



Vladlena Lisenco
Karsten Nowrot
Natalia Shchukina

**Human Rights in Times of
Health Emergencies:
Legal Reflections on the
COVID-19 Pandemic
on Both Banks of the
Dniester River**

Rechtswissenschaftliche
Beiträge der
Hamburger Sozialökonomie

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Vladlena Lisenco, Doctor in Law, is a Researcher at the University of European Studies of Moldova in Chisinau. She is also Associate Professor of International and European Law at the Komrat State University in Komrat and an affiliated professor at the Shevchenko University in Tiraspol. She has been a visiting professor at a number of European, Russian as well as American universities and has professional experience as consultant, trainer and project manager for international governmental organizations and NGOs.

Karsten Nowrot, Doctor in Law, LL.M. (Indiana), is Professor of Public Law, European Law and International Economic Law at the School of Socio-Economics of the Faculty of Business, Economics and Social Sciences at the University of Hamburg, Germany. He is also an affiliated professor at the Faculty of Law at the University of Hamburg and serves as Deputy Director of the Master Programme “European and European Legal Studies” at the Institute for European Integration of the Europa-Kolleg in Hamburg.

Natalia Shchukina, Doctor Habilitat in Law, is Associate Professor of Labor and Employment Law at the Komrat State University in Komrat. She is also the Head of the Department of Entrepreneurial and Labor Law at the Shevchenko University in Tiraspol. She is the author of more than 100 scientific papers on issues related to the legal regulation of social human rights, the protection of human rights, legal aspects of labor relations as well as social partnership relations. Moreover, she has professional experience as an invited national expert in UNDP, OHCHR and OSCE projects implemented in Moldova and as an invited legal consultant for trade union federations.

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Fachgebiet Rechtswissenschaft
Fachbereich Sozialökonomie
Fakultät für Wirtschafts- und Sozialwissenschaften
Universität Hamburg
Von-Melle-Park 9
20146 Hamburg

Tel.: 040 / 42838 - 3521
E-Mail: Beate.Hartmann@uni-hamburg.de

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A. The Timeless Challenge: Legal Systems and Extraordinary Situations*

Securing an adequate and acceptable observance of legal obligations in extraordinary situations, in particular under conditions of distress or emergencies, presents itself as an in principle age-old, fairly complex and difficult challenge faced by all legal systems, may they be domestic or transboundary in character.¹ This holds true with regard to the position of, and legitimate options available to, individuals; for example as far as questions of self-defence, necessity, duress or ultimately also of resistance against oppressive regimes and tyrannical rulers² are concerned. However, it most certainly also applies – in theory as well as practice – to states and other political communities as a whole, in particular in situations where – for various possible reasons – the viability of the political system or even the existence of the organized society in total is in danger.³

Addressing these scenarios from a legal perspective in a suitable manner is far from an easy undertaking. On the one hand, it is well-known and incontrovertible that the possibility to invoke such extraordinary circumstances as justifications or excuses for otherwise unlawful acts is – in the case of individuals and of governmental actors – unfortunately open to abuses and thus, entails the destructive and undesirable potential to threaten the overall stability and effectiveness of the legal order at stake. Already in light of this finding, it becomes obvious that recognizing the undeniable conceivability, and not infrequent occurrence, of such emergency scenarios should not just lead to the conclusion that their appropriate remedy lies in the extra-legal realm or in the invocation of an allegedly higher natural law;⁴ with the consequence that for example “every government, when driven to the wall by a rebellion, will [and is in fact also entitled to] trample down a constitution before it will allow itself to be destroyed”.⁵ That said, it is well-known that respective approaches were indeed also advocated for, admittedly in all likelihood not always devoid of good intentions, by a rather diverse “club” of prominent and politically active jurists comprising, among others, of *Alexander Hamilton*,⁶

* The contribution is based on a case study of Moldova/Pridnestrovie for declared and notified states of emergency within the category “pandemics” prepared for the Committee on Human Rights in Times of Emergency of the International Law Association. The authors would like to thank Irina Artamonova, PhD student at the University of Hamburg, for her very valuable assistance in the preparation of the case study. The findings made in this case study were also summarized in a presentation given at the 80th Biennial Conference of the International Law Association “International Law: Our Common Good” in Lisbon/Portugal on 21 June 2022.

1 The first three parts of this contributions are largely based on *Kornioti/Nowrot*, Looking Back to Learn for the Future?, 5 *et seq.*

2 On this aspect see also, e.g., the respective statement in the preamble of the Universal Declaration of Human Rights, UN Doc. GA-Res. 217 A (III) of 10 December 1948 (“Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, [...]”).

3 See in this connection the perception of *van Hoof*, Human Rights Journal 10 (1977), 213 (215) (“a problem that has existed from the moment people started living in organised communities”); *Scheppele*, University of Pennsylvania Journal of Constitutional Law 6 (2004), 1001 (1002) (“political theory [...] has wrestled for centuries with the question of what to do with a shock to a political system that is so great that normal rules seem no longer to apply”).

4 From the perspective of general international law see on this finding, with particular reference to the Latin maxim *necessitas non habet legem*, more recently for example *Paddeu*, Justification and Excuse in International Law, 335 (“It is not the case that necessity generates the right to engage in certain conduct, or that necessity, literally, opens the door to non-legality.”).

5 *Fisher*, Political Science Quarterly 3 (1888), 454 (485) (“So every government, when driven to the wall by a rebellion, will trample down a constitution before it will allow itself to be destroyed. This may not be constitutional law, but it is fact.”).

6 The Federalist No. 23 (*Alexander Hamilton*), 18 December 1787, reprinted in: The Federalist Papers by Alexander Hamilton, James Madison and John Jay, with an Introduction and Commentary by Garry Wills, 1982, 111 (112)

Thomas Jefferson,⁷ Abraham Lincoln,⁸ Theobald von Bethmann Hollweg⁹ and Carl Schmitt¹⁰ with their views still as of today occasionally echoing through the ages.¹¹

On the other hand, it seems to be at least equally obvious that any legal system, domestic or international, that disregards or even explicitly denies the existence and the need for a special and differentiated normative treatment of such extraordinary situations of distress or emergency is in clear and present danger of forfeiting its overall acceptance and steering capacity among the intended addressees of its rules of behavior,¹² with equally disastrous consequences for the (in-)ability of this normative order to provide for the necessary predictability and legal security.

The truth, and thus the most adequate regulatory solution to this central issue probably lies, as it is not infrequently the case, somewhere in the middle. In order to prove its resilience by preserving and protecting its steering capacity also in the face of direct, fundamental and potentially destructive challenges posed by such exceptional scenarios, the normative order itself must recognize and stipulate its own exception clauses in the form of justifications or excuses;¹³ exemptions being legally established in the realm of positive law and thus also subject to positively stipulated conditions and constraints¹⁴ that are – at least ideally – combined with and supplemented by suitable monitoring and review mechanisms. This steering technique is thus based on the ordering idea that extraordinary situations like private or public

(“These powers ought to exist without limitation: *Because it is impossible to foresee or define the extent and variety of national exigencies, or the correspondent extent & variety of the means which may be necessary to satisfy them.* The circumstances that endanger the safety of nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed.”) (emphasis in the original).

7 Letter to John B. Colvin, 20 September 1810, reprinted in: *The Writings of Thomas Jefferson*, collected and edited by Paul Leicester Ford, Volume IX, 1898, 279 (“The question you propose, whether circumstances do not sometimes occur, which make it a duty in officers of high trust, to assume authorities beyond the law, is easy of solution in principle, but sometimes embarrassing in practice. A strict observance of the written laws is doubtless *one* of the high duties of a good citizen, but it is not *the highest*. The laws of necessity, of self-preservation, of saving our country when in danger, are of higher obligation. To lose our country by a scrupulous adherence to written law, would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.”) (emphases in the original).

8 On the respective statements see for example the analysis by *Rossiter*, *Constitutional Dictatorship – Crisis Government in the Modern Democracies*, 11 and 223 *et seq.*

9 See the respective statement included in the speech in the German Parliament by the Chancellor *von Bethmann Hollweg* on 4 August 1914, cited in: *Commission on the Responsibility of the Authors of the War and on Enforcement of Penalties*, Report presented to the Preliminary Peace Conference, 29 March 1919, *American Journal of International Law* 14 (1920), 95 (111) (“Necessity knows no law.”).

10 *Schmitt*, *Political Theology – Four Chapters on the Concept of Sovereignty*, 12 (“What characterizes an exception is principally unlimited authority, which means the suspension of the entire existing order. In such a situation it is clear that the state remains, whereas law recedes.”).

11 See, e.g., the „extra-legal measures model“ argued for by *Gross*, *Yale Law Journal* 112 (2003), 1011 (1096 *et seq.*); see thereto also *Gross/Ní Aoláin*, *Law in Times of Crises – Emergency Powers in Theory and Practice*, 110 *et seq.*, with additional references.

12 See for example in the present context the observations by *Sottiaux*, in: *van Dijk/van Hoof/van Rijn/Zwaak* (eds.), *Theory and Practice of the European Convention on Human Rights*, 1063 (1064) (“The principled rejection of emergency powers has not prevented *de facto* derogation from human rights standards under the pressure of circumstances. It has been argued that a human rights regime with no provisions for emergency derogations leaves political decision-makers and courts with no other choice but to circumvent human rights norms or the legal order as whole. Such systems fail to constrain the state’s response to war and emergency situations altogether.”); and *MacDonald*, *Columbia Journal of Transnational Law* 36 (1997), 225 (232) (“Without it, states could and would derogate from the Convention in emergencies, but without supervision and with greater risk of abuse.”).

13 Generally on the distinction between justifications and excuses specifically in the realm of public international law see, e.g., *Paddeu*, *Justification and Excuse in International Law*, 27 *et seq.*, with further references.

14 See specifically in the present context for example *McGoldrick*, *International Journal of Constitutional Law* 2 (2004), 380 (389) (“Rather than approach the matter from the basis that exceptional situations cannot be the subject of legal regulation, international human rights law accepts the idea of derogations but then overlays it with an integral set of principles that constrain their scope and operation – necessity, proportionality, nondiscrimination, and consistency with other obligations under international law.”).

emergencies¹⁵ can only be adequately addressed by attempting to accommodate, within the legal system in question, the underlying needs and security issues.

B. Exception Clauses in International Treaty-Making: The Positivist Perspective

And indeed, it is well-known and fortunate, that such a positivist approach to these challenges also characterizes already for quite some time the dominant understanding of public international law. Respective indications and manifestations are provided, among others, by the recognition in principle, mostly under customary international law, of necessity as a circumstance precluding wrongfulness¹⁶ as well as by the explicit incorporation of related exception clauses in international agreements. Comparatively early examples are the right of individual and collective self-defence enshrined in Article 51 of the 1945 Charter of the United Nations, the security exception stipulated in Article XXI lit. b of the 1947 General Agreement on Tariffs and Trade¹⁷ as well as in bilateral agreements, such as the security and national emergency exception incorporated in Article XXIV (1) lit. e of the 1948 Treaty of Friendship, Commerce and Navigation between the United States of America and the Italian Republic.

In particular with regard to the last-mentioned approach of explicitly incorporating exception clauses referring, *inter alia*, to essential security interests and national emergencies, there is a rather broad consensus among social science and legal scholars as to the considerable advantages associated with such a regulatory technique in the realm of international treaty-making. Introducing an element of flexibility in the implementation processes and their underlying normative expectations, these provisions enable the contracting parties to address and better cope with the issue of uncertainty, concerning their ability to comply with the obligations arising under the treaty regime in the future, in particular also under changing – and potentially more challenging – conditions and circumstances. By signalling to states the option, legally granted to them, of at least temporarily deviating from certain treaty obligations under codified and specified extraordinary circumstances, incorporating this type of provisions facilitates and promotes, on the side of the potential contracting parties, the willingness to abstain from potentially more far-reaching reservations, to enter into deeper and broader contractual commitments or even to participate at all in the treaty regime in the first place. Moreover,

15 This approach obviously presupposes the possibility to distinguish in principle between ordinary and extraordinary situation; an underlying proposition that is occasionally questioned also in the legal literature, see thereto for example Gross, *Yale Journal of International Law* 23 (1998), 437 (454 *et seq.*, 499 *et seq.*); Gross, *Yale Law Journal* 112 (2003), 1011 (1069 *et seq.*).

16 On the state of necessity as a recognized justification for the deviation from international legal obligations, see for example Article 25 of the Articles on the Responsibility of States for Internationally Wrongful Acts with the respective commentary, reprinted in: *Yearbook of the International Law Commission* 2001, Volume II, Part Two, UN Doc. A/CN.4/SER.A/2001/Add. 1 (Part 2), p. 80 *et seq.*; Sykes, *American Journal of International Law* 109 (2015), 296 (308 *et seq.*); Paddeu, *Justification and Excuse in International Law*, 334 *et seq.*, each with numerous references to relevant state practice and decisions of international courts and tribunals.

17 On the question, for a long time quite controversially debated, as to the competence of GATT/WTO panels and the WTO Appellate Body to judicially review the invocation of this provisions (that was subsequently also incorporated in the 1995 WTO legal order) by a WTO member in the course of WTO dispute settlement proceedings see more recently and affirmatively WTO, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R, Report of the Panel of 5 April 2019, paras. 7.53 *et seq.* See also concerning the related provision of Article 73 TRIPS Agreement: WTO, *Saudi Arabia – Measures Concerning the Protection of Intellectual Property Rights*, WT/DS567/R, Report of the Panel of 16 June 2020, paras. 7.241 *et seq.*; as well as generally thereto, e.g., Van den Bossche/Zdouc, *The Law and Policy of the World Trade Organization*, 671 *et seq.*; Tietje, in: Tietje/Nowrot (eds.), *Internationales Wirtschaftsrecht*, § 4 paras. 96 *et seq.*; Weiss/Ohler/Bungenberg, *Welthandelsrecht*, paras. 548 *et seq.*

bearing in mind that they allow states to derogate from their obligations without being forced to consider violating their contractual commitments – possibly compromising or endangering the integrity of the international legal regime as a whole – or withdrawing from the entire treaty, exception clauses are in sum frequently perceived as notably contributing to the overall acceptance, stability and sustainability of the international agreement at issue.¹⁸

Despite these and other advantages often associated with what is referred to here as a positivist approach to addressing and accommodating emergencies as well as other extraordinary scenarios, it cannot be denied – and should not be left unmentioned – that also with regard to the stipulation of exception clauses in international agreements, the old saying unfortunately holds true that the devil is in the details¹⁹ and (one might be tempted to add) in implementation and monitoring in practice.

C. International Human Rights Law and States of Emergency: How It All Began

With the recognition of human rights within the international legal order and the first serious efforts aimed at codifying these individual entitlements in the form of treaties from the second half of the 1940s onwards, this general issue of how best to secure an adequate and acceptable observance of legal obligations under extraordinary circumstances immediately, and in principle most naturally, also presented itself as a “crucial problem”²⁰ and regulatory challenge in this new field of public international law. Thereby, in the course and as result of this endeavor, it was first and foremost also the question how to deal with and legally accommodate states of emergency, previously confined to the realm of domestic (constitutional) law, that was transferred – as vividly phrased by Hersch Lauterpacht – “to a higher plane” in the form of the international legal order.²¹

The by now well-known positivist approach of normatively addressing the challenges posed by states of emergency on the basis of incorporating explicit derogation clauses, that bear a certain and notable resemblance to the above mentioned doctrine of necessity,²² in human

18 For this perception and a discussion of the respective arguments in an international discourse which, in particular as far as social science scholars are concerned, often focusses primarily on international trade and investment agreements, see for example *Dam*, *The GATT: Law and International Economic Organization*, 99; *Rosendorff/Miller*, *International Organization* 55 (2001), 829 (850 *et seq.*); *Sykes*, *University of Chicago Law Review* 58 (1991), 255 (259, 273, 278 *et seq.*); *Sykes*, *American Journal of International Law* 109 (2015), 296 (305 *et seq.*); *Kucik/Reinhardt*, *International Organization* 62 (2008), 477 *et seq.*; *van Aaken*, *Journal of International Economic Law* 12 (2009), 507 (509); *Pelc*, *Making and Bending International Rules: The Design of Exceptions and Escape Clauses in Trade Law*, 18 *et seq.*, with additional references.

19 Generally on this perception see, from the perspective of political science, for example also the summary finding by *Pelc*, *International Studies Quarterly* 53 (2009), 349-350 (“On the one hand, an overly rigid agreement sets high barriers to entry for new members, and risks the abrogation of the agreement at the first exogenous shock. On the other hand, an overly flexible agreement, while immune to exogenous shocks, is prone to abuse by its members, to the point where it loses its credibility and becomes irrelevant.”).

20 See, with regard to the overarching question of the limitations to be imposed on human rights, already *Lauterpacht*, *An International Bill of Rights of Man*, 183 (“The Article gives expression to the crucial problem of the Bill of Rights.”).

21 *Lauterpacht*, *International Law and Human Rights*, 371 (“In political science and jurisprudence the question of State emergency and of the suspension of constitutional guarantees has been discussed in the past largely as a problem between the executive and the legislature. The Bill of Rights will transfer the problem to a higher plane. It will henceforth become of problem of reconciling the supremacy of the highest power within the State with the paramountcy of the international order safeguarding the rights of man against the State itself.”).

22 On this perception see also, e.g., Report of the Committee on the Enforcement of Human Rights, reprinted in: Report of the Sixty-Third ILA Conference in Warsaw in August 1988, 1988, 129 (178 and 183); *Hartman*, *Harvard International Law Journal* 22 (1981), 1 (12) (“there are some striking resemblances between the derogation clauses and the

rights treaties was apparently first proposed by the United Kingdom during the work of the Drafting Committee of the United Nations Commission on Human Rights in June 1947.²³ Although far from uncontroversial and at times even subject to quite polarized debates with some members of the Commission on Human Rights, *inter alia*, “fearing the arbitrary suppression of human rights on the plea of a national emergency”,²⁴ this regulatory technique subsequently found its well-known manifestation in provisions like Article 15 of the 1950 European Convention on Human Rights, Article 4 of the 1966 International Covenant on Civil and Political Rights and Article 27 of the 1969 American Convention on Human Rights.

This last-mentioned finding from the realm of treaty practice might very well be interpreted as an indication for the need and advantages of incorporating this type of exception clauses also in those international agreements that are primarily intended to benefit and protect non-party actors. And indeed, many of the reasons mentioned above that have been brought forward to support the stipulation of such “escape clauses” in international agreements in general, have also been advanced – by state representatives during the negotiations as well as in scholarly contributions – to justify and promote the inclusion of derogation clauses into human rights treaties. They have been, and continue to be, said to mirror the recognition of the drafters, that “fundamental rights of the individual must in certain cases yield to the vital necessities of the State”,²⁵ thus giving expression to the need to establish an appropriate balance between the protection of the individual’s legally protected interests on the one hand and “the overriding inclusive interests of all community members”,²⁶ on the other. By providing for a certain flexibility in the operation of the agreement, derogation clauses are aimed at reducing uncertainty for the contracting (state) parties and thus promote the broad acceptance

customary doctrine of necessity”). On the relationship between these derogation clauses and the doctrine of self-defence see for example International Commission of Jurists, *States of Emergency – Their Impact on Human Rights*, 1983, 413; United Nations Economic and Social Council, Commission on Human Rights, Question of the Human Rights of Persons Subjected to any Form of Detention and Imprisonment, Study of the Implications for Human Rights of Recent Developments Concerning Situations Known as States of Siege or Emergency, prepared by *Nicole Questiaux*, UN Doc. E/CN.4/Sub.2/1982/15 of 27 July 1982, para. 60.

- 23 United Nations Economic and Social Council, Commission on Human Rights, Drafting Committee, Text of Letter from *Lord Dukeston*, the United Kingdom Representative on the Human Rights Commission, to the Secretary-General of the United Nations, UN Doc. E/CN.4/AC.1/4 of 5 June 1947, p. 7. For the subsequent discussion on this provision in the Commission on Human Rights, see, e.g., United Nations Economic and Social Council, Commission on Human Rights, Second Session, Summary Record of the Forty-Second Meeting, UN Doc. E/CN.4/SR/42 of 16 December 1947, p. 4 *et seq.* See also for the position of the United Kingdom in the subsequent, and in part parallel, negotiations on the European Convention on Human Rights for example the statement made by *Sir Ronald Ross* during the first session of the Consultative Assembly in Strasbourg on 19 August 1949, reprinted in: Collected Edition of the “Travaux Préparatoires”, Vol. I, 1975, 152 (“It is defined in every declaration of human rights that in times of emergency the safety of the community is of first concern.”).
- 24 See the statement by *René Cassin* summarizing the previous position of the French delegation, reprinted in: United Nations Economic and Social Council, Commission on Human Rights, Fifth Session, Summary Record of the One Hundred and Twenty-Seventh Meeting, UN Doc. E/CN.4/SR 127 of 17 June 1949, p. 7. For a more in-depth account of the early debates and negotiations on the suitability and advisability of including derogation clauses in international human rights treaties see, e.g., *Svensson-McCarthy*, *The International Law of Human Rights and States of Exception*, 200 *et seq.*; *Krieger*, in: Dörr/Grote/Marauhn (eds.), *EMRK/GG, Konkordanzkommentar zum europäischen und deutschen Grundrechtsschutz*, Vol. I, 417 (418 *et seq.*); Office of the High Commissioner for Human Rights/International Bar Association, *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, 2003, Chapter 16, 816 *et seq.*
- 25 *Lauterpacht*, *International Law and Human Rights*, 366. On this perception see also for example International Commission of Jurists, *States of Emergency – Their Impact on Human Rights*, 1983, 413 (“That it may be necessary to suspend respect for certain human rights in order to prevent the nation from falling into chaos is universally admitted.”); *Cridle*, *Netherlands Yearbook of International Law* 45 (2014), 197 (200).
- 26 *McDougal/Lasswell/Chen*, *American Journal of International Law* 63 (1969), 237 (267); see also, e.g., *McDougal*, *Virginia Journal of International Law* 14 (1974), 387 (390 *et seq.*); *Stein*, in: Maier (ed.), *Europäischer Menschenrechtsschutz*, 135-136; *Higgins*, *British Yearbook of International Law* 48 (1976-77), 281-282.

and resilience of the human rights treaty even under exceptional circumstances.²⁷ In line with the findings made already above with regard to such provisions in international agreements in general, the advantages of derogation clauses in human rights treaties have been for example succinctly stated already a number of decades ago by *Christoph Schreuer*:

“The underlying policy is to provide for limited non-compliance in order to obviate the need for more far-reaching limitations of human rights. In the absence of such a legal safety valve, states might hesitate to join the Convention or might attach more significant reservations to their accession. Moreover, in situations of actual emergency, such as war, civil strife, or revolution, national elites may regard compliance as a low priority and may resort to broader claims of derogation like ‘necessity’ or may even denounce the Convention altogether. While a reservation to accession permits partial, uncontrolled, and permanent limitations and a denunciation allows a complete and uncontrolled termination, a derogation clause, such as article 15 of the European Convention, allows only for partial, controlled, and temporary limitations. Derogation clauses, therefore, offer undeniable advantages.”²⁸

While quite accurately summarizing some of the main benefits of derogation clauses in human rights treaties, in particular also by favorably contrasting them with reservations, a small “disclaimer” appears to be warranted, considering the fact that treaty practice, in principle already many decades ago, also bore witness to the rather remarkable – and most certainly quite disputed – approach of combining these two regulatory approaches by formulating more or less far-reaching reservations to specific derogation clauses.²⁹

In addition, and aside from possible restraining effects attributed to these provisions from the perspective of domestic politics,³⁰ two other aspects, not being addressed in the statement just cited, seem worth of briefly being drawn attention to in the present context. First, in the same way as the – at first sight potentially surprising – fact that liberal democracies generally have made more, not fewer, reservations and declarations when signing and ratifying human rights treaties than authoritarian regimes might very well, and is indeed not infrequently, considered to be indication that they take their international human rights commitments entered

27 Explicitly on these aspects, albeit in the context of reservations to human rights treaties, see for example already *Imbert*, in: Maier (ed.), *Europäischer Menschenrechtsschutz*, 95 (99-100); *Kadelbach/Roth-Isigkeit*, *Nordic Journal of International Law* 86 (2017), 275 (301) (“even exceptional circumstances can be captured by human rights law”).

28 *Schreuer*, *Yale Journal of World Public Order* 9 (1982), 113 (115-116). See in this connection also, e.g., Report of the Committee on the Enforcement of Human Rights, reprinted in: Report of the Sixty-Third ILA Conference in Warsaw in August 1988, 1988, 129 (178) (“Overcoming initial opposition, the drafters decided that derogation clauses would impose some constraints on emergency-declaring governments, which would otherwise simply assume that ‘necessity knows no law’.”); the respective summary of a statement by *Lord Dukeston* (United Kingdom), reprinted in: United Nations Economic and Social Council, Commission on Human Rights, Second Session, Summary Record of the Forty-Second Meeting, UN Doc. E/CN.4/SR/42 of 16 December 1947, p. 5 (“He felt that, if such a provision were not included, in time of war it might leave the way open for a State to suspend the provisions of the Convention. His Government thought it most important that steps should be taken to guard against such an eventuality.”); *Hafner-Burton/Helfer/Fariss*, *International Organization* 65 (2011), 673 (674 *et seq.*); *Sottiaux*, in: van Dijk/van Hoof/van Rijn/Zwaak (eds.), *Theory and Practice of the European Convention on Human Rights*, 1063 (1064); *Hartman*, *Harvard International Law Journal* 22 (1981), 1 (3) (“The treaties’ drafters sought to avoid rigidity that would discourage genuine state adherence and could invite outright repudiation in crises, while they used the content of the treaties to impose binding international obligations.”); as well as specifically on the perception of derogation clauses as a “mechanism for the avoidance of reservations” also *Giegerich*, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (1995), 713 (739 *et seq.*).

29 On the approach of making reservations in the context of derogation clauses stipulated in human rights treaties see, e.g., *Nowak*, UN Covenant on Civil and Political Rights, Article 4 CCPR, paras. 44 *et seq.*, with further references.

30 See thereto already for example Report of the Committee on the Enforcement of Human Rights, reprinted in: Report of the Sixty-Third ILA Conference in Warsaw in August 1988, 1988, 129 (179) (“Indeed, the existence of these treaty restraints may even assist a democratic government to deflect pressures upon it from extremist factions to impose draconian emergency measures during a perceived crisis.”).

into more seriously,³¹ the stipulation of clauses permitting contracting parties to derogate from their human rights obligations under certain extraordinary circumstances could potentially, with all due caution, also be interpreted as a rather encouraging sign signaling the readiness and aspiration of the respective states to seriously strive for the accommodation of other public interest concerns and thus, to establish in earnest a workable, effective and viable international legal framework for the protection of human rights. Second, it is precisely the approach of derogation clauses that allows for the explicit stipulation of substantive and rights-based counter-exceptions in the form of non-derogable rights and obligations and thus, for the normative explication of important additional material limitations to the powers enjoyed by governments even in times of emergency; a regulatory option that, albeit with regard to its practicability not at all times undisputed,³² was famously made use of in all three of the above-mentioned treaty regimes; namely, Article 4 (2) of the 1966 International Covenant on Civil and Political Rights, Article 27 (2) of the 1969 American Convention on Human Rights, as well as Article 15 (2) of the 1950 European Convention on Human Rights and a number of additional protocols to this treaty.

Nevertheless, the mere fact that the 1950s and 1960s bore witness to the incorporation of respective derogation clauses in some key international human rights treaties has most certainly, and most expectedly, neither solved all problems, nor answered all questions arising in connection with the issue of human rights in times of emergency. In particular, the finding introduced already above in connection with exception and escape provisions in international agreements in general, that the devil is, figuratively speaking, in the details as well as in implementation and monitoring in practice, surely first and foremost also applies to derogation clauses in the contractual realm of international human rights law. Moreover, and at least equally important, it is well-known that by far not all human rights agreements provide for respective provisions, giving rise to the challenge how to appropriately address situations of emergencies under such treaty regimes in the absence of derogation clauses.

Furthermore, to mention but one additional aspect worth taking into account, neither the legal recognition of human rights in international agreements in general, nor the incorporation of derogation clauses therein, stipulating substantive and procedural requirements and thus being intended to provide limits to the policy space enjoyed by the contracting parties in times of emergencies, resulted, in subsequent years and decades, in a decreasing number of states of emergency being formally declared or *de facto* taken recourse to³³ by governments in the international system. Quite to the contrary, the instances in which states resorted to emergency powers actually increased in the 1950s, 1960s and 1970s,³⁴ with “large parts of the world’s population hav[ing] lived under regimes of exception, often for lengthy periods”,³⁵ admittedly

31 On this finding see, e.g., *Neumayer*, *Journal of Legal Studies* 36 (2007), 397 (401 *et seq.*), with further references.

32 For a more cautious view see for example *Lauterpacht*, *International Law and Human Rights*, 371 fn. 31 (“So long as that power [of review] is vested in an international agency, it is not necessary – and it is impracticable – to enumerate rights and freedoms which must not in any case be suspended. No instrument or enactment can foresee in advance the extent and nature of possible emergencies.”).

33 Concerning the distinction between formally declared *de jure* states of emergency and *de facto* emergencies see, e.g., Report of the Committee on the Enforcement of Human Rights, reprinted in: Report of the Sixty-Third ILA Conference in Warsaw in August 1988, 1988, 129 (143-159); *Fitzpatrick*, *Human Rights in Crisis – The International System for Protecting Rights during States of Emergency*, 7 *et seq.*; *Kornioti/Nowrot*, *Looking Back to Learn for the Future?*, 24 *et seq.*, each with additional references.

34 On the prevalence of states of emergency during this time period see, e.g., International Commission of Jurists, *States of Emergency – Their Impact on Human Rights*, 1983, 413 (“States of emergency are encountered with surprising frequency throughout the world. [...] It is probably no exaggeration to say that at any given time in recent history a considerable part of humanity has been living under a state of emergency.”).

35 *O'Donnell*, *International Commission of Jurists Review* 21 (December 1978), 52 (53) (“In recent times, large parts of the world’s population have lived under regimes of exception, often for lengthy periods.”); see also, e.g., Report of the

also a result of the overall rise in the number of (newly) independent countries during the heydays of the processes of decolonization, whose champions were not always entirely immune to the temptation of securing their power base by way of emergency laws.³⁶ At the same time, however, it became increasingly clear and acknowledged that it is precisely those states of emergency that pose in practice one of the most fundamental threats to the effective protection and promotion of human rights in the respective countries at issue.³⁷ To mention but one example, the UN General Assembly, in its Resolution 31/124 of 16 December 1976 dealing with the protection of human rights in Chile, called upon “the Chilean authorities” to “cease using the state of siege or emergency for the purpose of violating human rights and fundamental freedoms and, [...], to re-examine the basis on which the state of siege or emergency is applied with a view to its termination”.³⁸

In light of these findings, and most certainly also inspired by the first related cases arising initially from the second half of the 1950s onwards in particular under the review regime of the European Commission of Human Rights and the European Court of Human Rights established by the European Convention on Human Rights,³⁹ scholarly attention was increasingly devoted to the question of human rights in times of emergency; a growing prominence that first and foremost also found its manifestation in a rising number of publications by legal academics on this topic in the 1960s⁴⁰ and 1970s,⁴¹ with the respective contributions most naturally first and foremost also addressing, and not infrequently critically evaluating the implementation in

Sub-Committee on the Study of Regional Problems in the Implementation of Human Rights, reprinted in: Report of the Fifty-Ninth ILA Conference in Belgrade in August 1980, 1982, 89 (90).

- 36 See thereto for example Report of the Committee on the Enforcement of Human Rights, reprinted in: Report of the Sixty-Third ILA Conference in Warsaw in August 1988, 1988, 129 (152) (“The period of decolonization saw many emerging nations reject the colonial yoke while embracing the tools of repression which had been used by the British colonial authorities against nationalist leaders, many of whom assumed power in the new nations. This pattern is profoundly ironic.”); as well as the remark by *Fitzpatrick*, Human Rights in Crisis – The International System for Protecting Rights during States of Emergency, 16 (“One legacy of the British Empire was a complex of internal security laws, designed to cope with external threats and internal subversion, including struggles for decolonization. It is a familiar story repeated throughout the world that when those liberation struggles succeeded, the new leaders embraced the same tools of repression that had been used by the colonial masters.”).
- 37 On this perception see, e.g., *O'Donnell*, International Commission of Jurists Review 21 (December 1978), 52; *Oraá*, Human Rights in States of Emergency in International Law, 1 (“in the last decades the gravest violations of fundamental human rights have occurred in the context of states of emergency”); *Grossman*, American University Journal of International Law and Policy 1 (1986), 35 (36); *Criddle/Fox-Decent*, Human Rights Quarterly 34 (2012), 39 (40); *Sheeran*, Michigan Journal of International Law 34 (2013), 491 (“States of emergency are today one of the most serious challenges to the implementation of international human rights law (IHRL).”).
- 38 UN GA Res. 31/124 of 16 December 1976, para. 2 (a).
- 39 For an overview of the early case-law under the European Convention on Human Rights, prominently among it for example the case of *Lawless v. Ireland*, see, e.g., *Weil*, The European Convention on Human Rights – Background, Development and Prospects, 72 *et seq.*; *Robertson*, Human Rights in Europe, 111 *et seq.*; *Schreuer*, Yale Journal of World Public Order 9 (1982), 113 (116 *et seq.*); *Gross*, Yale Journal of International Law 23 (1998), 437 (460 *et seq.*).
- 40 For related scholarly contribution from this decade see for example *Weil*, The European Convention on Human Rights – Background, Development and Prospects, 70 *et seq.*; *Wurst*, Die völkerrechtliche Sicherung der Menschenrechte in Zeiten staatlichen Notstandes – Artikel 15 der Europäischen Menschenrechtskonvention, 1967; *Schwelb*, in: Eide/Schou (eds.), International Protection of Human Rights, 103 (115 *et seq.*); *Fawcett*, The Application of the European Convention on Human Rights, 245 *et seq.*
- 41 With regard to respective publications that appeared in the 1970s, see for example *Partsch*, Israel Yearbook on Human Rights 1 (1971), 327 *et seq.*; *Castberg*, The European Convention on Human Rights, 165 *et seq.*; *Jacobs*, The European Convention on Human Rights, 204 *et seq.*; *Higgins*, British Yearbook of International Law 48 (1976-77), 281 *et seq.*; *O'Boyle*, Northern Ireland Legal Quarterly 28 (1977), 160 (178 *et seq.*); *O'Boyle*, American Journal of International Law 71 (1977), 674 *et seq.*; *Robertson*, Human Rights in Europe, 110 *et seq.*; *van Hoof*, Human Rights Journal 10 (1977), 213 *et seq.*; *O'Donnell*, International Commission of Jurists Review 21 (December 1978), 52 *et seq.*; *Dinstein*, in: Stein (ed.), Menschenrechte in Israel und Deutschland, 63 *et seq.*; *Green*, Canadian Yearbook of International Law 16 (1978), 92 *et seq.*; *Warbrick*, in: Dowrick (ed.), Human Rights – Problems, Perspectives and Texts, 89 *et seq.* See also from the beginning of the 1980s for example *Norris/Desio Reiton*, American University Law Review 30 (1980), 189 *et seq.*; *Buergethal*, in: Henkin (ed.), The International Bill of Rights, 72 *et seq.*

practice of, the “uneasy compromise”⁴² between conflicting public interests, as embodied in the said derogation clauses.

D. Human Rights and the Challenge of Health Emergencies: The COVID-19 Pandemic

It is well-known that the scholarly assessments and debates on the issue of human rights in times of emergency continue up to this day.⁴³ More recently, ever since the outbreak of the COVID-19 pandemic in the beginning of 2020, increasing attention has been paid in this regard in particular also to the effects of health emergencies on the protection of international human rights. In response to the corona crisis, almost thirty countries – among them Albania, Argentina, Armenia, Bolivia, Chile, Colombia, the Dominican Republic, Ecuador, El Salvador, Estonia, Georgia, Honduras, North Macedonia, Panama, Peru, Romania as well as Serbia – have declared a state of emergency and, moreover, have notified the Secretary General of the Council of Europe, the Secretary General of the Organization of American States and/or the UN Secretary General in his capacity as depositary of the 1966 International Covenant on Civil and Political Rights about their decision to exercise the right of derogation from their obligations under the respective human rights treaties in accordance with Article 4 of the 1966 International Covenant on Civil and Political Rights, Article 27 of the 1969 American Convention on Human Rights and/or Article 15 of the 1950 European Convention on Human Rights.⁴⁴

Against this background, the subsequent sections of this contribution intend to provide an assessment of the respective legal developments in connection with the COVID-19 pandemic on both banks of the Dniester River, thereby covering the Republic of Moldova⁴⁵ as well as Pridnestrovie, also known for example as Transnistria, being situated – depending on the perspective – east of, or in the east of, the Republic of Moldova on the left bank of the Dniester River.⁴⁶

42 *Hartman*, Harvard International Law Journal 22 (1981), 1 (2); see also for example more recently *Mariniello*, German Law Journal 20 (2019), 46 (47) (“difficult compromise”).

43 See, e.g., more recently *Kadelbach/Roth-Isigkeit*, Nordic Journal of International Law 86 (2017), 275 *et seq.*; *Yordan Nugraha*, International Journal of Human Rights 22 (2018), 194 *et seq.*; *Polzin*, Heidelberg Journal of International Law 78 (2018), 635 *et seq.*; *Spieker*, Heidelberg Journal of International Law 79 (2019), 155 *et seq.*; *Mariniello*, German Law Journal 20 (2019), 46 *et seq.*; *Thomson/Ip*, Journal of Law and the Biosciences 7 (2020), <https://doi.org/10.1093/jlb/ljaa064>; *Lebret*, Journal of Law and the Biosciences 7 (2020), <https://doi.org/10.1093/jlb/ljaa015>; *Wallace*, Human Rights Law Review 20 (2020), 769 *et seq.*; *Helper*, American Journal of International Law 115 (2021), 20 *et seq.*

44 See thereto also, e.g., *Lebret*, Journal of Law and the Biosciences 7 (2020), <https://doi.org/10.1093/jlb/ljaa015>; *Helper*, American Journal of International Law 115 (2021), 20 *et seq.*

45 See *infra* under E.

46 See *infra* under F.

E. Assessing Developments on the Right Bank of the Dniester River: The Republic of Moldova

As far as the status of international human rights law in the domestic legal order of the Republic of Moldova is concerned, Article 4 (1) of the Moldovan Constitution (MC) of 27 July 1994 and last amended on 29 March 2016⁴⁷ stipulates that the constitutional provisions on fundamental rights and freedoms shall be interpreted and enforced in accordance with the 1948 Universal Declaration of Human Rights⁴⁸ as well as the human rights treaties to which this state is a party. Moreover, in case a conflict arises between the Moldovan domestic legal order and the respective human rights conventions, priority shall be given to the later in accordance with Article 4 (2) MC. In addition, Article 54 (2) MC prescribes that the fundamental rights and freedoms enshrined in the constitution may only be subject to restrictions as, among others, are prescribed by law and are in conformity with applicable norms of public international law.

In accordance with Article 66 lit. m MC, the Parliament is entrusted with the competence to declare a state of emergency, martial law and war. During a state of emergency, the Parliament may in principle not be dissolved (Article 85 (4) MC)⁴⁹ and the MC may not be amended (Article 142 (3) MC). Below the level of constitutional law, more detailed regulations on the state of emergency are in particular laid down in the Law No. 212/2004 on the Regime of a State of Emergency, Siege and War of 24 June 2004 (Law No. 212/2004) that was adopted by Parliament in accordance with its legislative competences under Article 72 (3) lit. m MC.

I. 2020 State of Emergency in the Context of the COVID-19 Pandemic

Explicitly referring, among others, to the declaration of the World Health Organization qualifying the spread of COVID-19 as a pandemic on 11 March 2020, the Moldovan Parliament adopted on 17 March 2020 a decision declaring the state of emergency throughout the territory of Moldova for the period of 17 March until 15 May 2020 (Article 1 of the 2020 Declaration).⁵⁰ In its Article 2, it authorized the Commission for Exceptional Situations, a government body established during a state of emergency under Law No. 212/2004 and comprising, inter alia, of the Prime Minister and other Cabinet members, to issue provisions aimed at, among others, “establishing a special regime for the country entry and exit” as well as with regard to the movement on the territory of the country, introducing a quarantine regime, “prohibiting public meetings and gatherings and other mass events”, “coordinating media activities” as well as “carrying out other necessary actions in order to prevent, mitigate and liquidate the consequences of” the COVID-19 pandemic. Moreover, Article 5 of the 2020 Declaration states that the Parliament “will inform, within three days, the UN Secretary General and the Secretary

47 The text of the MC is for example available under: <<https://www.presedinte.md/eng/constitution>> (last accessed 10 July 2022).

48 Universal Declaration of Human Rights, UN Doc. GA-Res. 217 A (III) of 10 December 1948.

49 Article 85 (4) MC stipulates an exception from this rule in the case provided for in Article 78 (5) MC. This concerns the situation that the Parliament is, after three ballots, not able to elect a new President of the Republic with the necessary majority of three-fifths of the votes of the members of Parliament.

50 The text of the decision is for example annexed to the Note Verbale from the Permanent Representation of the Republic of Moldova to the Council of Europe of 18 March 2020, Ref.: JJ9016C Tr./005-228, available under: <<https://www.coe.int/en/web/conventions/derogations-covid-19>> (last accessed 10 July 2022).

General of the Council of Europe about this decision and the reasons for its adoption”.

In a Note Verbale to the Secretary General of the Council of Europe of 18 March 2020, the Permanent Representation of Moldova to this international organization informed the Secretary General about the decision of the Moldovan Parliament to declare a state of emergency “as a critical measure to stop the spread of COVID-19”.⁵¹ Since the measures already in force or intended to be implemented as a result of the state of emergency “entails or may entail restrictions to fundamental rights and liberties”, the situation triggers the necessity for Moldova to derogate, in accordance with Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), from the application of certain provisions of the ECHR and its Protocols, in particular, Article 11 ECHR (freedom of assembly and association), Article 2 First Protocol to the ECHR (right to education) as well as Article 2 Protocol No. 4 to the ECHR (freedom of movement). The Note Verbale continues that in light of the “worrying trends of COVID-19 spread in Europe” the measures adopted or envisioned to be adopted “are essential steps in combatting the spread of the COVID-19 and protect the population against this global pandemic”.

Also by communication of 18 March 2020, the Permanent Mission of Moldova to the United Nations notified the UN Secretary General in his capacity as depositary of the International Covenant on Civil and Political Rights (ICCPR) that in order to stop the spread of COVID-19, Moldova exercises the right of derogation from its obligations under the ICCPR in accordance with Article 4 ICCPR.⁵² This derogation concerned, in particular, the provisions of Article 12 ICCPR (freedom of movement) and Article 21 ICCPR (freedom of assembly).

The state of emergency ended on 15 May 2020. In a Note Verbale of 18 May 2020, the Permanent Mission of Moldova to the United Nations notified the UN Secretary General about the termination of the derogations under Article 4 ICCPR.⁵³ One day later, the Permanent Representation of Moldova to the Council of Europe notified the Secretary General of the Council of Europe on the end of the derogations under Article 15 ECHR.⁵⁴

From the numerous and diverse domestic measures adopted by Moldovan authorities in the course of the state of emergency, three aspects, decisions and acts appear to be particularly noteworthy.

First, on the same day when the Parliament adopted the decision to declare a state of emergency, it also decided to amend the above-mentioned Law No. 212/2004 on the Regime of a State of Emergency, Siege and War of 24 June 2004 (Law No. 212/2004) by, among others, introducing into Article 20 that provides for the measures that can be taken during a state of emergency a new lit. k that authorized the executive organs to carry out also other necessary measures in order to address the crisis situation at issue.⁵⁵ Five members of Parliament filed a constitutional complaint before the Constitutional Court of Moldova against, among others,

51 See Note Verbale from the Permanent Representation of the Republic of Moldova to the Council of Europe of 18 March 2020, Ref.: JJ9016C Tr./005-228, available under: <<https://www.coe.int/en/web/conventions/derogations-covid-19>> (last accessed 10 July 2022).

52 See ICCPR, Republic of Moldova: Notification under Article 4 (3), Reference: C.N. 164.2020.TREATIES-IV.4, available under: <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND> (last accessed 10 July 2022).

53 See ICCPR, Republic of Moldova: Notification under Article 4 (3), Reference: C.N. 169.2020.TREATIES-IV.4, available under: <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND> (last accessed 10 July 2022).

54 Note Verbale from the Permanent Representation of the Republic of Moldova to the Council of Europe of 19 May 2020, Ref.: JJ9053C Tr./005-253, available under: <<https://www.coe.int/en/web/conventions/derogations-covid-19>> (last accessed 10 July 2022).

55 See, e.g., *Pinzaru*, Human Rights and Democracy in the COVID-19 Era: Experience from Republic of Moldova, CCSDD Blog of 18 January 2021, available under: <<https://ccsddinternblog.wordpress.com/2021/01/18/human-rights-and-democracy-in-the-covid-19-era-experience-from-republic-of-moldova/>> (last accessed 10 July 2022).

this amendment as well as against the above-mentioned decision of Parliament to declare a state of emergency as far as it authorizes the Commission for Exceptional Situations under Article 2 No. 12 of the decision to also “carry[...] out other necessary actions in order to prevent, mitigate and liquidate the consequences of the Corona virus Pandemic (COVID-19)”. The claimants argued, inter alia, that the provisions grant almost unlimited powers to the executive bodies when addressing the emergency situation and thus violate for example the principle of balance of powers under Article 6 MC, the individual guarantee of access to justice under Article 20 MC as well as the requirements for restricting the exercise of fundamental rights and freedoms as stipulated in Article 54 MC.

In its judgment No. 17 of 23 June 2020,⁵⁶ the Court acknowledged that broader and more flexible regulations concerning the measures taken during state of emergencies are in principle necessary and constitutionally acceptable in order to allow the executive organs to react promptly and effectively to the various challenges arising in such situations. Nevertheless, the judges also emphasized that the principle of balance of powers must also be respected in times of emergencies. Therefore, the extraordinary powers conferred on the executive branch are not only subject to temporal constraints but are also limited by the prohibition to bestow core legislative functions to other branches of government. Furthermore, the respective executive competences are functional in scope by being strictly limited to serving the objectives underlying the declaration of a state of emergency by the Parliament. In order to ensure the accountability of the executive organs in times of emergency, the Court held that the Constitution requires the existence of effective review mechanisms on the side of the Parliament as well as on the side of the judicial branch. Finding that the Moldovan legal order, in particular the above-mentioned Law No. 212/2004, does currently not provide for a sufficient mechanism of parliamentary oversight and review, the Court requested the Parliament to establish by law a respective legislative control mechanism to scrutinize the measures adopted by executive bodies during a state of emergency. Furthermore, the Court held that the limited judicial review, provided for in Article 225 (3) of the Moldovan Administrative Code with regard to executive measures adopted in times of emergencies, that largely prevents the courts, among others, from reviewing the proportionality of the measures at issue, is incompatible with the fundamental right of access to justice guaranteed by Article 20 MC.

Second, activating its authorization objective to implement measures “coordinating media activities” in accordance with Article 2 No. 7 of the decision by the Parliament to declare a state of emergency on 17 March 2020, Moldovan executive organs adopted a number of measures some of which were controversially perceived by, among others, the media community and civil society groups.⁵⁷ Among these actions was the decision of the Commission on Emergency Situations, taken on 18 March 2020, to extend the maximum time period that media representatives must wait for governmental bodies to respond to information requests from 15 days to 45 days. Apparently, no official declaration was made explaining the reasoning for taking this

56 Constitutional Court of the Republic of Moldova, Judgement No. 17 of 23 June 2020, available under: <<https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=738&l=ro>> (last accessed 10 July 2022).

57 On the following see for example *Balan/Stegniy*, COVID-19 Pandemic: Lessons for Media Freedom in Moldova, Media Forward, Policy Brief Series of the Media Enabling Democracy, Inclusion and Accountability in Moldova (MEDIA-M) Project, June 2020, No. 12, p. 2, available under: <<https://freedomhouse.org/report/special-report/2020/covid-19-pandemic-lessons-media-freedom-moldova>> (last accessed 10 July 2022); *Nani/Buka/Lentine*, Media Policy in a Pandemic: Lessons from Moldova, Ukraine and Latvia, Media Forward, Policy Brief Series of the Media Enabling Democracy, Inclusion and Accountability in Moldova (MEDIA-M) Project, November 2020, No. 14, p. 2 *et seq.*, available under: <<https://freedomhouse.org/>> (last accessed 10 July 2022); as well as *Mirza*, The Rule of Law in Moldova’s Age of COVID-19, Justice First Policy Brief Series, January 2021, No. 1, p. 3 *et seq.*, available under: <<https://freedomhouse.org/>> (last accessed 10 July 2022), each with numerous further references.

measure which was frequently perceived as further intensifying the in principle long-standing challenges existing in Moldova with regard to securing the right of access to information,⁵⁸ and was thus widely criticized by journalists, civil society groups as well as *Mihail Cotorobai*, the People's Advocate (Ombudsman) of Moldova.⁵⁹ Moreover, on 20 March 2020, the Moldovan Information and Security Service, authorized by the Commission for Emergency Situations, decided to block access to fifty-two websites for allegedly promoting “fake news” about the COVID-19 pandemic and governmental actions taken in this regard. Finally, by far the most far-reaching and controversial measure was the order issued by the Moldovan Audiovisual Council on 24 March 2020, requiring Moldovan media organizations and journalists, in their news reports on the COVID-19 pandemic during the state of emergency, to only communicate the official position of the Moldovan public authorities and to refrain from expressing their personal perspectives and opinions in this regard. Following immediate and quite strong criticism from media workers, civil society representatives and others, this order was rescinded already on the following day (25 March 2020), with also the then President of Moldova, *Igor Dodon*, explicitly commenting that this measure was premature and entailed the danger of over-restrictions of the media.

Third, already shortly before declaring a state of emergency on 17 March 2020, the Moldovan Parliament amended on 12 March 2020, among others, the provisions of the Moldovan Contravention Code, stipulating that a failure to comply with state measures aimed at preventing and combatting epidemic diseases that endangers public health results in a penalty of a minimum of 22.500 and a maximum of 25.000 Moldovan Leu (at that time about 1.300 and 1.450 USD respectively) for individuals. Already in light of the fact that the average monthly salary in Moldova was around 8.000 Leu (roughly 460 USD) at that time, this measure received strong criticism from, among others, civil society groups.⁶⁰ Furthermore, in response to a number of constitutional complaints challenging the constitutionality of this regulation, the Constitutional Court of Moldova in its judgment No. 18 of 30 June 2020 found the minimum penalty of 22.500 Leu as stipulated in the amended Contravention Code to be unconstitutional.⁶¹ The Constitutional Court held that by stipulating a very high minimum fine as well as a relatively small difference between the minimum and the maximum penalty, Parliament has deprived the courts of the possibility to individualize the penalty effectively and reasonably by assessing the proportionality of the penalty applied in relation to the individual circumstances of the case at issue. The approach chosen by the Parliament thus constitutes a violation of the fundamental individual right to a fair trial as enshrined in Article 20 MC and – as the Court explicitly emphasized in its judgment – in Article 6 ECHR. Implementing the judgment of the Constitutional Court, the Parliament amended the respective provision of the Contravention Code on 20 November 2020, thereby considerably reducing the fines foreseen in the context of epidemic diseases.⁶²

58 Generally thereto, e.g., *Gotisan/Ionel*, Why Access to Information Is Still a Problem in Moldova, Media Forward, Policy Brief Series of the Media Enabling Democracy, Inclusion and Accountability in Moldova (MEDIA-M) Project, March 2020, No. 10, available under: <<https://freedomhouse.org/report/analytical-brief/2020/why-access-information-still-problem-moldova-0>> (last accessed 10 July 2022).

59 For additional information on the office of the People's Advocate (Ombudsman) of Moldova see: <<http://ombudsman.md/en/>> (last accessed 10 July 2022).

60 See *Mirza*, The Rule of Law in Moldova's Age of COVID-19, Justice First Policy Brief Series, January 2021, No. 1, p. 3, available under: <<https://freedomhouse.org/>> (last accessed 10 July 2022), with numerous additional references.

61 Constitutional Court of the Republic of Moldova, Judgement No. 18 of 30 June 2020, available under: <<https://www.constcourt.md/ccdocview.php?tip=hotariri&docid=739&l=ro>> (last accessed 10 July 2022).

62 See *Mirza*, The Rule of Law in Moldova's Age of COVID-19, Justice First Policy Brief Series, January 2021, No. 1, p. 3 and note 33, available under: <<https://freedomhouse.org/>> (last accessed 10 July 2022).

II. 2021 State of Emergency in the Context of the COVID-19 Pandemic

A second state of emergency was declared in the present context by the Moldovan Parliament on 31 March 2021 throughout the territory of the state for the period of 1 April until 30 May 2021 (Article 1 of the 2021 Declaration), taking into consideration “the serious pandemic situation and the fact that the subject concerns the state security and national interest”.⁶³ The measures envisioned to be taken by the Commission for Exceptional Situation in accordance with the authorization by Parliament in Article 2 of the 2021 Declaration are almost identical to the ones foreseen in Article 2 of the previous 2020 Declaration. In addition, Article 5 of the 2021 Declaration again includes the commitment of the Parliament to inform the UN Secretary General as well as the Secretary General of the Council of Europe. The notifications of derogations in accordance with Article 4 ICCPR as well as Article 15 ECHR, included in a Note Verbale addressed to the two Secretary Generals of 1 April⁶⁴ and 2 April 2021⁶⁵ respectively, are with regard to the provisions of the ICCPR and ECHR that are subject to the derogations identical to the previous notifications of March 2020. Moreover, both communications emphasize that the measures to be adopted by Moldova “are essential and critical in combating the spread of the COVID-19 and to protect the life and security of the nation”.

However, contrary to the first state of emergency declared in March 2020, this second state of emergency was, viewed from the perspective of Moldovan domestic politics, apparently only rather loosely related to the COVID-19 pandemic. Its primary aim was very likely to activate the above-mentioned provision of Article 85 (4) MC, thus preventing the Moldovan President from dissolving the Parliament and thereby avoiding early parliamentary elections.⁶⁶ In response to two constitutional complaints filed by three members of the Parliament challenging the constitutionality of the declaration of a state of emergency, the Constitutional Court of Moldova issued on 28 April 2021 its decision No. 15.⁶⁷ The Court held that, although the declaration of a state of emergency is a prerogative of the Parliament, this competence is subject to legal constraints in particular also in light of its impact on the fundamental rights and freedoms of individuals. Declaring a state of emergency is a measure of last resort only to be adopted in response to an exceptional danger that is imminent, cannot adequately and sufficiently be addressed by recourse to ordinary restrictions and state actions for the protection of public safety, public health as well as public order, and whose consequences affect the country as a whole to an extent that threatens its existence. In defining a state of emergency under Moldovan constitutional law, the Court thus at least implicitly also borrows from the language of Article 4 (1) ICCPR and Article 15 (1) ECHR.

63 The text of the Parliament’s respective decision is for example annexed to the Note Verbale from the Permanent Representation of the Republic of Moldova to the Council of Europe of 2 April 2021, Ref.: JJ9209C Tr./005-275, available under: <<https://www.coe.int/en/web/conventions/derogations-covid-19>> (last accessed 10 July 2022).

64 See ICCPR, Republic of Moldova: Notification under Article 4 (3), Reference: C.N. 126.2021.TREATIES-IV.4, available under: <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND> (last accessed 10 July 2022).

65 Note Verbale from the Permanent Representation of the Republic of Moldova to the Council of Europe of 2 April 2021, Ref.: JJ9209C Tr./005-275, available under: <<https://www.coe.int/en/web/conventions/derogations-covid-19>> (last accessed 10 July 2022).

66 For further information on the political context and background of this decision see, e.g., *Leontiev*, The Ups and Downs of Moldova’s Early Parliamentary Elections Process, *Verfassungsblog* of 23 July 2021, available under: <<https://verfassungsblog.de/a-new-chance-for-democracy-in-moldova/>> (last accessed 10 July 2022); as well as United Nations Moldova, COVID-19 Response and Recovery Monthly Bulletin, April 2021, p. 5 *et seq.*

67 Constitutional Court of the Republic of Moldova, Decision No. 15 of 28 April 2021, available under: <<https://www.constcourt.md/libview.php?l=ro&idc=7&id=2172&t=/Media/Noutati/Hotararea-adoptata-de-Parlament-referitoare-la-declararea-starii-de-urgenta-neconstitutionala>> (last accessed 10 July 2022).

Against this background, the Court stated that the Parliament is required to base its decision on an objective factual basis and thus on sufficient information demonstrating that the public authorities are compelled to adopt urgent emergency measures. Thereby, the most natural authority to gather the necessary information on possible dangers is the executive branch. Consequently, the Parliament will normally declare a state of emergency only after consultations with, or at the request of, the Government and the President of Moldova. Moreover, the Parliament is required to give sufficiently detailed and convincing reasons substantiating the necessity to declare a state of emergency in a given situation. In particular, the Parliament must explain why and to what extent the ordinary competences enjoyed by the executive branch are insufficient to overcome the crisis situation. This duty to give reasons can be derived – especially also as far as limitations on fundamental rights and freedoms are concerned – from the above-mentioned Article 54 MC as well as, more generally, from common standards of European constitutionalism. The reasoning of the Court thus somewhat echoes in this regard the approach adopted by the European Court of Justice (ECJ) in its jurisprudence on the evolution of the recognition of fundamental individual rights in the European Union legal order in the process of which the ECJ felt “bound to draw inspiration from constitutional traditions common to the Member States”,⁶⁸ an approach now codified in Article 6 (3) of the Treaty on European Union (TEU).

Applying these standards and requirements concerning the legality of states of emergency to the case at hand, the Constitutional Court of Moldova in its decision of 28 April 2021 declared the respective decision of the Parliament of 31 March 2021 unconstitutional. Implementing this court decision, the Permanent Mission of Moldova to the United Nations send a Note Verbale to the UN Secretary General of 29 April 2021 notifying him about the end of the state of emergency on 28 April 2021 and the termination of the derogations under Article 4 ICCPR, thereby explicitly referring to decision No. 15 of the Constitutional Court of Moldova.⁶⁹ A similar Note Verbale was send on the same day to the Secretary General of the Council of Europe signaling the end of the derogations under Article 15 ECHR.⁷⁰

68 European Court of Justice, *Nold v. Commission*, Case 4/73, judgment of 14 May 1975, para. 13. See also, e.g., *Schütze*, European Constitutional Law, 453 *et seq.*, with additional references.

69 ICCPR, Republic of Moldova: Notification under Article 4 (3), Reference: C.N. 137.2021.TREATIES-IV.4, available under: <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtmsg_no=IV-4&src=IND> (last accessed 10 July 2022).

70 Note Verbale from the Permanent Representation of the Republic of Moldova to the Council of Europe of 29 April 2021, Ref.: JJ9225C Tr./005-279, available under: <<https://www.coe.int/en/web/conventions/derogations-covid-19>> (last accessed 10 July 2022).

F. Taking an Analytical Look at the Left Bank of the Dniester River: Pridnestrovie

Pridnestrovie, also known for example as Transnistria, is situated – depending on the perspective – east of, or in the east of, the Republic of Moldova on the left bank of the Dniester River. It belongs to the category of non-recognized or only partially recognized autonomous territorial entities, also referred to, among others, as non-recognized states, quasi-states, state-like entities or stabilized *de facto* regimes,⁷¹ whose origins not infrequently lie in former – and currently inactive – internal or international armed conflicts and/or only semi-successful secessionist movements that often result in situations of so-called “frozen conflicts”.⁷² Pridnestrovie was established in the beginning of the 1990s, following the dissolution of the USSR, and is, ever since then, at least *de facto* effectively separated from the Republic of Moldova.⁷³ In particular, the Moldovan authorities do not exercise effective control over this territorial entity.⁷⁴

Pridnestrovie is not recognized by any country and – rather closely related – is not a party to any international human rights agreement at the regional or multilateral level. Nevertheless, there is a growing consensus that non-recognized states or stabilized *de facto* regimes like Pridnestrovie can be considered as partial subjects of international law⁷⁵ and are, in this capacity, also bound by those human rights that are recognized under customary international law.⁷⁶ Moreover, it is by now well-established in the jurisprudence of the European Court of Human Rights, in particular also as far as Pridnestrovie is concerned, that based on the assumption that this territorial entity’s “high level of dependency on Russian support provided a strong

71 Specifically on the concept of stabilized *de facto* regimes and their status under public international law see in particular Frowein, *Das de facto-Regime im Völkerrecht*, 1 *et seq.*; Frowein, *De Facto Regime*, paras. 1 *et seq.*, in: Peters (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <www.mpepil.com/> (last accessed on 10 July 2022); as well as for example Dahm/Delbrück/Wolfrum, *Völkerrecht*, Vol. I/2, 294 *et seq.*; von Arnault, *Völkerrecht*, 25 *et seq.*; Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law*, 206 *et seq.*; Krajewski, *Völkerrecht*, 145 *et seq.*

72 Generally on the phenomenon of frozen conflicts see for example Grant, *Cornell International Law Journal* 50 (2017), 361 *et seq.*; Grant, *German Yearbook of International Law* 59 (2016), 49 (64 *et seq.*).

73 For further details on the emergence, situation and context of Pridnestrovie/Transnistria see for example Socher, *Russia and the Right to Self-Determination*, 112 *et seq.*; Finck, in: Hohmann/Joyce (eds.), *International Law's Objects*, 162 *et seq.*; Borgen, *German Yearbook of International Law* 59 (2016), 115 *et seq.*; Borgen, *Oregon Review of International Law* 9 (2007), 477 (494 *et seq.*); Bowring, in: Walter/Ungern-Sternberg/Abushov (eds.), *Self-Determination and Secession in International Law*, 157 *et seq.*; Belitser, in: Bebler (ed.), “Frozen Conflicts” in Europe, 45 *et seq.*; Wolfschwenger, in: Bellak/Devdariani/Harzl/Spieker (eds.), *Governance in Conflict*, 65 *et seq.*; Hightower, in: Franke/Guttieri/Civic (eds.), *Understanding Complex Military Operations*, 46 *et seq.*; Molcean/Verständig, in: Cornell/Jonsson (eds.), *Conflict, Crime, and the State in Postcommunist Eurasia*, 129 *et seq.*; Hill, *OSCE Yearbook* 2019, 163 *et seq.*; Hill, *OSCE Yearbook* 2018, 193 *et seq.*; Hill, *OSCE Yearbook* 2017, 143 *et seq.*; Haynes, *Moldova*, 151 *et seq.*; Lisenco/Nowrot, in: Ackermann/Wuschka (eds.), *Investments in Conflict Zones*, 387 (391 *et seq.*).

74 See in this connection also for example in the context of the ECHR the relevant part of the Declaration contained in the instrument of ratification deposited on 12 September 1997: “The Republic of Moldova declares that it will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally definitively resolved.” Thereto as well as on the (very limited) legal relevance of this declaration see in particular European Court of Human Rights, *Case of Ilascu and others v. Moldova and Russia*, Application No. 48787/99, Decision on Admissibility of 4 July 2001, p. 11 and 19 *et seq.*; Schabas, *The European Convention on Human Rights*, Article 57 ECHR, p. 938.

75 On this perception see for example Frowein, *De Facto Regime*, para. 3, in: Peters (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <www.mpepil.com/> (last accessed on 10 July 2022); Epping, in: Ipsen (ed.), *Völkerrecht*, § 11, para. 15; von Arnault, *Völkerrecht*, 25; Krajewski, *Völkerrecht*, 146; Dahm/Delbrück/Wolfrum, *Völkerrecht*, Vol. I/2, 304; Verdross/Simma, *Universelles Völkerrecht*, § 406.

76 See, e.g., Schoiswohl, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law*, 214 *et seq.*; Heintze, *OSCE Yearbook* 2009, 267 *et seq.*; see generally thereto also Neukirch, *OSCE Yearbook* 2017, 181 *et seq.*

indication that the Russian Federation continued to exercise effective control and a decisive influence over the Transdnistrian authorities”⁷⁷ and bearing in mind the also extraterritorial scope of application of the ECHR in such circumstances,⁷⁸ that applicants alleging a violation of one of their rights and freedoms under this human rights treaty taking place in Pridnestrovie are within the jurisdiction of the Russian Federation in the sense of Article 1 ECHR.⁷⁹ However, as a result of the withdrawal of the Russian Federation from the Council of Europe on 16 March 2022 and its denunciation of the ECHR, this alternative remedy will only be available for respective acts or omissions that occur until 16 September 2022.⁸⁰

Based on the de facto “domestic” legal framework existing in Pridnestrovie/Transnistria, in accordance with Article 63 (1) of the Pridnestrovian Constitution of 24 December 1995 and last amended on 30 August 2019 (PC),⁸¹ the President of Pridnestrovie enjoys the competence, subject to requirements as stipulated in the Constitution as well as in a specific constitutional legal regime, to declare a state of emergency for the whole territory of Pridnestrovie or parts thereof. Moreover, as stipulated in Article 70 (3) lit. a PC, a declaration of a state of emergency by the President also requires the approval of the Pridnestrovian Parliament, the Supreme Council. During a state of emergency, the Parliament may not be dissolved (Article 76 (4) PC) and the Constitution cannot be amended (Article 101 PC).

As far as the effects of a state of emergency on the guarantee and protection of fundamental rights and freedoms as enshrined in Section II (Articles 16 *et seq.*) PC⁸² are concerned, Article 54 (1) PC prescribes that certain rights of individuals may be restricted in a state of emergency or martial law. This provision has to be regarded as *lex specialis* vis-à-vis the general provision on restrictions of individual constitutional rights in “ordinary” times as stipulated in Article 18 PC, stating that restrictions of the rights and freedoms of individuals are only permitted if prescribed by law and in the interest of national security, public order, protection of morality, public health as well as the rights and freedoms of other individuals. A systematic

77 European Court of Human Rights, *Case of Sandu and others v. Moldova and Russia*, Application Nos. 21034/05 and seven others, Judgment of 17 July 2018, para. 36; see also already in particular *Case of Ilascu and others v. Moldova and Russia*, Application No. 48787/99, Judgment of 8 July 2004, paras. 28 *et seq.*, 311 *et seq.*, 376 *et seq.*

78 Generally thereto *Schabas*, The European Convention on Human Rights, Article 1 ECHR, p. 100 *et seq.*, with further references.

79 European Court of Human Rights, *Case of Ilascu and others v. Moldova and Russia*, Application No. 48787/99, Judgment of 8 July 2004, paras. 311 *et seq.*, 376 *et seq.*; as well as subsequently for example *Case of Ivantoc and others v. Moldova and Russia*, Application No. 23687/05, Judgment of 15 November 2011, paras. 116 *et seq.*; *Case of Catan and others v. Moldova and Russia*, Application Nos. 43370/04, 8252/05, and 18454/06, Judgment of 19 October 2012, paras. 103 *et seq.*; *Case of Mozer v. Moldova and Russia*, Application No. 11138/10, Judgment of 23 February 2016, paras. 96 *et seq.*; *Case of Sandu and others v. Moldova and Russia*, Application Nos. 21034/05 and seven others, Judgment of 17 July 2018, paras. 36 *et seq.*; *Case of Cazac and Surchician v. Moldova and Russia*, Application No. 22365/10, Judgment of 7 January 2020, paras. 47 *et seq.*

80 See thereto, e.g., Council of Europe, Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, adopted by the Council of Ministers on 16 March 2022, available under: <www.coe.int/en/web/moscow/-/resolution-cm-res-2022-2-on-the-cessation-of-the-membership-of-the-russian-federation-to-the-council-of-europe> (last accessed 10 July 2022); European Court of Human Rights, Resolution on the Consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights of 22 March 2022, available under: <www.coe.int/en/web/moscow/-/plenary-court-adopts-a-resolution-on-the-consequences-of-russia-s-cessation-of-membership-to-the-council-of-europe> (last accessed 10 July 2022); as well as *Schmahl*, Neue Zeitschrift für Verwaltungsrecht 41 (2022), 595 *et seq.*; *Mantilla Blanco*, A Backdoor Exit from the European Convention on Human Rights – Russia, the Council of Europe and Article 58(3) ECHR, Verfassungsblog of 5 April 2022, available under: <<https://verfassungsblog.de/a-backdoor-exit-from-the-european-convention-on-human-rights/>> (last accessed 10 July 2022).

81 The text of the PC is for example available under: <<http://mfa-pmr.org/ru/konstitutsia>> (last accessed 10 July 2022).

82 A certain connection between the list of fundamental rights and freedoms as enshrined in Section II PC and the international legal regime on the protection of human rights is established by Article 45 PC, which states that the enumeration of fundamental rights and freedoms in the PC should not be interpreted as a negation or derogation of other universally recognized rights and freedoms.

interpretation of Article 54 (1) PC in light of Article 18 PC thereby also indicates that the term and concept of “restrictions” in Article 54 (1) PC has to be considered as being broader and more far-reaching in scope than the term “restrictions” in the general provision of Article 18 PC. Article 54 (1) PC thus can probably best be understood as a constitutional authorization, in a state of emergency or martial law, of a derogation of the rights and freedoms listed in this provision.

The rights listed in this provision that may be restricted/derogated in a state of emergency include the protection of property rights (Articles 4 and 37 PC), the right to liberty and security (Article 20 PC), the right to respect for family and private life (Article 24 PC), the freedom of movement within Pridnestrovie and with regard to entering and leaving its territory (Article 25 PC), the right to freedom of expression (Article 27 PC), the prohibition of media censorship (Article 28 PC), the right to participate in government (Article 31 PC), the right to freedom of assembly (Article 32 PC), the right to freedom of association (Article 33 PC) as well as the right to, among others, choose one’s profession and to strike as well as the prohibition of forced labour (Articles 35 and 36 PC). Moreover, Article 54 (1) PC explicitly stipulates that individual constitutional rights and freedoms other than the ones listed in this provision may not be restricted/derogated in a state of emergency.

Although some regional human rights regimes stipulate non-derogable rights⁸³ that would have to be regarded as conflicting with the respective list included in Article 54 (1) PC such as Article 27 (2) of the American Convention on Human Rights (AmCHR) prohibiting any derogation from the right to participate in government in accordance with Article 23 AmCHR or Article 4 (2) of the Arab Charter on Human Rights (ArCHR) prohibiting any derogation from the right to entering or leaving one’s own country as guaranteed by Article 27 ArCHR, comparable limitations are unknown to other international human rights treaties like the IC-CPR and the ECHR and already for that reason do not as of now appear to reflect universal or regional European customary international law as applicable to Pridnestrovie. Consequently, it might very well be argued that the list of derogable rights as stipulated in Article 54 (1) PC is in principle in conformity with the human rights obligations incumbent upon this stabilized *de facto* regime.

Article 54 (2) PC, somewhat mirroring the already above-mentioned provision of Article 63 (1) PC, prescribes that a state of emergency may be declared in accordance with the requirements as stipulated in other provisions of the Constitution as well as in a specific constitutional legal regime.⁸⁴ This last-mentioned stipulation refers in particular to the more detailed and comprehensive regulations on a state of emergency as laid down in the Constitutional Law on Special Legal Regimes of Pridnestrovie of 23 July 2002 in its currently applicable version of 1 January 2021 (CSLR).⁸⁵ In accordance with Article 10 lit. b CSLR, one of the circumstances in which a state of emergency can be declared concerns situations of epidemics. Article 15 CSLR prescribes certain measures that can legitimately be adopted once a state of emergency has

83 Generally on the concept and practice of non-derogable human rights in the present context of states of emergency see more recently International Law Association, Committee on Human Rights in Times of Emergency, Interim Report: Developments in Standard Setting and Practice (1990-2020), 2020, paras. 18 *et seq.* and *passim*, with numerous additional references.

84 In the same way as for example the current Constitution of the Russian Federation in, among others, its Articles 76 and 108, also the Pridnestrovian legal system distinguishes between constitutional laws aimed at specifying certain aspects of constitutional relevance and other laws of Parliament, with the constitutional laws enjoying a hierarchical status below the level of the Constitution and above other laws of Parliament.

85 The text of this constitutional law on special legal regimes is for example available under: <<http://www.vspmr.org/legislation/laws/zakonodatelnie-akti-pridnestrovskoy-moldavskoy-respubliki-v-sfere-konstitutsionnogo-stroya-osnov-pravoporyadka-a-takje-deyatelnosti-organov-gosudarstvennoy-vlasti-i-upravleniya/konstitutsionniy-zakon-pridnestrovskoy-moldavskoy-respubliki-ob-osobih-pravovih-rejimah.html>> (last accessed 10 July 2022).

been declared in scenarios covered by Article 10 lit. b of the same law, among them the establishment and enforcement of a quarantine regime. Article 5 (1) lit. a CSLR, whose content is identical to the one of the already mentioned Article 54 (1) PC, lists the fundamental rights and freedoms that may be restricted/derogated in a state of emergency. The permissible duration of a state of emergency is the regulatory subject of Article 12 CSLR. According to its Article 12 (1), a state of emergency that covers the whole territory of Pridnestrovie can be declared for a maximum period of thirty days whereas a respective state of emergency that applies only to certain localities of Pridnestrovie is permissible for a maximum period of sixty days. However, Article 12 (2) CSLR foresees that possibility of a renewal of the state of emergency.

Finally, Article 43 CSLR, dealing with notification requirements in case of a declared state of emergency, appears to be a provision worth mentioning also in the present context. In accordance with Article 43 (1) lit. a CSLR, the Pridnestrovian Ministry of Foreign Affairs shall, within twenty-four hours, notify the neighbouring states as well as those countries with which Pridnestrovie has special relations about the declaration of a state of emergency as well as its underlying reasons and circumstances. In addition, and even more notable, Article 43 (1) lit. b CSLR prescribes that the Pridnestrovie Ministry of Affairs shall inform within three days, in accordance with the ICCPR and the ECHR, the relevant Organization for Security and Co-operation in Europe (OSCE) mission (which currently happens to be the OSCE Mission to Moldova established in 1993⁸⁶) and other international organizations about the restrictions of the rights and freedoms of citizens and other persons that constitute a derogation from these international acts as well as about the extent of these derogations and the underlying reasons for declaring a state of emergency. Moreover, Article 43 (2) CSLR stipulates that a respective notification shall also be made on the termination of a state of emergency and the full resumption of the provisions of the ICCPR and the ECHR. Bearing in mind that Pridnestrovie is neither a party to the ICCPR nor to ECHR, this provision might, with all due caution, be interpreted as a kind of self-commitment⁸⁷ of this stabilized de facto regime to accept and abide by the protection standards as enshrined in these two human rights treaties; a unilateral act that is arguably not entirely devoid of normative relevance under international law.⁸⁸

In the same way as the Moldovan Parliament explicitly referring to the declaration of the World Health Organization on the pandemic character of the spread of COVID-19, the Pridnestrovian President declared on 16 March 2020 by decree No. 98/2020 a state of emergency for the whole territory of Pridnestrovie for a period of nineteen days, introducing a number of emergency measures aimed at preventing and combatting effects of the COVID-19 pandemic. Amendments to this decree were already made on the following day on the basis of decree No. 100/2020 of 17 March 2020. Subsequently, the state of emergency was temporarily extended on the basis of, among others, Presidential decree No. 123/2020 of 30 March 2020,

86 For details on the OSCE Mission to Moldova see the information provided under: <<https://www.osce.org/mission-to-moldova>> (last accessed 10 July 2022).

87 For a somewhat comparable example see the stipulations laid down in Article 21 (3) of the Treaty on European Union (TEU) as well as the Articles 205 and 207 (1) of the Treaty on the Functioning of the European Union (TFEU) that have already been interpreted as a “domestic” law based self-commitment of this supranational organization to pursue the global public interest oriented principles and objectives enshrined in Article 21 (1) and (2) TEU also within the context of implementing the common commercial policy. On this perception see, e.g., *Nowrot*, *European Yearbook of International Economic Law* 8 (2017), 381 (382); *Vedder*, in: Bungenberg/Herrmann (eds.), *Common Commercial Policy after Lisbon*, 115 (137), with additional references.

88 Generally on the potential normative relevance of unilateral acts and declarations in international law see, e.g., International Court of Justice, *Nuclear Test Case* (Australia v. France), ICJ-Reports 1974, 253 (267 *et seq.*); International Court of Justice, *Nuclear Test Case* (New Zealand v. France), ICJ-Reports 1974, 457 (472 *et seq.*); *Klabbers*, *International Law*, 38 *et seq.*; *Shaw*, *International Law*, 103 *et seq.*; *Crawford*, *Brownlie’s Principles of Public International Law*, 402 *et seq.*; *Rose*, in: *Rose et al.*, *Introduction to Public International Law* 15 (29 *et seq.*); *Hernández*, *International Law*, 53 *et seq.*

Presidential decree No. 157/2020 of 24 April 2020, Presidential decree No. 167/2020 of 12 May 2020 as well as the governmental decree No. 178/2020 of 29 May 2020 until 15 June 2020. After this date, no new state of emergency has been declared in Pridnestrovie in response to the COVID-19 pandemic or for other reasons.

Various different actions were taken by Pridnestrovian authorities during the state of emergency, many of which closely resembled the measures adopted in other parts of Europe in order to mitigate and combat the effects of the COVID-19 pandemic. Among them were the prohibition of mass gatherings in public and private contexts, restrictions on the maximum number of customers in shops and branches, the closing of educational institutions like schools and universities, a switch to digital work as well as the introduction of a quarantine regime,⁸⁹ many of which were kept in place also after the termination of the state of emergency on 15 June 2020. No large-scale or other notable protests by political groups, civil society organizations or other segments of society from within Pridnestrovie against these or related governmental measures have been recorded. No lawsuits or other legal complaints based on an alleged violation of fundamental rights and freedoms are known to have been initiated before Pridnestrovian courts or tribunals in connection with actions taken by public authorities during the state of emergency.

Nevertheless, the one measure whose implementation and effects is known to have given rise to protests from various different actors was the introduction of a strict border regime by Pridnestrovian authorities following the declaration of a state of emergency on 16 March 2020. The temporary measures prohibited all persons without a residence permit in Pridnestrovie to enter the territory, with certain exceptions made, among others, for diplomats and representatives of international organizations including their accompanying persons like translators and assistants as well as for carriers of goods whose imports were deemed necessary for Pridnestrovie. Moreover, it limited the possibility for residents of Pridnestrovie to leave the territory and, in case they were allowed to leave, required them to undergo a two-week quarantine upon their return. While, if viewed from a comparative European and global perspective, not in principle an unusual border regime during the first phase of the COVID-19 pandemic, the measures initially hindered a considerable number of Pridnestrovian residents, among them medical workers, to commute to their working places in Moldovan (health) institutions and factories. Moreover, the temporary border regime was also enforced by Pridnestrovian authorities on the basis of newly established checkpoints around Moldovan controlled enclaves in the Security Zone on the left bank of the Dniester River, thus precluding thousands of Moldovan residents of the respective towns and villages from accessing the road bridges across the Dniester in order to reach the Moldovan controlled territory west of the river. These measures not only resulted in protests⁹⁰ by affected Moldovan citizens, but also, among others, by the Moldovan government, the OSCE Mission to Moldova as well as the U.S. Mission to the OSCE, with the last-mentioned actor explicitly emphasizing the need “to refrain from taking actions that undermine the exercise of human rights, including the exercise of freedom of movement”.⁹¹

89 See also for example Eastern Partnership - COVID-19 Bulletin No 6, Special theme: COVID-19 in the Separatist Conflict Regions, 29 May 2020, p. 6 *et seq.*, available under: <<https://3dceftas.eu/publications/covid-19-bulletin-no-6>> (last accessed 10 July 2022); *Vlas*, Society and Economy 43 (2021), 192 (199 *et seq.*).

90 See thereto for example *Vlas*, Society and Economy 43 (2021), 192 (199 *et seq.*); *I. Gulca*, Moldova: Pandemic Brinkmanship Brings Strife to ‘Security Zone’, 21 September 2020, available under: <<https://balkaninsight.com/2020/09/21/moldova-pandemic-brinkmanship-brings-strife-to-security-zone/>> (last accessed 10 July 2022).

91 See the statement delivered by Ambassador *James S. Gilmore III*, U.S. Mission to the OSCE, to the OSCE Permanent Council, Vienna, on 8 October 2020, available under: <<https://osce.usmission.gov/on-illegal-checkpoints-in-the-transnistrian-region-of-moldova-during-the-covid-19-pandemic-outbreak/>> (last accessed 10 July 2022).

G. Conclusion

This short and most certainly far from comprehensive assessment of the legal developments in connection with the COVID-19 pandemic on both banks of the Dniester River serves as an indication that both the Republic of Moldova as well as Pridnestrovie – in the same way as numerous other countries in the world during the corona crisis – obviously faced some challenges in their responses to the COVID-19 pandemic on the basis of declared states of emergency and the measures adopted in this connection. However, both territorial actors overall proved able to appropriately address these challenges. Thereby, as in the context of the COVID-19 pandemic in particular demonstrated by the case of the Republic of Moldova, an active and critical civil society, an independent private media sector as well as a vigorous constitutional court can exercise important enabling functions in this regard.

References

- AAKEN, Anne van, International Investment Law between Commitment and Flexibility: A Contract Theory Analysis, *Journal of International Economic Law* 12 (2009), 507-538.
- ARNAULD, Andreas von, *Völkerrecht*, 4th edition, Heidelberg 2019.
- BALAN, Veaceslav/STEGNIY, Vladyslav, COVID-19 Pandemic: Lessons for Media Freedom in Moldova, *Media Forward, Policy Brief Series of the Media Enabling Democracy, Inclusion and Accountability in Moldova (MEDIA-M) Project*, June 2020, No. 12, available under: <<https://freedomhouse.org/report/special-report/2020/covid-19-pandemic-lessons-media-freedom-moldova>> (last accessed 10 July 2022).
- BELITSER, Natalya, The Transnistrian Conflict, in: Bebler, Anton (ed.), "Frozen Conflicts" in Europe, Opladen/Berlin/Toronto 2015, 45-55.
- BORGEN, Christopher J., Moldova: Law and Complex Crises in a Systemic Borderland, *German Yearbook of International Law* 59 (2016), 115-161.
- Imagining Sovereignty, Managing Secession: The Legal Geography of Eurasia's "Frozen Conflicts", *Oregon Review of International Law* 9 (2007), 477-535.
- BOWRING, Bill, Transnistria, in: Walter, Christian/Ungern-Sternberg, Antje von/Abushov, Kavus (eds.), *Self-Determination and Secession in International Law*, Oxford 2014, 157-174.
- BUERGENTHAL, Thomas, To Respect and to Ensure: State Obligations and Permissible Derogations, in: Henkin, Louis (ed.), *The International Bill of Rights – The Covenant on Civil and Political Rights*, New York 1981, 72-91.
- CASTBERG, Frede, *The European Convention on Human Rights*, Leyden 1974.
- CRAWFORD, James, *Brownlie's Principles of Public International Law*, 9th edition, Oxford 2019.
- CRIDDLE, Evan J., Protecting Human Rights during Emergencies: Delegation, Derogation, and Deference, *Netherlands Yearbook of International Law* 45 (2014), 197-220.
- CRIDDLE, Evan J./FOX-DECENT, Evan, Human Rights, Emergencies, and the Rule of Law, *Human Rights Quarterly* 34 (2012), 39-87.
- DAHM, Georg/DELBRÜCK, Jost/WOLFRUM, Rüdiger, *Völkerrecht*, Volume I/2, 2nd edition, Berlin 2002.
- DAM, Kenneth W., *The GATT: Law and International Economic Organization*, Chicago 1970.
- DINSTEIN, Yoram, Derogation from International Human Rights, in: Stein, Gustav (ed.), *Menschenrechte in Israel und Deutschland*, Cologne 1978, 63-71.
- EPPING, Volker, Sonstige Völkerrechtssubjekte, in: Ipsen, Knut (ed.), *Völkerrecht*, 7th edition, Munich 2018, 436-452.
- FAWCETT, J. E. S., *The Application of the European Convention on Human Rights*, Oxford 1969.
- FINCK, Francois, Border Check-Point, the Moldovan Republic of Transnistria, in: Hohmann, Jessie/Joyce, Daniel (eds.), *International Law's Objects*, Oxford 2018, 162-172.
- FISHER, Sydney G., The Suspension of Habeas Corpus During the War of the Rebellion, *Political Science Quarterly* 3 (1888), 454-488.
- FITZPATRICK, Joan, *Human Rights in Crisis – The International System for Protecting Rights during States of Emergency*, Philadelphia 1994.
- FROWEIN, Jochen A., De Facto Regime (March 2013), in: Peters, Anne (ed.), *Max Planck Encyclopedia of Public International Law*, available under: <www.mpil.com/> (last accessed on 10 July 2022).
- Das de facto-Regime im Völkerrecht, Köln/Berlin 1968.
- GIEGERICH, Thomas, Vorbehalte zu Menschenrechtsabkommen: Zulässigkeit, Gültigkeit und Prüfungskompetenzen von Vertragsgremien – Ein konstitutioneller Ansatz, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 55 (1995), 713-782.
- GOTISAN, Victor/IONEL, Natalia, Why Access to Information Is Still a Problem in Moldova, *Media Forward, Policy Brief Series of the Media Enabling Democracy, Inclusion and Accountability in Moldova (MEDIA-M) Project*, March 2020, No. 10, available under: <<https://freedomhouse.org/report/analytical-brief/2020/why-access-information-still-problem-moldova-0>> (last accessed 10 July 2022).
- GRANT, Thomas D., Frozen Conflicts and International Law, *Cornell International Law Journal* 50 (2017), 361-413.
- Three Years after Annexation: Of 'Frozen Conflicts' and How to Characterise Crimea, *German Yearbook of International Law* 59 (2016), 49-79.
- GREEN, L. C., Derogation of Human Rights in Emergency Situations, *Canadian Yearbook of International Law* 16 (1978), 92-115.
- GROSS, Oren, Chaos and Rules: Should Responses to Violent Crisis Always be Constitutional?, *Yale Law Journal* 112 (2003), 1011-1134.
- "Once More unto the Breach": The Systematic Failure of Applying the European Convention on Human Rights to Entrenched Emergencies, *Yale Journal of International Law* 23 (1998), 437-501.
- GROSS, Oren/Ní AOLÁIN, Fionnuala, *Law in Times of Crises – Emergency Powers in Theory and Practice*, Cambridge 2006.

- GROSSMAN, Claudio, A Framework for the Examination of States of Emergency under the American Convention on Human Rights, *American University Journal of International Law and Policy* 1 (1986), 35-55.
- HAFNER-BURTON, Emilie/HELPER, Laurence R./FARISS, Christopher J., Emergency and Escape: Explaining Derogations from Human Rights Treaties, *International Organization* 65 (2011), 673-707.
- HAMILTON, Alexander, The Federalist No. 23, in: *The Federalist Papers* by Alexander Hamilton, James Madison and John Jay, edited and with an Introduction by Garry Wills, New York/Toronto/London 1982, 111-115.
- HARTMAN, Joan F., Derogation from Human Rights Treaties in Public Emergencies, *Harvard International Law Journal* 22 (1981), 1-52.
- HAYNES, Rebecca, *Moldova – A History*, London/New York 2020.
- HEINTZE, Hans-Joachim, Are De Facto Regimes Bound by Human Rights?, *OSCE Yearbook* 2009, 267-275.
- HELPER, Laurence R., Rethinking Derogations from Human Rights Treaties, *American Journal of International Law* 115 (2021), 20-40.
- HERNÁNDEZ, Gleider, *International Law*, Oxford 2019.
- HIGGINS, Rosalyn, Derogation under Human Rights Treaties, *British Yearbook of International Law* 48 (1976-77), 281-320.
- HIGHTOWER, Rudy L., The Declarations of Independence – The Pridnestrovian Moldavian Republic, in: Franke, Volker/Guttieri, Karen/Civic, Melanne A. (eds.), *Understanding Complex Military Operations – A Case Study Approach*, London/New York 2014, 46-67.
- HILL, William H., *Moldova/Transnistria: Progress and Political Crisis*, *OSCE Yearbook* 2019, 163-176.
- *Moldova/Transnistria: Steps Forward, Stumbles Back*, *OSCE Yearbook* 2018, 193-204.
 - *Current Trends in Transnistria: Breathing New Life into the Settlement Process*, *OSCE Yearbook* 2017, 143-154.
- HOOF, F. van, The Protection of Human Rights and the Impact of Emergency Situations under International Law with Special Reference to the Present Situation in Chile, *Human Rights Journal* 10 (1977), 213-248.
- IMBERT, Pierre-Henri, Die Frage der Vorbehalte und die Menschenrechtskonventionen, in: Maier, Irene (ed.), *Europäischer Menschenrechtsschutz – Schranken und Wirkungen*, Heidelberg 1982, 95-133.
- JACOBS, Francis G., *The European Convention on Human Rights*, Oxford 1975.
- KADELBACH, Stefan/ROTH-ISIGKEIT, David, The Right to Invoke Rights as a Limit to Sovereignty – Security Interests, State of Emergency and Review of UN Sanctions by Domestic Courts under the European Convention on Human Rights, *Nordic Journal of International Law* 86 (2017), 275-301.
- KLABBERS, Jan, *International Law*, 3rd edition, Cambridge 2021.
- KORNIOTI, Nadia/NOWROT, Karsten, Looking Back to Learn for the Future?: The Work of the ILA on the Issue of Human Rights in Times of Emergency in the 1980s, Hamburg 2019.
- KRAJEWSKI, Markus, *Völkerrecht*, 2nd edition, Baden-Baden 2020.
- KRIEGER, Heike, Notstand, in: Dörr, Oliver/Grote, Rainer/Maruhn, Thilo (eds.), *EMRK/GG, Konkordanzkommentar zum europäischen und deutschen Grundrechtsschutz*, Volume I, 2nd edition, Tübingen 2013, 417-443.
- KUCIK, Jeffrey/REINHARDT, Eric, Does Flexibility Promote Cooperation? An Application to the Global Trade Regime, *International Organization* 62 (2008), 477-505.
- LAUTERPACHT, Hersch, *International Law and Human Rights*, London 1950.
- *An International Bill of Rights of Man*, Oxford 1945.
- LEBRET, Audrey, COVID-19 Pandemic and Derogation to Human Rights, *Journal of Law and the Biosciences* 7 (2020), <https://doi.org/10.1093/jlb/lsaa015>.
- LEICESTER FORD, Paul (ed.), *The Writings of Thomas Jefferson*, Volume IX, New York/London 1898.
- LEONTIEV, Lucia, The Ups and Downs of Moldova's Early Parliamentary Elections Process, *Verfassungsblog* of 23 July 2021, available under: <https://verfassungsblog.de/a-new-chance-for-democracy-in-moldova/> (last accessed 10 July 2022).
- LISENCO, Vladlena/NOWROT, Karsten, Assessing the Role and Effects of Domestic Investment Statutes in Frozen Conflict Situations: The Example of Transnistria/Pridnestrovie, in: Ackermann, Tobias/Wuschka, Sebastian (eds.), *Investments in Conflict Zones – The Role of International Investment Law in Armed Conflicts, Disputed Territories, and 'Frozen' Conflicts*, Leiden/Boston 2021, 387-430.
- MACDONALD, Ronald St. J., Derogations under Article 15 of the European Convention on Human Rights, *Columbia Journal of Transnational Law* 36 (1997), 225-267.

- MANTILLA BLANCO, Sebastián, A Backdoor Exit from the European Convention on Human Rights – Russia, the Council of Europe and Article 58(3) ECHR, *Verfassungsblog* of 5 April 2022, available under: <<https://verfassungsblog.de/a-backdoor-exit-from-the-european-convention-on-human-rights/>> (last accessed 10 July 2022).
- MARINIELLO, Triestino, Prolonged Emergency and Derogation of Human Rights: Why the European Court Should Raise its Immunity System, *German Law Journal* 20 (2019), 46-71.
- MCDUGAL, Myres S., Human Rights and World Public Order: Principles of Content and Procedure for Clarifying General Community Policies, *Virginia Journal of International Law* 14 (1974), 387-421.
- MCDUGAL, Myres S./LASSWELL, Harold D./CHEN, Lung-chu, Human Rights and World Public Order: A Framework for Policy-Oriented Inquiry, *American Journal of International Law* 63 (1969), 237-269.
- MCGOLDRICK, Dominic, The Interface between Public Emergency Powers and International Law, *International Journal of Constitutional Law* 2 (2004), 380-429.
- MIRZA, Radu, The Rule of Law in Moldova's Age of COVID-19, *Justice First Policy Brief Series*, January 2021, No. 1, available under: <<https://freedomhouse.org/>> (last accessed 10 July 2022).
- MOLCEAN, Alexandru/VERSTÄNDIG, Natalie, Moldova: The Transnistrian Conflict, in: Cornell, Svante/Jonsson, Michael (eds.), *Conflict, Crime, and the State in Postcommunist Eurasia*, Philadelphia 2014, 129-150.
- NANI, Anastasia/BUKA, Lolita/LENTINE, Gina, Media Policy in a Pandemic: Lessons from Moldova, Ukraine and Latvia, *Media Forward, Policy Brief Series of the Media Enabling Democracy, Inclusion and Accountability in Moldova (MEDIA-M) Project*, November 2020, No. 14, available under: <<https://freedomhouse.org/>> (last accessed 10 July 2022).
- NEUKIRCH, Lia, "Frozen" Human Rights in Abkhazia, Transnistria, and the Donbas: The Role of the OSCE in a Shaky System of International Human Rights Protection Mechanism, *OSCE Yearbook* 2017, 181-200.
- NEUMAYER, Eric, Qualified Ratification: Explaining Reservations to International Human Rights Treaties, *Journal of Legal Studies* 36 (2007), 397-429.
- NORRIS, Robert E./DESIO REITON, Paula, The Suspension of Guarantees: A Comparative Analysis of the American Convention on Human Rights and the Constitutions of the States Parties, *American University Law Review* 30 (1980), 189-223.
- NOWAK, Manfred, *U.N. Covenant on Civil and Political Rights*, 2nd edition, Kehl 2005.
- NOWROT, Karsten, Good Raw Materials Governance – Towards a European Approach Contributing to a Constitutionalised International Economic Law, *European Yearbook of International Economic Law* 8 (2017), 381-407.
- O'BOYLE, Michael P., Emergency Situations and the Protection of Human Rights; A Model Derogation Provision for a Northern Ireland Bill of Rights, *Northern Ireland Legal Quarterly* 28 (1977), 160-187.
- Torture and Emergency Powers under the European Convention on Human Rights: *Ireland v. The United Kingdom*, *American Journal of International Law* 71 (1977), 674-706.
- O'DONNELL, Daniel, States of Exception, *International Commission of Jurists Review* 21 (December 1978), 52-60.
- ORAÁ, Jaime, *Human Rights in States of Emergency in International Law*, Oxford 1992.
- PADDEU, Federica, *Justification and Excuse in International Law – Concept and Theory of General Defences*, Cambridge 2018.
- PARTSCH, Karl Josef, Experiences Regarding the War and Emergency Clause (Article 15) of the European Convention on Human Rights, *Israel Yearbook on Human Rights* 1 (1971), 327-334.
- PELC, Krzysztof J., *Making and Bending International Rules: The Design of Exceptions and Escape Clauses in Trade Law*, Cambridge 2016.
- Seeking Escape: The Use of Escape Clauses in International Trade Agreements, *International Studies Quarterly* 53 (2009), 349-368.
- PINZARU, Sorina, Human Rights and Democracy in the COVID-19 Era: Experience from Republic of Moldova, *CCSDD Blog* of 18 January 2021, available under: <<https://ccsddinternblog.wordpress.com/2021/01/18/human-rights-and-democracy-in-the-covid-19-era-experience-from-republic-of-moldova/>> (last accessed 10 July 2022).
- POLZIN, Monika, Art. 15 EMRK und die Rolle des Europäischen Gerichtshofs für Menschenrechte, *Heidelberg Journal of International Law* 78 (2018), 635-669.
- ROBERTSON, A. H., *Human Rights in Europe*, 2nd edition, Manchester 1977.
- ROSE, Cecily, Sources of International Law, in: Rose, Cecily *et al.*, *An Introduction to Public International Law*, Cambridge 2022, 15-34.
- ROSENDORFF, B. Peter/MILLER, Helen V., The Optimal Design of International Trade Institutions: Uncertainty and Escape, *International Organization* 55 (2001), 829-857.
- ROSSITER, Clinton L., *Constitutional Dictatorship – Crisis Government in the Modern Democracies*, Princeton 1948.
- SCHABAS, William A., *The European Convention on Human Rights – A Commentary*, Oxford 2015.

- SCHEPPELE, Kim Lane, *Law in a Time of Emergency: States of Exception and the Temptations of 9/11*, University of Pennsylvania Journal of Constitutional Law 6 (2004), 1001-1083.
- SCHMAHL, Stefanie, *Der ungleichzeitige Ausschluss Russlands aus Europarat und EMRK*, Neue Zeitschrift für Verwaltungsrecht 41 (2022), 595-598.
- SCHMITT, Carl, *Political Theology – Four Chapters on the Concept of Sovereignty*, translated by George Schwab, Chicago/London 2005.
- SCHOISWOHL, Michael, *Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of ‘Somaliland’*, Leiden/Boston 2004.
- SCHREUER, Christoph, *Derogation of Human Rights in Situations of Public Emergency: The Experience of the European Convention on Human Rights*, Yale Journal of World Public Order 9 (1982), 113-132.
- SCHÜTZE, Robert, *European Constitutional Law*, 3rd edition, Oxford 2021.
- SCHWELB, Egon, *Some Aspects of the International Covenants on Human Rights of December 1966*, in: Eide, Asbjörn/Schou, August (eds.), *International Protection of Human Rights*, Stockholm 1968, 103-129.
- SHAW, Malcolm N., *International Law*, 9th edition, Cambridge 2021.
- SHEERAN, Scott P., *Reconceptualizing States of Emergency under International Human Rights Law: Theory, Legal Doctrine, and Politics*, Michigan Journal of International Law 34 (2013), 491-557.
- SOCHER, Johannes, *Russia and the Right to Self-Determination in the Post-Soviet Space*, Oxford 2021.
- SOTTIAUX, Stefan, *Derogation in Time of Emergency*, in: van Dijk, Pieter/van Hoof, Fried/van Rijn, Arjen/Zwaak, Leo (eds.), *Theory and Practice of the European Convention on Human Rights*, 5th edition, Cambridge/Antwerp/Portland 2018, 1063-1076.
- SPIEKER, Luke Dimitrios, *Does Article 15 ECHR Still Matter in Military Operations Abroad? The UK Government’s “Presumption to Derogate” – Much Ado About Nothing?*, Heidelberg Journal of International Law 79 (2019), 155-183.
- STEIN, Torsten, *Die Außerkraftsetzung von Garantien menschenrechtlicher Verträge*, in: Maier, Irene (ed.), *Europäischer Menschenrechtsschutz – Schranken und Wirkungen*, Heidelberg 1982, 135-145.
- SVENSSON-MCCARTHY, Anna-Lena, *The International Law of Human Rights and States of Exception – With Special Reference to the Travaux Préparatoires and Case-Law of the International Monitoring Organs*, The Hague/Boston/London 1998.
- SYKES, Alan O., *Economic “Necessity” in International Law*, American Journal of International Law 109 (2015), 296-323.
- *Protectionism as a “Safeguard”: A Positive Analysis of the GATT “Escape Clause” with Normative Speculations*, University of Chicago Law Review 58 (1991), 255-305.
- TIETJE, Christian, *WTO und Recht des Weltwarenhandels*, in: Tietje, Christian/Nowrot, Karsten (eds.), *Internationales Wirtschaftsrecht*, 3rd edition, Berlin/Boston 2022, 164-248.
- THOMSON, Stephen/Ip, Eric C., *COVID-19 Emergency Measures and the Impending Authoritarian Pandemic*, Journal of Law and the Biosciences 7 (2020), <https://doi.org/10.1093/jlb/lsaa064>.
- VAN DEN BOSSCHE, Peter/ZDOUC, Werner, *The Law and Policy of the World Trade Organization*, 5th edition, Cambridge 2022.
- VEDDER, Christoph, *Linkage of the Common Commercial Policy to the General Objectives for the Union’s External Action*, in: Bungenberg, Marc/Herrmann, Christoph (eds.), *Common Commercial Policy after Lisbon*, Cham 2013, 115-144.
- VERDROSS, Alfred/SIMMA, Bruno, *Universelles Völkerrecht*, 3rd edition, Berlin 1984.
- VLAS, Cristian, *Transnistria’s Public Health System and SARS-CoV-2: The Challenges of an Unrecognized State Facing a Global Pandemic*, Society and Economy 43 (2021), 192-207.
- WALLACE, Stuart, *Derogations from the European Convention on Human Rights: The Case for Reform*, Human Rights Law Review 20 (2020), 769-796.
- WARBRICK, Colin, *The Protection of Human Rights in National Emergencies*, in: Dowrick, F. E. (ed.), *Human Rights – Problems, Perspectives and Texts*, Westmead 1979, 89-106.
- WEIL, Gordon L., *The European Convention on Human Rights – Background, Development and Prospects*, Leyden 1963.
- WEISS, Wolfgang/OHLER, Christoph/BUNGENBERG, Marc, *Welthandelsrecht*, 3rd edition, Munich 2022.
- WOLFSCHWENGER, Johann, *The EU Governance Approach to the Transnistrian Conflict: A Powerful Tool for Conflict Management?*, in: Bellak, Blanka/Devdariani, Jaba/Harzl, Benedikt/Spieker, Lara (eds.), *Governance in Conflict – Selected Cases in Europe and Beyond*, Zürich 2017, 65-101.
- WURST, Otto, *Die völkerrechtliche Sicherung der Menschenrechte in Zeiten staatlichen Notstandes – Artikel 15 der Europäischen Menschenrechtskonvention*, Cologne 1967.
- YORDAN NUGRAHA, Ignatius, *Human Rights Derogation during Coup Situations*, International Journal of Human Rights 22 (2018), 194-206.

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