The 10th session of the Expert Mechanism on the Right to Development

Item 5 of the Provisional Agenda
Consideration of thematic studies
Palais des Nations, Room XXI, Geneva

Right to development in international cooperation

Monday 28 October 2024, 16:30 PM to 18:00 PM

Introductory remarks
Presented by Mihir Kanade

Your Excellencies,
Members of the Expert Mechanism,
Dear Delegates,

It is my honour to present the draft of the thematic study titled "*Operationalizing the Right to Development in International Development Cooperation"* conducted by me on behalf of the Expert Mechanism. This thematic study explores how the normative framework of the right to development can be operationalized in the different forms of bilateral and trilateral development cooperation practices to ensure their effectiveness. It identifies challenges and best practices across North-South, South-South and Triangular cooperation, and elaborates principles to enhance their effectiveness by mainstreaming the right to development.

This study has benefitted from responses to questionnaires and direct consultations with numerous stakeholders, including development cooperation agencies. Also greatly beneficial were in-person meetings with the Secretariats of the United Nations Conference on Trade and Development, the Organization for Economic Cooperation and Development, the United Nations Office for South-South Cooperation, the Global Partnership for Effective Development Cooperation, the Total Official Support for Sustainable Development, and the South Centre. Additionally, we held a panel discussion on this topic earlier this year at our 9th session held in New York. Another panel discussion, looking to the future of development cooperation, will take place during this session on Wednesday, 30 October, under agenda item 5.a.vi, and will feed into the finalization of this study.

The study begins by contextualizing the need for and the importance of development cooperation in realizing both human rights and sustainable development. The pandemic, climate change, and conflicts have further derailed the 2030 Agenda for sustainable development, with around half of the 140 SDG targets now off-track in 2024; 18% of these show stagnation and 17% regression below 2015 levels. Decades of progress on poverty and hunger have stalled or even reversed, with 49 out of the 62 means of implementation targets off-track, including 10 regressing and 3 stagnating. Developing countries face an annual $4 trillion financing gap for SDGs, while global foreign direct investment fell to $1.33 trillion in 2023, marking a 2% decline from 2022. This shortfall particularly impacts low-income countries, with 60% already in or at risk of debt distress.

The Sustainable Development Goals Report 2024 as well as the Financing for Sustainable Development Report 2024, paint a bleak picture of international cooperation. On the one hand, they underscore that global partnerships and enhanced cooperation are critical, especially for

least-developed and vulnerable countries. On the other hand, they also raise serious concerns about the adequacy and quality of existing development cooperation and call for a renewed focus on ensuring the effectiveness of cooperation practices.

The study highlights that development cooperation is a binding legal obligation on States under international law, which must be discharged by them individually and jointly. This duty to cooperate is rooted in the Charter of the United Nations, the 1970 Declaration on Friendly Relations, and human rights instruments including the UDHR, the Covenants, and the 1986 Declaration on the Right to Development. International Law, of course, does not prescribe one particular means of discharging this duty. States can, and have, prioritized some forms of cooperation over others. For instance, members of the Development Assistance Committee of the OECD engage in cooperation primarily through Official Development Assistance, whereas developing countries often cooperate with each other through knowledge-sharing, technical expertise, capacity building or the like. When States do engage in international cooperation through their chosen means, international law requires that they do so in a manner that does not undermine the right to development but rather promotes it. Ineffective cooperation can be counterproductive; it can be harmful to the right to development of individuals and peoples in cooperation receiving-countries but can also amount to a violation of the duty to cooperate. The study then discusses the issue of which practices may amount to a breach of the duty to cooperate. It acknowledges that precisely determining a breach of the obligation to cooperate, and therefore, a violation of the right to development, requires a case-by-case analysis. Nevertheless, the study spells out key normative principles of the right to development in the context of development cooperation that can enable such an analysis.

These principles emphasize that development is a human right and must be mainstreamed as such in development cooperation. Rights-holders, that is individuals and peoples, must determine their own development priorities, and cooperation practices must be aligned with them. The study also outlines the general and specific duties of cooperation receiving and cooperation providing States recognized in international law. For instance, international law recognizes the duty of States to seek international cooperation when it cannot fulfil its obligations alone, but what is sought must be based on and aligned with national development priorities identified with the participation and contribution of the rights-holders. Similarly, cooperation providing countries also have specific obligations, including the duty not to impose their own development priorities on recipient countries or tie aid, which defeats the objective of country ownership.

The study then points out that countries have in fact agreed upon a set of principles to ensure effectiveness of development cooperation, although there are some important differences in how effectiveness is viewed in South-South and Triangular cooperation, as against those agreed upon in North-South cooperation. For the sake of managing time, I won't be able to get into the details of these differences in my oral presentation today, but these are discussed int eh draft study. Broadly, North-South cooperation mostly gravitates around the principles enshrined in the Paris Declaration on Aid Effectiveness, 2005, which is also the soft law standard followed by the OECD, and in the Busan Principles for Effective Development Cooperation of 2011 as subsequently solidified in further efforts.

South-South and Triangular Cooperation are based on specific set of principles outlined in the Nairobi outcome document of the High-level United Nations Conference on South-South Cooperation of 2009 and reaffirmed in 2019 at Buenos Aires in what we refer to as BAPA+40. There are some key differences with North-South cooperation. South-South cooperation is much more horizontal in nature – partnership between equals – and is overwhelmingly demand driven. That is not the case necessarily in North South cooperation, where DAC members

regularly develop partner country plans which then determine the sector and type of support they will provide. South-South and triangular cooperation does not permit conditionalities, whereas North-South can be, and is, often conditional as well as tied.

There are important challenges to the effectiveness of all these forms of cooperation, which the study then highlights. It reveals that lack of country ownership in development cooperation and misalignment of the provided cooperation with national priorities of recipients is a primary reason for ineffectiveness, especially of North-South Cooperation. Because South-South and triangular cooperation is initiated always at the request of the recipient partner, misalignment is generally not an issue. The study also explores other challenge areas such as focusing on results, inclusive partnerships, inadequacy of financing, additionality, conditionality, impact assessments, and transparency and accountability. Importantly, across all these challenge areas, the study also highlights some good practices to demonstrate how States and institutional actors such as the Secretariats of the OECD, the Global Partnership for Effective Development Cooperation, UNCTAD, or the UN Office for South-South Cooperation, have attempted to overcome these challenges. It also recommends improvements to further support these good practices.

To conclude, the study shows that there are clear differences between the principles of effectiveness in North-South Cooperation, and South-South and Triangular Cooperation, especially on conditionality. The operational principles of South-South and Triangular Cooperation, and the normative principles of the right to development are fully complementary and mutually reinforcing. However, this synergy has more to do with the commonality in principles rather than resulting from a conscious act of mainstreaming the normative framework of the right to development in South-South and triangular cooperation activities. The Paris Principles, and more so the Busan Principles, are also broadly in sync with the normative principles of the right to development, with the caveat that conditionality, depending on its nature, can result in undermining the right to development.

Despite these principles and the availability of tools, the effectiveness of development cooperation is under challenge. The fact that the effectiveness principles are not mainstreamed across all stages of cooperation practices can be explained by the lack of operationalizing the right to development in a systematic and conscious manner. Operationalizing the right to development at all stages of development cooperation practices, based on the principles outlined in Section D of the study, can help ensure effectiveness by purposefully providing them with a human person and people-centred approach. Operationalizing the right to development enables a conscious effort at "humanizing" cooperation by framing its objective, that is, development, as a right of all human beings and peoples, and as an enabler of all other human rights, and by framing development cooperation as a duty of States towards realizing the right to development.

The study highlights that moving forward, development cooperation requires a fundamental shift in mindset from the current business-as-usual approach where cooperation is provided either as charity or good conduct based on solidarity. Countries need to internalize the duty aspect of cooperation in all their practices and this means instituting systems at all stages of the cooperation process to ensure that the principles outlined in this study are followed.

The study, of course, is still in draft stage. It should be treated as a living document. All critiques and all suggestions from all quarters that will help improve the text are very welcome. We have shared the draft also with institutional actors who were previously consulted. The permitted word limit for these studies may not allow inclusion of all comments in the final version, but we will try our best.