

ADRIANA KALICKA-MIKOŁAJCZYK

The Good Neighbourliness Principle in Relations Between the European Union and its Eastern European Neighbours

Introduction

In international practice, there exists a set of legal principles intended to enable neighbouring states to maintain peaceful and harmonious interstate relations and to cooperate in a peaceful manner, which is called the international law of neighbourliness. This term may be understood as a set of conventional and customary norms regulating the relationship between neighbouring states in the adjacent parts of their territories (e.g the prohibition to use or permit to use the frontier zone with a view to cause damage on the territory of a neighbour state; the obligation to take into consideration legitimate interests of neighbours or the obligation to inform, consult and notify any situation that may cause damage beyond the border).¹ Currently there is a claim for good neighbourliness relations among neighbouring states.

Nevertheless, there is no legal definition of it in international law. The first attempt to define this issue was made at the Bandung Conference which took place on 18–24 April 1955 in Indonesia. Later, in the 1980s, the United Nations General Assembly (UN General Assembly) adopted many resolutions on the development and strengthening of good neighbourliness, which however did not contain one commonly accepted legal definition of this term.² For that reason, good neighbourliness can be, for instance,

1 L. Boisson de Chazournes, D. Campanelli, *Neighbour States*, in: *Max Planck Encyclopedia of Public International Law*.

2 The General Assembly, for its part, started to mention good-neighbourliness in its Resolutions 1236 (XII) of 14 December 1957 and 1301 (XIII) of 10 December 1958, with reference to 'peaceful and neighbourly relations among States'. In 1979, it expressed its intention to develop and strengthen the content of the notion of good-neighbourliness, as well as ways of enhancing its effectiveness (UNGA Res 34/99 [14 December 1979] § 3). In 1981, the General Assembly decided to prepare a 'suitable international document' on good-neighbourliness (UNGA Res 36/101 of 9 December 1981, § 4 and 5), an objective that has been reiterated in subsequent resolutions (UNGA Res 37/117 of 16 December 1982, §. 4; UNGA Res 38/126 of 19 Decem-

defined as an extension of the law of neighbourliness to the whole territory of two neighbouring states or of the states of a region.³

The main objective of this article is to scrutinize the good neighbourliness principle as a contemporary model of external interstate peaceful cooperation and dialogue. Its first part focuses on the role and main aspects of good neighbourliness as an international principle whereas its second part looks very closely at this principle but in the context of the two European Union's specific external policies: the neighbourhood policy and the enlargement policy.

The Good Neighbourliness Principle in International Law

The good neighbourliness principle is a fundamental principle in international law governing friendly relations among states. Most scholars consider it as a principle of international law. Kelsen points out that "good neighbourliness is a principle of international law which should have been included into the first chapter of the UN Charter".⁴ According to Verdross it is a "gradually emerging principle, which has now been solemnly anchored to the Preamble of the Charter of the UN".⁵ Fitzmaurice and Elias see it as "fundamental in law governing the use of shared resources".⁶ Jenks regards the good neighbourliness principle as "a potential source of specific obligations".⁷ Goldie points out that "good neighbourliness is an emerging principle of international law with many transnational law qualities".⁸ Finally, Jasudowicz considers it as a "model principle of contemporary international public law and international relationships, which, however, requires to be supplied with meaning and application by the UN Charter principles

ber 1983, § 3; UNGA Res 39/78 of 13 December 1984, § 4). The General Assembly referred again to the notion of good-neighbourliness in its Resolutions 50/80 of 12 December 1995, 52/48 of 9 December 1997, 56/18 of 29 November 2001, 57/52 of 22 November 2002, and 50/59 of 3 December 2004, dealing with the Balkan States and South-Eastern Europe.

3 J. Andrassy, *Les relations internationales de voisinage*, Recueil des Cours, 1951, p. 77–181; I Pop, *Voisinage et bon voisinage en droit international*, Paris 1980, p. 315; J. Salmon ed., *Dictionnaire de droit international public*, Bruylant Brussels 2001, p. 1138.

4 H. Kelsen, *The Law of the United Nations: A Critical Analysis of its Fundamental Problems*, London 1951, p. 11–13.

5 A. Verdross, *Völkerrecht*, Vienna 1964, p. 292–295, translated in: J.G. Lammers, *Pollution of International Watercourses*, The Hague 1984, p. 565.

6 M. Fitzmaurice and O. Elisa, *Watercourse Co-operation in Northern Europe: A Model for Future*, The Hague 2004, p. 5.

7 C.J. Jenks, *Law in the World Community*, New York 1967, p. 92.

8 L. F.E. Goldie, *Development of International Environmental Law- an Appraisal*, in: J.L. Hargrove ed., *Law, Institutions and the Global Environmental*, Leiden 1972, p. 104–165.

which are fundamental principles of international law”.⁹ So, a majority of authors presume that the legal nature of this principle flows from customary international law, however a smaller group argue that it is a general principle of law in the sense of Article 38 (1)(c) of the Statute of the International Court of Justice (ICJ Statute).¹⁰ Such disagreement between them may be explained firstly, by the broad and unclear scope of this principle and secondly, by the lack of a precise distinction between the customary rules and the general principles of law, except for the conclusion that the general principles of law are vaguer than international customary rules.¹¹ From a legal point of view, the good neighbourliness principle can be classified as a general principle of law, but also as being of customary nature, which implies that it will never be overridden by any customary rule and will be observed repeatedly by the majority of states in similar circumstances and thus will be accepted as binding law by states.¹²

According to the UN General Assembly, the good neighbourliness principle fully conforms with the objectives of the United Nations and is founded upon the strict observance of the principles of the United Nations Charter (UN Charter), and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.¹³ The Preamble of the UN Charter declares that the peoples of the United Nations will practise tolerance and live together in peace with one another as good neighbours. Under Article 1(1) and (2) of the UN Charter, the purposes of the United Nations are *inter alia* ‘to maintain international peace and security’ and to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”.¹⁴ So, it is based on the universal principle in favour of peaceful resolution of disputes over the use of force.¹⁵ This was also reassured in the Helsinki Act of 1975 of the Conference on Security and Cooperation in Europe (Helsinki Act), in which participating states declare to develop their cooperation with one another and with all states in all fields in accordance with the purposes and principles of the UN Charter. They also reaffirmed to promote mutual understanding and confidence,

9 T. Jasudowicz, *Zasada dobrego sąsiedztwa w Karcie Narodów Zjednoczonych*, “Acta Universitatis Nicolai Copernici” 1989, p. 67, 81.

10 E. Basheska, *The Position of Good Neighbourliness Principle in International and EU Law*, in: B. Kochenov and E. Basheska eds., *supra* note 1, p. 34.

11 *Ibidem*, p. 34.

12 *Ibidem*, p. 35.

13 General Assembly, Declaration on Principles of International law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24.10.1970, A/8082.

14 Charter of the United Nations and Statute of the International Court of Justice, <<https://treaties.un.org/doc/publication/ctc/uncharter.pdf>>.

15 A. Uilenreef, *Bilateral Barriers or Good Neighbourliness? The role of Bilateral Disputes in the EU Enlargement Process*, Netherlands Institute of International Relations, Clingendael, June 2010, p. 9.

friendly and good neighbourly relations among themselves, international peace, security and justice.¹⁶ Moreover, Article 74 of the UN Charter refers directly to the general principle of good neighbourliness. The commentary of the UN Charter edited by *Simma* states that the principle of good neighbourliness sets a general and legally binding aim for policy, that is why more than just a political principle.¹⁷ The commentary to the UN Charter edited by Cot, Pellet, and Forteau confirms this point of view: it says that the principle of good neighbourliness is but a guide for policymakers, void of any precise legal content. It is, however, admitted that the lack of precise legal content does not signify the total absence of a legal profile, as the strict observance of a set of basic international law norms is required.¹⁸ So, in this case, the good neighbourliness principle requires to be supplied with meaning and application by means of subsidiarity rules which give it content reflecting the standards, needs, and capabilities of the time and place.¹⁹ Finally, the judge Weeramantry in his Dissenting Opinion regarding the Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons* declares that the good neighbourliness principle is one of the bases of modern international law, which the UN Charter's provisions expressly recognise a general duty of good neighbourliness, which makes it an essential part of international law.²⁰

To sum up, the good neighbourliness principle is one of the most essential general principles of international law, where the notion "good" stresses positive relations among neighbouring states. We may also say, that it is intended to enable neighbouring states to avoid frictions, reconciling their divergent interests through continuous cooperation in all activities comporting a necessary interpenetration between them.²¹ So, it designates a model of peaceful cooperation, a certain type of good-natured international relations between neighbours²². Moreover, the good neighbourliness principle obligates states to respect independence and territorial integrity. In this way the good neighbour-

16 Conference on Security and Co-operation in Europe, Final Act, Helsinki 1975, p. 7, available at: <<https://www.osce.org/helsinki-final-act?download>>. J. Symonides, *Deklaracja zasad stosunków między państwowych KBWE*, „Sprawy Międzynarodowe” 1975, p. 45–50.

17 B. Simma et al., *The Charter of the United Nations: A Commentary. Vol. 1*, 3rd ed, Oxford 2012, p. 1097.

18 J-P. Cot, A. Pellet and M. Forteau eds., *La Charte des Nations Unies: Commentaire article par article*, Paris 2005, p. 1779–1780.

19 L. F.E. Goldie, *Special Régimes and Pre-Emptive Activities in International Law*, “International Comparative Law Review”, 11, 1962, p. 690.

20 Advisory Opinion of 8 July 1996 of the Legality of the Threat or Use of Nuclear Weapons, Dissenting Opinion of Judge Weeramantry, ICJ Rep. 1996, p. 505.

21 RIAA, *Affaire concernant le filetage à l'intérieur du golfe du Saint-Laurent entre le Canada et la France (Canada v. France)*, Judgement 17 July 1986, RIAA 1986, § 27.

22 I. Pop, *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*, Editura R.A.I., Bucharest 1991, p. 58.

liness principle is similar to the *sic utere tuo ut alienum non laedas* principle²³, which in international relations prohibits a state to use its territory to harm other states.²⁴ Furthermore, it is closely related to the duty to cooperate, which has been also formulated by the Court of Justice of the European Union (CJEU) in the *MOX Plant* case.²⁵

The European Union and International Law-General Remarks

According to Article 47 Treaty on the European Union (TEU) the European Union (EU) has legal personality and therefore has rights and obligations under international law.²⁶ So, the EU is bound by international law, however, the precise scope of powers and obligations are determined pursuant to its primary law. Under Article 3(5) TEU and Article 21(1) TEU, the EU is to contribute to the strict observance and the development of public international law. As is apparent from, *inter alia*, Article 38(1)(b) of the ICJ Statute²⁷, customary international law is one of the generally recognised sources of international law. However, the Treaties are silent on the status of international customary law in the Union's legal order, but in general terms Article 3(5) TEU hints at the idea that the EU considers itself bound by international law.²⁸ It was confirmed by the CJEU in the *AATA* judgement, where it stated that the EU is bound by customary international law as well as by the international agreements applicable to it, which means that the relevant principles of customary international law form a part of the Union's legal order.²⁹ Consequently, when the EU adopts an act, it is bound to observe international law in its entirety, including customary international law, which is binding upon its institutions. So, the status of customary international law does not differ from that of international agreements binding on the EU.³⁰ Therefore, its primacy is recognised in Union legal or-

23 In Latin the maxim means „Use your own property in such a way as not to injure that of other”.

24 P. Sands, *Principles of International Environmental Law*, Oxford 2003, p. 249.

25 Case C-459/03 Commission of the European Communities v. Ireland, EU:C:2006:345, § 174.

26 Consolidated version of the Treaty on European Union, OJ C 202, 7.06.2016, p. 13–388.

27 Statute of the International Court of Justice, <https://www.icj-cij.org/en/statute>.

28 B. Van Vooren, R. A. Wessel, *EU External Relations law. Text, Cases and Materials*, Cambridge 2014, p. 233.

29 Case- 366/10 Air Transport Association of America and Others v. Secretary of State for Energy and Climate Change, EU:C:2011:864, § 101; Case C-286/90 Anklagemyndigheden v. Peter Michael Poulsen and Diva Navigation Corp., EU:C:1992:453, § 9 and 10, Case C-308/06 The Queen, on the application of International Association of Independent Tanker Owners (Intertanko) and Others v. Secretary of State for Transport, EU:C:2008:312, § 51; and Joined Cases C-402/05 P and C-415/05 P Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities, EU:C:2008:461, § 291.

30 P. Koutrakos, *supra* note 12, p. 228.

der. However, the case-law of the CJEU has not given rise to any clear criteria for the determination of whether and to what extent a principle of customary international law can serve as a benchmark against which the validity of EU legislation can be reviewed. It would appear that the CJEU have not in the past had occasion to undertake such a review of validity; customary international law has, up to now, been called upon only in relation to the interpretation of provisions and principles of EU law. In line with the case-law on international agreements, the CJEU should not recognise principles of customary international law as a benchmark against which the lawfulness of EU acts can be reviewed unless two conditions are satisfied: firstly, there must exist a principle of customary international law that is binding on the EU and secondly, the nature and broad logic of that particular principle of customary international law must not preclude such a review of validity; the principle in question must also appear, regarding its content, to be unconditional and sufficiently precise.

To sum up, under Article 3(5), Article 21(1), (2)(b), and (3), Article 23 TEU and Article 205 TFEU, the good neighbourliness principle is placed among the essential principles of the European Union which must guide its action on the international scene. As the CJEU many times ruled, compliance with the principles of international law including respect for the principles of the United Nations Charter is required of all actions of the European Union, as is clear from the provisions, read together, set out in the first subparagraph of Article 21(1), Article 21(2)(b) and (3) TEU, and Article 23 TEU.³¹ This all means that the EU must respect international law in the exercise of its powers.³² The EU is bound by the good neighbourhood principle, which is enshrined in Article 1(2) of the UN Charter. Article 3(5) TEU, Article 21(1) TEU, Article 21(2)(b) and (c) TEU and Articles 23 TEU and 205 TFEU require the EU to respect the principles of the United Nations Charter. Declaration 13 concerning the common foreign and security policy, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, states that 'the European Union and its Member States will remain bound by the provisions of the Charter of the United Nations'. In addition, the good neighbourhood principle is among the principles of the Helsinki Final Act referred to in Article 21(2)(c) TEU. So, the good neighbourliness principle forms part of the general rules of international law, which are also the primary sources of the Union's law and respect for them is a condition of the lawfulness of Union acts and measures incompatible with them are not acceptable in the Union's legal order. Thus, the

31 Judgments of 21 December 2011, *Air Transport Association of America and Others* (C-366/10, EU:C:2011:864, § 101), and of 14 June 2016, *Parliament v Council* (C-263/14, EU:C:2016:435, § 47).

32 See judgments of 24 November 1992, *Poulsen and Diva Navigation* (C-286/90, EU:C:1992:453, § 9); of 16 June 1998, *Racke* (C-162/96, EU:C:1998:293, § 45); and of 3 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission* (C-402/05 P and C-415/05 P, EU:C:2008:461, § 291).

obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EU and FEU Treaties, such as Article 3(5) TEU and Article 21 TEU, which provide that the Union's external action is to respect for the principles of the United Nations Charter and international law. It is therefore incumbent on the CJEU to ensure that they are respected in the context of the full system of remedies established by the EU and FEU Treaties.

The Good Neighbourliness Principle and the European Neighbourhood Policy

The EU may maintain relations with neighbouring countries on the basis of Article 8 TEU. The main objective of such cooperation is the establishment of an area of prosperity and good neighbourliness, characterised by close and peaceful relations based on cooperation. Article 8 TEU obliges the EU to develop a special relationship with neighbouring countries on the base of the Union values and the good neighbourliness principle that are characterized by close and peaceful relations. The European Neighbourhood Policy (ENP) was established on 12 May 2004 with the objective to prevent the emergence of new dividing lines between the enlarged EU and its neighbours, to offer them the chance to participate in various EU activities through greater political, security, economic and cultural cooperation and to foster closer cooperation both across the EU's external borders and among the EU's neighbours themselves, especially among those that are geographically close to each other.³³ The ENP founding documents do not regard the good neighbourliness principle as a fundamental principle of the ENP. Nevertheless, within the ENP, the good neighbourliness principle may be analysed from three complementary aspects: firstly, Union values; secondly, the promotion of international peace and security; and thirdly, the settlement of international disputes by peaceful means in accordance with the UN Charter.

In its relations with the wider world, the EU's objectives are to uphold and promote values which have inspired its own creation, development and enlargement. Within the ENP, these values include strengthening democracy and the rule of law; respect of human rights and fundamental freedoms, including rights of minorities and children, gender equality, trade union rights and other core labour standards, freedom of media and

³³ Communication from the Commission - European Neighbourhood Policy - Strategy paper, COM(2004) 0373 final, p.3; M. Cremona, *The European Neighbourhood Policy: More than a Partnership?*, in: M. Cremona ed., *Developments in EU External Relations Law*, Oxford 2008, p. 121-147; A. Kalicka- Mikołajczyk, *Ramy prawne i zasady unijnej Europejskiej Polityki Sąsiedztwa wobec partnerów wschodnich*, Wrocław 2013, p. 32-42; B. Van Vooren, *EU External Relations Law and the European Neighbourhood Policy: A Paradigm for Coherence*, New York 2012, p. 52.

expression; the promotion of good neighbourly relations; the principle of a market economy and sustainable development; the reform of the judiciary and the fight against corruption and organised crime; and the fight against the practice of torture and prevention of ill-treatment; support for the development of civil society; cooperation with the International Criminal Court; the fight against terrorism and the proliferation of weapons of mass destruction; abidance by international law and efforts to achieve conflict resolution.³⁴ Moreover, according to Article 1 (1) Regulation establishing a European Neighbourhood Instrument, its main objective is to promote good neighbourliness, involving the EU and its neighbours, and to develop a special relationship founded on cooperation, peace and security, mutual accountability and a shared commitment to the universal values of democracy, the rule of law and respect for human rights in accordance with the TEU.³⁵ Therefore, the ENP, *expressis verbis* recognises the good neighbourliness principle as a part of the Union's values to be shared by the EU with its neighbours.³⁶

Secondly, the ENP Strategy paper underlines that conflict prevention and conflict solution are some of the most important objectives of this policy. Moreover, preserving peace, preventing conflicts and strengthening international security with the purposes and principles of the UN Charter and the principles of the Helsinki Act, are also confirmed by the 2015 Communication on Review of the ENP³⁷ and by the provisions of all Association Agreements (AA) concluded on 27 June 2014 by the EU with Georgia³⁸, Moldova³⁹ and Ukraine⁴⁰. According to Article 1, their main objectives *inter alia* are: to promote political association and economic integration between the Parties based on common values; to contribute to the strengthening of democracy and to political, economic and institutional stability; to promote, preserve and strengthen peace and stability

34 N. Ghazaryan, *The European Neighbourhood Policy and Democratic Values of the EU: A Legal Analysis*, Oxford 2014, p. 35; N. Wichmann, *Rule of Law Promotion in the European Neighbourhood Policy: Normative or strategic power Europe?*, Baden-Baden 2010, p. 85.

35 Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, [2014] OJ L 77, p. 27–43.

36 R. Petrov, *The Principle of Good Neighbourliness and the European Neighbourhood Policy*, in: B. Kochenov, E. Basheska eds., *supra* note 1, p. 305.

37 Joint Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, Review of the European Neighbourhood Policy, JOIN(2015) 50 final, p. 14–17.

38 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, [2014] OJ L261, p. 4. Entered into force on 01.07.2016.

39 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, [2014] OJ L260, p. 4. Entered into force on 01.07.2016.

40 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, [2014] OJ L161, p. 3. Entered into force on 01.09.2017.

regionally and internationally, including through joining efforts to eliminate sources of tension, enhance border security; to promote cross-border cooperation and good neighbourly relations and to promote cooperation aimed at peaceful conflict resolution. Furthermore, the Parties reaffirmed their commitment to the principles of territorial integrity, inviolability of internationally recognised borders, sovereignty and independence, as established in the UN Charter and the Helsinki Act, and their commitment to promote these principles in their bilateral and multilateral relations.

The good neighbourliness principle can be also found within the provisions on regional stability, which oblige the Parties to intensify their joint efforts to promote stability, security and democratic development in their common neighbourhood, and in particular to work together for the peaceful settlement of regional conflicts and to maintain international peace and security as established by the UN Charter, the Helsinki Act and other relevant multilateral documents.⁴¹ For example, Article 9 EU-Georgia AA states that, “the Parties reiterate their commitment to peaceful conflict resolution in full respect of the sovereignty and territorial integrity of Georgia within its internationally recognised borders”; Article 8 EU-Moldova AA underlines that “the Parties shall intensify their joint efforts to promote stability, security and democratic development in the region and, in particular, shall work together for the peaceful settlement of regional conflicts... The Parties reiterate their commitment to a sustainable solution to the Transnistrian issue, in full respect of the sovereignty and territorial integrity of the Republic of Moldova”, and according to Article 9 EU-Ukraine AA the Parties decided to intensify their joint efforts to promote stability, security and democratic development in their common neighbourhood, and in particular to work together for the peaceful settlement of regional conflicts. All these efforts will be based on common shared principles of maintaining international peace and security as established by the UN Charter, the Helsinki Act and other relevant multilateral documents.⁴²

The Good Neighbourliness Principle and the EU Enlargement Policy

For the first time, the concept of good neighbourliness relations was introduced to the enlargement policy in June 1993 by the *Pact on Stability in Europe*. The Pact covered Central and Eastern Europe states, which were looking westwards in the hope of future enlargement, to maintain close mutual relations, to help stabilise relations among them,

41 Article 8 of the EU-Georgia AA; Article 8 of the EU-Moldova AA and Article 9 of the EU-Ukraine AA.

42 Article 9(4) of the EU-Georgia AA; Article 8(3) of the EU-Moldova AA and Article 9(2) of the EU-Ukraine AA.

and to promote cooperation between the countries of the former Warsaw Pact which, in the words of the French government, “may eventually be associated to varying degrees with the European Union”. In July 1997, the European Commission stated in the *Agenda 2000: for a stronger and wider Union*, that all applicant countries should take all necessary measures to solve outstanding disputes among themselves and third countries in accordance with provisions of the UN Charter.⁴³ Next, in September 2009, the European Commission adopted its communication entitled *Enlargement Strategy and Main Challenges 2009–2010*, in which for the first time stated that all bilateral questions should be resolved in conformity with the principle of peaceful settlement of disputes in accordance with the UN Charter. Moreover, all parties concerned are expected to make every effort towards solving outstanding bilateral issues with their neighbours along these lines. All parties involved in such bilateral disputes have the responsibility to find solutions in a spirit of good neighbourliness and bearing in mind the overall EU interests.⁴⁴

By virtue of Article 49 TEU, any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the EU. So, this provision formulates requirements which any third “European State” must fulfil to join the EU. However, additional criteria which have to be taken into account are agreed upon by the European Council on a case to case basis.⁴⁵ The European Council has defined the additional conditions of eligibility in its two documents: Conclusions of 22 June 1993 at Copenhagen⁴⁶ and Conclusions of 10 December 1994 at Essen.⁴⁷ The good neighbourliness principle is *expressis verbis* mentioned in the second document, where the European Council called on Central and Eastern Europe States to cooperate “between the associated countries for the promotion of economic development and good neighbourly relations”. The Eastern Europe countries will be able to join the EU once the criteria of Article 49 TEU, including the Copenhagen and Essen criterias, are met. In order to meet all membership conditions and strengthen democracy, comprehensive and convincing reforms are required in crucial areas, notably on: rule of law, fundamental rights, governance; strengthening the economy; applying EU rules and standards and reconciliation, good neighbourly relations and regional cooperation.

43 Commission of the European Communities, *Agenda 2000: for a Stronger and Wider Union*, COM (1997) 2000 final.

44 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, *Enlargement Strategy and Main Challenges 2009–2010*, COM (2009) 533 final, p. 8.

45 According to § 1 sentence 4: „The conditions of eligibility agreed upon by the European Council shall be taken into account”.

46 Copenhagen European Council – 21 and 22 June 1993, Presidency Conclusions, available at: <http://www.europarl.europa.eu/enlargement_new/europeanCouncil/pdf/cop_en.pdf>.

47 Essen European Council - 9 and 10 December 1994, Presidency Conclusions, available at: <http://www.europarl.europa.eu/enlargement_new/europeanCouncil/pdf/ess_en.pdf>.

So, good neighbourly relations are essential elements of the EU's enlargement processes. However, the European Commission reaffirms that the EU cannot not import bilateral disputes, which must be solved as a matter of urgency by the parties. Achieving this objective will be facilitated by an atmosphere of good neighbourly relations. In the situation where disputes are not resolved bilaterally, parties should submit them unconditionally to binding, final international arbitration, the rulings of which should be fully applied and respected by both parties before accession. Moreover, the European Commission urges the avoidance of any kind of threat, source of friction or action that damages good neighbourly relations and the peaceful settlement of disputes.⁴⁸ This all means that the EU has directly connected the good neighbourliness principle as a pre-accession condition to the principle of peaceful settlement of disputes in accordance with the UN Charter. So, the good neighbourliness within the EU enlargement policy is a principle, which means that all third States which would like to accede the EU are obliged to make any necessary affords to resolve any outstanding border or other disputes by peaceful means in such a manner that international peace and security and justice are not endangered.⁴⁹

Concluding Remarks

The UN Charter in its Preamble refers to the determination of the UN peoples "to practice tolerance and live together in peace with one another as good neighbours". The principle of good neighbourliness, however, does not refer only to cooperation among the neighbouring states, so it is not restricted only to states sharing the same border, but it covers states which share the common values and common interests. This principle is no longer related to geographical proximity, but also applies to states that are geographically separated.⁵⁰ Within Union's legal order the good neighbourliness principle complements the EU's neighbourhood policy principles and the EU's enlargement policy principles and that is why occupies a special place under their framework. So, the good neighbourliness principle, as a general principle of international law, forms an integral part of Union's primary law, which means that it has legally binding force upon all the EU institutions and all Member States in the process of application and implementation of Union law. In other words: firstly, the EU and its Member States are legally bound by the provisions of Article 8 TEU and Article 49 TEU; secondly, on the basis of Article 3(5)

⁴⁸ *Ibidem*, p. 9.

⁴⁹ N. Ghazaryan, „*Good neighbourliness*” and *Conflict Resolution in Nagorno-Karabakh: a Rhetoric or Part of the Legal Method of the European Neighbourhood Policy*”, in: B. Kochenov and E. Basheska eds., *supra* note 1, p. 308.

⁵⁰ According to Poland, „In its objective aspect, good neighbourliness is being presently applied not only to relations among States having common frontiers or separated by seas, but also to relations in a sub region or in a supranational dimension”, UN Doc A/36/336/Add.1, 36.

TEU and Article 21 TEU, the EU is obliged to respect and promote the principles of international law; thirdly, on the base of Article 4(3) TEU the EU and the Member States are obliged to: assist each other in carrying out tasks which flow from the Treaties; take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the EU institutions; and finally, to facilitate the achievement of the EU's tasks and refrain from any measure which could jeopardise the attainment of the EU's objectives. This all means that any infringement of such obligations within the neighbourhood policy or the enlargement policy may lead to legal action for annulment before the CJEU. Under Article 263 TFEU, the CJEU is competent to review any decisions, including relating to the intergovernmental action of Member States, adopted by the EU institutions and by the Member States. However, in so doing, the CJEU is not taking a position on the Member States' intergovernmental action as such as that would lie outside its jurisdiction.⁵¹ Therefore, an action for annulment must be available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects.⁵² Moreover, an applicant country may try to bring the case before the CJEU for violation of those obligations, even though its *locus standi* is not clear.⁵³

To sum up, the EU and its Member States are bound to respect the good neighbourliness principle, which forms an integral part of international law and is a source of Union's primary law. This means that both the EU and its Member States are obliged to maintain the good neighbourly relations with all its neighbours. Such relations, however, must be founded on EU values and characterised by close and peaceful relations based on cooperation. So, on the base of Article 3(5) TEU, Article 8 (1) TEU, Article 21 TEU and Article 49 TEU, the EU is obliged to promote the good neighbourliness principle in its relations with third states, especially with neighbouring ones.

Literature

Andrassy J., *Les relations internationales de voisinage*, Recueil des Cours 1951.

Basheska E., *The Position of Good Neighbourliness Principle in International and EU Law*, in: *Good Neighbourliness in the European legal context*, eds. B. Kochenov and E. Basheska, Brill Nijhoff, Leiden 2015.

Boisson de Chazournes L., Campanelli D., *Neighbour States*, "Max Planck Encyclopedia of Public International Law".

⁵¹ Joined Cases C-181/91 and C-248/91, §12.

⁵² Case 22/70, § 42; Joined Cases C-181/91 and C-248/91, § 13; Case C-27/04, § 44.

⁵³ Opinion of Advocate general Jääskinen in Case C-547/10P, *Swiss Confederation v European Commission*, EU:C:2012:565.

- Cot J-P, Pellet A. and Forteau M. eds., *La Charte des Nations Unies: Commentaire article par article*, Paris 2005.
- Cremona M., *The European Neighbourhood Policy: More than a Partnership?*, in: *Developments in EU External Relations Law*, ed. M. Cremona, Oxford 2008.
- Ghazaryan N., „Good Neighbourliness” and Conflict Resolution in Nagorno-Karabakh: a Rhetoric or Part of the Legal Method of the European Neighbourhood Policy”, in: *Good Neighbourliness in the European Legal Context*, eds. B. Kochenov and Basheska E., Brill Nijhoff, Leiden 2015.
- Ghazaryan N., *The European neighbourhood Policy and Democratic Values of the EU: A Legal Analysis*, Oxford 2014.
- Goldie L.F.E., *Special Régimes and Pre-Emptive Activities in International Law*, “International Comparative Law Review”, 11, 1962.
- Fitzmaurice M., Elisa O., *Watercourse Co-operation in Northern Europe: A Model for Future*, The Hague 2004.
- Goldie L.F.E., *Development of International Environmental Law- an Appraisal*, in: *Law, Institutions and the Global Environmental*, ed. J.L. Hargrove, Leiden 1972.
- Jasudowicz T., *Zasada dobrego sąsiedztwa w Karcie Narodów Zjednoczonych*, “Acta Universitatis Nicolai Copernici”, 1989.
- Jenks C.J., *Law in the World Community*, New York 1967.
- Kalicka- Mikołajczyk A., *Ramy prawne i zasady unijnej Europejskiej Polityki Sąsiedztwa wobec partnerów wschodnich*, Wrocław 2013.
- Kelsen H., *The Law of the United Nations: A Critical Analyses of its Fundamental Problems*, London 1951.
- Koutrakos P., *EU International Relations Law. Second Edition*, Oxford 2015.
- Pop I., *Voisinage et bon voisinage en droit international*, Paris 1980.
- Petrov R., *The Principle of Good Neighbourliness and the European neighbourhood Policy*, [in] *Good Neighbourliness in the European legal context*, eds. B. Kochenov, Basheska E., Leiden 2015.
- Salmon J. Ed., *Dictionnaire de droit international public*, Brussels 2001.
- Simma B. et al., *The Charter of the United Nations: a Commentary. Vol. 1*, 3rd ed., Oxford 2012.
- Symonides J., *Deklaracja zasad stosunków międzypaństwowych KBWE*, „Sprawy Międzynarodowe”, 10, 1975.
- Uilenreef A., *Bilateral Barriers or Good Neighbourliness? The Role of Bilateral Disputes in the EU Enlargement Process*, Netherlands Institute of International Relations, Clingendael, June 2010.
- Van Elsuwege P., *Good Neighbourliness as a Condition for Accession to the European Union: Finding the Balance between Law and Politics*, in: *Good Neighbourliness in the European legal context*, eds. B. Kochenov and Basheska E., Leiden 2015.

Van Vooren B., Wessel R.A., *EU External Relations law. Text, Cases and Materials*, Cambridge 2014.

Van Vooren B., *EU External Relations Law and the European Neighbourhood Policy: A Paradigm for Coherence*, New York 2012.

Wichmann N., *Rule of Law Promotion in the European Neighbourhood Policy: Normative or Strategic Power Europe?*, Baden-Baden 2010.

SUMMARY

The Good Neighbourliness Principle in Relations Between the European Union and its Eastern European Neighbours

The good neighbourliness principle is one of the most important principles in international law which designates a model of peaceful cooperation and mutual tolerance among neighbouring states. Its violation in the past, however, very often led to military conflicts and many international disputes and may lead to serious disputes among neighbouring states in the future. Thus, the good neighbourliness principle has a clear legal value⁵⁴. This article analyses the good neighbourliness principle as a key principle that obligates neighbouring states to develop and to maintain peaceful interstate relations. The focus is twofold: firstly, on the scope, content and nature of the good neighbourliness principle in international law and secondly, on the impact of the good neighbourliness principle on the relations between the European Union and its Eastern Neighbours within the framework of the neighbourhood policy and the enlargement policy.

Keywords: good neighbourliness, European Union, European Neighbourhood Policy, EU enlargement policy.

ADRIANA KALICKA-MIKOŁAJCZYK, Faculty of Law, Administration and Economy, University of Wrocław, Uniwersytecka 22/26, 50-145 Wrocław, Republic of Poland, adriana.kalicka-mikolajczyk@uwr.edu.pl.

54 E. Basheska, *The Position of Good Neighbourliness Principle in International and EU Law*, in: B. Kochenov and E. Basheska eds., *Good Neighbourliness in the European legal context*, Leiden 2015, p. 25.