

### Assessment of ATRT 1 Recommendations 9-14

**Findings of ATRT1:** The ATRT1 recognized that the existing GAC-Board relationship was dysfunctional and provided six recommendations aimed at enabling GAC- Board interactions. Below is a presentation of those recommendations, ICANN's actions to implement them and the ATRT2's assessment of their implementation and effectiveness.

**Recommendations:** The ATRT1 Final Report contained six recommendations regarding the role and effectiveness of the GAC and its interaction with the Board. These recommendations (9-14) were adopted by the Board in June 2011.

*Recommendation 9:* The Board, acting through the GAC-Board joint working group, should clarify by March 2011 what constitutes GAC public policy "advice" under the Bylaws.

*Recommendation 10:* Having established what constitutes "advice," the Board, acting through the GAC-Board joint working group, should establish by March 2011 a more formal, documented process by which it notifies the GAC of matters that affect public policy concerns to request GAC advice. As a key element of this process, the Board should be proactive in requesting GAC advice in writing. In establishing a more formal process, ICANN should develop an on-line tool or data base in which each request to the GAC and advice received from the GAC is documented along with the Board's consideration of and response to each advice.

*Recommendation 11:* The Board and the GAC should work together to have the GAC advice provided and considered on a more timely basis. The Board, acting through the GAC-Board joint working group, should establish by March 2011 a formal, documented process by which the Board responds to GAC advice. This process should set forth how and when the Board will inform the GAC, on a timely basis, whether it agrees or disagrees with the advice and will specify what details the Board will provide to the GAC in circumstances where it disagrees with the advice. This process should also set forth the procedures by which the GAC and the Board will then "try in good faith and in a timely efficient manner, to find a mutually acceptable solution." This process must take into account the fact that the GAC meets face-to-face only three times a year and should consider establishing other mechanisms by which the Board and the GAC can satisfy the Bylaw provisions relating to GAC advice.

*Recommendation 12:* The Board, acting through the GAC-Board joint working group, should develop and implement a process to engage the GAC earlier in the policy development process.

*Recommendation 13:* The Board and the GAC should jointly develop and implement actions to ensure that the GAC is fully informed as to the policy agenda at ICANN and that ICANN policy staff is aware of and sensitive to GAC concerns. In doing so, the Board and the GAC may wish to consider creating/revising the role of ICANN staff support, including the appropriate skill sets necessary to provide effective communication

with and support to the GAC, and whether the Board and the GAC would benefit from more frequent joint meetings.

*Recommendation 14:* The Board should endeavor to increase the level of support and commitment of governments to the GAC process. First, the Board should encourage member countries and organizations to participate in GAC deliberations and should place a particular focus on engaging nations in the developing world, paying particular attention to the need to provide multilingual access to ICANN records. Second, the Board, working with the GAC, should establish a process to determine when and how ICANN engages senior government officials on public policy issues on a regular and collective basis to complement the existing GAC process.

**ATRT2 analysis of recommendation implementation:** Overall, the ATRT2 finds that ICANN has made a good faith effort to implement ATRT 1 recommendations 9-14 through the creation of joint Board-GAC Recommendation Implementation Working Group (BGRI WG). While many of the recommendations can be considered to have been addressed, there are outstanding implementation details that require further attention (e.g. the functioning of the Register of GAC Advice, whether and how often to hold additional High Level Meetings, etc.) Recommendation 12 related to facilitating the early engagement of the GAC in ICANN’s policy development process remains an ongoing work priority for the BGRI WG, which has most recently involved direct consultations with the GNSO. And while there has been some progress on the level of support and commitment of governments to the GAC process, further work is need related to recommendation 14. There seem to have some challenges associated with responsibility for implementation (i.e, the shared nature of both the ICANN Board and GAC) as well as the practicality of priority timing proposed by ATRT1.

As called for by recommendation 9, the GAC developed a definition of GAC Public Policy “Advice” that was accepted by the BGRI WG and Board and ultimately included in the Bylaws and GAC Operating Principles. This served a key input for developing GAC procedures for the new gTLD program, most notably in the processes for GAC Early Warning and Advice (Objections).<sup>1</sup>

To address recommendation 10, the BGRI WG, in cooperation with the GAC, developed and implemented a GAC Register of Advice. The GAC Register of Advice is posted publicly on the GAC website.<sup>2</sup> While the recommendation is considered fully implemented, final evaluation of the effectiveness of the Register as a tool for the Board, GAC and community remains outstanding, pending longer term use of the Register by the GAC and the Board, particularly in terms of “follow up action” and joint agreement that advice has been fully implemented.

To implement recommendation 11, the BGRI WG worked to codify the methods for the GAC-Board Consultations process as called for in the Bylaws. The GAC has submitted edits to the

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<sup>1</sup> <https://gacweb.icann.org/display/GACADV/GAC+Advice>, ICANN Bylaws, Article XI Section 2.1, <http://www.icann.org/en/about/governance/bylaws>, GAC Operating Principles, **ARTICLE XII – PROVISION OF ADVICE TO THE ICANN BOARD**,

<https://gacweb.icann.org/display/gacweb/GAC+Operating+Principles>

<sup>2</sup> <https://gacweb.icann.org/display/GACADV/GAC+Register+of+Advice>

document and the revised text remains outstanding in terms of Board review/approval. Once this is done, Bylaws amendments to impose time limits and a super majority of the Board requirement for the Board's rejection of GAC advice will be put forward.

Per the ICANN implementation plan issued in October 2011, recommendations 12 and 13 were grouped together due to linkages between the implementation of both recommendations. As the BGRI WG tackled recommendation 12 several complicating factors emerged. For example, as the BGRI WG evaluated the policy landscape of ICANN's supporting organizations (SOs) and advisory committees (ACs) to analyze how the GAC could engage earlier in the various policy development and deliberation processes, the complexity and length of the Generic Names Supporting Organization's (GNSO) policy development process was highlighted. Additionally, despite the fact that the policy development processes of various SOs and ACs are open to community participation there are different levels of explicit participation avenues for the GAC. For example, the ccNSO process affirmatively includes input from the GAC in particular, while the GNSO process is "open" to all interested stakeholders and does not provide a specific path to participation by the GAC. The different structures of policy development processes of ICANN's SOs pose particular challenges for the ATRT2 to consider, particularly in terms of integrating GAC public policy advice into the policy development processes of individual SOs, as well as whether such processes are effective in facilitating meaningful and early exchanges among the diverse interests represented in ICANN.

Deliberations regarding the implementation of recommendation 12, engaging the GAC earlier in the policy development process, have revealed considerable differences within the ICANN community as to the scope of the terms "policy" and "public policy". The GNSO considers itself as the sole source of policy related to generic top level domains, and expects the GAC to contribute directly to its policy development processes through participation in its various working groups. The GNSO does not appear to assign any particular or specific weight to "public policy" advice from the GAC in its deliberations. For its part, the GAC is aware that it does not have membership status in the GNSO and cannot influence or determine the outcome of GNSO processes. There is no clear record, for example, of acceptance by the GNSO of GAC advice prior to the completion of any specific GNSO policy recommendation; in fact, the reverse is the case (e.g. public order and morality). In addition, the GAC is structured under the Bylaws to provide public policy advice directly to the ICANN Board. In addition to the outstanding question of the distinction between "policy" and "public policy", as well as how to integrate the two, there is a structural impediment to the effective implementation of recommendation 12 that deserves further attention. Finally, there are diverse views within the ICANN community as to effectiveness of the GNSO's policy development process, as currently structured. There is the strong possibility that the introduction of new gTLDs will have both direct and indirect effects on the GNSO's policy development processes.<sup>3</sup>

This recommendation was discussed by the BGRI WG at ICANN Prague, Toronto and Beijing, focusing specifically on the different working methods in the GAC and the SOs (which are the sources of ICANN's policy development processes), as well as the differences in roles of the GAC versus the SOs under the Bylaws. The GAC agreed to develop proposals for new

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<sup>3</sup> The GNSO has deferred their scheduled review of their working methods and structure to allow them to take into account the likely influence the new gTLD program is likely to have on the group.

tools/mechanisms for GAC engagement with the GNSO policy development process as an experiment, the U.S. submitted specific proposals linked to the GNSO PDP timeline, which were forwarded to the BGRI WG and to the GNSO prior to the Beijing meeting. The GNSO considered these proposals as well as related proposals developed by the GNSO itself for purposes of further discussions in Durban. These issues remain outstanding pending further exchanges between the GAC and the GNSO, which will also be coordinated with the BGRI WG.

At the request of the BGRI WG, ICANN staff has proposed a monthly Policy update for the GAC to assist GAC members in monitoring/tracking pending policy development initiatives; this effort has been welcomed by the GAC and is considered one of several elements that will support meeting the goal of the recommendation. There may be additional tools identified by the BGRI WG that could facilitate a broader understanding among GAC members of the variety of pending policy initiatives and deliberations in other ICANN stakeholders groups. The GAC has also proposed, via the BGRI WG, the idea of "reverse" liaisons from ACs and SOs, as well as a Board liaison to the GAC, which remains under consideration in terms of specific implementation measures.

Many efforts were taken to implement recommendation 14. The Canadian Government hosted the first meeting of senior government officials during the 45<sup>th</sup> ICANN Meeting in Toronto, which was well attended and highlighted considerable support for the role of the GAC within ICANN. There is considerable interest in holding such high level meetings on a regular, if not annual, basis. Further discussions as to the timing, scope and agenda for such meetings are warranted. At the request of the GAC Chair, ICANN has made strides to increase funding for GAC Member travel to be commensurate with other SOs and ACs and provides interpretation for GAC meetings, which has clearly facilitated broader participation by non-English speaking GAC members in GAC deliberations. In February 2013, a new ICANN staff member has been hired under a temporary contract to provide additional support to the Chair/Vice chairs/GAC. As for additional Secretarial support, in 2012 – 2013 the GAC issued an RFP to solicit a provider for their secretariat support needs. During that time ICANN provided some additional, though largely interim, support personnel. The selected secretariat support provider will be funded by the GAC donor countries (Brazil, Norway, the Netherlands) pending agreement on a formal contract. In the interim, ICANN funded the travel costs of an ACIG staff member to the Durban meeting to provide support to the GAC, under the guidance of the GAC Chair and Vice Chairs.

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Comments received in response to the ATRT2 call for input generally support this analysis. Outstanding issues highlighted include the need to develop metrics or measurable criteria with which to monitor implementation, fully implement remaining recommendations, more clearly target future recommendations to aid in implementation, and improve communication of improvements, and in general, to those outside of the immediate ICANN community. In addition, several comments note that implementation was delayed and in some there was a gap between the wording of the recommendation and how it was carried out.<sup>4</sup> Some comments noted that the "role of the Board and the relationship between the Board and the GAC is unclear."<sup>5</sup> In

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<sup>4</sup> Shawn Gunnarson, Individual Commenter (see footnote 7)

<sup>5</sup> Maureen Hilyard, ALAC, (see footnote 7)

addition, while comments characterize ICANN as making best efforts the implementation of GAC improvements remains insufficient and that “a further smooth channel be provided for GAC to engage into policy-making procedure.”<sup>6</sup> Further comments consider that ICANN continues to need to improve accountability and transparency in decision-making and execution, “strengthen working mechanisms between GAC, Board and SOs/ACs and define roles.”<sup>7</sup> Some commenters feel that implementation remains unsatisfactory as some key GAC related recommendations have not yet been fully implemented.

### **ATRT2 assessment of recommendation implementation**

<b>Recommendation (s)</b>	<b>Assessment</b>
9	Complete, issue satisfactorily addressed
10	Complete, issue satisfactorily addressed
11	Substance complete, implementation pending Board approval and subsequent Bylaws changes
12 & 13	Discussion and implementation of recommendations remain ongoing. Completion involves considerable further work and engagement with other SOs and ACs.
14	Actions taken, but further work is needed given broader geo-politics and the concerns of some governments

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<sup>6</sup> 曹华平, Internet Society of China, (see footnote 7)

<sup>7</sup> Liu Yue, Chinese Academy of Telecommunications Research, (see footnote 7)