
RECORDED VOICE: This meeting is now being recorded.

NIELS TEN OEVER: Good evening, all. Welcome to the Cross-Community Working Group on Enhancing ICANN Accountability Work Stream 2 Human Rights Subgroup, Meeting 24 on February 28 at 1900 UTC. We're at an exciting interlude just before our Copenhagen meeting, but also after we made quite a breakthrough last week, and actually, the week before that as well. We've been making really good progress on the considerations document. And of course, we already have our framework of interpretation document, which together will be merged, we hope. But let's first go through the administrivia of our meeting, so we can look forward to going to our new document with new proposals and new solutions proposed by the Drafting Team, and also a [inaudible] on the list. We will need to decide how to go forward, but let's first go to the administrivia and have a short discussion about that.

So, first of all, everyone that's on the call via the phone bridge but not via the Adobe Connect Room, connecting, could you please make yourself known, so with that, I can start and make a roll call from the Adobe Connect Room?

UNKNOWN SPEAKER: Hi, Niels. This is [inaudible], and I'm on the phone only, as I'm driving. Thank you.

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.

NIELS TEN OEVER:

Welcome, [inaudible], and drive safely, please. But great you're here; that's really nice. And you will be added to the attendee list. Apologies we have from Jorge Cancio, Herb Wayne, and [inaudible], since [inaudible] is in transit [inaudible]. Does anyone have an update to their SOI, their Statement of Interest, that they would like to share?

No? Okay. Then another piece of administrivia, or maybe a for-your-information, or maybe something for your mature consideration – is that even though I have opted to call the discussion of the text today a first reading, that might have been a bit premature. But I wanted to make sure that if we actually manage to agree that we do not [inaudible] first reading, because if we go with the second reading next week, it might be that we are able to submit to the Plenary before the Copenhagen meeting, and we could do a pass-through at the same pace of the old text. I think that would be a very pleasurable and efficient use of our face-to-face meeting time. But I also completely understand and want to give everyone all the space here to consider so that we do not go too fast. So – yeah.

So, David McAuley is asking, “Are we meeting next week?” David, I had that in mind because we would have time for that, and that was also – that's how I paced my schedule, because then we would have time for two readings.

ANNE-RACHEL INNE:

Yeah, Niels, this is Anne. [CROSSTALK] I'm sorry I don't have the ability to put up my hand. It's very rough [inaudible] to travel for next

Tuesday. I don't know how others feel, and I will defer to others in this regard, but it's a rough time to travel.

NIELS TEN OEVER: I'm not sure if I completely understood you, Anne. Could you repeat?

ANNE-RACHEL INNE: Yes, thank you, Niels. This is Anne, for the transcript. I said, I would defer to others on next Tuesday, but it does make it quite rough when you're preparing to travel soon, to meet on that particular Tuesday – especially if you're traveling from farther away and not from the EU, for example. Thank you.

NIELS TEN OEVER: Okay. Okay, so why don't we use the ticks? For people that think it is a good idea to meet next week so that we potentially have a chance to submit something to the Plenary so we can discuss it in the face-to-face, please press green; and people who think that's not a good idea and we should simply continue at our normal pace and not meet next week Tuesday, please use a red tick. And if you [inaudible] a green tick, that means you are going to make it, but let's see if we can.

So I see one green tick, three red ticks – four red ticks – five red ticks – so that means people would rather – and Kavouss' hand is up. Kavouss, please come in.

KAVOUSS ARASTEH: Excuse me. [inaudible] meeting for your group next week. You have received your schedule and there is no meeting. [inaudible] not meeting next week, and I think [inaudible] face-to-face, even if the [inaudible] the document [inaudible] because the [inaudible] has not been resolved. So I am sorry; no meeting next week, and [inaudible]. Thank you.

NIELS TEN OEVER: So the message from the ticks and the group is clear; and of course we are going to respect that, so no meeting next week and no discussion of the text in the Plenary, then. Okay, that's clear, so I will let the Co-Chairs know as well, that we're not going to do that. So you can all clear your ticks, and then we can take all the time and space that we need to go into the consideration of the document by the Drafting Team.

Then, while we are at it, we have two options. Janet and Avri, could you please clear your ticks? Because I'm going to ask another tick question. That is, there are two document that we now could pull up on the screen. That is, the document that I shared, or the document that was with the suggestions of Jorge. Jorge cannot make it to the meeting, so we would then incorporate his comments and we would see his changes on the screen. But if people would prefer that the document is sent around, we can also do that. I think it's not bad to incorporate and discuss Jorge's suggestions, but not completely as we would have done it earlier, so I would not want to breach [inaudible] now. Paul doesn't understand the question, so Paul – or everyone – I shared the text yesterday. Today, there have been amendments made on that text by Jorge, and Jorge has shared that Google Doc. So, are we going to open

and discuss the document that I shared, or are we going to open and discuss the document that Jorge shared? I would suggest that we open the document that Jorge shared, and I would like to ask everyone against that to put up a red tick.

KAVOUSS ARASTEH: Hello, Niels?

NIELS TEN OEVER: Hello, Kavouss. Please come in.

KAVOUSS ARASTEH: Yes, sorry. [inaudible] I sent you a complete text of the document with my suggestions, and I hope that you will also take that into account, not only Jorge's document. I sent you a revised version of whatever document, whoever's document that was, with suggestions. So, I think that should be taken into account. I [inaudible] –

NIELS TEN OEVER: Thank you –

KAVOUSS ARASTEH: – and the proposed my suggestions. I have sent this [inaudible] –

NIELS TEN OEVER: Kavouss. Kavouss – Kavouss. We have already integrated your suggestions in the text, but Jorge made quite a few and he could not

join us on the call. So this would be an efficient way of discussing things. But I can start with the email from Jorge and not the Word document that he had attached to his email. So, we're going to go ahead and see [CROSSTALK]

ANNE-RACHEL INNE:

Niels, it's Anne. I just wanted to say, I'm sorry – I'm not sure when Jorge's document was sent around. I apologize; I've not had the opportunity to read it, so if you are going to read through it, can you be quite specific about it? Thank you.

NIELS TEN OEVER:

Yes, we will. And then we'll add the submissions to the Google Doc, because luckily in the Google Doc, there are the comments from Kavouss, Jorge, and everyone. But we cannot pull up the Google Doc here live on the screen; we cannot do that. So while we're waiting for the ICANN Staff to come up with the document shared by Jorge – is that work going okay, ICANN Staff?

And now, if we could perhaps save the .DOCX from the Google Doc and put that up on the screen, that would work, as well. [inaudible]. No need to rush, of course.

And here we are. Thank you so much for this. So, we'll start off with the Preamble. I'm not sure – do we want to go back to the Drafting Team reading it out and then [inaudible] discussion, or shall I read it out? Is there any preference? Greg, Tatiana, do you want to [inaudible]

yourself to start reading, or shall I go ahead? Drafting Team? Very good. Greg, would you take the honors?

I do not hear Greg. And Tatiana's offering to start. Great. Please, Tatiana, go ahead.

TATIANA TROPINA: Hi, Niels. Shall I start with the human rights conventions agreements between states? This paragraph, you want me to read?

NIELS TEN OEVER: Start at the top. Start with the Preamble.

TATIANA TROPINA: Oh, okay. I don't have a scroll control on the Adobe Connect, so I'm going to start with the Preamble, but I would be grateful if we could have a a scroll control. So, the Preamble – which is not really a preamble because the document is going to be part of a bigger framework – so the Preamble is the following part of the document, addresses the considerations listed in paragraph 24 of Annex 12 of the CCWG Accountability Final Report.

The next part of the document is, “consider which specific human rights conventions or other instruments, if any, should be used by ICANN in interpreting and implementing the human rights bylaw. So right now, with all the suggestions and corrections – I hope including Jorge's suggestions – it looks like that: “Human rights conventions are agreements between states. As such, ICANN is not a party to these

declarations and conventions. However, ICANN could refer to any of the widely adopted human rights conventions and other instruments while taking human rights considerations into account in policy and operations.” It should be noted that the bylaw was not written with one specific human rights declaration or covenant in mind. I will take some time to explain why we did this – because of course, the first move was just to write that ICANN is not a party of these international instruments, or they are not applicable and we will only follow the applicable law. But there were many concerns raised, especially [inaudible] by Avri and some others that it will actually exclude anything, and we really have to sometimes look at these instruments to interpret human rights to know what they mean, so we decided to put another line to say that these instruments can be considered by ICANN or referred to by ICANN.

The next paragraph is about our wonderful discussions and considerations on rights principles. The subgroup considered the work of the guiding UN principles for business and human rights could be applicable in the process of interpreting the bylaw. However, agreement in this matter could not be reach. While I am not one hundred percent happy with this language –

NIELS TEN OEVER:

Tatiana?

TATIANA TROPINA:

I’m sorry, but I’m going to comment. Can you hear me?

NIELS TEN OEVER: I hear you, but I also see Paul McGrady's hand.

TATIANA TROPINA: Ah, okay. Okay. Shall I stop and just give the floor to Paul?

NIELS TEN OEVER: Yes, because Paul [inaudible].

TATIANA TROPINA: Okay, thanks.

NIELS TEN OEVER: Paul, [CROSSTALK].

PAUL MCGRADY: Thank you. Thank you. This is Paul McGrady. If we can, it might be helpful to deal with one paragraph at a time. That way we don't get too far removed from whatever comments people may have. My comments on paragraph 1 may be, I think, lawyer comments and I apologize – not in my capacity as a lawyer, but because as a proofreader, I come from a legal point of view. I think we've got language – I think it's accomplishing what we want it to accomplish, but it's inconsistent. We say "human rights conventions," but we drop a footnote which I guess is meant to define which conventions we're talking about, as opposed to human rights conventions more generally if

[inaudible] more out there in the universe. That's fine, but I wanted to point out what footnote 1 does: "...are agreements between states. Okay. Then, "as such, ICANN is not a party to these declarations and conventions." Okay, well we've defined "conventions" and we've only referred to them by footnote 1, so now I don't know what "these declarations" means, because we've not used the term "declaration" before "convention" in the prior sentence.

So then, moving on to the next sentence: "However, ICANN could refer to any of the widely adopted human rights conventions and other instruments while taking human rights conventions into considerations into account in policy and operations." So now, we have a third concept of "and other instruments." We have "conventions," we have "declarations and conventions," and we have "conventions and other instruments." I think we're all saying the same thing three times, but it's written three different ways, and I think that we should just decide what language we're going to use here. And it should be noted that the bylaw was not written with one specific human rights declaration or covenant in mind.

So now, we're back to "declaration," which appeared in the second sentence, but not in the first and third. And now, we have something called "covenant," which is not defined by footnote 1 and is making its first appearance at the end of the paragraph. You see what I'm saying? I just think that we need to figure out what it is we're talking about here and call it one thing consistently throughout. And then those – whatever that is needs to carry forward to the rest of the document, because if we're doing it in paragraph 1, I suspect we're doing it in other places. Thanks.

NIELS TEN OEVER: Sorry. Thank you very much, Paul. I was talking through a muted mic. I made a few comments in the Google Doc, but this is something that we will address later during the week. I think Tatiana has her hand up [inaudible] take some notes. Tatiana, please come in.

TATIANA TROPINA: Thank you. Tatiana Tropina is speaking, for the record. Paul, thank you very much for these comments. There was so much fighting about the substance, so we totally forgot about harmonization of the language, and we are still struggling with these [inaudible] here. I suggest, as Greg suggested in the chat, that in the document, we will use “conventions and other instruments” as it is stated in the Annex 12, but when one goes to the footnote, we can actually note that “international instruments and conventions” include declarations, covenants, and any other international instruments that are widely adopted. Will this address your concern? Will this harmonize the language? I would like to hear from you and maybe Greg about this. I suggest that we keep the language which we have in Annex 12, maybe explaining a bit in the footnote. Thanks.

PAUL MCGRADY: This is Paul McGrady again. To respond to Tatiana directly on that question – yes, I think if we just define it as something – maybe it’s a human rights document, and we include all those things that you mentioned into a definition somewhere at the beginning of the document, and then use that defined term throughout, then we all

know what we're talking about. I have no problem with it being broad in its scope. We're not trying – I personally don't want to see anything excluded – I think that while they may not be binding on ICANN as a party, I think that it makes perfect sense for us as a community to say that ICANN can look at those things as part of the decision-making process. So, if we define that broadly and just be consistent in how we use that defined term, then I think we've solved the problem. Thanks.

NIELS TEN OEVER:

Kavouss' hand is up. Kavouss, please come in.

KAVOUSS ARASTEH:

I'm sorry, while I agree with Paul, I have difficulty [inaudible] sentence when we say that human rights conventions are agreements among the states. If we are [inaudible] conventions, I would like to know which conventions or agreements. Some of the conventions may not be agreements, and if we talk about the conventions [inaudible] are not agreements [inaudible] declarations. [inaudible]. It is a declaration. [inaudible]. It is agreed by the people in some form of moral agreement, but it is not a written agreement [inaudible]. [inaudible] something is very, very difficult to agree, because we cannot put all of these things together – conventions, covenants, declarations, other documents and [inaudible] are agreements among the states. They are not. So perhaps we could drop the first sentence. [inaudible] agreement with [inaudible]. ICANN cannot use this [inaudible]. That's all. And then go to the "however" [inaudible] so the first part is easy

[inaudible] creates difficulty, so we have to drop the first part. Thank you.

NIELS TEN OEVER:

Thanks Kavouss, and thanks, Paul, for suggesting concrete language. So, that's something that the Drafting Team can work on and streamline. I think that would be very useful [inaudible] important. Greg also has something on [inaudible]. Greg, please come in.

GREG SHATAN:

A couple of things. One, as I say in the chat – “documents” seems a little too generic. I know it's just a defined term – it could be “[inaudible]” – but I prefer something that sounds a little bit more like “conventions and other instruments” could be the definition for that, because the other things are instruments. So that's what I prefer, because “documents” gets very loose, or implies something looser, even if it's a defined term.

Secondly, with regard to the first sentence, I think that we can – I prefer “[inaudible]” to “canon” – but you can do whatever you'd like, or it could be canon with one “n,” which would be very different. But in any case. On the first sentence, we could say, “human rights conventions and other instruments are agreements between states or instruments that bind states,” or something like that. The point of this is that these are things aimed at states. While it may be technically true that not every one of these is an agreement, as such – not a treaty-like document – but the point is that it is aimed at the state level, and not at

the private sector level. So I think that an addition or a broadening, but keeping the point, is what I would suggest. Thank you.

NIELS TEN OEVER:

Thank you very much, Greg. I think it is simply something that we need to [inaudible] out when we propose something for the next call, so let's not try to solve that in unison in the group. but that's clear. Thanks for [inaudible] suggesting or actually trying it out. [inaudible] we can also move to the next paragraph, so I hope it's not about this poin, but of course I will give you the floor. First Tatiana, and then Kavouss. Please read.

TATIANA TROPINA:

Oh, actually, I just wanted to wrap up on this. I think we put all the comments to the Google Doc and we will just square it up for the next call. I believe that we can use the term "human rights conventions and instruments," but then use the language suggested by Paul and then come up with some nice suggestions. Thanks.

NIELS TEN OEVER:

Okay. Kavouss, please come in.

KAVOUSS ARASTEH:

Yes. [inaudible] we cannot use the term "instruments." "Instruments" is the legal equivalent to "conventions" and [inaudible] I'm sorry [inaudible] correctly. [inaudible] don't use the first [inaudible] that ICANN may use or could use [inaudible] refer to all of the conventions,

covenants, declarations, and any one you want to list [inaudible] but we don't need to talk about the [inaudible] as being among instruments [inaudible] very few conventions [inaudible] has not [inaudible] we could not [inaudible] convention is not [inaudible] and other documents [inaudible] instruments, and I am not in favor of this [inaudible]. [inaudible] I believe that we should drop this [inaudible] agreement among the states [inaudible]. And as such, [inaudible] delete [inaudible] ICANN could refer to any of widely agreed or recognized and [inaudible] conventions, covenants, declarations, other documents, as the case may be. Thank you.

NIELS TEN OEVER:

Thank you, Kavouss. So, we'll give this back to the Drafting Team and see what they can make. Oh, Avri's hand is up. Avri, please come in.

AVRI DORIA:

Thank you. Yeah, this is Avri speaking. I just wanted to make a [inaudible] counter-comment, in that I think it's irrelevant how [inaudible] signed, or implemented, or enacted any of these, as long as they are internationally agreed at some level, because they aren't binding on ICANN. They are just advisory guidelines and such. So the degree to which one country may not have implemented something should be irrelevant. So as long as the language doesn't imply that all countries have implemented – I'm not sure that there's anything that all countries have implemented – so I really don't think that that's pertinent. Thank you.

NIELS TEN OEVER: Thank you, Avri. Indeed, it's a [inaudible] agreement, but not by all states. I'm sure we will find some language around this. So, here I would like to – Kavouss' hand is up, and I would really like to move on to the next paragraph, because we are halfway through our meeting, and we only managed to do two paragraphs, but Kavouss, please come in.

KAVOUSS ARASTEH: Sorry, Avri put her finger on something that was not very important. I [inaudible] that agreement are not between all countries. I am simply [inaudible] that we cannot say [inaudible] agreement [inaudible] conventions that are agreed by the states, because instruments or not, [inaudible] or not, covenant or not, we cannot say that [inaudible] ICANN may use or could use [inaudible] all of them [inaudible] last one [inaudible] and [inaudible] as the case may be. Thank you.

NIELS TEN OEVER: Okay. Thank you, Kavouss. Then, with that, we'll go to the next paragraph. Tatiana, please – would you read –

TATIANA TROPINA: Thanks. Yes, I would. I would read it with pleasure. "This Subgroup considered whether the UN guiding principles for business and human rights could be applicable in the process of interpreting the bylaw. However, agreement on this matter could not be reached." [inaudible] my comments, because it has some new language. While I'm not perfectly happy about this language added by Jorge, but from my side, I would agree, because it doesn't really matter whether we say it that

agreement couldn't be reached, or there was not sufficient support. Let's just leave it like this, unless they have any other comments. But I think it sums up the situation quite well, concerning the rights and principles – or the history of this group with regard to rights and principles. So I will stop here and let others comment on this.

NIELS TEN OEVER: I see no hands, so if people are okay – oh, Kavouss. Please.

KAVOUSS ARASTEH: Yes, I want to [inaudible]. What is sufficient support? Do we have a criteria? So I [inaudible] no consensus was reached on the matter. Because consensus at least is clear, and no sufficient support, no significant support [inaudible]. We cannot say either of these things. [inaudible] no consensus was reached on the matter. Thank you.

NIELS TEN OEVER: What's the difference between consensus and agreement?

KAVOUSS ARASTEH: [inaudible] difference between consensus and agreement. [inaudible]

NIELS TEN OEVER: Greg's hand is up.

KAVOUSS ARASTEH: [inaudible] no consensus was reached on the matter.

NIELS TEN OEVER: Greg. Please come in.

GREG SHATAN: Greg Shatan, for the record. I'm fine with using the word "consensus." I think that we could just use Jorge's construction, though, and say "consensus on this matter could not be reached." But Kavouss' construction is not substantively different, anyway, so it's fine to use "consensus" rather than "agreement." It may be slightly more accurate. Thank you.

NIELS TEN OEVER: Okay, I'll replace that in the Google Document. Let's see what Jorge thinks about that, as well. [inaudible] draft [inaudible] go to the next paragraph.

TATIANA TROPINA: Thank you. So, from the history – Tatiana Tropina is speaking, for the record – from the history of our fights on Rugge principles, we are going to the recommendations and considerations concerning the Rugge principles, and it's a bit of a long paragraph, so please bear with me.

"With regard to implementation of the bylaw, the UN guiding principles for business and human rights, or at least certain aspects of the guiding principles could be considered as a useful guide in the process of applying the human rights bylaw. There are certain principles that may not be applicable, and others that may be applicable, depending on the

circumstances of the case. However, it is beyond the scope of this document to provide a detailed analysis of the guiding principles and their application or not, in their whole or in part, in particular situations. The use of the guiding principles as potential guidance has to be carefully considered by each SO/AC, as well as ICANN, the organization.” I think that, while [inaudible] this text, maybe we would like to change the process of applying the human rights bylaw to the process of applying the core values, because I remember there were some last-minute comments about this. But other than that, I will stop here and open the floor for comments. Thanks.

NIELS TEN OEVER:

Thank you very much for reading that, Tatiana, and [inaudible] Google Doc, people can see as suggested by Kavouss, that when we talk about human rights bylaw, we now speak of human rights core values. So I amended that, and I see that Paul’s hand is up. Paul, please come in.

PAUL MCGRADY:

Hi, Paul McGrady again. So I guess I don’t understand how the second and third paragraph interact with each other. The second paragraph says that we couldn’t come to consensus on whether or not the driving principles would be applicable in interpreting the bylaw, or – it says “could be applicable in the process of interpreting the bylaw.” I think what we meant there was – whether or not the guiding principles for business and human rights would be mandatory in the process of interpreting the bylaw, and there was no consensus on that they would be binding or mandatory. But I think paragraph 1 seems to imply that

they could be – depending [inaudible] applicable – they could be persuasive, they could be instructive. That’s what we’re trying to get to in paragraph 1. And so, I think that the purpose of paragraph 2 which I – we’re not quite there – is to say that I don’t think they’re binding. But they are in the kinds of documents, I think, that we wanted to include in paragraph 1, that we say could be instructive or persuasive.

Paragraph 3 essentially just says again what we say in paragraph 1, but about a specific document, right? So we say, okay, the UN guiding principles, they might be – the screen is moving so fast that it’s hard to latch onto specific words – it keeps moving back and forth – but we say certain principles may or may not be applicable, and others could be applicable. Okay, that’s all sort of fuzzy language, but that’s essentially what we’re saying in paragraph 1 about a broader set of documents. So I guess I don’t think that paragraph 2 gives as strongly worded as it needs to be to say that we don’t think the guiding principles are binding. And then, paragraph 3 I don’t think does anything other than what we did in paragraph 1 already, but for one specific document. So what’s the purpose of paragraph 3? Thanks.

NIELS TEN OEVER:

I would like to also [inaudible] that we do not go back in the discussion. If we had quite an extended meeting – but I think Tatiana would like to [inaudible] an explanation.

TATIANA TROPINA:

Thank you very much. I actually see that Kavouss’ hand is up; I’m sorry, Kavouss, I will try to be quick. Paul, the problem of all this is that the

UN guiding principles for business and human rights are not actually international instruments that bind the states, and this is why they have to have an additional paragraph for them. Maybe it would be better to clarify that in the first paragraph, we do not refer to the UN guiding principles for business and human rights. This is my first answer.

My second answer – yes, we might need stronger language in paragraph 2. But after all the discussions we had on the call, the strong language we suggested in the very beginning – that ICANN is not bound by Ruggie principles – has been watered down to reach the compromise which probably makes us all unhappy, but this is where we are now. I also think that we have not agreed whether they are binding or not binding. Because some people say and think that they might be binding. Many of us say that they will not be binding. This is why we have such compromised language in the second paragraph. So how I suggest to treat this issue is maybe Greg or others will weigh in on this. I suggest that we will be more clear that the first paragraph – the instruments referred to in the first paragraph [inaudible] international instruments for the state, and they do not include the UN principles, which are for voluntary adoption of the businesses. I do not know if this will solve the problem, but I believe that yes, if it's not clear even for the members of the Working Group [inaudible] how these three paragraphs are connected, we probably have to do something with this. Thanks.

ANNE-RACHEL INNE:

Niels?

[CROSSTALK]

NIELS TEN OEVER: I'll first go to Kavouss, and then I'll come to you, okay.

ANNE-RACHEL INNE: Yes, thank you for putting me in the queue. Thank you.

NIELS TEN OEVER: Excellent. Thank you, Anne. Kavouss, please come in.

KAVOUSS ARASTEH: Yes. I can tell [inaudible]. However, if you want to retain paragraph 3, first of all, [inaudible] before the second paragraph, you could say something [inaudible] use [inaudible] we should say that no consensus was reached on the matter. [inaudible] sequence of appearance of the paragraphs [inaudible] if you want to retain paragraph 3. [inaudible] asking not to change paragraph 3, because we don't add anything; [inaudible] paragraph 3. [inaudible] consistent with paragraphs 1 and 2. Therefore, the first [inaudible] we could delete paragraph 3. [inaudible] reword it and put it before paragraph 2 [inaudible] no consensus was reached on the matter. Thank you.

NIELS TEN OEVER: Sorry. Anne, please come in.

ANNE-RACHEL INNE: Yes, thank you. I don't have an answer either as to what you say. But there is something I do want to point out, in, I think Tatiana's very accurate summary – in that some feel that the Ruge principles are not binding, and some feel that the Ruge principles are binding. My concern is always in relation to this type of lack of clarity is – we've all acknowledged that the buck stops with the Board. And so, if we cannot be clear with the Board what its obligations are, that's very, very troubling for the smooth operation of ICANN as an organization. I wish that I had a proposed answer with respect to this other than simply reciting that there's no consensus, but I do think it's quite important that we work through this process to try to understand the effects on the Board of possibly conflicting policy recommendations. And if the framework isn't clear, that is a recipe for trouble. Thank you.

NIELS TEN OEVER: Thank you very much, Anne. I see now we are in the [inaudible] bit of consensus converging, but I also see that the hands of Tatiana and Greg are up. I'm not sure who was first. Tatiana, was it you?

TATIANA TROPINA: Yes, it was a new hand, and if I may intervene now. The third paragraph was not there before the last call. Actually, the document that appeared before the last call has suggestions from Greg, me, and [inaudible], only with the second paragraph. And again, only because we had to reach a compromise, we had to drop the subparagraph, because some of us disagreed that UN guiding principles are not binding, and some of us thought that the paragraph we couldn't reach

agreement or consensus of this matter would be misleading and would exclude Ruge principles and this is why we had to drop the subparagraph. Of course we had to [inaudible] to join them. And personally, personally, I would be happy if the third paragraph would be deleted. But I believe that this would cause an outcry among the group, actually. So we have to take all these opinions into account. Thanks.

NIELS TEN OEVER: Greg, please come in.

GREG SHATAN: Thanks. Greg Shatan for the record. Marcus's earlier intervention remarking on the use of the word "instruments" and our discussion of what these terms actually mean as opposed to just throwing them around loosely as different kinds of documents – it can be named whatever we want – caused me to go and look up "human rights instruments." And if I'm not mistaken, "human rights instruments" is not a term that includes the guiding principles. Therefore, I think that the second and third paragraph are actually out of scope for this question and should be deleted. So, I'd like to suggest that, rather than wordsmith the second and third paragraphs. I think they're not responsive to the question, as asked. Thank you.

NIELS TEN OEVER: Paul's hand is up. Paul, please com in.

PAUL MCGRADY: I'm going to withdraw my hand; it's because I don't fully understand what Greg is suggesting and I'd like to withdraw my hand so he can talk a little bit more to it. Thanks.

NIELS TEN OEVER: Then the next in line is Kavouss. Kavouss, please.

KAVOUSS ARASTEH: Yes. [inaudible] paragraph 3. Paragraph 2 also could be dropped. In paragraph 2, it says that we considered that but we have no consensus. [inaudible]. Why do we need to say that? We have no consensus, that's all. Why do we need to say [inaudible]? [inaudible] discussion [inaudible] Paragraph 1 is sufficient. We don't need either paragraph 2 or paragraph 3. [inaudible] both of them [inaudible] difficulties. And then, [inaudible] an issue with [inaudible] because guiding means – that's all. It's guidance. You can take it if you like the advice, or you can not take it. And then, when you say agreement among the states, also, according to the [inaudible] only the states who have signed with or without [inaudible] and ratified agreements is valid among those [inaudible] not valid, and I don't want to go [inaudible] which agreement has been [inaudible]. It is better [inaudible] in the first paragraph [inaudible] to [inaudible] the whole issue [inaudible] and drop paragraph 2 and paragraph 3. Thank you.

NIELS TEN OEVER: I see quite some [inaudible]. I see Tatiana's hand is up. Tatiana, please come in.

TATIANA TROPINA:

Thank you, Niels. Tatiana Tropina is speaking for the record. While I understand the motion behind the position these two paragraphs, and basically I would be happy if the Rugge principles would be out – but I would like us to be aware that we have to treat this with caution from both sides. As Avri said in the chat, for some of the people, the deletion of Rugge and recommendations on Rugge would be [inaudible]. For others who are against Rugge, who are against application of Rugge, who are against ICANN committing to Rugge – just think how much ambiguity this will create if we do not state, crystal-clear, that the group has not reached agreement or consensus as to whether ICANN has to bind itself with the Rugge principles. Because while we couldn't agree on this, this debate might be reopened many times, and there might be no point of reference about what this group actually thought about Rugge. So, I would really be against deletion of the Rugge paragraph for the reason of creating so much ambiguity, and so many open doors, and so many controversies for both Rugge oppononents and proponents. Thanks a lot.

NIELS TEN OEVER:

I'm a bit surprised with what is happening now. We carefully built towards an agreements, and now it seems like it's been shoveled up again, and I'm a bit saddened about that. [inaudible] find a solution. I see Greg's hand is up. Greg, please come in.

GREG SHATAN:

Thanks. Greg Shatan again, taking Paul's invitation. My reason for suggesting their deletion is not primarily due to my view on Rugge, but rather my view that we should only answer the questions we've been asked. That is true in this and every other Subgroup. I had a call last night where I felt that a Subgroup was answering many questions that it hadn't been asked to answer. My position was the same. I think that in this case, we've been asked to consider specific considerations in the framework of interpretation we've dealt with things up to a point, and here we [inaudible] considerations. So maybe I'm thinking too technically. Now, I'll accept that as a criticism, or even a self-criticism. But it's not [inaudible] looked at a document published about the Rugge principles and said [inaudible] instrument. So unless you redefine the term "instrument." So maybe we could say that even though the Rugge principles are not a convention or instrument, it's worthwhile to note x, y, z – maybe that is a way for me to satisfy my desire to be accurate and also satisfy the desire to say where we've come out on the Rugge principles. The other thing that can be said about the Rugge principles based on what is written here so far is, if no recommendation or no consensus could be reached on their use and interpretation, and there's really no recommendation or consensus that they be used in implementation, that from the point of view of making recommendations by the CCWG, there would be no recommendation in either case to use the Rugge principles, because there is no consensus that that's a recommendation to make. So we can still – that doesn't mean we can't say what we're saying here, or some version that captures the balance that we've tried to achieve. But once this gets translated into recommendations, per se, I think that the effect – or lack

thereof – of these kind of [inaudible] paragraphs needs to be recognized. Thank you.

NIELS TEN OEVER: Thank you very much, Greg. Kavouss, please come in.

KAVOUSS ARASTEH: Yes, I have [inaudible] so much time that we don't use the [inaudible] principle or anything to interpret the bylaw. We use that or may use that to [inaudible] human rights as contained in the bylaw, but not the bylaw. No part of the bylaw has any relation with the [inaudible] principles except the human rights. So I am not in agreement with interpreting the bylaw. This is wrong – clearly wrong. Interpreting the human rights [inaudible] in the bylaw. That, I could agree [inaudible] but the [inaudible] paragraph 3 [inaudible] –

NIELS TEN OEVER: Kavouss, [inaudible] it has been addressed in the Google Doc.

KAVOUSS ARASTEH: Okay. If there is no interpreting bylaw, I have no problem. Interpreting the human rights provisions in the bylaw –

NIELS TEN OEVER: [inaudible]

KAVOUSS ARASTEH: There is no human rights core value. Core value is ICANN core values, ICANN mission. [inaudible] human rights core value? What is the definition of the human rights core value? Thank you.

NIELS TEN OEVER: Thank you, Kavouss. I think – is Greg next in line, or Avri? I think it's Greg. Oh, Greg's hand is down. Avri, please come in.

AVRI DORIA: [inaudible], this is Avri speaking. I mean, I can't believe we're going around on this again. I think we talked earlier about the definition of internationally accepted instruments, conventions, and other documents; then we decided to take on a shorthand that was "conventions and instruments," and now we're using that as a strict criteria to define this internationally agreed document as out of scope. I think it's important that it be listed separately, because its status is perhaps a little different from the [inaudible] etcetera. So it's important to mention it. It's important to mention it because it has been such a preoccupation for this group. It's such a [inaudible] for many of us, as I say, and I put myself among the category where the inclusion of this as it is now, quite happy with the description that's there. And perhaps that's a mistake, because every time you become happy with something, that becomes a base that you're defending from further compromise with those that reject completely to any mention. However, I see it as a compromise, I see it as one of those critically important issues to what we're doing. So I really find it amazing that we keep going through this cycle of "Let's get rid of that Ruggie through any

process we can. Let's say it's out of scope," etcetera, and I truly object to that approach on this. Thank you.

NIELS TEN OEVER:

So on this note, I'm not sure if we need to continue tonight's discussion. It's almost time, so let's not reopen another thing. [inaudible] back to the Drafting Group and see how far we get. And with that, [inaudible] not make [inaudible] galvanize the consensus that we tried to build this week, but luckily, we [inaudible] much more time and we'll see each other in person in Copenhagen, and we might be able to find the right place and the right time there to make the next step. I'm really looking forward to seeing you all in the face-to-face. The ones I won't see there, I'm looking forward to seeing either in the Adobe Room there or on the mailing list in the meantime. Thank you all very much, and have a great day. Bye, all.

UNKNOWN SPEAKER:

Thanks.

UNKNOWN SPEAKER:

Thank you.

UNKNOWN SPEAKER:

Thank you.

[END OF TRANSCRIPTION]