**GNSO COUNCIL REVIEW OF THE** [**COPENHAGEN GAC COMMUNIQUE**](https://gacweb.icann.org/download/attachments/27132037/GAC%20ICANN%2058%20Communique.pdf?version=2&modificationDate=1489619243747&api=v2)**[[1]](#footnote-1)**

| **GAC Advice - Topic** | **GAC Advice Details** | **Does the advice concern an issue that can be considered within the remit[[2]](#footnote-2) of the GNSO (yes/no)** | ***If yes, is it subject to existing policy recommendations, implementation action or ongoing GNSO policy development work?*** | ***How has this issue been/is being/will be dealt with by the GNSO*** |
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| **1. Protection of the Red Cross and Red Crescent designations and identifiers** | Re-affirming previous GAC Advice for a permanent reservation of the Red Cross and Red Crescent designations and identifiers, the GAC acknowledges the conclusions of the facilitated dialogue held during ICANN 58 on resolving outstanding differences between the GAC’s previous advice and the GNSO's past recommendations to the Board on the protections of the names and identifiers of the respective Red Cross and Red Crescent organizations.  Consistent with the conclusions of the abovementioned dialogue,  a. The GAC advises the ICANN Board to:  I. request the GNSO without delay to re-examine its 2013 recommendations pertaining to the protections of Red Cross and Red Crescent names and  identifiers (defined as “Scope 2” names in the GNSO process) which were inconsistent with GAC Advice.  RATIONALE  The GAC acknowledges the outputs of the facilitated dialogue on this topic and requests the Board to proceed accordingly without delay | Yes | Yes | The GNSO Council discussed the Board’s request to consider possible modifications to the GNSO policy relating to a limited list of Red Cross National Society and international movement names, in accordance with the GNSO’s process as outlined in the GNSO Policy Development Process Manual, at its meeting on 20 April 2017. A motion to invoke this extraordinary process is currently under consideration. |
| **2. IGO Protections** | The GAC notes that a dialogue facilitated by the Board on this topic has begun between the GAC and the GNSO (including its relevant Working Groups). The GAC expects that these discussions would resolve the long-outstanding issue of IGO acronym protections and understands that temporary protections will continue to remain in place until such time as a permanent agreed solution is found. Based upon the facilitated discussions up to this stage,  a. The GAC advises the ICANN Board to:  I. pursue implementation of (i) a permanent system of notification to IGOs regarding second-level registration of strings that match their acronyms in up to two languages and (ii) a parallel system of notification to registrants for a more limited time period, in line with both previous GAC advice and GNSO recommendations;  II. facilitate continued discussions in order to develop a resolution that will reflect (i) the fact that IGOs are in an objectively unique category of rights holders and (ii) a better understanding of relevant GAC Advice, particularly as it relates to IGO immunities recognized under international law as noted by IGO Legal Counsels; and  III. urge the Working Group for the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms to take into account the GAC’s comments on the Initial Report.  RATIONALE  This Advice captures achievements made to date in the facilitated discussions, in the hope that this will be instrumental in resolving this long-standing issue at the earliest opportunity. | Yes | .Yes | The GNSO’s IGO-INGO Curative Rights Policy Development Process Working Group is actively reviewing all comments received on its Initial Report, including the comment submitted by the GAC. The GNSO Council appreciates the opportunity for a facilitated dialogue between the GAC and the GNSO at ICANN58 and looks forward to continuing discussion with the GAC and ICANN Board on appropriate next steps.  In regard to permanent protections for IGO names and acronyms, Council reiterates its previously stated position that the Bylaws prevent it from taking any further actions in regard to the blocking and monitoring of IGO-related domain registrations until the Board officially acts on the divergent GNSO recommendations and GAC advice on these matters. While the Board should act in a transparent and good faith manner concerning the unresolved issues, and while Council is committed to maintaining an open dialogue with the GAC aiming to facilitate a mutually satisfactory resolution, we do not believe it is the proper role for the Board to actively engage as a mediator between the GNSO and GAC on this or any other policy matter. As regards the October 4, 2016 IGO small group “compromise” proposal for resolution of outstanding IGO issues, Council will give it full consideration as our attention to resolution of these matters continues. However, while the proposal is an important input and will receive full and fair consideration in continued GNSO deliberations, we cannot regard it as the “starting basis for resolution of differences” as according it such priority would run counter to the Bylaws prescribed policy development process. We also note that a significant portion of the small group proposal addresses curative rights processes matters that are the subject of an ongoing PDP which is in its final stage and approaching completion of a proposed draft report and recommendations to be circulated for public comment shortly. We urge GAC members and IGOs to carefully review that document upon publication and to participate in the public comment process.  The Council further notes that it has been advised by the Co-chairs of the GNSO Working Group on Curative Rights Protection Mechanisms that the members of the Working Group devoted two working sessions to review of the small group proposal and that it has been fully taken into account; and that in its initial meeting following ICANN 58 the Working Group fully and carefully considered the comments of the GAC as well as those of various IGOs in regard to its Initial Report. The Co-Chairs have further advised Council of their expectation that the Working Group’s draft recommendations will add substantial clarity regarding the ability of IGOs to utilize CRP mechanisms and to safeguard their claimed immunities while doing so, and if adopted will better ensure that IGOs have clear standing to access effective and low cost relief when their names or acronyms are abused in the domain name system.  Donna Austin revised text taking into account Mary’s/Heather’s comments above:  The GNSO Council refers to its previous response to the Board on this topic, which notes the ongoing work of the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) Working Group. The GNSO Council appreciates the opportunity to participate in the facilitated discussion with the GAC at ICANN58, and the good faith dialogue that took place.  In relation to the GAC’s advice to the Board to pursue implementation of:  (i) a permanent system of notification to IGOs regarding second-level registration of strings that match their acronyms in up to two languages; and  (ii) a parallel system of notification to registrants for a more limited time period, in line with both previous GAC advice and GNSO recommendations.  The GNSO Council understands that the agreed outcome of the facilitated dialogue session at ICANN 58 was that further input from ICANN on the feasibility of permanent notification to IGOs is required; and that a parallel system of notification to registrants for a more limited time period, is in line with both previous GAC advice and GNSO recommendations.  In relation to the GAC’s advice to the Board to facilitate continued discussions in order to develop a resolution that will reflect (i) the fact that IGOs are in an objectively unique category of rights holders and (ii) a better understanding of relevant GAC Advice, particularly as it relates to IGO immunities recognized under international law as noted by IGO Legal Counsels. The GNSO Council looks forward to continuing, in good faith, the discussions with the GAC and the Board on appropriate next steps, but is concerned that the GAC advice in this instance seems to suggest a predetermined outcome, which the Council believes is premature.  As previously communicated to the Board, the ongoing PDP on IGO-INGO Access to Curative Rights Protection Mechanisms will take into account the GAC’s comments on the Initial Report. The GNSO Council notes that the Working Group is actively reviewing all comments received on its Initial Report, including the comments submitted by the GAC and a number of IGOs. |
| **3. Mitigation of Domain Name Abuse** | a. The GAC advises the ICANN Board to:  I. provide written responses to the questions listed in the Follow-up Scorecard attached to this Communique, no later than 5 May 2017 for appropriate  consideration by the GAC before the ICANN 59 meeting in Johannesburg, taking into account that the ICANN President and CEO will act as contact point for the GAC in this matter.  RATIONALE  The GAC is seeking to assess the effectiveness of its Advice to the ICANN Board.  Annex 1 of the GAC Hyderabad Communiqué listed a number of questions to conduct such assessment in relation to Advice implemented as part of the 2013 Registrar Accreditation  Agreement and the New gTLD Registry Agreement.  The GAC is also interested in assessing the contribution of the SSR and Contractual Compliance departments of ICANN to the prevention and mitigation of domain name abuse.  While ICANN responded to Annex 1 of the GAC Hyderabad Communiqué, the information provided was not sufficient to conduct the necessary assessments. | Yes | Yes | The GNSO Council refers to its input to the Board regarding the GAC’s Hyderabad Communique on this topic, and reiterates the concerns it stated in that response: <https://gnso.icann.org/en/drafts/review-gac-communique-15dec16-en.pdf>. |
| **4. 2-Character Country/Territory Codes at the Second Level** | In light of the discussions with the ICANN Board in Copenhagen on the Board Resolution of 8 November 2016 and its implementation of 13 December 2016 regarding two-letter country codes as second level domains,  a. The GAC advises the ICANN Board to:  I. Take into account the serious concerns expressed by some GAC Members as contained in previous GAC Advice  II. Engage with concerned governments by the next ICANN meeting to resolve those concerns.  III. Immediately explore measures to find a satisfactory solution of the matter to meet the concerns of these countries before being further aggravated.  IV. Provide clarification of the decision-making process and of the rationale for the November 2016 resolution, particularly in regard to consideration of the GAC advice, timing and level of support for this resolution.  RATIONALE  The GAC noted serious concerns expressed by some governments about the consequences introduced by the changes created by the 8 November 2016 Resolution. In particular, according to the new procedure it is no longer mandatory for the registries to notify governments of the plans for their use of 2-letter codes, nor are registries required to seek agreement of governments when releasing two-letter country codes at the second level, which, for example, allows registries to charge governments substantial fees. | Yes | Yes | The Consensus Advice contained in the Communique essentially requires the ICANN Board to negotiate directly with individual countries on two letter domain names at the second level, and requires the Board to reach resolution with each country. In other words, instead of developing a consensus position that all GAC members have agreed to, the Consensus Advice mechanism found in the bylaws is being misapplied to attempt to compel the ICANN Board to negotiate with, and presumably reach agreement on, each government’s individual demands. This should not be considered proper “Consensus Advice”, but could rather be considered an attempt to circumvent the very clear and well-defined threshold for the GAC to issue “Consensus Advice”. The GNSO regards this as an unhelpful attempt to sidestep requirements contained in the Bylaws to delegate GAC-equivalent advice to individual GAC members, rather than the GAC as a whole. We note that this was discussed extensively during the CCWG-ACCT Workstream 1 process, but ultimately rejected. It is therefore inappropriate to raise it again here. We also believe that bilateralism between the Board and individual GAC members undermines the very structure and utility of the GAC itself, and we believe that the Board should reject this “Consensus Advice” and inform the GAC that any future purported “Consensus Advice” which requires negotiations with individual GAC members, rather than actual consensus positions, will be ignored without comment or vote as it is not proper “Consensus Advice.” This is consistent with ICANN’s commitment to the United States Government and other parts of the ICANN Community that governments would not end up with more power in a post-transition ICANN.  Donna Austin revised text for consideration:  There should be no opportunity for this Advice to cause the Board to re-open their decision on two letter codes at the second level, as contained in the Board’s resolution of 8 November 2016 and subsequent implementation, which came at the end of a long process that included community consultation and input.  The Council is also concerned that the Consensus Advice contained in Section VI. 4. of the Communique that essentially requires the ICANN Board to negotiate directly, and reach resolution, with individual governments on two letter domain names at the second level is, in our view, inconsistent with the Consensus Advice mechanism found in the ICANN bylaws and as such should not be considered “Consensus Advice”. The GNSO Council regards this as an unhelpful attempt to sidestep requirements contained in the Bylaws to delegate GAC-equivalent consensus advice to individual GAC members, rather than the GAC as a whole. We note that this was discussed extensively during the CCWG-ACCT Workstream 1 process and was ultimately rejected. Bilateralism between the Board and individual GAC members also has the potential to undermine the utility of the GAC itself and is also inconsistent with ICANN’s commitment to the United States Government and other parts of the ICANN Community that the GAC or individual governments would not end up with more power in a post-transition ICANN. |

1. Only of “Section VI of the Communiqué: GAC Advice to the ICANN Board” [↑](#footnote-ref-1)
2. As per the ICANN Bylaws: ‘There shall be a policy-development body known as the Generic Names Supporting Organization (GNSO), which shall be responsible for developing and recommending to the ICANN Board substantive policies relating to generic top-level domains. [↑](#footnote-ref-2)