***Minority Position and Unaddressed Requests***

***of the International Red Cross and Red Crescent Movement***

*Submitted on 3 September 2013*

 The International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the 189 National Red Cross and Red Crescent Societies (hereafter the “Movement”) provide this “minority position” to the soon to be released IGO/INGO Report. After several months of fruitful discussions with the Working Group, of which several of us have been active and regular members, the recommendations and level of support identified in the IGO/INGO Report do not reflect the legal protections accorded under universally recognised international treaties (the 1949 Geneva Conventions and their Additional Protocols of 1977 and 2005) and under the domestic law in force in multiple national jurisdictions.

This “minority position” assesses the recommendations listed in the IGO/INGO Report and provides further clarification to complement previous comments and submissions made throughout the GNSO PDP Working Group process.

1. IGO/INGO Report Recommendations Related to the Movement

*IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 1 and 3*: We support these recommendations, as they make permanent the temporary reservations of the Red Cross and Red Crescent designations at the top and second levels, as previously confirmed by ICANN's Board, and as set out in the Applicant Guidebook and in Annex 5 to the revised Registry Agreement.

*IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 2 and 4*: We support these recommendations, as we believe they would effectively place the Red Cross and Red Crescent designations that are covered in Recommendations 1 and 3 on a “Modified Reserved Names List”. This would preserve the entitlement of Movement components to register relevant domain names should they require to do so in the future.

*IGO/INGO Report Red Cross Red Crescent Movement (RCRC) Recommendations 5, 6,*

*and 7*:

These recommendations ensure that the Movement will enjoy the necessary standing under the Trademark Clearinghouse (TMCH) (if there is any doubt that it did not already have such standing). The recommendations, however, do not address or foresee a waiver of fees for its activation. Consequently, in our view, the recommendations stop short of offering effective and cost neutral relief for the “Scope 2 (Red Cross and Red Crescent) identifiers”. In addition, we remain concerned that the TMCH does not provide sufficient relief to the Movement, and thus, in offering only a time-bound early warning.

1. Restatement of the Movement’s requests that are missing from the IGO/INGO Report Recommendations

Please find below a restatement of our request made throughout the Working Group process. Further to discussions and conversations held in Durban, we have reduced our asks with the

hope that this will facilitate approval and implementation of the protections that are called for. These are also set forth in our most recent Public Comment of 17 July.

1. The Movement requests that the following names also benefit from permanent protection as outlined above in Recommendations 1 to 4, and as further stated below:
* the names (official and usual) of the 189 National Red Cross and Red Crescent Societies in English and in the respective national languages of the National Society concerned, and
* the names of the International Committee of the Red Cross and International Federation of Red Crescent Societies in the six UN languages.

Confirmation is sought that these designations are permanently protected from top and second level registration in the current round and in all future rounds of application. Our request that the names of the respective Red Cross and Red Crescent organizations be protected in addition to the designations “Red Cross”, “Red Crescent”, “Red Lion and Sun” and “Red Crystal” is not new. As indicated, it was our understanding from the outset of the PDP process (and of its preceding RCRC/IOC Working Group) that in reserving the designations of the Red Cross and Red Crescent designations, such protections would duly prevent and block the registration, at both top and second levels, of any applied for strings which

* constitutes an exact match of the designations “Red Cross”, “Red Crescent”, “Red Lion and Sun” or “Red Crystal”; or which
* includes either of the said designations (thus, and consequently, preventing the registration of the actual names of the respective Red Cross and Red Crescent organizations - namely the 189 recognized National Red Cross and Red Crescent Societies, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies).

This interpretation is based on international law and the domestic law in force in multiple jurisdictions. It conforms to the universally approved requirements of the 1949 Geneva Conventions and their Additional Protocols, which specifically protect the Red Cross and Red Crescent designations in both their protective function (as the designations of the protective emblems in times of armed conflict) and indicative function (to indicate a link to the Movement or any of its components).

Defining the protections to cover *only* the designations *per se* (“red cross”, “red crescent” or “red crystal”) and not the names of the organizations (e.g. “British Red Cross”, “Croix-Rouge française”, or “Afghan Red Crescent”) would fail the requirements of international law and of the laws in force in multiple jurisdictions which intend to protect the designations at all times. It would also defeat the *global public interest* in preserving the names of the respective Red Cross and Red Crescent organizations from misuse, including fraud (a major risk, as witnessed in recent disasters during which websites were frequently and notoriously set up to divert donations to Red Cross and Red Crescent operations in favour of affected persons and communities). The adjectives composing the names of National Red Cross or Red Crescent Societies and indicating the latter's national affiliation (e.g. the word American in the name American Red Cross) cannot be considered as a simple pre- or suffix. These form a full-

fledged part of the names of the respective National Red Cross and Red Crescent Societies. It is noted in this regard that, under the 1991 *Regulations on the use of the emblem by National Red Cross or Red Crescent Societies* which have been adopted and approved by States, National Societies are required to use their *full name* for the purposes of identification.

The request to protect not only the designations *per se*, but also the names of the respective Red Cross and Red Crescent organizations is also consistent with the objective and scope of the WG and the latter’s mandate to consider the names and identifiers of relevant organizations.

It should be noted that the possibility remains that the list of National Red Cross or Red Crescent Societies could potentially be expanded in the future if a new National Society is recognised within the Movement, as in the recent case of the South Sudan Red Cross further to the establishment of the new State of South Sudan and on the basis of a statutory recognition process.

The Movement has also advocated for the inclusion of the Red Cross and Red Crescent designations and names on a "Modified Reserved Names List". This would preserve the entitlement of Movement components to register relevant domain names should they require to do so in the future. This would also conform with the above-mentioned international treaties and norms, which provide for the entitlement of the respective Red Cross and Red Crescent organisations to use the designations in order to show their association with the International Red Cross and Red Crescent Movement.

1. The protections sought also relate to the acronyms (initials) of the two international

organisations within the Movement, namely the International Committee of the Red Cross (ICRC/CICR/CICV/MKKK) and the International Federation of Red Cross and Red Crescent Societies (IFRC / FICR / МФКК).

As submitted as part of the Working Group process, we would be prepared to consider that these protections be addressed through a rights protection mechanism, such as a clearinghouse, which we understand is being discussed in the context of IGO acronym protection. We would need to ensure however that the ICRC and IFRC enjoy the necessary standing under such a mechanism and potentially a waiver of fees for its activation.

1. Finally, we remain concerned regarding strings containing, or which are confusingly

similar to, protected designations, which legally fall under the prohibitions of use defined under relevant international and domestic laws.

We are cognizant of the concerns of some in the community that a string similarity or “key word” search mechanism, which has been required by the Movement as a safeguard to ensure protection of the designations and names, may be difficult, particularly at the second level. For example, that the name of the International Committee of the Red Cross would be protected in point “A” above, but that the name "International Committee of the Red Crescent" (which does not exist) would by omission from the list of names not be protected from registration. This is a major concern. Thus, in pursuance of this protection, we will continue to work with relevant ICANN bodies to ensure that the potential of such a violation is duly addressed. It appears that this type of string containing protected terms is not covered by the current PDP process and, thus alternative mechanisms within ICANN must be sought. We are willing to work with ICANN to determine and manage this concern to ensure that abuse of the protected designations and names is prevented.

We remain available to provide any further clarification on the above.

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