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## The Transdniestrian Settlement Process – Steps Forward, Steps Back: The OSCE Mission to Moldova in 2005/2006<sup>1</sup>

The process of seeking a sustainable peaceful political settlement to the Transdniestrian problem underwent fundamental changes from mid-2005 into 2006. While political settlement negotiations resumed in an expanded format in autumn 2005,<sup>2</sup> relations between Chişinău and Tiraspol grew increasingly tense and hostile, especially after the introduction of a new customs and border regime by Ukrainian and Moldovan authorities on 3 March 2006. The new regime on the Transdniestrian segment of the Moldova-Ukraine border produced not only a hostile reaction from Tiraspol, but a marked increase in the polarization between the mediators and observers in the political settlement process. After the Transdniestrian referendum in favour of independence and closer association with the Russian Federation held on 17 September 2006, the outcome of the new initiatives and events of 2005-2006 still hangs in the balance.

### *The Orange Revolution and the 2005 Moldovan Elections*

The installation of new governments in Kiev and Chişinău in January and April 2005 brought far-reaching changes in the Transdniestrian political settlement process throughout 2005. The so-called Yushchenko Plan, introduced by the Ukrainian President Victor Yushchenko at the GUAM (Georgia, Ukraine, Azerbaijan, Moldova) Summit in Chişinău on 22 April 2005 and presented in more detail by Ukrainian negotiators in May at a meeting in Vinnitsa, Ukraine, changed the emphasis of the political settlement process to focus on the need for democratic reform of the Transdniestrian regime as a prerequisite for negotiating a political settlement. On 10 June 2005, the Moldovan parliament overwhelmingly adopted a declaration welcoming the Yushchenko Plan, with two appeals appended, calling for free elections in the Transdniestrian region under international supervision as a condition for progress towards a political settlement, and demanding completion of the withdrawal of Russian military forces from the Transdniestrian region and replacement of the current Russian peacekeepers by an international peacekeeping force.

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1 The opinions expressed in this article are exclusively the personal views of the author.

2 The original five-sided negotiation process (Moldova, Transnistria, and the three mediators Russia, Ukraine, and the OSCE) was expanded in autumn 2005 by the addition of the EU and the USA as observers (“five plus two”).

On 22 July 2005, the Moldovan parliament adopted an organic Law on Basic Principles of the Special Legal Status of the Settlements on the Left Bank of the Dniestr (Transdnestria). The law mandated democratization of the Transdnestrian region and withdrawal of Russian military forces as agreed at the 1999 OSCE Istanbul Summit as prerequisites for further negotiations on a special status for the Transdnestrian region.

The Moldovan legislation offered a formal status of autonomy for Transdnestria (an “autonomous territorial formation [...] within the composition of the Republic of Moldova”). The statute specified that the division of competencies between Moldovan central authorities and Transdnestrian authorities should be made on the basis of Moldovan legislation, thereby precluding adoption of the federal and confederate provisions of previous proposals, in particular the controversial “Kozak Memorandum”.

The Moldovan parliament’s adoption of the law on the basic principles of Transdnestria’s status was greeted with a barrage of criticism, in particular from Tiraspol and Moscow. The most frequent objection was that the Moldovan action was unilateral, taken without either consultation or consent from its Transdnestrian negotiating partner. However, the Moldovan parliament’s action was clearly consistent with the overall direction of the Yushchenko Plan. The Ukrainian initiative envisioned a three-stage process in attaining a political settlement of the Transdnestrian question, with the draft laws on status during the first stage to be worked out by the Moldovan parliament. The Transdnestrian legislative body was not to be accepted as a legitimate negotiating partner until a later stage, after holding free, democratic elections in the region.

Nonetheless Tiraspol reacted to President Yushchenko’s GUAM Summit proposals and the Ukrainian plan presented at Vinnitsa with outright hostility, while Moscow greeted the initiatives with minimal but clearly sceptical commentary. Transdnestrian negotiators sparred with their Ukrainian counterparts over various provisions of the Yushchenko initiative and Ukrainian plan for two months following the meeting in Vinnitsa. In July 2005, after a meeting in Kiev with President Yushchenko, the Transdnestrian leader, Igor Smirnov, formally offered his support in writing for the Ukrainian settlement plan. However, Smirnov’s letter to Yushchenko contained enough conditions, qualifications, and reservations to allow the Transdnestrian negotiating team to drag out or resist actual adoption and implementation of most of the provisions of the Ukrainian plan for a very long time.

#### *Expansion of the Negotiating Format*

One key point of President Yushchenko’s GUAM Summit initiative was expansion of the format of the Transdnestrian political settlement negotiations to include the European Union and the United States as formal participants.

Since the early 1990s, the United States has closely followed the Transdnistrian political settlement process through the office of a Special Negotiator for Conflicts in the Newly Independent States, located in the State Department. The US Special Negotiator has regularly visited Moldova, including the Transdnistrian region, and consulted closely with the parties and the mediators in the political settlement negotiations. The US Special Negotiator's portfolio also includes the conflicts in Nagorno-Karabakh, South Ossetia, and Abkhazia.

Since the turn of the century, the EU also has paid increasing attention to Moldova and the unresolved conflict in its Transdnistrian region. In February 2003, the EU joined with the US in placing visa sanctions on top officials from Transdnistria to encourage Tiraspol to change its unconstructive attitude in the political settlement negotiations. The EU extended these visa sanctions in response to Transdnistrian closure of several Moldovan Latin script schools in Transdnistria in July 2004. As formal EU expansion into Romania and Bulgaria grew nearer, overall attention to Moldova grew substantially. After adoption of the EU-Moldova Action Plan on 22 February 2005, the EU appointed Dutch diplomat Adriaan Jacobovits de Szeged as Special Representative for Moldova in March of that year. One of his tasks was to increase the EU contribution to the resolution of the Transdnistrian conflict.

Both the government and civil society in Chişinău had for some time discussed the possibility of changing the Transdnistrian political settlement negotiating format, in particular by adding the EU and the US as formal participants. Neither Russia nor Ukraine were eager to relinquish their privileged positions as mediators and self-proclaimed "guarantor countries". However, following the Orange Revolution, Kiev changed its position, and in his GUAM Summit speech on 22 April 2005, President Yushchenko proposed formally including the European Union and the United States in the negotiation process. Brussels and Washington subsequently indicated their willingness to participate officially in the process.

Moscow's response to the Ukrainian initiative was essentially neutral and non-committal. With respect to enlarging the negotiating format, Russian representatives indicated to their co-mediators from Ukraine and the OSCE that they would be guided by and would accept Tiraspol's response to the proposal.

In discussions with the OSCE Mission to Moldova during July 2005, Transdnistrian negotiators indicated they would be willing to accept EU and US participation in the political settlement negotiations, but only in the role of observers. The OSCE Mission then spent several weeks in consultations with all interested actors – Moldova, Russia, Ukraine, the EU, and the US – to develop an acceptable definition of what would actually be meant by observer status. The eventual agreement on observer status entitled EU and US negotiators to participate in all sessions and discussions, receive all docu-

ments, make proposals, and comment on other proposals. However, EU and US negotiators would not sign documents, vote when decisions were taken, or serve as chairs for formal sessions. Since all decisions in the negotiations are taken by consensus, the lack of a formal vote for the EU and US was not considered a handicap.

Transnistrian negotiators also requested individual consultations with the EU and US representatives to ask about their general approach and views on the Transnistrian question. Chişinău did not object, and in August-September, EU and US representatives visited Tiraspol separately. With the completion of this apparently necessary piece of political theatre, agreement on expansion of the negotiating format was formalized at consultations between the political representatives (i.e. negotiators) of Chişinău and Tiraspol and the three mediators from Russia, Ukraine, and the OSCE held in Odessa on 26-27 September 2005. The protocol signed at the end of the Odessa consultations agreed to formal resumption of political settlement negotiations in Chişinău at the end of October after a 15-month hiatus.

#### *The Political Background: One Problem Solved, Another Deepens*

The political settlement negotiations had broken off in July 2004 with the Moldovan walkout in protest at Transnistrian closure of two Moldovan Latin script schools and threats against at least two others. The acute crisis over the Moldovan schools in Transnistrian-controlled territory lasted almost a full year. After brokering patchwork agreements that enabled the schools in question to open belatedly and operate during the 2004-2005 school year, the OSCE Mission, joined by colleagues from the Ukrainian and Russian embassies in Chişinău, mediated an agreement between Moldovan and Transnistrian educational experts. This agreement, signed on 1 July 2005, provided for temporary registration of the Moldovan schools with local left bank authorities, which in turn enabled the schools to open and operate relatively normally for the 2005-2006 school year. Negotiations, brokered by the OSCE Mission, continued between educational experts from Chişinău and Tiraspol in search of a more durable agreement on the status and operation of the Latin script schools.

Resolution of the bitter, protracted school crisis was a necessary precondition for resumption of the political settlement negotiations. The success in achieving a temporary solution which allowed the Moldovan schools to reopen produced a result similar to squeezing a balloon – bitter tensions in relations between the right and left banks simply bulged out in other areas.

The most serious problems between Chişinău and Tiraspol during most of 2005 revolved around the travails of Moldovan farmers who live on the Chişinău-controlled left bank around Dubossary but cultivate lands to the east of the main north-south highway, which are under the control of the Trans-

dniestrian authorities. As early as the spring of 2000, local Transdniestrian authorities in Dubossary attempted to impose restrictions on the ability of Moldovan farmers from several Moldovan-controlled villages in the region (Cocieri, Malovata, Corjevo, Cosnita, and Dorotcaia) to visit and cultivate their lands. A meeting between then Moldovan Prime Minister Dumitru Braghis and Transdniestrian leader Smirnov resulted in a tacit truce between local authorities on both sides, and for several years the Moldovan farmers worked their fields largely without incident.

With the deterioration of relations between Moldovan and Transdniestrian authorities after President Vladimir Voronin's November 2003 decision not to sign the Kozak Memorandum, local Transdniestrian authorities imposed increasing restrictions and fees on Moldovan farmers working lands under *de facto* Transdniestrian jurisdiction during 2004. A crisis – and near hostilities – developed in the wake of an attempt by Transnistria in October 2004 to move a “border and customs” checkpoint some 200 meters into Moldovan-controlled territory near the left bank village of Dorotcaia. Despite repeated Moldovan appeals, the Transdniestrian and Russian delegations in the Joint Control Commission (JCC), which controls the Joint Peacekeeping Forces in the Security Zone between the parties to the conflict along the Dniestr River, proved unwilling and/or unable to resolve the issue of freedom of movement and access for Moldovan farmers in the region. When Transdniestrian authorities refused to permit Moldovan farmers to sow their fields in spring 2005, the Moldovan delegation walked out of the JCC, paralysing its work.

Together with representatives of the Russian and Ukrainian Embassies, the OSCE Mission sought to mediate a solution to the so-called “Dorotcaia crisis”. After a high-level meeting with Transdniestrian leader Smirnov in April 2005, it appeared a solution was at hand, but at the last minute the deal fell through. The OSCE Mission along with Russian, and Ukrainian representatives met regularly with Moldovan and Transdniestrian JCC delegations, but to no avail. With the issue unresolved, Moldovan negotiators made freedom of movement in the Security Zone – often referred to as simply “Dorotcaia” – a constant priority point on their agenda for the political settlement talks. Failure to make progress on this issue through the winter of 2005-2006 meant that every round of the political settlement negotiations included an acrimonious, protracted exchange over the plight of the Moldovan farmers.

Paradoxically – and happily – as the political settlement negotiations fell apart during the spring of 2006, a mutually acceptable temporary solution was found to the Dorotcaia issue. After the February 2006 negotiating round disintegrated over Moldovan objections to the lack of progress in addressing the plight of the Moldovan farmers, OSCE Mission consultations with Transdniestrian and Russian negotiators identified a possible approach to an *ad hoc* solution of the problem in the Dubossary region. Moldovan and Transdniestrian negotiators agreed to the OSCE's proposal to form a working

group of representatives of Moldovan and Transdnestrian local authorities from the Dubossary region. With the assistance of Russian, Ukrainian, OSCE, and EU representatives, these local representatives worked out an agreement on an informal, temporary, local system of registration with local authorities and free passage for Moldovan farmers. This agreement purposely avoided touching on any questions involving ownership or jurisdiction. In mid-April, a formal agreement on registration and land use until 2009 was signed by local Transdnestrian and Moldovan officials. By the holidays in early May, Moldovan farmers were back in their fields.

#### *Political Settlement Negotiations: Setting the Agenda*

The Transdnestrian political settlement negotiations resumed in the autumn of 2005 with an agenda that was largely determined by the Moldovan and Ukrainian negotiators, drawing upon April's Yushchenko initiative and the Ukrainian plan. The central point of the Ukrainian settlement scheme was the election under international supervision of a new legislature (Supreme Soviet) in Transdnestria that would be accepted as a legitimate negotiating partner. Ukrainian negotiators proposed that this first stage of the plan be completed in six months, quickly enough to precede the regular elections to Transdnestria's Supreme Soviet scheduled for December 2005. Experts from the OSCE Mission prepared an informal, unofficial analysis of the time and resources that might be needed to conduct democratic elections meeting international standards in the Transdnestrian region. This analysis was discussed at an informal meeting in Kiev in late August, but the scope of the technical and political questions to be resolved precluded any dramatic results. In any case, the Transdnestrian negotiators refused to engage with the proposal, referring the question to deputies in the sitting Supreme Soviet.

On 21 September 2005, in an effort to hasten the process, Presidents Voronin and Yushchenko sent a joint letter to the Slovene OSCE Chairman-in-Office Dimitrij Rupel proposing the dispatch of an international assessment mission to Transdnestria to evaluate conditions and make recommendations on necessary steps for holding democratic elections in the region. The Moldovan and Ukrainian delegations raised the proposal at the consultations in Odessa on 26-27 September. Transdnestrian negotiators came within a phone call to Smirnov of accepting the idea in principle. As it was, composition and discussion of a draft mandate for an international assessment mission became a leading item in the agenda for multiple rounds of the political settlement talks through the autumn and winter of 2005/2006.

As discussions on a possible international assessment mission and internationally conducted elections in the Transdnestrian region dragged out in the political settlement talks, events on the left bank took their own course and overran the discussion. An election campaign for a new Supreme Soviet

was announced in September 2005 and elections were held on 11 December. As with the three previous elections to the Transdniestrian legislative body, there was no international presence, no monitoring, and no recognition.

Despite the fact that the election campaign and polling failed to meet international standards, the vote produced a majority of deputies in the new body with some apparent distance if not independence from the Smirnov regime. Twenty three of the 43 deputies in the new body hailed from the *Obnovlenie* (Renewal) movement, reputedly supported by a number of large entrepreneurs, including the retail, media, and football conglomerate Sheriff. *Obnovlenie* leader, Yevgeny Shevchuk, was elected Speaker of the new Supreme Soviet, replacing long-time Smirnov cohort, Grigory Maracuta. However, the election of the new Supreme Soviet failed to have any positive effects on the political settlement talks. In fact, the installation of deputies with a new five year mandate made it that much harder to convince Transdniestrian representatives to agree to early internationally controlled free elections to replace them.

### *Factory Monitoring*

For years, political and opinion leaders in Chişinău have charged that Transdniestria engages in the manufacture, assembly, sale, and export of weapons of all sorts. Transdniestrian representatives have admitted to a small portion of the charges, but have persistently denied any massive, protracted, or commercial production and trade in weapons. Physical evidence to confirm or refute charges of arms manufacture or smuggling has been just about nonexistent, thereby reducing the dialogue across the Dniestr on this issue to a stream of unsubstantiated charges and equally unproven denials.

From time to time, participants in the political settlement process have proposed creating transparency around the operation of military-industrial facilities in Moldova, particularly in the Transdniestrian region, so as to settle accusations of arms dealing once and for all. In early 2003, Transdniestrian leader Smirnov proposed to the Dutch OSCE Chair and the OSCE Mission conducting inspections of major industrial facilities in the Transdniestrian region to counter Moldovan accusations of arms manufacturing. However, at that time Transdniestrian officials were not prepared to offer protracted, repeat access to the facilities in question or to the major export routes through Ukraine. OSCE officials concluded that one-time inspections would amount to little more than visits to a set of latter-day Potemkin villages, and no action was taken on the issue for some two years.

However, with the charges of arms smuggling continuing unabated, President Yushchenko's GUAM Summit initiative included a proposal for an international monitoring mission to be sent to military industrial enterprises in Transdniestria.

Through the summer months of 2005, the OSCE Mission consulted frequently with the parties and mediators in the political settlement talks, and produced a draft protocol (or agreement) for long-term monitoring of some fifteen industrial sites in Moldova's Transdnistrian region under the auspices of the OSCE.

After discussing the subject during the September consultations in Odessa, participants in the political settlement negotiations agreed to form an expert working group, which held several sessions at the OSCE Mission office in Chişinău to try to work out a text agreeable to both Chişinău and Tiraspol. However, working group discussions revealed deep differences between the parties to the conflict on this question, including such basic points as which parties should sign the factory monitoring protocol. After the issue was discussed without progress at two of the five-plus-two negotiating rounds, the Russian Federation negotiator suggested a change in approach, by using the template of the model agreement on inspection of industrial sites included in the CSBM package (see below, pp. 162-163) presented to both sides in the talks in July 2005.

The OSCE Mission produced a new draft protocol on factory monitoring, based on the template from the CSBM package, in time for the January 2006 five-plus-two negotiating round. While the format and some of the modalities of the proposed agreement were different, the most important elements, in particular the list of industrial objects to be subject to monitoring, were basically unchanged. The new proposed agreement was discussed at the two negotiating rounds held in early 2006. However, this discussion was cursory, largely polemical, and without substantive results.

#### *Military Aspects of Security: No Withdrawal, No CSBMs*

The withdrawal of Russian military forces and military equipment from the Transdnistrian region of the Republic of Moldova has been one of the primary aims of the OSCE Mission to Moldova since its deployment in April 1993. The Russian Federation first took upon itself the political obligation to remove its military forces from Moldova at the December 1992 OSCE Stockholm Ministerial Meeting. In its mandate, the OSCE Mission is charged with assisting the states involved in reaching an agreement for the withdrawal of foreign military forces from Moldova. In October 1994, Russia and Moldova signed a treaty calling for the withdrawal of all Russian military forces in three years. The OSCE was not a signatory or participant and received all of the ancillary protocols envisioned by the text of the treaty only years later. The treaty also contained the notorious phrase calling for the withdrawal of Russian forces to be "synchronized" with the attainment of a political settlement to the Transdnistrian question.



The Moldovan parliament ratified the October 1994 treaty almost immediately. However, the treaty languished in the Russian State Duma after its formal submission by the Russian government. Following the election in 1995 of a new and seemingly more radical legislative body, the Russian government withdrew the treaty from consideration in the Duma, arguing that it might otherwise be rejected outright by a majority of deputies. The Russian Federation has never formally repudiated the treaty, although the October 1997 deadline for completion of the withdrawal has long since passed.

Similarly, the Russian Federation has confirmed its political obligation to withdraw its military forces from Moldova's Transdnistrian region on an annual basis in OSCE Ministerial and Summit Meetings. At the November 1999 Istanbul OSCE Summit, in connection with the signing of the Adapted CFE Treaty, Russia agreed to explicit deadlines for the withdrawal of its military from Moldova – 31 December 2001 for CFE Treaty Limited Equipment (TLE) and 31 December 2002 for everything else. With the assistance of an OSCE Voluntary Fund established in the wake of the Istanbul Summit, Russia met the first deadline, either destroying or withdrawing to Russian territory over 500 tanks, armoured combat vehicles, and artillery pieces by late autumn 2001.

The withdrawal slowed considerably during 2002, and at the OSCE Porto Ministerial Meeting on 6-7 December 2002, Russia obtained a one year extension, to 31 December 2003, to complete full withdrawal. By that time the major task remaining was the removal or destruction of the 40,000 plus metric tonnes of munitions stored at the Russian ammunition depot near the village of Colbasna in the north of the Transdnistrian region. Because of Transdnistrian failure to co-operate with proposals for destruction of munitions on site, Russian military officials decided to remove all of the ammunition to bases in Russia. Work began in earnest in March 2003, and by the end of the year almost half of the ammunition had been removed. Unfortunately, in the winter of 2003/2004 and in the wake of Moldova's rejection of the Kozak Memorandum, the withdrawal process once again ground to a halt. An ammunition train was loaded and left Colbasna for Russia in March 2004. Since that time, no Russian ammunition, arms, or troops have been withdrawn from Moldova.

The Russian Federation has formally maintained its commitment to eventual complete withdrawal of its troops and military equipment from the Transdnistrian region of Moldova. However, Russian representatives explain that strained relations and political tensions between Chişinău and Tiraspol in recent years do not provide a sufficiently secure and stable environment in which to complete the withdrawal. They argue that improvement of relations and movement towards a political settlement will allow resumption of withdrawal of arms and ammunition. The OSCE Mission maintains contact with Russian military officials, including the Ministry of Defence in Moscow. However, during the past two years, these contacts and consulta-

tions on possible steps to renew and complete the withdrawal have not produced any concrete results.

### *Demilitarization – The CSBM Package*

Even during the most productive and co-operative periods of the political settlement process, it has been obvious that there is an extremely deep distrust between leaders in Chişinău and Tiraspol. This distrust might be expected, given the history of the brief but bitter military conflict between the right and left banks. However, it is exacerbated by the disproportionately large military, militarized, and paramilitary forces and amounts of weaponry possessed by both Chişinău and Tiraspol.

The OSCE has addressed the need for increasing mutual confidence and transparency and reducing military and paramilitary forces within Moldova since the late 1990s. Civilian and military leaders on both sides of the Dniestr were receptive in principle, and some modest steps were taken. For example, after over two years of discussion and negotiation, the armour and heavy weapons of both the Moldovan and Transdniestrian forces were removed from the Security Zone in August 2003. However, more ambitious confidence-building measures and arms reductions proved impossible to pursue within the format of the JCC due to the territorial limitation of its mandate to the narrow Security Zone along the river.

In 2004, the OSCE Mission undertook a more systematic and comprehensive approach to questions of military security, confidence-building, transparency, and reductions in arms and forces within Moldova. Using as models European arms control and CSBM agreements over the past two decades, in particular the CFE Treaty, the Vienna Document, and the Dayton Accords, the OSCE Mission produced a comprehensive package of draft arms-and-troop-reduction, confidence-building, and transparency agreements, which was initially presented to Chişinău and Tiraspol during the visit of OSCE Chairman-in-Office Solomon Passy in June 2004.

The crisis that erupted over Transdniestrian closure of the Moldovan schools in July 2004 derailed the prospect of immediate discussion between Chişinău and Tiraspol of the CSBM package. In the meantime, OSCE, Russian, and Ukrainian military experts conducted a thorough review and revision of the package through late 2004 and early 2005. In July 2005 the revised package of fourteen draft agreements was presented jointly by the Russian, Ukrainian, and OSCE negotiators to the Moldovan Minister for Reintegration, Vasile Sova, and Transdniestrian leader Smirnov.

It was hoped that the joint participation and united support for the package of the three mediators would increase chances of early discussion, adoption, and implementation of at least some of the draft agreements. As the initial author, the OSCE stressed that the package need not be implemented on

an all-or-nothing basis. In fact, the OSCE Mission proposed to the parties to the conflict and to its co-mediators that the sides begin by adopting an agreement on an exchange of comprehensive data on their military forces in order to increase transparency. Agreement and implementation of data exchange would be followed logically by agreement and carrying out of inspections of units and sites listed in the data exchange. These and further such steps might lead to an increase in confidence that in turn might permit negotiation and implementation of agreements on the reduction of military forces, that is, the beginnings of a process of demilitarization.

The CSBM package met with criticism from many quarters. Some Chişinău partisans objected that the package equated Moldova's legitimate military forces with the illegal units of the separatist regime. Transdniestrian military and security officials charged that the proposal was a trick to fool Transdniestria into disarming so that NATO could occupy the left bank on behalf of Chişinău.

Once the political settlement talks resumed in October 2005, the OSCE included on the agenda discussion of a proposed exchange between Moldovan and Transdniestrian representatives of data on their military forces as a first step in implementing the CSBM package. Moldova embraced the idea, and in November the Moldovan negotiator passed to the OSCE Mission comprehensive data on the Republic of Moldova's military forces and equipment. These data were provided on the condition that the Mission would retain custody and release them only when Transdniestrian representatives presented similar data on their military holdings.

Transdniestrian representatives agreed to the inclusion of the subject in the agenda for several rounds of talks, but steadfastly expressed their inability to convince their military to provide such data. In January 2006, the Transdniestrian representative presented a short (less than one full page) letter to the Russian Federation representative with some basic information on the troop strength and heavy weaponry of the Transdniestrian army. (The letter omitted other militarized and paramilitary forces, such as Interior Ministry troops, State Security Ministry troops, border guards, and Cossacks.) The Transdniestrian negotiator called this letter a form of data exchange, a claim disputed by almost all other participants in the talks.

After discussion of the CSBM package and the proposed exchange of data at the January 2006 round, negotiators called upon Russian Federation military experts to provide assistance to Transdniestrian military officials in preparing an adequate submission of military data in an internationally accepted format. No results had come of this appeal by the February 2006 round, which ended abruptly without written agreement on further steps. The CSBM package and consideration of an exchange of military data, along with the political settlement negotiations as a whole, have remained in suspension from the end of February into the autumn of 2006.

### *The Russian Federation Paper*

Russian Federation experts were at work through the summer of 2005 analysing the Ukrainian plan and preparing a Russian contribution. OSCE Mission representatives gained a detailed insight into the impending Russian contribution during consultations with Transdniestrian negotiators during the summer. In a process of bilateral consultations, the Russian Federation negotiator acquainted the OSCE Mission with the new Russian document in early September. Similar bilateral meetings took place during the month with other participants. The Russian representative then distributed the text of the document to all participants in the talks at consultations in Odessa on 26-27 September.

Moldovan negotiators reacted immediately and negatively to the Russian initiative and refused to discuss it in any format. The Moldovans pointed to a number of features in the document either drawn directly from the earlier Kozak Memorandum or very similar to provisions of the Kozak document. A process of bilateral Russian-Ukrainian consultations on the Transdniestrian settlement process during the late autumn of 2005 resulted in a positive reference to the Russian initiative in a Joint Statement by Presidents Putin and Yushchenko of 15 December. However, the Russian document was never formally included in the agenda of the rounds of the political settlement negotiations from October 2005 to February 2006.

### *The EU Border Assistance Mission*

The question of control of the Transdniestrian-controlled segment of Moldova's state border with Ukraine has played a major role in the Transdniestrian political settlement process since its inception. One of the foremost topics of discussion and in early 1996 one of the first written agreements between Chişinău and Tiraspol was an apparent deal on the formation of a single, unified customs service and system of border control. Unfortunately, Transdniestrian authorities eagerly accepted that portion of the 1996 Customs Agreement that permitted them to use Moldovan export documentation and customs seals and stamps. However, Tiraspol never implemented one of the other key points of this agreement, namely deployment of joint customs and border posts along the Transdniestrian sector of the border with Ukraine.

The economy of the *de facto* Transdniestrian mini-state was particularly sensitive to issues of border control. Transdniestria's relatively well-developed industrial sector is wholly dependent on access to foreign markets, largely by export through Ukraine's Odessa Oblast ports. In addition, the Transdniestrian retail sector is almost wholly dependent on imports, which during the 1990s came in equal measure through Moldova's right bank and the border with Ukraine. During the period that Tiraspol was able to make

legitimate use of Moldovan documentation from 1996-2001, Transdniestrian enterprises made significant inroads into North American and EU markets, providing the bulk of the revenues needed to keep the Transdniestrian state structures afloat.

While the Transdniestrian economy boasted healthy legal industrial and retail-trading sectors, the region was also a haven for myriad semi-legal and outright criminal schemes. While neither Ukraine nor Russia formally recognized the self-proclaimed Transdniestrian state, they placed no restraints upon imports and exports to and from Transnistria, especially during the period Tiraspol was legally using Moldovan export and customs documentation. With its unrecognized, unregulated status, Transnistria became in effect a giant offshore zone that businesses in Moldova, Ukraine, Russia, and Romania were able to use to evade domestic taxes. The Transdniestrian regime appeared to co-operate willingly in this massive tax evasion. The lack of control on the internal border along the Dniestr and the state border with Ukraine also facilitated the growth of organized crime, which flourished in the region especially in the 1990s.

For many reasons, including the search for a political settlement and reunification of the country and the fight against corruption and organized crime, control of the border became an increasingly important issue after the turn of the century. Citing purported obligations incurred by Moldova upon its entry to the WTO in mid-2001, President Voronin revoked Transnistria's right to use Moldovan customs stamps, seals, and certificates of origin in September 2001 when Smirnov refused to agree on any steps towards deployment of joint customs and border posts along the Ukrainian border.

Voronin's action touched off howls of protest from Tiraspol and a crisis that halted political settlement talks for over nine months. Nevertheless Transnistria managed to continue its foreign trade almost unchecked through Ukraine. At the last minute, at the end of August 2001, Ukrainian President Leonid Kuchma backed out of an informal agreement to allow stationing of Moldovan customs officials at Ukrainian border posts along the Transdniestrian segment on Ukrainian territory. In addition, despite an agreement in principle reached in May 2003 to require legal Moldovan documentation on imports and exports to and from the Transdniestrian region, the Ukrainian customs and border services failed to take enforcement action.

Meanwhile, tensions over the border issue grew steadily after President Voronin's September 2001 action. Transdniestrian representatives charged Moldova with violating the provision of the May 1997 Moscow Memorandum that provided Transnistria the right to establish and maintain independent foreign economic contacts. Moldovans, both government and non-governmental figures alike, charged that Transnistria was engaged in massive smuggling of all sorts across the border with Ukraine, and demanded the establishment of effective control along this border.

In November 2002, the OSCE sponsored a fact-finding mission to the region composed of representatives and specialists from a number of participating States to investigate the possibility of international border monitoring. In February 2003, even Transnistrian leader Smirnov made an offer to the Dutch OSCE Chair and the OSCE Mission to establish a system of inspection of the border. Through the spring of 2003, the OSCE discussed the possibility of establishing a border monitoring effort with Moldovan authorities within the context of the political settlement talks, and with interested parties within the OSCE, and developed several draft operational plans for such monitoring. However, agreement within Moldova and among OSCE participating States proved elusive. Chişinău and Tiraspol could not agree on several key conditions (e.g. Moldovan customs and border officials working on Transnistrian-controlled territory), and some participating states expressed concern about possible precedents that might be established by such a mission. With the deterioration of relations and the hardening of positions after the rejection of the Kozak Memorandum, the border question was, in effect, shelved during 2004.

While progress might have been blocked, the issue of border control never disappeared from the political settlement agenda. Ukraine's Orange Revolution removed one of the major causes of this blockage, the unwillingness of Ukrainian authorities to permit monitoring of the Transnistrian segment of the border from Ukrainian territory. In his April 2005 GUAM Summit initiative, President Yushchenko offered to permit short-term OSCE monitoring efforts on Ukrainian territory. Later, apparently presuming that it might be difficult to get Russia to join consensus on this question in the OSCE, Presidents Yushchenko and Voronin appealed directly to the European Union to establish a border monitoring mission. Greater EU interest in the region, manifested by the signing in February of the EU-Moldova Action Plan and the appointment of an EU Special Representative for Moldova, militated for a rapid, positive response. An EU assessment mission visited Moldova and Ukraine in August 2005. By 30 November, the EU, Moldova, and Ukraine had agreed on a mandate, and the EU Border Assistance Mission (BAM), with headquarters in Odessa, opened its doors for business.

#### *The Moldova-Ukraine Prime Ministers' Joint Statement and the Border Crisis*

After weeks, even months of negotiations, Moldovan Prime Minister Vasile Tarlev and Ukrainian Prime Minister Yuri Yekhanurov signed a Joint Declaration on 30 December 2005 in which the Moldovan government agreed to restore a system of expedited, essentially cost-free registration of Transnistrian enterprises with Moldovan authorities, while the Ukrainian government agreed to require all goods entering or leaving Transnistria to have proper

Moldovan documentation, as first agreed in the Moldova-Ukrainian protocol of 15 May 2003. Implementation of the Joint Declaration was to begin on 25 January 2006. Seeing the handwriting on the wall, Transdniestrian authorities complained vehemently about the new regime on the border envisioned by the Joint Declaration. Authorities in Tiraspol also did their best to prevent Transdniestrian entrepreneurs from attending briefings on the new system of registration and documentation scheduled by Moldovan and Ukrainian authorities in Odessa.

Arguing that Moldovan authorities had failed to fully restore the system of registration specified by the Joint Declaration, the Ukrainian government did not implement the requirement for Moldovan documentation for all goods crossing the border on the envisioned deadline. Moldovan representatives agreed to Transdniestrian requests to discuss the system of registration of enterprises in the negotiating rounds at the end of January and February, but as a matter of principle refused to discuss in these talks Moldova's right to institute or change the system of sovereign control on the state border. After another five weeks of negotiation and adjustment of the system of registration, Prime Minister Yekhanurov finally signed a decree at the beginning of March to commence Ukrainian enforcement of the Joint Declaration on 3 March 2006.

With Ukrainian customs officers requiring that exports and imports be conducted with legal Moldovan documentation and EU observers monitoring the process, Moldova achieved a degree of transparency and control on the Transdniestrian segment of its state border that had eluded it for over a decade. Transdniestrian authorities, however, immediately began a campaign of massive resistance to the new system on the border. Although registration with Moldovan authorities required at most minimal fees from Transdniestrian firms, authorities in Tiraspol clearly perceived the new order as the first step on a slippery slope, which might re-establish jurisdiction for Chişinău over economic activity on the left bank.

Rather than seek agreement with Chişinău on a division of authority in the sphere of regulating economic activity, Tiraspol chose to resist. Transdniestrian media called the Moldova-Ukrainian action a blockade, and halted all commercial rail and road traffic across the border. Transdniestrian authorities sent demonstrators to major crossing points into Ukraine and checkpoints into Moldovan controlled territory to protest the alleged economic blockade. (At one border crossing demonstration, OSCE Mission Members came across a crowd consisting almost entirely of familiar Transdniestrian Interior and State Security Ministry officials and their spouses.) Despite allegations of blockade and crisis, visitors to the region noted few if any shortages, no fluctuations in exchange rates, and normal day to day activities.

Transdniestrian allegations of economic blockade and crisis were gradually toned down, and the resistance measures eventually abated. By the end of March, at the demand of Sheriff, in particular, the largest business in

the region, and almost entirely dependent on imports, authorities in Tiraspol began to allow the declaration of goods with Moldovan authorities for import into the Transdniestrian region. By early summer, with first tacit and then overt acquiescence of left bank authorities, almost all Transdniestrian firms engaged in import or export operations (i.e. practically all major businesses in the region) had registered with Moldovan authorities, and obstacles to export of goods were gradually removed. While the Transdniestrian media continued to issue shrill denunciations of the “blockade” and allegations of economic crisis, by mid-summer the real economic situation had reverted just about to normal.

The one possible exception to a return to the *status quo ante* came as a result of the presence and work of the EU BAM. The European expert observers found little or no evidence of the alleged massive smuggling of arms and drugs across the Transdniestrian sector of the border. However, the EU Mission soon began to uncover evidence of substantial organized criminal activity in the region involving large-scale smuggling of other goods across the border. The most celebrated racket involved the legal import of frozen chicken parts into Transdniestria and subsequent illegal re-export through Ukraine and Moldova for markets in Eastern and Western Europe. As many small illegal shipments of frozen chicken were caught in Ukraine or along the Dniestr, it became apparent that the chicken smuggling operation netted the organizers at minimum some 30-40 million euros per year. Similar smuggling/illegal transit operations involving automobiles have also been discovered. While links remain to be established, it is clear that these operations involve a highly organized criminal structure, and that local Transdniestrian officials are either unable or unwilling to take action against these criminal groups.

#### *The Border Crisis and the Political Settlement Process*

As with other crises in previous years, the one occasioned by implementation of the Moldovan-Ukrainian Joint Declaration paralysed the political settlement talks. The negotiations had, in any case, been proceeding with great difficulty and without appreciable results since their renewal in October 2005. The Moldovan negotiators walked out of the late February 2006 session in protest at the failure to reach consensus on an approach to resolving the problems of the Moldovan farmers in the Dubossary region. Transdniestrian negotiators then declined to continue regular rounds of the talks, citing the so-called economic crisis and the failure to make progress on economic issues at the January and February rounds. Russian mediators also declined to push for continuing negotiating rounds at the time, citing the deep divisions between Chişinău and Tiraspol and the likelihood that any direct contacts would produce nothing more than fruitless polemical exchanges.



Instead, the three mediators and the two observers held two three-plus-two meetings, in Moscow in April and in Brussels in May 2006. Discussion at these meetings focused on how to get the settlement talks started again. At the Moscow meeting, Russian negotiators presented a “protocol on transit”, a document in the form of a draft agreement between Chişinău and Tiraspol that would more precisely define economic relations between them and regulations for Transdniestria’s foreign trade. The document provoked considerable comment and objections, in particular with respect to a provision to return to the *status quo ante* – before the Joint Declaration – while comprehensive agreements were in the process of negotiation. Russian experts took some of the comments into account and presented a revised version of the document at the Brussels meeting. To date, no further action has been taken.

The OSCE used the interlude following the halt in the five-plus-two negotiating rounds to conduct consultations on two papers already under development, and to circulate these papers at the Moscow and Brussels three-plus-two meetings. The first of these papers contained a proposed division of competencies between Moldovan central authorities in Chişinău and local authorities in Tiraspol, considered a central element in defining the special status envisioned for the Transdniestrian region, for instance, under the Moldovan law of 22 July 2005. Previous efforts at formulating a solution, such as the Kozak Memorandum, had come to grief due to the emotional debate over whether the structure of a united Moldovan state should be a federation, a system of autonomies, or a unitary state. In the so called “Competencies Paper” the OSCE sought to avoid the larger argument of federation versus autonomy and seek common ground first by identifying common positions over the specific division of powers between the centre and the region. Drafts of the paper were shown to and discussed individually with each participant in the political settlement process before the document was circulated at the Moscow meeting. The Moldovan negotiator subsequently called the paper an acceptable basis for Moldova to begin discussions of Transdniestria’s status within the country. No further action has been taken on the issue to this date.

#### *Peacekeeping: The Other Part of Demilitarization*

The second OSCE effort involved transformation of the peacekeeping forces in Moldova. The current peacekeeping operation in Moldova is a product of the ceasefire agreement signed by Moldovan President Mircea Snegur and Russian President Boris Yeltsin on 21 July 1992. The force includes troops from the Russian Federation, Moldova, and Transdniestria. A tripartite military command takes decisions by consensus and reports to the JCC, also consisting of Russian, Moldovan, and Transdniestrian representatives. Peacekeeping operations consist almost entirely of static posts at bridges, river

crossings, and checkpoints between Moldovan and Transdniestrian-held territory. A small number of military observers from the three participants in the operation, plus Ukraine and the OSCE, is available to investigate incidents on the spot. The number of troops and posts has been substantially reduced over the years. Current strength is somewhere between 1,300 and 1,500 troops, with 400-500 from each participant.

For some time, there have been discussions and proposals to change or reform the existing peacekeeping operation. In 2000, former Russian Prime Minister Yevgeni Primakov sought to obtain a recognized international mandate for the operation from the OSCE. In 2003, the Dutch OSCE Chair presented a food-for-thought paper that examined ways of internationalizing the mandate, composition, and command of the current operation. President Yushchenko's GUAM Summit initiative proposed transformation of the current peacekeeping operation into an "institute of civil and military observers". Yushchenko also offered to increase the number of Ukrainian military observers in the new body. In its declaration of 10 June 2005, the Moldovan parliament called for a gradual, step by step transformation of the current peacekeeping operation into an international body of civil and military observers.

After presentation of the Yushchenko Plan, the Moldovan delegation continuously demanded that transformation of the current peacekeeping operation be included in the agenda of the political settlement negotiations. Neither the Transdniestrian nor the Russian negotiators were particularly receptive on this question. In this context and with this background, the OSCE sought to bring together and to formulate the basic questions on and possible solutions to the overall issue of peacekeeping in Moldova in order to facilitate substantive discussion and possible agreement. Using previous OSCE efforts, in particular the Dutch Chairmanship's food-for-thought paper, the OSCE undertook a process of bilateral consultations with all participants in the political settlement negotiations to develop an updated, more comprehensive food-for-thought paper. This paper points out key questions and possible solutions for basic issues such as mandate, composition of force – including the mix of troops, observers, and police – and command. The final draft of the paper was circulated just before the Brussels three-plus-two meeting. To date, no further action has been taken on the issue.

### *The Transdniestrian Referendum*

The adoption and implementation of the Moldovan and Ukrainian Prime Ministers' Joint Declaration served as a proximate cause or pretext for significant radicalization of the Transdniestrian position on agreeing to a special status within the Republic of Moldova. While Transdniestrian leaders gave lip service from 1992 to the basic principle that a political settlement would

involve Transdniestria's joining with the rest of Moldova, the Tiraspol leadership's behaviour in the political settlement process indicated that the basic aim was to preserve Transdniestria's *de facto* independence from Moldova. Leaders in Tiraspol perceived the Joint Declaration as a real threat to the region's stand-alone economic and governmental institutions. They loudly branded the joint Moldovan-Ukrainian action a violation of earlier agreements, and resisted any extension of Moldova's jurisdiction in any form on the left bank.

At the same time the opening of the Kosovo status negotiations and the referendum on independence in Montenegro provided new elements in the international debate over the status and future of the unrecognized entities in the former Soviet periphery. Transdniestrian leaders particularly welcomed Russian President Vladimir Putin's statement in early 2006 that the principles used in reaching a solution in Kosovo should be applicable universally. Smirnov and his cronies clearly believed international speculation that Kosovo would be granted independence and presumed this could be used to justify independence from Moldova and international recognition for Transdniestria.

During the spring of 2006, Transdniestrian leaders and government, sponsored socio-political organizations on the left bank conducted a well orchestrated campaign in favour of holding a referendum in the region on independence from Moldova. This campaign received support from some Russian State Duma deputies, institutes, and NGOs. When Transdniestrian negotiators raised the possibility of a referendum with the OSCE, Mission representatives responded that Tiraspol had conducted six similar referenda, and none of them had been accepted by the international community. The Mission noted that any prospective unilateral referendum would undoubtedly meet the same fate. When Smirnov raised the issue of a referendum in a meeting with OSCE Chairman-in-Office Karel de Gucht in Tiraspol on 1 June 2006, the Chairman-in-Office replied that OSCE would not send observers or recognize the referendum.

Nonetheless, the Tiraspol regime proceeded with the initiative. At the end of June, a congress of deputies of all levels provided the purported legislative and political basis for proceeding. The Transdniestrian Supreme Soviet debated and formally voted to go ahead with a referendum, which was not unexpected. However, the questions to be put to the population were a surprise: "Do you favour Transdniestria's present course towards independence and closer association with the Russian Federation?" and "Can you envision abandoning Transdniestria's independent course and joining the Republic of Moldova?" Most politicians, diplomats, and observers in the region fully expected that authorities in Tiraspol would produce a vote handily in favour of separation from Chişinău. However, significantly fewer expected such an explicit movement towards joining with Russia, nor was it clear what would be the longer-term implications for the region of this step.

*What Next? An Opaque Crystal Ball*

The victory of the pro-independence line in the referendum is no great surprise. The announced majority – 97 per cent in favour – clearly smacks of old, Soviet-style electoral practices. Indeed, Moldovan observers reported that groups of pro-regime activists circulated through apartment buildings in Tiraspol, shaming and threatening those who had not voted early and “correctly”. While the theatrics of the referendum were successful, the effort did little to win international credibility and recognition.

The referendum complicates the negotiations between Chişinău and Tiraspol, but provides nothing useful in determining the basic outlines of an acceptable political settlement. Whatever the final agreement on status and the division of powers between the right and left banks, the infrastructures, economies, cultures, and populations are too closely intertwined to avoid dealing with one another. Even if separation were acceptable (which it is not), extensive, detailed negotiations would be necessary to settle questions of property, jurisdiction, and mutual relations. Unless overcome, the current high level of mutual distrust and hostility between the left and right bank ruling elites will make achieving a lasting political settlement exceedingly difficult, no matter what overall model might eventually be chosen.

Informal contacts between Moldovan and Transdnestrian negotiators continued episodically through the summer of 2006. However, these served mainly for early warning and crisis management, and made no effort at re-starting movement towards a settlement. Explosions on Tiraspol public transit vehicles on 6 July and 11 August caused multiple casualties. While these were apparently the work of individuals, and not of political or terrorist groups, the tragic incidents did nothing to inspire public calm or stability.

As this is being written, efforts are once more underway on the part of the OSCE and other participants in the settlement process to renew the political settlement negotiations. However, even if the talks resume, prospects for progress are cloudy. The proverbial glass is both half-full and half-empty. There are a number of good papers on status and security questions on the table, which enjoy considerable international support and could lead to relatively early, workable agreements. Sadly, relations among the participants in the settlement talks, not just between Chişinău and Tiraspol, have polarized, and there is substantially less political will to make compromises and seek commonly acceptable solutions, and considerably less trust that such compromises and solutions will be respected and implemented.

In December 2006, the population of the left bank faces another election to choose who will be “President” for the next five years. If Smirnov wins a fourth term, as current expectations indicate, leaders in Tiraspol may find it possible to adopt a more constructive, negotiable position. Whatever the outcome, considerable work is ahead in restoring dialogue and reducing mistrust and hostility before real progress can be achieved.