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# **The Good Neighbourliness Condition in EU Enlargement**

Research Article

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# The Good Neighbourliness Condition in EU Enlargement

Elena Basheska\*

Good neighbourliness is one of the most important principles relating to harmonious interstate relations. It primarily developed in international law around the idea of territorial sovereignty of states. The principle was further translated into an important accession condition in EU enlargement policy. A violation of the good neighbourliness principle can lead to serious confrontations or military conflicts between states. Yet, the respect of the principle requires precise definition of its legal substance. As a paradox, the good neighbourliness principle has not been codified in international law. The lack of sufficient clarification of the essence of the principle potentially undermines the success of the Union's engagement with it, threatening to lead to inconsistent interpretation and even to wrongful implementation of the good neighbourliness principle. The paper clarifies the legal basis of the principle in international law and traces the application of the corollary condition in EU enlargement policy where conditionality is deployed. It focuses on the application of the condition to settlements of bilateral disputes in the enlargement process. The paper concludes that the EU's efforts to implement the good neighbourliness condition in accordance with international law have failed so far.

**Keywords:** good neighbourliness, sovereign equality, enlargement, conditionality, bilateral disputes.

## Introduction

The principle of good neighbourliness in international law designates a model of interstate relations or certain type of ties among neighbouring states, providing for peaceful coexistence, dialogue and cooperation.<sup>1</sup> As key actors in the

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<sup>1</sup> This general definition of good neighbourliness which is used throughout the paper draws inspiration from the writings of several scholars; Glasser, Edwin. 1972. *Buna Vecinătate. Revistă de Studii Internaționale* 1, 30; quoted in Pop, Iftene. 1991. *Components of Good Neighbourliness Between States - Its Specific Legal Contents - Some Considerations Concerning the Reports of the Sub-Committee on Good-Neighbourliness Created by the Legal Committee of the General-Assembly of the United Nations* Bucharest: Editura R.A.I., 58. Pop writes that "[g]ood neighbourliness does not designate a geographical situation, but a model, a type of international relations, a certain kind of ties, as between good neighbours." Pop, himself, starts the same book by adding that coexistence and cooperation require that states do not suppress each other or affect each other significantly. These requirements form the core of the good neighbourliness principle as established in international law and are reflected through the rights and duties of states in this respect. That author, who is one of the very few scholars discussing the principle of good neighbourliness conceptually, shows this interconnection throughout his book. Finally, the dialogue between states represents a respectful mode of communication and a means of avoiding conflicts and moderating contradictions

international community, states necessarily interact with each other. Traditionally and in its strict sense neighbourliness refers to the external ties of each state with its bordering countries, e.g. states sharing common frontiers or being separated by seas.<sup>2</sup> The broader understanding of neighbourliness, however, is not confined to bordering states only, but extends to the interstate relations of countries from the same geographical region and even the relations of all states of the world.<sup>3</sup>

Notwithstanding the differences between the two approaches regarding the number of states to which neighbourliness applies, both understandings have a view to interstate relations governed by international law. The attribute “good” attached to the term “neighbourliness” describes a positive relationship among neighbouring states reflecting a respectful mode of intercommunication as opposed to what by analogy may be entitled “bad neighbourliness”. Accordingly, good neighbourliness emerges primarily from positive interactions among states governed by international law. As such it is regulated and may only be sustainable by strict observance of international law in general and of the UN principles in particular.<sup>4</sup> The central part in this respect occupies the principle

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and is therefore an important characteristic of good neighbourly relations between states. As put by Andrew Hurrell “the dialogue is especially important because international law seeks both to identify, promote, and institutionalize universal values and also to mediate amongst different and often conflicting ethical traditions.” See Hurrell, Andrew. 2003. *International Law and the Making and Unmaking of Boundaries*, in *States, Ethics and Nations: The Ethics of Making Boundaries*, edited by Buchanan, Allen E. and Margaret Moore. Cambridge: Cambridge University Press, 277.

<sup>2</sup> According to Article 6(1) *1958 Convention on the Continental Shelf*. (adopted 29 April 1958, in force 10 June 1964). 1958. 499 UNTS 311. (accessed: 19 March 2014), “[w]here the same continental shelf is adjacent to the territories of two or more states whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary line is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.” Some authors, argue that the good neighbourliness principle is “important for the States with opposite or adjacent coasts pending final delimitation [...] because there is a high possibility of a coastal State exercising its rights or carrying out activities in the disputed areas in such a way as to impair the rights of the other coastal States.” See Kim, Sun Pyo. 2004. *Maritime Delimitation and Interim Arrangements in North East Asia*. Leiden: Martinus Nijhoff, 31.

<sup>3</sup> The Preamble of the Charter of the United Nations (adopted 26 June 1945, in force 24 October 1945) 59 Stat. 1031 UN Charter. (accessed: 19 March 2014) for instance, reflects the determination of all peoples of the UN, rather than merely peoples from immediately neighbouring states, “to practice tolerance and live together in peace with one another as good neighbours.” Moreover, Article 74 UN Charter. (accessed: 19 March 2014) refers to the “general principle of good neighbourliness’ implying that the principle is of general application and not only to the relations of immediate neighbours.”

<sup>4</sup> In spite of its overwhelming importance to peaceful coexistence of states, the principle of good neighbourliness has not been codified in international law. Yet, the UN attempts and concrete steps in that direction have contributed significantly to clarifying the legal basis of the principle and relevant rights and obligations of states in international law. As clarified by the UN General Assembly (UNGA) in the Resolution on the *Development and strengthening of good neighbourliness between states* in UNGA Res 34/99 (14 December 1979), UN Doc/A/Res/34/99. (accessed: 19 March 2014), “good neighbourliness conforms with the purposes of the United Nations and is founded upon the strict observance of the principles of the Charter of the United Nations and of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as the rejection of any acts seeking to establish zones of influence and domination.” See also the resolutions on good neighbourliness of the General Assembly adopted in the following years: UNGA Res 36/101 (9 December 1981) UN Doc/A/Res/36/101. (accessed: 19 March 2014); UNGA Res 37/117 (16 December 1982) UN Doc/A/Res/37/117. (accessed: 19 March 2014); UNGA Res 38/126 (19 December 1983) UN

of the sovereign equality of states, and more importantly the legal rights and obligations of states resulting from this principle, and being well integrated within the good neighbourliness framework. Therefore, this paper discusses initially the principle of the sovereign equality of states as a precondition to good neighbourly relations. It then proceeds to analyse the application of the good neighbourliness principle in EU enlargement policy.

The principle of good neighbourliness has become an accession condition of overwhelming importance in EU enlargement policy applying (*inter alia*) to settlement of bilateral disputes between states. As such, the good neighbourliness condition formalised the possibility of the EU and its Member States to require from candidate countries to settle their bilateral disputes at a multilateral (EU) level. The progress of candidate countries in the enlargement process has been linked to the results of the settlements in such disputes. Such application of strict conditionality strengthens the position of the Union and its Member States *vis-à-vis* candidate countries. This can have further negative consequences on the application of the good neighbourliness requirement to the bilateral disputes between candidate countries and Member States in the enlargement process. Rodin uses asymmetric relations between states to differentiate between two general groups of bilateral disputes involving states with different status.<sup>5</sup> According to his classification, vertical disputes involve a Member State and a candidate country, while horizontal issues involve only candidate countries.<sup>6</sup> In the case of vertical disputes, Member States may either act on their own behalf in respect to their bilateral disputes with candidate countries or on the behalf of the Union regarding “EU-wide issues.”<sup>7</sup> Horizontal issues may be decided outside or within the framework, depending on their nature, but can also be reflected on EU level if concerning an EU interest.<sup>8</sup>

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[Doc/A/Res/38/126](#). (accessed: 19 March 2014); UNGA Res 39/78 (13 December 1984) [UN Doc/A/Res/39/78](#). (accessed: 19 March 2014); UNGA Res 41/84 (3 December 1986) [UN Doc/A/Res/41/84](#). (accessed: 19 March 2014); UNGA Res 42/158 (7 December 1987) [UN Doc/A/Res/42/158](#). (accessed: 19 March 2014); UNGA Res 43/171B (9 December 1988) [UN Doc/A/Res/43/171B](#). (accessed: 19 March 2014), etc. The Sub-Committee on good neighbourliness, set up by the UN Legal Committee at its 40<sup>th</sup> session and mandated to identify the elements of good neighbourliness, defined a number of legal rights and obligations of states emanating from the good neighbourliness principle and fields in which the principle is applicable. See the four reports of the Sub-Committee on good neighbourliness: [UN Doc A/C.6/40/L.28](#). (accessed: 19 March 2014); UN Doc A/C.6/41/L.14; UN Doc A/C.6/42/L.6; and [UN Doc A/C.6/43/L.11](#). (accessed: 19 March 2014). Nevertheless, the list of legal rights and obligations of states as defined by the Sub-Committee on good neighbourliness is not exhaustive and may further develop within the ambit of the legal basis of the principle. Same applies to the list of fields where the principle may be applied. The all-embracing nature of the principle provides for its application in all fields where the legal rights and obligations of states manifest themselves. For detailed analysis of the legal rights and obligations of states in the light of good neighbourliness principle and the application of that principle see Pop, *Components of Good Neighbourliness*.

<sup>5</sup> Rodin, Siniša. 2012. *The European Union and the Western Balkans: Does the Lisbon Treaty Matter?*, in *The Foreign Policy of the European Union: Assessing the Europe's Role in the World*, edited by Bindi, Federiga and Irina Angelescu. Washington: Brookings Institution Press, 156.

<sup>6</sup> Rodin, *The European Union and the Western Balkans*, 156. Where the good neighbourliness condition is applied in the enlargement process however, a more appropriate classification seems to be that between Member States and non-member countries, since the requirement can also affect states which do not have a candidate status.

<sup>7</sup> Rodin, *The European Union and the Western Balkans*, 156.

<sup>8</sup> Rodin, *The European Union and the Western Balkans*, 156.

Rodin's classification is extremely useful for distinguishing between the ongoing enlargement of the Union with the Western Balkan countries and pre-Balkan enlargements. Whereas certain countries that joined the EU in the fifth and sixth enlargement rounds<sup>9</sup> were involved mostly in disputes with each other or with third countries, bilateral disputes of Western Balkan countries, but also of Turkey, often involve Member States or have a potential for their future involvement. In other words, while in the case of the earlier two enlargement rounds the good neighbourliness condition was somewhat tested on horizontal disputes, in the case of Western Balkan countries and Turkey, it is effectively applied to vertical disputes between states. These two are essentially different situations given the important role of the Member States in the enlargement process.

Vertical bilateral disputes can be more problematic than horizontal ones in terms of causing delays or even deadlock situations at different stages of the enlargement process. So can be the invocation of good neighbourliness through the principle of conditionality. The enlargement practice has shown that good neighbourliness conditionality is more strictly applied to vertical bilateral disputes. The problem that appears from such application of the principle of conditionality is not only that of inconsistent application of the good neighbourliness condition. What is far more problematic is the application of the condition to settlement of vertical bilateral disputes which involve states that are not equal before the law. In such circumstances conditionality is not used to ensure the compliance of Member States with international law in general and with the good neighbourliness principle in particular. Quite to the contrary, instead of being used as an instrument contributing to the settlement of international disputes "in a spirit of good neighbourliness and bearing in mind the overall EU interests"<sup>10</sup> the principle of conditionality in such cases serves to national

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<sup>9</sup> The enlargement numbering as used in this paper draws inspiration from Kochenov who distinguishes between the ten countries that joined the Union on 1 May 2004, i.e. in the fifth enlargement round: Cyprus; Czech Republic; Estonia; Hungary; Latvia; Lithuania; Malta; Poland; Slovakia; Slovenia; and the two countries that joined the Union on 1 January 2007, i.e. in the sixth enlargement round: Bulgaria and Romania. See Kochenov, Dimitry. 2008. *EU Enlargement and the Failure of Conditionality: Pre-Accession Conditionality in the Fields of Democracy and the Rule of Law*. Alphen aan den Rijn: Kluwer Law International, 8. Such enlargement numbering, as opposed to the numbering of the European Commission, which considers that the fifth enlargement round includes the accession of all new Member States from 2004 and 2007 (see [European Commission. 2006. Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania](#). (accessed: 19 March 2014)) follows according to Kochenov, from the fact that the enlargements of the Union in 2004 and 2007 were governed by different Treaties of Accession, occurred at different dates and involved different transitional measures. In addition, the Treaty of Accession of the Republic of Bulgaria and Romania, [Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union](#), Articles 36-39, [2005] OJEU L157/29. (accessed: 19 March 2014), envisaged post-accession measures for these two countries – in particular, monitoring their compliance in the fields of justice and home affairs, internal market and economic policy by the European Commission and sanctions for non-compliance herewith for a period of three years after the accession.

<sup>10</sup> European Commission. 2009a. Communication from the Commission to the European Parliament and the Council. *Enlargement Strategy and Main Challenges 2009-2010*. COM 533 final. (accessed: 19 March 2014). The European Commission used similar wording in its enlargement strategies of the following years: European Commission. 2010a. Communication from the Commission to the European Parliament and the Council. *Enlargement Strategy and Main Challenges 2010-2011*. COM 660. (accessed: 19 March 2014); European Commission. 2011. Communication from the Commission to the European Parliament and the Council. *Enlargement Strategy and*

interests and political considerations of individual Member States. The cases of Croatia and Macedonia are most evident examples for the politicization of the good neighbourliness principle in the enlargement process. Having discussed the application of the good neighbourliness condition in the enlargement process, the paper suggests that in circumstances of unbalanced powers of the involved parties the use of conditionality may not be the most appropriate tool for settlement of bilateral issues.

### 1. The sovereign equality of states as a legal basis for the principle of good neighbourliness

All states are sovereign and free to deal independently with their internal and external affairs.<sup>11</sup> In circumstances where sovereignty is attributed to all states individually, equality is the only answer for regulating interstate relations.<sup>12</sup> Neighbours have equal rights to exercise their rights and an equal duty to consider the rights of the others. As noted by Henrikson:

*“[n]eighbours are to be accepted as being equal and thus as deserving of considerate regard when an action that might adversely affect them is being contemplated, just as the shoe were on the other foot. ‘Do unto others as you would have them unto you’ - the Golden Rule-obtains.”<sup>13</sup>*

Therefore, “mutuality or reciprocity - that is, equivalency of station and interchange”<sup>14</sup> is necessary for good neighbourly relations between states.<sup>15</sup> Sovereignty is exercised within borders and entails (*inter alia*) non-interference by neighbouring states. The power of states to exclude the actions of any other state or entity in exercising their state functions creates a duty for states to abstain from exercising their powers in the territory of other states unless

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*Main Challenges 2011-2012*. COM 666 final. (accessed: 19 March 2014); European Commission. 2012. Communication from the Commission to the European Parliament and the Council. *Enlargement Strategy and Main Challenges 2012-2013*. COM 600 final. (accessed: 19 March 2014) and the European Commission. 2013. Communication from the Commission to the European Parliament and the Council. *Enlargement Strategy and Main Challenges 2013-2014*. COM 700 final. (accessed: 19 March 2014).

<sup>11</sup> Article 2(1) UN Charter. (accessed: 20 March 2014) stipulates that the “Organisation is based on the principle of the sovereign equality of its Members.” The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the UN Charter, *UNGA Res 2625*. (accessed: 20 March 2014) clarifies that the sovereign equality of states presupposes states’ judicial equality, rights inherent in full sovereignty, duty to respect the personality of other states, inviolability of territorial integrity and political independence of the state, right to freely choose and develop their political, social, economic and cultural systems, and duty to comply fully and in good faith with their international obligations and to leave in peace with other states. For the early ideas on sovereign equality of states, see in particular Grotius, Hugo. (1625) 2001. *On the Law of War and Peace*. Kitchener: Batoche Books.; de Vattel, Emer. (1758) 1983. *Le droit des gens, ou, principes de la loimaturelle: appliqués à la conduite et aux affaires des nations souverains*. Geneva: reprinted by the Slatkine - Henry Dunant Institute.

<sup>12</sup> Cosnard, Michael. 2003. *Sovereign Equality - “The Wimbledon Sails On”*, in *United States Hegemony and the Foundations of International Law*, edited by Byers, Michael and George Nolte. Cambridge: Cambridge University Press, 121.

<sup>13</sup> Henrikson, Alan K. 2000. Facing across Borders: The Diplomacy of Bon Voisinage, *International Political Science Review* 21(2), 124.

<sup>14</sup> Henrikson, *Facing across Borders*, 124.

<sup>15</sup> Henrikson, *Facing across Borders*, 124.

there is a permissive rule to the contrary deriving from international law.<sup>16</sup> Sovereignty is directly connected with the principle of the equality of states, which is a corollary of the coexistence of sovereign states.

Equality emanates from state sovereignty and “by virtue of the later it is impossible to place States in a kind of hierarchy vis-à-vis each other.”<sup>17</sup> Obviously, the principle of equality does not refer to the unequal position of states in terms of their economic, political or military power. Similarly, equality is not affected by the differentiation among states in terms of the selective conferral of certain rights, such as the permanent membership in the UN Security Council.<sup>18</sup> Instead, the principle refers to the equal application of the law “in conformity with the law.”<sup>19</sup> Thus it implies equal treatment of states before the law, rather than in the law addressing judicial bodies and not the rights of states.<sup>20</sup> As such, the principle of legal equality is preserved primarily by equal observance of rights and obligations of all sovereign states as provided by international law. Accordingly, the greater factual powers of certain states or their legal privileges within the UN should by no means serve the purposes of avoiding duties that equally oblige all sovereign states, and any attempt to abuse these powers should be in breach of the principle of the legal equality of states.

The importance of equality of states in the light of the good neighbourliness principle results not only from the rules of international law but also from the nature of interstate relations. The establishment of good neighbourly relations implies friendship between states rather than enmity. As Maunier puts it,

“[equality in friendship means] *community of interests and feelings, social ties both material and spiritual, solidarity, co-operation and if possible unanimity [...]. Solidarity and reciprocity are needed. For what creates partnership and equality is the position by both parties of bilateral rights and duties: not rights existing on one side only, not rights of a superior over an inferior, as in the case of domination of master over subject, or even of a*

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<sup>16</sup> The obligation of states in international law to refrain from exercising their powers in the territories of other states in absence of a permissive rule to the contrary was expressed by the PCIJ in *Case of the S.S. Lotus, France v. Turkey*, Rep Series A, No 10 (Paragraph 45) - see United Nations. *Case of the S.S. Lotus, France vs. Turkey 1927*. (accessed: 20 March 2014). It was reaffirmed by the Arbitrator Judge Max Huber one year later in *Island of Palmas Case*, see United Nations. 2006. *Island of Palmas Case 1928*. (accessed: 20 March 2014), 839. This stance was reaffirmed by the Arbitrator Judge Max Huber. The obligation is also expressly provided for in Article 2(4) *UN Charter*. (accessed: 20 March 2014), stipulating that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

<sup>17</sup> Wouters, Jan. 2001. *Constitutional Limits of Differentiation: The Principle of Equality*, in *The Many Faces of Differentiation in EU Law*, edited by De Witte, Bruno / Hanf, Dominik and Ellen Vos. Schoten: Intersentia, 319.

<sup>18</sup> Kelsen ensures that “[e]quality does not mean equality of duties and rights but rather equality of capacity for duties and rights.” See Kelsen, Hans. 1944. *The Principle of Sovereign Equality of States as a Basis for International Organization*. *The Yale Law Journal* 53(2), 209. On the equal status of states under the UN Charter, see Fassbender, Bardo. 1998. *UN Security Council Reform and the Right of Veto: A Constitutional Perspective*. The Hague: Kluwer Law, 287-96. For a different opinion see Fleiner, Thomas and Lidija R. Basta Fleiner. 2009. *Constitutional Democracy in a Multicultural and Globalized World*. Heidelberg: Springer, 320.

<sup>19</sup> Kelsen, Hans. (1952) 2003. *Principles of International Law*. Clark: reprinted by The Lawbook Exchange, 112-14 and 155.

<sup>20</sup> Kelsen, *Principles of International Law*, 155.



*father over his children, but bilateral powers, bilateral rights on both sides, exercised reciprocally in both directions.*<sup>21</sup>

The existence of good neighbourly relations thus requires symmetric relations between states. Unlike enmity, which “implies the negation of Other [good neighbourliness] implies mutual and shared responsibility for Self and Other.”<sup>22</sup> The inequality of states before the law, if not in the law, hinders good neighbourly relations or even makes them impossible where conflicts of interests arise.

## 2. Good Neighbourliness as an EU Accession Condition

All international organizations set membership conditions to which states willing to join have to comply. Such conditions usually reflect and intend to safeguard the values and the achievements of the organization.<sup>23</sup> Thus, Article 49(1) of the Maastricht Treaty (European Union Treaty - TEU), which is the main Treaty provision regulating EU enlargement, stipulates that “[a]ny European State which respects the values referred to in Article 2 [TEU] and is committed to promoting them may apply to become a member of the Union.”<sup>24</sup> Yet, it is important to note that the main enlargement provision does not promise any membership to applicant countries but provides merely a possibility to states that satisfy the above conditions to apply to become a member of the Union. In other words, states enjoy only a right to apply for membership rather than a right to join the Union.<sup>25</sup> The question of whether an applicant state will be admitted to the Union “lies within the discretion of the Union and its Member States [and is] thus somewhat removed from the legal sphere.”<sup>26</sup> This speaks of ‘the predominantly political nature of enlargement regulation’<sup>27</sup> which as such cannot be challenged by applicant countries in front of the ECJ.<sup>28</sup>

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<sup>21</sup> Maunier, Rene. 2003. *The Sociology of the Colonies (Part 1): An Introduction to the Study of Race Contact: (International Library of Sociology)*. London: Routledge, 149.

<sup>22</sup> Hutter, Horst. 1978. *Politics as Friendship: The Origins of Classical Notions of Politics in the Theory and Practice of Friendship*. Waterloo: Wilfrid Laurier University Press, 11-12.

<sup>23</sup> Smith, Karen E. 2003. *The Evolution and Application of EU Membership Conditionality*, in *The Enlargement of the European Union*, edited by Marise Cremona. Oxford: Oxford University Press, 106.

<sup>24</sup> Similar wording can be found in the enlargement articles of all three Communities. While Article 98 of the Treaty of the European Coal and Steel Community. (accessed: 23 March 2014) provided that “[a]ny European state may apply to accede [the] Treaty”; Article 237 of the Treaty of Rome. (accessed: 23 March 2014) and Article 205 Euratom Treaty. (accessed: 23 March 2014) stipulated in identical way that: “[a]ny European State may apply to become a member of the [respective] Community.” The three provisions were later on replaced by a single Article ‘O’ introduced with the Maastricht Treaty. (accessed: 23 March 2014), adapted to the new situation of the emergence of the Union, but restating once again that “[a]ny European State may apply to become a Member of the Union.”

<sup>25</sup> Kochenov, *EU Enlargement and the Failure of Conditionality*, 15.

<sup>26</sup> Kochenov, *EU Enlargement and the Failure of Conditionality*, 15.

<sup>27</sup> Kochenov, *EU Enlargement and the Failure of Conditionality*, 15.

<sup>28</sup> In Case 93/78 *Lothar Matthäus v Doego Fruchtimport und Tiefkühlkost eG* [1978] ECR 2203, the European Court of Justice (ECJ) concluded that “the legal conditions for [...] accession remain to be defined in the context of [the then, Article 237(3) Treaty of Rome] procedure without it being possible to determine the content judicially in advance.” See in this context Hillion, Christophe. 2011. *EU Enlargement in The Evolution of EU Law*, in *EU Law: Text, Cases and Materials*, edited by Craig, Paul and Gráinne De Búrca. Oxford: Oxford University Press, 191. See also Schermers, Henry G. 1986. *Article 177 EEC: Experiences and Problems*. The Hague: T.M.C. Asser Institute,

As many other important elements of the EU enlargement law,<sup>29</sup> the good neighbourliness condition is still excluded from the Treaties. It has neither been explicitly mentioned nor referred to by Article 49(1) TEU.<sup>30</sup> Instead, it has developed in the enlargement practice of the Union and is applied through the principle of conditionality.<sup>31</sup>

In particular, the good neighbourliness condition started to crystallise in EU enlargement after the establishment of the Copenhagen criteria.<sup>32</sup> It was introduced in response to EU security considerations in respect to the unresolved issues of the applicant countries, which included border disputes and questions related to protection of minorities.<sup>33</sup> In its Agenda 2000, the European Commission stressed, that “before accession, applicants should make every effort to

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388; and Rasmussen, Hjalte. 1986. *On Law and Policy in the European Court of Justice: A Comparative Study in Judicial Policymaking*. The Hague: Martinus Nijhoff, 486.

<sup>29</sup> Kochenov, *EU Enlargement and the Failure of Conditionality*, 13-14.

<sup>30</sup> This is notwithstanding the EU values defined in Article 2(1) TEU, which largely overlap with the good neighbourliness condition as interpreted in the EU enlargement policy or Article 8 TEU which has started to clarify “good neighbourliness” at Treaty level. Article 8 TEU is most commonly associated with the European Neighbourhood Policy (ENP) and seen as a mean to distinguish between the ENP countries and countries with a membership perspective. See in this respect Van Elsuwege, Peter and Roman Petrov. 2011. Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union? *European Law Review* 36(5), 693. See also Craig, Paul and Gráinne De Búrca. 2011. *EU Law: Text, Cases and Materials*. Oxford: Oxford University, 324.

<sup>31</sup> The Copenhagen European Council (21, 22 June 1993) Presidency Conclusions, formulated three groups of criteria: political criteria - requiring that the candidate country has achieved stability of its institutions guaranteeing democracy, the rule of law, and respect for and protection of the minorities; economic criteria - requiring that the candidate country has a functioning market economy and capacity to cope with the competitive pressure and market forces within the Union; and implementation of the *acquis communautaire* - meaning that candidate countries shall be able to take on the obligations of the membership. The Copenhagen criteria set up conditionality as a new approach to assessing the progress of candidate countries. Unlike in the previous period when candidate countries were trusted to fulfil the membership conditions, the successfulness of new applicants in implementing the necessary reforms was to be checked. The benefits that applicant countries could receive from the EU, including financial and other assistance and eventually EU membership, was strictly dependant on their reforms and compliance with the Copenhagen criteria - see Article 4 in European Commission. 1998. *Council Regulation* No 622/98 of 16 March 1998 on assistance to the applicant states in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships. *Official Journal of the European Communities (OJEU)* L 85/1. (accessed: 25 March 2014). With regard to the enforceability of the Copenhagen criteria and use of conditionality see in more detail Kochenov, *EU Enlargement and the Failure of Conditionality*. See also Maresceau, *Pre-accession*, 9-42; Hillion, *The Copenhagen Criteria*.

<sup>32</sup> The Essen European Council (9, 10 December 1994) Presidency Conclusions emphasised the need for enhancing intra-regional cooperation between associated states and their immediate neighbours for the purpose of good neighbourly relations. The formal establishment of the good neighbourliness condition has been therefore often associated with the Essen Summit. See e.g. O’ Brennan, John. 2006. *The Eastern Enlargement of the European Union*. New York/London: Routledge, 27. See also Van Elsuwege, Peter. 2008. *From Soviet Republics to EU Member States: A Legal and Political Assessment of the Baltic States’ Accession to the EU*. Leiden/Boston: Martinus Nijhoff, 227-28.

<sup>33</sup> European Commission. 1997. *Agenda 2000: for a stronger and wider Union’* (Communication) COM (97) 2000 final. (accessed: 23 March 2014). The roots of the condition in EU enlargement policy can be traced back to the Greek accession. Back then however, the condition has appeared in a gentler form or as put by Smith: “less [as] a condition and more [as] an assertion of good intent.” See Smith, Karen E. 2003. *The Evolution and Application of EU Membership Conditionality*, in *The Enlargement of the European Union*, edited by Marise Cremona. Oxford: Oxford University Press, 106. See also Hillion. *The Copenhagen Criteria*, 17 as well as Shaelou, Stephanie L. 2010. *The EU and Cyprus: Principles and Strategies of Full Integration*. Leiden: Martinus Nijhoff, 60.

resolve any outstanding border dispute among themselves or involving third countries [and] [f]ailing this, they should agree that the dispute be referred to the International Court of Justice.”<sup>34</sup> It further clarified its stance stipulating that, before accession negotiations are completed, candidate countries should “commit themselves to submit unconditionally to compulsory jurisdiction, including advance ruling of the International Court of Justice in any present or future disputes of this nature.”<sup>35</sup> In respect to the minority issues, the European Commission emphasised that,

*“[m]inority problems if unresolved could affect democratic stability or lead to disputes with neighbouring countries. It is therefore in the interest of the Union and of the applicant countries that satisfactory progress in integrating minority populations be achieved before the accession process is completed, using all opportunities offered in this context.”*<sup>36</sup>

The importance of peaceful settlement of disputes in the light of the condition was further highlighted in the Presidency Conclusions of the European Council.<sup>37</sup> The intention of the EU to effectuate good neighbourliness between states in its enlargement policy through settlement of bilateral disputes is not inconsistent with the same principle as established in international law. Indeed, aimed at preventing internalisation of external conflicts,<sup>38</sup> good neighbourliness makes a legitimate condition in the enlargement policy of the Union. After all, the principle of good neighbourliness is founded upon the requirement for peaceful settlement of international disputes in accordance with the UN Charter and with the Declaration on Friendly Relations. Taking the argument further, the EU is even obliged to promote the principle of good neighbourliness in its enlargement policy and hence to make the membership of applicant countries conditional upon a peaceful settlement of disputes by virtue of Article 3(5) TEU and Article 21(1) TEU.<sup>39</sup> Nevertheless, the implementation of the good neighbourliness condition may not be flexible and arbitrary but should be consistent and in accordance with the rules of international law. Besides equal application to all candidate countries, this inevitably implies parallel advance-

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<sup>34</sup> The examples of Hungary and Slovakia on one side and of Lithuania and Latvia on the other side were enumerated as positive practices for peaceful settlement of disputes. At the time the dispute between Hungary and Slovakia over the Gabčikovo Dam has been referred to the ICJ while the maritime frontier between Lithuania and Latvia has been in a “process of being settled.” *Agenda 2000*, 51.

<sup>35</sup> *Agenda 2000*, 51.

<sup>36</sup> *Agenda 2000*, 41.

<sup>37</sup> European Council. 1997. *Luxemburg European Council Presidency Conclusions* on 12 and 13 December 1997, Paragraph 5. (accessed: 25 March 2014). European Council. 1999. *Helsinki European Council Presidency Conclusions* on 10 and 11 December 1999, Paragraph 4. (accessed: 25 March 2014).

<sup>38</sup> *Agenda 2000*, 51.

<sup>39</sup> Article 3(5) TEU, stipulates that “[i]n its relations with the wider world, the Union shall [...] contribute [...] to the strict observance and the development of international law, including respect for the principles of the United Nations Charter”. Article 21 TEU refers in the general provisions on the Union’s External Action to the commitment of the EU to respect principles of the UN Charter and of international law as guiding principles ‘which have inspired its own creation, development and enlargement and which it seeks to advance in the wider world’. The EU shall further ‘define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to [...] preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders.’

ment of equality of all states involved in bilateral disputes in the light of the condition. Yet, the position of Member States and candidate countries in the enlargement process is far from equal.

Given the unanimity requirement in the Council, Member States could employ their powers to hold up the enlargement process ever since the first enlargement round.<sup>40</sup> Such state-centrism entailed a possibility for Member States to insert their “crude domestic interests”<sup>41</sup> in EU enlargement policy. Unlike in the past, when Member States employed their membership powers to block the accession of candidate countries on rather exceptional basis,<sup>42</sup> this became a regular practice at the current stage of integration. The process has been described by Hillion as a “creeping nationalisation”<sup>43</sup> of the EU enlargement policy.<sup>44</sup> In the view of the good neighbourliness condition, Member States may employ their membership powers to reach favourable solutions in their bilateral disputes with candidate countries contrary to the principle of equality of states. The possibilities for pressure inserted by the Member States are increased in the enlargement process and can vary “from withholding consent to the opening of negotiating chapters, to objecting to the graduation of a country to a new phase (candidate membership, opening of negotiations, membership).”<sup>45</sup> This can certainly lead to politicization of the good neighbourliness condition contrary to its legal basis. Although recently introduced in the EU enlargement policy, the condition has been already used for gaining political (rather than legally significant) aims.

### 2.1. Application of Good Neighbourliness Condition to Croatia

Croatia and Slovenia were involved in a bilateral dispute which concerned mainly a boundary demarcation of a small gulf located at the northern-east corner of the Adriatic Sea.<sup>46</sup> The bilateral dispute between the two countries which caused a delay in the accession negotiations for Croatia was not problematised at the time of Slovenian accession. In fact, EU did not implement strictly the condition of good neighbourliness as applied to settlement of bilateral disputes during the fifth and sixth enlargement rounds. The dispute became an important issue for Slovenia however, once that country joined the Union and left Croatia behind.

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<sup>40</sup> Article 98 ECSC Treaty left all stages to be controlled by the Council, although not clarifying the voting procedure. Article 237 Treaty of Rome and 205 Euratom Treaty made the accession of new Member States conditional upon ‘agreement between the Member States and the Applicant State’.

<sup>41</sup> Hillion, *EU Enlargement*, 191.

<sup>42</sup> This was for instance the case with the two French vetoes of UK’s attempt to accede the Communities. For more details see Hillion, *EU Enlargement*, 191. See also Sweeney, Simon. 2005. *Europe, the State and Globalisation*. Essex: Pearson. 94; in more detail see Wall, Stephen. 2013. *The Official History of Britain and the European Community, Volume II: From Rejection to Referendum, 1963-1975*. New York: Routledge. Regarding the British reactions surrounding the decisions of Charles de Gaulle see Davis, Richard. 2010. The ‘Problem of de Gaulle’: British Reactions to General de Gaulle’s Veto of the UK Application to Join the Common Market. *Journal of Contemporary History* 32(4), 453-64.

<sup>43</sup> Hillion, *EU Enlargement*, 210.

<sup>44</sup> Hillion, *EU Enlargement*, 187-216.

<sup>45</sup> Uilenreef, Arjan. 2010. Bilateral Barriers or Good Neighbourliness? The Role of Bilateral Disputes in the EU Enlargement Process. *Clingendael European Papers* 28. (accessed: 10 March 2014).

<sup>46</sup> Uilenreef, *Bilateral Barriers or Good Neighbourliness*, 22.

The Negotiating Framework for Croatia provided explicitly that the advancement of the negotiations with that country will be guided by its progress in preparing for accession, measured in particular against “Croatia’s commitment to good neighbourly relations”<sup>47</sup> and its “undertaking to resolve any border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the United Nations Charter, including if necessary compulsory jurisdiction of the International Court of Justice.”<sup>48</sup> This legal framework for settlement of bilateral disputes among states in the light of the good neighbourliness condition has been promoted ever since the establishment of the requirement in the enlargement policy of the Union notwithstanding the lack of its practical application.

Although both Slovenia and Croatia wanted to see a settlement of the bilateral dispute, the two countries disagreed on the method which was to be used for reaching a solution. Assuming to have the law on its side, Croatia was in favour of using international arbitration such as the International Court of Justice (ICJ) for the settlement of the dispute, while Slovenia preferred a “[political] mediation instead of judicial arbitration.”<sup>49</sup> Deviating from the legal framework of the good neighbourliness condition, Slovenia employed its membership powers to achieve political gains by securing non-judicial arbitration which promised the country a more favourable solution in the bilateral dispute. To secure its position, Slovenia blocked effectively the opening or closing of fourteen negotiation chapters with Croatia, not all of them being connected to the compliance with the accession criteria.<sup>50</sup> It had more explicit reservations, however, with reference to the good neighbourliness requirement in relation to chapter 31 on Foreign, Security and Defence Policy.<sup>51</sup>

After many discussions and failed initiatives, the two parties have ended their disagreement by signing an arbitration agreement and on 1 July 2013, Croatia became the 28th Member State of the EU.<sup>52</sup> The award of the Arbitral Tribunal shall be binding on the two parties and shall constitute a definitive settlement of the dispute.<sup>53</sup> The European Commission applauded the launch of the arbitration process between Slovenia and Croatia. In the words of the European Commissioner for Enlargement, Štefan Füle,

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<sup>47</sup> Principle 13 of *Negotiating Framework for Croatia*, Luxembourg, 3 October 2005. (accessed: 23 March 2014).

<sup>48</sup> Principle 13 of *Negotiating Framework for Croatia*, Luxembourg, 3 October 2005. (accessed: 23 March 2014).

<sup>49</sup> Uilenreef, *Bilateral Barriers or Good Neighbourliness*, 17.

<sup>50</sup> Hillion, *EU Enlargement*, 201.

<sup>51</sup> In the Reports of the Commission on the Croatian progress the above chapter made specific reference to the good neighbourliness requirement included in the political criteria and covering *inter alia* the border issue between Slovenia and Croatia. See for instance: European Commission. 2007. *Croatia 2007 Progress Report* (Staff Working Paper) SEC (07) 1431. (accessed: 23 March 2014); European Commission. 2008. *Croatia 2008 Progress Report* (Staff Working Paper) SEC (08) 2694. (accessed: 23 March 2014); European Commission. 2009b. *Croatia 2009 Progress Report* (Staff Working Paper) SEC (09) 1333. (accessed: 23 March 2014); European Commission. 2010b. *Croatia 2010 Progress Report* (Staff Working Paper). SEC (10) 1326. (accessed: 23 March 2014).

<sup>52</sup> Permanent Court of Arbitration. 2009. Arbitration Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia.

<sup>53</sup> Article 7(2) Arbitration Agreement.

“[the] common agreement [was] a very welcome signal for the positive development of the good neighbourly relations between the two countries as well as for the Western Balkans regions showing that even difficult issues can be best solved by means of dialogue and cooperation.”<sup>54</sup>

The Agreement itself also refers to the principle of good neighbourliness as applicable law to the settlement of the issue between the two parties.<sup>55</sup> Uilenreef sees the inclusion of the principle of good neighbourliness as a kind of escape clause to the application of international law, noting that the Arbitration Tribunal “would not exclusively apply international law [...] but also the principles of equity and good neighbourly relations in order to achieve a fair and just outcome.”<sup>56</sup> Yet, the principle of good neighbourliness has its legal basis in international law and therefore, its inclusion in the Arbitration Agreement cannot serve legitimately to the political considerations of states contrary to international law. Agreeing with Avbelj and Černič, “political questions cannot be solved within a vacuum allowing arbitrary and one-sided measures based on the maxim of the rule of the most powerful,”<sup>57</sup> but “have to be resolved within the realm of law,”<sup>58</sup> notwithstanding their political sensitivity. It remains to be seen whether the Arbitral Tribunal will apply the principle of good neighbourliness in the realm of law, i.e. in accordance with its legal framework as established in international law, or as a tool serving to political considerations of state(s).

## 2.2. Application of Good Neighbourliness Condition to Macedonia

The second example in EU enlargement where the good neighbourliness condition has been highly politicized is the case of Macedonia. The major problem standing in the way of that candidate country is known to be the “name dispute” which has involved Macedonia and Greece in long lasting negotiations.<sup>59</sup> The dispute over the name took a place at a variety of levels and in a variety of contexts. Following the admission of Macedonia to the UN, that organization took the burden of bringing the two parties to an agreement through special mediators.<sup>60</sup> On 13 September 1995, Greece and Macedonia signed an Interim Accord under the UN auspices.<sup>61</sup>

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<sup>54</sup> European Commission, Launch of the arbitration process between Slovenia and Croatia, IP/12/25, Press Release, 17 January 2012.

<sup>55</sup> Article 4 Arbitration Agreement stipulates that the Arbitral Tribunal shall apply: (a) the rules and principles of international law for the determinations (of the course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia); (b) international law, equity and the principle of good neighbourly relations in order to achieve a fair and just result by taking into account all relevant circumstances for the determinations (of Slovenia’s junction to the High Sea and the regime for the use of the relevant maritime areas).

<sup>56</sup> Uilenreef, *Bilateral Barriers or Good Neighbourliness*, 19.

<sup>57</sup> Avbelj, Matej and Jernej Letnar Černič. 2007. *The Conundrum of the Piran Bay: Slovenia v. Croatia - The Case of Maritime Delimitation*. *Journal of International Law & Policy* 5(2). (accessed: 10 March 2014).

<sup>58</sup> Avbelj and Černič. *The Conundrum of the Piran Bay*, 2.

<sup>59</sup> For a brief summary of the arguments of the two states as well as a chronological record of the developments regarding the dispute see European Council. 2008. Parliamentary Assembly, Working papers. Ordinary Session (Second part) 14-18 April - Volume III, 37-41.

<sup>60</sup> See United Nations. 1993a. United Nations Security Council (UNSC) Res 817. *UN Doc S/RES/817*. (accessed: 25 March 2014) on the admission of Macedonia to the UN, which *inter alia* welcomed “the readiness of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia, at the request of the Secretary-General, to use their good offices

The Interim Accord, which is a legally binding document, regulated the conduct of the two neighbouring countries and became the main framework for the future development of their relations. The contracting parties “agree[d] to continue negotiations under the auspices of the Secretary-General of the United Nations pursuant to Security Council resolution 845 (1993) with a view to reaching agreement on the difference described in that resolution and in Security Council resolution 817 (1993).”<sup>62</sup> The legal framework for the settlement of the issue was thus set up with the related UN Resolutions and agreed upon between the involved countries with the Interim Accord. The Interim Accord secured further the future Euro-Atlantic integration of the newly independent state. Greece committed not to block the accession of Macedonia under the provisional name (Former Yugoslav Republic of Macedonia) in any regional or international organisation.<sup>63</sup> Article 11(2) of the Interim Accord went even further to stipulate an obligation for Greece to actively support the on-going economic development of Macedonia “through international cooperation, as far as possible by a close relationship of [that country] with the European Economic Area and the European Union.”<sup>64</sup>

Clearly, the Interim Accord provided an opportunity for re-establishment and deepening of the cooperation between the neighbouring countries. It further reaffirmed the willingness of the parties to respect the principle of good neighbourliness as being

*“[g]uided by the spirit and principles of democracy and fundamental freedoms and respect for human rights and dignity, in accordance with the Charter of the United Nations, as well as the Helsinki Final Act, the Charter of Paris for a new Europe and pertinent acts of the Organization for Security and Cooperation in Europe.”*<sup>65</sup>

The agreed framework for the settlement of the bilateral dispute between the two neighbouring countries promised a successful EU integration of Macedonia. The guarantees for an unblocked progress toward EU and the expected further support on that path by Greece formed essential conditions for successful negotiations between the two countries leading eventually to a settlement of the issue. Therefore, it should be not surprising that EU stayed aside from the problem as much as possible. Any pressure by the EU would have been unnecessary and even contrary to the agreed terms for the settlement of the issue under the rules of international law. This situation has changed with the aggravation of the relations between the two neighbouring countries which culminated with a Greek veto of Macedonia’s accession to NATO in 2008.<sup>66</sup>

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to settle the above-mentioned difference, and to promote confidence-building measures among the parties.” See also UNSC Res 845 (18 June 1993) UN Doc S/RES/845. (accessed: 26 March 2014), which urged the parties “to continue their efforts under the auspices of the Secretary-General to arrive at a speedy settlement of the remaining issues between them.”

<sup>61</sup> United Nations, 1995. UN Interim Accord Between the Hellenic Republic and the FYROM UN Doc 95-27866 of 13 September 1995.

<sup>62</sup> Article 5(1) Interim Accord.

<sup>63</sup> Article 11(1) Interim Accord.

<sup>64</sup> Article 11(2) Interim Accord.

<sup>65</sup> Preamble to the Interim Accord.

<sup>66</sup> The NATO Summit which announced membership invitations for three Western Balkan countries (Albania, Croatia and Macedonia) was held on 2-4 April 2008 in Bucharest. For the conclu-

### 3. Implications of the Veto in the Context of EU Enlargement

Although the Greek veto on the accession of Macedonia to NATO is not on itself connected to the prospective EU membership of the country, its negative impact should not be underestimated. That act constituted a direct breach of Article 11(1) of the Interim Accord which prohibited Greece from vetoing the accession of Macedonia to international organisations or to institutions of which it is a member itself.<sup>67</sup> The membership of Macedonia to NATO was made explicitly conditional upon a settlement over the issue contrary to the earlier binding agreement between the two neighbouring states.<sup>68</sup>

The NATO blockade had almost immediate impact in the EU enlargement context. In fact, the Accession Partnership with Macedonia which preceded the Bucharest Summit already listed the solution over the name issue in the short term priorities for the country with a view of ensuring good neighbourly relations.<sup>69</sup> The Council explicitly stated that Macedonia should “[e]nsure good neighbourly relations, in particular by intensifying efforts with a constructive approach to find a negotiated and mutually acceptable solution to the name issue with Greece, in the framework [...] and avoid actions which could negatively affect them.”<sup>70</sup> Only two months after the NATO Summit, the Brussels European Council underlined that the “maintaining good neighbourly relations, including a negotiated and mutually acceptable solution on the name issue remains essential”<sup>71</sup> for the further progress of Macedonia towards the EU, ignoring the legal significance of the Interim Accord if not stimulating further violations.

Namely, the breach of the Interim Accord jeopardised evidently the legal framework of good neighbourly relations between the two countries by shifting the conditions under which the dispute was to be resolved. The abstention of Greece from objections to the prospective EU membership of Macedonia, as envisaged in the Interim Accord, was the only guarantee for preserving the equality of the two countries in the process of settling the dispute. The ICJ judgement which confirmed the violation of the Interim Accord by Greece did not change the situation on the ground. Moreover, that Court rejected to order the infringing party to comply with its international obligations, although concluding that its judgement “would affect existing rights and obligations of the Parties under the Interim Accord and would be capable of being applied effectively by them.”<sup>72</sup> Referring to its previous case law,<sup>73</sup> the ICJ considered that

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sions of the Summit and reasons for not inviting Macedonia, see point 20 of the Bucharest Summit Declaration. (accessed: 11 March 2014).

<sup>67</sup> The violation by Greece was later on confirmed in a judgement of the International Court of Justice from 9 December 2011. See International Court of Justice. 2011. *Application of the Interim Accord of 13 September 1995* (the former Yugoslav Republic of Macedonia v. Greece). (accessed: 25 March 2014).

<sup>68</sup> North Atlantic Council. 2008. *Bucharest Summit Declaration*. Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council. Article 20. (accessed: 25 March 2014).

<sup>69</sup> European Council. 2008a. *Council Decision on the principles, priorities and the conditions contained in the European Partnership with the Former Yugoslav Republic of Macedonia and repealing Decision*. OJEU L80/32. (accessed: 25 March 2014).

<sup>70</sup> European Council, *Council Decision*.

<sup>71</sup> European Council. 2008b. *Presidency Conclusions*. Paragraph 56. (accessed: 25 March 2014).

<sup>72</sup> International Court of Justice, *Application of the Interim Accord*, Paragraph 53.



“[a]s a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed.”<sup>74</sup> Yet, the condemnation of Greece has proved insufficient to achieve compliance of that state with the rules of international law.<sup>75</sup> Contrary to the presumptions of the ICJ, Greece did not comply with its obligations under the Interim Accord. Any notable influence of the judgment is also missing at the EU level. In spite of five recommendations of the European Commission for the opening of the accession negotiations with Macedonia, the approval of the Council has been continuously postponed.<sup>76</sup>

The current deadlock situation does not contribute to maintaining good neighbourly relations, but certainly sparks nationalism in the fragile multi-ethnic society, having also a potential of endangering peace and stability in the region.<sup>77</sup> In the most recent 2013-2014 Enlargement Strategy, the European Commission highlighted “that a decision to open accession negotiations would contribute to creating the conditions conducive to improving good neighbourly relations in general and, in particular, to finding a mutually acceptable solution to the name issue, which [it] considers essential.”<sup>78</sup> It further reminded that

*“[f]ailure to act on [its] recommendation poses potentially serious challenges to the former Yugoslav Republic of Macedonia and to the EU. This calls into question the credibility of the enlargement process, which is based on clear conditionality and the principle of own merits. The lack of a credible EU perspective puts at risk the sustainability of the country’s reform efforts.”*<sup>79</sup>

The recommendations of the European Commission have been clearly overshadowed by the non-compliance of the affected Member State with its international obligations contrary to the good neighbourliness principle. Floundering with states that flout its rules, the EU fails to implement the good neighbourliness condition in accordance with international law.

## Conclusion

Good neighbourliness is a principle with a clear legal value. The principle goes back to the traditional concept of the sovereign equality of states in international law which enables states to enjoy their sovereign rights freely and imposes a duty on them to take into consideration the sovereign rights of other

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<sup>73</sup> International Court of Justice. 2009. *Navigational and Related Rights* (Costa Rica v Nicaragua). Paragraph 150. (accessed: 25 March 2014).

<sup>74</sup> International Court of Justice, *Application of the Interim Accord*. Paragraph 168.

<sup>75</sup> See in this respect the Declaration of Judge Ad Hoc Budislav Vukas to the judgment, warning about the possible consequences of the decision of the ICJ not to order the infringing party to comply with the judgement.

<sup>76</sup> The European Commission has been recommending the opening of the negotiations five times in row, i.e. since 2009. See in particular the Commissions *Enlargement Strategy 2013*, 18.

<sup>77</sup> For detailed analysis of the current situation in the country see Fouéré, Erwan. 2013. *Macedonia - A Country in Crisis*. CEPS Policy Brief. (accessed: 17 March 2014).

<sup>78</sup> European Commission. *Enlargement Strategy 2013*.

<sup>79</sup> European Commission. *Enlargement Strategy 2013*.

states. It is founded upon the strict observance of the principles of the UN Charter and of the Declaration on Friendly Relations. These principles form the main legal basis of the good neighbourliness principle.

In addition, the good neighbourliness principle has been translated into an important accession condition in the enlargement policy of the Union. It is applied primarily to settlement of bilateral disputes of candidate countries. Such condition is in accordance with the principle of good neighbourliness presuming peaceful settlement of disputes and with the obligation of the Union to promote international law in its “action on the international scene.”<sup>80</sup> The application of the good neighbourliness condition however, requires parallel advancement of equality between states which is hardly sustainable in circumstances of asymmetric powers between Member States and candidate countries. This complicates the application of the condition to vertical bilateral disputes in the enlargement process.

In circumstances of asymmetric powers, the good neighbourliness condition has been evidently applied outside its legal framework, serving not to justice but to political considerations of Member States. The cases of Croatia and Macedonia are most evident examples for such practices of Member States. Thus, while “[t]he idea of conditionality [is indeed] beautiful in theory,”<sup>81</sup> it cannot be always the most appropriate tool in the enlargement process. Agreeing with Kochenov, “law and politics follow different rationales and are most likely to come into conflict when simultaneously regulating the same issue. One naturally tends to undermine the achievements of the other.”<sup>82</sup> The condition of good neighbourliness can be successfully applied in the enlargement policy of the Union only if applied in the realm of law.

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<sup>80</sup> Article 21(1) of TEU.

<sup>81</sup> Kochenov. *EU Enlargement and the Failure of Conditionality*. 56.

<sup>82</sup> Kochenov. *EU Enlargement and the Failure of Conditionality*. 324.

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