

Encyclopedia entry – Official Development Assistance (ODA)

Dr Siobhán Airey

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1. Introduction:

Official Development Assistance (ODA, also known as ‘development aid’) is a concept that holds unique potency within law and development because of its chameleon-like ability to influence and connect diverse yet central debates and issues on the purpose, nature and governance of development. Though strictly speaking, ODA refers to a particular kind of concessional development finance, debates within ODA range from the technical (e.g. what constitutes aid for trade, conditionality, or technical assistance), to the programmatic (e.g. what constitutes effective aid and how can ODA best ‘blend’ with other kinds of development finance), to the politically sensitive (e.g. how to finance the UN Sustainable Development Goals (SDGs), support international responses to pandemics such as COVID-19, and respond to the many people seeking asylum or migrating to the EU via flimsy boats across a treacherous Mediterranean Sea). This entry approaches ODA as a powerful instrument through which the purpose of development, the role and responsibilities of different actors (in particular, Northern and Southern states) therein, and the governance of development (who makes decisions and how these are implemented) can be revealed in ways that reveal the hidden politics and role of law in that project. The following sections examine the contemporary definition of ODA, locating it within historical debates on North-South financial flows; discuss two areas of contention - the tying of ODA and the attachment by donors of conditions on ODA, and review the current approach to the assessment of ODA flows and its effectiveness. The aim here is to demonstrate the partiality of the current approach to ODA, and its contemporary significance as a key, if overlooked, instrument of international governance via development finance.

2. The official definition of ODA and international targets

ODA has been officially defined and is monitored by the Organisation for Economic Co-operation and Development’s (OECD) Development Assistance Committee (DAC), making the OECD the predominant international authority on donor ODA policy, as well as the main source of information on the amounts, sources and types of ODA given. The purpose, official and concessional aspects of

this kind of finance are key to ODA's definition. ODA is "those flows to countries and territories on the DAC list of ODA recipients and to multilateral institutions which are (i) provided by official agencies, including state and local governments, or by their executive agencies; and (ii) each transaction of which: a) is administered with the promotion of the economic development and welfare of developing countries as its main objective; and b) is concessional in character." At the time of writing, all DAC members (including EU institutions), along with 20 non-DAC countries, 46 multilateral organisations and 26 philanthropic (private) donors report data amenable to DAC ODA analysis. In some cases, donors have adopted this definition into national legislative frameworks (e.g. Canada), with many more directly referring to the OECD DAC definition in their domestic ODA policy frameworks. In 1970, the UN General Assembly adopted a Resolution that exhorted economically advanced countries to progressively increase their ODA to developing countries to reach a minimum net amount of 0.7% of their gross national product by the middle of that decade. By 2015, just six countries (United Kingdom, Netherlands, Denmark, Luxembourg, Norway and Sweden) had met this target, with the OECD average never yet exceeding 0.4%.

The OECD's contemporary distinction and separate treatment of ODA from other North-South financial flows belies historic debates since the early 1960s to the mid-1970s on how development should be financed within the UN, a then-fledgling UNCTAD and the OECD. Within the UN, the designation of 1960s as an international "Decade for Development" began with the controversial Resolution 1522 (XV) of 15th December 1960 that specified a target for the increase of the flow of "international assistance and capital for development" to "approximately 1 per cent of the combined national incomes of the economically advanced countries." Between the first two UNCTAD international conferences in 1964 and 1968, the First Ministerial Meeting of the Group of 77 produced the Charter of Algiers (1967) that included several demands and proposals on financing development that remain relevant to debates on ODA today. For example, the 1% target was to be met by 1968, all aid was to be untied, and the then-prominent support of a private sector-led model of development by donors and lenders was condemned. The Charter's demands targeted both public *and* private international capital flows, illustrating that the G77 clearly understood ODA as structurally embedded within a wider, problematic field of international finance for development for which effective remedies would need to go far beyond the mere reaching of a target on a level of resource transfer as aid from North to South.

3. The tying of aid, conditionality and technical assistance

Untied ODA refers to loans or grants which are freely and fully available to finance procurement from substantially all aid recipient countries and from OECD countries. Tied aid refers to aid

provided on the condition that the aid recipient use the lender's own resources, for example where a grant or a soft loan for a capital project is made with the condition that equipment or services are purchased from the donor country only. Tied aid occurs most frequently in a bilateral context, and poses obvious, often hidden costs and constraints on procurement options for aid-recipient states that can have longer-term direct and indirect negative development impacts. Though evidence to support donors' perceptions that tied aid promotes trade and economic opportunity is scarce, there continues to be marked reluctance amongst certain influential donors to untie their aid.

The tying of ODA remains permissible within the current OECD DAC definition of ODA, despite a DAC Recommendation to untie aid to Least Developed Countries (LDCs). Adopted in 2001 and revised in 2014 and in 2018, this Recommendation states that the "intentions" of DAC Members are to "untie their ODA to the LDCs and HIPC [Highly Indebted Poor Countries] to the greatest extent possible." The scope of this hortatory Recommendation is further limited by several restrictions, including a derogation clause that permits DAC Members to "take measures inconsistent with the terms of this Recommendation" in exceptional circumstances "where they believe it to be justified on the basis of overriding, non-trade related, development interests" (OECD 2020). No clarification is offered on what might reach this exceptional circumstance threshold and there no oversight mechanism is outlined for this clause.

Though La Chimia (2013) notes that the Recommendation has had deep resonance within the international community, if one traces the international legal instruments referred to in the Recommendation, one can see that it is really a palimpsest on liberalised public procurement markets. Though the Recommendation's stated aim is to capture the *benefits* of open procurement markets for LDCs HIPCs, OLICs and IDA-only countries, the legal and other governance instruments identified in support of this are focused solely on the *promotion* of an unfettered markets-centred approach to the public procurement policies of aid-recipient states. Notably, any reference to national, regional or international human rights standards in the approach to the marketization of public goods and services is absent. Similarly, recognition that a public procurement regime may prioritise distributional principles and other social objectives over the promotion of business competition and markets (Calleja 2015) is also lacking. Carbone's research on the politics of untying aid includes a revealing quote from a DAC official that "the main priority for the DAC is effective competition and getting the best price for aid tenders: contracts must be awarded to the cheapest bidder, regardless of its long-term development impact" (Carbone 2014). Thus, at the heart of this DAC Recommendation, lies an inherent tension between a poverty reduction approach to public procurement and a neoliberal, markets-maximisation one, each with a different view of the donor, the aid-recipient state, and of law and regulation.

Conditionality is the requirement on aid-recipient states to implement certain prescribed policy and legislative reforms as a condition of receiving aid. Initially introduced by the IMF as a requirement of countries to reduce their fiscal and current account deficits in order to receive a loan, since the 1980s, this practice has also been adopted by the World Bank via the promotion of an “enabling environment” by aid-recipient states via the promotion of privatisation and public sector reforms. This practice has been de facto adopted by some donors, who require aid recipient states to be “on track” with IMF and/or World Bank Programmes as a condition of receiving their ODA. Tan (2011) conceptualises the application of conditionality as a *doctrine*, in order to distinguish between the application of conditionality as due diligence in order to minimise the risk of debt default or a departure from agreed financing objectives, and the far greater scope and much more intrusive exercise designed to discipline the recipient state via the pursuit of domestic legal, regulatory and policy reforms established by the financier.

In recent years, the promotion of an enabling environment for private sector development has emerged as a prominent policy priority within donors’ ODA (see entry on Enabling International Environment). This term more narrowly refers to policy, legal, institutional, and regulatory conditions that govern business activities, but can include other factors such as labour supply and infrastructure, along with macro institutional factors that affect business such as trade facilitation and investment rules. An estimated US\$9.9 billion in 2015 was spent on this area via loans, equity and grants, with “technical cooperation” used to deliver 17% of enabling environment ODA, a larger proportion than average for ODA activities (Development Initiatives, 2018). While in-depth research on the relationship between conditionality practices, donor policy objectives on the promotion of an enabling environment and aid-recipient country need remains to be undertaken, what is important here is the recognition of the unique role of ODA as an instrument of both financial support and leverage over aid-recipient state domestic law, policy and institutions.

4. Assessing the transparency and effectiveness of ODA – measurement by numbers

How ODA is spent, and how effective it is in promoting development, has attracted much popular and scholarly attention. On the former, two dedicated initiatives on the transparency of donor ODA exist. The *International Aid Transparency Initiative* (IATI) was launched by donors at the Third High Level Forum on Aid Effectiveness in Accra, Ghana in 2008. This is a list of rules and guidance (the IATI ‘Standard’) for donors and other development actors on a common approach to the content and format of data on the organisation’s annual development spend and the activities funded. A related initiative is the NGO-led *Publish What You Fund* Index, first released in 2011. It aims at capturing aid

transparency, a commitment reiterated by donors over several international conferences in the early 2000s. 47 donors are now included in the Index.

On the effectiveness of aid, two initiatives exist, with both approaching 'effectiveness' mainly from a technical, programmatic (better aid management practices) over a substantive (whether aid reduces poverty and inequality) standpoint. By far, the more prominent is the international *Aid Effectiveness* agenda, consisting of five core principles developed over four "High Level" international events held in Rome (2003), Paris (2005), Accra (2008) and Busan (2011). The principles include ownership (where developing countries set their own strategies for poverty reduction, improve their institutions and tackle corruption); alignment (where donor countries align behind these objectives and use local systems); harmonisation (where donor countries coordinate, simplify procedures and share information to avoid duplication), results (where developing countries and donors focus on development results and aim to measure these) and mutual accountability (where donors and developing countries are accountable for development results). Arising from the Busan (2011) conference, the *Global Partnership for Effective Development Co-operation* evolved, a multi-stakeholder initiative that aims to track progress with implementing four of the principles, via ten indicators.

Other initiatives include the *Quality of ODA* (QuODA) by the think-tank Centre for Global Development (CGD) that analyses donors' performance on 31 indicators of aid 'quality' to which donors have made commitments. These include maximising efficiency, fostering institutions, reducing burden and transparency and learning. Related to this is the *Commitment to Development Index* by CGD and the Brookings Institution. This ranks 27 bilateral donors on the extent to which their policies (including aid, finance, investment, technology) benefit people in poorer countries.

From a law and development perspective, the predominant reliance on numbers, data, indicators and indexes to capture, analyse and monitor accountability for ODA, and its impacts, has three deeper governance effects. First, and most importantly, by operating to generic data gathering and analytical templates that rely mainly on numerical data, these principles and guidelines reinforce a top-down, donor-led approach to ODA decision-making and programme implementation, away from marginalised people and communities on whose behalf ODA is rhetorically rationalised. Similarly, these numbers-heavy monitoring mechanisms hide from view and implicitly legitimise the differentiated agency accorded to donors over that of aid-recipient states that is already institutionalised within the ODA relationship. Secondly, by foregrounding numerical assessments of ODA financial flows, attention is directed away from the political and structural context of wider capital and resource flows between North and South, and the legal and governance institutions that

legitimise them. Thirdly, the framing of aid and development inherent in these initiatives compounds the historical aporia intrinsic to the OECD's definition of ODA, and its approach to donor policies on ODA via its Recommendations and other good practice guidelines. The enduring effects of colonialism and imperialism to contemporary relations between the global North and South remain hidden. As we have seen earlier in this entry, this ahistorical, narrowly conceived approach to ODA contrasts strongly with the position taken by G77 states in Charter of Algiers.

5. ODA, the move to private finance and the UNSDGs

These issues continue to emerge in recent developments on ODA within the OECD. The adoption of a revised definition of ODA introduced in 2018 that now records the “grant equivalent” of concessional loans as “ODA flows” has introduced several anomalies that remain yet to be addressed (Scott 2019). The promotion of a new concept of Total Official Support for Sustainable Development (TOSSD), framed as a complement to ODA by the DAC, reflects a deeper policy shift within the DAC whereby donor ODA may increasingly engage with private financial sources and actors on investments in aid-recipient states, without recourse to the direct involvement by the latter.

In relation to financing the UN SDGs, while ODA remains a key, if small, source of development finance, arguably its significance now lies far more in its flexibility to engage with private actors and financing instruments through a “Blended Finance” modality. This flexibility, allied to the centrality of ODA’s role to the pursuit of institutional reform in aid-recipient states along a markets-led development model, makes ODA a powerful, if hidden, instrument of donor-led global governance.

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