SWEDEN—APPLICATION FOR EUROPEAN COMMUNITY MEMBERSHIP—SWEDEN FEARS LOSS OF POLICY OF NEUTRALITY WITH COMMUNITY MEMBERSHIP

I. FACTS

The European Commission recently advised European Community governments to open informal negotiations for Sweden’s membership in the European Community (EC).1 Sweden filed its application for membership2 on July 1, 1991, and plans to join the EC by 1995.3

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1. Treaty Establishing the European Union, Feb. 7, 1992, 31 I.L.M. 247 [hereafter Maastricht Treaty]. The European Community, committed to establishing a single integrated market throughout Europe, is composed of twelve member states, Belgium, France, Italy, West Germany, Luxembourg, The Netherlands, The United Kingdom, Ireland, Denmark, Greece, Spain, and Portugal. Id.


[A]ny European State may apply to become a member of the Community. It shall address its application to the Council [of Ministers] which, after obtaining the opinion of the Commission, shall act by means of a unanimous vote.

The conditions of admission and the amendments to this Treaty necessitated thereby shall be the subject of an agreement between Member States and the applicant State. Such agreement shall be submitted to all the controlling States for ratification in accordance with their respective constitutional rules. Id.

3. Swedish Government Still Aims to Enter EC by 1995, Reuter Libr. Rep., July 31, 1992, available in LEXIS, Nexis, Allwld file. EC External Affairs Commissioner Frans Andriessen believes Sweden’s hopes of joining the EC by 1995 are overly optimistic. Id. Formal negotiations cannot begin until the EC member states each ratify the Maastricht Treaty, the most recent amendment to the EEC Treaty, and devise a five year financial plan. EC Commission Advises Opening Membership Talks with Sweden, Reuter Libr. Rep., July 31, 1992, available in LEXIS, Nexis library, Allwld file [hereinafter EC Commission Advises]. In addition, if an EC entry agreement is not submitted to the Swedish parliament by December 18, 1993, the vote will be delayed until January 1, 1998. Robert Taylor, Sweden Wants Its EC Application Speeded Up, Fin. Times, May 7, 1992, at 3. This is because the parliament must approve any change in Sweden’s fundamental laws two times. The first approval must be given not less than nine months before a general election, and the second must be given after an election. Sweden’s next parliamentary election will be September 20, 1994, and thus the agreement must be submitted by mid-December of 1993. Id.
Opposition to EC entry, however, is growing. As many as 45 percent of Swedes now oppose full membership while only 14 percent opposed EC entry at the time the membership application was submitted.\(^4\)

Emerging as the make-or-break issue for Sweden’s EC application is the question of neutrality.\(^5\) Sweden has remained neutral in political affairs for nearly 200 years.\(^6\) Its status of neutrality, however, is the result of a self-imposed policy choice.\(^7\) Sweden is not bound to remain neutral because of any contractual relationship, international agreement, or constitutional provision.\(^8\) Because of Sweden’s geographical closeness to Russia, neutrality has been a practical policy to preserve Sweden’s wealth, peace, and identity during conflicts between East and West and to avoid conflict in Soviet satellite expansion.\(^9\)

Sweden’s interest in applying for EC membership stems from a desire to improve its economy.\(^10\) At 10 percent, inflation in Sweden is the highest in the Western World, and profits of Sweden’s top 500 companies dropped over 10 percent in 1990 and 1991.

Recently, the Moderates have gained power and have tried to deregulate Sweden’s socialist structure.\(^11\) Demonstrating an eagerness

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6. *Id.*

7. “The concept of neutrality has never been enshrined in law, but is a pragmatic recognition of Sweden’s national self-interest. Because neutrality has always been a flexible doctrine, Sweden now feels that membership in the EC and the concept itself are no longer incompatible.” Robert Taylor, *Sweden and the EC; Sweden Comes in from the Cold*, Fin. Times, June 14, 1991, at 21.


10. Goran Lysen, *Some Views on Neutrality and Membership of the European Communities: The Case of Sweden*, 29 Common Mkt. L. Rev. 229, 230 (1992). The famed “Swedish Model” of economic policy involves a mix of unbridled laissez-faire capitalism and totalitarian communism. Bruce Barnard, *Swedish Model Sick, Not Dead*, J. Com. & Com., Aug. 20, 1991, at 8A. A marginal income tax rate of 80 percent on income above $54,000 funds state-supported social programs. The system has been criticized, but it has enabled Sweden, a country with only 8.5 million people, to attain one of the highest standards of living in the world and produce a corporate sector that boasts world leaders in product lines such as Volvo and Saab. *Id.*

11. *Id.* After nearly sixty years of Social Democrat domination, Sweden is
to adapt to a free market economy, they have removed tariffs, pegged the Swedish krona to the European Currency Unit, partially phased out farm subsidies, and implemented a new tax system. Recovery, however, has been slow due to the world-wide recession. Sweden is thus hoping that EC entry will boost its economy.

Despite its willingness to adapt to economic changes, Sweden has been reluctant to change its foreign and defense policies. The Maastricht Treaty, the most recent amendment to the EEC Treaty, charts the development of a common EC defense policy. Because of the Treaty's goals, however, many in Sweden are now doubtful that the country can commit to full European Community membership without giving up its neutrality.

II. LEGAL BACKGROUND

The principle of neutrality has traditionally been based on impartiality. In 1907, a peace conference held in the Hague outlined the customary law of neutrality. This custom states that upon the outbreak of war, belligerents are obligated to notify neutral states of their status. States which do not declare war should then refrain from acting to the contrary and should pursue foreign and defense


12. Taylor, supra note 7, at 1.

13. See, e.g., EC Security Demand, supra note 5. Sweden bases its foreign policy on the premise that independence is best preserved through a policy of non-alliance in peacetime and neutrality in war. 28 THE NEW ENCYCLOPEDIA BRITANNICA 348 (1989) [hereinafter Encyclopedia Britannica].

14. According to one commentator, EC membership involves: accepting not only greater economic powers in more areas (the Treaty of Rome modified by Maastricht and including economic and monetary union), but the two new "pillars" of the union. These cover a common foreign and security policy, leading towards a common defence, and increased cooperation in justice and home affairs, both to be conducted through intergovernmental agreement, but with the likelihood of greater involvement of the European Commission and parliament after 1996.


15. Lysen, supra note 10, at 255.

16. Id. at 240.

17. Id.

18. Convention Relative to the Opening of Hostilities, Oct. 18, 1907, art. 2, 36 Stat. 2259, 2271 (obligating a belligerent to notify a neutral power of the state of war).
policies directed toward uninvolvment with military alliances.\textsuperscript{19} Neutrality is thus assumed by a state’s attitude of impartiality.\textsuperscript{20} Belligerents, however, must expressly or impliedly acquiesce in the impartial attitude.\textsuperscript{21} Finally, once a state assumes neutral status, that status ends with the termination of war or the outbreak of war between the neutral and the belligerent state.\textsuperscript{22}

Sweden has maintained a policy of non-alliance in peacetime and neutrality in war for 200 years.\textsuperscript{23} It has strived to avoid entanglement in wars unless directly attacked and has maintained a sizeable defensive force, especially to patrol its coastal waters, which have been intruded by Soviet submarines.\textsuperscript{24} Swedish troops have participated in United Nations peace-keeping missions,\textsuperscript{25} and despite its neutral policy, the Swedish government has adopted outspoken positions on disarmament, arms control, and nuclear non-proliferation.\textsuperscript{26} Sweden’s neutral status, however, has prevented it from joining the European Community.

Public sentiment and government policy traditionally favoring neutrality has begun to change as the European Community has become one of the most powerful unions in the world.\textsuperscript{27} The Preamble of the EEC Treaty states that the object of the EC is to pool resources in an ever closer union,\textsuperscript{28} and the Community began fulfilling this

\textsuperscript{19} Lysen, \textit{supra} note 10, at 240.
\textsuperscript{20} \textit{Id.}
\textsuperscript{21} The rights of neutral states often correspond to the duties of belligerents; belligerents cannot attack neutrals if the neutrals act impartially. Neutral states, therefore, must not give direct or indirect assistance to either belligerent side. In addition, neutrals have a duty to prevent warlike measures from occurring within their jurisdictions, and they must acquiesce to the acts of belligerents with regards to the neutral’s commerce if duly warranted. For example, a neutral state must acquiesce to the seizure of its vessel for carrying contraband. \textit{Id.}
\textsuperscript{22} \textit{Id.}
\textsuperscript{23} 8 JOHN CLEMENTS, CLEMENTS ENCYCLOPEDIA OF WORLD GOVERNMENTS 313 (1988) [hereinafter CLEMENTS ENCYCLOPEDIA].
\textsuperscript{24} Sweden expends about four to five percent of its gross national product (GNP) on defense. \textit{ENCYCLOPEDIA BRITANNICA, supra} note 13, at 348. The Soviet government has used submarines to gather information about the Swedish coastline and sea bed because of uncertainty over whether Sweden would retain its neutral status in another East-West conflict. Sara Webb, \textit{Moscow Admits Violations by Subs}, FIN. TIMES, June 30, 1988, at 4.
\textsuperscript{25} Members of Sweden’s armed forces have served in UN peace-keeping missions in the Gaza Strip, the Congo, and Cyprus. See \textit{ENCYCLOPEDIA BRITANNICA, supra} note 13, at 348.
\textsuperscript{26} CLEMENTS ENCYCLOPEDIA, \textit{supra} note 23, at 313.
\textsuperscript{27} Taylor, \textit{supra} note 7, at 1.
\textsuperscript{28} EEC Treaty, \textit{supra} note 2, at 14. The Preamble to the EEC Treaty states
objective in 1957 by establishing the free movement of goods, capital, persons, and services among member states. The EC's sphere of influence, however, has expanded, and today the EC addresses not only economic policy but also issues concerning workers' rights, consumer protection, telecommunications, environmental protection, and regional development.

The Maastricht Treaty, the EEC Treaty's most recent proposed amendment, would, if ratified, establish a common foreign and security policy whose objectives would include safeguarding the common values and interests of the European Union. The Treaty states that the Union shall pursue its objectives by establishing a "systematic cooperation between Member States in the conduct of policy," and the Preamble explains that the Union is resolved to eventually implement a common defense policy. The Treaty can only come into

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that the founding members are "[d]etermined to establish the foundations of an ever closer union among the European peoples," and "[r]esolved to strengthen the safeguards of peace and liberty by establishing this combination of resources, and calling upon the other peoples of Europe who share their ideal to join in their efforts." Id.

29. See Gunnar P. Nielsson, Economic and Political Factors Supporting the "Europe, 1992" Reform Program, 12 Whittier L. Rev. 177 (1991). The author points out that the "centerpiece" of the reform program is to remove non-tariff barriers to the free flow of commodities, capital, labor, and services. Id. at 178.

30. Id. Among the "flanking policies" the EC is addressing are:

1. the establishment of a monetary union;
2. a social charter dealing with labor market conditions, workers' rights and consumer protection;
3. the need to maintain "social and economic cohesion" between the highly developed and less developed regions within the Community by doubling the size of structural funds;
4. telecommunications, including a common audio-visual policy;
5. research and development policies;
6. competition policy and state aids; and
7. environmental protection.

Id.

31. Maastricht Treaty, supra note 1, at Preamble, 31 I.L.M. at 253. Other objectives of the common foreign and security policy include strengthening the security of the Union and its Member States, preserving peace and strengthening international security, promoting international cooperation, and developing democracy and respect for human rights and freedoms. Id.

32. Id.

33. Id. The Preamble of the Treaty on European Union states that the Union is resolved to "implement a common foreign and security policy including the eventual framing of a common defense policy which might in time lead to a common defense, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world." Id.
force after all twelve member states ratify it,\textsuperscript{34} and currently Denmark has refused to approve it.\textsuperscript{35} EC leaders, however, are still pursuing the movement towards European Union\textsuperscript{36} and are hesitant to renegotiate the treaty to accommodate the Danes.\textsuperscript{37}

As the European Community has grown, the member states have gradually begun to lose their national powers of decision making.\textsuperscript{38} In fact, EC law prevails over national law in cases of conflict,\textsuperscript{39} and a state may not withdraw from the Community without the consent of all member states.\textsuperscript{40} Member States also have a legal duty to facilitate the achievement of the EC's objectives. Article 5 of the EEC Treaty emphasizes loyalty and solidarity among Member States,\textsuperscript{41} and the European Court of Justice has established that the failure to cooperate with the Institutions of the EC or act with regard to external relations in interests of the Community are breaches of Article 5.\textsuperscript{42} The EC is thus beginning to resemble a federation and already constitutes a union of states.\textsuperscript{43}

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35. Danish voters have rejected the Maastricht Treaty because they have feared a loss of sovereignty and self-determination and have opposed service in a European defense force. Hilary Barnes, \textit{The Edinburgh Summit: Danish "No" Voters Start to Wobble}, FIN. TIMES, Dec. 10, 1992, at 3.
37. Renegotiating the treaty, which took over a year to finalize would open a "pandora's box." Gardner & Buchan, \textit{supra} note 35, at 1. EC leaders, therefore, must seek a solution to keep Denmark in the Community and save the Maastricht Treaty. \textit{Id.}
38. \textit{See} Lysen, \textit{supra} note 10, at 243 for a discussion of how the EC possesses strong federative features.
39. \textit{Id.} at 244.
40. \textit{Id.} at 245.
41. EEC Treaty, \textit{supra} note 2, at Part I, art. 5, 298 U.N.T.S. at 17. Article 5 states:

Member States shall take all general or particular measures which are appropriate for ensuring the carrying out of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's aims. They shall abstain from any measures likely to jeopardise the attainment of the objectives of this Treaty.

\textit{Id.}
42. Case 240/86, Commission v. Greece, 1988 E.C.R. 1835 (holding that the failure of Greece to co-operate with the Commission was a breach of Article 5).
43. Lysen, \textit{supra} note 10, at 243.
III. ANALYSIS

Membership within the European Community is incompatible with Sweden's policy of neutrality. Membership, however, is inevitable to avoid economic, technological, and cultural isolation. Sweden thus must change its neutral status in order to enter the EC.

To be admitted to the EC, Sweden will have to ratify the Maastricht Treaty, indicating that it will accept and follow the Community's common foreign and security policy. The Treaty would bind Sweden contractually to the EC, and Sweden would be obligated to join the EC states in foreign commitments or risk breaching Article 5 of the EEC Treaty on solidarity. EC External Relations Commissioner Frans Andriessen has even stated that "[Sweden] will no longer be in a position to claim traditional neutrality." The Maastricht Treaty therefore provides Sweden with no alternative but to commit without reservation towards forming an "ever closer union."

Moreover, joining the EC will damage Sweden's credibility as a neutral state. Because the rules of neutrality are based on impartiality, belonging to a union whose members belong to NATO will create the appearance of a military alignment. Ireland's experience with EC membership stands as an example of this implied military alignment. Ireland joined the EC despite its neutral foreign policy and, according to scholars, has since lost its status as a permanently neutral state. It has participated in the Conference on Security and Cooperation in Europe (CSCE) and has coordinated its policy with the EEC caucus rather than with the neutral and non-aligned caucus.

44. European Community membership implies "accepting the EC's political aims, and in particular abandonment of neutrality ...." Gardner, supra note 14, at 6.
45. EC Security Demand, supra note 5.
46. EEC Treaty, supra note 2, at 17.
47. EC Commission Advises, supra note 3.
48. EC External Relations Commissioner Frans Andriessen told a news conference that the Commission required Sweden "to sign up to the whole of European Union, lock, stock, and barrel." Id.
51. Id. at 17; See also Stephan Kux, EUROPE'S NEUTRAL STATES: PARTNERS OR PROFITEERS IN WESTERN SECURITY?; 1986 INST. EUR. DET. STRATEGIC STUD. 33 (S. Victor Papacosone and Mark R. Robin eds., 1989) construed in Bergethon, supra note 50 (explaining that unofficial policy making occurs in the caucuses though the participating states maintain their sovereignty).
Ireland thus has perpetuated ambiguities about its neutral status and damaged its credibility as a permanently neutral state. Analogously, Sweden will be forced to renounce its policy of neutrality because of its association with the aligned nations of the EC.

Membership in the EC will also compromise Sweden’s neutrality because of EC trade policies. For example, the EC has created a common market for the supply of nuclear fuels and ore. Sweden has a large nuclear industry and as a member of the EC, it would most likely be obligated to export these materials of dual-use or strategic importance to other Member States. Sweden’s neutrality would thus be compromised if it exported nuclear fuels to a belligerent Member State and was prohibited from supplying these materials to a non-member belligerent. In effect, therefore, Sweden would not be able to pursue a foreign policy of its own and would have to sacrifice neutrality when faced with conflicting duties.

Although membership within the European Community will prevent Sweden from maintaining its centuries-long neutrality, Sweden’s application for EC entry does not express a desire to choose between military blocs. Rather, Sweden is motivated by the need to jump start its sagging economy.

Sweden has been in its most severe recession since the 1930’s. Clearly, Sweden’s economic policy which consists of a mixture of free market opportunities and state subsidies is not working. Infla-

52. See Bergethon, supra note 49, at 237. Until external pressures force its hand, Ireland will continue to perpetuate ambiguities concerning its neutral status. Id. Ireland, however, should have few qualms about renouncing neutrality if faced with the prospect of a European political union because of the enormous economic benefits of EC membership. Id. at 238.


55. Commodities of dual-use or strategic importance are commodities or techniques which may find military application or be used as components in materials classified as weapons. Lysen, supra note 10, at 247 n.73.

56. Article 223 states that no common market shall exist for the trade of war materials. EEC Treaty, supra note 2. War materials include weapons and ammunition. Lysen, supra note 10, at 246.

57. Some believe the Swedish “system” is not “dead”, but out of synch because
tion, at ten percent, is nearly twice the rate of Sweden’s international competitors, and unemployment, which until recently did not exist in Sweden, has reached four percent. As a result of this economic crisis, the Swedish government has been attempting to expand its internal market, and through its ties with the European Free Trade Association (EFTA), it has partially succeeded in this goal. In 1991, the EFTA and the EC signed a pact, the European Economic Area (EEA) Trade Agreement, which has provided for the free movement of goods, services, and capital among 380 million people. The Agreement essentially integrates Sweden into the European Community economically but has had no effect on its policy of neutrality. It has, however, drawn Sweden closer to joining the EC since Sweden’s industry and government are affected by EC decision making but are unable to participate in such decision making.

The peaceful events following the unification of Germany have also decreased the urgency of Sweden’s need for neutrality. Neutrality assumes a state of war or hostility, and a primary reason for Sweden’s neutral status has been its fear of attack from Russia. The end of the cold war, however, has decreased the likelihood of it places too many demands on its capitalistic component which must support a bulging socialist welfare sector. Barnard, supra note 10.

58. Amy Kaslow, Sweden, Which Once Trod Its Own Path Between East and West, Seeks to Join the European Community, CHRISTIAN SCI. MONITOR, Oct. 22, 1991, at 3. As a result of high inflation, Sweden’s companies are setting up operations outside the country to earn higher returns. Id.

59. “The government has abandoned its cherished commitment to full employment in a belated attempt to curb wage inflation and ensure equilibrium between supply and demand in the labor market.” Barnard, supra note 10.

60. The EFTA was established in 1960 with objectives similar to those of the EC; it seeks to promote trade between member states by reducing tariffs. Treaty Establishing the European Free Trade Association, Jan. 1, 1972, 370 U.N.T.S. 3. Trade among the EFTA countries accounts for over 20 percent of Sweden’s exports. Clements, supra note 23, at 313.

61. 50 percent of Sweden’s exports go to EC member states. CLEMENTS ENCYCLOPEDIA, supra note 23, at 313.

62. EFTA member states have not contemplated forming a common market of their own, and as a whole, the EFTA has no supranational elements because of its loose framework. Hans Stenberg, Sweden and the Internal Market—Situating Some Problems, 1989 LEGAL ISSUES EUR. INTEGRATION 89, at 93.

63. Lysen, supra note 10, at 235.

64. Taylor, supra note 9, at 36.

war, thus reducing Sweden's practical need for neutrality. Sweden's basis for the policy is thus evaporating while the price of neutrality is rising.

Furthermore, Sweden has not always been strict with its policy of neutrality. During World War II, Sweden made concessions to Nazi-Germany, and in 1969 pledged 200 million dollars of support to North Vietnam, which was withdrawn following criticism. These events coupled with the fact that no constitutional provision or international agreement binds Sweden to its neutral status indicate that Sweden's centuries-long policy of neutrality may be selectively applied or terminated at any time.

Because the benefits to be derived from moving away from a policy of neutrality outweigh the costs of remaining neutral, Sweden must carefully weigh its options. As an alternative to joining the EC's military union, Swedish military officials have considered forming a Nordic defense alliance. These military officials feel uncertain about the future relationship between the three centers of power—Russia, the EC, and the United States—and they want to keep their relationships open in case of conflict. The EC Commission, however, has noted that Sweden must commit "lock, stock, and barrel" to the European Union and that it will have to make "specific and binding assurances" of its capacity to back the foreign and security policy plans of the Community. Therefore, Sweden will have to move away from a traditional policy of neutrality to adapt to the changing economic and political environment. It can no longer remain isolated, and it will have to redefine its neutral status or forego European Community membership.

Sweden should make a binding commitment to the Community's plans for European Union to hasten its entry into the EC. The practical need for a policy of neutrality is evaporating, and because EC membership appears inevitable, Sweden should work toward accepting the Community's common foreign policy goals and move away from an outdated and obsolete policy of neutrality.

66. Id. at 229 n.3.
68. Id.
70. Id.
IV. CONCLUSION

Membership within the European Community will prevent Sweden from maintaining its centuries-long policy of neutrality. Sweden’s application for EC entry, however, is not motivated by a desire to choose between military blocs. It reflects the need to jump start Sweden’s sagging economy and must be considered in light of present day circumstances. Sweden adopted its neutral policy because it feared Russian expansion, but the end of the cold war has reduced the practical need for neutrality. Sweden’s need to align with the EC, however, is growing. Sweden’s economy is experiencing its worst recession since the 1930’s, and EC membership will stimulate economic growth. Sweden should thus continue actively pursuing Community membership and move away from its obsolete policy of neutrality.

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