**Mutually Beneficial Cooperation and the Human Rights Council**

The Human Rights Council Advisory Committee (HRCAC), through resolution 37/23, has been tasked to conduct a study on the role of technical assistance and capacity-building in fostering mutually beneficial cooperation (MBC) in promoting and protecting human rights. In this context, Member States and others have been invited to provide inputs (data, statistics, best practices and challenges). This submission responds to this invitation.

MBC as a concept in the Human Rights Council (HRC) context first emerges in resolution 37/23 and in UNGA resolution 61/169, paragraph 7(c)[[1]](#footnote-1), the latter of which focusses exclusively on development. This presents challenges in responding to the HRCAC’s request to provide concrete data and best practices. The resolution itself remains silent on the definition of the term and offers no specific guidance on how to operationalize MBC in a human rights context.

**Mutually Beneficial Cooperation and “Win-Win” Cooperation**

MBC and “win-win” cooperation appear to be closely linked. The reference to MBC in 61/169 describes cooperation in economic terms, which, as is clear below, is the primary intent of “win-win” cooperation. This, in turn, has featured in a number of UN initiatives and speeches usually by representatives from China. In the interest of brevity, this submission will limit examination of references to win-win to 1) the speech given by the President of the People’s Republic of China Xi Jinping at the Boao Forum for Asia Annual Conference 2015 in Boao, China, 28 March 2015[[2]](#footnote-2), 2) the speech given by the delegation of China to the 37th Session of the Human Rights Council (HRC)[[3]](#footnote-3) and 3) the position paper of the People’s Republic of China for the 73rd session of the UN General Assembly (UNGA)[[4]](#footnote-4). There are, however, numerous other references that reflect the content and intent of these three sources.[[5]](#footnote-5)

In his 2015 speech, President Xi mentions “win-win” eight times. In the inaugural reference, “win-win” cooperation is cited along with the peace and security and development functions of the UN. Three times “win-win” is linked to the cooperation in the development context and in two instances “win-win” is referenced in cooperation that enhances peace and security. Most notably, the two other references to “win-win” in President Xi’s speech are more comprehensive:

“To build a community of common destiny, we need to seek win-win cooperation and common development….only through win-win cooperation can we make big and sustainable achievements that are beneficial to all. The old mindset of zero-sum game should give way to a new approach of win-win and all-win cooperation…The vision of win-win cooperation not only applies to the economic field, but also to the political, security, cultural and many other fields.”

While more comprehensive, the focus of “win-win” is first economic, second security and third other benefits.

China’s position paper for the 73rd Session of UNGA likewise states “win-win” cooperation in security and economic terms. The paper highlights that “the UN is an important platform to practice multilateralism, achieve win-win cooperation and build a harmonious world of enduring peace and common prosperity.”

In the March 2018 speech to the HRC, China noted in a speech entitled *Win-Win Cooperation for the Common Cause of Human Rights* that “the full enjoyment of human rights by all is a great ambition of human society and an important goal of building a community of shared future for mankind (sic), a concept initiated by President Xi Jinping.” The speech goes on to note that violent conflict is the root of human rights violations, but does not elucidate what causes conflict.[[6]](#footnote-6) The speech further posits that economic development should be the primary concern of states, but does not provide any context on development and human rights. In this way “win-win” cooperation can be seen as primarily an economic development term.

Thus, the only reference to human rights in the context of “win-win”, which appears to be another term for MBC, is in the HRC 37 speech. Based on these speeches and the position paper, it is clear that “win-win” cooperation is primarily an approach for economic development; secondly a mode of promoting peace and security; and in a tertiary manner can have other benefits in other fields, which may include human rights. We have found no other data or statistics that can be applied to how technical assistance and capacity building could foster MBC in promoting and protecting human rights. As a result best practices are difficult to identify. There are, rather, a number of challenges, which should be addressed before MBC can be operationalized.

**Challenge 1: Defining MBC**

Given the ambiguity of MBC in the context of human rights, defining or clarifying the term in the context of human rights is necessary and should be the first task of the HRCAC. To do this, it must be recognized that international human rights instruments include the Universal Declaration of Human Rights, the UN Charter, the Vienna Declaration, a number of conventions and the resolutions adopted by the HRC and its predecessor, among other sources. To effectively meet the definitional challenge of MBC, an exegesis of this body of work should be undertaken. The focus should be on defining the parameters of cooperation that have been determined by these documents.

Additionally, the efforts to define MBC should be guided by the clear principles that established the HRC, primarily those outlined in UNGA resolution 60/251. This resolution highlights that that there is provision in the Charter for friendly international relations, respect for equal rights, self-determination and international cooperation. Of equal importance is that the resolution also underlines that rights are universal, indivisible, interrelated and mutually reinforcing and that all states, regardless of their political, economic and cultural systems, have the duty to promote and protect all rights and fundamental freedoms. Any definition of MBC that contributes to the HRC’s work must include these components.

Finally, any definition should take into consideration that the UN Charter underlines three aims or pillars of the UN: security, development and human rights. These three pillars are equally weighted and mutually reinforcing. They are not sequenced and all states, regardless of levels of development, political systems or cultural specificities, must uphold their obligations in all three pillars and not prejudice one at the expense of the others. This principle is also enshrined in resolution 60/251.

Therefore, in defining MBC, the HRCAC must consider where cooperation is already described in the human rights acquis, it must respect the parameters of the HRC’s founding document and ensure consistency with the obligations defined in the UN Charter. MBC could potentially contribute to (but should not replace) international human rights obligations, but must go through the same rigour as all other new concepts.

**Challenge 2: How does MBC further Human Rights?**

A second challenge emerges once MBC is defined; how does the cooperation so defined contribute to protecting and promoting human rights? The HRCAC should look to evaluate how MBC will *concretely* make these contributions and how it quantitatively differs from other, established forms of cooperation. If MBC’s positive impact on human rights is determined to be negligible or non-existent and MBC amounts to one approach among many in promoting and implementing human rights obligations, the value of fostering MBC in the HRC would be minimal. Resolution 60/251 reaffirms the significance of national and regional particularities and various historical, cultural and religious backgrounds. However, MBC, stemming from a national approach, should not have precedence or be preferred over other approaches employed by the UN member states. All approaches necessarily must share the same goal of respecting and ensuring respect for the human rights of all people.

Further, international cooperation necessarily should be guided by the UN Charter. To this end, Article 1 of the UN Charter sets out a framework of cooperation stating that one of the purposes of the UN is “[t]o achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms”. Article 56 of the Charter of the United Nations stresses the need to take joint and separate action, placing proper emphasis on developing effective international cooperation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all. According to Article 22 of the UDHR: “Everyone . . . is entitled to realisation, through national effort and international cooperation . . . of the economic, social and cultural rights indispensable for his dignity and free development of his personality”. This raises the question of what MBC adds to the existing cooperation outlined in the Charter. It also makes clear that MBC must not be contrary to the Charter, which places individual human rights at the centre of international human rights cooperation.

While the UN Charter is primordial text in establishing cooperation, other documents such as the Vienna Declaration and Programme of Action (VDPA) and the Declaration on the Right to Development (DRD) also contribute to the agreed definitions and practices of international cooperation in the context of human rights. Section C of the VDPA and the DRD’s Article 3(3) are particularly relevant as they place the rights of the individual at the centre of international cooperation in pursuing human rights and development. MBC must mirror this intent.

**Challenge 3: Is the OHCHR Best Placed to Foster MBC?**

A third and final challenge identified by this submission is whether the OHCHR has the expertise to offer technical assistance and capacity building that could foster MBC, once it is more clearly defined and in light of the contributions it could potentially make to protecting and promoting human rights. Expertise can be acquired, but an evaluation should be made into whether this is cost effective. This is a necessary inquiry as it is the OHCHR that carries out the mandates of the HRC.

The study to be undertaken by the HRCAC should make this assessment and in doing so should in part be guided by the International Covenant on Economic, Social and Cultural Rights (ICESCR) which provides broad guidance on international cooperation in human rights.. The ICESCR states that each State Party “undertakes steps, individual and through international assistance and cooperation…to the maximum of its available resources, with a view to achieving progressively the full realization [of rights].” The OHCHR should not be obligated to provide resources to foster MBC. Rather, technical assistance and capacity building should be focused on those rights recognized in the ICESCR, the UN Charter, VDPA and other documents that outline rights that form the obligations and norms to which States have committed.

Further, the OHCHR should provide assistance based on its expertise and for the benefit of the recipient state in its efforts to fulfill its human rights obligations for all individuals. MBC suggests that benefits from cooperation and assistance flow two ways. The VDPA states, “[r]ecognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms.” This should be the focus of OHCHR programming, not fostering an undefined economic development approach.

**Conclusion**

In sum, MBC appears to reflect the principles of “win-win” cooperation and “win-win” appears to be an approach primarily focused on economic development. We have identified that there are very few existing data, statistics or best practices from which to draw as regards MBC in the domain of human rights. We believe this poses challenges to this study. It is our view that the HRCAC work on MBC should focus on defining this concept in the context of human rights, determine if the MBC approach can work to protect and promote human rights in a manner that fits within existing international obligations and finally determine if the OHCHR has the expertise, has the obligation, or should foster MBC through its technical assistance and capacity building.

1. <http://www.worldlii.org/int/other/UNGA/2006/183.pdf> [↑](#footnote-ref-1)
2. <http://www.xinhuanet.com/english/2015-03/29/c_134106145.htm> [↑](#footnote-ref-2)
3. <http://www.china-un.ch/eng/hom/t1538784.htm> [↑](#footnote-ref-3)
4. <https://www.fmprc.gov.cn/mfa_eng/wjbxw/P020180828720627338850.pdf> [↑](#footnote-ref-4)
5. These websites are provided to provide examples of the economic basis of “win-win.” The following list in no way provides an exhaustive account of “win-win” reference in the context of economic development and cooperation.

   <http://www.xinhuanet.com/english/2018-08/31/c_137434079.htm>

   <https://www.uscnpm.org/blog/2018/04/11/transcript-president-xi-addresses-2018-boao-forum-asia-hainan/>

   <http://www.ciis.org.cn/english/2017-11/17/content_40072596.htm>

   <https://www.newvision.co.ug/new_vision/news/1485058/china-emphasizes-win-win-cooperation-africa>

   <https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zwjg_665342/zwbd_665378/t1465389.shtml> [↑](#footnote-ref-5)
6. There is a correlation between human rights violations and the start of violent conflict. See Office of the High Commissioner for Human Rights, www.ohchr.org, Early Warning and the Protection of Human Rights in Situations of Conflict, Violence and insecurity, <https://www.ohchr.org/en/aboutus/pages/violenceandinsecurity.aspx> [↑](#footnote-ref-6)