
JOHANNESBURG – GAC Communique Drafting Session (2)

Wednesday, June 28, 2017 – 15:15 to 16:45 JNB

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CHAIR SCHNEIDER: Thank you, all. We've got all the contributions and Tom has just sent the latest version that is trying to take everything in out to you. So looking at the time, we have 20 minutes left. So what is the best use of this? Do we want to give you the 20 minutes to read it yourself and then resume at 6:30 or what else should we do? Iran.

IRAN: Thank you, Thomas. Whatever way you wish, but I suggest that after any of the two options, we go first to the follow-up action or whatever on the previous advice, which is important to be finished. And then go to the rest which is more administrative and less sensitive.

CHAIR SCHNEIDER: Actually, there are now some elements of advice proposed. So maybe we let Tom go through these elements of advice and then to the follow-up action of previous advice. Maybe we use the time to present things to you the way they are now in the text.

So, Tom, please, go ahead. Thank you.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

TOM DALE:

Thank you, Thomas.

The first section on GAC consensus advice to the board in this draft deals with IGO protections. This was text that was submitted by the representative of WIPO, I believe, after consultation with a number of interested GAC members.

It reads, "IGO protections. The GAC reiterates its advice that IGO access to a curative dispute resolution mechanism should, one, be modeled on but separate from the existing UDRP; two, provide standing based on IGO's status as public intergovernmental institutions; and, three, respect IGOs' jurisdictional status by facilitating appeals exclusively through arbitration.

"The GAC expresses concern that a GNSO working group has foreshadowed that it may deliver recommendations which substantially differ from GAC advice and calls on the board to ensure that such recommendations adequately reflect input and expertise provided by IGOs."

The rationale given for the advice, "This advice aligns with the view of governments that IGOs perform important public functions for citizens worldwide and that protecting their identities in the DNS serves to minimize the potential for consumer harm ."

CHAIR SCHNEIDER:

We can use a little bit of time to get a sense of whether you think this is fine or not. But I don't think we should spend too much time on it

now. So your initial feedback on this, please. And Brian from WIPO, is he here in case we have questions? Iran.

IRAN:

Thank you, Chair. We should make every effort to avoid any sort of conflict or let's just say difficulty with others. What we mean by "has foreshadowed that it may deliver recommendation"? How can we judge it may or may not deliver? What is the rationale behind this? I'm not objecting. I'm just asking. I put myself as GNSO and say, Why you have such a judgment? I have not yet made anything. Let's just be careful in the language and the text that we use. Thank you.

CHAIR SCHNEIDER:

Thank you, Iran.

If I remember -- apparently Brian is not here right now. Maybe he'll come back. Hopefully he will come back -- from a previous statement when had made when we were discussing this, he alluded to expressions made, I think, by the chair or one of the co-chairs of that working group that they themselves assessed that they will -- their recommendations will substantially differ. Question is: Should we reflect this in the text, or should we just maybe say the GAC calls on the board to ensure that the recommendations adequately reflect input and expertise provided for the IGO and delete the middle part? That would be something we could think about. Iran.

IRAN: Thank you. That is good. Perhaps we should replace "expressed concerns that GAC noted that" because "noted that" means -- "expressed concerns" means it has been done. It has not yet been done. So we have to slightly modify that. Thank you.

CHAIR SCHNEIDER: Brian is just coming in so let's give him seven and a half seconds to sit down.

Brian, we are discussing your proposed text about IGOs. And there was a question raised from Iran whether or not it was the right thing to say that we have concerns that the GNSO working group has foreshadowed that it may deliver recommendations which substantially are different and so on and so forth. And I was reflecting your -- your statement hopefully correctly that you made that that was an expression by one of the co-chairs of the working group.

The question is: Should we refer to this or should we just limit ourselves to call on the board that such recommendations should adequately reflect? So, Brian, if you want to quickly come back to this. Thank you.

WIPO: Thank you, Chair. I think the latter formulation would be fine. So I leave that to your discretion.

CHAIR SCHNEIDER: Thank you. U.K.

UNITED KINGDOM: Thank you. Just a suggestion on vocabulary, maybe instead of "foreshadowed," "indicated that it will likely deliver or something."

CHAIR SCHNEIDER: Thank you.

UNITED KINGDOM: "Indicated and will likely deliver."

CHAIR SCHNEIDER: Sorry, Mark. Are these meetings public where he said this, so this is no secret? He said this is on the record. So then we could say -- maybe follow the lines of what the U.K. is proposing, the GAC noted that a GNSO working group has indicated" -- "that the GNSO working group would probably be" -- "has indicated that it may deliver" and so on and so forth, to use a word that is maybe less -- or maybe simpler.

Maybe let's leave it at this just as -- and the rest of the text is fine? Do I get the sense that nobody has a problem with the rest of this text?

So let's note this, because we will have another round after the -- after the priorities session anyway, so let's try and go through and identify elements where we would need to look at it more closely.

TOM DALE: Thank you, Thomas. The next section of -- and the only other proposed text concerning GAC advice to the board was submitted and circulated to the GAC earlier by Peru. It reads as follows: "Geographic names. Regarding the use of geographic names, the GAC reaffirms its position as stated in the following documents and asks the board to stand by the position assumed by the board in each case," and then there is the listing of those previous advices and inputs from the GAC.

The GAC principles and guidelines on ccTLDs from 2005, the 2007 GAC principles on gTLDs, the GAC communiqués from Nairobi 2010, Durban 2013, and Helsinki 2016 on three-letter codes.

Thank you.

A rationale was not submitted yet with the text.

CHAIR SCHNEIDER: Thank you. So this is a proposal that was -- Peru indicated earlier that --

UNKNOWN SPEAKER: Based on Tom's work, obviously.

CHAIR SCHNEIDER: Based on the collection of advice.
Your views on this? United States?

UNITED STATES: Thanks. I'm struggling with the word "reaffirms," only because that sounds like we had a conversation and we all actively reconfirmed something. I'm perfectly fine with recognizing or bringing it to the board's attention. I just don't feel that I'm in a position to reaffirm all of these at this point in time since we haven't had discussion and I haven't read them all. Thank you.

CHAIR SCHNEIDER: Thank you. I think that's a fair point.

So instead of "reaffirms," we would say -- I don't know. What? Would "recalls" be something that for a native speaker is a factual thing?

Okay. Other comments?

U.S.?

UNITED STATES: Sorry. I'm losing my train of thought.

Also, it's not clear to me what -- after "the following documents and ask the board to stand by the position assumed by the board in each case." It's not clear to me what that means. If there could be some explanation on that point.

CHAIR SCHNEIDER: Thank you. Peru, would you want to explain?

PERU: May I speak in Spanish, please?

I reviewed the document prepared by Tom and there was a following piece of work done. It was very interesting. And unfortunately, many of the agreements made within the GAC and reflected on the communiques are not part of the collective memory, so we find ourselves in this position of repeating discussions around the same issues and we need to find a way to solve that and I'm sure that we will find an appropriate formula. But for the time being, given the status of the discussions and the debates on geographic names, I believe it is important to take advantage of the work prepared by Tom and remind the board of the fact that they have already adopted a certain position on each of these issues on previous occasions and that actually the work on that is going to be carried out in the different working groups among the different parts of the community are results that are going to be added to conclusions that have already been made and which agreements have already been made, and that is the rationale.

CHAIR SCHNEIDER: Thank you, Peru. Iran?

IRAN: Thank you, Chair. What Peru said is not to stand by. "Stand by" has other meaning. "To maintain," perhaps you want to say? "To retain," perhaps you want to say? "Not to change," perhaps? But not "to stand by." "Stand by" means to put to the side for the time being.

PERU: Thank God you have good English and you can interpret my bad English.

CHAIR SCHNEIDER: U.S.?

UNITED STATES: Thank you. That clarification was very helpful.

And I think this ties to my original point. I don't know -- I'm not comfortable having GAC advice on something that I really haven't had the chance to think through or discuss amongst ourselves.

Again, I'm -- I am not completely familiar with all of these communiques and guidelines. I would be -- I would be fine maybe having a period immediately after "documents," but asking the board to do something associated with these documents, I'm just not particularly comfortable having that included.

Thank you.

CHAIR SCHNEIDER: Thank you. Peru?

PERU: I will speak in Spanish again.

I understand the position of the U.S. representative but I don't support it, and I don't support her position because these are not new

documents, these are not new decisions. These are all decisions reached by consensus. The U.S. delegation agreed to those conclusions and decisions. Reminding the board of these decisions that were made on the basis of consensus and that were reflected on successive communiqués and reminding the board that they made decisions on the basis of those recommendations is extremely important.

I think that things don't change because we have other representatives. We are not representing people, we are representing countries, and our countries, as such, have been part of that consensus.

So I don't think we can accept that -- the fact that a new delegate is not familiar with documents and cannot support this. Thank you.

CHAIR SCHNEIDER:

We have no -- we just note that we need to continue to work on this after the next session and we'll come back to it, so I urge you to keep your comments for later because we need to move on.

We have seven minutes left to go through for the rest.

We'd just note that there is not yet -- not everybody's feeling fine yet with this, if that's okay.

So now comes the section on "Follow-Up on Previous Advice and Other Issues."

Tom?

TOM DALE:

Thank you, Thomas. To be clear for this heading, Section 5 of the communique, is a revised one from previous communiques, so it reads "Follow-Up on Previous Advice and Other Issues."

The first item is Required "Follow-Up Actions on the GAC Previous Advices on GAC Copenhagen Communique Number Advice."

It reads, "1. With respect to the two-character country territory codes at the second level, GAC Copenhagen communique advice of the GAC (a) endorses the decision made by the ICANN board directing the president and CEO of ICANN or his designees to take necessary actions for satisfactory resolution of the concerns raised in that advice; and (b), welcomes the initiative taken by president and CEO of ICANN to support the creation of a task force to resolve the concerns mentioned in the above communique. In this regard, the GAC suggests that the mandate and working methods of the above-mentioned task force need to be determined in consultation with GAC leadership and GAC members and other interested parties when required."

And perhaps Olga could clarify the meaning of the yellow highlighting. Thank you.

ARGENTINA:

Thank you, Tom. The yellow is that if we don't want to go into details how the task force would be formed, we can delete that part.

If not, we can keep it. That's the yellow.

CHAIR SCHNEIDER: Let me quickly try and get some feedback on how you feel about this.

So it's not in the "Advice" section anymore. It's in "Follow-Up to Previous Advice." Iran, thank you.

IRAN: Further expansion from what Olga has given.

We have heard with respect to the task force that somebody mentioned that we don't know what a task force is, we don't know its mandate, we don't know its working method. That is why we put this text in yellow. If that delegation or that member does not want that, we are happy to delete that. That is just for that purpose. Thank you.

CHAIR SCHNEIDER: Okay. European Commission.

EUROPEAN COMMISSION: Thank you, Chair. This is Cristina, European Commission.

Just to clarify that I also circulated some text on this, but just because I saw that this issue was also dealt in the GAC advice part, so I might have misunderstood that this has now moved out of the GAC advice. In any case, my text was just an attempt to offer some text which the GAC might consider to use maybe in this part. Thank you.

CHAIR SCHNEIDER: Thank you. But are we generally okay with this text and we just need to basically focus on whether or not we would want to have the yellow part in addition or not, or are there any basic -- more basic problems with the text?

Hungary and U.K.

HUNGARY: Generally, I do agree with it, except for the word "endorses." It seems to me a bit too -- we may take note of, we can acknowledge, but "endorse" is something above the board.

CHAIR SCHNEIDER: U.K. and then Iran.

UNITED KINGDOM: Thanks. I'm still a bit confused in (b), "the initiative taken by president and CEO to support." What is -- what is the initiative? Is the initiative referring to the task force? The English is -- the sentence is slightly odd, isn't it. I mean, we refer to an initiative and then the president's support for that initiative, but not the initiative to support.

Sorry, I -- I'm -- the language can be a bit confusing, I think, as drafted.
Thank you.

CHAIR SCHNEIDER: Iran.

IRAN: The initial text that was proposed was "to create" but not to support the creation. "To create."

CHAIR SCHNEIDER: So are we fine with "to create" or --

IRAN: Then we say "welcome the initiative taken by the president and CEO of the ICANN to create a task force."

CHAIR SCHNEIDER: So "initiative to create" so we don't say whether it's already created or not, so --

IRAN: Yeah. As mentioned today, we just wanted to reply to the people -- we just informed today by the CEO yes, it's being created. Not yet created, yeah.

CHAIR SCHNEIDER: We have to move on, so please make up your minds. I didn't hear a fundamental opposition to the text but we may have to spend a little bit of time going through it in more detail after the next session.

Okay. May I ask you to move on, Tom? Yes.

TOM DALE: Thank you. Thomas. The next section is new text submitted by the United Kingdom concerning Red Cross and Red Crescent protections.

It reads: "The GAC welcomed the GNSO's reconvening of the protection of IGO/INGO identifiers in all gTLDs PDP working group in order to re-examination the recommendations on protections for Red Cross and Red Crescent identifiers following previous GAC advice. GAC representatives look forward to contributing to its work accordingly."

CHAIR SCHNEIDER: Initial reactions?

Iran.

IRAN: Thank you, Chairman. What we discussed in our colleagues when we say "previous GAC advice," we may have several advices and I have noted that not intentionally, accidentally, some of this advice may not exactly be the same and couldn't it refer to the latest advice that we have prepared, if it is more complete, or you want to put all advices?

So I just leave it to you to refer to perhaps the most updated advice that we have given. Thank you.

CHAIR SCHNEIDER: I have no strong feelings. Who has? Olof?

OLOF NORDLING: The latest piece on that is, indeed, in the Copenhagen communique. 6.1, "Protection of Red Cross and Red Crescent Designations and Identifiers," and that's reaffirming previous GAC advice for permanent reservation of the Red Cross and Red Crescent designations.

[Laughter]

CHAIR SCHNEIDER: Roll over Beethoven.

Okay. U.K. fine with this?

UNITED KINGDOM: Well, I -- I referred to all the previous advice because it's all been consistent. You know, we've been hammering away for several --

CHAIR SCHNEIDER: So the answer is yes, if I may cut you short? Okay. Thank you.

Okay. Next one.

TOM DALE: The next section, to the best of my knowledge, is unchanged. The IDS and data protection rules, I don't believe there were any changes to it, so I'll move on.

Geographic names.

No further suggestions were received but it was the subject of some discussion. It reads now, "GAC members welcomed and participated

in the cross-community sessions held at ICANN 59 on geographic names at the top level. The GAC considers that any further process of policy review and development should (a) allow all stakeholder groups to participate equally (b) take into account the history and rationale of the arrangements currently in place and (c) apply an evidence-based policy approach to any proposals for future arrangements."

As I said, there was some discussion but I didn't receive specific requests for text, so...

CHAIR SCHNEIDER: Iran.

IRAN: Still if I put myself on the other side, I would have said, "Have you not been allowed and you want to be allowed now, given evidence you have not been allowed?" So just look at that one.

Maybe "to continue to allow" or something like this, but not "to allow." That means you have not allowed us up to now, and you have to have proof on that. I know those people are very critical people. Sometimes they take the issue up to the ombudsman saying that this is allegations. Thank you.

CHAIR SCHNEIDER: Well, Kavouss, I think this is -- if we go back also to 2012, we have been working differently with the GNSO than now, so I wouldn't call this as

an interpretation for backwards, but it's a forward-looking claim, and -
- so -- but we have no time to discuss this in detail. We note that this
needs further discussion as well and we move on.

TOM DALE:

Thank you, Thomas. The next section dealing with ICANN priorities, of
course we'll reflect anything the GAC wishes to say about the session
that is beginning in 13 minutes' time.

The section on CC review team is unchanged.

The section dealing with underserved regions and public service -- and
public safety working group's capacity development workshops reads:
"The GAC requests ICANN to continue providing necessary resources
for additional targeted capacity development programs with regional,
national, and thematic focus and the working group has developed a
tentative calendar of future capacity development initiatives for the
next two years," with a hyperlink. I don't think there's any additional
material received, but thank you.

CHAIR SCHNEIDER:

Thank you. Given that this is not -- just a stylistic comment. Given that
this is now not under the "Advice" section, we may think about
changing the word "requests ICANN" because that looks like an advice
to "expects ICANN," which is like an assumption that we think that this
is basically natural to continue. That would be something --

I see people nodding. Any expressions of whether you think that this is -- yes, Cook Islands.

COOK ISLANDS:

Thank you, Chair. I apologize for the late email. We actually just sent out an email to request we move this whole section to the general section of the communique and add it to -- under the current text for the underserved regions, and we have cut down the text as requested by Olof. Thank you.

CHAIR SCHNEIDER:

Thank you. So we'll take this, what you sent us, the last version, and put it where you propose because that may make sense, and look at it in the next round. Okay.

Then there's --

TOM DALE:

The last section -- the section on new gTLDs policy issues has not changed.

And the final part of this section is new text prepared by the chair and myself.

It says -- responding to a specific request from Brazil and some other delegations concerning a recurring theme during the meeting about challenges for engagement, it reads: "Challenges for inclusive and meaningful engagement with ICANN work. The GAC expressed

concerns to the board and other parts of the ICANN community that there are increasing challenges to effective and meaningful GAC participation in a range of ICANN activities, including important policy development work. Some of these are structural and derived from the GAC's specific advisory role to the board set out in the bylaws and the lack of any mandate and of adequate structures and resources to participate in policy development. Other challenges include the amount of multiple parallel work streams and an entry threshold that may be too high for many stakeholders with limited resources to follow, understand, and meaningfully participate in all relevant work streams. This is, in the GAC's view, increasingly becoming a challenge to the inclusivity of ICANN and its processes.

Elements for improvement of the situation could be the setting of priorities among different work streams in the ICANN framework on the one hand and the provision of documentation that would allow stakeholders with limited resources to easier understand and assess the issues and relevance of work streams and that would facilitate their active participation."

CHAIR SCHNEIDER:

As we are going to discuss this precisely in the next session, I think we may actually look at this after the experience of the next session, which is about particularly this issue focusing on prioritization.

Have we gone through everything? And it's actually ten to 5:00 so we need to stop here. We have tried to get a sense of where we are. We

note that there is a number of issues where we still will need to work on starting at some point after 6:30, so please don't go away.

Please also stay here and make your voices heard in the next session. I'm not sure whether it's taking place here because no one else is coming in. Are you sure it is in this room, the priority session? Let's verify. In any case, I think it makes sense to stop now.

Do you want to see this -- we did some changes. Should Tom send this out to you as the most recent version? Yes, Iran.

IRAN:

Thank you, Chair. The language used in some of these saying that "continue providing," I would like to do the same language in (a), "to continue allowing," rather than to allow, is more friendly rather than "to allow." "To continue allowing" has the same meaning.

CHAIR SCHNEIDER:

Let's look at this as a whole when we are back. Okay. Now, people seem to come in. So maybe we -- this is definitely the right thing. So let us -- yeah. Free some spaces also for others in the first rows. And we'll get here more or less immediately after the next session. Or do you want to have another break that will just make us work longer into the evening?

UNKNOWN SPEAKER:

(Off microphone.)

CHAIR SCHNEIDER: It's 6:30.

UNKNOWN SPEAKER: (Off microphone.)

CHAIR SCHNEIDER: Yeah.

[END OF TRANSCRIPTION]