

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

Yue Zhu

Graduate School of Chinese Academy of Social Sciences, Beijing, China

Email: aeonis@qq.com

How to cite this paper: Zhu, Y. (2018). War Powers Clauses: A Globally Comparative Perspective Based on 191 Constitutions. *Beijing Law Review*, 9, 600-622. <https://doi.org/10.4236/blr.2018.95035>

Received: October 11, 2018

Accepted: November 16, 2018

Published: November 19, 2018

Copyright © 2018 by author and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

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-

tions¹ and 6 uncodified constitutions² 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 undecared 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 constitutions³, 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-

¹Listed 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, Jamaica, 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, Luxembourg, 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.

²The United Kingdom, Canada, Germany, Israel, New Zealand, Saudi Arabia.

³Karl 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. Algeria⁴, Azerbaijan⁵, Bahrain⁶, Germany, Italy⁷, the Republic of Korea⁸, Kuwait⁹, Qatar¹⁰ and United Arab Emirates¹¹ 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 Israel¹², Lebanon¹³ and Papua New Guinea¹⁴, the state may only begin a war pursuant to a government decision. In the United Arab Emirates¹⁵, 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,

⁴Algeria Constitution, art 29.

⁵Azerbaijan Constitution, art 110.

⁶Bahrain Constitution, art 20.

⁷Italy Constitution, art 11.

⁸The Republic of Korea Constitution, art 5.

⁹Kuwait Constitution, art 68.

¹⁰Qatar Constitution, art 71.

¹¹The United Arab Emirates Constitution, art 140.

¹²Israel Basic Law: the Knesset, art 40(A).

¹³Lebanon Constitution, art 65.

¹⁴Papua New Guinea Constitution, art 227.

¹⁵The United Arab Emirates Constitution, art 140.

Table 1. Nations following the democratic model.

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

1836). 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

¹⁶Ethiopia Constitution, art 77.

¹⁷Liberia Constitution, art 34.

¹⁸Madagascar Constitution, art 95.

¹⁹Morocco Constitution, art 49.

²⁰Bahrain Constitution, art 36(A).

²¹Iraq Constitution, art 61.

²²Mongolia Constitution, art 25(1).

²³Philippines Constitution, art 5, sec 23(1).

²⁴Albania Constitution, art 171.

²⁵Austria Constitution, art 38.

²⁶Belarus Constitution, art 97.

²⁷Czech Republic Constitution, art 43.

²⁸Estonia Constitution, art 65 and 78.

²⁹Hungary Constitution, art 12.

³⁰Moldova Constitution, art 66.

³¹Montenegro Constitution, art 132.

³²Poland Constitution, art 116(1).

³³Romania Constitution, art 65.

³⁴Serbia Constitution, art 201.

³⁵Cuba Constitution, art 75 and 90.

³⁶Guatemala Constitution, art 171.

³⁷Honduras Constitution, art 205.

³⁸The United States of America Constitution, art 1, sec 8.

³⁹Uruguay Constitution, art 85.

⁴⁰Panama Constitution, art 159.

⁴¹Turkey 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 2. Nations following the semi-democratic model.

Continent	Nation
Africa	23: Benin ⁴² , Burkina Faso ⁴³ , Cape Verde ⁴⁴ , Chad ⁴⁵ , Democratic Republic of the Congo ⁴⁶ , Côte d'Ivoire ⁴⁷ , Djibouti ⁴⁸ , Eritrea ⁴⁹ , Gabon ⁵⁰ , Gambia ⁵¹ , Guinea ⁵² , Guinea-Bissau ⁵³ , Kenya ⁵⁴ , Niger ⁵⁵ , Nigeria ⁵⁶ , Rwanda ⁵⁷ , Sao Tome and Principe ⁵⁸ , Sierra Leone ⁵⁹ , South Sudan ⁶⁰ , Tanzania ⁶¹ , Togo ⁶² , Tunisia ⁶³ , Uganda ⁶⁴

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 ⁶⁵ , Azerbaijan ⁶⁶ , Cambodia ⁶⁷ , China ⁶⁸ , Indonesia ⁶⁹ , the Republic of Korea ⁷⁰ , Maldives ⁷¹ , Myanmar ⁷² , Syrian Arab Republic ⁷³ , Thailand ⁷⁴ , Timor-Leste ⁷⁵ , Uzbekistan ⁷⁶ , Vietnam ⁷⁷
Europe	18: Bulgaria ⁷⁸ , Croatia ⁷⁹ , Cyprus ⁸⁰ , Denmark ⁸¹ , Finland ⁸² , France ⁸³ , Italy ⁸⁴ , Kyrgyzstan ⁸⁵ , Latvia ⁸⁶ , Lithuania ⁸⁷ , Luxembourg ⁸⁸ , Netherlands ⁸⁹ , Portugal ⁹⁰ , Slovakia ⁹¹ , Spain ⁹² , Sweden ⁹³ , the United Kingdom, Ukraine ⁹⁴
North America	4: Costa Rica ⁹⁵ , El Salvador ⁹⁶ , Haiti ⁹⁷ , Mexico ⁹⁸
Oceania	Tonga ⁹⁹
South America	7: Argentina ¹⁰⁰ , Brazil ¹⁰¹ , Chile ¹⁰² , Colombia ¹⁰³ , Peru ¹⁰⁴ , Sudan ¹⁰⁵ , Suriname ¹⁰⁶
Transcontinental	2: Armenia ¹⁰⁷ , Egypt ¹⁰⁸

In most of these countries, the head of state, such as the king or president,

⁶⁵Afghanistan Constitution, art 64.

⁶⁶Azerbaijan Constitution, art 95 and 109.

⁶⁷Cambodia Constitution, art 24.

⁶⁸China Constitution, art 62 and 80.

⁶⁹Indonesia Constitution, art 11(1).

⁷⁰The Republic of Korea Constitution, art 60.

⁷¹Maldives Constitution, art 115.

⁷²Myanmar Constitution, pt 3, art 213.

⁷³Suriname Constitution, art 102.

⁷⁴Thailand Constitution, sec 156 and 177.

⁷⁵Timor-Leste Constitution, art 85 and 87.

⁷⁶Uzbekistan Constitution, art 78 and 93.

⁷⁷Vietnam Constitution, art 70, 74 and 88.

⁷⁸Bulgaria Constitution, art 84.

⁷⁹Croatia Constitution, art 100.

⁸⁰Cyprus Constitution, art 50(1).

⁸¹Denmark Constitution, pt 3, art 19.

⁸²Finland Constitution, sec 93.

⁸³France Constitution, art 3.

⁸⁴Italy Constitution, art 78 and 87.

⁸⁵Kyrgyzstan, art 64.

⁸⁶Latvia Constitution, art 43 and 44.

⁸⁷Lithuania, art 84.

⁸⁸Luxembourg Constitution, art 37.

⁸⁹Netherlands Constitution, art 96.

⁹⁰Portugal, art 161 and 179.

⁹¹Slovakia Constitution, art 86 and 102.

⁹²Spain Constitution, sec 63(3).

⁹³Sweden Constitution, ch 15, pt 12.

⁹⁴Ukraine Constitution, art 85 and 106.

⁹⁵Costa Rica Constitution, art 121 and 147.

⁹⁶El Salvador Constitution, art 131 and 168.

⁹⁷Haiti Constitution, art 140.

⁹⁸Mexico Constitution, art 89 and 118.

⁹⁹Tonga Constitution, art 36.

¹⁰⁰Argentina Constitution, art 75.

¹⁰¹Brazil Constitution, art 49.

¹⁰²Chile Constitution, art 32.

¹⁰³Colombia Constitution, art 173 and 189.

¹⁰⁴Peru Constitution, art 118.

¹⁰⁵Sudan Constitution, art 58(1) and 91(2).

¹⁰⁶Syrian Arab Republic Constitution, art 72 and 102.

¹⁰⁷Armenia Constitution, art 118.

¹⁰⁸Egypt Constitution, art 152.

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.

¹¹⁹The Bolivarian Republic of Venezuela Constitution, art 187.

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'Ivoire¹³³, the Democratic Republic of the Congo¹³⁴, Croatia¹³⁵, Cyprus¹³⁶, Djibouti¹³⁷, Egypt¹³⁸, El Salvador¹³⁹, Finland¹⁴⁰, France¹⁴¹, Gabon¹⁴², Gambia¹⁴³, Guinea¹⁴⁴, Guinea-Bissau¹⁴⁵, Haiti¹⁴⁶, Honduras¹⁴⁷, Italy¹⁴⁸, Kenya¹⁴⁹, the Republic of Korea¹⁵⁰, Kyrgyzstan¹⁵¹, Latvia¹⁵², Lithuania¹⁵³, Maldives¹⁵⁴, Mexico¹⁵⁵, Myanmar¹⁵⁶, Netherlands¹⁵⁷, Niger¹⁵⁸, Nigeria¹⁵⁹, Portugal¹⁶⁰, Rwanda¹⁶¹, Sao Tome and Principe¹⁶², Sierra Leone¹⁶³, Slovakia¹⁶⁴, Sudan¹⁶⁵, Tanzania¹⁶⁶, Thailand¹⁶⁷, Timor-Leste¹⁶⁸, Togo¹⁶⁹, Tonga¹⁷⁰, Tunisia¹⁷¹, Uganda¹⁷², Ukraine¹⁷³, Uzbekistan¹⁷⁴, Georgia¹⁷⁵, Ireland¹⁷⁶, Kazakhstan¹⁷⁷, the Lao People's Democratic Republic¹⁷⁸, Macedonia¹⁷⁹, Mali¹⁸⁰, Mauri-

¹³³Côte d'Ivoire Constitution, art 74.

¹³⁴The Democratic Republic of the Congo Constitution, art 137.

¹³⁵Croatia Constitution, art 89.

¹³⁶Cyprus Constitution, art 48.

¹³⁷Djibouti Constitution, art 34.

¹³⁸Egypt Constitution, art 123.

¹³⁹El Salvador Constitution, art 137.

¹⁴⁰Finland Constitution, sec 77.

¹⁴¹France Constitution, art 10.

¹⁴²Gabon Constitution, art 17.

¹⁴³Gambia Constitution, art 100.

¹⁴⁴Guinea Constitution, art 79.

¹⁴⁵Guinea-Bissau Constitution, art 69.

¹⁴⁶Haiti Constitution, art 144.

¹⁴⁷Honduras Constitution, art 216.

¹⁴⁸Italy constitution, art 74.

¹⁴⁹Kenya Constitution, art 115.

¹⁵⁰The Republic of Korea Constitution, art 53.

¹⁵¹Kyrgyzstan Constitution, art 64.

¹⁵²Latvia Constitution, art 71.

¹⁵³Lithuania Constitution, art 71.

¹⁵⁴Maldives Constitution, art 91.

¹⁵⁵Mexico Constitution, art 72.

¹⁵⁶Myanmar Constitution, art 105.

¹⁵⁷Netherlands Constitution, art 87.

¹⁵⁸Niger Constitution, art 58.

¹⁵⁹Nigeria Constitution, art 58.

¹⁶⁰Portugal Constitution, art 136.

¹⁶¹Rwanda Constitution, art 106.

¹⁶²Sao Tome and Principe Constitution, art 77.

¹⁶³Sierra Leone Constitution, art 106.

¹⁶⁴Slovakia Constitution, art 87.

¹⁶⁵Sudan Constitution, art 91.

¹⁶⁶The United Republic of Tanzania Constitution, art 97.

¹⁶⁷Thailand Constitution, sec 146.

¹⁶⁸Timor-Leste Constitution, art 88.

¹⁶⁹Togo Constitution, art 67.

¹⁷⁰Tonga Constitution, art 68.

¹⁷¹Tunisia Constitution, art 81.

¹⁷²Uganda Constitution, art 91.

¹⁷³Ukraine Constitution, art 94.

¹⁷⁴Uzbekistan Constitution, art 84.

¹⁷⁵Georgia Constitution, art 68.

¹⁷⁶Ireland Constitution, art 27.

¹⁷⁷Kazakhstan Constitution, art 44.

¹⁷⁸The Lao People's Democratic Republic Constitution, art 60.

¹⁷⁹Macedonia Constitution, art 75.

¹⁸⁰Mali Macedonia Constitution, art 40.

tania¹⁸¹, and Venezuela¹⁸². 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 3. Nations following the dictatorship model.

Continent	Nation
Africa	8: Algeria ¹⁸³ , Angola ¹⁸⁴ , Burundi ¹⁸⁵ , Equatorial Guinea ¹⁸⁶ , Mozambique ¹⁸⁷ , Somalia ¹⁸⁸ , Zambia ¹⁸⁹ , Zimbabwe ¹⁹⁰
Asia	8: Iran ¹⁹¹ , Jordan ¹⁹² , the Democratic People's Republic of Korea ¹⁹³ , Kuwait ¹⁹⁴ , Oman ¹⁹⁵ , Qatar ¹⁹⁶ , Saudi Arabia ¹⁹⁷ , Sri Lanka ¹⁹⁸
Europe	2: Belgium ¹⁹⁹ , Greece ²⁰⁰

¹⁸¹Mauritania Constitution, art 70.

¹⁸²Venezuela Constitution, art 214.

¹⁸³Algeria Constitution, art 109.

¹⁸⁴Angola Constitution, art 119.

¹⁸⁵Burundi Constitution, art 110.

¹⁸⁶Equatorial Guinea Constitution, art 41.

¹⁸⁷Mozambique Constitution, art 161 and 166.

¹⁸⁸Somalia Constitution, art 71 and 90.

¹⁸⁹Zambia Constitution, art 29.

¹⁹⁰Zimbabwe Constitution, art 111.

¹⁹¹The Islamic Republic of Iran Constitution, art 110.

¹⁹²Jordan Constitution, art 33.

¹⁹³The Democratic People's Republic of Korea Constitution, art 103.

¹⁹⁴Kuwait Constitution, art 68.

¹⁹⁵Oman Constitution, art 42.

¹⁹⁶Qatar Constitution, art 70 and 71.

¹⁹⁷Basic Law of Saudi Arabia, art 61.

¹⁹⁸Sri Lanka Constitution, art 33(2).

¹⁹⁹Belgium Constitution, art 167(1).

²⁰⁰Greece 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 4. Nations without clauses of deciding whether to go to war and declaring war.

Continent	Nation
Africa	12: Botswana, Cameroon, Comoros, Ghana, Lesotho, Libya, Malawi, Mauritius, Namibia, Seychelles, South Africa, Swaziland
Asia	10: Bhutan, Brunei Darussalam, India, Japan, Malaysia, Nepal, Pakistan, Singapore, Tajikistan, Turkmenistan, Yemen (Japan outlaws war)
Europe	10: Andorra, Bosnia and Herzegovina, Germany, Iceland, Kosovo, Liechtenstein, Malta, Monaco, Norway, Switzerland (Germany outlaws aggressive war)
North America	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
Oceania	12: Australia, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, New Zealand, Palau, Samoa, Solomon Islands, Tuvalu, Vanuatu
South America	5: Bolivia, Ecuador, Guyana, Paraguay, Trinidad and Tobago
Transcontinental	1: Russia

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 those 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.

Category	Nations
Proposal by the president	9: Azerbaijan ²⁰¹ , Albania ²⁰² , Chile ²⁰³ , Estonia ²⁰⁴ , Mexico ²⁰⁵ , Rwanda ²⁰⁶ , Sierra Leone ²⁰⁷ , Tanzania ²⁰⁸ , Ukraine ²⁰⁹
Proposal by the government	6: Armenia ²¹⁰ , Ethiopia ²¹¹ , Portugal ²¹² , Slovakia ²¹³ , Timor-Leste ²¹⁴ , Slovenia ²¹⁵
Proposal with mandatory consultation requirements	4: Congo ²¹⁶ , Egypt ²¹⁷ , El Salvador ²¹⁸ , the Republic of Korea ²¹⁹

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 Morocco²²⁰, the declaration of war takes place after communication of the king to the parliament. In Iraq²²¹, 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 Sudan²²², the proposal of making war is made by the president with the consent of the first vice president. In Macedonia²²³, either the president or the government or at least 30 representatives can make such a proposal. In Cape Verde²²⁴, 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/decre. 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 (Reiter, 2003). As Table 6 below shows, with the exceptions of the 18 nations of

Table 6. Distribution of legislative powers to decide whether to go to war.

Type	Nation
Both houses jointly	32 (29.36% of 109): Argentina ²²⁵ , Austria ²²⁶ , Bahrain ²²⁷ , Brazil ²²⁸ , Cambodia ²²⁹ , Chile ²³⁰ , Democratic Republic of the Congo ²³¹ , Czech Republic ²³² , France ²³³ , Gabon ²³⁴ , Georgia ²³⁵ , Haiti ²³⁶ , Italy ²³⁷ , Kazakhstan ²³⁸ , Kenya ²³⁹ , Liberia ²⁴⁰ , Madagascar ²⁴¹ , Mauritania ²⁴² , Mexico ²⁴³ , Myanmar ²⁴⁴ , Netherlands ²⁴⁵ , Nigeria ²⁴⁶ ,

²²⁰Morocco Constitution, art 99.

²²¹Iraq Constitution, art 61.

²²²Sudan Constitution, art 213.

²²³The Republic of Macedonia Constitution, art 124.

²²⁴Cape Verde Constitution, art 148.

²²⁵Argentina Constitution, art 75.

²²⁶Austria Constitution, art 38.

²²⁷Bahrain Constitution, art 36.

²²⁸Brazil Constitution, art 49.

²²⁹Cambodia Constitution, art 24.

²³⁰Chile Constitution, art 63.

²³¹The Democratic Republic of the Congo Constitution, art 86.

²³²Czech Constitution, art 39.

²³³France Constitution, art 35.

²³⁴Gabon Constitution, art 49.

²³⁵Georgia Constitution, art 62.

²³⁶Haiti Constitution, art 93.

²³⁷Italy Constitution, art 78.

²³⁸Kazakhstan Constitution, art 53.

²³⁹Kenya Constitution, art 132.

²⁴⁰Liberia Constitution, art 34.

²⁴¹Madagascar Constitution, art 95.

²⁴²Mauritania Constitution, art 58.

²⁴³Mexico Constitution, art 73.

²⁴⁴Myanmar Constitution, art 213.

²⁴⁵Netherlands Constitution, art 96.

²⁴⁶Nigeria Constitution, art 5.

Continued

	Philippines ²⁴⁷ , Romania ²⁴⁸ , Rwanda ²⁴⁹ , South Sudan ²⁵⁰ , Sudan ²⁵¹ , Thailand ²⁵² , United States of America ²⁵³ , United Kingdom, Uruguay ²⁵⁴ , Uzbekistan ²⁵⁵
The lower house	7(6.42% of 109): Afghanistan ²⁵⁶ , Belarus ²⁵⁷ , Ethiopia ²⁵⁸ , Indonesia ²⁵⁹ , Iraq 2005 ²⁶⁰ , Ireland ²⁶¹ , Senegal ²⁶²
The upper house	1(0.92% of 109): Colombia ²⁶³
The single house	63 (57.8% of 109): Armenia ²⁶⁴ , Azerbaijan ²⁶⁵ , Bangladesh ²⁶⁶ , Benin ²⁶⁷ , Bulgaria ²⁶⁸ , Burkina Faso ²⁶⁹ , Cape Verde ²⁷⁰ , Chad ²⁷¹ , China ²⁷² , Costa Rica ²⁷³ , Croatia ²⁷⁴ , Cuba ²⁷⁵ , Cyprus ²⁷⁶ , Denmark ²⁷⁷ , Djibouti ²⁷⁸ , Egypt ²⁷⁹ , El Salvador ²⁸⁰ , Eritrea ²⁸¹ , Estonia ²⁸² , Finland ²⁸³ , Gambia ²⁸⁴ , Guatemala ²⁸⁵ , Guinea ²⁸⁶ , Guinea-Bissau ²⁸⁷ , Honduras ²⁸⁸ , Hungary ²⁸⁹ , the Republic of Korea ²⁹⁰ , Kyrgyzstan ²⁹¹ , the Lao People's

²⁴⁷Philippines Constitution, art 5, sec 23.

²⁴⁸Romania Constitution, art 65.

²⁴⁹Rwanda Constitution, art 134.

²⁵⁰South Sudan Constitution, art 55.

²⁵¹Sudan Constitution, art 213.

²⁵²Thailand Constitution, sec 156.

²⁵³The United States of America Constitution, art 1, sec 8.

²⁵⁴Uruguay Constitution, art 88.

²⁵⁵Uzbekistan Constitution, art 78.

²⁵⁶Afghanistan Constitution, art 64.

²⁵⁷Belarus Constitution, art 97.

²⁵⁸Ethiopia Constitution, art 77.

²⁵⁹Indonesia Constitution, art 11.

²⁶⁰Iraq Constitution, art 61.

²⁶¹Ireland Constitution, art 28.

²⁶²Senegal Constitution, art 70.

²⁶³Colombia Constitution, art 173.

²⁶⁴Armenia Constitution, art 118.

²⁶⁵Azerbaijan Constitution, art 95.

²⁶⁶Bangladesh Constitution, art 63.

²⁶⁷Benin Constitution, art 101.

²⁶⁸Bulgaria Constitution, art 84.

²⁶⁹Burkina Faso Constitution, art 106.

²⁷⁰Cape Verde Constitution, art 148.

²⁷¹Chad Constitution, art 123.

²⁷²China Constitution, art 62.

²⁷³Costa Rica Constitution, art 121.

²⁷⁴Croatia Constitution, art 80.

²⁷⁵Cuba Constitution, art 75.

²⁷⁶Cyprus Constitution, art 50.

²⁷⁷Denmark Constitution, art 19.

²⁷⁸Djibouti Constitution, art 61.

²⁷⁹Egypt Constitution, art 152.

²⁸⁰El Salvador Constitution, art 131.

²⁸¹Eritrea Constitution, art 32.

²⁸²Estonia Constitution, art 65.

²⁸³Finland Constitution, sec 93.

²⁸⁴Gambia Constitution, art 79.

²⁸⁵Guatemala Constitution, art 171.

²⁸⁶Guinea Constitution, art 91.

²⁸⁷Guinea-Bissau Constitution, art 85.

²⁸⁸Honduras Constitution, art 205.

²⁸⁹Hungary Constitution, art 1.

²⁹⁰The Republic of Korea Constitution, art 60.

²⁹¹Kyrgyzstan Constitution, art 74.

Continued

Democratic Republic²⁹², Latvia²⁹³, Lithuania²⁹⁴, Luxembourg²⁹⁵, Macedonia²⁹⁶, Maldives²⁹⁷, Mali²⁹⁸, Moldova²⁹⁹, Mongolia³⁰⁰, Montenegro³⁰¹, Niger³⁰², Panama³⁰³, Peru³⁰⁴, Poland³⁰⁵, Portugal³⁰⁶, Sao Tome and Principe³⁰⁷, Serbia³⁰⁸, Sierra Leone³⁰⁹, Slovakia³¹⁰, Slovenia³¹¹, Spain³¹², Suriname³¹³, Sweden³¹⁴, Syrian Arab Republic³¹⁵, Tanzania³¹⁶, Timor-Leste³¹⁷, Togo³¹⁸, Tonga³¹⁹, Tunisia³²⁰, Turkey³²¹, Uganda³²², Ukraine³²³, Venezuela³²⁴, Vietnam³²⁵, Zambia³²⁶

The government 4 (3.67% of 109): Israel³²⁷, Lebanon³²⁸, Morocco³²⁹, Papua New Guinea³³⁰

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 159.

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.

³³⁰Papua New Guinea Constitution, art 227.

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 Emirates³³¹, a war bill is approved by the Supreme Council, which is the highest legislative and executive body. In Côte d’Ivoire³³², 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 basis³³³ than other legislative processes. In Luxembourg³³⁴, Uganda³³⁵, Egypt³³⁶, Mali³³⁷, and Guinea³³⁸, a two-thirds majority vote of the all members of the only house of the legislature is required. In Hungary³³⁹, such a decision requires the vote of two-thirds of the present members of the only house. In Slovakia³⁴⁰ and Tunisia³⁴¹, the decision of war demands a three-fifths majority vote of all members of the single house. In Philippines³⁴², Czech Republic³⁴³, Georgia³⁴⁴, Uruguay³⁴⁵, Madagascar³⁴⁶, Thailand³⁴⁷, and South Sudan³⁴⁸, such decisions are approved by a vote of two-thirds of both houses assembled in a joint session. In Iraq³⁴⁹, such a decision requires a two-thirds majority vote of the lower house. In Lebanon³⁵⁰, 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-

³³¹The United Arab Emirates Constitution, art 140.

³³²Côte d’Ivoire Constitution, art 104.

³³³According to Robert’s Rules of Order, a widely used guide to parliamentary procedure, the bases for determining the voting result consist of two elements: 1. the percentage of votes that are required for a proposal to be adopted or for a candidate to be elected; and 2. the set of members to which the proportion applies (Robert, 2011).

³³⁴Luxembourg Constitution, art 37.

³³⁵Uganda Constitution, art 124.

³³⁶Egypt Constitution, art 152.

³³⁷Mali Constitution, art 71.

³³⁸Guinea Constitution 2010, art 91.

³³⁹Hungary Constitution, art 47.

³⁴⁰Slovakia Constitution, art 84.

³⁴¹Tunisia Constitution, art 77.

³⁴²Philippines Constitution, art 6, sec 23.

³⁴³Czech Constitution, art 39.

³⁴⁴Georgia Constitution, art 62.

³⁴⁵Uruguay Constitution, art 88.

³⁴⁶Madagascar Constitution, art 95.

³⁴⁷Thailand Constitution, sec 156.

³⁴⁸South Sudan Constitution, art 55.

³⁴⁹Iraq Constitution, art 61.

³⁵⁰Lebanon Constitution, art 65.

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 cases³⁵¹. 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.

Category	Nation
The first	16 (50% of 32): Denmark ³⁵² , Netherlands ³⁵³ , Mexico ³⁵⁴ , Benin ³⁵⁵ , Brazil ³⁵⁶ , Colombia ³⁵⁷ , Egypt ³⁵⁸ , Estonia ³⁵⁹ , Honduras ³⁶⁰ , Hungary ³⁶¹ , Niger ³⁶² , Poland ³⁶³ , Suriname ³⁶⁴ , Turkey ³⁶⁵ , Ukraine ³⁶⁶ , Albania ³⁶⁷
The second	8 (25% of 32): Bulgaria ³⁶⁸ , Kyrgyzstan ³⁶⁹ , Latvia ³⁷⁰ , Lithuania ³⁷¹ , Macedonia ³⁷² , Moldova ³⁷³ , Mongolia ³⁷⁴ , Slovenia ³⁷⁵ 1991 (rev. 2013)
The third	5 (15.63%): Cuba ³⁷⁶ , Sweden ³⁷⁷ , Montenegro ³⁷⁸ , Ireland ³⁷⁹ , Armenia ³⁸⁰

³⁵¹According 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.

³⁵²Denmark Constitution, art 19.

³⁵³Netherlands Constitution, art 96.

³⁵⁴Mexico Constitution, art 118.

³⁵⁵Benin Constitution, art 101.

³⁵⁶Brazil Constitution, art 84.

³⁵⁷Colombia Constitution, art 189.

³⁵⁸Egypt Constitution, art 152.

³⁵⁹Estonia Constitution, art 78.

³⁶⁰Honduras Constitution, art 245.

³⁶¹Hungary Constitution, art 48.

³⁶²Niger Constitution, art 104.

³⁶³Poland Constitution, art 116.

³⁶⁴Suriname Constitution, art 102.

³⁶⁵Turkey Constitution, art 92.

³⁶⁶Ukraine Constitution, art 106.

³⁶⁷Albania Constitution, art 171.

³⁶⁸Bulgaria Constitution, art 100.

³⁶⁹Kyrgyzstan Constitution, art 64.

³⁷⁰Latvia Constitution, art 44.

³⁷¹Lithuania Constitution, art 84.

³⁷²Macedonia Constitution, art 124.

³⁷³Moldova Constitution, art 87.

³⁷⁴Mongolia Constitution, art 33.

³⁷⁵Slovenia Constitution, art 92.

³⁷⁶Cuba Constitution, art 90.

³⁷⁷Sweden Constitution, art 14.

³⁷⁸Montenegro Constitution, art 131.

³⁷⁹Ireland Constitution, art 28.

³⁸⁰Armenia 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 Croatia³⁸¹, 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 Republic³⁸², the Senate shall declare war when the Assembly of Deputies is dissolved. In Serbia³⁸³, 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 redefining 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 presidency³⁸⁵ is the

³⁸¹Croatia Constitution, art 100.

³⁸²Czech Constitution, art 11.

³⁸³Serbia Constitution, art 201.

³⁸⁴There 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.

³⁸⁵The 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, 6 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 times³⁹². Nevertheless, Since World War II, the United States has been involved in almost one hundred military conflicts³⁹³ 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.

Nation	Commander-in-Chief
Armenia ³⁸⁶	the highest military official of the armed forces
Denmark ³⁸⁷	one or two persons (not members of the Folketing) appointed by the Folketing
Germany ³⁸⁸	the Federal Minister of Defense
Israel ³⁸⁹	the supreme command level in the army (Chief of General Staff)
Lesotho ³⁹⁰	a person appointed by the king
The United Arab Emirates ³⁹¹	a person appointed by means of a federal decree

³⁸⁶Armenia Constitution, art 155.

³⁸⁷Denmark Constitution, art 55.

³⁸⁸Germany Constitution, art 65.

³⁸⁹Israel Basic Law: The Military, art 3.

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.

³⁹³See https://en.wikipedia.org/wiki/List_of_wars_involving_the_United_States.

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 Fisler Damrosch 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.” (Damrosch, 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

- Damrosch, F. (1995). Constitutional Control Over War Powers: A Common Core of Accountability in Democratic Societies? *University of Miami Law Review*, 50, 199.
- Dieterich, S., Hummel, H., & Marschall, S. (2010). *Parliamentary War Powers: A Survey of 25 European Parliaments*. https://www.files.ethz.ch/isn/122963/OP21_FINAL.pdf
- Elliot, J. (Ed.) (1836). *The Debates in the Several State Conventions on the Adoption of the Federal Convention*. <http://oll.libertyfund.org/titles/elliott-the-debates-in-the-several-state-conventions-5-vols>
- Fearon, J. (1995). Rationalist Explanations for War. *International Organization*, 49, 379-414. <https://doi.org/10.1017/S0020818300033324>
- Franklin, D. (2010). War Powers in the Modern Context. *Congress & the Presidency*, 14, 77-78. <https://doi.org/10.1080/07343468709507968>
- Garcia, M. (2012). *War Powers Litigation Initiated by Members of Congress since the Enactment of the War Powers Resolution*. <http://fas.org/sgp/crs/natsec/RL30352.pdf>

- Ginsburg, T. (2014). Chaining the Dog of War: Comparative Data. *Chicago Journal of International Law*, 15, 138. <https://doi.org/10.2139/ssrn.2491045>
- Ginsburg, T., & Diehl, P. (2006). Irrational War and Constitutional Design: A Reply to Professors Nzalibe and Yoo. *Michigan Journal of International Law*, 27, 1258-1259. <https://doi.org/10.2139/ssrn.931668>
- Goldstein, Y. (1988). The Failure of Constitutional Controls over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment. *Stanford Law Review*, 40, 1543. <https://doi.org/10.2307/1228782>
- Haddon, C. (2013). *Parliament, the Royal Prerogative and Decisions to Go to War*. [Http://www.instituteforgovernment.org.uk/blog/parliament-royal-prerogative-and-decisions-go-war](http://www.instituteforgovernment.org.uk/blog/parliament-royal-prerogative-and-decisions-go-war)
- Martinez, J. (2006). Inherent Executive Power: A Comparative Perspective. *Yale Law Journal*, 115, 2480-2511. <https://doi.org/10.2307/20455703>
- McGinnis, J., & Rappaport, M. (1999). Supermajority Rules as a Constitutional Solution. *William & Mary Law Review*, 40, 365-470.
- Owens, J., & Pelizzo, R. (2009). Introduction: The Impact of the “War on Terror” on Executive-Legislative Relations: A Global Perspective. *Journal of Legislative Studies*, 15, 119-146. <https://doi.org/10.1080/13572330902933284>
- Reiter, D. (2003). Exploring the Bargaining Model of War. *Perspectives on Politics*, 1, 27-43. <https://doi.org/10.1017/S1537592703000033>
- Robert, H. (2011). *Robert's Rules of Order Newly Revised* (p. 402). Philadelphia, PA: Da Capo Press.
- Schultz, K. (2001). *Democracy and Coercive Diplomacy* (p. 174). Cambridge: Cambridge University Press.
- The Constitution Project (2005). *Deciding to Use Force Abroad: War Powers—In a System of Checks and Balances*. http://constitutionproject.org/pdf/War_Powers_Deciding_To_Use_Force_Abroad1.pdf
- Turner, R. (1984). The War Powers Resolution: Unconstitutional, Unnecessary, and Unhelpful. *Loyola of Los Angeles Law Review*, 17, 683-713.
- Turner, R. (2012). The War Powers Resolution at 40: Still an Unconstitutional, Unnecessary, and Unwise Fraud That Contributed Directly to the 9/11 Attacks. *Case Western Reserve Journal of International Law*, 45, 142-143.
- Wagner, W., Peters, D., & Glahn, C. (2010). *Parliamentary War Powers around the World, 1989-2004*. A New Dataset. https://www.dcaf.ch/sites/default/files/publications/documents/OP_22.pdf
- Wormuth, F., & Firmage, E. (1989). *To Chain the Dog of War: The War Powers of Congress in History and Law* (p. 13). Champaign IL: University of Illinois Press.