"Off the Menu: Revisiting the Disappearance of War Declarations after 1945"

Supplementary Appendix for On-line Publication

This supplementary appendix has two sections. The first section provides some information about the use of national emergency declarations during wars to build on the brief discussion of this topic in the text. The second section reports regressions model that replicate and extend Fazal's analysis of the war declarations in interstate war.

1. Emergency Declarations in Time of War

We have argued that war declarations served a variety of functions that had to be replicated by other instruments when they fell "off the menu." The paper focuses on one mechanism that states can use to replicate the justificatory role of war declarations: self-defense claims made under Article 51 of the UN Charter. Domestically, war declarations also served to enhance executive powers, often by weakening civil liberties and increasing the states authority to intervene in the economy. As we suggest in the text, the declaration of states of emergency (SOE) or states of siege generally replicate those functions; indeed, because of their similarity, Fazal code four SOEs, in India and Pakistan, as war declarations. Thus, a natural question is whether SOEs have filled the gap left by the disappearance of war declarations. Here, we present some preliminary evidence suggesting that there is a rise in the use of SOEs, but it seems to begin a bit earlier than the disappearance of war declarations, at the time of World War I.

We define a declaration of emergency as a public proclamation that a national state of exception exists. While we consider a national declaration of martial law to be a declared state of emergency, we exclude martial law imposed at the subnational level (often in regions directly

affected by war) in our count. Furthermore, we consider provisional governments and ongoing states of emergencies to function as emergency declarations during foreign crises. Using this definition, we started by collecting data SOEs in post-1945 wars using data from Hafner-Burton, Helfer, and Fariss,[1] Rooney,[2] and a variety of primary and secondary source material.

We find that of the 130 interstate war participants in the post-1945 period, 46 (35 percent) declared a state of emergency. We note that this rate is just below the rate of war declarations in the pre-1945 period (which is about 40 percent). There is of course significant variation in the extent to which governments need SOEs in order to extend their authority, as some authoritarian states have few limits to suspend. Not surprisingly, in our data, we find that democratic countries are more likely to issue a SOE, with 45 percent of democratic war participants doing so, compared to 22 percent of autocracies. We call attention to a few examples during this period that rely upon SOEs to make war. Israel, which has participated in various wars with Arab states, has existed under a declared state of emergency since the Arab-Israeli War of 1948.[3] The UAR declared SOEs on-and-off in response to these same wars.[4] In the United States, there has been extensive use of SOEs; virtually all major post-1945 foreign conflicts have an associated SOE.

Has there been a meaningful increase in SOEs since World War II to accompany the decrease in war declarations in this period? Unfortunately, data on SOEs from the pre-1945

[1] Emilie M. Hafner-Burton, Laurence R. Helfer, and Christopher J. Fariss, "Emergency and Escape: Explaining Derogations from Human Rights Treaties," *International Organization* 65, no. 4 (2011): 673–707, https://doi.org/10.1017/S002081831100021X.

[2] Bryan Rooney, "Emergency Powers in Democracies and International Conflict," *Journal of Conflict Resolution* 63, no. 3 (2019): 644–71, https://doi.org/10.1177/0022002718755251.

[3] Shlomo Guberman, "The Development of the Law in Israel: The First 50 Years," Israel Ministry of Foreign Affairs, September 25, 2000, https://mfa.gov.il/mfa/aboutisrael/state/democracy/pages/development%20of%20the%20law%20in%20israel-%20the%20first%2050%20yea.aspx.

[4] Sherif Omar Hassan, "Emergency Powers of the Executive in the United Arab Republic," *Cornell International Law Journal* 3, no. 1 (1970): 45–62.

period is sparse, thus complicating efforts to distinguish missing data from the absence of an SOE. Nevertheless, a review of the literature of major states suggests that emergency declarations at the national level were uncommon in the pre-1945 period and particularly prior to World War I. To provide some support for this generalization, we assessed the behavior of four of the most frequent war participants: France, Great Britain, Russia, and the United States.

Prior to World War I, executives were recognized to possess emergency powers during security crises but most commonly declared martial law in *regions* directly affected by fighting and domestic unrest, rather than national SOEs. Like other absolutist governments prior to the mid-nineteenth century, Russia had limited opportunities to suspend additional rights during crises since rights during normal conditions were already severely limited.[5] Prominent acts of emergency in imperial Russia instead relied upon declarations of martial law in strategic localities and vulnerable regions (e.g., Siberia, Kronstadt, Sevastopol and Kurland in the Russo-Japanese War of 1904). [6] In Great Britain, emergency powers during crises broadly stem from the (unwritten) Royal Prerogative and Parliamentary legislation. Prior to the twentieth century, Great Britain declared most of its wars but did not invoke powers via SOEs. Martial law and the Riot Act were, however, invoked in areas associated with domestic unrest, specifically in Ireland.[7] France too relied upon regional "states of siege," most prominently during the Franco-Prussian War, in which most of the country ended up in such a state.[8] The experience in the United States shares some similarities in that early invocations of emergency powers include executive proclamations in response to domestic uprisings and localized martial law in conflicts

[5] Jonathan W. Daly, "On the Significance of Emergency Legislation in Late Imperial Russia," *Slavic Review* 54, no. 3 (1995): 603, https://doi.org/10.2307/2501738.

[6] Ibid., 622.

[7] Clinton Rossiter, *Constitutional Dictatorship: Crisis Government in the Modern Democracies.* (New York: Harcourt, Brace & World, 1963), 135–42.

[8] Ibid., 81.

with Native American tribes.[9] Nonetheless, Lincoln during the Civil War made various expansive and emergency proclamations to mobilize troops and take wartime actions.[10]

For each of our surveyed powers, it was not until World War I that we observed declarations of emergency applied at the *national* level. After Russia's declaration of war against Germany in July 1914, Russia first imposed martial law over vulnerable eastern and southern provinces and shortly thereafter established a state of extraordinary security in all other provinces.[11] For the first time, France too extended a state of siege over the entire country.[12] Woodrow Wilson announced the United States' first national emergency proclamation on February 5, 1917, two months prior to declaring war.[13] In Great Britain, however, national emergency was legislated (rather than declared by the executive) during World War I, which paved way for declared SOEs in accordance with the Emergency Powers Act of 1920.[14] With the exception of the Soviet Union, which imposed martial law regionally,[15] all of the powers enacted an SOE during World War II.[16]

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[9]For example, martial law was declared in Washington during the Whiskey Rebellion. See Harold Relyea, *A Brief History of Emergency Powers in the United States: A Working Paper*. Prepared for the Special Committee on National Emergencies and Delegated Emergency Powers, United States Senate. Washington: U.S. Government Printing Office, 1974. Carol Chomsky, "The United States-Dakota War Trials: A Study in Military Injustice," *Stanford Law Review* 43 (Nov. 1990): pp. 13-98.

[10] Rossiter, *Constitutional Dictatorship*, 223–39; Harold Relyea, "A Brief History of Emergency Powers in the United States: A Working Paper," Prepared for the Special Committee on National Emergencies and Delegated Emergency Powers, United States Senate (Washington: U.S. Government Printing Office, 1974), 9–30.

[11] Daly, "On the Significance of Emergency Legislation in Late Imperial Russia," 627.

[12] Max Radin, "Martial Law and the State of Siege," *California Law Review* 30, no. 6 (September 1942): 639, https://doi.org/10.2307/3477166; William Feldman, "Theories of Emergency Powers: A Comparative Analysis of American Martial Law and the French State of Siege," *Cornell Int'l LJ* 38 (2005): 1026.

[13] L. Elaine Halchin, "National Emergency Powers" (Congressional Research Service, October 14, 2020).

[14] James Goddard, "Civil Contingencies, Emergency Powers and No-Deal Brexit" (House of Lords Library Briefing, March 19, 2019), https://lordslibrary.parliament.uk/research-briefings/lln-2019-0034/.

[15] "Vast Russian Area Gets Martial Law," *New York Times*, 23 June 1941: 10.

[16] Feldman, "Theories of Emergency Powers"; Halchin, "National Emergency Powers"; "Emergency Powers (Defence) Act 1940," *UK Parliament*, https://www.parliament.uk/about/living-heritage/transformingsociety/private-lives/yourcountry/collections/collections-second-world-war/second-world-war-legislation/emergency-powers-defence-act-c20-1940-1/.

In the post-World War II era, SOEs during foreign conflicts were infrequent in Great Britain, France, and Russia/the Soviet Union, but frequently relied upon in the United States. Post-1945 SOEs in Great Britain were often connected to industrial action,[17] while France declared a state of siege in 1961 amid war in Algeria.[18] We did not observe any Russian or Soviet SOEs in connection to foreign conflict, though SOEs were implemented during and after the USSR's dissolution.[19] In contrast, the United States extensively relied upon SOEs after 1945. The SOE declared during the Korean War was also invoked during the Vietnam War, which ultimately motivated legislative reforms seeking to prevent executive abuse of emergency powers. After the passage of the National Emergency Act in 1976, each of the United States' foreign wars has had an associated SOE.[20]

2. Replication and Extension of Fazal's Analysis of War Declarations

As described in the text, the data cover all participants in interstate wars identified by the COW project from 1816-2007. Following Fazal, each observation is a directed dyad matching each war participant with each opponent on the other side. The main dependent variable codes whether the first state in the directed dyad formally declared war against the second state. The main independent variable is the number of IHL treaties the state had ratified at the start of the war. Other independent variables, as well as the sources, are described by Fazal.[21]

[17] Goddard, "Civil Contingencies, Emergency Powers and No-Deal Brexit."

[18] Feldman, "Theories of Emergency Powers: A Comparative Analysis of American Martial Law and the French State of Siege."

[19] Michael Dobbs, "Yeltsin Assumes 'Special Rule' Over Russia," *Washington Post*, 21 March 1993; R. Kushen et al., *Conflict in the Soviet Union: Black January in Azerbaidzhan*, A Helsinki Watch/Memorial Report (Human Rights Watch, 1991).

[20] Halchin, "National Emergency Powers."

[21] Tanisha M. Fazal, "Why States No Longer Declare War," *Security Studies* 21, no. 4 (October 2012): 83–88, https://doi.org/10.1080/09636412.2012.734227.

Table A-1 reports the estimates from a series on logit regressions applied to these data. Column (1), replicates the estimates from Fazal's Table 3.1, column (3), which shows the effect of ratifications while controlling for UN membership.[22] Inspection of the data, however, revealed that there is a sizable reduction in the sample size due to missing values of the polity and political constraints indicators, which generally means that the regime was unstable or in transition. There is reason to worry that this missingness is not ignorable, since states with missing polity scores are, not surprisingly, less likely to issue war declarations (16 percent) than are states with non-missing scores (26 percent). To fix this, we first drop the political constraints variable, which never shows significant effects, and then categorize regime types by polity score, creating indicators for democracy (polity>6), autocracy (polity<-6), and missing. The baseline category comprises mixed or anocratic regimes. Column (2) shows the estimates after this change, which increases the number of observations by 162, or almost 40 percent. Fortunately, this change has no substantive effect on Fazal's main results. The estimated effect of ratifications is smaller but still statistically significant.

We note, however, that UN membership also has a very large effect on the likelihood of a war declaration. The coefficient on UN membership is 100 times larger than the coefficient on IHL ratifications. This means that, all other things equal, the effect of being a UN member is equivalent to the effect of ratifying 100 additional treaties—in a world with fewer than 50 IHL treaties. Moreover, since UN membership is very highly correlated with the post-1945 period, we cannot rule out that the effect is systemic, rather than a product of UN membership. In column (3), we add a dummy variable for wars that started after 1945. The coefficient on this period dummy is very large and negative, as expected. The coefficient on UN membership is

[22] Ibid., 88–89.

large and positive, but UN membership only takes place after 1945, and the total effect (i.e., the sum of the two coefficients) is still negative.

Finally, columns (4) and (5) present estimates from separate regressions on the pre- and post-1945 samples. Because the small number of war declarations in the latter means that some covariates perfectly or almost perfectly predict the outcome, we include only the ratifications variable in that model. The results confirm the impression from Figure 2 in the text. The overall negative effect of IHL ratifications evident in the pooled sample disappears once the effect is allowed to vary by time period. In both samples, the estimated effect is negative but not statistically significant at conventional levels, and the coefficient is very small in the post-45 sample. Thus, even if IHL ratifications explain the decline of war declarations prior to World War II, they cannot account for their abrupt and near total disappearance afterwards.

Table 1. The Effect of Ratifications on the Probability of a War Declaration

	(1) Fazal sample	(2) Full sample	(3) Full sample	(4) Pre-1945	(5) Post-1945
IHL Ratifications	-0.050**	-0.031**	-0.026*	-0.025	-0.016
	(0.020)	(0.014)	(0.014)	(0.016)	(0.011)
UN member	-3.393***	-3.117***	12.955***		
	(1.014)	(1.021)	(0.828)		
Post-1945			-16.363***		
			(0.757)		
War initiator	-1.263***	-0.775**	-0.769**	-0.837**	
	(0.420)	(0.369)	(0.382)	(0.406)	
Polity score	0.073***				
	(0.028)				
Political constraints	0.012				
	(1.492)				
Democracy		0.508	0.773	0.708	
		(0.547)	(0.565)	(0.577)	
Autocracy		-0.796**	-0.398	-0.392	
		(0.328)	(0.275)	(0.273)	
Transitional polity		-1.126**	-1.180***	-1.399***	
		(0.445)	(0.442)	(0.440)	
COIN	-1.335	-1.441	-0.827	-0.640	
	(1.083)	(1.115)	(1.191)	(1.384)	
European vs. Non-European	0.825**	0.766**	0.485	0.713**	
	(0.321)	(0.324)	(0.356)	(0.311)	
Reciprocal declaration	0.024	-0.074	-0.332	-0.505	
	(0.580)	(0.540)	(0.516)	(0.467)	
Both great powers	1.264***	1.269***	1.179***	1.312***	
	(0.403)	(0.265)	(0.294)	(0.309)	
Constant	-0.088	-0.254	-0.110	-0.066	-3.764***
	(0.470)	(0.384)	(0.391)	(0.382)	(0.718)
Observations	420	581	581	373	208

Note: Robust standard errors in parentheses, clustered by war. *** p<0.01, ** p<0.05, * p<0.1