

NOTES OF BOARD - GAC CALL -- 14 August 2017

Attendance:

GAC –Argentina, Australia, Brazil, Canada, China, European Commission, Egypt, Iran, Japan, Latvia, Nigeria, Portugal, Rwanda, Switzerland, Thailand, Trinidad and Tobago, Tunisia, United Kingdom, USA, MeitY (India), FBI (USA)

BOARD – Markus Kummer, Chris Disspain, Lousewiese van der Laan, Khaled Koubaa, Rinalia Abdul Rahim, Cherine Chalaby, Marten Botterman, Becky Burr, Jonne Soininen, Akinori Maemura, Kaveh Ranjbar, Göran Marby, Leon Sanchez

ICANN STAFF – David Olive, Akram Atallah, Christine Willett, Ashwin Rangan, Larisa Gurnick, Lisa Saulino, Mandy Carver, Melissa King, Michelle Bright, Sally Costeron, Susanna Bennett, Vinciane Koenigsfeld, Amy Stathos, Xavier Calvez

ICANN GAC SUPPORT STAFF – Robert Hoggarth, Fabien Betremieux, Julia Charvolen, Gulten Tepe

Agenda:

- 1. Clarification by ICANN Org on Ongoing Dialogues with the GAC -- The 2-character code issue and future discussion for the CEO to talk about enhanced communication and information sharing between ICANN Org and GAC.*
- 2. The GAC Advice Proper -- Board Clarifying Questions Regarding Johannesburg Communiqué Advice*
- 3. BGRI Discussion on Definition of GAC Advice*

Discussions:

1. Clarification by ICANN Org On Ongoing Dialogues with the GAC -- The 2-character code issue and future discussion for the CEO to talk about enhanced communication and information sharing between ICANN Org and GAC.

Markus Kummer (MK) noted that the Board and the GAC seemed to have a slightly different understanding of the discussions in Johannesburg regarding the matter of two-character country/territory names at the second level. At MK's request, ICANN CEO, Göran Marby (GM) provided an update on the ongoing dialogue between members of the ICANN Organization and GAC members on the topics of two-character country/territory codes at the second level and DNS abuse mitigation.

GM explained that before the Johannesburg meeting, ICANN Org had individually engaged with several GAC member countries to discuss their concerns about the two-character issue in-depth. He believed the effort had been successful and that the parties had been able to clear-up a number of misunderstandings and to achieve some clarity on the process for how certain decisions were reached.

GM explained that additional efforts are now being directed at finding a way forward to support GAC members through fact-based discussions to help inform individual GAC members based on their needs - so that GAC members can be better-informed earlier about developments and can potentially take actions earlier in any process.

GM indicated that the intention of this specific effort is to avoid mistakes going forward rather looking back at previous actions like the two-characters matters.

GM reported that the ICANN executive team is exploring and developing ways to accomplish this dialogue and that he hopes that a proposal will be available for review by GAC leadership and members soon.

In response to questions from GAC members, GM further clarified that the proposal for improving GAC information sharing would likely be available and shared in the August/September time frame.

Further statements from specific GAC members suggested a desire for further individual communications on the two-character matter.

2. The GAC Advice Proper - Board Clarifying Questions Regarding Johannesburg Communiqué Advice

a. Clarifying Questions –

A substantial part of the discussion focused on the Board's desire to clarify a certain phrase in the GAC Consensus Advice to the Board regarding Intergovernmental Organization (IGO) protections – particularly regarding IGO access to curative dispute resolution mechanisms. In the Communiqué, the GAC reiterated its past advice (Reference No. :#GAC-2017-06-29) that IGO access to curative dispute resolution mechanism should:

- be modeled on, but separate from, the existing Uniform Dispute Resolution Policy (UDRP)

- provide standing based on IGOs' status as public intergovernmental institutions, and
- respect IGOs' jurisdictional status by facilitating appeals exclusively through arbitration.

A specific section of the communiqué advice stated:

“The GAC expresses concern that a GNSO working group has indicated that it may deliver recommendations which substantially differ from GAC Advice, and calls on the ICANN Board to ensure that such recommendations adequately reflect input and expertise provided by IGOs.”

The Board sought clarification from the GAC on the meaning of the phrase in highlighted text. Board members shared that it is not within the Board's remit to “ensure” what is ultimately incorporated into GNSO advice. MK indicated that “ensure” was very strong language. He noted that there is very limited power the Board has under the Bylaws to ensure anything as the Board does not make the policies. He noted that the Board can cajole or encourage but cannot ensure anything that takes place within a PDP.

The GAC Chair, Thomas Schneider (TS), explained that the Communiqué language was an expression of expectation that input from GAC members to a PDP WG is duly considered and that the issues raised by governments are taken into account. It is important that the Board does everything that it can to encourage this practice.

With respect to the particular IGO Working Group, TS noted that it has been acknowledged that some key aspects of the GAC advice might not be followed by the WG. He noted that this has been an issue in previous PDPs that has created some irritations.

Extensive comments from GAC members indicated an understanding that although the Board cannot ensure the policy recommendations which are the output of a PDP, they wish to see that the Board applies its oversight responsibilities to ensure GNSO processes are followed and that GAC input is considered.

GAC members noted that there is a long history of work on this topic in the GNSO's curative protections working group. It was shared that apart from the GAC consensus input as such, a number of individual Governments and more than 20 IGOs had submitted inputs during the public comment phase regarding the draft report of the PDP

WG and it is important that those contributions are read, taken into account and considered by the PDP WG.

GAC members explained that the working group process is approaching the point at which final recs will go to the GNSO Council and then the Board. Given the discussions to date, there is concern that there will be a divergence between the GNSO and GAC when the recommendations are made before Abu Dhabi.

The GAC is seeking that the Board, as the guardian of ICANN processes, apply oversight to ensure that community recommendations from the entire community are acknowledged and reflected in the GNSO recommendations.

Board members acknowledged the clarifications and did not have any other specific questions or comments. MK acknowledged the concerns expressed and noted the “very helpful discussion”. He said the Board will take this discussion into account when formulating a response to the communique. MK also noted the example of the Red Cross issue which has progressed due to mediation efforts. It was also noted that the Board had also received recent input from the GNSO Council concerning the Communiqué.

b. References to Prior Advice in Johannesburg Communique – New Communiqué Section:

The GAC Chair (TS) also pointed out to the Board that the GAC Johannesburg Communiqué included a new reference section that included “Follow-Up on Previous Advice” that the GAC had provided to the Board. He encouraged the Board to also review this section of the Communiqué and to seek clarification or make comments when necessary. He explained that this was an attempt to be more structured and to separate new advice from previous advice.

MK noted that was very helpful and has led to ICANN Organization efforts to improve knowledge sharing with the Board that was mentioned by GM earlier.

c. ICANN Org Tracking of GAC Advice:

MK asked ICANN staff to provide an update on the organization’s efforts to track historical advice provided to the Board by the GAC. Christine Willett (CW) of ICANN staff provided an update on the tracking of historical GAC Advice. She shared that ICANN Org has performed a review of GAC Advice dating back to 2013 and the GAC Beijing Communiqué. A review of the current status of each advice item has been

performed, similar to what was done last year for advice from the SSAC and RSSAC and is currently underway for the ALAC. The ICANN Org team intends to share this inventory and their understanding of the status of each advice item with the Board in the next several weeks. The Board then plans to review this inventory and will share with the GAC when feasible.

3. BGRI Discussion on Definition of GAC Advice

Members of the Board-GAC Recommendation Implementation Working Group (BGRI-WG) are working together to develop language that would provide a comprehensive definition of GAC advice and would explain with better clarity the nature and rationale for GAC advice. Members of the BGRI expressed their appreciation for progress in recent email discussions to define in simple terms what is to be considered as constituting GAC Advice. Board members and GAC members agreed to continue the discussion via email and indicated that a BGRI-WG meeting should be scheduled for ICANN60. It is hoped that intersessional email drafting might conclude the effort prior to ICANN60.

Other:

The meeting also featured a very brief exchange about DNS Abuse and the impacts of the GDPR. Members of the GAC Public Safety Working Group are pleased that there will be cross-community sessions on these topics at ICANN60. MK shared that Board members would look forward to attending the cross-community sessions in Abu Dhabi.

A reference was also made to the importance of pre-planning for the ICANN Board–GAC meeting in Abu Dhabi.

Meeting Action/Follow-up Items:

1. The Board will continue with its efforts to complete a response to the GAC Johannesburg Communiqué.
2. ICANN Staff is expected to share its proposal for improved GAC information sharing in The August/September time frame.
3. ICANN staff will soon complete its implementation inventory of historical GAC advice which will eventually be shared with the Board and the GAC.

4. BGRI members will continue drafting efforts in hopes of concluding before the ICANN60 meeting.
5. ICANN Board Support staff will schedule a BGRI meeting at ICANN60.
6. ICANN Board Support and GAC Support staffs will soon begin collaboration on preparations for the Board-GAC meeting at ICANN60.

Prepared by:

Robert Hoggarth (ICANN GAC Support)

August 2017