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Nick Minogue

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THE NORTH ATLANTIC TREATY AT 70—ARTICLE 10[†]

Nick Minogue*

Article 10

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. Any 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 Government of the United States of America will inform each of the Parties of the deposit of each such instrument of accession.¹

When Montenegro deposited the instrument of accession to the North Atlantic Treaty (“Treaty”) with the U.S. Department of State on June 5, 2017, it became the twenty-ninth Party to the Treaty, and the seventieth to accede under its Article 10.² At the time of writing, and following the agreement between Athens and Skopje on the resolution of the name issue, Allies are in the process of signing the accession protocol for the future Republic of North Macedonia with a view to it, under its new name, becoming the thirtieth.³

Citing Euro-Atlantic integration’s role in anchoring democracy and the rule of law and strengthening peace, cooperation and stability in Europe, nations have consistently lauded the Alliance’s Open Door policy under Article 10 of the Treaty as one of its great successes.⁴ Accordingly, the Allies view Article 10 as one of the core tools by which the treaty achieves the purpose of the Alliance, even as this purpose has evolved from the Cold War context in which it was founded, and the corresponding focus on self-defense, to the modern, more multifaceted approach to safeguarding security presented by the 2010 Strategic Concept.⁵ In this regard Article 10 operates hand in glove with Article 3 of the

[†] This Article contains views provided in the author’s personal capacity and may not reflect agreed upon policy or views of the NATO International Staff or the North Atlantic Treaty Organization.

* Assistant Legal Adviser, NATO International Staff Office of Legal Affairs.

¹ North Atlantic Treaty, art. 10, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

² *Montenegro Joins NATO as 29th Ally*, NORTH ATLANTIC TREATY ORG. (Jun. 5, 2017), https://www.nato.int/cps/en/natohq/news_144647.htm?selectedLocale=en.

³ *Relations with the Republic of North Macedonia*, NORTH ATLANTIC TREATY ORG. (Feb. 15, 2019), https://www.nato.int/cps/en/natohq/topics_48830.htm?selectedLocale=en.

⁴ See North Atlantic Treaty, *supra* note 1, art. 10; For example, in the 2015 NAC statement to mark the anniversary of the then three latest rounds of accession in 2014, and most recently in the 2018 Brussels Summit Declaration.

⁵ See *Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the*

Treaty, providing a means of extending the inherent stability represented by the increasing integration and cohesiveness of the Allies' security structures.

Whilst Article 10 is not without questions of legal interpretation, its relatively brief content belies the detailed procedures developed by the Alliance since the Treaty's entry into force to provide a pathway to accession. Similarly, accession to the Treaty is only one element of the legal obligations and political commitments that a State must undertake before it is able to operate as an effective member of NATO.

This Article will, therefore, in addition to examining Article 10 itself, focus on the policies and practices that have evolved to govern accession to the Alliance over the seven rounds of enlargement since the Treaty entered into force, as well as the content of the so-called Treaty legal acquis, and the mechanisms by which it binds States newly acceded to the Treaty.

A. *Drafting History of Article 10 of the North Atlantic Treaty*

According to a contemporaneous U.S. record of the Treaty negotiations, the seven participating governments saw the need for an accession provision from the outset, believing that, "a North Atlantic security system, to be fully effective, should provide not only for their own security but for that of other countries in the general North Atlantic area whose security was intrinsically and strategically interdependent with their own."⁶ At the same time, the participating governments recognized that not all such States would be able to become part of the Alliance from the beginning, either because the governments of such States might not initially be prepared to assume the necessary responsibilities of the Alliance, or due to lack of agreement amongst the seven Governments themselves.⁷

An accession provision was thus seen as necessary to avoid closing the door to future membership of the Alliance for those states, although the precise content of what became Article 10 was developed only later in the negotiations.⁸

Members of the North Atlantic Treaty Organization, NATO SUMMIT (Nov. 19–20, 2010), https://www.nato.int/strategic-concept/pdf/Strat_Concept_web_en.pdf.

⁶ John F. Hickman, *North Atlantic Pact: The Drafting of the Treaty*, PACT D-6/1, at 28 (Mar. 29, 1949).

⁷ *Id.*

⁸ *Id.*

The final text of Article 10 comprises essentially four elements:

1. *Procedure for Accession*

Article 10 confirms that accession is only at the invitation of the Parties to the Treaty, and that once invited, a State may become party by depositing its instrument of accession with the Government of the United States of America—the registry for the Treaty—who would inform each of the Parties of the deposit of each such instrument.⁹

These procedural elements were all present in the first draft of the Article considered in negotiations, with the exception of the identity of the depository State, later confirmed as the United States.¹⁰ Section C below sets out how these elements have been built upon over successive accession rounds into the considerably more detailed practice followed today.

2. *Voting Rule*

Article 10 specifies that unanimous agreement of the Parties is required to extend an invitation to accede to the Treaty.¹¹ This represents the only reference to a voting rule in the Treaty and was reportedly chosen by the drafters due to the impact of new membership on the obligations of the existing Parties.¹²

The Alliance's practice has been to enshrine the decision to invite in an accession protocol to the Treaty itself, thus requiring the agreement of all. As such, the question in principle of whether unanimity could be reached in the face of an abstention will never arise in practice.¹³

3. *Limitation to European States*

Article 10 limits a potential invitation to any other “European State,” and provides no definition of “European” to clarify its intended scope.¹⁴ The first draft of the accession article limited invitations to any other country in the “North Atlantic or Western European regions,” but this was reportedly

⁹ North Atlantic Treaty, *supra* note 1 at art. 10.

¹⁰ Hickman, *supra* note 6; North Atlantic Treaty, *supra* note 1, art. 10.

¹¹ North Atlantic Treaty, *supra* note 1 at art. 10.

¹² See North Atlantic Treaty, *supra* note 1; Hickman *supra* note 6 at ¶ 29.

¹³ As would be the case, for example, within the Council of the European Union.

¹⁴ See North Atlantic Treaty, *supra* note 1, art. 10.

considered by the negotiators as too limited, as was the subsequent draft's reference to "any other neighbouring State."¹⁵

The reference to "North Atlantic" was also dropped because Canada and the United States would be initial signatories and other American countries were actual or potential Parties to the Rio Treaty.¹⁶ By February 22, 1949, the drafters had settled on the reference to "any other European State," as included in the final text.¹⁷

There is some evidence that the Allies interpret the reference to "European State" relatively broadly, and independently of the definition of "Europe" in Article 6. Whilst the accession protocol for the Republic of Turkey supplements Article 6's reference to the territory of any of the Parties in Europe with an express reference to the territory of Turkey, the protocol makes no similar amendment to Article 10.¹⁸ Thus, whilst the then Allies evidently felt that at least some clarification was needed to avoid any uncertainty over whether Article 5 applied to all parts of Turkish territory, they implicitly understood the Republic of Turkey to fulfil the definition of a "European State" for the purposes of Article 10.¹⁹ Similarly, Georgia's geographical position to the east of Turkey has not prevented Allies from envisaging its accession.²⁰

At the same time, a different approach to Article 6 and Article 10 can be readily explained at a practical level, leaving aside questions of interpretation. With an invitation to accede requiring the agreement of all, there can be no question following an accession that the Allies considered that Article 10 has been satisfied. In contrast, agreement over an accession does not settle the question of the extent to which Article 6 is considered to encompass an Ally's territory, which explains the imperative to put the matter beyond doubt in the drafting of Article 6 itself.

¹⁵ Hickman, *supra* note 6, at 29.

¹⁶ *See id.*; Inter-American Treaty of Reciprocal Assistance (Rio Treaty), art. 5, Sept. 2, 1947, T.I.A.S. No. 1838, 21 U.N.T.S. 77 [hereinafter Rio Treaty].

¹⁷ *See* North Atlantic Treaty, *supra* note 1, art. 10; Hickman, *supra* note 6.

¹⁸ *See* Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey, art. 2, Oct. 17, 1951, 3 U.S.T. 43, 126 U.N.T.S. 350.

¹⁹ *See id.*

²⁰ *See Bucharest Summit Declaration*, NORTH ATLANTIC TREATY ORG. (Apr. 3, 2008), https://www.nato.int/cps/en/natohq/official_texts_8443.htm?selectedLocale=en.

4. *Conditions for Invitation*

Article 10 contains two further broad conditions that must be fulfilled before a State is invited to accede. Firstly, the State must be in a position to further the principles of the Treaty.²¹ Secondly, the State must be in a position to contribute to the security of the North Atlantic Area.²²

The conditions encompass both a political and a military strategic element. Both conditions, and the practical effect given to them in the pathway to accession developed by the Alliance, are considered in more detail in Section B below.

The political element requires an analysis of the commitment of the potential invitee to the shared values of the Allies as expressed in the Treaty, and particularly in its preamble.²³

There is a potential ambiguity to the military and strategic element, which could be read as reflecting the need to assess either a State's specific capacity to contribute to the common defense and other activities of the Alliance, or the military and security implications of its accession for the North Atlantic Area in a broader sense. As will be seen *infra*, the principles presently applied by the Allies in considering an invitation to accede encompass both these assessments.

B. *Current Practice—Principles Governing Accession*

Rooted in the 1990s, the modern expression of the Alliance's Open Door policy, and the principles applied in deciding to extend an invitation to accede, paved the way for the accessions of the first former Soviet States to join the Alliance.

At the Brussels Summit of January 1994, Allied leaders reaffirmed the Alliance was open to membership of other European States in a position to further the principles of the Treaty and to contribute to security in the North Atlantic Area.²⁴ Recognizing the need for greater transparency on the principles and practice that would govern this new phase in Alliance accession policy, Allied Foreign Ministers in December 1994 commissioned what would become

²¹ North Atlantic Treaty, *supra* note 1, art. 10.

²² *Id.*

²³ *See id.* at pmb1.

²⁴ Press Release, NATO, Brussels Summit Declaration, ¶ 12 (JULY 11, 2018) [hereinafter Brussels Summit], ¶ 12 (Jan. 11, 1994).

the Alliance's 1995 "Study on Enlargement" to set out the principles that would govern decisions regarding accession.²⁵ The Study was first shared with interested Partners in September 1995 and made public thereafter. Whilst the drafters of the Study were careful to confirm that neither the criteria to be applied nor the procedure to be followed were set in stone,²⁶ the principles identified in the Study remain the basis for the Alliance's approach to inviting new members to join.

The Study confirms NATO's broad characterization of security as embracing political, economic and defense components, and frames enlargement as enhancing security by complementing wider trends towards integration in the region, notably the enlargement of the European Union and the strengthening of the Organization for Security and Cooperation in Europe (OSCE).²⁷ Enlargement would offer new members the benefits of common defense and integration into European and Euro-Atlantic Institutions, whilst at the same time achieving NATO's wider objectives of integration into the community of values and institutions, and, thus, enhancing the stability and security for all countries in the Euro-Atlantic area.²⁸

Beyond these more strategic objectives, the Study sets out a number of specific aims for enlargement. Whilst those include emphasizing the benefits of common defense and strengthening the Alliance's ability to contribute to European and international security, the majority of aims represent the more political benefits of democratic and military integration and reform, and of fostering the habits of cooperation, consultation and consensus building.²⁹

The Study contains no fixed list of criteria by which an assessment of the two conditions in Article 10—that the State must be in a position to further the principles of the Treaty and that the State must be in a position to contribute to the security of the North Atlantic Area—will be carried out.³⁰

At the same time, in various places in the text, the Study points to certain key principles to be applied to accessions, and certain factors that will be taken into account as Nations consider a possible invitation to accede. The paragraphs below, whilst not seeking to be exhaustive, draw from the Study some

²⁵ Final Communiqué, Dec. 1, 1994, at ¶¶ 5–8.

²⁶ *Study on NATO Enlargement*, NORTH ATLANTIC TREATY ORG. ¶¶ 7, 79–82 (Sept. 3, 1995), https://www.nato.int/cps/en/natohq/official_texts_24733.htm.

²⁷ *Id.* ¶¶ 1, 4.

²⁸ *Id.* ¶¶ 1–2.

²⁹ *Id.* at ¶ 3.

³⁰ See North Atlantic Treaty, *supra* note 1, art. 10; *Study on NATO Enlargement*, *supra* note 26.

overarching principles, and some that can be broadly categorized by reference to one of the two Article 10 conditions.

Thus, by way of key overarching principles, the Study confirms:

- that enlargement should be on the basis that new Members will enjoy all the rights and assume all obligations of membership under the Treaty; and accept and conform with the principles, policies and procedures adopted by all Members of the Alliance at the time that new Members join;³¹
- that new Members should become familiar with the Alliance decision making process, and the modalities and traditions of consensus and compromise before joining, and commit themselves to good faith efforts to build consensus within the Alliance on all issues;³²
- that no country outside the Alliance should be given a veto or droit de regard over the process and decisions of enlargement;³³ and
- that the Alliance expects new Members not to “close the door” to the accession of one or more later candidate Members.³⁴

With respect to the furtherance of the principles of the Treaty—the first limb of the Article 10 test—the Study emphasizes the need for a candidate State—referred to in the Study as an “aspirant”—to:

- adhere to and promote the purposes and principles of the United Nations Charter, and conform to the principles of democracy, individual liberty and the rule of law;³⁵
- demonstrate a commitment to promoting stability and well-being by economic liberty, social justice and environmental responsibility;³⁶
- have established appropriate democratic and civilian control of their defense force;³⁷
- commit to the peaceful resolution of conflicts, and specifically to settle any international disputes in which they may be involved by

³¹ *Study on NATO Enlargement, supra* note 26, ¶ 4.

³² *Id.* ¶¶ 45, 70.

³³ *Id.* ¶ 27.

³⁴ *Id.* ¶¶ 30, 70.

³⁵ *Id.* at ¶¶ 4, 70 (which principles reflect directly the preamble of the Washington Treaty); *See* North Atlantic Treaty, *supra* note 1 at pmbl.

³⁶ *Study on NATO Enlargement, supra* note 26, ¶ 72.

³⁷ *Id.*

- peaceful means;³⁸ and
- resolve by peaceful means in accordance with OSCE principles any ethnic disputes, external territorial disputes or internal jurisdictional disputes, with resolution of such disputes specified as a factor to be taken into account before an invitation to accede is advanced, and not solely as a commitment for the future.³⁹

With respect to a State being in a position to contribute to the security of the North Atlantic Area—the second limb of the Article 10 test—the Study confirms the importance of a new State’s commitment to maintaining the effectiveness of the Alliance by sharing roles, risks, responsibilities, costs and benefits of assuring common security goals and objectives.⁴⁰ Specifically, the Study confirms that Allies will want to know how aspirants intend to:

- contribute to NATO’s collective defense, and how they will participate in the integrated military structure and collective defense planning process;⁴¹
- be assimilated into NATO force structures and stationing,⁴² taking into account the imperative of achieving as swiftly as possible at least the minimum level of interoperability required for military effectiveness;⁴³ and
- contribute to peacekeeping and other missions.⁴⁴

The Study makes clear that an aspirant’s willingness and ability to meet its accession commitments, not only on paper but in practice, will be a critical factor in any decision taken by the Alliance to invite a country to join.⁴⁵

At the same time, and in an echo of the convictions of the original drafters of the Treaty, the Study confirms that beyond the specific political characteristics, military capabilities and intentions of an aspirant State, the Alliance should look holistically at the effects of the accession decision-making process on European security and stability.⁴⁶ This should include consideration

³⁸ *Id.* ¶ 5.

³⁹ *Id.* ¶ 6.

⁴⁰ *Id.* ¶ 5.

⁴¹ *Id.* ¶¶ 45, 47.

⁴² *Id.* ¶¶ 53–61.

⁴³ *Id.* ¶ 78.

⁴⁴ *Id.* at ch. 4.

⁴⁵ *Id.* ¶ 69.

⁴⁶ *See* Hickman, *supra* note 6.

of the impact on NATO's relations with other European states, whether partners or not, as well as on the security of States which may not themselves be prospective NATO members.⁴⁷ These considerations should also take into account the impact the timing of an accession might have on the European security environment.⁴⁸

The 2018 Brussels Summit Declaration confirmed the Allies commitment "to the integration of those countries that aspire to join the Alliance, judging each on its merits."⁴⁹ At that time, four partner countries had declared their aspirations to NATO membership.⁵⁰ The Allies at the 2008 Bucharest Summit had agreed that Georgia and Ukraine would become Members of the Alliance.⁵¹ In December 2018, Allied Foreign Ministers confirmed that NATO was ready to accept the submission of Bosnia and Herzegovina's first Annual National Program under the Membership Action Plan.⁵² Finally, and as noted above, at the time of writing the Allies have just signed the Accession Protocol for the accession of the future Republic of North Macedonia.⁵³ Each of these aspirant States are at different stages in what has evolved to be the modern NATO accession process, and this process is described in more detail in the Section below.

C. *Current Practice—The Process to Accession*

Article 10 itself provides no detail as to the practical steps that proceed a formal invitation to accede, and the Study is careful to confirm that the modalities for enlargement will be determined on a case-by-case basis, taking into account the prevailing political and security context and individual circumstances and characteristics of new acceding members.⁵⁴ It emphasizes that previous accessions need not be considered as precise models, and that it is, therefore, important to have a transparent and predictable process in order to provide reassurance to public and legislative opinion in existing Member States.⁵⁵

⁴⁷ *Id.* ¶¶ 13,29.

⁴⁸ *Id.* ¶ 3.

⁴⁹ See Brussels Summit, *supra* note 24.

⁵⁰ See *id.* ¶¶ 64–65.

⁵¹ See *id.* ¶¶ 65–66.

⁵² See *id.* ¶ 64.

⁵³ See *Relations with the Republic of North Macedonia*, *supra* note 3; Brussels Summit, *supra* note 24, 62–63.

⁵⁴ See North Atlantic Treaty, *supra* note 1, art. 10; *Study on NATO Enlargement*, *supra* note 26.

⁵⁵ See Brussels Summit, *supra* note 24.

To meet this objective, the Organization has developed a graduated process of integration and dialogue with aspirant states, to ensure that by the time an invitation is issued the new Member is ready to take on their responsibilities within the Alliance and to allow for Allies to be assured that the new member is in a position to further the principles of the Treaty and to contribute to the security of the North Atlantic Area.⁵⁶

1. *Partnership for Peace*

All aspirant states must already be part of the Partnership for Peace (PfP).⁵⁷ The Study highlights the PfP's importance in what it terms the "evolutionary process of the enlargement of NATO."⁵⁸ Participation in the PfP program gives access for aspirant Members to a menu of tools laying the groundwork for an accession process. Such tools include initiatives to develop interoperability and build capacity and support for political, defense and security related reforms. Individual Partnership Action Plans and the Annual National Program—the most demanding tool within the PfP toolkit—allow also for Allies to assess progress in the reforms undertaken by participating partners.⁵⁹

However, following the accessions of the Czech Republic, Hungary, and Poland in 1999, Allies sought to introduce a more formal and graduated structure to the discussions with aspirant states beyond the standard PfP tools.⁶⁰ This led to the introduction in April 1999 of the Membership Action Plan (MAP), which has been the mechanism through which Allies and an aspirant state have discussed preparations for possible membership in all accessions since.⁶¹

2. *Membership Action Plan*

The MAP is divided into five chapters, encompassing: political and economic issues, defense and military issues, resource issues, security issues,

⁵⁶ See *Membership Action Plan (MAP)*, NORTH ATLANTIC TREATY ORG., ch. V (1999) [hereinafter MAP], https://www.nato.int/cps/en/natolive/topics_37356.htm.

⁵⁷ See *Partnership for Peace: Framework Document Issued by the Heads of State and Government participating in the Meeting of the North Atlantic Council*, NORTH ATLANTIC TREATY ORG. (1994), https://www.nato.int/cps/en/natohq/official_texts_24469.htm?selectedLocale=en. [hereinafter *PfP*].

⁵⁸ *Study on NATO Enlargement*, *supra* note 26, ¶ 4.

⁵⁹ *PfP*, *supra* note 57.

⁶⁰ See MAP, *supra* note 56.

⁶¹ See *id.* Bulgaria Estonia Latvia, Lithuania, Romania, the Slovak Republic, and Slovenia in 2004, Croatia and Albania in 2009, and most recently Montenegro in 2017, *id.*

and legal issues.⁶² Each Chapter of the MAP identifies a non-exhaustive list of issues that might be discussed and highlights potential mechanisms through which preparation for possible membership can be carried forward. As such, the MAP gives a more systematic means to apply the principles identified in the 1995 Study to an individual aspirant and to allow them to access tools to address areas where a need for further action is identified.

Undertaking a MAP places no obligations on an aspirant state. Such a state sets its own objectives and targets and draws up its own annual national program—as described above in respect of the PfP—based on whichever of the listed activities they consider would most assist them in their preparations.⁶³ Equally, participation in the MAP does not imply any time frame for, nor any guarantee of, eventual membership. Instead, the annual national program forms the basis for regular exchanges between the MAP State and the Allies in a North Atlantic Council (NAC) +1 format, allowing Allies to keep track of aspirant State's progress and provide feedback.⁶⁴ The format also enables meetings with representatives of NATO International Staff to discuss particular issues drawn from the MAP.

3. Accession Talks

The formal accession process is commenced by a NAC decision to invite a state or states to join the Alliance by commencing accession talks.⁶⁵ This decision is taken by consensus and is not yet the invitation to accede provided for in Article 10 itself.⁶⁶ Following the decision, the Secretary General will formally ask the invitee or invitees to begin accession talks.⁶⁷

The accession talks themselves are a formal opportunity for the invitee to confirm their willingness and ability to meet the political, legal and military obligations and commitments of NATO membership. They take place over two sessions, with the first discussing political and defense or military issues—essentially the conditions provided for in Article 10.⁶⁸ The second session then

⁶² *Membership Action Plan (MAP)*, NORTH ATLANTIC TREATY ORG. (1999) [hereinafter MAP 1999], https://www.nato.int/cps/en/natolive/topics_37356.htm.

⁶³ See MAP, *supra* note 56; PfP, *supra* note 57.

⁶⁴ See MAP, *supra* note 56.

⁶⁵ *Enlargement*, NORTH ATLANTIC TREATY ORG. (FEB. 15, 2019), https://www.nato.int/cps/en/natohq/topics_49212.htm?selectedLocale=en.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

covers the more technical matters of resources, security and legal issues.⁶⁹ Legal issues will include discussion of the NATO legal acquis, considered in Section D below and also any aspects of national law with the potential to impact the obligations and commitments the acceding State will assume.

With the introduction of the MAP in particular, the formal accession talks are to a large extent confirmatory of the extensive exchanges that would have already taken place before an invitation to accession talks was extended. The talks conclude with the invitee submitting a timetable for the completion of necessary reforms, which may continue even after the acceding State has become a member of the Alliance.⁷⁰

4. *Letter of Intent*

On completion of accession talks, the invitee provides a letter of intent from its foreign minister addressed to the Secretary General, which confirms its acceptance of the obligations and commitments of membership.⁷¹ The letter is significant from a legal perspective because it provides the mechanism by which an acceding state confirms its willingness to abide by commitments that are not explicit obligations in the Treaty itself, but are nonetheless critical for the new state's effective participation in the Organization—see Section D on NATO's legal acquis below. The letter typically confirms that the invitee:

- is willing to meet the requirements of NATO membership as laid out in the 1995 Study on NATO Enlargement, and to meet all other political and legal commitments of the Alliance, including with regard to third countries;⁷²
- is committed to accede to the legal agreements and protocols requiring an invitation by the present Member States of the Alliance, as well as to the other legal instruments required for functioning properly within the Alliance;⁷³
- accepts NATO's broad approach to security and defense outlined in its Strategic Concept, intends to participate fully in NATO's military structure and collective defense planning processes and is willing to

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *See id.*; *Study on NATO Enlargement*, *supra* note 26.

⁷³ *See* MAP (1999), *supra* note 62.

- commit forces and capabilities for the full range of Alliance missions;⁷⁴
- undertakes to allocate sufficient budget resources for the implementation of its commitments upon accession to the Alliance, to contribute to the Civil Budget, the Military Budget, the NATO Security Investment Program and the New NATO Headquarters Project on the basis of the modalities discussed during the accession talks and at the specific cost share agreed there;⁷⁵
- recognizes and accepts that the Alliance relies upon commonality of views, based on the principle of consensus in decision-making and will work for consensus in the Alliance;⁷⁶
- fully supports the continued openness of the Alliance in accordance with the Treaty and the relevant Summit Declarations; and⁷⁷
- has developed a program for the continuation of reforms covering specific issues and reforms upon which, as a result of the accession talks, and taking into account Allied guidance, further progress is expected before and after accession in order to enhance their contribution to the Alliance, and is committed to fulfilling this program.⁷⁸

5. *Decision to Invite Under Article 10 of the Treaty*

The letter of intent paves the way for the Allies to decide to invite an aspirant to accede to the Treaty. This decision is effected through the unanimous agreement of an accession protocol for one or more acceding States. The agreement of a protocol also provides an opportunity to amend the Treaty to facilitate a particular accession, if needed—for example, the amendment of Article 6, as was the case with respect to Turkey.⁷⁹ It is also worth noting the use made of the preamble of the Accession Protocol for Germany to highlight

⁷⁴ *Id.*; see *Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organization*, *supra* note 5.

⁷⁵ See MAP (1999), *supra* note 62.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See Protocol to the North Atlantic Treaty on the Accession of Greece and Turkey, *supra* note 18. Although as made clear in the 1995 Study, since new members should expect to enjoy the same rights and obligations as existing members of the Alliance, there must be no “second tier” security guarantees or members within the Alliance, and no modification of those rights in the Washington Treaty for those who join. *Study on NATO Enlargement*, *supra* note 26, ¶ 68.

political considerations that were fundamental to the Allies's agreement to make the invitation.⁸⁰

Otherwise, the protocol is a relatively straightforward legal text, containing an operative provision instructing usually the Secretary General to communicate, on behalf of the Parties to the Treaty, the invitation to accede to the Treaty. The accession protocol enters into force once the U.S. Government—as depository for the Treaty—has received notification from each Party of its acceptance of the protocol, in accordance with that Party's national processes.⁸¹

Once the accession protocol is in force, the Secretary General transmits the formal invitation letter to the acceding State. There is no prescribed time within which this will be done, and questions of choreography can become complex.⁸²

For example, if more than one country is acceding the question could arise as to whether either of the acceding States needs to themselves agree to the accession of the other and participate in the accession protocol. Such difficulties are avoided if the accessions occur simultaneously and for that reason, where there are multiple accessions, each would ideally deposit its instrument of accession to the Treaty with the Government of the United States simultaneously and become parties to the Treaty at the same time.⁸³

The accession to the Alliance of the future Republic of North Macedonia raised similar questions of choreography with respect to the signing of the accession protocol, given the parallel processes ongoing between Athens and Skopje in implementation of the resolution reached on the name issue and the challenges of coordinating the internal processes of the twenty-nine Nations with respect to authorization to sign the accession protocol before the text of the Protocol could be settled.⁸⁴

D. Current Practice—Adoption of the NATO Legal Acquis

By becoming party to the Treaty, an acceding State takes on the overarching obligations of membership of the Alliance. At the same time, effective participation in the Alliance's work depends on a much wider set of binding

⁸⁰ See Protocol to the North Atlantic Treaty on the Accession of the Federal Republic of Germany, Oct. 23, 1954.

⁸¹ See North Atlantic Treaty, *supra* note 1, art.10; *Enlargement*, *supra* note 65.

⁸² See *Enlargement*, *supra* note 65.

⁸³ *Study on NATO Enlargement*, *supra* note 26, ¶ 30.

⁸⁴ See *Relations with the Republic of North Macedonia*, *supra* note 3.

commitments—both legal and political—known as the NATO legal acquis, without which accession to the Treaty may not occur.⁸⁵

The NATO legal acquis comprises broadly two components:

First are the decisions of the North Atlantic Council that are still standing on the date of accession. NAC decisions are binding on the Member States of the Alliance and, depending on content, the obligations created can be either political or legal.⁸⁶ It is, therefore, important that newly acceded States are bound by such obligations to the same extent as the other Allies, and, as set out above, the mechanism used for this purpose is the letter of intent.

In the letter of intent, the aspirant State commits itself to meet all other political and legal commitments of the Alliance, including with regard to third countries. It also accepts NATO's broad approach to security and defense outlined in its Strategic Concept and expresses its intention to participate fully in NATO's military structure and collective defense planning processes. Finally, it confirms that it is willing to commit forces and capabilities for the full range of Alliance missions.⁸⁷

Second, there are a number of key treaties to which new Allies are expected to become a party in accordance with their respective domestic constitutional procedures.⁸⁸ Again, the letter of intent contains a broad commitment to accede to the legal agreements and protocols that require an invitation by the present Member States of the Alliance, as well as to the other legal instruments required to function properly within the Alliance.

Because of their practical importance, there is a particular expectation that an acceding Member State will sign and ratify the NATO Status of Forces Agreement and its Paris Protocol as soon as it becomes a Member of the Alliance.⁸⁹ These treaties underpin the presence in one Ally of, in the former case, the forces of another Ally, and in the latter the staff of NATO's international military headquarters.

⁸⁵ See MAP (1999), *supra* note 62.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ See Agreement Among the States Parties to the North Atlantic Treaty and the Other States Participating in the Partnership for Peace Regarding the Status of Their Forces, art. 2, June 19, 1995; Protocol on the Status of International Military Headquarters Set up Pursuant to the North Atlantic Treaty, Aug. 28, 1952.

In due course, though of less immediate operational importance, a new Ally is expected to become a party to the Ottawa Agreement, providing *inter alia* for the status of the Organization, as well as its civilian staff, and representatives of Nations.⁹⁰ A new Ally is also expected to become party to the 1994 Brussels Agreement, which provides for the status of missions and representatives of third states to the Organization.⁹¹

Additionally, there are certain technical agreements covering intellectual property and the security of information to which the new Ally is expected to accede.⁹²

Finally, a new Ally will need to determine its relationship with the NATO agencies—the support and executive branches of subsidiary bodies created by the NAC pursuant to Article 9 of the Treaty, and to which the Ottawa Agreement applies.

A new Ally will automatically become a member of the NATO Support and Procurement Organisation (NSPO), the NATO Communications and Information Organisation (NCIO) and the NATO Science and Technology Organization (STO), as their respective Charters have, since 2012, each provided that all NATO States are members.⁹³

In contrast, the Charters of the other Agencies provide that a NATO Member State may become a member on the basis of a “unanimous affirmative decision” of the other Nations participating in the Agency, and subject to the conditions as agreed between those participating Nations and the prospective new Member State. A special case is the NATO Battlefield Information Collection and Exploitation System (BICES), which has been transformed by the NAC into

⁹⁰ Agreement on the Status of the North Atlantic Treaty Organisation, National Representatives and International Staff signed in Ottawa, Sept. 20, 1951.

⁹¹ Agreement on the status of Missions and Representatives of third States to the North Atlantic Treaty Organisation, Sept. 14, 1994.

⁹² See William G. Gapcynski, NATO Agreement on the Communication of Technical Information for Defense Purposes 6 INT'L L. 359, 359–60 (1972); Agreement Between the Parties to the North Atlantic Treaty for the Security of Information, Mar. 6, 1997; Agreement Between the Parties to the North Atlantic Treaty for Cooperation Regarding Atomic Information, Sec. II, June 18, 1964; Protocol Amending the Security Annex to the Agreement Between the Parties to the North Atlantic Treaty for Cooperation Regarding Atomic Information, June 2, 1998; NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defence and for which Applications for Patents Have Been Made, Sept. 21, 1960.

⁹³ *Organisations and Agencies*, NORTH ATLANTIC TREATY ORG. (Apr. 1, 2015), https://www.nato.int/cps/en/natohq/topics_66470.htm.

what is termed a “Group,” with a charter of its own.⁹⁴ Participation in the BICES Group is subject to approval of the North Atlantic Council.⁹⁵

CONCLUSION

Over the twenty years since the first round of post-Cold War accessions, the Organization has put in place what is now a more settled structure and set of principles within which to consider and manage the pathway to accession, whilst retaining the flexibility to take account of the particular political and security context in which that accession takes place.

The implementation of Article 10 today remains true to the conception of the original parties to the Treaty: that the security of the North Atlantic Area could only be effectively assured by providing not only for the security of its

existing Members, but for that of other countries whose security is intrinsically and strategically interdependent with their own.

At the same time, present day accession to the Alliance should be understood not only through the analysis of Article 10 itself, and through the undertaking of the obligations of the Treaty, but also by the gradual process of political reform and military integration represented by the MAP and the assumption of the obligations of the wider NATO legal acquis.

⁹⁴ See generally *BICES-Archived 06/2003*, FORECAST INT’L, https://www.forecastinternational.com/archive/disp_pdf.cfm?DACH_RECNO=474.

⁹⁵ *Id.*