
NIELS TEN OEVER: Thank you very much, staff, for facilitating this. Welcome, everyone, to the Cross-Community Working Group on Enhancing ICANN Accountability Work Stream 2 Human Rights Subgroup Meeting 7 at 19:00 UTC on October 4.

Staff, would you be so kind to take a roll call from the Adobe Connect room and ask everyone who is only on the phone bridge to please say their name so we have a full record of attendees. Everyone who is only on the phone bridge, please say your name.

MARKUS KUMMER: Markus on the phone bridge. I'm trying to get into the Adobe.

NIELS TEN OEVER: Hi, Markus. Glad you're here. So [at least we] have that done. Then I also ask everyone whether someone has an addition or change to their Statement of Interest that they would like to [announce]. No? Then I will ask anyone who has an addition or suggestion or comment on the agenda. Tatiana has her hand up. Tatiana, please come in.

TATIANA TROPINA: Thanks a lot, Niels. Hello, everyone. Yes, I see that we have one very important item, Number 2, and that is Ruggie Principles – discussion on the Principles 19, 17, and 18. I'm wondering if there is a summary of the previous discussions because I'm still a bit [inaudible]. We put some of them on hold or [written] some of them. I was trying to go through the

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record of the previous call, and I'm still not sure. Have we reached consensus on the previous principles or not? Could you please just provide a summary or an update for everyone so we will be at least a bit on the same page? Thanks.

NIELS TEN OEVER:

Thank you very much for that question, Tatiana. The last meeting, we discussed Principle 13 and 15, where we said that 13A didn't seem problematic except for wordsmithing, the same for 15A, but that 13B and 15B were problematic and definitely needed a second reading. But we haven't made any decisions or haven't reached any consensus yet at all. So we're on the first reading of all the Ruggie Principles. That's where we currently are as far as I understand. But other people might have another reading of that. I see Greg's hand is up, and Greg might share his view.

GREG SHATAN:

Thanks. I do share that view that we are in the first reading. I do note that, while we are going through this, we also need to pay attention to other things, including as Paul McGrady said, the whole issue of applicable law. Clearly, it would do us no good to ignore the existence of the Ruggie Principles, but neither should we assume anything in particular about them.

That segues to my concern about the agenda. I think we should discuss the draft Framework of Interpretation document that has been put up and that has received quite a lot of attention lately, although I didn't have an opportunity to turn to it until today. I think we need to discuss

the concept and the approach of that document and whether, given that we are still on a first reading of the Ruggie Principles, the document is entirely premature. I'll withhold further discussion of that for a substantive discussion of the topic, but I think we should add that topic to the agenda. Thank you.

MARKUS KUMMER:

Niels, if I may come in? I'm afraid I still can't get into the Adobe Connect, so I can't put up my hand. On a similar note, I just wonder whether we did not jump too much into the details and that we should not take a step back. I think in your draft for the FoI, which may be premature or may not, I think you made a big, important point: that the Ruggie Principles are essentially not binding.

Also, in an earlier e-mail actually, you forwarded the link to Ruggie's recommendation for FIFA, which is in a way I think fairly relevant for ICANN. Okay, FIFA is not ICANN, but FIFA is also a not-for-profit organization with a global reach and there are parallels there.

I just wonder whether we should not take a step back and look at what actually the Ruggie Principles mean and [mean not]. You also said at one point that you may think of actually inviting Ruggie himself to be on the call, and I think that might be very helpful.

Lastly, on the applicable law, I think in many ways, yes, applicable law is relevant. Applicable law is applicable in any case whether or not we have a framework on human rights. Human rights instruments relate to states and not to private organizations. I feel that has confused much of the discussion. It is an important discussion, of course.

Again, it's my personal [feeling]. I'm not speaking on behalf of the Board, but I think it might be helpful to maybe take a step back and look at the broad picture of what the Ruggie Principles, and they are the only instrument available for non-state actors so they are clearly a very relevant benchmark for whatever we go forward.

This is my short comment on the agenda. Thanks.

NIELS TEN OEVER:

Thank you very much, Markus. I feel like I could do with some explanation of the document because I think it might have been received a bit differently than it was intended. I went about this exercise simply as a notepad to see how we could fit the discussions that we had and how it could potentially look – nothing more, nothing less.

This is a very preliminary document because there were a lot of questions where we were turning around a lot: what could respect mean? What could applicable law mean? How would Ruggie look if we do not [fit] 13B and 15B? I think just trying as a kind of mental gymnastics to put that in a document, I might have shared that prematurely. Maybe I should have kept it. I wanted to be transparent in my thinking, and I was hoping that we could all benefit from that thinking.

I'd like to make it totally clear that it does not, of course, represent any consensus of the group. I just wanted to feed it in as also something to start that a replenished drafting group can get their teeth in. I'm extremely happy with all the constructive comments that we're getting. So it's just a start to thinking.

This was also actually trying to get into the concerns raised by Paul McGrady about applicable law. We wrote something about [inaudible] in the draft, the same about respecting that Matthew asked about. So I tried to accommodate that. By no means was this meant to push Ruggie on everyone. It's just a way how we could see how it could fit for ICANN.

I've also been discussing our issues and our approach and problems with John Ruggie. He is a very busy man. It was very hard to get hold of him. I've talked to him on the phone shortly, but I will [now] see to keep on trying to get him on a call or perhaps even at a physical meeting. I'm doing my utmost best to do that. Sorry if I have abused my role as a co-chair here. I will quickly follow the queue again and go ahead to David McAuley. David, please come in.

DAVID MCAULEY:

Niels, thank you and thank you for your comments. I would just like to say that I would at the appropriate moment in this call align myself with Tatiana, Greg, and Markus, and when that point comes I'll make some comments. But I want to make a procedural point now, and that is with respect to the Framework of Interpretation document.

My recommendation will be when we get to it that we have a standalone FoI document and that it's not included in the Google Docs that's going to be accumulating a great number of comments because it just becomes confusing. So I see the FoI as now being a blank document but that it will grow once we start accepting things as consensus. I certainly think that framework document should be separate so that

people can see what it is and what progress we're making separately from all the comments that, again, I think become confusing the more they get made. Thank you very much.

NIELS TEN OEVER:

Thank you for that excellent suggestion, David. I can get working on that after this call to have a clean document with points that we reach consensus on. I think that is very good to have a clear overview for everyone also in line with the question that Tatiana asked earlier. I think that will be clear and we could be working on that. Kavouss, I see you're next in queue. Please come in.

KAVOUSS ARASTEH:

Thank you, Niels. I think people criticize the preliminary draft or [scratch] that you have provided. If they can do better, then do it. It is simple to criticize, but it's difficult to do something. If it is not okay, [simply comment on your] [inaudible]. This is point one.

Point two: whenever we start to talk, somebody consistently talks about applicable law, applicable law. What do you wish to [be] applicable law? Tell us really, in your view what is applicable law? Applicable law in [several] countries or applicable law where the court is [discussing] the matter or the people want to refer to?

Thirdly, you are putting some agenda, and I think we have to take the agenda you have provided. The document? Very good. People have commented on that. And you continue to discuss 17, 18, 19 or 19, 17, 18. That is that.

Then another issue is that people are complaining that the Ruggie Principles are not our [inaudible]. What would be our [inaudible]? Is the actions of something or anything? This is the only thing that you have. They have other principles? At least it is something very well prepared and established. If it is not relevant, okay [inaudible] not relevant. Excludes elements which are not relevant.

Niels, we need to really reply to these things. We're always back and forth for something. That is why in a message to the chairman of the CCWG, I mentioned that unfortunately we are back and forth. So could you kindly put some order of these discussions? Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. Jorge is next in line. Jorge, please come in.

JORGE CANCIO: Hello. Do you hear me okay?

NIELS TEN OEVER: We hear you very well. Thank you.

JORGE CANCIO: Hello. Goodnight for us from Europe. I would like to make some points on the FoI document. First of all, I would like to thank Niels for the effort of really trying to put into writing what we have been discussing. It's an

effort that is worthwhile, and it gives focus to our discussion. I think that's a positive aspect of this effort. That's the first point.

The second point is I agree very much with what [Sir] Markus Kummer said. As we said before, the Ruggie Principles GP may perhaps not be perfect, but first of all they are not binding for the business entities and they are more than that a benchmark. They are a benchmark that is recognized internationally. I'm not aware of any other benchmark that is at the same level of recognition of UNGP.

It would be a bit awkward or bizarre if we were to exclude the UNGP from our consideration without really and with an open mind going into the discussion of what the different principles really mean to the ICANN framework and to the work we are doing here with the Framework of Interpretation.

I really would like to urge colleagues to enter into that discussion with an open mind because, at least for my part, I'm there trying to look into each and every one of the principles and see whether they really put a serious problem to ICANN and how it works. If it does, let's look at the facts and see also what are the messages we can take in order to avoid problems that we don't want to enter into.

Also, Niels, you have been talking about your contacts with Mr. Ruggie. I think those contacts are valuable and they can shed light on what is really the intent and the scope and the implications of the different principles applicable to business entities.

As I said before in a different call, there is also a UN Working Group which is tasked to help any efforts to try to apply or to study to make

use of the Ruggie Principles. I would really suggest that we get in touch with them and that we also seek their opinion on the issues where we have doubts.

Finally, this is perhaps with my lawyer's hat on, we have to be mindful that we are talking about a core value. It's a core value which is guiding, and we are talking about giving some interpretation to this core value with international principles embodied in the Ruggie Principles which are nonbinding too. So it's something that is nonbinding, interpreted by something that is also nonbinding and where we have a lot of latitude in this work of coming up with the Framework of Interpretation of really putting the limits to what this commitment means.

I think that [inaudible] the agreement in the community that the mission that we defined in Work Stream 1 is the core boundary of anything ICANN will do. So we shouldn't be so afraid that with a core value we will go beyond the mission just with the snap of a finger because that shouldn't happen if we are mindful of this fact of the mission being really compulsory and binding.

As a final comment, I would also perhaps recommend to Niels that if he tries to rewrite a little bit the draft, he try to come up with more descriptive language and abstain for the time being from more [normative] implications until we find consensus on the different parts of the Ruggie Principles we may want to include into our Framework of Interpretation.

Sorry for taking the floor so long, but I hope that with this, my thinking may be clearer for other colleagues. Thank you.

NIELS TEN OEVER: That is very clear, Jorge. Thank you very much. I'd just like to respond that I have reached out to the UN Working Group, and I haven't heard back from them. If you have any suggestion how to get into contact with them directly, that will be greatly appreciated. I see Greg is next in line. Greg, please come in.

GREG SHATAN: Thanks. A lot has been said, and I won't try to respond to it all. I think that we have to some extent lost our way. I think we've gotten away from the idea that what we're doing is interpreting the language of the Bylaw, and I think we need to spend more time looking at reading and interpreting the Bylaw itself rather than looking and reading and interpreting Ruggie.

With regard to the Framework of Interpretation, while perhaps it's a notepad, I find it extremely internally consistent with a particular viewpoint, so much so that I was getting a headache trying to edit it. I almost feel – not almost feel – I feel that it would be just as productive in a sense to have a third column of commentary which is the counterpoint to the commentary in the second column here which I think assumes way too much and assumes a particular viewpoint all the way through. I don't think this reflects our work here, nor does it reflect the stage at which our work stands.

I think that I'm not sure whether we should work on this document at all, but if we do, frankly I'd say that we have a lot of work to do. I think what Kavouss said earlier I think completely misunderstands the role of

the rapporteur. Maybe you should look up the word rapporteur. It's not intended to be a thought leader but rather a follower. It's an awkward and complex task, and any of us who have tried to do it can sympathize with the position of a rapporteur in this or any other group trying to walk that line. But I think we need to find some way to reflect more than one point of view in this document. Right now, I think it reflects a point of view that's not shared by a number of us, certainly not at this point.

I think we need to think about what a Framework of Interpretation is as well. What we're trying to interpret here is what the commitment is that ICANN has made in the Bylaws, not all the possibilities that are open to ICANN whether or not this Bylaw even existed. We could have had a discussion two years ago about due diligence human rights. That has nothing to do with the Bylaw.

What we need to do is figure out what the Bylaw means and what its commitments are and what its limitations are. Applicable law is a very important limitation. It's a critical limitation. If we don't understand applicable law in the context of the Bylaw, then we don't understand the Bylaw. So I think we have quite a bit of work to do, and I think we need to figure out how to balance different viewpoints here.

I do agree with Jorge that we need to approach this with an open mind. I don't find this right now to be an open-minded approach, and any open-minded approach has to assume nothing about the Ruggie Principles – whether they're in or out, applicable/not applicable – and take each of them merely as a possibility that it is relevant and is also an equal possibility that it is a bad [set]. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. I couldn't agree more. I would love to be a follower, and I really would like to support any initiative for the drafting of text because we have seen a bit of a stagnation in the activity of the group. But if it was this draft, even if it is in another way than it intended, can spur volunteers to start drafting and help us writing and go forward, then I can only applaud and support that in any way I can.

So we've had different proposals on applicable law. That is something that keeps on returning. The only concrete proposal on how to deal with that is I've seen that it was made by Paul McGrady who said we should analyze state, federal, and country law applicable to ICANN which have relevance to human rights. That seemed a bit about the mandate and a bit big. So I'm not sure how we should deal with the applicable law question. Maybe looking to the jurisdiction group seems worthwhile, but I'm very much looking forward to people who are suggesting work on that to see how we could address that or else perhaps put that question even to another subgroup. David, please come in.

DAVID MCAULEY:

Niels, thank you. The term "applicable law" I think is actionable in and of itself. The reason I say that is it's a term that varies around the world, and ICANN works around the world, obviously. It's a term that changes. Applicable law changes. So I think that many corporations – and I think ICANN would be one of them – are certainly able to deal with an obligation that is bounded within the terms of applicable law, and it is

an important part of the Bylaw. There are three sentences in the Bylaw. Two of them have the phrase “applicable law.” It’s something we have to deal with, but I don’t know that we need to define it or that we need to specify it or give it detail. I think it’s an actionable term in and of itself. Thank you.

NIELS TEN OEVER:

So, David, if you have for yourself very clear what applicable law is, would you care to write a few sentences about it? Because there seems to be not necessarily consensus in the group about how it is and how it works. So if we could tackle that, it would be great progress I would say.

DAVID MCAULEY:

Niels, hi. I’d be happy to do that prior to the next meeting and send something to the list. The way it would work in operation, as I see it, ICANN is an organization that is not right now a hotbed of indifference to human rights. If an issue somehow cropped up, an organization like ICANN would inform itself what the applicable law is in the circumstances in which it arose. So I’m happy to come up with some wording along those lines, and I’ll put it on the list before the next meeting. Thank you.

NIELS TEN OEVER:

That’s perfect. I think that would already be great progress. So now we have that down, would people mind if we go ahead with the proposed agenda – since I haven’t seen any other proposed agenda points – with the discussion of Principle 19, as we had agreed on the last call, and 17

and 18? I see no objection with that, so let's go to the discussion of Ruggie Principle 19, which consists again of 19A and 19B. All the three that we are talking about here are talking about due diligence.

We'll start with Principle 19. Several people have had concerns about due diligence, so I'd like to open the floor to discussion about this. Jorge, please come in.

JORGE CANCIO: Hello. Do you hear me okay?

NIELS TEN OEVER: We hear you very fine. Thank you.

JORGE CANCIO: Okay. I guess that on Principle 19, this is relevant insofar as it helps to construe the meaning of respecting international human rights. However, I guess that this is mostly referring to the integration of a human rights commitment into internal processes of ICANN. I see this principle more related to possible future implementation work by the community and also, of course, by staff. So I would leave it at this point. Thank you.

NIELS TEN OEVER: Yeah, that's also a very good point of demarcation as we're now coming into the operational part of the Principles, which indeed might be part of the Framework of Implementation and not the Framework of

Interpretation. But understanding a bit where implementation might lead will help us to also demarcate what we would want to say and not want to say in the Framework of Interpretation, so that might also help us.

Are there other people who want to comment? I see a line forming. That's great. Tatiana, please come in.

TATIANA TROPINA:

Thanks. Well, I think we have some arguments about what due diligence means actually in the context of Ruggie. I think that in terms of "preventing and mitigating adverse human rights impacts," this principle borders a bit with not only implementation but also with enforcement. I would rather say that we have to mark it as controversial and look at it together with different examples of possible problems for ccTLDs, gTLDs, and other relations. So at a glance, it doesn't look like something [sensible] to me because of these problems. Thanks.

NIELS TEN OEVER:

Alright, Tatiana, thanks very much. Could you elaborate a bit more which part here is exactly problematic before declaring something quickly problematic? I think it would be great to have a bit more content for discussion about them, so could you make it a bit more clear where you have problems with the text that is on the screen right now, or concerns?

TATIANA TROPINA:

Okay, now let's start with the first line: "In order to prevent and mitigate adverse human rights impact...." I'm not sure that this does not cross the border between enforcement and protection of human rights, which we wanted to avoid in our Bylaw when we were drafting it.

Then "Effective integration requires that: Responsibility for addressing such impacts...Appropriate action...." My question is how these actions will not border with enforcement and protection. So how would we draw that clear line between these two?

Talking into account how extensive due diligence is which is required by Ruggie, I just don't know. I can't interpret this Principle as a standalone principle. I don't know. You think this is not enough to mark it controversial, though of course it's up to the group to decide. I just voiced my concerns.

NIELS TEN OEVER:

That's great. That's very clear. Thank you very much. Kavouss, please come in.

KAVOUSS ARASTEH:

Niels, I don't know where the due diligence comes from. This 19 does not talk about due diligence. It just mentioned that in order to prevent adverse impact and, if there are adverse impacts, to mitigate that "business enterprises should integrate the findings from their impact assessments across" the internal. So the [chapeaux] of this principle is right because, on one hand, we have to prevent such adverse effects. And if adverse effects happen, we have to mitigate that. And in order to

do these actions, any finding of these adverse effects need to be internally applied. So the principle is right. I don't understand what the due diligence here means. How quick we apply that? Is it a question of somebody?

So I think the remaining part is quite detailed and may not apply, but the [chapeaux] part is applied because it is a very important principle that we have to avoid to [accept] adverse impacts and if adverse impacts happen, we have to mitigate that and any finding of this happening and mitigation needs to be reflected internally into the process in order to not to repeat that. That is the understanding of 19, so the [chapeaux] of 19 seems to be correct. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. The words "due diligence" come from the heading of the chapter of 17, 18, 19, 20, and 21 in the Ruggie Principles which says "Human Rights Due Diligence." So that's where that term is coming from, just as a small note.

I see Greg is next in line. Greg, please come in.

GREG SHATAN:

Thanks. I think Principle 19 is entirely a matter of implementation, not interpretation, and should be out of bounds for the consideration of this group. It assumes in the [chapeaux] that there is an impact assessment that is going to be made. That in itself is implementation. We certainly haven't discussed whether there is a commitment to do an impact assessment that can be implied from the Bylaw, and I don't believe that

there is. I don't believe that there isn't either, but the question that's in front of us is interpreting the Bylaw. Then the Bylaw can go into effect, and then then things can be taken from there.

If you consider the fact that the Bylaw was made dormant so that we could come up with a Framework of Interpretation, this is not intended to be some sort of omnibus human rights action plan for ICANN. Our job here is merely to get the interpretation of the Bylaw framed up in the proper way so that activities across supporting organizations, working groups, advisory committees, and the like can be literally on the same page.

Anything that talks about assuming impact assessments, assuming mitigation which is a set of activities, I think is out of scope and not our job in this group. I'm not saying it's a good or a bad or an indifferent idea. I'm saying it's not our job in this group. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. Just one question for clarification just so I make sure that I understand your point correctly: you think that "mitigate" could or should not be part of the definition of what respecting human rights means?

GREG SHATAN:

I think that in terms of interpreting what our commitment to respect human rights is, I think it's premature to decide what kind of actions should be taken, whether that's mitigation, what mitigation means. I

think that's all premature, and certainly deciding how mitigation is going to take place is way premature.

Clearly, it's not likely that respecting human rights means standing idly by and watching your own organization violate human rights, if that's what's happening. But I think the mitigation here assumes a whole bunch of actions in advance of the mitigation phase. Those actions are out of scope for our group, and therefore any particular discussion of what mitigation might involve is out of scope as well and premature. Thank you.

NIELS TEN OEVER:

I completely agree that implementation is out of scope, but to be able to understand the boundary we might weigh what different interpretation's consequences might have for implementation, right? Because else we might have other impacts on implementation than we might have thought about.

I would like to reiterate Kavouss' question: how do we ensure that we draw a very careful line between the Framework of Interpretation and the Framework of Implementation? How do we find the right level?

GREG SHATAN:

Well, having spent a lot of time in the Policies Implementation Working Group, I think that is an important question, but it's not the first time it has been asked or dealt with. So I think there's a lot of prior material we can go to, to look at what the difference is between making policy and implementing policy. I think that as soon as we're setting out a

framework for what people should be actually doing as opposed to how they should read this Bylaw, then I think that's a fairly easy test for the fact that we've strayed over the line. Thank you.

NIELS TEN OEVER: Thank you very much, Greg. I see Jorge is in line. Jorge, please come in.

JORGE CANCIO: Thank you. I think we may have here a certain degree of agreement. I would like to stress that I agree with what Greg said on the implementation nature of this principle. I see the [apologist] parts of this principle in the "should integrate the findings from their impact assessments." This looks very much like implementation, which is not really needed I think for giving meaning to the concept of respecting international human rights, which is what is in the core value.

Nonetheless, perhaps on the background or on the origin of this principle, we may have different views when we get hopefully into discussions about the implementation. Because I see the linkage of course of the Principle 19 with Principle 13B, which uses similar language about preventing or mitigating adverse human rights impacts.

However, I would also like to stress as I wrote in one of my comments that Principle 13B means no legal obligation for the business entity at all. It has no responsibility for the impact itself. It has no obligation to provide remediation. What it does or what the moral obligation, so to say, that 13B spells out is more related to protection of the reputation of the business entity. So I would like to also [inaudible] this one.

But to return to the beginning, I agree that here we could draw the line and say this is something – human rights impact assessments and their findings are integrated into how ICANN works – as something we can leave for the implementation. Thank you.

NIELS TEN OEVER:

That is a great point. So if we agree on that, then that also gives us a lot of space to things we do not need to address. That is great. So let's have a look at the next principle, Principle 17. Kavouss? I see your hand is up, [Andreea], sorry. Kavouss, please come in. Kavouss, might you be on mute? We are having difficulty hearing you.

KAVOUSS ARASTEH:

...out of context here. This is [inaudible]. What is our mandate? Because everything is saying that is not. Maybe some people they don't want Ruggie Principles. If they don't want, throw it away and start on something else. How many meetings we should have talking of this and still people say that applicable law, this is not our term of reference, this is not an issue to discuss because it's implementation, and so on and so forth and then going [to add] applicable law? Do we need to discuss this Ruggie or not?

No problem you have another 10-15 minutes now and another hour next week to go to through the rest of the principles, but we have to establish because it seems that there is a divergence of view, no matter who is right, who is not right. People they're putting in doubt many of the principles of Ruggie. Thank you.

NIELS TEN OEVER: Thank you very much, Kavouss. Jorge, is that an old hand?

JORGE CANCIO: It's a new hand.

NIELS TEN OEVER: Please, come in.

JORGE CANCIO: Hello. Yes, in fact, on Principle 17, I would tend to also think that it's more on the implementation side. In fact, what it does is to explain what Section 15B means because Section 15B or Principle 15B where it is said that the obligation of the concept of respecting international human rights means that you would have to put into place a due diligence process. I don't think that at the level of the Framework of Interpretation we have to really go beyond the general notion of Principle 15B and that Principle 17 with its detailed explanation of how the due diligence would have to look like is more on the side of implementation. Thank you.

NIELS TEN OEVER: Thank you very much, Jorge. I see David McAuley has his hand up. David, please come in.

DAVID MCAULEY: Niels, thank you. Just a brief observation: I would align myself with Greg's position on Principle 17. I think our struggle stems from the fact that the Ruggie Principles are very broadly drafted to apply or to give insight to every business in the world, whereas we're coming at this from the point of view of a very unique organization that's at a very technical layer of the Internet, not the business layer if you will, the content or application layer. I think that's the germination of the struggle that we're having. Thank you very much.

NIELS TEN OEVER: Thank you very much, David. I would like to say that there is light at the end of the tunnel because we almost discussed all the Ruggie Principles that are applicable to businesses, so we've already really covered some work. So we're really making progress and seeing what addresses, what not addresses, and what is actually within our scope within the Framework of Interpretation. So let's not despair. We're making real progress here. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, Niels, I don't know whether we are achieving something or not, but when I look to the entire Ruggie Principles, I see first of all I agree with some of the colleagues saying that [inaudible], but the whole principles are turning around a few words: identifying, preventing, mitigating, taking into account, assessing the adverse effects of human rights. In 17, in 15, in 19, in 18, it's all this. This is few words and the entire principles are turning around these words by changing their places and creating new sentences.

But the center is this: if somebody sits down and looks at all these principles, he can find that there are many common words in all of them. As I mentioned: identification, mitigation, prevention, taking into account, assessment, and adverse effects, and taking the adverse effects assessment into the internal. So [repetitions].

Still I am questioning, do really we need to go through all of the details of the Ruggie Principles, or we need to have a look at that one to see whether we can get one or two principles out of that, but not the principles as they are written? Because they are [repetitions]. Thank you.

NIELS TEN OEVER:

That's very much what we're doing, Kavouss, and we're almost done with that. And we've seen that 13A and 15A are definitely the ones that we've seen within our scope, so that already tremendously helps us understand which parts we take and why we take it and why other parts not. Either because we think it's not fitting to ICANN or it's not within the mandate of our group. So that really helps us also in explaining to the CCWG to see what choices we made.

So if that is the consensus on 17 that it is largely implementation when we take into account words like "to identify, prevent, mitigate, and account" and see how these terms revolve as Kavouss clearly mentioned and also as Ruggie said himself the Ruggie Principles are mostly about knowing and showing and allowing for a remedy, let's see if we can go to the final principle that's on the agenda, and that is Principle 18.

Let's see do we agree here again that this is mostly on part of implementation, or is there also something that we can take from here? Oh, sorry, I was on mute myself. Sorry, Kavouss, is that an old hand?

KAVOUSS ARASTEH:

No, a new hand. Niels, [inaudible] almost a repetition of [inaudible]. 18 is a repetition of 17 and 19. You see all of the words there: "risks," the "assessment" which is already in 19, the "address human rights" whether it is potential or not potential, "impacts," and "through their own activities" that is internally applied. So it is [repetition] in different words. So come to my previous statement that perhaps somebody or a few people to see from all of these principles whether we could derive something that could be useful and after that to see whether it is a policy or it is implementation. That is something that I could offer you at this [stage]. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss. I'm quite excited about the progress we're making, and I think there's also a sentiment that we're seeing now in the chat. But we only have five minutes and we still have two people in the queue. I would also need to talk a bit about what we're going to do for next week because we're coming very close to the end of the meeting. Jorge, please come in.

JORGE CANCIO:

Hello. I'll try to be...

NIELS TEN OEVER: That was very brief. I think briefer than intended. While we're waiting for Jorge to recover, Greg, would you please come in?

GREG SHATAN: Thanks. I'll try to be brief too. I think anything that begins with "in order to" is getting into implementation and out of our scope. I think we're also being a little sloppy as I said in the chat in using the term "interpretation" as if it is consistent with policy because both are being opposed to the concept of implementation. I think that, in fact, implementing the human rights Bylaw is going to take a considerable amount of policy work certainly within the GNSO which I'm most familiar with and perhaps in Cross-Community works as well as or in other structures.

But I think that, in a sense, there are three phases here. There's the interpretation of the Bylaw; there is putting the Bylaw into more specific action phases through policy work; and then finally implementing those policy decisions. What we need to do here is provide a framework for those policy discussions so there is a consistency of approach to the Bylaws, the commitments of ICANN, the limitations of those commitments, and basically just what the words mean. Thank you.

NIELS TEN OEVER: Thank you very much, Greg. We only have two minutes left, which is very short, and I would like to use this time to see who has the gusto to take the work in the draft Framework of Interpretation to a next level or, as Greg suggested, start a third column to see where the discussions

that we had and our agreement on 13A and 15A in our understanding of implementation can now lead to a next part of drafting. Are there people who are willing to take up that challenge and work on that a bit this week? Could I perhaps see some ticks from people who would like to volunteer for that? I see Greg, I see Tatiana, and I see Matthew. That's a team. That would be great. Please, let me know if you need any – and Jorge – that's great. Jorge, Tatiana, Greg, and Matthew, I will follow up with you after the call to see if I can be of any support to you.

On that note, I would like to thank everyone, staff and participants, for another constructive call, for helping us to go through this difficult topic, and to go where no one has gone before and to continue to go together in this journey. I'm really looking forward to continue working with you all week on the list and next week on the call making forward to Hyderabad.

Thank you all very much, and enjoy your evening.

[END OF TRANSCRIPTION]