

These comments are my own personal comments and do not reflect a negotiated set of comments from amongst the NCSG members of the Working party.

While I can personally support most of the recommendations made by Westlake in the report, I do have questions and concerns with some of the discussions in document. First I will mention the specific recommendations for which I have questions, later I list comments based on their page number.

- Rec 22 seems too limited. Shouldn't the GNSO council also concern itself with the subject having been adequately covered. More discussion below.
- Rec 26 seems to include the issue that the rules for new constituencies have not been followed.

While Westlake, and many others, do not like the rules as established by the Board's SIC, I do not believe there is evidence of those rules having been flaunted or otherwise ignored.

It should also be noted that the methods for initiating new constituencies was only created for the NCPH and not for the CPH. So perhaps a recommendation needs to include some discussion of creating a set of rules applicable to both houses equally.

I agree that the default should include creating the new constituencies, though perhaps we need a lighter weight notion of constituency that is topical or based on interest, that is easier to create and sunset. I also believe that constituency creation needs to be done according to a set of rules and that they need to be created in the proper stakeholder groups. I think the evidence of the possible constituencies Westlake discussed is that they did not apply to the correct stakeholder group. One could question whether the current setup of the GNSO allowed any proper place for these constituencies.

An issue that could be discussed is whether the division of the GNSO in 4 SG, leaves some organizations homeless as they may either fit into any of the 4 SGs, or may be hybrid organizations that cannot find a home in a strictly segmented set of stakeholder groups. Is there a SG for every possible constituency?

- Page 13

Complexity deters newcomers.

Is the report assuming that complexity can be removed, or that it be mitigated by better explanations.

- Page 14

In addition, the current structure of the GNSO has been in place for only about three years. From the Westlake Review Team's professional experience of structural change in many organisations of differing types, this represents only a relatively short time for it to become firmly established and for people to be fully familiar with it.

The review could also have included an analysis of why such an oppositional organization arrangement was a good thing that should be allowed to become firmly established. I question the degree to which the deleterious effects have been adequately studied. In most all of the organization dynamics literature I have ever read, there is a negative effect to creating a set of oppositional structures, as was done in the past GNSO reform. Westlake could have done a great service by including an analysis of this situation and the many ways in which this oppositional setup has affected the GNSO. Yes, we have learned to live with it, but largely we do that by avoiding the contentious issues as much as possible. Even Section 9 of the Westlake report that has an extensive discussion of the structural issue does not recommend further study.

Since Westlake does not wish to recommend further work on this subject, I recommend that the GNSO Review Party make its own recommendation vis a vis further work on this topic. Various members of the Board have been quite outspoken on the idea that in the ICANN bottom-up model, if we don't like the structure, then we should recommend a way to fix it. We do not need a review or a SIC to give us permission to fix what needs to be fixed. We should just do it. Perhaps this is an issue that needs to be taken to GNSO Council.

- Page 40

The ATRT2 figures are from 2013. Has there been any work done to check and see whether there has been any change since then or what the rate of change is?

- Page 43,

The description of the Policy & Implementation team work seems incomplete and dated. Might be worth giving a timestamp for when that description was made.

- Page 50

The average length of a PDP is between 2 and 3 years

All the other figures in that section appear to be in days. Would be interesting to know what the actual average was in days. 2-3 years is such a wide range. Standard deviation would also be interesting. This comments also relates to the charts on Section 9. At the very least, there should be annotation that this data come from before outreach and does not show any effects that might have been achieved by the outreach program.

- Page 71

Among the things I have assumed the council should ensure, in addition to those listed, is that all of the issues have had a full exploration and that the opinions of all stakeholders as is possible has been taken adequately into account. As this does not figure on the Westlake list, I am wondering whether they consider this an inappropriate activity for the council. Does Westlake consider it appropriate for the GNSO council to send a report back to a WG if they feel the work has not been complete in respect to diversity of view or full discussion of substance? There are issues concerned with the substance of an issue, yet Westlake seems to indicate that the council should have no concern for the substance.

- Page 72

We acknowledge that the Board is the peak governing body of ICANN, so it would be inappropriate to limit its authority

The current CWG Accountability has taken issue with a structure where the Board is supreme in all substantive issues. Would Westlake see this as inappropriate?

- Page 81

Following the BGC WG review, but before the new and final Constituency process was implemented (2011), staff developed a two-step process (Notice of Intent to form a New Constituency, New Constituency petition and Charter applications) for new constituency applications

The Westlake does not note that this procedure was created only for the NCPH. There is not such procedure for creating constituencies in the CPH. It has never been clear why such a policy should only apply to half of the GNSO. Does Westlake have any input on this situation? Did it figure into the analysis?

- Page 82

and took no action on the Consumer Constituency as it was still being worked on

It should be noted that while the candidate constituency still exists in the NCSG, and it still holds observer seats in all NCSG committees as defined in the NCSG Charter, it has not been active in years. Despite this, no attempt has been made to end its candidacy. Several attempts have been made to resurrect it, and some NCSG members still hold out hope for it (I am a NCSG member of the candidate Consumer constituency as well as of NCUC and supported its creation) completing the ICANN policy and NCSG charter's required activities for full status. Would seem appropriate to discuss the case completely as opposed to allowing it to appear that this was somehow a prejudicial act by the NCSG.

- Page 83

In the discussion of the Cybercafe constituency applications Westlake avoids several salient facts:

- The NCSG charter, as approved by the ICANN Board, as well as the defined process for creating new constituencies requires the constituencies not only be appropriate to the SG group to which they are applying, i.e be non commercial in the NCSG or be commercial in the CSG, but that there should not be an overlap with existing constituencies.
- The statement related to the fact that if the applicants of the Cybercafe had paid attention to the requirements for the NCSG, they would have realized that as commercial entities they were not qualified for the Non Commercial SG. This was backed up by the Board.

Again this makes the NCSG look like it did some inappropriate when it was following procedures and its own Board approved charter.

Does Westlake recommend that:

- It is ok to put commercial constituencies in the NCSG and non commercial constituencies in the CSG?
- It is ok to create constituencies with overlapping mandates on the same SG?

Does Westlake have a recommendation for how to handle groups that file an intent to form a constituency without being fit for any of the four existing SGs?

- Page 85

What evidence is there to substantiate:

- Less 'pure' or altruistic motives, such as protecting one's own position, status in the GNSO/ICANN community (or with an employer), or,
- In other instances, individual concerns that if someone new comes in, the replaced incumbent will lose their own travel funding, regardless of the GNSO's greater interest of having the most appropriate people for the role – rather than just those who can defend their positions the most effectively.

What Westlake interprets as 'protecting a patch' may just be a strong feeling in support of adhering to the processes as negotiated and agreed to by constituencies, stakeholder groups and the Board. To indicate otherwise based on hearsay and without adequate substantive proof is somewhat disparaging of hard working sincere individuals. While this may indeed occur, I am also not well placed to judge the intentions of others, it seems inappropriate to include such claims in a review. Isn't it enough to say that not enough has been done to create new constituencies without casting aspersions on a population of hard working volunteers? Such evaluations, albeit very general and not about any individual or SG, seems like they should be avoided in a review.

- Page 91

NPOC is used both as an example of the only new constituency chartered and as a bludgeon against the NCSG. Yes, there have been, and occasionally still are rough times between the sister non commercial constituencies. But we work together and produce substantive NCSG statements that include the support of both constituencies, our candidate constituency and individuals. Not only did we successfully negotiate the creation of this new constituency according to rules that were being developed as part of the process itself, the NCSG charter was written with a full set of appeals for any occasion in which a constituency, or any group of participants, felt that the NCSG Committee decisions treated them unfairly or improperly. Initiating these NCSG appeals takes a very low threshold (15 members out of hundreds), yet not a single appeal has been initiated since the charter was approved in 2011.

A claim is also made about the lack of new leadership in the NCUC and the NCSG. If one were to look at the leadership of the NCSG, or NCUC for that matter, more than half got involved with ICANN in the last few years. Many are newcomers in their first 2-3 years of participation in the NCSG. Yes some of us old timers still hold posts, but we are by no means the majority. Many of our senior members work in the background on WGs and CWGs and penning draft statements without holding a leadership post. Many of the senior people long for a new younger generation to take of the SG and actively recruit replacements for the roles they hold. Would have been good to see that accounted for in the analysis.

- Page 113

I believe in the discussion of the GNSO as an artificial construct Westlake makes a category error. But first, in a sense all of the SOAC are essentially artificial constructs that have evolved over the course of years to reflect the reality of participation. The category error has to do with comparing the GNSO to the ALAC. That is wrong. The GNSO is to the GNSO Council as the At-Large is to the ALAC. One cannot compare the GNSO with the ALAC, though they could compare the GNSO Council to the ALAC. As someone who participates in both the At-large ,and the GNSO, I believe there is very little difference between the relationship among the RALOs of the At-large and the relationship among SGs of the GNSO. I see them as similar structure, though along different discrimination lines, geography and interest. This is not to say we don't need better communication across the silos, but merely to argue that the GNSO is not that different in this respect of other organizations that have a layers internal structure.

- Page 116

I find the appropriation of Sir Winston's adage a bit overstated in relation to the GNSO. He was talking about Democracy. While the quote can be appropriately applied to something as fundamental as the multistakeholder model of participatory democracy, I find its application to the GNSO a bit puzzling. Even if the quote did not trivialize the original utterance, I see little basis for a judgement that many other schemes have been tried and been shown to be wanting.

Despite my comments, I want to reiterate that I take little issue with the specific recommendations. I thank the Westlake Review team for having produced a mostly balanced 2nd revision of their report and for giving us yet another chance to review their work before it is submitted.

Avri Doria