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## Governmental Advisory Committee Comment on the Final Report from the EPDP on Specific Curative Rights Protections for IGOs

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The GAC appreciates the work of the EPDP convened to address the question of IGO access to a curative rights protection mechanism, and overall supports its recommendations.

*As an initial matter, we would like to confirm that GAC supports and welcomes the recommendations of this Working Group, while noting that this is the result of compromises on preferred policy outcomes (see e.g., below regarding the court-followed-by-arbitration approach).*

Further to the GAC comments on the Initial Report of this Working Group – which it is suggested the Board read for a fuller context – and further also to related GAC Advice, the GAC recalls that IGOs being unique treaty-based institutions created by governments under international law in order to undertake global public service missions, protecting their names and acronyms in the DNS serves the global public interest. [The GAC also recalls that ICANN’s Bylaws and Core Values indicate that the concerns and interests of entities most affected, here IGOs, should be taken into account in policy development processes.]

The central issue raised in the EPDP is that unlike trademark owners, IGOs benefit from privileges and immunities under international law; indeed, this is seen as core to their existence and ability to carry out their activities. As stated in the Swaine Memo prepared for the GNSO “IGO immunity is often likened to the foreign ‘sovereign’ immunity of states, but [in fact] IGOs are considered more vulnerable than states, since they have no territory or population, and must conduct their affairs in jurisdictions and through persons not their own.” While a trademark owner in a UDRP case agrees to submit to the jurisdiction of a court if a registrant wishes to appeal a UDRP decision against it, this is not a viable option for IGOs. For this reason, in its Hyderabad and Johannesburg Communiqués, GAC Advice stated that a mechanism such as the UDRP should respect IGOs’ jurisdictional status by facilitating appeals through arbitration; this approach is indeed recognized in the above-referenced Swaine Memo.

While the GAC does not believe the (court-followed-by-arbitration) approach outlined in the Final Report will be fruitful for potential UDRP case parties (nor indeed efficient in terms of time or costs), *as a matter of compromise to arrive at a recommendation*, the GAC supports the Working Group recommendation that if a court declines jurisdiction over an appeal from a UDRP case, the IGO and UDRP case respondent (the domain name registrant) should have an arbitration option available to resolve their dispute.

As stated in the GAC Comments on the Initial Report, using arbitration as the (default) means to appeal a UDRP case would be more efficient, and IGOs have expressed concerns that the Working Group recommendation potentially gives registrants an unwarranted third opportunity to have their case heard.

Finally, the GAC recalls Advice in the Buenos Aires and Los Angeles Communiqués that owing to the public funding of IGOs' missions, curative rights protection mechanisms such as the UDRP should be at no or nominal cost to IGOs. Against ICANN's substantial registration-based budget, such funding would be well-deserved and well-applied in the context of addressing harms caused by the abuse of IGO identifiers in the DNS.

The GAC looks forward to working towards implementation of this Final Report.

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