMCH protections.

And another radio was the curative protection, which as you know, was out of scope for our group and that's what the Curative Rights Protection Mechanism group is working on at the moment.

Bruce Tonkin: Okay. And so I guess what I'm hearing from the GNSO is that it sounded like you had a very clear set of names here that were absolutely clear in their names. And so you grant a protection for those. On the other side it sounds like, because you're looking at so many different variations so there's the names of the associations, there was potentially abbreviations, there was potentially acronyms, and it sounds like once you start expanding the set of names so you go beyond a 190 to maybe 2000 names, the chance of multiple legitimate uses of those names becomes higher.

And I think what we are hearing from Thomas from the GAC here was that when they're looking at these names here, and we are seeing them on the screen, so there's no real other legitimate use for the Finland Red Cross Society or that can be a Red Cross Society, those names really only have one use that derives through from the international law.

But acronyms gets a little bit different. So if I look at to acronyms on this page here, FPR, if you Google that you'll see that that has a number of different uses...

((Crosstalk))

James Bladel: I'm sorry, Bruce, this is James speaking. Can we take one step back before we proceed onto acronyms? Because you said something just a moment ago that I'm not - and maybe I didn't follow Thomas exactly what I want to make sure that we are clear. You said that the GNSO PDP saw the potential for legitimate use expand as the list expanded?

Bruce Tonkin: No, no. I might have been unclear in what I said.

((Crosstalk))

James Bladel: I didn't hear that in what Thomas said.

Bruce Tonkin: No, and that's also not what I thought I said. What I was saying is that the variations of the names were starting to look really large, so, you know, we weren't just dealing with a narrow set of 190, we were potentially dealing with many names, many variations including acronyms and abbreviations in different spellings and so on. So it went well beyond the defined list. This was a defined list.

James Bladel: Correct. And what I took away from Thomas's explanation was not that the legitimate use potential increased but the value of the protection decreased in

that you would see other permutations or names of storms or names of locations that were not, or could not be captured by this type of a list.

Bruce Tonkin: Yes, that's true. Yes, because I think what Thomas was saying is that the focus of the group shifted more to the curative mechanisms, which could be a lot more general, instead of sort of saying, you know, they curative mechanisms limited to a set list, they curative mechanisms are set to the broader protections, is that right?

Thomas Rickert: Yes, and I guess that you touched upon an important point and again, that is the group was discussing multiple times why are we doing this? Are we really helping with this? Because we do know that the few names that have been protected and reserved, you know, that's a futile exercise if you look at where abuse is actually taking place. So we were looking at, you know, what needs to be protected up front and then how can we efficiently make sure that where real abuse is taking place, that the organizations concerned...

((Crosstalk))

Thomas Rickert: And that's the curative part.

Bruce Tonkin: Yes.

Thomas Rickert: You know, so we were discussing things like, you know, sort of URS for these names or variations of the UDRP which are now being under discussion. Where you don't need that exact frame because if you want to find a technical solution incorporated by registries, and that's what we're talking about, you need something that can be validated in a binary fashion, 1 or 0. Is the name on the list? It's going to be reserved; if it's not it's falling through the roaster.

And therefore, since we – and we've asked the organizations for evidence of abuse. You might recall that, Stéphane, which names are being used? What

are fraudulent websites? And we saw that, you know, we would be – we would not be helpful in that regard if we did not open up the opportunity, which if course at the time was out of scope for our working group for expedite and efficient curative help for these organizations.

Bruce Tonkin: Okay so is that the clear the rationale for why they're looking at curative rights, Thomas?

Thomas Schneider: Thank you. And I think we all agree that there needs to be, let's say, both sides of the coin prevention and curation. And it is obvious, and that's not only the case on this issue, if you have speed limits on a motorway you have flashes maybe every 100 miles or kilometers and of course between the – we call it the metal policeman in Germany, of course people can ride too fast. But that doesn't mean that you don't – that you stop flashing occasionally because, yes, you will never, ever get all the criminals or prevent all the criminals from doing criminal action.

But there are some cases where let's say the proportion of the effort to take – to do something preventative is actually worth it and the rest you need to do curative. The problem with curative rights is that it's a lot heavier burden on those that have been abused to actually fight ex post against something. So what can be done ex ante, without too much of a burden to those affected in terms of now here's the registries and registrars, should be then exactly what cannot reasonably with reasonable resources be done ex ante because it needs to be cured ex post. So I think there's a mix that you see in all ways of dealing with criminal action whether it's drug trafficking or whatever it is, there's always both parts.

But as I said before, in this case, this is a list of a few hundred names that is there, that may have some tweaking with regard to some acronyms that I see. But it's not a list that will change daily or weekly or even yearly probably. So I think the effort of using this list which is done actually currently now, so this is nothing new, is manageable with a reasonable effort.

And as I said before, and as Bruce has said, there's no real other way that somebody else could use it. So once it's in the list it's brought that's it, at least that's the way I as a non-expert understand it. Thank you very much.

James Bladel: Sorry, just another technical question because Thomas reminded me of something which is that if we talk about blocking these names or reserving these names, I think reservation is the preferred term, but if we talk about reserving these names, and I'm just picking on one here, the Gambia Red Cross Society, is reserved from the DNS currently. What is the process if there were an earthquake in Gambia tomorrow and the Red Cross set up emergency fund raising efforts, what is the process for unreserving a name quickly to allow that national society to use this term?

Because if we block this from the DNS, and as contracted parties, if we're bound by our agreements to block this on a preemptive basis, the ability to unblock that in a timely manner could take months, it could take years. And our ability to be responsive to situations on the ground, I think, would be significant. And I understand and I appreciate the concerns about the resources necessary to effectively use curative rights, but one of the advantages of curative rights is that we don't have to be very smart.

We don't have to think ahead of all the possible things that criminals or abusive people will do. We can just watch them, find out what they're doing and then react to it. So it's much more dynamic. And in a way it captures not this list but all possible lists as opposed to a finite set. So I'm just kind of putting a couple of thoughts out particularly because I'm more concerned about that first part is that if we carve this into stone, then the legitimate need for those terms would also be taken off the table perhaps permanently.

Bruce Tonkin: So, James, you're talking about – you have a mechanism for reserving, which is currently what we have in the agreements. We don't currently have a

mechanism to unreserve, in other words, under the current contract, it's not actually possible to get one of these names registered, is that correct?

James Bladel: Not in any kind of a timely manner. I mean, it may be possible, we may have to create a mechanism, and then invoke it, but by designing that mechanism...

((Crosstalk))

Bruce Tonkin: The mechanism now is you'd have to go to the ICANN Board and ask for a contract change basically?

James Bladel: Well and that would have to go through the PDP process somehow if it's going to affect contracted parties.

Bruce Tonkin: Yes.

James Bladel: So it could take months.

Bruce Tonkin: Yes, Donna and then Thomas.

Donna Austin: Thanks, Bruce. Donna Austin. So, James, part of the answer to that is that this PDP working group came out with 25 recommendations, which Thomas will attest to. There's only two of those that are outstanding, that we're trying to work through today.

Bruce Tonkin: Yes.

Donna Austin: With the other 23, there's actually an IRT that's working through that at the moment. And with – there's a – the recommendations generally a reservation but there will be an exception process. So if the relevant IGO wants the name, that that exception process is currently being worked out at the

moment. Now I think we have a bit of a challenge with that because I don't think it's due to complete until 2018.

But the PDP working group did actually state in its recommendations, if I'm not – I think I'm correct – that the IGO – the exact name be reserved but there be an exception process that's actually built in so that if the actual IGO wants that name that they can have it. But that is part of an IRT that's currently underway.

Bruce Tonkin: Thomas.

Thomas Schneider: Thank you. Just a brief response. First of all, yes, I think we all agree that you need preventive and curative protection. And about the other is most of them I guess do already have a Website up like this was – probably under the ccTLD, they are present on the Web. So maybe it would be that fund or whatever that one of the few new gTLDs they may add, but it's not that they don't have the visibility. So in case something happens if you Google them, you will find them and hopefully find the real ones and not fake ones. Thank you.

Bruce Tonkin: Okay, so if I might suggest what I'm trying to look at is how can we kind of narrow the gap between the two positions? I think it's fairly clear what the positions are. We've heard, you know, the GAC feels that these names should be protected through a reservation process but the GAC is also agreeing with the GNSO position that curative rights are also important. So I don't hear any party saying if either or, it's like there's both a form of reservation and there is curative rights as well.

And so then the gap seems to be focused really is to – out of the names which can be reserved. And the current position from the GNSO was for and I think we've got clarity now that we're talking about the names of these currently 190 official names of the bodies and then there's one step beyond that which was the – the official name plus the name that's most commonly

known and commonly looks like they take – of the front or they take Society off the back seems to be the pattern here. But this list could be refined.

The one concern or something that I could see as a potential way forward is if you leave aside the acronyms, because the acronyms have lots of uses and picking on your comment, Thomas, there are other legitimate uses for the acronym, just picking one on the screen, FRK, in fact it's even a person's surname, so there's other uses of that.

But the full names, the names that actually include Red Cross, etcetera, those names are far more unique. It's not like there's a company name called the Gambia Red Cross that does space research, whereas SPR is actually the name of a space research company, and FRK is a person's surname, I think there's a football player – famous football player with that as his surname.

I think if we narrow it down to a defined list just like we have with country codes, and there's an official list that the Red Cross can provide, which is this is the official 190 names, and then some very well crafted rules picking up what I think I heard Petter say, there are the rules that you can't just choose a name that sounds like a great name that you can commercialize, the name has to actually meet a certain set of criteria in terms of its colloquial name, in other words, you might have a rule that says it's the exact name of the company so the exact name of the Red Cross organization, but you can remove the "the" or you can remove "society" at the end, but there's a defined set of rules that defines the common name, if you like.

It's the official name, so the official name would be the Gambia Red Cross Society and then the common name might be Gambia Red Cross, but it's not an open list, it's a – the official name perhaps plus a variant that meets a certain set of rules, if you like. Is that something that would be a compromise and sort of looking at the GNSO in particular, that we actually – it's really just extending the reservation, still of course picking up the fact that the curative

rights in the GNSO's belief is that that's going to deal with 99% of the problems. But we have heard from the GAC and ICANN does need to duly that advice into account.

Is that a way forward to say you take a step from the list of four to effectively a list of 194, defined lists, and there's rules for how the names that are in that 190 list are selected? In other words, it's the exact match plus a commonly used name that meets a set of rules. Phil.

Phil Corwin: Yes, just a point of information, and regard to the use of CRP for some of the names that wouldn't be permanently blocked. Just asking the Red Cross representatives, are most of those names that would be contemplating possible use of CRP, are they trademarked, because owning some trademark rights is prerequisite for standing for use of the UDRP or URS.

Bruce Tonkin: So is the question are they trademarked?

Phil Corwin: The question is are they generally trademarked by the national organizations?

Bruce Tonkin: Do you know whether the national organizations also have trademarks?

Stéphane Hankins: There are very few national societies which have trademarked the name. The American Red Cross is one of them. But there's very few. And in fact, we've not – we do not recommend that for this very reason that, you know, the protections stem from public international law, the responsibilities of states to enforce those protections in their domestic jurisdictions.

So there are few exceptions, but in principle they're not – these are not trademarked by the respective Red Cross Red Crescent organizations at national level, no.

Bruce Tonkin: Okay. James.

James Bladel: Oh I just – did that address Phil’s question? I wanted to talk to something else.

Phil Corwin: It did. The reason I ask of course Petter and I are cochairing the IGO CRP Working Group which will be the subject of discussion tomorrow night, it’d be one subject of discussion, permanent protections and CRP. But in our working group we had heard that many IGOs had not trademarked their names and/or acronyms and that’s why we took the step of providing an alternative basis for standing to bring a case, which was assertion of rights under Article 6ter of the Paris Convention. So that was the basis for my asking the question because we’ve encountered this issue in our own work.

Bruce Tonkin: Okay, James.

James Bladel: Thanks, Bruce. James speaking. Can I go back to what you were saying something – you were saying is that sounding like an acceptable compromise. And I just want to go back...

Bruce Tonkin: Well, what I’m trying to do, James...

James Bladel: Yes.

Bruce Tonkin: I know you're very sensitive because you feel like we're cutting some deal. I'm not trying to cut a deal. What I'm trying – what we're doing here is this is not a good situation to leave it like this. Because where we're currently sitting, the Board is going to have to accept or reject or reject both because the Board could say we're not going to accept the GNSO recommendations because we don't believe you've taken into account GAC advice.

So what I'm suggesting is, is there some in between part here that of course you have to take back but I'm just trying to have a rationale for what an in

between path might look like, which you would then of course need to go back and take it back through your community.

But I was trying to pick up what I heard Thomas saying is that you were looking at exact match at one point, but you moved away from that because you started to look at lots of variations. So I'm trying to say if we narrow that set down, because it sounded like there was a legitimate discussion in the working group at the time for exact match for these organizations but at the time he was getting multiple variants, they were talking about acronyms, they were talking about various abbreviations and so the list wasn't 190, it was actually obviously going to be much bigger. So I'm trying to say is there appetite or a basis for going beyond this initial four?

James Bladel: So, yes, I'm going to turn it over to Thomas but I just want to kind of put a button on what you said on where we go from here and what a middle path starts to look like but, Thomas...

Thomas Rickert: We have two different issues on the table. One is looking at the PDP recommendations that my group was working – or the group that I happened to chair at the time was working on, and whether that was okay, whether the results were okay or whether that needs to be revisited. And just to be perfectly clear, if there are new findings for whatever PDP working group I think the GNSO needs to take another look at those and there is a procedure for that, right?

I think that the process that we applied at the time was perfectly okay. So the way that the PDP recommendations were adopted, I have no issue with that whatsoever, whether the substance is to be changed, that's not up to me to decide.

The other issue that we are talking about is the situation that the Board is in, having conflicting GAC advice and PDP recommendations...

Bruce Tonkin: Yes, which is the problem statement...

((Crosstalk))

Thomas Rickert: And I think that these need to be discussed separately. And if you look at the second issue, the fact that I think everyone should know is that it was only until 2014 that the GAC specified that the 189 names should be covered by the advice. And at that time our group had already concluded its work.

Bruce Tonkin: Yes, evolved, yes.

Thomas Rickert: And so I think at the time we were coming up with a consensus recommendation, this was not covered. Regardless of the fact that the GAC advice is not applicable to PDP working groups directly because they're issued at the Board, was certainly we were noting at least and discussing in our group what the GAC advice at the time was about.

Bruce Tonkin: Yes, so Thomas, if I'm hearing right you're saying that since the PDP concluded, there is now more specific GAC advice on this topic, which highlights this group of 190...

Thomas Rickert: Well let me paraphrase this. If the Board had immediately signed off on the PDP recommendations coming out of the GNSO, we wouldn't have had that conflict for the names – for the set of names.

Bruce Tonkin: I see. So no, no you're just talking about timing, yes. And that's one of our challenges, yes.

James Bladel: James speaking. It's a sequencing problem.

Bruce Tonkin: Yes.

James Bladel: In that in by rights, if there were three years in between instead of the approval by the GNSO and acceptance by the Board, if instead there were three years in between the acceptance by the Board and the issuance of the GAC advice, for example, then this probably would have launched a second PDP.

Bruce Tonkin: Second PDP, yes.

James Bladel: ...that would have followed onto the first PDP and then addressed the expanded list. But I think because it came in between those two milestones, that's creating the problem.

Bruce Tonkin: Yes, so from a process point of view ideally you get the GAC advice during the PDP, during the - the PDP has a series of steps, got the initial reports, final reports, etcetera. The ideal scenario is you actually get GAC advice during those steps, you know, through an initial report and then you can take that into account in the final recommendations.

But in this case we've received GAC advice on the specifics, I know there was general GAC advice about protection, but the specifics of the 190 occurred after the PDP concluded. The Board, sort of, agree there's a timing thing, but right now the Board has been advice and it has the GNSO recommendations. And so what the Board could ask you to do is to say we've got advice around these 190, we would like the GNSO to specifically look at that and take that into account and see if it's a possibility for providing reservation for that defined list of 190 names.

Because I know you're defending PDP process and it's not a complaint about the PDP process, but that information is new since the time that working group was in place.

James Bladel: So Bruce, that brings me back to the reason I originally raised my hand which is that to note that we do have a mechanism or a process to go back

and take a look at the PDP recommendations based on exactly what you've just outlined, which is that there was a piece of information that was missing, that was misinterpreted, misapplied or was somehow just not considered or incorrectly considered during the process. And we have a process for that.

I think what we are asking in this particular case is, does the Board require us to first of all, let me back up a second. We can't invoke about process and say, and here's the answer that you should come out with by the end of this. It would essentially be a restart of an abbreviated or an expedited look at the PDP. And in order to do that we need some very specific and narrow questions on which parts of the PDP. And it sounds like we are talking about two recommendations in reflection of this new bit of information.

And if we can keep that narrow, that is a possibility. But we are looking at I think some guidance from the Board to take that process off because otherwise there is I think a legitimate concern on the GNSO side that what we are doing today is creating a new phase in the PDP process, the phase that comes somehow after GNSO Council adoption but before Board ratification where we have this review and amend phase.

And very quickly what we will see from a volunteer community is that the - that becomes the real show. The PDP is now just kind of the warm-up, the pregame, and that is what we are doing today becomes the real show. That is exactly the precedent that we are not seeking to create. We have a community-driven process that we are trying to uphold here because any time we start to whittle away at the margins on that I think that's when you see a lot of concern.

So that's why any revisiting or an invocation of that mechanism requires a Board action.

Bruce Tonkin: And I think, just to specifically address that, and we do have representatives from the Board here, and I was on the Board when a lot of this was discussed

as well. I think what we are dealing with here from a process point of view, the flow in the bylaws basically says we get recommendations from the supporting organization, if there are public policy concerns in those recommendations we actually have to notify the GAC.

The GAC can then come back and provide advice. And one of the issues there is the timeliness about because the GAC tends to meet, you know, basically in sort of a three-month cycles. But so then the Board then gets advice. And then in the occasions when that advice is in conflict I think what the Board has tried to do in the past, particularly around new gTLDs, is the Board has then tried to come up with its own internal Board policy process and try and sort of take into account advice.

And the way it did that in the gTLDs was basically to say these are implementation issues but many people thought they were policy issues. So the reason why the Board asked me to facilitate this session was to say well really rather than the Board trying to sort of come in and say, you know, we get the GAC advice and we just try and effectively modify or somehow change what we've got from the GNSO, we are trying to say really that the different parts of ICANN need to then talk to each other.

And it should have happened basically immediately we received that GAC advice. I mean, this is – agree, this should have happened three years ago. We should have been having this session three years ago. But the process, as I see it, James, is the Board gets recommendations from the supporting organization. The Board goes and asks the GAC, is there any advice on this public policy issue? The GAC comes back with advice.

Where there is a conflict of bad advice than the Board then goes to the supporting organization and said, we have found this advice in conflict with your recommendations. Can you explain either how you've taken that into account or can you know duly take those -- that advice into account before coming back to the Board with final recommendations?

By I agree, we've never done that before. And so I think we are breaking new ground. But what I'm hearing you say, it's in the bylaws, we're not breaking the bylaws at the moment, is you would prefer to get at some very specific instructions from the Board that says, please look at the specific advice.

James Bladel: Two points then. I know Heather wants to jump in. One is to narrow the focus to the specific recommendations on the specific question that was not considered or not...

Bruce Tonkin: Not taken into account.

James Bladel: Or needs to be reviewed.

Bruce Tonkin: Yes. And...

((Crosstalk))

James Bladel: And that's what we're talking about.

Bruce Tonkin: Yes.

James Bladel: And the – I lost the other bit. Go ahead, Heather.

Bruce Tonkin: Heather then also get Becky to give a Board perspective. Go ahead.

Heather Forrest: Thanks, Bruce. Heather Forrest. On the specific scope question, I think this has been a very helpful exercise in that it makes very good sense to me, and I'm sitting here as a member of the GNSO, and it hadn't made sense up to this morning, how it is that the PDP moved off of reservation, because the PDP didn't know what it was dealing with, it didn't know how many it was dealing with...

Bruce Tonkin: Yes.

Heather Forrest: ...until after it already came to its recommendations. So it makes very good sense to me that the PDP – the progress of work in the PDP shifted to curative rights because it simply didn't know how big that gets.

((Crosstalk))

Bruce Tonkin: It was not a finite list. Yes.

Heather Forrest: ...that basket was. So that makes very good sense to me. And I think this is – this is a – quite a significant outcome to come out of this morning. And well within the spirit of what we've set out to do.

I have a concern, Bruce, I agree 100% with the spirit of what you've said in terms of the process of bringing the parties together. But in my mind, the timing is wrong. To the extent that you are waiting until you get a final report from a PDP, and then asking the GAC, are there public policy issues in this, we're going to be right back in this room for subsequent procedures.

((Crosstalk))

Heather Forrest: We may as well book it in now.

Bruce Tonkin: I agree with that. Let's not debate that. That's what's actually in the bylaws. But effectively, and I think the GAC has been doing this a lot more proactively - this is something that happened over three years ago - is actually providing advice -- you look at the accountability work, the GAC actually was regularly providing advice into that process. It wasn't waiting until we got the final accountability report and then commenting.

So I think certainly going forward, certainly not advocating GAC don't do anything until the Board asks you after the policy is finished, I think we are all agreed the Board, the GAC and the GNSO that the most effective efficient way for the process to work is to get that advice during your policy development process to allow you to take it into account.

I'm just simply pointing out what the bylaws say. The bylaws have a requirement on the Board to ask the GAC for its advice. Now hopefully the GAC comes back and says, yes, we've already given our advice to the GNSO and they've already taken it into account, that would be ideal. But the bylaws require us to do that.

And we do have this different advice. And we are trying to resolve that conflict today. Becky.

Becky Burr: So I would like to narrow this a little bit. First of all, I want to acknowledge Heather's point that that process is something that we all need to work on and make it better. I don't think that there's any disagreement from anybody on that part.

But I think what we're hearing, even if the Board had adopted the policy coming out of the PDP, if the GAC came to us and said, this policy is inconsistent with international law, we would have an obligation at that point to go back to you. And I think that's what we're hearing this morning and I think rather than saying – because I'm not sure I agree with Bruce that we have no option when we receive conflicting, you know, advice policy other than to throw it back. I'm not sure I'm...

Bruce Tonkin: I'm not suggesting that's your only option.

Becky Burr: Okay.

Bruce Tonkin: But I'm saying – what I was suggesting is in the past the Board has tended to try and mix those two things together and then call it implementation. I'm saying...

((Crosstalk))

Bruce Tonkin: ...changed here is to say we actually have to engage the community in taking into account and then giving their advice back to the Board is saying it can't do it another way, but I'm saying this is sort of the preferred method.

Becky Burr: Right, so I think what I'm hearing and I just want to make sure I'm hearing this is that if the Board said you need to look at these specific aspects of the PDP, because we are concerned that they are not consistent with international law, that that would not set a enormous precedent, it would be something that we would have to do no matter what...

Bruce Tonkin: Yes.

Becky Burr: ...because we are obligated by the bylaws to ensure that our policies are consistent with international law.

Bruce Tonkin: Yes, we could word it that way. Donna.

Donna Austin: Thanks, Bruce. Donna Austin. So I might be taking a step back here, but one of the things that we should do here for completeness if we have not discussed the PDP recommendations, and I think we should...

Bruce Tonkin: No we've got five minutes.

Donna Austin: I know.

((Crosstalk))

Donna Austin: So I understand that but I think one of the questions that we're going to get – what was wrong with our recommendation? And I accept that we have GAC advice that's inconsistent, but I don't know that we've actually, you know, had the discussion about why the PDP recommendation wasn't adequate enough for these purposes. I think we can read into it why we think that's the case, but one of the things that I'm concerned about is that's the question that we're going to get is what – there was no discussion about the PDP recommendation. So it was all focused on, you know, the GAC advice.

So I'm just – just for completeness I just want to...

((Crosstalk))

Bruce Tonkin: Yes, I don't think it's quite fair.

Donna Austin: ...on the table.

Bruce Tonkin: We've explained that the PDP recommendation was focused on curative rights, and you've explained why that is. I think you've justified why you chose the – you basically provided the rationale for why you made the particular choices that were made and the focus moved into the curative rights.

And I think I heard the GAC say yes, we agree there needs to be curative rights. Perhaps to close the loop on it, and what I heard from Thomas then, was he's saying they feel that while those curative rights are there, that there is a burden on these specific names, there's 190 names, that yes, they could take advantage of these curative rights, but these are names that are fairly unique, they're not really used for anything else, and so I thought what I was hearing from Thomas was the reason the GAC has given that specific advice, is the feeling was there's an undue burden on an organization that actually has clearly defined legal rights under international law to have those names protected.

And there's a rationale for basically just saying they should be reserved.
Thomas, do you want to comment?

Thomas Schneider: Yes, basically the answer is simple, that the GAC felt that the – while many or most of the recommendations were fine for us, some of them were not sufficient. That's to cut it short the reason, thank you. Maybe Jorge can comment.

((Crosstalk))

Jorge Cancio: Yes, if I may piggyback on Thomas, Jorge Cancio for the record. It's the underlying public policy rationale, which is different for the notice process and the dispute process. It's more based on a resolution of claims on a given name which may be legitimate to different degrees. And we have the UDRP to favor some sort of claims. But in the reservation, the underlying thought is that there is no other possible claim on those exact names than the protection awarded by international and national law. So that's why we don't think that for those names...

Bruce Tonkin: For these 190 names.

Jorge Cancio: ...we have to go to the more claims-based approach which is underlying the UDRP and the TMCH, and the other mechanism.

Bruce Tonkin: So I think the argument Donna, is what the GAC is saying is that they feel that there's no other legitimate use for the Gambia Red Cross Society, and yes, you know, they could go to court, right, because they have these legal rights. So irrespective of anything we do today, if someone registers the Gambia Red Cross Society they could go to court under the existing legal provisions, but that's a very expensive process for them.

And the view of the GAC was that there's no other legitimate use for that. So, you know, why should this organization, the Gambia Red Cross, have to go through that process to get the name when there's really no other legitimate use for that name? And therefore they're saying that that should be in the reservation list.

But there's an acceptance that the great work that the GNSO has done and is continuing to do around the curative rights, because there's an acceptance that you still need those for the very reason that you can't – people are not just registering exact matches, they're registering all sorts of variations, right? Certainly Katrina.

James Bladel: So, Bruce, I mean, I'm just trying to stitch this all together now.

Bruce Tonkin: Yes, thank you.

James Bladel: Is that if we were to receive some sort of direction from the Board that said this particular recommendation is deficient, because it does not comprehensively consider the public policy interests of the international and local laws that are applicable to these organizations, and I think because the list is finite and there is no other legitimate use for these names, those three key things, finite list, no other legitimate use, strong foundation in international law...

((Crosstalk))

Bruce Tonkin: ...drafting, yes?

James Bladel: ...these are the three points that I think we're going to have to hit in order to, you know, because I think what that does is that says that if we were to go back and reconstitute some – if Thomas is still available for duty – if we reconstitute some form of that PDP that we can give them very clear instructions on what they need to look at and through what context, and that

they're not boiling the ocean of, you know, going back and taking a look at all these things. And I think just hope we're getting a transcript, it's those three, it's the standing on firm ground with international law, no other legitimate use and finite – not infinite permutations but a very finite list.

Bruce Tonkin: I think that's – Becky, do you want to comment on it?

Becky Burr: I hear you. I think that sounds like an appropriate way to proceed.

Bruce Tonkin: This is being transcribed and recorded. So we have...

James Bladel: I repeat myself three times just in case. It's mainly for me, Bruce.

Bruce Tonkin: Yes, no it's good. We are going to have to draw to a close. And I just perhaps want to hear from the GAC side, is that direction comfortable for you so it's saying – the Board is actually going to ask the GNSO to look at the very specific question of the 190 names based on the applicable law and based on the GAC rationale and ask the GNSO to look at that very narrow piece.

Thomas Schneider: Thank you. I think this session has helped to clarify and – a number of things and understand better where we came from and where we are. And I hope that it seems like we have found a way forward which is something that is highly appreciated. Thank you, Bruce. And thanks, of course, everybody else on...

((Crosstalk))

James Bladel: This is the part where I have to add a disclaimer is that we would, on the GNSO side, we can't commit to an outcome. We can commit to restarting that work and reviewing these questions through those lights, but we can't say that for example, that Thomas or Thomas's successor, won't come back with a very similar if not identical outcome. But if they do, they will have a

rationale that meets your criteria that fits those particular questions where one perhaps is absent today. So that's what we're going for here, either a modified outcome or the same outcome with a stronger rationale.

Bruce Tonkin: I think where the GAC is coming for is that you duly take it into account on that narrow question that Becky is going to draft.

James Bladel: Well taking into account and matching...

Bruce Tonkin: Yes.

James Bladel: ...outcomes is not always...

((Crosstalk))

Bruce Tonkin: And what you're saying, James, is you can't – you've got to go through a multistakeholder process and that hopefully will take into account that very specific provision.

Okay. Thank you all. I know there's a lot of work in the lead-up to this to even just get the problem statement right, and I want to particularly thank the Red Cross for a lot of the edits that they did to clarify the issue and these documents are available on the public record.

I've deliberately not tried to go into too much, you know, reading the recommendations because this is really the group of experts here and this is the dialogue, but the audience and the wider GNSO can read the underlying papers and see what those recommendations are. Okay, thank you all.

Thomas Schneider: Thank you, Bruce.

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