

**A federation is better at fighting pandemics
Than a treaty**

A federation allows for situational measures

Federal Alliance of European Federalists

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The WHO Vaccination Dashboard indicates that by 1 April 2021, 46.8% of the population of the 50 states of the federal United States of America have already received one or more vaccinations, compared to 17.0% of the population of the 27 states within the intergovernmental European Union¹. Despite former President Donald Trump's dysfunctional approach to testing and vaccination on the one hand, and despite the attempts of EU and national political leaders to jointly design a strong testing and vaccination strategy on the other, it appears that America's federal system is such that it wins by a large margin over the European Union's treaty-based operating system². This article is about the weakness of treaty-based cooperation between states versus the strength of a federal state.

1. The clash between general measures versus situational necessity

The pandemic is worldwide. It is a common problem of the whole world. This supports the logic of tackling it with top-down global measures. However, the effects of the pandemic - infection, illness, and death - occur at the grassroots level of society. In individual people in their own small circle: the family, the school, the care home, the church, the doctor's surgery, the market, the choir and sports club, the restaurant and terrace, the event, the cinema, the theatre, the shop, the bus, the train, the plane, the boat. That means a great diversity of situations at the basis of society. This supports the logic of organising the fight with situational measures from the bottom up. Implementing authorities such as education, care, police, municipal authorities, but also companies can meet safety conditions at the base of society with situational measures. Persisting with only taking general measures causes misunderstanding and unwillingness to comply with them.

In addition to taking general measures top-down - with their inherent infringement of freedoms - and situational measures bottom-up - with their inherent alleviation of those unfreedoms - one can switch between the general and situational measures with procedural provisions to significantly increase security.

However, the lack of coordination between the two logics - in a situation of lack of sufficient (and uncertain effects of) testing and vaccination - led to serious and sometimes unmanageable problems in hospitals, tensions between politics and science, conflicts between governments, tensions between citizens and governments, hasty development of testing materials and vaccines without respecting the usual development timelines, chaotic production, procurement, distribution and administration of vaccines. Leading to unequal, unfair conditions for peoples and individual citizens. The effect of this - by April 2021 - was a growing lack of understanding about the correctness of measures and an unwillingness to follow them up. An atmosphere of 'own country first and every citizen for himself' emerged.

Here is a very small selection of issues that fostered misunderstanding and unwillingness.

¹ See Annex 1. We have supplemented the data from that Dashboard with population figures plus a calculation of the percentages.

² An example outside the Covid-19 issue. The federal system with its fiscal union allowed America to quickly overcome the banking and economic crisis of 2008-2010 with an injection of 900 trillion. The only measure taken by the EU was extreme austerity, which almost led some Member States to the abyss and shook the survival of the euro.

America paid \$39 for a Pfizer vaccine. To help Prime Minister Netanyahu to an election victory, Israel was prepared to pay \$56. After the election, pharmaceutical company Pfizer became angry because payment was not forthcoming. On 5 April 2021, Pfizer decided not to send a shipment of 700,000 vaccines to Israel.

Vaccination passports were worked on in various places. The emphasis was on reviving tourism. Some of the countries pursuing it did not want it used to facilitate access to shops, schools, cultural and sporting events in their own countries. Other countries were willing to use it as a tool to relax the lockdown measures.

The difference in approach in the European countries during the first Covid wave led to the closing of internal borders in defiance of the Schengen Agreement.

Tourist destinations attracted customers while maintaining lockdown measures for their own people. French youths went partying in Madrid. Germans flew en masse to Turkey. Dutch people went to the Caribbean island of Curacao but were asked to leave after two or three weeks because the hospital could no longer cope with the rapidly rising number of infections.

Shopping by appointment suffered from unworkable bureaucratic rules: reserved time slot, maximum time spent (in and out), maximum number of customers per floor and per square meter, and so on. The result: shopkeepers acted on their own discretion. The same practical problems played a role in office buildings.

As long as vaccines are a scarce commodity, they have an economic value for businesses in terms of distribution, transport, storage, free sale to private individuals. Because such activities are often regulated by licenses, undesirable relations arose between politicians granting licenses and companies seeking them.

There was no consensus in scientific circles about the duration of immunity after vaccination, about the speed at which the virus mutates, about the need to constantly design new vaccines, about the causality of side effects after vaccination and about the relationship between Covid-19 and influenza. The communication to the population was unclear and contradictory.

The speed with which testing materials and vaccines were developed prevented an understanding of the fact that men and women react differently to infections and vaccinations.

Vaccines against Covid-19 were developed in a very short time. This raised questions about their efficacy and safety, leading to uncertainty and a reluctance on the part of citizens to be vaccinated.

Poor countries received no, too little, or too late vaccines and were often at the mercy of countries' willingness to transfer some of the surpluses.

Hungary had opted - outside the EU framework - for the Russian Sputnik vaccine. The low vaccination rate in Bulgaria was due to the fact that many Bulgarians did not trust vaccination. Malta, on the other hand, had a well-organised vaccination strategy. In the greatest secrecy, the German state of Bavaria purchased the Russian vaccine Sputnik. The federal body is considering the same.

Concerns about the AstraZeneca vaccine in relation to thrombosis symptoms led first to political decisions to temporarily stop vaccinating, then to scientific evidence that there was no causal link between the vaccine and the extremely rare lethal side effect, then to resuming vaccinating, then stopping again only to be told that there was a rare side effect, but that vaccinating was recommended nonetheless.

Politicians followed science when it suited them but were unable or unwilling to give science primacy when under political pressure.

Implementers - general practitioners, hospitals, state institutions in charge of health care - were under such great pressure that tensions arose, partly as a result of ever-changing insights and tasks.

There was a debate about who should be vaccinated first: the elderly, overweight older men, other people with underlying suffering, nursing staff, general practitioners?

Italy applied harsh lockdown measures throughout the country, including Sardinia, even though that island was virtually virus-free.

In federal Germany, the same problem occurred. Some states - and within states some municipalities - were so free of the virus that harsh lockdown measures were not relevant and therefore not accepted. Neither by citizens nor by governments. This led to a conflicting relationship with the federal body that wanted to apply general top-down measures everywhere in Germany.

During the Easter weekend in France, ministers dined in secret in restaurants, thus in violation of the lockdown measures.

Serbia (an aspiring EU country) had large stocks of various vaccines. Residents could choose between vaccines provided by the European Union, Russia, and China. Citizens of EU countries travelled there to be vaccinated as quickly as possible.

The lockdown measures allowed - under certain conditions - for stays in public areas. However, the terraces - a strong element of European culture - remained closed. Large groups of people who could visit terraces in a virus-safe manner sought refuge in illegal parties, overcrowded parks, forests, and beaches. With the deployment of police as a result.

The EU failed to order sufficient vaccines in time and subsequently prohibited pharmaceutical companies that produced vaccines within the EU from making them available outside the EU. This caused a 'vaccine war'.

When, around April 2021, lockdown measures could be relaxed in various places for people with a negative Corona test, governments proved unable to grant the same to people with two vaccinations. For example, when travelling abroad, they still had to obtain an expensive negative test from commercial companies before boarding a plane, despite being fully vaccinated.

All these issues are related to constitutional and institutional deficiencies inherent in the current flawed organisation of the European Union based on a series of treaties. That organisation will have to change fundamentally if we are to be able to combat future viruses and other unavoidable crises quickly and successfully.

The fear is justified that it will not be fundamentally changed. In the course of February and March 2021, leading politicians underlined the necessity of casting the fight against new pandemics in a new global treaty: top-down, but with no room for action from the grassroots of the respective societies. The coordination between, on the one hand, general global and nationwide measures and, on the other hand, local conditions (situational measures from the base of society) is a prerequisite for success, as the experience with the pandemic shows us. Intensifying cooperation under treaty law does not provide an effective approach to cross-border crises; a federal approach is indispensable.

In the next chapter, we discuss those political statements in favour of an intensified form of treaty-based cooperation as the wrong answer to everything that has gone wrong in combating the pandemic since the beginning of 2020. With this publication, we want to make clear that the political choice for a treaty-based continuation of the legal and organisational framework as an instrument in the fight against new pandemics is not effective and that this fight is more successful within federal state formation. A federal design offers an authoritative legal and organisational framework for both general measures and tailored measures at the grassroots level. A federal organisation works better than an intergovernmental control system because it integrates an overarching (cross-border) framework, and there is room for specific local circumstances. A federal approach, therefore, allows for greater administrative effectiveness while retaining sovereignty, democracy, democratic control, and accountability. It is a persistent misconception that a federal approach would be at the expense of sovereignty.

Of course, we know the objection: the United States has the highest number of Corona deaths, followed by Brazil. However, both are federal states. How can that large number of deaths be reconciled with the proposition that a federal state is better equipped to withstand such a pandemic quickly? Well, one should not confuse the correctness of an instrument - a federal state in this case - with the dysfunctionality of the political system in the United States and Brazil and the incompetent political leaders that these political systems have produced. The large number of casualties that Donald Trump and Jair Bolsonaro have caused in both countries has everything to do with faltering political systems and incompetence, and nothing to do with the design of a federal organisation as such; as President Biden is now demonstrating with the rapid vaccination in the US, because he is able to use the federal structures correctly. The rapid American revival, which is only a matter of (short) time, is another example of the strength of a federal approach, against which Europe's economic revival will stand out.

We are going to address - again³ - the failure of treaty governance. In the expectation that it will open the eyes of the sovereign people of Europe to put an end to the undemocratic and ineffective treaty governance of the European Union with a federal constitution. That will have to give way to a federal Europe. The same applies, mutatis mutandis, to the United Nations. It will have to make way for a federal world government. It's just a matter of waiting for an incident that will cause such a crisis - a system crisis - that this change of systems of states will become self-evident.

³ See the Constitutional and Institutional Toolkit for Establishing the Federal United States of Europe: <https://www.faeef.eu/request-for-toolkit/>

The Constitutional Toolkit cited in footnote 3 describes in chapter 2 how such systemic crises arise in the course of history and how close we are, globally and in Europe, to the next one. This is supported by the recently published report 'Global Trends, A More Contested World'.⁴ To understand the seriousness of the issue, we recommend that the reader study both the Constitutional Toolkit and this intelligence report.

What follows is first of all the aforementioned political statements in favour of concluding a new global treaty in the fight against pandemics. Then we will explain why this is the wrong choice.

⁴ National Intelligence Office USA, March 2021:
https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends_2040.pdf

2. Political declarations in favour of strengthening the treaty-based approach to pandemics

2.1 G7 declaration of 19 February 2021

The declaration following the G7 meeting⁵ on 19 February 2021 opened with the announcement that the seven countries wanted to work together to make the year 2021, with strengthened cooperation, "a turning point for multilateralism⁶ and to shape a recovery that promotes the health and prosperity of our people and planet."

It is a plea for cooperation with, and strengthening of, the World Health Organisation (WHO) in support of its leadership and coordinating role. Therefore, the G7 wants to accelerate global vaccine development and deployment; work with industry to increase production capacity, including through voluntary licensing; improve information exchange, for example on sequencing of new variants; and promote transparent and responsible practices, and confidence in vaccines.

The G7 reaffirms continued support for all pillars of the Access to COVID-19 Tools Accelerator (ACT-A), the associated COVAX facility, and affordable and equitable access to vaccines, therapeutics, and diagnostics, reflecting the role of extended immunization as a global public good. With the increased financial commitments of more than USD 4 billion to ACT-A and COVAX, the combined support of the G7 now stands at USD 7.5 billion. They invite all partners, including the G20 and International Financial Institutions, to join them in scaling up support for ACT-A, including improving developing countries' access to WHO-approved vaccines through the COVAX facility.

2.2 Statement by 26 Heads of Government and State, the President of the European Council and the Director-General of the World Health Organization

On 30 March 2021, Charles Michel, President of the European Council, WHO Director-General Dr Tedros Adhanom Ghebreyesus and more than 26 world leaders stated that Covid-19 demonstrates why joint action is needed for a more robust international health architecture. Below is the literal text of that statement. We have highlighted some passages, marked 1 to 8. Following this quote, we annotate those eight sections of their⁷ text.

⁵ The G7 is an intergovernmental group of Canada, Germany, France, Italy, Japan, the United Kingdom, and the United States.

⁶ Multilateralism is the same as intergovernmentalism: treaty-based cooperation by governments in policy areas. The big problem is that this form of cooperation is used to govern member states as a state. However, without the requisite constitutional and institutional framework. Result: no democracy and no effectiveness.

⁷ J. V. Bainimarama, Prime Minister of Fiji; Prayut Chan-o-cha, Prime Minister of Thailand; António Luís Santos da Costa, Prime Minister of Portugal; Mario Draghi, Prime Minister of Italy; Klaus Iohannis, President of Romania; Boris Johnson, Prime Minister of the United Kingdom; Paul Kagame, President of Rwanda; Uhuru Kenyatta, President of Kenya; Emmanuel Macron, President of France; Angela Merkel, Chancellor of Germany; Charles Michel, President of the European Council; Kyriakos Mitsotakis, Prime Minister of Greece; Moon Jae-in, President of the Republic of Korea; Sebastián Piñera, President of Chile; Andrej Plenković, Prime Minister of Croatia; Carlos Alvarado Quesada, President of Costa Rica; Edi Rama, Prime Minister of Albania; Cyril Ramaphosa, President of South Africa; Keith Rowley, Prime Minister of Trinidad and Tobago; Mark Rutte, Prime Minister of the Netherlands; Kais Saied, President of Tunisia; Macky Sall, President of Senegal; Pedro Sánchez, Prime Minister of Spain; Erna Solberg, Prime Minister of Norway; Aleksandar Vučić, President of Serbia; Joko Widodo, President of Indonesia; Volodymyr Zelensky, President of Ukraine, Dr Tedros Adhanom Ghebreyesus, Director-General of the World Health Organization.

"The Covid-19 pandemic is the greatest challenge to the global community since the 1940s. At that time, after the devastation of (1) two world wars, political leaders came together to forge the (2) multilateral system. The objectives were clear: to bring countries together, to resist the temptations of (3) isolationism and nationalism, and to address the challenges that can only be met together in a spirit of (4) solidarity and cooperation, namely (5) peace, prosperity, health, and security.

Today, we share the hope that, as we fight together to overcome the Covid-19 pandemic, we can build a more robust international health architecture that will protect future generations. There will be other pandemics and other serious health emergencies. (6) No single government or multilateral organisation can face this threat alone. The question is not if, but when. Together, we must be better prepared to predict, prevent, detect, assess, and respond effectively to pandemics in a highly coordinated manner. The Covid-19 pandemic was a stark and painful reminder that no one is safe until everyone is safe.

That is why we are committed to universal and equitable access to safe, effective, and affordable vaccines, medicines and diagnostics for this and future pandemics. Immunization is a global public good and we must be able to develop, produce and deploy vaccines as quickly as possible.

That is why the Access to COVID-19 Tools Accelerator (ACT-A) was set up to promote equal access to tests, treatments and vaccines and to support health systems around the world. ACT-A has delivered on many issues, but equal access has not yet been achieved. There is more we can do to promote access globally.

To this end, we believe that countries should work together on (6a) a new international convention on pandemic preparedness and response.

Such a renewed collective commitment would be a milestone in strengthening pandemic preparedness at (6b) the highest political level. It would be anchored in the (6c) constitution of the World Health Organisation, involving other relevant organisations crucial to this endeavour, in support of the principle of health for all. Existing global health instruments, in particular the International Health Regulations, would underpin such a treaty, providing a solid and proven basis on which to build and improve.

The main objective of this Convention would be to promote an all-government, all-society approach that strengthens national, regional, and global capacity and resilience against future pandemics. This would entail a significant increase in international cooperation to improve, for example, early warning systems, exchange of data, research and the local, regional, and global production and distribution of medical and public health measures, such as vaccines, medicines, diagnostics, and personal protective equipment.

It would also recognise a "One Health" approach that links the health of people, animals, and our planet. And such a treaty should lead to increased mutual accountability and shared responsibility, transparency, and cooperation within the international system and with its rules and standards.

To achieve this, we will work with Heads of State and Government around the world and with all stakeholders, including civil society and the private sector. We are convinced that it is

our responsibility, as leaders of nations and international institutions, to ensure that the world (7) learns the lessons from the COVID-19 pandemic.

Now that Covid-19 has exploited our weaknesses and divisions, we must seize this opportunity and come together as a global community for peaceful cooperation that extends beyond this crisis. Building our capacities and systems to do this will take time and a sustained political, financial, and social commitment over many years.

Our solidarity in ensuring that the world is better prepared will be our legacy, protecting our children and grandchildren and minimizing the impact of future pandemics on our economies and our societies.

Pandemic preparedness requires (8) global leadership for a millennium-ready global health system. To deliver on this commitment, we must be guided by solidarity, equity, transparency, inclusiveness, and justice.”

We do not doubt the sincerity of this political declaration. The content it seeks to promote is extremely valuable. What we do doubt is the knowledge required to operate at this political level. Precious content must be protected in a precious form. However, nothing in this declaration can be realised cautiously, honestly, effectively, and successfully in the form of a new treaty. Everything that this declaration rightly identifies as particularly valuable for the resilience of the global community to pandemics requires the protection and enforceability of federal statehood.

We now place annotations to figures 1 - 8.

(1) two world wars

The history of wars in Europe shows not two but four devastating systemic wars. In the period up to the Peace of Westphalia in 1648, there were struggles between noblemen all over Europe: nobility-anarchy. Between 1648 and 1945, the Napoleonic Wars around 1800 and the two World Wars in the 20th century formed the other three system wars: nation-state anarchy. After WWII, a global state system emerged in the form of the treaty-based UN. And a European treaty-based state system now called the EU. Their treaty-based nature means that both state systems are dominated by administrators who work top-down. Not by popular assemblies based on constitutions with trias politica, checks and balances and democratic accountability that work from the sovereignty of peoples. Since 1945, globally, and since 1951, Europe-wide, we have been experiencing the increasingly serious negative effects of treaty-anarchy.

Governments always tend towards oligarchy. Where this is not stopped, autocracy emerges. This is happening in more and more places in the world. The UN and the EU are therefore part - or rather the cause - of the problem, not the solution. They have both reached the end of their political life cycle and will be swept away by an impending fifth systemic war.⁸ Unless, that is, starting today, we exchange the United Nations for a World Federation with a

⁸ For the substantiation of this passage, we refer again to the Constitutional Toolkit, chapter 2, mentioned in footnote 3 and to the report Global Trends, A More Contested World, mentioned in paragraph 1, with a reaction to it by Ingo Piepers in LinkedIn: <https://www.linkedin.com/feed/update/urn:li:activity:6786199814083268608/>.

World Constitution, supported by a Federal Europe as a member of that World Federation, followed by a handful of other continental federations elsewhere in the world.

(2) multilateral system

Multilateral (= intergovernmental/treaty-based) systems of governance are only suitable for representing one common interest of a few states. For example, the management of the NATO. A treaty is the right legal basis for this. At least, that is the assumption. It provides for an administration that ensures that things run smoothly. Multilateral cooperation - as in the European Union - is a top-down management of 27 Member States as one state, with hierarchical directives. Without the constitutional and institutional instruments required to operate as a state. The result: more and more tensions and conflicts, Member States that refuse to comply with directives, threats of sanctions against such Member States, even more tensions and conflicts, solutions that have less and less effect until the control system implodes.

The position of fighting pandemics with yet another treaty must be approached first of all from the principle that those who cause the problems are not the right people to solve them. In other words, neither the G7 nor the political leaders mentioned in footnote 7 are the right people to promote an entirely new global health system with yet another treaty.

This assertion is supported by a quotation of 7 April 2021 from Amnesty International's Yearbook 2020-2021, which indicates that world leaders are doing great damage on the international stage by impeding collective recovery efforts by blocking or undermining international cooperation:

“The coronavirus (Covind-19) ... has been made far worse by austerity policies that weakened public infrastructure and public health systems; by international architecture enfeebled in form, function and leadership. And it has been made far worse under pressure from leaders of states who demonize and exclude, asserting archaic constructs of state sovereignty and peddling rejectionists approaches to science, evidence, and universal norms. (-) In 2020, exceptional leadership came not from power, privileges, or profits. It came instead from nurses, doctors, and health workers on the frontlines of lifesaving services. It came from those who cared for older people. It came from technicians and scientists running millions of tests and trials, frantically searching for vaccines. It came from those who, bunched together more often at the very bottom of the income scale, worked to feed the rest of us; who cleaned our streets; cared for the bodies of the hundreds of thousands of deceased; repaired our essential services; patrolled our streets; drove what remained of our public transport. (-) But the pandemic also amplified the mediocre and mendacious, the selfish and the fraudulent, among the world’s political leaders.”

The current failure of the fight against the pandemic is their own fault because they always make the same mistake: advocating more of the same despite the facts showing that it does not work; more of the same makes the next crisis appear faster and more intense. Reasoning from systems theory: trying to fix the errors of a flawed system does not produce a recovery, but just the opposite: multiplying the system errors as the series 2-4-8-16 and so on, until the system bursts.

(3) isolationism and nationalism

The principle of 'European integration' in the sense of strengthening the cohesion and homogeneity between the EU Member States is in reality 'European assimilation'. With its top-down hierarchical directives, the EU forces the Member States to increasingly resemble one another: assimilation. Member States' own sovereignty, autonomy and cultural identity are being eroded. As a result, Member States refuse to fulfil their obligations, isolate themselves (or leave) and become the prey of nationalistic leaders. In a federal state form, assimilation takes place only within the federal body. For example, at the federal level, the separate defence systems of the Member States merge into a common European defence force.

(4) solidarity and cooperation

Within intergovernmental control systems, actual solidarity and cooperation are always antagonistic. Tensions and conflicts are temporarily resolved through horse-trading but continue to exist underground. The time until the next conflict becomes ever shorter and the solution ever more artificial. Until the control system implodes.

(5) peace, prosperity, health, and security

This is the noble aspiration of the political leaders involved in the declaration. All credit to them. But the way in which it seeks to achieve it is one of the errors in the great book of political mistakes. Under the banner of the intergovernmental United Nations, there has never been so much tension and violent conflict as there is now. Eighty million refugees roam the earth. With impunity, countries allow themselves to nihilate minorities: the Palestinians, the Rohingyas, the Uyghurs, the Tibetans, the Syrians, the Moluccans, the Kurds, the English-speaking population of Cameroon, Beloetsji's in Iran, Afghanistan, and Pakistan, four hundred million people from indigenous peoples, to name but a few. The more than forty Unrepresented Nations and Peoples Organisation (UNPO) are a blot on the UN's record. On the edge of the European Union, migrants trying to reach Europe are drowning in the Mediterranean Sea, while the European border is protected by armed mercenaries. Migrants who do reach Europe are marginalized in camps. The Russian threat on the Union's eastern border - see Georgia, Ukraine, Baltic States - requires NATO deployment in the absence of a European defence force. However, due to the culpable negligence of the European countries (they do not pay) it has become a failed defence system. Health? The intergovernmental control systems have proven since WWII that they have not been able to prevent the destruction of the Earth and the resulting diseases, poverty, and battles.

It is considered normal that an experienced doctor is able to diagnose that someone has an inflamed appendix. It is considered normal for an engineer to be able to diagnose that a bridge is about to collapse. But it is not abnormal to entrust the world's biggest problems, including the fight against a pandemic, to politicians without basic diagnostic knowledge of the forms of state that do or do not work. With the knowledge of a beaver, they build bridges in storm-tossed waters, but are long gone from the political stage when those bridges collapse. Again, their emotional intentions are valuable. Their knowledge is not.

(6a) a new international treaty

(6b) the highest political level

(6c) constitution of the World Health Organisation

Number 6a, working with yet another treaty, is a serious mistake. The previous text has demonstrated this casuistically. In the next chapter we will substantiate this with scientific insights on the weakness of working with treaties.

Number 6b is the repeatedly wrong reflex of politicians to seek the solution to problems that are almost always created by themselves in the centralization of powers. This way of thinking is deeply rooted in administrators who always think that governing is the highest degree of perfection. They do not understand the essence of representing the people on the basis of 'all sovereignty rests with the people'.

Number 6c, however, is the most serious error. Here, the lack of simple knowledge to be mastered at that level is tragic. What is the case? When, immediately after WWII, the World Health Organization was set up as part of the United Nations, the natural tendency was to choose a treaty as the legal basis of the WHO. However, it was called a constitution. This gave the WHO's legal basis a charge that it does not deserve. By constitutional definition, a constitution has a triad - trias politica - of a legislative, an executive and a judicial power. The actual relationship of these three powers - a balance between separation and connection - takes place through a system of checks and balances - power and counter-power. Furthermore, accountability for decisions taken is an integral part of a constitution. All that is absent in a treaty-based operating system. So too in the WHO. Those who point to the existence of the General Assembly within the WHO as a form of representation of the people are, like those who see the European Parliament as a parliament, guilty of deception. Just as the UN General Assembly is not a parliament and the non-elected Security Council - and within the EU the non-elected European Council - are undemocratic and ineffective institutions. And seen from a classical interpretation of the concept of 'democracy', they are illegal.

(7) lessons learned from the COVID-19 pandemic

Few words are as misused in politics as 'learning lessons'. If our years of studying and analysing the functioning of governments has taught us anything, it is that governments do not learn from past mistakes. On the contrary. Governments are not learning organisations. Politicians do not change anything as long as things go the way they go. Only a crisis as a result of that behaviour causes a change. At the cost of damaging the people. Those who warn of this crisis are pushed aside. If they continue to warn, 'the system' will make them disappear: transfer, dismissal, early retirement, detention barracks, prison, or death.

(8) global leadership

With point 8 we reach the moment where we say: "We rest our case". This is how leaders think: centralizing power at the top, thinking - or pretending - that this is good for the people. The logic of building a constitutional and institutional system to fight a pandemic from the base of society is as far removed from their thinking as Mars is from Earth.

We now turn our attention to general, non-casual, systemic errors of treaty work.

3. System errors of working with treaties

3.1 James Madison, Alexander Hamilton

In their eighty-five Federalist Papers (1787-1788) James Madison, Alexander Hamilton and John Jay explained to the people of the thirteen former British colonies in America why the Philadelphia Convention had designed a federal constitution of only seven articles. The reason: the treaty under the name 'Articles of Confederation', which was supposed to guarantee cohesion, togetherness, solidarity, and cooperation of the thirteen states, turned out to work like a divisive poison. The Convention of 55 members threw the treaty away and made, based on the ideas of European philosophers, the first and best federal constitution in the world: preserving the sovereignty of the member states and guaranteeing the representation of common interests, i.e. interests that member states could not represent themselves.

The merit of Madison and Hamilton lies in the fact that they were probably the first in the world to apply the basic concepts of systems theory. Although this scientific discipline did not develop until the beginning of the 20th century, by the end of the 18th century they were already discussing the systemic errors of the Confederation Treaty and analysing with great precision why these systemic errors would destroy the thirteen states. The Constitutional Toolkit cited in footnote 3 describes their argumentation in detail.

3.2 The United Nations and the European Union as treaty-based operating systems

From 1800 onwards, the establishment of the United States of America prompted an attempt to do the same in Europe. Many attempts by organized citizens to do so failed as soon as they fell into the hands of politicians. The nation-state anarchy in 19th and 20th century Europe therefore caused series of conflicts and bloody wars. The World War of 1939-1945 led to the global state system of the UN, supplemented by a European state system that evolved into the European Union. Both based on a system of treaties: that is, intergovernmental governance, without institutions such as a true parliament-government-rule of law, thus without a classic trias politica with a system of checks and balances and therefore without democratic accountability. But with oligarchization of administrative supremacy at the expense of representing the people. The same mistake was made in America after the Declaration of Independence (1776) by wanting to govern the thirteen states with a treaty, a mistake that they rectified after only eleven years by throwing away the treaty and drafting a federal constitution.

Over seventy years after the Second World War, the treaty-based state systems of the UN and EU appear to have arrived at the end of their political life cycle. Managing states and their peoples with treaties is balancing on a volcano of systemic errors. They cause tensions and conflicts; attempts at repair bring a moment's peace, but multiply the systemic errors, making it increasingly difficult to restore broken balances. Conflicts follow each other faster and faster, the adage 'pacta servanda sunt' (treaties should be respected) crumbles under the pressure of Member States that use treaty cooperation mainly to serve their own national interests. Until a simple trigger causes the operating system to disintegrate.

That is about to happen. Both with the European Union and with the United Nations. We will not list the numerous systemic failures of both operating systems and how they are leading

these two intergovernmental systems into the abyss. Those who read this publication are well placed to make their own lists of those failures. We focus on the treaty shortcomings of a year and a half of fighting the Corona crisis.

The European Union has no common sense of, and no feeling for, interests and concerns that transcend the Member States. It is merely a collection of Member States that weigh their commitment to European-level issues against the benefit they derive from them as Member States: no benefit, then resistance. The EU lacks a form of authority to represent the interests and concerns of the whole. Therefore, it lacks a body with powers to design, lead and coordinate the fight against major problems such as the pandemic.

The resistance of European Union Member States to the creation of such a body is based on a strong aversion to the creation of a federal Europe. However, this arises from ignorance of the essence of federal state formation.

Member States think that by establishing a federation they are transferring part of their sovereignty and thereby losing sovereignty. This is incorrect. Member States of a federation entrust a federal body with the powers to look after interests and concerns which they cannot (or no longer) look after themselves; those powers become dormant. The member states are and remain sovereign with regard to all other powers. The great advantage for the Member States is the fact that they do not have to worry about looking after those common concerns and interests. That is called vertical separation of powers, which creates shared sovereignty. Another advantage is that in a federal state, the federal body has no top-down hierarchical powers that would violate the principle of subsidiarity. The concepts of federation and subsidiarity coincide.

The EU thinks that with 'more integration' it will make a better functioning Union. This is not the case. The way in which this integration is being managed within the EU, namely by means of top-down hierarchical directives, without respect for the principle of subsidiarity, has - as we stated earlier - an assimilating effect: Member States are forced to start looking alike. It destroys their own political, social, and cultural identity. This provokes resistance. The system of treaties reinforces the need to safeguard national and nationalist interests. In a federal state, on the other hand, Member States remain sovereign, autonomous and integration takes place exclusively at the level of the federal body. For example, in the form of a European approach to defence, climate, the fight against pandemics, migration and other matters that member states cannot deal with on their own.

The non-democratically elected European Council of 27 heads of government and state holds the EU's final powers. Decisions are taken on the basis of unanimity. As a result, members who interpret a proposed decision as being detrimental to their national interests use a veto against it. This is just as undemocratic and autocratic as the UN Security Council.⁹

If EU Member States, in contravention of the EU treaty system, dismantle principles of the rule of law in their own countries and are then pressurized in the European Council to comply with the treaties, they can use vetoes to paralyze the whole EU system. This almost

⁹ See 'The right of veto as a hand grenade in the European Council', in Europe Today Magazine of 3 March 2021: <https://www.europe-today.eu/2021/03/30/the-right-of-veto-as-a-hand-grenade-in-the-european-council/>

happened in autumn 2020 when Poland and Hungary threatened to veto the EU's multiannual budget in response to the threat of sanctions against the way these member states were dismantling the rule of law at home.

3.3 Failures of the treaty approach

The fight against a pandemic is a public interest. So, it is a matter that belongs to the domain of governments. But the two most important instruments for successfully waging that battle - test material and vaccines - are owned by private, commercial companies. Thus, by private, commercial interests. An alignment between public and private interests such that both interests are served satisfactorily has proved lacking. Instead of 'marching out immediately like the fire brigade', negotiations first had to take place. This was made more difficult by the fact that multinational pharmaceutical institutions have rights that exceed the area of competence of the EU and its Member States.

Hastily made agreements turned out to have weak delivery terms and obscure delivery deadlines. This created conflicts between the EU and private parties, as well as conflicts between the EU and Member States. As a result, some Member States went their own way, sometimes even outside the EU framework. It is a characteristic of intergovernmental control systems that solidarity disappears when Member States feel their national interests are threatened.

What citizens were accused of doing at the outbreak of the Corona crisis, namely mass hoarding, individual countries turned out to do the same when vaccines became available: own country first. In the UK and the US, pharmaceutical companies have had to submit to the rules of governments and restrict the export of vaccines in favour of vaccinating the citizens of their respective countries. The notion that common interest requires common concern disappeared like snow in the sun.

Questions arose about the functioning of the World Health Organisation, which is organised under treaty law. Did it sound the alarm in time, as the WHO itself states, or too late? Can it control the pace of vaccine development and the diversity of vaccines needed or not? Does it guarantee the timely and proportionate distribution of vaccines throughout the world? Can it, on its own authority, conduct independent research into the cause and location of the emergence of the virus? Is its mission of global health stronger than the geopolitical forces frustrating it? Note: it was only after more than a year that China allowed a research team in.

Such questions have still not been answered. The result of all this was that poor people and poor countries did not have vaccines until rich, powerful, and organised countries had completed their campaigns. So, the world became more unfair and angry.

A characteristic aspect of the EU's chaotic approach is the rejoicing over small successes and the blaming of those outside the 'Brussels' network for things that went wrong.

In essence, the failure of treaty governance comes down to poor legal and organisational preparation, non-conclusive agreements and understandings, and a failure to take political responsibility for decisions taken. The unclear division of tasks, responsibilities and

competences between Member States and 'Brussels' - all based on the failure of treaty governance - not only creates confusion, but also a playing field for unhinged politicians. All this causes tensions and conflicts. Because of the nation-state constellation of treaty systems, countries then choose to violate the age-old adage: *pacta servanda sunt* (treaties must be respected). Partly due to the pressure of hostile opposition to chaotic virus measures, treaty obligations are ignored in the knowledge that neither the EU nor the UN is willing or able to impose sanctions. Citizens copy this behaviour and seek their own way out of the chaos.

4. A closer look at the federal form of government

4.1 Some aspects of federal state formation

A society is based on several driving forces: legal values and morality driven force; social and justice driven force; cultural and creative driven force; economic and financial driven force; and safety and security driven force. They complement each other and together form the foundation of a powerful society. Except in societies where they are absent or weak. The first, the legal values and morality-driven force, includes with its constitution the foundations for political office, the most important office in the world, and the distribution of powers of the bodies that represent society. The way that society is structured determines the choice - or evolution - of the form of state that fits it.

There are only a few state forms:

- o the decentralized unitary state , e.g., the Netherlands;
- o the centralized unitary state, for example France;
- o the devolved state, for example the United Kingdom;
- o the federal state, for example Germany, Belgium, and Austria.

The last one, a federal state, is the right form of state when countries, or regions within a country, despite their diversity want but also need to cooperate with each other, have interests and concerns that they cannot promote on their own, but want to remain sovereign anyway, without infringing on their own cultural identity.

A pandemic affects the whole world. No country in the world can fight it on its own, let alone solve it. This is the main condition for the choice of a federal statehood as an instrument for fighting a pandemic: if countries have common problems that they cannot solve on their own, but want to preserve their own independence, this is best done in a federal form of state.

To solve common problems, countries or regions entrust some powers to a federal body. They do not lose their powers, but benefit from the fact that the federal body can solve their common problems with some of the powers of the member states. This is a variant of Jean-Jacques Rousseau's social contract in which citizens entrust a government with some of their own decision-making powers in order to receive added value in return. Translated to the pandemic: Citizens and Member States entrust to a federal body some of their powers to impose, for example, freedom-restricting measures that ensure that the pandemic is defeated, thus giving citizens not only their freedom back, but also the knowledge that the

federal body will be able to combat the pandemic faster and better in the future. Added value.

The surrender of freedom by the people can only happen from the bottom up because the highest authority rests with the people. This aspect, too, prohibits working with a treaty because the citizens have no role in the conclusion of treaties.

The willingness to give up freedom can only develop when the people can count on it to lead to a just society. Justice in the sense of swift, situational, proportional, and science-based action, under conditions of democratic accountability. The federal state form is the most appropriate for this.

There are three types of federal states:

- o strong ones, for example Germany and the United States;
- o weak ones, e.g., Belgium and India.
- o failing federations, for example Yugoslavia and Czechoslovakia.

'Strong' means that they are built on standards of federalisation from which one cannot deviate. 'Weak' means that they do not meet those standards in all respects. And 'failed federations', with examples in Europe, Africa, and Asia, have collapsed as a result of dominant political forces claiming the entire playing field for themselves. For example, the communist-driven federations in Eastern Europe.

Calling Belgium a weak federation requires a nuanced comment. Like no other country in the world, Belgium saw that the hostile society between French-speaking Walloons and Dutch-speaking Flemings - with a small German-speaking community on the sidelines - made the decentralized unitary state no longer tenable. From 1960 onwards, six admirably far-reaching constitutional reforms were started in order to give the two major regions - and partly the German region - federal status. And it worked. The weakness lies in the continued existence of some unitary aspects - as in India - as a feature of the fact that these federations were built from the top down. So, unlike that of the United States which was built from the bottom up, relying on the ratification of the federal constitution by the people.

Calling Germany a strong federation also requires a nuancing. In the first months of 2021, conflicts arose between the federal authority and the autonomous federal states. Chancellor Angela Merkel saw the number of infections seriously increase and wanted stricter measures for the entire country top-down. This met with resistance from states with such low infection rates that tightening the lock-down measures in their federal states would not be necessary. The logic of general measures, applicable to everyone and everywhere, clashed with the logic of situational measures appropriate to the places where such measures are meaningful and acceptable and where they are not. The cause lies in a constitutional aspect (the so-called Kompetenz Katalog) of the German federation: it is the Member States (Länder) that decide on health measures for their own territory. General, i.e., nationally effective, health measures require unanimous decision-making by all federal states. With her wish to implement general measures, Merkel violated the autonomy of the federal states and thus caused opposition to her intention. This can be easily understood if

one takes the German town of Augustburg as an example. By April 1, 2021, the infection rate there was so low that a pilot project was launched to abolish the lockdown measures. Such a town should not be burdened with stricter lockdown measures but should be given the authority to carry out an experiment within its own circle: situational measure. In terms of thinking and acting from the basis of society, Switzerland is a better federation.

We are not arguing that a federal state is by definition the form of government that can effectively combat a pandemic, but that it does offer the right constitutional and institutional framework for a clear allocation of general and situational powers and flexible switching between them. How this distribution of powers should look like is a matter for professionals. Based on the experiences with this pandemic within a federal model, they can indicate which powers can be allocated to the following layers of that model, starting with the base level of society:

- o individual citizens
- o groups of citizens;
- o municipalities;
- o regions;
- o State;
- o continental federal body such as Europe;
- o world federal body;
- o and procedures to switch between these layers.

Organising this is the task of others than the above political leaders: (1) do as James Madison and Alexander Hamilton did: throw the treaties in the dustbin, (2) concentrate on federal state-building and (3) make the world healthier, safer, more prosperous, fairer, and more just. If this is not started today and continued strengthening of treaty-based governance of states, an inevitable systemic crisis will implode not only the European Union but also the United Nations.

4.2 Epilogue

We realise that the realization of a European Federation and a Global Federation is a difficult process, quite apart from the fact that the concept of 'federation' is often not well understood and is mainly seen as unwanted interference from on high. This is certainly not the case. On the contrary, a properly designed federation is able to combine a global (the federation) solution with local and situational requirements and circumstances. From a governance perspective, a federation is therefore "the best of both worlds". As far as the fight against (the consequences of) the pandemic is concerned, that is where it went - and is going - wrong in the organised European Union under the terms of the treaty: states and 'Brussels' are constantly riding each other's wheels, and the resulting complexity (further) impairs decisive action. This situation will (again) be misinterpreted by politicians, intentionally or not: not more Europe, but less Europe. This is a misconception and misrepresentation: **a federation is just more Europe where it is needed, and (much) less Europe - and European interference - where it does not contribute to the issues (such as security) that matter.** Moreover, the current organisation (European Union) lacks democratic control, as a result of which European administrators, politicians and bureaucracies can continue to do too much - without control and accountability.

We have become entangled in a European inextricable - Gordian - knot. We must now use this crisis - the pandemic - to correct that structural error; that requires awareness - which we want to contribute to - insight and political leadership. What plays a role in this is that this pandemic and the crisis it has created is only the beginning of a series of crises that we will be facing in the near future. We refer among other things to the report Global Trends in footnote 4. Only with a federal structure will Europe be able to safeguard the interests of its people and member states - and our values - and to make an adequate contribution to solving problems with a global scope.

ANNEX 1 VACCINATION DASHBOARD

Source Vaccination Dashboard 1 April 2021, plus vaccination %

States	People (millions)	Vaccinations (abs)	Vaccinations (%)
Federal USA	328,200	153,630	46,8
Treaty-based EU			
Germany	82,500	13,770	16,7
France	67,060	11,390	17,0
Italy	60,360	10,500	17,4
Spain	46,940	8,340	17,8
Poland	37,970	6,270	16,5
Romania	19,410	3,090	15,9
Hungary	9,773	3,020	30,9
Netherlands	17,280	2,380	13,8
Belgium	11,460	1,870	16,3
Czech Rep.	10,650	1,760	16,5
Greece	10,720	1,740	16,2
Portugal	10,280	1,690	16,4
Sweden	10,320	1,670	16,2
Austria	8,859	1,640	18,5
Denmark	5,806	1,130	19,5
Finland	5,518	1,020	18,5
Slovakia	5,450	0,981	18,0
Ireland	4,904	0,819	16,7
Lithuania	2,794	0,515	18,4
Bulgaria	7,000	0,486	6,9
Croatia	4,076	0,475	11,7
Slovenia	2,081	0,376	18,1
Estonia	1,325	0,267	20,2
Malta	0,502	0,197	39,2
Latvia	1,920	0,143	7,4
Cyprus	0,875	0,129	14,7
Luxembourg	0,613	0,095	15,5
Total	446,446	75,763	17,0