
HYDERABAD – Board/GAC Recommendation Implementation Working Group
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OLOF NORDLING: Ladies and gentlemen, we will resume shortly. So, if you could make your way to your seats.

This is the second call. Would you please return to your seats. We'll start shortly.

CHAIR SCHNEIDER: This is the last call before the plane leaves. No, please take your seats. We will continue with the session with the BGRI on trying to improve effectiveness of GAC advice. And I had just in the last few days some interesting exchanges with the Board about how to understand the advice that we gave to the Board in Helsinki.

Markus Kummer, who is one of the members of the Board, can also contribute to this. And it is amazing that after 18 years of existence of ICANN and of the Governmental Advisory Committee, we still struggle on both sides to actually understand how we work, understand what the expectations are, what the processes are in terms of coming up with advice, processing advice. So the work is far from being over. So I'll

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stop here and hand over to the floor. And for promoting cultural diversity, I will just say one word or two to my Swiss colleague.

[Speaking language other than English.]

With this I hand over to the floor to the co-chairs of the BGRI.
Thank you.

MARKUS KUMMER:

Thank you, Thomas. Markus Kummer speaking. I have to apologize, some of my Board colleagues who are members of the Board/GAC working group on another meeting that is going on currently with the registrar, registry stakeholder group. And Chris Disspain felt it was maybe better to stay with the other group, which is an issue which is also being discussed with GAC is coming up. That's the IGO issue.

Just to pick up on what Thomas said on the difficulty the Board has, it's essentially two different cultures. The Board is not made up of government people, diplomats. The Board is made up of technologists, lawyers, whatever. And they are not used to the way governments work and the other way around. And --

UNKNOWN SPEAKER:

Would you please speak closer to the mic?

MARKUS KUMMER: Sorry. I do apologize. But I just said it's essentially two different cultures and it is a learning process. With that I hand over to my co-chair, Manal, who will start the presentation.

MANAL ISMAIL: Thank you, Markus. And good morning, everyone. And welcome to the BGRI working group meeting. The BGRI working group is cochaired by board member Markus Kummer and from the GAC myself Manal Ismail, GAC representative of Egypt.

The BGRI, for those who may be wondering, stands for Board/GAC recommendation implementation working group. And, if this is not any helpful, then it's a joint working group between the GAC and the Board that was originally initiated with the mandate to oversee the implementation of GAC related recommendation that came out of both accountability and transparency reviews 1 and 2 but then was reconvened to look into the effectiveness of GAC advice to the Board.

The ACIG GAC secretariat has helped me prepare a report. And, for the sake of this meeting, we'll be focusing on three points of the -- points that were raised in the report. So, if we can go to the first slide of the presentation, please.

So in Helsinki the GAC agreed to fine tune the current description of what constitutes GAC advice, agreed to create a

template that includes all aspects that need to be considered in any GAC advice, agreed as a pilot to have a post-communique exchange with the Board to ensure common understanding of GAC advice provided in the communique, and agreed to the BGRI suggested work plan regarding activities to be accomplished intersessionally between the Helsinki and Hyderabad meetings and beyond.

And this was a quote from the communique of the GAC advice in Helsinki.

So what constitutes GAC advice? This is what we currently have as a definition or as a description of what constitutes GAC advice on the GAC Web site.

So the question is: Do we need any modification or clarifications or further description to what we already have on the Web site? So I mean, if we have any reactions now, we can take them. We can wait until the end of the presentation. Or, if you need some more time, we just need to know if you have feedback on this.

Meanwhile, if we go to the following slide -- and this also is related to GAC advice and has to do with the clarity of GAC advice as Thomas and Markus were just discussing now.

Those are some key words for the aspects that need to be considered as per discussions in Helsinki and also discussions within the accountability track of the IANA transition.

So I think that it goes without saying GAC advice should be clear, should indicate consensus versus non-consensus advice. This was an output of the CCWG discussions. Include a rationale of the advice. Intended public policy outcome. Implementable elements. Of course, bearing in mind that not all those may apply to each and every piece of advice that we provide because sometimes we advise on matters related to effectiveness of ICANN's procedures and maybe planning of meetings and things like that. And also sometimes the advice is in the form of high-level principles. So it doesn't necessarily have to include implementable elements, for example. So this is just to note that, to the extent possible, those are the factors that we gathered from the discussions we had in Helsinki and elsewhere.

So I'll pause here and take your reactions, feedback, or questions on the first two slides before handing to my co-chair for the Board/GAC post communique exchange.

So Iran, please.

IRAN:

Yes, Manal. Thank you very much. And thank you for the board member. I repeat what I said in the previous meeting. For now we should be very, very careful about the use of advice with capital A, which has a very specific meanings. So I have some -- I'm not very comfortable with the last part, part 9, matters related to the effectiveness of ICANN procedures whether it should be advice. It is not advice. It is views, statement. It is not advice. It's not directly public policy. It's a functional arrangement. So we should not call something advice which is not advice. We should be very, very careful because now we are under the scrutiny of other SO and AC. They look at are there any outputs and so on. This is one point that we should really be careful. I have seen in the previous meeting that we put many things under the name of advice. We should be quite careful about that. This is something -- and just I want to reply in less than one minute to our distinguished board member that it is not a matter whether GAC is speaking diplomatically or not. It is a matter of consensus. When you want to find consensus or achieve consensus, you are obliged to use some words that people can read it in a way that they want that, that they could explain to their government that I was right because this word explained that.

So it is more or less, I would say, intentionally ambiguous.

You cannot do differently.

In all the organizations that government working, they have all these things. They call them constructive ambiguity. Thank you.

MARKUS KUMMER:

If I may react to that, as you are aware, I worked long enough for government to fully understand that. But not every board member has the same experience. And that, I think, is part of the problem. And also if I -- I think board members prefer something directly implementable. Then they know what it is. Whereas, high-level principles that quite often are full of what you eloquently described constructive ambiguity. And that is where board members tend to have difficulties interpreting what they should do. Now, part of the problem is that we have not been able to actually look at the GAC advice from Helsinki because of work overload. And we do apologize for that. And that hampers a little bit the progress in our group as we were not able to discuss it in depth. But we hope we can catch up with that. But, please.

MANAL ISMAIL:

And, to respond to your first part, Kavouss, advice on matters related to effectiveness of ICANN's procedure -- this is a quote from what we currently have on the Web site. So, if this is something that we need to change or we need to separate from the description of GAC advice, then I think this relates to the

slide just before this where we can discuss also what we need to put in the description of what constitutes GAC advice. But, before we go to the previous slide, let me give the floor to the African Union Commission, please.

AFRICAN UNION COMMISSION: Markus, Manal, I really thank you for this introduction. I would like to say something that is very important. All you have said and presented to us looks very nice. But there is a problem.

In the case of .AFRICA, for example, the GAC issued a recommendation to the Board. And it was reached by consensus. And that was repeated several times in different communiqués. But there has been no impact, no response so far.

So what is the use of GAC advice or GAC recommendation to the ICANN board? And I apologize for insisting on this. But we are so frustrated, so disappointed with the outcomes of these recommendations that Africa is looking for solutions outside ICANN.

And this might bring about some organizational disruption, especially in the field of Internet resources. So it's okay to have GAC recommendations. But, if ICANN or the Board do not take these recommendations into account, what should we do? The

.AFRICA example is quite clear, and it shows the ineffectiveness of these recommendations that we make.

MARKUS KUMMER:

If you allow me, I'm going to respond to you.

We are fully aware of this situation. And I understand your frustration. This is a case we're looking into, and I'm not in a position to comment on that now. But it is true that this is not part of constructive ambiguity.

The discussion that we had had to do with constructive ambiguity in the recommendations. And the example that you're bringing up here is completely different. Of course.

MANAL ISMAIL:

So do we have any further reactions to these slides or to the parameters that need to be implemented or included or considered in any GAC advice? If not, we can go to the previous slide so that everyone can take a closer look to what we have currently on our Web site on what constitutes GAC advice.

So I mean, maybe we can read it.

The ICANN bylaws require the Board to take due account of GAC advice and also provide that "The GAC may adopt its own

charter and internal operating principles or procedures to guide its operations."

GAC members have worked on the basis that any explicit advice, in any written form, constitutes the kind of advice foreseen in the bylaws. In practice, the GAC proceed -- The GAC produces various kinds of written advice for communication to the Board, including: Letters signed by the GAC chair on behalf of the GAC. Communiques and submissions endorsed by the GAC at face-to-face meetings and intersessionally, or arching "principles" documents, typically developed over successive face-to-face GAC meetings, "Issues" documents including interim issues documents. The focus of the GAC advice is mainly on public policy issues. There are also instances where the GAC generates advice on matters related to the effectiveness of ICANN's procedures for facilitating interactions between the ICANN constituencies in support of policy development; for example, the comments formulated by the GAC on the frequency of ICANN meetings. And finally, the GAC Web site provides advice in all these categories.

So this is the current text we have. And this is the current text we would like to seek your feedback on and whether this needs to be modified or we are happy with it as is. I mean, it's in your hands.

Kavouss, please.

IRAN:

May we consider to label some of these things that we have mentioned, for instance, a simple communication from the chair of the GAC to ICANN or similar things, not as GAC advice with a capital A? We could have another label to that? Request? Invitation? Recommendation? But saying that advice with capital A to the GAC -- to the Board as contained in the bylaw is always marked or labeled with advice with capital A. Any other communications has different connotations and meaning and so on. Otherwise, it will be mixed up with the situations. I don't think that if you want to do something with the Board, you ask them to put a rationale for that simple request for something. What he says. Or check whether it is consistent with the bylaw. So request for the improvement. We have to be careful about that. Thank you.

MANAL ISMAIL:

Let me try to make sure I understand your comment right.

So do you mean that letters from the chair on behalf of the GAC are not considered GAC advice and accordingly should not bear all those measures within?

IRAN: If the letter from the chair of the GAC seeking some clarification on some point, it is not GAC advice. It has not been discussed as GAC advice. It has not gone through that process of consensus or non-consensus. You should not try to make a barrier between any improvement to put them in the advice with capital A. Have those scrutiny in future. So that is something that we need to clear this matter after 17 or 18 years. Once forever. Thank you.

MANAL ISMAIL: So I got your point. So, I mean, we say those should be considered to the extent possible. If the letter is just a normal exchange, then maybe not. But, if it includes a GAC advice, then probably it should consider. So Thomas, please. Go ahead.

CHAIR SCHNEIDER: Thank you. Just a comment on this discussion. Basically, the GAC can issue advice in various forms, whether as in a communique, in a letter. It can be different ways.

One of the challenges that we and, in particular, the Board had is to define or identify -- and I think this is what you're aiming at -- to understand what elements or advice what elements are just information and so on and so forth.

That is a problem. On the other hand -- so we are trying to -- for years now identify more and more clearly what elements are

actual advice. We have different sections in a communique. We may also, when we have a letter, when we write a letter, produce a special title in that letter that says advice to the Board and blah, blah, blah. So to structure this more. However, there is a risk in all of this that you need to be aware of and I think the Board also needs to be aware of.

This is fine, but when we send a ten-page communique and rationales and everything, and then we have a two-line advice under the title in bold and underlined, underscored "Advice," because of the time pressure and the overload of work, which is not only a problem for us but it's also a problem for the Board, it's a problem for ICANN staff who is helping the Board in digesting information, and so on and so forth, the danger is that what the Board will do, it will not look for one second at the ten page of the communique, at whatever is written before and after these two lines of advice. They will look at, oh, this is the advice, these two lines, and then they will ask staff what do we do with this.

So a lot of information that is between the lines or even in the lines that is necessary to understand why we issue these two lines of advice risks to get lost, not because of lack of interest but because there is simply, for the sake of efficiency, the more you structure it, people look at what is black-and-white advice and the rest is lost.

This is a real risk. We all know this. When you have a paper that is 50 pages long and you read the abstract of half a page, that's fine. But maybe you don't get all you need.

So we have to be careful in overengineering and overstructuring things as well, because we may risk that -- that actually the actual public-policy issue that we're trying to achieve may get lost or at least not fully understood which is also not helpful.

I am just signaling this that in the end we need to be able to work on a basis of common sense. I'm sorry to use this very old-fashioned word, but all the nice structuring things are only tools to help us understand each other. So we need to be aware of this.

In the end, both sides need to devote some time on writing and on reading and trying to understand, and communicating. And for instance, if I may take the Helsinki advice where we had things in it -- I can give you a concrete example. Like the advice on new gTLDs where we -- one of the elements of the advice that is signaled out, we go for separable action items now, but we try to structure things where one is -- one phrase, I know it by heart because we spend some time now with the Board discussing it, requirements regarding safeguard security, resiliency should be met.

Then there were questions from the Board, okay, what requirements? Who defines them? What do you expect us to do when you say requirements should be met?

And then I -- we had quite an exchange, like, okay, we expect that we -- it's not up to us to tell you, because we are not the technical experts, which level of requirements we expect you to look into this, to show us what you did, what you -- what you do to make us confident that these requirements are met.

And then we were discussing, okay, they could just reply, "Yes, we agree, requirements should be met," full stop. So they have answered our advice. Or they could say we have 1500 experts that we rely on.

So a simple phrase like public policy advice, requirements regarding security and stability of the Internet should be met, can be answered and processed in 500 different ways more or less in line with the expectation of what the GAC has meant when it wrote this line. And of course if you have a little bit of rationale, a little bit of background, you may know a little bit more, but in the end there is no way of avoiding that the Board and the GAC talk to each other to make sure that what we mean is what they understand that we mean, and then that that is the second step that, in particular, the chair of the board, Steve

Crocker, is very keen on assuring that we actually understand each other.

I stop here. I could go on for hours on this, on this small example, but just to show everybody what the challenge in this is. And it's not so simple. You can't do it with a simple form or bullets. It's in the end a question of common sense of wanting to understand each other and doing all that you understand each other.

Thank you.

MARKUS KUMMER:

This is a very good example to illustrate what I meant with my introductory statement that there is two different cultures. And also, someone said we do that anyway. You know, it is a high priority, I think, also to the Board and to the organization to maintain the security and stability of the Internet.

But I wonder, Manal, could we then go to the next step and talk about the cross-community?

MANAL ISMAIL:

Yes, please, definitely. To be fair to all points that we need to discuss, maybe you can continue and we can try to conclude on the three points at the end.

So --

MARKUS KUMMER: Can we look at the next --

MANAL ISMAIL: Can we please, yeah, go to the following slide?

Thank you.

MARKUS KUMMER: Thank you very much.

Yes, we did say in Helsinki let's have a pilot project and let's have a Board-GAC exchange. And we had a call -- was it in July? Or early August. And we asked for feedback on that call. I think there was quite a big participation, and there was an interesting -- definitely interesting discussion. But I think, also, the third bullet point, what we received as feedback, some people on the call actually started engaging in a substantive discussion. And that was not really the intention of having these calls. The idea was more to ask what was meant with that, and also precisely what Thomas said. There are also sometimes elements between the lines which are not quite clear. And that maybe was not met to full extent.

And also, I think the feedback we received was, okay, we had one call. We cannot really draw conclusions from just this one call, and we should continue, have at least another call.

One proposal or one feedback was much more, then, detailed. So coming up, maybe we should have a small group dealing with this, of five board members and five GAC members. But the call was actually open to everyone. But I think I would agree with the first bullet point that maybe it's too early to draw conclusions. Also, in particular, because the Board has not yet reacted to the GAC advice.

So the last point is actually something we could implement, that the Board notify its points for clarification in advance of the call. I think that's a very helpful suggestion.

But here I think it would be good to have also broader impact. Quite often when you ask for it in input, you don't get -- not everybody has the time to react, and we are here now to discuss it. How can we -- if we agree to hold another call as a part of this experiment to improve communication, what can we do to improve the process? And like this last suggestion that the Board notify in an open public process its points for clarification in advance of the call. I think that's a good suggestion, but I think we should, at the same time, also leave it open for questions that come up during the discussion.

But, yes, Iran, please.

IRAN:

Thank you. Could that last point have an addition? When the Board provides clarification, whether in that clarification they mention the need or otherwise for meetings, in one way or another. Maybe a simple clarification, but maybe clarification sought. In that case, it would be a component that the need for a meeting, whether meeting one to one -- I have some difficulty to have just only one person from GAC and one board member. I prefer some, as you mention, three to five board member involved in the (indiscernible), three to five member from the....

And one thing very important from (indiscernible) is that the person or persons making this clarification, they should remain within the envelope of the advice but not interpreting their own understanding. It would be quite dangerous.

Thank you.

MARKUS KUMMER:

Thank you. That's a very important point. I think it really was meant to be, one point here, a clarification call. The board members who have problems understanding it have the opportunity to ask what exactly do you mean by that, but not start negotiating, going into substantive discussion, "No, I don't

agree with you." That's not the point of these calls. The point is really just clarification, and to avoid these kind of misunderstandings Thomas has mentioned.

Are there other points? Yes, Ornulf.

NORWAY:

Yes, thank you, Markus. Just a quick comment on the calls. I think a little bit in the same line as Iran pointed out. I think it's -- calls to clarify GAC advice should not then be sort of in the danger of having interpretations that is not what the advice was meant for.

So maybe calls could be arranged with the GAC chair and vice chairs, because then they sort of then maybe would be in a better position to convey what the overall GAC advice was meant to be. So instead of having the whole GAC to be the part and to have interpretations of different GAC members.

So that might be an idea, to start with that. Because I think normally also our GAC-elected officials then can be -- sort of convey the GAC discussions and messages. So that might also be something to take into consideration.

Thank you.

MARKUS KUMMER: Thank you for that. And there is actually another slide.

Can you show that?

That summarizes also some other suggestions.

Can the other slide be put? Oh, yes. It's here. Yes, thank you.

Other questions? Comments?

So on this slide there are some of the more concrete proposals to have a more restricted call. And this goes also in the line with what Norway just suggested. This could be something we could consider, I think.

Yes, please. Paraguay.

PARAGUAY: Paraguay. Thank you, Markus.

I think there is some confusion. If we can go back a little bit to the first slide, please. Yeah -- no, no. The next one. The next one, please. I see some confusion because I see many definitions for the word advice. I see written advice, clear advice, explicit advice. Maybe we should define amongst ourselves, choose what we consider advice, and in my humble opinion it would be a written text by the GAC chair or communicate directly.

Now, the last two bullets -- I don't know where the slide is --

MARKUS KUMMER: It's the previous slide.

PARAGUAY: Yeah, the previous slide. Sorry.

MARKUS KUMMER: Not this one. Next one.

PARAGUAY: There we go.

Bullets three and four are confusing. Even though we all agree overarching principles, documents, typically available, blah, blah, blah. And bullet number four, issues, documents. That's not clear advice. In my humble opinion again, bullets one and two clearly communicate you have something that we want to tell the Board; otherwise, there is confusion. And again, with the word advice. Clear advice? Written advice? Explicit advice? Who defines what is clear advice, for example?

I don't know. Maybe that's something we should consider.

Thank you.

MARKUS KUMMER: Yes, Thomas.

NETHERLANDS: Thank you, Markus. I think the point of Paraguay is also valid, but I think we also decide that every time we give advice, we also give the label advice. So basically we would not need to define exactly in what forms, on what ways we give advice, because we -- at each point we just give the label "advice." And I think that's most simple and effective way to deal with it.

Thank you.

MARKUS KUMMER: Thank you. And Kavouss again. Iran yes. I fully agree with Paraguay that three and four is not advice. We should find another name for that. Views, opinion, something, but they are not advice.

Thank you.

MANAL ISMAIL: So just to make sure we are all on the same page, this was the output of discussions in implementing ATRT recommendations, and this come -- came out of the GAC, actually. But again, we're

putting this for review now. So if we need to change anything here, this is why we're opening it for discussion.

And at the time, at least, we agreed that any written communication, as far as it is labeled advice, then it should be considered as an advice and trigger the bylaws, if necessary. Because otherwise, we'll be stuck not to provide any advice except at the three meetings each year.

But I'll give the floor to Thomas, and then we have CTU.

Thank you.

CHAIR SCHNEIDER: Thank you.

Go first. I'm happy to follow the line. Don't worry.

MANAL ISMAIL: Thank you. Go ahead.

CTU: Thank you very much. Nigel Cassimire, CTU.

On the -- on the issue of points three and four there, certainly I interpreted that to cover any outputs that might come from GAC working groups. And we have several GAC working groups working on lots of different issues. And it might be that those

working groups produce some overarching principles documents or issues documents relevant to the issues that they would have studied. And those documents could well be endorsed by the entire GAC and forwarded to the Board.

So I understood, certainly, those, three and four, to cover instances like that.

Thanks.

MARKUS KUMMER:

Thank you. With regard to this discussion, I think we have to think about how or what is the concept that we use or the logic that we use when giving advice. In my now eight years of participating in the GAC, in the earlier days there was a clear understanding in the GAC that the GAC should not give advice in the sense like you need to change line .257 in the Applicant Guidebook on page 15, but that the advice was given on a more generic level, on a more political level, in line with the agreement that I quoted already yesterday, I think, or at some previous occasion that in the World Summit on the Information Society in Tunis, the governments and support of other stakeholders agreed that the role of governments in Internet governance is public-policy issues, international law-related aspects. But the day-to-day operational management of this

would be left to others; i.e., mainly private sector actors, including ICANN in our case.

So the way we used to give advice was exactly through principles. If you look at the 2007 principles on gTLDs, that was the piece of advice. That was the reference point, like the bible of the GAC in terms of logic to the Board that we made reference, and, actually, we are still making reference to them.

So the problem, of course, isn't -- that goes back to the culture. The Board said, yeah, great, principles, fine. Okay. And they were not, maybe, fully, let's say, experienced to work this out into concrete action items and concrete decisions. And we keep having this struggle of defining the level of detail and the level of also responsibility that the GAC should take in telling ICANN how to do things that are, for us, abstract generic public-policy issues, like equality, diversity, preserving opportunities for everybody, and so on and so forth.

So this is a constant, let's say, development and we are getting more and more concrete because we have had the experience that the generic advice that we've been giving, the Board had struggled to actually implement this even if they accepted it.

But this is something that we may have -- and I actually encourage us all to have that discussion in the upcoming meeting with the Board, to pick this up, because whatever we

think our advice is and should be, it only works if it matches with what the Board thinks it is and should be. And again, we are there on the understanding level. And that has got nothing to do with bullet points and titles that are in bold or not. It's about a mutual understanding what it is that comes from us and what we expect and what the Board -- that the Board does with it and what the Board can actually do or cannot do. Also given the structure. And that is also linked to the discussion of -- of the Board -- I hear the Board say a lot of times "We don't do policy. It's the SO and AC -- SOs do policy. So basically it's too late when you come to us."

And the GNSO says the same. Early engagement. "you should not give advice to the Board. You should come to us, talk to us when we develop policy, because the Board cannot change the policy; can only reject it," which is not the most efficient way. And that is fundamentally in contradiction with the traditional understanding of us giving advice to the Board and then the Board will change whatever we think it should.

So we are having a challenge here on a structural level also that a historically grown concept is changing in its application or in its perception, and we all, not just the GAC, the whole institution will have to think about what do we do with this, because there's a gap between what is written in the bylaws and what the

expectations are in many parts of this community, and we need to figure out a way on how to deal with this.

But I think in general, to say that overarching principles are not advice and that issue documents, it depends on how they're framed and as the CTU has said, in it's a GAC working group document, then it's a GAC working group document. That is not advice. If it is endorsed by the GAC and sent to the Board and say this is an issue. We have some expectations, and we advise you to take them into account to follow them, then of course the issue document becomes advice.

So there are procedural elements that we need to follow in order to make clear that something is an advice. But I would -- I would not basically -- I don't think it's the key point is discussing whether three or four are advice or not. But we -- the first thing is we need to understand what kind of advice do we give, and then we need to discuss with the Board is this the kind of advice that they think they can actually process? I think that is actually my personal learning curve of the last two years in this role that I'm realizing this is where the challenge lies, mainly. And the rest is details that we can solve once we're clear about the big lines. Thank you very much.

MARKUS KUMMER:

Thank you, Thomas, you made some very important and fundamental points about the functioning of the organization and I think they're all very valid. And in one way or another, we ought to address them. But I think that requires more than just a half hour discussion. You would like -- and this is not a board -- I've seen you, sorry. We made actually a very positive experience with that in the transition working through CCWG. Where we all worked together not in our silos, but sat all around the table. And where the issues get developed with the involvement of GAC participants active and all stakeholders, all the constituencies are active. And, in my humble view -- and I'm not speaking on behalf the Board. But I think that leads the way forward to avoid problems such as the one we are facing with the IGO issue where we have a policy development in one silo and then the GAC doesn't like it and puts the Board in a very awkward decision. You have to choose between two groups, but --

CHAIR SCHNEIDER:

That was great. Through giving advice we put the Board in an awkward position. I won't say any more, but think about it. What our role is according to the bylaws and what the perceived reality is in a particular case. Thank you, Markus. It is never nice if you have to choose between two groups. Here's one -- policy development comes from one group and you say this is no good.

Reject it. But that's -- as I said, I think it would have been more conducive to find a solution had there been some kind of early warning system where the GAC says we don't like the way and we want to be part of this and not only as observer in a group but as equal partners so that we negotiate an outcome together. But that's again my personal view. But Nicolas has been very patiently waiting. And the UK, sorry.

UNKNOWN SPEAKER:

Again, I would go back to what I mentioned earlier. Right? If we try to define the kind of advice, we would end up, you know, giving even more confusing signals, so to say, right? But because who defines what is clear advice or blue, red, or black, or I don't know -- bright advice? You know, we just give advice. And maybe we should just focus on giving, like in bullets surrounding to a letter is certainly clear and direct and specific advice. I don't know. Maybe we can use more defining words. Right? And our communique certainly is clear advice and specific advice on something. Maybe referring to overarching principles and blah, blah, blah in bullet 3 or issues documents. Because, again, we would have the problem of working groups not representing the whole view of the GAC as a whole, I mean. Right? And creating even more confusion.

Thank you.

MARKUS KUMMER: Thank you. U.K. and then Norway.

UNITED KINGDOM: Thank you, Markus. I was going to say that the one, two, three, four here is not an exhaustive list. It's inclusive, yeah? I think we ought to be a bit careful not to be too definitional here as to what is advice. But the point Netherlands made, I think, is a very valid one that where we are conveying what we believe is advice, we mark it clearly as such. So perhaps we could add a line to the text here to say, "Advice in whatever form should be clearly identified as such."

Advice in whatever form should be clearly identified as such.

Maybe this captures the point about labeling and gives us the flexibility in how we articulate the advice. But ensure that there is ready understanding that this is advice. Thanks.

MARKUS KUMMER: Thank you. I have Norway, Switzerland, and Kenya. And the chairman tells me to close the list after that as we allotted time until 12:00. Norway and then Switzerland.

NORWAY:

Thank you very much, Markus. We very much agree what U.K. just said. I think that would help very much, and we need that flexibility. So that's a very good proposal.

Just a quick comment on what to Thomas, our chair, mentioned in the challenges for GAC advice and how to feed the public policy issues that GAC are concerned about into the PDPs in the relevant constituency and ccNSO and GNSO. I think that is something maybe also I think you, Markus, asked us to take into the Board and discuss how to treat a GAC advice when we make advice on certain public policy issues that are currently dealt with within the policy development processes. We would like -- we're advising the Board that these issues must be addressed into the policy development. But, of course, it doesn't ask the Board to immediately take a decision or action because it's not yet finished. So that is, I think, something also I would like the Board to discuss and come back to the GAC. And what does the Board mean? How can GAC advice be fed into the processes? Like we're currently discussing with GNSO how to feed that input into the processes before the final decision of the GNSO Council is sent to the Board? So that's something we also need to develop and to work on. Thank you.

MARKUS KUMMER:

Thank you for that. Switzerland.

SWITZERLAND: Thank you so much. Jorge Cancio, GAC rep for Switzerland, for the record.

I think I was, in a sense, forced to react to something which was said, I think by Markus.

And this is the idea that the Board has, in a sense, to choose between some of the children or some of the inputs made by different supporting organizations or advisory committees. I think that the Board doesn't have to choose. The Board has to decide. The Board is the governing body of this organization.

And, if there are different inputs from different parts of the community, the Board has an obligation, has a responsibility, has a power, has also the privilege to decide according to what is best for the global public interest. So I think that has to be made clear. It doesn't have to choose between the product of one supporting organization and one advisory committee.

That is not its role. At least according to my understanding of the bylaws.

And, if we talk about policy development process, the new commitment number 5, which is binding upon the board in the bylaws, sets out that the public policy development process includes the advice of the governments.

So it's part -- it's not a separate part of the public policy and the PDP process.

It's a part of that policy development process. So you cannot differentiate it from the PDPs that are made by the ccNSO or the GNSO. It's part of the mix whereby the community develops a policy. And that goes to the Board. And it is the Board who has to reconcile the positions if there are differences within the community.

I think we have always to be reminded that the supporting organizations recommend to the Board. They don't adopt policy.

And, as the GAC doesn't impose anything, it does just advise. And between those recommendations and that advice, if there is some disagreement, the Board has to decide, has to reconcile. So I just wanted to put those thoughts on the record. Thank you.

MARKUS KUMMER:

I would like to thank the representative of Switzerland who is, obviously, a very experienced lawyer for giving me a legal lesson on what I very lightly described as a choice between two advice. But I fully understand his explanation. And, obviously, he is right. Kenya next.

KENYA:

Thank you. Thank you, Markus. My comment is follow-up to what the Swiss delegate has said in relation to the -- what I want to refer from another forum as decisional independence by the Board.

Given the different aspects and different ways in which different communities approach the Board, I think it would be important to perhaps not require anything other than what, for instance, the Governmental Advisory Committee is required to do in relation to what it's going to give to the Board.

I would want to use perhaps an aspect from my delegation spheres in life where, if the Board is not -- is in receipt of advice from the Board. And I perhaps want to make a distinction from what the U.K. colleague said in relation to the device. It is the device may contain advice which includes issues and principles. If you remove the issues and principles, then I do not know that the advice is complete. So that to then ask that there be bullet points or very clear statements from the GAC in relation to what it considers to have been advice, deleting perhaps the issues of the principles, then perhaps the advice is not complete. So that I think, in relation to the question of the how we relate as to the clarity of the advice given by the GAC, it is perhaps, in my very humble view, for the Board to then ask very pointed questions to assist it in implementing its decisional independence and give a

resolution in what the GAC advised and what the Board conclusion then is.

So that, if then we are in the process where there is a situation where there is seeking of clarity on every document that is sent by the GAC, there is perhaps the risk that the questions and the clarifications, in spite of them being perhaps being replied to by the leadership, there may be the risk of an amending process so that perhaps there could even be on the principles that the Board should ask three, four, five pointed questions. And that ends the clarification period. And then the Board should decide.

So that then everybody is aware whether the GAC at the next meeting needs to clarify what's the new -- the reinforcement of the advice or give a different advice in relation to a similar question also a subsequent question. So that, in my humble view, having looked at this question, I'm caught in a situation where I have to then ask whether, in relation to the advice the Board gives I think I've seen this in another environment where sometimes when a very high court gives a judgment, then they give out what they would want to call as a press advisory on its decision. But that is generally for the public and for the press in order for them to be able to report on that judgment which is normally a very long and detailed document.

Now, in our -- in the GAC situation, I don't know that we could be in a situation where we are issuing in furtherance, for instance, to a communique, a subsequent document which then details which advice we are giving. I would want to think that they should look at the completeness of the communication and ask pointed questions and then bring the matter to a close as quickly as possible so that we don't have the amending interruption on this question on what was advice as constituted by what document was received or what device was received from the GAC. Thank you.

MARKUS KUMMER:

Thank you for your constructive comments. And I see the ccNSO is streaming in. We'd like to thank you all for a constructive session but hand back to Manal for concluding the session. Please, Manal.

MANAL ISMAIL:

Yes. Thank you. Just very quickly, not to leave it open-ended, I see we had a very constructive discussion today. I hope we can continue this intersessionally. I don't mean intersessionally. I mean online. And we can set a target date to get all your feedback. Would two weeks be okay after the meeting here? Like Monday 28? Thank you.

CHAIR SCHNEIDER: Thank you. I think we will try to set up a call with the Board two or three weeks after this meeting. And that will also have an impact on how to move this on. We may have a discussion with the Board about this. Because this is fundamental, at least in my view. And it's somehow tabled on the agenda with the Board. And I'm suggesting we spend some time on this issues, because it's at core of some of the challenges we're facing in the details further down the road. Thank you for this. And thank you for coming. And sorry to the ccNSO that we made you wait. Please come up to the table and fill the spaces that there are. And we'll be starting right away. Thank you. Okay. Thank you. For those who don't know me, my name is Thomas.

[END OF TRANSCRIPTION]