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The climate crisis and the rule of law

Report[1]
Committee on Social Affairs, Health and Sustainable Development
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Summary

The Paris Agreement and the United Nations Sustainable Development Goals have contributed to solidifying the commitments against global overheating. We must not only aim for the preferred target of 1.5°C to limit the temperature increase, but also adopt the "Zero Net Emission Goal" at the invitation of UN Secretary-General, Mr António Guterres. The Council of Europe is expected to play its role to ensure that the weakest will not be the first victims of the climate crisis. More than ever, it must stand with the member States, support the capacity of institutions to withstand threats, and anticipate a profoundly transformed society. Parliamentarians have a duty to strengthen climate resilience in accordance with human rights, democracy and the rule of law. This report explores creative solutions such as the Green New Deal. It proposes the launch of a network of parliamentarians to exchange on good practices, experiment, and act together to accompany a change in mentality.

1. Reference to committee: Doc. 14972. Reference 4475 of 29 November 2019.

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A. Draft resolution[2]

1. Thirty years of reports by the Intergovernmental Panel on Climate Change (IPCC) have helped to establish a broad scientific consensus on the severity of the climate crisis, acknowledging that irreversible changes have occurred under human influence. We face a local, national, regional and global challenge, which requires everyone to play their part.

2. The Council of Europe and the Parliamentary Assembly had occasion, very early on, to take action to combat this threat to human rights and humankind in its entirety. The Assembly refers to Principle 1 of the Stockholm Declaration (1972), which states: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears solemn responsibility to protect and improve the environment, for present and future generations".

3. The Assembly intends, pursuant to the commitments it made in the context of the United Nations Framework Convention on Climate Change and the Paris Agreement, to help to develop climate resilience. This must equip our societies to cope with the blows and the threats that global overheating deals us, both from the outside and from the inside, through its work to promote the rule of law, meaning the supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness, and transparency.

4. The Assembly urges the Council of Europe member States, while securing everyone's dignity and well-being to:

4.1. adopt the aim of "net zero emissions", based on clear and credible plans to meet commitments to keep the global temperature increase in line with the preferred objective of the Paris Agreement, amounting to an increase in average temperatures of 1.5°C;

4.2. continue to take a holistic approach combining economic, social and political development and environmental protection, in a spirit of equality and solidarity of purpose, as it had already invited them to do so in its Resolution 1292 (2002) "World Summit on Sustainable Development: ten years after Rio". It invites them therefore to make widespread use of assessments of the environmental impact of public policies at local, national and regional level, incorporating economic, social and political criteria and supporting the undertakings made under the Paris Agreement;

4.3. launch, in response to the Covid-19 pandemic and as quickly as possible, ambitious recovery programmes respecting the limit of 1.5°C set by the Paris Agreement;

4.4. schedule, as soon as possible, parliamentary debates on the nationally determined contributions, so as to share information, in full transparency, on the national ambitions arising from the preferred objective set by the Paris Agreement;

4.5. exercise the utmost caution and restraint when adopting measures that might necessitate derogation from the European Convention on Human Rights (ETS No. 5), and before doing so, explore every possibility for responding to the emergency situation using normal measures (see Resolution 2209 (2018) «State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights»).

5. The Assembly calls on Turkey to join the international consensus by ratifying the Paris Agreement.

6. The Assembly emphasises the importance of the involvement of parliaments. Renewing the ground-breaking commitment to combating the climate crisis which it made through Resolution 1292 (2002), it calls for the establishment of a parliamentary network operating under its auspices. Its task will be to monitor the action taken by the national authorities to honour the strong commitments they have made vis-à-vis the climate crisis while fostering the mutual enrichment of ideas and setting up regular opportunities for parliamentarians in Europe and on other continents to pool their experience.

2. Draft resolution adopted by the committee on 16 March 2021.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2021) "The climate crisis and the rule of law". The Earth has entered the Anthropocene Era and irreversible changes have been made. Despite the strong commitments made in connection with the United Nations Framework Convention on Climate Change and the Paris Agreement, the possibility of a doomsday scenario cannot be ruled out. The climate crisis is a local, national, regional, and global challenge, which humankind must face up to.

2. The climate crisis is a systemic threat, which puts institutions and societies to the test. It questions our ability to react to risks and vulnerabilities which were not seen in time for what they really were. Like the Covid-19 pandemic, this crisis amplifies the effects of other crises, namely those of society, the economy and democracy.

3. The Assembly is convinced that the Council of Europe can help to establish climate resilience in the face of global overheating by drawing on the rule of law, democracy and human rights. The rule of law orchestrates the capacity of institutions to play their role with due regard for the separation of powers and when faced with adversity. The Assembly invites the Committee of Ministers to reincorporate the task of protecting the environment into the Council of Europe's intergovernmental activities as a matter of priority.

4. Bearing in mind the huge changes in mentalities and attitudes required to meet the challenge of the climate crisis, the Assembly solemnly emphasises the scale of the efforts required. The last ways of tackling the climate crisis will have to be attempted over the next nine years because it may be too late afterwards. Consequently, the Assembly calls on the Organisation to mobilise every partner, at local, national, regional and world levels, to make these changes promptly and to share the results of their experimentation.

5. The Assembly recommends that the Committee of Ministers:

   5.1. incorporate sustainable development and climate crisis-tackling objectives into all of the Council of Europe's activities and operations, including when preparing strategies and action plans;

   5.2. encourage Council of Europe partners, whether from the public or private sector, to implement the States' commitments with regard to the reduction of greenhouse gas emissions;

   5.3. assess and limit the Council of Europe's environmental impact at local, national, regional, and international levels so as to enhance its sustainability.

3. Draft recommendation adopted unanimously by the committee on 16 March 2021.

C. Explanatory memorandum by Ms Edite Estrela, rapporteur

1. Introduction

1. In a bid to tackle the climate crisis, the international community committed itself to a number of targets by approving the Sustainable Development Goals (SDGs) in September 2015 and signing the Paris Agreement in December of the same year. United Nations Secretary General, Mr António Guterres, has placed sustainable development goals among the three strategic priorities of his mandate. Under the Paris Agreement, 196 countries and territories recognised by the United Nations are committed to beginning a long-term transition and addressing the challenge of global warming. The United States joined the Agreement again in February 2021. In Europe, Turkey is the last State not to have ratified it.

2. With the arrival of the Covid-19 pandemic, the world is facing the worst health catastrophe since the Spanish flu of 1918. Given the situation, the organisers of the United Nations Climate Change Conference (COP26)[4] have opted to postpone by one year the meeting originally scheduled for December 2020 in Glasgow so as to hold a truly meaningful meeting, give delegates time to clarify their objectives and review the "nationally determined contributions". On the occasion of the 5th anniversary of the Paris Agreement, António Guterres called on all the stakeholders to pursue the highest possible ambitions at the next COP26.[5] Already in 2018, in its annual report on the environment, the United Nations regretted that "weak enforcement [was] a global trend that [was] exacerbating environmental threats, despite a 38-fold increase in environmental laws since 1972".

3. And so, a potential doomsday scenario caused by global warming remains a real challenge. As the UK daily newspaper, *The Guardian* suggests, climate crisis is a more accurate term than climate change to reflect the true seriousness of the situation. Laurent Fabius,[6] former President of the COP21, preferred the term *"bouleversement climatique"* (climate upheaval) since the situation is unprecedented and under no circumstances can we revert to the previous status quo. Many cities[7] have declared a climate emergency in Europe.[8] They were followed by the Scottish, Welsh and UK Parliaments in a non-binding resolution in May 2019. Pope Francis declared a state of climate emergency in June 2019 and called for sweeping reforms. The European Parliament adopted a resolution in November 2019, declaring a climate and environmental emergency in Europe and in the world.

4. Even if the worst scenario – the planet heating up by more than 1.5-2°C – could still be avoided (and this is by no means certain), far-reaching changes to our societies are taking place. In the Arctic, for example, Greenland's ice sheet is melting at an unprecedented rate, resulting in a rise in sea levels.[9] The scientific community warns that worldwide greenhouse gas emissions must be halved by 2030 and net zero carbon must be achieved by 2050. The new decade we entered this year will be decisive. We are faced with a systemic danger: it will put our institutions to the test by challenging their ability to develop "climate resilience" so as to equip our societies against the risks and vulnerabilities whose urgency we have been unable or unwilling to recognise in time.

5. The United Nations defines the rule of law as the supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.[10] For the French writer and lawyer François Sureau: "The rule of law, in terms of its principles and organs, was designed so that neither the desires of the government nor the fears of the people should override the foundations of public

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4. The UK and Italian authorities have not specified when it will be rescheduled, see https://www.ukcop26.org/cop26-postponement/.
5. The UN Secretary-General said that the commitments made in Paris, which were "far from enough", were not being met and carbon dioxide levels were at record highs, with temperatures 1.2°C hotter than before the industrial revolution, www.un.org/sg/en/content/sg/statement/2020-12-12/secretary-generals-remarks-the-climate-ambition-summit-bilingual-delivered-scroll-down-for-all-english-version.
6. President of the French Constitutional Council, former Prime Minister and President of COP21 in Paris, at the high-level conference on environmental protection and human rights organised by the Georgian Chairmanship of the Committee of Ministers of the Council of Europe on 27 February 2020 in Strasbourg.
7. Around 300 in Europe at the time of writing this report.
8. Strasbourg, the Council of Europe's host city, declared a state of climate emergency on 4 July 2020.
9. *CNN*, 30 September 2020, "Greenland's ice sheet is melting as fast as at any time in the last 12 000 years, study shows", https://edition.cnn.com/2020/09/30/weather/greenland-ice-sheet-melt-carbon-emissions-climate-change/index.html.
10. Definition taken from the Report of the United Nations Secretary General "The rule of law and transitional justice in conflict and post-conflict societies", https://undocs.org/S/2004/616.

order, and first and foremost freedom."[11] Together with human rights and democracy, it forges society's resilience in the face of blows and threats, whether external or internal, and is a fundamental pillar of the values that unite the member States of the Council of Europe.

6. In the environmental sphere, the rule of law "offers a framework for addressing the gap between environmental laws on the books and in practice and is key to achieving the Sustainable Development Goals".[12] This report will begin by examining the threats and vulnerabilities, before describing the tools that already exist to back up our conception of the rule of law.[13] Lastly, it will give an overview of the avenues that the Council of Europe should explore in order to support its member States and other countries.

7. In December 2020, the UN Secretary-General issued a wake-up call, urging leaders to declare a state of climate emergency until carbon neutrality was reached. The Assembly has already had occasion to express its views on emergency laws in its Resolution 2209 (2018) "State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights". In this crisis, the Council of Europe will retain a monitoring role. The worst environmental disasters have given rise to the most effective legal tools; it is highly likely that innovative approaches will be needed to meet the challenges of the climate crisis. The current situation is not favourable for the environment. However, the Covid-19 pandemic has shown that change is possible and that we can look critically at the way we behave as individuals. It reminds us that even though our generations have been relatively spared up to now, today we are facing an unprecedented situation and we know that we will have to rise to the challenges that are undoubtedly ahead of us. It is still possible to overcome these challenges, even though rising temperatures could claim more victims than all active epidemics combined.[14]

8. The climate crisis threatens all the progress made since the Second World War. My aim, in this report, is to alert my fellow parliamentarians to the extent of the efforts and changes in mentality and attitudes needed not only to tackle the climate crisis and honour the international commitments entered into by the member States, but above all to demonstrate that we care about future generations and are preparing for the future within the time limits set by our respective electoral mandates. Above all, we must keep our hopes up, as new ideas arise every day on how to combat global warming. More than ever, the Council of Europe will be called upon to pursue its mission to defend not only the rule of law, but also human rights and democracy. It must, alongside its member States, assist the relevant institutions in their ability to resist threats and look ahead to a profoundly transformed society without any regression of rights. With a history of more than 70 years during which it has helped to bring about profound changes in mentalities and attitudes, the Council of Europe has a role to play in helping to create new instruments for climate resilience while at the same time ensuring that those who are weakest are not left unprotected.

9. As part of my work as rapporteur, a public hearing by videoconference was organised by the Committee on Social Affairs, Health and Sustainable Development on 6 July 2020 attended by Mr Robert Vautard, member of the IPCC (Intergovernmental Panel on Climate Change) and Director of the Pierre-Simon Laplace Institute attached to the University of Versailles Saint-Quentin, and Mr Paweł Wargan, co-ordinator of the coalition of political parties "New Green Deal for Europe."[15]

2. Cumulative threats to the rule of law

10. In Europe, both urban and rural areas will suffer the effects of rapid climate change: rising sea levels, higher temperatures and water scarcity. According to a ranking of cities threatened by rising sea levels published by *Nestpick,*[16] Amsterdam and Cardiff in Europe are among the ten most threatened cities in the world. As early as 2002 at the Earth Summit, Jacques Chirac warned that "our house is burning, and we look away". In January 2020, 175,000 inhabitants of Jakarta were displaced by torrential rains that ravaged the Indonesian capital.[17] A billion people could face insufferable temperatures within 50 years[18] and each year,

11. François Sureau, *Sans la liberté*, Gallimard, quoted in Dominique Strauss-Kahn, "L'être, l'avoir et le pouvoir dans la crise", blog of the Club des juristes, www.leclubdesjuristes.com/letre-lavoir-et-le-pouvoir-dans-la-crise/.
12. UN Environmental Programme Programme (UNEP), "Environmental Rule of Law – First Global Report", 2019, page XII.
13. This report is based on a motion for a resolution on "Climate change and the rule of law: baseline study" (Doc. 14972) tabled in October 2019 by the Committee on Legal Affairs and Human Rights. The aim of the motion was to assess the extent to which climate change could undermine the rule of law.
14. *The Guardian*, 4 August 2020, "Rising temperatures will cause more deaths than all infectious diseases" https://www.theguardian.com/us-news/2020/aug/04/rising-global-temperatures-death-toll-infectious-diseases-study.
15. See the minutes of the hearing held on 6 July 2020, Asocpv05add_2020.
16. Nestpick is a real estate rental site, see www.nestpick.com/2050-climate-change-city-index/.

devastating fires destroy thousands of natural habitats around the world, particularly in Australia, Brazil and California. Exceptional climate events are ever more recurrent. The effects will be felt by both rich and poor, but most keenly by the poorest and most vulnerable.

11. The temporary drop in global greenhouse gas emissions caused by the abrupt halt in human activities as a result of Covid-19 should not cause us to lose sight of this high priority. The current situation is not a favourable one for the environment, even if it offers an apparent respite.[19] There have been some backward steps in environmental regulations. In the United States, the previous administration decided to suspend all regulations that could hamper economic recovery:[20] all federal environmental lawsuits were dropped. There have been calls for similar moves in Europe as well.

12. The statements of the experts of the Intergovernmental Panel on Climate Change (IPCC) speak for themselves. With 30 years of experience, the IPCC has, on the strength of its methods, established itself as the reference authority on global warming. It was awarded the Nobel Peace Prize in 2007 for its work, alongside former US Vice-President Al Gore.

13. We now know that irreversible changes have taken place as a result of human activity. The scenarios put forward by the scientific community point towards strategies to limit the effects of those changes. The level of greenhouse gases already in the atmosphere is causing an unrelenting and perhaps irreversible warming of the atmosphere. As a result of human influence, we see not only migration, but also the possible extinction of animal and plant species.[21] The IPCC has begun its sixth assessment cycle, which should be completed by mid-2022 when the Paris Agreement is due to publish its first compilation of the efforts made by the various countries. This compilation should include an overview of the monitoring of the implementation of the SDGs by the States Parties.[22]

14. The United Nations Framework Convention on Climate Change (UNFCCC), which came into force 26 years ago, lays down the legal framework for international co-operation on climate change and organises the Earth Summits. In the words of the COP24 president, Michał Kurtika, it provides "a well-designed framework for global climate action for all, respecting national sovereignty but able to gradually ramp up global ambition."[23] It establishes an interface between the scientific community (represented by the IPCC) and States, through the Conference of the Parties (COP). Its Subsidiary Body for Implementation (SBI) is responsible for assessing the nationally determined contributions (NDCs), namely the individual efforts of the Parties to limit themselves to an increase of 2°C or to move towards the preferred 1.5°C target. Civil society will be called upon to play a key role in putting pressure on States.

15. The IPCC's objective for 2022 is to collate the information collected from each country in order to assess whether all the efforts are consistent with the agreed objectives. The current objectives, which were set when the Paris Agreement was signed, anticipate a warming of 3.5°C by 2100.[24] China's recent

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17. *Libération*, 30 January 2020, "Ces villes seront les plus touchées par le dérèglement climatique", www.liberation.fr/planete/2020/01/30/ces-villes-seront-les-plus-touchees-par-le-dereglement-climatique_1775949.
18. *The Guardian*, 5 May 2020, "One billion people will live in insufferable heat within 50 years – study", www.theguardian.com/environment/2020/may/05/one-billion-people-will-live-in-insufferable-heat-within-50-years-study.
19. The economist Christian de Perthuis estimates that this respite will last about two years because of the fall in the use of fossil energies caused by the Covid-19 pandemic. *France Inter*, 16 April 2020 and *Sud-Ouest*, 3 April 2020, "Le coronavirus et 'le crash des émissions de gaz à effet de serre': l'analyse de l'économiste Christian de Perthuis", www.sudouest.fr/2020/04/02/le-coronavirus-et-le-crash-des-emissions-de-gaz-a-effet-de-serre-l-analyse-de-l-economiste-christian-de-perthuis-7380774-11008.php.
20. *The Guardian*, 27 April 2020, "Trump administration allows companies to break pollution laws during coronavirus pandemic", www.theguardian.com/environment/2020/mar/27/trump-pollution-laws-epa-allows-companies-pollute-without-penalty-during-coronavirus.
21. A study published in *Nature Climate Change* in July 2020 which was widely covered by the media, refers to the high probability that polar bears will disappear in the wild by 2100 due to melting ice and the drastic deterioration of their habitat. *CNN*, 21 July 2020, "Most polar bears could struggle to survive in the Arctic by 2100, study finds", https://edition.cnn.com/2020/07/20/weather/polar-bears-survival-threatened-arctic-climate-change/index.html.
22. The IPCC experts' synthesis report is written, in non-technical language, for the final beneficiaries: policy makers and the business community. The complete report, which is intended to be "strong, robust and clear" will address the findings of three special reports describing: the impact of an increase of 1.5°C above pre-industrial levels; global warming, oceans and the cryosphere; global warming and desertification, land degradation, sustainable land management, food security and greenhouse gas fluxes in terrestrial ecosystems. It will also cover the observations appearing in the working groups' assessment reports resulting from the analyses by specialists in the physical sciences; putting forward a strategy for averting climate change; and analysing the impacts, adaptation and vulnerability brought about by global warming.
23. Statement by the COP24 president, Michał Kurtika, on the 25th anniversary of the Framework Convention. https://unfccc.int/news/ahead-of-the-un-climate-summit-celebrating-25-years-of-the-unfccc.

announcement (on 22 September 2020) that it will reach carbon neutrality "by 2060" reduces the anticipated rise by 0.3°C, to 3.2°C.[25] However, this is still a dangerous degree of global warming. Until now, the Earth has warmed by an average of 1.1°C since the 19th century.

16. It should be noted that temperature changes are not spread uniformly. For instance, the northern hemisphere has warmed more quickly than the southern hemisphere. Temperatures on land have increased more quickly than in the oceans. Because of ice melt and the absorption of heat by the oceans, the largest changes are located in higher latitudes. Whereas the world average is 1.1°C, Europe has warmed by 2.3°C[26] and the Arctic by 3°C.[27] If the Arctic warms up more, there is a risk that the carbon and methane locked in the permafrost will be released, causing further temperature rises. The Arctic seabed houses incalculable quantities of methane, bound up in the form of clathrates.[28] If it is released, then global warming will be irreversible and human civilisation will be finished. Pessimism is beginning to enter the thoughts of the IPCC.

17. Robert Vautard,[29] climatologist and member of the IPCC, believes that we will have to get used to the high temperatures that will become even more intense in the future.[30] The IPCC's conclusions are particularly alarmist for the period up to 2100, or even as early as 2070. They point to a warming of up to 6-7°C if greenhouse gas emissions are not reduced. If this happens, Europe would be ravaged by heat waves, cyclones and dust storms. "Only one of the socio-economic scenarios ([...] marked by strong international co-operation and giving priority to sustainable development), would make it possible to remain below the 2°C warming target, at the cost of very substantial mitigation efforts and a temporary overshooting of this target over the course of the century."[31] The report underlines the fact that any delay in the implementation of measures makes the most ambitious scenarios purely hypothetical.

18. We must not underestimate the efforts required to honour the commitments entered into. Public policies will have to not only attenuate and prevent the effects of the climate crisis, but also enable society to adapt. The goal of becoming carbon neutral by 2050 will bring with it radical changes for and a reinvention of our societies, towns, coastlines and countryside. For CO_2 alone, we in Europe will have to cut our emissions eight-fold and double our absorption capacities. The task is rendered even more complex by the need to take action on all greenhouse gases and their sources, taking into account the impact of ever more sectors of human activity that generate pollution.

19. In its 2018 report, the IPCC said that, to limit global warming to below or close to 1.5°C, net emissions would have to be cut by around 45% by 2030 and brought down to 0% in 2050. Even to limit global warming to less than 2°C, CO_2 emissions would have to be cut by 25% by 2030 and by 100% by 2075. The IPCC continues its work, and published its first special report, in August 2019, on the links between climate change, desertification, land degradation, sustainable land management, food security and greenhouse gas fluxes in terrestrial ecosystems. Climate upheaval obliges us to find a way to strike a new balance.

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24. NDC Partnership is a platform set up by the parties to the Paris Agreement to help developing countries by sharing examples of best practice, https://ndcpartnership.org/facilitating-global-transition-role-nationally-determined-contributions-meeting-long-term.

25. This commitment is still dependent, however, on a radical change in Chinese planning, as explained in *The Guardian*, 9 November 2020, "Revealed: Covid recovery plans threaten global climate hopes", www.theguardian.com/environment/2020/nov/09/revealed-covid-recovery-plans-threaten-global-climate-hopes.

26. Recommendation 1823 (2008) "Global warming and ecological disasters" already mentioned this threat.

27. *The Independent*, 24 February 2018, "Arctic set to be warmer than parts of UK as temperatures hit 30C higher than average", www.independent.co.uk/environment/arctic-warmer-uk-temperatures-weather-climate-change-global-warming-30c-higher-average-a8226446.html.

28. https://en.wikipedia.org/wiki/Clathrate_compound.

29. Robert Vautard, climatologist, IPPC member and research director at the Climate and Environmental Sciences Laboratory on *France TV Info*, 25 July 2020, "Réchauffement climatique: D'ici à 2050, on aura des vagues de chaleur 2 à 3 degrés supérieures à celles d'aujourd'hui", www.francetvinfo.fr/meteo/canicule/rechauffement-climatique-d-ici-a-2050-on-aura-des-vagues-de-chaleur-2-a-3-degres-superieures-a-celles-d-aujourd-hui_3550993.html.

30. Robert Vautard explained, at the committee hearing, that the mild summers of the 1960s are statistically unlikely to return. Some landscapes will be rapidly impacted by global warming if the rise in temperatures is not kept in check. The 2019 heat wave across Europe is objectively linked to human influence, based on data gathered over the last 1 000 years. Without human action, the heat peak would probably have been 1.5 to 3°C cooler. He concluded his remarks by confirming that global warming is already well and truly present in Europe. While northern Europe is more affected by extreme climatic events, the Mediterranean regions are experiencing very high temperatures and a shortage of water. More than ever, co-operation between Europeans is essential.

31. www.cnrs.fr/sites/default/files/press_info/2019-09/CP%20résultats%20CMIP6_OK.pdf.

20. A risks-based approach must lie at the heart of public policies. We are faced with threats, stemming not only from the cumulative, combined and knock-on impact of the direct effects of rapid global warming, but also from the implications of the solutions under consideration. These are dangers that have long been underestimated. It is likely that the colonisation of natural sanctuaries is responsible for the transmission of Covid-19 from animals to humans, as studies on other zoonoses (Ebola, HIV, anthrax, plague, etc.) have shown, and the melting of permafrost in Siberia could release other pathogens.

21. Discussions on the climate crisis have paved the way for the concept of "avoided costs", which makes it possible, on the basis of impact analyses, to guard against the various direct and indirect effects, while at the same time, seeking ways to protect against global warming. This has revived the concept of "amenity" or "wilderness", with reference to the work of the poet, John Muir, and the creation in the United States of the National Wilderness Preservation System. Nature conservation will be a determining factor in the fight against global warming. Protected areas already cover 15% of the Earth's surface, not including Antarctica,[32] and are continuing to spread. The equivalent of 30 Yellowstone Parks are already scheduled to be set up by 2030, in Europe alone.

22. "Rewilding" ("*réensauvagement*")[33] is one of the new tools which may fuel strategies to preserve biodiversity.[34] It provides spectacular signs of hope and illustrates how humankind and wildlife can co-exist through highly varied techniques, ranging from the reintroduction of species to completely relinquishing control. Its aim is to allow nature to develop entirely freely again despite the presence of humans. Besides its impact on conservation, it means the return of forgotten wild species in the countryside and of nature in the heart of cities for the benefit of all. It gives us a chance, as John Muir put it during his time, to rethink our relationship with nature. António Guterres talks of "making peace with nature."[35] Of course, none of this will be possible unless we encourage people to pool their experience and share good practices.

23. The whole of biodiversity and all natural habitats are in peril. A recent study, published in Nature, reveals that there has been an abrupt, widespread and alarming decline in marine vertebrate species, amounting to 70% since 1970.[36] Climate change, combined with habitat destruction and the introduction of invasive species, has led to a huge rise in the number of species threatened with extinction. This is what the journalist, Elizabeth Kolbert, calls the "sixth extinction."[37] Wild animal species now account for less than 5% of the world's land mammals.[38] Currently, over half of the world's amphibians, a third of its reef-building corals, molluscs and freshwater sharks, a quarter of its mammals, a fifth of its reptiles and a sixth of its birds are critically endangered, and an international study by the Royal Botanic Gardens, Kew, has shown that 40% of plant species are at risk of extinction.[39]

24. In 2019, the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, warned against the "risk of 'climate apartheid', where the rich pay to escape heat and hunger caused by the escalating climate crisis while the rest of the world suffers."[40] The Covid-19 pandemic has wreaked havoc on public services and revealed the weaknesses of the prevailing economic model. The temptation to seek to launch an economic recovery based on austerity measures such as those which followed the 2008 financial crisis would have disastrous effects on the efforts needed to tackle the climate crisis. The realisation that a significant proportion of the population had not benefited from the fruits of globalisation has revealed an underestimated

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32. *The Guardian*, 16 July 2018, "Rights not 'fortress conservation' key to save planet, says UN expert", www.theguardian.com/environment/andes-to-the-amazon/2018/jul/16/rights-not-fortress-conservation-key-to-save-planet-says-un-expert.
33. *Libération*, 22 January 2021, "*Si l'on veut réensauvager les humains, il faut leur permettre de vivre à leurs rythmes, dans leurs territoires*", www.liberation.fr/terre/2021/01/22/si-l-on-veut-reensauvager-les-humains-il-faut-leur-permettre-de-vivre-a-leurs-rythmes-dans-leurs-ter_1817879/.
34. The new UK Agriculture Bill 2019-21 (HC Bill 7) is a ground-breaking piece of legislation providing that farmers in England will "receive financial assistance for or in connection" for "protecting or improving the health or welfare of livestock", https://publications.parliament.uk/pa/bills/cbill/58-01/0007/cbill_2019-20200007_en_1.htm.
35. Speech at Columbia University, 2 February 2020, https://unfccc.int/news/un-secretary-general-making-peace-with-nature-is-the-defining-task-of-the-21st-century.
36. *Nature*, "Half a century of global decline in oceanic sharks and rays", 27 February 2021, www.nature.com/articles/s41586-020-03173-9.
37. Elizabeth Kolbert was awarded the Pulitzer Prize for her book, *The Sixth Extinction: An Unnatural History*.
38. 62% are domesticated animals and 33% human beings.
39. *European Scientist*, 2 October 2020, www.europeanscientist.com/en/environment/40-per-cent-of-plant-species-at-risk-of-extinction-study-finds/.
40. *The Guardian*, 25 June 2019, "Climate apartheid: UN expert says human rights may not survive", www.theguardian.com/environment/2019/jun/25/climate-apartheid-united-nations-expert-says-human-rights-may-not-survive-crisis.

form of vulnerability, climate vulnerability. There are already 50 to 60 million people suffering from "energy poverty" in the European Union. In 2018, the European Commission, acknowledging this worrying situation, launched the European Energy Poverty Observatory.[41]

25. The climate upheaval offers a new perspective on inequalities and protection through law. Because of its cross-cutting nature, it raises questions about the inevitable clash between autonomously developed sectors of law. In 2012, when Hurricane Sandy hit New York City, the Goldman Sachs Bank bought tens of thousands of sandbags to protect its headquarters and employees while the inhabitants of the poorest neighbourhoods were exposed to the elements.[42] More recently, the "yellow vest" movement in France arose out of protests against environmental measures leading to rising fuel prices. The slogan "End of the world, end of the month" illustrates an impossible dilemma. This spontaneous movement is striking because of the apparent conflict between seemingly contradictory rights. It has enabled outlying communities to voice their problems (unemployment, insecurity, and the scarcity of medical, judicial, and cultural provision) resulting from their distance from the urban centres that are the driving force behind business and trade. Globalisation has accentuated inequalities that have become unbearable. Assembly Resolution 2307 (2019) "A legal status for 'climate refugees'" called amongst other things for specific measures to increase local communities' thresholds of resilience, in a context of renewed migration issues in Europe with the emergence of "climate refugees." These clashes of rights call for a re-examination of the place of second- and third-generation human rights.

3. Finding climate resilience through existing instruments of the Council of Europe

26. The starting point for building climate resilience in the Council of Europe's member States is to be found in the undertakings made at global level. The member States and the Organisation are committed to the SDGs, first and foremost Goal 13: combating climate change, but there are also eco-policy aspects in other goals, such as Goal 6 (availability and sustainable management of water and sanitation for all) and Goal 7 (access to affordable, reliable, sustainable and modern energy for all). However, the real core commitment of the States on climate issues is in the Paris Agreement, which provides for the updating of NDCs by the end of 2020 and prepares the transition to 2030 and then 2050, in order to keep temperature increases to below 2°C. It is a matter of regret that Turkey has not yet ratified the 2015 Agreement as all the other Council of Europe member States have.

27. The Council of Europe has been developing tools that help to build climate resilience since the Stockholm Declaration in 1972 and its 26 principles.[43] As far back as 1994, it produced a "Model law on the protection of the environment" to guide countries in the preparation of their environmental legislation. The prime source provided by the Council of Europe is the case law of the European Court of Human Rights (hereinafter "the Court"), which features a broad palette of cases with implications for member States' environmental policy. The Court has published a "Manual on Human Rights and the Environment".[44] The European Convention on Human Rights (ETS No. 5, "the Convention"), after all, comes into play whenever there are conflicts of rights, and is a living tool that is constantly being adapted. The Court might ultimately be required to rule on debates triggered by civil society challenges to national environmental strategies that fail to respect the goals specified in the Paris Agreement. At the high-level conference on environmental protection and human rights in Strasbourg on 27 February 2020, the President of the Court Linos-Alexandre Sicilianos underlined the need to share this burden and, as an example of good practice, referred to the decision by France's Constitutional Council in which it declared protection of the environment, the "common heritage of all humankind", to be "an objective of constitutional value."[45]

28. The Council of Europe has devised conventions on the preservation of the environment with varying degrees of success. It first raised the issue of criminalising environmental offences or "ecocides" with the Convention on protection of the environment through criminal law (ETS no. 172), which did not work out since the convention never entered into force. Nor has the European Union managed to come up with an effective means of protecting the environment through criminal law, despite the ambitions set out in the Tampere milestones (1999) seeking to establish an "area of freedom, security and justice". Complaints in the environmental field and corresponding convictions in domestic courts and the International Court of Justice

41. www.energypoverty.eu/.
42. *The Guardian*, 25 June 2019, "'Climate apartheid': UN expert says human rights may not survive", op. cit.
43. The Stockholm Declaration in 1972 laid the foundations for the United Nations Environment Programme, https://legal.un.org/avl/pdf/ha/dunche/dunche_e.pdf.
44. Manual, published in 2006 and revised in 2012, www.echr.coe.int/LibraryDocs/DH_DEV_Manual_Environment_Eng.pdf.
45. Decision No. 2019-823 QPC of 31 January 2020, www.conseil-constitutionnel.fr/decision/2020/2019823QPC.htm.

are still few and far between. The Convention on civil liability for damage resulting from activities dangerous to the environment (ETS no. 150) has run into the same difficulties as the convention aimed at protecting the environment through criminal law, unlike the Convention on the conservation of European wildlife and natural habitats (ETS no. 104) or the European Landscape Convention (ETS no. 176) which have been success stories. We need to understand why certain initiatives have failed and to revise these conventions to make them effective and efficient.[46]

29. In its monitoring activities and also in its technical assistance work, the Council of Europe has adopted an approach based on risks connected to the SDGs. Broadly speaking, defining indicators should no longer be limited to economic or financial data. The Council of Europe's peer-based working method has helped to build awareness of the vulnerabilities and objectively gauge progress in reducing them. It serves as a model in this respect, at a time when the European Union is looking at broadening its indicators in preparation for the European Semester. In February 2020, the EU Court of Auditors called for the "greening" of indicators ahead of the reform of the Common Agricultural Policy (CAP). It is important, however, that the climate crisis be treated as a cross-cutting issue in Council of Europe activities.

30. The European Social Charter (ETS No. 35) lays down a set of rights that are especially at risk and under threat from the climate crisis, rights that could be further tested by the direct and indirect effects of global warming. Recent protest movements, many of them led by young people, have sprung up around the rights enshrined in the Charter. The climate crisis raises questions about the future of vulnerable communities. At a time when society is undergoing far-reaching changes, if the environmental commitments are to be met, the system for protecting second-generation rights needs to be strengthened.[47]

31. In its Recommendation 1431 (1999) "Future action to be taken by the Council of Europe in the field of environment", the Assembly was already talking about the need for an amendment or an additional protocol to the European Convention on Human Rights concerning the right of individuals to a healthy and viable environment. It referred to it again in its Recommendation 1885 (2009) "Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment."[48] In June 2019, the Council of Europe's Commissioner for Human Rights Dunja Mijatović also mentioned the idea when reiterating the 16 Framework Principles of Human Rights and the Environment proposed by David R. Boyd, the UN Special Rapporteur on human rights and the environment, in "Living in a clean environment" on World Environment Day.[49]

32. The Council of Europe has guided changes in mentalities for more than 70 years. It should now reach beyond the public sector and guide the private sector by emphasising social and environmental responsibility. The Council of Europe is still in the early stages of its dealings with the private sector after working with regulated professions (lawyers, accountants, journalists, etc.). It has helped to establish Europe-wide protection for human rights whistle-blowers while States are required to undergo regular audits in areas such as action against corruption or the fight against money laundering and the financing of terrorism. A similar exercise could conceivably be introduced in the fight against global warming and the Council of Europe could guide economic actors in the development of their corporate social responsibility strategy, including in the environmental sphere.

33. Cities around the world have instigated far-reaching changes in order to implement the Paris Agreement. According to the World Health Organization (WHO), air pollution is detrimental to health in cities, where the majority of the European population lives. It is responsible for at least 753 000 deaths per year in Europe.[50] The latest report by the European Environment Agency (EEA) reveals that microparticles of pollution were responsible for 374 000 premature deaths in 2016. Although national legislation is needed to discourage the use of fossil-fuelled internal combustion vehicles and encourage the use of ultra-low-emission vehicles, the local level will also be an appropriate one for regulation and action. Through its monitoring bodies, the Council of Europe promotes good practice at all levels, in line with the SDGs. Its Congress of Local and Regional Authorities oversees local governance in the responsible conduct of public affairs and management of public resources, namely citizen participation, ethics, rule of law, transparency, sound financial management and accountability. The preservation of the environment is addressed through the

46. See the report of the Committee on Legal Affairs and Human Rights "Addressing issues of criminal and civil liability in the context of climate change" (Doc. 15362).
47. These are economic and social rights, as opposed to first-generation rights, which are of a physical and intellectual nature, while third-generation rights are what are known as solidarity rights.
48. Recommendation 1885 (2009) "Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment".
49. Doc. 15367 "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe".
50. Resolution 2286 (2019) "Air pollution: a challenge for public health in Europe".

SDGs even though it is not included in the European Charter of Local Self-Government. The Congress is called upon to ensure the implementation of commitments related to the Paris Agreement. In the view of Harald Bergmann,[51] Congress Spokesperson on Human Rights and Mayor of Middelburg (Netherlands), speaking at the High-Level Conference on Environmental Protection and Human Rights on 27 February 2020, "local and regional elected representatives are in a unique position to tackle climate emergency and promote sustainable development by shaping policy to fit local needs" because "obtaining and using local knowledge will help us empower citizens, and it will also give us a better indication of what we need to do to be truly sustainable." It will be up to Congress members to decide whether a new protocol to the Charter is needed.

4. The Green New Deal, an innovative way to strike a new balance

34. Europe is facing the overarching challenge of this century, as the European Environment Agency put it when publishing its "European environment - state and outlook 2020" report in February 2020. It clearly states that "Europe will not achieve its 2030 goals without urgent action during the next 10 years to address the alarming rate of biodiversity loss, increasing impacts of climate change and the overconsumption of natural resources." In the Agency's view, not only do we have to do more; we must also do things differently. Under the leadership of Prime Minister António Costa, Portugal was the first European country to claim to achieve carbon neutrality by 2050.[52]

35. In November 2018, Benoît Cœuré, member of the Executive Board of the European Central Bank, made the following simple observation: "the longer the risks of climate change are ignored, the higher the risks of catastrophic events, possibly with irreversible consequences for the economy."[53] The climate crisis is unprecedented and all possible solutions need to be explored. The Green New Deal (GND) is an option worth investigating. It is not a new idea. Discussed as early as 2003 in the United States, where it drew on the work of the essayist Murray Bookchin,[54] it featured in the programme put forward by the Greens in the 2009 European elections.[55] It was later revived in the United States by Congresswoman Alexandria Ocasio-Cortez, who placed it at the heart of her political project. The GND seeks not only to address climate change but also to eliminate poverty and create millions of jobs. In the European Parliament, it has been espoused by a cross-party group led by Aurore Lalucq.[56]

36. The GND provides an opportunity to deal with the challenges of climate change in a calm and collected way, despite the huge and radical changes taking place. At the time of the launch of the original New Deal, US President Roosevelt said: "It is common sense to take a method and try it. If it fails, admit it frankly and try another. But above all, try something."[57] On both sides of the Atlantic, proponents of the GND[5859] saw it first and foremost as a means of responding to the issues of the climate crisis and then as an opportunity to radically transform the United States and Europe along the lines envisaged by President Roosevelt, who sought to invest massively in his country so that it could put the 1929 financial crash behind it once and for all.

37. The GND has been mooted in Europe as a possible response to three interrelated crises: a social and economic crisis (whose effects have been greatly amplified by the Covid-19 pandemic); a climate and environmental crisis; and a democratic and political crisis. Investing in GND, it is hoped, will reorient European economies away from private wealth accumulation and towards environmental sustainability through job

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51. CPLR, 27 February 2020, Harald Bergmann: "We need to develop strategies that fit local needs to protect the environment and at the same time ensure human rights", www.coe.int/en/web/congress/-/harald-bergmann-we-need-to-develop-strategies-that-fit-local-needs-to-protect-the-environment-and-at-the-same-time-ensure-human-rights-.
52. *Le Monde*, 30 August 2018, "Le Portugal vise la neutralité carbone en 2050".
53. Speech on monetary policy and climate change, "Benoît Cœuré: Monetary policy and climate change", available at www.bis.org/review/r181109f.htm.
54. *Remaking Society*, 1990 and 1998.
55. In September 2009 the Greens/European Free Alliance group in the European Parliament published a report by the Wuppertal Institute entitled "A Green New Deal for Europe: towards green modernisation in the face of crisis", www.greens-efa.eu/files/assets/docs/302250.a_green_new_deal_for_europe_towards_gree_en.pdf.
56. *Euractiv*, 01 October 2019, "Green New deal: l'Europe n'a pas droit à l'erreur", www.euractiv.fr/section/avenir-de-l-ue/opinion/green-new-deal-leurope-na-pas-droit-a-lerreur/.
57. Roosevelt Institute website, https://rooseveltinstitute.org/bold-persistent-experimentation-vs-bold-persistence/.
58. The Green New Deal for Europe website published a plan which is available at www.gndforeurope.com.
59. In "On Fire: The (Burning) Case for a Green New Deal", published by Simon & Schuster in September 2019, the American activist and academic Naomi Klein argues that because of human activity, the natural world has been thrown out of sync and balances disturbed. We have entered a new phase of planetary history, the Anthropocene. More recently, with regard to the Covid-19 pandemic, Klein, echoing the IPCC's findings about the growing number of extreme events, voiced her belief that the pandemic was no coincidence, any more than the fires in Australia and the Amazon which had ravaged hundreds of thousands of acres of protected land were a coincidence.

creation. GND has the merit of restoring the democratic link between citizens, elected representatives and local and national authorities. It includes "green" public works to accompany the continent's transformation through an investment plan, a legislative programme to align European policy with scientific consensus, and the creation of a new body, the Environmental Justice Commission, providing research and evaluation capacities for a green transition that is fair and just.

38. The GND is not a campaign – it is a political, social, and economic movement that paves the way for civic action and dialogue with decision-makers. The GND is a rallying call for citizens' assemblies at local, regional, national, and European level. The cities of Brussels and Luxembourg have already formed their citizens' assemblies dedicated to the preservation of the environment. The GND's proponents want to see a binding framework to prevent and combat "climate corruption." They are calling for a public platform to be set up to oversee expenditure under the large-scale investment plan, but also to monitor the implementation of projects. They are also calling for the establishment of a Public Integrity Authority with the power to investigate and pursue perpetrators of offences and crimes that undermine the implementation of the GND. At an expert hearing held by the committee, Paweł Wargan, co-ordinator of the alliance of political parties behind the Green New Deal for Europe, spoke of the risk of revolution if the three crises mentioned above were not addressed.

39. The European Union already claims to be the "global leader on climate and environmental measures." Climate issues are embedded in the objectives of the various EU policies. It wants to go further, however, and has proposed a new "Green Deal" inspired by the GND movement. The scheme has secured the backing of 17 EU environment ministers: it is intended to drive changes in institutions and lifestyles in order to achieve sustainable development. When launching the EU Green Deal, the President of the European Commission Ursula von der Leyen vowed to make Europe the "first climate-neutral continent".

40. Responsible for implementation, the First Vice-President of the European Commission, Frans Timmermans, has stated his intention that no one will be left behind. The Commission pays particular attention to people in precarious situations and to the most vulnerable population groups. It has little room for manoeuvre in meeting this challenge. Its budget is tiny in relation to the needs and there can be no question of syphoning off resources from existing policies in order to achieve these goals. The EU Court of Auditors has estimated the amount of funding required to cover the collective cost of climate transition for all Member States at €1 115 billion between 2021 and 2030.[60] That is roughly the sum calculated by the European Commission. Projections by the Bruegel Institute, however, put the cost at €2 000 billion.[61] Such a figure is unattainable for the European Union under the treaties. The European Council did nevertheless reach a consensus at its meeting from 17 to 21 July 2020 on a comprehensive €1 824.3 billion package in response to the Covid-19 pandemic, which combines the Multiannual Financial Framework and an extraordinary special recovery effort: Next Generation EU. The budgetary instrument includes a major solidarity plan unlike any seen before, and is guided by the general principles enshrined in the EU Treaties, in particular the values set forth in Article 2 of the Treaty of the European Union.

41. Implementing the Green Deal will, it is hoped, generate green growth and far-reaching changes. In March 2018, on the basis of the competences defined by the Treaties, the European Commission had already called for the establishment of a European classification of sustainable activities[62] to help investors and private companies navigate the transition to a low-carbon and resource-efficient economy. This approach is based on the standards defined by the Organisation for Economic Co-operation and Development (OECD) and the United Nations. The EU's efforts to ensure that the SDGs percolate into the European economy are reminiscent of the Council of Europe's efforts to promote that well-known trio "standards, monitoring and technical assistance". Implementation will nevertheless be a long, drawn-out process. Within the framework of the Green Deal, the European Commission intends, in turn, to propose a "climate law" enabling the EU to achieve climate neutrality by 2050.

42. As Europe's watchdog, the Council of Europe should contribute to the European Union's efforts to ensure that human rights, democracy and the rule of law remain at the heart of the debate and are taken into account throughout the preparation and implementation of the European Union's Green Deal, while also

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60. Cited by *Euractiv*, 27 November 2011, «La Cour des comptes fustige l'inefficacité de la politique climat de l'UE», www.euractiv.fr/section/climat/news/la-cour-des-comptes-fustige-linefficacite-de-la-politique-climat-de-lue/.
European Court of Auditors report available here.

61. The Bruegel Institute in Brussels believes that the carbon pricing system needs to be scaled up, "The European Green Deal must cut hidden fossil fuel subsidies", 4 March 2020, www.bruegel.org/2020/03/the-european-green-deal-must-cut-hidden-fossil-fuel-subsidies/.

62. https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance/eu-taxonomy-sustainable-activities_fr.

ensuring that it involves and benefits everyone living in Europe, leaving no one behind. It is time for the Assembly, in turn, to embrace the GND and the European Green Deal, and to take up the cause beyond the European Union, for all its member States.

5. Other resources for climate resilience

43. Climate resilience teaches us that the response to the current crisis will come not only from political will but also and above all from the commitment of the different levels of public authority. This entails both the sharing of information and co-operation between players at local, regional, national and international level. As the historian Yuval Noah Harari, of the Hebrew University of Jerusalem, explains with regard to Covid-19, "In this time of crisis, […] humanity needs to make a choice. Will we travel down the route of disunity, or will we adopt the path of global solidarity? If we choose disunity, this will not only prolong the crisis but will probably result in even worse catastrophes in the future. If we choose global solidarity, it will be a victory not only against the coronavirus but against all future epidemics."[63] The World Forum for Democracy 2021 will focus on the issue we are considering, under the title "Can democracy save the environment?"[64] The Assembly took part in the event of 18 January 2021 entitled "Representative democracy against climate crisis."[65]

44. The work of the IPCC has also shown that scientific progress will be no miracle cure for the challenges of the climate crisis. What is needed is a whole host of measures in a variety of areas to drive the degrowth that humankind must undergo. One of the risks facing us would be to approach solutions only in terms of restrictions and prohibitions. This is what some already call "punitive ecology". Being accountable to society as a whole, public authorities tread a path strewn with pitfalls in their efforts to nudge people towards making sustainable changes in their behaviour, often far removed from the consumerism that has dominated for years. Individuals need to be made aware of the efforts required of them with empathy, respect and precaution so as not to create new battlelines between social groups. The rule of law may have been built on prohibitions, but it must now focus more on persuasion and recommendation in order to drive the necessary changes by making individuals take responsibility. The United Nations Development Programme (UNDP) published the People's Climate Vote,[66] which is the largest survey of public opinion on environmental issues ever conducted. 64% of the 1.2 million respondents across 50 countries viewed climate change as a global emergency and 59% said that the world should do everything necessary in response and do so urgently.

45. The avenues open to the Council of Europe could also capitalise on inventiveness and creativity or draw inspiration from original initiatives.

– The first avenue must be viewed in the context of the law of nature. According to the ethnologist, Claude Lévi-Strauss, "our civilisation's malaise" is linked to the fact that "the realm of the rational and the realm of the poetic have become completely separated".[67] This viewpoint challenges us to take a holistic approach enabling us to deal simultaneously with the economic, social and democratic crises, and to think about the relationship we should cultivate with the nature surrounding us. It also confronts us with our responsibility to future generations. Drawing on animist customs, some law specialists have proposed that rivers should be given legal personality. This ground-breaking idea has taken hold in a number of countries (India, New Zealand, Canada, etc.). It has opened a new battlefront against polluters by making it possible to sue them on behalf of the waterways they have damaged. In 2008, Ecuador was the first country to write the law of nature and nature protection into its Constitution. Article 71 of its Constitution states that: "All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate. The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem." A whole range of initiatives is springing up in Europe to defend the living world in the courts.[68]

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63. *Financial Times*, 20 March 2020, Yuval Noah Harari: "The world after coronavirus", www.ft.com/content/19d90308-6858-11ea-a3c9-1fe6fedcca75.

64. The agenda of the World Forum for Democracy is available on the dedicated website on the Council of Europe web portal, www.coe.int/fr/web/world-forum-democracy.

65. To watch the video of the event see, https://pace.coe.int/en/news/8158/les-elu.e.s-ont-un-role-cle-dans-la-lutte-contre-le-changement-climatique. The minutes of the event are available here. See also the report of the Committee on Political Affairs and Democracy on "More participatory democracy to tackle climate change" (Doc.).

66. UNPD, 26 January 2021, "The Peoples' Climate Vote", www.undp.org/content/undp/en/home/librarypage/climate-and-disaster-resilience-/The-Peoples-Climate-Vote-Results.html.

67. *Libération*, 20 January 2021, "Faut-il 'réensauvager' nos esprits pour changer notre rapport au monde?", www.liberation.fr/terre/2021/01/20/faut-il-reensauvager-nos-esprits-pour-changer-notre-rapport-au-monde_1815912/.

– In his encyclical letter devoted to climate change, *Laudato si,*[69] Pope Francis proposes a similar line of thought, also calling for a holistic approach to environmental, social, and political change. The encyclical letter invites us to accept our vulnerability, rethink our poor understanding of the nature surrounding us and resolve to recognise where our assertion of omnipotence over the environment has led us.

– The World Congress on Environmental Law of the International Union for Conservation of Nature (IUCN) adopted the World Declaration on the Environmental Rule of Law along the same lines.[70] Going down this path, the Council of Europe could explore the possibility of a new legal tool responding simultaneously to the various crises afflicting the continent and affording better protection for the environment.

– Looking beyond questions of devolution, decentralisation and subsidiarity, we might also question the pertinence of public intervention. Polycentricity is an economic concept made popular by Elinor Ostrom, who won the Nobel prize for economics in 2009 for her work in analysing governance of the environment. She defines polycentric systems as opposed to monocentric organisation which monopolises all levels of decision-making. She calls for organisation revolving around multiple authorities exercising their authority simultaneously and on different scales, each unit having a degree of autonomy to lay down norms and rules in a specific area.[71] The INOGOV project[72] (*Innovations in Climate Governance*) is dedicated to proposing climate governance as a polycentric dynamic system, based on the postulate that States and international organisations must share their responsibilities with towns and cities, foundations, private companies, universities and religious organisations. New forms of committed involvement have sprung up spontaneously to tackle the climate emergency, generating dispersed, polycentric initiatives. The main message is that, to avoid environmental change, monumental efforts are called for by all sectors of society, from each private individual up to the architects of international regulations. At the local level, while the reasons prompting people to pitch into efforts to save the environment may not always be obvious, there will always be a creative thrust of individual or group initiatives acting as a pulling force to draw in local authorities, which will put pressure on national authorities, which in turn will carry along international authorities.

6. Conclusions

46. Thirty years of reports by the IPCC have helped to establish a broad scientific consensus on the reality of the climate crisis: if we fail, the scientific community cannot be blamed. Global overheating is a reality that must be faced by the States and each and every individual. Europe is under threat in the same way as the other continents. The crisis has become the catalyst that amplifies the effects of other crises. Without showing fatalism or undue optimism, our first challenge is to ensure that the weakest will not be the first victims of the climate crisis or suffer unjustly as a result of the changes we have to make. By approving the SDGs, the member States have taken this threat on board and undertaken to attain the different goals set. We must, collectively and individually, help to strike a new balance and build a stable world by promoting the rule of law, democracy and human rights, including those known as “third-generation human rights.”

47. The Council of Europe must further develop its work on the preservation of the environment. Its experience and methodology of risk management may be useful for guiding far-reaching changes in relations between individuals, societies and authorities. To adapt its standards, the Council of Europe must be creative in order to nurture the emergence of a vision that will equip us to respond simultaneously to different crises – affecting the environment, social issues and democracy. A holistic approach is best suited to meet the

68. The Association A.R.B.R.E.S, Georges Feterman, Elsa Grangier, the Global Alliance for the Rights of Nature, id·eau, Appel du Rhône, Nature Rights, Notre affaire à tous, Pôle arts & urbanisme, Valérie Cabanes, Marie Toussaint, Marine Calmet, Wild Legal, Valentrensition, and the Parlement de l’Escaut are the signatories of an appeal, announcing the creation of a French-speaking network to defend the rights of nature, published in *Libération* on 24 January 2021.

69. Encyclical letter, *laudato si’* of the Holy Father Francis on care for our common home, 18 June 2015, www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

70. This declaration was adopted at the 1st IUCN World Congress on environmental law, co-organised by the IUCN World Commission on Environmental Law, the United Nations Environment Programme, the Organization of American States, the International Association of Judges and other key partners in April 2016 in Rio de Janeiro (Brazil), www.iucn.org/sites/dev/files/content/documents/french_declaration_mondiale_de_luicn_sur_letat_de_droit_environnemental_final.pdf.

71. Elinor Ostrom, *Polycentric systems for coping with collective action and global environmental change. Global Environmental change*, 2010, pages 550-557

72. The project’s site is at www.inogov.eu and provides free online training in polycentricity.

challenge of the climate crisis and provide a new balance. A new legal instrument may well be an appropriate way of responding to the climate crisis and its consequences in the European legal area while respecting the constitutional traditions of the member States.[73]

48. The Council of Europe must, as an institution, take the challenges of the climate crisis on board transversally, in all the forms of its work. Working in partnership with the European Union, it will have a decisive role to play in simultaneously meeting the challenges of the climate crisis, human rights, democracy and the rule of law. It is of the utmost urgency that the European Union accedes to the European Convention on Human Rights in order to further diversify its legal bases.

49. The Assembly must continue to follow the member States' efforts to honour their commitments in the area of sustainable development. It must actively contribute to the next COP26 in Glasgow to ensure that the values underpinning the Council of Europe's mandate are central to the discussions. My wish is for the Assembly to be able to pursue its analysis of responses to the climate overheating and the proposed Green New Deal by setting up an inter-parliamentary group under the auspices of our committee, whose mission would be to monitor the action taken by national authorities to honour the strong commitments they have made with regard to the climate crisis. It would foster the mutual enrichment of ideas[74] and the pooling of experience between European parliamentarians and beyond, with parliamentarians from other parts of the world. As members of both national parliaments and this Assembly, we should play a pivotal role in promoting change. This is both a frightening and a stimulating responsibility.

50. In Resolution 1802 (2011) "The need to assess progress in the implementation of the Bern Convention", the Assembly took up Principle 1 of the Stockholm Declaration (UN Conference on the Environment, 1972): "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears solemn responsibility to protect and improve the environment, for present and future generations." Let us see to it that this principle guides us always in our collective action to combat the climate crisis and helps us to find the necessary resilience in our institutions. After the sanitary crisis, we will not be able to go back to life as it was before, and we must ask ourselves the right questions. What world do we want to live in and what do we want to leave behind for future generations? Technological innovation will not be enough; we will need to demonstrate creativity and resourcefulness in other areas, including politics, where we will have to put more emphasis on human well-being and collective responsibility.[75]

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73. The lack of effective protection of the environment through criminal law is a serious problem that neither the Council of Europe nor the European Union has resolved. The Council of Europe should be capable of understanding the reasons for that failure and opening consultation with the member States in order to gain a broader picture of the situation before considering ways of supporting the stakeholders in efforts to secure efficient and effective protection. See Doc. 15362.

74. It is our business to keep abreast of ground-breaking ideas which may further our ambitions. I am thinking, in particular, of the right to a healthy environment, but also of the idea of establishing a global carbon incentive fund, put forward by Robin Russell-Jones in *The Guardian*, 7 September 2020, "Will the Cop26 climate conference be a national embarrassment for Britain?".

75. New Zealand has already shown the way, adopting a well-being budget in 2019. It was introduced by the Prime Minister, Jacinda Ardern, who said that: "it encapsulates our approach to every decision we make and every action we take, be it on an everyday basis or, like this, in times of crisis". For more information, see: www.treasury.govt.nz/publications/wellbeing-budget/wellbeing-budget-2020-html.