

THE EUROPEAN CONVENTION

THE SECRETARIAT

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COVER NOTE

from	Secretariat
to	The Convention
Subject :	Contribution submitted by Mr Jacob Söderman, Observer to the European Convention. - “The functioning of the Institutions”

The Secretary-General of the Convention has received the contribution annexed hereto from Mr Jacob Söderman, Observer to the European Convention.

Strasbourg, 23.01.2003

Contribution from the European Ombudsman to the European Convention

“The Functioning of the Institutions”

The drafting of the Constitution should take account of the citizens' point of view on the functioning of the Union's Institutions. This contribution is based on my seven years experience as European Ombudsman in handling citizens' complaints.

Openness

European citizens still believe that the Institutions function too secretively.

The last ten years have brought significant progress towards openness in many Union Institutions and bodies, but there is still much to do.

Democracy is a fundamental value and openness is an essential part of democracy. The Constitution's statement of fundamental values should reflect this by retaining the phrase, added by the Amsterdam Treaty, that decisions in the Union are taken “as openly as possible.” (Art. 1 TEU).

The Union's legislative bodies should comply with normal democratic principles by meeting in public. This point is made in the preliminary draft constitutional Treaty (Art. 36), in Mr BROK's draft constitution (Art. 104), as well as in the “Penelope” draft (Art. 87.2), which was recently submitted as a contribution to the Convention (CONV 481/03).

The Amsterdam Treaty also included the public right of access to documents, subject to necessary exceptions (Art. 255 EC). This provision was limited to documents held by the European Parliament, Council and Commission. I am delighted that the “Penelope” draft proposes (Article 87) that the right of public access should apply to documents of all the Union institutions and bodies.

Good administration

European citizens also see the functioning of the Institutions as too bureaucratic. Citizens in all Member States want a well-managed administration that is open, accountable and service-minded.

In this field too, important progress has already been made.

The Maastricht Treaty established the European Ombudsman to enhance relations between the citizens and the Union, mainly by tackling maladministration. The institutions and bodies have been co-operative and try to correct maladministration when it occurs.

The Charter of Fundamental Rights is the first international human rights instrument to include the right of good administration. To make this right of citizenship concrete, the European Parliament has approved a Code of Good Administrative Behaviour containing the most important principles of administrative law.

Almost all Member States have a general law containing such provisions. European citizens cannot understand why no such law governs the functioning of the Union Institutions and bodies. To remedy this situation, the Constitution should provide a clear legal basis for a European administrative law.

a) The rule of law

Finally, European citizens want the functioning of the Institutions to promote the rule of law and fundamental rights.

The rule of law requires effective remedies if rights are not respected. It is important that the Constitution should provide such remedies and clearly inform the citizens of their existence.

Over the years, the practice has developed of citizens complaining to the Commission as “Guardian of the Treaty.” The Commission has power to deal with infringements of Community law by Member States under Article 226 EC.

Replacing the Treaty by a Constitution, especially a Constitution that includes fundamental rights, requires profound reflection on the role of Guardian of the Treaty. It must be organised in a way that demonstrates to citizens that the rule of law is a living reality and that no one is above the law. One possibility to achieve this could be to designate a Commissioner with special responsibility for this function.

The Constitution should also inform citizens of the remedies that are available in Member States. The most important is to go to the national courts, but there is also a network of non-judicial bodies - ombudsmen and committees on petitions - which could solve many cases quickly and effectively. The written contribution which I made to the Convention in July last year (CONV 221/02) contains details of the network and its potential role in applying the Charter of Fundamental Rights.