

IGO-INGO Access to Curative Rights Protection Mechanisms Working Group
TRANSCRIPT

Wednesday 09 September 2015 at 16:00 UTC

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Attendees:

George Kirikos - Individual
Petter Rindforth – IPC
Phil Corwin – BC
Val Sherman - IPC
Jim Bikoff – IPC
Osvaldo Novoa - NCUC
Jay Chapman – Individual
Kathy Kleiman – NCUC
Kristine Dorrain – NAF
Paul Keating – NCUC
David Maher - RySG

Apologies:

Mason Cole – RySG

ICANN staff:

Mary Wong
Berry Cobb
Steve Chan
Nathalie Peregrine

Operator: The recordings have started. Speakers, you may begin.

Phil Corwin: Okay. Thank you and we're being recorded now so be on your best behavior. Welcome to the first post-summer call of our IGO Working Group. And any updates to Statements of interest?

Hearing none update on recent discussions in the Council relating to this. Council had a two-hour call last Thursday. I reported to Council, number one, that we had basically been stuck in the mud since Buenos Aires because we couldn't proceed until we had expert legal advice on the accepted scope of sovereign immunity for IGOs and that we were receiving staff assistants and ICANN financial assistance in that regard and expected to be able to enter into a contract in the first half of September but that this would - certainly we wouldn't have any - advanced we'd be receiving the expert report just before the upcoming meeting in Dublin so that they shouldn't be expecting any final report from us pre-Dublin.

And I also expressed -- brought them up to date a bit on what had happened in Paris, to the extent we understand it because we have yet to have a call with any of the participants in the Paris meeting. And we have yet to see any specifics of what they are recommending. But I did put the Council on notice that there's a possibility of a board GAC staff proposal coming out of that meeting which could be in conflict with what we eventually recommend when we get to a recommendation.

And so they were brought up to date on our work. If anyone has questions on Council ask them now, if not we'll proceed to the main business which is to review the available legal experts and try to decide on who we should proceed further with.

Steve DelBianco: Phil?

Phil Corwin: I see a note in chat, it's not a staff proposal. I'm not sure that -- we'll get back to that, Mary. It's certainly not your staff proposal from you or Steve or anyone but I think there may be some staff assistance in drafting it. I believe the

characterization was something that was being prepared with assistance of staff. And I guess your further comments says there was some input to the group and Paul asked why it's not being provided to this working group.

But let me ask you, Mary, as far as I understand you have no more idea of exactly what that group is going to propose than we do at this point, is that correct, or do you have any strong indication of what they're going to come forward with?

Mary Wong: Hi, Phil. Hi everybody. This is Mary from staff. I hope you can all hear me. I'm not a great connection. To answer your question, Phil, I do know the general principles because these are based largely on the document that had already been sent in exchange. I do not know what that substance or the status of the discussions amongst the GAC and IGO participants are at this point so I can't -- I don't have any further insight as to what the final form of the proposal will look like.

And as to Paul's question as to the information, you know, maybe to clarify, you know, we facilitated the IGO group largely by assisting Chris Disspain and Thomas Schneider. And I know, Phil, you want to get to this later so like I said in the chat, it was mostly, you know, what was the GNSO's recommendations, what's the status of the board's adoption, what kind of hot considerations would come and that sort of thing. I hope that helps. Thanks.

Phil Corwin: Yeah, thank you, Mary. And at least for my part I certainly hope and I hope ongoing efforts are being made to set up that call with the folks who met in Paris that Petter and I can participate in so we can have a dialogue with them before they release anything. But I don't think staff should be asked to describe what we're going to get from that group any more than they should be describing the final -- what they think the final report from our group will be.

So, do we have some stuff to share in the Adobe room in terms of the potential legal experts that we may be looking toward?

Jim Bikoff: Phil, it's Jim Bikoff.

Phil Corwin: Yes, Jim.

Jim Bikoff: Let me just say you and I and Steve exchanged some e-mails yesterday. I called John Bellinger this morning. Unfortunately he's in Europe until Monday. I sent him an email but I may not hear from him until Monday at which time I'm going to ask him to give us an estimate. So I don't think we'll have it before, you know, the earliest would be early next week.

But in any event I also wanted to make the comment because...

Phil Corwin: And he's at Arnold & Porter, is that correct?

Jim Bikoff: Yes, yes.

Phil Corwin: Okay.

Jim Bikoff: He is. I also wanted to make a comment because I agree to a large extent with the memo that Paul Keating sent out on Wednesday, last Wednesday I guess, that I think personally that we should look for the candidate that has the best knowledge to make this kind of an opinion authoritative and then negotiate the amount.

I think most of the lawyers we're talking to have room to negotiate. And I think John is among them. And while I don't have a precise estimate I think that we shouldn't sacrifice quality of the opinion for price.

Phil Corwin: Thank you, Jim. And I would tend to agree. Let's focus on qualifications today with the understanding we may not – and, you know, we can maybe decide on more than one we're interested in pursuing further and then see how they shake out on cost.

But given the political sensitivity of this issue we want answers to our questions from someone who has really sterling qualifications and is going to produce a highly credible document that we can rely on. We don't want someone who's going to be learning as they go by party knows this stuff, although they will be dealing perhaps with some questions they haven't encountered before.

So let's go – and staff, let me ask you, my recollection was two of the - at least two of the candidates were not real experts in international, their expertise was more in the IP area. Is that correct?

You know, hello?

Steve Chan: Hi, this is Steve.

Phil Corwin: Yeah.

Steve Chan: This is Steve from staff. And, yeah, that's correct.

Phil Corwin: Which were those?

Steve Chan: Let's see, David Opderbeck and...

Phil Corwin: Right.

((Crosstalk))

Steve Chen: ...are the ones that we considered possibly and less qualified.

Phil Corwin: Yeah, I will say, you know, I reviewed - we don't have them in front of us right now, I don't know if we're going to be able to put up the individual bios of the candidates. But, you know, continuing off Jim's remarks, I don't see any point, unless we hear from others in the working group, of really giving intense review

to people who have fine background in intellectual property law but really very little in international law relating to sovereign immunity of nationstates and IGOs.

We need people who really know their stuff. So I wanted to just that we really not look at Opderbeck or (Cory) unless someone can make a compelling case for doing so, they're just - don't have the background that we need. Petter.

Petter Rindforth: Hi, Petter Rindforth here. Yeah, I perfectly agree with that. And I have looked at the CV from all the candidates so far and I really look forward to more information from John Bellinger. So at the point right now I'm – I see two good candidates to choose between, that's David Stewart or John Bellinger.

Because I just had to come in I was also looking for more of a -- people that had some knowledge about international disputes also related to these kind of organizations that we're talking about more than just general intellectual property even if that's international. And that's why I saw -- I have to admit that I am not studied it for 110% all their CVs but what I saw with David Stewart was (unintelligible) with that claims and also from John Bellinger.

So from my point of view I see those two as the most strongest candidates right now.

Phil Corwin: Okay, well thank you, Petter. So we're in agreement I think on let's skip the IP experts and go straight to the ones. Staff, do we have the individual -- are we able to put up the individual CVs in a chat room for the three remaining candidates?

Steve Chan: Hey, Phil, this is Steve. Sorry, I'm on my mobile.

((Crosstalk))

Phil Corwin: What's that?

Steve Chan: Sorry, I think Mary and I were talking over each other. This is Steve from staff.

Phil Corwin: Right.

Steve Chan: I just wanted to say I'm on mobile so it takes me a little longer to get off of mute here. And I just want to provide a little more context. So we kept the other two candidates that I think we all agree are not as qualified as the others. It's mostly for completeness sake, just to allow the group to see the full spectrum of candidates that we have been...

((Crosstalk))

Phil Corwin: Are you suggesting we review Opderbeck and (Cory)?

Steve Chan: No, no rather just to say that either included even though I guess from a staff perspective we have agreement that they are also – that we also don't think that they're quite as qualified as the other three.

Phil Corwin: That they're not as qualified.

Steve Chan: Sure. But like I say, I just wanted to tell you why they're included in the list at all. And that's...

((Crosstalk))

Phil Corwin: Well go ahead if you can make a quick but I really want to get to review of the other three CVs as quickly as possible.

Steve Chan: Sure. And to your point about whether or not they can be – the CVs can be put into the AC room that's correct, I can put any of them up.

Phil Corwin: Okay.

((Crosstalk))

Steve Chan: ...want to look at it can put up.

Phil Corwin: Okay. So, quickly, why were Opderbeck and (Cory) in the mix?

Steve Chan: Like I said -- this is Steve again from staff. Like I said, it was just for completeness and transparency that they were in the mix and that's nothing more to it than that I think.

Phil Corwin: Okay. Okay. Alright well the two vice chairs are in agreement that we needn't spend time looking at their CVs, they just don't have the requisite background. So could we get -- was it Bellinger Stewart and Feldman. Can we get one of those CVs up so we can quickly review it? And I think what I propose is that we do a quick couple minute review of each CV and then discuss the three remaining candidates among ourselves as to try to get a sense of prioritization in terms of expertise.

Okay, here's Mr. Bellinger. He's at Arnold & Porter, a very old and well-known DC law firm for those of you not familiar with it. He was legal advisor to the Department of State for four years, that would have been under the George W. Bush administration and also was at the White House under Bush's first term and advice to the president, cabinet officials and national security adviser and NSD staff. And he's also a senior fellow at the Council and Foreign Relations which is a very prestigious group in the foreign-policy field.

You can see his expertise is very wide-ranging on a great many issues of international law. And he continues to provide counsel in that area. And what impressed me is this next-to-last sentence, he has extensive experience in US foreign relations litigation involving the alien tort statute, Foreign Sovereign Immunities Act, which are relevant US laws, but generally on the immunities of foreign governments and government officials and recognition and

enforcement of foreign judgments, which would get into the litigation area which is relevant to our -- the issue we are grappling with with respect to right of appeal to a court of national jurisdiction.

So he seems quite well-qualified to me. And there is more going on here. Oh wait, so I'll stop there. Anyone have one or two quick comments on Mister Bellinger before we move on to the next candidate? And then of course we will discuss all three at the end.

Petter Rindforth: Petter here, a quick comment.

Phil Corwin: Yes.

Petter Rindforth: This looks good looking good.

Phil Corwin: Yeah, I mean, this guy advised the president and the National Security Agency on international law. So he's certainly got with this at the highest level in the United States.

Jim Bikoff: Phil? Oh sorry.

Phil Corwin: Was that Steve or Jim?

Jim Bikoff: It was Jim. I'm sorry I interrupted you.

Phil Corwin: Go ahead, I was done.

Jim Bikoff: Okay, I was just going to say that I talked to John two or three times specifically about the issues that we're looking at. And I think it's accurate to say that he feels very comfortable with providing an opinion on this type of issue because he has worked on issues involving both IGOs and governments on sovereign immunity. That's it.

Phil Corwin: Okay well that's also very helpful to know and also strengthens his credentials. Okay, Next, Mr. Debevoise. All right, he's got it does have background in international arbitration and multijurisdictional litigation. He's also at Arnold & Porter like our first candidate. Background in financial transactions, trade liberalization.

He's got a fine resume but not -- in fact why is he -- okay, yeah, I don't see him as being particularly well-qualified, certainly not in the contrast to Bellinger. Any comments on that? So let's move onto the next one.

Okay, Mr. Stewart, he's at Georgetown University of Law Center, which is not in Georgetown but near Capitol Hill. Well regarded law school. He's been teaching there since 2008 on public and private international law, foreign relations law, treaties, immunities on international law, codirector of the Global Law Scholars Program. So faculty advisor for the International Law Society and the International Arbitration Society.

Previously at another program in Georgetown on the Inter-American Judicial Committee, good work with the Organization for American States. Previous work before Georgetown was just over 30 years as Office of Legal Advisor for the US State Department where he dealt with private international law, diplomatic law and litigation, international claims and investment disputes, dealt with Iranian claims, that must have been interesting, and UN affairs.

So also I guess he taught and lectured at the Johns Hopkins University School of Advanced International Studies, has impressive educational background including both law school and the Harvard Kennedy School of Government and has written a bench of treaties on international law including Bench Book on Foreign Sovereign Immunities Act: a Guide for Judges for the Federal Judicial Center and also Digest of US Practice in International Law.

And I assume he would know how that differs from practice in other nations. So then there's a long list of professional activities and membership. So yeah

I think you know, this is also an impressive resume and certainly someone that in my view we should, you know, keep in the running along with Mr. Bellinger. Any quick comments on that?

Alright, and I think we have one more CV to look at which is a Mr. Feldman. I would also say while we're waiting for that, one advantage of hiring someone based in Washington is that at least one of your cochairs could rather easily sit down and have a -- or pick up the phone and have a -- readily have a conversation with those two folks if one of them is the one we contract with.

Okay and so Mr. Feldman, this is a little different structure, this CV, his expertise, public international law and foreign sovereign immunity in, was at the State Department for 16 years, has been in private practice since focused on international arbitration, counseling corporations on immunity and international dispute resolution.

Has counseled governments and corporations. Was also a legal advisor at the Department of State, worked on the Foreign Sovereign Immunities Act which is the relevant US statute in this area and so in terms of knowing US law. He considered the privileges and immunities of IGOs while drafting the FSIA and after its enactment. Also involved with US Iran claims, as was our previous candidate. And brings up there International Organization Immunities Act of 1945 which I don't remember seeing a reference to that prior to this.

He advises clients on immunity issues including claims against foreign states and government agencies and testifies as an expert witness for a whole bunch of major corporations. Has testified before Congress on the Foreign Sovereign Immunities Act several times before the House and Senate Judiciary committees and has published a number of articles on the same subject.

So I'm not sure if he's quite as strong as the other two candidates but he's certainly qualified. So can we get back to the original chart that showed where they fit in the money scheme, although I tend to agree with Jim, in that I think

that this project, that someone with real expertise in this area is not going to have to take that much time answering our questions. I think they will not be completely novel concepts to them.

And I don't know what they're billing rate is but given that this is for a -- dealing with a particularly sensitive issue for a nonprofit corporation in the Internet area of to accommodate the nonprofit nature of this as well as the fact that it may be novel to apply these concepts to Internet activities, we may be able to catch a break from them in terms of hours billed and hourly billing rate, or maybe they'll just give us a flat project rate that's within our budget.

So looking at that -- we don't know Mr. Bellinger, like he would be willing to do this for. Mr. Stewart was - regarded within the budget. Mister Feldman was regarded as likely above budget. That was a staff evaluation. Can I ask either Mary or Steve to advise us how they reached the characterization of being within or likely beyond the budget for the two candidates where we have a cost estimate?

Steve Chan: Hey, Phil, this is Steve from staff.

Phil Corwin: Go ahead, Steve.

Steve Chan: So, you know, we have a budget number that we have to work with so we're still obviously keeping it close to the vest for now. So the evaluations were based on their preliminary pricing which obviously is negotiable to a degree. But I would say that for Feldman, where we have the \$3, which I guess...

Phil Corwin: Yeah.

Steve Chan: ...is kind of like Trip Advisor, it's that -- in that particular case it's a magnitude of three to four times our budget. So while I can't give you exact numbers I can tell you that, you know, it's obviously up to the working group to make the selection, it's that there's repercussions to taking some of these, for instance,

Feldman, where, you know, it could prove very difficult to negotiate that much downwards so it would actually fit into our budget.

So hopefully that's helpful.

Phil Corwin: Okay. And let me – I – we're going to have to – I'm going to take Petter's question in one minute or his remarks. I respect your desire to keep the budget figure provided by ICANN under wraps for now, though at some point soon we're going to have to be talking actual dollars. Is there any flexibility on ICANN's part if – given the importance of getting expert advice for this working group to function, you know, if we had to go somewhat higher? Is there any flexibility? Or are you unable to state that at this time?

Steve Chan: Phil, it's Steve again. Yeah, I think we'd have to look into that. At this point not at this time I guess is the way to put it. So if we did have to go back and find more money it would require that conversation with...

((Crosstalk))

Phil Corwin: Okay. Well let's see how this proceeds. I see hands up now from Petter and I keep saying Paul's hand up and then down so I'm not sure if Paul wants to be – let me call on Petter and then we'll see who else wants to jump in on this discussion. And, Petter, go ahead and then I'd like a more general discussion on how the group thinks we should proceed with the three candidates we've identified as having very relevant and strong expertise. Petter.

Petter Rindforth: Yeah, Petter here. I may make a combination of my question and what George and Paul also asked. My question is, did you just (unintelligible) what they would charge for this project or for budgets without stating any ICANN budget for this project? And also did you indicate or did they indicate an hourly rate or for a full price for the full work so to speak? Thanks.

Steve Chan: This is Steve from staff again. Let's see, for Stewart he provided an hourly rate as well as an expected timeframe to be able to complete the work, you know, which equals a total amount which ended up, without negotiation, being within budget.

For Mr. Feldman it was a flat fee which I would actually also note that his email that accompanied his CV he noted that would be difficult for him to be able to answer questions I believe 2 and 3. So I guess I would note that while his fee is higher he also would have difficulty in answering all the questions fully. So hopefully that's helpful. Thanks.

Petter Rindforth: Well that's an important detail to know.

Phil Corwin: Yeah, agreed, that's very important detail. There's no point hiring someone who doesn't think they can provide answers to all of our questions. Okay and George had asked in the chat room what's our timeframe. I think our timeframe is, as I understand it, is that we're hoping to have once an agreement is signed, a retainer agreement, to have answers to our questions back within one month. In other words, four weeks, which again, someone with really high level expertise in this area that should be a reasonable amount of time.

You know, we don't know what the rest of their workload is but, you know, I think we're looking at, you know, I don't want to betray since I know the budget figure but I think we're talking about probably 10 hours of work at an average billing rate. That seems reasonable. Which, again, I forget how many questions we have but I think it's quite doable for someone.

This is not going to be a big profit center for whoever they hire, it's going to be more the fact that they get to provide input to – on an issue of first impression of how to apply these international law principles to the Internet and domain name system. And I think someone had asked – I think Paul – whether any of these folks have ever done any work under contract to ICANN before, I don't believe they have but can – does staff know that? Okay, Steve said no. None

have worked with ICANN before. So whether you think that'd be a positive or negative, it's not applicable.

How does the group – based on what we've heard does the group we should follow up with Bellinger, Stewart and Feldman or based on the fact that Feldman has stated a very high estimate for what it would cost and has also told staff he's not sure he could answer several of the questions, should we drop him from consideration and just focus on Bellinger and Stewart?

Petter.

Petter Rindforth: Well I suggest that we focus on Bellinger and Stewart and both because as I said, I see those two as the best candidates and I'm very interested to see what we get from Bellinger when it comes to costs and so. And also looking at the timeframe, I would be happy to, if we could have the report from the expert, which is ready to discuss in Dublin.

As I certainly hope that we also would have on that table the expert report as well as at least some kind of follow up from the – from GAC and IGOs so that we can have a more workable meeting with news to proceed from. Thanks.

Phil Corwin: Right. Yeah, I agree, it'd be highly desirable to have this memo from whoever is retained as a legal expert in hand by the time we get to Dublin. That is going to be challenging. I would say – well today is the 9th, let's say we could hire someone by the end of next week which I think is the most expedited timeframe. I'm not sure that's realistic.

That would - four weeks from next Friday is the – the day before the Council meetings start in Dublin. So we're talking about a very quick turnaround. So I think when we follow up with Bellinger and Stewart we have to be very specific about whether they believe they can deliver a report to us by the week of October 12 which is about four weeks, if they're retained next week.

George just asked, does ICANN have a policy that documents shouldn't be – I think that's – I don't know but this is, you know, this is not a, you know, draft PDP or issues report or something like that. This is a document for the use of this working group.

And I think the working group – I'm not sure what we're going not do meeting in Dublin if we don't have this document by then other than to discuss whatever we get from the Paris group, assuming we get something in writing by then although we can't really have an informed response to that until we know – have our own advice on the accepted scope of immunity for IGOs. So I'm not sure that would apply to this situation.

Yeah and, Mary, backing me up, that's for documents intended for community review, not working group documents. So where are we? It's 12:41, we have 19 minutes left. Let me make a draft proposal, since I don't see any hands up or hear any voices. Why don't we instruct staff to prepare a identical follow up letters for both Mr. Bellinger and Mr. Stewart informing them that we have – that we welcome – we welcome their interest in this project, we have reviewed their qualifications and believe they're highly qualified and could provide us with the critical information that we need.

And ask them if they feel confident they could respond to all the questions we've posed, ask them for a firm estimate of, you know, hopefully they can give us a flat fee for this project. They know exactly what it is. And can pretty well estimate how much time it's going to take them to answer. I don't think it's going to take any new research by either of them given their expertise.

Ask them if they can provide us either with a flat – a flat rate for the entire project or their hourly rate and an estimate of how many hours they would need and whether that hourly rate represents any discount from their normal rate given the novel question posed here, the exposure they're going to get and the fact that ICANN is a nonprofit organization and is the one who's going to be paying for this.

And most important, whether they think – when they think they can complete the project and in particular can they complete it by the week of October 12 so we have the memo in hand prior to the start of the Dublin meeting. How does that sound as a proposal? And does anybody think I've missed any points that should be in such a letter?

Jim Bikoff: Sounds fine to me, Phil. Jim Bikoff.

Phil Corwin: Okay thank you, Jim. And I'm seeing in the chat room Paul Keating first said Feldman might give a more thoughtful approach but then asked if he was the one who said he may not be able to respond to all the questions. Yes, Paul, he's the one who was both quite expensive in his estimate and not sure if he could even provide all the answers we're looking for.

Petter, is your hand still up or is that...

Petter Rindforth: No, it's still up again.

Phil Corwin: Okay.

Petter Rindforth: I think it's a good suggestion. And also that we – we need, if it's possible to have all information especially when it comes to John Bellinger as soon as possible by next week. I don't know if it's possible to – for us to have the final information to make an online decision or vote by next Friday. But it seems that somewhere around that will be necessary to have the expert to start the work so he will have the possibility to get a report to us before Dublin. I don't know if – yes, Mary, I see your hand is up. I hope you have a clear reply on that.

Phil Corwin: Yeah.

Mary Wong: Phil, may I?

Phil Corwin: Yes, yes.

Mary Wong: Okay thanks. So, Petter, I guess, you know, in terms of the timing before Dublin Phil had already given that indication that it could be challenging because obviously there are, you know, contracting and requisition processes that internally we have to go through before whoever, you know, is formally on board and able to start billing their time to us.

Obviously I think in the letter that Phil mentioned, you know, the sort of need for speed, if you like, will be highlighted so that, you know, they can provide their estimate of when they can get back to us as noted by Phil.

So in this regard and in regard to your earlier question one suggestion that we would have as staff is that if the working group agrees that we would proceed with either Mr. Bellinger or Professor Stewart, you know, assuming they're still available, that the two chairs that would be you and Phil, Petter, could make a preliminary decision and communicate that to the working group via email.

We don't think that it would need a vote and it may be things that can go quickly if we have you guys, you know, having looked at it, make a proposal to the working group as to what you think of the two might be better or more appropriate for the job.

Phil Corwin: Okay. Mary, let me ask you this, let's say, you know, staff has a draft letter for us to look at by tomorrow. Petter and I okay it and we send it out Friday and we ask the recipients to respond by next Friday the 18th, you know, which gives them, assuming they get it Friday, gives them a week to respond which seems, you know, given – that seems achievable.

If we get that response by the 18th and Petter and I, with the concurrence of the working group, to email – get agreement on who the preferred candidate is, assuming both fit within the budget and assuming they both fit within budget so there's no need to go back and try to negotiate with ICANN to get more

money, how much time does that final contracting phase take once we say, okay, we've got someone we want to hire X, he's willing to do it within budget, how much time we're talking about?

Mary Wong: Hi, everybody, this is Mary again. And Steve and I were actually discussing this and because we're not on the operational side we don't know exactly or specifically. We do know that, you know, as with I think – I guess every other corporation (unintelligible) that, you know, the internal processes will involve inputting into the system and, you know, getting out some kind of contract.

So what we can do is two things. We can certainly check, you know, what typically for presumably either an individual or law firm type of contractor, what – how long that normally takes. And we can certainly work with our colleagues internally to deal with this to try to make sure that goes to the top of the pile as much as possible. But that's as much as I know for now.

Phil Corwin: Okay so you're not sure. Are we talking do you think days, weeks, a month? I mean, do you have any sense of that?

Mary Wong: You know, to be honest I really don't know. I would imagine and hope that it's certainly not a month. I think some of it depends on how many of these I guess requests are going through the system and being processed by whoever it is that deals with these internally in our departments. So I can't answer that. But like I said, I think what Steve and I can undertake to do certainly is not just find out the typical period but really to try to push that, you know, as far up the priority line as we have any ability or influence to do.

Phil Corwin: Okay. Let me ask this, first order of business is draft up a letter to the candidates and once that's done if you could reach out to the people who are involved with that approval process and give them a heads up that we expect to have settled on an expert within the next week or so and need to enter into a contract as expeditiously as possible, get some feedback on what kind of

timeline we're looking at if you can and just inform the working group by email.
Is that a reasonable request?

Mary Wong: Very. And we can certainly do that. Thanks, Phil.

Phil Corwin: Okay.

Jim Bikoff: Phil, I've got to get off, I have another meeting I have to run to.

Phil Corwin: Yes, Jim.

Jim Bikoff: So it's Jim Bikoff. I'll follow up with John on Monday and tell him to expect a letter I guess next week.

Phil Corwin: Yeah, he may be getting it by Monday or even it may go out this Friday and be waiting for him on his...

((Crosstalk))

Jim Bikoff: Okay. Sounds good.

Phil Corwin: In fact, he may have it before his return. I assume that – do we send these letters, Mary and Steve, by snail mail or do we send them by email to these candidates?

Mary Wong: I guess Steve – on mute still. But I would imagine that for something like this email unless anyone has...

Phil Corwin: Yeah.

Mary Wong: ...any reason to think we need to do it differently would be the best. We could certainly up by snail mail if somebody thought that was appropriate.

Phil Corwin: Yeah. Okay, let me ask one question. I saw on the chat, Paul, you had some positive things to say about Mr. Feldman. I'm not sure he's going to pan out based on ability to answer our questions and price. Do you feel strongly about including him at least to get a letter to give him a chance to tell us flat out that – what his price is and whether or not he can answer our questions? It sounds like he's going to be above the range by a substantial amount and may not be confident in his ability to satisfy our questions.

But there's no harm in asking him to respond other than the additional few minutes it would take to review his answer. So if you could let us know, Paul, whether it's important for you that he be sent a letter as well. And I see that depends on how important the questions were. I think they're all important. I don't see any point in – my personal view is there's no point hiring an expert who can't answer all our questions and we don't know how important they are until we see the answers. They may be more important than we thought when we came up with them or they may not be that important. But we need solid answers.

All right, well let me – Paul says defer to the group. I'm going to ask for a show of the hands. Is there anyone – is there anyone who would – well let me ask, I'm trying to see how to frame the question. If you think we should, for the sake of completeness, in knowing that he may not be in the mix that it appears at this stage that he's above the price range and may lack the ability to answer our questions, is there anyone who – here's the question.

For the sake of completeness, should we send a third letter – the same letter to Mr. Feldman that Mr. Bellinger and Stewart are going to be getting in recognition of his important role in drafting the Foreign Sovereign and Immunity Act for the sake of completeness? So do you think just to be complete it would be worthwhile to ask him to send a letter to him as well as to the other two please raise your hand now.

And I see so far I see no hands up. Well I see Paul's hand up. All right, let me flip it around, given what we know now please – and take your hand down now, Paul, I'm going to ask a new question. If you think it would just be superfluous to send that letter to Mr. Feldman and that we shouldn't bother, put your hand up now to see if we have strong opposition to sending a letter.

And I see no hands on that. So I get the feeling the group is rather indifferent, the group thinks it's probably not going to pan out for Feldman but no one strongly objects to sending that letter to him and making sure we're not dismissing him prematurely.

So I'm going to ask my co chair, Petter, do you have any objection? I think for the sake of completeness maybe we send the letter to him even though we think it's not going to work out for Feldman. Are you okay with that?

Petter Rindforth: Well, Petter here. I'm okay with that just so that we can send out three letters. But I think it's that – I mean, it's okay the costs can probably be further discussed but what I'm a little bit afraid of is the time limit. Someone that says that he may need some extra time because he can't the original reply to all our questions. So – but just so that we can say that we have frankly asked and sent out further questions and information to three candidates, okay. But I don't really see him as one of the real candidates for this.

Phil Corwin: Yeah, I agree. I agree, but, again, I don't see any harm in asking them – and if nothing else we'd get it in writing, it's not just a conversation you had it with staff. So I think it has some merit in terms of nailing things down in creating a written record. And I was thinking while you were asking one thing that the letter should ask is whether the person – the expert believes he can answer the questions on the basis of current knowledge or will need to do any substantial additional research which of course will extend the time and run up the cost.

So I'm going to – I think we've done – I think we're in agreement, we want staff to draft up a letter to send to those three individuals. Hopefully we can see that by close of business tomorrow, let the working group review it and finalize it Friday and maybe ideally get it out before the weekend. It's not that complicated the kind of letter we're talking about, it just covers a few points.

As for next steps, we may need a – I don't know if we're going to have any – until we have a response from these experts, and I don't see any point to holding another call. And I'm not sure we're going to have a response if they get a letter late Friday or on Monday especially with Mr. Bellinger just getting back to Washington on Monday I'm not sure we're going to have answers by late Tuesday which we'd need to discuss Wednesday. So I don't see any need to schedule a call next Wednesday.

Does anyone have different views on that at this point in time, you know, unless – certainly if we – if – in the next 48 hours early next week we get something in writing from the Paris group then it would be a good idea to have a call but I don't see any reason to put one on the calendar as of now.

Petter.

Petter Rindforth: Yeah, I agree. And maybe we and the staff could use the time in between to work for this follow up meeting with the IGO representatives so – and with GAC so that we at least can get some further inputs from them to report to the full working group. But I fully agree that at least next week, and we'll see how it is the week after that, I see no reason to take all of our time when we don't have any use to discuss.

Phil Corwin: Okay. And I want to just add to that and give the group notice right now that the two Wednesdays after that I will be unavailable for a call. Wednesday the 23rd is Yom Kippur which is the holiest day of the Jewish year, while I'm not particularly observant that is a day on which I do not work if nothing else out of respect for my fellow Jews. So I could not be on the call on the 23rd.

On the 30th at the time of the call I'll be in an airport getting ready to fly back from a meeting to Washington. So if we do – we may have to schedule the call – if we need a call in those two weeks we may have to try to schedule it at a different time. If it's urgent possibly you could proceed with just Petter chairing and I'd read the transcript or we could try to get work done by email rather than a call. But I wanted to give everybody advance notice of my inability to be on phone calls the last two Wednesdays of this month.

And it's 1:01 so unless – Petter do you have further comment here, last comment? I see your hand up.

Petter Rindforth: No. Oh sorry.

Phil Corwin: Okay. So I think we're done and we look forward to receiving a draft letter to the three remaining candidates from staff hopefully by close of business tomorrow. And we'll turn that around quickly with the aim of sending that out either on Friday or on next Monday and moving this process forward as rapidly as possible.

So with that I'm going to bring the call to a close and thank everyone for their attendance and their input.

Petter Rindforth: Thanks.

Steve Chan: Bye, everybody.

Phil Corwin: Thank you. Bye-bye.

Nathalie Peregrine: Thank you very much, (Tony), you may now stop the recordings. This concludes today's call.

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