

21 October 2018

Heather Forrest, GNSO Chair

Donna Austin, GNSO Council Vice Chair

Rafik Dammak, GNSO Council Vice Chair

Subject: IGO-INGO Access to Curative Rights Protection Mechanisms.

Dear Heather, Donna and Rafik

I am writing to you regarding the final report from the policy development process on IGO-INGO Access to Curative Rights Protection Mechanisms. The Governmental Advisory Committee (GAC) wishes to express its serious concerns about this report given the clear conflict between its conclusions and longstanding GAC advice stretching back several years.

The broader issue of protecting IGO acronyms has been the subject of discussion within the ICANN community since at least 2012, when the GAC issued its first advice on the topic at ICANN 45 in Toronto in the light of IGOs' unique status as creations of government under international law. The GAC has issued specific advice on IGOs' need for access to curative rights protection mechanisms since ICANN 51 in Los Angeles. This reflects the incompatibility between provisions of the UDRP requiring submission to the jurisdiction of national courts and IGOs' immunities from the jurisdiction of such courts. This is in addition to the considerable efforts of individual GAC members and observers bilaterally, through the small group discussions involving various Board members, and input to the Working Group in the form of letters, public comments and individual contributions to provide technical advice on IGOs' status under international law.

The GAC has been closely following this issue and is concerned by the fact that the GNSO Council is preparing to vote on this report without further consultation with the GAC. The GAC has repeatedly made clear its desire to engage in an open and constructive dialogue on this issue, to avoid the kind of conflict that appears to be at hand. These efforts have not been fruitful despite the fact that this is precisely the kind of situation that was targeted by a recommendation of the GAC-GNSO Consultation Group, which "*encourage[s] the GAC and the GNSO Council to engage in dialogue, either through the regular mechanisms identified (GNSO Liaison to the GAC, GNSO-GAC leadership meetings) or on an ad-hoc basis in those instances where there is an obvious difference between the proposed PDP recommendations and GAC input that has been provided. Such a dialogue could for example take place following the publication of the Initial Report and/or before consideration by the GNSO Council of the Final Report*".

Given our numerous requests for dialogue on this issue, in addition to our inputs to the PDP during the public comment period, I would be grateful for the opportunity to engage with you as a matter of urgency; and ask that the GNSO Council gives serious consideration to the option of deferring its decision on the named PDP final recommendations until a dialogue between GAC and GNSO Council has been conducted, consistent with the abovementioned recommendation.

Best regards

Manal Ismail

GAC Chair