Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 15157
05 October 2020

Democracies facing the Covid-19 pandemic

Report[1]
Committee on Political Affairs and Democracy
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Summary

Faced with the Covid-19 pandemic, many governments introduced extraordinary measures aimed at stopping the spread of the virus. These measures have had a significant impact on people's lives, on fundamental rights and on the functioning of democratic institutions.

While supporting States in giving priority to saving and protecting populations from the pandemic, the report recalls fundamental principles to be respected when introducing emergency measures to cope with the crisis.

It stresses that no public health emergency may be used as a pretext to destroy the democratic *acquis* and warns governments against abusing emergency powers to silence opposition or restrict human rights. Parliaments must continue to play their role of representation, legislation and oversight.

The report addresses decisions to postpone elections during a public health emergency: a postponement should be foreseen by law, necessary, proportionate and limited in time; all political parties and other stakeholders should be involved; and campaigning should be open and fair.

The report argues that constructive multilateralism is a form of capital for anticipating and addressing real threats and restoring confidence in intergovernmental institutions, such as the World Health Organization, as well as tackling the far-reaching implications of the crisis. Council of Europe member and observer States must ensure that diagnostic tools, treatments and vaccines are available and affordable to all, starting with the most vulnerable among Europe's 830 million citizens.

1. Reference to Committee: Bureau decision, Reference 4512 of 07 May 2020.

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A. Draft resolution[2]

1. The Covid-19 pandemic is the greatest public health crisis the world has faced in recent history. It has already claimed more than one million lives across all continents and has produced unprecedented multi-faceted, wide-ranging and, possibly, lasting consequences for the social, economic, and political lives of our societies. It has also been a crash test for governance systems and institutions at national and international levels.

2. In view of the exceptional nature of this public health crisis, governments in Europe enacted, under time constraints, a variety of immediate and extraordinary measures aimed at stopping, delaying or limiting the spread of the virus. These measures, whether or not introduced under a state of emergency or other special situation status, have had a significant impact on people's daily, professional and social lives, on their enjoyment of fundamental rights and on the functioning of, and balance between, democratic institutions and processes.

3. The Parliamentary Assembly, while supporting States and public authorities in giving priority to saving lives and protecting populations, stresses that democracy, human rights and rule of law cannot be allowed to become the collateral damage of the pandemic. No public health emergency may be used as a pretext to destroy democratic *acquis*.

4. The Assembly notes that emergency situations, especially when a state of emergency is formally declared, generally affect the system of checks and balances. It warns against the risk of abuse of emergency powers by governments to, *inter alia*, silence the opposition and restrict human rights. In this context, the Assembly stresses that all emergency measures, introduced in response to the pandemic, must be limited in duration and not exceed the duration of the emergency situation warranting them.

5. The Assembly underlines that, as cornerstone institutions of democracy, parliaments must continue to play their triple role of representation, legislation and oversight, the latter being even more essential in times of emergency where the executive acquires additional powers. The continuity of parliament and the public coverage of its work during a public health emergency are also essential in so far as they allow all major political forces to be represented and participate in democratic decision-making, thus also ensuring the legitimacy of government. Above and beyond party cleavages, politicians must act with utmost responsibility to minimise the damage to the population, economy, social structures and public institutions; address the causes of the crisis; and work in concert on a post-pandemic recovery plan which also prepares for future crises.

6. Citizens' confidence in public authorities and democratic institutions and processes is essential in times of crisis. Curtailing public debate and restricting the functioning of key elements of the democratic system may not only undermine democracy as such but also damage people's adherence to, and the effectiveness of, any emergency policies and actions taken to address the primary causes of crisis and protect the population.

7. In view of these elements and in line with the principles applicable to the states of emergency elaborated by the European Commission for Democracy through Law (Venice Commission), the Assembly calls on member and observer States, as well as States whose parliaments enjoy observer or partner for democracy status, to respect the system of democratic checks and balances and, in particular, apply the following principles when facing a public health emergency:

7.1. limit, both in time and in scope, the declaration of the state of emergency and/or the application of emergency legislation and executive decrees, which must be adopted within the constitutional framework and comply with international standards, in particular those set by the European Convention on Human Rights where appropriate;

7.2. ensure that parliaments have the power to:

7.2.1. exercise regular control at all stages of the procedure related to a public health emergency (namely its declaration, prolongation or termination);

7.2.2. review, and where necessary repeal, any emergency decrees where the executive has used powers belonging normally to the legislator;

7.2.3. conduct inquiries and investigations on the execution of emergency powers, even after the public health emergency has come to an end;

2. Draft resolution adopted unanimously by the committee on 23 September 2020.

7.3. refrain from permanent changes to legislation, in particular concerning the electoral system, as well as constitutional amendments, organic laws or other long-term and fundamental reforms and referendums, especially constitutional referendums, until the end of the emergency;

7.4. enable the opposition to participate effectively in the approval or any extension of the state of emergency as well as in *ex-post* scrutiny of emergency decrees, in particular by introducing a requirement to have a qualified majority when prolonging the state of emergency;

7.5. respect the principle of loyal co-operation and mutual respect between national, regional and local authorities;

7.6. ensure the availability of, as regularly as possible, easily understandable, full and accurate information to citizens, by providing access of the media to State institutions, thus guaranteeing transparency and encouraging public debate.

8. The Assembly welcomes the fact that, since the outbreak of the Covid-19 pandemic, most Council of Europe member States' parliaments have continued to exercise, without interruption, their statutory duties relating to representing the interests of the citizens, considering new legislation to alleviate the effects of the pandemic and overseeing the emergency measures introduced by governments. They have responded with flexibility and creativity adapting their work to the extraordinary circumstances resulting from the pandemic by implementing, to various degrees, a combination of measures such as: reducing the number of plenary sittings and limiting the number of members who can attend them; limiting work in plenary to the strict minimum (i.e. consideration of emergency legislation related to the pandemic and overview of the emergency measures introduced by the government); increasingly using modern communication technologies and platforms, and allowing online participation in committee meetings, plenary sittings and even in voting; setting up new ad hoc structures of scrutiny and accountability regarding the government's pandemic response.

9. The Assembly is aware that finding ad hoc solutions to continue carrying out parliamentary work has not been an easy task and may have raised issues of procedure, competence, authority, priorities, relations between majority and opposition and within party groups, as well as with government and citizens. It therefore calls upon the parliaments of Council of Europe member and observer States and parliaments which enjoy observer or partner for democracy status to take stock of their experience during the pandemic and use it to prepare for any future crisis by:

9.1. introducing, preferably on the basis of a cross-party agreement, necessary changes into their internal structures, rules and procedures with a view to allowing for an uninterrupted exercise of parliamentary duties in emergency situations;

9.2. carefully assessing the management of pandemics by governments, namely the execution of emergency powers, implementation of an exit strategy, and preparedness for possible new waves of pandemics;

9.3. reviewing and, where necessary, revising legislation on emergency situations in a way that would ensure maximum efficiency while being fully compliant with fundamental principles of democracy, respect for human rights and the rule of law;

9.4. considering granting the opposition the right to chair relevant inquiry committees;

9.5. sharing experience and good practice of pandemic management with their peer parliaments, using in particular, multilateral parliamentary assemblies as platforms and co-operating with international partners.

10. The Assembly notes that, since the outbreak of the Covid-19 pandemic, elections at various levels have been postponed in a number of Council of Europe member States, while in others their organisation has given rise to controversies either about the principle of holding elections during the pandemic or the specific modalities. The Assembly calls upon member States to apply the following principles, as elaborated by the Venice Commission, when deciding whether to hold or postpone elections during a situation of public health emergency:

10.1. ensure that postponement is foreseen in the law, necessary, proportionate and limited in time;

10.2. involve all political parties, candidates and other stakeholders, including health authorities and experts, in the discussion concerning a possible postponement; a qualified majority in the parliament may be required, especially for longer postponements; judicial control by a national independent and impartial court should be possible;

10.3. ensure that conditions of universal, equal, free, secret and direct suffrage are met, including by guaranteeing an open and fair electoral campaign and a meaningful public debate;

10.4. assess how far it is possible to compensate for limitations to door-to-door campaigning or public rallies by means of public or private media or the use of internet, including social media; special attention should be paid to the duty of neutrality of the authorities, as well as to the obligation of the broadcast media to cover election campaigns in a fair, balanced and impartial manner on their overall programme services;

10.5. consider using different voting modalities such as postal voting, mobile ballot boxes, voting by internet or proxy voting, if provided by law and if the conditions for universal, free, secret and direct suffrage are met.

11. The Assembly notes that the organisation of elections during a public health emergency raises legal and practical challenges for election observation thus increasing the risk of possible fraud and manipulation of election results. In view of the importance of its election observation role, the Assembly resolves to consider modalities which would allow it to carry out election observation missions, during such an emergency situation, in co-ordination with its institutional partners, in the framework of International Election Observation Missions.

12. The Assembly, in line with its Resolution 2329 (2020) and Recommendation 2174 (2020) "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic", stresses the urgent need for an evidence based, internationally co-ordinated and human rights compliant approach to public health crises. In the face of a pandemic – and the inevitable next one – that threatens humanity, the current international context must shift from rivalry among powers to an opportunity for multilateral co-operation beyond partisan cleavages.

13. Genuine and constructive multilateralism is capital to anticipate and address real threats and to restore confidence in intergovernmental institutions, as well as to tackle the far-reaching health, economic, political, infrastructural and social implications of the current crisis. In this context, multilateral organisations, such as the World Health Organization (WHO), are central to finding common solutions to common problems and require support from all member States, including proper funding to act swiftly and issue recommendations based on evidence.

14. In light of the above, the Assembly calls upon member and observer States as well as States whose parliaments enjoy observer or partner for democracy status to:

14.1. seek and maintain a united global focus on pandemic preparedness and response, and to commit to building trust and a sense of common purpose amongst all States;

14.2. positively respond to the United Nations Security Council's call for a general and immediate cessation of hostilities in all situations and for the urgent need for unity and mutual support in the battle against a common enemy;

14.3. carefully scrutinise the way their national healthcare system coped or failed to cope with the pandemic, with a view to enhancing preparedness, resilience and response for the future;

14.4. share good practice in handling the pandemic;

14.5. raise awareness of disinformation and misinformation around the pandemic and ensure that individuals stay alert and abstain from spreading false or misleading content;

14.6. support the independent review of the WHO's co-ordination of the global response to Covid-19; ensure adequate funding for the Organisation to make it independent of voluntary contributions and provide it with appropriate tools to effectively monitor the health situation in all member States;

14.7. strengthen the International Health Regulations (IHR) for better preparedness and a more efficient early alert and response system;

14.8. ensure that diagnostic tools, treatments and vaccines are accessible and affordable for everyone, across all countries, starting with those persons at highest risk, and adopt a common European approach, so that every one of Europe's 830 million citizens can benefit from equal protection from Covid-19.

15. The Assembly welcomes the fact that, in the face of the challenges raised by the pandemic, the Council of Europe bodies and institutions – in particular, the Parliamentary Assembly, the Committee of Ministers, the Secretary General, the Commissioner for Human Rights and the Venice Commission – have provided timely

and adequate support to member States by sharing with their governments and parliaments tools, standards and guidelines aimed at ensuring compliance with the principles of democracy, human rights and the rule of law in their response to the pandemic.

16. Therefore, the Assembly resolves to develop further its co-operation with national parliaments by encouraging national delegations to share good practices and organising peer reviews on various aspects of addressing the consequences and implications of the pandemic, *inter alia*, through the organisation of parliamentary hearings with the participation of Council of Europe experts, with a view to developing viable and sustainable solutions and approaches to address similar crisis situations in future.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution …. (2020) "Democracies facing the Covid-19 pandemic" whereby it calls, *inter alia*, on member and observer States to respect the system of democratic checks and balances and apply a number of principles when facing a public health emergency and when deciding whether to hold or postpone elections during such an emergency.

2. In the face of the pandemic, the Assembly considers that the international context must shift from rivalry among powers to an opportunity for strong and effective multilateral co-operation beyond partisan cleavages. It also calls on member and observer States to ensure that diagnostic tools, treatments and vaccines are available and affordable to everyone, starting with the most vulnerable groups among Europe's 830 million citizens.

3. The Assembly welcomes the fact that, in the face of the challenges raised by the pandemic, the Council of Europe bodies and institutions – in particular, the Parliamentary Assembly, the Committee of Ministers, the Secretary General, the Commissioner for Human Rights and the European Commission for Democracy through Law (Venice Commission) – have provided timely and adequate support to member States by sharing with their governments and parliaments tools, standards and guidelines aimed at ensuring compliance with the principles of democracy, human rights and the rule of law in their response to the pandemic.

4. The Assembly welcomes in particular the Secretary General's toolkit offering guidance to member States on "Respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis", as well as the Committee of Ministers' Declaration on the Covid-19 pandemic, adopted on 22 April 2020 under the Georgian presidency. It also fully supports the theme of "Protection of human life and public health in the context of a pandemic – Effectively responding to a sanitary crisis in full respect for human rights and the principles of democracy and the rule of law", which is the focus of the priorities of the Greek presidency of the Committee of Ministers, and looks forward to the Athens Declaration to be adopted on 4 November 2020 at ministerial level.

5. In light of the principles applicable to the situations of emergency elaborated by the Venice Commission and on the basis of information, available *inter alia* on the observatory of such situations in Venice Commission member States, the Assembly invites the Committee of Ministers to build on national experiences and good practice in responding to the Covid-19 pandemic with a view to developing a checklist of parameters to enable the fullest democratic participation possible in situations of emergency.

6. Noting that co-operation, co-ordination and exchange of information and good practice between different tiers of government (national, regional and local) has proved crucial for the efficiency and effectiveness of the response by member States to the Covid-19 pandemic, the Assembly invites the Committee of Ministers to prepare a recommendation with guidelines on multilevel governance and response to emergencies.

3. Draft recommendation adopted unanimously by the committee on 23 September 2020.

C. Explanatory memorandum by Mr Ian Liddell-Grainger, rapporteur

1. Introduction

1. In the first place, the Covid-19 pandemic is a global public health emergency. Therefore, the legitimate priority for public authorities has been to save human lives and to protect peoples' health by ensuring resilience of health care systems.[4]

2. At the same time, it was clear from the outset that the pandemic will inevitably have multi-faceted, wide-ranging and lasting consequences for the economic, social and political lives of our societies.

3. In view of the exceptional nature of the threat, many governments in Europe and globally have had no choice but to enact, under time constraints, immediate and extraordinary measures aimed at stopping, delaying or limiting the spread of the disease (lockdowns, restrictions on the freedom of movement, and more broadly, on many other human rights and fundamental freedoms). These measures have had a significant impact on people's lives.

4. At the same time, the pandemic has been a crash test for governance systems and institutions. It constitutes a challenge to the very essence of our democracies based on the values and principles of rule of law and human rights, and on the interplay of institutions and other actors in democratic systems.

5. For tackling the Covid-19 pandemic and its intertwined health, social and economic impacts, our member States have relied primarily on their own resources and on co-operation in, and advice from, relevant international organisations.

6. For its part, the Council of Europe is duty-bound, by its mandate, to see to it that respect of basic principles of democracy, respect for human rights and the rule of law remains on the top of national and international political agendas even in the current crisis.

7. In this context, the swift reaction by the various Council of Europe officials and entities (Secretary General, President of the Parliamentary Assembly, chairpersons and rapporteurs of Assembly committees, Commissioner for Human Rights, European Commission for Democracy through Law (Venice Commission), European Centre for Global Interdependence and Solidarity (North-South Centre), chairperson of the Committee of Convention 108 and Data Protection Commissioner of the Council of Europe as well as several Council of Europe monitoring or advisory bodies), highlighting the importance of ensuring the compliance of emergency measures with the fundamental values and standards, were very timely and should be welcomed.

8. In particular, the Secretary General issued on 7 April 2020 a toolkit offering guidance to member States on "Respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis". The Committee of Ministers referred to the Secretary General toolkit in its declaration on the Covid-19 pandemic, adopted on 22 April 2020 under the Georgian presidency. The theme of "Protection of human life and public health in the context of a pandemic – Effectively responding to a sanitary crisis in full respect for human rights and the principles of democracy and the rule of law" is moreover the focus of the priorities of the current Greek presidency of the Committee of Ministers. Just before the distribution of this report to the members of the Committee, on 16 September 2020, the Secretary General issued a new "Council of Europe contribution to support member States in addressing healthcare issues in the context of the present public health crisis and beyond".

9. The Chairperson of the committee, Dame Cheryl Gillan, made a public statement on 25 March 2020 warning that "in times of crisis, parliamentary democracy cannot be put 'on hold'", calling for parliamentary scrutiny of governments, even if exercised through new means, to be protected during the Covid-19 pandemic to ensure transparency and public debate and to preserve citizens' trust in democratic institutions. She also called upon people's representatives to rise to the challenge of these extraordinary circumstances and put the general interest, as well as the security and safety of the population, above and beyond any political games or tactics.

4. See the Report adopted by the Committee on Social Affairs, Health and Sustainable Development on 2 June 2020 "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic", Doc. 15115 and Resolution 2329 (2020).

10. The President of the Parliamentary Assembly also issued several statements underlining the need to keep democratic safeguards in place during and after a pandemic, particularly parliamentary scrutiny of the executive,[5] and, on 2 June 2020, addressed to national parliaments a "toolbox" to help them carry out their tasks.[6]

11. For its part, the Venice Commission published two useful documents: a compilation of its opinions and reports on states of emergency[7] and a study "Respect for democracy, human rights and the rule of law during states of emergency – reflections".[8] It also set up an Observatory on the situations of emergency in Venice Commission member States whose aim is to collect country-specific information on constitutional and extra-constitutional emergency powers, on relevant mechanisms of parliamentary and judicial oversight and on electoral experiences. The Observatory thus provides systematised comparative information which may be used by lawyers, scholars, State officials, international and non-governmental organisations working in this field.

12. Amongst the intergovernmental structures of the Council of Europe, the European Committee on Democracy and Governance (CDDG) provided a good example of how member States can benefit from multilateral co-operation to strengthen their response to Covid-19. Since the beginning of the emergency, CDDG members have been collecting and sharing information on legal and policy developments, case studies and good practices as regards the co-ordination and collaboration between different levels of government, cross-border and inter-municipal cooperation, the role of local authorities, public administration innovation making it possible to ensure the continuous provision of essential services to the public.[9]

13. The Covid-19 crisis is, *inter alia*, a consequence of ill-governed globalisation. It has shown the urgent need for a genuine and constructive multilateralism to anticipate and address real, not fake threats, and for global co-operation, beyond partisan cleavages and interests, as well as co-ordinated actions to ensure effective and integrated crisis management. The power distribution among countries may have also influenced the handling of the pandemic by the World Health Organisation (WHO). In retrospect, many lessons can be learnt to prepare for future crises and to improve the functioning of the international system.

14. The present report is one of the five reports entrusted to Assembly committees with a view to covering the challenges raised by the pandemic falling within their mandate. It is therefore only natural that it covers the impact the pandemic has had on democracy and, in particular, the role of national parliaments in handling the crisis, as well as global challenges.[10] I was appointed rapporteur on 28 May 2020. On the same day, the committee held a video hearing with the participation of Mr Oliver Kask, Chairperson of the Council of Democratic Elections of the Venice Commission, Judge of the Court of Appeal of Estonia; Mr Iain Cameron, member of the Venice Commission; Professor, University of Uppsala, Sweden; and Ms Meg Russell, Director, Constitution Unit; Department of Political Science, University College London, United Kingdom.[11] I presented a preliminary draft report at the meeting of the Committee on 23 June (by videoconference). On this occasion, the committee also exchanged views with Mr Charles Clift, Senior Consulting Fellow, Global Health Programme, Chatham House, United Kingdom.

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5. On 3 June 2020, speaking during a high-level video-conference organised by the new Greek Presidency of the Council of Europe, chaired by Greek Alternate Foreign Minister Miltiadis Varvitsiotis speaking from Athens, the President reiterated that Parliaments needed to be "on deck at all times" in a crisis approving any temporary ceding of powers to the executive and subjecting governments to parliamentary scrutiny. It is important not to cross certain red lines, or diminish the power of the parliament, to whom citizens have handed their trust, and "refuse to accept the abnormal" once the crisis is over, when it comes to fundamental freedoms and democratic values.

6. The many statements issued by the President, but also Committee Chairpersons and Rapporteurs, including from our committee, related to the challenges raised by the pandemic, are reproduced on a special page in the Assembly's website on the Covid-19.

7. CDL-PI(2020)003, 9 April 2020.

8. CDL-PI(2020)005rev, 26 May 2020.

9. See www.coe.int/en/web/good-governance/cddg-and-covid.

10. In addition to the above-mentioned report of the Committee on Social Affairs, Health and Sustainable Development, three reports were also prepared by the Committee on Legal Affairs and Human Rights on "The impact of the Covid-19 pandemic on human rights and the rule of law" (Doc. 15139) (with an opinion by the Committee on Culture, Science, Education and Media, Doc. 15158), by the Committee on Equality and Non-Discrimination on "Upholding human rights in times of crisis and pandemics: gender, equality and non-discrimination" (Doc 15129) and by the Committee on Migration, Refugees and Displaced Persons on "Humanitarian consequences of the Covid-19 pandemic for migrants and refugees" (Doc. 15142).

11. See the statement "Covid-19: The pandemic must not be an opportunity to strengthen governments against parliaments", which includes the video link to the exchange of views.

2. Democratic safeguards in emergency situations

15. As mentioned above, the pandemic has been a crash test for governance systems and institutions. It constitutes a challenge to the very essence of our democracies. Undoubtedly, the way in which public authorities across Europe reacted to the crisis, and the steps taken to respond to the pandemic, are set to determine the trajectory of European democracies for years if not decades to come.

16. In addition, there is a risk that legitimate feelings of fear and uncertainty among the population provoked by the Covid-19 could subsequently be further exploited, and re-oriented on other issues causing public concern (for example terrorist threat, migration, etc.) leading to xenophobic trends and nationalistic rhetoric. Therefore, there is an increased need for continued vigilance on the part of the Council of Europe to identify and address such attempts in the future.

2.1. Crisis management and democratic requirements

17. As at all times of crisis, facing a pandemic calls for:

– continuity of democratic governance;

– trustworthy institutions;

– responsible democratic leadership;

– responsible citizenry;

– common responses and solidarity opposed to national isolation.

18. In times of crisis, Council of Europe governments must remain transparent and accountable, democratic checks and balances must be maintained and extraordinary powers and states of emergency must be applied carefully, limited in time and scope and always subject to parliamentary scrutiny and the control of the courts.[12] The democratic process should only be impeded as much as is necessary to address the emergency and for a limited period. Freedom of expression must be maintained, parliaments, political parties and courts should continue to function as much as possible.

19. Continuity of legitimate democratic institutions is of key importance for the resilience of democratic governance. Society must be able to rely on existing organs of the State that should continue to operate during extraordinary situations. In particularly demanding crisis circumstances, all branches of government are required to co-operate for the sake of public good. As pointed out by the Venice Commission, "*As a state of emergency involves derogations from the ordinary rules on distribution of powers, it is important, for the crisis management to be effective and coordinated and for the sake of equality and fairness of treatment of all citizens, that all state, regional and local institutions and bodies respect the principle of loyal cooperation and mutual respect between them*".[13]

20. Emergency situations may require exceptional measures to be swiftly decided upon and enacted through extraordinary procedures. The expediency of short cutting the normal institutional decision-making process is based on the primary duty of public authorities to protect the population.

21. In this context, it is worth recalling that, according to the Venice Commission, "*The security of the State and of its democratic institutions, and the safety of its officials and population, are vital public and private interests that deserve protection and may lead to a temporary derogation from certain human rights and to an extraordinary division of powers...*".[14]

22. In particular, public emergency situations may lead to alterations in the distribution of functions and powers among the different organs of the State. The executive may be authorised to take measures which otherwise would require legislative action.

23. The national authorities in each country shall determine the nature and the scope of emergency measures and procedures that best fit the pressing needs of their citizens. Where possible, such specific emergency measures may be adopted by parliament for dealing with the specific situation which goes beyond the existing law. The general emergency regime should preferably be laid down in the Constitution, and in more detail, in a separate law, preferably an organic or constitutional law. The latter should always be adopted

12. See Doc. 15139, op.cit.
13. CDL-PI(2020)005rev, op. cit., para. 16.
14. Venice Commission, Rule of Law Checklist, para. 51.

by parliament in advance, during normal times, in the ordinary procedure.[15] In any event, any general or specific emergency legislation or executive decree must comply with constitutional and international standards.

24. It should be recalled that "…*State security and public safety can only be effectively secured in a democracy which fully respects the Rule of Law. This requires parliamentary control and judicial review of the existence and duration of a declared emergency situation in order to avoid abuse*."[16]

25. Emergency measures must have a legal basis, be targeted, proportionate, transparent, non-discriminatory, and temporary.[17]

26. In Resolution 2209 (2018) on "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights", the Assembly recalled the basic requirements for any derogatory emergency measures to be in compliance with democratic standards:

> *"3. … Fundamental safeguards of the rule of law, in particular legality, effective parliamentary oversight, independent judicial control and effective domestic remedies, must be maintained even during a state of emergency. Due democratic process, including separation of powers, as well as political pluralism and the independence of civil society and the media must also continue to be respected and protected.*
>
> *4. Beyond these constraints, the overarching principle of proportionality limits the action that may be taken, via the stringent test of what is "strictly required by the exigencies of the situation". Normal measures or restrictions permitted by the Convention for the maintenance of public safety, health and order must be plainly inadequate before derogatory, emergency measures are permissible. A state of emergency that requires derogation from the Convention must be limited in duration, circumstance and scope. Emergency powers may be exercised only for the purposes for which they were granted. The duration of emergency measures and their effects may not exceed that of the state of emergency."*

27. From the outset of the crisis, there was a risk that the pandemic could be used as a pretext to curb democracy, human rights and the rule of law, and thus further accelerate deteriorating trends which were already observed in many countries, and globally, long before.

28. Moreover, these trends might well survive the virus; measures (even well justified ones) introduced to facilitate the quick response to the pandemic may not be revoked once it is over.

29. It is therefore important to recall that a state of emergency, if declared, must be of a limited duration, and not exceed the duration of the emergency situation warranting these measures. The Venice Commission recalled that "*…the main purpose of the state of emergency is to restore the democratic legal order. The emergency regime should not be unduly protracted; if the Government rules through emergency powers for too long, it will inevitably lose democratic legitimacy*".[18]

30. Any emergency legislation or executive decree should contain "sunset clauses", namely clear time limits indicating the duration of exceptional measures. Since the main purpose of emergency management is to stop the crisis and to revert to normality as soon as possible, the scope of emergency measures must be limited to the strictly necessary, and not allow altering the fundamentals underlying democratic rule.

31. Permanent changes to legislation, in particular relating to the electoral system, as well as constitutional amendments, should not be introduced during a state of emergency.

32. The Venice Commission warned that "…*emergency powers have been abused by authoritarian governments to stay in power, to silence the opposition and to restrict human rights in general. Strict limits on the duration, circumstance and scope of such powers is therefore essential*…".[19]

33. Emergency situations, in particular when these are substantiated by a formal introduction of a state of emergency, are generally characterised by a shift of power from parliament to government. Nevertheless, Parliaments, as cornerstone institutions of democracy, must continue to play their triple role of representation, legislation and oversight.

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15. CDL-PI(2020)005rev, op. cit., para. 15.
16. CDL-PI(2020)003, op. cit.
17. See Doc. 15139 op. cit.
18. Turkey – Opinion on Emergency Decree Laws Nos 667-676 adopted following the failed coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016, CDL-AD(2016)037, para. 229.
19. Venice Commission, Rule of Law Checklist, para. 51.

34. The latter is of particular importance in times of crises where the executive acquires additional powers. Parliamentary oversight remains an essential requirement of parliamentary democracy, all the more so in times of emergencies: "*Legislative control over the acts and actions of emergency rule authorities and special procedures for such control are important for the realisation of the rule of law and democracy. In most of the democratic constitutions the executive has the right to declare emergency rule, subject to parliamentary approval. The question of by whom, how and when an emergency rule is to be terminated cannot also be left to the executive enjoying its increased power. It must be the function of the Parliament. This implies a continuity of parliamentary life during the period of emergency. For that reason, some constitutions explicitly state that the legislature cannot be dissolved during the exercise of emergency powers.*"[20]

35. The continuity of parliament during an emergency situation and the publicity of its work contributes to the legitimacy of government insofar as it allows all major political forces, including the opposition, to be represented in political debate and to contribute (even if to a reduced degree) to democratic decision-making in times of crisis: "*Many constitutions provide for the possibility of the executive to legislate in emergency situations. Parliament should be involved in this process through the approval of the declaration of the state of emergency, and/or through ex post scrutiny of the emergency decrees or any extension of the period of emergency. Participation of the opposition in those matters may be ensured by requiring a qualified majority for the prolongation of the state of emergency beyond the original period ... It may also be useful to limit the legislative powers of the executive in emergency situations to certain specific matters, so that the executive cannot use its legislative functions to suppress opposition rights …These limitations prevent the executive from using an emergency as a pretext for curtailing the rights of the opposition.*"[21] The post-hoc general accountability powers of parliament, namely the right to conduct inquiries and investigations on the execution of emergency powers, are extremely important for assessing government behaviour. An open declaration that post-hoc scrutiny will happen can normally have the effect of deterring major overreactions on the part of government during the crisis.[22]

36. At the same time, the crisis context and the pandemic threat should not be instrumentalised for political purposes, neither by the majority nor by the opposition. Above and beyond party cleavages, politicians must act with utmost responsibility for public good to minimise the damage to the population, economy, social structures and public institutions, overcome the causes of the crisis and allow for swift return to normality.

37. When addressing the nation on 27 March 2020, Sergio Mattarela, the President of Italy, the first European country severely hit by the virus with unprecedented infection and death rates, stressed that "*citizens' sense of responsibility is the most important resource of a democratic state*". Helping citizens participate in the implementation of solutions is not only a key aspect to overcome the pandemic crisis, it is also key to democratic resilience.

38. Citizens' confidence in public authorities and democratic institutions and processes, which is important at all times for the resilience of democratic governance, is essential in times of crisis. Curtailing public debate and restricting the functioning of key elements of the democratic system may not only undermine democracy as such but also damage people's adherence to, and the effectiveness of, any emergency policies and actions taken to address the primary causes of crisis and protect the population.

39. Hence the need for public authorities to ensure maximum openness and deliver to citizens regular, easily understandable and as much full and accurate information as possible, by providing access of the media to State institutions in order to guarantee transparency, and encourage public debate[23].

2.2. Elections during emergency situations: guiding principles

40. Since the outbreak of the Covid-19 pandemic, 65 countries around the world have had to postpone elections at different levels (parliamentary, presidential or municipal).[24] Elections at various levels have also been postponed in a number of Council of Europe member States, while in others their organisation has given rise to controversies either about the principle of holding elections during the pandemic or the specific modalities.

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20. Venice Commission, Emergency Powers, CDL-STD(1995)012.
21. Venice Commission, Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist, CDL-AD(2019)015, para. 121.
22. CDL-PI(2020)005rev, op.cit., paras. 82-83.
23. See Doc. 15158, op. cit.
24. See http://electionguide.org/.

41. For instance, in Serbia, elections initially scheduled in April were finally organised on 21 June and 1 July under disputed sanitary conditions.[25] In Poland, the presidential election was initially scheduled to be held on 10 May. The authorities of Poland opted not to declare a state of emergency but instituted a state of epidemiological emergency to deal with the pandemic and enacted a special law to hold the elections entirely by postal vote. In this regard, the Assembly's Monitoring Committee co-rapporteurs for Poland issued a statement in which they welcomed the authorities' wish to ensure the continuation of the democratic process but concluded that the appropriate conditions for holding democratic elections were not in place at that time. The co-rapporteurs therefore urged the authorities to postpone the elections until such time as genuine democratic elections could be held. A new law providing for the possibility of voting either in polling stations or by post was passed on 2 June. The main political stakeholders agreed on the new date of 28 June for the presidential election (and 12 July for the second round) which was observed by an Assembly election assessment mission.[26]

42. There is no general principle of avoiding elections during an emergency situation, such as a pandemic, and postpone them until the situation is normal again, whether or not a state of emergency has been officially declared. That said, in many Council of Europe member States, the constitution explicitly forbids dissolution of parliament during a state of war or a state of emergency. Under several constitutions an extraordinary situation will postpone, or provide an opportunity to postpone upcoming elections, for example by extending the term of parliament (Canada, Croatia, Germany, Greece, Hungary, Italy, Lithuania, Poland, Slovenia and Spain) or prohibiting the dissolution of parliament (Germany, Hungary, Poland, Portugal, Russia and Spain). In Turkey, a declared state of war causes elections to be postponed (Article 78 of the Constitution).

2.2.1. Legal criteria

43. At the committee hearing on 28 May 2020, Mr Oliver Kask, Chairperson of the Council for Democratic Elections of the Venice Commission, presented a set of "reflections" on the issue which were published two days earlier.[27] On this basis, I would summarise the following legal criteria that must guide a decision to hold or postpone elections during a situation of emergency, leaving it to each member State to assess how they apply to the specific circumstances of emergency it is facing at a given time:

– postponement is a restriction to the periodicity of elections as guaranteed by Article 3 of the First Additional Protocol to the European Convention on Human Rights (ETS No 9), and has thus to be foreseen in the law, be necessary in the concrete circumstances and be proportionate. However, in case an emergency law is missing, and the postponement is not provided for, a parliament may still provide a legal ground for the postponement of elections, even during a state of emergency, in light of the factual situation, especially if the free movement or access to information is widely limited. To meet the proportionality test, the decision on the postponement of elections has to be based on specific circumstances and may lead to different outcomes depending on the exceptional circumstances (either armed or other violent conflicts between groups of society; epidemic or pandemic; natural disasters);

– in order for the elections to be in accordance with the main principles stated in the Code of Good Practice in Electoral Matters, that is universal, equal, free, secret and direct suffrage, it must be possible not only to give a vote, but also to have open and fair electoral campaigning, including a real public debate. This presupposes, in particular, respect for freedom of expression and of the press and the freedom of assembly and association for political purposes, including the creation of political parties. There is a risk that fundamental electoral principles will be undermined during an emergency situation, in particular the principle of equality of opportunity and freedom of voters to form an opinion. Similarly, derogation from individuals' civil and political rights creates a risk that the results are not democratic. Thus, the fairness of elections held under circumstances of emergency, such as a pandemic, might be doubtful;

– even if campaigning may be possible during the state of emergency, the postponement of elections can lead to a more thorough debate, beyond the main concerns among the society linked to the emergency situation, and thus to free and fair elections later.

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25. See in this respect the statement we issued on 15 July, together with my co-rapporteur on Serbia's monitoring, Mr Piero Fassino, expecting the authorities "to provide transparent and reliable data on the crisis" and expressed our conviction that "the newly-elected parliament should make full use of its oversight function, in consultation with all relevant stakeholders – including extra-parliamentary political parties and independent bodies – and draw lessons from the management of the crisis and the developments that followed the parliamentary elections of 21 June and 1 July".
26. See Statement by the Assembly election assessment mission and the Memorandum prepared by its head, Mr Stefan Schennach, Doc. AS/Bur (2020) 31.
27. CDL-PI(2020)005rev, op. cit.

2.2.2. Other considerations

44. Beyond the legal criteria, there is a wide list of other considerations to be taken into account when deciding on the postponement of elections. From those mentioned by the Venice Commission, I would, in particular, draw attention to the following which are most relevant in the context of the pandemic and can serve as lessons for the future:

2.2.2.1. Large scope of abuse

45. A state of emergency may be promulgated or prolonged, based on partisan political reasons, rather than the objective needs of the situation, for instance to avoid predictable election results not supporting the outgoing government or incumbent candidates. On the other hand, partisan political reasons may lead to a decision not to declare a state of emergency in order to avoid postponement if organising elections is likely to favour those in power. The Venice Commission thus proposes a list of measures against such abuse:

> *"a. There should be judicial control by a national independent and impartial court, ideally by the constitutional court, if such exists …;*
>
> *b. All political parties and other stakeholders should be involved in the discussion before the postponement of elections or, if the circumstances allow, also before the promulgation of state of emergency;*
>
> *c. The postponement of elections may be limited in time by law, providing for the elections taking place even during the state of emergency if it lasts for long time, e.g. over a year;*
>
> *d. A qualified majority in the parliament may be required to decide on the postponement of elections, to guarantee that there is at least a wide agreement on the postponement in the society, if not a consensus."*

2.2.2.2. Campaigning possibilities

46. During a situation of emergency, such as a pandemic, door-to-door campaigning or public rallies may be subject to severe limitations. According to the Venice Commission document, it has to be assessed *"for how far it is possible to compensate for this by means of public or private media or the use of Internet, including social media. If the campaigning in the country in question is done mainly through social media, TV, radio and newspapers, the limitation of campaigning in the form of rallies or demonstrations may be less important. The role of traditional electronic media (radio and television) is also increased in this type of situation: special attention should be paid to the duty of neutrality of the authorities, as well as to the obligation of broadcasters to cover election campaigns in a fair, balanced and impartial manner in their overall programme services, in conformity with CM/Rec(2007)15 Recommendation of the Committee of Ministers to member states on measures concerning media coverage of election campaigns. A particular issue indeed arises if government-controlled public media are in a dominant position. Especially in nationwide elections the use of new technologies is becoming more and more prevalent compared to rallies.*"

2.2.2.3. Security of election management staff and members of election commissions during election day and vote counting

47. It has to be taken into account how far the electoral procedures can be automated, for example by use of machine counting of ballot papers or voting by voting machines, or whether internet voting is provided.

2.2.2.4. Providing for different voting modalities

48. Different voting modalities like postal voting, mobile ballot boxes and voting by Internet or proxy voting may be taken into account, if provided by law and if the conditions for universal, free, secret and direct suffrage are met. If internet voting is only one of many possible means for voting, the exclusion of other means can lead to a lesser participation in elections by those who are not so used to voting by internet, mainly elderly voters or voters from vulnerable groups. This may have an impact on the election results and thus the fairness of elections.

49. Although the best solution is to provide for exceptional voting modalities in the electoral law in advance, during ordinary circumstances, it is possible to do so during a situation of emergency. According to the Venice Commission document, making a change of the election code as regards voting modalities less than one year before elections may possibly be in accordance with the Code of Good Practice in Electoral Matters if it is necessary for, or contributes to, fair elections. The Venice Commission states that "*such late amendments may only be in accordance with best European practices if the principle of free suffrage is guaranteed in its*

core elements and such special means are in accordance with the requirements stipulated in the Code of Good Practice in Electoral Matters, section I.3.2. and other documents, e.g. Recommendation CM/Rec(2017)5 of the Committee of Ministers to member States on standards for e-voting ... If exceptional or limited means of voting are provided, the state institutions have to arrange voters' training in the media and the social media in order for the voters to know how to take up the options they otherwise do not use."

50. During the committee meeting on 28 May 2020, the President of the Assembly noted that the use of different voting modalities, for instance postal voting, may have different consequences depending on the electoral system in force in a country. This raises issues which go beyond the discussion of elections during emergency situations and calls for a separate study by the Venice Commission.[28]

2.2.2.5. Turnout

51. Turnout is likely to be lower where elections are held during an emergency situation, with elderly people or most vulnerable groups of voters likely to participate less actively. Special means of participation for those vulnerable groups such as mobile ballot boxes, drive-in polling stations or internet voting via most widely used hardware must be provided. If there are turnout requirements, the situation may lead to invalidity of the election results, especially if there are factual or legal limitations on the free movement within the country or on the possibilities for out-of-country voting.

2.2.2.6. Finances

52. Organising elections during an emergency situation may be financially more difficult for state institutions than postponing the elections, as some special arrangements are probably necessary due to security reasons. As state finances have to be used to the maximum extent to combat the extraordinary circumstances, this consideration may advocate in favour of postponement.

2.2.2.7. Procedural modifications

53. According to the Venice Commission, "*late amendments to the electoral legislation, applicable only for concrete elections held during a situation of emergency, do not necessarily go against the European principles of electoral law. They may include prolongation of different deadlines, including for vote counting, or waiving the requirements for candidate nomination such as the requirement to collect support signatures (if this is not possible online)*." The best option would however be to provide such procedural modifications in election code beforehand.

2.2.2.8. Election observation

54. Where the elections are not postponed it may be difficult or even impossible to monitor their conduct, especially by the international community, thus increasing the risk of possible fraud and manipulation of election results. However, where the election management bodies have a long tradition of independence and online observation possibilities are available, the fairness of the election is easier to guarantee.

55. During the committee meeting on 28 May, several members underlined that, in view of the importance of its election observation role and taking into consideration new legal and practical challenges when organising elections during an emergency situation, the Assembly should consider modalities for resuming election observation missions, currently suspended, especially as the electoral calendar for autumn is quite heavy. The Assembly should co-ordinate such decisions with its institutional partners, in the framework of the International Election Observation Mission, namely the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), the Parliamentary Assembly of the OSCE, the Parliamentary Assembly of the North Atlantic Treaty Organization (NATO) and the European Parliament.

2.2.3. State institution competent to decide on postponement

56. There is no general rule which State institution should be competent to decide the postponement of elections. When there is no constitutional provision prohibiting elections during a state of emergency or an emergency situation and this is left to the discretion of an institution, the decision whether or not to hold elections may be either for the parliament, the president, the government or a higher level election commission.

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28. See also Doc. 15027 "Setting minimum standards for electoral systems in order to offer the basis for free and fair elections".

57. According to the document by the Venice Commission, due to the importance of the issue, "*it is recommended that such a decision be taken by the parliament. In any case, a provision either in the constitution or organic law (e.g. electoral law) foreseeing a postponement should be included. If the postponement concerns only part of the country or it the elections are to be postponed only for a short period (less than two months), a decision can be made by the election administration or the government. Where, by contrast, a postponement is for more than six months, this should be decided by the legislative body. One option is to require a qualified majority in the parliament for the longer postponements of elections. However a state may choose to deal with the issue, only one institution should be competent to decide on the matter. Different stakeholders, including political parties, election management bodies and experts (e.g. in pandemic, health authorities) have to be consulted beforehand.*"

2.2.4. Limited legitimacy equals limited scope for legislation

58. If elections are postponed, the legitimacy of parliament is to some extent limited. Thus, parliament should abstain from adopting amendments to the constitution, organic laws or other important reforms under political debate which are not necessary to return to a normal situation.

2.2.5. Referendums

59. Due to the difficulties of guaranteeing free campaigning and public debate on reforms with a longer effect, referendums, especially constitutional referendums, should be postponed until the end of a state of emergency. According to the Venice Commission, holding referendums would go against European standards enshrined in the Code of Good Practice on Referendums.

3. National parliaments facing Covid-19

3.1. The role of parliaments as guarantors of democracy in times of crisis

60. Parliaments perform a vital role in any system of representative democracy, but they must play an especially important role in times of crisis – not only in preserving the quality of governance by ensuring transparency and accountability, but also in shaping the public's expectations and attitudes to democracy. Parliaments are the single most important institution in overseeing government activity, adopting legislation and scrutinising its implementation, and representing the public's concerns to those in government.[29]

61. The overarching purpose of parliamentary oversight is to hold government to account. While governments are directly accountable to voters during elections, in between elections it is the duty of parliamentarians to hold ministers and their departments to account on the public's behalf. The Inter-Parliamentary Union's Tools for Parliamentary Oversight[30] sets out four key oversight roles:

– transparency and openness: parliament should shed light on the operations of government. It provides a public arena in which government's policies and actions are debated, exposed to scrutiny and held up to public opinion;

– delivery: parliamentary oversight should test whether the government's policies have been implemented, and whether they are having the desired impact;

– value for money: parliament needs to approve and scrutinise government spending. It should highlight waste within publicly funded services, and aim to improve the economy, efficiency and effectiveness of government expenditure;

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29. In a joint statement, PACE President Rik Daems, OSCE PA President George Tsereteli and NATO PA President Attila Mesterhazy stressed that "Parliaments play an essential role as guardians of democratic values, processes and fundamental freedoms, as well as help enhance public confidence. It is therefore important that they have continued to function throughout this crisis, passing unprecedented economic aid packages and emergency public health measures, while attempting to ensure democratic controls and securing effective checks and balances where possible … National parliaments have a key role to play to ensure that emergency measures are implemented properly and in accordance with democratic standards, that restrictions on freedoms are proportionate and temporary, that economic relief funds are disbursed where they are needed, and that security and stability are upheld." See "Covid-19: joint statement on The role of parliaments in a time of pandemic".

30. Inter-Parliamentary Union, Tools for parliamentary oversight: A comparative study of 88 national parliaments.

– tackling corruption and misuse of power: parliament should protect the rights of citizens by detecting and preventing abuse of power, arbitrary behaviour and illegal or unconstitutional conduct by government.

62. As mentioned above, in times of emergency, decision making is inevitably concentrated in the executive more than in normal circumstances.[31] The role of parliaments in representing the interests of citizens, in considering new legislation to mitigate the effects of the Covid-19 pandemic, and, in particular, in overseeing the emergency measures introduced by governments is therefore more important than ever.

3.2. Parliaments adapting to Covid-19: overview of various national experiences and good practice

63. Parliaments are subject to the same or similar public health and social distancing measures as other public institutions. In order to continue carrying out their duties while complying with sanitary requirements and thus protecting their members and staff, they have had to rearrange considerably the way they work.

64. In order to acquire a better insight into the various responses taken by parliaments of Council of Europe member States, our committee sent a questionnaire to national parliaments via the European Centre for Parliamentary Research and Documentation (ECPRD). In addition, the chairperson launched an internal consultation among members of the committee.

65. The questionnaire focused on two main questions. The first referred to whether parliaments had adopted emergency legislation, and the second, whether parliaments have been consulted by the government on, and/or agreed to, introducing special measures, such as quarantine rules, curfew or a state of emergency.

66. From the responses received, there seem to be two major currents: the first refers to States whose parliaments have adopted emergency legislation and had been consulted by the government to introduce special measures, and the second to States where prior consultation of the parliament was not necessary.

67. Speaking at the virtual hearing in our committee on 28 May 2020, Ms Meg Russell considered five options for parliaments to respond to the challenges of the pandemic:

– close all work (recess);

– limit functions to essential or emergency business;

– operate with fewer members;

– work online;

– set up alternative temporary structures to operate under the current specific circumstances.[32]

68. Taking into account the crucial importance of parliamentary oversight on emergency policies of governments, totally suspending the work of parliaments would be detrimental to the proper functioning of checks and balances and is therefore completely inappropriate in a democracy. This conclusion is consistent, *inter alia*, with the position of the Venice Commission referred to above.

69. In practice, since the outbreak of the Covid-19 pandemic, most Council of Europe member States' parliaments have continued to exercise without interruption their constitutional duties (with a few temporary exceptions, for example Easter recess in the United Kingdom) while adapting their work and implementing, to varying degrees, a combination of the four other options (namely limiting the scope of business, operating with fewer members, working online and setting up new structures).

70. Indeed, many parliaments restricted their statutory, legislative and oversight functions to urgent issues related to the sanitary crisis and its broader consequences for societies. However, the practice differs from country to country, depending, on the one hand, on the constitutional and legal framework, and on the other hand, on specific health conditions. While some countries enacted states of emergency, others opted for less stringent legal regimes not disturbing the institutional roles of the executive and the parliament. In some countries, there is no constitutional provision for introducing a state of emergency and no legal grounds for restricting the functioning of parliament (for example Austria).

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31. "Coronavirus: 'We must act like any wartime government'", *BBC News*, 17 March 2020.
32. See also the research conducted by the Inter-Parliamentary Union Centre for Innovation in Parliament, Parliamentary working methods during the coronavirus crisis.

71. Where relevant, parliaments were consulted by governments on the declaration of a state of emergency and/or adopted legislation authorising governments to take emergency measures by decrees.

72. For instance, in the United Kingdom, the Coronavirus Act 2020 was introduced as emergency legislation on 19 March 2020. It is intended to enable the government to respond to an emergency situation and manage the effects of a pandemic[33].

73. The Norwegian Storting adopted on 21 March 2020 a new temporary Corona Act to allow the government to make decisions that according to the Norwegian Constitution must be made in the Storting. It gives the King (namely the government) the authority to add to or depart from certain legislation as far as is necessary to safeguard the intention of the law. While the government initially proposed the legislation to apply for six months, the final act was only valid for 1 month. Moreover, it included a clause that would allow the Storting at any given time to repeal partly or in full the enabling act by a one-third minority vote in the Chamber.[34]

74. In Hungary, the National Assembly adopted on 30 March 2020 a Coronavirus Response Act (Act XII of 2020 on the containment of coronavirus) by which it authorised the government "… *in order to guarantee that life, health, person, property and rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures*." The latter has been strongly criticized, both by the opposition parties and abroad, as a threat to parliamentary democracy and a step towards an authoritarian rule, in particular in light of the wide formulation of the authorisation and the absence of any limitation in time.[35] For his part, our colleague Mr Zsolt Németh, chairperson of the Hungarian delegation, pointed out in his letter[36] that the National Assembly had the power to revoke the authorisation, either in general or in the case of specific measures, accorded to the government at any time it considered this appropriate and also held the power to terminate the effects of the legislation when the state of danger was over. The Act could not and did not contain any restrictions on the activities of the National Assembly and thus the National Assembly retained its right of oversight and control. In addition, the government was required by the bill to regularly inform the National Assembly of the adopted exceptional measures. Mr Németh informed the committee that on 16 June the National Assembly adopted the Act on the termination of the state of emergency. On the same day, a new law was adopted creating, amongst other things, the legal framework for a new 'state of medical emergency' which is declared and can be repeatedly extended by government decree, without parliamentary endorsement thus raising serious concerns. On 17 June, the Prime Minister issued two decrees, one ending the state of emergency and the other declaring an immediate state of medical emergency.[37]

75. In Spain, the government introduced the state of alarm for the management of the health crisis situation caused by Covid-19 by royal decree on 14 March 2020 for a maximum period of 15 days and informed the Congress of Deputies immediately. It then sought authorisation from the Congress of Deputies to extend the state of alarm for another 15 days; this procedure has subsequently been repeated several times.[38] The government also submitted to the Congress of Deputies, for debate and approval by vote, a number of decree-laws.

76. Similarly, in Italy, the government introduced, starting from 23 February 2020, a series of decree-laws aimed at counteracting Covid-19, which had to be approved by the Houses of parliament within 60 days.[39]

77. Most parliaments have reduced the number of plenary sittings, introduced changes in their order of business and limited their work in plenary to only considering urgent legislation related to the pandemic, while continuing work at the level of committees.

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33. The legislative and oversight role of parliaments in the context of the Covid-19 pandemic: replies received by national parliaments of the Council of Europe members States to a questionnaire submitted via the European Centre for Parliamentary Research and Documentation (ECPRD), AS/Pol/Inf (2020) 05 rev., p. 18
34. Written consultation of members of the Committee and other participants in regard to democracies facing the Covid-19 pandemic: the role of national parliaments, AS/Pol/Inf (2020) 04, letter by Ms Ingjerd Schou, chairperson of the Norwegian delegation, p.21
35. See *inter alia* the statement by the President of the Assembly, the letter addressed by the Secretary General of the Council of Europe to the Prime Minister of Hungary and the reaction by the Commissioner for Human Rights.
36. AS/Pol/Inf (2020) 04, letter by Zsolt Németh, Chairperson of the Hungarian delegation, p. 9
37. See Doc. 15139 op. cit.
38. AS/Pol/Inf (2020) 05 rev., p. 48.
39. Idem, p. 53.

78. This is in line with Council of Europe standards: according to the Toolkit for member States "Respecting democracy, rule of law and human rights in the framework of the Covid-19 sanitary crisis" issued by Secretary General, "*As a general rule, fundamental legal reforms should be put on hold during the state of emergency*".[40] Likewise, the Venice Commission stressed the importance of "…*protecting the fundamentals of the political system, notably the Constitution and the electoral system. It stems from the consideration that a state of emergency may entail limitations to the normal functioning of parliament (especially for the role of the opposition) as well as, very often, limited functioning of mass media and limitations on the exercise of political freedoms such as freedom of assembly. Under these conditions, the democratic process of constitutional amendment may not be fully guaranteed*."[41]

79. However, some parliaments continued to work on legislation and to exercise prerogatives with no direct link to the pandemic. For instance, the Verkhovna Rada of Ukraine adopted a number of laws required for the continued co-operation with the International Monetary Fund (for example Agrarian reform establishing agriculture land market) and appointed a new Prosecutor General and three new ministers.[42] In Poland, the Sejm (Lower House) adopted on 6 April 2020 a draft "Act on special rules for conducting the general election of the President of the Republic of Poland in 2020". The Senate (Upper House) rejected the draft on 5 May 2020, but the Sejm overcame the Senate's vote on 7 May 2020 and definitively adopted the law which made substantial changes in the electoral legislation, *inter alia* introducing postal voting as the only form of voting during presidential election which was finally held on 28 June (1st round) and12 July (2nd round).

80. In order to reduce to a minimum the risks of proliferation of the virus, many parliaments formally limited the number of members who could participate in plenary sittings.

81. For instance, the Conference of Presidents of the French National Assembly established since the outbreak of pandemic derogating rules for the organisation of meetings in the National Assembly during the period of containment until further notice. Firstly, only a limited number of members could be present. Each of the eight political groups was represented by only two members in addition to their Chairperson or their representative. Subsequently, the number of deputies who may be physically present in the assembly chamber was increased to 75 on 26 April, and to 150 as of 11 May 2020.[43]

82. For the weekly questions-to-the-government session, the number of questions has been restricted to four for the majority group, *La République en Marche*, and for the main opposition group, *Les Républicains*, and two questions each for the other six political groups. Non-registered members may put one question every two sittings. It was initially decided that the number of Ministers would be limited and that the other persons present would be the chairpersons of the political groups or their representatives and the authors of the questions. However, because of the increasing spread of the pandemic, the Conference of Presidents decided to reduce this quota from 31 March onwards to a single representative for each political group, who is expected to raise the questions on behalf of his or her group's members.[44]

83. The German Bundestag modified on 25 March 2020 its Rules of Procedure by lowering the decision-making quorum for plenary sittings and committees to "more than a quarter" of the members, which made it possible to hold plenary sittings and committee meetings with fewer members present.[45]

84. In the Norwegian Storting, the number of members present in the Chamber at the opening of the plenary and during voting was limited to 87 (from the total of 169).[46]

85. In Greece, parliamentary committees were assembled with a minimum presence of parliamentarians. Parliamentary oversight was maintained via electronic means and teleconferencing. A minimum number of MPs, in rotation, by each political party, were attending plenary meetings.

86. Similar provisions were introduced in many other parliaments in Europe.

87. Another option for parliaments to continue working during the pandemic has been to increasingly use the modern communication technologies and platforms, and allow online participation of members in committee meetings, plenary sittings and even in voting.

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40. SG/Inf(2020)11, para. 2.3.
41. CDL-AD(2017)005, Turkey – Opinion on the amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a National Referendum on 16 April 2017, para. 30.
42. AS/Pol/Inf (2020) 04, letter by Ms Yelyzaveta Yasko, chairperson of the Ukrainian delegation, p. 33.
43. AS/Pol/Inf (2020) 04, letter by Ms Nicole Trisse, chairperson of the French delegation, pp. 16-17.
44. Idem.
45. AS/Pol/Inf (2020) 04, letter by Mr Andreas Nick, chairperson of the German delegation, p. 18.
46. AS/Pol/Inf (2020) 04, letter by Ms Ingjerd Schou, chairperson of the Norwegian delegation, p.21

88. For instance, on 19 March 2020, the Parliament of Romania approved a state of emergency declared by the President, through a remote procedure. Both Chambers of the Parliament amended their Rules of Procedure to allow, in exceptional situations, remote meetings of the parliamentary committees, as well as plenary sittings to take place through electronic means. Similarly, on 16 April 2020 the parliament held a remote joint session of its Chambers to approve the extension of the state of emergency.[47]

89. In the United Kingdom,[48] significant technical and procedural work was carried out to allow parliament's work to continue in both new "hybrid" (meaning a mix of members in the chamber and others participating by video conference) and "virtual" (meaning all members participating by videoconference) formats. Proposals for relevant changes to standing orders and other procedures to allow hybrid and virtual sitting of the House of Commons were unanimously approved by the House, on the basis of a cross-party agreement, on 21 April 2020 and meetings in both formats started on 22 April. On 22 April, the House of Commons issued temporary orders to put in place a remote voting system for the duration of the temporary orders.

90. At the UK Government's instigation, the House of Commons voted along party lines to end hybrid proceeding and remote divisions on 20 May 2020. From 2 June 2020, the Commons continued to practice social distancing with a maximum of 50 MPs allowed in the chamber at any one time and voting in lobbies by MPs standing 2 meters apart.

91. The Latvian Saeima started using, from 26 May 2020, a new platform developed for it that allows plenary sittings to be held remotely, with MPs debating and voting on items in the plenary agenda in real time. Although MPs used the tool from different rooms in the parliament building during the sitting, it is set up to allow them to participate from outside the building.[49]

92. In Monaco, the National Council unanimously agreed to hold meetings that are a mix of virtual and physical, respecting social distancing. MPs can vote with a show of hands or a verbal nominal vote. The video of the session provides a recording of the session.[50]

93. In the Spanish Parliament (Cortes), video-conferencing and remote voting was put in place for deputies who could not attend. Remote voting was restricted and was already regulated for circumstances such as pregnancy, maternity or paternity leave or serious illness.[51]

94. Both the Sejm and the Senate of Poland modified the statute so as to allow parliamentarians to vote remotely. In the Senate, meetings are held in a mixed system. Some senators are in the meeting room, others in two other rooms in the Senate building, and others are taking part in the meeting remotely from home.[52]

95. In Finland, one of the challenges has been the need to find alternative solutions to ensure the continuity of parliamentary work, which would be compatible with the Constitution. Members of the parliament are now able to work remotely and participate in parliamentary work by using digital tools. Members may follow parliament's work and leave legislative initiatives digitally, but not vote.[53]

96. Also, in most parliaments, members take part remotely in committee meetings and hearings.

97. Last but not least, some parliaments decided to set up new structures of scrutiny and accountability regarding the government's pandemic response. The best-publicised example was in the New Zealand Parliament, which established a new 11-member Epidemic Response Committee, chaired by the leader of the opposition, with an opposition majority; four of its members are women (which is roughly in line with the proportionality of the parliament which sits at 40.8% women MPs). At the height of the pandemic, this committee took over essential parliamentary scrutiny functions, such as ministerial questioning.[54]

98. In Norway, the Storting established on 18 March 2020 a special committee to consider urgent matters relating to the coronavirus crisis. The committee consists of the President of the Storting and one MP from each of the nine parliamentary party groups.[55]

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47. AS/Pol/Inf (2020) 04, letter by Mr Titus Corlăţean, member of the Romanian delegation, p. 28.
48. IPU, Country compilation of parliamentary responses to the pandemic, first published 25 March 2020.
49. Idem.
50. Idem.
51. Idem.
52. Idem.
53. AS/Pol/Inf (2020) 04, letter by Mr Kimmo Kiljunen, chairperson of the Finnish delegation, pp. 29-30.
54. Contribution by Ms Meg Russell to the committee hearing, 28 May 2020, additional information on IPU website, Country compilation of parliamentary responses to the pandemic.
55. www.stortinget.no/en/In-English/About-the-Storting/News-archive/Front-page-news/2019-2020/the-storting-constitutes-coronavirus-special-committee/.

99. In France, the Bureau of the National Assembly decided on 5 May 2020, at the proposal of the President to set up a working group, in which the quaestors and all the political group chairpersons would participate, to discuss the functioning of parliamentary proceedings in times of crisis of any kind and consider digital solutions for supporting and improving parliamentary work in such circumstances.[56]

100. Summing up, it is fair to state that the parliaments of Council of Europe member States have been quite flexible and developed various innovative approaches in order to continue carrying out their statutory duties during the pandemic crisis. However, these approaches do raise some delicate questions, which are fundamental to parliaments. At the virtual hearing in the Committee on 28 May 2020, Professor Meg Russell identified the following issues:

101. First, who has the authority to take the key decisions about procedural change? Many parliaments have a cross-party bureau or similar organ to agree on business. This provided a ready forum for quick and inclusive decision-making. In other parliaments, government has more control. Notably in the House of Commons of the United Kingdom, there was initially widespread consultation and cross-party agreement on moving to virtual proceedings. However, this agreement subsequently broke down, with ministers unilaterally announcing an end to these arrangements

102. Both for principled democratic reasons, but also for pragmatic reasons of maintaining the widest possible public support, cross-party agreement on procedural changes seems crucial. Particularly if some "non-essential" business is to be suspended – who should decide what is non-essential? Who loses out? The crisis must not be an opportunity to strengthen governments against parliaments.

103. Second, there are similar risks that changes strengthen party leaderships against individual backbench members. If the number of members taking part is limited, and party leaders choose them, or choose for them, that risks stifling dissenting voices, and hence the diversity essential to parliaments' representative function.

104. Third, maintaining face-to-face proceedings during the crisis could threaten another fundamental parliamentary principle: that of equality of members. If some categories of members – for example, those living further from the capital, or with poor health conditions, are excluded, that is a problem, which could be resolved with virtual arrangements.

105. Fourth, experimentation with such virtual arrangements also helps remind us about key dynamics in how parliaments operate. While formal proceedings are clearly vital, some of the most important parliamentary politics occurs through informal discussions, often behind-the-scenes. Much of that has been swept away by these more formalised online style discussions.

106. Fifth, and finally, there are important questions about which, if any, of these arrangements we want to keep after the crisis. In the UK, for example, there will likely be debates about electronic voting. More widely, in parliaments all over the world, there may now be pressure from some members – particularly those from more remote areas – to continue some form of virtual participation.

107. At one level, maintaining these arrangements might be seen as making parliaments more accessible for members. But given the importance of informal politics, the prospect of doing this raises some really difficult questions for the future about what parliaments are, and what we want them to be.

4. Global challenges and multilateral responses

108. As said above, the Covid-19 crisis is also a consequence of ill-governed globalisation which created new fragilities. States but also regional and global governance structures have turned out to be totally unprepared for a crisis of this scale. It showed the urgent need for a genuine and constructive multilateralism to anticipate and address real threats for human and global solidarity, beyond partisan cleavages and interests, and for co-ordinated actions to ensure effective and integrated crisis management.

4.1. Crash test of the system of global governance

109. Although some scholars argue that the world order after the pandemic will be fundamentally different, it might be more accurate to say that the pandemic merely acted as a catalyst to what was already going on in the world,[57] underscoring how society values everyone's economic and social roles[58] but also how divided and unprepared the world remains as it confronts the greatest threat to global public heath since 1918.[59]

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56. AS/Pol/Inf (2020) 04, letter by Ms Nicole Trisse, chairperson of the French delegation, p. 17.

110. The devastating magnitude of the event obviously called for transnational co-operation and co-ordinated responses for it to be solved.[60] The crisis has exposed inadequacy of many existing international formats. For instance, over the past years, the Group of Seven (G7) has been highly criticised for being an exclusive group of states and its relevance has been put in question. The G7 meeting of 16 March 2020 even revealed a conflict between States over the name of the virus, resulting in separate statements and division in the group.[61]

111. The Group of Twenty (G20), a more inclusive group of States, put forward some concrete proposals to tackle poorer countries' debt problems, also based on the lessons learnt during the 2008 financial crisis.[62] Productive G20 action can deliver immediate gains in terms of lives saved and jobs recovered but also demonstrate the power of global co-operation and set policymakers on a better path to tackle not only future pandemics but also ongoing and more silent disasters, such as the climate crisis.[63]

112. For their part, the United Nations (UN) and WHO have been criticised for lack of authority in carrying out independent research and for internal politicisation, which I shall discuss below.[64] Multilateral organisations require support from all member States, authority and proper funding so that they can act swiftly and issue recommendations based on evidence, not political convenience.

113. Covid-19 has intensified the rivalry between the US and China, but it has also strengthened international co-operation and willingness to pursue dialogue rather than military and economic confrontation. Former British Prime Minister, Theresa May, warned that a lack of international co-operation "risks exacerbating the shift toward nationalism and absolutism which is emasculating the institutions that served us well over decades" and increasing divisions in dangerous ways.[65]

114. At EU level, after weeks of disalignment, a set of financial measures to support EU member States, in particular, the agreement on a new "Recovery Fund" to support European economy and cohesion among member States and citizens, marked a positive turn on 9 April 2020. A €750 billion stimulus, called 'Next Generation EU' and the EU's €1 trillion multi-annual financial framework were agreed by the EU leaders in July and the EU Council and the Parliament will need to agree on the final details by the end of the year.

4.2. Need for co-ordinated and multilateral actions in crisis management

115. The Covid-19 crisis also reminds us to what extent people are interconnected. The globalisation process and the development of transportation facilities have increased interconnection.

116. Some have said that one of the outcomes of the pandemic would be a return to a pre-globalisation era or at least a change in its nature.

117. In any event, the pandemic is a wake-up call for restoring multilateral co-operation and rebuilding confidence in institutions to tackle the far-reaching health, economic, social, political, infrastructural implications of the crisis, at a time when unilateralism, nationalism and provincialism are gaining ground.

118. This is particularly critical for countries with poor infrastructure and resources that depend on multilateral forums for resources and solutions.[66] The pandemic is having even greater direct and indirect impacts in developing countries, conflict settings, refugee camps and amongst disadvantaged groups, and more than 100 million people already rely on support from UN's humanitarian agencies.[67]

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57. Haass R., "The Pandemic Will Accelerate History Rather Than Reshape It".
58. Michael J. Sandel, "Are we all in this together?", *The New York Times*, 13 April 2020.
59. Stewart M. Patrick, "The Multilateral System Still Cannot Get Its Act Together on Covid-19", Council on Foreign Relations – blog post, 26 March 2020.
60. T.J. Biersteker, "Global Security Governance", in: Dunn-Cavelty M., Balzacq T., *The Routledge Handbook of Security Studies,* Routledge, London, 2018, p. 440.
61. Marquardt A., & Hansler J., "US push to include 'Wuhan virus' language in G7 joint statement fractures alliance".
62. Extraordinary G20 Leaders' Summit: Statement on Covid-19, 26 March 2020.
63. Maurice Obstfeld and Adam S. Posen, "The G20 not only should but can be meaningfully useful to recovery from the Covid-19 pandemic", Peterson Institute for International Economics, 13 April 2020.
64. Feldwisch-Drentrup H., "How WHO Became China's Coronavirus Accomplice".
65. Gehrke L., "Theresa May: 'Special relationship' with US should not prevent UK from working with China", 6 May 2020.
66. Dhanashree Jayaram, "Can the coronavirus revive multilateralism?", E-international relations, 26 March 2020.
67. www.unocha.org/Covid19.

119. UN Secretary-General, António Guterres said that "together, we can and will defeat this virus- with cooperation, solidarity, and faith in our common humanity". Indeed, trust is a vital element in international multilateral relations. Speaking about the new UN Communication Response, the Secretary General called for "trust in science", "trust in institutions", and "trust in each other".[68]

120. Conspiracy theorists are spreading dangerous disinformation and misinformation about Covid-19, sowing seeds of doubts about its severity and denying the very existence of the pandemic. Virus deniers and "anti-vaccine", "anti-masks" movements can threaten the effective fight against the pandemic and increase the exposure of at-risk groups, which is why "trust in science" and evidence-based recommendations are of key importance. The WHO has already joined forces with the UK Government for instance to raise awareness of misinformation around Covid-19 and encourage individuals to report false or misleading content online.

121. Following the US President's decision to withdraw from WHO, "trust in institutions" is one of the biggest challenges, which I shall also discuss below.

122. "Trust in each other" is also a key factor in multilateral relations. When dealing with a threat, be it a natural disaster, climate change, migration challenges, a war or a pandemic, the multilateral system can only work on some measure of trust and common purpose. A limited number of countries have the power to reach out and generate that kind of trust and most of them are in Europe.

123. Regrettably, the UN Secretary General's call for a global ceasefire of 23 March, which underscored the urgent need for unity and mutual support in the battle against a common enemy[69] has not been followed. His call was echoed by the UN Security Council Resolution 2532 unanimously adopted on 1 July 2020, demanding "a general and immediate cessation of hostilities in all situations".

124. For every news report of a cease-fire or breakthrough in peace talks there is a corresponding story that details a deteriorating situation.[70] In conflict-affected countries or countries emerging from conflicts, the pandemic has added another layer on top of multiple existing layers of crisis, with armed groups taking advantage of the global distraction, difficulties in peace-keeping and crisis management operations, excessive use of force against civilians, and civil unrest sparked by deteriorating socioeconomic conditions.[71]

125. A new wave of extremism represented an additional challenge calling for close co-ordination by all States. According to the EU Counter-terrorism Coordinator, Gilles de Kerchove, both right-wing and left-wing extremists exploited the crisis to achieve their goals.[72] During lockdown people also spend more time on the internet, which represents an opportunity for extremists' propaganda.[73] Worryingly, some radical religious leaders have also interpreted the pandemic as a sign of "divine retribution"[74] and encouraged their followers to fulfil acts such as Jihad to calm the divine wrath.[75]

4.3. WHO's action in dealing with the crisis and pandemic politics

126. Faced with an unprecedented health crisis in the country resulting in more than 170 thousand deaths, the US Administration has fiercely criticised WHO and, on 29 May, President Trump announced that he was terminating the US relationship with WHO, as "China has total control over the World Health Organization".[76] On 6 July, President Trump notified the Secretary-General of its withdrawal from WHO, effective on 6 July 2021.[77]

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68. "Let us renew our faith in one another".
69. "Secretary-General's Appeal for Global Ceasefire", 23 March 2020.
70. Council of Foreign Relations – Center for Preventive Action, Peace, Conflict and Covid-19 (last updated 18 August 2020), www.cfr.org/article/peace-conflict-and-Covid-19.
71. EU Institute for Security Studies, From bad to worse: the impact(s) of Covid-19 on conflict dynamic, 11 June 2020. www.iss.europa.eu/content/bad-worse-impacts-Covid-19-conflict-dynamics.
72. Rising D., "EU official warns of extremists exploiting virus outbreak", 13 May 2020.
73. Ibid.
74. Jones R., "Corona: Muslims Also Say Messiah is Coming", 22 April 2020.
75. "'Divine Retribution': The Islamic State's Covid-19 Propaganda", *The Diplomat*, 24 March 2020.
76. "Trump announces end of US relationship with World Health Organization", *CNN*, 29 May 2020.
77. www.un.org/sg/en/content/sg/note-correspondents/2020-07-07/note-correspondents-answer-questions-regarding-the-world-health-organization.

127. The power distribution among countries may have indeed influenced the behaviour and reactions by WHO and there are lessons that can be learnt to prepare for future crises and improve the functioning of the international system. Questions regarding the handling of the crisis by WHO have already been analysed in the report by the Committee on Social Affairs, Health and Sustainable Development but the politics surrounding the pandemic[78] is undoubtedly also of interest to our committee.

128. Following calls from most of its member States, WHO has agreed to launch an independent probe into how it managed the international response to the coronavirus, including the response by governments. The "comprehensive evaluation," sought by a coalition of African, European and other countries, is intended to review "lessons learned" from WHO's co-ordination of the global response to Covid-19, but will not look into contentious issues such as the origins of the new coronavirus. The Australian Foreign Minister also called for an independent global review of WHO, criticising the lack of transparency of Chinese reporting. However, she carefully stressed that Australia's "concerns about WHO's management in Geneva should not detract from this important and life-saving work".[79]

129. WHO has notably been criticised for its late declaration of a public health emergency of international concern.[80] Hence, it is important to clarify whether earlier action might have influenced the current situation,[81] which is something that will need to come through in the reviews.

130. One should bear in mind that following WHO's alarm on the H1N1 outbreak in 2009 and its sudden decrement in the death toll, many, including our Assembly,[82] severely criticised WHO for ringing the alarm mistakenly.[83] Perhaps that experience made WHO more cautious and conservative.

131. Dr David Nabarro, WHO Special Envoy for Covid-19, who kindly accepted my invitation to exchange views via videoconference on 15 June 2020, stressed that most of the people who worked in this area have no regrets because the consequences of slowness vastly outweigh the disadvantage of being accused of raising the alarm early. In his view, on the basis of the available information from Mexico, WHO did right and it was only overtime that it turned out that the overall threat of H1N1 was not so serious, although the untold story is that it had a harsh impact on indigenous communities and also on pregnant women.

132. Furthermore, WHO has been more and more reliant on local contacts, diplomatic channels and the internet to locate potential outbreaks, all of which has made the organisation less reliant on national governments for information. Over the past years, that strategy has proven its worth. In November 2002, when the Chinese Government became aware of the first cases of a novel respiratory disease, later named SARS, it failed to alert WHO. However, WHO staff were monitoring Chinese medical message boards and news media and became aware of what was then thought to be an atypical pneumonia outbreak.[84]

133. Despite those unofficial channels, WHO lacks authority to monitor the health situation in all member States. While the Chinese authorities were reportedly banning communication of data on the Covid-19 outbreak,[85] WHO was praising Beijing in public but seemingly pressing it behind the scenes over a weeklong delay in publishing the genetic sequence of the virus, which had been decoded by three government labs, according to a report released on 3 June 2020 by the Associated Press.[86]

134. Dr Nabarro, during a BBC interview in April, also clarified that WHO is not a "global international health inspectorate" and cannot force its member States to release information. He believed that Mr Tedros Adhanom, WHO Director General, praised the ways in which the Chinese Government responded to the

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78. Fidler D., "The World Health Organization and Pandemic Politics", Think Global Health, 10 April 2020.
79. Owens C., "The case for the World Health Organization", 25 April 2020.
80. WHO Director-General had to reconvene the Emergency Committee (EC) for a second time on 31 January after a first meeting on 22 January failed to reach consensus. This time, the EC advised the Director-General that the outbreak constituted a Public Health Emergency of International Concern (PHEIC). The Director-General accepted the recommendation and declared the novel coronavirus outbreak (2019-nCoV) a PHEIC. This was the 6th time WHO had declared a PHEIC since the International Health Regulations (IHR) came into force in 2005.
www.who.int/news-room/detail/27-04-2020-who-timeline---Covid-19.
81. Dr Clift C., "Coronavirus: Public Health Emergency or Pandemic – Does Timing Matter?", 4 May 2020.
82. Resolution 1749 (2010) and Recommendation 1929 (2010), "The handling of the H1N1 pandemic: more transparency needed".
83. Harrell E., "Was the Threat of H1N1 Flu Exaggerated?", *Time*, 26 January 2010.
84. Buranyi S., "The WHO v coronavirus: Why it can't handle the pandemic", 10 April 2020.
85. "The secrets of Wuhan: the 65 days that changed the world", *La Repubblica*, 15 May 2020.
86. "China delayed releasing Coronavirus info, frustrating WHO", *The Associated Press*, 2 June 2020.

outbreak when they realised what was going on, which was the right thing to do. WHO is not enabled to call out countries and criticise them, instead, it identifies successful approaches that are most useful to interrupt disease transmission. WHO can only advise, provide guidance and review but cannot instruct.

135. For instance, WHO can only discourage the practice of "wet markets" selling live wild animals contributing to an increased risk of zoonotic disease but cannot ban them. WHO is governed by 194 world's nations who only have the power to redesign the mandate of the organisation and give it more power, or not. "The way in which the international system works is by consent and by co-operation. During an emergency all leaders must work together to maximise the well-being of people", Mr Nabarro stressed.[87]

136. The treaty governing the powers of WHO, the International Health Regulations (IHR), needs a strong support by all European member States, with a view to encouraging continued co-operation at international level and a further revision of the IHR in the post-Covid-19 era, for better preparedness and a more efficient early alert and response system.

137. Mr Charles Clift, speaking at the committee meeting of 23 June, stressed that "there are things that WHO could, with hindsight, have done better and WHO member States have agreed this will be the subject of an independent enquiry at the appropriate time". He also argued that "national actions (or inactions) are the chief determinants of success (or failure) and, in the multilateral sphere, it is their job to shape relevant institutions to be most effective. Blaming the institutions they themselves have created misses the point".[88]

138. While the US may appear to turn its back to multilateralism, China attempts to shape the system around values and interests that Europeans do not share.[89] The US and China, as some other players, are also competing to achieve the geopolitical benefits of being the first country to develop a vaccine.

139. It should be noted that the position taken by the US administration is not necessarily a reflection of the consensus of American public health's or even legislators' opinion, which is why I believe it is important to keep an open channel of communication between our parliaments and US experts and elected representatives, also with a view to the November presidential elections.

140. Power-based fights are not merely restricted to the US and China. Other States are starting to use the fight against the pandemic as a weapon against each other.

141. Instead States that successfully handled the pandemic, such as Australia, Austria, Denmark, Germany, Iceland, Israel, New Zealand and Norway, displayed early preparation and strong co-operation with the scientific community and proved that testing, contact tracing and a functioning health care system can defeat the virus with low casualties. Overall, these countries appear to have succeeded in containing the pandemic because they reacted early and swiftly. Not all of them introduced stringent lockdowns, but all implemented aggressive testing and tracing programmes.[90]

142. Hong Kong, Singapore, South Korea, Taiwan also saw what was headed their way from China in the early days and remembered what happened two decades ago with SARS. They locked down their immigration hardest and soonest, deployed public health workers to follow up contacts of cases, got their hospitals shored up, and started publishing clear and consistent information and data.[91]

143. Focus should therefore be rather placed on a science-based global approach to health crises and on human right-based values to shift the current situation from rivalry among powers to an opportunity for multilateral co-operation. Liberal democracies work when they have democracy and human rights at the heart of their value system.

144. Council of Europe member States, and their elected representatives in particular, have a crucial role to play in seeking and maintaining a united global focus on pandemic preparedness and response, and in reaching out to other States. If European consensus is wide and strong, it would leave much less space for countries like Iran, Syria, Cuba or Venezuela to promote their viewpoint. The World Health Assembly Resolution of 19 May 2020, stressing global commitment to the Covid-19 response, was co-sponsored by more than 130 countries and adopted by consensus, thanks to the powerful leadership of European leaders, who teamed up with Australia, New Zealand, India, Canada and a number of other countries.[92]

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87. Dr David Nabarro, "Is the WHO failing its greatest test?", *BBC HARDtalk*, 20 April 2020.
88. "Covid-19: Pointing the finger at the alleged failures in WHO diverts countries from addressing their lack of preparation".
89. "China delayed releasing Coronavirus info, frustrating WHO", op. cit.
90. The Economist Intelligence Unit, "How well have OECD countries responded to the coronavirus crisis", 17 June 2020.
91. "The Asian Countries That Beat Covid-19 Have to Do It Again", *Wired*, 6 June 2020.

145. As the primary responsibility for public health lies with national authorities, it is our role, as members of national parliaments, to also carefully scrutinise the way healthcare systems coped or failed to cope with the pandemic and learn lessons for the future. Sharing experiences and best practices in a multilateral platform such as that provided by the Parliamentary Assembly can only help us in this endeavour so as to enhance preparedness, resilience and response for the future.[93]

146. Furthermore, over the last 60 years these zoonotic diseases have increased globally, and new zoonotic pathogens result from human-animal interaction, deforestation and land use changes, factory farming and trafficking in wild animals, all increasing the risk of infectious disease spreading. European countries must take action to address human, animal and environmental health holistically and minimise the risk of future epidemics. For these reasons, the Bern Convention on the Preservation of the European Wildlife and Natural Habitats (ETS No.104) should be accessed and ratified by all countries across the world, particularly in light of the UN Sustainable Development Goals.

147. Speaking at the videoconference meeting of the Assembly's Standing Committee on 26 June 2020, WHO Director General, Mr Tedros Adhanom, stressed that the current greatest threat was complacency, since "nobody is safe until we are all safe", but also the "lack of world solidarity and leadership". He proposed three concrete steps for WHO and the Parliamentary Assembly to take together. Firstly, initiating a structured dialogue between the two bodies. Secondly, seeking the Assembly's support beyond the immediate context of the pandemic. Thirdly, calling for continued leadership by Europe in a spirit of solidarity.

148. This report is also aimed at supporting these calls, also in the spirit of Resolution 2329 (2020) and Recommendation 2174 (2020) "Lessons for the future from an effective and rights-based response to the Covid-19 pandemic" of 26 June, which also calls for reform of WHO by making it independent of voluntary contributions to fulfil its essential functions, giving it the power to visit member States unannounced in a public health crisis, strengthening the International Health Regulations, and ensuring it faced independent, ideally parliamentary, oversight.[94]

4.4. A common European approach to vaccination

149. As stressed more recently by Mr Tedros Adhanom "we need to prevent vaccine nationalism". Diagnostics, therapeutics and vaccines must be available to everyone, everywhere, starting with those at highest risk.[95]

150. I welcome the "Blueprint for an EU vaccination for Covid-19" agreed on 21 July by the EU Health Security Committee, which should be considered for the preparation of national or regional vaccination plans in the European Union.[96]

151. However, all EU and Council of Europe member States should go a step further, opening up to the possibility for all European States, EU and non-EU members alike, to adopt a common European approach, so that every one of Europe's 830 million citizens can benefit from equal protection from Covid-19. This is especially relevant in view of the promising national efforts of several European States to develop a vaccine.

152. The Council of Europe is already playing an important role as the European Directorate for the Quality of Medicines and HealthCare (EDQM) is providing Covid-19 vaccine developers with free access to quality standards applicable in Europe and selected training materials.

153. The pandemic is therefore also an opportunity to give a new impetus to the process of European construction by focusing on mutual benefits, setting aside national and geopolitical agendas and deepen European co-operation for all 47 member States.

5. Conclusions

154. The Covid-19 pandemic is the greatest public health crisis the world has faced in recent history. It has caused unprecedented multi-faceted, wide-ranging and lasting consequences for the social, economic, and political lives of our societies.

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92. https://apps.who.int/gb/ebwha/pdf_files/WHA73/A73_R1-en.pdf.
93. Covid-19: joint statement on "The role of parliaments in a time of pandemic".
94. https://pace.coe.int/en/news/7938/Covid-19-responding-to-the-next-pandemic-states-should-act-fast-and-comply-with-human-rights.
95. WHO Director's remarks at the media briefing on Covid-19, 18 August 2020.
96. https://ec.europa.eu/health/vaccination/overview_en.

155. The pandemic has been a crash test for the functioning of democratic institutions at national level, including the system of checks and balances, the work of parliaments and the holding of elections. However, democracy, human rights and rule of law cannot be allowed to become the collateral damage of the pandemic. No public health emergency may be used as a pretext to destroy democratic *acquis*. It is therefore our duty to remind our member States that the response to Covid-19 must comply with the fundamental values and principles upheld by the Council of Europe.

156. On the global scale, the pandemic has aggravated some worrying trends in international relations and has revealed the shortcomings of international health governance system. Genuine and constructive multilateralism is capital to anticipate and address real threats and to restore confidence in intergovernmental institutions, as well as to tackle the far-reaching health, economic, political, infrastructural and social implications of the current crisis. In this context, multilateral organisations, such as WHO, are central to finding common solutions to common problems and require support from all member States, including proper funding to act swiftly and issue recommendations based on evidence.

157. The draft resolution calls, *inter alia*, on member and observer States, as well as States whose parliaments enjoy observer or partner for democracy status, to respect the system of democratic checks and balances and enumerates a number of principles which States are called upon to apply when facing a public health emergency and when deciding whether to hold or postpone elections during such an emergency.

158. It also calls on the parliaments of member and observer States, as well as States whose parliaments enjoy observer or partner for democracy status, to take stock of their experience during the pandemic and use it to prepare for any future crisis by taking a number of measures which it enumerates.

159. In the face of the pandemic, the draft resolution considers that the international context must shift from rivalry among powers to an opportunity for strong and effective multilateral co-operation beyond partisan cleavages. It also calls on member and observer States to ensure that diagnostic tools, treatments and vaccines are available and affordable to everyone, starting with the most vulnerable groups, among Europe's 830 million citizens.

160. For its part, the Assembly should develop further its co-operation with national parliaments by encouraging national delegations to share good practices and organising peer reviews on various aspects of addressing the consequences and implications of the pandemic, *inter alia*, through the organisation of parliamentary hearings with the participation of Council of Europe experts, with a view to developing viable and sustainable solutions and approaches to address similar crisis situations in future.

161. Finally, the draft recommendation welcomes the action taken so far by the Council of Europe bodies and institutions and proposes concrete action by inviting the Committee of Ministers to:

– build on national experiences and good practice in responding to the Covid-19 pandemic with a view to developing a checklist of parameters to enable the fullest democratic participation possible in situations of emergency;

– prepare a recommendation with guidelines on multilevel governance and response to emergencies.