

**The Role of National Parliaments
in the Decision-Making Mechanism
of the North Atlantic Treaty Organization**

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Contents

Introduction	5
1.The foreign policy decision-making process in the Republic of Bulgaria	7
1.1.Related institutions	8
1.1.1.The President of the Republic	8
1.1.2.The National Assembly	9
1.1.3.The Council of Minister	10

1.1.4.The Ministry of Foreign Affairs	11
1.1.5.The Constitutional Court	11
1.2.The foreign policy decision-making. The role of the National Assembly	12
2.NATO's decision-making mechanism	13
2.1.The North Atlantic Council	14
3.The role of national parliaments	18
3.1.The provisions of the Washington Treaty of 1949	18
3.1.1.The mutual defense provision	18
3.1.2.The North Atlantic Council	20
3.1.3.Invitations for membership	21
3.1.4.Ratifications	22
3.2.Role of National Parliaments according to the respective constitutional procedures	22
3.2.1.The constitutional ratification procedures in the NATO membership-countries with regard to the modifications of North Atlantic Treaty after the enlargement	25
3.2.1.1.Belgium	26
3.2.1.2.Canada	26
3.2.1.3.Denmark	26
3.2.1.4.France	27
3.2.1.5.Germany	27
3.2.1.6.Greece	27
3.2.1.7.Iceland	28
3.2.1.8.Italy	28
3.2.1.9.Luxembourg	29
3.2.1.10.The Netherlands	29
3.2.1.11.Norway	30
3.2.1.12.Portugal	30
3.2.1.13.Spain	31

3.2.1.14.Turkey	31
3.2.2.The constitutional ratification procedures of the new member-countries	32
3.2.2.1.The Czech Republic	32
3.2.2.2.Hungary	32
3.2.2.3.Poland	33
3.2.3.The constitutional ratification procedure of the United States Congress and the Parliament of the United Kingdom	33
3.2.3.1.The United States Congress	34
3.2.3.2.The Parliament of the United Kingdom	42
Conclusion	45
Bibliography	47

Introduction

The collapse of the Berlin wall brought to considerable changes in the geopolitical landscape in Europe.

The Warsaw Treaty Pact was dissolved and the Soviet occupation forces withdrew. The European continent which had long been a theatre of two opposing military alliances had lost its balance thus keeping in its Western part the most successful ever military

alliance and a great number of new democracies in the process of transformation from tributary communism to sovereignty to the East.

Tightly packed among the prosperity and security of their Western partners and the negative energy released by the process of disintegration of the former Soviet empire the Central and Eastern European states should have done for the first time after half a century of tributary dependency their sovereign choice to drag out of the grey prose of their existence, destined by history and great powers, and to become what have already been denied to them after the World War II.

The political order which has already been established in the world for decades had been changed fundamentally for reasons of global, regional and internal political character thus leaving deep and durable effects.

Without any large scale armed conflicts or global cataclysms the world as a whole and Bulgaria in particular joined new realities and new structures, thus provoking new values as well as new approach to international relations, what lead to the building of new democratic institutions.

After the collapse of the totalitarian system in the countries in Central and Eastern Europe in 1989 – 1990 and the dissolution of the Warsaw Treaty Pact though in a contradictory international situation Bulgaria choose an alternative to the foreign policy strategy that have been imposed by force on the ex-communist countries during the last fifty years.

Today Bulgarian foreign policy aims at ensuring of national security, prosperity and economic development as well as at strengthening of the democratic procedures and the institutions in the country.

Bulgaria's top priority in foreign policy, supported by the public and by the majority of the policymakers is membership in the North Atlantic Treaty Organization.

Bulgaria is among the countries, which supported strongly the enlargement of the Alliance and welcomed the decisions of the April 1999 NATO Summit in Washington where the “open door policy” was strongly reaffirmed and the country was among those specially mentioned in connection to the process of further enlargement.

Today Bulgaria’s membership in NATO depends on how our policymakers and state administration will do their homework. Together with the rest of the aspiring nations, Bulgaria should be fully complying with the military and political criteria which were established in the 1995 Study on NATO enlargement and reaffirmed in Madrid for political systems that adhere to democratic principles and are based on the rule of law, market economies and environment favorable to foreign trade, free enterprise, civilian control of the military, willingness to resolve territorial and ethnic disputes with neighbouring countries and the ability to undertake the military requirements of NATO including the participation in the Partnership for peace.

Ten years after the beginning of the democratic changes in the country we are still studying the experience of the western democracies. A lot more should be done for the development of the democratic institutions. As an aspirant country Bulgaria should be ready to contribute to the security of the whole Alliance. In practice that is the agreement to participate in the full range of Alliance activities from collective defense to blue helmet operations.

In its preparation for membership Bulgarian policymakers should add to parliamentary procedures and parliamentary control. It was quite recently that Bulgaria had to make its “dress rehearsal” to act as one of the allies, as the National Assembly ratified the Agreement between the Republic of Bulgaria and the North Atlantic Treaty Organization, concerning the transit through Bulgarian airspace of NATO aircraft within the framework of the Allied Force Operation.

With regard to the necessity of a vigorous and well-informed debate on NATO membership my study is focusing on the important role of national parliaments in the decision-making mechanism of NATO.

By means of the precise delienation of the foreign policy decision-making in Bulgaria as well as the decision making in NATO and the parliamentary procedures in the member-countries the most precise section would be sought for in which parliaments could effectively influence the decision-making in the North Atlantic Council within the frames of their national constitutional procedures.

1.The foreign policy decision-making process in the Republic of Bulgaria. Role of the National Assembly

The objectives of the Bulgarian foreign policy aim at the provision of national security and prosperity of the Bulgarian citizens, their fundamental rights and freedoms, economic development of the country and strengthening of democratic institutions. In correspondence to the principle of the division of powers, the competencies in the foreign policy making of the Republic of Bulgaria are shared among the Council of Ministers, the National Assembly and the Ministry of Foreign Affairs. The President of the Republic and the Constitutional Court have specific legislative competencies under the Constitution.

1.1.Related institutions

1.1.1.The President of the Republic

The President is the Head of the State according to the Constitution. He embodies national unity and represents the Republic of Bulgaria in international relations under Article 92, Paragraph 1 of the Constitution. The Presidents competencies in foreign policy are of a representative character and are strictly regulated.

Under Article 98 of the Constitution, the President:

- concludes international treaties¹;
- aprobrates changes in national borders²;

¹ Article 98, paragraph 3

² Article 98, paragraph 5

-appoints and removes from office heads of the diplomatic missions and permanent representatives of Bulgaria³.

The prerogatives of the President in the aforesaid cases are limited by legislation. International treaties, which he signs are subjected to ratification by the supreme legislative body of the country – the Bulgarian National Assembly. Though perfect from the point of view of international law, treaties could not become a part of the Bulgarian legislation without the act of ratification voted by the simple majority of the Parliament.

The appointment and removal from office of heads of diplomatic missions and permanent representations is on the proposal of the Council of Ministers.

The President has wider competencies in national security according to Article 100, paragraph 7.

1.1.2.The National Assembly

As a supreme body of state power the National Assembly has the exclusive competencies:

- to declare a war and make peace⁴;
- to decide on sending of Bulgarian troops outside the territory of the country, as well as on the access of foreign troops on the territory of the country or their transit through Bulgaria⁵;
- to declare martial law or any other states of emergency on a part of the country or on its whole territory on a motion from the President or the Council of Ministers⁶.

³ Article 98, paragraph 6

⁴ Article 84, section 10

⁵ Article 84, paragraph 11

⁶ Article 84, paragraph 12

In similar cases the National Assembly has no rights for an autonomous decision, but only on the motion from the Head of State or the Cabinet.

The National Assembly is not a subject in international relations and international treaties. But it has the competencies to ratify international treaties which:

- have political or military nature;
- refer to Bulgarian membership in international organization;
- refer to the changes in Bulgarian boundaries;
- have obligations for the treasury;
- envisage the participation of the country in international arbitration or legal proceedings;
- refer to fundamental human rights;
- affect the action of law or require legislation in order to be enforced.

Treaties ratified by the National Assembly might be amended or denounced only by their build in procedure or in accordance with the universally acknowledged norms of international law.

A very important competence of the National Assembly is the power to promulgate international treaties which was interpreted in resolution No 7 of the Constitutional Court from 2 July 1992. International treaties become a part of the national legislation of the country only after the completion of the three legislative procedures: ratification, promulgation and coming into force. According to the Constitution international treaties which have been ratified by the constitutionally established procedure, promulgated and come into force with respect to the Republic of Bulgaria shall be considered a part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise.

The activities of the National Assembly in foreign policy are supported by the Committee on Foreign and Integration policy which is considered a key committee by public and policymakers. It played very important role during the last years with respect to the country's foreign priorities concerning NATO membership as well as the crisis on the Balkans.

Parliamentary control is considered one of the most important instruments for the influence of the parliamentarians on the foreign policy decision-making.

1.1.3.The Council of Ministers

According to the classic tradition of the competence sharing in foreign policy making the executive power is in charge of the foreign policy as ensuring the national security of the country.⁷

The Council of Ministers concludes, confirms and denounces international treaties when authorized to do so by law. The Prime Minister coordinates and bears responsibility for the overall policy of the Government under Article 108, paragraph 2 of the Constitution.

1.1.4. The Ministry of Foreign Affairs

The Minister of Foreign Affairs and hence the corresponding Ministry is in practice authorized to implement as well as to accomplish and promote the foreign policy of the country.

The Ministry drafts and submits to the Council of Ministers the draft resolutions related to foreign policy.

1.1.5.The Constitutional Court

⁷ Article 105, paragraph 1 and 2 of the Constitution of the Republic of Bulgaria

The Constitutional Court has certain powers as far as foreign policy decision-making is concerned, which set up two categories:

- powers with in the process of decision-making;
- powers in the mechanism for co-ordination of the foreign policy process.

Under Article 149 of the Constitution, the Constitutional Court delivers judgements on the conformity of the treaties concluded with the Constitution, as well as the conformity of legislation with the regulations of international law and the international treaties to which Bulgaria is a party⁸, i. e. the Court has the power of preliminary control during the decision-making process on the constitutional conformity of a certain legislative category - the international treaties that has already been concluded.

The regulations of international law have priority over national legislation, which is also under the competence of the control of the Court.

1.2. The foreign policy decision-making. The role of the National Assembly

Institutions have different shares in the foreign policy making in Bulgaria. Among the powers of the National Assembly as an institution with a supreme and universal competency are longterm general guidelines for the country's foreign policy. They could be objectified in a different legislative form, which could include resolutions, decisions and addresses. As far as resolutions are concerned, they are binding for all the state institutions, organizations and citizen.

Declarations and addresses are an expression of the political will of the policymakers, which might consist of opinions on foreign policy issues and on issues related to the international relations of the country.

⁸ Article 14, paragraph 4

According to the principle of division of powers the acts of the Parliament have no power to repeal foreign policy decisions of the Council of Ministers or the Minister of Foreign Affairs. But if they are not in conformity to the acts of the National Assembly, the only means for reaction is parliamentary control, which might bring to a vote of non-confidence to the Government which is succeeded by resignation.

Under Article 72, paragraph 1 of the Rules of Procedure of the National Assembly the Parliamentary Committee on Foreign and Integration Policy is fostering the activities of the Parliament as related to foreign policy issues. The Committee adopts opinions on ratifications, draft resolutions, declarations, addresses after debates and evidence given by the members of Cabinet and state administration, holds hearings of Bulgarian ambassadors.

Under Article 80 of the Constitution any official or citizen summoned by a parliamentary committee shall be obliged to testify and present any required documents.

The Committee has no rights to propose amendments to the international treaties submitted for ratification. It could only propose the adoption or the rejection of the ratification draft law.

The legally regulated procedure for taking decisions in the National Assembly has a few specifications as compared to the process of taking of decisions in matters of different competence. Both of the parliamentary committees with competencies in foreign affairs and national security hold their meeting behind closed doors under Article 25, Paragraph 3 of the Rules of Procedure of the National Assembly.

The Rules of Procedure of the National Assembly specify on particular terms for the adoption of decisions, declarations and addresses. The drafts of these acts, should be submitted by the Chairman of the National Assembly to parliamentary committees not later than three days since their receipt. Committees should send their opinions on the draft pieces of legislation maximum to fifteen days from the date on which the documents have been received.

2. NATO's decision-making mechanism

It is beyond dispute that the decision-taking mechanism of NATO is unconditionally among the basic factors for the success and longevity of the Alliance.

The North Atlantic Treaty was originally signed by ten European States, the United States and Canada on 4 April 1949 in Washington on the basis of Article 51 of the United Nation's Charter, which confirms "the inherent right of the individual of collective self-defense"

NATO is an intergovernmental organization within which the member countries keep their sovereignty and independence. All the signatories joined the Alliance as a result of its own choice, which was a result of public debate and in correspondence with constitutional and parliamentary procedures.

The Treaty recognizes the international obligations of its member countries in correspondence to the United Nation's Charter. According to Article 8 the allies declare that they are not undertaking, nor entering into any international agreement that might be in conflict with the provisions of the Treaty.

2.1.The North Atlantic Council

Under Article 9 of the Treaty, the Parties established a Council on which each of them should be represented to consider matters concerning the implementation of the Treaty.

The Council has been modified in a number of ways since the foundation of the Alliance. In September 1949 it was decided that the North Atlantic Council would be composed of the Foreign Ministers of the member-states and would meet once a year in an ordinary session. The system proved to be too cumbersome to deal with day to day

problems and in 1950 the “Council deputies” was established. This was a semi-permanent body and in 1951, Defense Committee and Defense and Economic Committee were suppressed and the position of the Council deputies was enhanced. The deputies began to assume some of the functions which characterize the North Atlantic Council of today. A further change was made at the Lisbon ministerial meeting in 1952. This change was of a more radical nature, directed at the creation of a genuinely permanent body. The nature of the Council which resulted from the Lisbon meeting has not changed.

The Council is the supreme authority of the Alliance and its task is to work towards the fulfillment of the basic objective of the Treaty – international peace and the security of its member-countries. It has no terms of reference, but the Treaty itself. The Council provides the only one of its kind forum for wide consultations among the governments of the allies on all the issues, concerning their security. It is the most important decision-making body of NATO.

The Council meets at various levels – at the level of permanent representatives (the ambassadors of the member-countries to NATO), what is known as the Council in permanent session. In theory it meets at least once a week (every Wednesday), but in practice even more often; at the level of foreign ministers it meets twice a year, normally once in Brussels and once in one of the capitals of the member countries. According to the agenda on some occasions the defense and finance ministers might also attend these meetings. At the request of the chairman or any of its members the Council might be convened approximately in two hours notice.

When issues of crucial importance are to be discussed, meetings at the level of Heads of State and Government are summoned (the so-called summit level). They normally result in a major statement of future objectives and reaffirmation of the basic principles of the Alliance policy.

Notwithstanding the level of the states’ representatives at the meetings decisions are always taken on behalf of their governments. No minutes or official record of the

meetings of the Council are circulated which together with the confidential character of the meetings help the creative spirit.

All the sixteen member-countries have the identical rights on expressing their views at the meetings. The decisions adopted are an expression of the collective will of their governments and are reached on the basis of unanimity and on their common consent. There is no majority voting. Once adopted the decisions of the Council are binding. They could be amended or overriden only on the decision of the Council.

Permanent representatives in the Council act under the directions of their national administrations and keep them informed on the views and positions expressed by the other member countries especially on the progress achieved on issues on which they have concurrent positions.

The meetings of the Council are chaired by the Secretary General of NATO or his deputy in his absence, regardless of the level at which the Council meets. At the minister's level, one of the foreign ministers acts as an honorary chairman. This position is transferred from country to country by the English alphabet.

The Treaty assigns to the Council the task to create its subsidiary bodies. Subsequently the Committees and planning groups were created, which help the work of the Council or take responsibility in certain fields as planning security, nuclear planning or military issues.

Responsibility for NATO finances is also vested in the NAC, which is advised by the Military and the Civil Budget Committees and by the international Board of Auditors.

The process of taking decisions of the NATO members is based on the consensus and common consent which helps preservation of the role and the individual aspects and experience of each country.

The consultations within the frame of the Alliance at its initial stage are an exchange of information. Next level comprises of information on the decisions and actions, which individual governments have undertaken, or consider undertaking which might have either direct or indirect consequences on the other allies. Consultations aim at reaching of mutually acceptable agreements on common decisions or actions of NATO as a whole.

Action is agreed upon the basis of unanimity and common accord. As it has already been emphasized NATO is not a supranational organization, which means that each nation represented at the Council table or its subordinate committees retains complete sovereignty and responsibility for its own decisions.

The role of national parliaments of the signatories to the Washington Treaty in the decision-making mechanism of NATO is therefore entirely within the hands of their constitutionally regulated procedure.

The principle of the decision-making mechanism in the North Atlantic Council, being the highest political and military authority in the Alliance is based on common accord and unanimity. That is the base which defines the significant role of all the member-countries as well as their national institutions in the decision-making process, i.e. brought to their constitutional powers in the process of the foreign policy decision-making of their own countries.

In addition to all the routine constitutional powers of the national parliaments, their role and significance was explicitly intensified after the Madrid summit. In the process of inviting new member-countries, followed by negotiations and then by ratification, national legislatures confirmed their well deserved place in decision-making.

An excellent example of the aforesaid is the speech of the Secretary of State Madeleine Albright at the signing of Accessions Protocols on 16 December 1997:

“In the United States, I certainly do not have the final word on NATO enlargement, and neither does the President Clinton. The final word belongs to members of the United States Senate and the citizens they represent. While the debate has begun and many members of Congress from both political parties have embraced the goals of this effort, I do not take approval for granted.”⁹

⁹ Downloaded from the Internet