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Senate Consideration of Treaties

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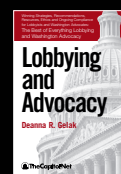


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The consideration of treaties and nominations constitutes the executive business of the Senate.¹ To conduct executive business, the Senate must resolve into executive session. Senate Rule XXIX governs executive sessions, generally; Rule XXX addresses proceedings on treaties.

When the President submits a treaty to the Senate, the treaty and any supporting materials are referred to the Committee on Foreign Relations. Paragraph 3 of Senate Rule XXIX requires that all treaties and “all remarks, votes, and proceedings thereon shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.” At the time the treaty is referred to committee, the Senate typically agrees by unanimous consent to remove the “injunction of secrecy.”²

The Foreign Relations Committee can order the treaty reported back to the Senate—favorably, unfavorably, or without recommendation—or, instead, decline to act on the treaty. If the committee does not act on the treaty, it is not automatically returned to the President. Treaties, unlike bills and other legislative measures, remain available to the Senate from one Congress to the next until they are disposed or the Senate agrees to return them to the President. Paragraph 2 of Rule XXX states in part that “all proceedings on treaties shall terminate with the Congress, and they shall be resumed at the commencement of the next Congress as if no proceedings had previously been had thereon.” Thus, if the Foreign Relations Committee fails to report a treaty before the end of a Congress, the treaty remains before the committee during the next Congress. If the committee has reported a treaty, but the Senate has not completed floor consideration of it when the Congress ends, the treaty is recommitted to the committee, and the committee must report it again before the Senate may consider it on the floor.

If the committee votes to report a treaty, it is placed on the Senate’s *Executive Calendar*³ and must lie over on this calendar for one day before possible floor consideration. The Senate may waive this layover requirement by unanimous consent.

When the Senate is prepared to consider the treaty, the majority leader makes either a unanimous consent request to that effect or, while in legislative session, a non-debatable motion that the Senate go into executive session for the purpose of considering a specific treaty that is on the *Executive Calendar*. If the Senate is already in executive session, or if the Senate agrees simply to resolve into executive session without a purpose for doing so being specified in the motion, then a motion made in executive session to proceed to any but the first item listed on the *Executive Calendar* is debatable, meaning that the motion to proceed could be subject to extended debate and perhaps the cloture procedures under Rule XXII.

Once the Senate has agreed to proceed to the treaty and is in executive session, the Senate first considers the text of the treaty itself, just as it would consider the text of a bill in legislative session. The treaty is amendable, and it is open for amendment at any point, with any amendments proposed by the Foreign Relations Committee being considered first. Once the amending process (if any) is complete and there is no further debate or amendment, the Senate does not vote on approving the treaty. Instead, the Senate takes up a *resolution of ratification*, by which the Senate formally gives its advice and consent, empowering the President to proceed with the ratification of the treaty. This un-numbered resolution typically states: “Resolved (two-

¹ Article II, Section 2, clause 2, of the U.S. Constitution provides the Senate this advice and consent function.

² See, for example, Senator Rounds, “Removal of Injunction of Secrecy—Treaty Document No. 114-12,” remarks in the Senate, *Congressional Record*, daily edition (June 28, 2016), p. S4680.

³ For explanation of the Senate *Executive Calendar* and its contents, see CRS Report 98-438, *The Senate’s Executive Calendar*, coordinated by Elizabeth Rybicki.

thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification” of the treaty in question. When the resolution of ratification is presented to the Senate, it incorporates any amendments to the treaty that the Senate had previously approved.

One day is required to elapse between the time that the Senate completes action on the treaty itself and the time it begins consideration of the resolution of ratification, although this requirement is also frequently waived by unanimous consent. After the Senate has begun considering this resolution, amendments proposing to change the text of the treaty itself are no longer in order. Senators may amend the resolution of ratification, however, by attaching to it reservations, declarations, statements, or understandings that can affect the interpretation or implementation of the treaty. Again, the Senate first considers any reservation or other proposition that the Foreign Relations Committee has reported.

Under Article II, Section 2 of the Constitution, the final vote on agreeing to the resolution of ratification—with whatever reservations or other propositions may have been attached to it—requires a vote of two-thirds of the Senators present and voting (a quorum being present). A two-thirds vote is also required to agree to a motion to postpone indefinitely further consideration of the treaty and accompanying resolution, because adopting that motion has the effect of disposing of the treaty permanently.

All other motions prior to final action, including those proposing treaty amendments or reservations, require only simple majority votes. However, treaties, resolutions of ratification, reservations, and other related propositions are debatable under the normal rules of the Senate, and they are subject to the Senate’s cloture rule, Rule XXII. When cloture is invoked on a resolution of ratification, action on all amendments and reservations must be completed before a vote on ratification under the rule’s post-cloture 30-hour time limit.⁴

Frequently, the Senate agrees by unanimous consent to dispense with consideration of the treaty itself and proceeds immediately to consider the resolution of ratification.

For additional information, see *Riddick’s Senate Procedure*, pp. 832-842 and 1294-1310. See also *Treaties and Other International Agreements: The Role of the United States Senate*, a committee print of the Senate Committee on Foreign Relations (S.Prt. 106-71), available at <https://www.gpo.gov/fdsys/pkg/CPRT-106SPRT66922/pdf/CPRT-106SPRT66922.pdf>.

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⁴ On the process and effects of invoking cloture, see CRS Report 98-425, *Invoking Cloture in the Senate*, by Christopher M. Davis, and CRS Report RL30360, *Filibusters and Cloture in the Senate*, by Valerie Heitshusen and Richard S. Beth.

Acknowledgments

This report was originally written by Stanley Bach, former senior specialist in the Legislative Process at CRS, and was later updated by Betsy Palmer, former analyst on Congress and the Legislative Process at CRS. The author currently listed has updated this report and is available to answer questions on the subject.

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