



NATO Enlargement: Senate Advice and Consent

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Summary

On July 21, 1949, the Senate gave its advice and consent to ratification of the North Atlantic Treaty. That treaty bound twelve states—the United States, Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, and Great Britain—in a pact of mutual defense and created the North Atlantic Treaty Organization (NATO). NATO now has a membership of 28 states. This enlargement has occurred gradually—Greece and Turkey joined in 1952; the Federal Republic of Germany in 1955; Spain in 1982; Poland, Hungary, and the Czech Republic in 1998; Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in 2004; and Albania and Croatia in 2009.

Each enlargement of NATO has raised the question of whether Senate advice and consent is necessary. The North Atlantic Treaty itself simply provides that any enlargement must be approved by *all* of the member states “in accordance with their respective constitutional processes.” In giving its advice and consent to the treaty in 1949, the Senate did not impose a formal condition regarding its participation in future enlargements of NATO. But it did obtain an explicit commitment from the Truman Administration that all proposed enlargements of NATO would be submitted to the Senate for its advice and consent. That commitment has been honored. All proposals to enlarge NATO have been submitted to the Senate; and the Senate has invariably given its assent (although in recent times subject to a number of conditions).

This report describes the provisions of the North Atlantic Treaty and of the original Senate debate in 1949 pertinent to enlargement and the procedures that have been followed for each subsequent enlargement proposal. It also discusses what the Senate did with respect to the reunification of Germany in 1990 and the implications of that event for Germany’s membership in NATO. The report will be updated as needed.

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Introduction

On July 21, 1949, the Senate gave its advice and consent to ratification of the North Atlantic Treaty.¹ That treaty bound twelve states—the United States, Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, and Great Britain—in a pact of mutual defense and created the North Atlantic Treaty Organization (NATO). NATO now has a membership of 28 states. This enlargement has occurred gradually—Greece and Turkey joined in 1952; the Federal Republic of Germany in 1955; Spain in 1982; Poland, Hungary, and the Czech Republic in 1998; Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia in 2004; and Albania and Croatia in 2009.

In July 2008, accession Protocols amending the North Atlantic Treaty were signed to permit Albania and Croatia to become NATO members. In order for the accession Protocols to take effect, they had to first be ratified by each of the existing NATO allies, and then by Albania and Croatia. The U.S. Senate gave its advice and consent to Protocol ratification on September 25, 2008, and the Protocols were signed by President Bush on October 24, 2008. Albania and Croatia formally became members of NATO on April 1, 2009, following the completion of the accession process.

Each enlargement of NATO has raised the question of whether Senate advice and consent is necessary. The North Atlantic Treaty itself simply provides that any enlargement must be approved by *all* of the member states “in accordance with their respective constitutional processes.” But in giving its advice and consent to the treaty in 1949, the Senate obtained an explicit commitment from the Truman Administration that all proposed enlargements of NATO would be submitted to the Senate for its advice and consent. That commitment has been honored. All proposals to enlarge NATO have been submitted to the Senate; and the Senate has invariably given its assent (although in recent times subject to a number of conditions).

This report describes the provisions of the North Atlantic Treaty and of the original Senate debate in 1949 pertinent to the future enlargement of NATO and the procedures that have been followed for subsequent enlargement proposals. It also discusses what the Senate did with respect to the reunification of Germany in 1990 and the implications of that event for Germany’s membership in NATO. The report will be updated as needed.

The North Atlantic Treaty

The North Atlantic Treaty entered into force in 1949.² As noted above, the treaty originally included twelve states as parties—the United States, Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, and Great Britain. But it contemplated the possibility of future enlargement. Article 10 of the Treaty provides that

The 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.

¹ This report was originally prepared by David M. Ackerman, Legislative Attorney, CRS.

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

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 Senate gave its advice and consent to the North Atlantic Treaty on July 21, 1949, by a vote of 82-13.³ It did not include a formal condition regarding the Senate’s role in any future enlargement of NATO in its resolution of ratification. But the issue was a matter of concern. During the hearings held by the Senate Committee on Foreign Relations on the treaty, Senator Vandenberg, the ranking member, posed a specific question on the matter to Secretary of State Dean Acheson and received the following carefully prepared response:

Senator, I am authorized by the President of the United States to say that in his judgment the accession of new members to this treaty creates in regard to each new member coming in effect a new treaty between the United States and that nation, and that therefore the President would consider it necessary to ask for the advice and consent of the Senate before himself agreeing to the admission of a new member.⁴

³ 95 CONG. REC. 9916 (July 21, 1949).

⁴ *Hearings on the North Atlantic Treaty Before the Senate Committee on Foreign Relations*, 81st Cong., 1st Sess. (April 27, 28, 29, May 2 and 3, 1949), at 26. Senator Vandenberg, Chairman Tom Connally, and Secretary Acheson subsequently (*id.* at 48-49) discussed whether President Truman’s commitment would be binding on subsequent Presidents:

Senator VANDENBERG. Mr. Secretary, ... [y]ou recall that you quoted the President as saying that, if he were confronted with the problem of deciding whether or not to accede to the addition of other members to the pact, he would consider that this involved the equivalent of writing a new treaty; and, so far as he is concerned, he would seek the advice and consent of the Senate.

Secretary ACHESON. Yes, sir.

Senator VANDENBERG. That protects us up to 1952. I do not mean to put a limitation at that point.... But after all, this treaty runs for 20 years. What protects us if, as, and when this President concludes to retire, voluntarily or otherwise?

Secretary ACHESON. I think there is precedent, Senator.

The CHAIRMAN. Would this not be a precedent? Would not the statement of the President, in the event it transpired within that period—and the custom and the practice, would that not make a precedent that the others would respect?

Secretary ACHESON. Yes, sir. This mere statement would be a precedent. But I was going to say that there is a precedent for the fact that a statement made by a sitting President in regard to Presidential interpretation of the treaty, and what should be done under it, is accepted by his successors as a statement coming from the Presidential office.

Senator VANDENBERG. You yourself evidently considered it to be a somewhat important point, I judge, from the degree of attention which you gave to arming yourself with a thoroughly adequate answer.

....

The CHAIRMAN. Along the line of the interrogation, the Presidential action in saying that this is a matter for Congress and the Executive would certainly have some influence at least, I hope, on a successor?

Secretary ACHESON. I should think it would make it clear that the basis of the thing is what the President said: that it is in effect a new treaty with a new state.

The CHAIRMAN. Exactly. It either has to be a new treaty or a modification of an existing treaty, and the consent of the Congress is required in any event. I think the President was exactly right in that (continued...)

Building on this commitment, the report of the Senate Committee on Foreign Relations on the treaty commented specifically on the Senate's role with respect to the admission of new members to NATO, as follows:

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.⁵

As noted above, this commitment has been honored in all five of the subsequent enlargements of NATO. In each instance a Protocol providing for the inclusion of an additional state or states in NATO has been negotiated, and the Protocol has been submitted to the Senate for its advice and consent.

Greece and Turkey (1952)

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, 1952;⁶ and the Senate approved the Protocol without conditions on February 7, 1952, by a vote of 73-2.⁷

The report of the Senate Committee on Foreign Relations, which unanimously recommended approval of the Protocol, recalled and reiterated President Truman's commitment to seek Senate advice and consent to any enlargement of NATO, as follows:

(...continued)

attitude, because if he could make a treaty without referring it to the Senate at all he would abrogate, almost, the advice and consent clause of the Constitution.

Secretary ACHESON. I think the statement that was made on behalf of the President really puts the question to rest. I do not think that any future President, in the light of that statement, would undertake to vote for the admission of a new member, and any new member would be very ill advised to let the matter rest at that point.

⁵ S. Exec. Rept. No. 8, 81st Cong., 1st Sess. (June 6, 1949), at 18.

⁶ S. Exec. E, 82d Cong., 2d Sess. (1952).

⁷ 98 CONG. REC. 930 (February 7, 1952).

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 effect a new treaty between the United States and that nation, and that therefore the President would consider it necessary to ask for the advice and consent of the Senate before himself agreeing to the admission of a new member.⁸

The Protocol entered into force on February 15, 1952.⁹

Federal Republic of Germany (1955)

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.¹⁰ In unanimously recommending Senate consent to ratification of both Protocols, the report of the Senate Foreign Relations Committee made no reference to President Truman's 1949 commitment regarding Senate involvement in any enlargement of NATO.¹¹ The Senate gave its consent to the ratification of the Protocol without conditions on April 1, 1955, by a vote of 76-2.¹² The Protocol entered into force on May 5, 1955.¹³

Spain (1982)

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

⁸ S. Exec. Rept. No. 1, 82d Cong., 2d Sess. (January 21, 1952).

⁹ 3 UST 43 (1952); TIAS 2390.

¹⁰ S. Exs. L and M, 83d Cong., 2d Sess. (November 15, 1954).

¹¹ S. Exec. Rept. No. 6, 84th Cong., 1st Sess. (March 31, 1955).

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

¹³ 6 UST 5707 (1955); TIAS 3428.

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, 1982.¹⁴ 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 controversy about whether the Senate should be involved.¹⁵ The Senate consented to the ratification of the Protocol without conditions on a division vote on March 16, 1982;¹⁶ and the Protocol entered into force on May 29, 1982.¹⁷

Reunification of Germany (1991)

The reunification of Germany in 1991 did not lead to a Protocol regarding the accession of the reunified state to NATO. As described above, the Federal Republic of Germany (West Germany) had become part of NATO in 1955, while the German Democratic Republic (East Germany) had been part of the Warsaw Pact. The NATO aspect of the reunification process, as a consequence, was dealt with by treating the reunified Germany as a continuation of the Federal Republic of Germany (FRG) and the FRG's treaty commitments—including its participation in NATO—as continuing in effect. These affirmations were part of both the Treaty between the FRG and the German Democratic Republic on the Establishment of German Unity¹⁸ and the Treaty on the Final Settlement With Respect to Germany between the four occupying powers and the FRG and German Democratic Republic (GDR).¹⁹

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, 1990.²⁰ 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.

¹⁴ Treaty Doc. No. 97-22, 97th Cong., 2d Sess. (January 26, 1982).

¹⁵ S. Exec. Rept. No. 97-51, 97th Cong., 2d Sess. (March 9, 1982).

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

¹⁷ 34 UST 3508 (1982); TIAS 10564.

¹⁸ 30 ILM 457 (1991). The pertinent provisions of this treaty are also reproduced at Department of State, TREATIES IN FORCE 2009, at 97, available at <http://www.state.gov/documents/organization/123747.pdf>.

¹⁹ TIAS ____ (1991); 1696 UNTS 115.

²⁰ 30 ILM 457, 464, Article 1.

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.

President Bush submitted the latter treaty to the Senate for its advice and consent on September 26, 1990;²¹ and the Senate gave its consent by a vote of 90-0 on October 10, 1990.²² 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.”²³ 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...”²⁴ 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.²⁵ The treaty entered into force on March 15, 1991.

Poland, Hungary, and the Czech Republic (1998)

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 [name of State] an invitation to accede to the North Atlantic Treaty. In accordance with Article 10 of the Treaty, [name of State] 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, 1998.²⁶ 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,²⁷ the committee on March 6, 1998, unanimously recommended

²¹ S. Treaty Doc. 101-20, 101st Cong., 2d Sess. (September 26, 1990).

²² 136 CONG. REC. 28208-09 (October 10, 1990).

²³ *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).

²⁴ S. Exec. Rept. 101-33, 101st Cong., 2d Sess. (October 5, 1990).

²⁵ *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. (October 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).

²⁶ S. Treaty Doc. 105-36, 105th Cong., 2d Sess. (February 11, 1998).

²⁷ *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. (February 24, 1998).

approval of the Protocols.²⁸ In contrast to its resolutions of ratification on prior enlargements of NATO, however, the committee proposed that seven declarations and three 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 for European integration. But one declaration reiterated the necessity for Senate advice and consent, as follows:

(A) SENATE FINDINGS

(iv)... [T]he 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 Poland, Hungary, or the Czech Republic) 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)

(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 security commitment pursuant to the North Atlantic Treaty.²⁹

One of the conditions in the proposed resolution of ratification also required the President to submit reports to the appropriate congressional committees on states being considered for NATO membership prior to any invitation to such states to begin accession talks and prior to the conclusion of any Protocols providing for such accession.³⁰

²⁸ S. Exec. Rept. 105-14, 105th Cong., 2d Sess. (March 6, 1998).

²⁹ *Id.* at 40.

³⁰ Condition 2(E) of the proposed resolution of ratification stated as follows:

(E) REPORTS ON FUTURE ENLARGEMENT OF NATO.—

(i) REPORTS PRIOR TO COMMENCEMENT OF ACCESSION TALKS.—Prior to any decision by the North Atlantic Council to invite any country (other than Poland, Hungary, or the Czech Republic) to begin accession talks with NATO, the President shall submit to the appropriate congressional committees a detailed report regarding each country being actively considered for NATO membership, including

(I) an evaluation of how that country will further the principles of the North Atlantic Treaty and contribute to the security of the North Atlantic area;

(II) an evaluation of the eligibility of that country for membership based on the principles and criteria identified by NATO and the United States, including the military readiness of that country;

(III) an explanation of how an invitation to that country would affect the national security interests of the United States;

(IV) an up-to-date United States Government analysis of the common-funded military requirements and costs associated with integrating that country into NATO, and an analysis of the shares of those costs to be borne by NATO members, including the United States; and

(V) a preliminary analysis of the implications for the United States defense budget and other United States budgets of integrating that country into NATO.

(ii) UPDATED REPORTS PRIOR TO SIGNING PROTOCOLS OF ACCESSION.—Prior to the signing of any protocol to the North Atlantic Treaty on the accession of any country, the President shall submit to the appropriate congressional committees a report, in classified and unclassified

(continued...)

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.³¹

During seven days of floor debate, the Senate made a number of modifications in the declarations and conditions recommended by the committee but it made no changes in the ones noted above. On April 30, 1998, the Senate approved the resolution of ratification, 80-19.³² All three Protocols entered into force on December 4, 1998.³³

Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia (2004)

On March 26, 2003, the nineteen members of NATO concluded seven Protocols providing for the accession to the North Atlantic Treaty of Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia. The Protocols reflected the decision of the NATO summit in Prague in the fall of 2002 that these seven states had met the standards articulated for prospective members in NATO's 1999 Membership Action Plan.³⁴ Article I of each 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 [name of State] an invitation to accede to the North Atlantic Treaty. In accordance with Article 10 of the Treaty, [name of State] shall become a Party on the date when it deposits its instrument of accession with the Government of the United States of America.

On April 10, 2003, President Bush submitted the seven Protocols to the Senate for its advice and consent.³⁵ After holding several hearings, the Senate Committee on Foreign Relations on April 30, 2003, unanimously recommended that the Senate give its advice and consent to ratification.³⁶ The committee's proposed resolution of ratification included nine declarations and three

(...continued)

forms—

(I) updating the information contained in the report required under clause (i) with respect to that country; and

(II) including an analysis of that country's ability to meet the full range of the financial burdens of NATO membership, and the likely impact upon the military effectiveness of NATO of the country invited for accession talks, if the country were to be admitted to NATO.

³¹ S. Exec. Rept. 105-14, *supra*, at 8.

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

³³ TIAS ____ (1998).

³⁴ See CRS Report RS21055, *NATO Enlargement*, by Paul Gallis.

³⁵ S. Tr. Doc. 108-4, 108th Cong., 1st Sess. (April 10, 2003).

³⁶ S. Exec. Rept. 108-6, 108th Cong., 1st Sess. (April 30, 2003).

conditions. One of the declarations reiterated in virtually identical language the statement that had been included in the resolution of ratification for Poland, Hungary, and the Czech Republic in 1998 regarding the necessity for Senate advice and consent to the accession of any new members to the North Atlantic Treaty.³⁷ Similarly, one of the conditions reiterated in virtually identical language the requirement in the resolution of ratification for Poland, Hungary, and the Czech Republic that reports be submitted to the appropriate congressional committees on countries being considered for membership prior to the beginning of accession talks and prior to signing any Protocols of accession.³⁸

The Senate debated the proposed resolution of ratification on May 7-8, 2003, and added one declaration to those recommended by the committee concerning NATO's decision-making procedures.³⁹ But it made no other changes. On May 8, 2003, the Senate approved the resolution of ratification on the seven Protocols by a vote of 96-0.⁴⁰ All seven Protocols entered into force on February 27, 2004.

Albania and Croatia (2008-2009)

At the NATO summit held in Bucharest, Romania on April 2-4, 2008, the 26 members of NATO agreed to issue invitations to Albania and Croatia to join the alliance. On July 9, 2008, members of the alliance signed accession Protocols to amend the North Atlantic Treaty so as to permit Albania and Croatia to join NATO. Article I of each 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 [name of State] an invitation to accede to the North Atlantic Treaty. In accordance with Article 10 of the Treaty, [name of State] shall become a Party on the date when it deposits its instrument of accession with the Government of the United States of America.

On July 23, 2008, President Bush submitted the Protocols to the Senate for its advice and consent.⁴¹ The Senate Committee on Foreign Relations held a hearing on the Protocols on September 10, 2008. On September 23, 2008, the Committee unanimously recommended that the Senate give its advice and consent to ratification, subject to one declaration and one condition for each Protocol.⁴² The conditions would require the President to certify, prior to the deposit of the Protocols' instruments of ratification, that the inclusion of Albania and Croatia in NATO shall not have the effect of increasing the overall share of the United States in the common budget of NATO, and that the inclusion of the two new members will not detract from the ability of the United States to fulfill its military requirements outside the North Atlantic area.⁴³ These conditions are similar to those that were found in the resolution of ratification for Bulgaria, Estonia, Latvia, Lithuania, and Romania.

³⁷ Section 5(A)(vi) of the proposed resolution of ratification, *reprinted at* 149 CONG. REC. S5538-41 (daily ed. April 30, 2003).

³⁸ *Id.* § 3(1) (C) of the proposed resolution of ratification.

³⁹ 149 CONG. REC. S5805-S5828 (daily ed. May 7, 2003) and S5881-S5888 (daily ed. May 8, 2003).

⁴⁰ *Id.* at S5885.

⁴¹ S. Treaty Doc. 110-20, 2nd sess., 110th Cong.

⁴² S. Exec. Rep. 110-27, 2nd sess., 110th Cong.

⁴³ 154 CONG. REC. S9554-S9557 (daily ed. September 25, 2008).

The Senate considered the resolutions of ratification for Albania and Croatia on September 25, 2008, and adopted the committee's resolutions of ratification without amendment.⁴⁴ Both Protocols were signed by President Bush on October 24, 2008.⁴⁵ The Protocols entered into force on April 1, 2009.⁴⁶

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 commitment from President Truman that all proposed enlargements of NATO would be submitted for Senate advice and consent. That procedure has in fact been followed with respect to every enlargement to date.

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⁴⁴ *Id.* (by division vote).

⁴⁵ White House, Office of the Press Secretary, "President Bush Participates in Signing Ceremony with NATO Secretary General De Hoop Scheffer for NATO Accession Protocols for Albania and Croatia," press release, October 24, 2008.

⁴⁶ NATO, "NATO Secretary General Welcomes Albania and Croatia as NATO members," press release, April 1, 2009, available at http://www.nato.int/cps/en/SID-65FAD6B8-ADF86224/natolive/news_52342.htm?mode=pressrelease.