

073-059

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Dear Mr Oreja,

I am afraid that I had less time than I had hoped for preparing the suggestions for you. About an hour on Monday evening after the

end of the Meeting and then again, last night I grabbed some minutes when I got home after travelling from Brussels to Boston.

What I have done is to jot down some ideas which you may find useful when preparing your initial presentation of the Constitution to the Committee tomorrow. This is not intended as a comprehensive draft speech, which I know, you will want to do yourself.

Best wishes

*revised* *\*\*\*\** *original*

1. ~~At first sight it might seem that presenting a Draft Constitution for Europe comes at a particularly inopportune time. After all, the obstacles to the adoption of the Maastricht Treaty have not been fully removed and it might be thought that public opinion is not yet ready to discuss and digest yet another document. There will certainly be those who will claim that in going ahead with its Constitution for Europe Project, the European Parliament is out of touch with its very own constituency.~~

*can be described as a debate on its nature*

2. This view must be firmly rejected. It must first be remembered that the ~~work we start today will come to fruition much later in the year, at a time when the Maastricht debate, hopefully, will be over and the question What Next? will, once again, be in the air.~~

*no public impact*

3. But it is not just the political calendar which justifies our work today. Indeed, The primary immediate task ahead is to give our full support to the Maastricht process. We should not allow that the Constitution Project be used or be seen as in any way undermining the Treaty on European Union.

4. Nevertheless, the Draft Constitution we shall be putting forward -- building on the Treaties, on Parliament's own Draft Treaty for European Union and other Parliamentary acts and yet moving confidently, if prudently, ahead -- is designed in many of its features to redress some of the weaknesses which the Maastricht debate has exposed. *procedural* *patiar*

5. Let us consider, in turn, Process, Style, Content and Form.

6. Process. For all its positive elements, the very process of adopting the Maastricht Treaty was disrespectful of European citizens. A secret, intergovernmental process, in which the European Parliament and its national counterparts are relegated to the sidelines and the public is kept in the dark until the final outcome is unveiled, was bound to run into difficulties. *inspection*

Compare this to our intentions: We embark today on a process which will be open, accessible and involve European political forces and public opinion at all levels. *confusion*

7. Style. Here too, we should not be altogether surprised that Maastricht has run into some difficulties. For all that is positive in its content, the essential messages of Maastricht are lost in a structural mass -- the Three Pillars -- and sunk in a miasma of technical provisions. It is regrettable that a text which represents a decisive step in the evolution of European integration, is drafted in a style which is unfortunately alienating to the citizens of Europe and which requires for its comprehension all manner of Guides for the Perplexed.

Compare this to our intentions: A Draft Constitution which focusses on the Essential and the text of which should be direct, principled, accessible, hopefully even inspiring. *inspired*

8. Content. We should not downplay the importance of Maastricht: Monetary and Economic Union, the first steps towards a Common Foreign and Security Policy, European Citizenship. But its glaring lacunae cannot be forgotten either: A failure to redress fully the *redirection* *restored*

democratic deficit of the Community; the absence of a veritable Bill of Rights -- elements which go to the core of our common European heritage and political culture.

Our intentions are, of course, to redress these gaps, to privilege democracy and human rights at the center of the constituent document of Europe -- their rightful place.

9. Form. Finally, consider the form, an element of such huge symbolic importance. The Community, the Union, even in the pre-Maastricht days, had long ceased to be a classical international organization, rooted in traditional Treaty law. The European Court

of Justice has characterized the Community not simply as a New Legal Order in which individual, citizens are full subjects alongside the Member States but, a titre juste, characterized the Treaties as the Constitutional Charter of Europe. It is thus unacceptable that at "vital moments" of European life we should revert to the old fashioned Treaty basis and international law precepts. It is time we acknowledged at a formal level what is already the living reality of Europe: The High Contracting Parties of the European construct are not only States. They are individuals as well! And it is time that this duality be reflected in the basic constituent documents. A Constitution.

10. What kind of Constitution? What were the principles which guided us in preparing the first Draft which will be presented to the Committee in a couple of weeks.

11. The first point to emphasize is that it is a Draft. Not a Fait Accompli. A draft which will be subjected to the widest possible scrutiny, discussion, debate, and amendment. In the very process of adopting a Constitution for Europe we shall be underling that the European Parliament sees itself as the veritable Public Forum of the polity.

12. In its style -- we have tried to present a document which is linear, accessible, in some sense even solemn as befits a Constitution. Moreover, we were guided by the conviction that if the Constitution is to become a document to which public opinion -- and not only that of elites -- can respond, brevity was to be a value in and of itself.

13. In its content we have sought a document which is above all Principled -- capturing the essence of the European values, objectives, structure and process in a manner which would

transcend changing political exigencies. We have tried to draft the Constitution in a manner which would have a lasting value.

14. It is clear that every Member of this Committee may well find "lacunae" in the detailed provisions of the Draft Constitution -- matters which seemingly were "forgotten." We do not claim infallibility. But it should always be remembered that the Constitution is precisely that -- a Constitution: A basic document which does not purport to specify the details of, say, each and every policy of the Union, but only the guiding principles which must be respected in adopting specific policies.

15. One should not be surprised therefore to discover that the Draft Constitution does not include many provisions of substantive, material Community law. Thus, for example, the Draft Constitution specifies the principle of the a mixed open economy, of social cohesion, and a Single Market, but does not include the provisions of Transport or Competition or Common Commercial Policy. Likewise, unlike the Treaties, the Constitution does not purport to specify all the details of institutional arrangements but only the tasks, powers and essential balances of and among the various Institutions.

16. Thus, in considering possible additions to the Draft Constitution we invite Members to consider first and foremost the following question: is it necessary to constitutionalise the particular provision in mind, or could it remain at the level of organic law. That is the test we adopted ourselves in deciding what to include and what to exclude.

17. How "far" does the Constitution in advancing the structure and process of European Integration? We were guided by the principle of "progressive development" in a text which takes as its base the existing Community acquis, adds to it the acquis of the European Parliament itself -- expressed in the Draft Treaty and the various Resolutions and Reports already approved by Parliament, and then develops these cautiously and prudently where we deemed necessary and useful.

18. Thus, to give another example, the Constitution vindicates fully the principles of institutional equality of Parliament and Council in the legislative process; it consolidates the position of the Commission in line with Parliamentary resolutions; it incorporates the Declaration of Human Rights, with slight technical modifications, as approved by Parliament and so forth.

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19. The Constitution is divided into a Preamble and ?? Chapters.

(Specify Titles)

At the ~~meeting of Feb. 77~~ the text will be available. At this moment one can mention the basic thinking behind the organisation and content.

The Preamble tries to reformulate the meta-political objectives of the Union in language which is both solemn and adapted to present conditions. Much emphasis is given to the maintenance of the delicate balance between European identity and that of the Member States and their peoples.

The Chapter on Principles is precisely that -- Unlike the Preamble we tried here to formulate principles which would serve at one and the same time as the guiding programme for future Community action, but also have sufficient legal consistency to provide a yardstick for judicial control of the actions of the Union and its Member States.

The Chapter on Competences is particularly delicate: We rejected a model which would attempt to list the respective competences of the Union and its Member States in favour of the existing model which relates the Competences of the Union to its objectives as specified in the chapter of principles. Naturally, Subsidiarity has been given a central and operational place in the definition of Competences.

Citizenship and Human Rights follow rather closely the wishes of Parliament in this respect.

The Institutional Provisions will be read with particular attention. In essence we have tried to remain faithful to the Parliamentary vision expressed in the Martin, Di Giovanni and <sup>Maïsch</sup> Reports, translating these into constitutional principles and constitutional language. In some places we offer innovations which we believe respect the spirit of Parliament.

Judicial Protection is consolidated in a manner which would allow adaptation to new Member States.

The Final Provisions attempt to give a realistic arrangement for adoption while consolidating the existing acquis.

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Additional Elements to be included in the presentation:

1. The Constitution as a core which may not be compromised in the process of Community enlargement.
2. The idea of writing a document which will be appropriate also for a Community of 15, 20 and 25.