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**BRIEFING PAPER: RECONCILING GAC ADVICE & GNSO POLICY  
RECOMMENDATIONS CONCERNING PROTECTIONS FOR CERTAIN RED CROSS  
NAMES AND ACRONYMS AT THE SECOND LEVEL IN THE DOMAIN NAME SYSTEM**

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**TO:** GAC AND GNSO REPRESENTATIVES

**FROM:** BRUCE TONKIN

**DATE:** [CLICK TO SELECT DATE]

**CC:** RED CROSS-IGO DISCUSSION GROUP PARTICIPANTS

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**I. SCOPE OF DISCUSSION:**

The Government Advisory Committee (GAC) public policy advice and the Generic Names Supporting Organization (GNSO) policy recommendations differs in relation to the nature and extent of the protections to be accorded at the second level of the domain name system (DNS) for the following names and acronyms associated with the International Red Cross and Red Crescent Movement. A reconciliation of positions between GAC advice and the GNSO's policy recommendations is notably

- The names of 189 (now 190) Red Cross or Red Crescent National Societies recognized within the International Red Cross and Red Crescent Movement<sup>1</sup>;

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<sup>1</sup> See, e.g., the GAC's Singapore Communique from March 2014 (<https://gacweb.icann.org/download/attachments/34373739/Final%20Communique%20->

- The name *International Committee of the Red Cross*, and its associated acronyms (*ICRC*, *CICR*, *MKKK*); and
- The name *International Federation of Red Cross and Red Crescent Societies* and its associated acronyms (*IFRC*, *CFRC*)

Representatives of the International Red Cross and Red Crescent Movement (Movement) participated in the completed GNSO PDP's in this matter and submitted a Minority Position and Statement to the Final Report: see <http://gns0.icann.org/en/issues/igo-ingo-final-minority-positions-10nov13-en.pdf><sup>2</sup>.

Pending final resolution of the issue as to the list of Red Cross and Red Crescent names and acronyms that are to be protected at the second level of the DNS, and in what form, the identifiers of the Movement that remain at issue have been withheld from registration on an interim basis, by way of a Board resolution in October 2014 that also recognized the continuing work in the GAC and GNSO community to resolve the remaining differences between GAC advice and GNSO policy on the topic of protections for the Red Cross and Red Crescent names and acronyms<sup>3</sup>.

## II. THE RELEVANT TIMELINE

October 2012: The GNSO Council [launches](#) a Policy Development Process to evaluate: (i) whether there is a need for special protections at the top and second level in all gTLDs for the names of International Governmental Organizations (IGOs) and international non-governmental organizations (INGOs) receiving protections under treaties and statutes under multiple jurisdictions, and specifically including the International Red Cross and Red Cross Movement and the International Olympic Committee; and (ii) if so, to develop policy recommendations for such protections.

July 2013: The ICRC and the International Federation submit to ICANN's Board a Position Paper detailing the international protections of the Red Cross and Red Crescent designations under the 1949 Geneva Conventions and their Additional Protocols and calling upon ICANN's Board 1) to make the existing temporary reservations of the Red Cross designations and names permanent and 2) to confirm that the said protections extend to the respective identifiers of the

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[%20Singapore%202014.pdf?version=1&modificationDate=1396983622000&api=v2](#)), the London Communique from June 2014 (<https://gacweb.icann.org/download/attachments/34832987/GAC%20London%20Communique%20FINAL%20%20%281%29.pdf?version=1&modificationDate=1406103000000&api=v2>), and the Los Angeles Communique from October 2014 ([https://gacweb.icann.org/download/attachments/35455781/Los%20Angeles\\_GAC%20Communique\\_Final.pdf?version=1&modificationDate=1414072141000&api=v2](https://gacweb.icann.org/download/attachments/35455781/Los%20Angeles_GAC%20Communique_Final.pdf?version=1&modificationDate=1414072141000&api=v2)).

<sup>2</sup> For the full text of the November 2013 GNSO Council resolution adopting all the consensus recommendations of the Policy Development Process Working Group on this topic, see <http://gns0.icann.org/en/council/resolutions#20131120-2>.

<sup>3</sup> See <https://www.icann.org/resources/board-material/resolutions-new-gtld-2014-10-12-en#2.d>.

different Red Cross and Red Crescent organizations (including the names of the then-189 National Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies and the latter's acronyms). Were annexed to the Report were lists of the names of the respective Red Cross and Red Crescent organizations as well as a detailed table of national legislation on the use and protection of the distinctive emblems and of their designations (in implementation of relevant obligations under the 1949 Geneva Conventions and their Additional Protocols).<sup>4</sup>

November 2013: The GNSO Council [adopts](#) the *consensus recommendations* contained in the Final Report of the PDP Working Group<sup>5</sup>, including protections at the top and second level for certain Red Cross and Red Crescent names and acronyms (notably for the designations "Red Cross", "Red Crescent", "Red Crystal" and "Red Lion and Sun"), but excluding the protections and reservations called for, in accordance with the GAC's advice, for

- the names of the then-189 National Red Cross and Red Crescent Societies (in English and in the official languages of their respective States of origin;
- the names of the two international organizations of the Movement (in the 6 UN languages) and their usual acronyms.

The ICRC and the International Federation present a Minority Position Statement that is annexed to the GNSO's Final Report.<sup>7</sup>

March 2014: The GAC's Singapore Communique clarifies for the first time that the permanent protections it requests for the terms most closely associated with the Red Cross and Red Crescent Movement includes the then-189 Red Cross National Society names, the names International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies; and the acronyms ICRC, CICR, IFRC and FICR.

April 2014: The ICANN Board [adopts](#) those of the GNSO's consensus recommendations that are consistent with GAC advice<sup>8</sup> received on the topic, and requests more time to consider the remaining recommendations<sup>9</sup>.

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<sup>4</sup> Reference should also be made to the Public Comment respectively submitted by over 60 National Red Cross and Red Crescent Societies to the ICANN community in support of the permanent protection of the Red Cross and Red Crescent names (4 July 2013).

<sup>5</sup> See the Final Report from the PDP Working Group (November 2013), e.g. at p. 11: <https://gnso.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>.

<sup>7</sup> Accessible at <https://gnso.icann.org/en/issues/igo-ingo-final-minority-positions-10nov13-en.pdf>.

Reference should also be made to the Public Comment submitted by the legal advisers of over 60 National Red Cross and Red Crescent Societies to the ICANN community on the Initial Report on the Protection of IGO and INGO Identifiers in all gTLDs (dated 4 July 2013).

(accessible at: <https://forum.icann.org/lists/comments-igo-ingo-initial-14jun13/msg00000.html>)

<sup>8</sup> Note that this section summarizes the main milestones; however, there have been GAC statements and GAC advice on this topic, dating from October 2011: see Annex C for the full compilation.

<sup>9</sup> The recommendations adopted by the Board are for the following specific designations – "Red Cross", "Red Crescent", "Red Crystal", and "Red Lion and Sun" – to be reserved at the top and second levels, in the six official UN languages, with an Exception Procedure to be designed during implementation.

Implementation of the Board-adopted policy recommendations has commenced, with an Implementation

June 2014: The Board via its New gTLD Program Committee (NGPC) [requests](#) that the GNSO Council consider amending those PDP recommendations that are inconsistent with GAC advice, in line with the GNSO’s PDP Manual for such an amendment process<sup>10</sup>.

September 2014: The GNSO Council discusses the type and scope of possible amendments with NGPC representatives and sends a [letter](#) to the NGPC requesting confirmation of the understanding prior to taking further action.

October 2014: The NGPC passes a [resolution](#) to provide temporary protections for the names of the International Committee of the Red Cross and the International Federation of the Red Cross and Red Crescent Societies, and the then-189 National Red Cross and Red Crescent Societies, as identified in the GAC Register of Advice as [2014-03-27-RCRC](#) while the GAC, GNSO, Board, and ICANN community continue to work on resolving the remaining differences<sup>11</sup>. These are included under Specification 5 of the Model Registry Agreement.

March 2016: The GAC’s [Marrakech Communiqué](#) notes: (1) the GAC’s previous advice that permanent protection of Red Cross, Red Crescent and Red Crystal designations and names need to be implemented as soon as possible; and (2) the GAC’s hope that current discussions involving the GNSO and ICANN staff will resolve the remaining differences between GAC advice and GNSO policy recommendations.

April 2016: Representatives of the Red Cross brief the GNSO Council on the Red Cross request and its status<sup>12</sup>.

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Review Team formed and meeting regularly since September 2015. The IRT members, meeting logs and draft implementation documents can be viewed here: <https://community.icann.org/x/RJFCaw>.

<sup>10</sup> Section 16 of the GNSO’s [PDP Manual](#) provides that (with emphasis added): “Approved GNSO Council policies may be modified or amended by the GNSO Council **at any time prior to the final approval by the ICANN Board** as follows:

- The PDP Team is reconvened or, if disbanded, reformed, and should be **consulted with regards to the proposed amendments or modifications**;
- The proposed amendments or modifications are posted for **public comment** for not less than thirty (30) days;
- The GNSO Council approves of such amendments or modifications with a **Supermajority Vote of both Houses** in favour.

*Approved GNSO Council policies that have been adopted by the ICANN Board and have been implemented by ICANN Staff may only be amended by the initiation of a new PDP on the issue.”*

<sup>11</sup> The full list of all the Red Cross identifiers that are temporarily reserved in all New gTLD Base Registry Agreements, including those designated in the Applicant Guidebook for the New gTLD Program and those provided with interim protections per ICANN Board resolution, can be found here:

<https://www.icann.org/sites/default/files/packages/reserved-names/ReservedNames.xml>.

<sup>12</sup> See <https://gns0.icann.org/en/correspondence/curtet-to-gns0-council-14apr16-en.pdf>.

June 2016: The GNSO Council Chairs [write](#) to the ICANN Board, requesting further clarity and specific feedback as to the nature and scope of any potential policy amendments that might be requested by the ICANN Board.

November 2016: The GAC's Hyderabad Communique advises the ICANN Board to "[r]equest the GNSO Council, as a matter of urgency, to re-examine and revise its PDP recommendations pertaining to the protection of the names and identifiers of the respective international and national Red Cross and Red Crescent organizations which are not consistent with GAC advice; and in due course [c]onfirm the protections of the Red Cross and Red Crescent names and identifiers as permanent.

November 2016: The Board confirms the imperative of reaching a conclusion on the issue [of the protections of Red Cross and Red Crescent identifiers protections] in the near future and proposes that the GAC and GNSO engage in a facilitated discussion in order to reach final conclusion on this matter<sup>13</sup>.

### III. NOTES AND QUESTIONS

ICANN's Bylaws specify that ICANN's mission is to ensure the stable and secure operation of the Internet's unique identifier systems, as described in Section 1.1(a) of the Bylaws<sup>14</sup>. In performing its narrow mission, the Bylaws also require that ICANN duly take into account the public policy advice of Governments and public authorities. Policies for protection of Red Cross names and acronyms at the second level of the DNS need to be developed within the context of ICANN's mission.

In this regard, the 2016 Commentary to the Geneva Conventions states that "today there is an acknowledged need for all organizations, including [Red Cross or Red Crescent] National Societies, to communicate their identity and 'brand' effectively to relevant audiences, for example in traditional media, as well as, increasingly, in the digital sphere. Moreover, many National Societies are experiencing greater competition for resources, owing to a perceived decrease in suitable funding sources for ever expanding humanitarian needs". Other commentators have noted that "the contemporary importance of the Internet for information and entertainment has introduced a new challenge in counteracting unauthorized use of the protected emblems [in domain names and on websites, including pornography, online retailers and political groups]. The transnational and rapidly evolving nature of online information makes these types of abuses difficult to counteract"<sup>15</sup>.

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<sup>13</sup> See the transcript of the call of ICANN Board members with representatives of the GAC and of the GNSO of 27 October 2016; See pages 90-92 of the transcript of the Public Forum at ICANN 57) In December 2016, GAC and GNSO representatives, together with a few Board members and Bruce Tonkin (designated facilitator), follow up on the Board proposal and discuss the scope and timing of the facilitated discussion.

<sup>14</sup> See Annex E for excerpts from the ICANN Bylaws.

<sup>15</sup> See Crowe & Weston-Scheuber, *Principles of International Humanitarian Law*, Edward Elgar Publishing (2013), at p. 88.

The International Red Cross and Red Crescent Movement had in 2002 submitted to WIPO's Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications a paper concerning cyber-misuse of the protected emblems of the International Federation of Red Cross and Red Crescent Societies, making a case for special protection for such emblems in the DNS<sup>16</sup>. This paper was one of the historical documents considered by the GNSO's 2012-2013 PDP Working Group.

In view of the above, one question that the group may wish to consider is this:

Within the boundaries of ICANN's Mission (as encapsulated in the ICANN Bylaws), what is the appropriate form and scope of second level DNS protection for the relevant Red Cross and Red Crescent names and acronyms, considering that:

- The Geneva Conventions of 1949 and their Additional Protocols protect the emblems of the Red Cross and Red Crescent Movement and their designations ("Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal") and national legislation in many countries also confers protection for the names and certain words associated with the Red Cross and Red Crescent.<sup>17</sup> Those protections extend to the designations and names of the emblems from all forms of misuse (including when these are associated to or combined with other words). Imitations are furthermore expressly prohibited.
- Excepting Internationalized Domain Names, many second level domain names in the DNS are essentially words made up of standard ASCII characters;
- The legal basis asserted for protection in the DNS of the applicable Red Cross names and acronyms is international humanitarian law and multiple national laws, rather than trademark and intellectual property law, as well as the global public interest in protecting these Red Cross identifiers against fraud and abuse;
- The ICANN Board has approved reservations at the top and second levels for the specific terms "Red Cross", "Red Crescent", "Red Crystal", and "Red Lion and Sun"; and
- Most of the new gTLDs approved in this 2012 New gTLD Program Round have already been delegated.

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<sup>16</sup> See [http://www.wipo.int/edocs/mdocs/sct/en/sct\\_s2/sct\\_s2\\_inf\\_3.pdf](http://www.wipo.int/edocs/mdocs/sct/en/sct_s2/sct_s2_inf_3.pdf).

<sup>17</sup>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 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)

## ANNEX A: THE APPLICABLE LAWS REGARDING PROTECTED EMBLEMS OF THE RED CROSS

### I. THE AFFECTED RED CROSS AND RED CRESCENT ENTITIES

Collectively, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, and all the National Red Cross and Red Crescent Societies make up the International Movement of the Red Cross and Red Crescent (Movement).

National Red Cross and Red Crescent Societies are formed in each country in consequence of the country's ratification of, or accession to, the 1949 Geneva Conventions. A National Society must first be recognized by the International Committee of the Red Cross, based on a set of criteria, in order to become a component of the Movement. It may then become a member of the International Federation of Red Cross and Red Crescent Societies, which is the umbrella organization for all the National Red Cross and Red Crescent Societies.

### II. THE APPLICABLE INTERNATIONAL AND NATIONAL LAW

The basis for the second level DNS protections being sought by the Red Cross is the legal protections afforded to the designations "Red Cross", "Red Crescent", "Red Crystal" and "Red Lion and Sun" under international humanitarian law and national laws in force in multiple jurisdictions, not trademark law or intellectual property rights. This is echoed in the GAC's advice on Red Cross protections<sup>18</sup>. In addition, in its London Communique from June 2014, the GAC made clear that "the Red Cross and Red Crescent terms and 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"<sup>19</sup>.

The GAC has also noted that its request for permanent protections for the names and those of the Red Cross National Societies is "also founded in the global public interest in preserving the names of the respective Red Cross and Red Crescent organizations from abuse and fraud"<sup>20</sup>.

#### (a) The distinctive emblems and their designations:

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<sup>18</sup> See, e.g. the October 2012 Toronto Communique ("coverage under international legal instruments and under national laws in multiple jurisdictions"); the March 2014 Singapore Communique ("the terms associated with the International Red Cross and Red Crescent Movement [are] protected in international legal instruments and, to a large extent, in legislation in countries throughout the world"); and the June 2014 London Communique ("the protections afforded to the Red Cross and Red Cross designations and names stem from universally agreed norms of international law and from the national legislation in force in multiple jurisdictions").

<sup>19</sup> See

<https://gacweb.icann.org/download/attachments/34832987/GAC%20London%20Communique%20FINAL%20%20%281%29.pdf?version=1&modificationDate=1406103000000&api=v2>

<sup>20</sup> See, e.g., the GAC's Hyderabad Communique:

<https://gacweb.icann.org/download/attachments/27132037/GAC%20ICANN%2057%20Communique.pdf?version=6&modificationDate=1478668059000&api=v2>.

Article 38 of the first Geneva Convention of 1949 states that, “[a]s a compliment to Switzerland, the heraldic emblem of the red cross on a white ground, formed by reversing the Federal colors, is retained as the emblem and distinctive sign of the Medical Service of armed forces. Nevertheless, in the case of countries which already use as emblem, in place of the red cross, the red crescent or the red lion and sun on a white ground, those emblems are also recognized by the terms of the present Convention.”<sup>21</sup>

The latest Commentary (2016)<sup>22</sup> to the Convention notes that this uniform, distinctive sign was established in the original 1864 Geneva Convention and further developed in subsequent revision thereof. It also states that, in relation to the Red Crescent and Red Lion and Sun emblems, where the intention had been that these would be used as alternatives to the Red Cross emblem (since they were already in use by certain countries at the time Article 38 was first adopted), in practice many states had simply adopted the emblem most suitable for their national circumstances. The result is that all the distinctive emblems enjoy equal status today under international humanitarian law<sup>23</sup>. In 2005, the Red Crystal emblem was added<sup>24</sup>. The 2016 Commentary states clearly that “all of the distinctive emblems are to be understood as signs of neutrality and protection, devoid of any religious, ideological or other partisan significance”.

The enshrinement of these emblems in the Geneva Conventions arose from a recognition that there was a need to have a visible sign of the immunity to which medical personnel, their equipment, and the wounded and sick should be entitled in times of armed conflict. Previously, medical transport and hospitals on the battlefield had been marked with flags of a single color that varied depending on the occasion and the country. The Conventions do not, however, prescribe the exact color shade or other forms of the various emblems, although national legislation may contain more specific details<sup>25</sup>.

The protections of the designations and words “Red Cross”, “Red Crescent”, “Red Lion and Sun” and “Red Crystal” (detailed below) find their legal source in the 1949 Geneva Conventions and their Additional Protocols and in the adverse consequences any misuse of the designations of the distinctive emblems, whether in peacetime or in times of armed conflict, could cause to the protective function of the emblems in wartime.

#### (b) Use and Misuse of the Protected Emblems and of their designations:

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<sup>21</sup> For the full text of the Geneva Conventions, see <https://www.icrc.org/ihl.nsf/INTRO/365?OpenDocument>.

<sup>22</sup> See <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=8BF732335A87E6DCC1257F15004A27A5>.

<sup>23</sup> See Article 2(1) of Additional Protocol III.

<sup>24</sup> This was done in part to limit the proliferation of additional symbols; see Article 2(2), Additional Protocol III: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/615?OpenDocument>.

<sup>25</sup> The 2016 Commentary cites Australia, Tajikistan and the United Kingdom as examples of countries whose national legislation contains more specific details of the appearance and form of the emblems.



Use of the emblems and of their designations is governed by the four Geneva Conventions, Additional Protocols I and II of 1977, Additional Protocol III of 2005, and national legislation. All UN member states have ratified the four Conventions, which as of 15 January 2017 have been ratified or acceded to by a total of 196 states<sup>26</sup>.

The emblems per se may be used in two ways. Firstly, and under the direction of the relevant competent military authority<sup>27</sup>, for protective purposes as an outward and visible sign of the protection accorded under international humanitarian law to certain medical units, personnel and transports in times of armed conflict - this is the meaning to be ascribed where an emblem is displayed on buildings, persons and objects entitled to respect under the 1949 Geneva Conventions and their Additional Protocols. Secondly, an emblem may be used indicatively, to designate persons or objects connected with the International Red Cross and Red Crescent Movement. The emblems carry their essential significance when used in the protective way, since use in the indicative way does not imply that the protections of the Conventions will apply to those so designated<sup>28</sup>.

Use of the emblems and of their designations by the respective Red Cross and Red Crescent organizations, including the respective National Red Cross or Red Crescent Societies, is governed by Article 44 of the first Geneva Convention of 1949, as well as under the rules and guidelines adopted in different sessions of the Statutory Meetings of the International Red Cross and Red Crescent Movement, most notably in various iterations of the International Conferences of the Red Cross and Red Crescent Societies and which Resolutions are committing upon all States Party to the 1949 Geneva Conventions.<sup>29</sup>

Misuse of the emblems and of their designations is provided for, and regulated under, Article 53 of the first Geneva Convention<sup>30</sup>, which states 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."<sup>31</sup> This prohibition covers use of the emblems in both their protective and indicative senses.

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<sup>26</sup> The full list of States can be found at [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp\\_viewStates=XPages\\_NORMStatesParties&xp\\_treatySelected=365](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=365).

<sup>27</sup> See Article 39, the first Geneva Convention, and its associated Commentary; this provision is also reflected in Article 41 of the second Geneva Convention.

<sup>28</sup> See Article 44, the first Geneva Convention.

<sup>29</sup> See in particular the "Regulations on the use of the Emblem by the National Societies", adopted by the 20<sup>th</sup> International Conference of the Red Cross and Red Crescent (Vienna, 1965) and revised by the Council of Delegates of the Movement (Budapest, 1991).

<sup>30</sup> Article 45 of the second Geneva Convention contains a similar provision.

<sup>31</sup> Paragraph 4 of Article 53 of the first Geneva Convention confirms that the prohibitions on misuse of the emblems and of the designation "Red Cross" also apply to the emblems of the Red Crescent and of the Red Lion and Sun (and by implications the latter's designations). Article 6 of the third Protocol Additional to the Geneva Conventions extends the provisions of the 1949 Geneva Conventions and, where

Notably, the 2016 Commentary to this section states that Article 53 “serves to reaffirm the special nature and status of the distinctive emblems. This status may be regarded as genuinely unique under international law.”<sup>32</sup> The Commentary notes, further, that while there are other international symbols that enjoy a certain level of protection under international law (such as the emblem and flag of the United Nations), “the very wide prohibition on the use of the distinctive emblems by third parties set out under Article 53, coupled with the positive obligation of States, established in Article 54, to take appropriate national measures to repress instances of abuse and misuse, constitutes a level of protection over and above that afforded to other internationally recognized signs.”<sup>33</sup>

The 2016 Commentary also notes that, although implementation varies from country to country, it is not just that Article 53 is generally applied in practice, but a number of states has also provided broader protection than that mandated by Article 53 by means of national legislation. National legislation usually prohibits commercial misuse of the emblems as well as wartime abuses<sup>34</sup>.

Finally, Article 54 requires states that are party to the Conventions to take the necessary measures to prohibit and prevent misuse of the emblems and of their designations at all times (including the stipulation of prohibitions on any sign or designation constituting an imitation thereof), e.g. via national legislation. The 2016 Commentary notes that, currently, “over 130 countries are recorded as having introduced one or more forms of domestic legislation to prevent and repress misuse of one or more of the distinctive emblems, their designations and other protected signs.”<sup>35</sup>

#### (c) Examples of National Law Implementations:

For the original 2012-2013 GNSO PDP on IGO-INGO Protections in All gTLDs, ICANN’s General Counsel’s Office conducted an illustrative survey of a number of jurisdictions whose legislation includes legal protections in respect of the respective distinctive emblems and their designations<sup>36</sup>.

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applicable, their 1977 Additional Protocols, governing prevention and repression of misuse of the distinctive emblems equally to the third Protocol emblem, the Red Crystal.

<sup>32</sup> See Paragraph 3067, at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=57F199148260B5AFC1257F7A00579E9B>.

<sup>33</sup> At Paragraph 3073.

<sup>34</sup> See Paragraph 3092.

<sup>35</sup> Implementation status is recorded in the ICRC’s database, at <https://www.icrc.org/ihl-nat>.

<sup>36</sup> See Annex 5 of the Final Report of the PDP Working Group (November 2013), at p. 74 *et seq*: <https://gnso.icann.org/en/issues/igo-ingo-final-10nov13-en.pdf>.

**ANNEX B: DIFFERENCES BETWEEN GAC PUBLIC POLICY ADVICE AND GNSO POLICY RECOMMENDATIONS ON THE SPECIFIC RED CROSS NAMES AND ACRONYMS AT ISSUE**

GAC advice	GNSO policy recommendations
<p>1. The following names to be withheld from reservation at the second level:</p> <ul style="list-style-type: none"> <li>• 189<sup>37</sup> Red Cross National Society names, in English and the official languages of their respective states of origin</li> <li>• The name International Committee of the Red Cross, in the six official United Nations (UN) languages</li> <li>• The name International Federation of Red Cross &amp; Red Crescent Societies, in the six official UN languages</li> </ul> <p>2. The same complementary cost-neutral mechanisms that are to be worked out for IGO acronyms to be applied to the acronyms ICRC, IFRC, CICR, FICR</p>	<p>1. 90-days Trademark Clearinghouse (TMCH) Claims Notice protection for:</p> <ul style="list-style-type: none"> <li>• The 189 National Society names, in English and the respective national language;</li> <li>• The two international movement names, in the six official UN languages; and</li> <li>• Associated acronyms (ICRC and IFRC in the six official UN languages; CICR, FICR, CICV, MKKK in English and the respective national language)<sup>38</sup></li> </ul>

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<sup>37</sup> The Red Cross has informed ICANN that there are now 190 National Societies; however, the GAC advice and GNSO recommendations to date specifically noted only the then-189 National Societies in existence.

<sup>38</sup> The PDP Working Group Final Report notes that these identifiers were based on a list requested by the Red Cross.

## **ANNEX C: COMPILATION OF GAC ADVICE AND COMMUNICATIONS RELATING TO RED CROSS IDENTIFIER PROTECTIONS**

### **Hyderabad Communique (Nov 2016):**

Referring to the GAC's previous advice to secure and confirm the permanent protection of the Red Cross and Red Crescent designations and names based on public international law and on the national laws in force in multiple jurisdictions, the GAC recognizes and welcomes the goodwill and renewed understanding both within the Board and within the Community that the protections due to the Red Cross, Red Crescent and Red Crystal identifiers require distinct treatment and resolution.

The GAC hence advises the ICANN Board to, without further delay:

I. Request the GNSO Council, as a matter of urgency, to re-examine and revise its PDP recommendations pertaining to the protection of the names and identifiers of the respective international and national Red Cross and Red Crescent organizations which are not consistent with GAC advice; and in due course

II. Confirm the protections of the Red Cross and Red Crescent names and identifiers as permanent.

#### Rationale:

The GAC's consistent advice in this matter is based in the distinct legal protections accorded to the words and identifiers of the Red Cross and Red Crescent under universally agreed norms of public international law and the laws in force in multiple jurisdictions. It is also 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.

The GAC wishes to emphasize that this course of action will offer a clear signal, to the ICANN Community and to the States represented on the Government Advisory Committee, of ICANN's commitment to resolve difference arising among its constituencies and to do so with all due consideration and attention to public international law and to global public policy interests in accordance with the afore-mentioned legal regimes.

### **Singapore Communique (Feb 2015):**

The GAC welcomes the steps taken to implement the NGPC resolution adopted in Los Angeles on 12 October 2014. The GAC reiterates its advice to the Board to pursue its consultations in order to confirm permanent protection of the Red Cross and Red Crescent terms and names in the current and future new gTLD rounds.

**Los Angeles Communiqué (Oct 2014):**

The GAC welcomes the decision of the New gTLD Program Committee ([Resolution 2014.10.12.NG05](#)) to provide temporary protections for the names of the International Committee of the Red Cross and International Federation of Red Cross and Red Crescent Societies, and the 189 National Red Cross and Red Crescent Societies.

The GAC requests the ICANN Board and all relevant parties to work quickly to resolve the longer term issues still outstanding.

**London Communiqué (June 2014):**

The GAC refers to its previous advice to the Board to protect permanently the terms and names associated with the Red Cross and Red Crescent, including those relating to the 189 national Red Cross and Red Crescent societies, and recalls that the protections afforded to the Red Cross and Red Crescent designations and names stem from universally agreed norms of international law and from the national legislation in force in multiple jurisdictions.

Accordingly, the GAC now advises, that:

I. the Red Cross and Red Crescent terms and 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;

II. the protections due to the Red Cross and Red Crescent terms and names should not be subjected to, or conditioned upon, a policy development process;

III. the permanent protection of these terms and names should be confirmed and implemented as a matter of priority, including in particular the names of the international and national Red Cross and Red Crescent organisations.

**Singapore Communiqué (March 2014):**

Referring to the previous advice that the GAC gave to the board to permanently protect from unauthorised use the terms associated with the International Red Cross and Red Crescent Movement – terms that are protected in international legal instruments and, to a large extent, in legislation in countries throughout the world.

The GAC advises that, for clarity, this should also include:

a. the 189 National Red Cross and Red Crescent Societies, in English and the official languages of their respective states of origin.

b. The full names of the International Committee of the Red Cross and International Federation of the Red Cross and Red Crescent Societies in the six (6) United Nations Languages.

**Buenos Aires Communique (Nov 2013):**

The GAC advises the ICANN Board that it is giving further consideration to the way in which existing protections should apply to the words “Red Cross”, “Red Crescent” and related designations at the top and second levels with specific regard to national Red Cross and Red Crescent entities; and that it will provide further advice to the Board on this.

**Durban Communique (July 2013):**

The GAC advises the ICANN Board 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).

**Beijing Communique (April 2013):**

Consistent with its previous communications, the GAC advises the ICANN Board to amend the provisions in the new gTLD Registry Agreement pertaining to the IOC/RCRC names to confirm that the protections will be made permanent prior to the delegation of any new gTLDs.

**Toronto Communique (Oct 2012):**

The GAC welcomes the ICANN Board’s Resolution on 13 September 2012, and agrees with the Board that protection for the second level should be in place before the delegation of the first new gTLDs ... The GAC will seek clarification from the GNSO as to its rationale for initiating a PDP. In light of the legal basis for advancing protections for the IOC/Red Cross Names at the top and second levels, which include coverage under international legal instruments and under national laws in multiple jurisdictions, the GAC considers its advice on the matter to fall into the category of implementation rather than policy development ...

**Prague Communique (June 2012):**

The GAC advises the Board that it requires further clarification as to the status of its pending request for enhanced protections for the IOC and Red Cross/Red Crescent names at the top and second levels, in light of the Board's rejection of the GNSO's recommendations intended to refine the means of enhanced protection at the top level in April, 2012.

**Costa Rica Communique (March 2012):**

The GAC advises that the IOC, Red Cross and Red Crescent names should be protected without delay at the top level so that these protections can be applied as part of the first round of new gTLD applications.

**GAC Meeting with the GNSO in Helsinki (June 2016), as described in the Communique:**

The GAC noted that further consultations were being undertaken by the GNSO with the Board in order to resolve the remaining differences between the GNSO recommendations and the GAC's long-standing advice that the current provisional protection of Red Cross, Red Crescent and Red Crystal designations and identifiers should be made permanent in accordance with the distinct legal and policy grounds for such protection. The GAC urges the Board to reach a solution as soon as possible.

**GAC Meeting with the GNSO in Marrakech (March 2016), as described in the Communique:**

The GAC recalled its previous advice to the ICANN Board that permanent protection of Red Cross, Red Crescent and Red Crystal designations and names should be implemented as soon as possible. The GAC expects, therefore, that the current discussions involving the GNSO and ICANN staff will resolve the differences between GNSO policy recommendations and the GAC's advice on this matter.

**GAC Statement on Red Cross and International Olympic Movements (May 2011):**

Adding "key words most directly associated with their Charters" would "provide the most appropriate form of protection of the global public interest invested in these two organisations. In both cases, there are existing protections in national law, in multiple jurisdictions, as well as coverage under an international instrument."

**GAC Proposal to the GNSO (October 2011):**

ICANN should amend the new gTLD Registry Agreement to add a new schedule of second-level reserved names. The new schedule should reserve those terms most directly associated with the International Olympic Committee (IOC) and the International Red Cross and Red Crescent Movement - terms that are protected in international legal instruments and, to a large extent, in legislation in countries throughout the world.

## **ANNEX D: TEXT OF THE ADOPTED GNSO CONSENSUS POLICY RECOMMENDATIONS RELATING TO SECOND LEVEL DNS PROTECTIONS FOR CERTAIN RED CROSS IDENTIFIERS**

- Top-Level protections of Exact Match, Full Name Scope 1<sup>39</sup> identifiers of the Red Cross Red Crescent Movement are placed in the Applicant Guidebook section 2.2.1.2.3, Strings "Ineligible for Delegation"
- For Red Cross Red Crescent Movement identifiers, if placed in the Applicant Guidebook as ineligible for delegation at the Top-Level, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Top-Level
- Second-Level protections of only Exact Match, Full Name Scope 1 identifiers of the Red Cross Red Crescent Movement are placed in Specification 5 of the Registry Agreement
- For Red Cross Red Crescent Movement identifiers, if placed in Specification 5 of the Registry Agreement, an exception procedure should be created for cases where a protected organization wishes to apply for their protected string at the Second-Level
- Second-Level protections of only Exact Match, Full Name Scope 2<sup>40</sup> identifiers of the Red Cross Red Crescent Movement are bulk added as a single list to the Trademark Clearinghouse (TMCH)
- Second-Level protections of only Exact Match, Acronym Scope 2 identifiers of the Red Cross Red Crescent Movement are bulk added as a single list to the Trademark Clearinghouse
- Red Cross Red Crescent Movement Scope 2 identifiers, if added to the TMCH, allowed to participate in 90 Day Claims Notification phase of each new gTLD launch for Second-Level registrations

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<sup>39</sup> The PDP Working Group used the term "Scope 1 identifiers" to refer to the following terms: "Red Cross", "Red Crescent", "Red Lion and Sun" and "Red Crystal" (in the six official UN languages).

<sup>40</sup> The PDP Working Group used the term "Scope 2 identifiers" to refer to the then-189 recognized National Red Cross and Red Crescent Societies; International Committee of the Red Cross; International Federation of Red Cross and Red Crescent Societies; ICRC, CICR, CICV, MKKK, IFRC, FICR (in English, as well as in their respective national languages; ICRC & IFRC (in the six official UN languages). The list was provided by the Red Cross: see <https://gnso.icann.org/en/issues/igo-ingo-final-rcrc-scope-names-10nov13-en.pdf>.



## **ANNEX E: EXCERPTS FROM THE ICANN BYLAWS – MISSION, COMMITMENT & CORE VALUES, THE ROLES OF THE GNSO AND THE GAC**

### **Section 1.1: Mission**

(i) Coordinates the allocation and assignment of names in the root zone of the Domain Name System ("DNS") and coordinates the development and implementation of policies concerning the registration of second-level domain names in generic top-level domains ("gTLDs"). In this role, ICANN's scope is to coordinate the development and implementation of policies:

- For which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS including, with respect to gTLD registrars and registries, policies in the areas described in Annex G-1 and Annex G-2; and
- That are developed through a bottom-up consensus-based multistakeholder process and designed to ensure the stable and secure operation of the Internet's unique names systems.

(ii) Facilitates the coordination of the operation and evolution of the DNS root name server system.

(iii) Coordinates the allocation and assignment at the top-most level of Internet Protocol numbers and Autonomous System numbers ...

(iv) Collaborates with other bodies as appropriate to provide registries needed for the functioning of the Internet as specified by Internet protocol standards development organizations ...

### **Section 1.2: Commitments & Core Values**

(a) In performing its Mission, ICANN must operate in a manner consistent with these Bylaws for the benefit of the Internet community as a whole, carrying out its activities in conformity with relevant principles of international law and international conventions and applicable local law, through open and transparent processes that enable competition and open entry in Internet-related markets. Specifically, ICANN commits to do the following ...

(i) Preserve and enhance the administration of the DNS and the operational stability, reliability, security, global interoperability, resilience, and openness of the DNS and the Internet;

(ii) Maintain the capacity and ability to coordinate the DNS at the overall level and work for the maintenance of a single, interoperable Internet;

(iii) Respect the creativity, innovation, and flow of information made possible by the Internet by limiting ICANN's activities to matters that are within ICANN's Mission and require or significantly benefit from global coordination;

(iv) Employ open, transparent and bottom-up, multistakeholder policy development processes that are led by the private sector (including business stakeholders, civil society, the technical community, academia, and end users), while duly taking into account the public policy advice of governments and public authorities. These processes shall (A) seek input from the public, for whose benefit ICANN in all events shall act, (B) promote well-informed decisions based on expert advice, and (C) ensure that those entities most affected can assist in the policy development process;

(v) Make decisions by applying documented policies consistently, neutrally, objectively, and fairly, without singling out any particular party for discriminatory treatment (i.e., making an unjustified prejudicial distinction between or among different parties); and

(vi) Remain accountable to the Internet community through mechanisms defined in these Bylaws that enhance ICANN's effectiveness.

(b) In performing its Mission, the following "**Core Values**" should also guide the decisions and actions of ICANN ...

(ii) Seeking and supporting broad, informed participation reflecting the functional, geographic, and cultural diversity of the Internet at all levels of policy development and decision-making to ensure that the bottom-up, multistakeholder policy development process is used to ascertain the global public interest and that those processes are accountable and transparent;

(iii) Where feasible and appropriate, depending on market mechanisms to promote and sustain a competitive environment in the DNS market;

(iv) Introducing and promoting competition in the registration of domain names where practicable and beneficial to the public interest as identified through the bottom-up, multistakeholder policy development process;

(vi) While remaining rooted in the private sector (including business stakeholders, civil society, the technical community, academia, and end users), recognizing that governments and public authorities are responsible for public policy and duly taking into account the public policy advice of governments and public authorities;

(vii) Striving to achieve a reasonable balance between the interests of different stakeholders, while also avoiding capture ...

(c) ... The specific way in which Core Values are applied, individually and collectively, to any given situation may depend on many factors that cannot be fully anticipated or enumerated. Situations may arise in which perfect fidelity to all Core Values simultaneously is not possible. Accordingly, in any situation where one Core Value must be balanced with another, potentially competing Core Value, the result of the balancing must serve a policy developed through the bottom-up multistakeholder process or otherwise best serve ICANN's Mission.

## **Section 11: Description of the GNSO**

11.1 - There shall be a policy-development body known as the Generic Names Supporting Organization (the "**Generic Names Supporting Organization**" or "**GNSO**", and collectively with the ASO and ccNSO, the "**Supporting Organizations**"), which shall be responsible for developing and recommending to the Board substantive policies relating to generic top-level domains and other responsibilities of the GNSO as set forth in these Bylaws.

11.6 - The policy-development procedures to be followed by the GNSO shall be as stated in Annex A to these Bylaws.

### **Section 12.2(a): Description of the GAC**

(i) The Governmental Advisory Committee should consider and provide advice on the activities of ICANNs they relate to concerns of governments, particularly matters where there may be an interaction between ICANN's policies and various laws and international agreements or where they may affect public policy issues.

(x) The advice of the Governmental Advisory Committee on public policy matters shall be duly taken into account, both in the formulation and adoption of policies. In the event that the Board determines to take an action that is not consistent with Governmental Advisory Committee advice, it shall so inform the Governmental Advisory Committee and state the reasons why it decided not to follow that advice. Any Governmental Advisory Committee advice approved by a full Governmental Advisory Committee consensus, understood to mean the practice of adopting decisions by general agreement in the absence of any formal objection ("**GAC Consensus Advice**"), may only be rejected by a vote of no less than 60% of the Board, and the Governmental Advisory Committee and the Board will then try, in good faith and in a timely and efficient manner, to find a mutually acceptable solution. The Governmental Advisory Committee will state whether any advice it gives to the Board is GAC Consensus Advice.

(xi) If GAC Consensus Advice is rejected by the Board pursuant to Section 12.2(a)(x) and if no such mutually acceptable solution can be found, the Board will state in its final decision the reasons why the Governmental Advisory Committee advice was not followed, and such statement will be without prejudice to the rights or obligations of Governmental Advisory Committee members with regard to public policy issues falling within their responsibilities.

### **Annex A: The GNSO Policy Development Process (extract)**

- a. Any PDP Recommendations approved by a GNSO Supermajority Vote shall be adopted by the Board unless, by a vote of more than two-thirds (2/3) of the Board, the Board determines that such policy is not in the best interests of the ICANN community or ICANN. If the GNSO Council recommendation was approved by less than a GNSO Supermajority Vote, a majority vote of the Board will be sufficient to determine that such policy is not in the best interests of the ICANN community or ICANN.

- b. In the event that the Board determines, in accordance with paragraph a above, that the policy recommended by a GNSO Supermajority Vote or less than a GNSO Supermajority vote is not in the best interests of the ICANN community or ICANN (the Corporation), the Board shall (i) articulate the reasons for its determination in a report to the Council (the "**Board Statement**"); and (ii) submit the Board Statement to the Council.
- c. The Council shall review the Board Statement for discussion with the Board as soon as feasible after the Council's receipt of the Board Statement. The Board shall determine the method (e.g., by teleconference, e-mail, or otherwise) by which the Council and Board will discuss the Board Statement.
- d. At the conclusion of the Council and Board discussions, the Council shall meet to affirm or modify its recommendation, and communicate that conclusion (the "**Supplemental Recommendation**") to the Board, including an explanation for the then-current recommendation. In the event that the Council is able to reach a GNSO Supermajority Vote on the Supplemental Recommendation, the Board shall adopt the recommendation unless more than two-thirds (2/3) of the Board determines that such policy is not in the interests of the ICANN community or ICANN. For any Supplemental Recommendation approved by less than a GNSO Supermajority Vote, a majority vote of the Board shall be sufficient to determine that the policy in the Supplemental Recommendation is not in the best interest of the ICANN community or ICANN.