

ATRT2 Draft new GAC Related Recommendations (WG1.b)

Hypothesis of problem: The lack of transparency of GAC work methods, limited support and adequate resource commitments of government to the GAC, and the lack of GAC early involvement in the various ICANN policy processes is challenging to the accountability, transparency and perceived global legitimacy of ICANN.

Background research undertaken:

Summary of relevant public comment responses: Responses from the community highlighted that while the GAC's input to policy discussions is important, the process and discussion involved in developing GAC views are often opaque. There were specific calls for community visibility into GAC work methods and processes. Comments show that this lack of insight into GAC discussion and work methods can result in confusion for the stakeholders upon the receipt of GAC Advice and a diminished level of trust. As confirmed by comments from one government official, the "GAC's role is critical in ensuring the wider public interest is taken into account" in ICANN decision-making so it is important its role and performance must be regularly subject to scrutiny by the wider ICANN community.¹ Comments suggest the GAC employ metrics to measure the GAC's accountability including "third party assessment of the advice, through interviews with the Board, constituency leadership, and community members."²

Comments show that large portions of the ICANN community do not share a common understanding of roles and that this "the lack of understanding of the different roles of the Board, the GAC and the GNSO can result in a lack of respect for the input of the various stakeholders."³ Others pointed to the limited visibility into the work methods and deliberations of the GAC, sometimes due to closed door discussion, results in confusion among the community as to the process of developing GAC advice noting that "it often appears to catch the community by surprise."⁴ Comment also suggested greater communication from the GAC during its deliberations and discussions could offer the community better insight into work methods, and processes, and GAC Advice relieving the feeling that "messages from the GAC are often misunderstood or seen as aggressive, and vice versa."⁵ Understanding that various constituencies within the community are interested in different issues and have different operational styles, "communication processes should be meaningful and relevant to ICANN users."⁶ Currently, "GAC external dialogue seems to be mainly Board-focused and the opportunity to interact with the wider ICANN community seems constrained."⁷

In addition, comments from the community focus on the need to increase the level and quality of

¹ United Kingdom Government, Mark Carvell

² Alejandro Pisanty.

³ Danish Business Authority, Julia Wolman

⁴ Nominet, Laura Hutchison

⁵ Nominet, Laura Hutchison

⁶ Maureen Hilyard, Affiliation, ALAC

⁷ United Kingdom Government, Mark Carvell

government participation in the GAC. Specific issues raised were outreach to developing countries, the need for GAC Representatives to be supported individually to encourage consistent participation, to continue steps to increase outreach beyond the traditional ICANN community, and to manage how the GAC addresses its work load to ensure it can be addressed in a consistent fashion by GAC Representatives. Comments referenced the perceived barriers to participation overall noting that “it is difficult to navigate in the ICANN model.”⁸ Continuing in that vein, comments lay out a few baseline questions regarding growing participation in the GAC by a broad base of governments asking if the GAC is currently “effectively taking account of all situations across the globe in differing economies and communities... are GAC representatives sufficiently resourced on an individual basis to undertake more work on early policy development?”⁹ How ICANN can provide simple, focused and high quality information rather than information on an ad hoc basis as well as measures to provide further support to newcomers. The GAC also has a role to play in assuring continuous participation.¹⁰

Several commenters also focus on the need to increase engagement and outreach to developing countries as a means to increase membership and gain more varied regional representation of views, noting that the “GAC needs to improve the consistency of levels of engagement across its membership, both at meetings and intersessionally when the level of involvement from developing and least developed countries are typically extremely low (notably in GAC teleconferences). This is a potentially serious problem given that the committee’s level of activity intersessionally needs to increase significantly.”¹¹ Additionally, commenters feel “it will be important to monitor progress in promoting wider engagement. It is important that ICANN work with its existing global stakeholders to reach out in their local communities where they are already well established and networked.”¹² Commenters note that the ATRT2 should, explore “Aspects that may contribute to raise the level of participation and strengthening the legitimacy of the multistakeholder model.”¹³ Finally, several comments offer solutions and identify current efforts that could contribute to increased government involvement in, and support of, the GAC. One comment notes “the deployment of innovative consultation tools may help restore the balance in order to achieve meaningful response levels.”¹⁴ In addition, several commenters note that “ICANN’s opening of new offices may provide new global awareness, but will not fix problems.”¹⁵

Lastly, comments highlight the need to incorporate the GAC into policy discussions early on in the process noting that “early engagement of the GAC is also important to ensuring predictability: improving understanding of the rationale behind decisions will help the wider community understand the advice and recognize how it fits in with the underlying principles.”¹⁶ Comments cited the GNSO PDP as an example of where there is weak GAC

⁸ Danish Business Authority, Julia Wolman

⁹ United Kingdom Government, Mark Carvell

¹⁰ Danish Business Authority, Julia Wolman

¹¹ United Kingdom Government, Mark Carvell

¹² Nominet, Laura Hutchison

¹³ Danish Business Authority, Julia Wolman

¹⁴ United Kingdom Government, Mark Carvell

¹⁵ Rinalia Abdul Rahim, Garth Bruen, Evan Leibovitch, Holly Raiche, Carlton Samuels, Jean-Jaques Subrenat, Affiliation ALAC

¹⁶ Nominet, Laura Hutchison

engagement stating that the “timeliness often depends on leadership strength and member commitment as well as consistent refusal of groups to participate at all or not until late in process.”¹⁷ The NCSG submits that they are “concerned about tendencies that threaten multi-stakeholder, bottom-up, consensus-building policy” and offer the drafting and discussion of the GAC Communique in Beijing as an example.¹⁸ In addition, comments highlight that while all input is valuable, there are often barriers to exchanging information.¹⁹ Comments continue to note that while GAC/Board interactions and processes have improved more can be done recommending that the ATRT2 specifically examine, “...a more dynamic and interactive exchange in open GAC/ Board meetings.”²⁰

Input from face to face sessions:

Several comments from ATRT2 discussions with the various SOs and ACs, while noting the need to incorporate the GAC early on, also focused on the need for better cross community communication in general. The ALAC noted, that in general, groups like the ALAC and GAC are not coming into the process early enough. The participants noted several barriers to inserting into various other processes such as 1) silos, associated with issues and SOs and ACs, create information sharing and process issues across the community, 2) cited instances when issues have been “taken” by a particular SO or AC when that issue was cross cutting and should have been addressed by the entire community, or 3) issues with participating in some other SO or AC processes, due to the tendency for SOs and ACs to “shout down” outside input. Finally, the ALAC participants noted that travel, facilities, and the compressed schedule all affect the ability of ALAC to do its work and proposed that better/alternate ways to connect should be explored (e.g. Adobe Connect).²¹

During discussion with the GNSO some ATRT2 participants noted (in their own observational capacity, not speaking on behalf of the GAC) that while the GAC does acknowledge a need and desire to participate in the process, it has not been able to identify how to do that effectively, while taking into account the different processes of the GAC and GNSO. The GNSO cited ongoing work and discussions regarding how to incorporate the GAC into their PDP stating that the ongoing discussion on this issue highlight an important aspect of the multistakeholder process. The GNSO also noted that because discussions were already underway, it is important not to duplicate work by approaching the issue from too many angles at the same time. Several GNSO participants suggested the need to examine whether policy processes as a whole were effective. Additional questions were raised regarding the ability for the GNSO policy process allowed for the development of consensus policies in a timely manner.²²

Community discussions on cross community deliberation continued with the Registry Stakeholder Group (RySG). The RySG shared several opportunities to participate in existing processes for GAC and other SOs and ACs. For example, when a PDP is initiated and a

¹⁷ Registries Stakeholder Group, Paul Diaz

¹⁸ Non Commercial Stakeholders Group, Mary Wong

¹⁹ Nominet, Laura Hutchison

²⁰ Nominet, Laura Hutchison

²¹ Characterization of notes (B.Cute) from ALAC session

²² Characterization of notes (B.Cute, E.Bacon) from GNSO session

Working Group is formed a request/notice is sent to SOs and ACs inviting participants. Some SOs and ACs are able to provide good and consistent participation in various Working Groups. They also noted other attempts to coordinate that did not prove to work well (e.g. liaison with the GAC) and processes that are still being tried (e.g. IGO WG engagement with the GAC). Some participants noted that the reason liaisons with some communities succeed and others fail rests on the participant's/SO or AC's ability to engage and provide consistent feedback.

NPOC - need help understanding Brian's notes to include this session

ICANN Staff input: In addition to issuing a questionnaire for public comment, the ATRT2 also asked ICANN Board and Staff a series of questions to gain insight into their understanding of the goals of ATRT1 recommendations and review the process used to review, implement and oversee implementation, the Board and staff responded to several questions from the ATRT2 as part of a Staff Input Document into the ATRT2.²³ One of the questions posed was "Did s/he identify additional opportunities for improvement by virtue of the implementation of these recommendations?" (Question I). In response to that question, in the context of ATRT1 Recommendation 14, the respondent noted that "more could be done to provide new GAC members with sufficient informational resources. MyICANN was, in part, intended to contribute to this objective and the planned Online Education Platform (working title) also is expected to help address GAC member's information needs."²⁴

In response to the question "What has been the outcome and effect both inside ICANN and external to ICANN as a result of the implementation of the recommendation?" (Question J) of the same survey, also in the context of Recommendation 14, the respondent noted "GAC appears to have benefitted from increased travel, language, staff, translated documents, real-time interpretation and informational resources; successful HLM in Toronto."²⁵ Finally, in response to "How does s/he feel that ICANN has improved as a result of the implementation of the recommendation?" (Question K) of the same survey, also in the context of Recommendation 14, the respondent noted that "ICANN gains credibility with increased governmental engagement, particularly from the developing world."²⁶

One of the questions posed as part of discussion with the ICANN Board and Staff was "Did s/he identify additional opportunities for improvement by virtue of the implementation of these recommendations?" (Question I).²⁷ In response to that questions, in the context of ATRT1 Recommendations 12, the respondent identified possible additional measures for consideration in the future "GAC Chair designates small GAC WG, Reviews Monthly Reports for possible public

²³<https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx>

²⁴<https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx> - [It is unclear from the chart of questions whether the response was from the entire group or a specific contributor]

²⁵<https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx>

²⁶<https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx>

²⁷<https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx>

policy interest, Post any comments on website, Submit comments to relevant SO, Specially-tailored Webinar prior to Public Meetings, Specifically designed for the GAC to focus on emerging or significant policy issues under development for discussion at public meetings that may raise public policy issues or concerns, Utilize Monthly Report to engage Supporting Organizations, Identify issues that may have public policy interest, Engage with relevant SOs prior to and during ICANN Public Meeting.” The same respondent continued with similar suggestions regarding ATRT1 Recommendation 13, “Assisting the GAC to organize/formalize regular consultation at ICANN meetings with the GNSO, ccNSO, ASO, and Advisory Committees on policy issues and matters of concern to the GAC.”²⁸

Relevant ICANN bylaws: Article 11, Section 2.1 (issue 1), Article XI, Section 2.1 (issue 2), Article XI, Section 2.1 (issue 3)

Relevant ICANN published policies: TBD, need to examine so/ac procedures

Relevant ICANN published procedures: TBD, need to examine so/ac procedures

Findings of ATRT2: The ATRT2 has identified three major issues that impact the GAC’s ability to effectively interact with the Board and community at large which has an impact on the accountability, transparency and perceived global legitimacy of ICANN. The first issue is a lack of clarity into, or understanding of, the GAC work methods, agenda and activities by the broad ICANN community, staff and Board. Complicating that relationship is that between advice provided by the GAC to the ICANN Board and the policy recommendations provided to the ICANN Board through the policy development processes within ICANN’s Supporting Organizations (particularly the GNSO) is not well understood. The advice provided by the GAC is not well understood outside of government circles and the specifics of it are often a surprise to non-GAC members, particularly on those occasions when the GAC deliberations are closed to other interested ICANN stakeholders. A lack of understanding of methods and activities of the GAC can contribute to diminished credibility and trust in the GAC and its outputs and impeded interaction with ICANN community and constituency leading to process and policy development inefficiencies.

Second, challenges continue with limited support and commitments of government to the GAC process, which is reflected in disparate levels of familiarity with DNS matters and disparate levels of preparation for the issues pending for GAC/ICANN meetings. A perceived level of unfamiliarity with DNS issues could lead to a lack of credibility for GAC Advice and other outputs. Additionally, sustained participation by individual GAC members develops deeper knowledge on issues, better discussion and ultimately a better GAC.

Finally, GAC participation in the various ICANN policy development processes is limited to non-existent. Without early engagement the GAC is often put in the position of making interventions later into the policy development process often extending the timeline for those issues. Earlier engagement in policy development by all stakeholders would also produce more comprehensive policies that reflect the views and needs of the community.

²⁸<https://community.icann.org/download/attachments/41880363/Consolidated+Responses+to+ATRT2+Questions-ATRT+1+Recommendations+Implementation+%2830Apr%29+Final.xlsx>

ATRT2 Draft New Recommendations:

1. The deliberations of the GAC should be more transparent. Examples of activities that GAC could consider to achieve this include:
 - Convening “GAC 101” sessions for the ICANN community, to provide greater insight into how individual GAC members prepare for ICANN meetings in national capitals, how the GAC agenda and work priorities are established, and how GAC members interact intersessionally and during GAC meetings to arrive at consensus GAC positions that ultimately are forwarded to the ICANN Board as advice;
 - Agendas for GAC meetings, conference calls, etc. could be published on the GAC website 7 days in advance of the meetings and meeting minutes for all should be published on the GAC website with 7 days after each meeting or conference call.
 - The GAC website could be updated and improved to more accurately describe GAC activities, including intersessional activities as well as publish all relevant GAC transcripts, positions and correspondence;
 - Consider whether and how to open GAC conference calls to other stakeholders to observe and participate, as appropriate. This could possibly be accomplished through the participation of “reverse liaisons” from the ICANN AC’s and SO’s, once that mechanism has been agreed and implemented; and,
2. The GAC should formally adopt a policy of open meetings to increase transparency into GAC deliberations, and to establish and publish clear criteria for closed sessions.
3. The GAC should develop and publish rationales for GAC Advice.
4. The GAC should develop a code of conduct for GAC representatives that address issues as conflict of interest, transparency and accountability, adequate resource commitments, and consistency of position taken in with GAC with existing relevant national and international laws.
5. The GAC should regularize senior officials meetings and convene a meeting at a minimum of every two years.
6. The GAC and ICANN’s Global Stakeholder Engagement Group (GSEG) should develop standards for engaging governments to ensure coordination and synergy of efforts.
7. The GAC and the Board should continue, through the BGRI, to develop proposals to facilitate early engagement of governments in ICANN’s policy development processes. Issues to consider include, but are not limited to: whether or not the current siloed structured of SO/AC’s is supportive of early GAC engagement; systematic way to regularly engage with other stakeholders that facilitates information exchanges and sharing of ideas/opinions, both in face to face meetings and intersessionally; and, if the Bylaws need to be amended to ensure that GAC advice is considered prior to policy recommendations being sent to the Board. [DRAFTING NOTE: This recommendation will likely be influenced by the report of the independent expert.]

Public Comment on Draft Recommendation(s): - TBC

Final recommendation: - TBC