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Group of Political Analysis (GPA)

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Institutional Settlement

Summary

On February 27, 2007 the Group of Political Analysis (GPA) convened to discuss aspects of institutional reform and prospects for an institutional settlement. In two sessions (formal session and lunch) the GPA heard three short presentations followed by a discussion and reactions from the side of the Commission, including the President. The discussion focused on five larger themes which can be summed up under the following headings:

- Looking back: what can be learned from the French and Dutch referenda?
- Need for an institutional settlement: is the EU working without the Constitutional Treaty? How does the failure of ratification of the Constitutional Treaty affect the function of the institutions of the EU?
- Current challenges for and difficulties for an institutional settlement
- Strategies and approaches for negotiating a solution
- Possible failure: what happens if there is no agreement or another rejection by citizens?

Presentations

1. The first presentation gave an account of the situation in which the EU finds itself during the deliberations for the so-called "Berlin Declaration" and the possible revival of the Constitutional Treaty (CT). The EU is and will be facing new and large challenges such as energy security, climate change, and water supply. At the same time, globalization continues which, if only as side-effect, leads also to changing identities and more diversification. On the level of states, especially EU Member States (MS), regional identities become more important and influential. Thus, a number of questions may be asked which link this background with the question of institutional reform: Is the current set-up of the EU and its institutions adequate for tackling major challenges the EU is facing? If not, does the CT provide all the necessary reforms in terms of institutional framework and competences to rectify the situation or does it hold "lacunae" where adaptation is needed? Does the CT do enough to increase democratic legitimacy of the Council? Does it hold an adequate reform for the structure of the Commission?

2. The second presentation focused on the aftermath of the "No" votes with a particular focus on France, building on two premises: (1) in hindsight the 2004 enlargement has not resulted in dramatically negative consequences neither for the functioning of EU institutions nor economically for the old Member States; (2) the CT has, of course, been a large compromise but not necessarily a satisfactory one. The main problem of the negative referenda may not be that two states voted against the CT but the recurrent problem of people expressing reservations and fear about the EU which threatens to erode the political consensus of left and right forces about the traditionally "neutral" project of European integration. Since it is usually the same social groups from which these expressions emanate, it will be essential to heed the voice of these groups in the future. A way has to be found to pass on the European message while answering to social concerns. This has to steer consideration for possible further referenda on an adapted CT. Generally, the citizens have to be heard more although referenda may not be the best way to achieve this as they are often a too simplistic means.
3. The third presentation gave an impression of the current difficulties for the German Council Presidency to define with 27 Member States what the substance of the CT may be that can be saved. Where some governments take a pragmatic and – in theoretical terms – neo-functionalist approach by asking how to respond better to citizens' fears, others seem to reflect more on their own short term concerns which makes it difficult to discuss the important issue of a time frame for a solution. The Presidency seems to attempt to establish what bargaining chips may be used vis-à-vis individual Member States in order to convince. In this sense, the exercise seems comparable to the negotiation over the Single European Act. Some MS argue that the EU works fine without the CT but one needs to look beyond the mere votes in the Council and the initiatives of the Commission. One needs to consider also the decisions which could not be taken in the Council for a lack of adequate qualified majority voting procedures, intergovernmental agreements which in fact circumvent EU decision-making like the treaty of Prüm, and the insufficient possibilities of participation of the Parliament. In order to reconnect with the citizens the EU should focus on solidarity and stress that it protects European identities rather than pretend that European integration has no effect on them.

Discussion

The ensuing discussion included reactions from GPA members and the Commission and centred on the following themes:

Looking back: what can be learned from the French and Dutch referenda?

Citizen's concerns were not taken sufficiently into account, especially in explaining adequately the content and necessity of the CT in the run-up to the referenda. Since we now have a relatively clear picture of why people voted "no" and because the opponents mostly have a clear social profile, it should be possible to answer to these concerns.

The discussion also focused on the **usefulness of referenda and the type of question** put to the vote which can make a considerable difference for the outcome. The point was raised that while referenda may not be a good way to increase political participation in general, they should, if used, be made more political. Citizens needed to be given real political choices in order to be able to weigh the options. Fundamental questions as, for example, on EU membership or on ways forward on specific political issues require real choices which interest

people; general questions on the agreement to a treaty or on voting procedures in the Council, however, are hard to sell to the citizens as important and don't excite. In that sense, the failed referenda were asked the wrong way.

Referenda questions should therefore be much more pointed. The point was raised that it would be ideal, if politically and legally very difficult, to discuss referenda questions on large European questions at the European level among the 27 Member States.

Some members raised the point that the **CT text itself** had been part of the problem. Taking up the provisions of the old Treaty texts and adding to them was partly responsible for the rejection and the current blockage. The idea that the CT should be a document that would be valid for a long time had been erroneous. A basic text of constitutional character needed to be flexible and adaptable to new political issues and challenges. The point was made that Member States had wanted to reign in this very flexibility during the Convention in order to be ensured against claims of new EU competences. Some of them were now calling for this flexibility again.

Need for an institutional settlement: is the EU working without the Constitutional Treaty?

Despite the fact that the EU is moving on and producing results in the absence of the CT, there was agreement among most GPA members that in order to have efficient mechanisms to tackle future challenges, some reform of institutions and also competences was necessary.

The point was raised that the Commission oftentimes does not present itself as a unified political body. In response, however, the point was made that the larger problem does not lie in governing a Commission of 27 but rather on the Council side where a number of important decisions stand no chance of being adopted given current voting procedures. This caused considerable frustration among some MS and resulted in an inclination to develop new agendas which were dealt with outside the EU framework on an intergovernmental level. Others were of the opinion that, in fact, the Council work was not deeply conflictual as some claimed and that Europe had often moved on by means of initiatives of a sub-group of Member States.

Current challenges and difficulties for an institutional settlement

Finding a solution has to happen against a difficult background. Generally, the EU finds itself between the Scylla and Charybdis of growing speed of globalization and increasing nationalism. More specifically, a solution to the crisis over the CT has to resolve the two impossibilities of (1) changing the text in order for it to stay (mostly) the same and (2) stressing the necessity and relevance of the CT while emphasizing that the EU was moving on with important political projects in its absence. The Commission especially faces the impossible task of showing the functioning of "Europe of results" and arguing that the CT is desperately needed.

Whatever the solution in the end, every possibility would have a political cost to each Member State government. The Presidency faces the very difficult task of finding ways to reduce these costs as much as possible and identify stumbling blocks as well as negotiating chips to motivate political will for a settlement. Then again, this is a political debate as many which have to be conducted in and over Europe. One shouldn't fear this.

Strategies and approaches for negotiating a solution

There was agreement that it had to be avoided to reopen the whole package of the CT and restart a new Convention. The point was made that in order to find agreement among the 27 one had to **go back to the political headlines of large issues**. Merely attempting to re-engineer the text of the CT would not yield results. Vis-à-vis the citizens and MS governments it would be best to adopt a task and issues driven strategy rather than one driven by institutional needs. Different Member States had different priorities so one could find ways of packaging a deal. There was agreement that the wider field of energy – climate – environment would be an important argument in aligning interests, also among some of the more sceptical Member States. In addition, a common narrative was needed next to the CT which showed common goals and values and dispelled fears of hidden agendas among Member States.

On the text, a number of GPA members stressed that the **name "Constitution"** should be dropped from the title. For some MS such a title was anathema symbolizing the imposition of a European "super-state". In addition, other parts of the CT on symbols such as on the flag, the European anthem etc. should be dropped. Some thought that the Constitutional parts should be dropped altogether and focus should be on the thematic issues. Others thought that including the reference to Christian values would be a plus for some Member States.

The issue of **reforming the Commission** was shortly briefly discussed. The idea was put forward that the CT solution in this respect was an aberration. It was unrealistic at any rate to believe that larger Member States would give up their Commissioner for a certain period in a rotation system. In support of this view, the argument was made that for reaching the citizens in each MS it was important that every MS had a representative of its own nationality in the Commission. The gain in efficiency of a smaller Commission would be lost on the side of the legitimacy. It was made clear, that the Commission supports the CT in its entirety, including the provisions on the Commission size and rotation.

Ratification issues were discussed to some extent. It was important to make clear to MS which had ratified the CT, especially to Spain and Luxembourg where a successful referendum had been held, that their ratification had not been useless. The idea was put forward that in the 18 countries that had ratified a **newly agreed text** should be regarded **as a treaty amending the CT**, a quasi-first amendment. In addition, the idea was raised that since the EU was currently based on two treaties, part I and II of the CT should be used to amend the Treaty on the European Union (TEU) whereas part III should be adopted separately to amend the Treaty establishing the European Community (TEC).

The **question** was discussed whether one should aim to **avoid referenda** on a new text altogether. Such strategy held the danger of losing contact with citizens even more and reducing trust. In addition, it would be a mistake for the Commission to support producing a treaty which didn't require a referendum in some Member State. This decision should be entirely left to the Member States.

Possible failure: what happens if there is no agreement or another rejection by citizens?

Some felt that the issue of the **CT should not be made a "make or break" issue** and that not much sentimentality should be attached to a lost document which had been imperfect. Given that the actual political challenges for the EU have often very little to do with the CT as such one should not insist too much on it. For all the importance of the institutional question, there were also enough successes of the EU on material issues so that a failure of this Constitutional process should not be regarded as a failure of the Union or the Commission.