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"Foreign Aid Reciprocity Agreements: Committing Developing Countries to Improve the Effectiveness of Aid When They Become Donors"

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ABSTRACT

Existing best practices for aid delivery are well known and largely uncontroversial but often neglected by bilateral and multilateral aid agencies because of domestic political considerations and bureaucratic resistance. Developing countries should unilaterally ratify an agreement committing them, in the future, after they have experienced sustained and robust economic, social, and political development, to establish their own foreign aid programs that follow existing best practices for aid delivery. Such foreign aid reciprocity agreements would have numerous benefits, including: being an international tool to signal a developing country's resolve to reform and a domestic tool to pressure corrupt public officials to improve; enabling developing countries to take a leadership position in international development discourses; putting pressure on developed countries to implement best practices; and encouraging other developing countries to support and eventually adopt aid reciprocity agreements, which would lead to an increase in the amount of aid in the future. Furthermore, the idea of unilateral reciprocity agreements could potentially be expanded to areas of international interaction beyond foreign aid such as finance, trade, security, technology transfer, migration, and environmental policies.

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INTRODUCTION

> In the order of nature we cannot render benefits to those from whom we receive them, or only seldom. But the benefit we receive must be rendered again, line for line, deed for deed, cent for cent, to somebody.
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> —Ralph Waldo Emerson[1]

Numerous existing best practices for aid delivery are well known and uncontroversial—e.g., coordinating the design and implementation of aid projects among different bilateral aid agencies so as to eliminate overlap and waste, and to alleviate the need for developing country public officials to submit countless project proposals and status reports.[2] Yet such practical measures are often not implemented by bilateral and multilateral agencies because of domestic political resistance and/or bureaucratic sclerosis.

If developed countries are unable to routinely implement such sensible, and largely uncontroversial, policies on how aid is delivered, then developing countries need to take over the leadership of advocating for such practices. Developing countries can do so through unilaterally establishing foreign aid reciprocity agreements.[3] Such agreements would commit a developing country, in the future, after it has experienced sustained and robust economic, social, and political development, to establish its own foreign aid programs that follow existing best practices for aid delivery.

Even if aid agencies were not so constrained in their ability to deliver aid through best practices, aid reciprocity agreements would still have a beneficial function for developing countries in expressing their gratitude for the aid they currently receive by pledging to assist others in the future, and such forward-thinking reciprocity would do more good than returning aid funds decades later to the agencies that provided them. The stark reality is that both developing and developed countries widely agree on a range of best practices in aid delivery that would improve the impact of foreign aid—i.e., help countless individuals struggle less. Thus, foreign aid reciprocity agreements have a sense of urgency that a simple policy of helping others in the future because someone helped you lacks. The unilateral vow by developing countries to implement best practices in the

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[1] Ralph Waldo Emerson, *Compensation*, *in* ESSAYS: FIRST SERIES (1841). Before Emerson's articulation of the concept, Benjamin Franklin famously articulated the same idea in an April 22, 1784 letter to Benjamin Webb. Some interpret the text of Menander's play *Dyskolos* from 317 BC to suggest the idea. *See* MENANDER: THE PLAYS AND FRAGMENTS (Maurice Balme trans., Oxford 2001).

[2] It was not uncommon "to have half a dozen different public structures each funded by a different donor and each offering farmers extension services, with little attention to coordinating their technical advice or linking it back to the ministry's own extension service." NICOLAS VAN DE WALLE, AFRICAN ECONOMIES AND THE POLITICS OF PERMANENT CRISIS, 1979–1999, 208 (2001).

[3] The terms "foreign aid reciprocity agreement," "aid reciprocity agreement," and "reciprocity agreement" will be used interchangeably throughout the manuscript.

future would put added pressure on developed countries to improve their aid policies now. Such pressure is important in order to shift the perspective of aid delivery away from the numerous agendas of developed country aid agencies—e.g., national security,[4] maximizing exports,[5] and political stability in developing countries instead of democratic reform[6]—towards the needs and concerns of developing countries.[7]

One example is sufficient to quickly contextualize the suboptimal nature of ignoring best practices in aid delivery and also the extent of the disregard. The 2017 White House budget proposal earmarks "$10 billion or so in foreign military aid the Pentagon administers every year, euphemistically referred to as Building Partner Capacity" (BPC).[8] Worryingly, what is absent from "that massive budget is a comprehensive country-level breakdown."[9] Thus, it is "impossible to calculate the cost of individual aid programs, much less to determine whether the BPC programs are effective."[10] This is cause for concern "because BPC sometimes causes more problems than it solves."[11] Even the Congressional Research Service was unable to determine the efficiency of BPC programs because "of an absence of accounting within the Pentagon."[12] Furthermore, the Congressional Research Service suggested that "'the assumption that building foreign security forces will have tangible U.S. national security benefits remains a relatively untested proposition.'"[13] All we essentially know is that "the Pentagon now has at least 70 different authorities under which it provides BPC."[14] Finally, the DOJ foreign aid is in addition to the State Department's provisions of U.S. military aid.[15]

Further, the centrality of ideas has become more apparent. While Lant Pritchett and others have shown how developed and developing countries are actually diverging both

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[4] CURT TARNOFF & MARIAN L. LAWSON, CONG. RESEARCH SERV., R40213, FOREIGN AID: AN INTRODUCTION TO U.S. PROGRAMS AND POLICY 3–4 (2016), *available at* https://www.fas.org/sgp/crs/row/R40213.pdf.
[5] *Id*. at 4.
[6] NICOLAS VAN DE WALLE, AFRICAN ECONOMIES AND THE POLITICS OF PERMANENT CRISIS, 1979–1999, 230 (2001).
[7] The U.S. federal government is explicit in these varied goals, even publicizing such strategic considerations by dividing the composition of aid into the following categories: military, non-military security, political/strategic, bilateral development, multilateral development, and humanitarian. See TARNOFF, *supra* note 4, at 6.
[8] Lora Lumpe & Jeremy Ravinsky, *The Pentagon's Secret Foreign Aid Budget*, POLITICO, Mar. 8, 2016, *available at* http://www.politico.com/agenda/story/2016/03/the-pentagons-foreign-aid-budget-needs-oversight-000060.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.
[14] *Id*.
[15] *Id*.

proportionately and absolutely in per capita income,[16] Angus Deaton[17] and Charles Kenny[18] have demonstrated that developing countries have made substantial progress in longevity and health outcomes.[19] According to Kenny, "the forces that have driven significant improvements in quality of life are technological change and the progress of ideas, not income."[20] Thus, generously donating funds to developing countries is not sufficient. More emphasis needs to be placed on how to more effectively put that money to use—i.e., we need novel ideas, such as aid reciprocity agreements—and how to convince aid agencies to implement better ideas (known best practices) in aid delivery.

Foreign aid reciprocity agreements would not be traditional treaties; they would not consist of two or more nations reciprocating with each other simultaneously. Rather, the developing country announcing an aid reciprocity agreement would reciprocate in the distant future by paying the assistance forward to other developing countries still in need.

Structural Differences Between Aid Reciprocity Agreements and Existing International Instruments

The international policy instruments that are most relevant to, yet distinct entities from, aid reciprocity agreements are in essence foreign aid, treaties, and naming-and-shaming status reports evaluating a country's behavior in certain regards. While reciprocity agreements share some features with such instruments, what makes the proposed model structurally unique is its focus on enabling developing countries to promote aid effectiveness by promising to become effective aid donors in the future.

First, the links between traditional foreign aid and aid reciprocity agreements are quite obvious. Reciprocity agreements are pledges to give foreign aid, yet with an original twist—the signing country agrees to give aid in a particular manner by implementing the best practices agreed upon in the field.

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[16] Lant Pritchett, *Divergence, Big Time*, J. ECON. PERSP., Summer 1997, at 3, 3.

[17] *See generally* ANGUS DEATON, THE GREAT ESCAPE: HEALTH, WEALTH, AND THE ORIGINS OF INEQUALITY (2015).

[18] *See generally* CHARLES KENNY, GETTING BETTER: WHY GLOBAL DEVELOPMENT IS SUCCEEDING—AND HOW WE CAN IMPROVE THE WORLD EVEN MORE (2011).

[19] Some credit this line of inquiry to Samuel Preston's work on how longevity is increasing significantly at a given income level. *See generally* Samuel H. Preston, *The Changing Relation Between Mortality and Level of Economic Development*, 29 POPULATION STUDIES 231 (1975).

[20] KENNY, *supra* note 18, at 13. Given the close relationship between institutions, ideas, policies, and values, I believe the characterization of aid reciprocity agreements is in line with Kenny's analysis, though I appreciate others could disagree. *Id*. at 151.

Second, almost axiomatically, treaties are negotiated and concluded on the basis of mutual benefit, or at least presumed or apparent benefit for all sides.[21] There is little reason for two international actors to spend considerable time and effort negotiating an international treaty if they do not both believe it is in the best interests of their states. Of course, a state's belief that it will benefit from a particular treaty can be mistaken.[22] Also, a powerful country can pressure a small or poor country, to a lesser or greater degree, into assenting to a treaty by threatening economic sanctions, political isolation, or military harms instead of promising attractive mutual benefits clearly evident to both parties.[23]

The definition of benefit for a state could, naturally, take numerous forms. For example, a state could enter a treaty seeking a specific, tangible benefit—e.g., financial concessions within a prescribed timeframe. Alternatively, a country could sign a treaty with the goal of general benefits accruing not just to itself but to others and over an uncertain timeline—e.g., treaties banning the use of certain weapons would be optimal

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[21] A treaty is "an agreement between two or more states or international organizations that is intended to be legally binding and is governed by international law." Restatement (Third) of the Foreign Relations Law § 301(1) (Am. Law Inst. 1987).

[22] For example:

> Russia's annexation of Crimea and covert invasion of eastern Ukraine places an uncomfortable focus on the worth of the security assurances pledged to Ukraine by the nuclear powers in exchange for its denuclearization. In 1994, the three depository states of the Treaty on the Nonproliferation of Nuclear Weapons (NPT)—Russia, the United States, and the United Kingdom—extended positive and negative security assurances to Ukraine. The depository states underlined their commitment to Ukraine's sovereignty and territorial integrity by signing the so-called "Budapest Memorandum."

Mariana Budjeryn, *The Breach: Ukraine's Territorial Integrity and the Budapest Memorandum*, Nuclear Proliferation International History Project, Woodrow Wilson International Center for Scholars, *available at* https://www.wilsoncenter.org/sites/default/files/Issue%20Brief%20No%203--The%20Breach--Final4.pdf.

[23] Jagdish Bhagwati states:

> [A] "selfish hegemon" such as the United States, reflecting its own lobbies' agendas, pushed for a common, coordinated policy of excessive intellectual property protection at the WTO. In short, a socially harmful policy may be imposed, under the pretext of coordination or the provision of what economists call public goods, by powerful nations in an interdependent world.

JAGDISH BHAGWATI, IN DEFENSE OF GLOBALIZATION 227 (2004).

not only for the signing parties but also for global relations writ large. These are compacts or covenants that a country might sign even though it realizes that any benefits it reaps by doing so would pale in comparison to the benefits accruing to other nations. For example, a long-term stable democratic state signing a human rights covenant is likely doing so not for its own benefit but to create a global environment where respect for human rights is the norm instead of an unfulfilled aspiration. The liberal state gives the human rights covenant its imprimatur in the hope that the practice of human rights globally becomes more than a mere talking point at international conferences.[24] Thus, even if the language of a human rights treaty does not explicitly refer to reciprocal obligations, reciprocity can still be an unstated expectation.

While expected reciprocal advantages are the norm among treaties, unilateral treaties do exist. For example, in international trade, the modern formulation of unilateral trade concessions to developing countries dates back to 1971.[25] A prominent example is the African Growth and Opportunity Act (AGOA), U.S. enacted legislation that authorizes "the president to grant duty-free and quota-free treatment to a wide range of exports from qualified sub-Saharan African countries."[26] Like trade concessions, aid reciprocity agreements are unilateral declarations; however, they are also fundamentally reciprocal, for they incorporate a pay-it-forward commitment that other unilateral agreements lack.

Third, the public pressure exerted by aid reciprocity agreements is distinct from mainstream naming-and-shaming techniques in that reciprocity agreements challenge aid donors to actually implement best practices and promote aid effectiveness through positive example. Amnesty International, Oxfam, Human Rights Watch, and other nonprofits research the failings of states and then not only publish their results but also seek to disseminate their findings as widely as possible using numerous new and established tools and techniques to do so.[27] Such identifying of wrongdoers and attempts to make the world aware of their human rights violations are meant to foment a groundswell of opprobrium against a regime or government in order to shame it into

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[24] For a critical response to the aim of human rights treaties, see Eric Posner, *The Case Against Human Rights*, GUARDIAN, Dec. 4, 2014, *available at* https://www.theguardian.com/news/2014/dec/04/-sp-case-against-human-rights. For example, Posner states: "However, in practice, international human rights law does not require western countries to change their behaviour, while (in principle) it requires massive changes in the behaviour of most non-western countries." *Id*.

[25] GATT Secretariat, *Waiver: Generalized System of Preferences*, June 25, 1971, GATT B.I.S.D. (18th Supp.), at 24 (1972).

[26] Ryan McCormick, *The African Growth and Opportunity Act: The Perils of Pursuing African Development Through U.S. Trade Law*, 41 TEX. INT'L L.J. 339, 340 (2006).

[27] *See generally* Lesley Wexler, *The International Deployment of Shame, Second-Best Responses, and Norm Entrepreneurship: The Campaign to Ban Landmines and the Landmine Ban Treaty*, 20 ARIZ. J. INT'L & COMP. L. 561 (2003).

reforming its ways.[28] In contrast, aid reciprocity agreements do not identify wrongdoers, such as particular aid agencies that embrace best practices in principle but only sporadically apply them. Unlike nonprofit reports exposing the past failures and shortcomings of states or agencies, reciprocity agreements allow developing countries to lead by example and keep constructive pressure on developed country institutions. They are a needed variant in the arsenals of institutions desiring to effect change by holding actors to account.

Foreign aid reciprocity agreements are structurally novel, blending aspects of traditional foreign aid, reciprocal and unilateral treaties, and name-and-shame advocacy instruments. In essence, a foreign aid reciprocity agreement is a formal declaration by a country receiving aid that it will pay the aid forward in accordance with best practices—a commitment to help other countries in the future after it no longer needs help itself.

Benefits of Foreign Aid Reciprocity Clauses

Developing countries pursuing aid reciprocity agreements would experience numerous benefits.[29] First, reciprocity agreements would emblematically underscore developing countries' autonomy, initiative, and responsibilities to the world. They would show each committed country's willingness to take the lead in efforts to improve international development policies. Aid reciprocity clauses would also symbolically and psychologically emphasize developing countries' obligations to the wider world—they would help governments systematically plan and routinely remember that global rights and responsibilities are two sides of the same coin.

Second, aid reciprocity agreements would have the constructive effect of putting pressure on existing developed countries to employ the same best practices that developing countries are committing to implement in the future. If, as a result of this pressure, developed countries decide to alter ineffectual foreign aid policies, such changes would potentially help countless developing countries. This dynamic is similar to how developing countries are expected to do "far more than states at similar income levels in the past" because "[s]preading the knowledge that governments *could* provide such services and that governments said they *would* provide such services may have helped foster demand that governments *should* provide those services."[30]

Such pressure possibly would ruffle some feathers yet be gentle enough to likely not cause retaliation. In fact, aid reciprocity agreements could be secretly welcomed by aid

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[28] It is difficult to gauge the effectiveness of such a policy. For example, see Edward F. Greene & Joshua L. Boehm, *The Limits of "Name-and-Shame" in International Financial Regulation*, 97 CORNELL L. REV. 1083 (2012).

[29] Admittedly, foreign aid reciprocity agreements will not come anywhere close to being a solution to poverty. The agreements are meant to modestly help developing countries and would be most effectively implemented with numerous other foreign aid and domestic reform programs.

[30] KENNY, *supra* note 18, at 146.

agencies as putting pressure on the funder of agencies—legislatures—to remove restraints on how aid is distributed. This is a genuine possibility given developed country aid agencies generally have agreed to numerous best practices in theory but have fallen short in implementing such practices.[31]

Third, aid reciprocity agreements could be a productive tool to signal to aid agencies that a developing country is serious about development. There are few policy tools that credibly convey a developing country's commitment to reform in the future. Often one of the best ways to demonstrate a country's seriousness is through unilateral policy changes implemented without pressure from external actors offering carrots or sticks.[32] For a country to aver that it will alter policy in the future instead of in the present often simply yields a justifiably skeptical response. Aid reciprocity agreements, while being future commitments, are bolder because they indirectly challenge developed countries to follow, which could agitate bilateral agencies—organizations that the developing countries rely on for assistance. While the risk of agencies cutting funding in response is low, it is not zero and hence makes aid reciprocity agreements more credible tools to signal a developing country's seriousness to improve.[33] Additionally, depending on which best practices developing countries commit to in the future, and even potentially in the present as donees, the signaling value of aid reciprocity agreements could be even further enhanced.

Fourth, developing countries could use aid reciprocity agreements as an internal tool to put pressure on those public officials who view the state as their own personal opportunity for enrichment through bribery and embezzlement, instead of conceptualizing their job as strengthening the rule of law and improving governance in order to help their own citizens. While aid reciprocity agreements are not primarily designed as a present-day anti-corruption mechanism, at least one of the major best practices that they would likely enshrine—making aid flows conditional on well implemented programs—is a significant tool for good governance, the rule of law, and anti-corruption efforts.[34] This would especially be the case if developing countries, when

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[31] *Aid Effectiveness 2005–10*, *infra* note 68.

[32] The archetypal polar opposite of such a strategy is the structural adjustment policies of the 1980s and 1990s. *See generally* Diana E. Moller, *Intervention, Coercion, or Justifiable Need? A Legal Analysis of Structural Adjustment Lending in Costa Rica*, 2 SW. J. L. & TRADE AM. 483 (1995).

[33] I do not mean to overstate the power of reciprocity agreements as international signaling tools given that there are numerous reasons an aid agency could decide to not retaliate even if it were upset over a developing country instituting an aid reciprocity agreement. For example, "[e]ven when recipients blatantly flout aid conditions, donors often hand over the money anyway, fearing that to refuse might spark an economic collapse." ROBERT GUEST, THE SHACKLED CONTINENT: POWER, CORRUPTION, AND AFRICAN LIVES 159 (2004).

[34] *See generally* Martin Skladany, *Buying Our Way Out of Corruption: Performance-Based Incentive Bonuses for Developing Country Politicians and Bureaucrats*, 12 YALE HUM. RTS. & DEV. L.J. 160 (2009).

announcing aid reciprocity agreements, also implemented internal reform measures to reduce corruption and strengthen governance.[35]

Fifth, in the long run, the implementation of aid reciprocity agreements would likely lead to more foreign aid in the future because more developing countries would commit to helping others if they themselves prosper. Admittedly, discounting such distant future aid flows to the present would lead to quite modest amounts.[36] Aid flows could also increase if the signaling aspect of aid reciprocity agreements successfully convinces existing aid agencies of a developing country's commitment to reform internally so much so that the agency increases its funding levels.[37]

The first section of this paper discusses issues relating to best practices in aid delivery. The second section examines numerous considerations regarding how to design and implement aid reciprocity agreements. The third section analyzes potential opposition to aid reciprocity agreements. The final section anticipates possible applications of the reciprocity agreement model to international interactions beyond foreign aid.

I. AID DELIVERY BEST PRACTICES

The fundamental question regarding best practices is selecting which procedural instruments and policies are optimal. As with any enterprise, disagreements will exist as to which aid delivery policies should be deemed best practices, yet while there are a few controversial candidates, there are numerous policies that most actors agree should be implemented by aid agencies. Before delving into a brief discussion of some likely candidates for best practices in aid delivery, this section will discuss whether, in the future, developing countries should follow current best practices or best practices to be determined in the future. This section will conclude with a comparison of existing aid effectiveness initiatives and foreign aid reciprocity agreements.

A. Current Best Practices vs. Future Best Practices

There is a legitimate uncertainty whether developing countries should commit to current conceptions of best practices (determined at the time the reciprocity agreement is signed) or to future conceptions of best practices (determined at the time the country committing to the reciprocity agreement becomes a donor).

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[35] *See generally* SUSAN ROSE-ACKERMAN & BONNIE J. PALIFKA, CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM (2d ed. 2016).

[36] Also, doing so would require significant guesswork in estimating such values given the uncertainty of numerous variables such as how many countries would implement aid reciprocity agreements and at what point in the future.

[37] Again, such augmented aid flows would be uncertain and likely modest in size if they materialize.

Pledging to implement current best practices in the future ensures that a developing country knows what it is agreeing to in legislation. Few governments would commit to loyally following future, unknown best practices in most policy areas. However, some would likely be sympathetic to the general principle that if a policy has been deemed the most effective, then it should be followed, providing that the policy is in harmony with the government's stances on equality, freedom, and other foundational concerns. Likewise, there is more ethical force to committing to faithfully execute future best practices, assuming our understanding of what works best improves, and again, does not conflict with fundamental governing principles. The second reason to implement current rather than future best practices is that the extent of the benefits that could accrue from aid reciprocity agreements depends on which set of current best practices the developing country commits to. In essence, the more demanding the best practices a developing country commits to, the greater the effects of the five benefits described earlier.[38]

If numerous developing countries adopt aid reciprocity agreements, it is possible that some of them will decide to commit to using current best practices in the future, while others commit to employing future best practices. Furthermore, various developing countries may enshrine different best practices regardless of whether they select to commit to present or future best practices. Such variation, while potentially not optimal, will likely not cause too many inefficiencies, especially considering that most aid agencies do not follow many best practices now.

Finally, unlike theories of economic growth that have changed on a regular basis since the Harrod-Domar model of economic growth of over 70 years ago,[39] theories as to what constitutes many, though not all, best practices in aid delivery have been much more stable over time. A substantial part of this difference is because the theory behind certain best practices in aid delivery, such as not mandating that a developing country use aid to buy supplies only from the developed country that donated the funds, is straightforward. In contrast, determining how to enable a developing country to experience sustained and robust growth involves innumerably more factors, assumptions, and contingencies. So it is hardly surprising that "economists recycle old theories into new solutions as the last consensus cure sinks under the growing weight of leaden growth performance."[40] Thus, the continuity as to what constitutes many best practices suggests that the choice between present and future best practices will be manageable.

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[38] In the abstract, without the ability to predict not-yet-discovered advancements, it appears equally likely that present or future best practices might conflict with future geopolitical or economic concerns of a newly developed country. Thus, such strategic reasoning does not help resolve the matter. Nor should it, given one of the points of committing to aid reciprocity agreements is for developing countries to enhance their selfless leadership in the world.

[39] Roy Harrod and Evsey Domar independently established essentially the same theory relating growth and saving and investment rates. *See generally* Roy Harrod, *An Essay in Dynamic Theory*, 49 ECON. J. 14 (1939), and Evsey Domar, *Capital Expansion, Rate of Growth, and Employment*, 14 ECONOMETRICA 137 (1946).

[40] KENNY, *supra* note 18, at 27.

B. Examples of Best Practices

Below I briefly mention a few examples of some widely perceived existing best practices.[41] Certain best practices, such as "standardising reporting requirements,"[42] "the need for collective lesson learning,"[43] and utilizing developing countries' finance and procurement systems,[44] will be excluded from the discussion. As will be seen in the next subsection, the best practices that would likely bring the most benefits are those that either aid agencies or developing countries have reasons to resist.

1. Coordinating Aid Delivery

Possibly the least debatable foreign aid best practice is the need to coordinate aid delivery among the dozens of aid agencies.[45] The current reality is that developing country public officials in charge of liaising with foreign aid agencies can take hundreds of meetings a year and write almost as many grant requests and project evaluations.[46] The lack of coordination among aid programs leads to duplicative and even conflicting efforts that significantly waste the time of public servants, who are in short supply to begin with. It also limits their ability to build expertise in one area because they are too thinly stretched among various discrete aid projects.

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[41] Given that the idea of aid best practices regarding aid centers on the delivery of the aid, not on what the funds will be used for, there are only so many conceivable best practices. Yet for the sake of brevity and concentrating on aid reciprocity agreements instead of which best practices are most important, nothing approaching a comprehensive list will be discussed.

[42] Adele Harmer & Deepayan Basu Ray, *Study on the Relevance and Applicability of the Paris Declaration on Aid Effectiveness in Humanitarian Assistance*, Humanitarian Policy Group, Overseas Development Institute, Mar. 2009, 1, *available at* https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/6020.pdf.

[43] *Id*.

[44] *The Paris Declaration on Aid Effectiveness: Five Principles for Smart Aid*, OECD, *available at* https://www.oecd.org/dac/effectiveness/45827300.pdf.

[45] Not only are there dozens of developed countries that have aid agencies, a country like the United States will have a dozen different actors providing aid—e.g., the U.S. Agency for International Development, the U.S. Department of Defense, the U.S. Department of State, the U.S. Department of Health and Human Services, the U.S. Department of the Treasury, the Millennium Challenge Corporation, the U.S. Department of Commerce, the Inter-American Foundation, the U.S. African Development Foundation, and depending on how one views their activities, the Peace Corps, the U.S. Trade and Development Agency, and the Overseas Private Investment Corporation. TARNOFF, *supra* note 4, at 21–24.

[46] This principle was first internationally recognized by donor nations during the First High Level Forum on Aid Effectiveness. *Rome Declaration on Harmonisation*, OECD, Feb. 2003, *available at* http://www.oecd.org/dac/effectiveness/31451637.pdf.

2. Training Local Experts Instead of Relying on Foreign Consultants

Another best practice that has been too often ignored or only partially applied is the need to train local experts. Bilateral and multilateral aid agencies spend a significant amount of foreign aid on paying consultants and employees from developed countries to advise developing country bureaucrats on how to implement aid projects. Some foreign experts are vital; however, more aid needs to flow to educating citizens from developing countries to run their own aid projects. For example, lawyers from Malawi can be taught how to run different types of rule of law projects—not just development or governance theory but management techniques and best practices within their specialty. With such education they can return home and supervise such efforts throughout their countries. Their better understanding of local conditions and culture and their lower salaries can significantly increase the productivity of each dollar of aid given. Such longer-term planning is needed over the short-term ease of hiring a foreign consultant or overstaffing aid agencies.

3. Untying Aid

While some developed countries have taken the lead in untying aid—no longer simply buying aid from domestic suppliers and no longer legally requiring developing countries to buy supplies needed for an aid project from businesses based in the developed country that provides the aid—many aid agencies have made too little progress in this area.[47] The concern goes beyond paying more for such goods.[48] It includes all-too-common situations where a developing country has to attempt to maintain machines or transport vehicles from numerous different manufacturers based in disparate developed countries, instead of being able to simply buy one type of pump or jeep and learn how to fix that pump or jeep expertly.[49]

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[47] Edward J. Clay et al., *Untying Aid: Is It Working?*, Danish Institute for International Studies (2009). A related, yet separate, issue exists in developed countries in regard to altering donor restrictions. *See generally* Susan N. Gary, *The Problems with Donor Intent: Interpretation, Enforcement, and Doing the Right Thing*, 85 CHI.-KENT L. REV. 977 (2010). This concern has deep historical roots. *See generally* CAROLINE R. SHERMAN, THE USES OF THE DEAD: THE EARLY MODERN DEVELOPMENT OF CY-PRÈS DOCTRINE (2017).

[48] For possibly the seminal work on the harms of aid tying see Jagdish N. Bhagwati, *The Tying of Aid*, United Nations Conference on Trade and Development (UNCTAD), mimeographed (Nov. 1, 1967).

[49] *Id*.

4. Providing Financial Flow Consistency Over Greater Periods

Aid agencies could enable developing country public servants to better plan aid projects over the medium to long term through providing more guaranteed funding over time.[50] Yet this is an ideal compared to the fact that many aid agencies do not even distribute committed aid on time. In 2010, only 43% of aid was "disbursed within the fiscal year for which it was scheduled and recorded in government accounting systems."[51]

Such an aim of medium- to long-term reliable funding does not necessarily conflict with the best practice of providing more conditional aid. For example, aid agencies could commit to providing the same level of funding each year for up to 20 years to a particular project as long as the same condition is met on the part of the developing country each year. Alternatively, if an aid project has been shown to be successful through the use of conditional aid, aid agencies can simply provide medium-term unconditional funding to the same project.

5. Independent, Rigorous Program Evaluation

Evaluating the success or failure of specific aid projects is commonly done,[52] yet such analysis is often performed by the same individuals who created the aid program or by others within the same organization and not using objective measurement tools such as double-blind trials.[53] As Easterly suggests in regard to such self-evaluation, "[m]y students at NYU would not study very hard if I gave them the right to assign themselves their own grades."[54] He is equally skeptical of having individuals within an organization evaluate their peers' initiatives, proffering the World Bank's Operations Evaluation Department (OED) as a failed attempt at independence.[55] This is because the employees of the World Bank "move back and forth between OED and the rest of the Bank—a negative evaluation could hurt staff's career prospects."[56] Furthermore, the evaluation performed by the OED is "subjective."[57] Thus, aid best practices dictate that program evaluations need to be truly independent—i.e., performed by individuals outside of the organization that implements the aid project and without any financial incentive or dependence on the aid agency to skew evaluations.

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[50] Homi Kharas, *Measuring the Cost of Aid Volatility* (Wolfensohn Center for Development at Brookings, Working Paper No. 3, 2008).
[51] *Aid Effectiveness 2005–10, infra* note 68.
[52] For a review of potential negative aspects to accountability, see Lief Wenar, *Accountability in International Development Aid*, 20 ETHICS & INT'L AFF. 1, 7 (2006).
[53] William Easterly, *Why Doesn't Aid Work?*, CATO UNBOUND, April 2, 2006, *available at* http://www.cato-unbound.org/2006/04/02/william-easterly/why-doesnt-aid-work.
[54] *Id*.
[55] *Id*.
[56] *Id*.
[57] *Id*.

The other best practice related to project evaluations is that whenever possible the analysis should be objective, not subjective like many of the OED's evaluations.[58] The outside investigators must be allowed to run double-blind trials on foreign aid initiatives, which would require them to have a hand in the project design stage.[59] Thus, instead of interviewing recipients or project staff about the success of a project, evaluators would compare a test group of aid recipients to a control group, to see if measurable indicia of progress, such as malaria infection rates or school attendance, have improved. International development specialists borrowed this technique from medicine at least two decades ago, yet most projects suitable for such a tool never run such trials, with many of the most well known studies having been done by academics.

These two best practices in regard to project evaluation—independence and scientific analysis—are "as obvious as [they are] unpopular." Yet, as Easterly notes, "feedback only works if somebody listens."[60] This is too strong a conclusion; for example, there has been a rapid spread internationally of programs that provide mothers with cash grants as long as they take their children to regular health checkups and ensure they stay in school,[61] simply because the success in raising the living standards of participants was properly documented. Yet the general thrust of Easterly's argument is supported by evidence that many aid agencies do not generally implement either of these evaluative best practices, let alone both.[62]

It is understandable that a developed country would want to use its aid dollars to buy goods or fund consultants from its own country, to guard its freedom in deciding which aid projects to fund, to maintain long-term funding flexibility, and to avoid stringent conditional aid flows because they conflict with geopolitical diplomacy that leverages foreign aid or with domestic constituencies that care only that the amount of aid is increased, not how the aid is spent. Yet foreign aid could help many more desperately poor individuals in developing countries if aid agencies would reform a handful of their own policies.

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[58] *Id*.

[59] For an extensive examination of numerous examples of double-blind trials in international development. see ABHIJIT V. BANERJEE & ESTHER DUFLO, POOR ECONOMICS: A RADICAL RETHINKING OF THE WAY TO FIGHT GLOBAL POVERTY (2012). Easterly also advocates for such evaluation techniques elsewhere. *See* WILLIAM EASTERLY, THE WHITE MAN'S BURDEN: WHY THE WEST'S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD 47 (2006).

[60] Easterly, *supra* note 53.

[61] Easterly himself mentions such success elsewhere. *Id*.

[62] Pritchett argues that advocates of individual policy solutions "have incentives to under invest in knowledge creation because having credible estimates of the impact of their preferred program may undermine their ability to mobilize political (budgetary) support." Lant Pritchett, *It Pays to Be Ignorant: A Simple Political Economy of Rigorous Program Evaluation*, 5 J. POL'Y REFORM, 251, 251 (2002).

C. Existing Efforts to Implement Aid Delivery Best Practices and Aid Reciprocity Agreements

While there have been multilateral efforts to improve aid delivery such as the Paris Declaration on aid effectiveness,[63] the Accra Agenda for Action,[64] and the Busan Partnership for Effective Development Co-operation[65]—all closely related results of the last three of four High Level Fora on Aid Effectiveness[66]—the Organisation for Economic Co-operation and Development (OECD) in 2007 stated that "much remains to be done."[67] In 2011, the OECD's conclusion was little different, with its report on 12 different aid effectiveness indicators finding that the "results are sobering."[68] Only one of 12 targets from the 2011 report were met in the five-year period with a 2% increase in the amount of untied aid.[69] Other targets barely rose—e.g., the aid predictability measure rose by 1%, the joint missions target rose from 20% to 22%, and the target on aligning aid flows with national priorities increased by 2%.[70] More positively, the four targets with the largest improvements include: reliable public financial management systems increasing from a 0% baseline in 2005 to 38% in 2010, the operational development strategies indicator rising 33%, the results-oriented framework target rising from 7% to

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[63] The Paris Declaration outlines "five fundamental principles for making aid more effective": ownership, alignment, harmonisation, results, and mutual accountability. *Paris Declaration and Accra Agenda for Action Overview*, OECD, *available at* http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm.

[64] The Accra Agenda for Action was "[d]esigned to strengthen and deepen implementation of the Paris Declaration." *Id*.

[65] The Busan Partnership Agreement "for the first time establishes an agreed framework for development co-operation that embraces traditional donors, South-South co-operators, the BRICS, civil society organisations and private funders." *Fourth High Level Forum on Aid Effectiveness, Busan Partnership Agreement*, OECD, *available at* http://www.oecd.org/dac/effectiveness/fourthhighlevelforumonaideffectiveness.htm.

[66] For an example of another such aid effectiveness project focusing on humanitarian aid not foreign aid in general, see the Good Humanitarian Donorship initiative, "an informal donor forum" that "facilitates collective advancement" of best practices specifically for humanitarian action. *About GHD*, GOOD HUMANITARIAN DONORSHIP, *available at* http://www.ghdinitiative.org/ghd/gns/about-us/about-ghd.html.

[67] *The Paris Declaration on Aid Effectiveness*, *supra* note 44. The Good Humanitarian Donorship initiative, *supra* note 66, came to a nearly identical conclusion, saying "much work remains to be done."

[68] *Aid Effectiveness 2005–10: Progress in Implementing the Paris Declaration*, OECD (2011), *available at* http://effectivecooperation.org/wp-content/uploads/2016/03/2011%20Report%20on%20Monitoring%20the%20Paris%20Declaration%20ENGLISH.pdf.

[69] *Id*. at 21. Some of the 12 indicators have multiple sub-targets, leading to some confusion about exactly how to count the number of different best practices.

[70] *Id*.

22%, and the use of country public financial management systems (distinct from the abovementioned target of having such systems be reliable) jumping 8%.[71]

These collective initiatives—Paris, Accra, and Busan—are an encouraging first step. Most important for purposes of this discussion, the Paris/Accra/Busan initiatives took the form of aid agencies, developing countries, and civil society groups collectively reaching agreement as to which best practices should be encouraged.[72] In theory, this seems eminently appropriate but for the fact that it allows both aid agencies and developing countries to skirt the best practices that they find unattractive. For example, as discussed above, aid agencies are understandably reluctant to implement genuinely independent, objective evaluations of their projects because the results would demonstrate substantially more failure than is currently gauged by self-evaluations or subjective analysis that relies on, for example, interviews instead of double-blind clinical trials. This is evident in the micro-macro paradox. Most evaluations of aid projects claim success, yet in many though not all substantive fields, such as aid projects focusing on the rule of law, economic growth, anti-corruption, or governance, macro progress within these fields has been slow or nonexistent.[73] While the Paris/Accra/Busan initiatives include indicators that appear to address such evaluative concerns, in fact the details of such targets reveal anything but genuinely independent, scientific evaluations.[74]

Furthermore, a best practice that has been ignored by the Paris/Accra/Busan initiatives is holding aid agencies accountable for their work through tying their budgets to results. Easterly argues for "incentives to do something as a result of the evaluations—allocations of money to multilateral development banks should go up or down depending on their average performance as rated by the independent evaluators."[75] Recognizing that failure is at times inevitable, he suggests "multilateral development banks should get credit for discontinuing failed programs or fixing them if they are fixable, while inaction should be correspondingly penalized."[76] Such budgetary incentives would not only do wonders for

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[71] *Id*.

[72] *Fourth High Level Forum on Aid Effectiveness*, *supra* note 65. The range of partners has grown from Paris to Busan.

[73] The seminal article introducing the micro-macro paradox focuses on the lack of economic growth. *See generally* Paul Mosley, *Aid-Effectiveness: The Micro-Macro Paradox*, 17 IDS BULLETIN 22 (1986). For an alternative perspective, see Stephen Howes et al., *Does the World Bank Have a Micro-Macro Paradox or Do the Data Deceive?* (Development Policy Centre Discussion Paper No. 5, 2011).

[74] Similar public relations attempts occur in measuring aid effectiveness by the Paris/Accra/Busan initiatives. For example, the five-year aid effectiveness report mentioned earlier as part of this work suggests a high level of untied aid—89% in 2011—yet this figure is only based on a limited sample of countries that participated in both the 2006 and 2011 performance surveys. More important, this seemingly high figure for how much aid is untied does not include freestanding technical cooperation and food aid—both highly tied forms of aid. Clay, *supra* note 47.

[75] Easterly, *supra* note 53.

[76] *Id*.

homing in on which substantive aid projects are most promising but would also dramatically encourage aid agencies to implement aid delivery best practices, which have a role to play in the success of any aid project regardless of whether the project entails distributing deworming pills or textbooks.

On the developing country side, the Paris/Accra/Busan initiatives do not emphasize situations in which conditional aid—aid that is only distributed upon the stringent completion of prerequisite actions—could prove effective. For the handful of developing countries that are stringently improving governance and reducing corruption, aid needs to flow unconditionally—i.e., without the need for developing country public officials to draft aid grants or evaluative reviews of specific projects, even without specifying which substantive areas the money should be spent on.[77] Also, it appears that depending on the type of substantive project, conditionality does not necessarily have to apply to a developing country or to the poor within a developing country. For example, it has been shown that the conditionality aspects of cash transfer policies—requiring children to attend school and obtain health checkups—makes no difference in the positive impact that cash transfers have in general.[78] Areas where conditionality appears to hold the most promise are those touching on governance, the rule of law, and corruption. This makes sense given that there are substantial reasons why politicians and bureaucrats are corrupt or do not follow the rule of law—i.e., money or political pressure. Thus, aid projects need to squarely counteract such influences through conditionality aimed directly at individual public servants—e.g., significant year-end bonuses if corruption is reduced[79]—and on a country level—e.g., requiring the elite within a developing country to match aid flows dollar for dollar.[80]

These missing best practices strike at the heart of holding both developing country public officials and aid agencies truly accountable. While other best practices can do good, financial accountability and conditionality can transform aid. Further, while such best practices may see demanding or even harsh, they are commonly accepted in many contexts both for individuals and societies. For example, aid agencies commonly demand that poor women pay back micro loans or risk everyone in their credit group being denied future loans if they do not repay the loan on the defaulter's behalf,[81] yet these same

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[77] ROBERT CALDERISI, THE TROUBLE WITH AFRICA: WHY FOREIGN AID ISN'T WORKING 163 (2006).

[78] Najy Benhassine et al., *The Impact of Conditional Cash Transfers on Schooling and Learning: Preliminary Evidence from the Tayssir Pilot in Morocco*, MIT, mimeographed (2010).

[79] Skladany 2009, *supra* note 34.

[80] *See generally* Martin Skladany, *Throwing Dough Over Castle Walls: Improving the Rule of Law with Foreign Aid Challenge Commitments*, 23 TRANSNAT'L L. & CONTEMP. PROBS. 367 (2014).

[81] *See generally* Jami Solli, *What Happens to Microfinance Clients Who Default?*, SMART CAMPAIGN, Jan. 2015, *available at* https://execed.economist.com/sites/default/files/what_happens_to_microfinance_clients_who_default.pdf.

agencies balk at the idea of applying such either-or financial accountability to themselves.

Relative to the Paris/Accra/Busan initiatives, aid reciprocity agreements would more effectively enable such accountability best practices because they would empower developing countries who are serious about reform to forcefully communicate their resolve both domestically and internationally. The level of forcefulness would depend on what a developing country precisely commits to. The most resolve would be agreeing not only to implement financial accountability in the distant future for itself as a donor and conditionality for its donees, but also to meet conditions for receiving more aid in the immediate future as a donee. The next most resolve would be for a developing country to agree to both financial accountability and conditionality only in the future. Alternatively, a developing country could announce an aid reciprocity agreement without either of these two challenging best practices.

Not only do the Paris/Accra/Busan initiatives not require any hardship on the part of developing countries in terms of having public officials improve their performance, they do not present such public officials with the opportunity to lead. Beyond being a signaling tool, aid reciprocity agreements with such accountability provisions would also demonstrate the country's willingness to lead the international community in regard to aid practices. The importance of such a desire cannot be underestimated given the lack of leadership on many best practices and the history of developing countries largely being dictated foreign aid terms. Such leadership benefits and domestic and international signaling benefits do not accrue to developing countries that participate in the existing aid effectiveness framework. Finally, unlike the Paris/Accra/Busan initiatives, aid reciprocity agreements would possibly increase aid commitments in the future and, more important, would pressure existing aid agencies not only to actually implement relatively easy aid delivery best practices but to consider deeper reform through financial accountability best practices.

II. Practical Issues in Pursuing Such Commitments

There are numerous practical issues that would need to be addressed in order to make foreign aid reciprocity agreements a success. Several such issues are examined below.

A. Obtaining Support Within Developing Countries

Even though there are various different constituencies within any developing country, obtaining their support, or at least a lack of strenuous opposition, is a realistic proposition. Of the numerous diverse groups within a developing country, the most likely relevant constituencies include the poor, public officials in general, corrupt public officials specifically, and the private sector elite.

It is difficult to imagine that the poor in a developed country would be against their government committing to help others once their own country has experienced significant

and sustained improvements in well-being. However, it is easy to understand why the poor might be upset that their public officials are taking time to plan future initiatives to help foreigners rather than concentrating on urgent domestic needs. Communicating the reasons for an aid reciprocity agreement to the public would prevent or assuage this initial reaction. The justifications center around how formalizing an aid reciprocity agreement could bring immediate modest benefits to the country implementing it. Knowing these reasons, the poor might still be unconvinced, yet even if they continue to object to the agreement, it is not the sort of policy, such as eliminating food or fuel subsidies, that is likely to cause riots or opposition that is strenuous enough to put the agreement into doubt.[82] Finally, all of the above rests on the poor actually being made aware of the existence of aid reciprocity agreements, which is practically speaking unlikely.

As for developing country public servants, an argument could be made that aid reciprocity agreements would unduly bind their time in the future, but any such argument would be hard to sustain given that the actual restrictions encapsulated in the reciprocity agreement would be relatively straightforward and unburdensome to implement—e.g., aid recipients would not be encumbered with unnecessary meetings and reports to write. Plus, if a developing country establishes a foreign aid reciprocity agreement on its own, the fact that the initiative is being instigated domestically could be an issue of pride and a motivation for public officials to support it.

Finally, it is implausible that developing country elite within the private sector would block an aid reciprocity agreement. While they might initially hesitate at being taxed to fund the advancement of other countries, the earliest that such transfers could happen would be 20 to 30 years down the road, if not much longer. In other words, the financial sting of paying for a significant portion of future foreign aid is too remote a prospect to move elites to raise substantial opposition against aid reciprocity agreements.

It is more likely that developing country elite would appreciate the idea of their country taking the initiative on the international development stage. Further, if, in the short to medium term, an aid reciprocity agreement reduces the amount of money bilateral aid agencies spend on foreign consultants and reallocates the savings to directly increase funding within the developing country, the elite of the developing country would likely

[82] For example, in 2012 Nigeria attempted to end fuel subsidies, but had to quickly restore them due to nationwide protests. Associated Press, *Nigeria Restores Fuel Subsidy to Quell Nationwide Protests*, GUARDIAN, Jan. 16, 2012. In 2016 the country is attempting to do so again, with unions threatening to strike. Conor Gaffey, *Nigeria Removes Fuel Subsidy, Prompts Mixed Reactions*, NEWSWEEK, May 12, 2016. For another example, see generally Benedict Clements et al., *Real and Distributive Effects of Petroleum Price Liberalization: The Case of Indonesia*, *in* 45 DEVELOPING ECONOMIES 220 (2007).

support such a policy shift because the enhanced spending power could lead to more of their own products being purchased.[83]

B. Obtaining Support from Bilateral Aid Agencies

It is difficult to know with any certainty how the numerous actors within the dozens of different bilateral aid agencies would react to the proposal of foreign aid reciprocity agreements. A possibility is that bilateral aid agencies would not even respond. This could happen for at least three reasons. First, bilateral aid agencies might not be concerned that aid reciprocity agreements could cause any negative publicity about the fact that the agencies are not currently implementing numerous aid delivery best practices. Second, decision makers within the agencies might be ambivalent or disagree with each other about the prospects of aid reciprocity agreements. Third, the agencies might support the idea but not want to take a public stance on it.

Of course it would be ideal to have bilateral aid agencies publicly and privately support aid reciprocity agreements, which is a realistic possibility. The minimal goal is to ensure that aid agencies do not retaliate against developing countries for proposing reciprocity agreements. There appears to be little benefit to aid agencies in doing so. Nevertheless, it is worthwhile to consider approaches that will prevent this from happening as well as increase the odds that aid agencies will genuinely support reciprocity agreements.

First, developing country public officials should approach aid agencies with the idea of aid reciprocity agreements to obtain their input. This would help aid agencies buy into the idea or, at the minimum, not be surprised by hearing about it in the press.

Second, developing country delegates should explain why they desire to establish an aid reciprocity agreement. A number of their reasons would likely make sense to aid agencies and be something that aid agencies would naturally gravitate toward supporting. For example, the idea that developing countries want to signal to the outside world that they are serious about development is easy to sympathize with. So is the idea that developing countries want to forward their own internal debate about their responsibilities to poor citizens—i.e., to use reciprocity agreements as a tool of internal change.[84]

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[83] Such a policy is a largely ignored best practice. The costs of foreign consultants can be quite high—e.g., beyond their significantly more robust salaries relative to local experts, World Bank staff routinely travel business class on international flights instead of coach. See WORLD BANK, OPERATIONAL TRAVEL 2 (AMS 3.00 & 3.10, April 2010), *available at* http://pubdocs.worldbank.org/en/581511374626394422/AMS131000and0311000112011.pdf.

[84] Structuring foreign aid reciprocity agreements as formal accords between a developing country and an aid agency would raise the issue of which of the dozens of existing bilateral and multilateral aid agencies the developing country should sign the aid agreement with. Conceivably, the developing country could attempt to sign an aid reciprocity agreement with every aid agency it collaborates with, yet this would appear to

C. Activating the Provisions within an Aid Reciprocity Agreement

The point during the development process when a developing country should begin to give foreign aid to less well off countries is a decision for each developing country to determine on its own. While in theory we ought to give generously to all individuals in need regardless of their proximity or distance from us,[85] ethicists have argued that given how human nature appears to include an urge to first look after the individuals closest to us and only then help others,[86] one cannot expect a developing country on a sustained path of growth to quickly start to give to other nations when many of its own citizens are still in great need of assistance. In fact, even if a developing country begins to give aid at a rather early stage in its own development—India provides foreign aid to over one hundred developing countries[87]—there is no basis for telling the country to halt. This is because the outwardly generous country would have its own reasons to be distributing aid to others—e.g., it has been shown that India provides aid to other nations primarily for political and commercial reasons.[88] Regardless, it would provide some degree of clarity to have aid reciprocity agreements include criteria for when a developing country would begin to implement best practices in delivering its own aid to others.

D. Agreement Enforcement

Many of the benefits of creating aid reciprocity agreements do not critically hinge on enforcement of a developing country's future promise to deliver aid using certain best practices. Most of the benefits that accrue to the developing country signing an aid reciprocity agreement—such as putting positive pressure on domestic and international actors, signaling a serious commitment to development, and symbolizing obligations to help others in the future—will materialize in the short term, immediately after the announcement of the aid reciprocity agreement. These benefits are not causally related to whether decades in the future a developing country actually delivers aid to others in a particular manner.[89]

Of course, two significant benefits of aid reciprocity agreements could be advanced with enforcement provisions: the promise to give aid in the future and the promise to deliver it using certain best practices in the field. Yet even without strong enforcement provisions,

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be overkill or at least duplicative given the nature of reciprocity agreements—i.e., that they are expressions of policy commitments aimed at assisting third parties, other developing countries, in the future.

[85] See the introduction to PETER SINGER, PRACTICAL ETHICS (3d ed. 2011).

[86] *Id*.

[87] *See generally* Andreas Fuchs & Krishna Chaitanya Vadlamannati, *The Needy Donor: An Empirical Analysis of India's Aid Motives*, 44 WORLD DEV. 110 (2013).

[88] *Id*. Interestingly, India has also been shown to give more generously to countries at a stage of economic development similar to its own and, less surprisingly, to countries that are geographically closer. *Id*.

[89] *See generally* THOMAS F. MCINERNEY, STRATEGIC TREATY MANAGEMENT: PRACTICE AND IMPLICATIONS (2015).

the public nature of the aid reciprocity agreements would build a certain level of expectation that both commitments would be met in the future.

A clause could be inserted that requires a developing country that signs an aid reciprocity agreement and reaches a certain level of development to distribute aid to other countries using best practices[90] or else face paying back the grants it received from bilateral aid agencies.[91] Thus, instead of paying the help forward, the newly developed country would be retroactively reimbursing the aid agencies. The intent of such a clause would not be to punish the newly developed country but rather to incentivize it to fulfill its promises.

E. Publicizing Reciprocity Agreements

Foreign aid reciprocity agreements have the greatest chance to do the most good if they become well known to the general public as well as among policymakers. Knowledge of aid reciprocity agreements will encourage developed country public officials to seriously consider requiring their own bilateral aid agencies to implement similar aid delivery best practices. Furthermore, the more developing country public servants are aware of aid reciprocity agreements, the more likely it is that the use of this tool will spread among developing countries. Each newly concluded agreement would offer another opportunity to publicize the idea more widely. Additionally, each new reciprocity agreement would build cumulative pressure on bilateral aid agencies to reform their aid delivery practices.

III. POTENTIAL CONCERNS

Foreign aid reciprocity agreements will not solve poverty. They are a partial, modest tool for improving the status quo. Below are responses to some potential criticisms of aid reciprocity agreements.[92] It will be shown that these concerns are either inconsequential or quite manageable.[93]

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[90] There would need to be a subclause allowing the newly developed country to not have to use a method of aid delivery that becomes discredited by the time the country is ready to begin providing foreign aid assistance.

[91] Of course, the commitment could be waived if there are no plausible countries to give aid to—an optimistic prospect.

[92] Another possible objection is that aid reciprocity agreements would somehow be insulting to developing countries. It is unclear how such an argument could be made, let alone convincingly argued. As mentioned earlier, reciprocity-like arrangements can be found in numerous areas of international law. In such areas they are not deemed insulting but rather the opposite—a tool that allows all parties to show respect for each other and to hold each other to standards of responsibility.

[93] Given that earlier I discuss the unlikelihood that developed country aid agencies will retaliate against developing countries that institute aid reciprocity agreements, I will not include any additional such discussion in this section.

A. Reciprocity Clauses Are Not Needed

One could believe that the world does not need more donors, especially by the time a developing country transforms itself into a rich country. As an objection to aid reciprocity agreements, this notion is spurious for three reasons. First, aid reciprocity agreements are meant to change the behavior of existing aid agencies now. Second, reciprocity clauses would have several other benefits already mentioned, for example, being an internal and external signaling tool. Third, in a world without foreign aid reciprocity agreements, surely numerous developing countries that experience sustained economic, social, and political development would voluntarily assist countries still struggling, given the ethical imperative to do so. Indeed, more donors will be needed if current donors do not alter their policies and implement best practices for aid effectiveness. A new aid agency could lead by example in the same way reciprocity agreements enable developing countries to lead by pronouncement.

Alternatively, one could suggest developing countries would naturally implement aid best policies when they develop and begin distributing aid to other countries. If that were true, more existing developed country aid agencies would be using best practices now. Without a binding legal commitment, it is uncertain whether a country that has gone through the countless transformations necessary to become developed would have a political and bureaucratic structure any less resistant to implementing aid best practices than those of current developed countries.

B. Aid Reciprocity Agreements Will Be Ineffectual

Aid reciprocity agreements might prove ineffective in at least three ways: (1) the reciprocity agreement could fail to bring any benefits to the developing country that establishes it, (2) in 30 years when a country with a reciprocity agreement begins to give aid through best practices, the aid delivered could be unproductive, or (3) after a developing country develops, it might never give aid to others or might do so without implementing acknowledged best practices.

As for the first scenario, an aid reciprocity agreement that fails to produce benefits, unlike an unsuccessful foreign aid project, incurs little cost. For the first decades of an aid reciprocity agreement, no foreign aid can be possibly misappropriated or misspent because the developing country has yet to establish its own aid agency; any losses would simply be the time public officials initially devoted to drafting and announcing the agreement. One could argue that if no immediate benefits arise from a reciprocity agreement, the developing country could suffer reputational damage, yet, in fact, the opposite would be much more likely—the country would be respected for its initiative. While such transaction costs are not zero, they make aid reciprocity agreements attractive, especially since the downside is so slight.

As for the second potential scenario, a developing country that successfully experiences sustained progress, establishes its own aid agency, and follows best practices in aid delivery could still see its generosity prove futile. One could argue that this is due to the

aid reciprocity agreement, yet it would appear more apropos to suggest that the causes were misguided best practices in aid delivery, poorly conceived substantive projects, or managerial incompetence.[94]

Thirdly, a newly developed country that has signed an aid reciprocity agreement could decide either to not give aid to other countries or to provide aid but not through best practices. Modern day developed countries give foreign aid, though they may not give as much aid as others would like to see[95] or may deliver it in ways that further non-altruistic state considerations. This latter shortcoming is a realistic possible outcome, yet one that international law could struggle to prevent given the structural nature of international governance—i.e., at times, there is little that can, or potentially should depending on the circumstances, practically be done if a country decides to withdraw from a treaty.[96] Thus, if a newly developed country wants to forget its obligation to deliver aid through best practices, this would be a failure of the aid reciprocity agreement but no more of an indictment of such tools than of the international system. More optimistically, it has been stated many times in different ways that "almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time."[97] There is a historical record that demonstrates living up to international commitments is common, because a nation believes it is the best policy, because it wants to further the norm of compliance, or because it wants to avoid the negative publicity and image of reneging on previous commitments.[98]

Thus, aid reciprocity agreements might turn out to be unsuccessful, but there is no reason to believe, ex ante, that they would be more prone to failure than other aid projects, and

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[94] Sadly, poorly designed and executed aid projects are not a rarity.

[95] Most nations fall short of the U.N. pledge from a 1970 General Assembly Resolution that developed countries give .7% of their gross national product as foreign aid. *See generally* The 0.7% Target: An In-depth Look, Millennium Project, U.N. Secretary General, *available at* http://www.unmillenniumproject.org/press/07.htm. Yet there are legitimate arguments as to what should or should not count as aid. For example, David Pozen has argued that tax breaks given to nonprofit organizations could be viewed as foreign aid: "Whenever U.S. charities and foundations spend money overseas—as they have increasingly been doing—some portion of this spending can be attributed to the support they receive from numerous state and federal tax privileges." David E. Pozen, *Hidden Foreign Aid*, 8 FLA. TAX REV. 641, 643 (2007).

[96] In regard to one particular international treaty and the right to withdraw, see Emily K. Penney, *Is That Legal?: The United States' Unilateral Withdrawal from the Anti-Ballistic Missile Treaty*, 51 CATH. U. L. REV. 1287 (2002), and Christopher C. Sabis, *Congress and the Treaty Power: An Originalist Argument Against Unilateral Presidential Termination of the ABM Treaty*, 31 DENV. J. INT'L L. & POL'Y 223 (2002).

[97] LOUIS HENKIN, HOW NATIONS BEHAVE 47 (2d ed. 1979) (emphasis omitted).

[98] Human rights treaties present a particularly complicated example of this. *See generally* Oona A. Hathaway, *Do Human Rights Treaties Make a Difference?*, 111 YALE L.J. 1935 (2002).

there are many reasons to believe that they would be more likely to bring at least some benefits, and at little cost.

C. Simply a New Method for Developed Countries to Coerce Developing Countries

Given that developed countries have had a variety of reasons for giving aid in the past, many of which were self-interested and possibly without serious consideration for what was best for the aid recipients, it would be understandable if leaders in a developing country were at least partially suspicious of any aid reform proposal. Yet, hopefully, once they review the specifics that aid reciprocity agreements entail, any initial skepticism would quickly dissipate. This is especially the case given aid reciprocity agreements would be instigated by developing countries.

First, aid reciprocity agreements do not require any initial action on the part of a developing country. Second, the agreements only mandate action once a developing country transforms itself through sustained economic, political, and social development. Third, the agreements could be written to require only that newly developed countries give aid in a certain way, if they decide to give aid at all. A developing country could draft its agreement to state that it would follow best practices if it chooses in the future to give foreign aid. The mandated methods would all be well established, sensible best practices that would be hard to misconstrue as manipulation or coercion. For example, coordinating one's aid policies with other aid agencies simply makes sense to reduce the resource burden on developing countries so that public officials do not have to spend time interacting with dozens of aid agencies, writing up countless aid proposals, and attempting to figure out how to make different visions of development held by various aid agencies not conflict.

Finally, the purpose of aid reciprocity agreements is to gently encourage existing aid agencies to use best practices in aid delivery. If any soft coercion does take place, it would be aimed at developed countries, not developing countries.

IV. CONCLUSION

The idea of reciprocity agreements could potentially be expanded to areas of international interaction beyond foreign aid such as migration, technology transfer, finance, trade, security, and environmental policies.[99] For example, a developing country could commit to provide peacekeeping assistance to other countries that request such assistance in the

[99] Developed countries have varied widely in how much and in what ways they have attempted to assist different developing countries. The Center for Global Development's Commitment to Development Index measures the above-mentioned seven ways developed countries attempt to help others. *See* Petra Krylová & Owen Barder, *Commitment to Development Index 2015*, CENTER FOR GLOBAL DEVELOPMENT, Dec. 4, 2015, *available at* http://www.cgdev.org/publication/ft/commitment-development-index-2015.

future, after the developing country pursuing the security reciprocity agreement has successfully developed. Alternatively, a developing country could pledge to provide generous trade terms on agricultural products to other developing countries after it has experienced sustained development progress. Or a developing country could enter into a migration reciprocity agreement to provide assistance to a certain number of migrants each year in the future.

One of the most significant reasons that developing countries might want to create reciprocity agreements in a range of areas is a straightforward desire to be altruistic. Furthermore, most, if not all, of the benefits to such reciprocity agreements are the same as those articulated for aid reciprocity agreements. Reciprocity agreements in finance, technology transfer, environmental policies, and other areas could pressure developed countries to improve their international policies, enhance the world's policy response in the future when developing countries are in a position to contribute more, help organize developing countries' international priorities in the future, signal a developing country's seriousness to improve governance and strengthen institutions to the international community, and pressure developing country public officials to elevate their performance.[100]

[100] Conceivably, if desired by developed countries, many different unilateral arrangements—e.g., unilateral trade concessions or foreign aid—could have a clause stipulating that when the poor country develops it will open its markets to other developing countries' trade in a similar manner or give at least the same amount of aid it received adjusted for inflation.