

Distribution	Public
Date	31 July 2020

Governmental Advisory Committee Comments Regarding ATRT3 Final Report Recommendations

Introduction

The ICANN Governmental Advisory Committee (GAC) welcomes the opportunity to provide comments on the Final Report of ICANN’s Third Accountability and Transparency Review Team (hereinafter “ATRT3” or “Review Team”) dated 29 May 2020 and released for public review and comment on 16 June 2020 (see - <https://www.icann.org/public-comments/atrt3-final-report-2020-06-16-en>).

The “Third Accountability and Transparency Review Team (ATRT3) Report (29 May 2020)” (<https://www.icann.org/en/system/files/files/atrt3-report-29may20-en.pdf>) (hereinafter the “Final Report”) is a substantive and comprehensive document that addresses several topics and issues including several that are pertinent to GAC operations. The GAC appreciates the substantial time and attention that the ATRT3 has devoted to (1) studying the GAC implementation of previous ATRT2 recommendations, (2) assessing the present state of the committee’s operations and interactions with other ICANN communities, and (3) considering input from other ICANN communities that appears to have resulted in some practical suggestions to further improve GAC operations and the committee’s work within the ICANN multistakeholder community.

These comments are directed particularly toward (1) the Final Report’s assessment of the implementation of ATRT2 recommendations impacting the GAC and (2) additional suggestions to the GAC offered by the ATRT3 as a result of answers to survey documents provided by other members of the ICANN multistakeholder community. The two areas are discussed below in separate sections of this document.

I. Comments Regarding Specific ATRT3 Review Team Assessments of ATRT2 Implementation

The GAC is encouraged to see that the Review Team (1) noted “the special nature of the GAC when considering how it assessed the implementation and effectiveness of the ATRT2 Recommendations for the GAC”¹; (2) accorded the GAC generally high marks with respect to implementation of the extensive array of ATRT2 recommendations; and (3) chose not to make any specific new improvement recommendations to the Board regarding the GAC (see ATRT3 Final Report at page 36).

¹ See Final Report at page 35.

The overall ATRT3 assessment of the ATRT2 implementation effort acknowledged that 15 of the 20 ATRT2 recommendations with applicability to the GAC had been fully and effectively implemented. According to the ATRT3, other ATRT2 recommendations impacting the GAC, to varying degrees, merited further work and the review team has provided suggestions for further action.

These comments focus on those assessments where the ATRT3 concluded that an ATRT2 recommendation had been either partially implemented or was not fully effective or if there was not enough information to determine the effectiveness of the implementation effort.

This GAC feedback is provided in a bulleted format designed for ease of reference to each of the various suggestions that the ATRT3 has set forth in its Final Report.

A. ATRT2 Recommendation 6.1(a)

1. Recommendation

Convening “GAC 101” or information 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;

2. ATRT3 Assessment = Partial Implementation/Not Effective/Points to Consider

In assessing the implementation of this recommendation the ATRT3 noted that the GAC

“... has intersessional calls to define the agenda for ICANN meetings and to define its relevant points. This certainly does not show how GAC members prepare themselves for ICANN meetings at their own country. This is not an appropriate demand anyway; they have tools - previous agenda, links, etc. How they are prepared is totally dependent on each country’s internal government arrangements and does not contribute to transparency or accountability to ICANN community. The intersessional call allows members to better prepare. This part of the recommendation was implemented. Regarding the process to arrive to consensus, GAC uses the work of writing the communiqué to reach consensus. This is not a written process, but more of a negotiation. Article 47 of the GAC Operating Principles says GAC shall look for consensus under the United Nations definition. When consensus cannot be reached, all positions shall be written.”

As a consequence of these observations, the ATRT3 assessed recommendation 6.1(a) as “partially implemented.” The ATRT3 assessed the implementation as “not effective” and to this added three “points to consider”; specifically:

“a. Communiqué language is still not clear, which can generate misinterpretations. The effort done to date not yet as effective as it should be.

- b. More clarity on which kind of consensus was reached. For example, there is no record of how many members fully agreed or disagreed during the process to reach consensus.*
- c. The consensus process itself is not clear for the community, therefore it is not yet effective.”²*

3. GAC Reaction

The ATRT3 “suggestions” regarding implementation of this ATRT2 recommendation seems to have been influenced by community responses to two ATRT3 community surveys and a general opinion that the GAC should be held “more accountable” (see Section II A. of this document below at page 7). The GAC appreciates the ATRT3 assessment that some of the community responses show “significant expectations of accountability for the GAC and its members which seem inconsistent with the charter of the GAC”.³

Regarding point “a”, GAC Members find it difficult to give credence to the observation that the “Communique language is still not clear”. The ATRT3 offers no support or explanation for that statement. As the ATRT3 should be aware, the GAC and the ICANN Board have an established process for “clarifying” any consensus advice provided in each GAC Communique. If the Board feels the need to clarify any unclear statements, a specific call is held with the GAC within 6 weeks of the Communique’s publication to resolve those concerns. Records of those calls are posted on the GAC web site.

Regarding point “b”, the GAC Operating Principles clearly state the definition of GAC Consensus and the process for achieving it. GAC Operating Principle 47 specifically states -

“The GAC works on the basis of seeking consensus among its membership. Consistent with United Nations practice[1], consensus is understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection. Where consensus is not possible, the Chair shall convey the full range of views expressed by members to the ICANN Board.”⁴

Additionally, the GAC Communique drafting process is conducted in open plenary sessions for the entire community to observe. Those sessions are recorded, transcribed and interpreted in the 6 UN languages and Portuguese.⁵ If the GAC achieves consensus as defined in its operating principals, then Consensus GAC advice is included in the GAC Communique. If no consensus is reached for sharing specific advice to the Board on a particular topic, then – typically - the Communique will not include any GAC Consensus advice on that topic.

Regarding point “c”, the GAC is concerned that despite a clearly written Operating Principle and completely open Communique drafting sessions, that its process for reaching consensus is still, somehow, “not clear to the community”.

² See Final Report, Annex A, at page 121.

³ See Final Report Annex B, at page 139.

⁴ See GAC Operating Principle 47 - <https://gac.icann.org/operating-principles/operating-principles-june-2017>)

⁵ See example, <https://66.schedule.icann.org/meetings/1116861>

The above concerns notwithstanding, the GAC Leadership will discuss how this process might be made more visible to non-GAC community members and will work with the GAC Support staff to investigate the practicality of evolving the Communiqué drafting and consensus process to make it more generally visible to interested members of the ICANN community.

B. ATRT2 Recommendation 6.1(d)

1. Recommendation

Recommendation 6.1d - Considering 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 liaisons from other ACs and SOs to the GAC, once that mechanism has been agreed upon and implemented;

2. ATRT3 Assessment = Implemented/Effective/Suggestions Provided

“Conclusion – Overall, this recommendation is implemented and effective when considering that it was an unrealistic expectation that GAC conference calls could be open to all given the current number of GAC members. The effectiveness is directly related to the quality of the liaisons that are appointed to the GAC.”

Suggestions:

- ATRT3 suggests that the GAC publish a short list of suggested qualities or requirements for liaisons to assist SO/ACs to select the best candidates to be GAC liaisons.
- ATRT3 suggests that the GAC, in conjunction with ICANN, should provide orientation for liaisons to the GAC so they understand the environment of the GAC as well as the expectations for liaisons.

3. GAC Reaction

The GAC appreciates these suggestions and the GAC Leadership will work with the GAC Support staff to develop recommendations consistent with these ideas for consideration by the full GAC.

C. ATRT2 Recommendation 6.1(h)

1. Recommendation

Recommendation 6.1h - When deliberating on matters affecting particular entities, to the extent reasonable and practical, give those entities the opportunity to present to the GAC as a whole prior to its deliberations.

2. ATRT3 Assessment = Partially Implemented/Partially Effective/Suggestions Provided

The ATRT3 noted that implementation of this recommendation was “partially effective” because, “it is difficult to measure the effectiveness of this [recommendation] using working groups.”

Liaisons in some cases are facilitating the engagement with the GAC prior to a decision. More analysis on effectiveness to SO/ACs could be done. Some complaints about advanced information was done by GNSO.”

The ATRT3 concluded that, “Overall the implementation and effectiveness are currently satisfactory. The ATRT3 suggested that the GAC continue to commit to its improvement efforts focusing on ensuring early engagement with relevant SOs and ACs on matters of importance to the GAC.

3. GAC Reaction

The GAC appreciates the suggestion offered by the ATRT3. The GAC Leadership will work with the GAC Support staff to develop internal recommendations consistent with these sentiments for consideration by the full GAC.

D. ATRT2 Recommendation 6.6

1. Recommendation

ATRT2 recommended that the Board work jointly with the GAC, through the BGRI working group, to ... develop GAC engagement best practices for its members that could include issues such as: conflict of interest; transparency and accountability; adequate domestic resource commitments; routine consultation with local Domain Name System (DNS) stakeholder and interest groups; and an expectation that positions taken within the GAC reflect the fully coordinated domestic government position and are consistent with existing relevant national and international laws.

2. ATRT3 Assessment = Partially Implemented/Partially Effective

The ATRT3 appeared to consider a number of different implementation aspects of this recommendation. Although apparently finding that various aspects of this recommendation had generally been implemented effectively⁶, the ATRT 3 noted that these types of recommendations implied “more of a continuous improvement process rather than a single outcome and suggested that the GAC “continue with improvements in this area.”

The ATRT3 specifically suggests that the GAC consider exploring development of a “set of non-mandatory practices to facilitate efficiency and transparency of GAC work” – noting that such a project, presented as a guide to GAC Members, “could be established on a consensual basis and lead to further progress in GAC work efficiency.” The ATRT3 specifically, “recommended that GAC members explore this avenue.”

3. GAC Reaction

The GAC is disappointed that the ATRT3 assessment in this area was not more operationally focused but appreciates the suggestion offered and will consider exploring the avenue suggested.

⁶ The Final Report indicated that, “Significant improvements have been made by the GAC since the ATRT2 recommendations.” See Final Report at page 131.

E. ATRT2 Recommendation 10.2

Notably, this recommendation has joint applicability to the GAC and the GNSO.

1. Recommendation

The GAC, in conjunction with the GNSO, must develop methodologies to ensure that GAC and government input is provided to ICANN policy development processes and that the GAC has effective opportunities to provide input and guidance on draft policy development outcomes. Such opportunities could be entirely new mechanisms or utilization of those already used by other stakeholders in the ICANN environment. Such interactions should encourage information exchanges and sharing of ideas/opinions, both in face-to-face meetings and intersessionally, and should institutionalize the cross-community deliberations foreseen by the AoC.

2. ATRT3 Assessment = Partially Implemented/Partially Effective

Noting minimal implementation progress regarding this recommendation, the ATRT3 stated:

“As it was raised during the ATRT3 interviews with the community at ICANN 65, there is no process established between GNSO and GAC to facilitate communications related to issues that are key to both parties. There should be a complete process like the one defined between the Board and the GAC, with specific adjustments to fit into GNSO. The nature of GNSO makes it more difficult to do this with the GAC vs GAC- Board, but since this recommendation was made by ATRT2 both sides are trying to improve communications. This is a work in progress that needs to continue.”⁷

The Final Report concluded,

*“ATRT3 recognizes that the history between the GAC providing and the GNSO accepting input into the policy development process has been and remains inconsistent per this ATRT2 recommendation. While the community may believe that there is no process established between the GAC and the GNSO to facilitate participation there are examples such as the Public Safety Working Group that has engaged early and consistently on topics where clear positions are established and reinforced early enough for the GNSO to consider this input as part of the policy deliberation and recommendation process. ATRT3 has already made a suggestion in Section 4 of this report stating that **‘ATRT3 suggests that the GAC, considering the success of the current mechanisms that are in place for interacting with the Board, work with the GNSO to implement similar mechanisms to facilitate interactions between the GAC and the GNSO’ which address this issue.**”⁸*

3. GAC Reaction

The GAC appreciates the suggestion offered by the ATRT3. The GAC Leadership will work with the GAC Support staff to develop recommendations consistent with these sentiments for consideration by the full GAC.

⁷ See Final Report at page 139

⁸ See Final Report at page 139 – emphasis added

II. Comments Regarding Specific Review Team Suggestions Garnered From Community Survey Responses

These comments also address specific suggestions offered by the Review Team in response to ICANN stakeholder feedback provided to two ATRT3 surveys that are summarized in the Final Report (see Final Report Annex B). Although the suggestions do not rise to the level of specific recommendations in the Final Report, those survey responses nevertheless provide additional guidance for how the GAC might improve its operations in the future and, thus, are related here.

This GAC feedback is, again, provided in a bulleted format designed for ease of reference to each of the various suggestions that the ATRT3 has set forth in its Final Report.

A. ATRT3 Survey Question 15 – Should GAC accountability be improved?

1. ATRT3 Conclusion and Suggestion

According to the ATRT3, some of the community survey responses seemed to have significant expectations of accountability for the GAC and its members “which seem inconsistent with the charter of the GAC” (see Prologue in GAC section of the Final Report at page 35⁹). These responses seem to provide some basis for the Review Team’s earlier suggestions regarding lack of clarity of the GAC Communiqué language (see Section I A. 2. above). As such, ATRT3 will make suggestions regarding the issues surrounding liaisons and the clarity of the GAC communicate.”

The ATRT3 suggests that the GAC, in addition to other GAC suggestions, pursue its continuous improvement efforts and focus on making the GAC communicate clearer. The ATRT3 apparently believes that this would facilitate the community’s ability to take in GAC advice and properly consider it in the context of any relevant ongoing work.

2. GAC Reaction

The ATRT3 assessment of community survey reactions seems to have prompted some of the Review Team’s suggestions regarding the clarity of the GAC Communiqué and GAC efforts to reach consensus. The GAC welcomes the ATRT3 recognition that community expectations seem

⁹ The Section 2.1 “prologue section notes – “It is important to understand the special nature of the GAC when considering how ATRT3 assessed the implementation and effectiveness of the ATRT2 Recommendations for the GAC. The GAC is composed of government representatives who are, for the most part, participating as official representatives of their respective governments.

These representatives are subject to a number of expectations as to how they can interact with the ICANN community and can rarely commit their governments to anything without prior formal authorization.

Additionally, these government representatives are trained to function in certain ways when participating in international forums like ICANN and most require the GAC to function in similar fashion.

The recommendations ICANN makes for the GAC via such processes as the ATRT reviews may have limited applicability or may have to be adapted to fit into the GAC context.”

“inconsistent with the charter of the GAC” and the GAC leadership will consider the suggestions offered by the ATRT3.

B. ATRT3 Survey Question 16 – Should GAC transparency be improved?

1. ATRT3 Conclusion

After analyzing community responses to this survey question, the ATRT3 determined that “roughly” 55% of survey respondents supported improving GAC accountability vs. 40% for not doing so. Consequently, the Review Team indicated that it would not make any recommendations of suggestions regarding this topic.

2. GAC Reaction

Over the last few years, the GAC has made many improvements regarding the transparency of its meetings, deliberations and work efforts. GAC members have worked to more broadly to participate in ICANN cross-community efforts regarding policy and organizational operations. The committee expects this approach to continue.

C. ATRT3 Survey Question 17 – In your view are you satisfied with the interactions the GAC has with the Board?

1. ATRT3 Conclusion

The ATRT3 noted in its Final Report that responses to Question 17 “would seem to indicate that ICANN structures have been following the recent evolution of the GAC-Board relationship more closely than individual members of the community. The Review Team also determined that there have been significant improvements by the GAC in this area which would appear to align with ICANN Structures expressing a very strong net of 64% being satisfied or very satisfied.

The ATRT3 suggests that the GAC and the Board develop joint messaging about the current state of their interactions and the mechanisms which support these.

2. GAC Reaction

GAC leadership will discuss this suggestion and consider developing recommendations regarding the pursuit of joint messaging with the Board on the success of their interactions.

D. ATRT3 Survey Question 18 – In your view are you satisfied with the interactions the GAC has with the SO/ACs?

1. ATRT3 Conclusion

The Review Team determined that, overall, SO/AC interactions with the GAC are rated very positively by the SO/ACs. The ATRT3 noted concerns expressed by contracted parties and suggested that the GAC consider the success of the current mechanisms that are in place for

interacting with the Board and work with the GNSO to implement similar mechanisms to facilitate interactions between the GAC and the GNSO.

2. GAC Reaction

The GAC notes the value of building and maintaining productive relationships with other ICANN communities and welcomes this suggestion. The GAC Leadership will explore further mechanisms that can improve those relationships, particularly with the GNSO communities.

III. Conclusion

The GAC appreciates the substantial time and attention that the ATRT3 has devoted to this initiative and looks forward to further exploring the suggestions offered by the review team to help the GAC improve its transparency and accountability – a constant and continuous effort.

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