

GNSO Council Meeting, 14 April 2016

Presentation by Charlotte Lindsey Curtet on behalf of the International Red Cross and Red Crescent Movement on agenda item 4:

“Possible Next steps in Resolving the Issue of Permanent Protection of Certain Red Cross Identifiers”

1. I would like to thank the GNSO Council for the invitation to present today with a view to resolving the issue of permanent protection of Red Cross/Red Crescent names (“identifiers” in your terminology).
2. We appreciate the recognition by the GNSO Council that there are still issues to resolve and the willingness to engage with us in this regard. Noting also that the Council has received a Briefing Paper, dated 30/3/16, on the status of protections and the status of recommendations from a GNSO perspective.
3. On the basis of the invitation received today and acknowledging the 10 minute time slot accorded, I will address:
 - a. The scope of RC/RC request for protections for names/identifiers and the rationale stemming from existing legal protections under international and domestic laws;
 - b. Names and acronyms for permanent protection
 - c. Points of clarification where we may not share the same reading – if we have understood correctly – of the “status updates” noted in the 31st March briefing paper.
4. Firstly, on scope of the request:
 - a. This relates to the pending request for protection related to the identifiers/names of the 189 National RC/RC Societies and the international components ICRC and IFRC. Why?
 - i. We enjoy an international entitlement under the 1949 Geneva Conventions to use the designations as a means of identification. Thus, this use flows from the Geneva Conventions and not international or domestic trademark or unfair competition laws. We have a strong and enduring concern to ensure the protection of the designations from

all forms of misuse or misrepresentation, and to ensure that any permission for their use are duly restricted in accordance with the requirements of international law.

- ii. In this regard, it should be recalled that the role and mandates of the Red Cross and Red Crescent actors are defined by States in international treaties, as well as under the Statutes of the Movement (adopted by Governments and the RC/RC entities at our International Conference). These include a unique status and specific mandates to act in situations of humanitarian crises.
 - iii. We have a specific role and responsibilities devolved upon the components of the Movement in support of their national authorities to monitor and to undertake appropriate démarches in the event of any and all forms of misuse of the designations, including on the internet.
- b. The designations must at all times be protected from misuse or misrepresentation. Any misuse of the designations at any time erodes the respect that belligerents and civilians have for the Red Cross and the Red Crescent, thus compromising our ability to fulfil our humanitarian mission and mandates.
 - c. National Red Cross and Red Crescent Societies are entities formed in their respective countries by legislation or by government decree. They are not Non-Governmental Organizations, but are formally recognized and respected as “auxiliaries to their public authorities in the humanitarian field”. As to the ICRC and IFRC, they enjoy special status under public international law and participate as observers of the United Nations General Assembly.
 - d. The protection awarded to the designations does not result from trademark law (either from common law rights or those conferred by registration). It stems from international and domestic laws and due to global public interest. The primary stakeholders remain the States parties to the Geneva Conventions, which carry the primary obligation and the responsibility to enforce the protection in their own domestic jurisdictions and legal orders. The GAC has made consistent advice for these designations and names to be protected in GAC advice since 2011.

- e. These are clearly designations which are particularly vulnerable to internet fraud and abuse, as illustrated by the numerous instances of fraudulent use witnessed in recent humanitarian crises.
5. To my second point, on names and acronyms
- a. We have submitted to ICANN a table of full names of the different components of the Movement – the 189 National Societies, the ICRC and the IFRC – for permanent protection. (We included in our submission a table of national legislation on the use and protection of the distinctive emblems and designations.)
 - b. The names (in the 6 UN languages) of the 2 international components – the International Committee of the Red Cross (ICRC) and International Federation of the Red Cross and Red Crescent Societies (IFRC) – as well as their most commonly used acronyms have been submitted to ICANN for permanent protection.
 - c. For NS we seek the protection of their names in English and their national languages. Please note, to be recognized as a National Society is a very formal and strict process, the latest member and actually the 190th National Society admitted in December 2015 was recognized 35 years after it was established. The ICRC is the only body that formally recognizes National Societies and it has to ensure that all conditions for recognition are met. There can only be one NS per country, so the list of NS will only need to be updated if a new State comes into being – as was the recent case of South Sudan – or where a State exists but the NS has not previously met the conditions for recognition – as for Tuvalu. Thus, amendments are few and far between.
6. Lastly, to my third point, on the GNSO Briefing note and “Status updates” therein:
- a. The GAC advice is strong, consistent and unanimous because governments have a legal obligation under international humanitarian law and corresponding domestic legislation to implement and to ensure the protection of the RC/RC designations in their domestic legal systems.

- b. The RC/RC national societies, ICRC and IFRC are not IGO's or INGO's and the issues being resolved under the IGO process are different and stem from different grounds for protection. Thus, we have not been part of the IGO-INGO protections discussion as we do not fit into this category because of our unique status and legal protections, and as the issues are very different. There are not competing commercial uses of the ICRC or IFRC acronyms and we are seeking protection for the names ("identifiers") – not acronyms - of the NS.
- c. We are concerned by the Status Updates I and II outlined in the 31st March GNSO Briefing paper which seem to subsume or equate - and risk to further delay - resolution of the RC/RC protections subsequent to outcomes of the IGO protections matter. There were 2 distinct GNSO PDP's – one for RC/RC protections and one for IGO's. Also Status Update II – to our mind – is potentially misleading in that it reads as if the GAC advice from Durban was that "any mechanisms" developed for IGO's should "also apply to certain RC identifiers". Whereas the GAC advice was that "the same complementary cost neutral mechanisms to be worked out for the protection of acronyms of IGO's be used to also protect the acronyms of the ICRC and IFRC". These are very different readings. Also to note that the context of this GAC Durban advice was that the RC/RC should not have to divert funds received for purely humanitarian purposes to monitor and seek misuse/abuses of the RC/RC designations and names on the internet i.e. protection which was legally due to it anyway.
- d. To conclude, our meetings in Marrakech which led to this GNSO Council invitation, were driven by our concern that
 - i. 2 years on from the original Board (April 2014) advice highlighting the inconsistencies between GAC and GNSO advice related to the RC/RC names (identifiers), and
 - ii. 22 months (June 2014) after the Board request that the GNSO Council consider amending those of the GNSO's original PDP recommendations that are inconsistent with GAC advice, and
 - iii. noting that 19 months since the GNSO Council letter (Oct 2014) to the NGPC seeking clarifications related to such an "amendments" request,

- iv. and 18 months after the NGPC passed a resolution to provide temporary protections to these RC/RC names (identifiers) and called on the GAC, GNSO, Board and ICANN to actively work on resolving the remaining differences, we have had no formal interaction on the specific issue of RC protections.
- v. In Marrakech, (March 2016) we brought this to the attention of – and were given renewed assurances by - the CEO of ICANN that this matter will be moved forward and must be resolved urgently. The GAC communique from Marrakech reflects this wish too.
- vi. The ICRC has acted in good faith to engage with ICANN, GAC, GNSO and others to try to resolve this matter and stands ready to continue its engagement whilst recognizing that we are diverting resources from our purely humanitarian mandates in so doing.

Thank you for your attention and consideration of this important issue today.

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Director

International Committee of the Red Cross (ICRC)

April, 2016