THE EUROPEAN CONSTITUTION
- A STRONGER ROLE FOR LOCAL & REGIONAL GOVERNMENT

Conseil des Communes et Régions d’Europe
Council of European Municipalities and Regions
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On 29th October 2004, the heads of all the EU’s 25 Member States met in Rome to sign the Treaty Establishing a Constitution for Europe - better known as the European Constitution.

This represented the culmination of 4 years of discussion, debate and much political and technical work. But signing the Treaty is not the end of the story… Treaties - and Constitutions - only come into force once they are ratified, according to each Member State’s own constitutional procedure.

Some countries must, by law, hold a referendum on the question. In other States, it is Parliament that will say yes or no.

This publication aims to explain the key points of the Constitution, and to highlight its points of particular interest to local and regional government.

The Council of European Municipalities and Regions (CEMR) welcomes the fact that the Constitution gives a stronger recognition of the role of local and regional government than any previous EU Treaty. We have for more than 50 years promoted a strong and united Europe that is based on local and regional self-government - and the Constitution for Europe is a major step in that direction.

This is important because the modern “Europe” (now of 25 countries, soon to become more) must not become a top-down construction, where “they” - whether the EU institutions or the Heads of Government of the Member States - tell “us” what to do. It has to involve the people of Europe, the peoples of Europe. And since local and regional governments are the spheres of government closest to the citizen, they have a key role to play, as intermediaries between the citizen and “Europe”, pressing the viewpoint of citizens on the one hand, and explaining the key European issues on the other.

But the role of local and regional government in tomorrow’s EU is even more important, since they actually have responsibility for implementing some 70% of EU laws, on subjects such as the environment, transport, consumer protection, competition rules…. Just as important, it is the EU that decides on major financial programmes (in particular the structural funds) which are for the benefit of the EU’s regions, especially - but not only - the poorest and least developed ones, including those with natural handicaps such as mountains, islands or a sparse population. These territorial funds and policies are a key element in building a sense of solidarity and cohesion across Europe, including through co-operation between Europe’s towns and regions.

So for CEMR, some of the key questions, in assessing the constitution, were:

Does the constitution make it easier for citizens and their local and regional governments to have their input into laws and policies that affect them?

Does it enhance democracy, and in particular does it recognize local and regional democracy and self-government?

Does it recognize the needs of Europe’s regions and localities, with all their diversity?

You will find the answers in the following pages!

Jeremy Smith
Secretary general
December 2000. The Heads of State and Government of the EU meet in Nice to agree a new Treaty to establish the new rules and processes that will enable enlargement to take place, bringing in the 10 new Member States. The debates in this inter-governmental conference, mainly behind closed doors, are hard and heated; the final text is complex and convoluted, the very opposite of transparent. It consists of complicated amendments of earlier Treaties already complicated by previous amendments… Everyone, including the heads of government involved, knows that the Treaty of Nice, though creating a minimum legal base for enlargement to work, is an unsatisfactory document.

So they agree, as an add-on to the Treaty, a Declaration on the future of the EU, calling for a deeper and wider debate over the coming year. The debate, they thought, should look at:

- How best to clarify and divide powers between the EU and the Member States, respecting the principle of subsidiarity (i.e. the EU should only do what cannot best be done by the Member States)
- The status of the EU’s new Charter of Fundamental Rights
- How to simplify the Treaties (without changing their meaning)
- The European role of national Parliaments
December 2001. The EU’s heads of government meet again, this time in Laeken, near Brussels. In the meantime, there has indeed been a lively debate, with many senior politicians putting forward their ideas for Europe’s future. They adopt the Laeken Declaration, which poses a large number of questions, essentially around how to make the EU more democratic, transparent and efficient.

But in addition, the Declaration asks a key new question - should the existing Treaties be rolled up into one Basic Treaty, which would contain the key elements, alongside a longer and more detailed part? And, most important, it sets up a Convention on the Future of Europe, comprising representatives of the EU’s institutions, and of each Member State’s government and Parliament, with the task to consider the key issues arising for the Union’s future development and try to identify the various possible responses, with the option of putting forward either a single proposal, or a range of opinions.

The President of the Convention is Valéry Giscard d’Estaing - a source of pleasure to CEMR, since he had been CEMR’s President since 1997. This was the first time that such a body had been given such a key political task, which in the past was always kept by governments to and for themselves. It added a strong element of democracy and diversity, and the Convention worked in a generally open way.

July 2003. The Convention’s work is complete, its final report is sent to the Heads of government. The Convention has reached a broad consensus - though not total unanimity - on a single text: a draft European Constitution for a single European Union.

December 2003. The inter-governmental conference, convened by the Italian Presidency of the EU, fails to reach agreement on a number of key issues in the draft Constitution... The toughest problem is the issue of voting rights in the Council of Ministers. The situation seems blocked - the incoming Irish Presidency takes on the task of finding agreement by every government.

18th June 2004. Despite all the problems and arguments, the inter-governmental conference finally reaches agreement on the Treaty establishing a Constitution for Europe. The key blockage (voting rights) is finally resolved, though in a way that makes the Constitution more complicated than the Convention had proposed.

And so to Rome, for the symbolic signing of the Treaty by the Heads of State and Government. The European Constitution is finally launched - but the long road to ratification now stretches ahead...
The European Convention decided quite early on in its work to see if agreement could be reached on the drafting of a Constitution, rather than through traditional Treaty changes. There are, in essence, three practical reasons for having a Constitution at this stage of the EU's development:

**Simplification:**  
- To make the way the EU works more easy to understand

Until now, the basic legal texts for the EU are scattered around in various Treaties, mostly known after the cities in which they were signed (Rome, Maastricht, Amsterdam, Nice…). These Treaties together constitute a maze of thousands of pages. They have been amended and re-amended to such a point that it is very difficult for citizens to understand where to find the legal basis for the rules that affect their lives, or to understand them if they do find them. So one key objective of the Constitution is to put all of the key rules for the working of the EU into one place. In fact, even today the "EU" is in fact, and in law, a mix of two bodies, the European Union and the European Community, so one task of the Constitution is to merge them into a single European Union.

**Modernisation**  
- To enable the enlarged EU to work more effectively

Widening the EU from 15 to 25 members in one go required a review of the way the EU institutions work. Whilst the Treaty of Nice did the bare minimum to enable the 10 new member states who joined in May 2004 to take their place, the new Constitution aims to provide a more solid, understandable and logical foundation for an EU of 25 - perhaps in a decade 30 - member states. The new rules for the EU Presidency, for example, provide for a two and a half year term of office for the President, instead of the 6 monthly rotation system between each of the Member States.

**Bringing the EU closer to its citizens**

One of the main reasons for launching the "future of Europe" debate was the sense that the EU has, over the years, become more remote from the day to day experience and priorities of Europe's citizens. This sense of remoteness is highlighted in the declining turn-out in successive elections to the European Parliament. Most surveys indicate that the majority of European citizens do not understand the role and functioning of the EU. In part, this is due to the over-complex language and poor communication. But it also reflects a sense that decision-making is both distant yet also sometimes intrusive, and that people’s daily concerns are not listened to enough. The Constitution aims to tackle these issues, in part by making the basic texts easier to understand, and in particular by creating new rules to ensure that the EU institutions listen more closely to the voices of the national Parliaments, to regional and local governments, and to civil society.
The European Constitution is in four parts.

The **first part** sets out the EU’s **values and objectives, its competences and law-making procedures, and its institutions**. In short, what is the EU there to do, who does it, and how is it done. This first part contains most of the really "constitutional" features, set out in 60 articles, in a much more accessible way than anything contained in the Treaties to date.

The **second part** is dedicated to the **EU Charter of Fundamental Rights**, which had been agreed in 1999 as a stand-alone Charter setting out the basic rights of all EU citizens, and which now finds its place in the Constitution. It is a common feature of many Constitutions, in Europe as well as the USA and elsewhere, to provide for fundamental rights.

The **third part** is much longer than the rest, and sets out the **scope and more detailed rules covering all of the EU’s powers and policies**. In large measure, this part re-produces the rules and provisions currently to be found spread around the existing treaties, and does not include radical changes in the content of those policies. However, it does contain some important new provisions, including more areas where the European Parliament has a decision-making role, and a decrease in areas requiring unanimity of all member states (whilst keeping the national "veto" power for sensitive areas).

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**What is in the Constitution?**

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What follows is a short summary of some of the key points in the Constitution, in particular those in Part I that provide the essential framework rules for the Union’s existence and functioning.

**DEFINITION, OBJECTIVES, RIGHTS AND CITIZENSHIP**

**Article I-1** provides for the establishment of the European Union, and declares that the Union “shall be open to all European States which respect its values and are committed to promoting them together.”

**Article I-2** then sets out the Union’s values, including respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights (including those of minorities). This is followed in **Article I-3** by a statement of the Union’s aim (to promote peace, its values and the well-being of its peoples), and its objectives. **Article I-4** enshrines the free movement of persons, services, goods and capital, and outlaws discrimination on ground of nationality.

**Article I-5** deals with the relations between the Union and the Member States. In particular, it requires the EU to respect the equality of Member States, and their national identities – which are defined to include regional and local self-government (see below). It provides for the principle of sincere co-operation, under which States must work together in mutual respect to implement the tasks and objectives of the Union.

Under **Article I-6**, the Constitution and EU law are expressed to have primacy over the law of the Member States. **Article I-9** states that the Union will recognize the fundamental rights, freedoms and principles set out in the Charter of Fundamental Rights and which itself is set out in full in Part II of the Constitution.

**Article I-10** provides for citizenship of the Union – every national of a Member State is also, automatically, an EU citizen. It also sets out the key rights of EU citizenship.
The Union’s competences

The following articles deal with the EU’s competences, or powers. Article I-11 sets out the principles which apply to the exercise of the EU’s powers. In particular, these include the principle of “conferral”, under which the EU can only act if it has a power conferred on it; of subsidiarity (i.e. if it is shown that action is essential at EU level); and of proportionality (i.e., the EU should not do more than is needed to achieve the objective of an action). For more on subsidiarity and proportionality, as they affect local and regional government, see below.

Article I-13 sets out the different categories of EU competence. These begin with a small number of competences that are exclusive to the EU: the customs union, competition rules necessary for the internal market, monetary policy for eurozone Member States, conservation of marine biological resources, and the common commercial policy.

There is a considerably longer list of “areas of shared competence”, set out in Article I-14, where the EU may take action, but so also may the Member States, insofar as the EU has not acted. These shared competences include the internal market, social policy, cohesion policy, agriculture, the environment, consumer protection, transport, trans-European networks energy, and the area of freedom, security and justice.

Next comes the role of the Union in the co-ordination of economic and employment policies (Article I-15), followed by its competence in relation to the common foreign and security policy (Article I-16). The final list of competences (Article I-17) sets out areas of supporting, co-ordinating or complementary action, i.e., where the main role remains with the Member States, but where the Union may add some value by its action. The areas listed are health, industry, culture, tourism, education, youth and vocational training, civil protection, and administrative co-operation. And last but not least, Article I-18 provides a flexibility clause, enabling the Union to act to achieve its objectives where there may be no clear existing competence, but only by unanimity in the Council of Ministers (i.e. every Member State must agree).

The Union’s institutions

Articles I-19 to I-32 set out the institutional framework of the Union. The institutions are:

- the European Parliament,
- the European Council (heads of state and government, together with the new post of President of the Council – elected by the Council for a two and a half year term - and the President of the Commission)
- the Council of Ministers (or Council)
- the European Commission (also including, as a new post, that of Union Minister for Foreign Affairs)
- The European Court of Justice
- The Court of Auditors
- The European Central Bank

In addition, the Union has two advisory bodies, the Committee of the Regions and the Economic and Social Committee.

Exercising the EU’s competences

Article I-33 provides for the different types of EU legal action, in particular legislative action. It differentiates between European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law is binding and directly applicable in all Member States. A European framework law, however, is also binding as to the result to be achieved, but leaves it to the national authorities to choose the form and methods. Regulations have the role of implementing legislative acts, and apply to all Member States. A Decision, on the other hand, is only binding on those to whom it is addressed. Recommendations and opinions, as their name suggests, are non-binding.

The following Articles set out the rules for legal acts in more detail, including specific provision relating to the common foreign and security policy, and the area of freedom, security and justice.

Article I-43 provides for a solidarity clause, under which the Union and Member States commit themselves to act jointly in a spirit of solidarity in case of terrorist acts, or natural or man-made disaster.
Article I-44 provides for “enhanced co-operation”, allowing a group of Member States (at least one third) to work more closely together, within the scope of the EU’s powers and objectives, where the Union as a whole is not at that time willing to go further.

**The democratic life of the Union**

Within a few Articles, the Constitution lays down some important principles as to the democratic functioning of the Union. Article I-46 provides that the functioning of the Union “shall be founded on representative democracy”, with citizens directly represented at EU level in the European Parliament. This Article also asserts that every citizen has the right to participate in the democratic life of the Union, with decisions being taken “as openly and as closely as possible to the citizen.”

Article I-47 then goes on to provide for the principle of participatory democracy, under which the EU’s institutions must maintain an open and regular dialogue with representative associations and civil society. In addition, one million or more citizens from a significant number of Member States may petition the Commission to take action under the Constitution. Article I-48 concerns the clear recognition of the role of the social dialogue at EU level. Other Articles relate to the role of the European Ombudsman, and the status of churches and non-confessional organisations.

Article I-50 deals with the transparency of the proceedings of the Union’s institutions. In particular, it provides that the Parliament shall meet in public, as must (and this is a new requirement) the Council of Ministers when debating legislation.
As noted above, Article I-1 provides that EU membership is open to all European states that are committed to the EU’s values. Articles I-58 and 59 give more detail on the processes, including the process for suspending existing EU members’ rights, in cases of serious and persistent breach of the EU’s values. Article I-60 sets out the procedure for the voluntary withdrawal from the EU by a Member State, including a negotiated arrangement for the withdrawal.

Part IV of the Constitution contains the procedures for amending the Constitution. In brief, any change can only be made by unanimous agreement of all Member States. There is a simplified revision procedure in relation to proposals to change any of the internal policies set out in Part III, but even here each member state must approve the change via its own constitutional procedure.
Throughout the life of the Convention, CEMR pressed hard for the Constitution to give a stronger recognition and role to local and regional government than under the existing Treaties. We worked with other European associations representing regions and cities, and with the Committee of the Regions. At first, it was difficult to get the Convention members to take up our points, but in the end our lobbying achieved very positive results.

(1) THE EXPLICIT RECOGNITION OF LOCAL AND REGIONAL SELF-GOVERNMENT

Article I-5 states that the EU must respect the national identities of the Member States, through their political and constitutional structures, “inclusive of local and regional self-government”. This is the first time that the European treaties have ever referred to local and regional self-government. This recognition is politically and symbolically important – showing that the Europe is not just a top-down system – but will also have legal value, if for example draft EU legislation undermined the universal principles of local self-government. These principles are set out in particular in the Council of Europe’s European Charter of Local Self-Government, now ratified by 39 States including all EU Member States, once France completes its current ratification process.

(2) THE EXTENSION OF THE SUBSIDIARITY PRINCIPLE TO INCLUDE LOCAL AND REGIONAL GOVERNMENT

Since the Maastricht Treaty of 1992, the EU’s governing treaties have included the principle of subsidiarity, under which the EU may only take action if the objectives of the action cannot be adequately achieved by the Member States. Until now, this has generally been seen as creating a division of labour between the EU and the national governments. CEMR has always argued that the true meaning of subsidiarity requires that decisions and actions should be taken by the sphere (or level) of government closest to the citizen that is effective for the purpose – which in very many cases will be local and regional government. Under Article I-11 of the Constitution, the subsidiarity principle now requires the EU not to act if the objectives can be better achieved by the Member States “either at central or at regional and local level.”

In addition, Article I-46 (on the principle of representative democracy) states that “decisions shall be taken as openly and as closely as possible to the citizen”, which adds force to the importance of the local dimension of subsidiarity.
## (3) More Effective Consultation of Local and Regional Government

As we have seen above, the Constitution, in its chapter on the Democratic Life of the Union, requires the EU to maintain a regular dialogue with representative associations and civil society, and to carry out broad consultations with “parties concerned”. This means that representative European associations of local and regional government such as CEMR now have a stronger legal position.

More specifically, the Constitution also includes a Protocol on the Application of the Principles of Subsidiarity and Proportionality – which will be as binding as the Constitution itself. Under the Protocol, the European Commission must consult widely before proposing European legislation, and these consultations must, where relevant, take into account the regional and local dimension of the proposed action. All of this guarantees that the interests of our regions and municipalities will be better taken into account in future European legislation.

## (4) More Account to Be Taken of the Financial Impact on Local and Regional Government

The Protocol also requires the Commission to draw up a detailed statement on how the proposed new law meets the principles of subsidiarity and proportionality. This statement must assess the financial impact of the new rules, including the implications for Member States’ national and regional legislation. Draft laws must also ensure that the financial and administrative impact on regional or local authorities (amongst others) is minimised and in line with the objective.

One of the major concerns of local and regional government has been that the EU institutions often legislate on issues where the burden of implementing the measure falls on our authorities, without this being considered let alone compensated. CEMR wanted a stronger requirement – to ensure that adequate finances are provided for local and regional authorities where new burdens are imposed – but at least the Constitution requires the impact to be assessed and minimised.

## (5) The New Right of the Committee of the Regions to Go to the Court of Justice

The Constitution gives the Committee of the Regions the right, for the first time, to refer issues to the European Court of Justice. This right is given where the Committee considers there is a breach of the subsidiarity principle, and also where its legal rights have been broken (e.g. it has not been consulted when it is required to be). This gives local and regional government some “teeth” to ensure that the subsidiarity principle is complied with.

## (6) A Stronger Recognition of Territorial Cohesion

Regional and local government have a special interest in the EU’s policies so far as cohesion policy and the structural funds are concerned. So far, the Treaties mainly refer to economic and social cohesion – the Constitution’s new objectives, in Article I-3, now include the promotion of economic, social and territorial cohesion. Local and regional authorities are by definition “territorial” actors, and the new emphasis will often require the EU to look more closely at the regional impact of its policies.
Some key innovations in the European Constitution

The European Constitution for the first time:

• Creates a single European Union, with a **single text** setting out its objectives and values, how it works and what it does

• Includes a **Charter of Fundamental Rights** for all EU citizens

• **Enhances democracy** by giving the European Parliament the power to legislate, together with the Council of Ministers, in more policy areas

• **Simplifies decision-making** in the Council of Ministers — from now on, new laws (except those requiring unanimity) will require the vote of 55% of Member States, representing 65% of the EU’s population

• **Gives national Parliaments more say on new legislation**, by requiring them to be consulted on new laws, with the right to complain if under the subsidiarity principle, EU action is not considered justified

• Creates a **full-time President for the European Council** (the Heads of state and government) who will hold office for two and a half years, rather than the 6 months at present

• Creates a **Foreign Minister for the EU**, to help to develop the coherence and effectiveness of the EU’s foreign and related policies
In 2002, CEMR adopted its policy in relation to the Convention on the Future of Europe. It supported the idea of a Constitutional Treaty, and advocated many of the points later to be included in the Constitution. At the meeting of its Policy Committee in Maastricht in December 2004, CEMR adopted its Declaration on the European Constitution.
The Council of European Municipalities and Regions welcomed the decision taken by the Heads of States and Governments to establish a Convention on the Future of Europe, thus going beyond the classical intergovernmental approach. Chaired by President Giscard d’Estaing, the Convention paid particular attention to involving all democratic actors in the European Construction process, including local and regional authorities. It fulfilled its task by handing over a draft Treaty establishing a Constitution for Europe which, after amendments, was approved by the heads of States and Governments and signed in Rome on October 29th 2004.

The Policy Committee of the Council of European Municipalities and Regions welcomes this vital new stage of the construction of European Union which is more democratic, more efficient and closer to its citizens. The Policy Committee moreover recalls that from the moment that the Convention was established, CEMR drafted proposals aimed at improving European governance and involving local and regional authorities in the Union’s decision making mechanisms.

CEMR has ensured the promotion of these ideas with the members of the Platform of European Associations of local and regional government, and in close cooperation with the Committee of the Regions. CEMR notes with satisfaction that the Treaty establishing a Constitution for Europe meets the majority of our requests.

In a position paper adopted in June 2002, we called for a European Union based on a constitutional framework which is comprehensible to citizens, close to them and able to take their interests into account. We sought the creation of a single Union, with one Constitutional Treaty. We considered that the Union’s goals needed to be clarified in an understandable and precise manner. We called for a clear definition of competences and we called on the Union to have comprehensible decision making mechanisms. Lastly, we emphasised the need to take into consideration the principles of governance including participation, subsidiarity, proportionality, consultation, and partnership. We believe that our opinions have been heard on the majority of these issues.

The Treaty establishing a Constitution for Europe represents major advances for local and regional authorities, for which we have long waited, in particular:

- The explicit recognition of local and regional self government in the Constitution’s first articles;
- Taking into consideration, for the first time, local and regional authorities in the definition of the implementation of subsidiarity and emphasizing the importance of the principle of proportionality;
- The inclusion of territorial cohesion among the goals of the Union;
- The principle of consultation of local and regional authorities and their representative Organisations;
- The power given to the Committee of the Regions to go before the EU Court of Justice if it considers that the principle of subsidiarity is being breached.

This consideration of the local and regional dimension in the Treaty establishing a Constitution for Europe is not a symbolic reference, but has real meaning and legal consequences, including on issues regarding the role and management of our public services.

Even prior to the formal ratification of the Treaty, we call for the implementation of the provisions of the Constitution (including the protocol on subsidiarity) relating to good governance which concern local and regional authorities, and in particular those linked to consultation and dialogue, which should be very quickly implemented within the existing legal framework.

Given the major progress that the Treaty represents for governance in Europe and local and regional authorities, the Council of European Municipalities and Regions expresses its support for the Treaty establishing a Constitution for Europe, signed on October 29th 2004 in Rome by the Heads of States and Governments.

The CEMR invites its member national associations to take initiatives, in accordance with their chosen methods, to fully explain to their citizens the different aspects linked to the ratification of the Treaty.
The Council of European Municipalities and Regions (CEMR) is a non-profit association. It is the broadest association of local and regional government in Europe. Its members are national associations of local and regional governments from over thirty European countries.

The main aim of CEMR is to promote a strong, united Europe based on local and regional self-government and democracy; a Europe in which decisions are taken as closely as possible to its citizens, in line with the principle of subsidiarity.

CEMR’s work covers a wide range of themes, including public services, transport, regional policy, the environment, equal opportunities…

CEMR is also active on the international stage. It is the European section of the world organisation of cities and municipalities, United Cities and Local Governments (UCLG).

**CEMR’s activities**

**Influencing European legislation**

EU legislation – in fields such as the environment, public procurement, structural funds, state aids and competition law - has a huge impact on local and regional government across Europe. Influencing European laws is thus one of CEMR’s key activities. Working closely with its national associations, CEMR draws up policy positions, which form the basis of responses to the European Commission, especially through its dialogue and consultation processes, and for lobbying the Parliament and the Council of Ministers, e.g. via specific amendments.

**Shaping the future of Europe**

CEMR works for a Europe that respects the principle of subsidiarity and local and regional self-governance, a Europe in which all spheres of government (local, regional, national, EU) work together as partners. CEMR has campaigned for a European Constitution that recognizes the role of municipalities, towns and regions; it has also helped local and regional governments from new EU member states to prepare for accession to the EU.

**Exchanging information and experience**

Taken together, localities and regions constitute a well of experience in their domains of competences (Social welfare, economic development, environment, transport...). CEMR’s role is to facilitate the flow of information on these experiences, to spread ideas and skills to all its members. To achieve this, CEMR organises working groups, seminars and conferences that enable its members to meet and discuss their concerns and ideas.

**Supporting town twinning**

CEMR has created the concept of European town twinning, which stems from the idea that a peaceful and successful Europe can be best built at its base, by its citizens. Today, there are over 30,000 town twinnings across Europe, and support for this unique movement remains one of CEMR’s priorities – in particular, by co-ordinating the work of twinning officers. CEMR works closely with the European Commission (DG Culture and Education) and the Parliament to ensure necessary financial and policy support for the twinning movement.

**Strengthening local and regional government in the world**

CEMR is the European section of the world organisation of towns and municipalities, United Cities and Local Governments (UCLG). Within UCLG, the Council of European Municipalities and Regions promotes democracy, local self-government and exchange of experience across the world. It also promotes North-South co-operation and capacity-building.