
MARRAKECH - GAC: Communique Drafting (2 of 3)
Wednesday, June 26, 2019 - 15:15 to 16:45 WET
ICANN65 | Marrakech, Morocco

MANAL ISMAIL, GAC CHAIR: Okay. We're ready to start again if you can please take your seats [non-English word or phrase]. I suggest that we start the discussion now with the GAC advice to the Board and follow up with GAC advice to the Board, so we can get to the substantial matters before everyone is very tired. On consensus GAC advice to the Board, the text reads the following items of advice from the GAC to the Board have been reached on the basis of consensus as defined in the ICANN bylaws. One is the .Amazon. [reading] [refer to slide]. The rationale, in 2014 [reading] and there is reference to Board resolution 2014. Reference to the relevant Board resolution.

GAC advice from Abu Dhabi ICANN60 recognized the need to find a mutually acceptable solution and called for the continuation of that process, admitted under the GAC [reading] [refer to slide] the GAC's response to the Board's request regarding the GAC's advice that the Amazon applications should not proceed, end quote, [reading]. So any comments on the GAC advice to the Board first? I have Iran and US.

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.

KAVOUSS ARASTEH: In the GAC advice we have [indiscernible] application, is it application or applications? Single or plural? And the second is totally editorial .Amazon with upper case, sometimes .Amazon lower case, is there any difference case between the two?

MANAL ISMAIL, GAC CHAIR: On the application I think its applications because it's more than one string, it's the [indiscernible] one and I believe two other IDN one. But thank you and the upper and lower case has been fixed. Thank you for pointing it out as well. Any other comments? Okay. Moving on to the rationale, any comments on the rationale? US, please.

ASHLEY HEINEMAN: Thank you, Chair. Would like to make comments with respect to rationale, as well as a number of comments made during the session with the Board earlier today. Just to supplement the record here and perhaps even correct it, there is references here to the March 15th communication from the GAC to the Board with respect to the Abu Dhabi advice and request is to whether or not the GAC had any additional information to provide and it's been noted earlier today and in this text that not provide additional information, which I agree which is what we transmitted but been articulated this assumption that this process would proceed with the baseline Durban advice and when going over this in Abu Dhabi, we were clear to say this was not a reaffirmation of Durban

advice, at the time the Durban advice came out the US said our abstentions would not prejudice our position in the future on the subject, [reading] the United States can no longer support a GAC [reading] also we would like to point out that in the Abu Dhabi advice it was clear at least to the United States that that advice was intended to work towards with the view to work towards a mutually acceptable solution, not our understanding there was a requirement to reach a mutually acceptable understanding.

Also with respect to moving forward now, we are a bit concerned that the GAC is attempting to have consensus advice on an issue currently in process in which ICANN has in place and currently being exercised most notably in the request for reconsideration. We don't -- the US does not think appropriate at this time to interfere as the process plays out. It has been a long, complicated process and by inserting GAC advice at this time would further complicate that and threatens the integrity of the ICANN process, and wouldn't want to set a precedent to tinker with [indiscernible] procedure, I would save further comments for later but for those reasons United States cannot support this advice as drafted.

MANAL ISMAIL, GAC CHAIR: So the comments are mainly on the rationale or also the advice itself?

ASHLEY HEINEMAN: The rationale I think has a number of inaccuracies with respect to how the US has positioned itself over the years, and also because of that we cannot support the advice.

MANAL ISMAIL, GAC CHAIR: Okay. So is it possible that we fix the rationale or fine tune it to reflect the accurate? I have the US and then --

ASHLEY HEINEMAN: That was one portion of my comment, the second was it's not appropriate to have advice at this time because a process underway, so not just a matter of correcting the rationale.

MANAL ISMAIL, GAC CHAIR: Sorry, I overlooked it, thank you. So Brazil?

BRAZIL: Thank you, Madame Chair, clearly [indiscernible] whether the Board can [indiscernible] with GAC advice and different views as to the meaning [indiscernible] quite apparent and clear during the interactions we had with the Board where several members expressed views that the Board [indiscernible] comply with GAC advice, express their interpretation of GAC advice on the .Amazon, the Board reacted, expressing alternative views, we had previously put to the Board a written question precisely asking

the Board to explain what were the reasons behind its decisions and how those decisions would justify compliance with GAC advice and now we hear the US expressing their position on the question aligning themselves with the ICANN Board which is a legitimate thing to do. Brazil considers since this is an issue of important to the GAC as highlighted in the discussions taken place so far and in the presence of a clear diverge, it would be the [indiscernible] to ask the Board to provide in writing explanation supporting their views. The US obviously free if it wishes to provide a written explanation but won't ask them to, our role is to [indiscernible] the ICANN Board and provide public policy advice on activities of interest to the governments and Internet community. So it is our responsibility I understand if we can't agree to state that there wasn't violation of GAC advice to ask the Board to give their explanation and we could proceed along the same lines as we have been doing with the two-character country codes, which to my understanding would be a useful thing to do.

MANAL ISMAIL, GAC CHAIR: So the suggestion if we are not able to agree on the GAC advice that we reiterate our question posed earlier to the Board?

THIAGO JARDIM: The suggestion is for the GAC to kick the ball in a certain direction which will help the GAC to assess whether there was or was not

violation of GAC advice since we are here in the presence of a situation where several GAC members consider there was a violation of GAC advice and might be the US who disagrees and the Board as such. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. Okay.

UNIDENTIFIED SPEAKER: I think it would be useful to explain the condition text of the Board request because I can see in the third paragraph that the Board request regarding the GAC advice [indiscernible] proceed, I just want to say that between the ICANN GAC advice, and [indiscernible] decision, this is why the Board asked the GAC if there is any information to provide. Because I mean, that's the aim of this question. So I think.

I think it's important to mention there was an IRP [indiscernible] it would be fair to have the full context of the question from the Board to the GAC.

MANAL ISMAIL, GAC CHAIR: Thank you for the clarification. Brazil and Luxembourg. Brazil.

BRAZIL: Just wondering if it would be appropriate for someone from the staff to intervene [indiscernible] perhaps the title of the GAC

communique should become GAC and ICANN org communique.
Thank you.

UNIDENTIFIED SPEAKER: Sorry, just providing facts, not trying to intervene.

MANAL ISMAIL, GAC CHAIR: Thank you, Laurent and Brazil, I thought clarification might be useful and we have referenced Nigel in an earlier discussion during the GAC communique but again, I take your point so thank you.

BRAZIL: The point was someone from ICANN staff was suggesting text added to the rationale of the communique if the GAC doesn't need [indiscernible] because ICANN org already knows all the facts behind our advice then I don't see the point of us providing advice at all or the point of ICANN Board or organization asking to us provide rationales to our advice. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. I had a request for a floor.

UNIDENTIFIED SPEAKER: For me it's just to repeat that we had accepted -- the GAC had accepted to put in place an IRP instrument that we have been following and after that it gave place to Abu Dhabi advice, the GAC advised in Abu Dhabi that we should work through a mutually acceptable solution, and we are currently in this process following that advice and in my opinion this shouldn't be new advice. Thank you.

MANAL ISMAIL, GAC CHAIR: So this is a suggestion that we move this to follow up to previous GAC advice, is it?

UNIDENTIFIED SPEAKER: I'm not sure on this but no new advice for the moment being.

MANAL ISMAIL, GAC CHAIR: Thank you. I have Iran next and I think there is a question in principle that was also raised by the US, whether -- I'm just trying, before we get into the details, there is a point raised that there is reconsideration request under discussion and that in principle they are opposing to GAC advice, and there are other views of course but let me give Iran the floor first and then we try to move on.

KAVOUSS ARASTEH: Thank you, Manal. I think we should try to reconcile the differences, difficulties. In my personal view we don't need a new GAC advice. Nothing wrong with that [indiscernible] follow previously GAC advice [indiscernible] follow-up actions and the follow-up does not require any rationale at all (audio interference) follow-up actions, follow-up GAC previous advice and what meant here factual situations. The GAC advice [indiscernible] mutually acceptable solution and we considered that mutually acceptable solutions. If somebody opposing to this [indiscernible] where is that mutually acceptable solutions? So [indiscernible] people put their own positions, we should [indiscernible] and figure (audio interference) (distorted audio) we should follow our previous GAC advice saying that mutually acceptable solution was without any reservation of any country [indiscernible] does not exist. So I don't think there is room that we start to argue and bring in what we wanted to say -- I don't think that's a good way to proceed. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss for trying to provide a constructive way forward. Is it okay to move this to follow up on previous GAC advice as has been suggested by a few speakers now?

BRAZIL: I think it would be appropriate first to consider Brazil's alternative, which was to turn this GAC advice into a question to the ICANN Board so they would have the opportunity, this would be what we would ask them, to plain in writing what were the reasons they consider to comply with GAC advice, this is what we [indiscernible] for the ICANN Board session this morning, I don't think there was an answer provided specifically to the question or if there was, I would like to see it in writing. And again, there is clearly a divergent view of GAC members and that the Board overlooked the roles and responsibilities of governments over [indiscernible] bylaws and there is disagreement with that. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Brazil. So any objections or agreements to changing the advice language to a question to the Board along the lines expressed by Brazil? And I see Iran.

KAVOUSS ARASTEH: Thank you. There is no objection to that. When we put it under the follow up of previous advice it could be a question or anything. The only thing I suggest to the distinguished colleague from Brazil, not to use a strong word as violation, has not been considered, followed, and so on, so forth, try to walk a little bit between the language and so on, not saying violating, it's a little

bit -- [indiscernible] but I have no question, put it on the previous GAC advice follow-up and if that would be termed as a question or statement, both are correct. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you Kavouss, for the friendly suggestion. Argentina next.

OLGA CAVALLI: We found value in the proposal made by Brazil, because it gives the Board perhaps a chance to give a thought about the answer to the question, so yes, we agree with that proposal.

MANAL ISMAIL, GAC CHAIR: So there is a proposal now that is gaining momentum on changing this GAC advice into a question to the Board. US.

ASHLEY HEINEMAN: Thank you, and I appreciate this conversation. I think before I can say I accept or object to the recommendation, I would need to see text first because as of now my concerns still stand with respect to the process implications, so perhaps we can review this again once we have something to react to. Thank you.

MANAL ISMAIL, GAC CHAIR: Fair point. I have European Commission and Iran.

EUROPEAN COMMISSION: Yes, we would support moving the sections to follow up part and asking the question to the Board. I think the language should also be revised a bit. If you consider the process, there have been good things done over the years, it's not like if the parties have not spoken, like no situation took place, maybe in the end there is no mutually accepted solution but there has been discussion, there has been [indiscernible] so I think we should recognize that.

MANAL ISMAIL, GAC CHAIR: Thank you, European Commission. Iran.

KAVOUSS ARASTEH: Thank you, I think as I mentioned, I have no problem to convert that into the questions but the issue is that it will be better fitted in this question is under the title of follow-up to previous GAC advice not stand alone question but [indiscernible] standalone question and you as a GAC chair see in the operating principle we have this opportunity to have the communications, to have questions, advice, notify difficulty either with that one but I thought that perhaps it's better fitted to be follow-up actions on the previous GAC advice and raising the question, but if not agreed by everybody, I have no problem either way.

MANAL ISMAIL, GAC CHAIR: I can see agreement so far changing the language to a question, moving it to follow up to GAC advice to the section follow-up to GAC advice, acknowledging efforts also that has been exerted in good faith. But there is a fair request to see the text also, so do you have something ready on your mind or, Brazil, or you would like to have some time to provide us with the exact question? You need time. Fair point.

KAVOUSS ARASTEH: [indiscernible] clearly that when we had to sign up on the jurisdiction, there was a suggestion to recognize the efforts. I am not in favor of recognizing the effort, [indiscernible] how we can say thank you very much we recognize you have done everything and [indiscernible] not been followed, so not in agreement to make any recognition of any actions in the written form, just convert that in too questions, otherwise it's still we have plenty of discussion. So I followed your advice to put it as a question form under the follow-up GAC advice but not putting it recognizing part and recognize all effort you have done [indiscernible] don't agree with that, [indiscernible] have to send that, if [indiscernible] agree not to put anything at all.

MANAL ISMAIL, GAC CHAIR: Thank you, Iran, and I think it would be helpful when we have the text to start fine tuning it as we see appropriate. So I think maybe

we can also quickly discuss the two-character text so that when we pause again we have both groups working on anything that needs further discussions.

So under follow up on previous... okay. I was notified that we have text here that we don't know who exactly inserted the text. So please, if you want to speak to your own text please request the floor. Meanwhile the text reads the GAC remains concerned that the GAC advice on the procedure for the release of the country codes at the second level under the in the gTLDs was not taken into consideration as intended and advises that meaningful steps are taken to ensure this does not happen in the future. This is the text we had before, proposal for new text, the GAC recognizes steps already taken in this regard [reading] [refer to slide] and then the GAC also notes the provision of the search tool by ICANN, however, it would like to highlight that the efficacy of the tool is still being evaluated. The GAC urges ICANN to continue to engage with concerned members of the GAC and ensure their concerns are addressed. So any comments?

OMAN:

I think the previous text was okay, enough and to the point.

MANAL ISMAIL, GAC CHAIR: Thank you, Oman. We have the suggestion to retain the shorter version of the text. Any agreements or oppositions?

KAVOUSS ARASTEH: Not opposed to that, in fact I agree, the only thing I ask my distinguished colleague, the last part should be retained, the GAC urges ICANN to continue to engage, this is a positive sentence, action, why should delete it? So just after the third line in the future and the last part the GAC urges, rescind that and delete the rest.

MANAL ISMAIL, GAC CHAIR: So is it clear with the proposal that we maintain the short version of the text as has been proposed or presented to the Board this morning but go and keep the last sentence that urges ICANN to continue to engage with concerned members of the GAC to ensure their concerns are addressed?

OMAN: Yes, we agree with.

MANAL ISMAIL, GAC CHAIR: Any comments? Everyone okay with deleting the highlighted part? I see no -- I see the US.

ASHLEY HEINEMAN: Yes, thank you. I also don't recall this last sentence being here, could you refresh my memory to when this was added, the reference to the GAC urges ICANN to continue to engage with concerned members.

UNIDENTIFIED SPEAKER: My understanding this was a suggestion by India made earlier, about two hours ago.

MANAL ISMAIL, GAC CHAIR: And a request from the floor from India.

RAHUL GOSAIN: Rahul Gosain from India, for the transcript. When I added this text I added in the context that I had made some intervention regarding the notification to the Board to continue to direct the development of this concern to take into account all the suggestions which were provided and also the fact that during the conversation with the Board it was perhaps suggested by someone from the Board that they were looking forward to [indiscernible] matter of discussion on this subject and it was (distorted audio) colleague from Iran who had [indiscernible] it is just to accurately reflect the points I tried to summarize in my comments. So I hope that clarifies the issue. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, India.

ASHLEY HEINEMAN: Thank you, India, that was very helpful. in fact now I understand. I support that sentence if it is included in the context of what India originally provided because it's very clear and it's understood what we're working to address. I think without it I have concerns with that as a stand-alone sentence because as I believe I argued in Kobe, it's not clear had that we are asking for, so [indiscernible] valid and important comment to make that as the [indiscernible] continues to be developed, GAC concerns continue to be addressed in the process.

KAVOUSS ARASTEH: Thank you, this part has three elements, one was discussed this morning and the two other element, the last portion saying that ICANN engage with the concerned government, it is a fact because these two-characters there are two groups of countries, one not concerned at all, the other concerned. Those who are concerned they want ICANN to contact them to resolve the problem. The middle part is the tools, I think it's not part of the follow-up actions, it may be part of the Board GAC discussions, you could transfer the middle part it that portion and that is quite good. But not part of the follow-up actions because we're dealing with previous GAC advice. [indiscernible] the first, last and

middle part talking about tools, a valid point, you can put it under the GAC Board discussions, was held this morning and it was mentioned that. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you. So a proposal to move the part that is related to the GAC Board meeting to the GAC Board meeting section. I'm afraid we don't want to get into populating our bilateral meetings because this is a whole new task. I mean, I fully understand the point but let's try to agree now on what needs to go in the follow up on previous GAC advice part. So if there are no further requests for the floor. I'm sorry, Switzerland first.

SWITZERLAND: Thank you so much. I just want to clarify and apologies if I lost track of the discussion, that the second sentence was proposed by me, I have seen in the Google GACs that somebody accepted it because I entered it as a suggestion, and it reflects what was part of the discussion. So I hope that it may stay in the text, but I don't have super strong feelings.

MANAL ISMAIL, GAC CHAIR: Thank you, Switzerland.

KAVOUSS ARASTEH: Thank you, Manal. I listened to the discussions, the understanding is that we agree on this as soon as possible. The first [indiscernible] no disagreement, the second the second [indiscernible] (distorted audio) so on, so forth so we could do that one, the third element and put the second element, the second and third part both go to the Board GAC discussions or interventions and so far, so we leave the first part so if it's quickly giving us some sort of release of this part going to the remaining part it may still require some time. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Iran. So I think all views have been expressed. If we can pause for people to get together and try to fine tune the drafting of both sections, the one on the two the two-character code but also the .Amazon part and the question that we will be posing to the Board. So I wonder how much time we need. It is 4:25 now. When would you like to us to reconvene?

KAVOUSS ARASTEH: Perhaps I was not clear, or it has changed. My suggestion was that the element in the third line saying that in the future remains in the follow-up actions. The remaining part could go to the Board GAC discussions. So this is what I suggested. The Board GAC discussions, so from that up to the end totally we should transfer that to the Board GAC interventions or discussions.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss, so let's get together on the specific text. India, if you can coordinate with Iran maybe, maybe Switzerland can help and US, you have views on this as well. So if we can finalize maybe half an hour is okay? If we can come back to check where we stand at 5:00? Would this be suitable?

KAVOUSS ARASTEH: Yes, suitable but two issues, one to convert that text into the questions and the other is this [indiscernible] so maybe two groups.

MANAL ISMAIL, GAC CHAIR: Yes, two groups with overlaps of course, but we need two separate communique language, one on the two-character code along the lines discussed. I hope people coordinate together and another one on the question on .Amazon to the Board. So we will be reconvening at 5:00. If people manage to progress before that, please let me know, we will reconvene as soon as you finish but I see a request for the floor from European Commission.

EUROPEAN COMMISSION: Thank you, Chair. Just to be clear, so we will not have a follow-up section on WHOIS and the work of the EPDP, so for example to say that we welcome the progress, we encourage the different

communities to work together, just to be sure that everyone is fine with having nothing on the...

MANAL ISMAIL, GAC CHAIR: Noted, European Commission, thank you.

KAVOUSS ARASTEH: Thank you, while we have no problem with the European Commission, I don't know this is bringing new ideas, [indiscernible] noting that I am not in favor of the good progress been made, a lot of [indiscernible] spent for the definitions, what is actions, what is disclosure -- I can't say that good progress has been made. I don't want to say to the contrary but silent is better. Can't say good progress has been made., [indiscernible] what's access and disclosure, -- let us not put it on the [indiscernible] if the colleagues from the European Commission agree.

MANAL ISMAIL, GAC CHAIR: Thank you. Iran. Is there a request for the floor, Germany.

GERMANY: I would like to support the idea of the European Commission to have some language as a follow-up on EPDP and WHOIS. It could be short [indiscernible] but would stress the [indiscernible]

(audio interference) if there is support by the other countries.
Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you, Germany, European Commission, were you asking whether or not we put text or suggesting not to put text.

EUROPEAN COMMISSION: I was asking but we're happy to suggest for a very short text and see if it works for others.

MANAL ISMAIL, GAC CHAIR: Okay. Let's have this text. I have Iran requesting the floor but also Germany was supporting the suggestion.

KAVOUSS ARASTEH: Thank you, Manal, it's not supporting or opposing, it's what is agreed by everybody. I have no problem with saying that the GAC considered the actions being taken in regard with the EPDP and so on, so forth but don't want to say with satisfaction and progress, that I don't want to say. [indiscernible] but I have no problem with considered the actions being taken, that means they still continue to be taken in regard with the development of Phase II or EPDP, no problem with that, and [indiscernible]

European Commission and Germany along that line. But maybe in Montreal will be happy or not happy, thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Iran for sharing your views early before we start the drafting exercise so that they are taken into consideration. Any other comments? So we are considering three comma draft languages, [indiscernible] we will be back at 5:00. If anything is accomplished before that, please let us know. Thank you.

[RECESS]