

‘Good Neighbourliness’ and Conflict Resolution in Nagorno-Karabakh: A Rhetoric or Part of the Legal Method of the European Neighbourhood Policy?

1. Introduction

The concept of ‘good neighbourliness’ has undergone its metamorphosis within various branches of law. Its transformation can be traced from the Roman maxim of *sic utere tuo ut alienum non laedas* in the law of property to the principle of good neighbourliness or ‘no harm’ in International law prohibiting a state using its territory to harm other states, with its specific interpretation in International Environmental law.¹ In the European Union (EU) external relations law ‘good neighbourliness’ has acquired a meaning of its own. It first appeared in 1994 in relation to the accession process. The so called ‘Essen condition’, it featured as — an additional to Copenhagen criteria — accession condition, although it has not been applied systematically or uniformly.

Initiated in 2003, the European Neighbourhood Policy (ENP) was devised as a means to solve the ‘inclusion-exclusion’ dilemma created by the anticipation of the ‘Bing Bang’ enlargement of the EU.² Membership-like, the ENP was to exclude accession, while promising close political and economic cooperation with the neighbours ineligible for EU membership and those whose membership perspective the EU was not prepared to consider.³ Instead of accession the ENP initially offered sharing ‘everything but institutions’,⁴ however its incentives have gradually diminished. The possibility of creating a free trade area with each of the partners appears to be the main incentive on offer currently.⁵ Proclaimed to spread security and stability beyond the borders of the EU, the ENP has embraced accession-like conditionality as one of the methods through which to seek political and economic transformation in the neighbourhood.

The question asked in this chapter is to what extent the principle of good neighbourliness emerging in the accession policy has been borrowed by the ENP to address the existing conflicts in the neighbourhood. Can the latter be legitimately considered to constitute an element of the ENP legal method? Various policy documents and subsequently the Lisbon Treaty in its neighbourhood related provision incorporated ‘good neighbourliness’ as part of the rhetoric. But the precise role the concept of ‘good neighbourliness’ plays within the ENP, particularly in the context of conflict resolution is not straightforward. In particular, it is not clear whether good neighbourliness can be seen as an objective the EU promotes or a condition it wishes to impose on its partner states. The

¹ U Beyerlin and T Marauhn, *International Environmental Law*, (Hart, 2011) 39; *Island of Palmas Case*, 2 RIAA (1928) 829, para 839; *Trail Smelter Case*, 3 RIAA (1941) 1938, at 1965; *Corfu Channel Case* [1949] ICJ Rep 4, para 22; *Legality of the Threat or Use of Nuclear Weapons* [1996] ICJ Rep 226, para. 29; and *Gabcikovo-Nagymaros Project* [1997] ICJ Rep 7, paras 53, 112, and 140.

² KE Smith, ‘The Outsiders: The European Neighbourhood Policy’ (2005) 81 *International Affairs* 757, 757-758; M Cremona, ‘The European Neighbourhood Policy’ in A Ott and E Vos (eds), *Fifty Years of European Integration: Foundations and Perspectives* (T.M.C. Asser Press, 2009) 221-245, 243.

³ The list of addressees of the policy (some do not have immediate borders with the EU at present) includes Ukraine, Moldova, Belarus, Georgia, Armenia, Azerbaijan, Egypt, Algeria, Tunisia, Morocco, Israel, Occupied Palestinian Territories, Syria, Jordan, Lebanon, Libya.
Commission Communication, *Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours COM (2003) 104 final*, 11 April 2003 (hereinafter *Wider Europe Communication*) 5.

⁴ R Prodi ‘A Wider Europe-A Proximity Policy as the Key to Stability’ Speech to the Sixth ECSA-World Conference, 5-6 December 2002, Speech/02/619.

⁵ Commission Communication, *Strengthening the European Neighbourhood Policy COM (2006) 726 final*, 4 December 2006 (hereinafter *Communication on Strengthening the ENP*) 3-4; General Affairs and External Relations Council, *Presidency Progress Report, Strengthening the European Neighbourhood Policy*, 18-19 June 2007, 3.

paper aims to answer this question with reference to one of the ‘frozen conflicts’ in the Eastern neighbourhood, namely the Nagorno-Karabakh conflict.⁶ The choice of the conflict is dictated by the fact that both parties to the conflict, Armenia and Azerbaijan, are ENP partner states.

Within this context the chapter will firstly discuss the concept of good neighbourliness as part of the accession policy on which the ENP is based. Next, the role ‘good neighbourliness’ plays within the ENP will be considered. The effect of article 8(1) TEU on the existence of the principle of good neighbourliness will also feature as part of the analysis. In addition to this policy-generic analysis, the last substantive part of the paper will focus on the operational elements of the ENP with a specific focus on the chosen conflict in order to reveal whether good neighbourliness is imposed as a condition for ENP cooperation. The conclusion will summarise the findings on the general role of good neighbourliness within the ENP and its particular application to the Nagorno-Karabakh conflict.

2. Good Neighbourliness as an Inheritance from of the Accession Policy

Although the principle of good neighbourliness has been established to play an important role within EU legal order and in the relations between EU Member States,⁷ it is its specific application within the accession process that is of relevance here. This is due to the similarities between the ENP and the accession policy, including the borrowed conditionality mechanism and the instruments of the policy, which have been much written about.⁸

The ‘good neighbourliness’ first appeared within the accession policy, when the Essen European Council called on the Central and Eastern European (hereinafter CEE) states to cooperate with each other ‘for the promotion of economic development and good neighbourly relations’.⁹ It is suggested that the previously established accession criteria, the so called Copenhagen criteria, have been tacitly expanded without an official acknowledgement.¹⁰ The Copenhagen criteria formally established the standards required of candidate countries, including the stability of institutions guaranteeing democracy, the rule of law, respect for human rights and protection of minorities; a functioning market economy with the capacity to cope with competitive pressures and market forces within the EU; ability to adopt the *acquis* and accept the aims of economic and political union.¹¹

⁶ These also include the breakaway conflicts in South Ossetia and Abkhazia involving Georgia, and the Transnistria conflict in Moldova. It can be argued that Crimea will become another ‘frozen’ conflict.

⁷ E Baseska, ‘The Principle of Good Neighbourliness in European Law’ (2014), Thesis submitted at the University of Groningen, Chapter 2.

⁸ For this discussion see J Kelley, ‘New Wine in Old Wineskins: Policy Learning and Adaptation in the New European Neighbourhood Policy’ (2006) 44 JCMS 29; A Magen, ‘The Shadow of Enlargement: Can the European Neighbourhood Policy Achieve Compliance?’ Centre on Democracy, Development and the Rule of Law, Stanford Institute for International Studies, Working Papers, No 68, August 2006; G Meloni, ‘Is the Same Toolkit Used during Enlargement Still Applicable to the Countries of the New Neighbourhood? A Problem of Mismatching between Objectives and Instruments’ in M Cremona and G Meloni (eds), *The European Neighbourhood Policy: A New Framework for Modernisation?*, EUI Working Papers, LAW 2007/21, 97-111; R Balfour and A Rotta, ‘Beyond Enlargement. The European Neighbourhood Policy and its Tools’ (2005) 40 International Spectator 7.

⁹ Essen European Council, Presidency Conclusions, 9-10 December 1994.

¹⁰ M Cremona, ‘EU Enlargement: Solidarity and Conditionality’ (2005) 30 ELR 3, 16.

¹¹ European Council, Presidency Conclusions, 21-22 June 1993, 12; C Hillion, ‘EU Enlargement’ in P Craig and G de Burca (eds), *Evolution of EU Law*, 2nd edn (OUP, 2011), KE Smith, ‘The Evolution and Application of EU Membership Conditionality’ in M Cremona (ed), *The Enlargement of the European Union* (OUP 2003) 105-139

Although initially articulated in relation to the CEE states, good neighbourliness is said to have been aimed at Turkey in the view of its outstanding conflict with Cyprus.¹² The Commission's 'Agenda 2000' explicitly linked the principle to Turkey and the rejection of use of force under the UN Charter.¹³ Subsequently, at the 1999 Helsinki European Council, which granted a candidate status to Turkey, a more articulate version of this condition was offered. A reference was made to 'the principle of peaceful settlement of disputes in accordance with the UN Charter'.¹⁴ Thus, the 'good neighbourliness' was accorded a status of a principle, and the candidate states were to undertake every effort to resolve any outstanding border disputes and if necessary take the dispute to the International Court of Justice. On this basis, it has been argued that the principle of good neighbourliness referring to peaceful settlement of conflicts is *one of the conditions* for accession.¹⁵ Nevertheless, its apparent application has been neither consistent nor uniform.

The 2005 Negotiating Framework with Turkey emphasised the need for satisfying certain conditions in addition to Copenhagen criteria. These conditions pertained to Turkey's unequivocal commitment to good neighbourly relations and resolving any outstanding border disputes in conformity with the principle of peaceful settlement of disputes in accordance with the UN Charter, including if necessary accepting the jurisdiction of the International Court of Justice.¹⁶ The same condition was included in the 2008 Accession Partnership with Turkey setting the most up to date accession priorities.¹⁷

It should be noted, that a narrow and wide approach towards the application of the good neighbourliness can be identified. The former implies the application of the principle to the relations between the acceding state and an existing or a potential EU Member State, as well as between two or more candidate countries. A wide approach entails the application of the principle to relations between the candidate country and a third country. A wide approach seemed to have been incorporated in relation to the CEE states when the Commission made an explicit reference to unresolved disputes with third countries.¹⁸ However, in its evaluation of Turkey's progress, the Commission turns to a narrow interpretation of the scope of this obligation, namely to the necessity of having good neighbourly relations with accession candidates and neighbouring Member States, thus excluding the neighbouring countries who are not candidates for membership. Good neighbourliness has therefore been applied in relations to Cyprus — previously a candidate state, and currently a Member State, but not to Turkey's troubled relations with Armenia.¹⁹ This primarily indicates certain flexibility inherent in the application of the given principle.

¹² Smith, *ibid*, 118.

¹³ Commission Communication, Agenda 2000 for a Stronger and Wider Union I COM (97) 2000 final, 15 July 1997, 48.

¹⁴ 10-11 December 1999, para 4.

¹⁵ P Van Elsuwege and R Petrov, 'Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?' (2011) 36 ELR 688, 695; Smith, note 11 above, 114-115.

¹⁶ Negotiating Framework, Luxembourg, 3 October 2005, Council of the European Union, 12823/1/05.

¹⁷ Council Decision 2008/157/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC [2008] OJ L 051, s 3.1.

¹⁸ Agenda 2000, note 13 above, 42.

¹⁹ The problematic relations or absence of relations between these two countries stem from their complex historical past, in particular different interpretations of the massacres of Armenians in Ottoman Turkey in 1915-1922. Furthermore, the diplomatic relations established between Turkey and Armenia in 1991 were suspended two years later when Turkey closed its border following the Armenian advance into the territory of Azerbaijan around the disputed region of Nagorno-Karabakh; Armenia Country Strategy Paper 2007-2013, 9.

The possibility of its flexible or inconsistent application can also be seen within the narrow approach identified above. While good neighbourliness was applied to Turkey, no similar obligation was imposed on Cyprus which ultimately joined the EU without normalising its relations with Turkey in 2004.²⁰ This has led to a misbalance in the incentives to seek conflict resolution for both parties,²¹ ultimately failing the EU's attempts to reconcile them.²² Meanwhile Turkey's accession process is still halted inter alia by the refusal to sign the Additional Protocol to Ankara Agreement on opening its sea and air routes to Cyprus.²³

Another aspect of the flexibility inherent in the good neighbourliness can be found within the Stabilisation and Association Process (SAP) in the Western Balkans countries which were promised EU membership in 2003.²⁴ Here the principle has been intertwined with the political conditionality and is closely linked to the EU's regional approach. The 'regional approach' established in 1996 was aimed at aiding the implementation of the Dayton/Paris and Erdut peace agreements²⁵ and 'the creation of an area of political stability' by promoting and sustaining democracy and the rule of law with an emphasis on minority rights and the resettlement of refugees and displaced persons.²⁶ The good neighbourliness has been therefore linked to the political conditions of accession, of which minority protection is a constituent element.²⁷ The objectives of cooperation between the EU and each of the partners could not have been achieved separately as it directly involved other neighbours, and therefore the cooperation between them was essential.²⁸ The degree of political progress in each country depended on its preparedness to 'put the development of relations with the EU but also with its neighbours in the region above national(ist) interests'.²⁹ Not only good neighbourliness is closely linked to the political conditionality, but the conditionality

²⁰ KE Smith, 'Enlargement, The Neighbourhood, and European Order' in C Hill and M Smith (eds), *International Relations and the European Union*, 2nd edn (OUP, 2011) 299-323, 316.

²¹ C Yakinthou, 'The EU's Role in the Cyprus Conflict: System Failure or Structural Metamorphosis?' in J Hughes (ed), *EU Conflict Management* (Routledge, 2010) 32-48, 36.

²² According to the Annan Plan, a federation-like United Cyprus Republic would have combined the Republic of Cyprus and the Turkish Republic of Northern Cyprus. A referendum was held in both parts of the island of Cyprus in April 2004 on the issues of its unification according to the Annan plan and joining the EU as a single state. Although the proposal was favoured by the majority in the Turkish Republic of Northern Cyprus, it was rejected by the Greek Cypriots.

²³ Turkey 2013 Progress Report, Commission Staff Working Document, SWD(2013) 417 final, 16 October 2013, 4.

²⁴ Thessaloniki European Council, 19 and 20 June 2003, para 40-43.

On the SAP generally see A Elbasani, *European Integration and Transformation in the Western Balkans: Europeanisation or Business as Usual?* (Routledge, 2013); C Pippin, 'The Rocky Road to Europe: The EU's Stabilisation and Association Process for the Western Balkans and the Principle of Conditionality' (2004) 9 EFAR 219.

²⁵ Dayton Peace Agreement was signed in Paris on December 14, 1995 ending the Bosnian war. The Erdut agreement was signed on 12 November 1995 between the Croatian central authorities and the Serbian authorities in the region of Eastern Slavonia, Baranja, and Western Sirmium.

²⁶ Commission Communication on the Stabilisation and Association Process for Countries of South-Eastern Europe COM (1999) 235 final, 26 May 1999, 2 (hereinafter Stabilisation and Association Communication).

²⁷ This was also obvious from the list of projects supported for this purpose, Article 1, Council Decision implementing Common Position 98/633/CFSP concerning the process on stability and good- neighbourliness in South-East Europe of 22 October 1999.

²⁸ Stabilisation and Association Communication, 3.

²⁹ Ibid, 3.

itself is determined by the ‘regional approach’ or is at the centre of the latter.³⁰ The regional approach has been exemplified within the general conditions established for all parties involved, e.g. the implementation of the Dayton Peace Agreement, and the specific conditions for each of the states.³¹

While this suggests a modified conditionality for the SAP candidate countries, some have suggested that the ‘stabilisation’ element inherent in good neighbourliness gradually receded in terms of its role with the focus shifting to the fulfilment of the core membership conditions.³²

‘Good neighbourliness’ therefore presents itself as a flexible concept which *might* supplement the Copenhagen criteria to require peaceful settlement of conflicts, or to establish ‘appropriate means of developing friendly relations — of mutual respect, of trust and confidence and of security and peace — among states’.³³ Hence, even within the accession policy ‘good neighbourliness’ is not a fixed concept, and taking into account the ENP’s nature, in particular its weak conditionality, limited expectations can be attached to its application.

3. ENP Objectives, Good Neighbourliness and Conflict Resolution

In its widest meaning ‘good neighbourliness’, inclusive of conflict management/resolution, characterises various aspects of the ENP. It is the policy objectives and conditionality, discussed in turn below, that are indicative of the possible incorporation of the concept of good neighbourliness.

It is said that there appears to evolve a culture of ‘mainstreaming’ of conflict prevention among EU institutions with a persisting need to integrate it into existing policies.³⁴ Based on this presumption one would expect the ENP to have embraced the same trend. At the same time the ENP was created with a security rationale in mind and therefore the role of conflict prevention should be more than merely ‘mainstreaming’ it. Besides, the ENP signalled that the EU is willing to bear a ‘shared responsibility’ for conflict prevention with its neighbours.³⁵

Since the majority of ENP policy setting documents is soft law in nature, and therefore lacking legal certainty, it is easy to become entangled in their political rhetoric. To make any sense of the role of the concept of good neighbourliness within the policy, one needs to distinguish the objectives as ‘the intended effects in social reality’³⁶ from the means of achieving those objectives. The ENP documents appear to make no such distinction in rhetoric.

The Wider Europe Communication, which proposed the main features of the policy, highlighted the aim of creating ‘a zone of prosperity and a friendly neighbourhood’.³⁷ The Council in its turn set the policy objectives to be ‘creating an area of shared prosperity and values based on

³⁰ K Inglis, ‘EU Enlargement: Membership Conditions Applied to Future and Potential Member States’ in S Blockmans and A Łazowski (eds), *The European Union and its Neighbours: A Legal Appraisal of the EU’s Policies of Stabilisation, Partnership and Integration* (T.M.C. Asser Press, 2006) 61-92, 74; S Blockmans, ‘Western Balkans (Albania, Bosnia-Herzegovina, Croatia, Macedonia and Serbia and Montenegro, including Kosovo)’ in Blockmans and Łazowski, *ibid.*, 315-355, 108.

³¹ General Affairs Council, Conclusions, 29-30 April 1997, Annex III.

³² C Gordon, ‘The Stabilisation and Association Process in the Western Balkans: An Effective Instrument of Post-Conflict Management’ in J Hughes, *EU Conflict Management* (Routledge, 2010) 49-64, 52.

³³ Inglis, note 30 above, 80.

³⁴ F Cameron, ‘The EU and Conflict’, European Policy Centre, UN Institute for Disarmament Research, 10.

³⁵ Wider Europe Communication, 9.

³⁶ A von Bogdandy, ‘Founding Principles’ in A von Bogdandy and J Bast (eds) *Principles of European Constitutional Law*, 2nd revised edn (Hart, 2010) 11-54, 23.

³⁷ Wider Europe Communication, 4.

... shared responsibility for conflict prevention and conflict resolution'.³⁸ However, this rhetoric phrased in terms of 'objectives' and 'aims' should be distinguished from policy objectives, which can be ultimately reduced to achieving comprehensive security for the EU.

Although security related concerns have been part of the EU agenda in its neighbourhood previously,³⁹ a renewed emphasis on the security of the EU surfaced at the beginning of the new millennium following 9/11 and the anticipation of the most extensive enlargement creating new geographic borders.⁴⁰ Various scholars have pointed at the centrality of the security within the ENP objectives and its obvious links with the European Security Strategy Paper.⁴¹ The security aspects should be considered to be fundamental or central to the entire policy, where the objectives of stability and prosperity are designed to lead to security through political and economic development.⁴² Besides, the ENP has been considered to be inherently linked to the concerns of the Common Foreign and Security Policy (CFSP).⁴³

The role of the neighbourhood is two-fold in terms of the ENP security objectives. First, the neighbourhood is a threat of its own, which was branded a 'malevolent neighbour problem'.⁴⁴ Conflicts, political instability and poverty are all factors in this one-dimensional understanding of security, the significance of which has been acknowledged by the EU institutions.⁴⁵ The conflicts in the South Caucasus, Transnistria and in the Middle East, and now also in the Crimean peninsula, present direct security threats at the EU periphery menacing with potential migration, arms flow, trafficking, or suspension in energy flow. Hence the EU was willing to 'share responsibility' for conflict prevention and conflict resolution as a policy goal.⁴⁶ The 2006 Communication on

³⁸ General Affairs and External Relations Council. Conclusions on Wider Europe- New Neighbourhood, 16 June 2013, VI.

³⁹ Pace makes this observation regarding the Barcelona Process and the security issues in the Middle East. M Pace, 'Paradoxes and Contradictions in EU Democracy Promotion in the Mediterranean: The Limits of EU Normative Power' (2009) 16 *Democratisation* 39-58, 45.

⁴⁰ L Delcour, 'Does the European Neighbourhood Policy Make a Difference? Policy Patterns and Reception in Ukraine and Russia' (2007) 7 *European Political Economy Review* 118, 121.

⁴¹ Commission Communication, European Neighbourhood Policy Strategy Paper COM (2004) 373 final, 12 May 2004 (hereinafter ENP Strategy Paper), 2, 6; A Secure Europe in a Better World, European Security Strategy Paper, Brussels, 12 December 2003, 4, 8; D Lynch, 'The Security Dimension of the European Neighbourhood Policy' (2005) 40 *International Spectator* 33, 34-35; R Del Sarto and T Schumacher, 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy towards the Southern Mediterranean?' (2005) 10 *EFAR* 17, 25-26; C Hillion, 'The EU's Neighbourhood Policy towards Eastern Europe' in A Dashwood and M Maresceau (eds), *Law and Practice of EU External Relations* (CUP, 2008) 309-333, 314.

⁴² M Cremona and C Hillion, 'L'Union fait la force? Potential and Limitations of the ENP as an Integrated EU Foreign and Security Policy' in N Copey and A Mayhew (eds), *European Neighbourhood Policy: The Case of Europe*, Sussex European Institute, SEI Seminar Papers Series Number 1, 2006, 20-44, 22-23; M Cremona, 'The European Neighbourhood Policy' in A Ott and E Vos (eds), *Fifty Years of European Integration: Foundations and Perspectives* (T.M.C. Asser Press, 2009) 221-245, 225.

⁴³ W Wallace, 'Looking after the Neighbourhood: Responsibilities for the EU-25' Policy Papers No. 4, *Notre Europe* 2003, 27; M Smith and K Webber, 'Political Dialogue and Security in the European Neighbourhood Policy: The Virtues and Limits of 'New Partnership Perspective'' (2008) 13 *EFAR* 73, 81.

⁴⁴ R Seidelmann, 'The EU's Neighbourhood Policies' in M Telò (ed), *The EU and Global Governance* (Routledge, 2009) 261-282, 276; G Meloni, 'Who's My Neighbour?' (2007) 7 *European Political Economy Review* 24, 33.

⁴⁵ General Affairs and External Relations Council, Conclusions on Strengthening the European Neighbourhood Policy, 18-19 June 2007, 2.

⁴⁶ General Affairs and External Relations, Council Conclusions, 16 June 2003, IV.

Strengthening the ENP confirmed that addressing the conflicts in the region was one of the key purposes of the ENP.⁴⁷ The second dimension, less relevant for the purposes of this paper, is the creation of a necessary ‘buffer zone’ or ‘functioning semi-periphery’ between the EU and the troubled areas further in the East and South.⁴⁸

Addressing the ‘malevolent neighbour problem’ should be considered to be part of the EU foreign policy objectives, particularly those of the CFSP. The ENP as part of EU foreign policy has to necessarily pursue the objectives defined in Article 21 TEU which sets a common list applicable across all areas of external action.⁴⁹ Within this common list it is still possible to discern CFSP specific objectives,⁵⁰ including preserving peace, preventing conflicts and strengthening international security, in accordance with the purposes and principles of the UN Charter,⁵¹ the principles of the Helsinki Final Act⁵² and the aims of the Charter of Paris,⁵³ including those relating to external borders. This objective has been considered to stretch beyond achieving military security to pertain to attaining ‘peace’ due to the references to the documents above.⁵⁴ ‘Preventing conflicts’ can be argued includes peacefully resolving them as the existing ‘frozen’ conflicts can become ignited at a slight provocation. Good neighbourliness, understood as a call to resolve conflicts peacefully, would therefore be pursued in the EU foreign policy. Besides, Article 21(2)(b) sets the objective of consolidating and supporting inter alia the principles of international law, which is said to include the principle of good neighbourliness crystallised in certain obligations.⁵⁵

One might argue that Article 21(3) TEU applies the common list of objectives to the EU external action covered by Title V of the TEU and by Part Five of the TFEU, which technically leaves the neighbourhood policies outside the scope of Article 21 TEU. Such argument might be raised due to the fact that Article 8 TEU on the neighbourhood policy stands separately in Common Provisions in Title I TEU. On the other hand, the wording of Article 21(1) and (2) is viewed to be sufficiently wide to allow its application over Article 8 TEU.⁵⁶ Besides, as an originally cross-pillar and currently a cross-Treaty policy, comprising elements from various areas of EU foreign action,

⁴⁷ Communication on Strengthening the ENP, 9.

⁴⁸ R Zaiotti, ‘Of Friends and Fences: Europe’s Neighbourhood Policy and the ‘Gated Community Syndrome’ (2007) 29 *European Integration* 143, 149; A Marchetti, ‘The European Neighbourhood Policy: Foreign Policy at the EU’s Periphery’ Discussion Paper C158, Centre for European Integration Studies 2006, 16-17; D Lynch, ‘The European Neighbourhood Policy’, Institute for Security Studies, Paper presented at the workshop ‘European Neighbourhood Policy: Concepts and Instruments,’ Prague, June 2004, organised by the European Commission with DGAP, CEFRES and IIR, 2.

⁴⁹ The list of objectives applies to policies pursued both under the TEU and TFEU; see Article 205 TFEU.

⁵⁰ P Eeckhout, *External Relations of the European Union: Legal and Constitutional Functions*, 2nd edn (OUP, 2011) 169.

⁵¹ The Charter of the United Nations, 26 June 1945.

⁵² Helsinki Final Act, Conference on Security and Cooperation in Europe, 1975.

⁵³ Charter of Paris for a New Europe, Organisation for Security and Cooperation in Europe, 21 November 1990.

⁵⁴ R Wessel, *The European Union’s Foreign and Security Policy: A Legal Institutional Perspective* (Kluwer Law International, 1999) 64-65.

⁵⁵ E Baseska, ‘The Principle of Good Neighbourliness in European Law’ (2014), Thesis submitted at the University of Groningen, Chapter 1.

⁵⁶ M Cremona, ‘The Two (or Three) Treaty Solution: The New Treaty Structure of the EU’ in A Biondi, P Eeckhout and S Ripley (eds), *EU Law After Lisbon* (OUP, 2012) 40-61, 46-47.

the ENP needs to pursue the common objectives set in Article 21 TEU.⁵⁷ Moreover, it might be argued that the spirit of Article 21 TEU has been translated into Article 8 TEU on the neighbourhood policies:

‘The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation’.

A question to ask in this respect is what does the reference to ‘good neighbourliness’ denominate here? First of all, it is phrased as ‘aims’ as opposed to a condition obliging the EU to a certain position seen in the phrase ‘founded on the values of the Union’. The reference to good neighbourliness can therefore be first viewed within the context of policy objectives.

On the one hand, the reference to the area of good neighbourliness in Article 8(1) TEU, especially in the context of ‘peaceful relations’ stressed therein, can be viewed as the link with the CFSP foreign policy objectives, including conflict prevention. The reference to the ‘area of prosperity and good neighbourliness’ has also been viewed as an expression of the ENP’s ‘security and stability’ component.⁵⁸ Besides, the combination of these references can pertain to more than purely security related considerations given the recent emphasis on solidarity and regionalism.⁵⁹ That it is an ‘area of prosperity and good neighbourliness’ might also be indicative of the rationale of regional cooperation. The initial European Council and Council Conclusions on the ENP indeed indicated their preference for the support of cooperation and regionalism between the Eastern European countries, acknowledging that inter-regional cooperation will allow to ‘develop the region’s potential to the full’.⁶⁰

On the other hand, there might be another interpretation of the reference to ‘good neighbourliness’ here. This term can be found in the Treaties only in Article 8 TEU. It can be argued that it fulfils another function than merely specifying the objectives of the CFSP for the neighbourhood policies. This function might be the classification or the characterisation of the neighbourhood policies, inclusive of the ENP, that is an alternative to the accession policy.⁶¹ The reference to good neighbourliness here embodies the spirit of the Article, which is to provide an alternative to membership under Article 49 TEU. It is reminiscent of the language used in early ENP papers mentioned above which were keen on stressing the alternative nature of the new cooperation. Thus, Article 8 TEU merely has continued the previous trend, or put it otherwise has codified the ENP rhetoric. In this context, one might argue that Article 8 TEU is a mere reference provision, not intended to create legal obligations for the EU. However, the imperative language of Article 8(1) TEU and the possibility of concluding a legally binding agreement under Article 8(2) TEU suggest that the latter cannot be dismissed altogether.⁶² Nevertheless, one can hardly argue that the reference to ‘good neighbourliness’ creates an obligation for the EU institutions to impose a condition of good neighbourliness on its neighbours similar to the accession process.

⁵⁷ N Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU* (Hart, 2014) 32; N Ghazaryan, ‘The Law and Political Objectives of the European Neighbourhood Policy in the East: A Difficult Marriage or Singing in Unison?’ (2012-2013) 15 *CYELS* 619, 635.

⁵⁸ Van Elsuwege and Petrov, note 11 above, 696.

⁵⁹ M Cremona, ‘EU Enlargement: Solidarity and Conditionality’ (2005) 30 *ELR* 3, 16.

⁶⁰ European Council Conclusions, 29 January 2003, 7; see also General Affairs and External Relations Council, Conclusions, 18 November 2002, II.

⁶¹ Van Elsuwege and Petrov, note 11 above, 698.

⁶² C Hillion, ‘Anatomy of EU Norm Export towards the Neighbourhood: The Impact of Article 8 TEU’ in P Van Elsuwege and R Petrov (eds), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union: Towards a Common Regulatory Space?* (Routledge, 2014) 13-20, 16-17.

It can therefore be suggested that good neighbourliness understood as a call to peaceful resolution of conflicts is implanted within the original security agenda of the ENP, and also can be traced to the objectives of the EU foreign policy. Even if a similar meaning can be implied in the relevant reference in Article 8 TEU, it can be argued alternatively that the term ‘good neighbourliness’, particularly in the context of the ENP, should be viewed as a specification of the cooperation between the EU and the neighbouring states *as an alternative to accession*. Although Article 8 TEU does not establish ‘good neighbourliness’ as a condition for cooperation, it is still apt to ask whether the latter has found a place within the ENP conditionality mechanism.

4. Good Neighbourliness and ENP Conditionality: The Case of Nagorno-Karabakh Conflict

The Nagorno-Karabakh conflict, which erupted following the fall of the Soviet Union,⁶³ received little attention from the EU at the time, preoccupied with the doorstep conflicts in the Balkans.⁶⁴ Its presence in the conflict was primarily aimed at humanitarian aid provided through the ECHO and Food Aid Operations.⁶⁵ Negotiations over the settlement of the conflict have been pursued within the OSCE Minsk Group since 1994, from which the EU has been virtually excluded.⁶⁶ Despite the security threats this conflict might present, the EU has been noted to have very little understanding as to what can be done.⁶⁷

Conditionality has been said to be one of the ‘principal channels’ to influence conflicts in the EU neighbourhood through contractual relations.⁶⁸ Although contractual relations were established both with Armenia and Azerbaijan via Partnership and Cooperation Agreements concluded in 1996,⁶⁹ both agreements lacked any meaningful conditionality over the issue of Nagorno-Karabakh conflict.⁷⁰ Thus, the ENP conditionality was the step-up to which expectations

⁶³ The conflict erupted over the status of the largely Armenian populated autonomous oblast in Azerbaijan. Mass protests in the end of 1980s to reunite with Armenia resulted in escalation of violence, the killings of Armenians in Azeri town of Sumgait and Baku in 1990, prompting a Soviet intervention in Baku and followed by exchanges in refugee populations. Full-scale military activities intensified after the break-up of the Soviet Union. A ceasefire was signed in May 1994 with the efforts of the OSCE.

⁶⁴ B Coppieters, ‘An EU Special Representative to a New Periphery’ in ‘The South Caucasus: A Challenge for the EU’ Chaillot Papers No 65, EU Institute for Security Studies, Paris, 2003, 159-170, 169.

⁶⁵ Council Regulation No 1257/96 concerning humanitarian aid [1996] OJ L 163/1; Armenia ENP Country Strategy Paper 2007-2013, 13.

⁶⁶ The permanent members of the OSCE Minsk Group include Belarus, Germany, Italy, Sweden, Finland, Turkey, Armenia and Azerbaijan. The OSCE Troika includes the representatives of Russia, the US and France are co-chairmen.

⁶⁷ EJ Stewart, ‘Mind the Normative Gap? The EU in the South Caucasus’ in R Whitman (ed), *Normative Power Europe: Empirical and Theoretical Perspectives* (Palgrave Macmillan, 2011) 65-82, 78.

⁶⁸ N Tocci, ‘Comparing the EU’s Role in Neighbourhood Conflicts’ in M Cremona (ed), *Developments in EU External Relations* (OUP, 2008) 216-243, 218-219.

⁶⁹ Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other [1999] OJ L 239/3; Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other [1999] OJ L 246/3.

⁷⁰ N Ghazaryan, ‘The ENP and the Southern Caucasus: Meeting the Expectations?’ in R Whitman and S Wolff (eds), *The European Neighbourhood Policy in Perspective: Context, Implementation and Impact* (Routledge, 2010) 223-246, 225-226.

could have been attached as the policy promised closer economic and political cooperation with the EU in comparison with the PCAs.⁷¹

The ENP conditionality is a fuzzy concept, where denominating the place of peaceful resolution of conflicts is rather problematic. Thus, some general observations should be made regarding the incorporation of good neighbourliness within the ENP conditionality prior to testing its application in the case of Nagorno-Karabakh conflict.

4.1. ENP Conditionality: Where Does Good Neighbourliness Fit?

Adopting enlargement-like positive conditionality was supposed to accord the ENP with a similar ‘transformationist’ rationale to motivate the EU neighbours to undertake profound reforms. However, borrowing the conditionality principle from the accession practice has not necessarily worked in favour of the ENP.⁷²

Firstly, the accession criteria in general have been replaced with the concept of ‘shared values’.⁷³ The prospect of closer economic integration with the EU depends on the progress in demonstrating shared values,⁷⁴ which is said to be based on Copenhagen criteria.⁷⁵ Thus, the Action Plans, the main documents setting the priorities for cooperation, follow broadly the Copenhagen criteria.⁷⁶ In terms of the conditions for compliance a distinction should be made between *acquis* and non-*acquis* conditionality, where expectations as to fulfilment of non-*acquis* conditionality are limited even in the case of the enlargement.⁷⁷ The non-*acquis* conditionality, or put it differently the political or value conditionality, is even more problematic due to the way it is framed within the ENP.

Is the good neighbourliness a part of the ENP political/value conditionality? If one is to judge on the basis of the wording of Article 8 TEU, the political conditionality is to be found within the values of the EU which is the foundation for the ‘special relationship’ with the neighbours. The values of the EU are defined in Article 2 TEU which as such makes no reference to peaceful resolution of conflicts. In this way the principle of good neighbourly relations would be omitted from the conditionality mechanism of the ENP. On the other hand, the reliance on the concept of ‘shared values’ might suggest another possibility. Despite the fact that Article 8 TEU specified that it is the *EU’s* values that are to be shared by the neighbours, as noted by Leino and Petrov, the abstraction in the notion of ‘shared values’ implies their very general nature and allows flexibility

⁷¹ The ultimate promise of the PCAs in question was ‘gradual rapprochement’ between the parties.

⁷² M Comelli, E Greco, N Tocci, ‘From Boundary to Borderland: Transforming the Meaning of Borders through the European Neighbourhood Policy’ (2007) 12 EFAR 203, 210.

⁷³ E Tulmets, ‘Adapting the Experience of Enlargement to the Neighbourhood Policy: the ENP as a Substitute to Enlargement?’ in P Kratochvil (ed), *The European Union and Its Neighbourhood: Policies, Problems and Priorities* (Prague, Institute of International Relations, 2006) 29-57, 30.

⁷⁴ Wider Europe Communication, 4; ENP Strategy Paper, 8.

⁷⁵ Tulmets, note 73 above, 32.

⁷⁶ EU-Azerbaijan Action Plan, s 3, priority areas 2, 3, 4, 6, 7; EU/Georgia AP, s 3, priority areas 1, 2, 3; EU/Armenia AP, s 3, priority areas 1, 2, 3, 4, 5; G Sasse, ‘The European Neighbourhood Policy Conditionality Revisited for the EU’s Eastern Neighbours’ (2008) 60 *Europe-Asia Studies* 295, 302.

⁷⁷ D Kochenov, ‘The Issue of Values’ in P Van Elsuwege and R Petrov (eds), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union: Towards a Common Regulatory Space?* (Routledge, 2014) 46-62, 52-59; D Kochenov, ‘The ENP Conditionality: Pre-Accession Mistakes Repeated’ in L Delcour and E Tulmets (eds), *Pioneer Europe? Testing EU Foreign Policy in The Neighbourhood* (Nomos, 2008) 105-120, 108-110.

in terms of their monitoring.⁷⁸ Thus, despite finding a footing in the EU legal framework, the concept of ‘values’ nevertheless provides a scope for political choices in terms of which values to include or prioritise or what level of adherence to require. The EU is free to choose to ‘value’ good neighbourliness if it wishes to do so.

Besides, it might be argued that there is a certain place for the principle of good neighbourliness outside the ‘value’ dimension. Here it should be noted that the progress of the ENP partners does not solely depend on the adherence to shared values, but also the ‘will and capacity to implement agreed priorities’.⁷⁹ It is therefore not clear whether the values should be adhered to as a precondition or alongside the priorities agreed, or whether the priorities themselves are necessarily reflective of the EU values. Moreover, the agreed priorities of cooperation are contained in the Action Plans which fail to clarify whether any specific conditions, including those relating to good neighbourliness, are intended to serve as *preconditions* for cooperation in other prioritised areas, creating a problem of the sequence of priorities.⁸⁰

The intention to prioritise good neighbourliness should be traced to the policy documents. While it was clear in the Wider Europe Communication that commitment will be required as regards the shared values and the implementation of political, economic and institutional reforms,⁸¹ it made no reference to regional or conflict-related conditionality. The subsequent ENP Strategy Paper appeared to have suggested that the privileged partnership would be based among the usual criteria on the promotion of good neighbourly relations,⁸² suggesting that the latter, inclusive of conflict prevention *was or might have become* part of conditionality. The EU was to provide incentives for the parties to settle their bilateral disputes.⁸³ In relation to the inclusion of the South Caucasus within the policy, the ENP Strategy Paper stressed the need for enhanced efforts to resolve the conflicts and develop good neighbourly relations.⁸⁴ At the same time a call came from the European Parliament for intertwining of conditionality and good neighbourliness modelled after the SAP with an involvement also from Turkey and Russia, which was nevertheless left on paper.⁸⁵

In June 2004 the General Affairs Council mentioned that the privileged partnership would build on commitments corresponding to Copenhagen criteria, but also on efforts towards the peaceful resolution of regional conflicts.⁸⁶ It added that the progress would depend on the adherence to values and the fulfilment of jointly agreed priorities. This suggests that conditionality is understood to embrace all priority areas identified in the Action Plans.⁸⁷ The Council in 2005

⁷⁸ P Leino and R Petrov, ‘Between “Common Values” and Competing Universals: The Promotion of the EU’s Common Values through the European Neighbourhood Policy’ (2009) 15 ELJ 654, 665-666.

⁷⁹ ENP Strategy Paper, 8.

⁸⁰ Ghazaryan, *The European Neighbourhood Policy*, note 57 above, 128, 140, 182.

⁸¹ Wider Europe Communication, 4.

⁸² ENP Strategy Paper, 3, 13.

⁸³ *Ibid*, 9.

⁸⁴ *Ibid*, 11.

⁸⁵ European Parliament, Draft Report on the European Neighbourhood Policy (2004/2166(INI)) Committee on Foreign Affairs, 14 April 2005.

⁸⁶ General Affairs Council, Conclusions, 14 June 2004, 11.

⁸⁷ For instance the EU-Armenia Action Plan states that ‘[t]he level of ambition of the relationship will depend on the degree of Armenia’s commitment to common values as well as its capacity to implement jointly agreed priorities, in compliance with international and European norms and principles. The pace of progress of the relationship will acknowledge fully Armenia’s efforts and concrete achievements in meeting those commitments’.

mentioned with regards to South Caucasus that particular attention would be paid to ‘encouraging regional cooperation and progress in conflict resolution’.⁸⁸ However, the ‘particular attention’ fell short of being translated into an SAP-like regionalism or a requirement to resolve the conflict with peaceful means as part of the commitments of the parties. That enhanced regional cooperation can be a way out for solving the conflicts has been considered by the Commission but not in terms of conditionality, but rather assisting the regional initiatives, such as the ‘Black Sea Synergy’.⁸⁹

A new emphasis on differentiation and ‘more for more’ in the revised ENP appears to shift the responsibility firmly with the neighbouring states in terms of conflict resolution, where the regional development will take place along larger soft frameworks, such as the Eastern Partnership.⁹⁰ A clear change of language is noticeable in the 2012 Joint Communication, where the responsibility is no longer ‘shared’ but it is mainly with the conflicting parties.⁹¹ Thus, the EU’s role is limited to the support for post-crisis scenarios,⁹² which is also confirmed by the following analysis of the application of the conditionality mechanism in the case of Nagorno-Karabakh conflict.

4.2 The Non-Application of the Principle of Good Neighbourliness

As noted earlier, Armenia and Azerbaijan each pursued bilateral cooperation with the EU within their respective PCAs prior to the ENP. The common article on General principles of cooperation made reference to the UN Charter, the Helsinki Final Act and the Paris Charter for New Europe. In this respect it can be argued that ‘good neighbourliness’ was present in the relations between the parties indirectly, as Article 2 of the UN Charter establishes the general principle of international law of peaceful settlement of disputes.⁹³ The Helsinki Final Act 1975 similarly adopts a principle of prohibition of use of force and the requirement of peaceful settlement of conflicts.⁹⁴ Also the Paris Charter confirmed the principles of Helsinki as regards ‘friendly relations among participating states’.⁹⁵ Although the agreements themselves made no space for a greater involvement of the EU with conflict related issues, they established a political dialogue between the parties which allowed for voicing the EU’s preferences for its peaceful resolution

In comparison with the PCAs the initial emphasis of the ENP on ‘shared responsibility’ as regards the conflicts has been noted to signify the Union’s preparedness for a greater involvement,⁹⁶ unlike its previous distant attitude. However, this quest for a greater involvement did not materialise in a form of strict or clear conditionality. Imposing strict conditionality on the parties would have meant taking over Russia’s dominant role in the stalled negotiation process. Besides, the

⁸⁸ General Affairs Council, Conclusions, 25 April 2005, 12

⁸⁹ Communication on Strengthening the ENP, 10.

⁹⁰ Commission Communication, A New Response to a Changing Neighbourhood, 25 May 2011, 2.

⁹¹ Ibid.

⁹² ‘EU bolsters its support to reformers in its Southern and Eastern neighbourhoods’, Press release, ENP Package, 15 May 2012, 8.

⁹³ A Cassese, *International Law*, 2nd edn (OUP, 2005), 58.

⁹⁴ Declaration on Principles Guiding Relations between Participating States, Conference on Security and Cooperation in Europe.

⁹⁵ Note 53 above.

⁹⁶ G Sasse, ‘The ENP and Conflict Management: A Comparison of Moldova and the Caucasus’ in J Hughes (ed), *EU Conflict Management* (Routledge, 2010) 92-109, 94.

conditionality will have effects if applied to both parties equally.⁹⁷ This was to be doubted taking into account the EU's close energy links with Azerbaijan resulting in practice in abandoning of the political conditionality of the ENP.⁹⁸ Another reason for initial scepticism regarding the application of good neighbourliness to the case of Nagorno-Karabakh was the lack of magnitude of the carrot on offer.

Although Armenia was eager to cooperate to strengthen its economic ties with the EU to compensate for its political and economic isolation in the region,⁹⁹ its strong military and economic dependence on Russia did not allow making radical changes in its 'complementarity policy'.¹⁰⁰ The DCFTA promised by the EU would have significantly improved Armenia's economic situation, but only the membership perspective with sufficient guarantees of its security would have incentivised the latter to make independent choices, especially in the view of the Russian pressure to join a competing project of the Eurasian Economic Community with its Customs Union.¹⁰¹ Despite its interests in the economic cooperation with the EU, Azerbaijan does not demonstrate much eagerness to integrate into the EU: the integration into 'the European and Euro-Atlantic political, security, economic and other institutions' constitutes a more general strategic goal of the country.¹⁰² The ruling regime controlling large revenues from country's rich natural resources has no sense of urgency to integrate to the internal market.¹⁰³ The promise of the DCFTA is, therefore, hardly an incentive for the governing regime to make concessions in the negotiation process.

So, to which extent do the operative elements of the ENP conditionality, that is the ENP Action Plans, the monitoring mechanism and the financial assistance provided,¹⁰⁴ include good neighbourliness as a condition?

4.2.1 In Search of Good Neighbourliness in the Priorities of Cooperation

⁹⁷ Tocci, note 68 above, 234-235.

⁹⁸ In 2006 the EU signed a Memorandum of Understanding on Energy Cooperation with Azerbaijan. The Baku-Tbilisi-Ceyhan and the Baku-Tbilisi-Erzurum pipelines for oil and gas secured economic cooperation with Azerbaijan, strategically important for the EU in its quest to diversify the supply routes of oil and gas. On ENP political conditionality in the South Caucasus see Ghazaryan, *The European Neighbourhood Policy*, note 57 above, 125-176.

⁹⁹ National Security Strategy of Armenia, Ministry of Foreign Affairs, 26 January 2007.

¹⁰⁰ Two Russian military bases are located in the country: in 2010 the parties agreed to extend the Russian military presence in Armenia until 2044 (the Russian-Armenian military cooperation was based inter alia on the Treaty on Friendship and Cooperation signed in 1997). Armenia is also one of the founding members of the Collective Security Treaty Organisation whereby Russia guarantees its security. Russia has major stakes in various sectors of Armenian economy, including banking and telecommunications.

S Vasilyan, 'The External Legitimacy of the EU in the South Caucasus' (2011) 16 EFAR 341, 346; A Iskandaryan, 'Armenia-Russia Relations: Geography Matters' in A Hug (eds), *Spotlight on Armenia* (UK, Foreign Policy Centre, 2011) 54.

¹⁰¹ The current members include Russia, Belarus and Kazakhstan; see www.eurasec.com; 'Will Armenia Join EurAsEC? Russian President Medvedev is Pressing for the Three Observer Members of EurAsEc to Join as Full Members' *Commonspace EU* 20 March 2012.

¹⁰² National Security Concept of the Republic of Azerbaijan, Ministry of Foreign Affairs, 23 May 2007.

¹⁰³ 'Azerbaijan: Vulnerable Stability' International Crisis Group, Europe Report No 207, 3 September 2010, 2-5; F Guliyev, 'Oil Wealth, Patrimonialism, and the Failure of Democracy in Azerbaijan' *Caucasus Analytical Digest* 02/09, Bremen, 4-5.

¹⁰⁴ Baracani identifies these components as the constituents of the 'ENP method'; E Baracani, 'European Union Democratic Anchoring' in E Baracani (ed), *Democratisation and Hybrid Regimes: International Anchoring and Domestic Dynamics in European Post-Soviet States* (European Press Academic Publishing, 2011) 111-134, 118.

The Action Plans remain the main documents setting the conditions for cooperation to this date with both Armenia and Azerbaijan. They note the ‘shared responsibility in conflict prevention and conflict resolution’.¹⁰⁵

In both Action Plans the peaceful settlement of conflict is prioritised, suggesting it constitutes part of the ENP conditionality. However, this quick conclusion is somewhat unwarranted. First of all, it is clear that the EU is not prepared to exercise any leverage over the outcome of the conflict due to the framing of the priorities. Both Action Plans in their priorities for contributing to a peaceful resolution of Nagorno-Karabakh conflict provide for almost identical four actions. These include enhanced diplomatic efforts and support for peaceful solution, inter alia via the increased support to the OSCE framework, encouraging people to people contacts and intensification of the dialogue between the EU and the parties concerned aimed at the settlement of the conflict. A few observations should be made in this regard. First, the Armenian Action Plan in the Priority Area 7 mentions that the support should be intensified for the efforts to solve the conflict on the basis of international norms and standards, including the principle of self-determination vital for the Armenian side.

While this might suggest a certain stance on behalf of the EU regarding the outcome of the conflict, the EU-Azerbaijan Action Plan suggests otherwise. Its introduction refers to the EU commitment to the territorial integrity of Azerbaijan. This double act of the EU ultimately presents the EU’s neutral stance in the conflict which according to the Action Plans is limited to the intensification of support via the Special Representative and the already existing OSCE framework. The support for OSCE is the multilateral approach, which has been confirmed as the main avenue for EU conflict prevention strategies in 2011.¹⁰⁶ The Union’s neutral stance can be explained among other things with reference to lack of consensus between the EU Member States or even its institutions. While the majority of the EU institutions support the ‘Madrid Principles’ set as the OSCE proposed framework for solving the conflict, the Parliament for instance demonstrates a one-sided attitude favouring the territorial integrity of Azerbaijan,¹⁰⁷ which is more onerous on the Armenian side in comparison with the ‘Madrid Principles’.

In its turn, the role of the Special Representative in conflict resolution was considered to be limited due to his late arrival to an already overcrowded political scene and the limited scope of his mandate.¹⁰⁸ The latter has gradually changed since the first appointment.¹⁰⁹ Initially it included activities contributing to the prevention of conflicts, and preparing for the return of peace to the region. The Special Representative’s mandate to assist in conflict resolution did not create a separate role for the Union and was confined to supporting the OSCE Minsk Group.¹¹⁰ The mandate

¹⁰⁵ EU-Armenia Action Plan, 1; EU-Azerbaijan Action Plan, 1.

¹⁰⁶ Foreign Affairs Council, Conclusions, 20 June 2011, 2.

¹⁰⁷ European Parliament Report on the Review of the European Neighbourhood and Partnership Instrument (2008/2236(INI)) 28 January 2009, para 39.

¹⁰⁸ A Labeledzka, ‘The Southern Caucasus’ in S Blockmans and A Łazowski (eds), *The European Union and Its Neighbours: A Legal Appraisal of the EU’s Policies of Stabilisation, Partnership and Integration* (T.M.C. Asser Press, 2006) 575-612, 606.

¹⁰⁹ Council Joint Action 2003/496/CFSP concerning the appointment of an EU SR for the SC [2003] OJ L 169/74. For the extensions and amendments of the mandate see Council Joint Action 2003/872/CFSP [2003] OJ L 326/44; Council Joint Action 2004/532/CFSP [2004] OJ L 234/16; Council Joint Action 2005/100/CFSP [2005] OJ L 199/92.

¹¹⁰ Council Joint Action 2003/496/CFSP concerning the appointment of an EU Special Representative for the South Caucasus [2003] OJ L 169/74; Council Joint Action 2003/872/CFSP [2003] OJ L 326/44.

was further expanded to include creating conditions for progress on settlement of conflicts,¹¹¹ which nevertheless did not result in a more significant presence for the EU. In this connection the August 2008 war between Russia and Georgia was viewed as a testament to the failure of the role of the Special Representative in the region.¹¹²

That the EU actors do not share a common vision of the EU's role in South Caucasian conflict prevention was demonstrated by one of the first moves of the High Representative Catherine Ashton to abolish the mandates of the Special Representative for the South Caucasus and Moldova.¹¹³ This went against the previous rhetoric of actively contributing to the conflict resolution and peace building in the region. A new Special Representative was later appointed in September 2011 for the South Caucasus and the crisis in Georgia.¹¹⁴ However, the mandate still merely reflects the limited nature of EU involvement confined to assisting the OSCE in Nagorno-Karabakh. A new twist within the mandate was the intensification of the Union's dialogue with the main interested actors concerned, which will mean first of all Russia and Turkey. However, the Crimean events demonstrated the inefficiency of the dialogue with Russia in the region widely, which casts a shadow on the possibility of establishing a meaningful debate regarding the South Caucasus.

Thus, while the substance of the Action Plan priorities does not entail specific actions imposed on either Armenia or Azerbaijan to contribute actively to the resolution of the conflict, it is the status of the priorities that might be indicative of certain conditionality.

If the numbering of the priorities is a criteria by which to judge their significance, in the Azerbaijani case the contribution to the peaceful resolution of the conflict is the first amongst priorities, while in the case of Armenia it is only the seventh. However, the numbering of the priorities is not suggestive of the conditionality, but rather of the country's own leverage over the EU. It is due to the principle of joint ownership, allowing the partner state to have a say in the direction and dynamics of the cooperation.¹¹⁵ Furthermore, as noted in section 4.1 none of the prioritised actions is a precondition for the development of the cooperation, and the mentioned priority in the Azerbaijani Action Plan is no exception in this respect.

The priority on regional cooperation to be found in both Action Plans should also be dismissed in terms of incorporation of the principle of good neighbourliness. The specific actions provided are suggestive of the EU's general support for the development of regional structures and initiatives, rather than establishing an SAP-like condition for integration.

Thus, none of the relevant priority areas of the Action Plans requires either of the countries to undertake any efforts regarding the resolution of the conflict as a precondition for the advancement of relations with the EU. The question to ask then is what is supposed to be perceived as progress in the implementation of these priority actions?

¹¹¹ Council Joint Action 2006/121/CFSP appointing the European Union Special Representative for the South Caucasus [2006] OJ L 49/14.

¹¹² Sasse, note 96 above, 103.

¹¹³ 'EU Plans To Scrap South Caucasus, Moldova Envoys' *Radio Free Europe*, 31 May 2010; 'EU and Nagorno-Karabakh: a "better than nothing" approach' *EU Observer*, 15 March 2011.

¹¹⁴ Philippe Lefort was appointed by Council Decision 2011/518/CFSP appointing the European Union Special Representative for the South Caucasus and the crisis in Georgia [2011] OJ L 221/5. The mandate was prolonged subsequently by Council Decision 2012/326/CFSP extending the mandate of the European Union Special Representative for the South Caucasus and the crisis in Georgia [2012] OJ L 165/53 and Council Decision 2013/353/CFSP of 2 July 2013 amending and extending the mandate of the European Union Special Representative for the South Caucasus and the crisis in Georgia [2013] OJ L 185.

¹¹⁵ ENP Strategy Paper, 8.

4.2.2. *Monitoring of the Conflict Resolution in Nagorno-Karabakh*

It is the PCA joint institutions that monitor the implementation of the Action Plans, while the Commission issues annual reports on their progress in cooperation with the High Representative.¹¹⁶ Monitoring of the Action Plan implementation is the element of the ENP mechanism which emphasises the determination on behalf of the EU to send a regular message to the partner countries on their potential to come closer to the EU.¹¹⁷ The role of the PCA joint institutions should be largely ignored in terms of their monitoring function as they are a mere hand-shaking exercise.¹¹⁸ In the annual progress reports for both Armenia and Azerbaijan the Commission considers the peaceful resolution of conflict within the section on political dialogue and reform.¹¹⁹ Although this might suggest the implied presence of the good neighbourliness within the ENP political conditionality, not many expectations can be attached to this in the view of the weak or at times absent political conditionality.¹²⁰

In terms of substance of the monitoring, the annual reports merely demonstrate a position of a passive observer, whereas the monitoring should be undertaken with the purpose of linking it to the fulfilment of conditions as to a certain end, e.g. suspension of aid, allocation of additional assistance, advancing the relations via the conclusion of a new agreement etc. However, the lack of progress in the resolution of the conflict noted regularly by the Commission has not led to any substantive changes in the policy dynamics.

None of the stages demarcating certain advancement in the cooperation has been linked to the efforts on the conflict resolution. These can include the initiation of the Eastern Partnership with a promise of a more intense cooperation with the Eastern neighbours, the starting of the negotiations on the new Association Agreement or a Deep and Comprehensive Free Trade Agreement (DCFTA). The involvement of all Eastern neighbours within the Eastern Partnership, including Belarus, suggested a lack of any ex-ante conditionality.¹²¹ Similarly, the negotiation of the Association Agreements commenced with Armenia and Azerbaijan in 2010 without any conditionality. The negotiations of the DCFTA with Armenia were commenced in 2012 based only on economic reform related conditionality. The DCFTA with Azerbaijan is not currently a viable option not due to certain conditionality, but rather the country's protracted and reluctant accession process to the WTO, the membership to which is a precondition for concluding a DCFTA.¹²²

¹¹⁶ See section 5 of EU/Armenia, EU/Azerbaijan Action Plans.

¹¹⁷ Wider Europe Communication, 18.

¹¹⁸ Ghazaryan, *The European Neighbourhood Policy*, note 57 above, 151-154.

¹¹⁹ Progress in 2012 and Recommendations for Action Armenia, Joint Staff Working Document SWD (2013) 79 final, 20 March 2013; Progress in 2011 and Recommendations for Action Armenia, Joint Staff Working Document, SWD (2012) 110 final, 15 May 2012; Progress Report Armenia 2011, Commission Staff Working Document SEC (2011) 639, 25 May 2011; Progress Report Armenia 2010, Commission Staff Working Document SEC (2010) 516, 12 May 2010; Progress Report Armenia 2009, Commission Staff Working Document SEC (2009) 511/2, 23 April 2009; Progress Report Armenia 2008, Commission Staff Working Document SEC (2008)392, 3 April 2008; Progress in 2012 and Recommendations for Action Azerbaijan, Joint Staff Working Document SWD (2013) 88 final, 20 March 2013; Progress in 2011 and Recommendations for Action Azerbaijan, Joint Staff Working Document SWD (2012) 111 final, 15 May 2012; Progress Report Azerbaijan 2011, Commission Staff Working Document SEC (2011) 640, 25 May 2011; Progress Report Azerbaijan 2010, Commission Staff Working Document SEC(2010) 519, 12 May 2010; Progress Report Azerbaijan 2009, Commission Staff Working Document SEC (2009) 512/2, 23 April 2009; Progress Report Azerbaijan 2008, Commission Staff Working Document SEC (2008)39, 3 April 2008.

¹²⁰ On the issue of ENP political conditionality in the South Caucasus see Ghazaryan, *The European Neighbourhood Policy*, note 57 above 125-176.

¹²¹ Commission Communication, Eastern Partnership COM (2008) 823 final, 3 December 2008, 2.

¹²² Azerbaijan applied for WTO membership in 1997, but it since made little progress in satisfying the entry requirements.

The monitoring which takes place via political dialogue also confirms the EU's role as a passive observer incapable of pressurising the parties or even taking a stance. Often its reaction to the events in Armenian-Azerbaijani relations is muted. For instance, in August 2012 upon his extradition, Ramil Safarov, a murderer of an Armenian officer convicted to life imprisonment in Hungary, was released in Azerbaijan raising serious concerns regarding the rule of law in the country and causing a diplomatic breakdown between Armenia and Hungary. It took a few days for the High Representative and the ENP Commissioner to issue a cautiously worded statement expressing 'concern' and calling both the Armenian and the Azerbaijani sides to 'exercise restraint'.¹²³ As a result the EU comes across as not being capable of taking a stance on the matters capable of causing further instability.

4.2.3. Financial Assistance as Part of ENP Conditionality

In other external conflicts, including the Middle East and South Ossetia, it is through aid that the EU acquired a certain role.¹²⁴ The same cannot be said about the Nagorno-Karabakh conflict.

The 'good neighbourliness' rhetoric found its way to the European Neighbourhood and Partnership Instrument (ENPI) Regulation, which was the main financing instrument for 2007-2013. Accordingly, one of the aims of the assistance was the 'development of an area of prosperity and good neighbourliness'.¹²⁵ The Regulation provided for assistance being used for the benefit of partner countries, including for cross border cooperation. When considering the list of areas falling within the scope of the assistance to be provided, a rather cautious attitude was prevalent, however. An emphasis was made on post-conflict rehabilitation rather than conflict prevention, that is 'providing support in post-crisis situations, including support to refugees and displaced persons, and assisting in disaster preparedness'.¹²⁶

The soft law instruments used to allocate the funds similarly shifted the responsibility towards the parties without creating any conditionality: the EU was willing to provide assistance regarding 'all aspects of peaceful conflict settlement and settlement consolidation' depending on the developments in the process of settlement.¹²⁷

The actual allocation of the ENPI funds through Country Strategy Papers setting concrete funds for established areas followed the same pattern. Although the Armenian Country Strategy Paper 2007-2013 identified the peaceful resolution of the conflict and the enhanced efforts in the field of regional cooperation within key priorities for assistance,¹²⁸ the actual allocations for this

¹²³ Statement by the Spokespersons of EU High Representative Catherine Ashton and Commissioner Štefan Füle on the release of Ramil Safarov, Brussels, 3 September 2012 A 389/12.

¹²⁴ Tocci, note 68 above, 277.

¹²⁵ Article 1, Regulation No 1638/2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument [2006] OJ L 310/1.

¹²⁶ Article 2(2)(a), ENPI Regulation.

The preferred support for post-conflict involvement was also made clear in Wider Europe Communication, 12.

¹²⁷ Armenia Country Strategy Paper 2007-2013, 18, 23; Azerbaijan Country Strategy Paper, 5, 7; Armenia ENPI 2007-2010 Indicative Programme, 3; Armenia ENPI 2011-2013 Indicative Programme; Azerbaijan ENPI 2007-2010 National Indicative Programme, 5.

¹²⁸ Armenia Country Strategy Paper 2007-2013, 17.

period did not consider the latter as priorities neither in 2007-2010 or 2011-2013 allocations.¹²⁹ A similar position is recorded with the funds allocated to Azerbaijan for both periods.¹³⁰ The draft regulation for setting a new neighbourhood package for 2014-2020 adopts a similar approach.¹³¹

Although, the provision of financial assistance is considered to be one of the means through which the EU could put pressure on its neighbours,¹³² its ability to influence the positions of the parties is limited, particularly so in the case of Azerbaijan. While Armenia depends on foreign assistance for its economic development, in oil-rich Azerbaijan the cancellation of the assistance is not a threat the national leadership is fearful of. Besides, it is not a measure the EU is eager to restore to in the view of Azerbaijan's strategic importance. On the other hand, this results in continuous financing of a country which does not hide its intentions to settle the conflict through military actions and even makes the largest increase in military expenditure worldwide.¹³³ This ultimately goes against the very nature of the idea of 'good neighbourliness'.

Thus, the overview of the chain of conditionality as applied to Armenia and Azerbaijan demonstrates that good neighbourliness does not feature as a condition imposed on either country.

5. Conclusion

The ENP has embraced 'good neighbourliness' in a number of ways, none of which is though a condition for cooperation between the EU and its neighbours akin to the accession process. Within the latter good neighbourliness proved to be a flexible concept which can be applied as an additional criterion if perceived necessary by the EU. No such application is present within the ENP. While good neighbourliness can be linked to the objectives of the policy, more interesting is the articulation of the concept of good neighbourliness as part of the characterisation of the policy itself. Peaceful coexistence and close co-operation with neighbours is what the policy offers instead of the accession process. Not only can this be traced in the policy documents, but it is argued that the same meaning has been incorporated within Article 8 TEU. The latter creates no obligation for the EU to impose a condition of good neighbourliness on its ENP partner states, but rather uses the term in its verbatim meaning: good relations with EU neighbours at the exclusion of the prospect of accession.

Another, general observation is that good neighbourliness, as a condition applied in the case of Turkey or the Western Balkan countries, has found no expression in the weak conditionality of the ENP. Even if one might frivolously imply good neighbourliness to be incorporated within the

¹²⁹ In Armenia the three priority areas for 2007-2010 were support for democratic structure and good governance, regulatory reform and administrative capacity building and support for poverty reduction. The next period focused on somewhat similar priorities of democratic structure and good governance, trade and investment, regulatory alignment and reform, socio-economic reform and sustainable development; Armenia ENPI 2007-2010 Indicative Programme, 4; Armenia ENPI 2011-2013 Indicative Programme, 7.

¹³⁰ In Azerbaijan the assistance priorities for 2007-2010 instead were focused on democratic development and good governance, socio-economic reform, fight against poverty and administrative capacity building, and reforms in the transport, energy and environment sectors. The package for the next period focused on similar priorities; Azerbaijan ENPI 2007-2010 National Indicative Programme, 4; Azerbaijan National Indicative Programme 2010-2013, 10-11.

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¹³² S Blockmans and A Łazowski, 'The European Union and its Neighbours: Questioning Identity and Relationships' in S Blockmans and A Łazowski (eds), *The European Union and its Neighbours: A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration* (T.M.C. Asser Press, 2006) 3-18, 10-11.

¹³³ See for instance the data for 2011; 'New EU support for governance and economic development in Azerbaijan,' European Commission, Press Release, available at http://ec.europa.eu/europeaid/documents/aap/2011/pr_aap_2011_aze.pdf; 'Recent Trends in Military Expenditure' Stockholm International Peace Research Institute, available at <http://www.sipri.org/research/armaments/milex/resultoutput/trends>.

abstract notion of ‘shared values’, it might still be established within the priorities set with each party, which are nevertheless not prioritised. Thus, good neighbourliness, even if it can be found within the conditions of cooperation, is by no means a *precondition* for the advancement of cooperation. As to the case study in question, the respective Action Plans merely reflect the EU’s proclaimed eagerness to be involved in the conflict resolution without imposing any conditions on either Armenia or Azerbaijan. The monitoring and the financial assistance elements of conditionality also testify to the absence of any meaningful conditionality as regards conflict resolution or regional cooperation.

The elements of the ENP conditionality demonstrate the lack of it or put it otherwise the EU’s indisposition to establish good neighbourliness as a condition for cooperation. A number of reasons can be identified for this timid attitude. First of all, the incentives the EU can offer to both parties play a major role in the potential success of any conditionality. Anything short of accession for Armenia will not provide a sufficient security guarantees currently provided by Russia. On the other hand, even the promise of accession will not be attractive for oil-rich and seemingly self-sufficient Azerbaijan to change its militaristic position, as the latter is not interested in EU integration while the energy cooperation provides for revenues sustaining the political regime. Besides, Russia, being the main arbiter within the negotiation process, is interested in maintaining the status quo in order to secure its interests in Armenia and Azerbaijan alike. Not only a highly coordinated action with Russia will be required to play a more meaningful role, but also the EU will have to be represented in the OSCE Minsk Group, which is not a visible prospect. Armenia in the first place would be reluctant to agree to the replacement of the French representation by that of the EU taking into account the importance of Azerbaijan as the EU’s trade partner. Besides, given the EU’s double act in terms of supporting the principle of self-determination with Armenia and that of territorial integrity with Azerbaijan suggests a lack of a clear stance acceptable to either party. As a result no expectations can be attached to the ENP as a policy capable of contributing to the resolution of the Nagorno-Karabakh conflict.

This conclusion is also supported by recent developments in the region. Following a meeting with the Russian President Putin in September 2013, the Armenian President declared that the country would join the Customs Union with Russia, Kazakhstan and Belarus to a certain shock of the EU.¹³⁴ The DCFTA proved to be an insufficient incentive to secure Armenia’s involvement in the project via an Association Agreement. Currently, the EU-Armenia cooperation will continue with a predominant emphasis on multilateral cooperation through the Eastern Partnership framework.¹³⁵ In addition, the recent events in Crimea seriously undermined the prospect of a constructive dialogue between the EU and Russia regarding the region concerned. Azerbaijan in its turn has been advocating for an alternative framework of cooperation, a so-called ‘Strategic Modernisation Partnership’ which would in substance acknowledge its special role within the EU eastern neighbourhood,¹³⁶ and most likely would signify abandoning any meaningful conditionality.

Thus, the good neighbourliness as a call to resolve conflicts peacefully or to cooperate regionally, has not become a condition for ENP cooperation generally and more specifically in the case involving the Nagorno-Karabakh conflict.

¹³⁴ European Commission, ‘Armenia: EU position on the latest developments’, MEMO/13/766, Brussels, 4 September 2013.

¹³⁵ ‘Eastern Partnership: The Way Ahead, ’Joint Declaration of the Eastern Partnership Summit, 28-29 November 2013, Vilnius, 3.

¹³⁶ ‘Azerbaijan Chief Paints Rosy Picture on EU Visit’ *EU Observer*, 21 June 2013; ‘Aliiev Seeks EU Strategic Partner Status’ *European Voice*, 19 June 2013.