RG Intervention on Article 1

Yesterday a number of interventions highlighted the fact that fine words are not enough. We agree. Lofty aspirations can only be fulfilled if they are clearly and fully articulated. Mandates can only be converted into impacts on the ground if they are expressed in language that is widely understood and confers legal certainty. For this reason we continue to have concerns over the use in the draft treaty of terms that are imprecise and/or incompletely defined . This is meant to be a legal text and in legal texts words matter.

Let me give three brief examples from Article 1:

Use of the word “victims.” “Victim is a term used to describe a person who has suffered harm and been found to have so suffered by a court of law. No matter how grave the alleged harm or how much sympathy they might command, until then they are a person alleging an abuse. The word victim is not used in the UNGPs and should not be used here, because it prejudges and prejudices — it gives an adjudicative status to a person before the harm itself has been proven. Words matter.

“Remedy” and “effective remedy”: No reference is made in the text to the fact that ensuring access to effective remedy is a responsibility of the State. Effective judicial mechanisms provided by States are at the core of ensuring access to remedy, as States are the first duty bearers under international human rights law. This does not absolve companies of their responsibilities, but to makes clear that they are not the sole actors in this regard. Words matter.

“Human rights Due Diligence”: This is a complex process, and the definition in the treaty should be as clear and understandable as that provided in the UNGPs. As it stands here, the draft definition is far too concise to convey the content of the seven guiding principles laid out in the UNGPs. It therefore does not capture the varied scenarios and associated responsibilities companies may face in the due diligence process. Nor is the responsibility of remediation in cases where businesses have caused or contributed to harm reflected in this definition. This is a key component of the corporate responsibility to respect.

In the search for the consensus that is key to this draft treaty