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NATO Enlargement: Senate Advice and Consent

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Summary

The Senate is expected to vote on the resolution for NATO enlargement sometime in early to mid-May. The enlargement of the North Atlantic Treaty Organization (NATO) in 1998 to include Poland, Hungary, and the Czech Republic, and the invitations extended at the NATO summit in November, 2002, to seven additional states have raised questions about whether Senate advice and consent is necessary when new states join NATO. This report describes the process that has been used in previous enlargements — Greece and Turkey (1952), the Federal Republic of Germany (1955), Spain (1982), and Poland, Hungary, and the Czech Republic (1998) — and finds that Senate advice and consent has been sought and given in every instance. The report also discusses the reunification of Germany in 1990. For more on NATO applicants, see CRS Report RL30168. This report will be updated as needed.

The North Atlantic Treaty. The North Atlantic Treaty entered into force in 1949.¹ Article 10 of the Treaty provides that “[t]he Parties may, by unanimous agreement, invite any other European state in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty.” Article 10 further provides that “[a]ny state so invited may become a party to the Treaty by depositing its instrument of accession with the Government of the United States of America.” The Treaty does not specifically mandate the procedures that each member state should follow with respect to such accessions, but Article 11 does provide that “[t]his Treaty shall be ratified and its provisions carried out by the Parties in accordance with their respective constitutional processes.”

The report of the Senate Committee on Foreign Relations on the proposed NATO treaty in 1949 commented specifically on the Senate’s role with respect to the admission of new members to NATO, as follows:

¹ 63 Stat. 2241 (1949); TIAS 1964; 4 Bevens 828.

Inasmuch as the admission of new members might radically alter our obligations under the pact, the committee examined article 10 very carefully. The question arose whether any United States decision respecting new members would be based solely on Presidential action or would require Senate approval. Consequently, the committee was fully satisfied by the commitment of the President, delivered by the Secretary of State, that he would consider the admission of a new member to the pact as the conclusion of a new treaty with that member and would seek the advice and consent of the Senate to each such admission. The committee considers this an obligation binding upon the Presidential office.²

The Senate did not add a formal condition regarding the Senate's role to its resolution of ratification of the Treaty.³ But that procedure has in fact been followed with respect to all of the subsequent enlargements of NATO — Greece and Turkey, West Germany, Spain, and, most recently, Poland, Hungary, and the Czech Republic. In each instance a protocol regarding the enlargement has been concluded by all of the member states of NATO, and the Administration has submitted the protocol to the Senate for its advice and consent.

Greece and Turkey. In 1951 the twelve members of NATO negotiated a “Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey.” Article I of the Protocol stated:

Upon the entry into force of this Protocol, the Government of the United States of America shall, on behalf of all the Parties, communicate to the Government of the Kingdom of Greece and the Government of the Republic of Turkey an invitation to accede to the North Atlantic Treaty, as it may be modified by Article II of the present Protocol. Thereafter the Kingdom of Greece and the Republic of Turkey shall each become a Party on the date when it deposits its instrument of accession with the Government of the United States in accordance with Article 10 of the Treaty.

President Truman submitted the Protocol to the Senate for its advice and consent on January 10, 1952⁴; and the Senate approved the Protocol on February 7, 1952, by a vote of 73-2.⁵ The report of the Senate Committee on Foreign Relations, which unanimously recommended approval of the Protocol, reiterated the commitment of the President to seek Senate advice and consent to any enlargement of NATO, as follows:

Before the Senate gave its advice and consent to the ratification of the North Atlantic Treaty on July 21, 1949, it received the President's assurance delivered by the Secretary of State during the hearings on the treaty that —

... in his judgment the accession of new members to this treaty creates in regard to each new member coming in in effect a new treaty between the United States and that nation, and that therefore the President would consider it necessary to

² S. Exec. Rept. No. 8, 81st Cong., 1st Sess. (June 6, 1949), at 18.

³ The Senate approved the Treaty by a vote of 82-13. See 95 CONG. REC. 9916 (July 21, 1949).

⁴ S. Exec. E, 82d Cong., 2d Sess. (1952).

⁵ 98 CONG. REC. 930 (Feb. 7, 1952).

ask for the advice and consent of the Senate before himself agreeing to the admission of a new member.⁶

The Protocol entered into force on February 15, 1952.⁷

Federal Republic of Germany. On October 23, 1954, the fourteen member states of NATO concluded a “Protocol to the North Atlantic Treaty on the Accession of the Federal Republic of Germany.” In words virtually identical to those used in the Protocol regarding Greece and Turkey, Article I of the Protocol provided as follows:

Upon the entry into force of the present Protocol, the Government of the United States of America shall on behalf of all the Parties communicate to the Government of the Federal Republic of Germany an invitation to accede to the North Atlantic Treaty. Thereafter the Federal Republic of Germany shall become a Party to that Treaty on the date when it deposits its instruments of accession with the Government of the United States of America in accordance with Article 10 of that Treaty.

President Eisenhower submitted this Protocol to the Senate for its advice and consent on November 15, 1954, together with another protocol terminating the occupation regime in West Germany.⁸ In unanimously recommending Senate consent to ratification of both protocols, the report of the Senate Foreign Relations Committee made no reference to the President’s 1949 commitment regarding Senate involvement in any enlargement of NATO.⁹ The Senate gave its consent to the ratification of the Protocol on April 1, 1955, by a vote of 76-2¹⁰; and the Protocol entered into force on May 5, 1955.¹¹

Spain. On December 10, 1981, the fifteen member states of NATO concluded a “Protocol to the North Atlantic Treaty on the Accession of Spain.” In words slightly different from those of the two foregoing protocols, Article I of this Protocol provided as follows:

Upon the entry into force of this Protocol, the Secretary General of the North Atlantic Treaty Organization shall, on behalf of all the Parties, communicate to the Government of the Kingdom of Spain an invitation to accede to the North Atlantic Treaty. In accordance with article 10 of the treaty, the Kingdom of Spain shall become a Party on the date when it deposits its instrument of accession with the Government of the United States of America.

President Reagan transmitted this Protocol to the Senate for its advice and consent on January 26, 1982.¹² In its report unanimously recommending approval of the Protocol, the Senate Foreign Relations Committee made no mention of the 1949 commitment regarding the Senate’s role in consenting to any enlargement of NATO or to any

⁶ S. Exec. Rept. No. 1, 82d Cong., 2d Sess. (Jan. 21, 1952).

⁷ 3 UST 43 (1952); TIAS 2390.

⁸ S. Exs. L and M, 83d Cong., 2d Sess. (Nov. 15, 1954).

⁹ S. Exec. Rept. No. 6, 84th Cong., 1st Sess. (March 31, 1955).

¹⁰ 101 CONG. REC. 4233 (April 1, 1955).

¹¹ 6 UST 5707 (1955); TIAS 3428.

¹² Treaty Doc. No. 97-22, 97th Cong., 2d Sess. (Jan. 26, 1982).

controversy about whether the Senate should be involved.¹³ The Senate consented to the ratification of the Protocol on a division vote on March 16, 1982¹⁴; and the Protocol entered into force on May 29, 1982.¹⁵

Reunification of Germany. The reunification of Germany did not lead to a protocol regarding the accession of the reunified state to NATO. Instead, the reunified Germany was treated as a continuation of the Federal Republic of Germany (FRG); and the FRG's treaty commitments, including its participation in NATO, were affirmed as continuing in effect. That affirmation was part of both the Treaty between the FRG and the German Democratic Republic on the Establishment of German Unity¹⁶ and the Treaty on the Final Settlement With Respect to Germany between the four occupying powers and the FRG and German Democratic Republic (GDR).¹⁷

Article I of the treaty between the FRG and the GDR regarding the process of unification provided for the accession of the districts of the GDR to the territory of the FRG on October 3, 1990.¹⁸ On that date the GDR ceased to exist as a state while the FRG continued in existence with an expanded territory. Article 11 of the agreement provided that the treaties of the FRG would continue in force, as follows:

The Contracting Parties proceed on the understanding that international treaties and agreements to which the Federal Republic of Germany is a contracting party, including treaties establishing membership of international organizations or institutions, shall retain their validity and that the rights and obligations arising therefrom ... shall also relate to the territory specified in Article 3 of this Treaty.

In contrast, Article 12 of the agreement provided that the treaties of the GDR would not automatically continue in force but were subject to negotiation with the parties affected.

Similarly, the Treaty on the Final Settlement With Respect to Germany concluded by the FRG, the GDR, the United States, France, the Soviet Union, and the United Kingdom affirmed the continuing right of the united Germany to participate in alliances such as NATO. Article 6 of the treaty provided as follows:

The right of the united Germany to belong to alliances, with all the rights and responsibilities arising therefrom, shall not be affected by the present Treaty.

¹³ S. Exec. Rept. No. 97-51, 97th Cong., 2d Sess. (March 9, 1982).

¹⁴ 128 CONG. REC. 4301 (March 16, 1982).

¹⁵ 34 UST 3508 (1982); TIAS 10564.

¹⁶ 30 ILM 457 (1991). The pertinent provisions of this treaty are also reproduced at Department of State, TREATIES IN FORCE 2002, at 105.

¹⁷ TIAS ____ (1991).

¹⁸ 30 ILM 457, 464, Article 1.

President Bush submitted the latter treaty to the Senate for its advice and consent on September 26, 1990¹⁹; and the Senate gave its consent by a vote of 90-0 on October 10, 1990.²⁰ In a hearing by the Senate Foreign Relations Committee on the treaty, the State Department representative stated that “Article 6 permits full German membership in NATO.”²¹ Similarly, the report of the Committee recommending that the Senate consent to ratification of the treaty stated that Article VI meant “[a] united Germany retains the right to be a member of NATO”²² A hearing held by the Senate Armed Services Committee on the implications of the treaty for NATO strategy adduced a number of similar statements from Administration witnesses.²³

The treaty entered into force on March 15, 1991.

Poland, Hungary, and the Czech Republic. On December 16, 1997, the sixteen member states of NATO concluded three Protocols providing for the accession of Poland, Hungary, and the Czech Republic, respectively. Article I of each Protocol stated as follows:

Upon the entry into force of this Protocol, the Secretary General of the North Atlantic Treaty Organization shall, on behalf of all the Parties, communicate to the Government of [the Republic of Poland, the Republic of Hungary, the Czech Republic] an invitation to accede to the North Atlantic Treaty. In accordance with Article 10 of the Treaty, [the Republic of Poland, the Republic of Hungary, the Czech Republic] shall become a Party on the date when it deposits its instrument of accession with the Government of the United States of America.

President Clinton submitted the three protocols to the Senate for its advice and consent on February 11, 1998.²⁴ The Senate Foreign Relations Committee had in prior years held a number of hearings on the subject of enlarging NATO; and after an additional hearing on February 24, 1998, on the three Protocols,²⁵ the committee on March 6, 1998, unanimously recommended approval of the Protocols.²⁶ In contrast to its recommendations on prior enlargements of NATO, however, the committee proposed that

¹⁹ S. Treaty Doc. 101-20, 101st Cong., 2d Sess. (Sept. 26, 1990).

²⁰ 136 CONG. REC. 28208-09 (Oct. 10, 1990).

²¹ *Hearing on the Treaty on the Final Settlement With Respect to Germany Before the Senate Committee on Foreign Relations*, 101st Cong., 2d Sess. (September 28, 1990), at 5 (statement of Robert Zoellick).

²² S. Exec. Rept. 101-33, 101st Cong., 2d Sess. (Oct. 5, 1990).

²³ *See Hearing on the Implications of Treaty on Final German Settlement for NATO Strategy and U.S. Military Presence in Europe Before the Senate Armed Services Committee*, 101st Cong., 2d Sess. (Oct. 4, 1990), at 6 and 25-26 (statements of Stephen J. Hadley, Assistant Secretary of Defense for International Security Policy) and 7 (statement of James F. Dobbins, Jr., Principal Deputy Assistant Secretary of Defense for European and Canadian Affairs).

²⁴ S. Treaty Doc. 105-36, 105th Cong., 2d Sess. (Feb. 11, 1998).

²⁵ *Hearing on Administration Views on the Protocols to the North Atlantic Treaty on the Accession of Poland, Hungary, and the Czech Republic before the Senate Committee on Foreign Relations*, 105th Cong., 2d Sess. (Feb. 24, 1998).

²⁶ S. Exec. Rept. 105-14, 105th Cong., 2d Sess. (March 6, 1998).

seven declarations and four conditions be included in the resolution of ratification of the Protocols. Most concerned the strategic rationale for NATO and the implications of its enlargement for relations with Russia and European integration. But one declaration reiterated the necessity for Senate advice and consent, as follows:

The Senate declares that no action or agreement other than a consensus decision by the full membership of NATO, approved by the national procedures of each NATO member, including, in the case of the United States, the requirements of Article II, section 2, clause 2 of the Constitution of the United States (relating to the advice and consent of the Senate to the making of treaties), will constitute a security commitment pursuant to the North Atlantic Treaty.²⁷

The committee report also noted that the Secretary of State had, in response to a written question from the committee, made the following commitment:

We understand fully the Senate's constitutional responsibility to advise and consent to the ratification of any Treaty into which the United States enters. As we have done in the past, as well as on this occasion, we will keep the Senate fully informed of significant developments with regard to possible future rounds of NATO enlargement and seek its advice on important decisions. We would of course be required to obtain the Senate's advice and consent to any future amendments to the Washington Treaty that enlarge NATO.²⁸

During several days of floor debate, the Senate made a number of modifications in the declarations and conditions recommended by the committee but it made no change in the foregoing declaration. On April 30, 1998, the Senate approved the resolution of ratification, 80-19.²⁹ All three Protocols entered into force on December 4, 1998.³⁰

Conclusion. The North Atlantic Treaty requires the unanimous agreement of its members to invite additional European states to join and mandates that the members evidence their approval "in accordance with their respective constitutional procedures." In approving the Treaty in 1949 Congress elicited a promise from President Truman that all enlargements of NATO would be submitted for Senate advice and consent; and it reiterated that understanding in its resolution of ratification approving the most recent enlargement in 1998. That procedure has in fact been followed with respect to every enlargement to date.

²⁷ Id. at 40.

²⁸ Id. at 7.

²⁹ 144 CONG. REC. S3907 (daily ed. April 30, 1998).

³⁰ TIAS ____ (1998).