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NIELS TEN OEVER:

Thank you very much, ICANN staff. And welcome, everyone, to the ICANN Cross Community Working Group on Enhancing ICANN's Accountability Sub-group on Human Rights Meeting #23/#21 – depends on the counting – but it definitely is the 21<sup>st</sup> of February, 2017, and it is 19:00 UTC.

Here we are all together in the Human Rights [Sub call]. Our Drafting Team has been working hard. We've been making quite some progress. We've been making some progress even upon the progress we already made last week, so that means we are still moving forward. That is really nice. But let's first, before we go into the content, go into the administrivia.

Is there anyone who is on the Audio Bridge who is not on the Adobe Connect? Could they please make themselves known – or heard, in this case? Then I can stop and take a roll call from the Adobe Connect room.

Thank you very much for that, ICANN staff. I think we saw apologies from Jorge Cancio, and I do not remember if we've seen any others. I don't think so. I'll have a quick peek in a second at the list, but I don't think so.

So, only Jorge which means, as we can see in the Adobe room, we have a full call with active participants. That's great.

Does anyone of all the people here have an update to their Statement of Interest?

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*Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.*

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No. No hands. No comments. No update to the Statement of Interests. That is great.

I do have one incoming message, and therefore it would be great if Mark Carvell or Jorge Cancio were here. But for Jorge, we have the apologies, and Mark Carvell, I don't see here. But I heard from Mark Carvell and Jorge Cancio that the task they volunteered for – namely reaching out to the U.N. Working Group on Business and Human Rights – came back to them after a while and offered their support and advice in our process.

So, if you all would not mind, we will reach out to the working group and invite them to the call – if you all do not mind – so we can all equally interact with the working group and benefit from their advice directly. I hope you are all okay with that because it was also our joint approach to invite them and look for impacts, so now they have been following up.

I see a question from Tatiana. Hi, Tatiana. So, Tatiana asked, “What exactly would be the benefit of this? Are they aware of what we are doing? Are they familiar with ICANN?”

Yes, so earlier in the process you might remember – I think it was the third meeting – we were seeing whether there were other people around that we could benefit from. By then, it was Jorge and Mark who said that the U.N. Working Group on Business and Human Rights might be able to provide input.

Then the group said that it might be useful to have people coming in. Then we had the discussion – yes, but they should not have a special

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status. Then we all agreed – yes, we would invite them to the sub-group call so they can discuss with us, we could benefit from them, and they could benefit from our expertise.

We made the invitation. Now they come back. They would be happy to join us. And actually, they do know things about ICANN. So, I was pleasantly surprised to read that. So, I'm very curious what will happen, but I propose we invite them and then we'll see what happens.

I do not know when that will be. I just know that they are available. So, I would just extend to them the invitation and I hope we can do that before Copenhagen. So, I will extend to them that invitation so we can all engage with them.

Excellent. Then that point is covered. Then those were notifications.

Does anyone else have a suggestion or an update for the agenda?

I see no hands, but I see Tatiana is typing. I see nothing. So if not, then I suggest we go with the agenda as it is. So, the people who prefer can have a look at the Google doc, and I would like to ask the always helpful ICANN staff to load the [work options] in the Adobe Connect so the people who prefer Adobe Connect can have a look there at the text that is the next iteration of our work, which is going to be our considerations document which will be part of our Framework of Interpretation which we will merge with the work that we have finished earlier.

So, at the end of the call I would like to bring to the [inaudible] end, we'll discuss what we will present in Copenhagen because this is on the agenda tomorrow for the Plenary. So, we will need to discuss whether

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we think we will present the FoI that we've already done or whether we want to present the FoI as well as the version of the considerations document as far as we are in Copenhagen, which I think might make sense. But it would be at the state that the considerations document [is then] whether we have consensus on it or not. And even if we do not have consensus on it, we can always present it currently where we are as a discussion document.

I would, nonetheless, discuss that a bit later; but first go into our work and go over to our Drafting Team who has been working hard. Part of the Drafting Team has been coming together in Iceland and making some great progress there, so I'd like to have loaded in Adobe Connect – the Word documents that we had before – and then let's go into the document and see where are the changes from last week.

Who from the Drafting Team can I give the floor, or shall I do a first roundabout, a first overview? Drafting Team advice.

I see Greg has his hand up. Greg, please come in.

GREG SHATAN:

I'm happy to start. I guess we're starting back at the top with this latest draft. I think that there's no need to read every word, but we'll focus on the changes that have been made or changes that have been accepted.

The first is, "To consider which specific Human Rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the Human Rights Bylaw. "

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First paragraph, which I think adopts changes that were proposed the last time around, says that, “ICANN is not a party to declarations/conventions, but ICANN could refer to any of the widely-adopted Human Rights conventions and other instruments,” which are now all mentioned in a footnote. Also, the note that, “It should be noted that the bylaw was not written with one specific Human Rights declaration or covenant in mind.”

The Drafting Team presented three different proposals here, and that’s really the part that I will look at more carefully here and that we need to discuss as a sub-group.

The first proposal says, “The sub-group considered whether the U.N. Guiding Principles for Business and Human Rights can be applicable in the process of interpreting the bylaw, however there was not sufficient support to recommend the adoption of the U.N. Guiding Principles.”

This probably actually needs to be above Proposal 1 because this is true of the textual analysis in any case. But we can discuss that as well.

This goes on to say, “The sub-group also considered whether the U.N. Guiding Principles for Business and Human Rights could be a useful guide in the process of seeking guidance for the bylaw.”

And then it said here, “However, given both the differences between ICANN and ‘business enterprises’” – and then it’s been added – “alleged by some between ICANN and ‘business enterprises’ for which the Guiding Principle was written, and the content of many of the principles, this was either deemed unsuited or no agreement was reached.”

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So, this is, in essence, two proposals competing with each other as Proposal 1 and 1A, and could end with, “Therefore the sub-group does not recommend or makes no recommendation regarding using the Guiding Principles” – the first one being a more active, non-recommendation; the other one being just more of a passive – “There is no recommendation here.”

Proposal #2 says, “The UN Guiding Principles for Business and Human Rights could be useful guide in the process of observing the Human Rights Bylaw.” Question whether “observing” is the right verb there.

Last is, “The U.N. Guiding Principles for Business and Human Rights should – as opposed to ‘could’ – “should guide the implementation of the Human Rights Bylaw.”

Really, this is, essentially, four competing proposals, all of which are really based on trying to determine where the sub-group as a whole comes out on the question of the Ruggie Principles when it comes to implementing the Human Rights Bylaw. I really do think we dealt with interpreting in the first part of our work, but that’s where we find ourselves in this particular section. Thank you.

NIELS TEN OEVER:

Thank you very much for that overview, Greg. And, indeed, a bit of a conflict is now a multiple choice. But without it before people coming up with, “I’m for this. I’m for that,” it would be good to quickly see a bit of the background. And I think a background of some of the contention might also be in the question itself, which convolutes the interpretation and the implementation of the Human Rights Bylaw.

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I think it would be during the drafting of the Framework of Interpretation we've seen and we've discussed, to great extent that the U.N. Guiding Principles might not be completely applicable because of the issue regarding chain responsibility and ccTLDs – how that would be hard to translate.

But where it could come to implementation, the U.N. Guiding Principles might be very relevant because they outline clearly the process of U.N. Guiding Principles of Human Rights Impact Assessment and how that could be followed. So, this could be a useful separation or not.

I see there is a queue, so I trust there will be great insights from everyone. So, I'm looking forward to a constructive engagement and discussion on this point.

Kavouss, please come in.

Kavouss, I do not yet hear you but I trust we will.

Okay, so I see Kavouss has some audio issues, so for the moment let's go to Matthew and then have Kavouss after Matthew.

Matthew, please come in.

MATTHEW SHEARS: Yes. Niels, can you hear me alright?

NIELS TEN OEVER: We hear you swimmingly, Matthew. Great to hear you.

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MATTHEW SHEARS:

Perfect. Thanks. I just wanted, actually, just to reinforce a point that Greg made, which is we just need to be a little bit careful about the way that this is written now with these various proposals or options. I think Greg is correct when he says that the first paragraph that comes now under Proposal 1 actually is a factual statement as to where we find ourselves after significant discussion about the Ruggie Principles.

I think the actual Proposal 1 should come above the next paragraph where we start to talk about to what degree they could be used for guidance. So, I think that's an important distinction.

Also, about your question about the considering, in which you talk about whether or not we have adequately or correctly viewed how the issue of interpreting and implementing. That's been a tricky one, of course, because there is a difference between interpreting and implementing, as we've discussed in the past also.

But I think what we've done is certainly considered the interpreting part of which possible Human Rights conventions or instruments could be used to interpret the Human Rights Bylaw. The implementing, I think, we've also addressed but, obviously, that's been a little bit more tricky as we've found over the past couple of months.

So, I think we just have to be a little bit careful about how we read that, but I just wanted to encourage us to look at the three options after the first paragraph [because] that's a factual statement to where we are at the moment. Thank you.



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NIELS TEN OEVER:

Thank you very much, Matthew. Can I ask you a follow-up question because it would be great? Could you iterate a bit more [inaudible] around “adoption” because “adoption” sounds very strong. I do not think “interpretation” and “adoption” are the same. So, would you say that that is the description of the facts and that could be also seen different ways. Could you iterate a bit on that?

And then could you also iterate a bit on the options in the paragraph following that and how you think we could take that forward.

MATTHEW SHEARS:

Actually, I think the question mark on the word “adoption” actually is mine because I’m not sure that that is the right word at all. I don’t know how it’s in there, but I am somewhat uncomfortable with that word and I’m sure there’s something else that we can look at that would be better suited.

I think we have to be careful in these proposals. As I think Tatiana said in the chat, there’s a possibility that we might be able to do something with the second paragraph for Proposal 1 and Proposal 2. But even with Proposal 1, there’s some uncertainty within those brackets there, so I think we just have to be very careful about how we look at this.

I think it would be good to get a general sense from those on the call as to where their sentiment is at the moment, noting that we do have to approach this with some caution because our discussions around the whole issue of Ruggie have been somewhat difficult over the past couple of months. But I’m sure Tatiana has more to say. Thanks.

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NIELS TEN OEVER: Thanks so much, Matthew. Before we continue to Tatiana and Greg, let's go back to Kavouss because Kavouss's situation might have improved.

Kavouss, can we hear you already?

KAVOUSS ARASTEH: Hello. Can you hear me, please?

NIELS TEN OEVER: Kavouss, we hear you. Please come in.

KAVOUSS ARASTEH: I don't know why we come back to this sentence on changes again. It was drafted in a cautionary manner that could be used as a guide – guide you set [up]. We take a guide or we don't take a guide. You guide me to do something. I accept or I don't accept. Why come back to that?

Why some people from some constituency always come back to this issue and push for the initial point? We have discussed this 10 times. I don't agree with that. I'm very, very, sorry – a strong opposition. This [inaudible] paragraph has always been agreed. We don't come back to that to satisfy one or two people from one constituency. The existing wording as you take it out is sufficient. Could be used as a guide. That's all.

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We could not say the meeting that was [inaudible] adoption. Adoption of what? We don't adopt a Human Rights principle. We just say whether we could use it or could not use it. And we said that we could use it as a guide. Or we could say it could be generally be used as a guide. Full stop.

I'm sorry. Please do not come back to everything. We have a lot of work to do. We have a lot of obligations, commitments. We cannot quite get back to all of these things all of the time. We had only the last part which was discussions about GNSO, ccNSO, and GAC. And we said that put them one similar paragraph. That's all. But not to be reviewed again.

How many times do these distinguished people want to review? Please, kindly guide us. I have a strong opposition to come back to any of this anymore. Thank you.

NIELS TEN OEVER:

That's very clear, Kavouss. Thank you.

Next in the queue is Tatiana. Tatiana, please come in.

TATIANA TROPINA:

Thank you, Niels. Well, first of all, let me firmly disagree with not raising these issues again. Let me go a bit into the history. We knew that three members of the Drafting Team were in Iceland and were not able to join the call. If we would have been on the call, we would have raised these issues. We didn't have time to draft a document, and Niels was aware of this.

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We were considering whether we are going to have the call or not. The notion behind having the call was that we have to make progress, but the significant part of this group – and I believe the significant part of the Drafting Team – was not on the call. And if the issues had been not raised on the last call – and I was actually amazed when I was listening to the call that no one raised the issues.

We did redraft this part as well. We did redraft the previous part. And it's not only about Ruggie Principles. We did redraft and fine tune it significantly. I don't believe that we have to put up, again, the old [discussion] because it does suffer from different flaws. It's not only about Ruggie Principles.

Coming back to the Ruggie Principles, I do believe that, as Matt and Greg said, the first paragraph is a factual statement. The group did not agree whether we shall commit to Ruggie Principles. I think that "adoption" is maybe a strong word. Maybe we have to use "commitment" or "implementation" of the Ruggie Principles or "following" the Ruggie Principles; but nevertheless, we discussed them over several calls and we couldn't reach the agreement furthermore.

I do believe that if we are going for the option #2, the group has to come back to this discussion and to consider whether the Ruggie Principles would be useful guidance for the implementation because just writing these as statement of fact, I just simply cannot accept this. If we are going to consider this, if this is going to be in the final document, we have to discuss – Are they useful? Do we agree that they are useful? Maybe we will agree. Who knows? But I want to have the discussion them.

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I just don't want any statements which are not the reflection of the factual reality and factual discussions. I am not aware of any discussions how Ruggie Principles are useful in this sense. So, I believe that we can, of course, say that ICANN as an organization can consider in the future to commit to Ruggie Principles, that if ICANN community in the policy making decides to follow Ruggie Principles, they might do so. But they have to be crystal clear that the group didn't reach an agreement on this.

Or otherwise, if we want to reach an agreement on recommending this, we have to go through Ruggie Principles and agree or disagree. Thank you very much.

NIELS TEN OEVER:

Thank you very much, Tatiana. I'm not sure whether we should go through all the Ruggie Principles again, but it's an interesting suggestion that we could do.

I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. I would say that I agree in large part with what Tatiana just said. I think we could not come to an agreement on the use of Ruggie Principles in the interpretation. And whether we've discussed it fully with regard to implementation or not, I don't think we've finished that discussion. As a matter of fact, I think we're in the middle of it.

In any case, I think that we cannot buy the Ruggie Principles wholesale. Are there perhaps some particular aspects of the Ruggie Principles that,

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by themselves, could be useful guidance? Perhaps. Let's take a look if we want to go down that route. But there are also other parts of the Ruggie Principles that I think would be absolutely inapplicable and counter to ICANN's Mission.

It also goes way beyond the charge of this particular sub-group which was to interpret the bylaw, and providing broad implementation advice is beyond our scope. The question only asks which conventions or other instruments should be used by ICANN, if any, in interpreting and implementing the Human Rights Bylaw.

But I do not consider the Ruggie Principles to be a convention or [instant]. They are, themselves, a Framework of Interpretation and implementation. That would be like putting on somebody else's suit at this point, and with regard to how they would want to do that. And I think that this would either need to be finely tailored and reviewed, at best, but certainly we cannot buy it off the rack and put it here. There's just no agreement that we are going in that route.

I think that's a sufficient statement of my position. Thanks.

NIELS TEN OEVER:

Thank you very much, Greg.

I see David McAuley's hand is up. David, please come in.

DAVID MCAULEY:

Thank you, Niels. I just wanted to make a comment, too, because I was on the call last week and I have to admit that for part of the call, I was

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distracted by something where my attention was not on the call – perhaps it was during a discussion of the Ruggie Principles.

But I would add my voice to those that say that we have to be very careful in how we refer to them. Part of the problem I think we’re facing is that the final report from the CCWG on Accountability Work Stream 2 uses words in Annexes 6 and 12 in the final report itself like “implement,” “operationalize,” and things like that – very active verbs – where the bylaw simply says that, “ICANN will be guided by these considerations,” and then uses the language about “internationally recognized Human Rights” and language about “applicable law.”

So, we’re sort of in a bit of a twist because, I think, of the [inartful] use of language. Those of us who worked on Work Stream 1 will remember just how busy and hurried that was. And so, that’s understandable. But I think that what we should shoot for in this language is underscoring the concept of “might” and “could.”

In other words, ICANN is tasked with respecting Human Rights in the manner that the bylaw sets forth – ICANN the community and ICANN the organization – and they can consider whatever they want. I think that ICANN can consider the Ruggie Principles to the extent they’re helpful. They’re certainly not binding – at least in my opinion. They’re certainly not binding on ICANN.

But in trying to discern what are internationally recognized Human Rights, I think ICANN has a free hand to consider anything that’s relevant. And if we would shape the language in that respect and said, “We’ve considered the Ruggie Principles,” I join those who say, “Boy,

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those Ruggie Principles have limited application to ICANN,” especially when it gets to language about remediation and about remediation with respect to business partners. Those are the things that really concerned me when I read the Principles.

I would just like to add my voice to those that say these are simply guides. ICANN will have to operate under the bylaw and will have to stay within the limits of internationally recognized Human Rights as found in applicable law. Whatever tools they find to help them to stay within those limits would probably be fine with me. Thank you.

NIELS TEN OEVER:

Thank you very much, David.

I see Kavouss’s hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

I’m sorry. A matter of principle. If two or three people are not in a meeting, it is not appropriate to come back and say that they disagree with the remaining people that were at the meeting. It is your fault. You did not attend. That’s all. You cannot come and upside down what the other agreed. That is not a good reason that they were not there. The reason that even you were there, you have [inaudible] presence [inaudible] believe that there is a need to refine that, I have no problem.

But I don’t agree with Tatiana saying that she was not there, therefore she can dominate these views [inaudible] everybody. That is not correct.



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So, what I suggest that we still believe that we should say “could be used as a guidance” when they are applicable, where applicable. We could add something at the end of the sentence – “where applicable.” [inaudible] retain what you have [inaudible] could be used as a guidance – “could” but not “will be” – could be used as a guidance in processing so on so forth – comma at the end – “where applicable.”

Just take note of what David said. But I don’t want we come back saying that we have not agreement to adopt that. We are not adopting anything. We don’t have any right to adopt. Who we are to adopt or not adopt? No one has given us this task to adopt anything. The U.N. Principle does not require adoption of the 11 people in this group.

The only agreement is could we use them or is it to not use them? If we say we could use them, be cautious. [Use with] caution. Then we add at the end “where applicable.” “Could be used as a guide, where applicable.” So, if we want to leave it, go to the next meeting – no problem. But I totally disagree with the concept that we were not there, then we disagree with the others who were there. That is not acceptable. That is selfishness. Thank you.

NIELS TEN OEVER:

Thank you very much, Kavouss.

Let’s see in which direction we can move to merge different positions because it might seem that people are disagreeing. But I actually see some words that are going back that would fit together, and of course, decisions are never made in one meeting. We are only making decisions once we have two readings. And we haven’t even had one reading

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because we agreed that we would announce readings and we would even mention them in the subject lines.

So, we are still in the brainstorming session. We have all different space to move, to discuss, to be experimental. So, let's stay within that frame of mind and let's try to remain flexible, and also to try to see what we need to decide now and where we could move.

I think that there might be space, as I think Tatiana and Matt have said, on the combination between Proposal 1 and 2 to say that maybe where it comes to interpretation, it might not be completely a one-to-one fit; but on implementation, parts could be useful. And this would need further study because we had a consideration that would say how ICANN should do it. So, maybe we can move in that direction. Perhaps we can find some fertile ground there just as an experimental suggestion.

I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. My hand was actually up to respond to Kavouss, which I'll do only briefly. We were all at the ICANN the intersessional meeting for the Non-Contracted Parties [inaudible]. So, we were working day and night on ICANN matters. This call fell in the middle of the night and we notified everyone of that fact – not that we were off entertaining ourselves.

As Niels already said, we're not at the point where that procedural door can even be touched, much less slammed in our faces for bringing up

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different thoughts. I will note that some other sub-groups and working groups did not have meetings last week due to the Intersessional. It's fine to have meetings, but please recognize that you can't use a meeting scheduled against another meeting in order to ram things through.

With that, in terms of getting back to the point itself of where do we go with all of this, I think we have a fairly broad spread here. But again, I come back to any language that basically endorses the Ruggie Principles as a whole, as *the* guide, is not something I think I could agree to.

On the other hand, it's not a banned book. It can be referred to by any group that is actually, truly implementing the Human Rights Bylaw, say looking at how to revise the PDP process in the GNSO. But again, I don't think we have much of a mandate at this point to advise on documents other than Human Rights conventions and instruments that might be used.

And I think even there, we need to agree on their applicability. We've been around that fairly hard on the interpretation side and we can do it again here. We'll see whether there is a different result. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg.

I see Tatiana's hand is up. Tatiana, please come in.

TATIANA TROPINA:

Thank you, Niels. The problem with the Proposal 2 – and I wrote this already on the chat – is that if we are writing this sentence, we really

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have to mean it. And to mean it, we really have to discuss whether U.N. Guiding Principles could be a useful guide. I believe that once we will start discussing this, we will have to discuss the issues that David raised, for example, about the strong language, about remediation, about all this.

And while I believe that, yes, sure, Ruggie Principles can be a useful guidance – ICANN might adopt Ruggie Principles in the future; I don't mind. But let's be careful here. Let's be careful in what this group is doing. If we are mentioning Ruggie Principles, let's be honest about this. Let's discuss – can they be useful guides in process of developing of the Human Rights Bylaw and implementation and whatever, observing, or not.

Once the discussion is carried out in this group, I will be fine with any result. We will reach consensus. But just writing this sentence without really looking at the consequences – without really looking at the principles, without listening to concerns which might actually be raised when we are considering this sentence content-wise – I believe we just cannot marry these two options.

So, if we really want to get this job done, I believe that we cannot avoid this discussion. And again, I am not against Ruggie. I'm for open discussion. Let's go into this. Let's see what David will say about strong language. Let's see what Avri will say supporting Ruggie Principles. Let's hear our opinions, and let's see what we can get out of this. You know what I mean. Thanks.

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NIELS TEN OEVER: Indeed. Open discussion and exchange of opinion. That's what we're doing, and I'm so happy that we're continuing with that.

I see Kavouss is in line. I also see Avri is in line. That's great to also have more voices. I'll also definitely call on the people that we haven't heard yet to also get in the queue.

Kavouss, please come in.

KAVOUSS ARASTEH: Yes. Bylaw says that ICANN should be guided by internationally recognized agreement, among which is something that we will say to if it is not applicable to all cases mentioned, it's not applicable to [inaudible].

NIELS TEN OEVER: Kavouss? I think there is another audio problem with Kavouss.

Avri, could you come in?

KAVOUSS ARASTEH: Can you hear me please? Hello? I've been disconnected.

UNIDENTIFIED MALE: No, Kavouss. I can hear you quite well. I think you are still connected.

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KAVOUSS ARASTEH:

I said that if we cannot apply to all cases, mention that. If it could be applied in certain cases, mention that. If it could be applied as a guidance, mention that. But I don't think that we should say that [inaudible] inapplicable, as somebody said. It was discussed many, many, many, times. And I know some people were against that from the very beginning.

But the issue is that we need to understand each other. We must refer to what is internationally recognized agreement and so on so forth. What is that? If we can't spell out what are those [inaudible]. If we can go through the Ruggie Principles, let's specifically say that "not applied in all cases," "should be applied with caution," and, "should be taken as a guidance, where applicable."

Later on [inaudible] say that, "I was not at the meeting. Please come back because I was not there." It is [not] a good way of working. Thank you.

NIELS TEN OEVER:

Thank you for that view, Kavouss. I am back on the call.

I see Avri is in the line. Avri, please come in.

Are others hearing Avri or is it just me?

Avri typed that Avri's point was that, "It's premature to worry about the details of Ruggie. It is a guide for those doing commerce. Anyone using it will have to take into account all of the restraints of the bylaws and not use it inappropriately. To do that up front seems premature."

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So, Avri said that, “There are enough fences and boundaries around the mission, the core values, and weighing them as we ourselves so carefully constructed that within that, Ruggie could be useful.” So, I think Avri is very close to Proposal 2 that I see in the Google doc she also strongly supports.

It seems, and maybe we can park the discussion there, that we will need to see how we can see that for the Interpretation, the full Ruggie Principles – we thought that the full Ruggie Principles might not be useful or applicable, and that the U.N. Guiding Principles could be useful in the process of observing the bylaw and implementing the bylaw.

But that it might be something that the Drafting Team could work on in the coming week. That might be something that we could discuss next week because I’m not sure if we would make much progress here if we keep on discussing this in the coming 15 minutes.

I see Tatiana is unhappy with this, and Greg and Tatiana want to discuss whether they could be useful. Greg and Tatiana, are you saying that you want to hear from people whether they are useful or not. Or would you like to go through all of them, because we went through them. I think we saw that some were useful and applicable, and that some were problematic. Right? So, do we want to repeat that exercise?

I see many people are typing, and being the one not typing but talking always makes one feel a bit the odd one out.

I see a queue is forming, so that is great. I see Kavouss and then there are a couple of [inaudible].

KAVOUSS ARASTEH:

Yes. Why not we say that it could be used as a guide or guidance on or in certain circumstances or under certain circumstances? It is not totally rejected. And we say “could” and we say “guide” and we say “under certain circumstances,” or “under certain cases,” or “according to the case.” So, we keep this [inaudible] to the text.

But I think that “not applicable” – we come back to square one. We disagree with that. We have discussed that many, many, many, hours, and we need to retain what we have discussed. Thank you.

If you want to [give it the vote on this, give it the vote], but not to come and invent something that satisfies these three people. These three people [limitations] are for just three people. That’s all. They’re three, and it is up to us to say yes or no. They should not impose what they think. Thank you.

NIELS TEN OEVER:

Thank you, Kavouss. This is now becoming a bit of a tradition that, towards the end of the call, Kavouss is coming with language suggestions that are then helping us completely through [the way]. This is great, Kavouss. Maybe you should consider joining the Drafting Team. That’s really great.

I see Greg has his hand up. Greg, please come in.



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GREG SHATAN:

Thanks. Again, following the logic of my earlier intervention, none of which are intended to impose anything but merely to express my view. I don't think we can buy or recommend the Ruggie Principles wholesale. I think it's not just certain circumstances; it's certain principles. Certain principles may be useful in the process.

And I think that we should not just give the positive side of the coin but also the negative and not leave a temptation that there are certain Ruggie Principles that would not be applicable, or should not be applicable, or on which there is no agreement that they could be applicable, and also certain circumstances where [any] principle would not be applicable.

The point is, it's really a decision for another time as to which could be useful, which could be appropriate under which circumstances. So, I think we end up surrounding them. So, I think as long as we don't rule them out, they can be looked at down the road.

I don't think we should go into deep detail one by one again and try to provide a guide to the Ruggie Principle. That we should not do. But I think we should basically indicate that it's up to others to decide when, which, and whether they could be useful; and also that there are times when they would not be useful or appropriate and certainly that would not be appropriate under any circumstances. Thanks.

NIELS TEN OEVER:

Greg, what you just said there – I think if we could capture that in language and then use that as a replacement for 1 and 2, I think then we would be there. I think that was a very nice spirit that captures a lot

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because we're not saying, "This does not apply. This does apply." We need to look at it. There might be some issues. So, let's see how we can do that because that sounded definitely like music to my ears and also different than anything we had thus far.

Maybe this is something that you could already draft something in the Google doc or do something that we can play with.

I see Kavouss's hand is up. Kavouss, come in.

KAVOUSS ARASTEH:

Yes. I tend to agree with the last statement of Greg. We could say that, "Certain principles could be used as a guidance according to the circumstances that we discussed." We do not give a [lonesome], blank check to Ruggie Principles, but a certain principle could be applied as a guidance according to the circumstances. Very general; very high level. And that is that.

And then leave it to ICANN to see which principles could be applied in what circumstances. That is sufficiently broad to implement that.

I put it in a positive way. Instead of saying that, "Certain principles would not apply," I could say, "Certain principles could be applied as a guidance in certain cases and/or under certain circumstances." Thank you.

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NIELS Ten OEVER: [inaudible] always makes me happy in the multistakeholder process if we see that we come up with real solutions for real problems that have not been worked on before. It is really great.

Nonetheless, I would, in the last 10 minutes of the call, try to move to the other parts of the text because some other suggestions have been made. So, we can at least, have them hold or we can all have a have a look at them and then we can work on them the coming week and then discuss them in the call. And of course, as always, before we put them anywhere else we first discuss them among each other before we share them anywhere else, and we only bring them formally out after we've done two readings and we reach consensus on this together.

So, for now, after this progress I'd like to ask Greg if it's okay, as a member of the Drafting Team, to quickly take us through the changes through the next part because we moved some things and we removed some things. Could you take us through that or if you don't, I can also do that?

GREG SHATAN: I'm going to nominate Tatiana to do that one, if I could.

NIELS TEN OEVER: Tatiana, please come in.

TATIANA TROPINA: Greg wants me to talk to you all but my voice again. So, for the Policy Frameworks, if any, that ICANN needs to develop or enhance in order to

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fulfill its commitment to respect Human Rights, we propose that to put the Human Rights Bylaw into practice, you can notice that we do not use the word “operationalize” which was used before. So, we changed to “put the bylaw into practice.”

“ICANN the community and the organization will need to consider how to reflect this core value in it’s policy and operation process.”

I think this is quite clear. So, they will have to consider how to basically use it in those processes. So, what we suggest is that each SO and AC should take the core value into consideration in its policy development or advisory role. I think we had this discussion on the mailing list, and I believe that Ann and someone else was supporting this point of view. And I think that this is quite obvious because the bylaws, the core values, they have consequences for the whole community and for ICANN organization and for the ICANN Board.

But we decided that it is up to each SO and AC, and ICANN the organization if as applicable to develop their own policies and frameworks to fulfill this commitment. So, from our position as a subgroup, we are just interpreting the bylaw. We cannot tell them exactly what they have to do or are going to do with their policy processes. They have to apply this core value. They have to obey this Bylaw. They have to put it into practice on their own.

And then we concluded that in doing so, the SOs and ACs, as well as ICANN the organization, should also take into account the requirement to balance core values, which is already in our textual interpretation and which is already in the Bylaw, so there is nothing new here. We just

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want to make this text aligned with what we said before in the textual interpretation.

Thanks. I hope that was clear.

NIELS TEN OEVER:

That [inaudible] was clear, Tatiana. And I think it also links to a point that comes a bit lower that says that we removed the part thus far about setting up a Cross Community Working Group because all the different SOs and ACs are so different from each other. So, all the groups need to consider, by themselves, how they are going to live up to this work.

We are four minutes before the whole hour, so we will have very little time to finish. I hope that people will have the chance to have a look at the document and also comment a bit on the list. We are going to meet each other all tomorrow in the Plenary. I hope you all do not mind that I proposed in Copenhagen we proposed the FoI, as it has been on the list, and present then the current work on the considerations document on when we are then. But unless we will have had two agreed readings upon them – which I think is completely impossible – we say, “This is a work in progress document. We’re still working hard on it. But we’re making constructive progress and we think we will be done well within the guideline.”

So, I propose we tell that to the Plenary tomorrow, and then in the last three minutes that we have left I want to give the floor to the hands. The queue [inaudible]. Kavouss, please come in.

KAVOUSS ARASTEH: Yes. I did not understand what Tatiana said, which part of that one it refers. So, I said that this is the whole document is in a square bracket and subject to further discussion. And I'll submitted it to CCWG. With that, we have finished. People brought back the issues. We [re] discussed that because of Annex 12, and now we are in the full [fledged] discussion and we have not had any agreement yet on any part of this document. I have no problem with that. Thank you.

NIELS TEN OEVER: That's great. There are no problems with this. This week, again, we made progress and I would to underline we are now just joking about that it's a work in progress in the chat. Sometimes we disagree with each other, but I think today on the call we saw again that every call – and I think this is really quite special – we make progress and we manage to get through conflicts or disagreements we have and we come at new dialectical position.

And I'm very happy we were able to do that, and I really hope we can continue to do that coming week and discuss our upcoming work in next weeks' call.

I hope we can work with the Drafting Team again and thank you again, Drafting Team. Thank you again, ICANN staff. And thank you, everyone, for participating in the discussions, in the call, and on the list.

See you all next week, all. Bye.

**[END OF TRANSCRIPTION]**

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