

E-administracja

**Skuteczna, odpowiedzialna i otwarta
administracja publiczna
w Unii Europejskiej**

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Sławomir Dudzik · Inga Kawka · Renata Śliwa

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1

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Kraków 2022

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ITAI APTER¹

INTERNATIONAL AND EU E-NORM AND DECISION MAKING (E-GOVERNANCE)

LESSONS FOR PUBLIC ADMINISTRATIONS FOR THE COVID-19 ERA AND BEYOND

ABSTRACT: E-norm and decision making (e-governance) are now integral to global and regional legal order responding to COVID-19 restrictions. After discussing how processes impact normative outcome according to global administrative law, the article explores practices of UNCITRAL, UNODC, HCCH, EC and the EP. In view of their successes, the article suggests that European public administrations consider taking similar measures to ensure efficient governance during the pandemic and beyond.

KEY WORDS: International law, COVID-19, remote, norm and decision-making, distance-voting

**MIĘDZYNARODOWE I UNIJNE ELEKTRONICZNE STANOWIENIE PRAWA ORAZ PODEJMOWANIE
DECYZJI (*E-GOVERNANCE*). LEKCJE DLA ADMINISTRACJI PUBLICZNEJ W ERZE COVID-19
I PÓŹNIEJ**

ABSTRAKT: E-stanowienie prawa i podejmowanie decyzji (*e-governance*) są obecnie integralną częścią globalnego i regionalnego porządku prawnego, co jest odpowiedzią na ograniczenia spowodowane pandemią COVID-19. Po przedstawieniu, w jaki sposób procedura wpływa na wyniki normatywne według globalnego prawa

¹ Itai Apter, LL.B. (University of Haifa, 2006); International Legal Studies LL.M. (New-York University, 2008), Ph.D. Candidate (University of Haifa, degree expected, 2022); Visiting Scholar, WCL, American University (Washington D.C), 2021-2022, <https://orcid.org/0000-0002-6663-8563>.

administracyjnego, w artykule omówiono praktyki UNCITRAL, UNODC, HCCH, EC i PE. Biorąc pod uwagę ich pozytywne wyniki, artykuł sugeruje, aby europejskie administracje publiczne rozważyły podjęcie podobnych środków w celu zapewnienia skutecznego zarządzania podczas pandemii i po jej zakończeniu.

SŁOWA KLUCZOWE: prawo międzynarodowe, COVID-19, zdalny, stanowienie prawa oraz podejmowanie decyzji, głosowanie na odległość

1. Introduction

Travel and COVID-19 restrictions transformed cross-border norms and decision-making processes. The article explores international and EU norm and decision-making (hereinafter: e-governance) to ascertain lessons for the EU public administrations concerning the tools to address limitations during the pandemic and beyond.

This paper first discusses the impact of process on international normative outcomes or global administrative law (GAL). This is followed by highlighting global and EU methodologies developed to ensure continuation of normative work by focusing on practices of NCITRAL (United Nations Commission on International Trade Law);² UNODC (United Nations office on Drugs and Crime);³ and the HCCH (Hague Conference on Private International Law).⁴ As the European Commission (EC) and the European Parliament (EP) are the EU norm-making bodies, the third section offers a similar analysis in respect of EU practices.

Based on the findings, the final section discusses lessons in the scope of e-governance by the EU public administrations for the time of the pandemic and beyond.

2. Global administrative law – process determines outcome

Until relatively recently, scholarship focused on legal substance; letter of the law (civil law) or case law (common law), assuming that the law's content is most important. International law study was no different, focusing primarily on the content of multilateral and bilateral treaties and customary international law.⁵

² UNCITRAL, <https://uncitral.un.org/en/gateway> (30.09.2021).

³ UNODC, <https://www.unodc.org/> (30.09.2021).

⁴ HCCH, <https://www.hcch.net/en/home> (30.09.2021).

⁵ Article 38, ICJ Statute.

Legal scholarship and case law have shifted from highlighting statutory provisions to emphasizing legislative intent.⁶ International law scholarship explored treaties' "**travaux préparatoires**" to interpret them,⁷ or designated norms like the UN Charter as a breathing tree,⁸ as domestic constitutions,⁹ providing international law with necessary flexibility.

Exploration of what is behind the law alongside the law's content continued as legal scholarship sought to understand impacts of legislative processes on legislative outcomes.¹⁰ International law followed, with the increasing prominence of GAL.¹¹ International organizations, free from the domestic constraints, developed specialized norm-making processes.¹² Combined with the global governance movement, emphasizing the role of diverse actors, in addition to states, in international norm-making,¹³ international norm-making methodology became almost as important as the normative content.¹⁴

GAL focuses on actors involved,¹⁵ networks,¹⁶ procurement regulation,¹⁷ internal administrative bodies,¹⁸ and administration of justice.¹⁹ These elements attract

⁶ Congressional Research Service, *Statutory Interpretation: Theories, Tools, and Trends*, Washington, DC 2008.

⁷ UN Treaty Series, Vienna Convention on the Law of Treaties, 1969, 1155, p. 331.

⁸ S. Murphy, *Assessing the Legality of Invading Iraq*, "Georgetown Law Journal" 2004, vol. 92, no. 4, 209 (fn. 157).

⁹ M. Da Silva, *International "Constitutions" and Comparative International Law*, "Notre Dame Journal of International and Comparative Law" 2020, vol. 10, pp. 168-169.

¹⁰ I. Bar-Siman-Tov, *Lawmakers as Lawbreakers*, 52 Wm. & Mary L. Rev. 2010, pp. 809-810.

¹¹ B. Kingsbury, N. Krisch, R.B. Stewart, *The Emergence of Global Administrative Law*, "Law and Contemporary Problems" 2005, vol. 68, pp. 15-61.

¹² J. Tallberg et al., *Norm Adoption by International Organizations, 1980-2015*, Paper for the 11th Annual Conference on The Political Economy of International Organizations, Madison, February 8-10, 2018, <https://www.peio.me/wp-content/uploads/2018/02/TallbergLundgrenSommererSquarrito-PEIO-paper-43.pdf> (1.10.2021).

¹³ S. Besson, J.L. Marti, *Legitimate Actors of International Law-Making: Towards a Theory of International Democratic Representation*, "Jurisprudence" 2018, vol. 9, no. 3, p. 505.

¹⁴ J. Tallberg et al., *Norm Adoption by International Organizations...*

¹⁵ E. Posner, *International Law and the Disaggregated State*, "Florida State University Law Review" 2005, vol. 32, p. 799.

¹⁶ *Ibidem*, p. 837.

¹⁷ C. McCrudden, S.G. Gross, *WTO Government Procurement Rules and the Local Dynamics of Procurement Policies: A Malaysian Case Study*, "European Journal of International Law" 2006, vol. 17, no. 1, p. 152.

¹⁸ S. Villalpando, *International Administrative Tribunals* [in:] *The Oxford Handbook of International Organizations*, J.K. Cogan, I. Hurd, I. Johnstone (eds), Oxford 2016, pp. 1086-1103.

¹⁹ S.C. Turner, *The Assurance of Impartiality: Due Process Mechanisms and the Development of Global Administrative Law in International Administrative Tribunals*, "Georgetown Journal of International Law" 2018, vol. 49, pp. 1398-1402.

international scholars because they represent a supranational legal order for a world without borders.²⁰

GAL studies view as important regulatory frameworks for norm and decision-making (hereinafter: governance) in international organizations based on constituting instruments.²¹ Sometimes, international organizations stipulate procedural rules in “soft law” resolutions.²² Such “soft law” tools are gaining not only scholarly recognition, but can also arguably constitute customary international law.²³

Governance processes contain elements which GAL views as critical to understanding processes for international normative outcomes including voting quorum requirements,²⁴ rules for presenting proposals,²⁵ and transparency, including non-state actors’ participation.²⁶

International governance, much like domestic equivalents, includes significant informal negotiations which can predetermine outcomes before formal deliberations, rendering it important to understand their impact.²⁷

COVID-19 significantly challenged cross-border norm-making, necessitating modifying regulatory infrastructure. Despite initial setbacks, most international organizations found ways to adapt, as norm-making is their *raison d’être*.²⁸

We next explore relevant case studies. Future readers should note that even if cross-border travel is allowed during COVID-19, it can be subject to quarantine

²⁰ D. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, “Yale Law Journal” 2005–2006, vol. 115, pp. 1561–1562.

²¹ N. Blokker, *Constituent Instruments* [in:] *The Oxford Handbook of International Organizations*, J.K. Cogan, I. Hurd, I. Johnstone (eds), Oxford 2016, p. 943.

²² J.K. Cogan, *Representation and Power in International Organizations: The Operational Constitution and Its Critics*, “American Journal of International Law” 2009, vol. 103, no. 2, pp. 225–227.

²³ United Nations, *Draft Conclusions on Identification of Customary International Law, with Commentaries*, 2008, Conclusion 12.

²⁴ O. Kanevskaia, *Governance of ICT Standardization: Due Process in Technocratic Decision-Making*, “North Carolina Journal of International Law” 2020, vol. 45, pp. 572, 590–594, 602.

²⁵ I. Feichtner, *The Administration of the Vocabulary of International Trade: The Adaptation of WTO Schedules to Changes in the Harmonized System*, “German Law Journal” 2008, vol. 9, pp. 1488–1492.

²⁶ A. Boyle, K. McCall-Smith, *Transparency in International Law Making* [in:] *Transparency in International Law*, A. Bianchi, A. Peters (eds), Cambridge 2013, pp. 422–428.

²⁷ C.C. Joyner, *The Antarctic Minerals Negotiating Process*, “American Journal of International Law” 1987, vol. 81, no. 4, p. 898.

²⁸ J.K. Levit, *A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments*, “Yale Journal of International Law” 2005, vol. 30, pp. 125–209.

requirements.²⁹ Some governments also discouraged official travel,³⁰ making physical meetings almost obsolete.

2. Remote international governance

Each of the following cases addresses governance in different global legal spheres, illustrating remote mechanisms.

The analysis includes the following: (1) brief presentation of the organization's mandate; (2) pre-pandemic governance processes; (3) remote governance processes during COVID-19.

2.1. United Nation Commission on International Trade Law (UNCITRAL)

The mandate – UNCITRAL, a UN Office of Legal Affairs subdivision, develops international trade law norms,³¹ like the 2019 Singapore Convention on International Settlement Agreements Resulting from Mediation, signed so far by 55 states.³²

Routine governance – UNCITRAL is composed of 64 member states, elected by the GA, based on UN regional groups allocation.³³ UNCITRAL operates through Commission sessions, held in July and its Working Groups (WGs). Meetings are held in the Vienna or New York UN headquarters. WGs develop norms and recommendations. Decisions are made by the Commission.³⁴

Largely, decisions are taken by consensus, although not by unanimity, pursuant to the Vienna Spirit.³⁵ However, there could be rare cases where voting is required.

²⁹ UN World Tourism Organisation, <https://www.unwto.org/news/vaccines-and-digital-solutions-to-ease-travel-restrictions> (3.10.2021).

³⁰ N. Ogrysko, Federal News Network, *Limits on Official Travel for Federal Employees Remain in Place, Even if Vaccinated*, 23 April 2021, <https://federalnewsnetwork.com/workforce/2021/04/limits-on-official-travel-for-federal-employees-remain-in-place-even-if-vaccinated/> (3.10.2021).

³¹ *A Guide to UNCITRAL – Basic Facts About the United Nations Commission on International Trade Law*, Vienna 2013, p. 1, 9.

³² United Nations Treaty Collection, *United Nations Convention on International Settlement Agreements Resulting from Mediation*, New York 2018, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&cmdtsg_no=XXII-4&chapter=22&clang=_en (3.10.2021).

³³ *United Nations General Assembly Elects New UNCITRAL Members*, <https://unis.unvienna.org/unis/en/pressrels/2022/unisl325.html> (16.03.2022).

³⁴ *A Guide to UNCITRAL...*, paras. 11-17.

³⁵ UN Office on Drugs and Crime, <https://www.unodc.org/unodc/frontpage/2020/March/new-unodc-chief-addresses-commission-on-narcotic-drugs--calls-for-unity-in-tackling-diverse-drug-challenges.html> (3.10.2021).

Only member states can vote.³⁶ Consensus can be challenging due to divergence between delegations from common and civil law jurisdictions. Nevertheless, consensus is usually achieved to facilitate outcomes.³⁷ Sometimes consensus results from plenary discussions, but informal deliberations best achieve compromises.³⁸

Remote governance – the last UNCITRAL WG fully in-person meeting was held in February 2020 in New York City. Since then, some meetings were postponed but eventually took place in full on-line formats and later in hybrid formats with some delegations present in Vienna and in New York.³⁹ The 2020 Commission was held for the first time in a two-part format. One segment addressed COVID-19 challenges to international trade law (held virtually, using New York-based interpreters and staff) and another one, “virtually held” in Vienna, was where decisions were made, including those concerning normative work.⁴⁰ Deliberations last 2-4 hours daily, accommodating time-zones.⁴¹

Shifting from physical meetings to full-online or hybrid formats was unavoidable as delegations could not travel. However, deliberations on structuring hybrid meetings were not without challenges, as some wished to prevent routine remote decision-making.⁴² Following virtual informal consultations, the Commission adopted a resolution on hybrid meetings.⁴³

The Resolution encouraged delegations to make written submissions; set-up WG officers’ elections; called WG chairs to “accommodate remote participation” and to ensure that delegations participating physically do not have an unfair advantage; encouraged chairs to postpone decision-making or to arrive at consensus through a written

³⁶ *A Guide to UNCITRAL...*, para. 14.

³⁷ I. Apter and C.H. Muchnik, *Reservations in the Singapore Convention – Helping to Make the “New-York Dream” Come True*, “Cardozo Journal of Conflict Resolution” 2019, vol. 20, no. 4, p. 1277.

³⁸ H. Abramson, *The New Singapore Mediation Convention: The Process and Key Choices*, “Cardozo Journal of Conflict Resolution” 2019, vol. 20, no. 4, p. 1037.

³⁹ UNCITRAL, *Information Sheet for Delegations*, 74th session of UNCITRAL Working Group II (Dispute Settlement), 27 September-1 October 2021, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/information_sheet_for_delegations_wg_ii_74.pdf (3.10.2021).

⁴⁰ UNCITRAL, *Commission Report*, 2020, paras. 54-83.

⁴¹ UNCITRAL, Chair Letter on the WG II (Dispute Settlement) Meeting in September 2021, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/letter_from_the_chair_7_september_2021_website.pdf (3.10.2021).

⁴² UNCITRAL, *Commission Report*, 2020, para. 120.

⁴³ UN General Assembly, *Decision on the Format, Officers and Methods of Work of the UNCITRAL Working Groups During the Coronavirus Disease 2019 (COVID-19) Pandemic, Adopted on 19 August 2020*, A/CN.9/1038.

process; and to ensure agendas are adapted to remote discussions. The Resolution also offered flexibility for meeting reports, replacing lengthy discourse on their drafting.⁴⁴

Experiences in UNCITRAL's WGs and two Commission sessions have been positive. Delegations, chairs and the Secretariat adapted well.⁴⁵ Normative work continued, facilitated by informal on-line meetings and written submissions.⁴⁶ It is difficult to assess the gaps between the results achieved and those which could have been achieved in physical meetings and on-line meetings, but some projects were completed, like the 2021 UNCITRAL Expedited Arbitration Rules.

2.2. United Nations Office on Drugs and Crime (UNODC)

The mandate – the United Nations Office on Drugs and Crime (UNODC) is responsible for the global fight against criminal phenomena including organized crime; corruption; cyber-crime; and human trafficking.⁴⁷ The UNODC develops and monitors norms like the 2003 United Nations Convention against Corruption, the 2005 United Nations Convention against Transnational Organized Crime, and the 1961 Single Convention against Narcotics.

Routine governance – working groups and forums develop and monitor implementation of UNODC norms. Alongside working groups, the UNODC also conducts normative work through the Commission on Crime Prevention and Criminal Justice, and the Crime Congress.⁴⁸

Numerous states adhere to UNODC norms. Some are almost universal.⁴⁹ Meetings are held in-person in the UN Vienna headquarters, with the exception of the Crime Congress, and the UNCAC Conference of States Parties (COSP).

Like UNCITRAL, the Vienna Spirit characterizes UNODC forums. However, attaining consensus is much more difficult. Meetings are attended by hundreds of

⁴⁴ *Ibidem*.

⁴⁵ UNCITRAL, *WGII 2020 February Meeting Report*, A/CN.9/1010.

⁴⁶ Submission by the Bahrain to the WGII 2020 Meeting, https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/submission_from_bahrain.pdf (3.10.2021).

⁴⁷ UN Office in Drugs and Crime, <https://www.unodc.org/unodc/en/about-unodc/index.html> (3.10.2021).

⁴⁸ The Commission on Crime Prevention and Criminal Justice, <https://www.unodc.org/unodc/en/commissions/CCPCJ> (3.10.2021).

⁴⁹ UNCAC has over 185 member states. UN Treaty Collection, United Nations Convention against Corruption, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18 (3.10.2021).

delegates from almost all countries.⁵⁰ This prolongs decision and norm-making which can take years, but consensus is usually achieved.

Remote governance – Like UNCITRAL, UNODC bodies are GA subsidiaries. GA-related instruments are discussed in UNODC forums, most recently, the 2021 UN Anti-Corruption Declaration.⁵¹

The GA adopted a resolution on working procedures during the pandemic, holding that GA decisions can be silently adopted, allowing 72 hours for objections (similar to UNCITRAL) (March 2020).⁵² Like UNCITRAL, UNODC initially held fully on-line meetings, later followed by hybrid meetings.⁵³

Challenging this methodology, the Kyoto Crime Congress was scheduled for March 2020 at the pandemic's height, but was postponed to March 2021. The Congress took place with mostly on-line participation, including the high-level session where global leaders provided recorded statements, adopting important decisions.⁵⁴ This changed somewhat in the December 2021 UNCAC COSP meeting held in Sharm-Al-Sheikh, where there was relatively significant in person participation despite the spread of the COVID-19 Omicron variant.⁵⁵

Like UNCITRAL, the UNODC on-line or hybrid format posed difficulties, at times significantly prolonging discussions until consensus was reached. Still, normative progress was attained and decisions taken largely as planned.⁵⁶

2.3. Hague Conference on Private International Law (HCCH)

The Mandate – The Hague Conference on Private International Law (HCCH) is composed of 90 member states and the EU, and is responsible for international norms

⁵⁰ UNCAC Implementation Review Group List of Participants, 2019 May Meeting, https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/27-29May2019/Final_LOP_IRG.pdf (3.10.2021).

⁵¹ UN Global Assembly, *Opening Special Session on Corruption, General Assembly Adopts Political Declaration with Road Maps to Help Countries Tackle Bribery, Money-Laundering, Abuse of Power*, <https://www.un.org/press/en/2021/ga12329.doc.htm>, 2 June, 2021, (4.10.2021).

⁵² GA Res. 74/544: Procedure for taking decisions of the General Assembly during the coronavirus disease 2019 (COVID-19) pandemic (27.03.2020).

⁵³ UNCAC Implementation Review Group held on-line in June 2020. UN Office on Drugs and Crime, <https://www.unodc.org/unodc/en/corruption/IRG/session11.html> (4.10.2021).

⁵⁴ Kyoto Crime Congress, <https://www.unodc.org/unodc/en/crimecongress/about.html> (4.10.2021).

⁵⁵ The meeting was conducted in a hybrid format. The highlight video of the opening day shows a half full pelneary room. <https://media.un.org/en/asset/k1e/k1etf2u0so> (7.02.2021).

⁵⁶ United Nations Office on Drugs and Crime, *Note by the Secretariat on the Working Methods of the UNODC Governing Bodies During the COVID-19 Pandemic*, 23 November 2020, E/CN.7/2020/CRP.21-E/CN.15/2020/CRP.2.

regulating cross-border commercial and family interactions. The organization is over 125 years old and regulated by the HCCH Statute and procedural frameworks.⁵⁷

Routine governance – The HCCH conducts normative and post-convention work through expert and working groups and special commissions. These forums consist of delegations from contracting states to the relevant instrument, sometimes also including observer states and representatives from NGOs and professional organizations.⁵⁸

Meetings are held in the Hague Academy building near the Hague Peace Palace, or in the Hague HCCH Permanent Bureau office.⁵⁹ Governance is based on consensus.⁶⁰ Like UNCITRAL, academics representing member states are common. Also, like UNCITRAL, consensus can be relatively easily achieved, although there could be controversial issues which can optionally be resolved by voting.⁶¹

Remote governance – the last Hague HCCH meeting was the March 2020 Council on General Affairs and Policy (CGAP). Most delegates attended in-person, and just but a few remotely.⁶² It later became obvious that HCCH meetings could no longer take place in person. Gradually, after some pause, HCCH forums moved to fully virtual formats,⁶³ held daily for a few hours (like UNCITRAL and the UNODC).⁶⁴

Despite difficulties, HCCH forums adapted to on-line meetings and normative progress was made. Currently, the HCCH plans virtual meetings for some forums, but others concerning family matters were postponed. CGAP agreed that these forums should be in-person, because of the importance of personal connections, as meetings are used to resolve bilateral issues.⁶⁵

The above cases demonstrate a common shift from in-person to virtual or hybrid meetings. Each organization followed a different path, but the result was similar – (1) almost entirely remote participation; (2) silent procedures for decisions; (3) relatively good progress on normative work.

⁵⁷ HCCH, <https://www.hcch.net/en/home> (4.10.2021).

⁵⁸ HCCH, <https://www.hcch.net/en/about> (4.10.2021).

⁵⁹ *Ibidem*.

⁶⁰ H(3), HCCH Rules of Procedure.

⁶¹ *Ibidem*, H(4).

⁶² HCCH, <https://www.hcch.net/en/governance/council-on-general-affairs/archive/2020-council> (4.10.2021).

⁶³ HCCH, *CGAP Conclusions and Decisions*, 2021, paras. 37-38.

⁶⁴ HCCH, *CGAP Agenda*, 2021.

⁶⁵ HCCH, *CGAP Conclusions and Decisions*, 2021, para. 23.

3. Remote regional governance – European Commission (EC) and European Parliament (EP)

The analysis now shifts to e-governance developed by EU bodies responding to COVID-19. While vaccines eased internal travel restrictions, some practices remain,⁶⁶ and analysis is important as a learning exercise even if the EC and its institutions might gradually revert back to past formats.

Mandate – The European Commission (EC) coordinates EU normative work between member states.⁶⁷ Where the EU has exclusive competence pursuant to the Treaty of the European Union (TEU), the EC essentially decides for member states.⁶⁸ Alongside the EC, the European Parliament (EP) is the EU legislative body, adopting norms and controlling EC executive action.⁶⁹

Routine governance – Integral to EU functioning, all member states engage in common policy design. Where the EC has exclusive competence, the EC must receive input from representatives of all 27 member states in the form of periodic meetings held in Brussels.⁷⁰

EP Meetings are held in plenary sessions, committees and working groups in Strasbourg or Brussels. Resolutions or proposals are voted in “voting marathons” by 705 MEPs.⁷¹

Remote governance – responding to the limitations, the EC minimized physical meetings.⁷² Some of the measures enacted included on-line summits and consultations, with some exceptions for meetings by heads of states⁷³ and written decision-making

⁶⁶ D.M. Herszenhorn, *Commission Confirms Plans to Zoom Past COVID*, Politico, 2021, <https://www.politico.eu/article/european-commission-telework-future> (4.10.2021).

⁶⁷ R. Leal-Arcas, *The EU Institutions and their Modus Operandi in the World Trading System*, “Columbia Journal of European Law” 2005-2006, no. 12, p. 131.

⁶⁸ European Commission, Areas of EU Action, https://ec.europa.eu/info/about-european-commission/what-european-commission-does/law/areas-eu-action_en (9.10.2021).

⁶⁹ European Parliament, Supervisory Powers, <https://www.europarl.europa.eu/about-parliament/en/powers-and-procedures/supervisory-powers> (9.10.2021).

⁷⁰ European Commission, Council of the European Union, https://europa.eu/european-union/about-eu/institutions-bodies/council-eu_en (9.10.2021).

⁷¹ European Parliament, How Plenary Works, <https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/how-plenary-works> (9.10.2021).

⁷² H. Von Der Burchard, *Coronavirus Forces Council of the EU to Reduce Meetings to ‘Absolute Minimum’*, “Politico”, 26.10.2020.

⁷³ *EU Leaders Shift to Virtual Summit as COVID-19 Cases Surge*, Reuters, 21.03.2021.

processes in the Coreper (Committee of the Permanent Representatives of the Governments of the Member States to the European Union).⁷⁴

At first, the shift made it difficult to address a crisis like the pandemic. On-line discussions were time-consuming, it was challenging to overcome bureaucratic obstacles, and difficult to attain consensus. However, as time passed and remote decision-making became the norm, the process became more conducive to addressing issues like the pandemic and Brexit.⁷⁵

The EP demonstrated similar agility, allowing MEP distance voting,⁷⁶ and remote participation in legislative sessions from EP liaison offices across the EU,⁷⁷ including interpretation to all EU languages.⁷⁸

This flexibility was hailed as demonstrating EP responsiveness to the limitations posed, because it ensured work continuation. Nevertheless, conservative EP governance actors lamented over the loss of MEPs' interpersonal connections, highlighting the importance of informal negotiations for compromises.⁷⁹

Like previous case studies, the EC and the EP transformed operations to remote settings. As both institutions found themselves forced to move to teleworking due to the restrictions,⁸⁰ they had no choice. Even if that was the case, overall, shifting to remote governance was relatively smooth, allowing the EC and the EP to ensure continuation of work.

⁷⁴ J. Greubel, *Governing in Times of Social Distancing: The Effects of COVID-19 on EU Decision Making*, European Policy Center, 2020.

⁷⁵ *Ibidem*.

⁷⁶ European Parliament, *Remote Voting in the European Parliament and National Parliaments*, 25.03.20220, [https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649348/EPRS_ATA\(2020\)649348_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649348/EPRS_ATA(2020)649348_EN.pdf) (11.10.2021).

⁷⁷ European Parliament, *Q&A on Extraordinary Remote Participation Procedure*, 19.10.2020, <https://www.europarl.europa.eu/news/en/press-room/20200325BKG75805/q-a-on-extraordinary-remote-participation-procedure> (11.10.2021).

⁷⁸ European Parliament, *How Parliament Works During a Pandemic*, 16.04.2020. <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20200408STO76807/how-parliament-works-during-a-pandemic> (11.10.2021).

⁷⁹ M. de la Baume, S. Wheaton, *How the Zoom Revolution Will Transform the Brussels Bubble*, "Politico", 22.07.2021.

⁸⁰ N. Lomas, *European Commission Goes Teleworking by Default Over COVID-19*, TechCrunch+, 12.03.20. <https://techcrunch.com/2020/03/12/european-commission-goes-teleworking-by-default-over-covid-19/> (11.10.2021).

4. Analysis and future outlook

The pandemic necessitated transforming cross-border norm and decision-making. From its earliest days, the international legal order relied on in-person diplomacy. Even when travel was difficult, international governance operated by physical meetings culminating in hundreds of treaties.⁸¹

International norm-making could not have reached its contemporary prominence without legal and political experts working together in-person.⁸² This was demonstrated by the Advisory Committee of Jurists who constituted the Permanent Court of Justice in 1920. The Committee, with delegates from the US, Japan, Brazil and Europe, met for a month, making international adjudication history.⁸³

Shifting towards remote cross-border governance can face several obstacles:

Politically, there could be concerns with the lack of ability to engage in backstage diplomacy, a key to cross-border norm and decision-making.⁸⁴ Recognizing the increased international law-making transparency, including the providing of non-state actors with access to global negotiations,⁸⁵ compromises are still mostly reached in informal gatherings, which could allegedly work only in close physical settings.⁸⁶

Legally, institutions, such as the EP, required physical presence at voting sessions before the pandemic,⁸⁷ including quorum requirements.⁸⁸ Noting that such rules apply to special decisions, this feature highlights the importance associated with physical presence.

⁸¹ E. Keene, *The Treaty-Making Revolution of the Nineteenth Century*, "The International History Review" 2012, vol. 34, no. 3, pp. 475-500.

⁸² M. Joutsen, A. Graycar, *When Experts and Diplomats Agree: Negotiating Peer Review of the United Nations Convention Against Corruption*, "Global Governance" 2012, vol. 18, pp. 425-439.

⁸³ B. McGarry, *Legacy of the Statute of the Permanent Court of International Justice, 100 Years Onward*, EJIL Talk! Blog of the European Journal of International Law, 30.12.20, <https://www.ejiltalk.org/legacy-of-the-statute-of-the-permanent-court-of-international-justice-100-years-onward/> (11.10.2021).

⁸⁴ T. Schnabel, *The Singapore Convention on Mediation: A Framework for the Cross-Border Recognition and Enforcement of Mediated Settlements*, "Pepperdine Dispute Resolution Law Journal" 2019, vol. 19, pp. 7-8.

⁸⁵ A. Boyle, K. McCall-Smith, *Transparency in International Law Making...*, p. 420.

⁸⁶ R.S. Dimitrov, *The Paris Agreement on Climate Change: Behind Closed Doors*, "Global Environment Politics" 2016, vol. 16, no. 3, pp. 1-11.

⁸⁷ K. Welle, *Protecting Members and Staff, Ensuring Business Continuity and Implementing Practical Solidarity – The European Parliament in the Times of the Coronavirus*, Robert Schuman Foundation Website, https://www.robert-schuman.eu/en/doc/ouvrages/EN_European_Parliament_2.pdf (11.10.2021).

⁸⁸ S. Zamora, *Voting in International Economic Organizations*, "American Journal of International Law" 1980, vol. 74, pp. 577-588.

UNCITRAL demonstrated that pre-pandemic legal frameworks operated on the assumption of physical presence. UNCITRAL Commission resolutions were required to move to a virtual or hybrid setting, and to adopt resolutions and texts by silent procedure.

Practically, it was difficult imagining how the EC and EP could change their practices without modifying existing regulations or adopting new ones through the regular complicated and lengthy process.⁸⁹ It was also difficult to envision how technology could support UNODC negotiations, with over a hundred states participating. Providing remote translation to the six UN languages and twenty-four EU languages also seemed impossible.

The case studies show a gradual process, beginning with the postponement of all normative and decision-making work where possible (HCCH, UNDOC, UNCITRAL), or limiting decisions, at first, only to physical settings, significantly reducing output. Later, when the limitations remained, modalities shifted towards virtual meetings only (HCCH, UNCITRAL), to be followed by hybrid sessions (UNODC, UNCITRAL, EU).

The shift should have impacted normative outputs. The optimal way to measure the impact is to conduct empirical research comparing between normative outputs resulting from in-person meetings to hybrid and/or virtual ones. As the process is still ongoing and relatively new, this type of research might not be viable at this stage. In lieu of such research, it would be useful to consider an initial qualitative assessment.

Overall, the case studies indicate that while there were delays and decisions might have been made sooner, there was no dramatic negative impact. UNCITRAL adopted instruments; UNODC negotiated an important anti-corruption resolution; and the HCCH conducted expert and working meetings, including CGAP; and the EC and EP have facilitated EU operations, addressing the pandemic and Brexit.

International organizations are different from public administrations. The latter are bound by domestic and systematic limitations and can face much more technological challenges in comparison to an international setting. Nevertheless, if the case studies demonstrate a larger trend, despite the differences, public administrations which have not already done so, should consider adopting some of the measures for addressing the pandemic's limitations.

Administrations should not be deterred by political, legal, and practical concerns which can be solved by creative solutions and amending procedural rules. Rather, flex-

⁸⁹ K. Welle, *Protecting Members and Staff...*

ibility should be the main guidance, and continuing the functions of the administration in a similar manner to pre-pandemic days.

Moreover, public administrations should consider adopting e-governance routines. Acknowledging that some governance and administration practices are more appropriately done in-person, conducting some administrative business remotely can be cost-efficient and beneficial, for public end-users as well.

For international organizations, such a more permanent shift could require consensus which would be difficult to reach. For national public administrations, installing permanent e-governance practices might be easier, requiring only a decision by the central government. The case studies presented provide a good starting point as domestic officials can refer to the tools successfully utilized by international organizations.

5. Summary

Two years into the pandemic and the shift in international and regional settings to e-norm and decision making, it is yet too early to assess impacts, and perhaps too early for European public administrations to quickly follow suit.

This article offers a snapshot of UNCITRAL, UNODC, HCCH, EC, and EP practices, demonstrating that despite initial concerns, the recognition by the member states that despite travel and gathering restrictions work must proceed led to rapid development of flexible successful strategies.

Hopefully, European public administrations could use these international examples for developing their own infrastructure for enhanced e-governance. Following this path might be difficult for some administrations due to political, legal, practical, cultural or traditions constraints. The article could serve as a useful reminder that almost all states are now involved in e-governance globally or regionally. There is no reason this should not be translated into the domestic local arena to address the limitations present in the pandemic or even beyond it.

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Zebrane w monografii artykuły naukowe dotyczą szerokiego spektrum zagadnień związanych z cyfrową transformacją administracji publicznej w Europie. Pierwsza część książki została poświęcona analizie e-administracji z perspektywy prawa europejskiego. Następnie cyfryzację administracji przedstawiono jako katalizator transformacji administracji otwartej, odpowiedzialnej i świadczącej e-usługi dla obywateli. Książka ukazuje również wpływ digitalizacji na funkcjonowanie polskiej administracji publicznej. Ostatnia część opracowania dotyczy e-administracji jako czynnika zwiększającego potencjał administracji w państwach członkowskich UE i państwach stowarzyszonych oraz na szczeblu międzynarodowym.

Monografia adresowana jest do badaczy zajmujących się administracją, prawem administracyjnym i europejskim, praktyków: sędziów, prokuratorów, urzędników państwowych, adwokatów i radców prawnych oraz studentów i doktorantów prawa, administracji i ekonomii. Mamy nadzieję, że publikacja poszerzy wiedzę na temat cyfryzacji administracji w Polsce i Europie oraz zachęci do dalszych studiów w tej dziedzinie.



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