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OPTION REPORTS

STATE OF EMERGENCY

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on the version used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

A state of emergency is a declaration that may suspend normal functions of political and civil life, usually during a time of natural disaster, war, or civil disorder. Nations differ widely in the predicate conditions as well as the mechanisms for such declarations. We describe below the range of constitutional provisions for states of emergency, including the question of who has the authority to declare a state of emergency and under what conditions.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the question text). As of this writing, the project's sample includes 640 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

Overall, 82% of constitutions in the sample contain provisions for calling a state of emergency.

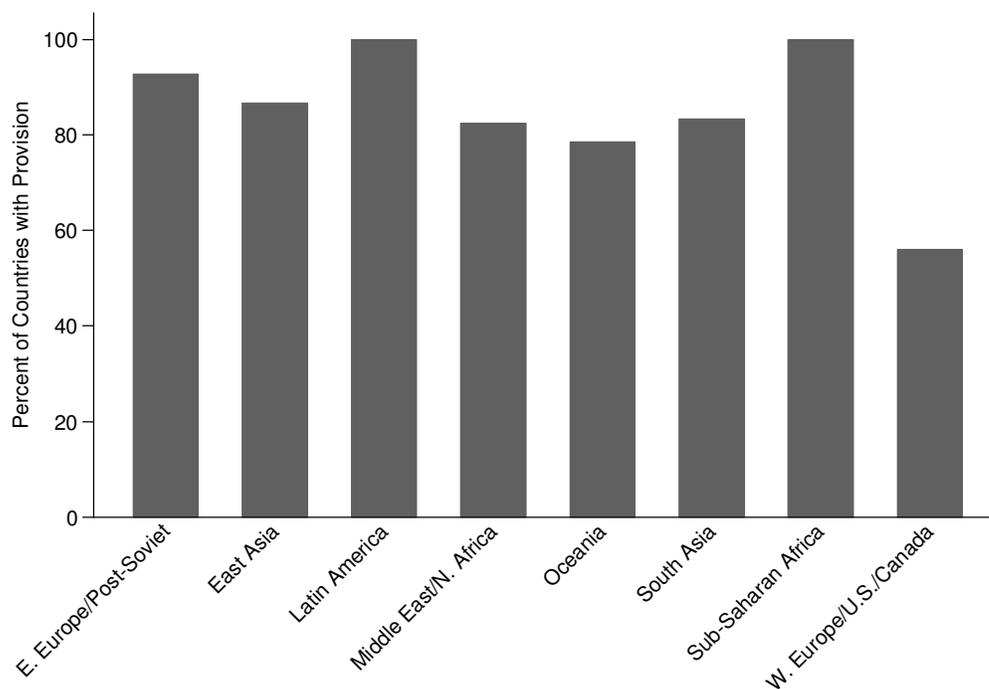
Figure 1. Percent of Constitutions that have Provisions for Calling a State of Emergency by Year (N=640)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

As Figure 1 suggests, such provisions have been common throughout the 19th and 20th centuries. As of 2000, 80% or more of constitutions contained provisions for calling state of emergency. Figure 2 shows that these provisions are common in every region of the world except for the industrialized west: only 50% of constitutional texts in Western Europe, the U.S. and Canada mentioned states of emergency. They are nearly universal in Latin America and Sub-Saharan Africa.

Figure 2. Percent of Constitutions that have Provisions for Calling a State of Emergency in 2000 by Region (N=181)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Table 1 shows the breakdown of constitutional provisions regarding who declares the state of emergency. About 67% of constitutions grant such authority to the Head of State.

Table 1. Distribution of Provision Regarding who Declares State of Emergency (N=522: only constitutions that mention emergency)

Provision	Number of Cases	Percent of Cases
Head of State	347	67%
Head of Government	8	2%
Either Head of State or Government	3	<1
Government & Cabinet	32	6%
First Chamber of legislature	32	6%
Both Chambers required	39	7%

Figure 3. Percent of Constitutions that Provide for Executive Branch to Declare a State of Emergency by Year (N=522: only constitutions that mention emergency)

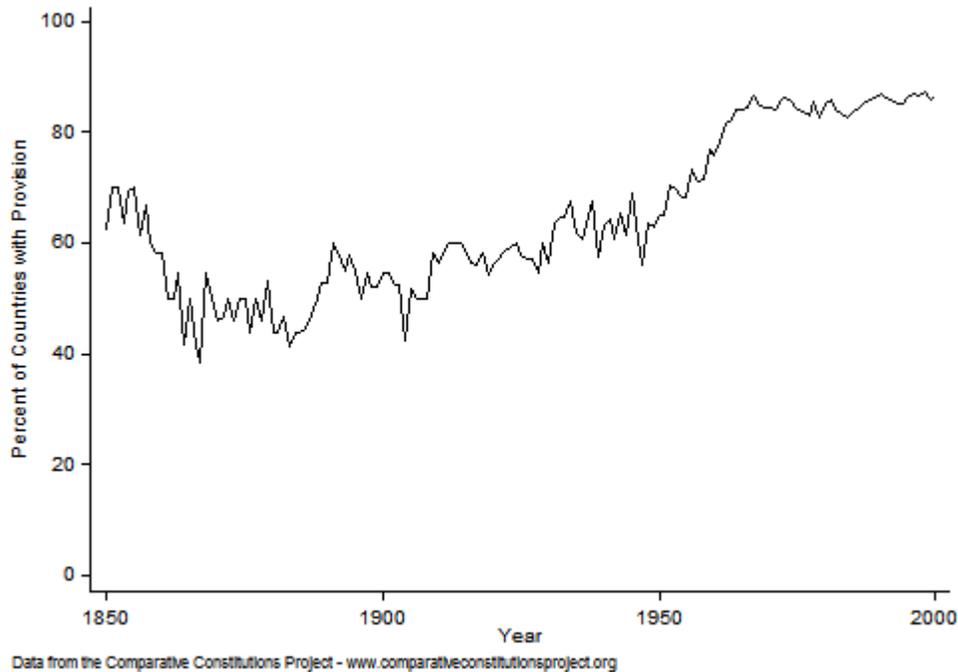


Figure 3 shows the percent of constitutions that grant the authority to declare state of emergency to the Head of State, the Head of Government or the Cabinet. The executive branch was allowed to declare a state of emergency only in about 50% of constitutions before 1950. Since then the number has been consistently increasing and reached over 80% in 2000.

Figure 4 shows the percentage of constitutions in force in 2000 that allow the executive branch to declare a state of emergency. As figure 4 suggests there is no significant variation across regions except for Western Europe, the U.S. and Canada. About 70% of constitutions in force in Eastern Europe, East Asia and Middle East allow the executive branch to declare state of emergency. The number increases to 80% in the Middle East and Latin America, and tops 90% of constitutions in Sub-Saharan Africa. At the same time, only about 60% of constitutions in force in Western Europe, the U.S. and Canada grant the authority to declare emergencies to the executive branch.

Figure 4. Percent of Constitutions that Provide for Executive Branch to Declare a State of Emergency in 2000 by Region (N=161: only constitutions that mention emergency)

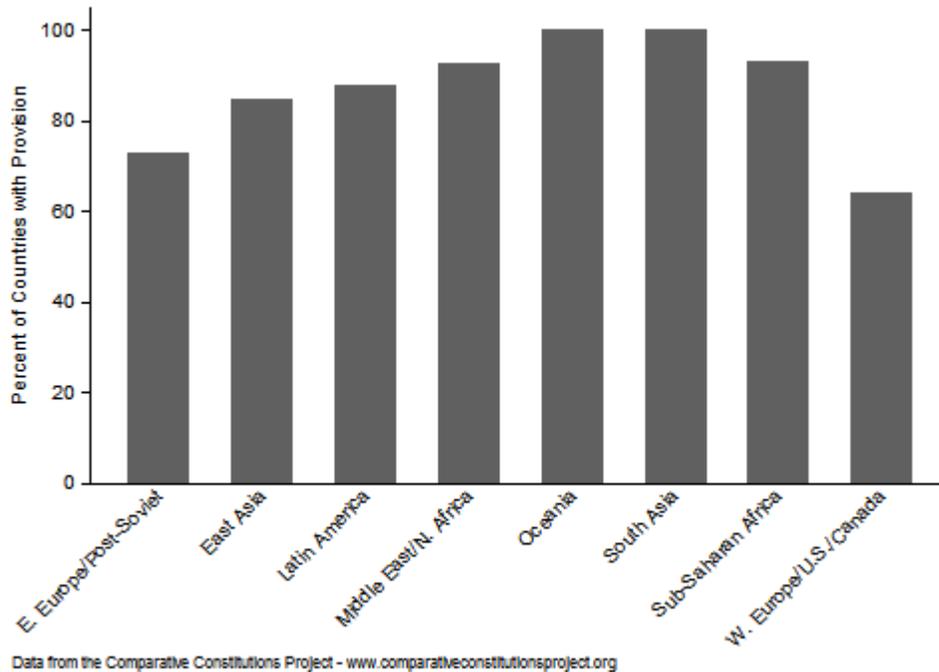


Figure 5. Percent of Constitutions that Provide for Parliament to Declare a State of Emergency by Year (N=522: only constitutions that mention emergency)

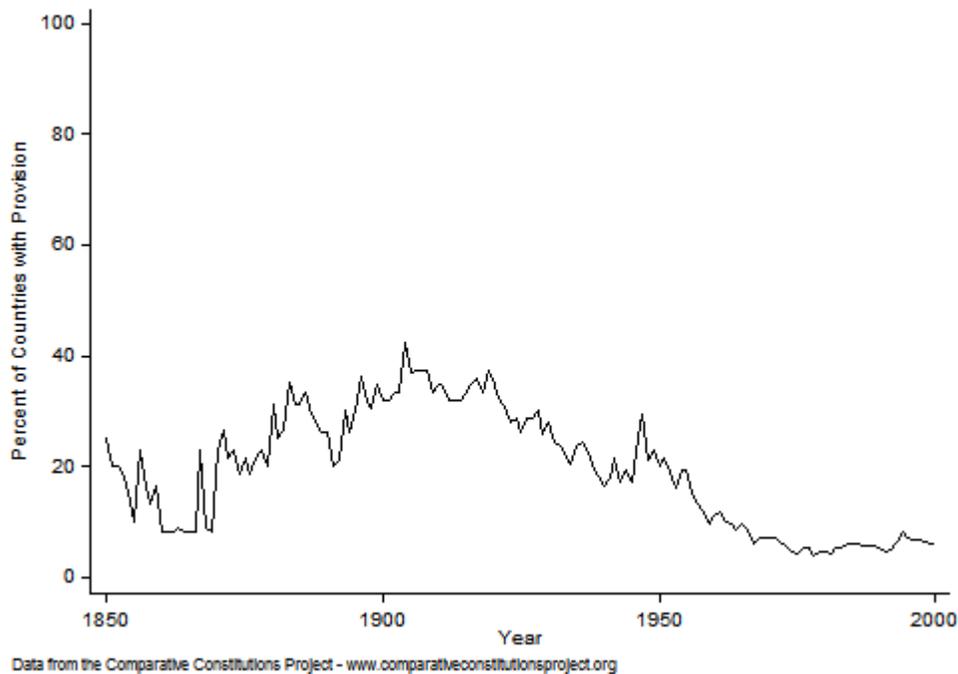


Figure 5 shows the percent of constitutions that grant the authority to declare a state of emergency to the parliament. Only about 25% of constitutions granted the authority to the Parliament in the 19th century. However, that number decreased considerably as the 20th century progressed, falling to about 8% in 2000. As Figure 6 suggests, most of those constitutions in force in 2000 were in Eastern Europe, with a few in Latin America, and Sub-Saharan Africa.

Figure 6. Percent of Constitutions that Provide for Parliament to Declare a State of Emergency in 2000 by Region (N=161: only constitutions that mention emergency)

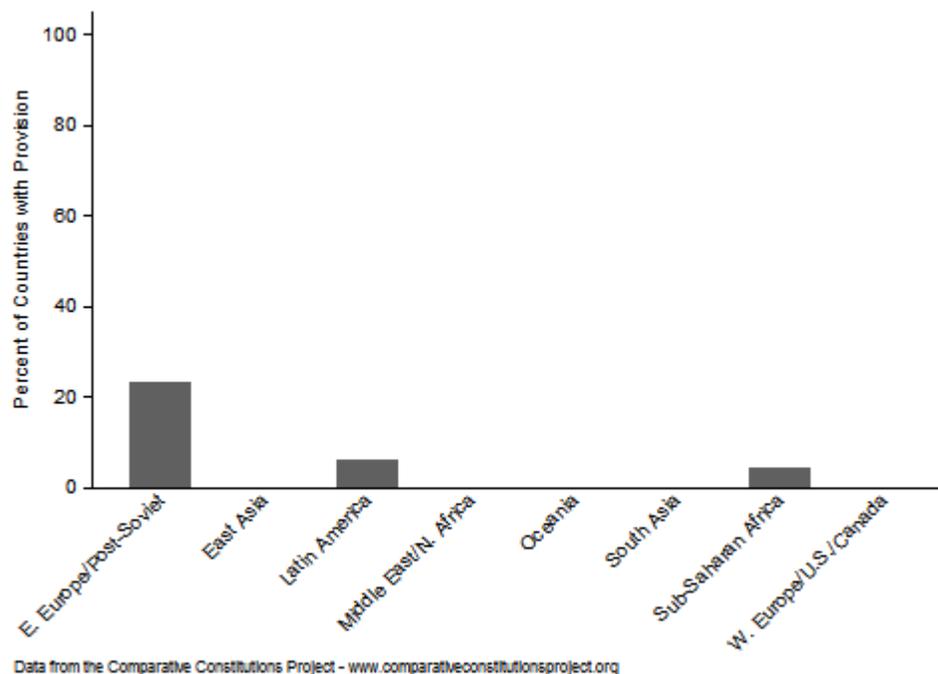


Table 2. Distribution of Provisions regarding who approves state of emergency (N=522: only constitutions that mention emergency)

Body	Number of Cases	Percentage of Cases
First Chamber	141	27%
Both Chambers Required	80	15%
Government/Cabinet	29	6%
Does Not Need Approval/Not Specified	252	49%

Only about 50% of the constitutions that contain emergency provisions require or specify the body to approve its declaration. As Table 2 shows, 27% of constitutions require the approval of the first chamber of the legislature, 15% require both chambers to approve, and 6% specify the government as the approval body.

Table 3. Distribution of Provision Regarding Conditions for State of Emergency (N=522: only constitutions that mention emergency)

Provision	Number of Cases	Percent of Cases
War/Aggression	293	56%
Internal Security	242	46%
National Disaster	107	21%
General Danger	172	33%
Economic Emergency	33	6%
Left to non-constitutional law	34	7%

Table 3 shows the breakdown of constitutional provisions regarding the conditions under which a state of emergency can be declared. Note that constitutions frequently mention more than one condition under which state of emergency can be declared, so the percentage of cases adds up to well over 100%. Out of all the constitutions that mention state of emergency, roughly half allow declaration during foreign aggression and/or when internal security is threatened. A third of constitutions mention general danger and a quarter reference national or natural disaster. Some 7% of constitutions leave the conditions to non-constitutional law.

4. NOTES ON ATYPICAL CASES

A state of emergency is addressed in variety of ways in the constitutions. We have taken a rather general approach in coding these provisions, interpreting as state of emergency any reference to martial law, state of siege, state of defense etc. We also code here those cases where state of emergency is not explicitly referenced but is implied as a part of granting extraordinary authority to the executive or where references are made to “exceptional cases of necessity or urgency.”

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

The set of sample provisions is divided into sections on:

1. Declaration of State of Emergency
2. Conditions for State of Emergency

5.1. Declaration of State of Emergency

In times of national emergency when the public interest so requires, the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest.

- *Philippines 1984. Article 14.7*

If the President is satisfied that a grave emergency exists whereby the security or economic life of Fiji is threatened, he may issue a Proclamation of Emergency.

- *Fiji 1990. Article 100.5*

When the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments are under serious and immediate threat, and when the proper functioning of the constitutional public powers is interrupted, the President of the Republic takes the measures required by these circumstances, after officially consulting the Prime Minister, the Presidents of the Assemblies as well as the Constitutional Council. He informs the Nation of these measures in a message.

- *France 2005. Article 16*

If a grave crisis arises in regard to the sovereignty or integrity of Nepal or the security of any part thereof, whether by war, external invasion, armed rebellion or extreme economic disarray, the Council of Ministers of the Government of Nepal may, by Proclamation, declare or Order a state of emergency to be enforced in any specified part or the whole of Nepal.

- *Nepal 2006. Article 143*

Proclamation of emergency on account of war, internal disturbance, etc.—(1) If the president is satisfied that a grave emergency exists in which the security of Pakistan, or any part thereof, is threatened by war or external aggression, or by internal disturbance beyond the power of a

Provincial Government to control, he may issue a Proclamation of Emergency.

- *Pakistan 2002. Article 232*

Under the circumstances and procedures envisaged by the Federal Constitutional Law, the President of the Russian Federation can impose a state of emergency on the territory of the Russian Federation or certain areas with immediate notification to the Federation Council and the State Duma.

- *Russia 1993. Article 88*

A state of emergency may be declared only in terms of an Act of Parliament, and only when—(a) the life of the nation is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergency;

- *South Africa 2003. Article 37.1*

If the House of Representatives and the Senate approve the Emergency Decree, or if the Senate disapproves it but the House of Representatives reaffirms its approval by the votes of more than one-half of the total number of the existing members of the House, such Emergency Decree shall continue to have the force as an Act. The Prime Minister shall cause the approval or disapproval of the Emergency Decree to be published in the Government Gazette. In case of disapproval, it shall be effective as from the day following the date of its publication in the Government Gazette. The consideration of an Emergency Decree by the Senate and the House of Representatives in case of reaffirmation of the Emergency Decree must take place at the first opportunity when such Houses hold their sittings.

- *Thailand 1997. Article 218*

5.2. Conditions for State of Emergency

(1) If due to war, threat of war, serious rebellion, natural disasters, or situations similar to these protecting the independence or nation's survival becomes impossible by following the provision of this Constitution, the President in confirmation of National Assembly shall declare a state of emergency in some or all parts of the country. (2) If the state of emergency continues for more than two months, the agreement of the National Assembly is required for its extension.

- *Afghanistan 2004. Article 143*

When the Institutions of the Republic, the independence of the Nation, its unity or the integrity of its territory are threatened and when the regular

functioning of the public powers is compromised, the President of the Republic may proclaim, on the whole or part of the national territory, the situation of exception, more precisely, the situation of urgency, the state of necessity or martial law. The decision is taken by the President of the Republic, in the Council of Ministers, and after consultation with the Presidents of the National Assembly, Senate and the High Constitutional Court.

- *Madagascar 1998. Article 59*

When the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfillment of its international commitments are under serious and immediate threat, and when the proper functioning of the constitutional public powers is interrupted, the President of the Republic takes the measures required by these circumstances, after officially consulting the Prime Minister, the Presidents of the Assemblies as well as the Constitutional Council.

- *France 2005, Article 16*

After hearing from the Council of the Republic and the National Defense Council, the President of the Republic may decree a state of defense in specific restricted locations to preserve or promptly re-establish public order or social peace threatened by grave and imminent institutional instability or affected by large scale natural calamities.

- *Brazil 2005. Article 136*

In the event of an invasion, serious disturbance of the public peace, or any other event which may place society in great danger or conflict, only the President of the United Mexican States, with the consent of the heads of the Secretariats of the State, the administrative departments, and the General Procurator of the Republic and with the approval of the Congress of the Union or, if in recess, the Permanent Commission, may suspend throughout the country or in a determined place the guarantees which present an obstacle to a rapid and easy combating of the situation; but he [or she] must do so only for a limited time, by means of general preventive measures, and without such suspensions being limited to a particular individual. If the suspension occurs while the Congress is in session, the latter shall grant such authorizations that are deemed necessary to enable the Executive to deal with the situation, but if it takes place during the time of recess, the Congress shall convene without delay in order to approve them.

- *Mexico 2005. Article 29*

Whenever the Institutions of the Republic, the independence of the Nation, the integrity of its territory or the execution of its international

commitments are threatened in a grave and immediate manner, and that the regular functioning of the constitutional public powers is interrupted, the President of the Republic takes the exceptional measures required by those circumstances after [the] obligatory consultation of the President of the National Assembly and of that of the Constitutional Council. He informs the Nation by a message. The National Assembly meets of right.

- *Cote d'Ivoire. Article 48*

For the purpose of maintaining national or public safety or national economic security, or averting public calamity, the King may issue an Emergency Decree which shall have the force as an Act.

- *Thailand 1997, Article 218*

In time of war, an imminent threat of war, or any other emergency, the law may introduce restrictions on the disposition of a portion of the assets owned by juridical and natural persons, for the duration of the state of emergency, or it may impose a special regime for their utilization.

- *Yugoslavia 2000. Article 75*

If a grave emergency arises in regard to the sovereignty or integrity of the Kingdom of Nepal or the security of any part thereof, whether by war, external aggression, armed rebellion or extreme economic disarray, His Majesty may, by Proclamation, declare or order a State of Emergency in respect of the whole of the Kingdom of Nepal or of any specified part thereof.

- *Nepal 1990. Article 115.1*

The President of the Republic may proclaim, after consultation with the Presidents of the two chambers, a state of emergency or martial law in case of grave and immediate danger to the institutions of the Republic, national independence or territorial integrity. He shall so inform the nation by message.

- *Cambodia 1973. Article 39*

When the integrity of the national territory is threatened, or when events occur which may impair the functioning of the Constitutional Institutions, the King can, after having consulted the Speaker of the Chamber of Representatives and the Chairman of the Constitutional Council and having addressed a message to the Nation, declare, by dahir, the state of exception.

- *Morocco 1996. Article 35*

6. APPENDIX

This report is based on the following question(s) from the Comparative Constitution Project's "survey instrument":

[EM] Does the constitution have provisions for calling a state of emergency?

1. Yes
2. No
96. Other, please specify in the comments section
97. Unable to Determine

Instructions: State of emergency includes other exceptional states, such as state of siege, martial law and defense. Any mention of one of these states, even if not explicitly about calling them, is sufficient to answer 'Yes.' Please mention the type of exceptional state in the comments for anything other than state of emergency.

[EMDECL] Who can declare a state of emergency?

1. Head of State (use this choice for single executive systems)
2. Head of Government
3. Either Head of State or Head of Government
4. the Government/Cabinet
5. First Chamber
6. Second Chamber
7. Both Chambers required
90. left explicitly to non constitutional law
96. Other, please specify in the comments section
97. Unable to Determine
98. Not Specified

[EMAPPR] Who approves a state of emergency?

1. Does not need approval
2. Head of State (use this choice for single executive systems)
3. Head of Government
4. the Government/Cabinet
5. First (or only) Chamber of the Legislature
6. Second Chamber of the Legislature
7. Both Chambers of the Legislature are required
8. Constitutional Council
90. left explicitly to non constitutional law
96. other, please specify in the comments section
97. Unable to Determine
98. Not Specified

Instructions: If both chambers must act, then please select 'Both Chambers of the Legislature are required ' If either chamber can act, then please select both the 'First Chamber of the Legislature' and the 'Second Chamber of the Legislature

[EMCOND] Under which of the following circumstances can state of emergency be declared?

1. War/aggression
2. Internal security
3. National disaster
4. General danger
5. Economic emergency
6. Threat to constitutional system
90. left explicitly to non constitutional law
96. Other, please specify in the comments section
97. Unable to Determine
98. Not Specified

Instructions: 1 war/aggression includes threat to independence, national sovereignty, territorial integrity, impeding invasion by outside forces, insurrection of foreign armed forces, threat to the defense, general mobilization 2 Internal security includes rebellion, internal war, revolution, civil unrest, civil strife, any disturbance during which army can be called to restore order, general insurrection or disorder 3 National disaster includes natural catastrophe, public calamity, ecological disaster, epidemics 4 General danger includes serious disturbance, extraordinary danger, imminent danger, all situations, compelling circumstance, public security, threat to public order, public emergency, mass disorder accompanied by violence and menace to human life, imminent peril resulting in grave results to public order 6 Threat to constitutional system includes threat to institutions, when functioning of constitutional power is interrupted.

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.