

Проблемы управления: теория и практика

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Изменение климата как вызов глобализации. На пути к новому определению чрезвычайной ситуации

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Аннотация

Изменение климата и экологические чрезвычайные ситуации признаны одним из основных вызовов современных демократий. Тем не менее, несмотря на масштаб проблемы, подтверждающийся огромными людскими и материальными потерями, демократические государства до сих пор не используют чрезвычайные механизмы для борьбы с экологической угрозой, так же как они задействуют подобные механизмы для борьбы с терроризмом или с финансовыми кризисами. В настоящей работе высказывается предположение, что пассивность демократических режимов в борьбе с этими вызовами современности связана с устареванием самого понятия чрезвычайной ситуации, наступление которой позволяет государству использовать чрезвычайные меры по ее разрешению. Основопологающим условием для повышения эффективности демократий в борьбе с глобальными чрезвычайными вызовами, такими, как, например, изменение климата, по мнению автора, является пересмотр самой дефиниции чрезвычайной ситуации с акцентом на процесс, нежели на факт возникновения подобной ситуации. При этом требуется использование объективных методов определения характера ситуации и, в целом, более широкого подхода к тому, что следует относить к глобальной чрезвычайной ситуации.

Ключевые слова

Чрезвычайная ситуация, чрезвычайный процесс принятия решений, эффективность демократии, изменение климата, глобальные вызовы.

Scholars and policy makers alike recognize climate change and ecological emergencies as the greatest challenges of the 21st century. The upward trend in surface temperature due to human activities is now subject to a wide consensus among the scientific community and has been well documented in various reports such as those of the Intergovernmental Panel on Climate Change (IPCC). It is also acknowledged that, in the absence of decisive action, climate change will cause staggering human and material damages. Falling labor and agricultural productivity as well as massive population displacements will put under strain international security¹, and the stability of many states. In

¹ Gleick P.H. Environment and Security: The Clear Connections // Journal Bulletin of the Atomic Scientists. 1991. Vol. 47, No 3. P. 16–21.

the US only, it is estimated that global warming could cost yearly 3.6% of GDP by 2100² and that the world GDP could contract by more than 33 trillion USD by 2050³.

If the worst consequences of climate change are still remote, its impact is already materializing. Weather and climate disasters have caused more than 306 billion USD of losses in 2017, the costliest year on record, and more than 1.5 trillion USD since 1980. Many scholars and policy makers, like former US president Obama, suggest that the 2007–2010 drought, possibly caused by global warming, played a substantial role in the escalation of the Syrian civil war.

While being a threat for the whole world, climate change challenges contemporary liberal democracies in a radical way. Democracies are accounting for huge part of total CO₂ emissions (32% in 2014) and are historically the main cause for the increase in greenhouse gas concentrations. The way of life prevailing in democratic states and promoted as a model of development entails per capita emissions way higher than in developing countries. Therefore, democracies will have to bear the brunt of the fight against climate change both in terms of drastic emissions reductions — which would need to tend towards zero — and of financial support to developing countries. Considering the magnitude of the challenge and the potential threat to the way of life of its citizens, climate change is likely to exacerbate the specific “democratic dilemma”— the constant trade-off between system effectiveness and citizen effectiveness — and threatens its viability.

So far, and despite being earmarked as a top priority, democracies are devoting limited efforts and achieving poor results in their fight against climate change. As the French president Macron put it at the One Planet Summit, the world, and we argue democracies in the first place, are “losing the battle against global warming”. Instead of using their vast resources and proclaiming a climate state of emergency, liberal democracies are tackling the problem through ordinary decision making and are delaying as much as they can the most painful measures (such as the ban of fossil fuel in the auto industry). The relative “passivity”⁴ of liberal democracies stands in stark contrast with their ability to mobilize swiftly vast human

² *Ackerman F., Stanton E.A.* The Cost of Climate Change, What We'll Pay if Global Warming Continues Unchecked// Natural Resources Defence Council [Электронный ресурс] Май 2008. URL: www.nrdc.org/sites/default/files/cost.pdf (дата обращения: 30.05.2018).

³ The Emissions Gap Report 2017, A UN Environment Synthesis Report // UNEP. [Электронный ресурс] 2017. Nov. URL: https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR_2017.pdf (дата обращения: 30.05.2018).

⁴ *Shearman D.* Democracy and Climate Change: A Story of Failure // Open Democracy [Электронный ресурс] 2007, Nov. 7. URL: https://www.opendemocracy.net/article/democracy_and_climate_change_a_story_of_failure (дата обращения: 30.05.2018).

and financial means to cope with emergencies such as international terrorism or financial crises⁵. Various explanations are brought forward to account for this paradox. Some focus on the infiltration of governments by lobbies⁶ or on the tendency of democracy to favor the present over the future⁷, others stipulate the unhealthy fusion between democracy and capitalism⁸. All have in common to ascribe the failure to act against ecological issues to fundamental, systemic, flaws of liberal democracies.

This paper, instead of incriminating the democratic form of government, argues that the failure to act is primarily due to an obsolete conception of emergencies which prevents modern liberal democracies to resort to emergency decision making in the fight against global emergencies such as climate change.

I — The obsolescence of the classical approach to emergencies in modern democracies

I.1 — Unprecedented means standing idle

Modern liberal democracies have at their disposal a comprehensive arsenal of emergency provisions “allowing them in time of peril to temporarily alter constitutional government to whatever degree is necessary to overcome the peril” and resulting in more power for the government and fewer rights for the people⁹. Faced with an emergency, modern democracies can resort to a wide range of instruments of emergency powers designed to speed up the decision-making process and mobilize resources: general constitutional provisions, legal measures, court decisions, specific derogations, extra-legal instruments¹⁰. All these instruments imply, to some extent, the concentration of decision making powers in the hands of the executive branch as well as limitations to the freedoms of citizens. As a result, in time of danger, they enable democratic governments to bypass ordinary democratic procedures and

⁵ Dobson A.A. Climate of crisis: towards the eco-state // Open Democracy, 2007, 19 September URL: https://www.opendemocracy.net/article/globalisation/politics_climate_change/state (дата обращения: 30.05.2018).

⁶ A Climate of Corporate Control: How Corporations Have Influenced the U.S. Dialogue on Climate Science and Policy // UCS USA. [Электронный ресурс] 2012. May. URL: https://www.ucsusa.org/sites/default/files/legacy/assets/documents/scientific_integrity/a-climate-of-corporate-control-report.pdf (дата обращения: 30.05.2018 г.)

⁷ Boston J. Governing for the Future: Designing Democratic Institutions for a Better Tomorrow. Emerald Group Publishing, 2016

⁸ Shearman D., Wayne Smith J. The Climate Change and the Failure of Democracy. London: Praeger, 2007.

⁹ Rossiter C. Constitutional Dictatorship, Crisis Government in the Modern Democracies. New Jersey: Princeton University Press, 1948. P. 5.

¹⁰ Gross O., Aolain F.N. Law in Times of Crisis: Emergency Powers in Theory and Practice. Cambridge: Cambridge University Press, 2006; Ferejohn J., Pasquino J. The Law of the Exception: A Typology of Emergency Powers // International Journal of Constitutional Law. 2004. Vol. 2. No. 2. P. 210–239.

the opposition of veto-players, lobbies, political parties that might hinder the implementation of swift and decisive measures.

This paper argues that never at any point in history democracies had such institutional, technological and financial means to fight emergencies. But, despite the actual and potential danger posed by environmental problems to the wellbeing of their people and, ultimately, to the very subsistence of the democratic form of government, modern liberal democracies are not using these instruments. Ecological problems are exclusively dealt with — or sometimes not dealt with at all — through ordinary decision making with all the delays, incoherencies, and compromises it entails. Quite astonishingly, there is no such thing as a climate state of emergency as it might exist with other emergencies such as terrorism or financial crisis.

A comparison between the way modern democracies are addressing terrorism and an actual ecological emergency — air pollution in big cities — highlights this paradox. On the one hand, democracies devoted huge attention and means to fight terrorism and did not hesitate to resort to emergency rule. Since 2001, starting with Proclamation 7463¹¹, most democracies have not only resorted to existing emergency provisions but have strengthened them in an unprecedented fashion¹². France, for instance, enacted 16 laws and decrees including terrorism related derogatory provisions, including the 2015 decree activating the state of emergency¹³. In the USA, it is estimated that the cost of the war on terror could amount to 3 000 billion USD¹⁴. Democratic states have been fighting terrorism so aggressively that some of them, as G. Agamben put it, fall in a state of “permanent emergency”¹⁵. On the other hand, both the attention and the means devoted to air pollution in big cities are far from being up to the problem. The boldest measures, so far implemented, include alternate circulation — most of the time badly enforced — and free public

¹¹ Proclamation 7463 of 14th September 2001. Declaration of National Emergency by Reason of Certain Terrorist Attacks // U.S. Government Publishing Office [Электронный ресурс] URL: <https://www.gpo.gov/fdsys/pkg/WCPD-2001-09-17/pdf/WCPD-2001-09-17-Pg1310.pdf> (дата обращения: 30.05.2018).

¹² Posner E.A., Vermeule A. Terror in the Balance: Security, Liberty, and the Courts. Oxford: Oxford University Press, 2007.

¹³ Décret n° 2015-1475 du 14 novembre 2015 portant application de la loi n° 55-385 du 3 avril 1955 // Legifrance.gouv.fr [Электронный ресурс] URL: <https://www.legifrance.gouv.fr/eli/decret/2015/11/14/INTD1527633D/jo> (дата обращения: 30.05.2018).

¹⁴ Carter S., Cox A. One 9/11 Tally: \$3.3 Trillion // New York Times [Электронный ресурс] 2011, 8 September URL: https://archive.nytimes.com/www.nytimes.com/interactive/2011/09/08/us/sept-11-reckoning/cost-graphic.html?_r=1 (дата обращения: 30.05.2018).

¹⁵ Agamben G. Stato di Eccezione. Torino: Bollati Boringhieri, 2003

transportation during peak days, various subsidies to encourage the acquisition of cleaner vehicles, or the obligation, as in California, for every carmaker to include in its offer electrical vehicles. But, democratic states are systematically delaying more decisive measures such as the ban of fossil fuel in the auto industry. Table 1, brings comparative focus on France's recent reactions to air pollution and terrorism and highlights the huge disproportion in means and attention between the two problems.

Table 1. France's reaction to air pollution and terrorism since 2015¹⁶

	Terrorism	Air pollution
Impact	<ul style="list-style-type: none"> • 244 killed, 997 wounded between 2015 and 2017 • Economical losses of more than 2 billion Euro 	<ul style="list-style-type: none"> • 48 000 deaths each year (of which 2 500 in Paris alone) • Economical cost of at least 20 billion Euro yearly
Triggering events	Attacks of January and November 2015	Several air pollution peaks in 2015 and 2016
Measures taken	<ul style="list-style-type: none"> • Proclamation of a state of Emergency • Adoption of several legislative measures strengthening anti-terrorism powers • Intensification of the military intervention in Syria 	<ul style="list-style-type: none"> • Alternate circulation in some big cities (for the first time in 20 years several days in a row) • Free public transportation • Subsidies to less polluting vehicles • Ban of old polluting vehicles
Allocated means	<ul style="list-style-type: none"> • Cost of domestic counter-terrorism of approx. 1.8 billion Euro yearly • Cost of military interventions of approx. 1.2 billion Euro yearly • Mobilization of army forces • Use of sophisticated surveillance technologies 	<ul style="list-style-type: none"> • Budget of air quality monitoring bodies of 64 million Euro • Subsidies and tax breaks to favor less polluting vehicles and heating systems • Gradual increase of carbon tax (up to 86,2 Euro per ton in 2020) • Investment plan of 20 billion Euro over 5 years to facilitate the ecological transition
Answer assessment	Strong answer	Weak answer

Such a disproportion is in no way justified by a difference in the entity of the threat, on the contrary. In 2016 terrorism was responsible for 34,676 victims worldwide, of which only 73 in the USA and 238 in Western Europe¹⁷ to be compared with 7 million victims from

¹⁶ Conseil d'Etat, France. Association Les Amis de la Terre France. N° 394254 // Le Conseil d'État : Accueil [Электронный ресурс] 2017. 12 Juil. URL: www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-12-juillet-2017-Association-Les-Amis-de-la-Terre-France (дата обращения: 30.05.2018).: The lack of action is such that, in July 2017, France's Supreme Administrative Court ordered the State to take all the necessary measures to effectively lower the concentration of PM10 particles in the atmosphere.

¹⁷ National Consortium for the Study of Terrorism and Responses to Terrorism // START [Электронный ресурс] 2017. URL: <https://www.start.umd.edu/gtd> (дата обращения: 30.05.2018).

air pollution yearly¹⁸. One would think the threat posed by ecological emergencies is of such scale and magnitude that it would justify implementing the same kind of emergency provisions without delay.

Many factors are brought forward to account for the failure of democracies to cope with global emergencies such as climate change. For some, it is due to the strength of lobbies and big corporations, other scholars point to the structural weaknesses of contemporary democracies: unaccountability towards future generations¹⁹, its presentist bias²⁰, the inconsistency induced by electoral competition. Others blame capitalism, mass consumption and the very principles on which democracy rests — liberalism and individual freedom²². As valid as could be some of these general explanations, we argue that the failure of democracy is mainly a failure to assess and manage complex global emergency causes which lays in the inadaptation of democratic models of emergency management. We think that the failure to do so is primarily due to the conceptual failure of democratic states to acknowledge ecological issues as full-fledged emergencies.

1.2 — An obsolete perception of emergencies

At a first glance, nothing in the existing emergency provisions would prevent using emergency powers to address climate change. Many pieces of legislation explicitly refer to ecological or natural emergencies as, for instance, the Russian constitutional law on emergency situations²³ or the British Civil Contingency Act of 2004²⁴. How to explain then that these provisions are not used in the fight against global warming and other ecological emergencies? In our view, the reason must be found in the fact that emergency decision

¹⁸ 7 million premature deaths annually linked to air pollution. Press release // WHO. [Электронный ресурс] 2014. March. URL: <http://www.who.int/mediacentre/news/releases/2014/air-pollution/en/> (дата обращения: 30.05.2018).

¹⁹ Jonas H. The Imperative of Responsibility: In Search of an Ethics for the Technological Age. Chicago: The University of Chicago Press, 1984.

²⁰ Boston J. Governing for the future: How to bring the long-term into short-term political focus. Washington D.C.: Centre for Environmental Policy: WP School of Public Affairs, American University, 2014.

²¹ Boston J. Governing for the Future: Designing Democratic Institutions for a Better Tomorrow. Emerald Group Publishing, 2016.

²² Shearman D., Wayne Smith J. Указ. соч.

²³ Федеральный Конституционный закон от 30 мая 2001 года N 3-ФКЗ " О чрезвычайном положении" // Российская газета. [Электронный ресурс] URL: <https://rg.ru/2001/06/02/chp-dok.html> (дата обращения: 30.05.2018).

²⁴ Civil Contingencies Act 2004, CHAPTER 36, 18th November 2004 // Legislation.gov.uk [Электронный ресурс] URL: http://www.legislation.gov.uk/ukpga/2004/36/pdfs/ukpga_20040036_en.pdf (дата обращения: 30.05.2018).

making rests on a narrow and subjective perception of emergencies interpreted in an arbitrary way by policy makers.

Indeterminacy and subjectivity constitute the main features of the conception of emergency prevailing in modern democracies. Both institutional and academic definitions fail to address the general phenomenon of emergency in a comprehensive way²⁵. Even if “the circumstances that endanger the safety of nations are infinite” (A. Hamilton) and, as N. Lazar notes, “no set of characteristics precisely defines an emergency and no definition would leave no grey edges”²⁶, existing provisions are vague and leave considerable room to policymakers to decide on what constitutes an emergency. Article 16 of the French Constitution²⁷, for instance, mentions unspecified “grave and immediate threats” to “the institutions of the Republic, the independence of the nation, the integrity of its territory”. The Civil Contingency Act defines an emergency as an event or situation which threatens serious damage to human welfare, the environment or the security of the United Kingdom or of a place in the United Kingdom.

Academic literature does not really fill this conceptual gap. Most author gloss over the definition of emergencies implying that they are self-evident or “given” and, by way of consequence constitute poor guides to a comprehensive general theory of emergency. C. Rossiter evacuates the question in the first pages of his book listing three types of crisis: war, rebellion and economic depression²⁸. Even the scholars who try to give a more precise definition of the concept fail in our view to provide a comprehensive framework. According to N. Lazar the main features (symptoms) of emergencies are urgency and scale²⁹. N. Sagos distinguishes “real emergencies” from “apparent emergencies” and suggests three criteria to identify the former: suddenness, urgency, and limited foreseeability³⁰. Summing up, all these definitions leave the question of how to objectively determine what an emergency is open and

²⁵ *Sagos N.* Democracy, Emergency, and Arbitrary Coercion, A Liberal Republican View. Montreal: University of Montreal, 2014. P. 27.

²⁶ *Lazar N.C.* State of Emergency in Liberal Democracies. Cambridge: Cambridge University Press, 2009. P. 7.

²⁷ Civil Contingencies Act 2004, CHAPTER 36, 18th November 2004 // Legislation.gov.uk [Электронный ресурс] URL: http://www.legislation.gov.uk/ukpga/2004/36/pdfs/ukpga_20040036_en.pdf (дата обращения: 30.05.2018).

²⁸ *Rossiter C.* Указ. соч. P. 6.

²⁹ *Lazar N.C.* State of Emergency in Liberal Democracies. Cambridge: Cambridge University Press, 2009. P. 7.

³⁰ *Sagos N.* Democracy, Emergency, and Arbitrary Coercion, A Liberal Republican View. Montreal: University of Montreal, 2014. P. 38.

rest on what M.Troper called “the tautologic dimension of the concept emergency” (“emergency is what a competent authority decided to call emergency”)³¹.

Compiling the various academic and legal definitions, it emerges that what we could call the “classical conception” envisions emergencies as urgent events threatening to cause large damages. It could be formalized as follows:

Emergency = urgency + large impact (scale) + focusing event

The first term of the definition, urgency, is understood narrowly. As L. Feldman notes³², according to the classical conception, the archetype of urgency is the metaphor of the ticking bomb. Urgency is appreciated literally in hours, weeks, months. The second term of the definition refers to the reality of the threat (impact). Apparently, it should be the less controversial element of the definition, but it is nowhere objectively defined, and leaves open many questions. In practice, for an event to be declared as an emergency, the damage must be concentrated, localized and visible. Finally, the classical conception perceives emergencies as events or as chain of events. N. Lazar rightly notes that the idea of urgency does not necessarily entail temporal containment³³, though in reality the classical approach to emergencies rest on the idea that emergency situations are identifiable events developing along a linear pattern. To be treated as emergencies, these events should be spectacular and/or violent to attract the attention of policymakers and public opinion. They must take the form of a “focusing event” in the sense of F. Baumgartner and B. Jones³⁴.

This classical approach to emergency, underpinning the democratic institutional framework, entails three major consequences explaining the overall lack of performance in the way democracies tackle global emergencies. First, it induces a bias in favor of short-term over long-term action. Second, it results in a preference for reaction over prevention. Third, the absence of objective assessment leaves room for subjectivity and arbitrary. Overall, these shortcomings lead to inconsistent and non-optimal decisions on emergencies. As a result, many declared emergencies in modern democracies are only apparent³⁵ while, on the contrary, some genuine emergencies remain undeclared. Emergency management is still

³¹ Troper M. L'Etat d'Exception n'a rien d'Exceptionnel // L'Exception dans tous ses Etats / ed. S. Theodorou. Paris: Editions Parenthèses, 2007. C. 167.

³² Feldman L.C. The Banality of Emergency: On the Time and Space of Political Necessity // Sovereignty, Emergency, Legality / ed. A. Sarat. Cambridge: Cambridge University Press, 2010.

³³ Lazar N.C. Указ. соч. P. 7.

³⁴ Baumgartner F.R., Jones B.D. Agendas and Instability in American Politics. University of Chicago Press, 2003.

³⁵ Sagos N. Указ. соч. P. 36.

framed by the Schmittian “absolutist”³⁶ vision of emergencies according to which “Sovereign is who decides on the exception”³⁷.

Consequently, this obsolete conception of emergency fails to account for global emergencies such as global warming on every count:

- 1) The damages brought by ecological emergencies are diffuse and often unspectacular. They are not limited to a localized territory or limited to a defined group of population; on the contrary they are scarcely visible and spread over time and across the society.
- 2) The materialization of the impact of global emergencies is not imminent in the narrow sense of the word given to it by the classical conception of emergencies. Most of the impact of global warming is still years away and will span over an extended — maybe indefinite — period.
- 3) These emergencies are not one-time events, or chain of events, but processes unfolding over years or decades.

Table 2 below summarizes these essential differences between the classical conception and the main features of global emergencies:

Table 2. Classical emergencies versus global emergencies³⁸

	Classical emergencies	Global emergencies
Nature	Events or chain of events	Unfolding process
Impact	Concentrated, visible	Spread, concealed
Temporality	Short-term	Long-term
Localization	Localized	Global
Sequence	Linear	Non-linear

The radical differences between the classical approach to emergencies and the characteristics of global emergencies such as climate change explains, in our view, the lack of efficiency of democracies. The obsolescence of the conceptual approach to emergencies, inadequate to account for global long-term emergencies, disqualifies the institutional models of emergency management. Therefore, we argue that the path to a greater efficiency of

³⁶ *Lazar N.C.* Указ. соч. Р. 38–42.

³⁷ *Schmitt K.* Political Theology: Four Chapters on the Concept of Sovereignty. Chicago: University of Chicago Press, 1985.

³⁸ Source: *Бусье Р.* Принятие решений западными демократиями в условиях глобализации // Вестник Московского университета. Серия 21: Управление (государство и общество). 2012. № 2. С. 55–73.

democracies against climate changes and other global challenges passes through a redefinition of the concept of emergency.

II — A necessary redefinition of the concept as a prerequisite to more efficient emergency management

Updating the concept of emergency to a time of global challenges requires a close examination of the 3 components of the classical definition: urgency, scale and characterization as an event. This paper argues in favor of a threefold shift: i) from a narrow definition of urgency to an extended one, ii) from a subjective assessment of the impact to an objective one and iii) from an event based approach of emergencies to a process based one. Such a shift would entail wide ranging implications in the way emergencies are managed in contemporary democracies.

II.1 — Redefining urgency

It appears necessary to rethink the notion of urgency and go beyond the narrow interpretation irrigating democratic emergency decision making. As we have seen, the current approach to urgency is intended literally: an emergency is always the possibility, or the certainty, of a damage occurring within a very short period (ticking bomb). This approach is based on the Schmittian assumption of time compression which collapses the decision to acknowledge an emergency, the decision on the measure to adopt and the materialization of the damage in a single moment — the sovereignty's moment³⁹. In this perspective the materialization, or not, of the impact depends exclusively on the short-term implementation of emergency measures, supposed to produce immediate or nearly immediate effects.

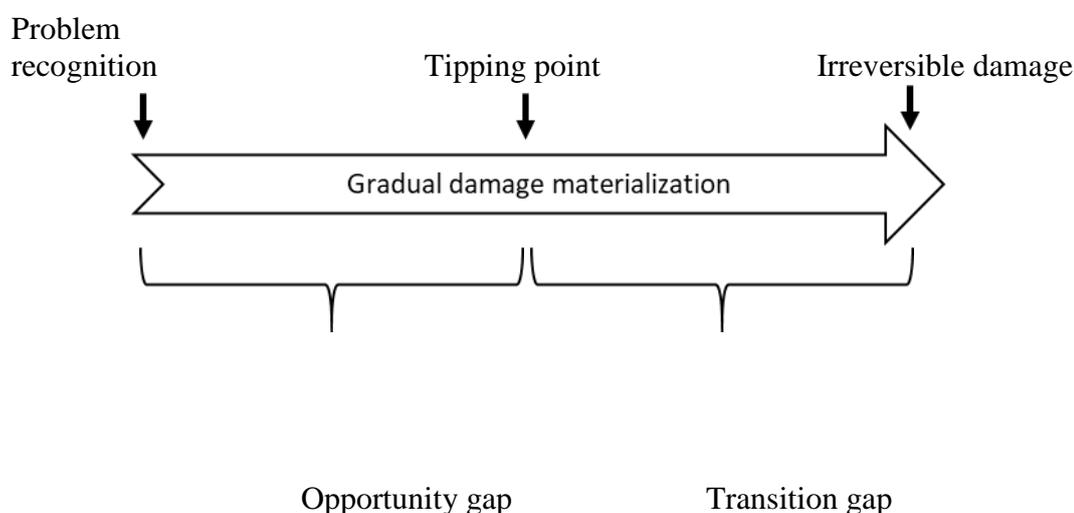
Therefore, as we discussed above, damages, due to materialize in years or decades, such as those likely caused by climate change, are not considered imminent for emergency management purposes. We agree with L. Feldman when he rebukes the idea that necessity compresses time and requires an urgent decision. There is always a gap between the decision moment, even a small one, and the materialization of the damage, and in some cases this gap can span over several years. This gap represents the window of opportunity, or opportunity gap as we will call it, during which it is still possible to avert the potential negative effects. With global emergencies an additional complexity is represented by the fact that the damage does not necessarily occur immediately at the end of the opportunity gap but may materialize

³⁹ *Feldman L.C.* Указ. соч. Р. 163

after another extended period. The end of the opportunity gap represents a tipping point⁴⁰, signaling the start of a transition period, or transition gap, leading to the full damage occurrence. In other words, corrective measures can avert damage materialization until the tipping point threshold after which it might be too late to act — or after which the cost of action will be greatly increased — even if the damage might appear in full force after another prolonged period. In the case of climate change, some scientists argue that the threshold of 400 parts per million for carbon dioxide, reached in 2016, represents a tipping point⁴¹, marking the entry into a “danger zone of climate change”⁴².

The sequence of damage materialization reported below (table 3) is therefore, in our view, better suited to the reality global emergencies and a necessary starting point to redefine the notion of urgency. It enables shifting from a time compression approach to a multi-dimensional approach.

Table 3. Damage materialization sequence



⁴⁰ This notion, first developed in sociology by Morton Grodzins, is commonly used in climate change studies to describe a “critical threshold” beyond which abrupt and irreversible change starts.

⁴¹ Lenton T.M et al. Tipping elements in the Earth's climate system // PNAS. 2008. Vol. 105. № 6. P. 1786–1793. URL: <http://www.pnas.org/content/105/6/1786.full> (дата обращения: 30.05.2018).

⁴² Jones N. How the World Passed a Carbon Threshold and Why It Matters // Yale Environment 360 [Электронный ресурс] 2017. Jan. URL: <https://e360.yale.edu/features/how-the-world-passed-a-carbon-threshold-400ppm-and-why-it-matters> (дата обращения: 30.05.2018).

Based on what precedes, to assess urgency it is necessary to introduce a new parameter: the time needed for the ordinary corrective measures to take effect. This parameter should be compared with the estimated horizon of the danger keeping in mind the existence of potential tipping points. Thus, shall be construed emergency any phenomena whose potential impact, however remote it might be, or whose potential tipping points leading to it, could materialize before the corrective measure are i. implemented and ii. produce the intended effect. The following formula summarizes our proposition:

$$\text{Urgency} = x + y > I$$

where “x” stands for the time needed for the ordinary — as opposed to emergency — decision making process and the implementation of the corrective measures, “y” — for the time needed for these measures to produce the expected results, and “I” — the horizon over which the transition gap would start leading to irreversible damage (it is conceivable that in some case the transition period = 0 and I stands for the damage materialization). If $x + y$ is greater than I then the urgency condition is met and the considered phenomena would qualify for emergency management.

As far as global warming is concerned, it is widely agreed among the scientific community that both the measures already taken (Kyoto protocol) and those arising from the Paris agreements are insufficient to significantly contain the increase in temperature below 2⁰C before the end of the century.⁴³ Therefore, according to our proposed definition, the condition of urgency would be met, and climate change should be recognized as a full-fledged emergency, alongside terrorism or severe economic crisis, warranting the use of emergency provisions.

II.2 — Quantifying the impact of emergencies

Alongside a redefinition of urgency this paper focuses on the issue of impact assessment and argues that a shift from a subjective approach to an objective, quantified one is needed. As we have seen above, academic research and normative texts alike approach the issue of evaluating the impact of emergencies in vague and evasive terms. From the “accidents and necessities that may concern the public” to the “great national crises”⁴⁴ the question of objectively setting the thresholds for an event to be considered as an emergency is

⁴³ The Emissions Gap Report 2017, A UN Environment Synthesis Report // UNEP. [Электронный ресурс] 2017. Nov. URL: https://wedocs.unep.org/bitstream/handle/20.500.11822/22070/EGR_2017.pdf (дата обращения: 30.05.2018).

⁴⁴ Rossiter C. Указ. соч.

never really addressed in the academic literature. Most scholars seem to take for granted that emergencies are self-evident events (you recognize them when you see them). Constitutional and legislative norms are also extremely vague: grave and immediate threats, grave and immediate danger to the public order, public calamities...Existing norms provide no guidelines for objectively assessing the various emergencies and setting priorities. They leave the task of subjectively deciding to declare an emergency and to take the necessary measures to the political power in place. The rationale for this rests on the assumption that emergencies are unpredictable — A. Vermeule and E. Posner, for instance, understand that emergencies are unforeseeable even in principle⁴⁵. Consequently, emergency situations being nearly impossible to forecast and to assess the law should not constrain policymakers but on the contrary, give them discretionary power to decide on what is or isn't an emergency. The burden of arbitrarily assessing, and declaring, emergencies fall therefore entirely on policymakers. According to this view emergency could be equated with uncertainty.

Though, recent technological and statistical progresses enable to forecast emergencies, or at least the probability of their occurrence, and to assess their potential impact. Accordingly, emergencies relate less to the notion of uncertainty and more and more to the notion of risk⁴⁶. In the case of climate change, policymakers have access to a wide range of studies providing detailed probability models predicting the future rise in temperatures and credible estimates quantifying the impact in terms of victims and financial losses. While we should hold in mind that these are only estimate reflecting the state of research and knowledge at a certain time, they nonetheless provide useful tools enabling to go beyond the arbitrary and subjective assessment of emergencies by policymakers.

Therefore, we argue that it is not only possible but highly desirable to introduce, in the emergency provisions, objective and quantified criteria providing a guideline for the identification of emergencies. As soon as a situation would meet the criteria, the use of emergency powers to face it would be justified or, even better, mandatory. The Russian law on emergency situations provides an interesting example of what could be objective criteria for declaring an emergency. It provides quantitative thresholds — more than 500 casualties and/or more than 500 M Rubles of damage — for a situation to be qualified as a natural or technological federal emergency (“чрезвычайная ситуация природного и техногенного

⁴⁵ Posner E.A., Vermeule A. Указ. соч.

⁴⁶ Бордовских А.Н. Политические риски международного бизнеса в условиях глобализации. М: АспектПресс, 2015.

характера”)⁴⁷. This paper believes that similar, and even more detailed, provisions should be introduced in the various emergency legislations. Should a situation meet these objective quantitative criteria and the condition of urgency, in the sense we developed above, emergency rule should automatically apply.

Objectively assessing the threats in terms of forecasted quantified human and material damages would not only enable to identify objective emergencies, as opposed to apparent emergencies, but it would also help in establishing priorities among the many challenges democracies face. It would help to put on the forefront “hidden” or “silent emergencies”, such as air pollution, which kills more than 500,000 people each year in Europe, instead of focusing only on spectacular or violent events attracting public attention.

Shifting from event to process

The third step towards the redefinition of the concept of emergency this paper proposes would be to shift from an event-based approach to a process-based approach. We argue that it is necessary to redefine emergencies not as localized, visible, linear and time limited events (or chain of events), but as unspectacular, creeping processes that result, from time to time, in violent and sudden events. In this perspective, classical emergency situations, such as natural disasters or terrorists’ attacks, are merely the manifestation, the visible symptoms, of wider emergencies. Despite all the recent years’ focus on prevention and mitigation, emergency management in contemporary democracies is essentially event-centered. The fight against terrorism in France after November 2015 attacks provides a striking example of that. France declared a state of emergency essentially with the purpose of preventing other attacks. And if substantial human and material means have indeed been dedicated to the fight against Islamic terrorism, at home and abroad, very little has been done to act on the process of radicalization of a part of the population in which terror networks find most of their recruits. The sole center of deradicalization, endowed with a meagre 2.5 million Euro, was empty when it opened and has since then been closed. The same is true about climate change and ecological emergencies — contemporary democracies devote huge means to disaster relief and recovery and too little to cope with the underlying processes.

To account for the reality of global emergencies, we suggest distinguishing between short-term, localized and time limited emergencies (events) and long-term, slow burning,

⁴⁷ Федеральный Конституционный закон от 30 мая 2001 года N 3-ФКЗ " О чрезвычайном положении" // Российская газета. [Электронный ресурс] URL: <https://rg.ru/2001/06/02/chp-dok.html> (дата обращения: 30.05.2018).

unspectacular and virtually indefinite emergencies (processes) — the former being, most of the time, the obvious and violent manifestation of the latter. And these processes far from being linear and limited to a specific field as implicitly presents the classical approach to emergencies tend to be nonlinear and iterative. They develop themselves in increment, mutate and very often includes feedback loops — climate change being once again a case in point — increasing the difficulty to assess them properly and take adequate action. The deep interconnection, and the increased complexity of modern world arising from globalization and scientific progress changed the nature of emergencies which are not linear and contained to a specific sector and area any more. Modern crisis tends to spill over and affect many sectors if not the entire society. In this sense, global emergencies tend more and more to be total emergencies.

In view of what precedes, we suggest a new definition of global emergencies which could be the following: a process whose impact, objectively assessed, is imminent in the sense that it could occur, or become irreversible, before ordinary decision making could produce significant effects.

Emergency = urgency ($x+y>I$) + quantified impact + unfolding process

This paper believes such a shift in the perception of contemporary emergencies would have far reaching implications in terms of emergency management. Firstly, emergency would be managed over the long-run. Instead of short-term management, the fight against emergencies would evolve towards long-term regulations of lasting emergencies. Secondly, the determination of what constitutes an emergency would be less subjective and real priorities could emerge with a better resource allocation. Emergency management would at last exit the Schmittian paradigm: emergencies would impose themselves on the sovereign. And finally, it would ensure a greater continuity as it would prove more difficult and politically costly for a government to discontinue the fight against a given emergency as it is currently happening in the USA with withdrawal from the Paris agreement. Of course, it would constitute only part of the solution to the bigger problem of the inadequacy of emergency management systems in liberal democracies. A broader reflection on the efficiency and adequacy of emergency decision making and emergency provisions is necessary. Moreover, to be effective this new conception of what is an emergency should receive a convincing implementation in the various emergency legislations. Which body should declare and assess emergencies? Should it be an independent board — like the

ministry of future advocated by some scholars⁴⁸ — and according to which rules? The redefinition of emergencies raises many theoretical as well as practical questions going well beyond the scope of the present paper.

Conclusion

Changing the conceptual approach to emergencies will not solve pressing issues such as climate change overnight. Though, the redefinition of what constitutes an emergency is in our view a necessary step in the necessary emergency management overhaul and using the vast normative and financial resources that modern democracies devote to emergency management to face the real global challenges of the XXI century. Redefining emergencies could be the first step toward the emergence of an environmental state of emergency that might prove the last resort to effectively fight ecological challenges while preserving our democracies. Undoubtedly, the enlargement of the field of emergency rule to ecological emergencies would be opposed by those who believe contemporary democracies are slipping towards states of permanent emergencies. To those opposing emergency measures let's remind that the possible alternatives, authoritarian regimes, green dictatorship or generalized chaos, are even less appealing.

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Boussier R.

Climate Change and Emergency. Towards Redefinition of Emergency Concept

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Annotation

Climate change and ecological emergencies are widely recognized to be a daunting challenge for modern democracies. But despite the magnitude of the already materializing human and material threats, democratic states are not resorting to emergency rule as they do to fight other emergencies such as terrorism or financial crisis. This paper argues that one of the main reason of democracies' passivity lies in an obsolete perception of what constitutes an emergency justifying the use of emergency powers. We believe a redefinition of the concept, focusing on processes instead of events, on objective impact assessment and on an extended notion of urgency, is a prerequisite to enhance democratic efficiency in the fight against global emergencies such as climate change.

Key words

Emergency, emergency decision making, democratic effectiveness, climate change, global emergencies.