CHAPTER 8

Applying the Principle of Good of Neighbourliness in EU Law: The Case of Gibraltar

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1 Introduction

The main concern addressed by this contribution is an appraisal of whether and how the good neighbourliness principle in EU law could become a suitable legal instrument for tackling the dispute over Gibraltar, which has damaged the public perceptions of and the functioning of the European Union. More generally, the application of the principle in the manner proposed could contribute to the establishment and safeguarding of genuinely amiable, productive relations between the Member States. While this review envisages a preliminary testing of the principle on the conflict between Gibraltar, the UK and Spain, because of its limited scope, this paper in no way sets out an exhaustive apparatus for the resolution of this complex issue. Nonetheless, the recent escalation between Russia and the Ukraine in Crimea, the proliferation of dormant and active clashes infiltrating into the EU by means of past and future enlargements, as well as the growing complexity of the Union’s operations, all mean that a proper mechanism for internal dispute resolution, rapid reconciliation and the effective enforcement of mutually beneficial commitments are more pressingly needed than ever.

Reference to the universal international principle of good neighbourliness has gradually entered the European integration process. The principle has been increasingly invoked in bilateral agreements between states as a legal standard. The UN General Assembly (UNGA) has also commissioned a number of projects to set out its proper application. For its part, the EU, reacting to the fear of importing border and minority disputes into the Union through enlargement, has started including good neighbourliness into the framework of the

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accession rules. Its tenor was subsequently elaborated in the Stabilisation and Association Process (SAP) and European Neighbourhood Policy (ENP). Solemn commitment to the principle by the EU vis-à-vis its neighbours was voluntarily anchored in Article 8 Treaty on European Union (TEU). This notwithstanding, the good neighbourliness principle is binding on the EU as a general principle of the UN, as a rule of international customary law and as a general principle of international law.

Without underestimating the benefits and value of the principle of Article 8 TEU and the desire to facilitate interstate convergence within a wider Europe, it seems that lasting disputes among the Member States persist because of self-serving, unfriendly unilateral actions. Many of these disagreements, including those occurring in fields not governed by EU law, potentially and actually threaten the Union’s functioning, stability and the effet utile of the Union’s tasks and competences. They furthermore compromise the Union’s very raison d’être in securing peace, intra-societal and public tolerance, and solidarity. Consequently, for the sake of internal practicality and by virtue of its own legal prerequisites, a capable EU demonstrating leadership and commitment to the Rule of Law should be moved to effectively and justly counteract obdurate, recalcitrant conduct of its Member States. A corresponding comprehensive body of substantive and procedural rules on dispute settlement based on the good neighbourliness principle, carefully nurtured within the EU, could eventually contribute to a swifter and more efficient resolution of internal and external problems and thereby to the attainment of Union’s integration goals.

The centuries-old, currently escalating conflict over Gibraltar exemplifies the lack of good neighbourliness in the EU, with the current trilateral relations

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4 Articles 3(5), 21(1) and 47 TEU; Case C–162/96 A. Racke GmbH & Co. v Hauptzollamt Mainz [1998] ECR I–3655, para 45; 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 [2008] ECR I–4057. (Intertanko) para 51.

5 Spanish antagonism flared anew in December 2011 after the People’s Party won the elections and culminated in the adoption of measures in July and August 2013 as a response to the