

# **MOLDOVA: NO QUICK FIX**

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## **MOLDOVA: NO QUICK FIX**

### **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

The conflict in the Transdniestrian region of the Republic of Moldova is not as charged with ethnic hatred and ancient grievances as others in the area of the Organisation for Security and Cooperation in Europe (OSCE), and it is more conducive to a sustainable settlement. However, a “quick fix” in 2003, as envisaged by the Dutch Chairmanship of the OSCE, is also unlikely. To reach the sustainable agreement that is required if the forthcoming European Union (EU) enlargement is not to be compromised by a nearly open border with international crime and serious poverty, a comprehensive approach is needed that takes into account the root causes of the original conflict and the factors that have blocked the settlement process since 1992.

The Transdniestrian authorities are not recognised by any state and have been subjected to targeted sanctions such as travel bans by the EU and the U.S. but they have acquired for their small territory on the left bank of the Dniestr River with barely one-sixth as many people as Moldova some of the attributes of a state. They have gained control over local enterprises and the customs service covering their section of the Ukraine-Moldova border and their side of the internal Moldovan boundary. This enables them to profit not only from legal trade but in all likelihood also from the trafficking of other goods in transit to Moldova and beyond. Such illicit activities pose a threat to the security of the wider region. The EU, which will share a common border with Moldova after the accession of Romania in 2007, has a particular interest in settlement of the conflict and regularisation of Transdniestria’s status.

The Transdniestrian elite (and others) prefer the status quo to any negotiated agreement. An important part of a settlement process, therefore,

must be to design steps that would reduce and even abolish the benefits that flow from that tainted status quo – for example, the imposition of sanctions on Transdniestrian leaders and enterprises and help for the Moldova government to establish a unified customs system along its entire border.

The vested interests of elites on either side of the river do not necessarily correspond to the interests of the broader population. Although the majority on both sides would certainly profit from increased investments and trade after settlement of the conflict, there is no general awareness of the real costs of separation and the political stalemate. Moreover, the authorities in Transdniestria hinder the development of civil society, free media and party pluralism. As a result, there is no opportunity to express views freely on the future of the region. Another important pillar of the process, accordingly, must be the fostering of an open society in Transdniestria. A settlement that merely cemented the Smirnov regime in place would be unacceptable.

At the same time, economic transformation, democratisation, rule of law, freedom of the media and human rights are also deficient on the other side of the river. The third pillar of a comprehensive approach to a final settlement, therefore, should be to make Moldova more attractive for the Transdniestrians in order to provide incentives for them to support an agreement. Joint benchmarks for legislation and its implementation in Moldova and Transdniestria should be worked out and reviewed regularly, with clear rewards for compliance and targeted punitive measures for non-compliance. For Moldova, this initially could mean not getting loans or access to aspects of the European market. For Transdniestria, it would include further visa

restrictions, the freezing of individual and enterprise assets and perhaps a ban on trade with Transdniestrian companies not registered with the Moldovan authorities. Additional aims of this process would be to harmonise the legislation of Moldova and Transdniestria and reintegrate state structures that have developed in parallel for more than a decade, in order to prepare the way for reintegration.

The fourth pillar would have to be a fair proposal for a final settlement tabled by the Moldovan side. A federation – preferably asymmetric and multi-member – would be the best political system for a unified Moldova; it would not only give Transdniestria broad autonomy but also keep it in constant interaction with the central authorities. It should include a framework for a functioning dispute settlement mechanism to cope with new disputes.

Finally, any agreement would need political and military guarantees. The former should include a functioning dispute settlement mechanism. The latter are important to prevent spoilers from provoking violence, including military people on both sides until they are decommissioned, and should come in the form of an international security presence mandated by the OSCE.

## RECOMMENDATIONS

### To the OSCE, the EU and the U.S.:

1. Plan a comprehensive settlement process involving simultaneous democratisation on both sides of the Dniestr River, with a special emphasis on the left bank (Transdniestria).
2. Establish an international security presence under an OSCE mandate, led by the EU and including troops from Russia and other interested OSCE participating states, to take over from the current trilateral peacekeeping forces in Moldova by 1 January 2004.
3. Urge Ukraine and Moldova to come to an agreement on joint customs posts and on the presence of independent observers, both to be located on Ukrainian territory if Transdniestria continues to refuse to allow Moldovan customs to operate on its territory.

4. Establish a trust fund under international supervision into which all revenues collected by Moldovan authorities from Transdniestrian enterprises would be deposited and which pending a final agreement between the two sides would be used exclusively for financing economic development, infrastructure, education, public health and social welfare.
5. Draw up a reconstruction program for a unified Moldova based on a co-ordinated approach by international donors.
6. Increase aid for language education and social integration programs in both Moldova and Transdniestria.

### To the EU:

7. Open a full European Commission delegation office in Moldova.
8. Draw up and assign priority to an Action Plan for Moldova that sets clear benchmarks – worked out in close co-operation with the OSCE and the Council of Europe – for development of democracy, rule of law and human rights, including specific benchmarks to be met in Transdniestria.
9. Target the Transdniestrian leadership with further sanctions if it continues to block the negotiation process and removal of Russian ammunition or fails to meet the benchmarks in the EU Action Plan for Moldova described above, and urge Russia to join such measures and refrain from helping the Transdniestrian regime consolidate its power.

### To the OSCE:

10. Increase the OSCE Mission to Moldova by at least three international staff members responsible for promoting reunification, including democracy and rule of law, especially in Transdniestria.
11. Include economic experts, inter alia from the International Monetary Fund, among the international experts working with the Joint Constitutional Commission.
12. Conduct an awareness-raising campaign in Moldova on the nature of power sharing,

especially through various federal models, as a conflict resolution tool.

13. Strengthen co-operation between Transnistria and Moldova at non-official levels (for example, economic agents, NGOs, and the media) by organising and/or supporting such measures as round-tables, workshops, and summer schools.
14. Have the donor states agree that the OSCE voluntary fund for destruction or withdrawal of ammunition can be used to finance destruction of the ammunition also in Russia after it has been withdrawn or establish a new voluntary fund for that purpose.
15. Task the Strategic Police Matters Unit of the OSCE Secretariat to conduct a full scale needs assessment in Moldova and to prepare a program for police training with a special view to the need for increased policing in a security zone after final settlement of the conflict.

**Chisinau/Brussels 12 August 2003**

## MOLDOVA: NO QUICK FIX

### I. INTRODUCTION

The conflict in the Transdnestrian region of the Republic of Moldova is often described as “frozen”, as are those in Abkhazia, South Ossetia and Nagorno-Karabakh in the South Caucasus. Of these, it seems to offer the best hopes for a lasting settlement. The violent clashes between Moldovan and Transdnestrian forces in 1992 were confined to a few hot spots, were relatively short and caused much less bloodshed than the wars in Abkhazia and Nagorno-Karabakh. Although the conflict has ethnic and linguistic elements, it is not rooted in those divisions. It is not laden with deep disputes over history, and there are comparatively few serious traumas from the short period of fighting. The joint mediation carried out since 1993 by the Organisation for Co-operation and Security in Europe (OSCE), Russia and Ukraine has, nevertheless, not resulted in a final settlement – largely because there are many players with strong vested interests in preserving the current state of affairs.

The negotiation process has gained fresh momentum since the mediators presented a new draft for a final settlement agreement in July 2002. This Kiev Document for the first time introduced the notion of a “federal state”. Moreover, it was launched as Moldova was starting to receive more international attention. The European Union (EU) and Russia had declared at their summit on 29 May 2002 that they would cooperate to resolve the Transdnestria conflict, while the Netherlands identified a settlement as a priority for its Chairmanship-in-Office of the OSCE in 2003.

Heightened interest of the EU and its member states is certainly warranted. Partly as a result of the economic costs of the unresolved Transdnestrian situation, Moldova is Europe’s poorest country. Transdnestria is a haven for organized crime and as such is a threat to security

not only for Moldova but for the wider region. In 2007 when Romania is expected to join, Moldova will become a direct neighbour of the EU. As there is no effective border control at the internal Moldovan boundary, the border between the future EU (Romania) and Moldova will be all that separates Western Europe from Transdnestria. Moreover, approximately 300,000 inhabitants of Moldova, including of Transdnestria, have already been granted Romanian citizenship and more are expected to apply in the next few years,<sup>1</sup> making it even more difficult for the EU to control this border. In effect stability and prosperity on the expanded EU’s new frontier will not be achievable without the settlement of this conflict.

This first ICG report on Moldova lays the ground for a better understanding of the problems the international community faces. It provides background information on the conflict and analyses the main developments in the settlement process. Following detailed discussion of the Kiev Document and the factors that have impeded an agreement, it argues for a multifaceted approach based on (1) breaking-up the vested interests; (2) promoting democracy, rule of law and human rights in Transdnestria; (3) promoting economic and democratic reforms in Moldova and (4) the offer of a fair settlement agreement based on a new federal constitution with political, economic and military guarantees for Transdnestria.<sup>2</sup>

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<sup>1</sup> “President Voronin Signs Law that Clears Way for Multi-citizenship”, *Basa-Press*, 9 July 2003. The Republic of Moldova has approximately 4.3 million inhabitants, of whom 630,000 live in Transdnestria.

<sup>2</sup> A subsequent ICG report in this series will look in greater detail at the situation in Transdnestria.

## II. BACKGROUND TO THE CONFLICT

### A. GEOGRAPHY AND HISTORY

The name Moldova<sup>3</sup> dates to the medieval period. In the fifteenth century, the principality of Moldova stretched from the Carpathians to the Dniestr. In 1812, the area east of the Prut River was annexed by Russia under the name of "Bessarabia". The area west of the Prut became part of the Romanian kingdom in 1859. Bessarabia declared its independence from Russia on 24 January 1918 and united with Romania shortly thereafter. In order to underline its claim to Bessarabia, Moscow created a Moldovan Autonomous Socialist Soviet Republic (MASSR) within Ukraine and on the left (eastern) bank of the Dniestr in 1924. In 1940, the Soviet Union annexed Bessarabia and formed the Moldovan Soviet Socialist Republic (MSSR) by uniting its centre with the western MASSR. Although also partly populated by Moldovans, the lands east of the Dniestr had never shared the same administrative structure with the right (western) bank before 1940. Also, between 1941 and 1944, when Bessarabia and the area between the Dniestr and the Bug was controlled by Germany's World War Two ally Romania, the banks of the Dniestr were under different jurisdictions: Bucharest formally reintegrated the right bank into the Romanian state but it only occupied the area between the Dniestr and Bug, called Transdnistria.

After the war, Moldova was restored to the boundaries of 1940 and experienced a period of industrialisation and Russification. Up to 300,000 Russian speakers were settled there between 1944 and 1959, mainly in Transdnistria and in the few bigger cities on the right bank. At the same time, more than 500,000 Moldovans were deported to the

far east of the Soviet Union or were ordered to work outside their republic.<sup>4</sup> Another 200,000 died during the great famine of 1946/47, which was triggered by the forced collectivisation of the agricultural sector. Transdnistria, which was already more developed in 1945, became the industrial centre of the MSSR. While the economy on the right bank was mainly based on agriculture and light industry, in Transdnistria it was dominated by heavy industry and enterprises for the Soviet military industrial complex. As a result Transdnistria, with the exception of the Grigoriopol and Camenca districts, became more urban and Russified than Bessarabia.

Transdnistria was not only the economic heartland of the MSSR, but also the area from which most of its elite was recruited. Russians or Russified Moldovans from Transdnistria dominated state and party structures as well as the economy until the 1980s. Russian was the republic's language, while Romanian was confined to the role of a kitchen tongue. Moreover, Romanian (officially called Moldovan), was written in Cyrillic script, and Soviet linguists and historians attempted to prove that the Moldovan language and nation were different from those of Romania.

In the late 1980s, Gorbachev's glasnost and perestroika opened the way for pro-Romanian intellectuals to voice opposition to Russian domination. Inspired by similar movements in the Baltic States, they organised their protest in May 1989 in the framework of the Popular Front of Moldova, which rapidly became a mass-movement that demanded, inter alia, that Romanian, in Latin script, become the official state language. This demand was supported not only by an increasing number of ordinary Moldovans who went into the streets, but also by reform-minded party officials.

As a result, the Supreme Soviet of the MSSR passed a law on 31 August 1989 declaring Moldovan (Latin script), the state language. Article 7 stipulated that everyone in a position requiring communication with customers must speak both Moldovan and Russian. Compulsory language tests were foreseen within five years. As the Moldovan population could speak Russian to some extent, but only a fraction of non-Moldovans could communicate in the new state

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<sup>3</sup> According to the most common legend, the name Moldova derives from that of the favourite hunting dog of the Romanian prince Dragos, who in the early fourteenth century chased an aurochs in the forests east of the Carpathian Mountains. During the hunt, the dog, Molda, was drowned in a river. Dragos is said to have named the river and the land Moldova and taken the auroch's head as his crest. The head of an aurochs is included in the state emblems of both the modern Republic of Moldova and Romania. For an overview of Moldovan history, see Charles King, *The Moldovans – Romania, Russia and the Politics of Culture* (Stanford, 2000).

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<sup>4</sup> Wilhelm van Meurs, *The Bessarabian Question* (New York, 1994), pp. 122-124.

language, this affected mostly Russian-speakers, who feared marginalisation and discrimination.

The new language law, as well as calls to replace old cadres in the name of perestroika, gave Romanian-speakers wider access to posts in the state and party structures. The electoral success of the Popular Front in the first competitive ballot for the Supreme Soviet of the MSSR in 1990 and its subsequent inclusion in the new government expanded these opportunities further. The democratisation process, combined with the language law, inevitably led to a “Moldovanisation” or “De-Russification” of power structures. By 1991, ethnic Moldovans occupied nearly 90 per cent of leadership positions within the government and the state administration.

From the outset, the Moldovan national movement faced opposition from the other ethnic groups. In southern Moldova, there are some 160,000 members of the Gagauz minority (a Christian community whose language is related to Turkish) and 80,000 ethnic Bulgarians. Demonstrations and protests took place in these areas, and the conflict between Moldovans and Gagauzians nearly became violent in October 1990. Growing anti-Russian sentiments and talk of possible (re-)unification with Romania further added to the unease among the Russian-speaking population, which developed a “reactive nationalism”<sup>5</sup> and started to organise counter-demonstrations and strikes. Of the organisations on the side of Russian-speakers, the Union of Workers Collectives (OSTK – *Ob’edinennyi sovet trudovykh kollektivov*), formed on 11 August 1989 out of several Workers Collectives from Transdnistria, became the most important. Protests from the Russian and Ukrainian minorities took place in the two largest cities, Chisinau and Balti.

Resistance was fiercest in the industrial centres of the Transdnestrian region, including the right-bank city of Bender (Tighina) where the concentration of Russian-speaking blue collar workers was highest and most enterprises were directly subordinate to Moscow. Management feared subordination to the Moldovan government and rejected any plans for more Moldovan sovereignty or even independence. Identification with the Soviet Union was also considerably higher in Transdnistria and Bender

than in the rest of Moldova. Both factors resulted in a combination of interests and identity symbols that were diametrically opposed to those among Moldovan-speaking communists and pro-Romanian nationalists alike.

The OSTK was in essence a top-down, pro-Soviet and chauvinist Russian organisation. It pursued, together with the local authorities in the towns along the Dniestr, a policy of step-by-step secession from Moldova. On 2 September 1990, the “Dniestrian Moldovan Socialist Soviet Republic” was proclaimed as a constituent part of the Soviet Union. Moldova declared independence shortly after the failed Moscow putsch of August 1991, and on 2 September 1991, the Supreme Soviet of Transdnistria adopted its own constitution and began to build armed forces. On 1 December 1991, Igor Smirnov was elected the first president of the “Dniestrian Moldovan Republic”,<sup>6</sup> whose independence was approved in a referendum on the same day. Transdnestrian paramilitary forces and militias then started a “creeping putsch”.<sup>7</sup> During the winter of 1991/1992, they surrounded and attacked several Moldovan police stations in Transdnistria and tried to overthrow local authorities in the mainly Moldovan-inhabited rural areas, which had remained loyal to the Moldovan government.

The Soviet 14th Army stationed in Transdnistria played a crucial role during this period. Its officers refused to acknowledge Moldovan jurisdiction, declared loyalty to the Transdnestrian leadership,<sup>8</sup> and expressed readiness to defend the Transdnestrian region and train and supply the

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<sup>5</sup> William Crowther, “The Politics of Ethno-National Mobilisation: Nationalism and Reform in Soviet Moldavia”, *The Russian Review*, vol. 50 (1991), p. 183.

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<sup>6</sup> The term “Transdnistria” is generally accepted in diplomatic and academic circles, though the Republic’s own nomenclature is slightly different. The Moldovan name “Republica Moldoveneasca Nistreana” stands for “Dniestrian Moldovan Republic”. The Russian “Pridnestrovskaya Moldavskaya Respublika” could be equally well translated as either “Dniestrian Moldovan Republic” or “Transdnestrian Moldovan Republic”. The terms “right bank” and “left bank” with respect to the Dniestr River refer to their orientation with respect to an observer looking downstream (south); somewhat counter intuitively, the right bank is, therefore, to the west and the left bank to the east.

<sup>7</sup> Vladimir Socor, “Creeping Putsch in Eastern Moldova”, in RFE/RL Research Report, 1 (1992), pp. 8-13.

<sup>8</sup> Mihai Gribincea, *Trupele Ruse in Republica Moldova - factor stabilizator sau sursa de pericol* (Chisinau, 1998), p. 25.



newly created defence forces of Transdniestria.<sup>9</sup> Most of the 14th Army's personnel were in fact native to the region and directly concerned with the future of their homeland. In fact, Moscow did not have full control over the military units stationed in Transdniestria, and it remains unclear to what extent the 14th Army's Tiraspol headquarters effectively controlled all its sub-units.<sup>10</sup>

In spring 1992, the creeping putsch escalated into outright war. Fighting was fiercest in Bender and around Dubasari, where the Moldovans were able to hold some villages on the left bank. The Moldovan attack on Transdniestrian forces in Bender on 19 June 1992 resulted in a bloody setback. The 14th Army intervened in the fighting there on 20 June. While this helped to establish a cease-fire, it also secured Transdniestria's de facto independence.

In July 1992, the 14th Army was by far the strongest military factor in Moldova, numbering about 9,250 troops with heavy equipment whose deployment was subject to limitations set by the Treaty on Conventional Armed Forces in Europe (the CFE Treaty):<sup>11</sup> 126 battle tanks, 198 armoured combat vehicles and 127 artillery pieces.<sup>12</sup> The CSCE Ministerial meeting in Stockholm on 14-15 December 1992, called on Russia and Moldova to conclude a bilateral agreement on the status of the Russian troops and their early, orderly and

complete withdrawal.<sup>13</sup> An agreement was finally signed on 21 October 1994 but the Russian Duma's refusal to ratify meant that it never came into force. Nevertheless, Russia had committed itself in the framework of what was now the OSCE to its essential objective.

By 1999, the number of 14th Army troops had been reduced to 2,600<sup>14</sup> and at the OSCE Istanbul Summit, Russia accepted formal deadlines for the withdrawal or destruction of all CFE-limited equipment by the end of 2001, and completion of troop withdrawal by the end of 2002. Giving in to heavy diplomatic pressure, combined with pledges of considerable financial compensation, the Transdniestrian authorities accepted the destruction of the CFE-limited equipment in 2001, and Russia actually beat the first deadline. However, it missed the second. Although the Transdniestrians had agreed to a plan for withdrawal and destruction of equipment and the 40,000 tons of stockpiled ammunition, they blocked any attempts to withdraw or destroy ammunition and military equipment not covered by the CFE Treaty after December 2001. The process stalled, and the December 2002 Porto Ministerial extended the deadline for the withdrawal of the remaining troops as well as the ammunition and military equipment not covered by the CFE Treaty to the end of 2003. Moreover, on Russian insistence, the Porto document also introduced a clause that opened the door for even further delay: that the withdrawal should be conducted "provided the necessary conditions are in place".<sup>15</sup>

While the presence of Russian troops has become far less significant in military terms, it is still seen as reassuring by the Transdniestrians. Moreover,

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<sup>9</sup> Stuart J. Kaufman and Stephen R. Bowers, "Transnational Dimensions of the Transnistrian Conflict", *Nationalities Papers*, vol. 26 (1998), p. 132.

<sup>10</sup> Andrea Mörike, "The Military as a Political Actor in Russia: The case of Moldova and Georgia". *The International Spectator*, vol. 33 (1998), p.124.

<sup>11</sup> The CFE Treaty was signed in Paris on 19 November 1990 by the 23 Participating States of the Conference for Security and Co-operation in Europe (CSCE) belonging to NATO and the Warsaw Pact and entered into force on 9 November 1992. Its main objective was to reduce the possibility of a surprise armed attack and the triggering of major offensive operations in Europe. The treaty established equal limitations on major armaments for NATO and the Warsaw Pact. Moreover, it established sub-areas where permitted armaments are subject to specific limitations. On 19 November 1999 an agreement on the adaptation of the CFE Treaty was signed in Istanbul that replaced the original bloc limitations with national and territorial ceilings. See <http://cns.miis.edu/pubs/inven/pdfs/cfe.pdf>.

<sup>12</sup> Mihai Gribinicea, *The Russian Policy on Military Bases: Georgia and Moldova* (Oradea, 2001), p. 153.

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<sup>13</sup> Conference for Security and Co-operation in Europe (CSCE), Third Meeting of the Council, Stockholm, 14-15 December 1992, Summary of Conclusions, Decision on Peaceful Settlement of Disputes, <http://www.osce.org/docs/english/1990-1999/mcs/3stoc92e.htm> (20 June 2003). The CSCE was converted into the Organisation for Security and Cooperation in Europe (OSCE) at the Budapest Summit, 5-6 December 1994.

<sup>14</sup> William Hill, "Making Istanbul a reality: Moldova, Russia, and withdrawal from Transdniestria", *Helsinki Monitor* vol. 13 (2002), p. 135.

<sup>15</sup> Organisation for Security and Co-operation in Europe (OSCE), Tenth Meeting of the Ministerial Council, 6 and 7 December 2002, Statements by the Ministerial Council, <http://www.osce.org/docs/english/1990-1999/mcs/10porto02e.pdf> (11 July 2003).

Transnistria claims that it inherited the military equipment and munitions from the Soviet Union and has, therefore, asked to be compensated financially for withdrawal. Up until March 2003, the Transnistrian authorities used various administrative means and impediments to prevent or at least slow the withdrawal, including the activities of ostensibly independent groups such as Cossacks and the “Women of Transnistria”.<sup>16</sup>

## B. TRANSDNIESTRIA TODAY

Since it declared independence from Moldova, Transnistria has established and consolidated its own state-like structure: it has an elected president and parliament, a national bank that issues currency, a judicial system from the lowest courts up to a Constitutional Court, an army, police and militia, a strong internal security service, border guards and a customs service, a constitution, a national anthem, a coat of arms, and a flag. Both these state structures and the economy function relatively well, or at least little worse than their Moldovan counterparts. Official GDP per capita is only marginally lower than in Moldova (U.S.\$392 as compared to U.S.\$448).<sup>17</sup> Due to the poor state of its economy and its political system, the Republic of Moldova has hardly any economic attraction to the Transnistrian population. Unsurprisingly, there is little emigration from Transnistria to Moldova. Both Moldovans and Transnistrians prefer to seek their fortunes in Russia, Western Europe or North America.

As far as the Transnistrian leadership is concerned, running a state, albeit one that is unrecognised, is not only more prestigious than being in charge of an autonomous region or a federal unit, but also assures control over economic resources. The revenues of the customs department, headed by a son of Igor Smirnov, are larger than Transnistria’s state budget.<sup>18</sup> The only sizeable business set up after 1992, the Sheriff company, is also said to be controlled indirectly by Smirnov. It owns the only modern supermarket chain in the

region as well as petrol stations, media outlets and telecommunications and is highly profitable. Due to its extensive financial resources, its football club, Sheriff Tiraspol, has become the strongest in Moldova.<sup>19</sup> Since 2002, Sheriff has hosted matches in Moldova’s only European standard stadium – a complex that incorporates a luxury hotel and is said to have cost U.S.\$250 million.<sup>20</sup>

The economic resources controlled by the Transnistrian authorities include both legal and illegal activities. The most important (legal) enterprise is the Moldovan Metallurgical Plant in Ribnita, in which the Russian company ITERA holds a majority of shares, and which accounts for two-thirds of Transnistrian tax revenues.<sup>21</sup> Other important enterprises include the Cuciurgan Power Station, the KVINT Brandy Factory, and factories producing small and light weapons. Transnistria is a small entity with only 630,000 inhabitants; its economy is extremely open with an external trade turnover of 276.9 per cent of GDP in 2002, compared with 111.7 per cent in right-bank Moldova.<sup>22</sup> In 2002, 46.7 per cent of Transnistrian exports went to CIS (former Soviet) countries, a figure that reflects considerable diversification in the last few years to Egypt, Germany and other Western states. Since 1991, the authorities have kept for their entity all tax and customs revenues collected on its territory as well as the revenues from privatisation initiated in the late 1990’s.

Between February 1996 and September 2001, Transnistrian enterprises were even able to export legally without paying taxes to the Republic of Moldova. This was possible due to a protocol signed on 7 February 1996 in which Moldova granted Transnistria the right to use the custom seal “Republic of Moldova. Transnistria. Tiraspol Customs” for the export of its goods. Moldova also agreed not to collect taxes and duties on goods bound for Transnistria at Moldovan customs offices. In turn, Transnistria agreed to establish

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<sup>16</sup> Hill, “Making Istanbul a Reality”, op. cit., p. 136.

<sup>17</sup> Official statistics in Moldova and even more in Transnistria should not be taken at face value but they give some indication of the formal or “white” economy. As described in this report, considerable economic activity, particularly in Transnistria, is off the books.

<sup>18</sup> ICG interview, Chisinau, May 2003.

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<sup>19</sup> The Moldovan football league is unified. Players from Transnistria have always been included in the single national team that participates in European and world championship competition. To learn more about Moldovan football, read Tony Hawks, *Playing the Moldovans at Tennis* (London, 2000).

<sup>20</sup> The cost might be exaggerated as Sheriff allegedly tends to overcharge when billing, ICG interview, Chisinau June 2003.

<sup>21</sup> Centre for Strategic Studies and Reforms (CISR), “Recent Economic Developments in Transnistria”, Chisinau, 2003, p. 2.

<sup>22</sup> Ibid, p. 5.

joint Moldovan-Transdnistrian customs posts at the border with Ukraine and to remove its own customs checkpoints at the inner-Moldovan border. However, it did not honour the agreement. Moldovan customs officials are not allowed on Transdnistrian territory,<sup>23</sup> and the number of Transdnistrian customs posts has increased since 1996.

The combined effects of these measures were profitable for Transdnistria but devastating for Moldova. Whereas Transdnistria strengthened control over its own customs space, Moldova lost even more control over the flow of goods, especially excise goods. In 1998, excise goods worth U.S.\$107 million were imported to Moldova, while the volume of excise goods taken through Moldovan customs but declared for Transdnistria amounted to U.S.\$ 475 million.<sup>24</sup> Given that right-bank Moldova has a much larger population – approximately 3.7 million versus 630,000 – most of these goods must have been redirected to Moldova. Moreover, excise goods entering Transdnistria directly without going through Moldovan customs often reach Moldova as contraband. The official Transdnistrian budget of 1998 reported receipt of only U.S.\$80 million in excise duties.

The beneficiaries of much of this movement of goods are likely to have been criminal organisations, possibly on both sides of the river. In order to fight the contraband problem, the Moldovan government decided on 1 June 1999 to establish seventeen permanent customs posts and 30 mobile posts inside its boundary with Transdnistria and also along the frontier with Ukraine. Their purpose was to collect the value-added tax and excise duties and halt the traffic in contraband.<sup>25</sup> Neither these posts nor the additional efforts undertaken by the newly created Department against Crime and Corruption, however, have been very effective. Trafficking, contraband and other criminal activities continue.<sup>26</sup>

Maintenance of the status quo allows the Transdnistrian authorities to profit not only from trade (legal and contraband) in such products as fuel, cigarettes, liquor and otherwise standard goods, but allegedly also from trafficking in arms, drugs, and human beings and from money laundering.<sup>27</sup> Some production of arms and ammunition is done legally for a Russian company. However, there have been reports that the factories also produce small and light weapons, including grenade launchers, for illegal export. Firearms produced in and trafficked from Transdnistria are said to lack serial numbers, making them ideal for organised crime.<sup>28</sup>

One of the major routes for trafficking in human beings to Russia and Arab countries goes via the Transdnistrian “capital”, Tiraspol, and the Ukrainian port of Odessa. Undeniably, trafficking in human beings and other organised crime also occur in right-bank Moldova. However, in the current situation, such activities can be conducted in and from Transdnistria very easily. International law enforcement bodies are not allowed there, and international governmental and non-governmental organisations are unable to operate normally. It is difficult to provide training for officials or expertise on legislation, awareness-raising campaigns and witness protection programs related to trafficking issues when the authorities are not recognised internationally and are resistant to international pressure or intervention.

Transdnistria is basically a safe haven for criminals, whose safety is threatened only by rivals such as in December 1999 when a number of Transdnistrian officials and local criminals were killed over several days.<sup>29</sup>

Influential figures in Transdnistria’s security forces, such as Vadim Antyufeyev (also known as Vadim Shevtsov) and other former officers of the special police force (*Otryad militsii osobogo naznacheniya*, or OMON), were wanted by Interpol for crimes committed in Riga in 1990-1991. Although Latvia has apparently dropped its charges, they have reason to fear prosecution if a final settlement agreement is reached and Transdnistria is integrated into European

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<sup>23</sup> “Protocol Decision on Settlement of the Problems that Have Arisen within the Activity of the Customs Services of the Republic of Moldova and Transnistria”, 7 February 1996, OSCE Mission to Moldova translation. ICG interview with Valery Litzkai, Tiraspol, May 2003.

<sup>24</sup> Oazu Nantoi, “Conflict in the Eastern part of the Republic of Moldova – economic aspects”, paper published in 1999 on [www.azi.md](http://www.azi.md) and in ICG possession.

<sup>25</sup> “Fiscal Checkpoints to be Installed at Eastern Border”, *Basa-Press*, 17 May 1999.

<sup>26</sup> ICG interviews, Chisinau, May 2003.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Nantoi, “Conflict in the Eastern part of the Republic of Moldova”, op. cit.

structures. This contributes to the virtual absence of political will among the ruling elite to settle with Moldova.

The conflict will only be resolved when Transnistria's current or new elites regard change as better than struggling to preserve the status quo. This means it is insufficient to elaborate an adequate political status for the entity. Giving Transnistria the right to decide on the privatisation of its property, to conduct legal business and to receive a fair share of tax revenues will have to be a cornerstone of any settlement agreement. Breaking up vested interests now does not mean diminishing legitimate economic autonomy in the future. But there will also need to be political actions that reduce or even abolish the currently existing sources of income and power for the elites.

The attempt to deal with the illegal activities in Transnistria, which previously met resistance from several sides, has become more serious since 2001 when the Communists came to power in Moldova and increased efforts to regain control over the country's borders. Also, Brussels has started to realise that the current state of affairs in Transnistria threatens the security not only of Moldova but also of a soon to be enlarged European Union. However, the nature of the business conducted throughout Transnistria suggests that the beneficiaries of the current status quo are not only to be found there, but also on the Moldovan right bank, in Ukraine and in Russia.<sup>30</sup>

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<sup>30</sup> See Anatol Taranu's statement in a round-table discussion on Transnistria published in *Flux*, 6 June 1998, p. 2, "Transnistria trebuie sa devina problema nationala numarul unu a Republicii Moldova"; Charles King, "Politicians in Chisinau Want Existence of Secessionist Transnistria", *Basa-Press*, 5 September, 2000.

### III. MANAGING THE CONFLICT

#### A. ATTEMPTS AT SETTLEMENT, 1992-2002

On 21 July 1992, the Presidents of Moldova and Russia, Mircea Snegur and Boris Yeltsin, signed a ceasefire agreement in Moscow, following which a tripartite peacekeeping force – Russian, Moldovan and Transnistrian – was stationed in a security zone on both sides of the river and negotiations on a special status for the Transnistrian region commenced. On 27 April 1993, the OSCE opened a long-term mission, mandated, inter alia, to facilitate a comprehensive political framework for dialogue and negotiations and to:

assist the parties to the conflict in pursuing negotiations on a lasting political settlement of the conflict, consolidating the independence and sovereignty of the Republic of Moldova along with an understanding about a special status for the Trans-Dniestr region.<sup>31</sup>

Thus, OSCE mediation is clearly based on the understanding that independence for Transnistria is not an option. At the same time, it rules out simply re-integrating Transnistria into a unitary Moldovan state without taking the historical and socio-economic peculiarities of the region into account.

The OSCE Mission started its work with intensive and broad consultations, from which it developed concrete proposals on a special status for Transnistria within Moldova. Those proposals, published as Report No. 13 on 13 November 1993, were later accepted as the basis for the negotiating process between Moldova and Transnistria.<sup>32</sup> Under mediation of the OSCE Mission and the special envoy of the Russian president,<sup>33</sup> negotiations were conducted by expert groups, and both sides made proposals for a draft treaty. There were no concrete results, however, and the process stalled in summer 1995. Some momentum was regained when a "Memorandum on the Principles of

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<sup>31</sup> CSCE, CSO Vienna Group, *Journal No. 7*, Annex 1, 11 March 1993.

<sup>32</sup> Rolf Welberts, "Der Einsatz der OSZE in der Republik Moldau", in Institut für Friedensforschung und Sicherheitspolitik an der Universität Hamburg/IFSH (ed.), *OSZE-Jahrbuch 1995*, Baden-Baden, p. 206.

<sup>33</sup> Ukraine was invited as a mediator to the conflict only in 1995.

Settlement of Relations” was initialled on 17 June 1996. However, Russia cancelled the already agreed date for signature, and subsequently the Moldovan side and the OSCE also withdrew consent on the grounds that the text did not guarantee the territorial integrity of the Republic of Moldova. Russian Minister for Foreign Affairs Yevgeny Primakov broke the deadlock in April 1997 by introducing an additional paragraph stating that “The Parties shall build their relations in the framework of a common state within the borders of the Moldavian SSR as of January of the year 1990”.<sup>34</sup>

On 8 May 1997, the amended memorandum was signed in Moscow alongside a supplementary joint statement from the presidents of Russia and Ukraine as mediators meant to safeguard the integrity of the Moldovan state against contrary interpretations of the phrase “common state”.<sup>35</sup> The OSCE Mission then prepared a draft final settlement agreement and division of competences between Moldova and Transdniestria that was presented to the parties as a common draft of the mediators in June 1997. In the ensuing negotiations, a single, bracketed text was produced but the differences remained fundamental. The negotiations finally failed in mid-September 1997, as did an attempt the following month when the sides were sequestered at Meshcherino, near Moscow.

In November 1998, the mediators presented another draft agreement. It upheld the principle of the territorial integrity of Moldova while introducing the idea of a “postponed status” for Transdniestria.<sup>36</sup> The differences over status, however, were fundamental,

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<sup>34</sup> Memorandum on the Bases for Normalization of Relations Between the Republic of Moldova and Transdniestria, <http://www.osce.org/moldova/documents/files/memorandum.pdf> (9 July 2003).

<sup>35</sup> The presidents declared that: “the provisions of the Memorandum cannot contradict the generally accepted norms of international law, and also will not be interpreted or acted upon in contradiction with existing international agreements, decisions of the OSCE, the Joint Declaration of 19 January 1996 of the Presidents of the Russian Federation, Ukraine, and the Republic of Moldova, which recognise the sovereignty and territorial integrity of the Republic of Moldova”. Joint Statement of the Presidents of the Russian Federation and Ukraine in Connection with the Signing of the Memorandum on the Bases for Normalization of Relations Between the Republic of Moldova and Transdniestria, available at *ibid.*

<sup>36</sup> “Mediators offering ‘postponed status’ variant for Transnistria”, Infotag, 28 January 1999.

and again no progress was made. Primakov presented yet another draft in August 2000, in his new capacity as head of the Russian state commission charged with the settlement of the Dniestr conflict.<sup>37</sup> The “Primakov Project” received a cool response from Tiraspol because it stopped short of granting Transdniestria the status of an independent subject under international law, while it was harshly criticised by Chisinau as an attempt to federalise Moldova.<sup>38</sup>

In elections generally rated free and fair, the Moldovan Communist Party gained 71 of the 101 seats in the Moldovan parliament in February 2001, a remarkable result for an opposition party fighting an election in a proportional system. Its leader, Vladimir Voronin, was elected President by the parliament on 4 April.<sup>39</sup> On 16 May 2001 he presented a new proposal on a special status for Transdniestria and the division of competencies. The Transdniestrian side forwarded its own document a few weeks later. However, in August 2001, negotiations came to a halt after the Moldovan side announced that new customs seals would be introduced by 1 September.<sup>40</sup> The deadlock continued until the mediators presented the Kiev Document on 3 July 2002.

## B. THE KIEV DOCUMENT AND BEYOND

The Kiev round of negotiations, which started on 2 July 2002, was preceded by meetings of the three mediators in Prague (21-22 November 2001) Bratislava (19-20 February 2002) and Warsaw (20-21 May). Moldovan President Voronin and Transdniestrian leader Smirnov’s consent to resume negotiations at the level of political representatives was linked to the Kiev Document, which had been developed by the mediators, with OSCE help, as an agreement meant to be signed by three guarantors – Russia, Ukraine and the OSCE – as well as the parties. In 42 articles, it set out the main principles of governance of a unified Republic of Moldova as well as a system of guarantees and transitional procedures.

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<sup>37</sup> The Chisinau newspaper, *Moldavskye Vedomosti*, on 6 September 2000 published a document that it claimed was the Primakov Project.

<sup>38</sup> “Transnistrian Settlement through Federalisation is Unacceptable”, Infotag, 11 September 2000.

<sup>39</sup> A dispute over the precise mechanism by which the President of Moldova should be elected had contributed to the collapse of the previous coalition government.

<sup>40</sup> See Section IV of this report for a detailed discussion on this issue.

Most importantly, Article 1 described the Republic of Moldova as a democratic, federal state, with rule of law and a republican form of government.

The two sides agreed in Kiev to study the document and that a new session in a five-sided format would be held at expert level in August 2002. Article 7 of the protocol of the Kiev meeting noted that the parties would refrain from steps hindering the negotiation process and would analyse the record of previous agreements and promote their further implementation. This stipulation referred to agreements reached, but essentially ignored, in areas such as customs, taxation, banking, and communication. Thus, parallel to the political negotiations, which started on 22 August 2002 in Chisinau, sectoral meetings for economic experts were held in September and October 2002 to discuss a range of practical issues. These sectoral meetings continue, but have not resulted in any concrete measures.

Between 22 August and 5 September 2002, five rounds of political negotiations were held in Chisinau in the five-sided format. Based on the Kiev Document, a draft "Agreement on the Basis of Relations between the Republic of Moldova and Transdnistria" was elaborated, Article 1 of which described Moldova as "a democratic, federal state, governed by the rule of law, with a republican form of government, established on a contractual basis".

At the sixth meeting on 18 September 2002, the Transdnistrian side presented amendments that defined Moldova as a common state but one based on the concept of a confederation rather than a federation. This was a retreat from the earlier formulation and a severe setback for the negotiation process. Five more fruitless meetings took place in October and November, after which the Transdnistrian side refused to sign a protocol record that would have confirmed the wording of Article 1 as the basis for a final document. Finally, the mediators proposed on 5 December 2002 a Declaration of Intentions with the following main provisions:

1. The Republic of Moldova and Transdnistria agree to build, on a contractual basis, a democratic federal state governed by the rule of law, oriented toward creating conditions that ensure a decent life and free development of the individual.
2. The parties confirm adherence to agreements reached earlier.

3. As the basis for the final document, the parties agree to take on the comprehensive settlement of the concept of federalisation as contained in the 2 July 2002 Kiev Document.<sup>41</sup>

This time the Moldovan side refused to sign, as it was not ready to accept "building" a state on a contractual basis, which it felt implied recognition of Transdnistria as an existing subject of international law that could later formally withdraw from any contract reached between the two sides.<sup>42</sup>

In Moscow on 17-19 December 2002, a protocol was signed by the parties, stipulating agreement to continue consultations on the Declaration of Intentions of 5 December 2002 and to develop a final document on the basis of the Kiev Document of 2 July 2002, as well as earlier agreements and drafts. Thus, the Kiev Document is but one of the papers on which the current negotiation process is based.

The Moscow protocol did not resolve whether the unified Moldova would become a federal state established on a contractual basis or not and left open the earlier possibilities of a special status or autonomy for Transdnistria. What it at least achieved was to open the way for negotiations on other topics.

On 29 January 2003, the parties agreed to a work plan foreseeing regular meetings with political representatives and experts in the framework of sectoral commissions. Moreover, they signed a protocol containing agreed provisions on basic fundamental rights and freedoms as well as questions of state sovereignty.<sup>43</sup> With respect to the wording of Article 1, however, no progress was made. The Moldovan side refused to sign a protocol proposing that Moldova and Transdnistria would establish a territorially integral, democratic, federal state based on the rule of law.

The negotiations on status thus seemed deadlocked again, in repetition of a decade-old cycle that has seen many drafts tabled in order to restart a stalled process, rounds of intensive meetings on core issues that lead to protocols and distinctive

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<sup>41</sup> OSCE, SEC.FR/18/03 14 January 2003, Mission to Moldova, Activity Report, December 2002.

<sup>42</sup> ICG interview with Moldovan official, Chisinau, May 2003.

<sup>43</sup> <http://mfa-pmr.idknet.com/documents/index.php?lang=rus&options=5&id=0&next=1> (20 June 2003).

formulas about the future relationship – and then a stonewall as one side or the other backs away from what it had apparently agreed to.

### C. THE VORONIN CONSTITUTIONAL INITIATIVE

This time, as the negotiations triggered by the Kiev Document seemed to have reached another deadlock, the initiative to revive the process was taken by one of the local actors. In a message delivered on 10 February 2003, President Voronin proposed “to Transdniestria to become a participant and co-author of the new Constitution of the Republic of Moldova. The fundamental principles of constitutional structure, as well as the mechanism of their implementation and entering into effect, are to constitute the basis of the new draft agreement with Transdniestria”.<sup>44</sup>

Voronin’s initiative is built on the Kiev Document and the subsequent discussions, in particular that unification of the country must be carried out according to the principles of territorial integrity and unity of state authority, on the basis of a democratic and republican political system and federal principles.<sup>45</sup> His draft final settlement foresees, *inter alia*:

- a two-level system of state organs, legislation, and fiscal and budgetary arrangements, with a corresponding distribution of competencies between the central authorities and Transdniestria;
- mechanisms to ensure that laws and other normative acts are implemented throughout the country;
- a single citizenship, a unified monetary system and a single defence and customs space;
- the right of Transdniestria to determine its own policy with respect to language, though throughout the entire territory of the republic, Moldovan would be the “state” language and Russian an “official” language; and

- the right of Transdniestria to self-determination in case the international status of the state were to change.<sup>46</sup>

The initiative came with a detailed roadmap aimed at re-integrating the country by February 2005. The new constitution was to be drafted within six months by a Joint Constitutional Commission (JCC), comprised of Moldovan and Transdniestrian experts supported by observers from Russia, Ukraine, the OSCE, and the Venice Commission of the Council of Europe. This draft would then be publicly discussed for two months and subjected to a referendum not later than 1 February 2004. Elections to a new parliament of the united republic would take place no later than 25 February 2005.<sup>47</sup> Parallel to the JCC, five-sided negotiations would continue on ancillary agreements such as for security guarantees.<sup>48</sup>

Voronin’s move opened the way to developing a new common constitution instead of amending the 1994 Moldovan document that had been worked out and adopted by a parliament in which Transdniestria took no part.<sup>49</sup> While the new initiative was welcomed by the OSCE, Russia and Ukraine, Transdniestria insisted again on the establishment of equal relations with Moldova on a contractual basis.<sup>50</sup> However, it did not reject the proposal and agreed on 28 February 2003 to a draft “Protocol on Establishing a Mechanism for the Drafting and Approval of the Constitution of the Federal State”.<sup>51</sup> This enshrined the basic principles of the Voronin road map and was signed at the next round of negotiations on 19 March.

On 27 February 2003, the European Union imposed a travel ban on seventeen Transdniestrian leaders, including Igor Smirnov and his two sons,

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<sup>44</sup> OSCE, SEC.DEL/31/0, 20 February 2003, Statement by the President of the Republic of Moldova Vladimir Voronin.

<sup>45</sup> *Ibid.*

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<sup>46</sup> OSCE, SEC.DEL/30/03, 20 February 2003, The Ministry of Foreign Affairs of the Republic of Moldova, Press Release, “Regarding the initiative of the President of the Republic of Moldova on the settlement of the Transnistrian conflict”.

<sup>47</sup> *Ibid.*

<sup>48</sup> OSCE, PC.FR/5/03, 17 February 2003, Report to the OSCE Permanent Council, Ambassador William Hill, Head of OSCE Mission to Moldova, 18 February 2003.

<sup>49</sup> As in subsequent national elections, special voting stations were assigned for potential voters from Transdniestria on Moldovan-controlled territory. However, less than two per cent of the eligible voters from Transdniestria took up this opportunity in 1994.

<sup>50</sup> OSCE, PC.FR/5/03, *op. cit.*

<sup>51</sup> OSCE, SEC.FR/115/03, OSCE Mission to Moldova, Activity Report No. 2, 1-28 February 2003.

“considered to be primarily responsible for the lack of cooperation to promote a political settlement of the conflict”.<sup>52</sup> The EU called the “continued obstructionism” of the Transdniestrian leadership unacceptable and threatened to consider additional targeted restrictive measures at a later date.<sup>53</sup> Although not mentioned in the decision itself, it is widely understood that the freezing of assets might be one of the next steps the EU considers.<sup>54</sup> EU associated countries (those on the path to membership) almost immediately imposed similar visa restrictions on the Transdniestrian leadership, as did the U.S.

The Ukrainian Delegation to the OSCE issued a statement describing these measures as an important step toward contributing to resolution of the conflict and stabilisation of the region. It proposed that Ukrainian authorities meet Transdniestrian leaders only within the framework of the negotiation process and that all Transdniestrian bank accounts in Ukraine be closed.<sup>55</sup> Moscow was more nuanced; while it favoured threatening sanctions to press Transdniestria to compromise on the issue of the withdrawal of Russian military equipment and ammunition, it was not enthusiastic about the linkage to the negotiation process.<sup>56</sup>

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<sup>52</sup> European Council, Council Common Position 2003/139/CFSP of 27 February 2003 concerning restrictive measures against the leadership of the Transnistrian region of the Moldovan Republic. Targeted measures against the Transdniestrian authorities with the aim of overcoming their resistance against the withdrawal of Russian troops had already been discussed in 2000 within the Permanent Council of the OSCE but were never implemented. They were also considered in the framework of the meeting between U.S. President Bush and his Moldovan counterpart, Voronin, on 17 December 2002. On 18 February 2003, the Head of the U.S. Delegation to the OSCE urged “particularly those Participating States most directly involved in attempting to resolve the Transdniestrian conflict to consider very seriously joining such measures”, U.S. Mission to the OSCE, Response to the Report of Ambassador William Hill, Head of the OSCE Mission in Moldova. As delivered by Ambassador Stephan M. Minikes to the Permanent Council, Vienna, 18 February 2003.

<sup>53</sup> European Council Common Position, *op. cit.*

<sup>54</sup> ICG interviews in Chisinau and Brussels, May and June 2003.

<sup>55</sup> OSCE, PC.Del/193/02, 6 March 2003, Delegation of Ukraine to the OSCE, Statement on the Process of the Transdniestrian Settlement.

<sup>56</sup> ICG interview, Chisinau, May 2003.

#### D. NEW DYNAMICS IN THE WITHDRAWAL PROCESS

The Transdniestrian side reacted cautiously to the visa restrictions, stating only that the EU and U.S. were misinformed. Tiraspol argued that it was really Moldova that was blocking settlement talks.<sup>57</sup> Nevertheless, the travel ban was a wake-up call. It brought some inconvenience to the targeted people and hurt them economically, but the truly alarming possibility was that more sanctions – most of all financial sanctions – might be imposed.<sup>58</sup> The first tangible result was a fundamental reversal of the Transdniestrian leadership’s position on the withdrawal question.<sup>59</sup>

On 5 March 2003 the Transdniestrian Supreme Soviet adopted a decree recommending that the leadership ensure and facilitate the withdrawal of Russian military equipment and ammunition.<sup>60</sup> It was understood that with this decision all political obstacles had been resolved and complete withdrawal could start. A combination of sticks and carrots initiated the breakthrough, not just the travel restrictions. On 4 March, for example, an agreement had been reached between the Transdniestrian leadership and the Russian firm Gazprom resulting in the write-off of a U.S.\$100 million debt.<sup>61</sup>

In the following weeks and months, the withdrawal of ammunition and military equipment proceeded with unprecedented speed. Around 35 per cent had left by the beginning of June 2003. If the withdrawal had continued at the same pace, most of the ammunition and military equipment would have been evacuated by the end of the year.<sup>62</sup> However, there was a serious setback in June/July, when the departure of a train loaded with ammunition was blocked for a month. Transdniestria claimed that it had not received the promised gas debt write-off and insisted that it would not allow the removal process to continue until this was resolved. But this might not be the only reason for the renewed

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<sup>57</sup> <http://mfa-pmr.idknet.com/news/index.php?lang=rus&options=0&id=1&next=1#85> (19 June 2003).

<sup>58</sup> ICG interviews in Chisinau, May 2003.

<sup>59</sup> Cf. Section II A above.

<sup>60</sup> OSCE, SEC.FR/120/03, 11 March 2003, OSCE Mission to Moldova, Spot Report: “Transdniestrian negotiator: Political Obstacle to Porto Deadline Removed”.

<sup>61</sup> ICG interviews in Chisinau, May 2003.

<sup>62</sup> “William Hill Optimistic About Russian Armament Withdrawal Prospects”, Infotag 9, June 2003.



resistance. Transdniestria may still covet the ammunition, which is outdated for the Russians but still usable for its own forces or export.<sup>63</sup>

The international community should continue to pay close attention to this process and be flexible on use of the voluntary fund set up by the OSCE in 1999<sup>64</sup> to finance the withdrawal and/or destruction of the ammunition. So far, this money has been used only for the destruction or withdrawal of ammunition in Transdniestria. In order to make sure that all ammunition is withdrawn, including what no longer suits Russian weapons, the OSCE needs to use the fund to help pay for the destruction of withdrawn ammunition in Russia proper. This would give Russia an incentive to remove and destroy ammunition that it can neither use nor store safely over a longer period. Otherwise it represents a potential hazard, at least for the environment and possibly in third country crises. In any event, financing destruction in existing Russian facilities would probably cost less than using mobile equipment for on-site destruction in Transdniestria.<sup>65</sup>

## E. DEADLOCKS IN THE NEGOTIATION PROCESS

While the visa restrictions imposed by the EU and the U.S. on the Transdniestrian leadership helped to trigger significant, albeit temporary, progress on the withdrawal issue, their effect on the negotiation process was mixed and in the end less sustainable. Transdniestria, which believed the restrictions had been initiated by the Moldovans, retaliated on 21 March 2003 by declaring fourteen high-ranking Moldovan officials, including the president, “persona non grata”. This killed a plan to organise a symbolic meeting between Dutch Foreign Minister de Hoop Scheffer as OSCE Chairman-in-Office, President Voronin and Transdniestrian leader Smirnov at the 2 April football match between Moldova and the Netherlands in Tiraspol. The last time Voronin and Smirnov had met was in August 2001, and a symbolic handshake in the

presence of the CiO would have been an important sign that negotiations were on track.

However, the process was not heading in the right direction. In fact, the above mentioned protocol on the establishment of a Joint Constitutional Commission was signed on 19 March but at the same time, the Transdniestrian side continued to use formulations such as “federation on a contractual basis” or “two equal subjects”.<sup>66</sup> The Moldovan side noted, in an interpretative statement, that the phrase “constitution of the federal state” refers to the new constitution of the Republic of Moldova. Thus, on the question of Transdniestria’s future status, which has been the centre of the negotiation process for ten years and especially since the Kiev Document, profound disagreement still persists.

Negotiations have continued, but more on procedure than substance. The two parliaments appointed members for the Joint Constitutional Commission in early April. Meetings of sectoral commissions were planned to continue discussions on practical issues such as education. But the Joint Constitutional Commission effectively stalled before it could begin. Its inaugural meeting, on 24 April at the OSCE Mission, was just another procedural event, without real discussions.

On the sidelines of a seminar on federalism organised by the Parliamentary Assembly of the OSCE on 12 and 13 May 2003 in Chisinau and Tiraspol, members of the two delegations met separately with EU and Council of Europe experts but held no official meetings. The planned first working session on 15 May did not take place.<sup>67</sup> The Transdniestrian side had proposed to rotate JCC meetings between Tiraspol and Chisinau, while the Moldovan side insisted on holding meeting exclusively in the Moldovan parliament,<sup>68</sup> arguing that the JCC could only work efficiently when all necessary documents and administrative support were available round the clock at a single venue. Moreover, it claimed the JCC should meet under the roof of the legally established parliament in order to gain legitimacy.

<sup>63</sup> ICG interviews, Chisinau, May and June 2003.

<sup>64</sup> See OSCE, PC.DEC/329. Due to the blockage of the withdrawal process between 2000 and 2002, several states have withdrawn their pledges to the voluntary fund. However, the U.S., which has pledged more than U.S.\$15 million of the U.S.\$22 million total remains committed.

<sup>65</sup> Also, Transdniestria has thus far blocked destruction on its territory.

<sup>66</sup> OSCE, PC.Del/296/03, 27 March 2003, Permanent Delegation of the Republic of Moldova to the OSCE, Statement.

<sup>67</sup> “Convocarea primei sedinte a Comisiei Constitutionale mixte a esuat” [The Convocation of the First Session of the Constitutional Commission Failed], Basa-Press, 16 May 2003.

<sup>68</sup> ICG interviews Chisinau, May 2003.

Neither of these arguments has much merit. The JCC is not a permanent working body, and all documents and materials should be available in both Tiraspol and Chisinau. Several meetings between the sides had been organised in the last decade in Tiraspol without anyone suggesting it affected the legitimacy of the process. Thus, the Moldovan side appeared to be putting the brakes on a process it had initiated itself.

On 6 June 2003, the parties agreed, within the framework of the five-sided talks, to hold the first meeting of the Joint Constitutional Commission on 11 June at the OSCE Mission. Although that meeting took place – a step forward – a month had been wasted arguing over where to convene. No move had been made to address the deadlock over whether a unified Moldova would be a confederation, similar to Serbia and Montenegro, with substantially separate constituent parts linked to a very weak centre, or an asymmetric federation that, while providing broad autonomy to Transdnistria, would have a central government with important competencies. The meeting ended without tangible results, as the parties failed to reach consensus on rules of procedure. They did finally agree to these on 3 July and to hold further meetings in premises provided by the OSCE in Bender. Due to the delays, first drafts for a common constitution were exchanged only on 6 August.<sup>69</sup>

The reasons for lack of progress on status issues are numerous, and more than just political and economic pressure is needed in order to reach a final settlement. To understand why, a critical review of the Kiev Document and the core principles of any viable future settlement is a prerequisite.

#### **IV. RESOLVING THE CONFLICT: THE KIEV DOCUMENT**

The Kiev Document presented by the mediators in July 2002 was put together in haste, its fundamentals substantially adapted from the Russian Constitution, with only slight adjustments for the Moldovan case. The Russian Constitution was reportedly used as a drafting template in order to make it attractive to the Transdnistrian side but it provoked a strong negative reaction from the right and centre-right camp in Moldova, which now sees anything connected with the idea of a federal state as a *de facto* Russian initiative.<sup>70</sup>

As time has passed, the Kiev Document has lost relevance. This was reflected in the Declaration of Intentions of 5 December 2002, signed by Transdnistria and the mediators but not by Moldova, which stipulated that as well as the Kiev Document, all other agreements reached and drafts submitted during the process were to be used as a basis for future negotiations. Moreover, the Joint Constitutional Commission has started to look into other federal models. The only thing left of the Kiev Document is the idea of a federation. Nevertheless, it is worthwhile to discuss the main principles it laid out to see whether its pitfalls can be used as starting points for more viable solutions.

##### **A. THE PRINCIPLE OF FEDERATION**

The principle of federalism, introduced in Article 1, provoked strong negative reactions in Moldova and from observers abroad.<sup>71</sup> Until July 2002, the Moldovan side had always argued that the republic should remain a unitary state in the framework of

<sup>69</sup> “Moldova-Dniestr Constitutional Commission Holds First Meeting”, Basa-Press, 11 June 2003; “Constitution Drafting Commission to be Permanently Working in Bender”, Infotag, 3 July 2003.

<sup>70</sup> It has been suggested that the Russian template was more tactical and apparent than real and that Smirnov quickly spotted significant differences that made him unenthusiastic about the draft as well. ICG interview with senior U.S. official, July 2003.

<sup>71</sup> The most prominent critics include Vladimir Socor (Institute for Advanced Strategic and Political Studies, Washington DC, and The Wall Street Journal Europe), Oazu Nantoi (Institute for Public Policy, Chisinau), Constantin Tanase (Timpul newspaper, Chisinau) and the Moldovan newspaper Flux. For a critical discussion of the Kiev Document, see also the Brussels-based analysts Bruno Coppieters and Michael Emerson, “Conflict Resolution for Moldova and Transdnistria Through Federalisation?”, CEPS Policy Brief No. 25, August 2002.

which Transdniestria could be granted considerable autonomy. The arguments against a federal solution that were brought forward in reaction to the Kiev Document had multiple origins. First, many Moldovans have a negative attitude to federalisation based on an attachment to the unitary character of the current Moldovan constitution. Secondly, some fear that a federal model would result in the Transdniestrian leadership and ultimately Russia acquiring strong influence on political decision-making in Moldova. Thirdly, after Article 1 of the Kiev Document had been amended in the negotiation in the sense that Moldova would be a federal state on a contractual basis, suspicion was raised that federalisation would somehow confer extra legitimacy on Transdniestria, including a unilateral right of secession. Fourthly, the Kiev Document has been criticised for not defining the number of units in a future federation.

### 1. A question of principle?

The historical and socio-economic discrepancies between right-bank Moldova and Transdniestria,<sup>72</sup> which have become even greater over the last decade, are strong arguments for granting a special status to Transdniestria. There is wide international consensus that, unlike other Moldovan districts, it cannot be successfully governed directly from the centre as part of a unitary state. The Moldovan side has accepted this insofar as it has proposed several types of autonomy for Transdniestria in the last ten years. No Moldovan government, however, was ready to discuss a federal solution before summer 2002, and a majority of civil society and the opposition parties are still opposed.<sup>73</sup> Among the opposition only the Social Democratic Alliance of former Prime Minister Dumitru Braghis and the smaller Social-Liberal Party have spoken in favour

of a federal model.<sup>74</sup> Support is not even expressed by the whole of the ruling party.<sup>75</sup>

But the opposition to a federal solution is not based on understanding of what a federation actually is. An opinion poll conducted in April and May 2003 revealed that only 16 per cent of the population considered the idea of a federation acceptable, while 28 per cent opposed it categorically. At the same time, 61 per cent were not able to answer what a “federal state” means, while 11 per cent believed that it is an alliance between two states, what would normally be more closely termed a confederation.<sup>76</sup> That autonomy solutions can go much further than the devolution of powers in a federal system, as the OSCE Mission pointed out in its 1993 Report No. 13, is not even discussed.<sup>77</sup> Despite the polemics on the term “federation” since July 2002, there has been no substantive discussion of which competencies might be granted to Transdniestria or how the political system of Moldova should be modified.

Opposition to a federal solution, without discussion of content, is not constructive. As the concept is already in play, the international community should encourage consideration of the pros and cons of various federal models and help develop concrete proposals applicable to Moldova’s situation. The OSCE Mission should engage politicians, media, civil society and the broader population in a constructive dialogue on the nature of autonomy and federal models and on possible forms of power sharing and distribution of competencies with regard to Transdniestria. By starting a series of roundtable discussions with this aim in June 2003, the Mission has, albeit late, begun to raise awareness. It should continue and broaden this approach.

There are two main arguments for applying a federal solution, rather than some form of autonomy, to Transdniestria. First, an autonomous status which is capable of amendment by the central authorities is not

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<sup>72</sup> See Section II above.

<sup>73</sup> ICG interviews with representatives of political parties, May 2003; round-table discussion on “Federalism, Reconciliation and Reconstruction: A Discourse on Moldova and Resolution of the Transdniestrian conflict”, hosted jointly by the Open Society Institute Moldova and the OSCE Mission on 10 June 2003 in Chisinau. Also, Iurie Rosca, “Position of the Christian Democratic People’s Party on the problem of Moldo-Russian conflict in the Transnistrian region of the Republic of Moldova”, 12 May 2003, an unpublished leaflet in ICG possession, and Partidul Liberal, Proclamatie, [Liberal Party, Proclamation], Chisinau, 24 July 2002.

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<sup>74</sup> ICG interviews with Dumitru Braghis and Oleg Serebrian (Chairman of Social-Liberal Party), Chisinau, May 2003.

<sup>75</sup> ICG interviews, Chisinau, May 2003.

<sup>76</sup> “Barometrul de Opinie Publice, realizat de IMAS Inc”, April-May 2003, available at [http://www.ipp.md/publications/Barometer\\_of\\_Public\\_Opinion\\_-\\_May\\_2003](http://www.ipp.md/publications/Barometer_of_Public_Opinion_-_May_2003).

<sup>77</sup> European examples of far-reaching autonomy in an otherwise unitary state include the Aland Islands (Finland) and the Faroe Islands and Greenland (Denmark).

acceptable to Transnistria.<sup>78</sup> Secondly, in contrast to an autonomy solution, a federal model would serve the goal of reintegration. As the example of Gagauz autonomy in southern Moldova shows,<sup>79</sup> autonomous solutions do not encourage communication with the centre. Granting substantial autonomy to Transnistria without giving it an incentive to participate in politics at the centre would ensure continued separation. What is needed is a system that will include Transnistrians – authorities and population – in political discussions and decision-making processes on a central level. A federal model is much more likely to enable a solution based on inclusion rather than on separation.

## 2. Transnistriation and Russification of Moldova?

As a matter of fact, giving Transnistria a say in central decision-making is one of the main arguments used against a federal solution. The Kiev Document would set up a bicameral parliament, consisting of a 71-member Chamber of Legislators and a 30-member Chamber of Representatives. The members of the lower chamber would be elected on a proportional basis, whereas the seats in the upper chamber would be divided equally among the federal units. Thus, in a two-unit federation, Transnistria would control only 15 per cent of the seats in the lower chamber but half the seats in the upper chamber. The latter would give it the possibility to veto all federal laws. However, the veto of the upper chamber could be overruled by a two-thirds majority of the lower chamber. Opponents of the Kiev Document argue that such a Transnistrian veto would open the way for deals behind closed doors, as the politicians from the right bank could not be relied on to produce a two-thirds majority in the lower chamber. This also

assumes that the deputies from Transnistria would form a monolithic bloc. It is then argued that such a strong position of the Transnistrians would ultimately result in strong Russian influence on the Moldovan legislature.<sup>80</sup>

For the Transnistrian side, however, the Kiev Document did not go far enough. It argues the need for a stronger veto by noting that between 1990 and 1992 only 42 of 360 members of the Moldovan parliament were from Transnistria, and they had no influence on the political process.<sup>81</sup> The formula suggested in the Kiev Document might serve as the basis for a compromise solution. However, its real significance very much depends on the number of units in the federation, on which Kiev provided no information.

## 3. Recognition of Transnistria

Another argument against a federal solution, especially one formed on a contractual basis, rests on the fear that it would be tantamount to recognising Transnistrian independence. The international community has made it clear on several occasions that Transnistria cannot hope for recognition and that it supports Moldova's territorial integrity. Contracts or agreements between federal units, or between the central state and one or more federal units, do not amount to recognition of such units as independent states or equal partners. The Russian Federation has, for example, concluded treaties with Bashkortostan and Tatarstan, which are constituent republics of the Federation. Given that Transnistria is already *de facto* independent, and that, besides a constitution, a series of transitional measures is needed, some form of agreement between Chisinau and Tiraspol has to be concluded. However, any contract between them should be designed to preclude Transnistria from establishing itself as an independent state by cancelling that contract unilaterally. In other words, a constitutional charter

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<sup>78</sup> See Dov Lynch, "Managing Separatist States: A Eurasian Case Study", IISS Occasional Papers 32, November 2001.

<sup>79</sup> The Gagauz, a Christian-orthodox Turkic people living in southern Moldova, received territorial-autonomy in December 1994. The Law on the Status of Gagauzia successfully transformed the struggle between the central authorities and the region after four years of Gagauz *de facto* independence from a hot conflict to a process of negotiations conducted within a common framework. Unilateral decisions taken by both the central and the regional authorities led, however, to further political strains. See Claus Neukirch, "Autonomy and Conflict-Transformation: The Gagauz Territorial Autonomy in the Republic of Moldova", Kinga Gal (ed.), *Minority Governance in Europe* (Budapest, 2002), pp. 105-123.

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<sup>80</sup> ICG interviews, Chisinau, May and June 2003. It is true that 70,000 to 80,000 inhabitants of Transnistria and the majority of the Transnistrian leadership are Russian citizens. However, those who hold Russian passports in Transnistria are, *per se*, no more promoting the interests of a foreign country than those on the right bank who hold Romanian passports. In any case, to deny persons with dual citizenship the right to elect or to be elected would be contrary to basic democratic values.

<sup>81</sup> ICG interview with Valery Litzkai, 27 May 2003.

like the one between Serbia and Montenegro, an agreement characterised as a temporary solution to be reviewed after a certain amount of time, has to be ruled out.<sup>82</sup>

#### 4. How many units?

One of the biggest shortcomings of the Kiev Document was that it introduced the idea of a federation without discussing the number of units. The Transdniestrian side naturally wants only two units; it desires a status equal to that of the right bank and a confederal solution similar to that of Serbia and Montenegro. Given that the centre in the Serbia and Montenegro arrangement has hardly any competencies, and there is not even a single currency, the model is unacceptable to the Moldovan side. It is, however, also not acceptable to the OSCE, which ruled out a confederal solution in Report No. 13 in 1993, and has consistently supported Moldova's sovereignty and territorial integrity.

Although Moldova opposes a confederation, it might consent to a two-unit federation. However, there are few historical examples of a successful two-unit federation in which the smaller unit is essentially autonomous, while the federal level and the bigger unit are almost identical.<sup>83</sup> Such a solution would also create problems in the autonomous region of Gagauzia in southern Moldova, established in 1995. The Kiev Document does not address Gagauzia at all. In the case of a two-unit federation, it would, however, be crucial to decide whether Gagauzia would be an autonomous region within the federal state or within the federal unit on the right bank. Granting Gagauzia, which has only 3 per cent of Moldova's population, the status of another federal unit would certainly provoke demands for similar status from

the Bulgarian-dominated Taraclia district,<sup>84</sup> which is even smaller, and for the municipality of Chisinau, which is stronger than Transdniestria in demographic and economic terms.

Building a federation out of several units rather than just two seems to be a much more viable solution. Whereas a two-unit federation would be prone to protracted conflicts and zero-sum games along the old dividing lines, a multi-member federation would permit a more complex game of alliances.<sup>85</sup>

In its Report No. 13, the OSCE Mission suggested cantonalisation of Moldova into eight to ten units. A smaller number of bigger units might, however, be more suitable for a small and poor country like Moldova.<sup>86</sup> A five-unit model, such as that outlined below, would be appropriate. These units should not be drawn on ethnic lines, as this would result in a number of small, territorially non-contiguous units. Minority protection must of course be ensured at all levels.

Transdniestria, including Bender, would certainly be a single federal unit on its own, as it would not accept any attempt to dismember or merge it with Moldovan territories. Chisinau clearly also should be considered as a potential federal unit. Gagauzia and Taraclia could be merged into a single unit that would be territorially contiguous. Northern Bessarabia could form another unit with Balti as its centre, and the fifth unit might consist of the remaining Moldovan populated areas in central and southern Bessarabia, with Hincesti as its centre. Such a federation should be asymmetric: that is, Transdniestria would have some competencies, for instance in the fields of foreign economic and cultural relations, that the right bank units do not necessarily need. The Gagauzia/Taraclia unit would, of course, retain at least the current privileges enjoyed by Gagauzia and provide equivalent rights for the Bulgarian minority.

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<sup>82</sup> For an analysis of the Serbia and Montenegro agreement, see ICG Balkans Report No. 142, *A Marriage of Inconvenience: Montenegro 2003*, 16 April 2003 and ICG Balkans Report No. 129, *Still Buying Time: Montenegro, Serbia and the European Union*, 7 May 2002.

<sup>83</sup> Indeed, successful two-unit federations are rare no matter what the relative sizes of the units. Belgium, though often portrayed as a federal settlement between the two major groups of Walloons and Flemings, actually has a complex overlapping federal structure with special status for the Brussels region and for the geographically concentrated German-speaking minority.

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<sup>84</sup> Gagauzia is split into three discontinuous geographical units, separated by those parts of Taraclia which did not vote for autonomy in 1995.

<sup>85</sup> Coppieters/Emerson, "Conflict Resolution", op. cit., p. 4.

<sup>86</sup> To be sure, Switzerland has 23 cantons and is only slightly larger than Moldova, but the Swiss cantons are historically rooted, and the country is wealthy enough to shoulder the costs of such a system.

## B. LANGUAGE

Article 14 of the Kiev Document declares Moldovan, in Latin script, as the state language of Moldova, while giving the units the right to establish their own official languages. This stipulation would permit official status for Russian in Transdnistria. It would also open the way for Ukrainian to receive the status of a regional language in Transdnistria and northern Bessarabia, and for Gagauz and Bulgarian to receive this status in Gagauzia/Taraclia. However, it would not give Russian an official status on the federal level. Since perceived linguistic discrimination at the centre contributed considerably to the conflict in the beginning of the 1990s, an adequate status for Russian should also be assured on the federal level. This does not necessarily mean that Moldovan (i.e. Romanian) and Russian should have equal status, but the status of Russian in the new constitution should not be lower than what it already enjoys in present-day Moldova.

Translation from and to Russian of all federal documents as well as of the proceedings in the federal parliament and the federal government should be guaranteed in order to offer Russian-speakers from Transdnistria equal opportunities on the federal level. There is apparently readiness on the Moldovan side to compromise along these lines. However it is appropriate to maintain a symbolic difference between the “state language” (Moldovan) and an “official language” (Russian) so as to help counter fears among the Moldovan population that Russian would again become dominant. Making Russian an “official language” would also address the Russian-speakers’ fear that their career opportunities would be harmed by language requirements. Beyond such symbolic steps, however, more efforts would be needed to promote true bilingualism.

The OSCE, the European Union and individual Western states have financed large-scale language and social integration programs in the Baltic States but not Moldova. Only in 2000 was a Language Teacher Training project set up there by the Office of the OSCE High Commissioner on National Minorities. Teachers of Moldovan as a second language were trained, and teaching materials and new methodologies were provided to promote the use of Moldovan as a tool for social integration and

minority studies.<sup>87</sup> UNDP Moldova started a project called “Language as a Social Integration Tool” in October 2001.<sup>88</sup> Such programs are also needed for Transdnistria. Symmetrical bilingualism should be reached by providing quality language education at school and offering additional opportunities for people who have left school without proper knowledge of Moldovan or Russian.

## C. DISTRIBUTION OF COMPETENCIES

The distribution of competencies is a core issue in status negotiations, even more than whether the structure is described as autonomous, federal or confederal. The Kiev Document is unclear and uninspiring on this. The list of “mixed” competencies laid down in its Article 16 is unnecessarily long and contradicts the list of federal competencies in Article 15. Specifically, the protection of minority rights and the rights and freedoms of individuals are within the competence of the federal state according to Article 15 (c), but joint according to Article 16 (b). State property and its management are also mentioned twice, in Articles 15 (e) and 16 (c, d). Establishing common principles of taxation is a joint competence according to Article 16 (i) but federal taxes are within the competence of the federation. Article 20 stipulates the primacy of the federal level in cases of conflicting legislation, and as there is no mechanism for joint elaboration or adoption of legislation dealing with joint competencies, the entire list in Article 16 is rendered largely meaningless.

The drafters of the future Moldovan constitution must analyse the peculiarities of the Moldovan case in depth rather than working from Articles 71 and 72 of the Russian Constitution as in the Kiev Document. Over the last decade, both sides have submitted drafts proposing formulas for the distribution of competencies. Moreover, the mediators themselves have developed proposals based on an assessment of the situation in Moldova in Report No. 13 of the OSCE Mission and in the drafts elaborated in 1997 and 1998. The Kiev Document failed to offer a sensible basis for dividing competencies between Moldova and Transdnistria, or between several federal units and

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<sup>87</sup> ICG interview with OSCE official, June 2003.

<sup>88</sup> <http://www.undp.md/ongoing/mol-01-003.html> (20 June 2003).

the federal level, and was actually a step backwards in some respects. Even the allocation of exclusive foreign affairs responsibility might be looked at carefully to see whether a provision such as that in its autonomy statute that grants Gagauzia the right to participate in the external (foreign) policy of Moldova would be helpful for Transdniestria.<sup>89</sup>

The allocation of competencies is precisely the area on which both the parties and the mediators will have to work hardest. The key to a settlement process lies in the distribution of state property and state debts, and which tax revenues would be assigned to the federal level, which to the units. Moldova and Transdniestria would benefit from outside expertise on these questions, but neither the OSCE nor the Venice Commission has much experience in drafting the economic and financial parts of constitutional frameworks. The International Monetary Fund (IMF), the European Commission and OSCE participating states should be invited to propose economic experts for inclusion in the group of international experts working with the JCC.

#### **D. DISPUTE SETTLEMENT, POLITICAL GUARANTEES AND POWER-SHARING**

The clearest and most concise agreements on competencies will not, of course, prevent future disputes over particular issues. The sustainability of the political settlement will depend on a mechanism that can settle such disputes. One observer notes that the “transformation of secessionist conflicts is decisively achieved only when political trust in autonomy arrangements has been established on both sides, and tested in the peaceful resolution of subsequent disputes”.<sup>90</sup> The example of the Gagauz autonomy is telling. Disputes over allocation of tax revenues, privatisation of enterprises, and the hierarchy of national and regional legislation have arisen. Neither the constitutional court nor the central parliament were considered neutral by the Gagauz,

and since no special settlement mechanism was in place, these disputes have resulted in sometimes very strained relationships. In the case of Transdniestria, such disputes would renew secessionist activities and instability if not tackled in time. A functioning dispute settlement mechanism has to be a cornerstone of a final settlement.

The Kiev Document does not provide such a mechanism but rather places the main role in dispute resolution on the shoulders of the president (rather than the constitutional court, which is a more standard procedure). Article 24 would entitle the president to:

...suspend the effect of acts of organs of executive authority of the Republic of Moldova and of the state-territorial units of the Republic of Moldova, in case they violate the Constitution and the laws of the Republic of Moldova, or the rights and freedoms of individuals and citizens, until the issue is settled by an appropriate court of law.<sup>91</sup>

In what appears to be a cut-and-paste passage from the Russian constitution, the Kiev Document would entitle the president to “utilise agreed procedures for resolving disagreements between organs of State authority of the Republic of Moldova and organs of the state-territorial entities, and also between organs of State authority of the state-territorial entities. In the event of non-achievement of an agreement resolution, he may transfer resolution of the dispute for review by an appropriate court”.<sup>92</sup>

This will not work. First, there are no “agreed procedures” for resolving disputes. Secondly, if the president is to be an arbitrator, he or she must be chosen in an election procedure that accommodates both right and left bank constituencies. The Kiev Document, however, stipulates in Article 24 that the president shall be elected in a joint session of both chambers of the parliament in which Transdniestrian deputies would account for a maximum of 26 out of 101 votes. A president elected, as is entirely possible, by right-bank

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<sup>89</sup> There are examples worldwide for giving federal units limited foreign policy competence. Articles 54-56 of the Swiss Constitution, for example, define foreign relations as a federal matter, while giving the cantons the right to participate in international negotiations when their powers are concerned.

<sup>90</sup> Ted Gurr, cited by Connie Peck, *Sustainable Peace: The Role of the UN and Regional Organizations in Preventing Conflict* (Lanham, 1998), p. 50.

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<sup>91</sup> This section is based on Article 85 (2) of the Russian Constitution. The Russian President is described as “guarantor” of the Russian Constitution in Article 80 (2), a concept not carried over into the Kiev Document.

<sup>92</sup> Taken with minimal replacement from Article 85(1) of the Russian constitution.

deputies alone, would hardly be an acceptable arbitrator for the Transdnestrian side.

Dispute settlement procedures are also included in Chapter Eight on Guarantees and Transitional Provisions. Article 34 stipulates that “disagreements shall be settled by exclusively peaceful means, through negotiations and consultations between the Republic of Moldova and Transdnestria, with the assistance and mediation of the guarantor-states and the OSCE Mission”. It is not clear whether this refers only to the transition period, or whether negotiations and consultations would be the means of settling disputes in the long term. A third-party mediation procedure would be perfectly normal for the transition period. But in the long term, negotiations between the federal level and an entity under international mediation would infringe on the sovereignty of the federal state. Besides, Article 34 does not detail how such negotiations would take place or how the resulting agreements would be implemented.

Article 36 I (2), which calls on the parties to “develop a coordinated intra-State procedure for entering into force of international documents which affect the interests of Transdnestria”, leaves more questions open than it resolves. Article 39 refers to the settlement of disputes and conflicts, but only during the transition period: “To settle disputes and conflict situations during the transition period, the Republic of Moldova and Transdnestria agree to establish joint commissions on the basis of mutual trust.” There is no provision for a subsequent sustainable dispute settlement mechanism. Such a mechanism, however, needs to be agreed on beforehand.

The role of the Russian Federation, Ukraine and the OSCE as guarantors in the settlement of disputes after the transition period would also need to be defined more clearly. The Kiev Document leaves their role unspecified and does not distinguish between the transition period and afterwards.<sup>93</sup> Chisinau fears that Russia would use its status as a guarantor to interfere continuously in internal affairs. This fear should be addressed by specifying the role of the guarantors more precisely and by providing counterbalances to Russia.

In summary, an internal dispute settlement mechanism should be set out clearly in a final settlement agreement, and the role of the guarantors

should be clearly defined. This dispute settlement mechanism should have both political and legal components. The former could consist of a joint conciliation commission, made up of legislators from the regional and federal parliaments. Such a commission might be invoked by either side when disputes arise over legislation, and it should work out compromise solutions which would have to be adopted by the legislative bodies. If no agreement were reached on this level and one side felt that the legislation or actions of the other were contrary to the constitution, the next step might be to turn to a constitutional court with impartial, independent, professional judges, including from Transdnestria.

If these internal dispute settlement mechanisms are exhausted and serious conflicts remain, international experts and arbitrators might be invited to study the case. Here Russia, Ukraine and the OSCE could play their role as guarantors. First, the Moscow Mechanism of the OSCE could be invoked either by the Moldovan government or by Russia or Ukraine on behalf of Transdnestria when questions related to the OSCE human dimension were concerned. Secondly, the OSCE Conciliation and Arbitration Court could be used by giving Russia and Ukraine the right to activate its jurisdiction upon the request of the regional parliament of Transdnestria.<sup>94</sup> This should be possible only after all internal mechanisms have been exhausted and under no circumstances be understood to give the guarantors the right to interfere directly and permanently in Moldova’s internal politics.

Closely related to dispute settlement mechanisms is the issue of federal power sharing. The OSCE Report No. 13, called for proportional representation of Transdnestrians in parliament, the constitutional court, the supreme court and the governmental administration. Gagauzia’s autonomy statute stipulates that the governor of the autonomous region will also be an ex officio member of the Moldovan government. Moreover, the directors of the government departments of Gagauzia are ex officio members of the corresponding boards of ministries and of the departments of the Republic of Moldova. This was meant to ensure the participation of Gagauzia in the internal policy of Moldova. In practice, however, the mechanism reportedly has not

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<sup>93</sup> See Coppieters/Emerson, “Conflict Resolution”, op. cit., pp. 7 ff.

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<sup>94</sup> As the Court is only open to states, Transdnestria could not be a party to the procedures itself.



worked efficiently.<sup>95</sup> Such a system would not ensure proportional representation for Transdnistria. The Kiev Document, however, makes no reference to representation of Transdnistria on the federal level, other than in the upper chamber. This would open the way for the monopolisation of the federal level by the right bank – especially in a two-unit federation – and make the need for a dispute settlement mechanism even more pressing.

## E. TRANSITION PERIOD

The Kiev Document foresees an unspecified transition period between the signing of a final settlement agreement and election of a two-chamber parliament. Its Chapter Eight elaborates on guarantees and the transition period in detail. President Voronin's constitutional initiative does not explicitly mention such a period. However, it is fairly clear that the time between the adoption of the new constitution, targeted for 2004, and elections to the new parliament, targeted for 2005, would be such a period. There is no doubt that a period of transition and legal harmonisation would be needed. Both Transdnistria and the Republic of Moldova started with the legislation of the former MSSR. From this common base, they have adopted comprehensive new legislation in the last decade with different orientations. Transdnistrian laws are oriented more toward the legislation of Russia, while Moldova has received more expertise and input from Western states and international organisations such as the IMF and the Council of Europe. The EU's *acquis communautaire* will most probably be an important reference for Moldovan legislators in the future.

Against this background, Article 38 of the Kiev Document, which states that "all the laws, decisions, and other acts valid in Transdnistria at the moment of this agreement entering into force, remain in effect if and until they are replaced by laws and decisions adopted by a competent body", should be retained in a final settlement agreement. More detailed agreements to harmonise legislation and establish a common economic space, including customs and a single currency, will be necessary. Working out the details has so far been blocked by lack of political will. If a breakthrough is achieved

on a higher level, the sectoral commissions will have to carry the burden of producing practical arrangements to manage the transition.

## F. MILITARY GUARANTEES AND PEACEKEEPING

Article 36 III of the Kiev Document suggests a peacekeeping presence during the transition period under the supervision of the OSCE, with detailed provisions to be inserted in a separate document. The current peacekeeping operation in Moldova functions on a trilateral basis, including Russian troops and units from Moldova and Transdnistria. Although no armed clashes have occurred since the Moscow Agreement of 21 July 1992, an operation including the conflicting parties not only runs counter to the idea of traditional peacekeeping but is also potentially dangerous. A change in format is essential.

Several factors have to be considered about the participation of Russian troops in a future peacekeeping operation. First, Russia is seen by Transdnistrians as a guarantor of their rights, and the presence of its troops would be a reassurance for them. Secondly, many Moldovans perceive Russia as the aggressor that supported Transdnistria in 1992 and has secured its regime since. Thirdly, the presence of Russian troops in Moldova runs counter to the Moldovan constitution and, arguably, international law. As described above, Russia committed itself at the CSCE Stockholm Ministerial in 1992 to withdraw from Moldova and, at the 1999 OSCE Istanbul Summit, accepted a clear deadline to complete this withdrawal by the end of 2002.<sup>96</sup> This deadline was extended to the end of 2003 at the 2002 OSCE Porto Ministerial, which welcomed the Russian Federation's commitment to complete the withdrawal of Russian forces as early as possible and its intention to do so, "provided necessary conditions are in place".<sup>97</sup> This (rather ambiguous) qualification has been convenient for Russia, which takes the stance that the necessary conditions are not in place due to problems with customs procedures.

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<sup>95</sup> Randolph Oberschmidt, "Neue Satzung für Gagausien (Gagauz-Yeri) in der Republik Moldau", *WGO-Monatshefte für Osteuropäisches Recht*, vol. 41 (1999), pp. 13-21.

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<sup>96</sup> OSCE, Istanbul Summit Declaration, article 19, at: <http://www.osce.org/docs/english/1990-1999/summits/istadecl199e.htm>.

<sup>97</sup> OSCE, Tenth Meeting of the Ministerial Council 6 and 7 December 2002, Statements by the Ministerial Council, <http://www.osce.org/docs/english/1990-1999/mcs/10porto02e.pdf>.

Between 1992 and 1996 the Russian peacekeeping forces in Moldova were part of the 27th Motorised Infantry Division and were rotated in and out of the Trans-Volga Military District.<sup>98</sup> Since then, contrary to the 1992 Moscow Agreement, Russia has staffed its peacekeeping forces with troops from the Operational Group of the Russian Forces in the Transdnistrian Region of Moldova (OGRF) – the former 14th Army. Thus, as Russia is obliged to withdraw the OGRF from Moldova, the issue of a complete and orderly withdrawal of Russian troops and the peacekeeping question is interlinked.

Leaving the Transdnistrian and Moldovan forces in the security zone without a third party would be irresponsible. Indeed, no one is calling for the termination of all peacekeeping operations in Moldova for the time being. Russian officials praise the achievements of the trilateral peacekeeping operation,<sup>99</sup> and at least parts of the Russian government and military have apparently supported the idea to transform the OGRF into a Russian peacekeeping operation, which would provide them a political argument to circumvent the commitment to complete withdrawal. The 1,288 Russian troops still stationed in Moldova in summer 2003 do not represent a sizeable strategic military factor but nationalist circles in Russia would consider their withdrawal a defeat and a loss of influence. Continued symbolic presence in Moldova is thus relevant.

For the international community, however, the transformation of troops that should long since have been withdrawn into legitimate peacekeepers carries risks. The Porto extension of the Istanbul deadline has already cost the OSCE credibility.<sup>100</sup> The U.S. and other OSCE participating states have publicly linked ratification of the CFE II Treaty to Russia's fulfilment of its Istanbul obligations,<sup>101</sup> so this issue has much wider implications. At the same time, the linkage may actually help overcome the deadlock over the withdrawal. The ratification of

the CFE II treaty is surely of greater interest to Russia than continuing to shield Transdnistria, especially after the latest NATO expansion and the possible stationing of NATO troops in the Baltic States. Also, on the presidential level in Russia at least, there is an interest in good relations with the EU and the U.S. Given that the presence of Russian troops is a costly operation with little political or military pay-off, it should be possible to find a way out of this deadlock.

There are good arguments for Russian participation in future peacekeeping operations but only if the Russian contingent is balanced by forces more acceptable to the Moldovan side, and the operation is legitimised by an international mandate. A new peacekeeping operation should have a significant but minority Russian contingent and not include officers who are long-term residents in the region. Ukraine could also be considered as a participant but Western OSCE participating states would be needed as well. Most importantly, establishment of such an operation should not be made contingent upon a final settlement agreement, but should start in January 2004 in order to allow Russia to meet its revised Istanbul commitment on withdrawal.

The OSCE lacks resources to deploy, command and support an armed peacekeeping operation in Moldova, and there is no chance that it will develop this capacity by January 2004,<sup>102</sup> particularly given the strong resistance among several participating states to the organisation having command and control capacities.<sup>103</sup> Thus, a future peacekeeping operation in Moldova has to count on other organisations. In fact, Article 46 of the Charter for European Security adopted at the 1999 OSCE Summit in Istanbul stipulates that the OSCE:

could also decide to provide the mandate covering peacekeeping by others and seek the support of participating States as well as other organisations to provide resources and expertise. In accordance with the Platform for Co-

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<sup>98</sup> Mihai Gribincea, "Rejecting a New Role for the 14th Russian Army", *Transition*, vol. 2 (1996), pp. 38-40.

<sup>99</sup> ICG interview, Chisinau, May 2003.

<sup>100</sup> See, inter alia, IASPS Policy Briefings: Geostrategic Perspectives on Eurasia, 18 June 2003, No. 20, "Letting the West Down: The American-Led OSCE Mission in Moldova", Part 1.

<sup>101</sup> See 12 February 2003 transcript of the press availability of U.S. Assistant Secretary of State Stephen G. Rademaker and U.S. Ambassador to Moldova Pamela Hyde Smith, <http://www.usembassy.md/en-ambassador24.htm>.

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<sup>102</sup> ICG interview, Vienna, May 2003 and OSCE, SEC.GAL/81/03Corr.1, 10 June 2003, "Current OSCE capabilities for deploying and running Peacekeeping Operations (PKOs)".

<sup>103</sup> ICG interviews with OSCE officials and delegations, May 2003.

operative Security, it could also provide a coordinating framework for such efforts.<sup>104</sup>

The recent proposal developed in an article published by the Paris-based and EU-sponsored Institute for Security Studies to replace the current peacekeeping operation by the end of 2003 with a joint EU-Russian one under an OSCE mandate is very attractive.<sup>105</sup> Modalities for the participation of Russian forces in such an EU operation already exist.<sup>106</sup> Under these, Russia would have the same rights and obligations for day-to-day management as participating EU member states.<sup>107</sup> Command and control might come from the EU per se or a non-NATO EU member state.<sup>108</sup> The Transdnistrians would find it difficult to swallow a formal NATO involvement – not only is the Transdnistriean leadership opposed, but strong anti-NATO propaganda during the Kosovo campaign in 1999 has had lasting effects on the wider population. In any case, the U.S. would hardly be ready to deploy troops in Moldova under an OSCE mandate. Thus, although a security presence sponsored by NATO or the NATO-Russia Council should not be ruled out totally, it seems to be the second best option when compared with an EU-Russia operation with the participation of other interested OSCE participating states.

A delicate question remains the relationship between an EU peacekeeping force under an OSCE

mandate and the OSCE Mission to Moldova. The repeated lesson of the Balkans over the past decade is that parallel structures and unclear division of competencies can seriously hamper the effectiveness of international missions. An EU operation in Moldova would certainly submit regular reports to the OSCE in Vienna and wish to take advantage of the wide political experience possessed by the local OSCE Mission, but it should remain under clear EU command and control.<sup>109</sup>

Strong diplomatic lobbying at the highest levels of the Russian government will be necessary in order to overcome resistance to an EU-led peacekeeping force. This resistance is visible among Russian diplomats in Chisinau and within the Russian OSCE delegation in Vienna but stems from higher levels. Vyacheslav Trubnikov, Russia's First Deputy Minister of Foreign Affairs, for example, has clearly voiced Russia's desire to lead any peacekeeping operation in Moldova.<sup>110</sup>

Given that no violent clashes have occurred in Moldova since 1992, a peacekeeping operation need not be numerically stronger at initiation than the current one, and there should be provision for it to be reduced as the situation is normalised. Its first goal would be to act as a classical buffer between the conflicting sides and to deter potential spoilers from destabilising the situation.<sup>111</sup> Its second goal should be to monitor a process of parallel demilitarisation.

The best way to ensure stability would be virtually complete demobilisation of the armed forces of both Moldova and Transdnistria. The country faces no direct security threats from neighbours and would be better off with solid international security guarantees against outside aggression than attempting to rely on a strong military of its own that could be misused or at least create concerns about potential misuse in one of its constituent parts. As demilitarisation proceeds, peacekeeping troops could gradually be replaced by unarmed observers. Templates for demobilisation and re-

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<sup>104</sup> OSCE, Charter for European Security, article 46, <http://www.osce.org/docs/english/1990-1999/summits/istachart99e.htm#Anchor-Operationa-52482>.

<sup>105</sup> See Dov Lynch, "Russia faces Europe", Chaillot Paper No. 60, Paris, 2003. ICG interviews in Vienna, Chisinau and Brussels, May and June 2003. See also Judy Dempsey, "Troops may play peacekeeping role in Moldova", *Financial Times*, 11 July 2003; John Chalmers, "Dutch propose EU peacekeeping force for Moldova", Reuters, 11 July 2003, and Vladimir Socor, "Will the EU become Europe's Main Peacekeeper?", *The Wall Street Journal Europe*, 27-29 June 2003.

<sup>106</sup> Lynch, "Russia faces Europe", op. cit., p. 68.

<sup>107</sup> Presidency Report on ESDP, Brussels, 22 June 2002, 10160/2/02REV2ESDP188, Annex IV, Arrangements for Consultation and Cooperation between the European Union and Russia on CIS Crisis Management.

<sup>108</sup> The non-NATO EU member states at present are Sweden, Finland, Austria and Ireland. Eight of the ten states due to join the EU in 2004 are either in NATO (Poland, the Czech Republic and Hungary) or about to join (the Baltic States, Slovenia and Slovakia). Malta and Cyprus are not NATO members but do not have the resources to take on such a role.

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<sup>109</sup> Somewhat similarly, the EU force (heavily French in composition) in Ituri, the Democratic Republic of Congo, operates under a mandate from the UN Security Council to which it submits reports, but is responsible for its own day-to-day operations under direction from Brussels and Paris rather than subordinate to the UN office on the ground.

<sup>110</sup> "Russia Seeks to Play the First Violin in Transnistrian Operation", Infotag, 4 June 2003.

<sup>111</sup> Such spoilers might include the leadership of the Transdnistriean security agencies, for example.

integration programs (DR) from NATO's Partnership for Peace program and other demilitarisation experiences should be used to make the process sustainable.

Many tasks to be covered in the former conflict zone are related more to policing than to classical peacekeeping, particularly considering the criminal activities in the region. Consequently, the peacekeeping force would need to be complemented by a well trained and reliable policing component. An international police force, as in Kosovo or Bosnia-Herzegovina, would not be necessary but outside assistance would be needed to train and modernise the police on both sides, and international police officers should be deployed in the security zone to work as mentors and confidence builders. Joint Moldovan-Transdnistrian police patrols accompanied by international police would be an important confidence building element – especially in Bender, where tensions between both sides are still high.

The OSCE's Strategic Police Matters Unit should do a needs assessment mission that, preferably, would cover the entire range of the security sector in Moldova and Transdnistria and result in a strategic approach for reform of that sector throughout the whole country. Such a reform on international standards would mean that both sides would have to adjust instead of one accepting the standards and procedures of the other.<sup>112</sup>

## G. ADOPTING A NEW CONSTITUTION

A new federal constitution for Moldova was not foreseen in the Kiev Document but is a corner stone of the Voronin February 2003 initiative. The new constitution should be adopted in harmony with the current constitutional framework, in order to give it credibility and legitimacy. That framework, however, sets high barriers for changing the state's unitary character. The present constitution (Article 142) stipulates that "the provisions regarding the sovereignty, independence and unity of the state, as well as those regarding the permanent neutrality of the state may be revised only by referendum based on a majority vote of registered voting citizens".<sup>113</sup> Only 67.5 per cent of the 2,379,491 registered voters

participated in the 2001 parliamentary election. The 794,808 votes cast for President Voronin's Communist Party represented but one-third of the electorate; over 50 per cent would be needed for a successful referendum. Although confidence in the president and his party has been stable since the 2001 elections, it is far from certain whether this high barrier could be met if other political parties opposed the new settlement, as is possible.

Changing or circumventing Article 142 are not viable options. Any gerrymandering in the run-up to or conduct of a referendum would considerably weaken the new document's legitimacy. Moreover, a settlement that did not enjoy the support of the great majority of the population would not be sustainable. The Moldovan government and the international community must try to bring the greater part of the Moldovan population behind any new federal constitution.

Even if proponents of a federal solution were successful in winning over the moderate electorate, the 50 per cent hurdle would be hard to meet. Due to the poor state of the economy, over 600,000 citizens have left Moldova, temporarily or permanently, looking for work in Russia, Turkey or the EU. In order to cross the 50 per cent threshold, those who no longer reside in Moldova would have to be removed from the voter registry or substantial provisions would need to be made to facilitate their voting abroad, possibly by setting up polling stations in Moldovan embassies and consulates. This has been done in recent national elections, but not with sufficient rigour. To guarantee the referendum's accuracy, the outdated and unreliable registration system would need to be replaced – before February 2004 if the Voronin timetable were to be maintained – with a computerised version. That new computerised system should also include the Transdnistrian region, where a parallel referendum would have to be organised. As in Moldova, Transdnistrian legislation stipulates that a referendum to adopt a new constitution requires support by at least 50 per cent of all registered voters.<sup>114</sup>

An OSCE Referendum Observation Mission, working independently but in close co-operation with the OSCE Mission, should be established in Moldova and Transdnistria well in advance. The Office for Democratic Institutions and Human

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<sup>112</sup> Incidents in the security zone over the last years have involved police and militia officers from both sides.

<sup>113</sup> Article 142, paragraph 1, Constitution of the Republic of Moldova.

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<sup>114</sup> "Transnistrian Constitution Amendment Will Require Referendum", Infotag, 14 February 2003.

Rights (ODIHR) has plenty of experience in nation-wide elections in Moldova, and the establishment of such a mission on the right bank should be routine. It would be crucial, however, to establish a second core team in Tiraspol, in particular for media monitoring and legal analysis, and of course for liaison with the regional authorities.

## V. COMPLEX SOLUTIONS

The status negotiations of the last decade have primarily addressed the question of which rights and competencies might be allocated to Transdniestria in the areas of power-sharing and minority protection. Attempts to cut off the illicit revenues that the Transdniestrian authorities and other players receive through perpetuation of the status quo started only slowly in 2001. If Transdniestria is to buy into the settlement process, reducing benefits from that status quo will be as important as developing an acceptable power-sharing model. Even progress in both these areas will not be sufficient, however, to bring the two sides to an agreement. For a settlement to be achievable and sustainable, Moldova must make itself more attractive, and Transdniestria's closed society must gradually open.

### A. REDUCING THE BENEFITS OF THE STATUS QUO

To make the status quo less attractive to the Transdniestrian authorities, it is necessary not only to crack down on illegal activities operating from the region but also to deprive them of the revenues they require to run their authoritarian regime. Control over the Transdniestrian section of the Moldovan-Ukrainian border – approximately 860 km of the 1250-km border – is key for applying economic pressure. Most Transdniestrian goods are exported to or via Ukraine, especially through the port of Odessa. Moldovan excise duties will continue to be circumvented unless Moldovan custom officials are also posted on this section of the border.

As long as the Moldovan government continues to allow goods officially declared for Transdniestria to pass its borders without tax or customs duties, this contraband cannot be halted. It is widely agreed that not only the Transdniestrian authorities but also influential persons in Moldova and Ukraine have an interest in this arrangement.<sup>115</sup> The vested interests on all sides block negotiations and protect the Transdniestrian elites. The international community should, therefore, put pressure on the Moldovan government to have all goods entering

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<sup>115</sup> ICG interviews, Chisinau, May 2003.

its territory registered by Moldovan customs and to collect customs duties as well as excise taxes on them. This would in turn facilitate concentration on controlling the Transdnistrian section of the Moldovan-Ukrainian border, which is not only an important crossing for Transdnistria's legal trade but also a source of its illegal revenues.

This is all the more necessary as Moldova, supported by the international community, jeopardised legal Transdnistrian business through the introduction of new customs seals on 1 September 2001. Because these invalidated the seals introduced in 1996 for Transdnistria, Transdnistrian enterprises could no longer export legally while circumventing Moldovan customs. Consequently, a step that Moldova justified by its commitment to World Trade Organization (WTO) standards was viewed in Tiraspol as tantamount to an economic blockade. The retaliation was a transport fee for non-Transdnistrian carriers, a migration fee for all Moldovan citizens crossing into Transdnistria, and a 20 per cent import tax on all Moldovan products – increased to 100 per cent in mid-July 2003. These measures hurt internal Moldovan trade and in particular peasants and economic enterprises in the Moldovan enclaves on the left bank. The Transdnistrian Ministry of Economy, for its part, claimed that Transdnistria lost U.S.\$174 million in 2002, mostly due to unrealised exports.<sup>116</sup> In fact, its economy suffered most in the immediate aftermath of the introduction of the new customs seals but limited the GDP decline for the year to 2.7 per cent.<sup>117</sup>

To show its good faith and that the new seals were not intended as an economic blockade, the Moldovan government announced that it would charge only 0.18 per cent of the merchandise value as a customs documentation fee from Transdnistrian enterprises (the same rate used in Transdnistria) and that all other payments related to border crossings could be paid into the budget of the Transdnistrian region.<sup>118</sup> It later granted seven Transdnistrian enterprises included in the Russian-

Moldovan Program for Industrial Co-operation the right to use the new customs seals without paying taxes to the Moldovan state budget.<sup>119</sup>

The question of who should receive the tax and customs revenues from Transdnistrian enterprises is crucial. While it is clear that Moldova must regain full control over the flow of goods entering and leaving the country in order to be able to collect all revenues efficiently, there are strong arguments for granting Transdnistria those generated from the trade of its own enterprises. As mentioned above, a fair division in the areas of property and finance will be a cornerstone of any future agreement. Therefore, the international community, while supporting Moldova's claims with respect to the new customs seals, should urge the establishment of a special trust fund into which all revenues collected by the Moldovan authorities from Transdnistrian enterprises should be deposited. Until a final settlement has been agreed, this trust fund should be internationally supervised and used exclusively for the region's financing requirements for economic development, infrastructure, education, public health and social welfare.

Finding an agreement along these lines is even more important now that Moldova and Ukraine have concluded on 15 May 2003 a customs protocol envisaging that from 25 May 2003, Ukraine will permit the import and transit only of goods carrying the new seals.<sup>120</sup> Moldova had already requested in 2001 that Ukraine no longer accept the old seals from Tiraspol and that it establish joint customs points with it on Ukrainian territory along the Transdnistrian section of the border. This met with a cool response in Kiev, which has little interest in blocking trade with Transdnistria since about 30 Transdnistrian enterprises maintain economic contacts with Ukrainian companies, and the Moldovan Metallurgical Plant in Ribnita alone purchased U.S.\$25 million of raw materials in 2001.<sup>121</sup> In addition to the activities of large companies, there

<sup>116</sup> CISR, "Recent Economic Developments", op. cit., p.7.

<sup>117</sup> Ibid, p. 3.

<sup>118</sup> Government of the Republic of Moldova, "Hotarirea Guvernului Republicii Moldova cu privire la declararea marfurilor de catre agentii economici din raioanele de est ale Republicii Moldova", Nr.1001 din, 19 September 2001, Monitorul Oficial al R. Moldova nr.116-118 din, 27 September, 2001.

<sup>119</sup> "Comunistii I-au vandut lui Smirnov stampilele" [The Communists sold Smirnov the stamps], *Flux*, 18 April 2002.

<sup>120</sup> "Ucraina nu mai accepta stampile sovietice", *Flux*, 27 May 2003.

<sup>121</sup> Vitaly Kulik, "Settlement of the Transdnistrian Conflict as a way to the Creation of the Regional Stability Zone in Eastern Europe", Institute de Politicii Publice, *New Borders in South Eastern Europe. The Republic of Moldova, Ukraine, Romania*, (Chisinau 2002), p. 269.

is also considerable small business trade. Ukraine withdrew objections to blocking Transdnestrian exports carrying old customs seals only as a result of diplomatic pressure from the EU and the U.S.

For Moldova, the agreement with Ukraine was a step forward, although there is no way of evaluating how it will be implemented on the ground and still no understanding on joint customs posts. As of July 2003, Ukraine claims to accept in principle both joint customs posts and an international monitoring mission. However, it still objects to either on its side of the border.<sup>122</sup> As Transdnestria is likewise not ready to accept Moldovan customs posts on its territory, the Ukrainian position means that Moldova is still unable to establish effective customs control of its entire border. The 15 May protocol would only force Transdnestrian enterprises to register with the Moldovan authorities but would not stop contraband or otherwise hinder illicit trafficking. The establishment of joint customs posts on the Ukrainian side of the Transdnestrian section of the Moldovan-Ukrainian border remains essential for the Moldovan government to regain full control over its entire border and to register all goods entering its tax and custom space.<sup>123</sup>

The EU, the U.S. and the World Bank should further strengthen their ongoing efforts to train and equip the Moldovan and Ukrainian custom services. Both would benefit (Ukraine to a lesser extent) from aid programs to develop full computerisation and improve legal frameworks, working methods and technical equipment at the border. Since Transdnestria would have to be integrated into a decentralized Moldovan customs service in a final settlement, legislative advice and training should also be available for its customs officials.

Establishing a functioning, unified customs service with full control over all segments of the border and trained and equipped to combat illicit traffic would help to stabilise Moldova economically. The country suffers annual treasury losses of U.S.\$470 million

(3.8 per cent of GDP) due to reduced tax and customs revenues as well as higher transport costs through Transdnestria. Even more important, this customs service would considerably reduce the illicit incomes of Transdnestrian authorities and thus make the status quo less attractive for them. Once again, however, the measures for border and customs control should not block legal Transdnestrian trade. A 12 June 2003 Moldovan government regulation on registration of Transdnestrian enterprises engaged in export and import operations appears to have the right balance.<sup>124</sup>

It is also important to leave ways open for Transdnestrian enterprises to conduct legal business. The revenues collected from this trade should benefit the region. They should, however, not be channelled back simply to the Transdnestrian authorities unless they have received legitimacy through a final settlement agreement and internationally observed free and fair elections. Pending such developments, it would be desirable for the revenues to be paid into the internationally supervised trust fund discussed above, which should either disburse them directly for infrastructure, education, public health, social welfare and related purposes or release them to the authorities in Tiraspol after receiving adequate assurance that they will be so dedicated.

Measures aimed at reducing revenues of the Transdnestrian leadership would need to be supplemented by additional ones making the status quo less comfortable. The visa restrictions introduced by the EU and the U.S. in February 2003 were examples. Targeted financial sanctions like freezing assets and a "refusal to deal" directed towards individuals and enterprises related to the Transdnestrian elites should follow. They should be broad enough to encompass the persons and enterprises essential for keeping the leadership in power.<sup>125</sup> Their aim would be less to hurt the current leadership directly than to induce the business elite

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<sup>122</sup> ICG interviews, Vienna and Chisinau, May 2003. There has so far not been an official request to establish an international border observation mission on the Ukrainian side of the border. However, this issue is discussed in corridors, and it is clearly not endorsed by Ukraine.

<sup>123</sup> ICG interviews, Vienna, Chisinau, Brussels, May and June 2003.

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<sup>124</sup> Government of the Republic of Moldova, "Hotarirea Guvernului Republica Moldova despre masurile de efectuare a operatiunilor import-export de catre agentii economici dislocati in raioanele de Est ale Republicii Moldova", N 712 din, 12 June 2003. Monitorul Oficial al R. Moldova N 123-125 din, 20 June 2003.

<sup>125</sup> See Samuel D. Porteous, "Targeted Financial Sanctions", in Mats Berdal/David M. Malone (eds.), *Greed and Grievance. Economic Agendas in Civil Wars* (Boulder 2002), pp. 175 ff.

and the younger political cadre to calculate costs and benefits. To help such calculations, the international community should complement the sticks with carrots and guarantees. A reconstruction program for Transnistria to be implemented after conclusion of a final settlement should be elaborated and publicised. Moreover, Transnistrians should be assured that they could continue their legal business operations and that the region would keep its property and a fair share of the revenues collected on its territory.

## B. OPENING TRANSDNIESTRIAN SOCIETY

Transnistria is controlled by an authoritarian regime with a well-functioning security service that limits political pluralism essentially to the anti-reform, pro-Transnistrian and Soviet-nostalgic part of the political spectrum. The several political parties that are partly in opposition to the leadership, and even more so the pro-Moldovan opposition, are under constant threat of arrest, interrogation and other harassment. Native Moldovan speakers in the countryside who express pro-Moldovan orientation, for example by pressing for Moldovan (Romanian) language education in Latin script<sup>126</sup> for their children, have no political representation and are under constant pressure from the local authorities and security service.

The several elections to local councils and to the Supreme Soviet of Transnistria as well as a Transnistrian presidential election held since 1992 have not been monitored by the OSCE or the Council of Europe, though the OSCE Mission and local embassies have tried to follow them. There is a consensus that they were neither free nor fair. No candidates with serious prospects of challenging Smirnov were allowed to take part in 1996 or 2001. The opposition movement "Power to the People – for Social Justice", whose leader, Alexander Radchenko, tried to challenge Smirnov in 2001, was declared unconstitutional and dissolved on the grounds that it had supported the Party of Communists of the Republic of Moldova in the 2001 parliamentary elections.<sup>127</sup>

The media is almost entirely under control of the authorities. Such independent media as exists is constantly under pressure and cannot develop freely. The newspaper *Glas Noroda*, the organ of Power to the People, will most probably cease to exist now that the movement has been abolished. The most important independent newspaper, *Novaja Gazeta*, is also constantly under pressure from the authorities. Since 1999 state security has confiscated its entire print run on several occasions. In May 2003, the founders of the paper were fined U.S.\$5,000 for slander, a decision that threatens its economic viability. A similarly threatening lawsuit has been attempted against another independent newspaper, *Dobryi Den*. NGOs are either funded by the authorities or also subjected to pressure and harassment. Persons critical of the authorities are likely to be beaten up or prosecuted and convicted by biased courts implementing the will of the authorities. A small foundation for the creation of civil society has been unable to develop under these circumstances.

Without political or media pluralism and with NGOs restricted, it is difficult to ascertain the population's interests and expectations with regard to a final settlement. Reliable opinion polls do not exist, and any data would be questionable due to the lack of impartial information and open discussion. A final settlement agreement negotiated and discussed under these circumstances might well accommodate the power elite without taking into account the interests of the wider population. Moderates less interested in maintaining the current state of affairs and who could envisage a future in an autonomous region or federal entity within the Republic of Moldova have hardly any opportunities to express themselves. Opening up this closed society would go some way to diminishing the elite's hold on power.

It is important for the OSCE, in close co-operation with the Council of Europe and the EU, to increase its work on democratisation, rule of law and support of civil society. However, even carrots in the form of program money would not make such activity welcome to the Tiraspol leadership, which will object to the funding of free media and real NGOs (as compared to government-financed ones). Further targeted measures being considered by the EU and others should, therefore, be linked specifically not only to formal progress on status negotiations but also to the underlying issue of democratic reforms. Opening up Transnistrian

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<sup>126</sup> According to Transnistrian legislation, Moldovan is to be written in the Cyrillic alphabet. Consequently, public schools in Transnistria do not offer Moldovan (Romanian) language education in Latin script.

<sup>127</sup> "Dniestr Court Upholds Ban on Opposition Party", Moldpres, 13 June 2003, and ICG interviews, June 2003.



society would give its moderates more space to manoeuvre as well as reducing fears on the right bank that the integration of an authoritarian Transdnistria would endanger the reform process in Chisinau.

### C. MAKING MOLDOVA ATTRACTIVE

It is also fair to ask, however, whether from a Transdnistrian perspective an impoverished Moldova with widespread corruption and a ruling party that tends to assume control over the economy, the media and political institutions at all levels is attractive enough to join.<sup>128</sup>

Moldovan GDP per capita in 2002 was €417, just 1.8 per cent of the EU average. Although the economy is expected to grow slightly in 2003, prospects for sustainable growth are slim. The privatisation process has stalled. In 2002, it yielded a mere U.S.\$11 million for the state budget, and the only sizeable foreign companies participating were Russian. Western companies have lost faith in the government. Especially worrisome is the case of the Spanish company Union Fenosa, which after purchasing three of the five regional electric power distribution networks, is being harassed by the Moldovan Chamber of Auditors and other authorities who dispute its ownership rights. As a result of such pressure from the establishment, foreign direct investment (FDI) up until 2002 totalled only US\$714 million. Moreover, it declined by 38 per cent in 2002, leaving Moldova with an FDI per capita of only US\$27.<sup>129</sup>

It is questionable whether the government will be able to continue to pay pensions and salaries regularly. As it does not fulfil its obligations to the IMF, it will not receive already agreed loans, and other donors will also be more reluctant to provide new credits. The winter frost and spring drought will most probably result in a poor 2003 harvest. Corruption and crime continue to increase as the government speaks loudly but takes little action, while members of the ruling Party of Communists

allegedly use the anti-corruption program and other administrative powers to silence political opponents and take over lucrative business operations. Just before the local elections of 25 May 2003, for example, the government spread allegations of corruption against the incumbent mayor of Chisinau, Serafim Urechanu, who was summoned to appear before the police.

Promising investments have been taken over under unclear terms during the past few years, and new monopolies have been established by enterprises close to the leadership of the ruling party and the government. Monopoly enterprises like the phone company, Moldtelecom, and the tobacco producer, Tutun, are not being privatised but are said to be “milked” by the party leadership.<sup>130</sup> Under these conditions, even moderate Transdnistrians fear that the Moldovan authorities want to get their hands on the more lucrative enterprises of the left bank.

Nor has Moldova performed well enough with regard to the functioning of democratic institutions, the rule of law and human rights to impress Transdnistrians. The OSCE and the Council of Europe raised concerns about the integrity of the local elections held on 25 May and 8 June 2003 because of the nature of the campaign that preceded them – the first such serious criticism since independence.<sup>131</sup> Observers reported that coverage in the state media was biased, and opposition candidates were arrested or threatened with arrest as the ruling party sought to gain control over most villages and district councils as well as the capital. The opposition has hardly any possibility to influence parliamentary proceedings and debates, and the public media is effectively controlled by the ruling party. The judiciary has been made more vulnerable to political influence as the result of a reform that decreased the number of courts and positions for judges while allowing the president to veto appointments or reappointments.

<sup>128</sup> For analysis of the Moldovan economy and (particularly) public administration, see the Romanian Academic Society, “Early Warning Report: Republic of Moldova”, November 2002, at [www.sar.org.ro/ewrpdf/Moldova/MD.ewr1en2002.pdf](http://www.sar.org.ro/ewrpdf/Moldova/MD.ewr1en2002.pdf).

<sup>129</sup> TACIS (EU) Moldova, “Moldovan Economic Trends, 1st Quarter 2003”, p. 77, at [www.met.dnt.md](http://www.met.dnt.md).

<sup>130</sup> ICG interview, Chisinau, May 2003.

<sup>131</sup> OSCE/ODIHR & Council of Europe Congress of Local and Regional Authorities, Press Release, 26 May 2003, “Despite smooth voting, conduct of local elections in Moldova raises concerns”, and Press Release, 9 June 2003, “Observers express concerns about runoff local elections in Moldova, despite slight improvement over first round”. See also OSCE/ODIHR Election Observation Mission, Local Elections, Republic of Moldova, Statement of Preliminary Findings and Conclusions, 26 May 2003 and 9 June 2003.

This deterioration of democratic standards, human rights and the rule of law is worrisome for Transdnistrians considering a settlement agreement. A reversal of the trend, on the other hand, would not only be good for Moldova but might even serve as an incentive for Transdnistrians who would like to get out from under their own authoritarian leadership.

The international community can and should use its influence to promote economic and political reforms that would make Moldova both more successful and more attractive for Transdnistria. In its Communication on Wider Europe of 11 March 2003, the European Commission proposed drawing up action plans that would set clear objectives and spell out what the EU expected of its new neighbours.<sup>132</sup> The benchmarks would be established together with the OSCE, the Council of Europe and international financial institutions and be subject to an annual review process. They would be political as well as economic and include implementation of international commitments on democracy, rule of law and human rights. Given that Moldova has declared EU membership a long-term strategic goal and a Stabilisation and Association Agreement with the EU a goal to be reached by 2007, the EU should make such an action plan a priority. Setting clear benchmarks for reforms while being ready to increase technical and financial support to enable Moldova to reach the targets would make the country more attractive to Transdnistria as well as contribute to its stability and prosperity.

#### **D. OFFERING A FAIR SETTLEMENT**

Making Moldova more attractive, pressing the Transdnistrian side toward an agreement and opening its society are not the only requirements for a lasting settlement. Additionally, the Moldovan side has to offer a fair agreement that addresses the interests and grievances of the Transdnistrian population as well as its elites. The crime problem will not be solved simply by regime change. Due to its socio-economic, historical and demographic development, Transdnistria differs from the rest of the country and cannot be successfully governed in

a unitary state. The violent conflict in 1992 and a decade of separation have added to previously existing differences between the two areas. Even if the Tiraspol leadership were replaced by a younger, more moderate group, Moldova would have to grant Transdnistria broad powers of autonomy.

Moldova should offer an asymmetric federation, allowing Transdnistria control over its property and resources and ensuring the rights of the Russian-speaking population. Instead of imposing Moldovan legislation and structures, this would mean finding ways to develop new laws, rules and procedures. The standards set by the EU would be a good starting point. Such an approach would also be a basis for modernising the country in the course of the reintegration process and thus bringing it closer to the EU. Vigorous elaboration of a new constitution for a federally organised Republic of Moldova would put even more pressure on the Transdnistrian side to settle. As long as the international community has doubts that the Moldovan government is serious about its own initiative, however, it will be reluctant to apply more sanctions on the Transdnistrian side. To create a positively reinforcing dynamic, the Moldovan side will have to propose concrete schemes for power sharing and distribution of competencies within the framework of the Joint Constitutional Commission.

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<sup>132</sup> European Commission, Communication from the Commission to the Council and the European Parliament, "Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours", Brussels, 11 March 2003, COM(2003) 104 final.

## VI. CONCLUSION

The Transdniestria conflict does not have a quick fix. A strategy that tackles it from the several directions required cannot be implemented within one or two years. More intensive activity by the OSCE and the EU in 2002 and 2003 has helped restore some movement to a stalled negotiating process but this momentum has to be sustained. Even more rigorous efforts are needed if a sustainable settlement is to be reached by 2007, the likely date when Romania's anticipated EU membership would make it vital. To this end, the EU should allocate even more attention and resources to Moldova and support the OSCE

mediation efforts accordingly. Moreover, it should use its bilateral influence to reduce the benefits of the status quo for Transdniestria's leadership, and help open Transdniestrian society, make Moldova more attractive to Transdniestrians and convince the Moldovan side to offer a fair agreement. The U.S. should do likewise, and both should join, in the framework of the OSCE as well as bilaterally, to work on and with Russia in order to ensure that favourable policy declarations made at the presidential level in Moscow are actually applied in Vienna and Chisinau.

**Chisinau/Brussels, 12 August 2003**

## APPENDIX A

### MAP OF THE REPUBLIC OF MOLDOVA



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## APPENDIX B

### LIST OF ACRONYMS

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<b>CFE Treaty</b>	Treaty on Conventional Armed Forces in Europe
<b>CiO</b>	Chairman-in-Office
<b>CISR</b>	Centre for Strategic Studies and Reforms
<b>CSCE</b>	Conference on Security and Co-operation in Europe
<b>EU</b>	European Union
<b>FDI</b>	Foreign Direct Investments
<b>HCNM</b>	High Commissioner on National Minorities
<b>IMF</b>	International Monetary Fund
<b>IPP</b>	Institute for Public Policy
<b>JCC</b>	Joint Constitutional Commission
<b>MASSR</b>	Moldovan Autonomous Socialist Soviet Republic
<b>MSSR</b>	Moldovan Socialist Soviet Republic
<b>NATO</b>	North Atlantic Treaty Organization
<b>ODIHR</b>	Office for Democratic Institutions and Human Rights
<b>OGRF</b>	Operational Group of the Russian Forces in the Transdnistrian Region of Moldova
<b>OMON</b>	Otryad militsii osobogo naznacheniya (Special Forces Police Detachment)
<b>OSCE</b>	Organisation for Security and Co-operation in Europe
<b>OSTK</b>	Ob'edinennyi sovet trudovykh kollektivov (Union of Workers Collectives)
<b>UNDP</b>	United Nations Development Programme
<b>WTO</b>	World Trade Organisation

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

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The International Crisis Group (ICG) is an independent, non-profit, multinational organisation, with over 90 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

ICG's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, ICG produces regular analytical reports containing practical recommendations targeted at key international decision-takers.

ICG's reports and briefing papers are distributed widely by email and printed copy to officials in foreign ministries and international organisations and made generally available at the same time via the organisation's Internet site, [www.crisisweb.org](http://www.crisisweb.org). ICG works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The ICG Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring ICG reports and recommendations to the attention of senior policy-makers around the world. ICG is chaired by former Finnish President Martti Ahtisaari; and its President and Chief Executive since January 2000 has been former Australian Foreign Minister Gareth Evans.

ICG's international headquarters are in Brussels, with advocacy offices in Washington DC, New York, Moscow and Paris and a media liaison office in London. The organisation currently operates twelve field offices (in Amman, Belgrade, Bogota,

Islamabad, Jakarta, Nairobi, Osh, Pristina, Sarajevo, Sierra Leone, Skopje and Tbilisi) with analysts working in over 30 crisis-affected countries and territories across four continents.

In *Africa*, those countries include Burundi, Rwanda, the Democratic Republic of Congo, Sierra Leone-Liberia-Guinea, Somalia, Sudan and Zimbabwe; in *Asia*, Indonesia, Myanmar, Kyrgyzstan, Tajikistan, Uzbekistan, Pakistan, Afghanistan and Kashmir; in *Europe*, Albania, Bosnia, Georgia, Kosovo, Macedonia, Montenegro and Serbia; in the *Middle East*, the whole region from North Africa to Iran; and in *Latin America*, Colombia.

ICG raises funds from governments, charitable foundations, companies and individual donors. The following governments currently provide funding: Australia, Austria, Canada, Denmark, Finland, France, Germany, Ireland, Japan, Luxembourg, The Netherlands, Norway, Sweden, Switzerland, the Republic of China (Taiwan), Turkey, the United Kingdom and the United States.

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**August 2003**

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\* The Algeria project was transferred from the Africa Program to the Middle East & North Africa Program in January 2002.

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