War Powers Clauses: A Globally Comparative Perspective Based on 191 Constitutions

Yue Zhu
Graduate School of Chinese Academy of Social Sciences, Beijing, China
Email: aonis@qq.com

Abstract
The restriction of war powers is one of the core functions of model constitutions. War powers clauses, relating to the distribution of the powers to decide on, declare and lead war, are basic constitutional instruments for control over war. Through a global survey of war powers clauses based on a comprehensive review of 191 constitutions in force, the article found that, although war powers clauses vary, some common techniques, models and logics can be found. Three models are built to describe the relationship between the power to decide whether to go to war and the power to declare war. The article also provided a statistical view on the commonalities of the functional distribution of war powers in making the proposal of war, approving the bill of war, and deciding whether to go to war in the absence of the legislative branch. In addition, given that in most nations, the head of state doubles as commander-in-chief, the abuse of war powers by commanders-in-chief, following the example of some western nations since World War II, may result in unrestricted undeclared wars, which implies a return to authoritarianism in war-making and poses a growing challenge to the constitutional restriction of contemporary war powers.

Keywords
Commander-in-Chief, Constitution, Deciding War, Declaring War, War Powers Clause

1. Introduction
Wars result from a complex set of calculations by domestic actors in two or more different states (Fearon, 1995). One of the overall goals of a constitution is to prevent government officials from needlessly disturbing the peace. Thus, the
restriction of war powers is one of the core functions of model constitutions. Historically, the power to make war was a monarchical prerogative. Only the individuals in the most powerful positions, such as the emperor, Khalifa, king, or queen, had the power to decide whether to go to war and declare war. Many arguments of legal controlling war powers occurred throughout the history of political and legal theory. Niccolò Machiavelli, John Locke, Montesquieu and de Tocqueville all argued that the executive should be able to decide autonomously over the deployment of armed forces (Owens & Pelizzo, 2009). Given that only a civilian legislative could assure civil supremacy and political accountability, American framers such as James Madison tried to establish a better system of war powers aiming to “chain the dogs of war” by shifting the powers from a monarchical prerogative to a constitutional authority (Wormuth & Firmage, 1989). Most current constitutionalists concur that war powers are constitutional powers that must be exercised consistently with limits and with prudence (Franklin, 2010). The constitutional provisions on making war are often called war powers clauses that authorize the head of state, the executive branch or the legislative branch to decide whether to go to war, declare war and lead the military.

Many comparative studies of war powers show constitutional assignment of war powers notably affects their war making processes. Damrosh (1995) argued that the body of experience of the mature democracies in their war-and-peace decisions reflects a common core of commitment to democratic accountability. Martinez (2006) argued that the power to wage war is intrinsically “executive” in nature by a comparative study of British and German parliamentary systems, the semi-presidential French system, and the presidential Mexican and South Korean system. Wagner, Peters and Glahn (2010) described the decision-making power that parliaments possess before troops can be deployed by their governments in 49 country studies. Dieterich, Hummel and Marschall (2010) present a survey of parliamentary “war powers” based on a comprehensive and detailed review of the degrees and institutional forms of parliamentary involvement in military security policy-making. Ginsburg (2014) argued that constitutions continue to allocate the power of declaring war, even though such declarations have become meaningless in international law and showed a trend toward specifying legislative involvement in approving the actions of commanders-in-chief. Those researches have pioneered this form of comparative study of constitutional control of war powers.

This article examines that the internal structure of constitutional war-making power leads to war selection. A cross-national analysis of constitutional control over war and a comparative understanding of war powers clauses can help us explore the constitutional role in the exercise of war powers and find that some nations share certain basic models that distinguish them from other nations in the decision-making processes of peace and war. By searching the keywords “war/military/armed/defense/invasion” and later manually screening the results, the article analysed the war powers clauses of all 185 codified constitu-
tions\(^1\) and 6 uncodified constitutions\(^2\) in force. Partially recognized regimes and dependent territories such as Samoa, Aruba and Virgin Islands are not in the scope of the analysis. All constitution texts are downloaded from the website “constituteproject.org”. In thinking about the optimal Peace-oriented constitutional design, the article tries to explain whether constitutional assignment of war powers may effect the propensity of states to enter into conflict.

In the following sections, the article first introduces the three basic models of the powers to decide on and declare war: the democratic model, the semi-democratic model and the dictatorship model. It then engages in a descriptive exercise demonstrating the allocation of war powers by providing a comparative analysis to show who makes the proposal of war, who approves the bill of war, and who decides whether to go to war in the absence of a legislative branch. Finally, based on the example of the United States, the article argues that the abuse of war powers by commanders-in-chief may result in unrestricted undeclared wars, implying a return to authoritarianism in war-making.

Nevertheless, it should be mentioned that the article only analysed war powers clauses in a comparative study of constitution texts. However, in those nations with nominal and semantic constitutions\(^3\), contents of constitution are not always corresponding to the reality, and the exercising of war powers in those nations are beyond the scope of this research. Of course, these analyses based on statistical data may not be comprehensive and self-explanatory in describing the major constitutional factors in war-making. In addition to the powers to decide whether to go to war, declare war and lead war, there are other clauses that re-

\(^1\)Listed in alphabetical order: Afghanistan, Albania, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Chad, Chile, China, Colombia, Comoros, The Democratic Republic of the Congo, Costa Rica, Côte d’Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hungary, Iceland, India, Indonesia, Iran, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Kiribati, The Democratic People’s Republic of Korea, The Republic of Korea, Kosovo, Kuwait, Kyrgyzstan, the Lao People’s Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Lithuania, Luxemburg, Macedonia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Micronesia, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senega, Serbia, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, South Sudan, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, Ukraine, United Arab Emirates, the United Kingdom, the United States of America, Uruguay, Uzbekistan, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

\(^2\)The United Kingdom, Canada, Germany, Israel, New Zealand, Saudi Arabia.

\(^3\)Karl Loewenstein distinguishes constitutions in three typologies: normative, nominal, semantic. A nominal constitution is like a suit which “for the time being, hangs in the closet, to be worn when the national body politic has grown into it”; and in the case of a semantic constitution “the suit is not an honest suit at all; it is merely a cloak or a fancy dress”.
strict war, such as the budget process, the audit and oversight mechanisms, the chain of the military command system, and the relationship between civil and military authorities (Ginsburg, 2014). What’s more, a few constitutions have banned war. Japan outlaws war as a means to settle international disputes. Algeria\(^4\), Azerbaijan\(^5\), Bahrain\(^6\), Germany, Italy\(^7\), the Republic of Korea\(^8\), Kuwait\(^9\), Qatar\(^10\) and United Arab Emirates\(^11\) definitely prohibit aggressive war.

2. Three Basic Models of Powers to Decide and Declare War

By a comparative study of the 185 codified and 6 uncodified constitutions in force, the article has found that 127 (66.49% of 191) constitutions have clauses on the decision or declaration of war, and these can be classified into three basic models: Democratic model: A legislative body such as parliament, congress, or national assembly makes the decision whether to go to war and the declaration of war. Semi-democratic model: A public person such as the head of state or an organ of the executive branch declares war with the endorsement decided by a collective such as the congress. Dictatorship model: The head of state can decide whether to go to war and declare war on his/her own. Given that some constitutions do not mention the power to decide whether to go to war but only the power to declare war, if the constitution does not authorize other organs the power to decide whether to go to war, the article presumes that whoever can declare war also has the power to decide whether to go to war. However, a few nations cannot be described by these three models. In Israel\(^12\), Lebanon\(^13\) and Papua New Guinea\(^14\), the state may only begin a war pursuant to a government decision. In the United Arab Emirates\(^15\), the Supreme Council, the highest legislative and executive body, approves war.

2.1. Democratic Model

The democratic model is a model in which the legislative branch has the power to decide whether to go to and declare war. As Table 1 shows below, 26 (20.47% of 127) nations follow the democratic model:

The War Powers Clause of the United States Constitution is the first and most typical clause of this model. As James Wilson explained, “It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large” (Elliot,
Table 1. Nations following the democratic model.

<table>
<thead>
<tr>
<th>Continent</th>
<th>Nation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>4: Ethiopia\textsuperscript{16}, Liberia\textsuperscript{17}, Madagascar\textsuperscript{18}, Morocco\textsuperscript{19}</td>
</tr>
<tr>
<td>Asia</td>
<td>4: Bahrain\textsuperscript{20}, Iraq\textsuperscript{21}, Mongolia\textsuperscript{22}, Philippines\textsuperscript{23}</td>
</tr>
<tr>
<td>Europe</td>
<td>11: Albania\textsuperscript{24}, Austria\textsuperscript{25}, Belarus\textsuperscript{26}, Czech Republic\textsuperscript{27}, Estonia\textsuperscript{28}, Hungary\textsuperscript{29}, Moldova\textsuperscript{30}, Montenegro\textsuperscript{31}, Poland\textsuperscript{32}, Romania\textsuperscript{33}, Serbia\textsuperscript{34}</td>
</tr>
<tr>
<td>North America</td>
<td>4: Cuba\textsuperscript{35}, Guatemala\textsuperscript{36}, Honduras\textsuperscript{37}, United States\textsuperscript{38}</td>
</tr>
<tr>
<td>South America</td>
<td>1: Uruguay\textsuperscript{39}</td>
</tr>
<tr>
<td>Transcontinental</td>
<td>2: Panama\textsuperscript{40}, Turkey\textsuperscript{41}</td>
</tr>
</tbody>
</table>

To ensure that the decision to initiate hostilities would not be made by the arbitrary order of a single person but instead collectively by a deliberative and politically accountable judgement of the legislature, Article I, Section 8 assigns to Congress the power to declare war and to raise and fund the armed forces. Furthermore, the Constitution vests in Congress the authority to grant letters of marque and reprisal to privateers to use force or to seize enemy property in retaliation for an injury to the United States. The democratic model changes the propensity of nations to become involved in war. It lays the grounds for political accountability for war by requiring the congress to make war power decisions and declarations transparently and deliberately by the complex and lengthy legislative bargaining process of approval (The Constitution Project, 2005). As Carl von Clausewitz said, “War is the continuation of politics by other means”, the most important function of this model is to avoid war waged by

\textsuperscript{16}Ethiopia Constitution, art 77.  
\textsuperscript{17}Liberia Constitution, art 34.  
\textsuperscript{18}Madagascar Constitution, art 95.  
\textsuperscript{19}Morocco Constitution, art 49.  
\textsuperscript{20}Bahrain Constitution, art 36(A).  
\textsuperscript{21}Iraq Constitution, art 61.  
\textsuperscript{22}Mongolia Constitution, art 25(1).  
\textsuperscript{23}Philippines Constitution, art 5, sec 23(1).  
\textsuperscript{24}Albania Constitution, art 171.  
\textsuperscript{25}Austria Constitution, art 38.  
\textsuperscript{26}Belarus Constitution, art 97.  
\textsuperscript{27}Czech Republic Constitution, art 43.  
\textsuperscript{28}Estonia Constitution, art 65 and 78.  
\textsuperscript{29}Hungary Constitution, art 12.  
\textsuperscript{30}Moldova Constitution, art 66.  
\textsuperscript{31}Montenegro Constitution, art 132.  
\textsuperscript{32}Poland Constitution, art 116(1).  
\textsuperscript{33}Romania Constitution, art 65.  
\textsuperscript{34}Serbia Constitution, art 201.  
\textsuperscript{35}Cuba Constitution, art 75 and 90.  
\textsuperscript{36}Guatemala Constitution, art 171.  
\textsuperscript{37}Honduras Constitution, art 205.  
\textsuperscript{38}The United States of America Constitution, art 1, sec 8.  
\textsuperscript{39}Uruguay Constitution, art 85.  
\textsuperscript{40}Panama Constitution, art 159.  
\textsuperscript{41}Turkey Constitution, art 87 and 92.
over-zealous and irrational politicians and guard against the abuse of power. Meanwhile, this model could promote the transparency of decision-making. Congressional deliberation and debate can be a crucial mechanism for transmitting information to the public, possibly generating support (Ginsburg & Diehl, 2006). Moreover, vesting these powers in a legislative body meant that the widely preventive collective, the body most directly responsive to voters, had to strive for the widest possible political consensus and civilian support for waging a war.

2.2. Semi-Democratic Model

A semi-democratic model is a model in which the legislative branch can decide whether to go to war, and the head of state or the executive branch can declare war with the endorsement of the legislative branch. It differs from the democratic model in that both the legislative branch and the executive branch/head of state are responsible for waging war. In many nations, although the legislative branch can approve the decree deciding whether to go to war, the president or the council has the power to reject (the bill of) the declaration of war. As Table 2 shows below, 68 (53.54% of 127) nations are classified under the semi-democratic model.

<table>
<thead>
<tr>
<th>Continent</th>
<th>Nation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>23: Benin42, Burkina Faso43, Cape Verde44, Chad45, Democratic Republic of the Congo46, Côte d’Ivoire47, Djibouti48, Eritrea49, Gabon50, Gambia51, Guinea52, Guinea-Bissau53, Kenya54, Niger55, Nigeria56, Rwanda57, Sao Tome and Principe58, Sierra Leone59, South Sudan60, Togo62, Tunisia63, Uganda64</td>
</tr>
</tbody>
</table>

42Benin Constitution, art 101.
43Burkina Faso Constitution, art 106.
44Cape Verde Constitution, art 148 and 160.
45Chad Constitution, art 123.
46The Democratic Republic of the Congo Constitution, art 86.
47Côte d’Ivoire Constitution, art 104.
48Djibouti Constitution, art 61.
49Eritrea Constitution, art 27(1), art 32.
50Gabon Constitution, art 49.
51Gambia Constitution, ch 6, pt 3(79).
52Guinea Constitution, art 91.
53Guinea-Bissau Constitution, art 68, art 85.
54Kenya Constitution, ch 8, pt 1(95) and 2(132).
55Niger Constitution, art 104.
56Nigeria Constitution, ch 1, pt 2(5).
57Rwanda Constitution, art 134.
58Sao Tome and Principe Constitution, art 76 and 86.
59Sierra Leone Constitution, ch 5, pt 1(40)
60South Sudan Constitution, art 55 and 101.
61Tanzania Constitution, art 44.
62Togo Constitution, art 72 and 93.
63Tunisia Constitution, art 77.
64Uganda Constitution, art 124(1).
Continued

Asia
13: Afghanistan, Azerbaijan, Cambodia, China, Indonesia, the Republic of Korea, Maldives, Myanmar, Syrian Arab Republic, Thailand, Timor-Leste, Uzbekistan, Vietnam

Europe
18: Bulgaria, Croatia, Cyprus, Denmark, Finland, France, Italy, Kyrgyzstan, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovakia, Spain, Sweden, the United Kingdom, Ukraine

North America
4: Costa Rica, El Salvador, Haiti, Mexico

Oceania
Tonga

South America
7: Argentina, Brazil, Chile, Colombia, Peru, Sudan, Suriname

Transcontinental
2: Armenia, Egypt

In most of these countries, the head of state, such as the king or president,
declares war according to the constitutional procedure based on the authorization of the legislative branch. Although the United Kingdom does not have one specific constitutional document named as such, the prime minister alone has the authority to send troops to war using royal prerogative powers that are decided by the parliament and declared by the queen (Haddon, 2013). What is worth mentioning is that in Armenia and Sweden, it is not the head of state but the government that declares war based upon the legislature’s decision. In addition, the Netherlands declares war by a royal decree signed by the king and by one or more ministers or state secretaries.

The article also finds that the constitutions of 11 nations have statutes about who decides whether to go to war but do not mention who declares it. These countries are Bangladesh109, Georgia110, Ireland111, Kazakhstan112, the Lao People’s Democratic Republic113, Macedonia114, Mali115, Mauritania116, Senegal117, Slovenia118, and Venezuela119. However, in these nations, the declaration of war is in the form of decrees or ordinances that are signed and pronounced by the head of state or the leader of government. Thus, they could be seen as a special category of the semi-democratic model. In all, this model includes 26 African nations, 16 Asian nations, 22 European nations, 5 North American nations, 8 South American nations, 1 Oceanian nation and 1 transcontinental nation, 79 (62.2% of 127) in total.

In the semi-democratic model, making war requires the head of state/executive branch and the legislative branch to cooperate and come to a consensus. Otherwise, as shown below, in 63 (79.75% of 79) nations, the head of state or the executive branch could exercise veto power to reject what the legislative branch has approved and return the bill to the legislature: Afghanistan120, Armenia121, Argentina122, Azerbaijan123, Bangladesh124, Brazil125, Bulgaria126, Burkina Faso127, Cape Verde128, Chad129, Chile130, Colombia131, Costa Rica132, Côte

109Bangladesh Constitution, art 63.  
110Georgia Constitution, art 62.  
111Ireland Constitution, art 28.  
112Kazakhstan Constitution, art 53.  
113The Lao People’s Democratic Republic Constitution, art 53.  
114Macedonia Constitution, art 124.  
115Mali Constitution, art 71.  
116Mauritania Constitution, art 58.  
117Senegal Constitution, art 70.  
118Slovenia Constitution, art 92.  
120Afghanistan Constitution, art 94.  
121Armenia Constitution, art 139.  
122Argentina Constitution, art 83.  
123Azerbaijan Constitution, art 110.  
124Bangladesh Constitution, art 80.  
125Brazil Constitution, art 66.  
126Bulgaria Constitution, art 101.  
127Burkina Faso Constitution, art 48.  
128Cape Verde Constitution, art 149.  
129Chad Constitution, art 81.  
130Chile Constitution, art 73.  
131Colombia Constitution, art 165.  
132Costa Rica Constitution, art 125.
d’Ivoire\textsuperscript{133}, the Democratic Republic of the Congo\textsuperscript{134}, Croatia\textsuperscript{135}, Cyprus\textsuperscript{136}, Djibouti\textsuperscript{137}, Egypt\textsuperscript{138}, El Salvador\textsuperscript{139}, Finland\textsuperscript{140}, France\textsuperscript{141}, Gabon\textsuperscript{142}, Gambia\textsuperscript{143}, Guinea\textsuperscript{144}, Guinea-Bissau\textsuperscript{145}, Haiti\textsuperscript{146}, Honduras\textsuperscript{147}, Italy\textsuperscript{148}, Kenya\textsuperscript{149}, the Republic of Korea\textsuperscript{150}, Kyrgyzstan\textsuperscript{151}, Latvia\textsuperscript{152}, Lithuania\textsuperscript{153}, Maldives\textsuperscript{154}, Mexico\textsuperscript{155}, Myanmar\textsuperscript{156}, Netherlands\textsuperscript{157}, Niger\textsuperscript{158}, Nigeria\textsuperscript{159}, Portugal\textsuperscript{160}, Rwanda\textsuperscript{161}, Sao Tome and Principe\textsuperscript{162}, Sierra Leone\textsuperscript{163}, Slovakia\textsuperscript{164}, Sudan\textsuperscript{165}, Tanzania\textsuperscript{166}, Thailand\textsuperscript{167}, Timor-Leste\textsuperscript{168}, Togo\textsuperscript{169}, Tonga\textsuperscript{170}, Tunisia\textsuperscript{171}, Uganda\textsuperscript{172}, Ukraine\textsuperscript{173}, Uzbekistan\textsuperscript{174}, Georgia\textsuperscript{175}, Ireland\textsuperscript{176}, Kazakhstan\textsuperscript{177}, the Lao People’s Democratic Republic\textsuperscript{178}, Macedonia\textsuperscript{179}, Mali\textsuperscript{180}, Mauritania\textsuperscript{181}, Mauritius\textsuperscript{182}, Montenegro\textsuperscript{183}, Morocco\textsuperscript{184}, Mozambique\textsuperscript{185}, Namibia\textsuperscript{186}, Nepal\textsuperscript{187}, Netherlands\textsuperscript{188}, Nicaragua\textsuperscript{189}, Nigeria\textsuperscript{190}, Norway\textsuperscript{191}, Oman\textsuperscript{192}, Pakistan\textsuperscript{193}, Panama\textsuperscript{194}, Peru\textsuperscript{195}, Philippines\textsuperscript{196}, Poland\textsuperscript{197}, Portugal\textsuperscript{198}, Qatar\textsuperscript{199}, Romania\textsuperscript{200}, Russia\textsuperscript{201}, Rwanda\textsuperscript{202}, Saint Kitts and Nevis\textsuperscript{203}, Saint Lucia\textsuperscript{204}, Saint Vincent and the Grenadines\textsuperscript{205}, San Marino\textsuperscript{206}, Samoa\textsuperscript{207}, Saudi Arabia\textsuperscript{208}, Senegal\textsuperscript{209}, Serbia\textsuperscript{210}, Seychelles\textsuperscript{211}, Sierra Leone\textsuperscript{212}, Singapore\textsuperscript{213}, Slovakia\textsuperscript{214}, Slovenia\textsuperscript{215}, Solomon Islands\textsuperscript{216}, South Africa\textsuperscript{217}, South Korea\textsuperscript{218}, South Sudan\textsuperscript{219}, Spain\textsuperscript{220}, Sri Lanka\textsuperscript{221}, Sudan\textsuperscript{222}, Suriname\textsuperscript{223}, Sweden\textsuperscript{224}, Switzerland\textsuperscript{225}, Syria\textsuperscript{226}, Taiwan\textsuperscript{227}, Tanzania\textsuperscript{228}, Thailand\textsuperscript{229}, Timor-Leste\textsuperscript{230}, Tonga\textsuperscript{231}, Trinidad and Tobago\textsuperscript{232}, Turkey\textsuperscript{233}, Turkmenistan\textsuperscript{234}, Tuvalu\textsuperscript{235}, Uganda\textsuperscript{236}, Ukraine\textsuperscript{237}, United Arab Emirates\textsuperscript{238}, United Kingdom\textsuperscript{239}, United States\textsuperscript{240}, Uruguay\textsuperscript{241}, Uzbekistan\textsuperscript{242}, Venezuela\textsuperscript{243}, Vietnam\textsuperscript{244}, Yemen\textsuperscript{245}, Zambia\textsuperscript{246}, Zimbabwe\textsuperscript{247}.

\textsuperscript{133}Côte d’Ivoire Constitution, art 74.
\textsuperscript{134}The Democratic Republic of the Congo Constitution, art 137.
\textsuperscript{135}Croatia Constitution, art 89.
\textsuperscript{136}Cyprus Constitution, art 48.
\textsuperscript{137}Djibouti Constitution, art 34.
\textsuperscript{138}Egypt Constitution, art 123.
\textsuperscript{139}El Salvador Constitution, art 137.
\textsuperscript{140}Finland Constitution, sec 77.
\textsuperscript{141}France Constitution, art 10.
\textsuperscript{142}Gabon Constitution, art 17.
\textsuperscript{143}Gambia Constitution, art 100.
\textsuperscript{144}Guinea Constitution, art 79.
\textsuperscript{145}Guinea-Bissau Constitution, art 69.
\textsuperscript{146}Haiti Constitution, art 144.
\textsuperscript{147}Honduras Constitution, art 216.
\textsuperscript{148}Italy constitution, art 74.
\textsuperscript{149}Kenya Constitution, art 115.
\textsuperscript{150}The Republic of Korea Constitution, art 53.
\textsuperscript{151}Kyrgyzstan Constitution, art 64.
\textsuperscript{152}Latvia Constitution, art 71.
\textsuperscript{153}Lithuania Constitution, art 71.
\textsuperscript{154}Maldives Constitution, art 91.
\textsuperscript{155}Mexico Constitution, art 72.
\textsuperscript{156}Myanmar Constitution, art 105.
\textsuperscript{157}Netherlands Constitution, art 87.
\textsuperscript{158}Niger Constitution, art 58.
\textsuperscript{159}Nigeria Constitution, art 58.
\textsuperscript{160}Portugal Constitution, art 136.
\textsuperscript{161}Rwanda Constitution, art 106.
\textsuperscript{162}Sao Tome and Principe Constitution, art 77.
\textsuperscript{163}Sierra Leone Constitution, art 87.
\textsuperscript{164}Slovakia Constitution, art 91.
\textsuperscript{165}The United Republic of Tanzania Constitution, art 97.
\textsuperscript{166}Thailand Constitution, sec 146.
\textsuperscript{167}Timor-Leste Constitution, art 88.
\textsuperscript{168}Togo Constitution, art 67.
\textsuperscript{169}Tonga Constitution, art 68.
\textsuperscript{170}Tunisia Constitution, art 81.
\textsuperscript{171}Uganda Constitution, art 91.
\textsuperscript{172}Ukraine Constitution, art 94.
\textsuperscript{173}Uzbekistan Constitution, art 84.
\textsuperscript{174}Georgia Constitution, art 68.
\textsuperscript{175}Ireland Constitution, art 27.
\textsuperscript{176}Kazakhstan Constitution, art 44.
\textsuperscript{177}The Lao People’s Democratic Republic Constitution, art 60.
\textsuperscript{178}Macedonia Constitution, art 75.
\textsuperscript{179}Mali Macedonia Constitution, art 40.
tania\textsuperscript{181}, and Venezuela\textsuperscript{182}. In many of these countries, despite rejection by the head of state, if the bill or draft referring to war-making can be approved again by a supermajority of two-thirds of the legislature such as the parliament, congress, or national assembly, the bill is considered endorsed and enforceable. In addition, in some nations such as Ireland, the exercising of veto can put a bill or draft law by the legislative branch to a vote by referendum. These provisions, of course, further increase the prudence and deliberation of war-making.

2.3. Dictatorship Model and Nations without Clauses of Deciding and Declaring War

As the name suggests, in the dictatorship model, a single person (usually the executive head of state) has nearly unlimited power to initiate war, while the legislative and executive branches can usually pose very limited restrictions on him/her. As Table 3 shows below, 18 (14.17\% of 127) nations follow the dictatorship model (listed in alphabetical order).

In such nations, the legislature can participate in the process of deciding whether to go to war only by providing advice to the head of state, such as through an advisory committee. For example, in Mozambique, the Council of State shall compulsorily advise the President of the Republic on war and peace affairs whenever the President requests such advice. Correspondingly, the duty of the executive head of state is to notify and inform the legislature with clarifications.

<table>
<thead>
<tr>
<th>Continent</th>
<th>Nation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>8: Algeria\textsuperscript{183}, Angola\textsuperscript{184}, Burundi\textsuperscript{185}, Equatorial Guinea\textsuperscript{186}, Mozambique\textsuperscript{187}, Somalia\textsuperscript{188}, Zambia\textsuperscript{189}, Zimbabwe\textsuperscript{190}</td>
</tr>
<tr>
<td>Asia</td>
<td>8: Iran\textsuperscript{191}, Jordan\textsuperscript{192}, the Democratic People’s Republic of Korea\textsuperscript{193}, Kuwait\textsuperscript{194}, Oman\textsuperscript{195}, Qatar\textsuperscript{196}, Saudi Arabia\textsuperscript{197}, Sri Lanka\textsuperscript{198}</td>
</tr>
<tr>
<td>Europe</td>
<td>2: Belgium\textsuperscript{199}, Greece\textsuperscript{200}</td>
</tr>
</tbody>
</table>

\textsuperscript{181}Mauritania Constitution, art 70.
\textsuperscript{182}Venezuela Constitution, art 214.
\textsuperscript{183}Algeria Constitution, art 109.
\textsuperscript{184}Angola Constitution, art 119.
\textsuperscript{185}Burundi Constitution, art 110.
\textsuperscript{186}Equatorial Guinea Constitution, art 41.
\textsuperscript{187}Mozambique Constitution, art 161 and 166.
\textsuperscript{188}Somalia Constitution, art 71 and 90.
\textsuperscript{189}Zambia Constitution, art 29.
\textsuperscript{190}Zimbabwe Constitution, art 111.
\textsuperscript{191}The Islamic Republic of Iran Constitution, art 110.
\textsuperscript{192}Jordan Constitution, art 33.
\textsuperscript{193}The Democratic People’s Republic of Korea Constitution, art 103.
\textsuperscript{194}Kuwait Constitution, art 68.
\textsuperscript{195}Oman Constitution, art 42.
\textsuperscript{196}Qatar Constitution, art 70 and 71.
\textsuperscript{197}Basic Law of Saudi Arabia, art 61.
\textsuperscript{198}Sri Lanka Constitution, art 33(2).
\textsuperscript{199}Belgium Constitution, art 167(1).
\textsuperscript{200}Greece Constitution, art 36.
whenever the interest and the security of the nation thus allow. In this model, there are usually very limited restrictions on those with the powers of making war. In some nations, such as Algeria, Angola, and Burundi, before declaring war, the president should consult with the legislature. For example, in Algeria, before declaring war, the president has to convene the Council of Ministers, hear the High Council of Security and consult with the President of the Council of the Nation and the President of the People’s National Assembly. In Zimbabwe, although the president has the power to declare war, there is a rejection process by which the Senate and the National Assembly, by a joint resolution passed by at least two-thirds of the total membership of Parliament, can resolve that the declaration of war should be revoked. In short, this model insists that an individual judgement would be superior to a collective judgement, which may cause the nation to go to war without a political consensus. Moreover, without a required bargaining process, the head of the state would have no obligation to explain why war was necessary to the public, who would ultimately bear its cost. An empirical study shows that democracies are highly effective and indeed more successful than those dictatorship nations in similar circumstances (Schultz, 2001).

Meanwhile, as Table 4 shows below, there are 63 (32.98% of 191) nations whose powers to decide whether to go to and declare war have not been regulated by their constitutions.

In brief, in 63 nations, including powerful military nations such as Russia, India, and Pakistan, waging a war may not require constitutional authorization by a widely preventive collective.

### 3. A Global Comparative Study of the Assignment of War Powers

In the nations following the democratic and semi-democratic models, waging a

<table>
<thead>
<tr>
<th>Continent</th>
<th>Nation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>12: Botswana, Cameroon, Comoros, Ghana, Lesotho, Libya, Malawi, Mauritius, Namibia, Seychelles, South Africa, Swaziland</td>
</tr>
<tr>
<td>Asia</td>
<td>10: Bhutan, Brunei Darussalam, India, Japan, Malaysia, Nepal, Pakistan, Singapore, Tajikistan, Turkmenistan, Yemen (Japan outlaws war)</td>
</tr>
<tr>
<td>Europe</td>
<td>10: Andorra, Bosnia and Herzegovina, Germany, Iceland, Kosovo, Liechtenstein, Malta, Monaco, Norway, Switzerland (Germany outlaws aggressive war)</td>
</tr>
<tr>
<td>North America</td>
<td>13: Antigua and Barbuda, Bahamas, Barbados, Belize, Canada, Dominica, Dominican Republic, Grenada, Jamaica, Nicaragua, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines</td>
</tr>
<tr>
<td>Oceania</td>
<td>12: Australia, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, New Zealand, Palau, Samoa, Solomon Islands, Tuvalu, Vanuatu</td>
</tr>
<tr>
<td>South America</td>
<td>5: Bolivia, Ecuador, Guyana, Paraguay, Trinidad and Tobago</td>
</tr>
<tr>
<td>Transcontinental</td>
<td>1: Russia</td>
</tr>
</tbody>
</table>
war requires specific constitutional procedures that would prevent the nation from entering into conflict without a full deliberative process in which the justice, necessity, facts, and aims of the war could be fully reviewed before each member of the legislative branch solemnly stepped forward and cast their vote on the matter. In the comparative analysis of the descriptive data from the 26 nations of the democratic model and the 79 nations of the semi-democratic model, the article tries to find common characteristics among those who make the proposal of war, those who approve the bill of war, and whose who decide to go to war in the absence of the legislative branch.

3.1. Comparative Study of Making the Proposal to Wage a War

Statistical data show that 23 (21.9% of 105) nations have special procedural requirements for making the proposal to wage a war. As Table 5 shows below, there are 3 major categories: proposal by the president, proposal by the government and proposal with mandatory consultation requirements. In the first category, the president’s proposal to make war is the prerequisite before the legislature makes the declaration of war. In the second category, the legislative branch declares war following a government proposal. In the third category, consultation with specific executive organs such as the council of ministers or the national defence council or relevant reports by executive organs is the prerequisite for a decision of war made by the legislative branch.

Table 5. Distribution of powers to propose a war bill.

<table>
<thead>
<tr>
<th>Category</th>
<th>Nations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposal by the president</td>
<td>9: Azerbaijan(^{201}), Albania(^{202}), Chile(^{203}), Estonia(^{204}), Mexico(^{205}), Rwanda(^{206}), Sierra Leone(^{207}), Tanzania(^{208}), Ukraine(^{209})</td>
</tr>
<tr>
<td>Proposal by the government</td>
<td>6: Armenia(^{210}), Ethiopia(^{211}), Portugal(^{212}), Slovakia(^{213}), Timor-Leste(^{214}), Slovenia(^{215})</td>
</tr>
<tr>
<td>Proposal with mandatory consultation</td>
<td>4: Congo(^{216}), Egypt(^{217}), El Salvador(^{218}), the Republic of Korea(^{219})</td>
</tr>
</tbody>
</table>

\(^{201}\)Azerbaijan Constitution, art 95.
\(^{202}\)Albania Constitution, art 171.
\(^{203}\)Chile Constitution, art 63.
\(^{204}\)Estonia Constitution, art 65.
\(^{205}\)Mexico Constitution, art 73.
\(^{206}\)Rwanda Constitution, art 134.
\(^{207}\)Sierra Leone Constitution, art 40.
\(^{208}\)Tanzania Constitution, art 44.
\(^{209}\)Ukraine Constitution, art 85.
\(^{210}\)Armenia Constitution, art 118.
\(^{211}\)Ethiopia Constitution, art 55.
\(^{212}\)Portugal Constitution, art 135.
\(^{213}\)Slovakia Constitution, art 119.
\(^{214}\)Timor-Leste Constitution, art 85.
\(^{215}\)Slovenia Constitution, art 92.
\(^{216}\)The Democratic Republic of the Congo Constitution, art 86.
\(^{217}\)Egypt Constitution, art 152.
\(^{218}\)El Salvador Constitution, art 131.
\(^{219}\)The Republic of Korea Constitution, art 89.
Four nations cannot be classified as above. In Morocco\textsuperscript{220}, the declaration of war takes place after communication of the king to the parliament. In Iraq\textsuperscript{221}, a joint request from the President of the Republic and the prime minister is the prerequisite of the declaration of war by the Council of Representatives. In Sudan\textsuperscript{222}, the proposal of making war is made by the president with the consent of the first vice president. In Macedonia\textsuperscript{223}, either the president or the government or at least 30 representatives can make such a proposal. In Cape Verde\textsuperscript{224}, the government’s request and consultation with the council are required before a decision of war is made.

3.2. Comparative Study of the Distribution of the Power to Approve War

The next question is who has the power to approve the war bill/decree. Before going to war, nations typically engage in what is known in the literature as crisis bargaining, a communicative process of signalling about capabilities and resolve \cite{Reiter2003}. As Table 6 below shows, with the exceptions of the 18 nations of

\begin{table}[h]
\centering
\caption{Distribution of legislative powers to decide whether to go to war.}
\begin{tabular}{ll}
\hline
Type & Nation  \\
\hline
Both houses & 32 (29.36\% of 109): Argentina\textsuperscript{225}, Austria\textsuperscript{226}, Bahrain\textsuperscript{227}, Brazil\textsuperscript{228}, Cambodia\textsuperscript{229}, Czech Republic\textsuperscript{232}, France\textsuperscript{233}, Gabon\textsuperscript{234}, Georgia\textsuperscript{235}, Haiti\textsuperscript{236}, Italy\textsuperscript{237}, Kazakhstan\textsuperscript{238}, Kenya\textsuperscript{239}, Liberia\textsuperscript{240}, Madagascar\textsuperscript{241}, Mauritania\textsuperscript{242}, Mexico\textsuperscript{243}, Myanmar\textsuperscript{244}, Netherlands\textsuperscript{245}, Nigeria\textsuperscript{246},

\textsuperscript{220}Morocco Constitution, art 99.
\textsuperscript{221}Iraq Constitution, art 61.
\textsuperscript{222}Sudan Constitution, art 213.
\textsuperscript{223}The Republic of Macedonia Constitution, art 124.
\textsuperscript{224}Cape Verde Constitution, art 148.
\textsuperscript{225}Argentina Constitution, art 75.
\textsuperscript{226}Austria Constitution, art 38.
\textsuperscript{227}Bahrain Constitution, art 36.
\textsuperscript{228}Brazil Constitution, art 49.
\textsuperscript{229}Cambodia Constitution, art 24.
\textsuperscript{230}Chile Constitution, art 63.
\textsuperscript{231}The Democratic Republic of the Congo Constitution, art 86.
\textsuperscript{232}Czech Constitution, art 39.
\textsuperscript{233}France Constitution, art 35.
\textsuperscript{234}Gabon Constitution, art 49.
\textsuperscript{235}Georgia Constitution, art 62.
\textsuperscript{236}Haiti Constitution, art 93.
\textsuperscript{237}Italy Constitution, art 78.
\textsuperscript{238}Kazakhstan Constitution, art 53.
\textsuperscript{239}Kenya Constitution, art 132.
\textsuperscript{240}Liberia Constitution, art 34.
\textsuperscript{241}Madagascar Constitution, art 95.
\textsuperscript{242}Mauritania Constitution, art 58.
\textsuperscript{243}Mexico Constitution, art 73.
\textsuperscript{244}Myanmar Constitution, art 213.
\textsuperscript{245}Netherlands Constitution, art 96.
\textsuperscript{246}Nigeria Constitution, art 5.
\end{tabular}
\end{table}
Continued

Philippines\textsuperscript{247}, Romania\textsuperscript{248}, Rwanda\textsuperscript{249}, South Sudan\textsuperscript{250}, Sudan\textsuperscript{251}, Thailand\textsuperscript{252}, United States of America\textsuperscript{253}, United Kingdom, Uruguay\textsuperscript{254}, Uzbekistan\textsuperscript{255}

7(6.42\% of 109): Afghanistan\textsuperscript{256}, Belarus\textsuperscript{257}, Ethiopia\textsuperscript{258}, Indonesia\textsuperscript{259}, Iraq 2005\textsuperscript{260}, Ireland\textsuperscript{261}, Senegal\textsuperscript{262}

The lower house

1(0.92\% of 109): Colombia\textsuperscript{263}

63 (57.8\% of 109): Armenia\textsuperscript{264}, Azerbaijan\textsuperscript{265}, Bangladesh\textsuperscript{266}, Benin\textsuperscript{267}, Bulgaria\textsuperscript{268}, Burkina Faso\textsuperscript{269}, Cape Verde\textsuperscript{270}, Chad\textsuperscript{271}, China\textsuperscript{272}, Costa Rica\textsuperscript{273}, Croatia\textsuperscript{274}, Cuba\textsuperscript{275}, Cyprus\textsuperscript{276}, Denmark\textsuperscript{277}, Djibouti\textsuperscript{278}, Egypt\textsuperscript{279}, El Salvador\textsuperscript{280}, Eritrea\textsuperscript{281}, Estonia\textsuperscript{282}, Finland\textsuperscript{283}, Gambia\textsuperscript{284}, Guatemala\textsuperscript{285}, Guinea\textsuperscript{286}, Guinea-Bissau\textsuperscript{287}, Honduras\textsuperscript{288}, Hungary\textsuperscript{289}, the Republic of Korea\textsuperscript{290}, Kyrgyzstan\textsuperscript{291}, the Lao People's

\textsuperscript{247}Philippines Constitution, art 5, sec 23.

\textsuperscript{248}Romania Constitution, art 65.

\textsuperscript{249}Rwanda Constitution, art 134.

\textsuperscript{250}South Sudan Constitution, art 55.

\textsuperscript{251}Sudan Constitution, art 213.

\textsuperscript{252}Thailand Constitution, sec 156.

\textsuperscript{253}The United States of America Constitution, art 1, sec 8.

\textsuperscript{254}Uruguay Constitution, art 88.

\textsuperscript{255}Uzbekistan Constitution, art 78.

\textsuperscript{256}Afghanistan Constitution, art 64.

\textsuperscript{257}Belarus Constitution, art 97.

\textsuperscript{258}Ethiopia Constitution, art 77.

\textsuperscript{259}Indonesia Constitution, art 11.

\textsuperscript{260}Iraq Constitution, art 61.

\textsuperscript{261}Ireland Constitution, art 28.

\textsuperscript{262}Senegal Constitution, art 70.

\textsuperscript{263}Colombia Constitution, art 173.

\textsuperscript{264}Armenia Constitution, art 118.

\textsuperscript{265}Azerbaijan Constitution, art 95.

\textsuperscript{266}Bangladesh Constitution, art 63.

\textsuperscript{267}Benin Constitution, art 101.

\textsuperscript{268}Bulgaria Constitution, art 84.

\textsuperscript{269}Burkina Faso Constitution, art 106.

\textsuperscript{270}Cape Verde Constitution, art 148.

\textsuperscript{271}Chad Constitution, art 123.

\textsuperscript{272}China Constitution, art 62.

\textsuperscript{273}Costa Rica Constitution, art 121.

\textsuperscript{274}Croatia Constitution, art 80.

\textsuperscript{275}Cuba Constitution, art 75.

\textsuperscript{276}Cyprus Constitution, art 50.

\textsuperscript{277}Denmark Constitution, art 19.

\textsuperscript{278}Djibouti Constitution, art 61.

\textsuperscript{279}Egypt Constitution, art 152.

\textsuperscript{280}El Salvador Constitution, art 131.

\textsuperscript{281}Eritrea Constitution, art 32.

\textsuperscript{282}Estonia Constitution, art 65.

\textsuperscript{283}Finland Constitution, sec 93.

\textsuperscript{284}Gambia Constitution, art 79.

\textsuperscript{285}Guatemala Constitution, art 171.

\textsuperscript{286}Guinea Constitution, art 91.

\textsuperscript{287}Guinea-Bissau Constitution, art 85.

\textsuperscript{288}Honduras Constitution, art 205.

\textsuperscript{289}Hungary Constitution, art 1.

\textsuperscript{290}The Republic of Korea Constitution, art 60.

\textsuperscript{291}Kyrgyzstan Constitution, art 74.
the dictatorship model and the 64 nations without constitutional provisions on the powers to decide whether to go to war and declare war, most of the remaining 109 nations can be divided into 5 major types according to the distribution of the power to decide whether to go to war. Type 1 could be labelled “both houses jointly”, in which the adoption of a war bill/resolution requires the two chambers/houses of a nation with a bicameral legislature to meet as the con-

292The Lao People’s Democratic Republic Constitution, art 53.
293Latvia Constitution, art 43.
294Lithuania Constitution, art 142.
295Luxembourg Constitution, art 37.
296Macedonia Constitution, art 124.
297Maldives Constitution, art 115.
298Mali Constitution, art 71.
299Moldova Constitution, art 66.
300Mongolia Constitution, art 25.
301Montenegro Constitution, art 82.
302Niger Constitution, art 104.
303Panama Constitution, art 25.
304Peru Constitution, art 118.
305Poland Constitution, art 116.
306Portugal Constitution, art 135.
307Sao Tome and Principe Constitution, art 86.
308Serbia Constitution, art 99.
309Sierra Leone Constitution, art 40.
310Slovakia Constitution, art 84.
311Slovenia Constitution, art 92.
312Spain Constitution, sec 63.
313Suriname Constitution, art 102.
314Sweden Constitution, art 14.
315Syrian Arab Republic Constitution, art 102.
316Tanzania Constitution, art 44.
317Timor-Leste Constitution, art 85.
318Togo Constitution, art 72.
319Tonga Constitution, art 36.
320Tunisia Constitution, art 77.
321Turkey Constitution, art 92.
322Uganda Constitution, art 124.
323Ukraine Constitution, art 85.
324Venezuela Constitution, art 187.
325Vietnam Constitution, art 88.
326Zambia Constitution, art 37.
327Israel Basic Law: the Knesset, art 40.
328Lebanon Constitution, art 65.
329Morocco Constitution, art 99.
gress/parliament in a joint public session and all members of the legislature to vote. Type 2 could be labelled “the lower house” in which the lower house of a bicameral legislature has the power to decide whether to go to war. Type 3 could be labelled “the upper house” in which the upper house of a bicameral legislature can decide whether to go to war. Type 4 could be labelled “the single house” in which the single body of a unicameral legislature has the power to decide whether to go to war. Type 5 could be labelled “the government” in which the government can decide whether to go to war.

Nevertheless, two nations cannot be classified into a certain type above. In the United Arab Emirates, a war bill is approved by the Supreme Council, which is the highest legislative and executive body. In Côte d’Ivoire, the Parliament has the power to decide whether to go to war; however, in case of disagreement between the two houses, the decision is made by the National Assembly (the lower chamber).

In addition, in 17 (15.6% of 109) nations, declaration of war requires a stricter voting basis than other legislative processes. In Luxembourg, Uganda, Egypt, Mali, and Guinea, a two-thirds majority vote of the all members of the only house of the legislature is required. In Hungary, such a decision requires the vote of two-thirds of the present members of the only house. In Slovakia and Tunisia, the decision of war demands a three-fifths majority vote of all members of the single house. In Philippines, Czech Republic, Georgia, Uruguay, Madagascar, Thailand, and South Sudan, such decisions are approved by a vote of two-thirds of both houses assembled in a joint session. In Iraq, such a decision requires a two-thirds majority vote of the lower house. In Lebanon, such a decision requires the vote of two-thirds of the government members. Supermajority rules can “prevent the government from becoming an engine for producing private interest goods” (McGinnis & Rappaport, 1999), in-
cluding political ambitions, thus providing an effective contemporary mechanism for controlling the war powers.

3.3. Comparative Study of “Exceptional Clause”

Deciding on and declaring war constitutionally and prudently requires chiefly that the legislature consistently perform its constitutional duty to decide whether to initiate war. In total, 32 (29.36% of 109) constitutions have designed so-called “exceptional clauses” in case of the absence of the legislature and urgent cases. If the legislature or its permanent/standing committee is prevented from taking decisions or an urgent case arises, according to the exceptional clauses, war powers may be vested in a particular political person or body of the executive branch. As Table 7 below shows, such clauses can be divided into 4 categories:

Table 7. Categories of exceptional clauses.

<table>
<thead>
<tr>
<th>Category</th>
<th>Nation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The first</td>
<td>16 (50% of 32): Denmark, Netherlands, Mexico, Benin, Brazil,</td>
</tr>
<tr>
<td></td>
<td>Colombia, Egypt, Estonia, Honduras, Hungary, Niger, Poland, Suriname,</td>
</tr>
<tr>
<td></td>
<td>Turkey, Ukraine, Albania, Suriname, Colombia, Egypt, Estonia, Honduras,</td>
</tr>
<tr>
<td></td>
<td>Hungary, Niger, Poland, Suriname, Colombia, Egypt, Estonia, Honduras,</td>
</tr>
<tr>
<td></td>
<td>Hungary, Niger, Poland, Suriname, Colombia, Egypt, Estonia, Honduras,</td>
</tr>
<tr>
<td></td>
<td>Hungary, Niger, Poland, Suriname, Colombia, Egypt, Estonia, Honduras,</td>
</tr>
<tr>
<td>The second</td>
<td>8 (25% of 32): Bulgaria, Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova,</td>
</tr>
<tr>
<td></td>
<td>Mongolia, Slovenia (rev. 1991)</td>
</tr>
<tr>
<td>The third</td>
<td>5 (15.63%): Cuba, Sweden, Montenegro, Ireland, Armenia</td>
</tr>
</tbody>
</table>

According to the comparative study of the “exceptional clauses”, the two below may be seen as urgent cases: 1. Actual, imminent or reasonably attack on the nation or its armed forces or its people abroad; 2. Urgent obedience of a common defense obligation derives from an international agreement.

Denmark Constitution, art 19.
Netherlands Constitution, art 96.
Mexico Constitution, art 118.
Benin Constitution, art 101.
Brazil Constitution, art 84.
Colombia Constitution, art 189.
Egypt Constitution, art 152.
Estonia Constitution, art 78.
Honduras Constitution, art 245.
Hungary Constitution, art 48.
Niger Constitution, art 104.
Poland Constitution, art 116.
Suriname Constitution, art 102.
Turkey Constitution, art 92.
Ukraine Constitution, art 106.
Albania Constitution, art 171.
Bulgaria Constitution, art 100.
Kyrgyzstan Constitution, art 64.
Latvia Constitution, art 44.
Lithuania Constitution, art 84.
Macedonia Constitution, art 124.
Moldova Constitution, art 87.
Mongolia Constitution, art 33.
Slovenia Constitution, art 92.
Cuba Constitution, art 90.
Sweden Constitution, art 14.
Montenegro Constitution, art 131.
Ireland Constitution, art 28.
Armenia Constitution, art 118.
in the first category, if the legislature is not able to meet, the head of state such as the king or the president may decide whether to declare war and take steps for the protection of the nation without the authorization of the legislature. The second category is the same as the first, except that the head of state must submit these decisions for approval in the next sitting of the legislature. In the third category, if the legislature is not able to meet, the government or a special department may decide whether to go to war and take steps for the protection of the nation without the authorization of the legislature.

Three nations, however, cannot be classified into one of these categories. In Croatia\(^ {381}\), in case of an immediate threat, the president with the counter signature of the prime minister may order the employment of the armed forces. In Czech Republic\(^ {382}\), the Senate shall declare war when the Assembly of Deputies is dissolved. In Serbia\(^ {383}\), the decision of war shall be passed by the president together with the President of the National Assembly and the prime minister when the National Assembly cannot be convened.

4. Designation of Commander-in-Chief and the Return to Authoritarianism in War-Making

In most nations, the head of state doubles as commander-in-chief. Following the example of some Western nations such as the United Kingdom and the United States, the presidents of modern presidential nations tend to abuse their powers to make undeclared wars that need not be approved by the legislative branch. This trend can be seen as a return to authoritarianism in war-making that is re-defining war powers as a monarchical prerogative. This return, however, is posing a challenge to constitutional instruments control over war analysed in the section II and III.

4.1. Global Comparative Study of the Designation of Commander-in-Chief

By keyword analysis of the 191 constitutions in force, 160 constitutions were found that have clauses on the designation of a commander-in-chief.\(^ {384}\) In 154 nations (96.25% of 160 constitutions), the power of the commander-in-chief of the armed forces is vested in the head of state including executive and non-executive persons, such as the president, the prime minister, or the queen. It is worth mentioning that in Bosnia and Herzegovina, the three-member presidency\(^ {385}\) is the

\(^{381}\)Croatia Constitution, art 100.
\(^{382}\)Czech Constitution, art 11.
\(^{383}\)Serbia Constitution, art 201.
\(^{384}\)There are 31 constitutions without the clauses on designation of Commander-in-Chief: Andorra, Antigua and Barbuda, Bahamas, Barbados, Belize, Cyprus, Dominica, Grenada, Iceland, Jamaica, Japan, Kiribati, Libya, Liechtenstein, Malta, Marshall Islands, Mexico, Micronesia, Monaco, Nauru, Palau, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Singapore, Solomon Islands, Sweden, Tuvalu, Vanuatu.
\(^{385}\)The Presidency of Bosnia and Herzegovina is the three-member body that collectively serves as head of state of Bosnia and Herzegovina. The three Members: one Bosniac and one Croat, each directly elected from the territory of the Federation, and one Serb directly elected from the territory of the RepublikaSrpska.
chief, and each member of the presidency shall have civilian command authority over the armed forces. As Table 8 below shows, constitutions do not vest the head of state but others with the power of commander-in-chief.

As the statistical data show, most of the modern constitutions have reached a consensus that a single person as commander-in-chief, not a collective or group, shall make all expeditious and coordinated tactical decisions necessary to wage war successfully (Turner, 1984). Thus, in most nations, the constitution authorizes the commander-in-chief to identify and respond to foreign threats, using such force as he/she deems necessary. However, the abuse of the powers of the commander-in-chief since World War II, to some extent, has promoted a return to authoritarianism in making war and resulted in modern undeclared wars.

4.2. The Return to Authoritarianism in War-Making: The United States as an Example

With the return to authoritarianism in war-making, in the process of making war, the legislature is eclipsed by the commander-in-chief who often doubles as the head of state. Recognizing that war is the most serious decision a leader can take, such a return would allow what the framers of the United States and later constitutionalists tried to guard against: a single person making the war decision even when there has been no real attack on the nation and there is ample time for a collective, deliberative, and accountable decision by the legislature.

The return in the United States is typical. A review of history can show how the return has come about. Historically, the United States Congress has declared war only five times. Nevertheless, Since World War II, the United States has been involved in almost one hundred military conflicts without the declaration of war, of which the Korean War was the first. In 1947, as the Cold War began, the

Table 8. Others designated as commander-in-chief.

<table>
<thead>
<tr>
<th>Nation</th>
<th>Commander-in-Chief</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>the highest military official of the armed forces</td>
</tr>
<tr>
<td>Denmark</td>
<td>one or two persons (not members of the Folketing) appointed by the Folketing</td>
</tr>
<tr>
<td>Germany</td>
<td>the Federal Minister of Defense</td>
</tr>
<tr>
<td>Israel</td>
<td>the supreme command level in the army (Chief of General Staff)</td>
</tr>
<tr>
<td>Lesotho</td>
<td>a person appointed by the king</td>
</tr>
<tr>
<td>The United Arab Emirates</td>
<td>a person appointed by means of a federal decree</td>
</tr>
</tbody>
</table>

386Armenia Constitution, art 155.
387Denmark Constitution, art 55.
388Germany Constitution, art 65.
390Lesotho Constitution, art 145.
391The United Arab Emirates Constitution, art 138.
392Against England in 1812, Mexico in 1846, Spain in 1898, Germany and Austria-Hungary in 1917, and Japan and Germany at the start of World War II.
United States created the office of the Secretary of Defense, the Joint Chiefs of Staff, the National Security Council, and the CIA. Each of these reported to the president, greatly enlarging his authority over national security. Later presidents, however, contended that they did not need congressional authorization to use force (Garcia, 2012). The legitimacy of such unauthorized wars has spurred debate in the United States and around the world. Congress tried to settle these disputes by passing the War Powers Resolution in 1973, which was intended to check the president’s power to commit the United States to an armed conflict without the consent of Congress. It stipulates that president can send United States Armed Forces into action abroad only by declaration of war by Congress, “statutory authorization”, or in case of “a national emergency created by attack upon the United States, its territories or possessions, or its armed forces.” Since then, however, presidents and some researchers have consistently maintained that parts of the resolution intrude unconstitutionally on the president’s war powers (Turner, 2012). It is widely believed that the War Powers Resolution has been violated several times since its entry into force (The Constitution Project, 2005). Many congressional leaders have argued that the executive branch has failed to abide by either the constitutional limitations on presidential authority or the provisions of the resolution (Goldstein, 1988).

The return in the United States has had worldwide influence. Since World War II, more commanders-in-chief in presidential democracies have emulated the United States by winning more independent powers to initiate war in struggles with the legislature by waging undeclared wars, which severely challenge the legitimacy of the war powers clauses.

4.3. The Challenge of Undeclared War

The large number of undeclared wars since World War II, as a result of the return mentioned above, have challenged the traditional constitutional control over war. A declaration of war is a formal document that promises war against another nation or proclaims that a state of war already exists. Article 1 of the Hague Convention (III) demands that states shall issue a declaration of war before the commencement of hostilities. The declaration of war had legal effects such as changing the rights of neutral parties or the relationships between states.

However, since World War II, the legal obligation of a declaration of war has been mostly ignored. The “Malayan Emergency” set by the United Kingdom was the first modern war without a formal declaration. As mentioned above, since 1941, the United States has not formally declared war. Moreover, a number of nations have followed these examples and characterized limited warfare and pre-emptive or preventive military actions as a “military action” or “armed operation”. The most recent undeclared war was the Russian military intervention in Ukraine. In addition, the rapid growth and spread of terrorist crimes around the world poses a serious threat to the peace and security of the international community. However, according to the traditional definition, a war is fought
between sovereign states, and most terrorist attacks are committed by international terrorists and criminal groups that are non-state actors. Theoretically, there may be no need for a traditional declaration of war on terrorism.

Today, declarations of war have become so meaningless that, while the legislature can authorize war, a collective, deliberative, and accountable decision by the legislature is not necessary for a commander-in-chief to wage an undeclared war. By undeclared war, the commander-in-chief can bypass the constitution and wage a real war instead of taking up only the legal duty to make day-to-day tactical decisions. Complementarily, the undeclared wars in recent years have given the commander-in-chief more room to make decisions with the lack of collective supervision. As Lori FislerDamrosh argued, “Presidents who are weak in their domestic political posture, but who believe themselves to possess very potent and essentially unchecked war powers, are the most dangerous of all.” (Damrosh, 1995). The return of authoritarianism in war-making and undeclared wars are creating opportunities for those leaders while eroding the legitimacy of the legislative branch in war-making.

5. Conclusion

The global comparative study of war powers clauses based on 191 constitutions contributes a new dimension of the relationship between constitutions and war and generates new insight for the ongoing argument about the roles of the constitution in war-making.

The article found that, although war powers clauses vary, some common techniques, models and logics can be found. In total, 127 (66.49% of 191) constitutions have clauses on the decision to wage war or the declaration of war and can be classified into three basic models. Of these nations, 26 (20.47% of 127) follow the democratic model, and 79 (62.2% of 127) follow the semi-democratic model, and 18 (14.17% of 127) follow the dictatorship model, and notably, some of them have very limited restrictions on the powers of the commander-in-chief. In addition, 4 constitutions with clauses on the decision on or declaration of war cannot be described by those three models. Furthermore, there are 63 (32.98% of 191) nations whose powers to decide and declare war have not been regulated by their constitutions.

The article also provided a statistical view on the assignment of war powers. In the nations following the democratic and semi-democratic models, the article seeks to find commonalities of the functional distribution of war powers in making the proposal of war, approving the bill of war, and deciding whether to go to war in the absence of the legislative branch. There are 23 (21.9% of 105) nations that have special procedural requirements for making a proposal to wage a war. In addition, 109 nations of the democratic model and semi-democratic model can be divided into 5 major types according to the distribution of the power to decide war: in 32 bicameral nations, both houses jointly approve war; in 7 bicameral nations, the lower house approves war; in 1 bicameral nation, the
upper house approves war; in 63 unicameral nations, the single house approves war; in 4 nations, the government approves war; and 2 nations cannot be classified into a certain type above. Considering the possibility of the absence of the legislature, 32 (29.36% of 109) constitutions have designed so-called “exceptional clauses” by which war powers may be vested to a particular political person or body of the executive branch in urgent cases.

Moreover, the article revealed that in 154 nations, the powers of the commander-in-chief of the armed forces are vested in the head of state. Learning from the debate over war powers in the United States, the abuse of war powers by the commander-in-chief may result in unrestricted undeclared wars. To gain more room in war-making and bypass the collective decision of the legislature, commanders-in-chief of modern presidential democracy nations tend to make undeclared wars, which violate the Hague Convention (III). This trend can be seen as a return to authoritarianism in war-making that would allow a single person to reacquire war powers. The resurrection of the monarchical prerogative in the 21st century is posing a growing challenge to world peace.

Constitutionalists never give up the aim to “chain the dogs of war”, and currently 179 (93.72% of 191) constitutions proclaim the intention to safeguard the value of peace. However, as the statistical data and regularities above imply, the ideal of constitutional control over war powers is not achieved in reality. In many nations, it is necessary to optimize the design of contemporary war powers clauses by further increasing the extent of the legislature involvement in war-making and constraining the executive branch, especially ambitious commanders-in-chief.

Conflicts of Interest
The author declares no conflicts of interest regarding the publication of this paper.

References


