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**Advisory Committee
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Item 3 of the provisional agenda **Requests addressed to the Advisory Committee stemming from Human Rights resolutions:
The role of technical assistance and capacity-building in fostering mutually beneficial cooperation in promoting and protecting human rights**

 Preliminary outline of the study on technical assistance and capacity building in fostering mutually beneficial cooperation in promoting and protecting human rights

(draft preliminary outline, 12 February 2019) prepared by Lazhari Bouzid, Rapporteur of the drafting group

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I. Introduction

1. This outline is submitted to the Advisory Committee pursuant to HRC Resolution 37/23 of 23rd March 2018 on – promoting mutually beneficial cooperation in the field of human rights- paragraph 5 of the said resolution requested the Committee – to conduct a study on the role of technical assistance and capacity- building in fostering mutually beneficial cooperation in promoting and protecting human rights, and to submit a report their on to the HRC before its forty –third session.

2. In order to prepare for this report, the Committee through a note verbal dated 16 August 2018 invited states and other shareholders for their inputs. Nine 9 states replied to the invitation of the committee, they are: Canada, China, France, Germany, Japan, Morocco, Philippines, Switzerland and United Kingdom.

II. Definition and History of technical assistance

3. Technical assistance has been defined as a form of aid given to the less developed countries by, especially, the international community represented by the United Nations and its specialised agencies and to a lesser degree by developed states and non-governmental organizations.

4. Technical assistance may take different forms, such as training, scholarships, organizing of seminars and conferences on specific subjects, country visits by experts, etc. and new forms are evolving by the time.

5. Technical assistance covers different fields and subjects such as economic and social development in general, agriculture, health, education, employment, environment, etc. However, the report will concentrate on technical assistance and capacity building and human rights especially within the United Nations system.

6. Technical assistance has a history which goes back to the conference of San Francisco of 1945, states at that conference were aware that building and maintaining peace and security in the world imposes the promotion of economic, social and humanitarian development, especially, of less developed countries, since there was a big and even dangerous disparity in the level of development and standard of living between developed and less developed countries.

7. However, since the UN and its specialised agencies cannot provide direct loans for financing investments and development projects in less developed countries, they – the UN and its agencies – considered that it is among their duties and functions to provide at least advise, technical instruction, training and sending expert missions.

8. It was on this background that the ECOSOC asked the General Assembly of the UN in February 1949 and all Specialised Agencies to work out a Comprehensive Plan for Expanded Program of Technical Assistance.

9. In August 1949, the General Assembly of the UN announced the machinery of the administration of the program in its resolution 22.

10. After the creation of the this program, less developed countries asked the Secretary General of the UN for , especially, economic advisors, the ILO has been asked to advise on co-operation and social insurance, the FAO was asked to advise on agriculture, fisheries and forestry. The UNESCO was asked to advise on education and eradication of illiteracy, the WHO was asked to advise on health, combatting malaria and several other diseases.

11. However, the results of the application of the program were mixed, the main weakness of the program resides in its financial limitations, since the demand for technical assistance was higher than the resources afforded by the UN system.

 III. Technical assistance and human rights

12. The charter of the UN, has made it clear that human rights and their protection, promotion and strengthening were among the principal foundations of the organisation, non-respect and violations of human right can threaten international peace and security.

13. The Universal Declaration of human rights which was adopted by the General Assembly without any dissenting vote, has guided the UN in its work of protection and promotion of human rights ever since.

14. In 1955, and after some Ad Hoc technical assistance in the field of human rights, the General Assembly and for the first time established the UN Program of Advisory Services in the field of human rights by resolution 926 – 10- of the 14/12/1955, in this resolution the General Assembly of the UN authorised the Secretary General to make provision, at the request of governments, for assistance in the field of human rights , including advisory services of experts, fellowships, scholarships and seminars, later the General Assembly widened the scope of the program to include national and regional human rights courses.

15. In November 1987, the Secretary General of UN, under a resolution of the Human Rights Commission created the Voluntary Fund for Advisory Services and Technical Assistance in the field of human rights . The main task of the fund was to provide additional financial support for practical activities, such as the implementation of international conventions enacted by the UN, its specialised agencies and regional organisations.

16. The Human Rights Commission used the Voluntary Fund to finance many activities in the field of human rights, such as:

(a) Expert and technical assistance to government, in order to develop the necessary infrastructure to meet international standards.

(b) Projects for legal protection and strengthening of the independence of the judiciary.

(c) Comprehensive needs assessment and overall country programs including specific projects aimed at strengthening the human rights infrastructure of the country.

(d) Project that can play catalytic role in the practical role in the practical realisation of internationally recognized human rights.

 IV. Legal basis for technical assistance

17. The Charter of the UN stresses the obligation of states to promote universal respect and observance of human rights, also states must co-operate between themselves for the implementation of their obligations in the domain of human rights without any discrimination of any kind.

18. Also, it is recognized today that supporting and assisting less developed countries by the international community in their endeavors to effectively implement their human rights obligations is a real legal obligation.

19. Respecting sovereignty of States benefiting from technical assistance is a fundamental duty of the international community and individual States, it is the corner stone which must be taken into account in any policies of technical assistance. This means that the request of the state for any form of technical assistance or capacity building is necessary, states cannot be compelled even by the international community to accept technical assistance against their will.

20. The duty of the international community to finance technical assistance and capacity building stems from the principal of solidarity and international cooperation.

21. Dialogue on human rights issues must not based on political considerations and on the threat of force or on double standards, this is another rule which must guide any dealings with human rights subjects including technical assistance, and capacity building.

 The concept of mutually beneficial cooperation - MBC

22. Seven states submitted their inputs concerning the report on technical assistance, the concept pf MBC occupied a very important place in the replies of 4 states at least.

23. Switzerland observed that the term MBC is not sufficiently defined and stressed that it remains sceptical regarding the added value of this new concept.

24. The United Kingdom was of the view that it strongly supports technical assistance and capacity building as a means of enabling a state to fulfil its human rights obligations. However, it considers that the concept of MBC poses significant challenges, since the term is not defined in resolution A/HRC/RES/37/23 and it is not agreed United Nations language and further it is not an approved concept in multilateral human rights contexts.

25. The UK declared openly that it does not support the introduction of a new and undefined term and concept that is not included in international human rights law, and added that if the term MBC is to be used in human rights context, its meaning must be clearly compatible with international human rights obligations, the UK concluded that without a definition of MBC it is not clear that it is compatible.

26. France and Germany submitted a joint response, they stressed that the concept of MBC as well as the similar – or identical- term –win win- cooperation is useful in trade negotiation for example. However, in their view it cannot be applied in the field of human right, since existing human rights obligations ought not to depend on intergovernmental negotiations, the risk in that case being that whether or not the standards are applied would depend on the balance of power between states, to the determinant of small states and also of individuals.

27. Canada stressed from the start that MBC and –win-win- cooperation appear to be closely linked and generally it describes cooperation in the economic field .Canada further, stated that –win win- cooperation is usually used by China representatives in their UN speeches .

28. Canada then remarks that given the ambiguity of MBC in the context of human rights, defining or clarifying the term in the context of human rights should be the first task of the Advisory Committee of the HRC

29. In its view Canada stressed that the HRCAC should be guided in its efforts to define MBC by the international instruments of human rights and the principles that established HRC, particularly those outlined in UNGA resolution 60/250.

30. Japan indicated that the terms –building a community of shared future for human rights- and – MBS are not widely recognized in the field of human rights, and are unclear, which makes their use in a resolution of the HRC unsuitable in its view.

 V. Individual states, regional organisations, non-governmental organizations and technical assistance.

31. Japan indicated in its input that it has been implementing technical assistance and capacity building on human rights, as part of the cooperation programs by JICA – Japan International Cooperation Agency- for developing countries all over the world, especially in South Asia and South East Asia.

32. The projects covered for 4 sectors namely legal and judicial sector, election sector, police sector and media sector. Legal and judicial sector covers drafting and dissemination of civil law and other laws and regulations. Election sector covers ensuring the right of the people to participate in politics through strengthening the capacity of staff of the board of elections. Police sector covers the contribution to appropriate criminal proceedings through capacity-building on criminal prevention, control and investigation. Lastly, media sector covers the contribution to the public right to know by ensuring circulation of accurate, neutral and fair information through strengthening the capacity of public media.

 VI. Human Rights Council and technical assistance.

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