

Minister, the United States of America will honor the agreement. And actually we've initiated the process of fulfilling that agreement, subject to the results of the vetting processes that now apply to all refugees in the United States.<sup>23</sup>

#### INTERNATIONAL ORGANIZATIONS

*Trump Administration Criticizes NATO Members for Failing to Meet Defense Spending Guideline; United States Joins Other NATO Members in Supporting Montenegro's Membership in the Organization*

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Throughout Donald Trump's presidential campaign and into the first months of his presidency, he has warned that the United States' commitment to the North Atlantic Treaty Organization (NATO) may depend on whether its partner states increase their defense spending in line with previously adopted guidelines. While senior administration officials have reaffirmed U.S. commitments to the NATO alliance, including the North Atlantic Treaty's mutual defense obligation on several occasions,<sup>1</sup> President Trump himself did not so until mid-June. Separately, the Trump administration signaled its support for NATO by supporting the admission of Montenegro as a new member state.

The North Atlantic Treaty does not impose a quantitative requirement for defense spending. Article 3 provides:

In order more effectively to achieve the objectives of this Treaty, the Parties, separately and jointly, by means of continuous and effective self-help and mutual aid, will maintain and develop their individual and collective capacity to resist armed attack.<sup>2</sup>

This treaty obligation has been supplemented by various subsequent agreements. In 2006, NATO member states made a political commitment to spending at least 2 percent of their gross domestic product (GDP) on defense.<sup>3</sup> In 2014, the heads of state present at the meeting of the North Atlantic Council in Wales reiterated and expanded upon this commitment. An excerpt follows:

Allies currently meeting the NATO guideline to spend a minimum of 2% of their Gross Domestic Product (GDP) on defence will aim to continue to do so. . . . Allies whose current proportion of GDP spent on defence is below this level will: halt any decline in defence expenditure; aim to increase defence expenditure in real terms as GDP grows; aim to move towards the 2% guideline within a decade [i.e., by 2024] with a view to meeting their NATO Capability Targets and filling NATO's capability shortfalls.<sup>4</sup>

<sup>23</sup> White House Press Release, Remarks by the Vice President and Australian Prime Minister Turnbull at a Press Conference (Apr. 22, 2017), at <https://www.whitehouse.gov/the-press-office/2017/04/24/remarks-vice-president-and-australian-prime-minister-turnbull-press>.

<sup>1</sup> The North Atlantic Treaty, Art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 UNTS 243.

<sup>2</sup> *Id.* Art. 3.

<sup>3</sup> North Atlantic Treaty Org., *Funding NATO* (last updated June 2, 2017), at [http://www.nato.int/cps/en/natohq/topics\\_67655.htm](http://www.nato.int/cps/en/natohq/topics_67655.htm).

<sup>4</sup> North Atlantic Treaty Org., *Wales Summit Declaration*, para. 14 (Sept. 5, 2014), at [http://www.nato.int/cps/en/natohq/official\\_texts\\_112964.htm](http://www.nato.int/cps/en/natohq/official_texts_112964.htm).

Also included in the Wales Summit Declaration was a political commitment to spend at least 20 percent of defense spending on major new equipment and/or the research and development of such equipment:

Allies spending more than 20% of their defence budgets on major equipment, including related Research & Development, will continue to do so. . . . Allies who currently spend less than 20% of their annual defence spending on major new equipment, including related Research & Development, will aim, within a decade, to increase their annual investments to 20% or more of total defence expenditures.<sup>5</sup>

As of February 2017, only five NATO countries, including the United States, were meeting the 2 percent guideline.<sup>6</sup> Three more are on track to meet that guideline within a year or two.<sup>7</sup> Among the remaining member states, seventeen have recently begun to increase their defense spending.<sup>8</sup> Thus, a growing number of NATO member states appear to be in a position to meet the 2 percent guideline before the 2024 deadline agreed to in Wales.

As a presidential candidate, Donald Trump described NATO as “obsolete,”<sup>9</sup> and complained that the United States pays “a totally disproportionate share of NATO.”<sup>10</sup> A few days later, he told a crowd at a rally that other NATO member states were “ripping off the United States.”<sup>11</sup> He concluded that “[e]ither they have to pay up for past deficiencies or they have to get out.”<sup>12</sup>

Since his inauguration, President Trump and other administration officials have continued to raise the defense spending issue. On February 15, 2017, Secretary of Defense Jim Mattis addressed the commitments of the United States and other NATO members:

I register the concern in European capitals about America’s commitment to NATO and the security of Europe. I also understand our long-term European allies and friends are seeking reassurance and clarity about American intentions. I join you today representing America’s commitment and President Trump’s “strong support” for our Alliance.

<sup>5</sup> *Id.*

<sup>6</sup> Those five countries are Estonia, Greece, Poland, the United Kingdom, and the United States. North Atlantic Treaty Org. Press Release, Defence Expenditure of NATO Countries (2009–2016), PR/CP(2017)045 (Mar. 13, 2017), available at [http://www.nato.int/nato\\_static\\_fl2014/assets/pdf/pdf\\_2017\\_03/20170313\\_170313-pr2017-045.pdf](http://www.nato.int/nato_static_fl2014/assets/pdf/pdf_2017_03/20170313_170313-pr2017-045.pdf) [hereinafter Defence Expenditure of NATO Countries]. These figures are based on calculations made by NATO. *Id.* This press release acknowledges that, because of disputes over the definition of defense spending, see *infra* notes 29–34 and accompanying text, the numbers published by NATO may diverge from those published by national authorities. See also White House Press Release, Joint News Conference at NATO Headquarters, Mike Pence, Vice President of the United States, and Jens Stoltenberg, NATO Secretary General (Feb. 20, 2017), at <https://www.whitehouse.gov/the-press-office/2017/02/20/remarks-vice-president-and-nato-secretary-general-stoltenberg-jpa> [hereinafter February Joint News Conference].

<sup>7</sup> February Joint News Conference, *supra* note 6.

<sup>8</sup> Defence Expenditure of NATO Countries, *supra* note 6.

<sup>9</sup> See, e.g., “*This Week*” Transcript: Donald Trump and Sen. Bernie Sanders, ABC NEWS (Mar. 27, 2016), at <http://abcnews.go.com/Politics/week-transcript-donald-trump-sen-bernie-sanders/story?id=37949498> (“I think NATO’s obsolete. NATO was done at a time you had the Soviet Union, which was obviously larger, much larger than Russia is today. I’m not saying Russia’s not a threat. But we have other threats. We have the threat of terrorism and NATO doesn’t discuss terrorism, NATO’s not meant for terrorism. NATO doesn’t have the right countries in it for terrorism.”).

<sup>10</sup> *Id.*

<sup>11</sup> Ashley Parker, *Donald Trump Says NATO is ‘Obsolete,’ UN is ‘Political Game,’* N.Y. TIMES (Apr. 2, 2016), at <https://www.nytimes.com/politics/first-draft/2016/04/02/donald-trump-tells-crowd-hed-be-fine-if-nato-broke-up>.

<sup>12</sup> *Id.*

A decade ago, when I was serving as Supreme Allied Commander for Transformation, I watched then-Secretary of Defense Robert Gates warn members of this Council that Congress and the American body politic would lose their patience for carrying a disproportionate burden of the defense of Allies. . . .

The impatience Secretary Gates predicted is now a governmental reality. As noted by a European Minister of Defense, calling for two percent defense spending is a “fair” demand from the American people to their long-time Allies and friends in Europe. No longer can the American taxpayer carry a disproportionate share of the defense of western values. Americans cannot care more for your children’s future security than you do. Disregard for military readiness demonstrates a lack of respect for ourselves, for the Alliance, and for the freedoms we inherited, which are now clearly threatened.

. . .

I owe it to you to give you clarity on the political reality in the United States, and to state the fair demand from my country’s people in concrete terms. America will meet its responsibilities, but if your nations do not want to see America moderate its commitment to this Alliance, each of your capitals needs to show support for our common defense.

Specifically, we must ensure we are not in the same spot at the end of the year that we are in today. We must adopt a plan this year, including milestone dates, to make steady progress toward meeting Warsaw and Wales commitments.

If your nation meets the two percent target, we need your help to get other allies there. If you have a plan to get there, our Alliance is counting on you to accelerate your efforts and show bottom-line results. And if you do not yet have a plan, it is important to establish one soon. Showing immediate and steady progress to honor commitments made at Warsaw and Wales must become a reality if we are to sustain a credible Alliance and adequately defend ourselves.

. . . NATO will remain strong only if all nations show their respect for NATO’s benefits and carry a full and equal burden of our defense. There is no substitute for our security—and we can afford peace and survival as free nations.<sup>13</sup>

Vice President Mike Pence echoed Mattis’s key points in a speech and press conference in Europe later that same month.<sup>14</sup> On February 20, 2017, NATO Secretary General Stoltenberg also emphasized the importance of burden-sharing:

At the same time, I fully support what has been underlined by President Trump and by Vice President Pence today, the importance of burden-sharing. And I think we have to remember that this is not only something that the U.S. is asking for, it’s actually something that 28 Allies agreed. The leaders from 28 NATO-allied countries sat around the same table in 2014 and agreed to stop the cuts, to gradually increase defense spending, and then to meet the 2 percent target within a decade. And the good news is that we are moving in the right direction. After many years of decline, after many years of defense cuts across Europe and Canada, we saw that in 2015 we stopped the cuts, the first year after we made the pledge. And then, in 2016, we had

<sup>13</sup> Jim Mattis, U.S. Secretary of Defense, Intervention by Secretary of Defense Mattis, Session One of the North Atlantic Council (Feb. 15, 2017), at <https://nato.usmission.gov/february-15-2017-intervention-secretary-defense-mattis-session-one-north-atlantic-council>; Dan Lamothe & Michael Birnbaum, *Defense Secretary Mattis Issues New Ultimatum to NATO Allies on Defense Spending*, WASH. POST (Feb. 15, 2017), at <https://www.washingtonpost.com/news/checkpoint/wp/2017/02/15/mattis-trumps-defense-secretary-issues-ultimatum-to-nato-allies-on-defense-spending>; Helene Cooper, *Defense Secretary Mattis Tells NATO Allies to Spend More, or Else*, N.Y. TIMES (Feb. 15, 2017), at <https://www.nytimes.com/2017/02/15/world/europe/jim-mattis-nato-trump.html>.

<sup>14</sup> Mike Pence, Vice President of the United States, Munich Security Conference (Feb. 18, 2017), available at <https://nl.usembassy.gov/remarks-vice-president-pence-munich-security-conference-february-18>; February Joint News Conference, *supra* note 6.

a significant increase of 3.8 percent in real terms, or \$10 billion. There is a long way to go, and much remains to be done, but at least we have turned a corner and we have started to move in the right direction. I am encouraged by that, and I expect all allies to make good on the promise that they made in 2014 to increase defense spending and to make sure to have a fairer burden-sharing.<sup>15</sup>

Neither Mattis nor Pence elaborated on what Mattis had in mind when he said that the United States may “moderate its commitment[s]” if other NATO member states failed to meet the 2 percent guideline.<sup>16</sup> As a candidate, President Trump hinted at the possibility that the United States might refuse to fulfill its collective-defense obligations in the event of an attack against a “massive nation[]” with “tremendous wealth” that hadn’t been spending adequately on defense.<sup>17</sup> These collective-defense obligations are codified in Article 5 of the North Atlantic Treaty, which provides:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.<sup>18</sup>

Another possibility would be to withdraw troops from—or stop deploying new troops to—countries that are not meeting the 2 percent guideline. Addressing this possibility, the senior NATO commander based in the United States said: “If the U.S. forces would stop deploying, it would be some kind of strategic shock in Europe.”<sup>19</sup> The United States might also withdraw some of its equipment based in Germany, which hosts the largest contingent of U.S. military personnel in Europe.<sup>20</sup> Since the U.S. military relies on its military personnel and bases in Germany for operations beyond the scope of NATO,<sup>21</sup> however, independent strategic considerations may weigh against such a withdrawal.

<sup>15</sup> February Joint News Conference, *supra* note 6.

<sup>16</sup> Mattis, *supra* note 13.

<sup>17</sup> *Transcript: Donald Trump on NATO, Turkey’s Coup Attempt and the World*, N.Y. TIMES (July 21, 2016), at <https://www.nytimes.com/2016/07/22/us/politics/donald-trump-foreign-policy-interview.html> (On June 21, 2016, Donald Trump said “If we cannot be properly reimbursed for the tremendous cost of our military protecting other countries, and in many cases the countries I’m talking about are extremely rich. . . . I would prefer that we be able to continue, but if we are not going to be reasonably reimbursed for the tremendous cost of protecting these massive nations with tremendous wealth. . . . We’re talking about countries that are doing very well. Then yes, I would be absolutely prepared to tell those countries, ‘Congratulations, you will be defending yourself.’”); see also Steven Erlanger, *As Trump Era Arrives, A Sense of Uncertainty Grips the World*, N.Y. TIMES (Jan. 16, 2017), at <https://www.nytimes.com/2017/01/16/world/europe/trump-eu-nato-merkel-brexit-russia-germany-china.html>.

<sup>18</sup> North Atlantic Treaty, *supra* note 1, Art. 5.

<sup>19</sup> Michael Birnbaum, *A Top NATO General Echoes Trump, Calling Aspects of the Alliance ‘Obsolete,’* WASH. POST (Jan. 17, 2017), at [https://www.washingtonpost.com/world/top-nato-general-aspects-of-alliance-are-obsolete-echoing-trump/2017/01/17/9a91eff0-dcd8-11e6-8902-610fe486791c\\_story.html](https://www.washingtonpost.com/world/top-nato-general-aspects-of-alliance-are-obsolete-echoing-trump/2017/01/17/9a91eff0-dcd8-11e6-8902-610fe486791c_story.html); see also Michael Birnbaum, *Even as Trump Seeks Warmer Ties with Russia, U.S. Deploys Troops Across Eastern Europe*, WASH. POST (Jan. 30, 2017), at [https://www.washingtonpost.com/world/us-troops-begin-long-planned-deployment-across-eastern-europe-even-as-trump-talks-of-cooperation-with-russia/2017/01/30/e516f508-e6f0-11e6-80c2-30e57e57e05d\\_story.html](https://www.washingtonpost.com/world/us-troops-begin-long-planned-deployment-across-eastern-europe-even-as-trump-talks-of-cooperation-with-russia/2017/01/30/e516f508-e6f0-11e6-80c2-30e57e57e05d_story.html).

<sup>20</sup> Rick Noack, *German Defense Ministry Contradicts Trump, Says It Doesn’t Owe U.S. Money for NATO*, WASH. POST (Mar. 19, 2017), at <https://www.washingtonpost.com/news/worldviews/wp/2017/03/19/german-defense-ministry-contradicts-trump-says-it-doesnt-owe-u-s-money-for-nato>.

<sup>21</sup> *Id.*

President Trump's displeasure with NATO partners resurfaced again in March. Following a meeting with German Chancellor Angela Merkel, President Trump tweeted: "Germany owes . . . vast sums of money to NATO & the United States must be paid more for the powerful, and very expensive, defense it provides to Germany!"<sup>22</sup> German defense minister Ursula von der Leyen responded:

There is no debt account in NATO. To relate the 2% defense spending that we want to reach in the next decade solely to NATO is wrong . . . The defense spending also goes to UN-peace mission[s], into European missions and towards our contributions to the fight against ISIS terrorism.<sup>23</sup>

German Chancellor Angela Merkel has reiterated Germany's commitment to meeting the 2 percent guideline by 2024<sup>24</sup> and German Defense Minister Ursula von der Leyen described the United States' demand for more spending as "a fair request" and agreed that "[e]veryone has to make a contribution."<sup>25</sup> Many German officials see the goal as unrealistic, however.<sup>26</sup> On March 31, German foreign minister Sigmar Gabriel said

The idea that Germany in a few years will spend €70 billion each year on the army is an idea that I consider absurd . . . It's particularly absurd if we look at France which spends €40 billion but has also a nuclear program included in it. I would honestly not even know where to put all the aircraft carriers we would buy with €70 billion.<sup>27</sup>

He went on to emphasize the nature of the spending commitment in the Wales Declaration:

It is important to correctly quote the Wales declaration. Its guidelines say members should lean towards a 2 percent spending, but it is at no point written that this is a fixed goal and that every member state should invest 2 percent of its GDP in defense.<sup>28</sup>

German leaders also endorsed a broad interpretation of the types of expenses that should be counted for purposes of meeting the 2 percent goal. Defense Minister Leyen emphasized that German expenditure on UN peacekeeping missions is part of a "modern understanding of security."<sup>29</sup> German leaders, including Chancellor Merkel and Foreign Minister Gabriel, have pointed out that if Germany's €30–40 billion in spending on the Syrian refugee crisis were included in the NATO security spending calculations, Germany would already be either

<sup>22</sup> Donald Trump (@realDonaldTrump), TWITTER (Mar. 18, 2017, 6:15 AM), at <https://twitter.com/realDonaldTrump/status/843088518339612673>; Donald Trump (@realDonaldTrump), TWITTER (Mar. 18, 2017, 6:23 AM), at <https://twitter.com/realDonaldTrump/status/843090516283723776>.

<sup>23</sup> Euan McKirdy, *Germany's Defense Minister to Trump, No We Don't Owe NATO Money*, CNN (Mar. 20, 2017), at <http://www.cnn.com/2017/03/20/politics/nato-commitment-germany-reacts-trump>.

<sup>24</sup> Noack, *supra* note 20.

<sup>25</sup> Michael Birnbaum, *Trump's Calls for Europe to Increase Defense Spending Could Force Other Upheaval*, WASH. POST (Feb. 15, 2017), at [https://www.washingtonpost.com/world/europe/trumps-calls-for-europe-to-increase-defense-spending-could-force-other-upheaval/2017/02/15/fe257b44-efc1-11e6-a100-fdaaf400369a\\_story.html](https://www.washingtonpost.com/world/europe/trumps-calls-for-europe-to-increase-defense-spending-could-force-other-upheaval/2017/02/15/fe257b44-efc1-11e6-a100-fdaaf400369a_story.html).

<sup>26</sup> *Id.*

<sup>27</sup> David M. Herszenhorn & Giulia Paravicini, *Germany Pushes Back on Trump's NATO Demands*, POLITICO (Mar. 31, 2017, updated Apr. 3, 2017), at <http://www.politico.eu/article/germany-pushes-back-on-donald-trump-nato-demands-angela-merkel>.

<sup>28</sup> *Id.*

<sup>29</sup> Noack, *supra* note 20.

at or very close to the 2 percent guideline.<sup>30</sup> Italian Foreign Minister Angelino Alfano has made a similar point about Italian spending on search-and-rescue operations for migrants in the Mediterranean.<sup>31</sup> In addition, European officials have suggested that foreign development aid—an area where the EU’s spending exceeds that of the United States<sup>32</sup>—might properly be understood as part of security spending. At the Munich Security Conference in February, Chancellor Merkel said:

When we help people in their home countries to live a better life and thereby prevent crises, this is also a contribution to security . . . . So I will not be drawn into a debate about who is more military-minded and who is less.<sup>33</sup>

European Commission President Jean-Claude Juncker has also endorsed a broader understanding of European contributions to stability and security.<sup>34</sup>

At a press conference on April 12, 2017, President Trump suggested that his views on NATO may have evolved. Most significantly, he explicitly abandoned his earlier characterization of NATO as obsolete. At a joint press conference with Stoltenberg, Trump declared: “I said it was obsolete; it’s no longer obsolete.”<sup>35</sup> Trump also took a softer tone but retained his focus on spending, saying:

In facing our common challenges, we must also ensure that NATO members meet their financial obligations and pay what they owe. Many have not been doing that. The Secretary General and I agree that other member nations must satisfy their responsibility to contribute 2 percent of GDP to defense. If other countries make their fair share, instead of relying on the United States to make up the difference, we will all be much more secure and our partnership will be made that much stronger.<sup>36</sup>

On May 25, 2017, President Trump attended a NATO summit and personally met with other foreign leaders. His remarks again focused on spending:

The NATO of the future must include a great focus on terrorism and immigration, as well as threats from Russia and on NATO’s eastern and southern borders. These grave security concerns are the same reason that I have been very, very direct with Secretary Stoltenberg and members of the Alliance in saying that NATO members must finally contribute their fair share and meet their

<sup>30</sup> Lorne Cook, *U.S. Gives NATO Allies 2 Months for Defense Spending Plans*, ASSOCIATED PRESS (Mar. 31, 2017), at <https://apnews.com/ce256f31a023483b8ed5d246abd49290>; Robin Emmott, *Europe Dodges Trump’s Defense Spending Ultimatum*, REUTERS (Feb. 21, 2017), at <http://www.reuters.com/article/us-usa-trump-nato-analysis-idUSKBN16011F>; Amanda Erickson, *No, Germany Doesn’t Owe America ‘Vast Sums’ of Money for NATO*, WASH. POST (Mar. 18, 2017), at <https://www.washingtonpost.com/news/worldviews/wp/2017/03/18/no-germany-doesnt-owe-america-vast-sums-of-money-for-nato>.

<sup>31</sup> Herszenhorn & Paravicini, *supra* note 27.

<sup>32</sup> Emmott, *supra* note 30.

<sup>33</sup> Erickson, *supra* note 30.

<sup>34</sup> Emmott, *supra* note 30 (“Things look very different if we add up our defense budgets, our development aid budgets and our humanitarian efforts all around the world. . . . We want . . . a broader understanding that the word ‘stability’ in the world means defense expenditure, human aid and development aid.”).

<sup>35</sup> White House Press Release, Joint Press Conference at White House, Donald Trump, President of the United States, and Jens Stoltenberg, NATO Secretary General, (Apr. 12, 2017), at <https://www.whitehouse.gov/the-press-office/2017/04/12/joint-press-conference-president-trump-and-nato-secretary-general> [hereinafter April Joint Press Conference]. Trump’s comments linked his changed view to NATO’s efforts to combat terrorism. Immediately before describing his changed opinion, Trump said: “The Secretary General and I had a productive discussion about what more NATO can do in the fight against terrorism. I complained about that a long time ago and they made a change, and now they do fight terrorism.” *Id.*

<sup>36</sup> April Joint Press Conference, *supra* note 35.



financial obligations, for 23 of the 28 member nations are still not paying what they should be paying and what they're supposed to be paying for their defense.

This is not fair to the people and taxpayers of the United States. And many of these nations owe massive amounts of money from past years and not paying in those past years. Over the last eight years, the United States spent more on defense than all other NATO countries combined. If all NATO members had spent just 2 percent of their GDP on defense last year, we would have had another \$119 billion for our collective defense and for the financing of additional NATO reserves.

We should recognize that with these chronic underpayments and growing threats, even 2 percent of GDP is insufficient to close the gaps in modernizing, readiness, and the size of forces. We have to make up for the many years lost. Two percent is the bare minimum for confronting today's very real and very vicious threats. If NATO countries made their full and complete contributions, then NATO would be even stronger than it is today, especially from the threat of terrorism.<sup>37</sup>

An omission in Trump's speech garnered significant attention: at no point did he reaffirm the United States' obligations under Article 5. According to press reports, that affirmation was deleted shortly before Trump spoke, though it is unclear by whom.<sup>38</sup> More recently, Vice President Mike Pence specifically reaffirmed the United States' commitment to Article 5, saying:

We will meet our obligations to our people to provide for the collective defense of all our allies.

The United States is resolved, as we were at NATO's founding and in every hour since, to live by that principle that an attack on one of us is an attack on us all.<sup>39</sup>

On June 9, 2017, at a joint press conference with the Romanian president, President Trump finally reaffirmed the U.S. commitment to NATO's collective defense obligation when he said, in response to a question from a journalist:

Well, I'm committing the . . . United States to Article 5. And certainly we are there to protect. And that's one of the reasons that I want people to make sure we have a very, very strong force by paying the kind of money necessary to have that force. But, yes, absolutely, I'd be committed to Article 5.<sup>40</sup>

Separately, the U.S. Senate and President Trump have evinced their continued support for the Alliance by approving Montenegro's membership in NATO.<sup>41</sup> Pursuant to the North Atlantic Treaty, the members of NATO may, by a unanimous decision, invite "any other European State in a position to further the principles of this Treaty and to contribute to

<sup>37</sup> White House Press Release, Donald Trump, U.S. President, Remarks by President Trump at NATO Unveiling of the Article 5 and Berlin Wall Memorials (May 25, 2017), at <https://www.whitehouse.gov/the-press-office/2017/05/25/remarks-president-trump-nato-unveiling-article-5-and-berlin-wall>.

<sup>38</sup> Susan Glasser, *Trump National Security Team Blindsided by NATO Speech*, POLITICO (June 5, 2017), at <http://www.politico.com/magazine/story/2017/06/05/trump-nato-speech-national-security-team-215227>.

<sup>39</sup> White House Press Release, Remarks by the Vice President to the Atlantic Council (June 5, 2017), at <https://www.whitehouse.gov/the-press-office/2017/06/05/remarks-vice-president-atlantic-council>.

<sup>40</sup> White House Press Release, Joint Press Conference at White House, Donald Trump, President of the United States, and Klaus Iohannis, President of Romania, (June 9, 2017), at <https://www.whitehouse.gov/the-press-office/2017/06/09/remarks-president-trump-and-president-iohannis-romania-joint-press>.

<sup>41</sup> Andrew Hanna, *Senate Votes Overwhelmingly to Admit Montenegro to NATO*, POLITICO (Mar. 28, 2017), at <http://www.politico.com/story/2017/03/senate-approves-montenegro-nato-treaty-236606>; White House Press Release, Statement By the Press Secretary on Montenegro's NATO Accession Protocol (Apr. 11, 2017), at <https://www.whitehouse.gov/the-press-office/2017/04/11/statement-press-secretary-montenegro-nato-accession-protocol> [hereinafter Statement on Montenegro].

the security of the North Atlantic area to accede to th[e] [t]reaty . . .” and thereby become a member of NATO.<sup>42</sup>

Montenegro began the process to join NATO eight years ago, in 2009, when it joined the Membership Action Plan, NATO’s program of advice and assistance to prepare countries to join NATO.<sup>43</sup> Throughout the process, Russia has firmly and vocally opposed to NATO’s expansion in the Balkans.<sup>44</sup> The current NATO members extended such a formal membership invitation to Montenegro on May 19, 2016, by signing an accession protocol.<sup>45</sup>

When President Harry Truman initially submitted the North Atlantic Treaty to the U.S. Senate for its advice and consent in 1949, he committed to seeking the such advice and consent again for the addition of any new members of NATO.<sup>46</sup> Accordingly, on June 28, 2016, then-President Barack Obama and then-Secretary of State Kerry submitted the accession protocol to the Senate for its approval.<sup>47</sup> On March 28, 2017, the Senate approved Montenegro’s accession by a vote of 97–2.<sup>48</sup>

Following the Report of the Senate Committee on Foreign Relations, the Senate included the following declaration in its resolution approving Montenegro’s accession:

The advice and consent of the Senate under section 1 is subject to the following declarations: . . .  
(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.<sup>49</sup>

Several Republican senators likewise emphasized defense spending in their individual statements surrounding the vote on Montenegro.<sup>50</sup>

President Trump signed the U.S. instrument of ratification of the accession protocol on April 11—the day before Trump announced his change of view regarding NATO’s

<sup>42</sup> North Atlantic Treaty, *supra* note 1, Art. 10.

<sup>43</sup> North Atlantic Treaty Org., *Relations with Montenegro* (last updated June 12, 2017), at [http://www.nato.int/cps/cs/natohq/topics\\_49736.htm](http://www.nato.int/cps/cs/natohq/topics_49736.htm); North Atlantic Treaty Org., *Membership Action Plan* (last updated June 12, 2017), at [http://www.nato.int/cps/en/natohq/topics\\_37356.htm](http://www.nato.int/cps/en/natohq/topics_37356.htm).

<sup>44</sup> Steven Erlanger, *NATO Unveils Plans to Grow, Drawing Fury and Threats From Russia*, N.Y. TIMES (Dec. 2, 2015), at <https://www.nytimes.com/2015/12/03/world/europe/kerry-nato-syria-russia.html>; Niraj Chokshi, *Trump Appears to Push Aside the Leader of Montenegro*, N.Y. TIMES (May 25, 2017), at <https://www.nytimes.com/2017/05/25/us/politics/trump-push-aside-leader-montenegro-nato-summit.html>.

<sup>45</sup> North Atlantic Treaty Org., *NATO Foreign Ministers Sign Accession Protocol with Montenegro* (last updated May 19, 2016), at [http://www.nato.int/cps/en/natohq/news\\_131132.htm](http://www.nato.int/cps/en/natohq/news_131132.htm).

<sup>46</sup> Marjorie M. Whiteman, 14 DIG. INT’L L. 93, 100 (1970) (Quoting the report of the Senate Committee on Foreign Relations dated June 6, 1949, recommending advice and consent to ratification of the North Atlantic Treaty: “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 the 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 admission. The committee considers this an obligation binding upon the Presidential office.”).

<sup>47</sup> S. Treaty Doc. No. 114-12 (2016).

<sup>48</sup> 163 Cong. Rec. S2032-02.

<sup>49</sup> *Id.*; S. Exec. Rept. No. 115-1, at 8 (2017).

<sup>50</sup> 163 Cong. Rec. S1982-03 (statements of Senators Marco Rubio and Bob Corker); 163 Cong. Rec. S1981-05 (statement of Senator Mitch McConnell); 163 Cong. Rec. S2019-04 (statement of Senator Mike Lee).



obsolescence.<sup>51</sup> Montenegro became NATO's twenty-ninth member state on June 5, 2017, at a ceremony that took place at the U.S. State Department.<sup>52</sup>

INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

*President Trump Issues Executive Orders Suspending Refugee Program and Barring Entry by Individuals from Specified Countries*

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On January 27, 2017, President Trump issued an executive order that: (1) prohibited nationals from seven majority-Muslim countries from entering the United States for ninety days; and (2) prohibited individuals from entering into the United States as refugees for 120 days. Courts stayed the order on constitutional and statutory grounds. In response to these stays, President Trump replaced the initial order with a new order that eliminated preferential treatment for refugees fleeing from religious persecution and narrowed the scope of persons prohibited from entering into the United States. Courts again issued stays, holding that the new order violated the Establishment Clause and the Immigration and Nationality Act. The Trump administration appealed, and the Supreme Court agreed to hear the case in October. Along with its grant of certiorari, the Court kept the lower court stays in place except as to people with no connection to the United States either personally or through family.

During the 2016 presidential election, Donald Trump campaigned on a platform of revamping the process and substance of U.S. policy regarding immigrant and nonimmigrant visas. The particulars of his proposals evolved over time. In December 2015, Trump's campaign website called for "a total and complete shutdown of Muslims entering the United States . . . until our country's representatives can figure out what is going on."<sup>1</sup> This proposal remained on the campaign website until February 2017. Trump frequently discussed these views on the air and during stump speeches. During an interview with CNN in March 2016, Trump said that "Islam hates [America],"<sup>2</sup> and suggested that the United States should not "allow people coming into the country who have this hatred of the United States."<sup>3</sup> On Fox News, shortly after a terrorist attack in Brussels, Trump expressed his view that the country was "having problems with the Muslims."<sup>4</sup> These "problems," according to Trump, justified implementation of a more rigorous vetting process for entry into the United States:

<sup>51</sup> See Statement on Montenegro, *supra* note 41; see also *supra* note 35.

<sup>52</sup> NATO Press Release, North Atlantic Treaty Organization, Montenegro Joins NATO as 29th Ally (June 5, 2017), at [http://www.nato.int/cps/en/natohq/news\\_144647.htm](http://www.nato.int/cps/en/natohq/news_144647.htm); U.S. Dep't of State Press Release, Notice to the Press, Office of the Spokesperson, U.S. Department of State, Montenegro Joins the NATO Alliance, U.S. Department of State (June 2, 2017), at <https://www.state.gov/r/pa/prs/ps/2017/06/271540.htm>.

<sup>1</sup> Jenna Johnson, *Trump Calls for 'Total and Complete Shutdown of Muslims Entering the United States,'* WASH. POST (Dec. 7, 2015), at <https://www.washingtonpost.com/news/post-politics/wp/2015/12/07/donald-trump-calls-for-total-and-complete-shutdown-of-muslims-entering-the-united-states>.

<sup>2</sup> Donald Trump: 'I Think Islam Hates Us,' CNN (Mar. 9, 2016), available at <https://www.youtube.com/watch?v=C-Zj0tfZY6o>.

<sup>3</sup> *Id.*

<sup>4</sup> Mark Hensch & Jesse Byrnes, *Trump: 'Frankly, We're Having Problems with the Muslims,'* THE HILL (Mar. 22, 2016), at <http://thehill.com/blogs/ballot-box/presidential-races/273857-trump-frankly-were-having-problems-with-the-muslims>.

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