

Slovenia and Croatia in Dispute over Bank Deposits from Yugoslav Times – ‘No more shall foes, but neighbors be’?

Damijan Možina

1 Introduction

After more than a decade of political and economic crisis, the Socialist Federal Republic of Yugoslavia formally disintegrated in 1991 when Slovenia and Croatia proclaimed independence, followed in 1992 by Macedonia and Bosnia. As opposed to the consensual dissolution of Czechoslovakia, the former Yugoslav constituent republics did not agree on the breakup and its consequences.

Slovenia and Croatia are neighbours without any history of violence or serious conflict. However, although the relations between Slovenia and Croatia are generally cordial, they have also been periodically affected by outstanding, mostly succession-related issues. As noted by the European Commission, it appears that some aspects of the political relations between the countries are ‘marked by lack of mutual confidence.’¹ There is also the impression that the politicians in both countries, supported by the media, sometimes try to present these issues more dramatically than they really are. The most well-known example is the border dispute concerning the delimitation of maritime and land borders in a relatively small area near the Piran Bay in the northern Adriatic, the crucial issue being the contact of Slovenian territorial sea with international waters.² All attempts to settle the issue since

* A line from ‘Zdravljica’ (‘A Toast’), Slovenian national anthem, written by Slovene romantic poet France Prešeren in 1848, translated by Janko Lavrin. The anthem goes: *God’s blessing on all nations/Who long and work for that bright day/When o’er earth’s habitations/No war, no strife shall hold its sway/Who long to see/That all men free/No more shall foes, but neighbours be.*

** Damijan Možina is Associate Professor, Faculty of Law, University of Ljubljana.

1 Commission, ‘Croatia 2005 Progress report’ COM (2005) 561 final, 32.

2 See e.g. Arjan Uilenreef, ‘Bilateral barriers or good neighbourliness? The role of bilateral disputes in the EU enlargement process’, Netherlands Institute of International Relations, Clingendael, <http://www.clingendael.nl/sites/default/files/20100600_cesp_paper_uilenreef

1991 had failed.³ Slovenia, which entered the EU in 2004, wanted to see the issue resolved before Croatia’s accession. One of the conditions for accession, applied by the EU, is also the good neighbourliness principle in the sense of successful settlement of bilateral disputes, especially border disputes.⁴ As the EU wishes to avoid importing disputes, it expects early solutions to its candidate countries’ principal bilateral disputes, preferably before the opening of accession negotiations and ‘in a constructive and neighbourly spirit.’⁵ Bilateral issues should not hold up the accession process.⁶ Unfortunately, Slovenia and Croatia were unable to achieve an early solution. Slovenia later blocked the closing of several chapters under negotiation between EU and Croatia in December 2008, making the bilateral issue a European problem.⁷ It took several months of negotiation with EU Enlargement Commissioner Rehn as mediator for the countries to agree to settle their dispute by binding arbitration. The negotiation process between the EU and Croatia resumed in October 2009 and on 4 November 2009, Slovenia and Croatia signed an arbitration agreement, which was subsequently ratified by both parliaments and confirmed in a referendum in Slovenia. On 1 July 2013, Croatia became the 28th member of the EU.⁸ Some authors have suggested that by raising the border dispute during Croatia’s accession negotiations, Slovenia misused its position: apparently, the good neighbourliness principle was ‘applied outside its legal framework, serving not to justice but to political considerations of the Member States.’⁹ Solving a border dispute by arbitration is well within both the legal framework and good neighbourliness but each party to a dispute has its own view of what a fair outcome will be. Furthermore, it seems impossible to separate political considerations and justice when determining state borders. The arbitral tribunal’s decision remains outstanding.

3 Most notably, in 2001, the prime ministers of Slovenia and Croatia signed a treaty defining the entire border between the countries (Drnovšek–Račan agreement). While the Slovenian Parliament ratified the agreement, the Croatian Parliament never voted on ratification.

4 Elena Basheska, ‘The Good Neighbourliness Condition in EU Enlargement’ (2014) Contemporary Southeastern Europe 92–111, 94.

5 See European Parliament, ‘Resolution on Enlargement Policies, Criteria and the EU’s Strategic Interests 2012/2025’ (IN1), 22 November 2012, No 26; and European Commission, ‘Enlargement Strategy and Main Challenges 2013–2014’ COM (2013) 700 final (Enlargement Strategy 2013) 8, 6 *ibid.*

7 See e.g. Elena Basheska, ‘The Good Neighbourliness Principle in EU Law’ (PhD Thesis, University of Groningen, 2014) 148 et seq.

8 Treaty of Accession of Croatia [2012] OJ L 112/10.

The border dispute was not the only succession-related issue between Slovenia and Croatia with the potential to slow Croatia's EU accession. For more than twenty years the two countries, along with other former republics, have failed to agree on a post-succession resolution to Yugoslav state guarantees for foreign currency deposits. The issue of foreign currency deposits and state guarantees from Yugoslavia is complex and multilateral in nature. The purpose of this paper is to briefly present the issue's basic facts. It focuses on how Slovenia and Croatia have been trying to solve the problem and attempts to determine whether Slovenia 'misused' its membership by raising the question during Croatia's accession process.

Due to its complexity, a presentation of the issue requires insight into the circumstances under which the problem arose. The paper therefore begins by describing some of the characteristics of the banking system of the Socialist Federal Republic of Yugoslavia. In dire need for foreign currency, Yugoslav banks offered high interest rates and state guarantees for their deposits,¹⁰ while withdrawals were subject to restrictions. After the country and its banking system collapsed, the successor states took over the guarantees under different conditions. Although the vast majority of depositors were repaid, several thousands of them are still waiting for their savings. This paper continues by presenting how Slovenia and Croatia, after independence, dealt with foreign currency deposits in Ljubljanska Bank – a bank headquartered in Ljubljana (Slovenia) and with units in other former republics, including Zagreb (Croatia). Later on, Ljubljanska Bank underwent rehabilitation; as a result, most assets were transferred to a newly established Nova Ljubljanska Bank, whereas the depositors in Zagreb were left with claims against the 'old' Ljubljanska Bank (Zagreb branch), which, furthermore, was not allowed to operate in Croatia. The next chapter deals with multilateral negotiations between the successor states about the state guarantees for bank deposits. The paper then focuses on the bilateral dispute and its settlement during Croatia's accession to the EU: Croatia, having repaid some of the Ljubljanska Bank of Zagreb's depositors, claimed this money before a Croatian court from the Nova Ljubljanska Bank – a bank currently owned by the Slovenian state. Slovenia had raised the issue during Croatia's accession negotiations. The countries then agreed on how the issue was to be resolved. Ultimately, the dispute did not delay Croatia's accession, but it also has not been resolved yet. The last part of the paper presents the judicial proceedings regarding the deposits. The European Court of Human Rights has delivered important judgments on

another aspect of this problem – the violations of the human rights of unpaid depositors.¹¹

2 Banking System, Foreign Currency Deposits and Crisis in Yugoslavia

Before the economic reforms (1989) made just before the disintegration of the Socialist Federal Republic of Yugoslavia, its commercial banking system was composed of 'associated banks' and 'basic banks'. Ljubljanska Bank was an associated bank in Ljubljana (then the Socialist Republic of Slovenia) composed of several 'basic banks'. Basic banks were integrated into the organisational structure of associated banks but had a separate legal personality and were to some extent financially and economically independent from their head offices.¹² Some of the basic banks forming Ljubljanska Bank (associated banks) were established in other Yugoslav republics, such as Ljubljanska Bank Zagreb (Croatia) and Ljubljanska Bank Sarajevo (Bosnia). They operated under the law of these republics and federal law and were formally mainly controlled by their debtors, i.e. socially owned companies based in these territorial units.¹³ In economic terms they held deposits from the local population and distributed credit to natural and legal persons in the area.

In the 1980s Yugoslavia was in deep economic and political crisis.¹⁴ International debt rose extremely quickly and almost quadrupled between 1974 and 1980, whereas inflation reached triple digits in 1987 and became four-digit hyperinflation in 1989.¹⁵ From 1983 the over-indebted country was brought under the auspices of International Monetary Fund. Needing foreign currency,

11 See *Alčić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* App No 60642/08 (ECtHR, 16 July 2014).

12 Erik Jurgens. Repayment of the deposits of foreign exchange made in the offices of the Ljubljanska Banka not on the territory of Slovenia, 1977–1991. (Doc 10135); Report of the Committee on Legal Affairs and Human Rights, Parliamentary Assembly – Council of Europe, 14 April 2004 (CoE Report) No 29.

13 On Self-Management and Social Ownership in Yugoslavia, see e.g. Saul Estrin, 'Yugoslavia: The Case of Self-Managing Market Socialism, Journal of Economic Perspectives' (1991) 5(4) J Economic Perspectives 187–194, 191. See also: John B Allcock, *Explaining Yugoslavia* (C. Hurst & Co. Publishers, London 2000) 96.

14 For more on political the crisis, see e.g. John R Lampe, *Yugoslavia as History. Twice There Was a Country* (2nd edn CUP, Cambridge 2000) 332 et seq. For more on the economic crisis, see Estrin, *ibid.*

measures were taken to make it attractive for its citizens to deposit foreign currency with its banks by offering high interest rates of up to 12 percent – greatly exceeding market deposit rates in other countries – and a State guarantee for deposits.¹⁶ The main sources of deposited foreign currency were tourism and expatriates. The guarantee was meant to be activated in case of a bankruptcy or a manifest insolvency at the request of the bank and not its depositors; however, such formal requests were never made.

The foreign currency deposits did not remain with the basic banks. To relieve the commercial banks from the burden of the depreciation of the 'dinar' exchange rates, a re-depositing system was introduced, under which basic banks re-deposited foreign currency savings with the National Bank of Yugoslavia in exchange for claims against the National Bank of Yugoslavia in dinars (credits).¹⁷ This counter-value was then used by the commercial banks to finance loans for clients within the regions where the banks were operating.¹⁸ However, the principal method used was the 'pro-forma' method – a pure accounting operation. According to the ECtHR, only about 14 percent of deposits were actually transferred by the banks to the foreign accounts of the National Bank of Yugoslavia.¹⁹ The foreign currency which remained untransferred was used by the banks to finance imports and foreign services for the clients of the banks in the various regions.²⁰

The system of re-depositing was brought to an end in 1988.²¹ Emergency measures due to the monetary crisis included legislation on the restrictions on the repayment of foreign currency deposits to individuals. In 1988 the foreign currency accounts of the Ljubljanska Bank and other commercial banks with the National Bank of Yugoslavia were frozen.²²

In 1989, two years before the disintegration of Yugoslavia, economic reforms (the Markovic reforms, named after the president of the Executive Council at the time) were carried out to transform the socialist planned economy to a more market-oriented economy. The commercial banks underwent

16 See Foreign Currency Transactions Act (Official Gazette SFRY 66/85, 13/86, 71/86, 2/87, 3/88, 85/89, 27/90, 82/90, 22/91), Section 14(3) and Act on Banks and other financial institutions (Official Gazette SFRY, 10/89, 40/89, 87/89, 18/90, 72/90, 79/90) Section 76(1).

17 See Foreign Exchange Operations and International Credit Relations Act (Official Gazette SFRY, 15/77, 61&82, 77/82, 34/83, 70/83, 71/84).

18 Jurgens (n 12); CoE Report (n 12) No 16.

19 *Kovačić and others v Slovenia* App No 44574/98, 45333/98 and 48316/99 (ECtHR, 3 October 2008) para 36.

20 Jurgens (n 12); CoE Report (n 12) No 16.

21 *Kovačić and others v Slovenia* (n 19) para 38.

22 *ibid*, para 45.

a conversion from basic and associated banks into joint stock companies. Ljubljanska Bank Zagreb became a branch of Ljubljanska Bank Ljubljana (head office), as did Ljubljanska Bank Sarajevo. However, the dissolution of the SFRY (Socialist Federal Republic of Yugoslavia) prevented the full conversion of Ljubljanska Bank basic bank Zagreb into the Ljubljanska Bank Zagreb (Main Branch).

The country had been falling apart before the formal dissolution of the SFRY, as the economy collapsed. By 1990, the commercial banks were de facto insolvent.²³ The monetary system was under attack, primarily by the National Bank of Serbia, but also by some other national banks. The Serbian National Bank was acting as a source of primary currency emission to cover the budgetary deficit of the Republic of Serbia.²⁴

3 Foreign Currency Deposits and Ljubljanska Bank in Independent Croatia

In 1991 the formal dissolution of the SFRY began with two of the six republics proclaiming independence. The new states assumed guarantees for foreign currency savings, but they did it variously and under different conditions.

Slovenia took on the state guarantees for all deposits in the branches of all Yugoslav banks on the territory of Slovenia, regardless of the citizenship of depositor²⁵ and converted liability of the banks into public debt. Croatia, on the other hand, assumed state guarantee only against depositors who were Croatian nationals and who had opted to transfer their foreign currency savings accounts into Croatian banks within a transitional period of a few months.²⁶ Croatia offered the depositors bonds as compensation. Some Croatian citizens from Bosnia and Herzegovina (i.e. depositors at Ljubljanska Bank Sarajevo)

23 Jurgens (n 12); CoE Report (n 12) No 33.

24 See Michael Palairat in Lenard J Cohen and Jasna Dragović-Soso (eds), *State Collapse in South-Eastern Europe: New Perspectives on Yugoslavia's Disintegration* (Purdue University Press, West Lafayette 2007) 221–248, 241, 242. See also 'Zis sprejel odločne ukrepe zoper srbsko samovoljnost', *Delo* (Slovenian newspaper) from 8 January 1991.

25 See *Kovačić and others v Slovenia* (n 19) para 53 and Constitutional Act on the Implementation of the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, Official Gazette of Republic of Slovenia, 1/91, 45/94.

26 Decree on the conversion of nationals' foreign currency deposits into the Croatian public debt (Official Gazette of Republic of Croatia 71/91).

were also repaid. Croatia did not take on the state guarantee with for deposits in Ljubljanska Bank Zagreb (main branch) and insisted that they should be refunded by the head office, i.e. by Slovenia.²⁷

About two thirds of account holders from the Ljubljanska Bank Zagreb (main branch) opted to transfer their deposits (in total approx. DEM 450,000,000), whereas others, around 140,000 depositors, kept their accounts with Ljubljanska Bank Zagreb (Main Branch), 96,000 of which had less than the equivalent of EUR 30 (in total approx. DEM 300,000,000).²⁸

In 1991 the Croatian National Bank prohibited the operation of Ljubljanska Bank Zagreb (Main Branch). The same year, a decree was adopted prohibiting the disposal of real property on Croatian territory owned by legal entities whose head offices were outside Croatia.²⁹ Since Ljubljanska Bank Zagreb was not allowed to continue operations in Croatia, it had not been able to generate the assets needed to service its debt to foreign currency depositors, despite its assets in Croatia (approx. EUR 525,000,000 according to the Slovenian government) exceeding its obligations towards foreign currency depositors (approx. EUR 171,000) by far.³⁰ Its assets included loans granted to Croatian (and Bosnian) companies (in dinars), the majority of which the bank never succeeded to recover: some companies went bankrupt, others were privatized; some winding-up petitions were suspended by the courts. Furthermore, the Croatian dinar depreciated in 1992. In 1994 the Croatian Payment Transaction Institute froze Ljubljanska Bank Zagreb's (Main Branch) bank account and in 2000, the authorities closed its giro account.³¹

4 Rehabilitation of Ljubljanska Bank

Ljubljanska Bank (Ljubljana, Head Office) represented a significant share of the Slovenian banking market in 1991. It had accumulated substantial negative capital before and after the dissolution of SFRY, which threatened to destabilize the Slovenian financial system. A further threat to the Slovenian financial system at the time was the realization of the loan under the 'New Financing

²⁷ Jurgens (n 12); Report for Committee on Legal Affairs and Human Rights, Parliamentary Assembly – Council of Europe, 14 April 2004, No 23.

²⁸ *Kovačić and others v Slovenia* (n 19) para 79.

²⁹ *Ibid.*, para 80.

³⁰ Submissions of Slovenian government in ECtHR, *Kovačić and others*, para 91. See also Arhar, 'Tudi pravici je potrebna pomoč', *Delo, Sobotna priloga* (26 July 2014).

³¹ *Kovačić and others v Slovenia* (n 19) para 81.

Agreement' from Yugoslav times, as the successor states were unable to agree about the division of debts. The New Financing Agreement, concluded in 1999 between foreign private banks, the National Bank of Yugoslavia and ten Yugoslav commercial banks including Ljubljanska Bank and Kreditna Bank Maribor, provided a new agreement on servicing Yugoslav external debt. According to the agreement the repayment of capital was postponed for five years: it included a joint liability and a cross default clause.³²

Slovenian government decided to rehabilitate Ljubljanska Bank in 1993.³³ It became its sole shareholder. In 1994 the Bank was restructured under the Constitution Act: a new legal entity was created (Nova Ljubljanska Bank, joint stock company), which took over all the assets and liabilities of the former bank on Slovenian territory and the majority of assets and some of the obligations of Ljubljanska Bank Zagreb (Main Branch). The old Ljubljanska Bank was left with rights and obligations with respect to the SFRY and other republics, including rights to the debt of the National Bank of Yugoslavia for foreign currency savings accounts, rights to the loans granted to Croatian and Bosnian companies and the obligations regarding 'old' foreign currency depositors in Croatia and Bosnia.³⁴

Ljubljanska Bank Zagreb (Main Branch) was not the only bank in Croatia from the other former Yugoslav republics. However, the Croatian Government adopted a different approach to Jugobank (Serbia): they did not condition the license to conduct banking business on the payment of foreign currency deposits while at the same time obstructing the collection of debts. Jugobank in Croatia was liquidated by a Government regulation in 1992: the claims against natural and legal persons in Croatia were to be recovered and the obligations against natural and legal persons in Croatia would be paid from this money.³⁵

³² Later, Slovenia succeeded in individual negotiation with the 'London club' to cancel the solidarity clause and assume only the Slovenian debtors' share and a part of the unapportioned debt. See Paul Williams and Jennifer Harris, 'State Succession to Debts and Assets: The Modern Law and Policy' (1994) 42(2) *Harvard Int'l LJ* 355–341, 396 et seq.

³³ *Kovačić and others v Slovenia* (n 19) para 86 et seq.

³⁴ See Constitutional Law amending the Constitutional Law relating to the Fundamental Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (Official Gazette of the RS No 45/94), Articles 22a–22 h; *Kovačić and others v Slovenia* (n 19) paras 63, 64 and 171.

³⁵ See Official Gazette of Republic of Croatia No 84/92 and 106/93.

5 Negotiations between Successor States

In the early years after the dissolution of SFRY the successor states were unable to negotiate on succession issues due to ongoing violence in the region.³⁶ The first agreement they reached was the Agreement on Succession issues (2001, Vienna), signed by Bosnia and Herzegovina, Slovenia, Croatia, the Federal Republic of Yugoslavia (later Serbia and Montenegro) and the Former Yugoslav Republic of Macedonia. It entered into force on 2 June 2004, after the last ratification (Croatia). However, the Agreement did not ultimately solve the issue of 'old' foreign deposits. It introduced a formula for the allocation of the SFRY's foreign financial assets.³⁷ The liabilities for distribution included guarantees by the SFRY and the National Bank of Yugoslavia on hard currency savings deposited in the banks.³⁸ The question of guarantees was to be solved by negotiations 'without delay' under the auspices of the Bank for International Settlements in Basel. A Standing Joint Committee was established to monitor the implementation of the Succession Agreement.

However, although negotiations in 2001 and 2002 took place in Basel, no solution was found.³⁹ The Swiss bankers' proposal, according to which each country would pay the depositors on its own territory, was rejected by Croatia and Bosnia.⁴⁰ Consequently, BIS expert Hans Meyer terminated his involvement in the matter, but BIS left the door open for future negotiations. All the successor states, except Croatia notified BIS of their willingness to continue negotiations.⁴¹

Further meetings of the Standing Committee established by the Succession Agreement were held in 2005 and 2006, but Croatia opposed requests that the distribution of assets be put on the agenda.⁴² In Croatia's view, the guarantees could not be a matter of negotiations because the guarantees related exclusively to banks which had been (formally) declared bankrupt, which was not

³⁶ *Kovačić and others v Slovenia* (n 19) para 95.

³⁷ See 'Agreement on Succession Issues Between the Five Successor States of the Former State of Yugoslavia, International Legal Materials' (2002) 41 ILM 3-35, Annex C, Article 5(2). The formula was: Bosnia and Herzegovina 15.5%, Croatia 23%, Federal Republic of Yugoslavia 38%, FYR Macedonia 7.5% and Slovenia 16%.

³⁸ See Annex C of the Agreement, Article 2(3)(a).

³⁹ *Kovačić and others v Slovenia* (n 19) para 103.

⁴⁰ Željko Trkanjac, 'Slovenian bank saga finally draws to an end' *EU Observer* (18 November 2010) available at: <<http://euobserver.com/news/3295>> last accessed 10 December 2014.

⁴¹ *Kovačić and others v Slovenia* (n 19) para 63.

⁴² This was a submission of Slovenian government, *ibid*, para 108.

the case.⁴³ In 2010, after Slovenia blocked the chapter on free movement of capital (EU–Croatia negotiations), Croatia finally agreed to continue negotiations at BIS.⁴⁴

In its resolution in 2004, based on a Report by Erik Jurgens, the Parliamentary Assembly of the Council of Europe called upon Slovenia, Croatia, Bosnia and Herzegovina and Macedonia promptly to find a solution to the problem of depositors.⁴⁵ The Parliamentary Assembly considered, notwithstanding the awaited decision of the ECtHR (in the *Kovačić* case, see *infra*), that the matter of compensation of so many individuals would be better solved politically between the successor states than in the court: it was, however, also unfair to keep the depositors waiting until a political agreement was concluded.⁴⁶ The Rapporteur came to the conclusion that the issue was not just a legal, but also a political matter: the depositors were victims of the banking system of the SFRY; of the misrepresentation that the extremely high interest rates offered on foreign currency deposits could have been paid; and of the dispute over which successor state should fulfil the guarantee of the former SFRY.⁴⁷ The SFRY banking system could not be automatically translated into civil liabilities under the new system.⁴⁸ The Assembly proposed the establishment of a collective compensation fund by all four countries, possibly with a contribution from the EU.⁴⁹ In the negotiation over the precise allocation of burdens, due account was to be taken of the following factors, in so far as they could be established: of the actual hard currency transfers made to the Ljubljana branch of savings deposited in branches in other republics and the use of such funds for the economic development of Slovenia, of the possibility or otherwise of Ljubljanska Bank having continued its banking activities in other republics after the breakdown of the SFRY, thus enabling the Ljubljanska Bank to recover debts for loans granted; and of the fact that compensation had already been paid to depositors by some states and that the claims of these depositors had been accepted by those states.⁵⁰

⁴³ *ibid*, paras 109 and 252.

⁴⁴ Commission, 'Croatia 2010 Progress report' COM (2010) 660 final.

⁴⁵ Parliamentary Assembly – Council of Europe, Resolution 1410 (2004) from 23 November 2004, Repayment of the deposits of foreign exchange made in the offices of the Ljubljanska Banka not on the territory of Slovenia, 1977–1991 (CoE Resolution 1410).

⁴⁶ *ibid*.

⁴⁷ Jurgens (n 12); CoE Report (n 12) No 36–51.

⁴⁸ *ibid*.

⁴⁹ CoE Resolution 1410 (n 45).

⁵⁰ *ibid*.

6 Bilateral Relations between Slovenia and Croatia

Slovenia and Croatia were well aware of the problem of 'old' foreign currency depositors in Ljubljanska Bank Zagreb. However, their respective views of the solution differed. Slovenia's position was that the liability of the successor states for the foreign currency deposits should be apportioned on the basis of the principle of territoriality, with the depositors in banks on the territory of a state being repaid by the banks on that territory or re-compensated by the governments guaranteeing the deposits of the successor states of the SFRY.⁵¹ The idea underlying the territoriality principle is that the money received from the depositors would have been invested in the same territory in which the Bank had previously functioned. As the deposits benefit the territory/state where they are invested, the state should also assume their guarantee. It is a general rule on state succession related to tangible movable property.⁵²

Croatia on the other hand considered that a civil law relationship between the Bank and its depositors lay at the core of the problem. This was also the position of the governments of Bosnia and Herzegovina and Macedonia. Since in 1989, Ljubljanska Bank Zagreb had become a branch of Ljubljanska Bank Ljubljana (Head office), the latter should repay the deposits that the branch was unable to pay.

Slovenia and Croatia have been negotiating to find a solution to the problem since 1992. Croatia had two principal demands: that the 'old' deposits from Ljubljanska Bank Zagreb be serviced in the same way that the deposits of depositors in Slovenia were, and that the deposits which became a part of Croatian public debt (i.e. deposits of Croatian nationals in Ljubljanska Bank Zagreb which were transferred to Croatian banks and for which Croatia assumed the guarantee) be included in an agreement between the two states as a Croatian claim against Slovenia. Slovenia, on the other hand, considered both matters to be a succession issue to be solved by multilateral agreement. Slovenia demanded Ljubljanska Bank Zagreb to be allowed to operate in Croatia to enable the bank to fulfil its obligations towards its depositors.⁵³ Croatia was prepared to allow such operation only after the depositors had been repaid; at the same time, Croatia refused to negotiate over the claims of

⁵¹ Jurgens (n 12); CoE Report (n 12) No 6.

⁵² Carsten Stahn, 'Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia' (2002) 96(2) AJIL 379–397. See also Dissenting opinion of Judge Zupancić, ECtHR, *Judgement Altić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (Judgement of 6 November 2012).

⁵³ France Arhar, 'Tudi pravici je potrebna pomoč', *Delo, Sobotna priloga* (26 July 2014).

the Ljubljanska Bank Zagreb (Main Branch) against Croatian companies and individuals.⁵⁴

In 1998 the representatives of both states were discussing the possibility of solving the dispute with the help of experts from the IMF or World Bank. The IMF had analysed the situation and was prepared to inter-mediate between the two sides. In 1999 the prime ministers of Slovenia and Croatia agreed that the IMF should suggest a non-binding solution.⁵⁵ However, Croatia never forwarded the required documentation to the IMF.⁵⁶ In October 1999 the two states signed a bilateral Treaty on the regulation of property rights.⁵⁷ However, the Treaty only provided that the relations regarding Ljubljanska Bank Zagreb (Main Branch) would be governed by a separate agreement to be concluded between the states.

7 Croatia's Accession to the EU

Despite the outstanding issues between the countries, including the bank dispute, Slovenia gave strong support to the opening of accession negotiations with Croatia.⁵⁸ However, in 2010 Slovenia blocked the closure of the chapter on the free movement of capital in the negotiations for Croatia's accession to the EU.⁵⁹ The respective prime ministers (Kosor and Pahor) then agreed that the issue should be resolved on the basis of the Succession Agreement and that the negotiations under the auspices of the Bank for International Settlements (BIS) should resume.⁶⁰ Slovenia then unblocked the negotiations. The BIS,

⁵⁴ *ibid.*

⁵⁵ 'Slovenia and Croatia Solving Painful LB Deposits Issue', *The Slovenia Times* (11 March 2013) available at: <<http://www.sloveniatimes.com/slovenia-and-croatia-solving-painful-lb-deposits-issue>> last accessed 10 December 2014.

⁵⁶ *ibid.* See also *Altić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 52) para 60.

⁵⁷ See Slovenian Act on Ratification of the Treaty between Slovenia and Croatia on the regulation of property rights, Official Gazette of the Republic of Slovenia, no/1999. The treaty entered into force on 23 February 2000.

⁵⁸ Croatia 2005 Progress report (n 1) 32.

⁵⁹ Angutin Palokaj, 'Slovenia still blocking Croatia's progress towards EU', *EU Observer* (11 October 2010) available at: <<http://euobserver.com/news/31005>> last accessed 10 December 2014.

⁶⁰ Zeljko Trkanjec, 'Slovenian bank saga finally draws to an end', *EU Observer* (18 November 2010). See also: Tjaco van den Hout, 'Croatia's EU membership: restoring a level playing field with Slovenia' (2013) Latvian Institute of International Affairs, available at:

however, informed Croatia that, in light of the time elapsed since the previous round of negotiations, no added value could be expected from a BIS participation in the negotiation; nevertheless, they were prepared to host the meetings of the successor states.⁶¹

Croatia successfully completed its accession negotiations in June 2011 and signed an Treaty of Accession with the EU in December 2012. On 7 July 2012 the foreign ministers of both countries appointed former central bankers Zdravko Rogic and France Arhar as experts entrusted with the elaboration of a proposal for the deposits to be transferred into Croatian public debt by the end of 2012. A solution was not found.

On 27 July 2012 the Municipal Court in Zagreb issued a (non-final) judgement in favour of Privredna Bank Zagreb on behalf of Croatia in a claim against Ljubljanska Bank and Nova Ljubljanska Bank with respect to the transferred deposits.

Slovenia saw this as a breach of the agreement to resolve the issue at the BIS brokered negotiation and announced that its Parliament's ratification of Croatia's Treaty of Accession, which was to enter in force on 1 July 2013, was conditional on finding a solution to the dispute in accordance with international law. This was regarded by some as an act of 'blackmail'.⁶²

The bilateral negotiations concluded successfully with a memorandum of understanding, signed on 11 March 2013 by the prime ministers of both countries.⁶³ They agreed (again) that the issue would be solved on the basis of the Agreement on Succession, on the basis of which the successor states would negotiate to resolve the issue of the former Federation's guarantee for foreign currency deposits under the auspices of the Bank of International Settlements (Succession Agreement, Art. 7 Appendix C). In the meantime, Croatia was to suspend the lawsuits filed by commercial banks in Croatia's name against Ljubljanska Bank and Nova Ljubljanska Bank regarding the transferred deposits. The agreement also paved the way for Nova Ljubljanska Bank to start operating in Croatia. European Commissioner for Enlargement and European

⁶¹ <<http://lha.lvlv/blogs/croatias-eu-membership-restoring-a-level-playing-field/>> last accessed 10 December 2014.

⁶² *Alčić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 11) para 63.

⁶³ See e.g. the EU Observer headline: 'Slovenia puts €172mm price tag on Croatia's EU entry', *EU Observer* (12 September 2012), available at: <<http://euobserver.com/enlargement/117629>> last accessed 10 December 2014.

⁶⁴ See e.g. 'Slovenia and Croatia Signed 1.8 Memorandum', *Slovenia Times* (11 March 2013), available at: <<http://www.sloveniatimes.com/slovenia-and-croatia-signed-1.8-memorandum>> last accessed 10 December 2014.

Neighbourhood Policy Štefan Füle welcomed the news that a mutually acceptable solution to the issue had been found:

I consider this to be a good deal for both countries and good deal for enlargement. This is also a very good example how joint efforts in the area of good neighbourly relations bring benefits for both sides and provide basis to solve open issues. It is the culmination of intense efforts by both countries. We congratulate Slovenia and Croatia on their commitment and willingness to find a solution⁶⁴

As agreed, Slovenia performed timely ratification of Croatia's Treaty of Accession and on 1 July 2013 Croatia became a member of the EU.⁶⁵ In November 2013 a judge at the Zagreb Municipal Court refused to stay proceedings against Ljubljanska Bank and Nova Ljubljanska Bank, arguing that a memorandum signed by the prime ministers of Slovenia and Croatia does not constitute a binding international treaty. In January 2014 a (non-final) judgement was passed in favour of the Croatian banks, representing Croatian Government.⁶⁶

The fact that both Slovenia and Croatia are EU Member States does not affect how this dispute will be settled. Bilateral disputes within the scope of EU law are, in principle, resolved by the Court of Justice of the EU, with the Commission playing an important role (Art. 258 TFEU).⁶⁷ However, as this issue seems to fall outside the scope of EU law, the rules of international law remain applicable.⁶⁸

8 Judicial Proceedings Regarding the Bank Dispute

Over more than twenty years, a great many lawsuits were filed against Ljubljanska Bank, Nova Ljubljanska Bank and against the successor states, not only in Croatia, Slovenia and Bosnia and Herzegovina, but also in Italy,

⁶⁴ See 'Croatia reaches bank deal with Slovenia to unblock EU accession', *BNE-Business News Europe* (11 March 2013) available at: <<http://www.bne.eu/content/croatia-reaches-bank-deal-slovenia-unblock-eu-accession>> last accessed 10 December 2014.

⁶⁵ See Treaty of Accession of Croatia (n 8).

⁶⁶ Harris Stefanatos, 'Slovenian-Croatian dispute regarding the Yugoslav-era savings deposits continues', *Independent Balkan News Agency* (22 January 2014), available at: <<http://www.balkan.eu.com/%EF%BB%BFnova-ljubljanska-bank-return-yugoslav-era-savings-deposits-croatian-clients/#sthash.UEuQzAcn.dpuf>> last accessed 10 December 2014.

⁶⁷ Basheska (n 7) 78 et seq.

⁶⁸ *ibid.*, 81.

Germany and Austria. Furthermore, proceedings were initiated before the European Court of Human Rights.⁶⁹ Most of these cases concern the individual relationships between depositors and a bank or a state, respectively. However, these cases also affect the relationships between states, and the role played by the states in some of the judicial proceedings (e.g. state intervention) can also be assessed from the perspective of good neighbourliness.

Many depositors filed claims against Ljubljanska Bank Zagreb (Main Branch) and Ljubljanska Bank in Croatian courts. Some of their requests for the seizure and sale of real estate owned by Ljubljanska Bank Zagreb (Main Branch) were successful.⁷⁰ As already mentioned, the Croatian Government authorised Privredna Bank Zagreb in 1995 to file a lawsuit in Croatia against Ljubljanska Bank Zagreb and Nova Ljubljanska Bank to recover the amount which Croatia had repaid depositors who had transferred their foreign currency accounts to Croatian banks in 1992. In 2001 this authority was extended to Zagrebačka Bank. The dispute is pending.⁷¹ Many lawsuits were filed in Slovenia. Slovenian courts adopted a number of decisions ordering the 'old' Ljubljanska Bank to pay customers of its Zagreb and Sarajevo branches.⁷² These claims against the state were unsuccessful. In 1997 a statute stayed all proceedings regarding the foreign currency savings in branches of Ljubljanska Bank in other republics until the succession negotiations were complete.⁷³ In 2009 the Constitutional Court declared the measure unconstitutional, as the

69 Aleš Velkavrh, 'Za dolgove Ljubljanske banke do nekdanjih deviznih varčevalcev iz Hrvške in BiH je odgovorna Slovenija', *Pravna praksa* 47/2012, 22.

70 See e.g. *Ališić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 11) para 43; and *Kovačić and others v Slovenia* (n 19) paras 112–163.

71 There are several pending cases in which Privredna Bank Zagreb is claiming compensation for the deposits transferred from Ljubljanska Bank (Ljubljana) and Nova Ljubljanska Bank. The first lawsuits originate from 1994. Their reference numbers include: P–2127/99 (joined cases: P–2140/99, P–2136/99, P–2138/99, P–2129/99), P–2139/99; P–4833/13 (previously P–2137/99); P–2126/99 (joined cases: P–2142/99, P–724/01, P–2134/99, P–2135/99, P–2144/99); P–2145/99 (previously P–1755/10); P–2143/99 (previously P–1732/09); P–2141/99 (previously P–5587/11); P–12609/99 (previously P–8319/11); P–628/01 (previously P–7046/09); P–8769/01. The reference numbers of the lawsuits brought by Zagrebačka Bank against LB and NLB are: P–14888/99 (previously P–11230/09) (joined cases: P–14889/99, P–14890/99, P–14891/99); P–8515/00 (previously: P–7056/09); P–8514/00 (previously: P–2362/11); P–8516/00, P–8517/00 (previously P–4681/11).

72 *Ališić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 11) para 9.

73 See Act on the Succession Fund of the Republic of Slovenia, Official Gazette 10/93, 38/93 and 40/97.

limitation of the right to judicial protection was unclear and disproportionate.⁷⁴ Since then, Slovenian courts have issued many judgments ordering the 'old' Ljubljanska Bank to pay depositors from its Zagreb and Sarajevo branches on the basis of the contractual relationship between the depositors and the bank; the courts rejected the argument that the claims of the depositors should depend on settling the complicated succession issues between the successor states.⁷⁵

8.1 ECtHR: *Kovačić and others v Slovenia* (2008)

The European Court of Human Rights handed down its judgment in *Kovačić and others v Slovenia* in 2006⁷⁶ and the Grand Chamber confirmed the judgment in 2008.⁷⁷ Croatia joined the dispute on the side of the applicants as an intervening party. The Court decided to strike the cases out of its list for procedural reasons: two of the three applicants had obtained reimbursement in full for their foreign currency deposits with interest through a Croatian court procedure and the third applicant had proceedings pending in the Croatian courts. The Court did, however, investigate the circumstances of the dissolution of the SFRY, its banking system and other developments in the successor states with regard to the redistribution of liability for old foreign currency savings.⁷⁸ The Court noted that although it had jurisdiction over violations of the human rights of the depositors, it was compelled to agree with the view of the Parliamentary Assembly in Resolution 1410 (2004) that the matter of compensation for so many thousands of individuals should be solved by agreement between the successor states: the Court called on the states to proceed with these negotiations urgently.⁷⁹ In his concurring opinion, Judge Ress stressed that the reason for the case was the different rules on state guarantees or repayment of old foreign currency deposits: while Slovenia permitted claims from all those living on its territory, Croatia accepted such claims only from Croatian nationals. He pointed out that under the normal rules of state succession, territoriality and not nationality was the first criterion for allocating claims and justifying any entitlement. If the present case was not a succession case then

74 Constitutional Court of the Republic of Slovenia, 21 December 2009, No Up-1857/07-70, Official Gazette No 105/2009.

75 See e.g. Supreme Court of Slovenia, No 11 1p2 307/2011 of 5 April 2012.

76 *Kovačić and others v Slovenia*, App nos 44574/98, 45133/98 in 48316/9 (ECtHR, 6 November 2006) Third Section.

77 *Kovačić and others v Slovenia* (n 19) Grand Chamber.

78 *ibid*, paras 27–10.

79 *ibid*, para 256.

the Ljubljanska Bank, being a private corporation, would be liable regardless of the emergence of new republics. However, since there was a legal relationship between the private banks and the National Bank of Yugoslavia to which at least a part of the foreign currency had to be transferred, there was an implicit federal guarantee of these debts, regardless of the whether private banks really existed in a socialist economy. Because the responsibility of the SFRY had to be divided and apportioned among its successor states, the principles of state succession had to be applied. He also stressed the duties of the successor states to negotiate and to reach an agreement over the issue, as provided in the Treaty on Succession Issues.

8.2 ECtHR: *Ališić and others v Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia (2014)*

In its next case *Ališić and others v Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* the ECtHR adopted a different approach to *Kovačić*. According to the Court's judgment of 6 November 2012,⁸⁰ which was confirmed upon appeal by the Grand Chamber on 16 July 2014,⁸¹ Slovenia is liable for the breach of Article 1 Protocol 1 ECHR (property) and Article 13 ECHR (effective remedy) rights of two of the applicants – nationals of Bosnia and Herzegovina who had deposited their savings with Ljubljanska Bank Sarajevo. Slovenia was found to have been under an obligation to have included the savers from Bosnia and Croatia into its national scheme for repayment of old foreign currency deposits. Serbia was found liable to Bosnian nationals who deposited their savings at Invest-bank Tuzla. According to the Court, the violations found in the case concerning depositors from Bosnia and Herzegovina affect many people, as there are around 1850 similar applications relating to more than 8,000 applicants pending before the Court. Both chambers therefore decided for a pilot judgement and ordered Slovenia to establish a scheme and repay not only the old foreign currency savers at Ljubljanska Bank Sarajevo (Bosnia), but also the savers at Ljubljanska Bank Zagreb (Croatia). Serbia was ordered to repay the savers of former branches of Serbian banks outside Serbia.

The Court rejected the idea that the principle of territoriality should be applied to the savings claims, preferring instead, the 'equitable proportion' principle governing state debts. However, the applicants' claims are not state

⁸⁰ *Ališić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 52).

⁸¹ *Ališić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 11).

debts.⁸² Be that as it may, the equitable distribution of debts would require a global assessment of the assets and liabilities of all the former states: a task far beyond the scope of the case and the competence of the Court.⁸³ The Court also dismissed the relevance of the EFTA Court's judgement with regard to the repayment of foreign depositors following the collapse of the Landsbanki in 2008,⁸⁴ as it concerned the rehabilitation of a private bank in the particular legal framework applicable to Iceland and the savers had already been repaid by the Dutch and UK states.

The Court based its ruling regarding the infringement of property rights on the finding that, as the Yugoslav state guarantee for banks had never been activated, liability had never moved from the banks to the SFRY. However, the Grand Chamber saw sufficient grounds to consider Slovenia (and Serbia respectively) liable for these banks after the dissolution of the SFRY, because they were state-controlled. A state can be responsible for the debt of a State-owned company, provided that the latter does not have sufficient institutional and operational independence. Slovenia did not infringe the right to property directly, as the depositors were never expropriated; they retained claims against Ljubljanska Bank. However, Article 1 Protocol 1 ECHR also prescribes a positive duty on states to protect property. Although a state enjoys a wide margin of appreciation, it is obliged to strike a fair balance between legitimate public interest (such as protection of the banking system) and the individual interest. In this respect the key considerations for the Grand Chamber were that Ljubljanska Bank is owned by the state, that a statute transferred the majority of its assets to Nova Ljubljanska Bank to the detriment of Ljubljanska Bank and its stakeholders, and that there is some factual basis for the assumption that a part of assets of Ljubljanska Bank Sarajevo were transferred to Slovenia.⁸⁵ The applicant's continued inability to freely dispose of their savings

⁸² *Ališić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 52) paras 121 and 122. See also the dissenting opinion of Judge Zupančič to *Ališić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 52).

⁸³ *ibid.*

⁸⁴ EFTA Court, *EFTA Surveillance Authority v Iceland* [2013] Case E-16/11. After the collapse of Landsbanki in 2008, the UK and the Netherlands repaid the depositors in the banks' foreign branches. The EFTA Court freed Iceland from the disputed obligation of repayment of Icelandic minimum deposit guarantees to the UK and the Netherlands. The Court found that Iceland had established a deposit insurance scheme in conformity with Directive 94/19/EC and that it did not discriminate on the basis of nationality.

⁸⁵ Igor Vuksanović, 'Dolžnost poplāčila varēvalcev Ljubljanske banke' *Pravna praksa* No 29–30/2012 (24 July 2014) 31.

since 1992 amounted to a violation of Article 1 Protocol 1 of the ECHR: the depositors were made to wait too long.

In her dissenting opinion, Judge Nußberger, joined by Judge Popović, severely criticised the judgement. She reproached the Grand Chamber for the oversimplification of complex historical developments. She challenged the view of the Grand Chamber that responsibility should be based on a civil law relationship, which it had essentially justified by reference to the jurisprudence of Slovenian and Serbian courts. She also challenged the attribution of exclusive responsibility to Slovenia and Serbia. In her opinion, Slovenia and Serbia are states within which associated banks following the socialist model of self-management happened to have their head offices' during Yugoslav times and are now required to pay back all the debts incurred in a system created by another state before the entry into force of the Convention. She called attention *inter alia* to the fact that it was the late SFRY which first resorted to emergency measures restricting withdrawals of foreign currency deposits. The consequences of the disfunctioning SFRY system should be regarded as a shared responsibility of the successor states. As she explained, the positive obligations of the respondent state in the context of state succession are twofold: at a vertical level they were obliged to make good the losses of the applicants and to provide immediate relief, and at a horizontal level, to negotiate among themselves to achieve an adequate distribution of debts accumulated within the SFRY system. She considered that not only Slovenia and Serbia, but also Bosnia and Herzegovina had breached the former aspect (by deliberately excluding state guarantees),⁸⁶ and Croatia had breached the latter (by refusing to continue negotiations in 2002): A better solution would be, in her opinion, holding Croatia and Bosnia and Herzegovina liable for the violation of the property rights of the applicants, not just Slovenia and Serbia. It is highly likely, writes Judge Nußberger, that the money had already been lost in 'Yugoslav times'. On the basis of their shared responsibility for the SFRY system, all the respondent states should cooperate in establishing an adequate compensation scheme.

8.3 ECtHR: *Ljubljanska Bank Zagreb v Croatia*

In June 2007 Ljubljanska Bank Zagreb (Main Branch) filed a complaint with the ECtHR, because it could not execute a writ of execution against its debtor – Sugar Company IPK Osijek: the bank referred to its rights to a fair trial, to

property, to effective remedies and to the prohibition against discrimination.⁸⁷ Ljubljanska Bank Zagreb (Main Branch) obtained final writs of execution from 1991 and 1994 at the Commercial Court in Osijek. In 1994, with the war in Croatia still ongoing, Ljubljanska Bank Zagreb agreed on a temporary adjournment of court proceedings. In 2003 the bank filed for continuation of proceedings of court proceedings. In 2003 the bank filed for continuation of proceedings. After that, according to media reports, the Vice President of Croatian Government, Slavko Linić, intervened at the Osijek Court, which then suspended the execution procedure. Court of Appeal and Croatian Constitutional court dismissed the bank's appeal. In 2014 the application remains pending at the ECtHR.⁸⁸

9 Conclusions

This incomplete survey certainly does not reveal all the relevant aspects and circumstances of the dispute, going back more for more than twenty years. It shows, however, that the bank dispute which evolved into a bilateral dispute between Slovenia and Croatia during Croatia's EU accession process is a part of a complex problem arising from the state succession process following the collapse of Yugoslavia. Beyond the question of how Slovenia and Croatia should settle some aspects of this issue bilaterally, there remains the multilateral succession issue regarding the state guarantees for bank deposits, which can only be solved with the cooperation of all succession states. Furthermore, there is the human rights aspect of the bank depositors (their relationship with states) and the question of the rights of the depositors against the banks (civil law relationship). These aspects are intertwined.

The ECtHR (*Ališić*, 2014) only dealt with the vertical aspect of the unpaid bank deposits: it decided that the burden of long-term succession negotiations should not be borne by ordinary people deprived of their savings. In this sense the Court has separated the vertical from the horizontal aspect – it gave the applicants' human rights priority over an international treaty (the Succession Agreement). The Court implied that in the light of the length of succession negotiations, the states were obliged first to pay out the depositors and then to negotiate. In fact, the states involved had done just that, but under different conditions. Although the length and outcome of multilateral negotiations depend on all parties being involved, the Court *de facto* attributed liability for

⁸⁷ See *Ljubljanska banka v Zagrebu toži Hrvaško Delo* (13 July 2007).

⁸⁸ App no 29003/07. See also Dejan Vodovnik, 'Odstavljeni ministar vpleten v slovenske bančne tožbe' *Delo* (10 May 2014).

⁸⁶ *Ališić and others v Bosnia and Herzegovina, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia* (n 11) para 24 et seq.

failed negotiations and their length (including interest on claims) only to two of them. However, the final settlement of the succession issue is yet to emerge.

It is doubtful whether the enlargement process provides a suitable platform for resolving disputes in a constructive and neighbourly spirit. The good neighbourliness principle as it is applied in the process of EU enlargement – i.e. as a condition for the bilateral settlement of disputes with candidate countries – is certainly not in accordance with the legal foundation of the good neighbourliness principle in international law, i.e. the idea of sovereign equality of states.⁸⁹ The positions of Member State and candidate country are fundamentally different – the situation is asymmetric *per se*. On the other hand, however, the mere fact that a bilateral dispute is solved during the enlargement process at the initiative of a Member State does not permit the conclusion that the Member State has somehow 'misused' its position or that the dispute has been solved 'unjustly', to the detriment of the candidate country.

Before a possible misuse is found, all the circumstances of the dispute must be taken into account. If the candidate country had been rejecting offers to solve the problem for years before the commencement of the accession process (e.g. Croatia with respect to the IMF and BIS-sponsored negotiations), it is perhaps not incomprehensible that the Member State which wants to see the dispute settled, raises the issue during the accession negotiations. Raising an issue at a time when a Treaty of Accession is already in the process of being ratified by the Member States is indeed very late, but to conclude that this is 'blackmail', all circumstances have to be taken into account.

The dispute has not been solved yet in any case; rather, it has been 'imported' into the EU. It will have to be solved along with other successor states. As the issue is not connected to EU law, EU law does not provide a legal platform to settle the issue. International law remains applicable.

⁸⁹ Basheska (n.4) 92 et seq.

Good Neighbourliness in the European Legal Context

Edited by

Dimitry Kochenov
Elena Basheska



BRILL
NIJHOFF