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SWEDEN IN NATO: LEGAL STATUS AND FUTURE CHALLENGES

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Introduction

On 7 March 2024, after decades of close partnership, Sweden finally joined NATO. Its accession followed a strict process involving the approval of all Parties of the Alliance. Before this pivotal moment, Sweden's application to NATO was engaged in an unstable diplomatic negotiation between former Allies. This paper aims to analyse the legal framework and the future setup of NATO after this substantial transformation.

1. Legal framework of Sweden's accession to NATO

Articles 10 and 11 of the North Atlantic Treaty (1949) outline the process of accession to the NATO Alliance, designing its so-called "open door policy" (NATO, 2024 March 8). These articles state that membership is open to any "European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area" (NATO, 1949). As a result, the enlargement of NATO is an ongoing and dynamic process and its membership has grown from the 12 founding members to today's 32 members through 10 bouts of expansion in 1952, 1955, 1982, 1999, 2004, 2009, 2017, 2020, 2023 and 2024 (NATO, 2024 March 11).

The enlargement of the Alliance has been promoted by Member States since 1995, when the study's findings on NATO enlargement were published (NATO, 1995). The study concluded that the end of the Cold War offered a pivotal opportunity to strengthen security across the entire Euro-Atlantic region. In fact, a NATO enlargement would enhance stability and security by encouraging and supporting democratic reforms, including the establishment of civilian and democratic control over military forces; fostering patterns and habits of cooperation, consultation and consensus-building characteristic of relations among members of the Alliance, and promoting good-neighbourly relations. The study also concluded that enlargement would strengthen the Alliance's ability to contribute to European and international security while reinforcing the transatlantic partnership (NATO, 1995).

Countries seeking NATO membership have to demonstrate that they can fulfil specific requirements such as a functioning democratic political system based on a market economy; the fair treatment of minority populations; a commitment to the peaceful resolution of conflicts; the ability and willingness to make a military contribution to NATO operations; and a commitment to democratic civil-military relations and institutional structures (NATO, 2024 March 8).

New members can join the Alliance through the legal instrument of accession, which has to be deposited before the Government of the United States of America. In turn, the US Government has to inform each party of the deposit: subsequently, all members must ratify the text of the agreement in accordance with their constitutional processes. The Treaty shall enter into force as soon as the majority of signatories deposit their ratification; similarly, it shall come into effect for the remaining signatories when they also deposit their ratifications (NATO, 1949).

On 18 May 2022, the Swedish government submitted the application letter to officially join NATO after and because of the Russian invasion of Ukraine (NATO, 2022 May 18). The Swedish constitution comprises four constitutional acts, the one concerning government powers being the most relevant to access international organisations. According to the 1974 Instrument of Government (IoG), only the government can lead Sweden's foreign policy and conclude international agreements or access international organisations such as NATO (IoG, Chapter 1, article 6). However, the parliament must approve and ratify government fulfilling two different conditions: to change the legislation in compliance with international agreements of "major significance" (IoG, Chapter 10 Art. 3 Paras. 1-3). Therefore, there is no doubt that an agreement to become a NATO member must be approved by the Swedish parliament, for which it typically required a simple majority vote. (Åhman, 2022).

2. The path of Sweden to NATO: from request to accession

Before officially joining the Alliance, Sweden and NATO had a close partnership that began in 1994 and was based on the Swedish policy of military non-alignment and a firm national political consensus (NATO, 2024 March 8). In fact, unlike Austria or Switzerland, Sweden does not have constitutionally mandated neutrality (Habtom, 2023).

Sweden has historically been neutral, acting as a 'buffer' state between the Eastern and Western blocs then and between the West and Russia today. However, a discreet agreement between the country and NATO was already in place at the end of the 20th century, particularly in the event of an attack by Warsaw Pact countries (Norlen, n.d.)). By joining the European Union in 1994, Sweden found itself in a context where the question of common defence and interoperability could arise: in fact, Article 42.7 of the Treaty on European Union stipulates that if one of the member states is attacked, the other members of the Union must provide assistance (Norlen, n.d.). Sweden's neutrality was, therefore, much more relative after 1994, and the events of 2022 further undermined this neutrality strategy and convinced the public opinion to join the Atlantic Alliance.

For example, Sweden signed a Host Nation Support Agreement with NATO in 2016. This Treaty aimed to facilitate Sweden's efficient provision and receipt of military support from NATO in the event of a serious deterioration of international relations. The Host Nation Support Programme entered into force for civilian and military missions, and for practical and logistical arrangements. The overall objective of the partnership was to enable foreign military forces to operate and carry out assignments on Swedish territory and vice versa (Government Offices of Sweden, 2023).

On 4 July 2022, in the context of the Madrid Summit, Sweden and Finland were officially invited to become members of the Alliance. In fact, all NATO members had agreed to sign the accession protocols following the signature of the trilateral memorandum between Turkey, Finland, and Sweden (Madrid Summit Declaration, 2022, par. 18). Turkey had initially objected to Finland and Sweden's application to join NATO, stating that their support for certain Kurdish groups threatened Turkey's national security.

The memorandum addressed those concerns and, as a result, Finland and Sweden agreed not to provide support to YPG/PYD (Kurdish groups in Syria, the People's Defense Units and Democratic Union Party) and confirmed that the PKK (the Kurdistan Workers' Party) would be officially considered a terrorist organisation (Brooke - Holland, 2024). A Permanent Joint Mechanism was set up to implement the steps each country had committed to, with the participation of all signing parties. President Erdoğan made it clear that Turkish ratification depended on Sweden and Finland fulfilling the commitments made in the memorandum (Trilateral Memorandum, 2022). On 23 January 2024, Turkey's parliament ratified Sweden's accession protocol (Brooke - Holland, 2024) and, a few days later, the government deposited the protocol with the US State Department (Protocol to the North Atlantic Treaty on the Accession of the Kingdom of Sweden, 2024).

Hungary's Parliament delayed the vote on the ratification, waiting for the final Turkish decision and only approved Sweden's accession on 26 February 2024, with the President signing the bill on 5 March (Brooke - Holland, 2024). According to Politico, European diplomats are not clear why Hungary opposed Sweden's membership, with one official saying there is "zero understanding" (Bayer, 2023). Politico suggested it is because of its close ties with Ankara, with a Hungarian official suggesting that Hungary's position "is fundamentally shaped by the preferences of Turkey" (Bayer, 2023). Sweden, then, formally joined the Alliance on 7 March 2024 (NATO, 2024 March 7).

3. Evolution of NATO and Sweden legal and political status after the accession

In the Swedish parliament, all political parties quickly came out in favour of membership after voting for various measures to increase the defence budget and potentially reach the NATO defence target: 2% of GDP. The strategy of neutrality, which advocated for a gradual disarmament of the country, was completely misaligned with the current context of growing tensions. Swedish people detected this discrepancy and decided to re-establish a national defence strategy with a European and then an international dimension.

Before 7 March 2024, the "Declaration of Swedish Solidarity within the framework of the 2009 Defence Bill" had already established Sweden as a member state of a partial military alliance. It did not take long for coordinated exercises to be set up within the EU and between the EU and NATO. In 2013, Thomas Bertelman, former Swedish ambassador to Russia, concluded: "This extensive cooperation, combined with our own declaration of solidarity, brings us so close to NATO that we can hardly avoid being identified with the Alliance - without benefiting either from the effect of cooperation or the protection of solidarity that membership would offer" (Norlen, n.d.).

Therefore, Russia's invasion of Ukraine was only the culmination of a process that had already been underway to change political strategy. Moreover, Swedish public opinion was convinced that Finland wanted to join the Alliance as well.

The words of Swedish Prime Minister Magdalena Andersson, leader of the Social Democratic party originally opposed to NATO membership, illustrate very well this change in mentality: “I think (...) that this is a very important moment in history. There is a before and an after 24 February 2022. The security landscape has changed completely, with Russia’s demands in December and then the invasion of Ukraine. Given this situation, we really need to think about what’s best for Sweden, our security and our peace in this new situation” (Norlen, n.d.). While some have expressed reservations or criticisms for the recent integration into the transatlantic organisation, the new challenge for the Swedish government and general staff will be to modernise the army and give it the capacity to meet the defence objectives set within NATO.

Regarding NATO, Turkey’s obstruction preceding the tripartite agreement is problematic because it shows imperfect cohesion at a time when the organisation needed to exhibit strength in unity. This disagreement could easily be exploited by Russia, which is seeking to weaken its adversaries by any means possible. Coordinated exercises, carried out by member countries’ forces, remain the best way of putting up a unified front and preparing for a potential conflict. A recent example is the coordinated exercise Nordic Response 2024, part of the Steadfast Defender training operation, which brings together 20,000 troops from thirteen different countries in northern Norway to train in an arctic environment in preparation for a potential conflict in the area. With the recent accession of Sweden and Finland to the alliance, this exercise could be extended to the whole of Scandinavia, a major theatre for combat training operations in a snowy environment (NATO, 2024 March 12).

Sweden’s entry into NATO further enables the organisation to gain strength and deterrence, particularly around the Baltic Sea, a crucial economic and military zone. Sweden has a position of the utmost importance in northern Europe: for example, the island of Gotland, a strategic gateway between the Baltic and Atlantic oceans, could serve as a strong deterrent (Norlen, n.d.). Sweden has taken advantage of this outpost in recent years to prepare the island for a potential siege situation: in fact, the Swedish government and general staff set up crisis exercises where the island would find itself besieged and out of contact with the motherland (Norlen, n.d.).

Following the formal invitation for Sweden to join the Alliance in June 2022, President Putin stated publicly that he sees no threat to Russia’s national security despite his long-opposed expansion of NATO. He has, however, specified that Russia will respond if NATO begins to establish military infrastructure in either Sweden or Finland “by creating a corresponding group of forces in Russia’s northwest” (Brooke - Holland, 2024; President of Russia website, 2022). Remarking on Finland and Sweden’s accession in March 2024, Sergey Lavrov, Russia’s Foreign Minister, stated: “The alliance took an openly aggressive, hostile attitude towards the Russian Federation” (Russia Foreign Ministry, 2024). Subsequently, Lavrov suggested Russia could deploy additional weapons to the new Moscow and Leningrad military districts (Russia Foreign Ministry, 2024).

Conclusion

NATO benefits from extra resources and enhanced action capabilities in the Baltic Sea owing to Sweden's well-developed military, especially its naval branch. Russian naval manoeuvres will be much more difficult in this area, where virtually all coastal countries are members of the Transatlantic Alliance. NATO's collective defence strategy must be rethought to integrate the Scandinavian newcomers. In the future, the Alliance may see Sweden become the leader of the Nordic region, particularly in and around the Baltic Sea. However, stability in the area will depend on relations between NATO and Russia and could still be altered – or undermined – if other countries were to join the Alliance.

Bibliography

Åhman, J. (2022). A Swedish NATO Membership and Its Constitutional Barriers. *Verfassungsblog: On Matters Constitutional*. DOI: 10.17176/20220516-182242-0

Bayer, L. (2023, April 12). 'Annoying sideshow': Hungary frustrates NATO allies. *POLITICO*. <https://www.politico.eu/article/hungary-nato-sweden-bid-accession-block-democracy-viktor-orban/>

Brooke-Holland, L. (2024). NATO Enlargement: Sweden and Finland. House of Commons Library, 9574. <https://researchbriefings.files.parliament.uk/documents/CBP-9574/CBP-9574.pdf>

Government Offices of Sweden (2024, March 7). Historical relations between Sweden and NATO. Government Offices of Sweden. <https://www.government.se/government-policy/sweden-in-nato/history-of-sweden-and-nato/>

Habtom, N. K-T. (2023, January 17). Sweden's Challenging Road to NATO Membership. *LawFare*. <https://www.lawfaremedia.org/article/swedens-challenging-road-nato-membership>

NATO Heads of State and Government. (2022, June 29). Madrid Summit Declaration. NATO. https://www.nato.int/cps/en/natohq/official_texts_196951.htm#18

Ministry of Foreign Affairs of the Russian Federation. (2024, March 2). Foreign Minister Sergey Lavrov's remarks and answers to media questions following the Antalya Diplomacy Forum, Antalya, March 2, 2024. The Ministry of Foreign Affairs of the Russian Federation. https://mid.ru/en/foreign_policy/news/1936336/

NATO. (2024, March 8). Enlargement and Article 10. NATO. https://www.nato.int/cps/en/natohq/topics_49212.htm#:~:text=NATO's%20%22open%20door%20policy%22%20is%20based%20upon%20Article%2010%20of,of%20the%20North%20Atlantic%20area%202.

NATO. (2022, May 18). Finland and Sweden submit applications to join NATO. NATO. https://www.nato.int/cps/en/natohq/news_195468.htm

NATO. (2024, March 12). NATO's marines brave the Norwegian Arctic for exercise Nordic response 2024 [Video]. NATO. <https://www.natomultimedia.tv/app/asset/701518#:~:text=Exercise%20Nordic%20Response%202024%20gathers,NATO%27s%20biggest%20exercise%20in%20decades.>

NATO. (2024, March 11). NATO member countries. NATO. https://www.nato.int/cps/en/natohq/topics_52044.htm#:~:text=NATO%20was%20created%20by%2012,2020%2C%202023%20and%202024.

NATO. (2024, March 28). Relations with Sweden. NATO.
https://www.nato.int/cps/fr/natohq/topics_52535.htm?selectedLocale=en

NATO. (1995, September 3). Study on NATO Enlargement. NATO.
https://www.nato.int/cps/en/natohq/official_texts_24733.htm

NATO. (2024, March 7). Sweden officially joins NATO. NATO.
https://www.nato.int/cps/en/natohq/news_223446.htm

Norlen, J. (2023). Adhésion de la Suède à l'Otan : évolution de sa politique de sécurité et implications stratégiques dans la région de la Baltique. *Revue Défense Nationale*, 2023/HS13 (Hors-série), 324-341. <https://www.cairn.info/revue-defense-nationale-2023-HS13-page-324.htm#re1no50>

President of Russia. (2022, December 21). Meeting of the Defence Ministry Board: Vladimir Putin spoke at an expanded meeting of the Board of the Defence Ministry, which was held at the National Defence Control Centre. President of Russia. <http://en.kremlin.ru/events/president/news/70159>

Protocol to the North Atlantic Treaty on the Accession of the Kingdom of Sweden (5 July 2022), US Department of State, Notification Reference No. 2024-008. <https://www.state.gov/wp-content/uploads/2024/03/NATO-Sweden-Accession-Protocol-Notification-of-Entry-Into-Force-March-7-2024.pdf>

Protocol to the North Atlantic Treaty on the Accession of the Kingdom of Sweden, ratified by the Republic of Turkey (5 July 2022), US Department of State, Notification Reference No. 2024-003. <https://www.state.gov/wp-content/uploads/2024/01/NATO-Sweden-Accession-Protocol-Notification-of-Deposit-of-Instrument-Turkiye-January-26-2024.pdf>

The Instrument of Government (IoG) (1974), Constitution of Sweden. <https://www.equalrightstrust.org/ertdocumentbank/CONSTITUTION%20OF%20SWEDEN.pdf>

The North Atlantic Treaty (4 April 1949). https://www.nato.int/nato_static_fl2014/assets/pdf/stock_publications/20120822_nato_treaty_en_light_2009.pdf

Trilateral memorandum between Turkey, Sweden and Finland (28 June 2022). https://www.nato.int/nato_static_fl2014/assets/pdf/2022/6/pdf/220628-trilat-memo.pdf