**DRAFT PROBLEM STATEMENT RELATING TO THE PROTECTION OF CERTAIN RED CROSS NAMES AND ACRONYMS AT THE SECOND LEVEL IN GENERIC TOP LEVEL DOMAINS (draft as of 12 January 2017)**

**The Objective:**

The allocation, management and operation of generic top level domains (gTLDs) must take into account the need to ensure that neither the registration of a domain name at the second level nor the manner in which it is used infringes the legal rights of the Red Cross, in accordance with recognized principles of international law. In this specific instance, any gTLD policies for the protection for the official names of the various National Societies of the Red Cross movement, the two international movement names (International Federation of Red Cross and Red Crescent Societies, and International Committee of the Red Cross), and the acronyms of the two international movement names (ICRC, CICR, IFRC, and FICR), should reflect the scope of protection afforded to these terms under international law while balancing the legitimate rights and interests of other domain name registrants.

**The Problem:**

Since the Governmental Advisory Committee (GAC) advice and Generic Names Supporting Organization (GNSO) policy recommendations in relation to the above objective are in conflict, a resolution is now being sought. The main questions concern:

(1) the appropriate form and extent of any protections that are to be conferred; and

(2) how to provide that protection in the context of the applicable legal rights framework as well as ICANN's narrow mission as encapsulated in the ICANN Bylaws.

Where practicable, any protection mechanisms to be developed should take advantage of similar mechanisms that have been created for protecting other legal rights.

**Proposed Method:**

The GAC and the GNSO are being requested to engage in a dialogue based on this Problem Statement and agreed Briefing Materials, assisted by a facilitator.

**The Issue in Context:**

A few specific terms associated with the Red Cross movement – namely, Red Cross, Red Crescent, Red Crystal, and Red Lion and Sun – are already on the Reserved Names List at the top level of the 2012 New gTLD Program. In addition, these specific terms have been approved by the ICANN Board to be permanently withheld from registration at the second level in all new gTLDs delegated under the 2012 New gTLD Program, following the completion of a GNSO Policy Development Process (PDP) in 2013. However, the question of permanent protections at the second level for certain other terms associated with the Red Cross movement remains unresolved. In relation to these other terms, the advice that has been provided by the GAC to the ICANN Board between 2013-2015 is not consistent with the policy recommendations of the 2013 GNSO PDP.

The Red Cross terms for which protection remains in question are:

* the names of 189 National Societies of the Red Cross movement;
* the name *International Federation of Red Cross* and *Red Crescent Societies* and its acronyms (*IFRC* and *CFRC*); and
* the name *International Committee of the Red Cross* and its acronyms (*ICRC* and *CICR*).

The GAC’s rationale for seeking permanent protection for terms most closely associated with the Red Cross movement is that these terms are protected by international treaty and under multiple national laws. In March 2014, the GAC clarified expressly that such protection should also apply to 189 National Society names (in English and the respective official language), and the 2 international movement names (in the 6 official United Nations (UN) languages). In relation to the acronyms of the international movement (ICRC, CICR, IFRC and FICR), the GAC’s advice was for protection similar to the proposed cost-neutral mechanisms it recommended be developed for International Governmental Organization acronyms.

Under its PDP conducted between October 2012 and November 2013, the GNSO’s final policy recommendations for protection of the 189 National Society names and each of their acronyms (in English and the respective official language), as well as the 2 international movement names and each of their acronyms (in the 6 official UN languages), were that they be placed into the Trademark Clearinghouse mechanism such that: (1) a potential registrant of a second level domain matching one of these names or acronyms would receive a Claims Notice informing them of the fact; and (2) the affected organization would receive a Notice of Registered Name if the registrant nevertheless proceeds with the attempted registration.

**Current ICANN Mechanisms Developed to Reflect Existing Legal Protections:**

When registering a gTLD domain, a Registered Name Holder represents that, to the best of the Registered Name Holder's knowledge and belief, neither the registration of the Registered Name nor the manner in which it is to be directly or indirectly used infringes the legal rights of any third party.

Where the allegation concerns infringement of trademark rights, ICANN has an existing consensus policy (the Uniform Domain Name Dispute Resolution Policy (UDRP)) that allows trademark holders to initiate a dispute resolution process where:

(i) the registered domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; AND

(ii) the registrant has no rights or legitimate interests in respect of the domain name; AND

(iii) the domain name was registered and is being used in bad faith.

Examples of bad faith include: (1) instances where a Registered Name Holder intentionally attempts to attract, for commercial gain, Internet users to the Registered Name Holder's website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or of a product or service on the website; or (2) circumstances indicating that the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant/mark-holder for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name.

In addition to the UDRP, the 2012 New gTLD Program incorporated new and additional trademark rights protection mechanisms. For example, entering one’s trademark into the new Trademark Clearinghouse database ensures that a trademark holder will be notified when a domain name is registered that matches their trademark, and potential registrants are advised of trademark rights that may exist in a domain name as part of the registration process. A new dispute resolution policy based substantially on the UDRP – the Uniform Rapid Suspension system (URS) - was also introduced for the 2012 New gTLD Program.

The above-mentioned protection mechanisms are based on the existence of legal rights based on numerous national trademark laws and international treaties related to trademarks.