

ICANN Transcription

IGO INGO PDP Working Group on Red Cross Names

Thursday, 17 August 2017 at 13:00 UTC

Note: The following is the output of transcribing from an audio recording IGO INGO PDP Working Group on the Red Cross Names call on the Thursday, 17 August 2017 at 13:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.

Attendance may be found at: <https://community.icann.org/x/-g8hB>

Recordings may be found at: <http://audio.icann.org/gnso/gnso-igo-ingo-17aug17-en.mp3> AND
<https://participate.icann.org/p59acngik1a/>

Julie Bisland: Good morning, good afternoon, good evening everyone. Welcome to the Reconvened IGO INGO PDP Working Group on the Red Cross Names call on 17 August 2017. On the call today we have Alan Greenberg, Chuck Gomes, David Maher, Jennifer Breckenridge, Mason Cole, Thomas Rickert, Heather Forrest and Jorge Cancio. From staff I have Marika Konings, Mary Wong, Berry Cobb, Steve Chan and myself Julie Bisland. Do we have anyone on audio only?

I believe Stephane Hankins is on audio only but noise was coming from the line. All right well I would like to remind all participants to please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid background noise. With this I'll turn it over to Thomas Rickert. Thank you.

Thomas Rickert: Thanks so much Julie. And in fact it took me a couple of years to get the introduction right. And now that I learned it finally this is done by you which is an excellent service. Thanks so much and hello everyone. First of all I should apologize for having been silent on the mailing list. But actually I was on vacation and really off line.

So I would like to welcome all of you to the second call of the Reconvened IGO, INGO PDP Working Group. And as you will have seen we have received the background material that we discussed earlier and there was also some debate on the list which shows that at least some of you have really read the documentation so that hopefully today we can have a good discussion on those. Do we have any updates to statement of interest? Chuck, I see your hand raised. Please. Over to you.

Chuck Gomes: Yes thanks Thomas, Chuck Gomes. And I don't remember whether I did this in our last meeting or not but I have updated my statement of interest. I think most of you know I'm no longer a VeriSign employee so that's on my SOI and I'll just leave it at that thanks.

Thomas Rickert: Thanks very much Chuck. I don't see any other hands raised. Are there any other comments on the agenda? I don't see any hands raised as well on this. So we can now move to the – to agenda item on number one. And that is the review of the RCRC submission on the legal basis for protection of identifiers. And there was a link to the email in which this documentation was shared. And let me go on record thanking the IGO, the Red Cross and in particular (Charlotte) for putting together the information sending into the list and also to Stephan for responding to Chuck's request and providing additional information on that comment.

The way this call is structured, you know when we last spoke we agreed that we would ask for the legal basis for the protection of the identifiers that are now seek to be protected permanently and that we would raise concerns. We

showed that we (unintelligible) with respect to that legal basis on the mailing list allowing for everyone to really digest the information at hand and have a discussion during this call. So what we're going to do today is we're going to open it up for comments and questions on the information provided by the RCRC.

We will then go through the briefing paper from the Copenhagen facilitated discussion which also offers a lot of background information. And then we're going to look at what the GAC said. And as you know GAC advice is particularly important when it comes to public policy issues. And these three sources of information in combination will hopefully allow for this group to determine whether or not the protections can be granted or whether external help is required in order to respond to that question or as a third alternative whether permanent protection for the identifiers can't be granted based on the information that we have.

I should also use the opportunity to hopefully want them to all clarify a point that's been discussed on the list as well. And that is the question of acronyms. And as stated by the Red Cross itself as well as the others on the mailing list this is out of scope for the discussion in this group right? So we do not have to discuss acronyms.

And responding to (Ken)'s question in the chat he's asking who is speaking? This is Thomas Rickert speaking. I'm making some opening remarks before we open it up for questions. So and - we're now at the point where I would like to invite all of you to make initial comment on the submission made by the Red Cross, Red Crescent representatives to this group. So if you want to speak to that if you have questions please do raise your hand and will be given the floor.

Okay, maybe you need to warm up to it a little bit. I do hope that I don't put Jennifer too much on the spot. But I guess that we should maybe put on the record into the transcript for this card, you know, some of the things that have

been discussed earlier. And that is how exactly you derive protections for domain names and strings from the laws and conventions that you mentioned in your data because that primarily speaks to emblems. It also speaks to designations. But maybe you could if that's okay for you to say a few sentences about the link to domain names and the strings in question for these protections.

Jennifer Breckenridge: Good afternoon, it's Jennifer here. I just should probably give Stephan the opportunity to comment if he is there given that he was involved in the drafting and has been, you know, you know the ICSCs lead on this. So Stephan if you're there and you want to do this section otherwise I can say a few words. Hello?

Thomas Rickert: Just for information we do not see – Stephan is there. Stephan welcome.

Stephan Hankins: Yes good afternoon. I'm afraid I didn't quite catch the question because I mean – I don't hear very well but what was the question please quickly in short?

Thomas Rickert: Sure. Stephan the question was whether you could just offer to put into the record briefly explaining the connection between the Geneva Conventions as well as potentially other national laws, the protections that are granted there and the strings that you are seeking to be permanently protected as domain names.

Stephan Hankins: Okay. So Jennifer I will start and maybe can – you complement it. Well indeed I think we have had the opportunity to hear us explain this many times before. But essentially indeed the protections of the names Red Cross, Red Crescent, Red Crystal and Red Lion and some which are also protected designations stem from the 1949 Geneva Conventions. That is international treaties that's are today universally ratified that is by 196 states which makes them I believe the most ratified international instrument in the world or on equal numbers with the International Convention on the Rights of the Child.

The first Geneva Convention adopted in 1949 essentially provides for absolute protections for the emblems of the Red Cross, and Red Crescent, and Red Lion and (unintelligible) for their names, so their designations. Those protections are essentially linked to the purpose of the four Geneva Conventions adopted 1949 which are the protection of victims of – or with victims of armed conflict in times of armed conflict.

And basically the drafters that is the international community at the time had decided or confirmed that the Red Cross and Red Crescent emblems were the emblems of protection of victims of armed conflict. And they also protected the designations the names Red Cross and Red Crescent. Those protections for the names were essentially as for the emblems essentially intended to ensure respect for emblems which were intended to be protected in times of war. And those protections were defined to apply both in times of war so, you know, only certain categories of persons were authorized to use them. In particular armed forces medical services but also in times of peace meaning that in the assumption of the drafters and of the treaties enforced today are that any misuse of the emblems or misuse of the names in the peace time or by an authorized persons is of the nature to undermine the protective purposes I mentioned.

So that is the – that's the ground purpose. And in the recognized interpretation of these treaties it means that the words Red Cross, Red Crescent, Red Lion and (unintelligible) nature Red Crystal are words that are protected in any configuration and in association with any other words meaning that an unauthorized users for the private sector is not enabled in principle to use or to use the emblem or the names Red Cross. Unauthorized users must therefore refrain from doing so.

And the conventions in question also create an obligation for states parties against the 196 state parties the Geneva Convention today to themselves protect and ensure respect for the emblems and for the designations for the

words Red Cross, Red Crescent, Red Lion and some and Red Crystal in their domestic legislation. And that has a number of implications that is that states for example ensure that that the emblems as well as the names are protected from registration as trademark and so on and so forth.

So in the documents that we submitted there are number of annexes as you would have seen. These include the relevant provisions from the first Geneva Convention of 1949, the relevant provision from the 30 additional protocols of the Geneva Conventions which is a much later treaty but which protects the Red Crystal emblem and the Red Crystal words or names. And as you will have also noted we also attached a list of the national legislation enforced in multiple jurisdictions in over 125 states to date. There is today legislation which protects these names and these words from misuse including again from the private sector or the corporate sector. So I don't know whether this answers the question. Can you confirm or what other elements do you think would be necessary to provide here Thomas?

Thomas Rickert: First of all thanks very much Stephan for providing that information. In fact I do have another question for you but I read in the chapter (Ken) was already - also raised his hand has a question for you so I'll let (Ken) go first. (Ken), the floor is yours.

(Ken): Yes, can you hear me Thomas?

Thomas Rickert: I can hear you loud and clearly. Yes.

(Ken): Okay. I apologize if I sound impatient or somewhat frustrated here but to the best of my knowledge we've been kicking this around for somewhere between 3-1/2 and five years now. And I would like very much to have somebody in a very short concise manner tell us exactly where the issues are right now. I don't need the history of the Red Cross. I don't need the - and exactly what are we trying to accomplish by reconstructing this thing because I frankly think it's - I won't say - it's not a waste of time but it's a - using a lot

of resources to solve a problem we could probably solve –be solved relatively quickly if the community had a clear and concise question posed that needed to be answered with a yes or no.

Should the Red Cross and the related I will call them symbols, and words and so forth be protected in the DNS yes or no? I mean you can only go so far with an issue like this to the point where it becomes almost distracting. It's just something that's sitting on the side and I'd much rather get this problem resolved and off. And I don't see any reason why we have to go three, four, five months.

We're – it's almost like we're relearning the entire issue and yet I look at the people who are signed into the participants list and by golly I have a real problem saying that these people don't have complete and concise history with ICANN and with these issues. So please somebody tell me where the hell are we trying to go here and what are the problems that need to be solved? And that's what I'm trying to get to. Thank you.

Thomas Rickert: Thanks very much (Ken). And I think you will find nobody disagreeing with your wish to get this off the table as quickly as possible. I will try to very concisely respond to your comment. And should that not be satisfactory I suggest that we take this off line for the sake of saving everyone's time.

But when the original PDP Working Group did its work it did not grant permanent protections for certain strings for a national societies of the Red Cross, Red Crescent movement. And these organizations were not happy with the original policy recognition recommendations nor was the GAC. And since there was conflicting GAC from – GAC advice and policy recommendations from the GNSO the board was between a rock and a hard place. And therefore we are – we've been asked by the GNSO council to look at a very specific issue in terms of potentially changing the original policy recommendations. But we can't just do this without applying the required diligence and looking at the legal basis for granting protection for strings that

have been explicit GAC advice after the original PDP Working Group had concluded its work.

And I do agree that a lot of what we're hearing seems like Deja Vu for a lot of people. But I think that we should go through the supporting documentation quickly but diligently as we can. And then hopefully conclude the work in far less time than the months that you mentioned. So my hope is that we can resolve this in the next couple of weeks hopefully. But certainly that is not to prejudice whether or not we're going to have difficult discussion on this. Let me go to Heather and then back to (Ken) who has raised his hand again. Heather please.

Heather Forrest: Thank you Thomas. And my question is this picking up on the comment just made previously by (Ken). On this legal basis of course it is not new as Stephan has noted the Geneva Conventions have been in force for some time. And certainly these would have been within the scope of the original PDP's view. And I'm not aware of any changes to those international legal provisions since then. So to the extent that the group didn't find a legal basis then I'm wondering how we find one now. Thomas you and others who were on that original PDP to the extent that something has changed and I'm misunderstanding I think it would be very helpful to clarify that now. Thank you.

Thomas Rickert: Thanks very much Heather. And I guess this really boils down to the overall volume of designations that shall be protected. It is true that the legal basis apart from, you know, international societies names that have subsequently been covered by national laws that the legal basis has not changed. But the original PDP Working Group has looked at a huge spectrum of strength not only for the Red Cross, Red Crescent movement but also for the IGOs and even INGOs.

We've been looking at top level protections, second level protections, exact match names, variations thereof and acronyms. And the – to protect national

societies names permanently was explicitly mentioned by the GAC after we had concluded our work. So this working group had concluded or almost concluded its work when the RC mentioned those - that – those designations. And then they have been granted temporary protection at the time.

So I'm not sure whether this fully answered your question but I think that it was the sequence of events at the time that made the original PDP Working Group not grant permanent protection for these designations. And this is something that they're refuting. Again and hopefully in the very swift manner. (Ken) please.

(Ken): Yes, so it sounds to me that there's almost an allusion here to the camel's nose under the tent. Are we really saying that there is so much concern about granting these restrictions (unintelligible) exemptions from TLDs to these strings that we establish a precedent that can then be used in the future by various IGOs or INGOs to - for them to use. And what I'm saying basically is as far as I can tell we have one item on the – we have one issue on the table. Our table is – our issue is not necessarily unless I read the information our issue is not whether or not we're allowing the – all of the identifiers for these areas these are governmental organizations and so forth can enjoy the same status as the Red Cross and their various entities. Am I right or am I wrong Thomas?

Thomas Rickert: Well I'm not sure. I guess the, you know, first of all we've been tasked by the GNSO Council to take a look at this. That's what we're doing right now. And certainly each and every additional request that's coming in by whoever asked for protection needs to be looked at on an individual basis. And I guess that we to apply the required diligence when making recommendations on this in order to avoid that floodgate could be opened which I think would be the case if we just said yes or no and not really explore the legal basis for that or other public policy or other reasons for granting protections. But I guess it's not for me to decide. I'm trying to navigate this group through this process

and I would suggest, yes, (Ken) is this a follow-up question or is that an old hand?

(Ken): Yes, it's a follow-up. The follow-up question basically is and is are we working on an ulterior motive here? Is the purpose of this group to provide a set a guidelines that allows requests like of a similar nature to this to be dealt with in the future and are we just using the Red Cross as the strawman for the establishment of this set of guidelines? That's where I'm confused, you know? I've got 30 pages of information on the Red Cross and yet it sounds to me like it's a much deeper issue than the Red Cross. And so let's call a spade a spade.

Thomas Rickert: I'm not aware of any strategy or rationale for this exercise to be a role model for future request such as this. You are certainly right that this sort of is a precedent because this clause that are – that allows for reviewing GNSO policy recommendations has never been invoked in the past right? So we are moving on uncharted territory at the moment.

At the same time I do think we need to work on this request as we would need to work on every other request. The only difference is that this is a post PDP recommendation phase while other requests from third parties for seeking protection would need to go through the whole lifecycle of PDP work. So I don't think that this particular piece of work can set precedent for other third-party requests.

There has been some exchange in the chat. And it's interesting because the question that has been mentioned there about national society names was exactly the question that I wanted to ask Stephan as a follow-up to his earlier intervention. And I'm sort of glad that others also started that and therefore let me pass on this question to Stephan (unintelligible) talking about the emblems and designation mentioned in the Geneva Conventions as well as national laws. But what I think we would need to understand better is how this relates to national society names and the name of the Red Cross itself. So I

would suggest that we move to you now and then we go back to Greg to make his intervention.

Stephan Hankins: Yes, thank you. So Stephan Hankins speaking, ICRC. Well first of all if I may Thomas I would just like to make one comment to the conversation that was just taking place. I think we do need to come back to the reasons why we are – why the working group was reconvened. And that is because there was a recognition that the level was – of the board that there was a need to find to reconcile (Jack)'s consistent advice and GNSO recommendations of three or four years ago.

And so – and I think we do need to concentrate on the particular issue that at stake which is this reconciling the GAC advice and the past GNSO recommendations on the Red Cross with questions, names, and designations and more particularly as Thomas you mentioned the question of the names of the respective components of the Red Cross and Red Crescent movement, so the names of the national societies of the Red Cross, Red Crescent.

But I would – we do need to add to that also the names, the designations of the international bodies in the movement. And so I know this has been discussed and presented many of times before so I – but I think we, you know, the issue is to trying to find a way of reconciling the GAC advice and GNSO recommendations. And one more point on that is certainly I believe the GAC has grounded its advice very clearly on public international law and global public interests at stake under those particular treaty provisions that I have mentioned. So I think it's a – this is what we – the group should be looking at.

Now to the issue of the names of the respective components of the Red Cross, Red Crescent movement, the Red Cross, Red Crescent organizations, the national societies of the Red Cross and Red Crescent in particular it is a fact that the Geneva Conventions mention the protection of the designations of the words Red Cross, Red Crescent, Red Crystal. But as I have mentioned

those words are protected in whatever configuration whether they were on their own or whether there were associated with other words and so on and so forth.

And the second point that is important to underline here is there are two users, two uses, two respective uses of the designations. There is of the emblems and the designations there is so-called a protective use so that is use in particular by Armed Forces medical services in times of armed conflict as I mentioned. But there is also a second use which is recognized under international law which is indicative use. And that is the use of the emblems but also of the words Red Cross, Red Crescent, Red Crystal by the components of the international Red Cross Red Crescent movement.

So I'm afraid that a lot of you have heard me – have heard us explain this before. But basically the – we – the organizations within the Red Cross, Red Crescent movement are themselves enabled entitled to use the designations. And that usage by regulation is normally to be composed so in principal to be composed by either the words Red Cross, Red Crescent or Red Crystal associated with an objective indicating national affiliation of the organization. I'm talking here for the national societies. So they are protected whether they are on their own, Red Cross for example but they're also protected when they are associated with an objective indicating national affiliation such as (unintelligible), British Red Cross and so on and so forth. So you have an intent from the drafters based on the public policy considerations.

I indicated when these conventions were drafted to authorize the national organizations of the Red Cross, Red Crescent to use the words but also by implication that those names would be protected or at least the designations accompanied by the objective indicating national affiliation or the names of the organizations. So I – I'll leave it there Thomas. I don't know whether this answers your question.

Thomas Rickert: Thanks very much Stephan. I suggest that we move to Greg and Alan. And just since there has been some communication going on in the chat information about the facilitated dialogue and the RC position as asked for by (Harker) that has been sent to the mailing list. (Harker) maybe you can double check or we can ask staff to explain exactly when this was sent but I guess that the information that you're asking for has been circulated. Greg, you're next.

Greg Shatan: Thanks. Greg Shatan, for the record. So I think we've heard what I would call conclusions rather than analysis. And what we need to look at as a group is the specific legal basis for their request and get into kind of the chapter and verse of the conventions and other things that we're cited to in passing and look at the language itself. It's unfortunate Stephan could not join the meeting fully by joining the Adobe Connect room. I'll note Mary Wong state - remarks that the Geneva Conventions and protocols do not specifically mention the national society names or what specific names associated with Red Cross or intended by use of the terms, emblem and designations therein.

However hence staff felt it was for the working group with the assistance of the RC reps to clarify what exactly is the scope of the law as especially in the DNS. And, you know, Heather Forrest has, you know, remarked similarly. It's not clear to me how the national society names fit here in the Geneva Convention. So I realize there's a great deal of desire on the part of Red Cross to make the connection and - but we have to go beyond desire to legal basis which brings me to the second part of my remarks and a response to (Ken) which is maybe a little bit different than Thomas's on his last question.

I don't know that there is any sort of an attempt to create precedent here but there is the possibility of it nonetheless. What's important here is to make sure that there is a firm and explicit legal basis for any additional protections that are granted by this and then thus recommended as policy by this working group. So we really need to get to the bottom of the legal basis for this.

And it may be slightly more detailed than anybody really wants but without that detail we're asking you to make leaps of logic or faith. And I think we need – there aren't that many steps involved needed to avoid a leap. And I think we need to take those steps or else we do create a precedent wittingly or unwittingly for the granting of protection without explicit legal basis for them but merely on the basis of desire.

So we need to avoid creating that sort of precedent because everyone has an ox eventually that is being gored here. But not all ox's are created equally. So we need to make sure that we look at those at this issue now. Unfortunately this group is freighted with responsibility I believe beyond the immediate question in front of it. It's become kind of a canary in a coal mine for number of issues over the last three or four years which is why we haven't been able to accomplish much among other reasons on this particular topic.

So I think we need to get down to brass tacks. And rather than looking at a 44 page document in our Adobe chat we look at the language in particular. I see that Thomas has while I've been talking clipped something and put it in the chat which I'll look at as soon as I stop talking which will be right now, thanks.

Thomas Rickert: Thanks very much Greg. Alan?

Alan Greenberg: Thank you very much. I'm going to disagree with Greg and I'm going to express at least as much frustration as (Ken) did although perhaps for somewhat different reasons. I'm attend – I was an active participant in the first group. I'm attending this meeting although it happens to be in direct conflict with CCWG meetings that's going on right now that I'm an active participant in. This is not a threat but simply a statement. I put my fingers in a lot of things and there's only so many of these meetings I'm going to attend when we're saying the same thing over and over and over again.

I do not believe we are going to find a legal basis. The Red Cross is protected in all sorts of ways and all sorts of places but none of them talk about domain

names. I think we have a strong case has been made time and time again that there is no other organization comparable to the Red Cross that is protected in a similar way by both treaty and national law.

I think we have a strong basis for simply making a decision if this group can to protect the national names and we can all go home. I think we should at some point decide it. The concept that we can only make decisions in a PDP based on legal basis I think is completely ridiculous. PDPs on a regular basis come to agreement on things that have nothing to do with being required by law. We just decide that is the right thing to do. I don't think we have to worry about a precedent. So I believe we need to simply come to a decision on this and get on with our lives. Thank you.

Thomas Rickert: Thanks very much. Alan before we moved to Chuck I'd just like to briefly respond that in my view as sort of the shepherd of this group following procedures you are right that this group can just come up with a recommendation or with a yes no answer at its discretion. But the question is will that stand when it comes in front of the GNSO council which surely will – and that's the role of the GNSO council. As I understand that the GNSO council will not replace its own views with the group of the PDP working group's view. But it has a duty to check whether due process has been followed.

And as much as I agree with everyone who is frustrated over the process that it takes so long that there is repetition in there I think we need to go on the record in transcript as well as in our report that we have looked at the various aspects why or not – why not protections can be granted or can't be granted. And when Stephan said that it is – that the friction between GAC advice and GNSO policy recommendation has to be reconciled in this group I think that is at least in my view not an accurate statement.

It is not for this group to take a shortcut to reconciling friction which in my view has not been caused by the PDP Working Group because we have to

do the right thing and we have to be satisfied that the recommendations that we make do stand the test of being looked at by the international community. And that require some diligence and that it is for others to decide whether this reconciled use of the GAC and the board and the GNSO. We have to just come concentrate on our part.

And I apologize for potentially having caused some of the repetition because I want to make sure that we have all the information that is belonging to responding to this question on the record for this group's work. That may frustrate some but I think it is part of doing a proper job. Chuck your next.

Chuck Gomes: Thanks Thomas. First of all I think it would be great if we can do what you just said and concentrate on what our tasks are. But we're making this so complicated. When we look at our tasks they're always in a huge amount of verbiage that is repeated over and over again as Alan said.

I don't know, it's frustrating how many times I have heard the same things over and over again. Of course I heard it in the first working group but I'm – it's happening now too. We're over complicating this thing. Now that doesn't mean the decisions are necessarily easy. But let me make some suggestions instead of just criticizing.

First of all I think we should have a one paragraph description of what the questions we have before us to answer. For example what names are we going to protect permanently? Are we going to add the national names? Are we going to add the two international names? That may not be all of our tasks but our tasks are always encompassed at least in the working group so far in a huge amount of verbiage so I don't think everyone has a clear picture of the questions we need to answer.

So my first suggestion is let's have a list of the questions that we are tasked as a working group to answer. One paragraph is fine. We don't need all the context of that. That's important. But we've heard it over and over again.

Secondly I think James Bladel in a message August 8 gave us a very clear path forward. And it was related to the GNSO council resolution. And he paraphrased it in the three things that we need to check for each of the questions that we need to answer. So first step is let's identify very concisely what the questions are we have to answer.

Secondly for each of those questions James give us an outline of what we need to evaluate. The first one is that the protections were based upon and reflected in national and international law. The second one is was that the list of cover strengths was finite and it was amended only via consistent invisible processes. And third there were no other legitimate uses for the string. We should answer each of those questions or each of those items for each of the questions that we're tasked with answering.

No with regard to protections based on national international law I agree with Alan that we can go make recommendations that aren't based in law. I think we should do that with caution because it sets precedents for other work in the future. So I think we should do that very carefully. But we should first see are there really in a – is there really any bases in law because in the new gTLD program that's one of the principles that was very critical in that is that any recommendations that we make was based on preferably international law because of the global nature of the Internet. So if we make exceptions to that we can – we better provide good strong justification.

And I'm not saying that's not possible. I may be one that supports that. But we've got to simplify and make very clear to the whole working group what our tasks are. If we evaluate the three items that James identified for each of those questions and if we decide to make an exception justify that we can move forward. But let's quit all of the repetition of stuff that has been around for years and the documents that we've seen over and over again and let's get down to the specific questions we have to answer and come – try to come to consensus on the answers that we can agree on. Thanks.

Thomas Rickert: Thanks very much Chuck. With respect that to the two points that you mentioned first quick summary of what the task is. Don't you think that the GNSO Council resolution is clear and short enough for this because it explicitly says what we're supposed to do?

Chuck Gomes: Was that a question for me Thomas?

Thomas Rickert: Yes exactly. I'm just trying to understand whether potentially the GNSO Council resolution is the paragraph that you might be looking for or whether we need to write up something?

Chuck Gomes: Well I thought James wrote it up for us.

Thomas Rickert: Yes but I guess that's – that is - he was relating to the GNSO Council resolution. So I guess that we have that paragraph already. And then I think you are right in citing James email who's testing things. And if you remember his email – and I don't have it in front of me now but from memory the first point that he was looking at when responding to the three questions is whether there was sufficient legal grounds for granting protections. And that is exactly the steps that we're in at the moment.

So I take to heart the concerns that have been raised by you Alan and others that we should – where we can avoid repetition. But reviewing the legal basis is actually part of what James has mentioned and that is actually part of what we're tasked with. So I think that what James mentioned there is exactly the methodology that we're applying. But we will try to do it quicker and more straightforward.

Let's now move to (Harker) please. (Harker) if you're speaking you might be talking to a muted microphone. So (Harker) maybe you can put your comments into the chat or try to load the audio issues so that we can then hear you.

Okay I - at the risk of telling you even more let's ask whether there are more questions with respect to the explanations that Stephan gave linking the national society's names actually the designations that we're discussing now and the Geneva Convention. And maybe you can...

Unintelligible: Thomas?

Thomas Rickert: ...identify and (Harker) yes please?

Stephan Hankins: Thomas can I just – I appreciate the previous comments on the three questions that, you know, need to be looked at. I think, you know, the legal basis, the (senate) list of names no other (unintelligible) reduces so the strings I think is a good way to go. On the legal issue I just want to read for the record one of the articles of the Geneva. It won't be long. It's the first paragraph only. It's Article 53. So you have it as Annex 4 of the document that we send.

The Article 53 reads as follows. The use by individual, societies, firms or companies either public or private other than those entitled there to under the present convention potentially as I mentioned Armed Forces Medical Services and the components of the Red Cross, Red Crescent (movement) so the use by individual societies terms or companies either public or private other than those entitled there to under the present convention or of the emblem or of the designation Red Cross or Geneva Cross or any sign or designation constituting an imitation thereof whatever the object of such use any risk irrespective of the date of its adoption shall be prohibited at all times. So I think, you know, to me however legalistic this may sound it's actually very clear. So I just want to put it on record.

This is not for that to me it's very clear in saying that unauthorized uses are not entitled to use it for any purpose. And of course these conventions were drafted in 1949 so yes there is no mention of course of the GNA. But it's still

the case that, you know, this is the founding article if you will of what we're speaking about. Thank you.

Thomas Rickert: Thanks very much Stephan.

Stephan Hankins: Yes.

Thomas Rickert: We now have Jennifer and (Harker) waiting in the queue. So Jennifer's first?

Jennifer Breckenridge: Yes thanks very much. I just thought I's – it was time for me to say something. I am the new kid on the block from the Red Cross, Red Crescent movement. But I just wanted to respond to some of the earlier comments. And thanks Stephan for that last point. I was just going to, you know, following on from what he said from what he said reiterate that the Geneva Convention provides that certain limited, very limited classes of persons can use the Red Cross Red Crescent emblem and the words as Stephan has said by themselves or in conjunction with other words like the (unintelligible) of National Societies. So in terms of a legal right, that is a legal right to use those terms by the Red Cross Red Crescent entities to indicate their association with the international Red Cross Red Crescent movement and also under the protective use by medical services of the Armed Forces. They have a legal right under international law to use the emblems and the name.

Similarly, as this clause states, others under international law are prohibited from using them. So therefore granting permanent protection protects the legal right under international law and helps to enforce international law by prohibiting the use by others. Similarly, there's a legal right and of course there's also a very strong public policy argument, which has been made before, and that is that the way the international Red Cross and Red Crescent operates, in times of crisis, we launch appeals via internet and there has been a high vulnerability to fraud, and to misuse, and to imitation of Red Cross Red Crescent entities in order to defraud the movement.

So in terms of public policy, that's another very strong reason to grant permanent protection. In terms of the argument that this sets a precedent for other international organizations, I'd quite strongly refute that. Although the public policy issue that I mentioned at the end there is the same for other international organizations who fundraise and do other things online, the protection under the Geneva convention is unique to the Red Cross Red Crescent movement. And that's why we have always, as I understand it, thought to be treated differently from other international organizations.

Thanks very much.

Thomas Rickert: Thanks very much. Next is (Harker).

Unintelligible: Good afternoon. Can you hear me okay?

Thomas Rickert: Yes, we can hear you all right.

Unintelligible: Okay, thank you very much for giving me the floor. I'll be very brief and I just wanted to support what Alan Greenberg mentioned before and, of course, what (unintelligible) from the Red Cross has been explaining. I think that Stephan and also (Jennifer) have made my argument. I just wanted to recall that of course there's, on one side, international law, legal basis, as well as national laws protecting the names of national societies. And on the other side, we made sure and it was a key part of the consensus we arrived at in Copenhagen that the public policy considerations that the GAS has been putting forward for some time, which have been mentioned by (Jennifer) as presenting fraud, embezzlement, people (unintelligible) for Red Cross societies when they have now legitimate use of those denominations. But to defraud people who are willing to contribute to (unintelligible) hiring process, that all these policy considerations should be considered.

And this was taken up by the Board in the resolution requesting the GNSO to review this matter and referring back to GAC advice. So I think that we have

a perfect combination of international/national law and public policy considerations for very limited scope of names and that we should recognize that this is a good basis for making a change. And obviously, if we go back to conventions that have some decades of age and try to find the perfect legal basis, we will be able to discuss, to put into question the legitimacy of this protection.

But I think that is not really the purpose of this exercise. Both facilitated discussions in Copenhagen and the board resolution made it clear that we were looking to growth factors to the public policy sectors and we think that we should put this question at a rest confirming that and the provisional protection.

So I just wanted to make that comment. Thank you.

Thomas Rickert: Thanks very much (Harker). And while you were speaking, there was some more communication going on in the chat relating to structuring our dialogue more and looking at charter questions. And I'm afraid that I'm sort of getting lost with these comments. The email that Chuck was referring to earlier where he applauded James for his email sent on August 8. The first point that James is mentioning in this email is that we need to answer the question that the protections were based on reflected in national and international law. So that's the first point that needs to be discussed and in my view that is exactly what we're doing right now, i.e. trying to understand where if at all national societies names are protected in the Geneva Convention.

So Chuck is also asking what charter questions we're discussing. I guess I can echo that question. Again, I'm trying to get more clarity on the question for the legal foundation for protections so that is exactly the point that we're discussing and that is in line with both the GNSO Council Resolution as well as the email in which James summarized how we should go about with our work.

So let's please focus on that and ask whether you have more questions understanding how the national societies' names are legally protected. There is a mentioning of Article 44 of the Geneva Convention. Maybe a representative from the RTRC can help us understand where the national societies' names are mentioned if at all for protection. So whether that is in Article 52 that I pasted into the chat. So maybe (Jennifer) or Stephan can help with this.

Stephan Hankins: Thomas, I am afraid you will feel that we already answered that question, no. We, as mentioned, the protections, so the words Red Cross, Red Crescent, Red Crystal, that includes in whatever consideration. So in terms of the specific prohibitions under the first Geneva Convention that would in any event cover the words Red Cross when they are used as part of the names of the international organization.

So in any case, in line with the Article that I read, there is no possibility for persons that are not specifically authorized under the first Geneva Convention to actually use those names, register those names, and so on. So that's a very clear prohibition -- protection. Now, I've given further explanations and that's also detailed in this long report that we submitted that the users include the components of the movement that are authorized to use the names indicatively and that therefore, the same prohibition should obviously cover the names or the words when they are used as part of the names or identifiers of the respective organizations that are part of the movement.

So I'm not quite sure what further explanation we can give. I'm not going to re-read the article but I did. This is hard law and again, states have the obligations by virtue of this and a wide range of them have acted upon that for domestic legislation. So I'm not sure what further explanation we can possibly give to the first point.

Thomas Rickert: Thanks very much, Stephan. Let me extend this question to Greg. Greg, I think it was you who mentioned that you had not been satisfied with the responses or the information that you got so far. Is there anything specific that you would like to ask for so that we can end this -- the discussion on this point?

Greg Shatan: It's Greg Shatan. I don't think we can merely end the discussion on this point. We can see if everyone else is satisfied that there is a legal basis for this or that we don't need a legal basis to provide protections for rights if they somehow seem extremely sympathetic or desirable. But I think what we need is a succinct analysis of the specific legal basis. We don't need long surrounding discussions of the good works of the Red Cross or the like. We can assume that just as we could assume it for Doctors without Borders, or the United Way, or any other organizations that do good work and have -- suffer from fraud on and offline.

So I think we have both some raw pieces of the Geneva Convention being thrown at us and some very long but not really very clear documentation. There's something in the middle. I agree with Chuck's frustration that we almost seem to be being buried in verbiage and so I think we need to get to somewhere, where there is specific language (unintelligible) we can get to the point where it is clear that the term designation embrace these national society names. I didn't see any reference to in whatever configuration in the language. So that's a conclusion that (Stefan) has advanced. So I think we need to show our work on this point in order to answer the question. I don't think the work has been shown to us. We need to seek the work, and adopt the work, and then we can decide whether we've -- what the answer to this question is, yay or nay.

Thomas Rickert: Thanks very much, Greg. To be quite honest, having listened to both (Stefan's) explanations as well as the explanations (Jennifer) gave, I could make the connection between the National Society of Names and

protections. Was that not clear enough? So I'm just trying to understand what exactly we need to ask for.

Greg Shatan: No. This is Greg Shatan again. First, whatever we have in terms of oral explanations, we need to have in a succinct writing, not buried in a much longer document, if it in fact in that longer document. And so far, I've not heard anything that completely -- that satisfies me that we have connected the national designations in all of their various forms to the Red Cross protections in the Geneva Convention.

I have an open mind and would be as happy as the next guy to have a clear answer, not a perfect answer, but an answer that can be used to form an adequate basis for all of us and to answer (Harker), I've read the 44-pager. It's a lot of trees and not enough forest. So that's why I'm saying we need a clear and succinct analysis of the exact question at hand, not a long explanation of historical document, wonderful though all this may be. So I'm not saying we have to torture this for months. That's the last thing I want to do and I'll avoid making any further analogies since we're lucky to be able to do this in a sense.

But I think we do need to make sure that we're all connecting the dots. So I'm not there yet. Thanks.

Thomas Rickert: Thanks very much, Greg. So as a to do, we will make sure that we extract the information from the recording pertinent to this from (Stefan) as well as from (Jennifer) (unintelligible) one-pager and this will be submitted to the list so that everyone has it in writing. Certainly if (Jennifer) and/or (Stefan) want to come up with a concise statement with respect to this, that can be put on the record, that is also fine.

So I think that we have received information on the legal basis. We do know that some are asking for more details in writing to analyze this and form a view on this. So I would suggest that we conclude this first agenda item with

this. We will subsequently send something to the list that can hopefully help resolve this issue.

Let's now move to the second agenda item. I'm conscious of the fact that we only have 14 minutes left on this call but at least I want to offer the opportunity to participants of this group to comment on or ask questions surrounding the documentation of the Copenhagen facilitated discussion.

Okay, and hearing nothing nor do I see hands raised. So I assume that everything in those documents is clear. There have been documents compiling GAC advice on this very issue and let me ask you whether there are any questions relating to that. When it comes to the GAC submissions, while not directly applicable to this group since the GAC issues advice to the Board and neither to the GNSO Council nor its working groups, I guess it's worthwhile noting that the GAC has given explanations on the public policy considerations for this. This was not included in all the advice or sometimes the advice was more concise, but actually on occasion, just going through it trying to find the exact source, the GAC did offer a public policy consideration when it issued its advice.

Maybe Mary or Barry can help me with this if they instantly spot it. Mary, your hand is raised. Please go ahead.

Mary Wong: Thanks, Thomas. Hi, everyone. It's Mary from the staff. It's a bit noisy where I am so I hope it's not distracting. Thomas if I heard your question, you were asking specifically which piece of GAC advice or where in any specific piece of GAC advice that the GAC would refer to public policy rationale; is that correct?

Thomas Rickert: That is correct. I guess that some of the advice was more of a general nature, asking for protection of the designations for the Red Cross and also in the same regard for IGO names. But there was one instance on which the GAC has explicitly offered some rationale relating to public policy.

Mary Wong: Thank you. And this is Mary again from staff. That is correct and the most recent, I think the most explicit one you're referring to, Thomas, is the rationale from the Hyderabad communique of November 2016. You see that at the bottom of Page 1 of the document on the screen going into the top of Page 2 and just echoing here while I have the mic that the GAC's advice on the Red Cross has indeed been mentioning the legal norms and international law protections that we discussed today.

But on the public policy rationale, you find a clear statement in the Hyderabad communique. Thanks Thomas.

Thomas Rickert: Thanks very much, Mary. Do we have any questions or comments on the GAC's input on this? That doesn't seem to be the case, which I guess allows for us to even end the call ahead of time. As I mentioned, we will provide a summary of the legal rationale offered by the Red Cross movement for your review and I hope that we will have questions should there be any relating to this, whether it's said exactly for you to form a view or not on the list so that we can then hopefully have a final discussion on this in the next call.

I'm virtually looking at Mary and Barry. Have you already booked a slot for a subsequent call? Mary?

Mary Wong: Hi, Thomas and everyone. It's Mary from staff again. We have not as this group, I think, is meeting for only the third time. So we understand that occasionally that conflicts but when we scheduled these three calls, they were all for Thursday, which is today, at 13:00 UTC. So assumption unless told otherwise that the next call will also be on this day of the week and at this time. So the only question is whether you want to reconvene next week or in two weeks' time, and regardless whether you would like to reconvene for 60 minutes, or 90 minutes, or some other duration. And we can then schedule it regularly from there.

Thomas Rickert: Okay. Thanks very much. I would really like to have an exchange on the three points that were mentioned by James and taking place on the list so that we can do it as few calls as possible. So unless there is objection, I would suggest that we schedule the next call for September 7, which is in three weeks' time, and do some (unintelligible) work on the mailing list in between.

And I see that Greg has asked for avoiding the 13 to 14 VPC slot because there is a conflict CCWG sub-team call and I'm okay with that. So why don't we let the call start at 14:00 UTC so that we can avoid that overlap? So the next call will be on September the 7th at 14:00 UTC if that slot can be confirmed. I think that staff would need to check this. And in the meantime, I think we can now adjourn. Let me give you the opportunity to make some last minute comments but I don't see any hands.

Stephan Hankins: Thomas, Stephan Hankins speaking. If there -- I mean I -- is there any further elements that you require? It would be helpful for us to be able to be informed and to prepare that.

Thomas Rickert: I think we will see whether there will be more questions from the group, but for the time being, the only to do is basically to give a quick summary of what has been explained today, i.e. establishing the connection between the Geneva Convention and the national societies' names.

Okay. So with that, I'd like to end this call, thank everyone for their attendance, and talk to you soon and read you on the list. Bye-bye for now.

Julie Bisland: Thank you so much everyone. This meeting is adjourned. Gina, can you stop the recordings please? Everyone have a great day.

END