

PROTOCOL TO THE NORTH ATLANTIC TREATY OF
1949 ON THE ACCESSION OF MONTENEGRO

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Mr. CORKER, from the Committee on Foreign Relations,
submitted the following

REPORT

[To accompany Treaty Doc. 114-12]

The Committee on Foreign Relations, to which was referred the Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro, opened for signature at Brussels on May 19, 2016, and signed that day on behalf of the United States of America, having considered the same, reports favorably thereon subject to seven declarations and two conditions for the Protocol, as indicated in the resolution of advice and consent for the treaty, and recommends the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of advice and consent.

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I. PURPOSE

This Protocol is a vehicle for inviting Montenegro to accede to the North Atlantic Treaty (the “Treaty”) in accordance with Article 10 of the Treaty and thus become a member of the North Atlantic Treaty Organization (“NATO”), with all of the privileges and responsibilities that apply to current Allies. The core commitment made among the Allies is embodied in the text of the Treaty, including the collective defense provision in Article 5.

II. BACKGROUND

The North Atlantic Treaty entered into force on August 24, 1949, with twelve states having ratified the Treaty. The original parties of the Treaty, and thus the original members of NATO, were the United States, Canada, the United Kingdom, France, Italy, the Netherlands, Belgium, Portugal, Denmark, Norway, Iceland, and Luxembourg. The alliance has expanded six times: in 1952, Greece and Turkey became members; in 1955, West Germany; in 1982, Spain; in 1999, Poland, Hungary and the Czech Republic; in 2004, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia; and in 2009, Albania, and Croatia.

The process leading to the enlargement of the alliance has been refined since the Cold War. NATO remains a military alliance, but also became an agent of peace, holding new members to higher democratic and economic standards and creating a secure space for newly free nations to develop. Military reform and achieving interoperability with NATO remains essential, but the character of the new allied country is also important. The debate over the last three enlargements has centered on what standard of political or economic development is adequate for accession to the alliance.

In the 1990s, Secretary of Defense William Perry established benchmarks used to assess new members. These are democratic elections, individual liberty, and the rule of law; commitment to economic reform and a market economy; adherence to the norms of the Organization for Security and Cooperation in Europe (OSCE) in the treatment of ethnic minorities and social justice; resolution of territorial disputes with neighbors; and the establishment of democratic control of the military. Montenegro has attempted to address these issues in the course of its NATO membership applications and the committee has examined the results.

Engagement with NATO to assist a country's democratic and economic development is not the end of reform. The experience of previous NATO enlargements suggests that countries continue the reform process after admission, and Montenegro must similarly continue this process.

III. QUALIFICATIONS OF MONTENEGRO FOR NATO MEMBERSHIP

Since the mid-1990's, NATO has been heavily involved in peace-keeping operations in the Western Balkans, a region that has been beset by instability and conflict for the past two decades. NATO has also worked hard to strengthen institutional ties with the fledgling democracies of the region, in the hope that full integration with Euro-Atlantic institutions such as NATO and the European Union (EU) would ensure long-term stability and security.

Since gaining independence from its union with Serbia in 2006, Montenegro's key foreign policy goals have been EU and NATO membership. Former Prime Minister Milo Djukanovic has said that a fundamental reason for Montenegro's efforts to join NATO is that the alliance serves as a stabilizing force in the region.

NATO invited Montenegro to begin formal accession talks in December 2015, having concluded that the government had made sufficient progress in implementing the reforms called for in its Membership Action Plan (MAP). Since 2009, Montenegro has adopted a wide range of laws aiming to bolster the effectiveness and trans-

parency of government institutions, and the independence of the judiciary, among other things. Nevertheless, it is noted that Montenegro continues to face challenges in the following areas: rule of law, especially judicial reform and the fight against organized crime and corruption; security matters, including intelligence and security sector reform, arms control, and the fight against terrorism; and military matters, including removal of unnecessary military infrastructure and surplus arms.

In its 2015 annual progress report on Montenegro, the European Union noted that the government had made “good progress” in improving the legislative framework for increasing the independence of the judiciary and fighting corruption. However, the EU also underscored that Montenegro had yet to establish a track record of prosecuting corruption cases and achieving convictions. Observers have welcomed the establishment in 2015 of a Special Public Prosecutor’s Office, but its effectiveness remains to be seen. Some outside experts have raised doubts as to whether Montenegrin authorities are sufficiently committed to taking steps to prevent corruption and promote an independent judiciary, suggesting that such actions could implicate high-ranking political figures.

As a condition of advancing accession talks, NATO officials consistently pushed for further reform of Montenegro’s security sector. Areas of particular concern have been the intelligence sector and arms control issues. Montenegro has taken steps to address deficiencies in its intelligence sector, specifically within its National Security Agency (ANB). NATO appears to have concluded that Montenegro has since taken the steps necessary to ensure the independence of its intelligence sector, but the committee urges continued vigilance to ensure that NATO’s security standards are met.

IV. ENTRY INTO FORCE

The Protocol will enter into force when all of the current Parties to the North Atlantic Treaty have notified the Government of the United States of America, which is the depositary for the North Atlantic Treaty, of their acceptance of the Protocol. Once the Protocol has entered into force, the Secretary General of NATO shall extend an invitation to Montenegro to accede to the North Atlantic Treaty and in accordance with Article 10 of the Treaty, Montenegro shall become a Party to the Treaty on the date it deposits its instrument of accession with the Government of the United States of America.

V. COMMITTEE ACTION

In the 114th Congress, the committee held a public hearing on the accession of Montenegro to NATO on September 14, 2016, and testimony was received from Mr. Hoyt Yee, Deputy Assistant Secretary, Bureau of European and Eurasian Affairs at the Department of State; and Dr. Michael Carpenter, Deputy Assistant Secretary of Defense for Russia, Ukraine, And Eurasia at the Department of Defense. A transcript of this hearing is forthcoming in S. Hrg. 479.

On January 11, 2017, the committee considered this protocol and ordered it favorably reported by voice vote, with a quorum present and without objection.

VI. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that Montenegro has the potential to make contributions as a member of NATO. Montenegro has already demonstrated this potential through its participation in recent years in NATO combat and peacekeeping operations in Afghanistan. The admission of Montenegro to the alliance will have a stabilizing effect on Southeastern Europe. Montenegro's membership will encourage the continued spread of peace and democracy in the region, and its willingness to contribute to ongoing NATO operations will augment NATO's resources.

It will take some time for Montenegro to cement the political and economic gains made during the past decade of independence. Montenegro still needs to make greater efforts enhance the rule of law, fight corruption and organized crime, meet NATO standards in security sector reforms, and build public support for NATO membership. The committee believes, however, that Montenegro's commitment to NATO membership is strong and that its addition to the alliance is warranted.

RESOLUTION

The committee has included in the proposed resolution for the Protocol seven declarations and two conditions, which are discussed below.

DECLARATIONS

Declaration 1: Reaffirmation that Membership in NATO Remains a Vital National Security Interest of the United States

Declaration 1 restates that NATO membership is a vital national security interest for the United States. For over sixty years, NATO has served as the foremost organization to defend the territory of the countries in the North Atlantic area against all external threats. NATO prevailed in the task of ensuring the survival of democratic governments throughout the Cold War, and NATO has established a process of cooperative security planning that enhances the security of the United States and its allies, while distributing the financial burden of defending the democracies of Europe and North America among the Allies.

Declaration 2: Strategic Rationale for NATO Enlargement

Declaration 2 lays out the strategic rationale for the inclusion of Montenegro in NATO. NATO members have determined that, consistent with Article 10 of the North Atlantic Treaty, Montenegro is in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area, and that extending membership to Montenegro will enhance the stability of Southeast Europe, which is in the interests of the United States.

Declaration 3: Support for NATO's Open Door Policy

Declaration 3 supports NATO's Open Door Policy for any European country that expresses interest in the alliance and is able to meet the obligations of membership.

Declaration 4: Future Consideration of Candidates for Membership in NATO

Declaration 4 declares that the consideration of future members in NATO provided for under Article 10 of the Senate-approved North Atlantic Treaty is subject to the requirement for advice and consent under Article II, Section 2, Clause 2 of the United States Constitution. Article 10 of the North Atlantic Treaty provides for an open door to the admission into NATO of other European countries that are in a position to further the principles of the Treaty and that can contribute to the security of the North Atlantic area. The United States will not support any subsequent invitation for admission to NATO if the prospective member cannot fulfill the obligations and responsibilities of NATO membership in a manner that serves the overall political and strategic interests of the United States. The Senate emphasizes that no state will be invited to become a member of NATO unless the Executive Branch fulfills the Constitutional requirement for seeking the advice of the Senate, a consensus decision to proceed is reached in NATO, and ratification is achieved according to the national procedures of each NATO member, including the consent to ratification by the Senate.

Declaration 5: Influence of Non-NATO Members on NATO Decisions

Declaration 5 states that non-NATO members shall not have the ability to impact the decision-making process of the alliance in relation to NATO enlargement. Some outside observers have alleged that outside forces have attempted to interfere in domestic Montenegrin politics and build opposition to Montenegro's inclusion in NATO. The Senate notes such concerns and emphasizes that non-NATO members shall not have the ability to influence the decision-making process of NATO enlargement.

Declaration 6: Support for 2014 Wales Summit Defense Spending Benchmark

Declaration 6 reaffirms support for the collection contribution to the resource commitments of the alliance outlined in the 2014 Wales Summit Declaration. These commitments obligate each NATO member to spend a minimum of two percent of GDP on defense and twenty percent of their defense budget on major equipment, including research and development. The Senate notes that at this time only five members of the alliance meet the obligation for overall defense spending and encourages all members to address this disparity at the soonest opportunity.

Declaration 7: Support for Montenegro's Democratic Reform Process

Declaration 7 affirms that Montenegro has made appropriate progress in implementing reforms to address corruption, but recognizes that Montenegro must continue to progress in ensuring rule of law, particularly in the area of corruption.

CONDITIONS

Condition 1: Presidential Certification

Condition 1 requires the President to certify, prior to the deposit of the instrument of ratification for the Protocol, that (1) the inclusion of Montenegro in NATO will not have the effect of increasing

the overall percentage share of the United States in the NATO common budget; and (2) the inclusion of Montenegro in the alliance will not detract from the ability of the United States to meet or fund its military requirements outside the North Atlantic Area.

Condition 2: Annual Report on NATO Member Defense Spending

Condition 2 requires the submission of an annual report on NATO member defense spending for each of the subsequent eight years following the entry into force of the protocol. The report shall outline the following expenditures for each of the previous five years: amount each NATO member spent on its national defense, the percentage of GDP each NATO member spent on its national defense, and the percentage of national defense spending each NATO member spent on major equipment, including research and development. The report shall also include a detailed accounting of actions taken by each NATO member in the previous year to move toward achieving the NATO guideline, outlined in the 2014 Wales Summit Declaration, to spend a minimum of two percent of GDP on national defense and twenty percent of its defense budget on major equipment.

VII. RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

PROTOCOL TO THE NORTH ATLANTIC TREATY OF 1949 ON THE
ACCESSION OF MONTENEGRO

Resolved, (two-thirds of the Senators present concurring therein),
**SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO DECLARA-
TIONS AND CONDITIONS.**

The Senate advises and consents to the ratification of the Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro, which was opened for signature at Brussels on May 19, 2016, and signed that day on behalf of the United States of America (the “Protocol”) (Treaty Doc. 114–12), subject to the declarations of section 2 and the conditions of section 3.

SEC. 2. DECLARATIONS.

The advice and consent of the Senate under section 1 is subject to the following declarations:

(1) REAFFIRMATION THAT UNITED STATES MEMBERSHIP IN NATO REMAINS A VITAL NATIONAL SECURITY INTEREST OF THE UNITED STATES.—The Senate declares that—

(A) for more than 60 years the North Atlantic Treaty Organization (NATO) has served as the preeminent organization to defend the countries in the North Atlantic area against all external threats;

(B) through common action, the established democracies of North America and Europe that were joined in NATO persevered and prevailed in the task of ensuring the survival of democratic government in Europe and North America throughout the Cold War;

(C) NATO enhances the security of the United States by embedding European states in a process of cooperative security planning and by ensuring an ongoing and direct leadership role for the United States in European security affairs;

(D) the responsibility and financial burden of defending the democracies of Europe and North America can be more equitably shared through an alliance in which specific obligations and force goals are met by its members;

(E) the security and prosperity of the United States is enhanced by NATO's collective defense against aggression that may threaten the security of NATO members; and

(F) United States membership in NATO remains a vital national security interest of the United States.

(2) STRATEGIC RATIONALE FOR NATO ENLARGEMENT.—The Senate finds that—

(A) the United States and its NATO allies face continued threats to their stability and territorial integrity;

(B) an attack against Montenegro, or its destabilization arising from external subversion, would threaten the stability of Europe and jeopardize United States national security interests;

(C) Montenegro, having established a democratic government and having demonstrated a willingness to meet the requirements of membership, including those necessary to contribute to the defense of all NATO members, is in a position to further the principles of the North Atlantic Treaty and to contribute to the security of the North Atlantic area; and

(D) extending NATO membership to Montenegro will strengthen NATO, enhance stability in Southeast Europe, and advance the interests of the United States and its NATO allies.

(3) SUPPORT FOR NATO'S OPEN DOOR POLICY.—The policy of the United States is to support NATO's Open Door Policy that allows any European country to express its desire to join NATO and demonstrate its ability to meet the obligations of NATO membership.

(4) FUTURE CONSIDERATION OF CANDIDATES FOR MEMBERSHIP IN NATO.—

(A) SENATE FINDING.—The Senate finds that the United States will not support the accession to the North Atlantic Treaty of, or the invitation to begin accession talks with, any European state (other than Montenegro), unless—

(i) the President consults with the Senate consistent with 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); and

(ii) the prospective NATO member can fulfill all of the obligations and responsibilities of membership, and the inclusion of such state in NATO would serve the overall political and strategic interests of NATO and the United States.

(B) REQUIREMENT FOR CONSENSUS AND RATIFICATION.—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 commitment to collective defense and consultations pursuant to Articles 4 and 5 of the North Atlantic Treaty.

(5) INFLUENCE OF NON-NATO MEMBERS ON NATO DECISIONS.—The Senate declares that any country that is not a member of NATO shall have no impact on decisions related to NATO enlargement.

(6) SUPPORT FOR 2014 WALES SUMMIT DEFENSE SPENDING BENCHMARK.—The Senate declares that all NATO members should continue to move towards the guideline outlined in the 2014 Wales Summit Declaration to spend a minimum of 2 percent of their Gross Domestic Product (GDP) on defense and 20 percent of their defense budgets on major equipment, including research and development, by 2024.

(7) SUPPORT FOR MONTENEGRO'S DEMOCRATIC REFORM PROCESS.—Montenegro has made difficult reforms and taken steps to address corruption. The United States and other NATO member states should not consider this important process complete and should continue to urge additional reforms.

SEC. 3. CONDITIONS.

The advice and consent of the Senate under section 1 is subject to the following conditions:

(1) PRESIDENTIAL CERTIFICATION.—Prior to the deposit of the instrument of ratification, the President shall certify to the Senate as follows:

(A) The inclusion of Montenegro in NATO will not have the effect of increasing the overall percentage share of the United States in the common budgets of NATO.

(B) The inclusion of Montenegro in NATO does not detract from the ability of the United States to meet or to fund its military requirements outside the North Atlantic area.

(2) ANNUAL REPORT ON NATO MEMBER DEFENSE SPENDING.—Not later than December 1 of each year during the 8-year period following the date of entry into force of the Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro, the President shall submit to the appropriate congressional committees a report, which shall be submitted in an unclassified form, but may be accompanied by a classified annex, and which shall contain the following information:

(A) The amount each NATO member spent on its national defense in each of the previous 5 years.

(B) The percentage of GDP for each of the previous 5 years that each NATO member spent on its national defense.

(C) The percentage of national defense spending for each of the previous 5 years that each NATO member spent on major equipment, including research and development.

(D) Details on the actions a NATO member has taken in the most recent year reported to move closer towards the NATO guideline outlined in the 2014 Wales Summit Declaration to spend a minimum of 2 percent of its GDP on national defense and 20 percent of its national defense budget on major equipment, including research and development, if a NATO member is below either guideline for the most recent year reported.

SEC. 4. DEFINITIONS.

In this resolution:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means the Committee on Foreign Relations and the Committee on Armed Services of the Senate and the Committee on Foreign Affairs and the Committee on Armed Services of the House of Representatives.

(2) NATO MEMBERS.—The term “NATO members” means all countries that are parties to the North Atlantic Treaty.

(3) NON-NATO MEMBERS.—The term “non-NATO members” means all countries that are not parties to the North Atlantic Treaty.

(4) NORTH ATLANTIC AREA.—The term “North Atlantic area” means the area covered by Article 6 of the North Atlantic Treaty, as applied by the North Atlantic Council.

(5) NORTH ATLANTIC TREATY.—The term “North Atlantic Treaty” means the North Atlantic Treaty, signed at Washington April 4, 1949 (63 Stat. 2241; TIAS 1964), as amended.

(6) UNITED STATES INSTRUMENT OF RATIFICATION.—The term “United States instrument of ratification” means the instrument of ratification of the United States of the Protocol to the North Atlantic Treaty of 1949 on the Accession of Montenegro.

