**GNSO COUNCIL REVIEW OF THE** [**JOHANNESBURG GAC COMMUNIQUE**](https://gacweb.icann.org/download/attachments/27132037/GAC%20ICANN59%20Communique_Final.pdf?version=2&modificationDate=1498747877729&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*** |
| --- | --- | --- | --- | --- |
| **1. Intergovernmental Organization (IGO) Protections** | **a. The GAC reiterates its Advice that IGO access to curative dispute resolution mechanism should:**  I. be modeled on, but separate from, the existing Uniform Dispute Resolution Policy (UDRP)  II. provide standing based on IGOs’ status as public intergovernmental institutions, and  III. respect IGOs’ jurisdictional status by facilitating appeals exclusively through arbitration.  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.  RATIONALE This Advice aligns with the view of governments that IGOs perform important public functions for citizens worldwide, and that protecting their identities in the DNS serves to minimize the potential for consumer harm. | Yes | Yes | “The GNSO Council takes note that the GAC has reiterated its previous advice regarding IGO access to curative dispute resolution mechanisms. The Council hereby refers to its prior responses to the Board and GAC on this topic, which noted the ongoing work of the IGO-INGO Access to Curative Rights Protection Mechanisms Policy Development Process (PDP) Working Group (WG). The GAC advice on this matter was encapsulated in the IGO Small Group Proposal that was extensively considered and discussed by the WG in its January 2017 IGO-INGO Access to CRP Mechanisms Initial Report, after being requested by the ICANN Board to give it the fullest consideration. The WG did not adopt the Small Group Proposal after concluding, based upon input from its expert legal adviser and other considerations, that there was no sound legal or policy basis for creation of a separate CRP solely for IGOs, and that it would be both inappropriate and ineffective for ICANN to attempt to grant blanket jurisdictional immunity to IGOs, or to attempt to deny redress by domain registrants via applicable national laws pertaining to domain-related disputes.  Notwithstanding the decision by IGOs to refrain from becoming members of the WG, the WG has nonetheless done its utmost to consider all input and expertise provided by IGOs. In particular, the WG reviewed and discussed all comments received on its Initial Report that contained new information and analysis, including extensive comments received from IGOs. Based upon such considered review, it is Council’s understanding that the WG’s Final report will likely change the effect on standing to initiate a CRP based upon an IGO’s notification to WIPO to invoke its protections in national trademark law systems under Article 6ter of the Paris Convention. In addition, the WG is presently discussing an option whereby, when a domain registrant appeals an adverse dispute resolution decision to a court of mutual jurisdiction, and an IGO successfully invokes an immunity defense in that court, the appeal would be resolved through a subsequent arbitration procedure.  The Council further understands that the WG has made clear that it would delay submission of its Final Report if the facilitated GAC-Board-GNSO discussion group on IGO matters elected to seek a separate legal opinion regarding any legal basis for protection of IGO names and acronyms apart from trademark law, but that following discussion of this option by the discussion group no decision has been taken to seek such additional legal advice.  The IGO CRP WG is presently seeking to deliver its Final Report prior to the ICANN 60 meeting in Abu Dhabi. It is the Council’s understanding that the WG remains committed to ensuring ready access by IGOs to effective and low cost curative rights protection mechanisms that recognize IGOs’ performance of important public functions for citizens worldwide, and that protection of their identities in the DNS serves to minimize the potential for consumer harm.” |
| **Follow-Up on Previous GAC Advice and Other Issues** | | **GNSO Response** | | |
| **4. Geographic Names as Top-Level Domains**  GAC Members welcomed and participated in the cross-community sessions held at ICANN59 on geographic names at the top level. The GAC considers that any further process of policy review and development should: (a) continue to allow all stakeholder groups to participate equally; (b) take into account the history and rationale of the arrangements currently in place; and (c) apply an evidence-based policy approach to any proposals for future arrangements. Regarding the use of geographic names at the top level, the GAC recalls its advice and positions as stated in the following documents:   * GAC Principles and Guidelines for the Delegation and Administration of Country Code Top Level Domains (2005), paragraphs 4.1.1. , 4.1.2. and 8.3. * GAC Principles Regarding New gTLDs (2007), sections 1.2 , 2.1 ,2.2, 2.3, 2.4 , 2.7 and 2.8. * GAC Nairobi Communiqué (2010): Application of 2007 Principles. * GAC Durban Communiqué (2013): Future application of 2007 Principles. * GAC Helsinki Communiqué (2016): 3-letter codes. | | “The GNSO Council also takes note of the “Geographic Names as Top-Level Domains“ section of the communiqué restating previous advice and positions. Among those positions are references that imply that certain geographic top-level domains should be addressed by, and only through, a ccNSO PDP.  With respect to that position we note (i) that a ccNSO PDP was not commenced on country and territory names at the top-level, (ii) a Cross Community Working Group on the Use of Country and Territory Names produced a final report in which no recommendations were made on any issues other than the use of two-characters at the top-level, and (iii) these issues are currently within the scope of and charter of the GNSO Policy Develop Process on New gTLD Subsequent Procedures (SubPro PDP). Our understanding is that the SubPro PDP will be establishing a new Work Track 5 on Geographic Names at the Top Level and inviting persons from each of the SOs and ACs to participate in the leadership of that Work Track.  The GNSO Council encourages participation from the community, including the GAC, in that SubPro PDP to ensure a multi-stakeholder bottom up solution to this issue.” | | |

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)