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From Confidence Building to Conflict Settlement in Moldova?

On 5 November 2009, on the night before the first informal 5+2 meeting¹ following the replacement of the Communist government by the centre-right coalition “Alliance for European Integration” (AEI) in Chişinău, the Head of the OSCE Mission to Moldova facilitated a private meeting between the new Moldovan chief negotiator and his Transdniestrian counterpart in a Viennese restaurant. This meeting marked the beginning of a new phase in the Transdniestrian settlement process and the restart of genuine talks between the two sides after a period of six years. While, for the past two years, these talks have focused on confidence-building measures and the resolution of practical issues between the sides, they have established common ground that has enabled them to move on to official negotiations. This article looks into the prospects of moving from basic confidence building to genuine conflict settlement by analysing the enabling factors and stumbling blocks that are present today.

A Look Back

By November 2003, the Transdniestrian settlement process had turned from near-resolution into prolonged deadlock after a last-minute decision by Moldova’s then President Vladimir Voronin not to sign the “Kozak Memorandum”. This proposal was brokered by Dmitry Kozak, deputy head of the Russian presidential administration, whose involvement Voronin himself had requested.² Since then, all attempts to restart formal negotiations *on the future status of Transnistria* have failed.

Some progress was made in September 2005 when the sides agreed, during consultations in Odessa, to invite the European Union (EU) and the United States (US) to participate as observers in the five-sided negotiations and to restart formal talks. However, the following four rounds of official negotiations in the new 5+2 format between October 2005 and February 2006

1 The 5+2, formally the Permanent Conference on Political Issues in the Framework of the Transdniestrian Settlement Process, includes representatives of the two sides in the conflict, Moldova and Transnistria; mediators from the Russian Federation, Ukraine, and the OSCE; and observers from the European Union and the United States.

2 Cf. Claus Neukirch: *Managing the Crises – Restarting the Process: The OSCE Mission to Moldova in 2004/2005*, in: Institute for Peace Research and Security Policy/IFSH (ed.), *OSCE Yearbook 2005*, Hamburg 2006, pp. 139-153, here: pp. 139-140. For an in-depth analysis of the process surrounding the Kozak Memorandum, see William H. Hill, *Russia, the Near Abroad and the West. Lessons from the Moldovan-Transdniestrian Conflict*, Baltimore (forthcoming).

did not touch upon the future status of Transnistria. Following the Moldovan Parliament's adoption of the Law on the Special Status of Transnistria on 11 June 2005, the Moldovan side was empowered to discuss only issues related to the "democratization" and "demilitarization" of the region. The 2005 status law offers Tiraspol a limited autonomy similar to that of Gagauzia in southern Moldova and makes any settlement negotiations dependent on the prior "democratization" and "demilitarization" of Transnistria.

On 27 February 2006, even these limited talks ended in deadlock, when the Moldovan chief negotiator walked out of the meeting. A few days later, on 3 March 2006, the Ukrainian customs service began to implement new rules agreed in a Joint Declaration on Customs Procedures signed by the Ukrainian and Moldovan prime ministers on 30 December 2005. Under the new procedures, all goods from Transnistria crossing the Moldovan-Ukrainian state border are checked by Ukrainian customs for valid Moldovan customs documents, which means that Transnistrian enterprises not registered with Moldovan authorities cannot export their goods. The Transnistrian side cancelled its participation in the 5+2 meeting scheduled for 14 April, and made its return to the negotiations conditional on the lifting of what it called an economic blockade of Transnistria.

The new regulations were certainly not to the liking of the Transnistrian leadership, as they forced Transnistrian enterprises to register with Moldovan central authorities to do business. However, they did not amount to an economic blockade and in fact stimulated Transnistrian exports. The OSCE Mission to Moldova, which monitored the availability of goods in the region intensively, found neither shortages of any goods nor any increase in prices. The new rules did not stop the direct importing of goods across the Transnistrian segment of the Ukrainian-Moldovan border, where Moldova has no control at all, and they did not prevent exports either. By the end of 2011, over 750 Transnistrian enterprises, including the region's main exporting companies, were registered with the Moldovan authorities. These enterprises can not only export their goods; they can also profit from the asymmetric trade preferences that Moldova negotiated with the European Union. Given the start of talks between Moldova and the EU in 2011 on a "Deep and Comprehensive Free Trade Agreement", the potential benefits for registered Transnistrian companies are likely to grow even further.

After Moldova hardened its starting position in June 2005 by adopting the status law, which its parliament can amend only with a 3/5 majority, Tiraspol held a referendum in September 2006 asking people whether they (1) "support the course of independence for the Transnistrian Moldavian Republic and subsequent free accession to the Russian Federation by Transnistria" or (2) whether they "consider possible the rejection of the Transnistrian Moldavian Republic's independence with subsequent incorporation into the Republic of Moldova". Just as the Moldovan law was

adopted virtually unanimously (one lawmaker voted against, claiming that the law granted Transnistria too many rights), the Transnistrian voters, following an aggressive, one-sided campaign, overwhelmingly voted for independence and subsequent union with Russia.

With both sides having enshrined their maximalist positions and having set a variety of preconditions for official status talks, the Transnistrian settlement process had clearly hit rock bottom in 2006.

Confidence Building

In the absence of common ground for constructive discussions on the status question, and in light of the problems affecting the daily life of people on both sides of the river, the sides – and the OSCE Mission to Moldova – began to concentrate their efforts on promoting confidence- and security-building measures – both as a means of tackling the issues at hand and to prepare the ground for genuine negotiations.

In 2004 and 2005, the Mission, with the support of Russian and Ukrainian experts, had worked out a set of proposals for confidence- and security-building measures (CSBMs) in the military sphere. Following President Voronin's October 2007 proposal to the Transnistrian side that the parties establish Joint Expert Working Groups on Confidence-Building Measures (CBMs), including social issues and infrastructure development, the Mission used its CSBM package as a platform for broader work on confidence-building measures.

On the margins of a Mission-organized CSBM seminar in Odessa on 23 October 2007, the full 5+2 met informally over a working dinner and discussed, among other things, the possible co-operation of both sides on confidence-building measures. The dinner at the Mission's CSBM seminar was the first time since February 2006 that the 5+2 had sat around the same table. The next time the 5+2 came together was again in Odessa and again informal, this time on the margins of a Mission-sponsored seminar in April 2008. In December 2008, the 5+2 met for the first time at a stand-alone meeting not linked to another event. It took another year until informal 5+2 meetings became regular and independent of other events, and another two years until they became official again (see below).

In parallel to the modest progress of the 5+2, the confidence-building track begun in autumn 2007 developed further, at least at first. On 31 October 2007, the Moldovan government moved to create eight working groups tasked with elaborating specific projects to implement President Voronin's initiatives on confidence building. On 13 December 2007, the Moldovan side sent the mediators, observers, and the Transnistrian side a draft list containing 128 issues divided into 31 chapters that the sides might discuss in the eight working groups. So far, however, these were Moldovan working

groups; the Transdnistrians had not agreed to create their own groups to participate, and were suspicious of what they saw as acceding to the fiat of Voronin.

It took Chişinău and Tiraspol until April 2008 to agree on establishing Joint Expert Working Groups on CBMs to discuss confidence-building measures in areas such as health and social protection, education, economics and trade, infrastructure, and the environment. Between April 2008 and July 2009, 15 meetings of five different working groups took place at the Mission offices in Chişinău, Tiraspol, and Bender. However, these meetings were sporadic and did not evolve into a continuous process – the sides met only when they needed to demonstrate their goodwill towards the international community – and did not produce concrete results.

The situation improved following the change of government in Chişinău in September 2009, which brought along a shift in attitude. The new Moldovan government under Prime Minister Vlad Filat and its new chief negotiator Victor Osipov took a pragmatic, process-oriented approach to the Transdnestrian issue, focusing on resolving practical issues and avoiding the escalation of small incidents. During the informal 5+2 meeting in Vienna on 6 November 2009, Osipov and his Transdnestrian counterpart Vladimir Yastrebnik agreed to hold regular bilateral meetings to resolve problems that affect the lives of people on both banks of the river and erode confidence between the two sides. One purpose of this channel is to give political impetus to the Joint Expert Working Groups on CBMs, which function only on a technical level and stall whenever they come up against a political problem. The first official bilateral meeting between Osipov and Yastrebnik took place on 27 November 2009 in the Mission's office in Bender, and a second followed on 26 January 2010 in the Mission's office in Chişinău. Osipov met with Yastrebnik in 2010 four more times officially and at least three times for informal tête-à-tête meetings. However, the frequency of contact in the 1:1 channel at this level slowed down significantly in 2011, which saw, besides several encounters in larger formats, only two official meetings between Yastrebnik and Osipov's successor Eugen Carpov.

On 8 February 2010, Osipov and Yastrebnik met together with the co-chairs of the Joint Expert Working Groups on CBMs in the Mission's Tiraspol office. During this meeting, the sides agreed to restart meetings of these groups, including one newly established to deal with law enforcement co-operation. In February 2010, the Joint Expert Working Groups on Law Enforcement Co-operation; Humanitarian Aid; Railways, Road Transport and Infrastructure; and Agriculture and Ecology met for the first time since the change of government in Chişinău. Meetings of the Joint Expert Working Groups on Economy and Trade and Health and Social Issues followed later that year. As the process went on, the groups diversified and new ones were created in response to the emergence of important issues. As of November 2011, the process includes a separate sub-group on railway issues that in-

cludes customs experts, a sub-group on telecommunications, and a Joint Expert Working Group on Civil Status Documents. In 2010 and 2011, the Joint Expert Working Groups on CBMs held more than 20 meetings, all in a constructive atmosphere devoid of political wrangling.

Prime Minister Filat and Transdniestrian leader Igor Smirnov met twice in 2010 on the sidelines at Europa League football matches in Tiraspol and again in July 2011 at the Moldovan cup final. Building on this “football diplomacy”, the two met on 9 September 2011 in Bad Reichenhall (Germany) on the margins of a CBM conference organized by the Mission with the support of the Lithuanian OSCE Chairmanship and the German Foreign Office. On 21 November 2011, they finally met in the OSCE premises in Bender for a stand-alone meeting that was not connected to any other event. These high-level meetings gave additional impetus to the confidence-building process and the overall attempt to reach a settlement: Bad Reichenhall was essential to the 5+2’s decision in Moscow two weeks later to resume official negotiations; and the Bender meeting cleared the way for the first official 5+2 meeting in Vilnius on 30 November and 1 December. The constructive atmosphere between the two chief negotiators and the direct contact between the leaders of both sides helped to bring progress on several fronts:

- In 2009, 2010, and 2011, Smirnov prolonged – each time for one year – the mechanism mediated by the Mission in 2006 that allows farmers from Moldovan-controlled villages on the left bank to cultivate agricultural lands under Transdniestrian control.
- On 24 December 2009, the Moldovan government extended indefinitely the arrangements under which Transdniestrian companies can register as Moldovan companies and take advantage of autonomous trade preferences granted to Moldova by the European Union.
- On 29 December 2009, the Moldovan government prolonged for an indefinite period the mechanism for issuing free identity cards and passports to all residents of the Transdniestrian region eligible for Moldovan citizenship. Until then, the mechanism for applying for free passports expired every year and was regularly extended at the beginning of each year.
- The Moldovan government officially requested that the EU suspend its ban on issuing visas to certain Transdniestrian leaders. The EU complied with this request.
- On 1 October 2010, the Chişinău-Tiraspol-Odessa passenger railway line reopened. It had been closed since March 2006.
- As of 1 January 2011, registration fees for “foreign” (including Moldovan) citizens visiting the region are no longer levied by the Transdniestrian migration authorities.
- On 9 September 2011, Filat and Smirnov signed a statute for the Joint Expert Working Groups on CBMs, stipulating, *inter alia*, that the groups

should meet at least once every two months. Their meeting was also instrumental for the agreement reached at the informal 5+2 meeting on 22 September in Moscow to resume official 5+2 negotiations.

- In Bender on 21 November 2011, they agreed that official 5+2 talks should continue regularly after the first meeting in Vilnius on 30 November.

In other areas, first steps were taken but suitable solutions have not yet been found:

- Phone connections: In July 2010, the Moldovan and Transdniestrian sides commenced expert negotiations on the re-connection of landline telephone services. These talks went well in their early stages but later stalled.
- Railway freight traffic: In September 2010, the Moldovan government made a decision to introduce simplified regulations for the export of goods from Transnistria by rail. As of November 2011, however, the decision has not entered into force. Moldovan and Transdniestrian railway and customs officials started to discuss what needs to be addressed for a full resumption of railway freight traffic through Transnistria during the CBM conference in Bad Reichenhall and convened for a first trilateral meeting with the EU Border Assistance Mission on 11 November in Odessa.
- Removal of pesticides: In June 2011, the two sides agreed to look into proposals from the OSCE Mission to repack and remove pesticides stockpiled in Transnistria. As of November 2011, no final agreement on this project has been reached.

A series of other issues, especially with regard to freedom of movement, have been discussed, but no tangible progress has been achieved. As a result, Moldovan parliamentarians and government representatives are banned from entering Transnistria, while Transdniestrian officials such as the “interior minister”, with whom the Moldovan side otherwise seeks co-operation, are the subject of outstanding arrest warrants in Moldova and thus effectively unable to cross the Dniestr.

The Mission continued to support the confidence-building process throughout 2010 and 2011 by providing shuttle diplomacy and looking into solutions for specific issues, such as the delivery of radioactive isotopes to a Tiraspol hospital for cancer treatment, and by organizing workshops that bring together representatives of the sides in specific areas such as law enforcement, disaster relief, the armed forces, environmental agencies, and others to discuss issues of mutual concern and possible co-operation on resolving them. In November 2010 and September 2011, the Mission held two conferences on CBMs in Germany, bringing together the chief negotiators

and the co-chairs of the Joint Expert Working Groups on CBMs to review the progress made and to look into ways to move things forward.

These activities, as well as Mission support for grassroots initiatives such as music concerts, workshops, and summer schools that bring people from both banks of the river together, aim to strengthen the contacts between the two sides at all levels (grassroots, working level, leaders) and help them to find workable solutions to issues resulting from the prolonged de facto separation. However, as a mediator and facilitator, the Mission cannot and has never intended to impose solutions on the two sides.

On balance, despite the efforts of the Mission and its partners in the settlement process, the confidence-building process which started off well in late 2009 and early 2010 has not moved much further in 2011.

Chişinău remains preoccupied with its internal political crisis and Transdnistria, too, has entered a phase of prolonged instability. The quasi-continuous election campaign on the right bank (parliamentary elections in April 2009, July 2009, November 2010, and possibly again in early 2012, a constitutional referendum in September 2010, and local elections in June 2011) not only limits the attention Transdnistrian issues receive from high-level politicians, but also limits the government's room for manoeuvre to take difficult, potentially controversial decisions. At the same time, a tug of war is ongoing between the elites in Tiraspol, which reached its climax with the Transdnistrian "presidential elections" in December 2011 and which likewise limits the chances for the bold moves needed to break the current deadlock.

From Vienna to Vilnius – Getting from Informal to Official Talks

During their informal meeting in Vienna in March 2010, the 5+2 agreed to hold regular and more frequent meetings: no less than once every three months. They also agreed to the objective of holding official 5+2 negotiations by the end of the year. While the 5+2 met five times in 2010, the goal of re-starting official 5+2 negotiations was not achieved in that year. At a meeting in Moscow on 22 September 2011, the 5+2 agreed to resume official talks; and only on 30 November 2011 did the 5+2 in fact meet for an official meeting in Vilnius.

Instead of discussing status issues, the 5+2 concentrated, during 2010 and 2011, on issues related to freedom of movement, as suggested by the Moldovan side, and on guarantees for existing agreements, as suggested by the Transdnistrian side. To support these talks, the Mission circulated a matrix summing up the various issues as they exist today between the two sides with regard to freedom of movement for people, goods, and services. The Mission also worked with both sides to draw up an overview of agreements previously signed, and organized an expert seminar on guarantees in co-

operation with the UK Embassy in Chişinău. While the atmosphere at the informal 5+2 talks was constructive, and the regular dialogue at this level was another element that contributed to the resolution of practical issues, agreement on the restarting of official talks was still difficult to reach.

The first serious attempt to move from informal to official talks was made on 21 June in Moscow. In comparison to the previous rounds of informal talks, which centred on other issues, the Moscow meeting was designed specifically to reach an agreement on the resumption of official negotiations. Everyone knew that this would not be easy: Tiraspol had made it clear from the beginning that, from its perspective, the time was not ripe for official negotiations, as many of the existing practical issues, such as the railway question, had not been resolved. At the same time, Chişinău emphasized that status negotiations could be conducted only on the basis of Moldova's territorial integrity and sovereignty. While *all* mediators and observers have stated on numerous occasions that they aim to find a solution on the basis of Moldova's territorial integrity, and although Moscow in particular made this point in public, Tiraspol was clearly not ready to sign off on this principle at the very start of official talks. The Mission has argued that any attempt to put any final goals in a statement meant to mark the start of negotiations will effectively block the resumption of official talks.

In the run-up to the Moscow meeting, the Russian negotiator attempted to broker a deal on a statement outside the format of mediators and observers, leading to a multiplication of competing drafts, each acceptable to one side or the other, but not to both. This resulted in a failure to agree on which text was to serve as the basis for negotiations.

The differences between the sides were not resolved during the one-day meeting in Moscow, and the meeting was suspended under a "stopping the clock" procedure after several hours of discussion and a number of phone calls, "in order to allow participants in the 5+2 format to consult in their respective capitals [...] The meeting will be continued without preconditions in Moscow at a point in time to be agreed."³

The solution that was found when the clock started running again in Moscow on 22 September was simple: In a short declaration bearing no signatures, the 5+2 agreed to resume official negotiations, and left it for the first official meeting to discuss principles and an agenda for the official negotiating process.

It took a visit of the 3+2 (the mediators and the observers) to Chişinău and Tiraspol at the beginning of November to come to an agreement on when and where to meet (30 November in Vilnius). Thus, the resumption of official talks was, while difficult, finally achieved in 2011. Whether this means that the sides have come closer on any of the issues discussed before and during the first Moscow meeting is, however, a totally different question.

3 OSCE Chairmanship, Press Release, *Discussions on Transdniestrian settlement held in Moscow*, Moscow, 21 June 2011, at: <http://www.osce.org/cio/78859>.

Where Do We Stand?

Starting with the re-establishment of regular contact between the two chief negotiators in late 2009, the Transdniestrian settlement process has slowly got back on track. Since then the sides have (re-)built a multi-level network of contacts, ranging from issue-focused expert-level talks on railway issues and telecommunications, to formal meetings in the Joint Expert Working Groups on CBMs, formal and informal meetings of the two chief negotiators, and meetings between the leaders of the two sides.

While the meetings of the 5+2 between March 2006 and November 2011 were “informal”, they were regular, stand-alone meetings with a clear agenda. In essence, the ten informal 5+2 meetings that took place between November 2009 and September 2011 were better structured and more constructive than any of the formal five-sided or 5+2 meetings held after the failure of the Kozak Memorandum. The Vilnius meeting of 30 November 2011, too, did not discuss status issues but concentrated on principles and procedures for the 5+2 talks. The next meeting, envisaged for February 2012 in Dublin, will continue the Vilnius discussions on working procedures, and prospects for the resumption of status negotiations are still bleak.

Nevertheless, the progress made in 2011 makes a difference. To move the process forward it was essential to shift from informal to official 5+2 meetings and from the informal “football diplomacy” to official meetings between the leaders of both sides. While informal meetings can prepare the necessary groundwork, they can by definition not produce any agreements. The statute for the Joint Expert Working Groups on CBMs is a case in point. The two chief negotiators had agreed on most of the text of a statute for these working groups by the time of an informal 5+2 meeting in Kiev in November 2010, and agreed on a complete text in a follow-up meeting in Chişinău between the two political representatives. However, this agreement was not reflected in a protocol or by an initialled text. In March 2011, in the absence of such an agreement, the Moldovan side tabled a significantly revised version of the statute which was immediately rejected by Tiraspol. It was only during the Smirnov-Filat meeting in Bad Reichenhall that this basic document was finally agreed.

While the 5+2 have reconvened officially after an almost six-year hiatus, they have not yet started to discuss status issues again. There are several enabling factors present today that make the resumption of official *settlement negotiations* (as compared to official 5+2 meetings talking about everything but Transdniestria’s future status) a realistic goal – but there are also several stumbling blocks to be cleared and pitfalls to avoid.

Possible Progress – the Enabling Factors

A key enabling factor at present is the new dynamism in the EU-Russia dialogue on Transdnestrian issues, and the special interest of Germany in making the Transdnestrian settlement a successful example of EU-Russian co-operation. In June 2010, German Chancellor Angela Merkel and Russian President Dmitry Medvedev proposed in the “Meseberg Memorandum” that the possibility of establishing an EU-Russia Political and Security Committee at ministerial level should be explored.⁴ According to the Meseberg Memorandum, this committee should be tasked *inter alia* with EU-Russian co-operation aimed at achieving a resolution of the Transdnestrian conflict. Since this memorandum was adopted, the Transdnestrian issue has received a degree of attention it has never enjoyed before – not in Western Europe at any rate. During the French-German-Russian Summit in Deauville in October 2010 and the EU-Russia Summit in Nizhny Novgorod in June 2011, Transdnestria was again a high-level topic.⁵ The interest in this issue, especially that shown by Germany, has been highlighted further by the intensification of contact between senior officials from the German Foreign Office and Chancellery and both the Moldovan government and the Transdnestrian authorities. Germany has also made Transdnestria a permanent topic of discussion with the Russian Federation, and in spring 2011 shared its view on the basic principles for a settlement with Moscow in a non-paper.

While there is so far no agreement within the EU on whether, and if so when to establish the proposed EU-Russia Political and Security Committee, the EU itself has taken on the Transdnestrian issue with the Russian Federation.⁶

This continuous high-level attention and the link between the specific Transdnestrian conflict and the broader EU-Russia security dialogue have brought pressure from Moscow, Berlin, and Brussels to induce actors in Chişinău and Tiraspol to move ahead. The EU can offer both sides attractive incentives: Moldova has entered into negotiations on visa-free travel and a deep and comprehensive free trade agreement – if these negotiations succeed, they might also offer new opportunities for Transdnestrian residents who are eligible for Moldovan citizenship and for Transdnestrian companies, many

4 Cf. *Memorandum (Meeting of Chancellor Angela Merkel and President Dmitri Medvedev on 4-5 June 2010 in Meseberg)*, at http://www.bundesregierung.de/nsc_true/Content/DE/_Anlagen/2010/2010-06-05-meseberg-memorandum.property=publicationFile.pdf/2010-06-05-meseberg-memorandum.

5 See *Statement for the France-German-Russia Summit in Deauville (18-19 October) (final)*, at: [http://www.bundesregierung.de/nsc_true/Content/DE/_Anlagen/2010/2010-10-19-erklaerung-gipfeltreffen-deauville-eng](http://www.bundesregierung.de/nsc_true/Content/DE/_Anlagen/2010/2010-10-19-erklaerung-gipfeltreffen-deauville-eng.property=publicationFile.pdf/2010-10-19-erklaerung-gipfeltreffen-deauville-eng); *Remarks by Herman Van Rompuy, President of the European Council at the press conference following the EU-Russia Summit, Nizhny Novgorod, 10 June 2011, PCE 0146/11*, at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/122555.pdf.

6 See Nicu Popescu, *EU Foreign Policy and Post Soviet Conflicts: Stealth Intervention*, London 2011, pp. 38-65.

of whom trade primarily with the EU. The EU has also earmarked 40 million euros to spend on confidence-building projects over the next three years. Most of these investments are likely to benefit Transnistria.

A second enabling factor is represented by the increased interest shown by Kiev in playing a more active role in the Transnistrian settlement process. Following the consolidation of Viktor Yanukovich's government, and with the 2013 OSCE Chairmanship in its sights, Ukraine is now prepared to become more active and to support working towards the resolution of the Transnistrian conflict in co-operation with its main partners, Russia and the EU.

A third enabling factor is represented by the pragmatic attitude of the current government in Chişinău and the new Transnistrian leadership. By engaging in a constructive dialogue with Tiraspol and not responding to provocations from hardliners on both sides, the government in Chişinău has helped to keep the process on track over the last two years. More importantly, Chişinău signalled greater flexibility on the status question in a non-paper distributed in May 2011. At the same time, the previous Transnistrian chief negotiator did good work in minimizing the negative impact of hardliners on his own side. The newly elected Transnistrian leader, Evgeny Shevchuk, and his new chief negotiator are both known to be pragmatic and interested in finding solutions that would improve living conditions for people on the left bank.

A fourth enabling factor is represented by the ongoing reform process in Moldova. With Chişinău advancing internal democratic reforms and coming closer to the EU – especially with key agreements on visa liberalization and deep and comprehensive free trade on the horizon – Moldova is at last becoming more attractive for Transnistrians. The question of whether to join Russia or Moldova posed by the 2006 referendum in Transnistria sounded like asking people whether they want to be healthy and rich or sick and poor. In 2011, the perspective has been reversed, and today one could ask Transnistrians whether they would like to live in a non-recognized pseudo-state that does not issue valid travel documents or in a country on its way towards EU integration. However, with a new, young leader in Tiraspol who aims to introduce reforms on the left bank, too, Chişinău has to ensure that the reform process produces tangible results in order to maintain this dynamic.

Stumbling Blocks and Pitfalls to Avoid

The main stumbling blocks for the final settlement of the Transnistrian conflicts remain the lack of interest in compromise on the part of the political elites and the populations on both sides. The only driving factors for compromise at this stage are therefore coming from outside, which creates dangerous pitfalls.

The first stumbling block is the continued hardline position taken by Tiraspol. The political and economic elites in Tiraspol still see their interests safeguarded better under the status quo than in a still-to-be-defined autonomous region within Moldova. For Smirnov and the people around him, the status quo has always been a better option than any negotiated agreement tabled so far (including the Kozak Memorandum, which he was pressured into accepting in 2003). Even with Smirnov gone, there is no guarantee that Tiraspol's starting position on the status question will change dramatically. While Shevchuk and his team are likely to be more open and pragmatic towards the solution of practical issues, he too supports Transdniestrian "independence".

The second stumbling block for the settlement process lies in the limited political will in Chişinău to move towards a compromise solution. Chişinău is currently unlikely to offer more to Tiraspol than an autonomy solution similar to the Gagauz model – a variant void of any attraction for the left bank. Neither the political elite, nor civil society, nor the broader population are prepared to offer more. In fact, some of the most vocal hardliners can be found among civil society leaders, and society at large is not prepared to accept – nor have its leaders prepared it to accept – any compromises with regard to Transdniestria. The communist opposition is ready and able to seize on any controversial decision by the ruling coalition, which is fragile and might soon face another round of elections. Under these circumstances, the room for manoeuvre for those in the government who are prepared to invest in compromise for the sake of settlement remains extremely limited.

Another related problem remains the limited capacity of the Moldovan side to provide sustainable, quality input to the confidence-building and wider settlement processes. The Moldovan representatives in the Joint Expert Working Groups are often too preoccupied with their internal reform and EU integration agenda to pay the necessary attention to topics discussed in these groups. The Bureau for Reintegration still lacks the necessary analytical and organizational capacity. This limits the dynamism of the process and makes it easier for the Transdniestrian side to delay issues they are less eager to discuss and to raise complaints about the slowness of the process with regard to issues they are more interested in.

After agreement has been reached on the resumption of official negotiations, the next challenge is to craft an agenda that will bring the process forward. As mentioned above, the interests of Tiraspol's elite are concentrated on the preservation of the status quo, not on settlement. Accordingly, their starting position for negotiations is "to talk about a civilized divorce". At the same time, Chişinău promotes a settlement based on the 2005 law offering Transdniestria autonomy. Accordingly, Chişinău wants to talk about "reintegration" based on the "territorial integrity of Moldova". International support for the bare bones of this position notwithstanding, this remains an obvious non-starter for Tiraspol, especially when devoid of any specific

offers on delimitation of competencies. Given these diametrically opposed starting positions, any attempt to jump-start status talks without appropriate preparation risks derailing the entire process – a point sadly underscored by the meeting in Moscow on 21 June. Even if both sides sit down at the table to discuss the possible future status of Transdniestria in a constructive manner, talks will be difficult.

With a lack of driving force for compromise from the parties themselves, influence wielded by their main partners, notably the EU and Russia, will be crucial for moving the process ahead. In order to bring about a lasting settlement, however, it will be necessary to bring both Chişinău and Tiraspol on board. In addition, the EU and Russia have very different views about how the final settlement should look – and so might Ukraine (which is about to raise its profile in the talks) and the United States (which although relatively low-key at this stage, has certain positions on security arrangements that need to be taken into account).

In Lieu of A Conclusion: A Look Ahead

With a breakthrough in the Transdniestrian settlement process clearly not in sight, the question is what can be done down the road to prepare for a settlement in the longer term.

The goal for 2011 was to reach an agreement on the resumption of official 5+2 talks. This was achieved in Moscow on 22 September, and the first official meeting took place on 30 November/1 December 2011 in Vilnius.

The aim after official resumption is now to continue official 5+2 meetings according to a regular schedule and with meaningful agendas. The first meeting discussed principles and procedures for the negotiations. While good progress was made in Vilnius in this respect, some difficult issues remained unresolved. The experience of the preparations for the first Moscow meeting suggests that agreement on principles will be extremely difficult to reach, so this agenda item is likely to remain relevant for future meetings, too. Given the good track record of previous informal meetings, it would be advisable to include items discussed in the informal talks in the official meetings. Freedom of movement and guarantees should remain part of the agenda, as should the regular revision of progress made in the framework of the Joint Expert Working Groups on CBMs. Finally and most importantly, agreement should be reached on resuming discussions on the status of Transdniestria. In order to make this happen, it will be important for all sides to drop preconditions for the resumption of an exchange of views on this topic, including limiting the discussions on “relations between two states”, “reintegration” or “Transdniestria’s status within Moldova”. It is understood that all partners in the 3+2 support the territorial integrity of Moldova, and that meaningful

status discussions will have to move in this direction. But putting the issue on the agenda in a pre-defined way will not help to make this case.

Finally, the 3+2 should aim to agree on a joint proposal for a comprehensive Transdniestrian settlement. Such a proposal would need to be elaborated in continued consultations with both sides, aimed at sounding out their main interests and red lines. The 3+2 would also need to prepare political elites, civil society, and the population as a whole for a constructive discussion on the settlement, using closed meetings, debates, and workshops. The proposal should be submitted to the parties and discussed within the 5+2 and possibly with expert committees after there has been agreement among the 3+2.

The settlement plan should avoid using labels such as “autonomy”, “federation”, “common state”, etc., but concentrate instead on the delimitation of competencies, guarantee mechanisms, and a road map for implementation. The latter two should be taken seriously. Up until now, the draft settlement plans worked out within the Transdniestrian settlement process have consisted of a few pages outlining power-sharing mechanisms and the division of competencies. While this is certainly the heart of every settlement, there is a need to recognize that the devil is generally in the detail, and the details need to be addressed. The Annan Plan for Cyprus and the Ahtisaari Plan for Kosovo show that a comprehensive settlement arrangement, including annexes, is likely to have tens or hundreds of pages ruling on matters of detail that might become bones of contention during the implementation phase. In the case of Transdniestria, issues such as the reintegration of the security forces, the justice systems, and the need for appropriate electoral or party legislation – to name but a few – certainly need detailed agreements as part of the final settlement. While there has so far been no serious work on this issue, the Joint Expert Working Groups on CBMs could serve as a platform to think about some of these issues, too, when time is ripe.