
COPENHAGEN - Board-GAC Recommendation Implementation WG Presentation to the GAC Plenary
Sunday, March 12, 2017 - 17:45 to 18:30 CET
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MARKUS KUMMER: Thank you, Thomas. Markus Kummer speaking. And good afternoon. It's a pleasure to be here. We, unfortunately, don't have to be here. We originally allotted 45 minutes.

CHAIR SCHNEIDER: We lost 13 minutes. I'm sorry.

MARKUS KUMMER: There is an important meeting on the NGO-IGO Red Cross issue at 6:30. We'll try to compress it, to the extent possible. It's a combination of the meeting we had in Helsinki. And tightness might be more of a misnomer. Actually, we seek the input of the full GAC for the BGRI. And we have done some work and you have noticed that we have improved in responding to GAC advice. We got the system in place that now allows us to be timely in our feedback.

But with that I'll give it over to Manal who has prepared a few slides. Please, Manal.

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MANAL ISMAIL: Thank you, Markus. And thank you, board members, for being with us.

Until we have the slides up, maybe I can go directly to the substance, since we already have limited time. The background information has already been repeated, I think, previously.

So, if we can go to the next slide, please.

So yeah. This is the background and what the report revealed and why we are looking into effectiveness of GAC advice.

So, if we can go to the following slide.

So we previously mapped the key findings of the report into those nine actions to address all the identified issues. And we agreed to start working on the very first three, which we hope to adopt by the end of this meeting.

So can we go to the next slide, please. The following slide. Okay.

Yes, please. Can we go to the next slide.

So first is -- what constitutes GAC advice is the first issue we have. This is a copy and paste of what we already have on the GAC Web site.

And the red edits are proposals by GAC colleagues here.

So I'll go through the changes directly. So GAC members have worked on the basis that anything the GAC submits to the Board in any written form and expects a reply to is identified by the GAC as GAC advice to the Board and constitutes the kind of advice foreseen in the bylaws.

This includes, but is not limited to, things that need implementation, follow-up on previous issues, requests for responses, requests for studies, et cetera.

And let me say that this did not come through a comment from GAC colleagues but was added in response to a discussion that took place during a GAC-GNSO conference call where GNSO colleagues were wondering why we are calling our questions to the Board, why do we call them GAC advice?

And we had to explain that anything we provide in writing to the Board, we consider GAC advice. And it was not clear to them. And that's why there was a suggestion that we add this explicitly in what constitutes GAC advice.

The GAC communique was already in the old text, but it's now in a separate bullet.

We have already -- sorry. We have already added examples in bullets four and five. So it's just the hyperlinks that's the new text.

And, finally, the very final sentence stating, "The above description of what constitutes GAC advice covers only GAC advice to ICANN board, but not GAC input to ICANN SOs and ACs."

So this is the text as it stands now.

I'll pause here for a moment to see whether we have any feedback, comments.

Iran, please.

IRAN:

Thank you, Manal. I have provided some comments. I don't know to what extent you have taken that into account.

When I see this text, it's a letter signed by the GAC chair on behalf of the GAC. You consider that the GAC advice? If the chair of the GAC asks the Board, please inform us of the action you have been taking with respect to issue A, B, C, is it advice? It is not advice.

So there is some sort of refinement. We should really distinguish and separate advice with capital A from any other things. Because advice with capital A has been specifically referred in the bylaw with certain applications, laws, procedure and so on, so forth.

So my question is that a letter signed by the chair of the GAC to the Board is not GAC advice. Seeking clarification. Although in the last paragraph, you try to clarify that. But it is some sort of inconsistency throughout the text. Thank you.

MANAL ISMAIL:

Thank you, Iran. So let me clarify this. So some letters of the GAC chair to the board are GAC advice. Maybe not all letters, but sometimes there are letters submitted on behalf of the GAC. And this is considered GAC advice. So this is what's meant by bullet 2. If there is a concrete suggestion that would make it more clear -- we can take this after hearing what Chris wants to say. Go ahead.

CHRIS DISSPAIN:

I was just going to say a concrete suggestion would be that given that what you now do in the communique is that you say, the GAC advice is or whatever it is, the words, specific words, I mean,

surely a letter that says dear whoever, this letter constitutes GAC advice solves that problem. Because you can then exactly the same way as you'd label in it the communicate. No one thinks that your thanks to the various people in your communicate are actually advice. So if you do that with the letter, then it's fine. Thanks.

MANAL ISMAIL:

Okay. And I think -- yeah, I'll give you the floor, just very quick response. Maybe -- maybe we can mention here that in practice the GAC produces various kinds of written advice with the explicit mention, for example, that this is GAC advice, if this would make it more clear. U.K., please.

UNITED KINGDOM:

Exactly. These, what you have listed here, are vehicles of communication between the GAC and the board, and those vehicles may contain within them advice, and that should be clearly stated. But a letter itself is not advice. It's a vehicle, a mechanism of communication, which may contain advice. And maybe stating that might help address sort of everyone's concerns.

MANAL ISMAIL: So shall we remove the bullets and describe the thing or just say that -- those forms -- those are different forms of providing advice. I mean, it doesn't say that every single instance of the letters is a GAC advice. So ...

Again, I think we're more or less in agreement. We can work the drafting after the meeting. So Thomas, I'm sorry, go ahead.

CHAIR SCHNEIDER: Don't apologize. Actually, if you look at the existing operating principle, if I'm not mistaken, the letters, the form of letter is also listed under advice. But, of course -- and Iran is right and you are right -- not every letter is, by definition, an advice but an advice can come by a vehicle of a letter. Whereas, for instance, in bullet point 4, principles document have been traditionally considered as advice, but maybe we are not very far -- and following what Manal has said, we are not very far from where we should want to be that we would basically learn from the past and maybe just add a bullet or add a sentence and say whenever we give advice we will declare it as such, whether it's in the communique or in the letter or in a form of principles or whatever, that we will -- somehow the word "advice" is on that paper, whatever it is, that this may be something that we could think of that it makes it clearer, I hope. Thank you.

MARKUS KUMMER: If I may suggest, I notice that we are broadly in agreement. I think it just needs some tweaking, and I would suggest taking it offline and do some tweaking after and move on to the next chapter, please, Manal.

MANAL ISMAIL: Yes, please. So can we move to the next slide, please? Yes, Kavouss.

IRAN: I think you can slightly modify the second bullet that you have number 2. Certain letters signed by the chair of GAC and send to the board under the GAC advice title. So if you have advice, it should be GAC advice and underneath of that, whatever we say is -- so we shall not say letters. Certain letters or some letters, if we can (indiscernible) or relays within that title of GAC advice. But not all letters. So we have to be very clear. Thank you.

MANAL ISMAIL: Thank you, Kavouss. Noted. I'll circulate a new text taking this into consideration. So now the clarity of GAC advice, we have already agreed on all the text in black before. There were some suggestions that is highlighted in red, so it's simply adding precise and concise to clear, stress that it -- the advice should be

consistent with the ICANN bylaws, goes without saying. And implementable elements, there was a suggestion that we add "identifying relevant actors and implementers." And finally -- and Kavouss, I think you already provided this -- stressing the necessity to ensure that all the above criteria are fully implemented when drafting GAC advice. So this is where we stand now. If we -- if no one has any comments, so --

MARKUS KUMMER:

My comment would be whether the GAC really wants to go that far in the weeds and identify relevant actors/implementers. I think that would be beneficial if the GAC left that to the organization to identify who does what there and the GAC gives the big principles and the big high-level advice and leaves it then to the organization to implement the advice.

MANAL ISMAIL:

So I see -- sorry, Thomas and then Kavouss.

CHAIR SCHNEIDER:

Thank you. Dear markers, this is a point where we have like conflicting expectations that keep repeating themselves. On the one hand, if we give a general advice on a public policy principle, we get the reply from the board, from the GNSO, well, this is too

general. We are not sure -- we don't know what to do, we don't know who is supposed to do what. We've had that discussion at least in -- in my period of the last one and a half years I don't know how many times we've had that discussion.

So when we give general advice we are not specific enough and then it's not implementable or it's not clear. When we give specific advice then it's not general enough and we should leave this to the organization. I'm provoking now a little bit, but it's somehow difficult to know what -- what we should give in terms of advice. So I would rather say, let's -- let's take these as guidelines or guidance or something that is giving a direction because what is clear, precise, and concise advice? There's no black and white. Nobody -- we don't score points on this advice is -- is ten points clearer, the next sentence is maybe only eight. So this is not a black and white thing. It's a direction that we tried to take. And I think we should -- if we can, if we think it's useful, that we can make proposals maybe on who could be or should be relevant actors but, of course, leaving it to the organization. But we somehow have to be clear what we're asked for. Either we are -- give general advice and leave it or we give concrete advice or we look at every time what is the best idea. But we should avoid conflicting expectations. Otherwise, it's difficult. Thank you.

MARKUS KUMMER: Point taken. Among friends we're of different opinions. My concern here is that it looks as if you're going into micromanagement and telling the CEO this person should do that, and that, I think, would be the wrong path to go. But you can always add some diplomatic language and say to the extent possible.

MANAL ISMAIL: Yeah, I was going to suggest to where applicable because we already have two bullets at the end that not all criteria may apply to them, like the high-level principles you already mentioned, Thomas, and other matters like the GAC commenting on frequency of ICANN meetings and things like that. So not -- not each and every criterion of this may apply to each and every GAC advice. So Chris, you have something to add, and then Kavouss. I'm sorry.

CHRIS DISSPAIN: Thank you. I had a question actually. If perhaps somebody could explain bullet point 3 to me because I don't understand. The GAC does not give non-consensus advice. So I'm not sure how that is an aspect to be considered. It's -- advice is by consensus. Now, you can say, we advise you that there isn't consensus, but that's not non-consensus advice. That's advice

that there isn't consensus. You can say, we can advise you that a number of governments are concerned about stuff, and in fact you have done that before. So I'm just not clear why that says non-consensus advice.

MANAL ISMAIL:

So maybe it was not the best way to show it, but it's just a slide. But this is just to make sure that we explicitly mention that this is a consensus advice as per the outcome from the CCWG meeting. So whether it is consensus or not, this has to be mentioned. I give you the floor, Kavouss. Go ahead.

IRAN:

I'm sorry, don't -- please kindly, don't mix consensus and non-consensus. We are not talking of that. We want to know how we take the follow-up action and this follow-up action we know -- we should know who is implementing that. I agree that we need to put some qualifiers, but not to the extent possible. Everything is possible in the world. Feasible. To the extent practicable or extent feasible and when required. You just introduced two qualifiers with that. Sometimes it's qualified that it is not feasible to have any implementer designated. So to the extent feasible or to the extent practicable, and if necessary. Sometimes may not be necessary at all. But it's not the issue of

the GAC consensus advice and GAC normal advice. I don't think that that is an issue here. Thank you.

MANAL ISMAIL: Thank you, Kavouss. Thomas, yes. Go ahead.

CHAIR SCHNEIDER: Thank you. Just think that -- and apparently that text had been agreed before. I think that refers to the -- the -- what we now have in the bylaw that we should indicate whether or not now with this -- with this distinction between advice and the different procedure for consensus advice as defined in the bylaws, if there is a request, that we should indicate whether or not an advice given by the GAC is consensus advice as defined in the bylaws or not. So that maybe we can find another formulation, but that's in answer to the request that we are asked to give this indication from the bylaws. Thank you.

MANAL ISMAIL: Thanks, Thomas. I hope this addresses your concern, Kavouss. This is what I was going to say. So if we go -- if there are no further comments, can we go to the following slide, please?

So this is the post-communicate board/GAC exchange. Again, this has been agreed before, that there was stress that the exchange should not replace GAC/board face-to-face meetings, need to ensure that the post-communicate exchanges are undertaken solely -- I don't have to go through this again. The only addition here is that it does not get into substance of the board's response to the GAC advice nor the substance of the GAC advice. So --

MARKUS KUMMER:

If I may, we'll recall we decided in Helsinki to have a first pilot project at the first such call. I think it was in August, and then we had a second call after the Hyderabad communicate that was in December. And I think we have improved on that insofar as we have provided questions in advance. So we had questions from the board side for those who were not able to be on the call and then the call helped indeed to clarify. But nevertheless, there is still a tendency on the calls that some people find it difficult not to go into the substance and want to discuss the substance itself whereas this slide makes it clear the idea is really just that there's a call for clarification.

And now I think what the next slide will say, is there need for fine-tuning the procedure. So far I think the procedure has been

very helpful and so it has allowed us to respond to the GAC advice in a timely manner.

MANAL ISMAIL: Thomas, then Kavouss.

CHAIR SCHNEIDER: Thank you. I fully see what the intention of this is, but given that for the time being I have a role in this trying to clarify things, it's slightly difficult to me how I should explain something or answer a question to the board on a GAC advice without going into explaining the substance of the GAC advice. So I understand that we should not discuss the substance, but I have to be able to explain the substance, at least to the extent that the questions are related to the substance. So I don't want to go too much into detail, but we should try not overengineer this. I think we know what we mean, we should not time discussing substance but explaining -- or discussing answers to the GAC advice but the issues, explaining, mutual and fostering mutual understanding. I think we know what we want, but maybe that phrasing is not necessarily the best one. I don't insist because I will explain the substance anyway if I'm asked whether or not that is written in the text. But just to -- to tell you.

MANAL ISMAIL: It's just not to reopen issues again on the call, so yeah, we understand each other. Yeah, please, Lousewies, please, go ahead.

LOUSEWIES VAN DER LAAN: Sorry, Lousewies Van der Laan, for those of you who haven't met me yet. I think this is going to be a process whereby every time we have one of these calls things will be clarified and the next time there is a GAC communique it will become clearer and clearer and clearer until the point where these calls are only going to take three seconds because everything will be so crystal clear that the need for these calls will be eliminated. So I think it's also a matter of starting to try to understand, and I think what's wonderful about this process is we get to know each other and, of course, we have to understand the substance in order to know what we're going to do with the advice. But I think the concern is that if, for any reason, a discussion is reopened after the GAC took a long time to find very precise wording, that the wording was there for a specific reason, then it puts the board in a very difficult position because if we have a feeling that there's a re-negotiation going on on what should be an explanatory call, then it puts -- we can't go into that obviously. And I think that's -- that's where we have to make the distinction. Substance, yes, but no reopening of a text.

MANAL ISMAIL: Exactly. Thank you. So Kavouss, very sorry to keep you waiting.

IRAN: Yes. Please kindly give the floor as a request in sequence. Don't make a distinction between the board, chair of the GAC, and GAC members. We are equal. You are the chair, you have asked. Give us in the sequence that has been asked.

I have problem with the slide 2. You put consensus versus non-consensus. It's not versus. They're two separate things. Please kindly separate that. We have suggested it to you. You did not consider our proposal. Go to the slide 2 and take it out and say GAC consensus advice and GAC advice. So --

MANAL ISMAIL: Noted, Kavouss. But I cannot take it out now so this is --

IRAN: Yeah, okay. But with respect to the substance, I agree. It must have some brief substance but not go into the whole things. But I agree with Thomas that without substance we are not just communicating anything. There is a need to be some sort of explanation to be understood. Thank you.

MANAL ISMAIL: Thank you, Kavouss. So U.K.

UNITED KINGDOM: It's just a query. When the board has its get-together and its discussion upon receiving a communique, GAC communique or GAC advice, any other document, does the board receive a copy of that actual document as well or is it sort of -- is a briefing paper prepared by sort of staff that contains the information? I just wondered if you got sort of a copy, yeah.

MANAL ISMAIL: So we have now the rest of the proposals that we got for the post-communique Board-GAC exchange. And this is basically whether to -- and this is a question to the GAC, whether we should have all GAC members on this call or whether we have a subset of the members on the call. Of course maintaining flexibility that we can invite more GAC as necessary, whether topic leads or -- or not.

So this is -- I think is a question to the GAC and a proposal from U.K. as well.

MARKUS KUMMER: Just a clarification. From the board side, it's essentially the board members of the BGRI plus, and it's open-ended. People who want to are free to join the call. But the call is the BGRI members, the board BGRI members.

MANAL ISMAIL: Kavouss.

IRAN: I am not comfortable with this, to invite topic expert. What topic expert? Do you want that the board or anyone be influenced or biased by the discussion of topic expert?

The GAC advice is quite clear. The only person who is responsible for that is GAC chair. But I don't understand what -- who is the topic expert that you give such authority to go and interpret the GAC advice in a way that he understands? He may have always goodwill. So I'm not in favor of that and I don't want to retain that.

Please delete that. And the only responsibility, the GAC chair who represent the GAC. If he does the work, kindly, we admire him. He doesn't work kindly, then we request him to clarify why he has not done that.

So I don't agree with that. I'm sorry; delete that.

MANAL ISMAIL:

Okay. Just -- The -- The exact drafting is going to be taken care of, as you mentioned. But now the question is such calls, should they be attended by the full GAC membership or by the GAC leadership team. And the GAC leadership team, if there is going to be a discussion on a specific topic that need to have specific GAC member on the call, this GAC member could be invited to the call as well.

So Kavouss.

IRAN:

Only by GAC chair. If GAC chair requires some supporting material, he consult anyone that he deems appropriate. Leaders of the meeting or anyone. But we don't want to mix-up responsibilities. The only person responsible to the GAC is GAC chair, which is democratically elected and is accountable to GAC. But if he deems appropriate to consult some other people on his own responsibility, we leave it to him to decide. Or her, in future, in the event maybe distinguished lady become chair of the GAC.

So that is that. So we don't want this intermediate. We don't want the GAC leadership, too. They don't have such authority. They don't have such mandate.

Thank you.

MANAL ISMAIL: Then we've got to hear from the GAC chair.

CHAIR SCHNEIDER: No, actually, you should hear from other members, too. And my dear friend from Iran, we take note that this is your position, Iran's position. So if you request or propose to delete this, you can't say, "Please delete this." You can say, "I suggest to delete this," because other GAC members -- this is not about me here. Other GAC members may have other views.

So it's very good that we hear your proposals or your views, but I would invite others to participate in this discussion as well because this is not a trial or (indiscernible). It should actually be including everyone.

If I may just use 30 seconds. First of all, from my side, it is not the intention that the GAC chair necessarily needs to

monopolize the discussion. This is a decision that the GAC can take.

I personally would welcome it that the GAC chair, if somebody is supposed to speak on behalf of the GAC, then it should be the GAC chair.

If others are on the call to add additional information as vice chairs or as national representatives, clearly, in full awareness of the difference between when the GAC chair is saying something, when others are saying something, I personally as the GAC chair would have no problem with others being on the call as well. But this is up for the GAC to decide how they want to handle these calls.

And I have a question. These calls are public anyway, they are recorded, they are available. People can follow. So we need to make a distinction between can -- who can listen into the call and who is allowed it speak. I think that is an important distinction, distinction to make. But I would really urge the other GAC members as well to give their views because we are a collective entity where everybody should be able to make his or her view heard.

Thank you.

MANAL ISMAIL: Thank you, Thomas. We have Mark and then Kavouss.

MARK CARVELL: Yes, thank you, Manal. I just wanted to add one point that I think is important to bear in mind; that prior to the call there will be notification by the board of the questions for clarification. So those -- that prior notification will allow all the GAC members to be aware of what the questions are to be tabled for the call, in a window ahead of the call.

So my proposal was that the call primarily would be involving the GAC leadership, but the GAC and the entire committee will be aware of the questions. And there will be some flexibility to ensure that if there was a question specific to a particular topic where there has been a topic lead on the GAC involved, that we may facilitate the ease of answering the question for clarification, we involve that topic lead in the call.

So we have some flexibility in terms of participation to ensure the call is as efficient as possible.

I hope that's helpful. Thank you.

MANAL ISMAIL: Thank you, Mark.

Kavouss.

IRAN:

Let me explain the position. Yes, Thomas, I agree with you. I said that it should be deleted, so which is subject to judgment of colleagues that say no, they don't want.

My problem is the following. GAC advice, sometimes up to 2:00 in the morning, is based on consensus. If any of these discussions of team leaders break that consensus, it is terrifying. It must be -- it may be the case that someone going and try to break that consensus with his views, which may be helpful for them, himself, but may break the consensus. It is a very, very sensitive issue that that person would not be allowed to break that consensus by the explanations that requires.

So we want to have one person who is responsible. If he wants to consult others, do it under her own or his own responsibility, but maintain the consensus.

Thank you.

MANAL ISMAIL:

Thank you, Kavouss. And I think we can conclude this internally. It's an internal GAC discussion, and the board members need to

leave at 6:30 sharp. So we have one minute to go to the next slide, please.

MARKUS KUMMER:

And may -- may I add that the next call is around the corner. We will have a commitment to have it within more or less five weeks from now. I mean, we said four weeks after the communique is published. So up to then, you will have to come up with an agreement on how you handle it. But I would say also the first two calls went actually rather well, and they did deliver what we wanted to get out of them.

Just we have a "What Next" slide which is up there. And I do apologize, I also will have to leave. What we suggest, Manal and I, that we will have, as the BGRI, have a call ahead of Johannesburg to discuss all the review issues and also with staff. And then we have a presentation from ICANN staff how they are reviewing and assessing all the GAC advice; that we have a broader presentation on that in Johannesburg.

But with that I thank you, and I apologize.

MANAL ISMAIL:

Thank you to board members. And, Thomas.

CHAIR SCHNEIDER: Since I'm walking faster than Markus, I allow myself to run after you a little later.

Just a final point. I think, please, let's not overengineer this. We shouldn't talk about process too much unless there are problems with the process. And as Markus has said, I think the first calls went fairly well.

Of course Iran is absolutely right. We should not confuse the board by giving diverging messages on a consensus that is not helpful.

So, Iran, your point is extremely important and is absolutely taken. But if you look at, for instance, the discussion on two-character codes where you have different views or where we agree on some things but maybe on others, it may, in particular cases, actually be useful to hear some of the flavors from different people in the board. And I think we should leave this up on a case-by-case basis. I think we are experienced enough to manage this and, hence, we are fully aware of your point. It's absolutely relevant what you say but I would not go too much into detail in trying to regulate this in ex ante because I don't think that makes too much sense.

Thank you very much.

MANAL ISMAIL:

Thank you, Thomas. Thanks to board members, and apologies for the late start and apologies to everyone for the speed we were rushing through the slides, but I think we managed to do some progress at the end.

So thank you, everyone. And I -- I look forward to continuing the discussion intersessional. And I thank CTU, Iran, U.K., Venezuela, and India for their substantial contribution and comments on this.

Thank you.

[END OF TRANSCRIPT]