**NOTES FROM RECONVENED IGO-INGO PDP WORKING GROUP CALL ON 17 AUGUST 2017**

**Prepared by ICANN Staff – 23 August 2017**

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6. WHAT IS THE SCOPE OF THIS WORKING GROUP’S REMIT AT THIS TIME?

The Working Group was reconvened by the GNSO Council in May 2017 (<https://gnso.icann.org/en/council/resolutions#20170503-071>), to consider a specific proposal to amend the Working Group’s original Recommendation #5 from Section 3.1 of its November 2013 Final Report. The scope of the Council’s request reads as follows (emphasis added):

*“(a)* ***The full names of the now-190 Red Cross National Societies and the full names of the International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies*** *are to be placed into Specification 5 of the Base gTLD Registry Agreement, with an exception procedure to be created for cases where the relevant Red Cross Red Crescent Movement organization wishes to apply for their protected string at the second level;*

*(b) In placing the specified identifiers into Specification 5 of the Registry Agreement, this should apply to an* ***exact match of the full name*** *of the relevant National Society recognized within the International Red Cross and Red Crescent Movement (in English and the official languages of its state of origin), the full names of the International Committee of the Red Cross and of the International Federation of Red Cross and Red Crescent Societies (in the six official United Nations languages)* ***and a defined limited set of variations*** *of these names; and*

*(c) In considering the proposed amendment, account is to be duly taken of the matters noted during the GAC-GNSO facilitated discussion at ICANN58 as well as of the GAC's public policy advice to reserve the finite list of names of the Red Cross and Red Crescent National Societies, as recognized within the International Red Cross and Red Crescent Movement, in all gTLDs.”*

The “matters noted during the GAC-GNSO facilitated discussion at ICANN58” were highlighted in the Board’s request to the GNSO Council (made at the conclusion of ICANN58: see <https://www.icann.org/resources/board-material/resolutions-2017-03-16-en#2.e.i)> to consider initiating the Policy Amendment Process leading to the reconvening of this Working Group. These matters were described in the GNSO Council’s resolution reconvening this group as follows (emphasis added):

*“(1) The* ***public policy considerations*** *associated with protecting the Movement's identifiers in the domain name system (DNS);*

*(2) The* ***GAC's rationale for seeking permanent protection for the terms most closely associated with the Movement and its respective components*** *is grounded in the protections of the designations "Red Cross", "Red Crescent", "Red Lion and Sun", and "Red Crystal" under* ***international treaty law and under multiple national laws****;*

*(3) The list of names of the Red Cross and Red Crescent National Societies is a* ***finite, limited list of specific names of the National Societies*** *recognized within the Movement (*[*http://www.ifrc.org/Docs/ExcelExport/NS\_Directory.pdf*](http://www.ifrc.org/Docs/ExcelExport/NS_Directory.pdf)*);*

*(4) There are* ***no other legitimate uses for these terms****; and*

*(5) The* ***GAC had provided clarification following the completion of the GNSO PDP****, via its March 2014 Singapore Communique, on the finite scope of the specific list of Movement names for which permanent protections were being requested”.*

1. WHAT HAS CHANGED SINCE THE PDP WORKING GROUP CONCLUDED ITS ORIGINAL DELIBERATIONS ON THE SAME TOPIC?

As highlighted in the GNSO Council’s May 2017 resolution, the participants in the facilitated discussions at ICANN58 took note of the fact that the GAC’s clarification that its request for permanent protection for Red Cross identifiers specifically included the Red Cross National Society names was provided only in its Singapore Communique of March 2014. This Communique was issued after the original PDP had concluded.

In its June 2014 London Communique, the GAC further noted that the Red Cross names *“should not be equated with trademarks or trade names and that their protection could not therefore be adequately treated or addressed under ICANN's curative mechanisms for trademark protection”*.

1. DOES THE SCOPE OF THIS RECONVENED WORKING GROUP INCLUDE RED CROSS ACRONYMS?

It does not. The Board and GNSO Council resolutions explicitly stated that the requests pertained only to the names of the Red Cross National Societies and the two names of the International Movement. While the GAC had issued advice via its Durban Communique (July 2013) to the effect that *“the same complementary cost neutral mechanisms to be worked out … for the protection of acronyms of IGOs be used to also protect the acronyms of the International Committee of the Red Cross (ICRC/CICR) and the International Federation of Red Cross and Red Crescent Societies (IFRC/FICR)”*, this topic is not within the scope of the reconvened group.

There is a separate GNSO PDP that is currently completing its work, that has been tasked with considering curative rights protection mechanisms for IGOs and International Non-Governmental Organizations, including the Red Cross.

1. WHAT IS THE LEGAL BASIS THAT HAS BEEN BROUGHT FORWARD AS PROVIDING THE SUBSTANTIVE GROUNDS FOR PERMANENTLY PROTECTING THESE PARTICULAR RED CROSS NAMES?

International law governing the use of the Red Cross emblems and designations is contained in the Geneva Conventions and their Associated Protocols.[[1]](#footnote-1)

**Article 44** of the First Geneva Convention of 1949 (<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=5CCB6DD2AB618FABC12563CD0051A251>) provides, in relevant part, that:

*“The emblem of the Red Cross on a white ground and the words "Red Cross", or "Geneva Cross" may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel and material protected by the present Convention and other Conventions dealing with similar matters … The National Red Cross Societies and other Societies designated in Article 26 shall have the right to use the distinctive emblem conferring the protection of the Convention only within the framework of the present paragraph.*

 *Furthermore, National Red Cross (Red Crescent, Red Lion and Sun) Societies may, in time of peace, in accordance with their national legislation, make use of the name and emblem of the Red Cross for their other activities which are in conformity with the principles laid down by the International Red Cross Conferences.*

*The international Red Cross organizations and their duly authorized personnel shall be permitted to make use, at all times, of the emblem of the Red Cross on a white ground.”*

**Article 53** of the same Convention provides, in relevant part, that:

*“The use by individuals, societies, firms or companies either public or private, other than those entitled thereto under the present Convention, of the emblem or the designation "Red Cross" or "Geneva Cross", or any sign or designation constituting an imitation thereof, whatever the object of such use, and irrespective of the date of its adoption, shall be prohibited at all times.”*

Notably, the 2016 Commentary to the Convention states that this Article *“serves to reaffirm the special nature and status of the distinctive emblems. This status may be regarded as genuinely unique under international law.”*

1. WHAT WAS THE PUBLIC POLICY BASIS ARTICULATED BY THE GAC?

The rationale provided by the GAC in its Hyderabad Communique (November 2016) was that, in addition to the *“distinct legal protections”* accorded to the Red Cross under *“universally agreed norms of public international law*”, justification can also be:

*“founded in the global public interest in preserving the names of the respective Red Cross and Red Crescent organizations from abuse and fraud. The above grounds constitute the motivation for the GAC's request that the recommendations of the past GNSO PDP that are not consistent with past GAC advice be revised.”*

1. The following paragraphs constitute only a very brief summary of points explored in greater detail in the Red Cross’ submission on this topic (see <http://mm.icann.org/pipermail/gnso-igo-ingo/attachments/20170804/e1bd7e31/14August2013.PositionpapertoICANNBoard-0001.pdf>), and the Briefing Document used in the ICANN58 facilitated discussions (<http://mm.icann.org/pipermail/gnso-igo-ingo/attachments/20170724/beae27eb/BriefingDocument-RedCross-ICRCcomments-6March-0001.pdf>). In general, note that the 1949 Geneva Conventions and their Additional Protocols contain explicit prohibitions against misuse of the emblems and their designations and require States parties to take adequate measures to prevent and repress misuse. See, e.g. Arts. 53, 54, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field of 12 August 1949, (GC I); Arts. 38(1), 85 (3)(f), Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Conflicts of 8 June 1977 (AP I); Art. 6, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem of 8 December 2005 (AP III). [↑](#footnote-ref-1)