

Chapter 14

From the Means of Implementation to Implementation of the Means:

Realizing the SDGs as if they Matter*

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Learning Objectives:

- To understand the importance of the means of implementation of the Sustainable Development Goals and realizing them.
- To analyze the practice of development aid and assistance as one of the most important means of implementation of the Sustainable Development Goals.
- To understand the normative framework of the duty of international cooperation on States in the context of a global partnership for sustainable development.
- To understand how operationalizing the right to development can ensure better mobilization of the means of implementation, including development aid and assistance, to ensure course-correction of the 2030 Agenda.

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Introduction

The first four years of implementation of the Sustainable Development Goals (SDGs), despite the enormous expectations evoked by their adoption in 2015,¹ have unfortunately been redolent of a similar trajectory traversed by their predecessor – the Millennium Development Goals (MDGs);² perhaps even worse. By the end of their life cycle in 2015, several targets of the MDGs remained unmet and progress was uneven, particularly in Africa, least developed countries (LDCs), landlocked developing countries, and Small Island developing States (SIDS).³ Unlike the process for elaboration of the MDGs, the design of the SDGs incorporated in the 2030 Agenda involved the participation of a wide range of stakeholders.⁴ The result was not only a much improved, comprehensive and holistic development agenda centered on sustainability, moving as it did from 8 MDGs and 21 Targets to 17 SDGs and 169 Targets, but also a rectification in many of the structural flaws that had crept into the MDGs.⁵ And yet, the UN's 2019 annual SDGs report records that progress on its implementation in the first four years has been off-track with respect to most goals.⁶ More portentously, the data demonstrates that instead of making progress, indicators on many targets have worsened compared with previous years.⁷ This downward spiral is only expected to exacerbate in 2020 with the world brought to its knees by the COVID-19 pandemic. This chapter contends that this alarming result – prior to, during, and most likely after COVID-19 – is the inevitable consequence of the lack of a normative framework around which the

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¹ UNGA, *Transforming our world: the 2030 Agenda for Sustainable Development*, Resolution A/RES/70/1, adopted on 25 September 2015.

² For a complete repository on the MDGs and official statistics, see UN, *Millennium Development Goals Indicators*, available at <http://mdgs.un.org/unsd/mdg/default.aspx> (retrieved on 05/05/2020).

³ A/RES/70/1, para. 16; OurWorldInData, *Millennium Development Goals: How many did the world achieve?*, available at <https://slides.ourworldindata.org/millennium-development-goals/#/title-slide> (retrieved on 05/05/2020); Emmeline Booth, *Millennium Development Goals: An Uneven Success*, 07 July 2015, available at <http://newirin.irinnews.org/dataviz/2015/7/7/millennium-development-goals-success-failure> (retrieved on 05/05/2020).

⁴ A/RES/70/1, para. 6.

⁵ Mihir Kanade, “The Right to Development and the 2030 Agenda for Sustainable Development” in *Operationalizing the Right to Development in Implementing the Sustainable Development Goals*, E-learning Module, October 2019, (Geneva, Ciudad Colon and Kuala Lumpur: OHCHR, UPEACE and UNU-IIGH), p.10.

⁶ UN, *The Sustainable Development Goals Report 2019*, available at <https://unstats.un.org/sdgs/report/2019/The-Sustainable-Development-Goals-Report-2019.pdf> (retrieved on 05/05/2020)

⁷ Ibid.

implementation of the 2030 Agenda can converge. This was a feature that visibly characterized the uneven and unsatisfactory implementation of the MDGs as well.⁸ Implementation of the SDGs has been underpinned by a “business as usual” approach of development viewed through the lens of charity, privilege, or generosity. This is especially true of the “means of implementation” (MOI) of the SDGs incorporated in the 2030 Agenda. This chapter contends that the only way in which the 2030 Agenda can be successful is if its realization is based on the normative framework of development viewed as a human right of all persons and peoples with corresponding duties on States with respect to the MOI, including most importantly, the duty of international cooperation. This chapter demonstrates that such an essential normative framework is encapsulated in the right to development (RtD), and that its operationalization can not only lead to a better realization of the 2030 Agenda, but the same is indispensable for any prospects of success.

This Chapter is organized in the following manner. Part I will introduce the concept of MOI incorporated in the 2030 Agenda. Particular attention will be paid to SDG 17, entitled “Strengthen the means of implementation and revitalize the global partnership for sustainable development”, as well as to the “a, b, c, targets” in the preceding 16 SDGs. It will demonstrate that the entire 2030 Agenda is predicated upon an acknowledgement that unless these MOI are realized through a revitalized global partnership for sustainable development, it is impossible to make progress on any of the SDGs. It will then outline current data available on the implementation of one of the most important MOI envisaged in the 2030 Agenda – financing for development through international aid and assistance – indicating an overwhelming failure and deceleration. Following this, Part II will introduce the RtD with the objective of presenting it as the normative framework necessary for ensuring that SDG 17 and the other MOI targets, and in turn all SDGs, are realized. It will also explore the symbiotic relationship between the RtD and the SDGs, with a special emphasis on the relationship between the duty of international cooperation inherent to the former and MOI indispensable for the latter. It will explain how operationalization of the RtD can help in better realization of the SDGs in general, and the subject of the case study in particular. Part III will briefly comment upon the ongoing COVID-19 pandemic of 2019-2020 in the context of this analysis and draw final conclusions and make recommendations.

I. The Means of Implementation of the SDGs: Case Study on Financing for Development through International Aid and Assistance

A specific structural improvement in the 2030 Agenda over the MDGs is that it “crucially, defines means of implementation” of the development goals.⁹ Under a heading by that name, the agenda acknowledges that its scale and ambition “requires a revitalized Global Partnership to ensure its implementation” and records the commitment of States to do so.¹⁰ It envisages such partnership to “work in a spirit of global solidarity, in particular solidarity with the poorest and with people in vulnerable situations”.¹¹ It further notes that this partnership will be multi-stakeholder, “bringing

⁸ Mihir Kanade, “The Right to Development and the 2030 Agenda for Sustainable Development”.

⁹ A/RES/70/1, para.17.

¹⁰ A/RES/70/1, para.39.

¹¹ Ibid.

together Governments, the private sector, civil society, the United Nations system and other actors”, and will mobilize all available resources to “facilitate an intensive global engagement in support of implementation of all the Goals and targets”.¹²

The 2030 Agenda incorporates MOI under two separate streams. The first stream is captured through several targets under SDG 17 entitled as “Strengthen the means of implementation and revitalize the global partnership for sustainable development”.¹³ The targets thereunder are divided under the five heads of “finance”, “technology”, “capacity-building”, “trade” and “systemic-issues”, the last of which is further divided into three sub-heads of “policy and institutional coherence”, “multi-stakeholder partnerships”, and “data, monitoring and accountability”. Each of these heads and sub-heads contains several targets, in total numbering 19; it is these 19 targets identified under SDG 17 that constitute the overarching MOI for all the preceding 16 SDGs.

The second stream of MOI is comprised by targets that are specific to each of the first 16 SDG. These are listed under each SDG separately in alphabetical order (for instance, Targets 1.a and 1.b under SDG 1) below the targets mentioned in numerical order (for instance Target 1.1, 1.2, 1.3 etc. under SDG 1). These “a, b, c targets” constitute the specific MOI for the “1, 2, 3 targets” under each of the initial 16 SDGs. For instance, while targets 1.1 to 1.5 under SDG 1 comprise benchmarked and quantifiable commitments on States to end poverty in all its forms by 2030, targets 1.a (significant mobilization of resources) and 1.b (support accelerated investment in poverty eradication actions) comprise those that need to be realized as MOI for the former.¹⁴ Together, SDGs 1 to 16 contain 43 MOI targets, bringing the total of such targets under the 2030 Agenda to 52.

The 2030 Agenda recognizes that these 52 MOI targets are “key to realizing” it.¹⁵ While it recognizes that “each country has primary responsibility for its own economic and social development”, it also sets out a framework for “a revitalized global partnership for sustainable development” through these MOIs.¹⁶ Progress on all SDGs is therefore directly proportional to progress on these MOI. It is in this context that this chapter seeks to analyze progress on one of the most important MOIs, viz. financing for development through international aid and assistance.

A. The 2030 Agenda and Financing for Development through international aid and assistance

The 2030 Agenda rightly places significant importance to “financing for development” through global partnership as an indispensable MOI.¹⁷ This term encompasses many forms of financial flows, both domestic and international, as well as public and private. These include foreign direct investment, remittances, domestic revenue sources like taxation, government borrowing and external debt, as well as development aid and assistance. The case study in this chapter will focus on development aid and assistance as a MOI.

¹² Ibid.

¹³ Ibid, SDG 17.

¹⁴ Ibid, SDG 1.

¹⁵ Ibid, para. 40.

¹⁶ Ibid, para. 41.

¹⁷ Ibid, paras. 40, 41, 43 and 86, and SDG 17.

In July 2015, as a lead-up to the 2030 Agenda, States adopted the Addis Ababa Action Agenda (AAAA) at the Third International Conference on Financing for Development.¹⁸ The AAAA seeks to balance financing for development with national action for realizing the SDGs. It recognizes that “cohesive nationally owned sustainable development strategies, supported by integrated national financing frameworks, will be at the heart of our efforts”.¹⁹ It reiterates that “each country has primary responsibility for its own economic and social development and that the role of national policies and development strategies cannot be overemphasized”.²⁰ It further records the commitment of all States to “respect each country’s policy space and leadership to implement policies for poverty eradication and sustainable development, while remaining consistent with relevant international rules and commitments”.²¹ This is an important acknowledgement in light of persistent criticism, as shall be discussed presently, that development aid limits policy space of recipient countries through conditionalities. Having noted the importance of domestic action based on national policy space, it acknowledges that “at the same time, national development efforts need to be supported by an enabling international economic environment, including coherent and mutually supporting world trade, monetary and financial systems, and strengthened and enhanced global economic governance”.²² For these reasons, the AAAA records the commitment of States “to pursuing policy coherence and an enabling environment for sustainable development at all levels and by all actors, and to reinvigorating the global partnership for sustainable development”.²³

Specifically, with respect to financing through international assistance and aid, the AAAA notes that “international public finance plays an important role in complementing the efforts of countries to mobilize public resources domestically, especially in the poorest and most vulnerable countries with limited domestic resources”.²⁴ It further records the reaffirmation by Official Development Assistance (ODA) providers regarding their respective ODA commitments, including the commitment by many developed countries to achieve the target of 0.7% of gross national income for ODA (ODA/GNI) and 0.15 to 0.20% of ODA/GNI to LDCs.²⁵ However, it also expresses concern that many of these donor countries were falling short of their ODA commitments and reiterates that “the fulfilment of all ODA commitments remains crucial”.²⁶

The AAAA was endorsed by the UNGA a few days after it was adopted in Addis Ababa,²⁷ and thereafter incorporated as “an integral part” of the 2030 Agenda.²⁸ The 2030 Agenda recognizes that “the full implementation” of the AAAA is “critical for the realization of the SDGs and

¹⁸ *Outcome document of the Third International Conference on Financing for Development*, Addis Ababa, Ethiopia, 13–16 July 2015, Endorsed by UNGA Resolution 69/313 of 27 July 2015.

¹⁹ *Ibid.*, para. 9.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*, para. 50.

²⁵ *Ibid.*, para 51.

²⁶ *Ibid.*

²⁷ UNGA, Resolution 69/313.

²⁸ A/RES/70/1, paras.40 and 62.

targets”.²⁹ As such, financing for development as a MOI for the 2030 Agenda is governed by the principles and framework of the AAAA.

In the 2030 Agenda, financing for development in general is covered under SDG 17 through targets 17.1 to 17.5. There are three targets within these that relate to development aid and assistance through international cooperation.

17.1 Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection

17.2 Developed countries to implement fully their official development assistance commitments, including the commitment by many developed countries to achieve the target of 0.7 per cent of ODA/GNI to developing countries and 0.15 to 0.20 per cent of ODA/GNI to least developed countries; ODA providers are encouraged to consider setting a target to provide at least 0.20 per cent of ODA/GNI to least developed countries

17.4 Assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress

While Target 17.2 directly relates to development aid and assistance commitments of ODA donor countries, Target 17.1 also encompasses such aid as part of international support to developing countries for strengthening domestic resources mobilization for enhancing tax and revenue collection capacity. Target 17.4, although explicitly on long-term debt sustainability, is relevant to our analysis since aid is often given as loan and can thus be debt-augmenting for the recipient countries.

Financing for development in the form of aid and assistance is also envisaged in Targets 1.a, 1.b, 2.a, 3.c, 7.a, 8.a, 9.a, 10.b, 11.c, 15.a, and 15.b as MOI for the specific SDG they fall under. Two of these targets merit mention. Target 10.b aims to “encourage official development assistance and financial flows, including foreign direct investment, to States where the need is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries, in accordance with their national plans and programmes”.³⁰ This MOI target falls under SDG 10 on reducing inequality within and among countries. The other relevant MOI, Target 8.a, aims to “increase Aid for Trade support for developing countries, in particular least developed countries, including through the Enhanced Integrated Framework for

²⁹ Ibid., para.40.

³⁰ Ibid., SDG 10.

Trade-Related Technical Assistance to Least Developed Countries”.³¹ This target is incorporated in SDG 8 on promoting sustained, inclusive and sustainable economic growth for all.

B. Effectiveness of international development aid and assistance as MOI

The importance of financing for development through international aid and assistance as MOI for the entire 2030 Agenda is evident from the above and cannot be overemphasized. While its volume is certainly crucial, its effectiveness is also the key to realization of all SDGs. However, concerns regarding effectiveness of development aid have been persistently raised for years. The first decade of the MDGs witnessed increasing scrutiny over two of the most important forms of development aid practiced by the developed countries. The first comprised Official Development Assistance (ODA) provided by members of the Development Assistance Committee (DAC) of the Organization of Economic Cooperation and Development (OECD).³² ODA, has since 1969, constituted the standard means through which international aid and assistance has been provided by DAC countries.³³ To qualify as ODA, such aid and assistance must firstly be provided by official agencies, including state and local governments, or by their executive agencies, must secondly be concessional (i.e. grants and soft loans) and must thirdly be administered with the promotion of the economic development and welfare of developing countries as the main objective.³⁴

In 2005, the second major contemporary form of development aid, the Aid-for-Trade (Aft) initiative, was launched at the WTO whereby developed countries agreed to provide aid to developing and least-developed countries to address their trade related supply-side constraints in return for the latter agreeing to recommence negotiations on further trade liberalization.³⁵ Aft was intended to be additional to traditional ODA from DAC countries, not a substitute for it, although most of the Aft allocations in fact turned out to be merely a rebranding of ODA allocations.³⁶ Nevertheless, the simultaneous rise of Aft, alongside ODA earmarked for the MDGs, also led to increasing scrutiny over its effectiveness.

³¹ Ibid., SDG 8.

³² The OECD’s DAC comprises the following 30 members: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, European Union, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, The Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom, United States. See: OECD, *Development Assistance Committee*, available at <http://www.oecd.org/dac/development-assistance-committee/> (retrieved on 05/05/2020).

³³ For more information, see: OECD, *Official Development Assistance*, available at <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/official-development-assistance.htm> (retrieved on 05/05/2020).

³⁴ OECD, *Official Development Assistance, Fact Sheet, April 2020*, available at <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/What-is-ODA.pdf> (retrieved on 05/05/2020).

³⁵ For detailed analysis of the evolution and adoption of the Aft initiative, see: Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, (London, Routledge, 2018), pp.176-180.

³⁶ Joseph Stiglitz and Andrew Charlton, *Aid for Trade: A Report for the Commonwealth Secretariat* (London, Commonwealth Secretariat, 2013).

A large volume of research, as discussed below, emerged between 2000 and 2015 challenging claims of effectiveness of aid. The overwhelming academic opinion was that development aid, in the manner it was practiced, had been largely ineffective, and in many cases counterproductive, to the recipient countries. For instance, Dambisa Moyo, one of the fiercest critiques of aid, labelled it as “dead aid” since it had, according to her, been responsible for destroying the economies of the recipient African countries by creating aid dependency, and far from alleviating poverty, had made the situation worse.³⁷ Similarly, William Easterly demonstrated empirically that around USD 568 billion spent on aid in Africa over 40 years until 2005 had not lifted average African incomes;³⁸ instead the number of poor people had only increased.³⁹ Research on AfT pointed to the same conclusions.⁴⁰

As indicated above, an important reason presented by scholars for this dim report card on aid effectiveness is that it creates dependency of the recipients upon such aid and upon the donors. In turn, this dependency has disastrous domino effects on the recipients, such as wiping out of local businesses and entrepreneurships, breeding corruption, a stunted middle class with negligible tax contributions and generation of domestic revenue, and destruction of social capital.⁴¹

Scholars have presented other pertinent reasons to question the effectiveness of aid. It has been pointed out that the choice of countries that receive aid, the volume of such aid, the choice of sectors for which aid is allocated, and how it is implemented, are all in practice determined by donors; recipients hardly have any say. Several studies have demonstrated that donor interests — political, strategic, and economic — are the major determinants of ODA and AfT allocations in general, and not recipient needs.⁴² Donors exercise an almost complete discretion (and hence control) over all aspects of the aid process, and if it is diminished or cut off, recipient is left with no enforcement mechanism to restore or guarantee the aid.⁴³ Aid is generally non-binding and beyond the perimeters of an existing institutionally governed design, implementation, and

³⁷ Dambisa Moyo, *Dead Aid: Why Aid Is Not Working and There is a Better Way for Africa* (New York, Farrar, Straus and Giroux, 2010), pp.65-67.

³⁸ William Easterly, “Can Foreign Aid Save Africa?”, *Saint John’s University Clemens Lecture Series*, 17 (2005), pp.1-29, at p.3.

³⁹ *Ibid*; William Easterly, *White Man’s Burden: Why the West’s Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (New York, Penguin Press, 2006).

⁴⁰ Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, pp.169-194; Joseph Stiglitz and Andrew Charlton, *Aid for Trade: A Report for the Commonwealth Secretariat*.

⁴¹ Dambisa Moyo, *Dead Aid*.

⁴² Alberto Alesina and David Dollar, “Who Gives Foreign Aid to Whom and Why?”, *Journal of Economic Growth*, 5:1 (2000), pp.33-63; Jean-Claude Berthelemy, “Bilateral Donors’ Interest vs. Recipients’ Development Motives in Aid Allocation: Do All Donors Behave the Same?”, *Review of Development Economics*, 10:2 (2006), pp.179-194; Samuel Brazys, “Evaluating the Impact of Trade Capacity Building: Evidence for the Donor-Interest or Recipient-Need Theory of Foreign Aid?”, Paper presented at the COngerence *Exploring the Past, Anticipating the Future*, New York, 15 February 2009; Peter Nunnenkamp and Hannes Ohler, “Aid Allocation Through Various Official and Private Channels: Need, Merit and Self-Interest as Motives of German Donors”, *World Development*, 39:3 (2011), pp. 308-323.

⁴³ Phoenix Cai, “Aid for Trade: A Roadmap for Success”, *Denver Journal of International Law and Policy*, 36:3-4 (2008), pp.283-324.

evaluation framework. This creates an inherent power imbalance between donors and recipients, making the political economy of development aid arguably dubious.⁴⁴

An important critique of development aid practices results from a questioning of the conditionalities attached by donors. Tied aid has been questioned both for being predatory and for limiting the policy space of recipient States. In a study evaluating the effectiveness of AfT till 2016, this author demonstrated that a significant interest for donors in choosing whom to grant aid, in which form, under which conditions, and for which purpose, is whether such aid will enhance donor exports.⁴⁵ Empirical evidence overwhelmingly demonstrates that aid has significantly enhanced donor exports to recipients, both before the launch of the AfT Initiative,⁴⁶ and thereafter,⁴⁷ and far outweighs any rise in recipient exports, if at all. Some scholars even contend that AfT actually has a negative impact on recipient exports while increasing imports.⁴⁸ At the very least, it is clear that the benefits of aid to donors are significantly high enough for them to continue controlling the political economy of the industry.

The tying of aid to donor exports may not be direct; it is also accomplished indirectly by creating mechanisms, whereby recipients must spend aid for supplies or services only from the specific donors.⁴⁹ The EU,⁵⁰ as well as China under its Belt and Road Initiative,⁵¹ have often been accused

⁴⁴ Razeen Sally, "Introduction: Trade Liberalization in the Twenty-First Century" in Peter Draper, Philip Alves and Razeen Sally (eds.), *The Political Economy of Trade Reform in Emerging Markets*, Cheltenham, Edward Elgar, 2009, pp.1-30; Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, p.187.

⁴⁵ Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, pp.186-189.

⁴⁶ Lars Nilsson, *Essays on North-South Trade*, Lund: Lund University Publications, 1997; Don Wagner, "Trade and Aid – An Empirical Study", *Journal of Japanese and International Economics*, 17:2 (2003), pp. 153-173.

⁴⁷ Massimiliano Cali and Dirk te Velde, "Does Aid for Trade Really Improve Trade Performance?", *World Development*, 39:5 (2011), pp.725-740; Philipp Huhne, Birgit Meyer and Peter Nunnenkamp, "Who Benefits from Aid for Trade? Comparing the Effects on Recipient Versus Donor Exports", *The Journal of Development Studies*, 50:9 (2013), pp.1275-1288.

⁴⁸ Jonathan Munemo, "Foreign Aid and Export Diversification in Developing Countries", *Journal of International Trade and Economic Development*, 20:3 (2011), pp.339-355; Raghuram Rajan and Arvind Subramanian, "Aid, Dutch Disease, and Manufacturing Growth", *Journal of Development Economics*, 94:1 (2011), pp.106-118.

⁴⁹ Philipp Huhne, Birgit Meyer and Peter Nunnenkamp, "Who Benefits from Aid for Trade?", pp.1275-1288.

⁵⁰ Mark Langan and James Scott, "The Aid for Trade Charade", *Cooperation and Conflict*, 49:2 (2014), pp.143-161.

⁵¹ National Security and Defense, *China's Debt-Trap Diplomacy*, 3 July 2018, available at <https://www.nationalreview.com/2018/07/china-belt-and-road-initiative-debt-trap-diplomacy/> (retrieved on 05/05/2020); Ethan Kapstein and Jacob Shapiro, *Catching China by the Belt (and Road)*, 20 April 2019, available at <https://foreignpolicy.com/2019/04/20/catching-china-by-the-belt-and-road-international-development-finance-corp-beijing-united-states/> (retrieved on 05/05/2020); Wade Shepard, *How China Is Losing Support For Its Belt And Road Initiative*, 28 February 2020, available at <https://www.forbes.com/sites/wadeshepard/2020/02/28/how-beijing-is-losing-support-for-its-belt-and-road-initiative/#766207c92199> (retrieved on 05/05/2020).

of practicing “boomerang aid” whereby large parts of aid given for infrastructure construction in Africa and Asia are returned back to profiting their own firms through project related contracts. As such, “this direct and indirect tying of AfT to donor exports translates into not only enhancing exports of donors’ firms by creating market in goods and services for them, but importantly also subsidising them”.⁵² It is unsurprising then that the largest recipients of aid are not those most in need. Countries such as India, Vietnam, Indonesia and even China, that are attractive FDI destinations or have larger domestic markets, receive a lot more aid than the LDCs.⁵³

It has also been demonstrated that contemporary aid practices create a permissive environment for donor countries to pass off their own interests as those of the recipients. For instance, a road constructed from the port in an LDC to its interiors can be passed off as a project to enhance the exportability of recipient’s agricultural produce from its villages, when in fact, donor’s interests in gaining access to such interiors for its own exports might be the actual motivation.⁵⁴

Finally, scholars have pointed out that the form in which aid is generally given is very problematic. Current practices of ODA allow concessional loans to form part of aid, as long as the package contains some grant component in varying degrees depending on the categorization of the recipient.⁵⁵ It is estimated that about half of all ODA, including AfT, is in practice given in the form of loans.⁵⁶ However, loans are debt-enhancing, not debt-relieving. They only add to the likelihood of many recipient countries augmenting their debts.⁵⁷ This is despite the fact that D-LDCs, as well as the UNDP, have for long demanded that aid should not be debt-creating or on a loan basis, but must be on a grant basis.⁵⁸

To address some of these major criticisms, several guiding principles on the policy and practice of development aid emerged since 2005 and were agreed upon by donor countries and institutions,

⁵² Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, p.187.

⁵³ Ibid, p.186.

⁵⁴ Ibid, p.183 and p.188.

⁵⁵ In current DAC practices, qualification as ODA implies a grant element of at least 45% in the case of bilateral loans to the official sector of LDCs and other LICs (calculated at a rate of discount of 9%); 15% in the case of bilateral loans to the official sector of LMICs (calculated at a rate of discount of 7%); 10% in the case of bilateral loans to the official sector of UMICs (calculated at a rate of discount of 6%); 10% in the case of loans to multilateral institutions (calculated at a rate of discount of 5% for global institutions and multilateral development banks; and 6% for other organisations, including sub-regional organisations. See: OECD, Official Development Assistance, Fact Sheet, April 2020, available at <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/What-is-ODA.pdf> (retrieved on 05/05/2020).

⁵⁶ Mihir Kanade, *The Multilateral Trading System and Human Rights: A Governance Space Theory on Linkages*, p.188-189; OECD and WTO, *Aid for Trade at a Glance: Connecting to Value Chains* (Paris, OECD Publishing, 2013), at p.76.

⁵⁷ Ratnakar Adhikari, “Evaluating Aid for Trade Effectiveness on the Ground: A Methodological Framework”, *International Centre for Trade and Sustainable Development Issue Paper Series*, 20 (2011), pp.1-35, at p.7.

⁵⁸ David Luke, Luca Monge-Roffarello and Sabrina Varma, “Perspectives on Aid for Trade” in Philippe de Lombaerde and Lakshmi Puri (eds.), *Aid for Trade: Global and Regional Perspectives* (Berlin, Springer, 2009), pp.29-38, at p.32.

including the multilateral financial institutions. In particular, these included the Paris Declaration on Aid Effectiveness (2005),⁵⁹ the International Health Partnership Plus (2007),⁶⁰ the Accra Agenda for Action (2008),⁶¹ the Busan Partnership for Effective Cooperation (2011),⁶² and the Global Partnership for Effective Development Cooperation (GPEDC) (2011).⁶³ Collectively, these documents enumerate six principles for aid to be effective viz. country ownership over programmes; alignment between donor funding and country priorities; harmonization of donor activities to prevent or mitigate fragmentation and duplication of efforts; ensuring transparency and accountability; provision of predictable and long-term funding; and engagement of civil society.⁶⁴ These documents are not legally binding instruments and hence they outline only guiding principles that remain largely discretionary without accountability in case of breach. In any case, their successful implementation prior to adoption of the 2030 Agenda remained extremely doubtful.⁶⁵

Neither the AAAA nor the 2030 Agenda specifically refer to any of these documents. The AAAA, however, “welcome[s] continued efforts to improve the quality, impact and effectiveness of development cooperation and other international efforts in public finance, including adherence to agreed development cooperation effectiveness principles”.⁶⁶ Unfortunately, recent empirical data on development aid and assistance as MOI for the SDGs demonstrates that not only have donor countries miserably failed to abide by their commitments, but also that the principles of effectiveness agreed upon have been rampantly trampled upon or ignored.

C. *Data on international development aid and assistance as MOI*

This section relies on the following four reports to cull out the most updated available data: the Sustainable Development Goals Report, 2019, prepared by the UN Secretariat (hereinafter, the “SDG 2019 report”);⁶⁷ the Financing for Sustainable Development Reports of 2019 and 2020 prepared by the UN’s Inter-agency Task Force on Financing for Development to monitor

⁵⁹ OECD, *The Paris Declaration on Aid Effectiveness*. Paris, OECD, 2005, available at <http://www.oecd.org/dac/effectiveness/34428351.pdf> (retrieved on 05/05/2020).

⁶⁰ For more information, see the website of the International Health Partnership Plus, available at <https://www.uhc2030.org/> (retrieved on 05/05/2020).

⁶¹ OECD, *The Accra Agenda for Action*, Paris, OECD, 2008, available at <http://www.oecd.org/dac/effectiveness/34428351.pdf> (retrieved on 05/05/2020).

⁶² OECD, *The Busan Partnership for Effective Development Cooperation* (Paris, OECD, 2011), available at <https://www.oecd.org/dac/effectiveness/busanpartnership.htm> (retrieved on 05/05/2020).

⁶³ For more information, see the website of the Global partnership for effective development cooperation, available at <http://effectivecooperation.org/> (retrieved on 05/05/2020).

⁶⁴ For in-depth analyses, see: Deepthi Wickremasinghe et.al., “It’s about the idea hitting the bull’s eye”: how aid effectiveness can catalyse the scale-up of health innovations”, *International Journal of Health Policy and Management*, 7:8 (2018), pp.718–727.

⁶⁵ Bernard Wood et. al., *The Evaluation of the Paris Declaration, Final Report (Phase 2)*. Copenhagen, Danish Institute for International Studies, 2011; Catherine Blampied, *Where next for development effectiveness? Building a renewed consensus*, CAPE Conference Note 1 (London, ODI, 2016), available at <https://www.odi.org/sites/odi.org.uk/files/events-documents/10936.pdf> (retrieved on 05/05/2020).

⁶⁶ UNGA Resolution 69/313, para.58.

⁶⁷ UN, *The Sustainable Development Goals Report 2019*.

implementation of the AAAA (hereinafter, “FSDR 2019” and “FSDR 2020” respectively);⁶⁸ and the report of the OECD entitled “DAC Untying Recommendations” (hereinafter, the “OECD 2018 Report”).⁶⁹ These reports collectively reveal the following:

1. Global situation

As per FSDR 2019, the world economic growth had likely peaked at 3% in 2018.⁷⁰ More than half a trillion dollars’ worth of goods were subject to trade restrictions, 7 times more than in 2018.⁷¹ At the same time, debt risks were rising. Around 30 LDCs and other vulnerable countries were either in or at high risk of debt distress, putting dents in their ability to invest in realization of the SDGs.⁷² ODA is the largest source of external financing for LDCs.⁷³ LDCs faced large financing gaps and “their annual spending on education alone would need to more than triple in order to achieve universal pre-primary, primary and secondary education”.⁷⁴ Clearly, this situation has worsened dramatically in 2020 due to the COVID-19 pandemic and the related global economic and commodity price shocks. FSDR 2020 points that in this scenario, 44% of LDCs and other low-income developing countries are currently at high risk or in debt distress, and this figure is likely to rise.⁷⁵ This represents a doubling of debt risk in under five years from 22% in 2015 when the 2030 Agenda was adopted.⁷⁶

2. Volume of Development aid and assistance

As per FSDR 2019, DAC countries contributed USD 147.2 billion as ODA in 2017, representing a decline of 0.1% in real terms over 2016.⁷⁷ However, measuring ODA contributions over time in real terms is misleading. The commitment by DAC countries in Target 17.2 is contributing 0.7% of ODA/GNI to developing countries and 0.15% to 0.20% of ODA/GNI to LDCs.⁷⁸ In 2017, none of the DAC members, except five, met this target.⁷⁹ On aggregate, DAC donors provided only

⁶⁸ UN, *Financing for Sustainable Development Report 2019*, Prepared by the Inter-Agency Task Force on Financing for Development (New York, United Nations, 2019), available at <https://developmentfinance.un.org/sites/developmentfinance.un.org/files/FSDR2019.pdf>, and, United Nations, *Financing for Sustainable Development Report 2020*, Prepared by the Inter-Agency Task Force on Financing for Development (New York, United Nations, 2020), available at https://developmentfinance.un.org/sites/developmentfinance.un.org/files/FSDR_2020.pdf (both retrieved on 05/05/2020).

⁶⁹ OECD, *Report on the DAC Untying Recommendation 2018*, available at [https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DCD-DAC\(2018\)12-REV2.en.pdf](https://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DCD-DAC(2018)12-REV2.en.pdf) (retrieved on 05/05/2020).

⁷⁰ UN, *FSDR 2019 Report*, Foreword by UNSG Antonio Guterres

⁷¹ *Ibid.*, p.XVII.

⁷² *Ibid.*

⁷³ UN, *SDG 2019 Report*, at p.56.

⁷⁴ UN, *FSDR 2019*, Foreword by UNSG Antonio Guterres.

⁷⁵ UN, *FSDR 2020*, pp.7 and 129.

⁷⁶ *Ibid.*, p.XVII.

⁷⁷ UN, *FSDR 2019*, at p.78.

⁷⁸ A/RES/70/1, SDG 17.

⁷⁹ The only five countries that reached the target were Denmark, Luxembourg, Norway, Sweden and the United Kingdom. See: UN, *Financing for Sustainable Development Report 2019*, at p.78.

0.31% of GNI as ODA.⁸⁰ In other words, while the committed amount was USD 332.4 billion, the shortfall ended up being a massive USD 185.2 billion. Overall, ODA to LDCs amounted to only 0.09% of DAC members' GNI in 2017 (including imputed multilateral flows).⁸¹ Total ODA flows to SIDS dropped to USD 2.7 billion in 2017 in constant 2016 dollars from USD 4.6 billion in 2016.⁸² With respect to Target 17.1, ODA dedicated to domestic revenue mobilization in recipient countries fell significantly from USD 329 million in 2016 to USD 193 million in 2017, accounting for 0.18% of ODA.⁸³

The situation worsened further in 2018. According to the SDGs Report 2019 which was based on preliminary figures, net ODA totalled USD 149 billion in 2018, down by 2.7% in real terms from 2017.⁸⁴ Humanitarian aid fell by 8% in real terms.⁸⁵ In 2018, bilateral ODA to LDCs fell by 3% in real terms from 2017, and aid to Africa fell by 4%.⁸⁶ FSDR 2020 provides updated statistics using a new methodology for calculation. According to this report, ODA in fact fell by 4.3% in 2018.⁸⁷ ODA by DAC countries in 2018 was equivalent to 0.31% of the combined GNI, that is, more than 50% below the 0.7% commitment in the AAAA and Target 17.2.⁸⁸ Similar to 2017, all but five DAC countries failed to meet these commitments.⁸⁹ Specifically with relation to LDCs, ODA fell by 2.1% and accounted for only 0.09% of DAC members' GNI, well below the 0.15-0.20% LDC target.⁹⁰ ODA to Africa, landlocked developing countries and SIDS dropped by 1.8, 8.9 and 2.1%, respectively.⁹¹

Insofar as AfT is concerned, FSDR 2019 reported a decline in volumes as well.⁹² However, as pointed out earlier, most AfT is merely a rebranding of previously existing ODA. In any case, AfT in regular practice constitutes a share within ODA as a sector allocable aid, approximately amounting to 39.2% of total ODA in 2017.⁹³ Since AfT is not additional and separate from ODA as it was originally intended to be,⁹⁴ it is hard to consider increase or decrease in its reported value of any consequence, when the total volume of ODA itself is decreasing and most DAC members have for several years not reached anywhere close to their committed targets.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid, p.46.

⁸⁴ UN, *SDG 2019 Report*, at p.56.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ UN, *FSDR 2020*, p.81.

⁸⁸ Ibid, p.82.

⁸⁹ Ibid. Like 2017, these five were Denmark, Luxembourg, Norway, Sweden and the United Kingdom.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² UN, *FSDR 2019*, at p.110.

⁹³ OECD and WTO, *Aid for Trade at a Glance 2019*, available at https://www.wto.org/english/res_e/booksp_e/aid4trade19_e.pdf (retrieved on 05/05/2020), at p.76.

⁹⁴ WTO, *Recommendation of the Task Force on Aid for Trade*, WT/AFT/1, adopted on 27 July 2006, part C.

3. Country ownership over programmes and alignment between donor funding and country priorities

In addition to serious drop in the volume of ODA, reports also demonstrate that existing practices continued to violate the agreed principles of aid effectiveness. A good measure of whether ODA is adequate to ensure availability of funds for financing national priorities expressed in national sustainable development strategies is the share and sector-allocation of country programmable aid (CPA), which excludes items such as humanitarian aid, debt relief, in-donor refugee costs and administrative costs.⁹⁵ FSDR 2019 records that while CPA increased from 46.9% in 2016 to 48.3% in 2017, partially reversing a longer-term declining trend, it was still 6.6% points below the share of CPA in 2010.⁹⁶ Similar trend is reported in FSDR 2020. CPA overall increased marginally by 0.3%, but fell by 1.1%, 7.2% and 0.1% respectively for LDCs, LLDCs and African countries.⁹⁷

More importantly, sector-allocations reported in FSDR 2019 tell a story of their own. Social spending fell as a percentage of total ODA, from 40% in 2010 to 35% in 2017; the largest decline is attributed to share of spending on education, which fell from 8.8% of total ODA in 2010 to 7.1%.⁹⁸ The report notes that this decreasing share of assistance for social sectors, “after growing rapidly in the first decade of the millennium during the era of the MDGs, reflects a shift in donors’ focus to economic aid and support for production sectors”.⁹⁹ It is telling that ODA for the social sector decreased for LDCs between 2010–2013 and 2016–2017, while aid for economic infrastructure and services and production sectors increased in real terms over the same period.¹⁰⁰ This trend is consistent with the critiques referred to in the previous section that donors’ choices of sectors for allocation of ODA tend to be based on commercial interests rather than for social welfare.

FSDR 2020 further laments the need for the allocation of ODA to align with country priorities and plans and frameworks. It highlights that “despite considerable strengthening in developing countries’ planning processes, development partners’ alignment to country priorities and country-owned results frameworks is declining”.¹⁰¹ It notes that in 2018, while 83% of new projects had objectives aligned to country priorities, only 59% of results indicators were drawn from country-owned results frameworks, and only 50% aligned with their statistics and monitoring systems.¹⁰² Finally, the report notes that medium-term predictability was declining, with limited provision of forward expenditure and implementation plans by development partners.¹⁰³

⁹⁵ For more information on CPA, see: <http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/cpa.htm> (retrieved on 05/05/2020).

⁹⁶ UN, *FSDR 2019*, at p.79.

⁹⁷ UN, *FSDR 2020*, p.82.

⁹⁸ UN, *FSDR 2019*, at p.79.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ UN, *FSDR 2020*, p.99.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

4. Loans or Grants

FSDR 2019 notes that since 2010, “the concessionality of bilateral ODA has declined, owing to an increased reliance on concessional loans and a decline in grants”.¹⁰⁴ Loans increased from constituting 12.4% of ODA in 2010-2012, to 15.2% in 2016-17.¹⁰⁵ LDCs bore a bigger brunt with the share of loans rising from 2.8% to 8.3%.¹⁰⁶ The report also notes that more than 60% of ODA financing for the economic infrastructure and services sector has been through loans, mainly in the transport and energy sectors. Importantly, the report notes that “the increase in loans also raises questions of whether ODA may be contributing to the build-up of debt in developing countries”.¹⁰⁷ This is again consistent with the pre-2015 general practice of granting substantial aid in the form of loans critiqued in the previous section.

5. Tied or Untied Aid

In 2018, the OECD produced a report on “the DAC Untying Recommendation”. This report is progressive and makes several recommendations to DAC countries on moving towards untying aid based on empirical evidence.¹⁰⁸ It focuses significantly on the fact that “a large part of aid contracts continue to be awarded to companies from the donor country awarding the contract”.¹⁰⁹ Clearly, this is not in alignment with recipient interests because open competitive bidding might lead to more competitive contractors from non-donor countries. It notes that 65% of contracts in 2015 and 2016 were awarded to companies in the donor country.¹¹⁰ In terms of the underlying value of contracts, “in-donor” share increased from 46% in 2014 to 51% in 2016.¹¹¹ When only projects implemented in LDCs and non-LDC Heavily Indebted Poor Countries (HIPC) are taken into account, the in-donor share was at 84.4% in 2015 and 57.3% in 2016.¹¹²

FSDR 2019 looks more broadly at tied aid beyond the award of contracts. It notes that in 2016, the share of untied aid reported by DAC countries was high and accounted for 79.8% of total ODA.¹¹³ However, it also notes that “DAC procurement statistics illustrate that ‘informal tying’ remains a major challenge”.¹¹⁴ These include the “in-donor” contracts. The report then highlights that against the backdrop of ongoing efforts to scale-up blended finance,¹¹⁵ “development partners must take urgent action to remove barriers, to allow developing countries, including LDCs, to better tap into

¹⁰⁴ UN, *FSDR 2019*, at p.80.

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ OECD, *OECD 2018 Report*.

¹⁰⁹ *Ibid.*, p.3.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*, p.8.

¹¹² *Ibid.*

¹¹³ UN, *FSDR 2019*, at p.93.

¹¹⁴ *Ibid.*, p.94.

¹¹⁵ Blended finance is described as “the strategic use of development finance for the mobilisation of additional finance towards sustainable development in developing countries”. See: OECD, *Blended Finance*, available at <https://www.oecd.org/dac/financing-sustainable-development/blended-finance-principles/> (retrieved on 05/05/2020).

the important double dividend that local procurement can bring when economic conditions are right”.¹¹⁶ Promotion of blended finance in this environment poses a real risk of proliferation of tied or informally tied aid.¹¹⁷ Similarly, FSDR 2020 notes that despite increase of untied ODA to 82% in 2018, these figures mask the informal tying of aid through in-donor contracts.¹¹⁸

6. Transparency and accountability

Most worryingly, despite DAC countries reporting significant share of their aid as untied, the OECD 2018 report notes that “the adherence to transparency provisions, intended to address concerns that *de jure* untied aid might remain *de facto* tied, is mixed”.¹¹⁹ The DAC Untying Recommendations included transparency provisions that call for *ex ante* notification of untied aid offers to be posted on the Untied Aid public bulletin board of the OECD, as well as reporting of *ex post* statements on contract awards. The OECD 2018 report notes that the vast majority of DAC members do not report any *ex ante* notifications.¹²⁰ It further notes that “given limited compliance with the provision for *ex ante* notifications, transparency remains limited, and the provision cannot be expected to contribute to building confidence about *de facto* adherence to the Recommendation by the DAC Membership overall”.¹²¹ Finally, it records its helplessness that “repeated past calls for reporting have not resulted in improved reporting, and observance has had an overall declining trend over time”.¹²²

With respect to *ex post* contract awards, despite overall improvement in reporting, the report notes that there is “room for significant improvement” while a few members continue to not report any contract awards.¹²³ It then hastens to question the veracity of the reported cases as well, noting that “it remains difficult to reconcile the number and value of contracts awarded in a given year with the activities reported to the CRS in earlier years”.¹²⁴ It points out that for some members in particular, “the amounts notified are persistently small in comparison to ODA volumes provided to countries covered by the Recommendation”.¹²⁵

The aforesaid analysis clearly demonstrates that financing for development through international aid and assistance as MOI has been entirely off-track in the first five years of implementation of the 2030 Agenda, and where it is practiced, it continues to be contrary to agreed principles of aid effectiveness. The next section contends that this failure is the direct result of lack of operationalization of the RtD in implementation of this MOI, and that doing so is the only way the “business as usual” approach can be turned around.

¹¹⁶ UN, *FSDR 2019*, at p.94.

¹¹⁷ *Ibid.*

¹¹⁸ UN, *FSDR 2020*, p.99.

¹¹⁹ OECD, *OECD 2018 Report*, p.3.

¹²⁰ *Ibid.*, p.6 at para.14.

¹²¹ *Ibid.*

¹²² *Ibid.*, p.6, para.15.

¹²³ *Ibid.*, p.7, para.19.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

II. The Right to Development and SDGs: MOI as Duty of International Cooperation

A. The context and content of the RtD

The birth of the RtD was a consequence of the disillusionment of newly decolonized countries in the 1960s and 70s with the then existing international economic regime.¹²⁶ This regime was created by victors of WWII in the 1940s when most of what we today call as the developing world did not even exist as independent countries.¹²⁷ The sense of unfairness generated by being born into debt-creating prescriptions of the WB and IMF and the experience of these new countries with untimely opening of markets under GATT 1947, led to a push for reforms and restructuring of the international economic regime.¹²⁸ This manifested itself initially in two resolutions adopted in 1974 at the UNGA for establishment of a New International Economic Order,¹²⁹ and the Charter of Rights and Duties of States.¹³⁰ These resolutions stressed that “international co-operation for development is the shared goal and common duty of all countries”.¹³¹ Eventually, the movement culminated in recognition of the RtD as a human right, first in the 1981 African Charter on Human and People’s Rights,¹³² and then at the global level through adoption of the Declaration on the Right to Development (DRTD) by the UNGA in 1986.¹³³ The DRTD was adopted with an overwhelming majority of 146 countries voting in favour, 8 countries abstaining, and only the US voting in opposition.¹³⁴ Since then, however, the RtD has been reiterated and reaffirmed unanimously by all States in numerous declarations, resolutions and agendas, including most recently, in the 2030 Agenda.¹³⁵ Today, the divisions among North-South lines are mostly on the scope of the RtD and the appropriate means for operationalizing it.

¹²⁶ For an excellent study on this, see: Raghavan Chakravarthi, *Recolonization: GATT, the Uruguay Round and the Third World*, London, Zed Books, 1990.

¹²⁷ Daniel Whelan, Mihir Kanade and Shyami Puvimanasinghe, “The Right to Development: Origins, History and Institutional Development”, in Kanade and Puvimanasinghe (eds.) *Operationalizing the Right to Development for Implementation of the Sustainable Development Goals*, E-Learning Module, October 2019 (Geneva, Ciudad Colon and Kuala Lumpur: United Nations, UPEACE and UNU-IIGH), Chapter 1.

¹²⁸ Mihir Kanade, *The Multilateral Trading System and Human Rights*, p.188-189; OECD and WTO, *Aid for Trade at a Glance: Connecting to Value Chains* (Paris, OECD Publishing, 2013), at p.202.

¹²⁹ UNGA, *Declaration on the Establishment of a New International Economic Order*, adopted on 1 May 1974, A/RES/S-6/3201.

¹³⁰ UNGA, *Charter of Rights and Duties of States*, adopted on 12 December 1974, A/RES/29/3281.

¹³¹ Para.3 and article 17 respectively.

¹³² *African Charter on Human and Peoples’ Rights*, 27 June 1981, CAB/LEG67/3 rev.5, *International Legal Materials*, 21.1 (1982):58-68, article 22.

¹³³ UNGA, *Declaration on the Right to Development*, adopted on 4 December 1986, A/RES/41/128.

¹³⁴ Countries which abstained were Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden and the UK. See: OHCHR, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*. Geneva, United Nations, 2013, at p.500.

¹³⁵ For the complete list, see UN, “Draft Convention on the Right to Development”, *Report of the Chair-Rapporteur, Zamir Akram, to the UN Working Group on the Right to Development*, A/HRC/WG.2/21/2, 17 January 2020, Preambular paragraph 14.

Key features of the DRTD relevant for this Chapter may be summarized as follows:¹³⁶

- a. The RtD is an inalienable self-standing human right.¹³⁷ Development, and as will be pointed out below, sustainable development, are thus not mere privileges enjoyed by human beings, nor are they just subjects of charity or generosity.
- b. The RtD denotes the entitlement of the right-holders to three things viz. to participate in, contribute to, and enjoy economic, social, cultural and political development.¹³⁸
- c. The RtD also implies the full realization of the right of peoples to self-determination.¹³⁹
- d. Operationalizing the RtD involves respecting, protecting and fulfilling all other human rights — civil, political, economic, social, and cultural — along with generating the resources of growth such as GDP, technology etc.¹⁴⁰ This means that given the very nature of development as a human right, it cannot be realized when there are violations of other human rights.
- e. The RtD requires focusing not only on outcomes which are sought to be achieved as a result of a development plan (the “what” question), but also on the process by which those outcomes are achieved (the “how” question). Both the processes and outcomes of development must be consistent with and based on all other human rights.¹⁴¹
- f. Human beings are individually (all human persons) and collectively (all peoples) the right-holders of the RtD against their States as well as other States.¹⁴² Every State is entitled, as an agent of all persons and peoples subject to its jurisdiction, to demand respect for their RtD by other States and international organizations.¹⁴³
- g. The DRTD entails duties on all States to respect, protect and fulfil the RtD across the following three levels:¹⁴⁴
 - (i) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction;
 - (ii) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction; and
 - (iii) States acting collectively in global and regional partnerships.

¹³⁶ The summary below draws from a similar exercise conducted by this author in: Mihir Kanade, “The Right to Development and the 2030 Agenda for Sustainable Development”.

¹³⁷ A/RES/41/128, article 1(1).

¹³⁸ Ibid.

¹³⁹ Ibid, article 1(2).

¹⁴⁰ *Third Report of the Independent Expert on the Right to Development, Mr. Arjun Sengupta*, E/CN.4/2001/WG.18/2, paragraph. 9–10.

¹⁴¹ *Study on the Current State of Implementation of the Right to Development Submitted by Mr. Arjun Sengupta, Independent Expert*, E/CN.4/1999/WG.18/2, paragraph. 36.

¹⁴² A/RES/41/128, article 1(1).

¹⁴³ Ibid, article 2. See also: Anne Orford, “Globalization and the Right to Development” in Philip Alston (ed.), *People’s Rights* (Oxford, Oxford University Press, 2001).

¹⁴⁴ UN, *Report of the High-Level Task Force on the Implementation of the Right to Development*, A/HRC/15/WG.2/TF/2/Add.2 and Corr.1, annex, para.1

- h. The RtD imposes an obligation on States, individually and collectively, to eliminate existing obstacles to its realization, refrain from making policies which are adverse to its realisation, and to positively create conditions favourable to its realisation.¹⁴⁵
- i. Most importantly, the RtD imposes a duty on States with respect to international cooperation to realize the RtD.¹⁴⁶

It is evident from the above summary that “making the RtD a human right recognised by all Governments, enjoins them to follow a code of conduct that not only restrains them from disrupting the conditions required to fulfil that right but also actively assists and promotes its fulfilment”.¹⁴⁷ The duty to cooperate with each other is of primary importance to the RtD and flows from the UN Charter.¹⁴⁸ The DRTD refers to it twice in the preamble and at least thrice in the substantive provisions. Article 3(2) thereof stipulates that “the realization of the right to development requires full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations”.¹⁴⁹ Article 3(3) further stipulates that “States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights”.¹⁵⁰ The duty to cooperate applies to all facets of the RtD and “runs through the entire draft convention like a golden thread binding together all its provisions”.¹⁵¹ Because the realization of the RtD requires an enabling national *and* international environment, the duty to cooperate is indispensable to the obligations to respect, protect and fulfil.

B. The Symbiotic Relation between the RtD and the SDGs

The DRTD contains no references to sustainable development. This is unsurprising because, sustainable development, as a concept and framework emerged on the global policy agenda only in 1987, one year after the DRTD was adopted by the UNGA.¹⁵² The symbiotic relationship between the RtD and sustainable development was however obvious and was specifically recognized for the first time in the 1992 Rio Declaration on Environment and Development, stipulating in its third principle that the “right to development must be fulfilled so as to equitably

¹⁴⁵ A/RES/41/128, article 1(1), articles 2(3), 3(1) and (3), 4(1), 6(1) and (3) and 10.

¹⁴⁶ For detailed analysis, see UN, “Commentaries to the Draft Convention on the Right to Development”, Prepared by Mihir Kanade, *Report of the Chair-Rapporteur, Zamir Akram, to the UN Working Group on the Right to Development*, A/HRC/WG.2/21/2/Add.1, 20 January 2020, commentaries on draft article 13.

¹⁴⁷ *Study on the Current State of Implementation of the Right to Development Submitted by Mr. Arjun Sengupta, Independent Expert*, E/CN.4/1999/WG.18/2, paragraph. 58.

¹⁴⁸ Charter of the United Nations, articles 1(3), 55 and 56.

¹⁴⁹ A/RES/41/128.

¹⁵⁰ *Ibid.*

¹⁵¹ UN, “Commentaries to the Draft Convention on the Right to Development”, commentaries on draft article 13, p.54, para.1.

¹⁵² World Commission on Environment and Development, *Our Common Future* (Oxford, Oxford University Press, 1987).

meet developmental and environmental needs of present and future generations”.¹⁵³ This was reiterated in the Vienna Declaration of 1993.¹⁵⁴ The Millennium Declaration adopted unanimously in 2000, and from which the MDGs emanated as actionable and achievable goals, explicitly incorporated “making the right to development a reality for everyone” as one of its stated objectives.¹⁵⁵ Finally, the 2030 Agenda notes that it is “informed by” the DRTD.¹⁵⁶ It has been pointed out from the text of the 2030 Agenda, that it further reaffirms the RtD and acknowledges that the agenda is “grounded” in the “objective of making the right to development a reality for everyone” enshrined in the Millennium Declaration.¹⁵⁷

The very adoption of the 2030 Agenda by States could be seen as an implementation by them of their duty stipulated in the DRTD to “take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development”.¹⁵⁸ In this sense, the SDGs could be seen as a policy expression by States of their intention individually and collectively to realize their obligations under the DRTD and a plan of action for operationalizing the RtD.¹⁵⁹ On the other hand, operationalizing the RtD can in turn significantly bolster the realization of the 2030 Agenda by providing its MOI with a normative framework effectively stipulating that the participation in, contribution to, and enjoyment of sustainable development by all human persons and peoples ought not to be seen as a charity, bestowed upon them by States, but as a human right with corresponding duties.¹⁶⁰ The RtD gives proper shape, colour and texture to the SDGs by purposely stressing on the right and duty aspects of sustainable development. By insisting that development is a human right which has clearly identified duty-bearers, the “RtD hammers down the point that the only way development can be sustainable is if it is itself treated as a right and not as a charity, and if it encompasses all human rights as equally important and ensures that no human right is undermined”.¹⁶¹ Operationalizing the RtD then entails infusing MOI with the normative framework of the RtD so that they are realized within the ambit of the duty of international cooperation.

To put the aforesaid in the context of our chapter, unfortunately, data discussed in Part I on financing for development through international aid and assistance demonstrates that there has been a complete failure to operationalize the RtD. Aid and assistance practices are bereft of a normative framework of rights and duties resulting inevitably in failure to make progress as MOI. The continual reduction in volume in breach of commitments by DAC countries demonstrates that aid and assistance still operates very much within the framework of charity, is fungible, and under total control of donors with respect to processes and outcomes. While the commitments of 0.7%

¹⁵³ UN Conference on Environment and Development, *Rio Declaration on Environment and Development*, adopted on 12 August 1992, A/CONF.151/26 (Vol.I), principle 3.

¹⁵⁴ World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted on 25 June 1993.

¹⁵⁵ A/RES/55/2.

¹⁵⁶ A/RES/70/1, para.10.

¹⁵⁷ *Ibid.*, paras. 11 and 12. For an analysis, see: Mihir Kanade, “The Right to Development and the 2030 Agenda for Sustainable Development”, p.4.

¹⁵⁸ A/RES/41/128, article 4(1).

¹⁵⁹ Mihir Kanade, “The Right to Development and the 2030 Agenda for Sustainable Development”, p.9.

¹⁶⁰ *Ibid.*

¹⁶¹ *Ibid.*

of GNI as ODA to developing countries and 0.15% to LDCs are not by themselves legally binding obligations and hence enforceable, continual failure to meet these commitments can be seen as failure to abide by the duty to cooperate inherent to the RtD. Data also demonstrates that current ODA practices continue to undermine the development priorities of the recipients in terms of sector allocations, alignments, and country ownership. They also actively infringe upon the RtD of the recipients through adverse conditionalities (in-donor contracts) and design (as loans) that promote the economic interests of the donors rather than the recipients. While principles for effectiveness of aid exist, they haven't translated into reality because they as well lack a normative framework. Indeed, it has been pointed out that since the adoption of the 2030 Agenda, the aid effectiveness agenda has practically stalled and commitments on effectiveness principles by donor countries have dissipated.¹⁶² The absence of operationalizing the RtD inevitably results in realization of this MOI in a manner that is counterproductive and a recipe for failure of the 2030 Agenda itself.

III. Conclusions and Recommendations

It has often been pointed out that aid literature suffers from econometric problems of proving causation.¹⁶³ There are complex variables involved that make it extremely difficult to evaluate the effectiveness of aid.¹⁶⁴ A key difficulty is ascertaining the counterfactual, i.e. "what would have happened in its absence?".¹⁶⁵ Despite these limitations, it may be pointed out that the 2030 Agenda itself acknowledges and identifies financing for development through aid and assistance as a key MOI. Its absence is assumed to result in failure of the agenda. Thus, it is unsurprising that the OECD Report 2018, SDG Report 2019, FSDRs 2019 and 2020, all point at the urgent need for course correction by DAC countries with respect to this MOI if the 2030 Agenda is to progress.

The year 2020, unfortunately, has unleashed the COVID-19 pandemic bringing the entire world to a grinding halt and unleashing disastrous consequences in its wake. Quarantines, travel restrictions and lockdown of cities and countries instituted to contain the spread of the virus have resulted in a significant reduction in demand and supply, disruptions in the supply chains, halt to manufacturing sectors, the falling of commodity prices including oil, and collapse of global financial markets, resulting in investors' rush to pull funds out of emerging-markets and other high-risk sectors.¹⁶⁶ The pandemic has plunged an already struggling global economy into a recession that may mark the beginning of the worst economic downturn since the Great

¹⁶² Osondu Ogbuoji and Gavin Yamey, "Aid Effectiveness in the Sustainable Development Goals Era", *International Journal of Health Policy and Management*, 8:3 (2019), pp. 184–186.

¹⁶³ Raghuram Rajan and Arvind Subramanian, "Aid and Growth: What Does the Cross-Country Evidence Really Show?", *The Review of Economics and Statistics*, 90:4 (2005), pp.643-665.

¹⁶⁴ Olivier Cadot et.al., *Where to Spend the Next Million? Applying Impact Evaluation to Trade Assistance*, Washington D.C., The World Bank, 2011; Olivier Cadot and Richard Newfarmer, "Does It Work? Aid for Trade Through the Evaluation Prism", *Trade Negotiations Insights*, 10:7 (2011), pp.10-11.

¹⁶⁵ Joseph Stiglitz and Andrew Charlton, *Aid for Trade: A Report for the Commonwealth Secretariat* (London, Commonwealth Secretariat, 2013), at p.370.

¹⁶⁶ UN, *Shared Responsibility, Global Solidarity: Responding to the Socio-Economic Impacts of COVID-19*, Report of the UNSG, March 2020, available at <https://unsdg.un.org/sites/default/files/2020-03/SG-Report-Socio-Economic-Impact-of-Covid19.pdf> (retrieved on 05/05/2020), p.8.

Depression.¹⁶⁷ The UN points out that Latin America and the Caribbean is facing the worst recession ever and Africa may be in its first recession in the last 25 years. Other regions, including Asia and the Middle East are staring at similar decelerations.¹⁶⁸ According to the ILO, the crisis could wipe out the equivalent to 195 million full-time jobs globally in just the second quarter of 2020.¹⁶⁹ As the UNSG has pointed out, “this is much more than a health crisis [...] it is a human crisis [...] the coronavirus disease (COVID-19) is attacking societies at their core”.¹⁷⁰

Unsurprisingly, the most severe impacts are bound to be on the weakest and poorest countries.¹⁷¹ The UNSG has raised the alarm that “the situation in developing countries, LDCs, LLDCs and SIDS in particular, is of special concern”, where even before the crisis, debt accumulation has outpaced the growth of income.¹⁷² As he has pointed out, 44% of LDCs and other low-income developing countries are at high risk or in debt distress.¹⁷³ A consortium of African ministers has recently requested financial support, including a “debt holiday waiver” of \$44 billion.¹⁷⁴ Worryingly, middle-income countries are also highly vulnerable to a debt crisis, lost market access and capital outflows.¹⁷⁵

Resultantly, both the UNSG, and several special procedures of the UN,¹⁷⁶ have called for unprecedented debt-relief and lifting of sanctions on countries as part of immediate measures to handle the crisis. But more importantly, there is a clear recognition that meeting the ODA commitments and injecting significantly more financial aid and assistance to developing and vulnerable countries has never been more necessary. The UNSG has called for a “large-scale, coordinated and comprehensive multilateral response amounting to at least 10 per cent of global GDP”.¹⁷⁷ In the wake of COVID-19, he has also highlighted the urgent need of “reversing the

¹⁶⁷ UN, *Debt and COVID-19: A Global Response in Solidarity*, 17 April 2020, available at https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_debt_relief_and_covid_april_2020.pdf (retrieved on 05/05/2020), p.5.

¹⁶⁸ Ibid, p.6.

¹⁶⁹ ILO, *COVID-19 Causes Devastating Losses in Working Hours and Employment*, 7 April 2020, available at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_740893/lang--en/index.htm (retrieved on 05/05/2020).

¹⁷⁰ UN, *Shared Responsibility, Global Solidarity*, p.1.

¹⁷¹ Joseph Stiglitz, *World Must Combat Looming Debt Meltdown in Developing Countries*, 7 April 2020, available at <https://www.theguardian.com/business/2020/apr/07/world-must-combat-looming-debt-meltdown-in-developing-countries-covid-19> (retrieved on 05/05/2020).

¹⁷² UN, *Shared Responsibility, Global Solidarity*, p.8.

¹⁷³ Ibid. p.14.

¹⁷⁴ UN, *Debt and COVID-19*, p.6.

¹⁷⁵ Ibid, p.4.

¹⁷⁶ OHCHR, *UN Rights Expert Urges Governments to Save Lives By Lifting All Economic Sanctions Amid COVID-19 Pandemic*, 3 April 2020, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25769&LangID=E> (retrieved on 05/05/2020); OHCHR, *US Must Lift Its Cuba Embargo To Save Lives Amid COVID-19 Crisis, Say UN Experts*, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25848&LangID=E> (retrieved on 05/05/2020); Obiora Okafor, *Solidarity Key to Post COVID-19 Response*, 28 April 2020, available at <https://www.openglobalrights.org/solidarity-key-to-post-covid-19-response/?lang=English> (retrieved on 05/05/2020).

¹⁷⁷ UN, *Shared Responsibility, Global Solidarity*, p.1.

backsliding we are seeing in the commitments enshrined in the [AAAA], including the decline in [ODA], especially to [LDCs], and the growing debt distress of low-income and vulnerable countries”.¹⁷⁸

There has never been a more urgent moment for international solidarity and the duty of international cooperation to be operationalized. As the Independent Expert on International Solidarity has pointed out, coming out of the pandemic and the brutal economic crisis that will linger on for the foreseeable future is impossible without operationalizing the RtD.¹⁷⁹

In the context of this chapter, this will require financing for development through aid and assistance as MOI to be ramped up at least to the ODA commitments made by DAC countries, and in the short term, much beyond. This must, however, happen not with the business as usual approach of charity or generosity, but through the normative lens of the duty to cooperate inherent in the RtD. The objective of financing for development through international aid and assistance must be realizing the RtD of the recipients and not promotion of economic interests of the donors. Such aid and assistance, when given, must respect the right of recipients to participate in, contribute to, and enjoy development as defined by them. Respect for this troika means that donors must align their aid and assistance with development priorities, policies, and local systems of the right-holders, and ensure that aid is not tied with conditionalities that infringe on the RtD of the recipients. During and in the aftermath of COVID-19, such aid must certainly not be in the form of loans that are debt-augmenting for already fragile countries on the verge of unravelling.

One might, however, question whether merely insisting on the adoption of the RtD normative framework for MOI, in the absence of any enforcement mechanism, will lead to its actual operationalization and better realization of the SDGs. The fact of the matter as we have seen in the analysis above is that, in the absence of such a normative framework, there are zero prospects for realization of the SDGs. But more importantly, the critique ignores that the entire universal human rights system operates on the principle of naming and shaming.¹⁸⁰ It is high time that mechanisms are adopted beyond the self-regulation-based evaluation of aid and assistance practices conducted by the OECD of its own DAC members. Such a mechanism would identify bad practices of donor States through research-based empirical studies and produce reports focusing specifically on “obstacles to development” caused thereby.¹⁸¹ This predominant focus on obstacles would be a significant value addition over existing human rights mechanisms since it would, for the first time, permit analysis of financing for development through aid and assistance from the normative lens of the RtD and the duty of international cooperation. The mechanism would need to be independent and impartial and have the appropriate institutional mandate, ideally from the UN human rights system, for it to carry weight. Current OECD mechanisms request recalcitrant countries for compliance because aid is seen as a charity; new mechanisms would admonish for non-compliance because aid carries duties. The zero draft of the proposed legally binding instrument on the RtD, negotiations on which are set to commence later in 2020, incorporates mechanisms conceived of

¹⁷⁸ UN, *FSDR 2020*, p.iii.

¹⁷⁹ Obiora Okafor, *Solidarity Key to Post COVID-19 Response*.

¹⁸⁰ For a detailed analysis, see: James Franklin, “Human Rights Naming and Shaming: International and Domestic Processes” in Friman H.R. (ed.) *The Politics of Leverage in International Relations*, Palgrave Studies in International Relations Series. Palgrave Macmillan, London, 2015, pp.43-60.

¹⁸¹ A/RES/41/128, articles 3(3) and 6(3).

on similar lines.¹⁸² As Jagdish Bhagwati reminds us, “God gave us not just teeth but also a tongue. A good tongue lashing today [...], can be very effective”.¹⁸³

In his urgent call for action in response to the COVID-19 pandemic, the UNSG lamented that “had we been further advanced in meeting the SDGs and the Paris Agreement on Climate Change, we could better face this challenge - with stronger health systems, fewer people living in extreme poverty, less gender inequality, a healthier natural environment, and more resilient societies”.¹⁸⁴ Unfortunately, far from heeding to appeals for course correction and enhancing financing for development, multilateral institutions such as the World Health Organization find themselves throttled for funds at a time when they need it the most,¹⁸⁵ and the world seems braced for more economic turmoil with reports of newer unilateral sanctions being threatened by the world’s two largest superpowers.¹⁸⁶ The inseparable sibling of good governance, the rule of law, has been replaced by lawless whims. Perhaps, it is time for some normativity.

¹⁸² UN, “Draft Convention on the Right to Development”, draft articles 24 and 26.

¹⁸³ Jagdish Bhagwati, “Afterword: The Question of Linkages”, *American Journal of International Law*, 96:1 (2002), pp.126-134, at p.132.

¹⁸⁴ UN, *Shared Responsibility, Global Solidarity*, p.2.

¹⁸⁵ The Guardian, *Trump Halts World Health Organization Funding Over Coronavirus 'Failure'*, 14 April 2020, available at <https://www.theguardian.com/world/2020/apr/14/coronavirus-trump-halts-funding-to-world-health-organization> (retrieved on 05/05/2020)

¹⁸⁶ Jeff Mason, Matt Spetalnick, Humeyra Pamuk, *Trump Threatens New Tariffs On China In Retaliation For Coronavirus*, 30 April 2020, available at <https://www.reuters.com/article/us-health-coronavirus-usa-china/trump-threatens-new-tariffs-on-china-in-retaliation-for-coronavirus-idUSKBN22C3DS> (retrieved on 05/05/2020); NewsHub/7 News, *Coronavirus: China Threatens Economic Sanctions on Countries Leading Inquiry Into COVID-19 Origins*, available at <https://www.newshub.co.nz/home/world/2020/05/coronavirus-china-threatens-economic-sanctions-on-countries-leading-inquiry-into-covid-19-origins.html>; Richard McGregor, *In A Testy Post-Covid-19 World, Chinese Sanctions of Australian Goods May Be Closer Than Ever*, available at <https://www.theguardian.com/commentisfree/2020/apr/27/in-a-testy-post-covid-19-world-chinese-sanctions-of-australian-goods-may-be-closer-than-ever> (retrieved on 05/05/2020).