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Executive Summary

Since 2009 political conditions in Moldova have significantly changed towards more democratic, accountable, and decidedly pro-European structures of government. In the Transnistrian region, too, there is now a greater degree of political pluralism and following the election of Yevgeni Shevchuk to the presidency, a relatively more open-minded political class has replaced the regime of long-time ruler Igor Smirnov. As a result, relations between Moldova and the Transnistrian region, at the level of the top leadership have vastly improved and become more constructive. Internationally, the Meseberg process has produced a new momentum in the 5+2 conflict settlement process that has led to the formal resumption of official negotiations.

At the same time, however, major obstacles remain locally, regionally and internationally. While Moldova, and to a lesser extent the Transnistrian region, have made progress towards more democratic forms of government and more effective, transparent and accountable governance, neither is a fully free and democratic society according to most international assessments. Problems persist in relation to human rights and political and civil liberties, organised crime and pervasive corruption. Economic development is uneven, and poverty relatively remains widespread. Moldova has made significant progress in its European integration efforts. The Transnistrian region, while economically benefitting from access to the European Union market, has yet to engage fully with Moldova's European agenda and aspirations and retains a significantly stronger economic, cultural and political orientation east, towards the CIS, and especially Russia and Ukraine.

Internationally, the participants in the 5+2 conflict settlement negotiations are far from united in their interests and ambitions. While Russia is often seen as the major problem and veto player, the level of engagement and capacity among the other participants is highly uneven, as is the level of resources they are able and willing to commit. This is as true for the immediate conflict parties as it is for Ukraine and the OSCE (the other two guarantors/mediators alongside Russia) and the EU and the United States (the two observers).

As a consequence, the relative enthusiasm, which followed the Meseberg Memorandum of June 2010 and the resumption of official negotiations in the 5+2 process, about bringing the Transnistrian conflict to a sustainable solution has largely disappeared. This, however, does not mean that the conflict is less important to settle nor that opportunities to do so have completely vanished.

Against the background of an analysis of the current situation in Moldova and the Transnistrian region, an examination of the main interests of the participants on the 5+2 conflict settlement process, and an assessment of past conflict settlement proposals, this Report offers a number of recommendations how the EU and its institutions and member states can contribute to a sustainable settlement of the Transnistrian conflict.

The Report concludes that the EU should:

- Continue to support Moldova's efforts to develop its relationship with the EU, especially in relation to visa arrangements and the DCFTA negotiations as part of ongoing negotiations on the Association Agreement.
- Ensure that the Transnistrian region is given opportunities to participate in DCFTA negotiations in order to strengthen engagement between the Sides on a concrete policy issue and enhance relations between the EU and the Transnistrian region as part of a broader confidence-building agenda
- Increase the level of confidence-building measures and initiatives that the EU undertakes in the Transnistrian region and jointly with the Sides in order to extend and consolidate

economic and social links between the Sides, honing common interests for rapprochement at all levels and across all sectors of society, and contributing to a more self-sustainable reform process in the Transnistrian region. Investment in a broad range of confidence-building measures can ensure not only that conflict settlement negotiations progress more easily but they can also assist with maintaining engagement between the Sides if the settlement process becomes deadlocked. A careful balance, however, needs to be maintained to avoid a situation in which confidence-building substitutes for progress in negotiations and instead entrenches a status quo that the Sides are increasingly interested in maintaining.

- Support both Moldova and the Transnistrian region in their efforts to make progress in the 5+2 negotiations, especially by encouraging and assisting the Sides in implementing all aspects of the Agenda agreed in April 2012.
- Continue support for the OSCE Chairmanship-in-Office and the OSCE Mission in Moldova as the leading mediators in the 5+2 process and a strong endorsement of the 5+2 process as the ‘only game in town’.
- Maintain its involvement in the 3+2 consultations (i.e., consultations among the mediators/guarantors—Russia, Ukraine, OSCE—and observers—EU, US—while resisting calls to demand that its status of observer be ‘upgraded’ to mediator and/or guarantor. The EU should also use its influence in the 3+2 to maintain a realistic pace in the negotiations. While it is important to maintain the current positive momentum and not to dampen down the Sides’ enthusiasm, too frequent a schedule of 5+2 meetings is likely to be counter-productive and, in light of the differences and divisions, as well as lack of capacity, more likely to lead to renewed frustration and possibly deadlock.
- Continue to engage directly with Russia, inter alia through existing EU-Russia cooperation and consultation fora, as well as through the Meseberg process, as means to ensure that Russia commits to a settlement of the conflict that would ensure a viable Moldovan state. This will need to include effective EU-internal coordination across institutions and member states, especially in relation to the role that Germany has assumed in the conflict settlement process.
- Maintain its efforts to move beyond the current crisis in relations with Ukraine and support Ukraine in its preparations for taking on the OSCE Chairmanship in 2013.
- Continue to support the work of EUBAM in combatting transnational organised crime and enhance the capacity of Ukraine and Moldova for border management and customs cooperation.
- Coordinate closely with the United States as the other observer in the 5+2 process and assist the United States in using its considerable leverage to contribute to a settlement of the conflict.

Democratic Party of Moldova, led by Marian Lupu, who defected from the Communist Party after the April 2009 elections, gained 12.6% in the July 2009 elections, and 12.7% in the November 2010 elections.

The largest single political party in Moldova, however, remains the Communist Party, with currently 39 of the 101 seats in Parliament, owing to the defection of three of its members in November 2011. While the party thus still commanded just under 40% of the vote, this is a far cry from its dominant position in the first decade of the 21st century when the communists had an outright majority of seats in the elections of February 2001 (71 seats, 50.1% of the vote) and March 2005 (56, 46%). The steady decline from its 2001 high continued after the April 2009 elections, when the communists' share in the vote rose to just under 50% (60 seats) but civil unrest forced another election in July when their share in the vote dropped to under 45% and they failed to secure a majority of seats in parliament (48).

It would be too simplistic, however, to conclude from the decline of the Communist Party and the rise of the Alliance for European Integration that Moldova is irreversibly set on a course to democratic political stability. While the decline of the communists is likely to continue, the Alliance is far from a stable political bloc, united, as it is, more by a common 'enemy'—the communists—than by a common political programme and vision. The main rift in the Alliance is between the Liberal Democratic Party and the Democratic Party, especially between Prime Minister Filat and the deputy chairman of the Democratic Party, Vlad Plahotniuc who is one of Moldova's richest entrepreneurs and thus potentially able to use his control of vast financial resources to bolster the Democratic Party's political influence. The personal rivalry between Filat and Plahotniuc has not led to the break-up of the governing coalition to date despite attempts, partially promoted and supported by Russia, to forge a coalition between the communists and the Democratic Party after the November 2010 elections. Yet, there are also tensions within the Democratic Party between Plahotniuc and the party's chairman Marian Lupu, who is also Speaker of the Moldovan Parliament, having failed in his efforts to gain the presidency after 2009.

With the defection of Igor Dodon (and former Prime Minister Zinaida Greceani and Veronika Abramchuk) from the Communist Party and his election to the Chairmanship of the Socialist Party, a fifth party now has deputies in the Moldovan parliament. The Socialist deputies were crucial in securing the election of a president in March 2011, but have not formally joined the Alliance coalition government. However, if they can consolidate and expand their position in the run-up to the next election, scheduled for 2014, new political constellations could emerge, albeit all being likely to exclude the communists and continue Moldova's course towards European integration.

Finally, the Moldovan Orthodox Church⁴ remains an influential political player, but mostly on social domestic issues. In an alliance with the Communist Party, it has led protests against the recognition of Islam as a religion in Moldova and against a law to prevent non-discrimination of LGBTs in Moldova which was passed in May 2012. This alliance of convenience with the Communist Party also reflects the frustration of the Moldovan Orthodox Church with the current government which has not continued the previous communist government's support for it over the much smaller Bessarabian Orthodox Church.⁵

⁴ This refers to the so-called Metropolis of Chisinau and all Moldova, which is subordinate to the Russian Orthodox Church, albeit as an autonomous entity. Roughly 90% of eastern orthodox parishes in Moldova fall under its authority. The remainder are mostly part of the Metropolis of Bessarabia, which is subordinate to the Romanian Orthodox Church.

⁵ Cf. Freedom House, "Freedom in the World 2012 Country Report Moldova" (<http://www.freedomhouse.org/report/freedom-world/2012/moldova>).

Human Rights Issues

The observance of human rights in Moldova has generally improved in the course of the past three years under the government of the Alliance for European Integration. This is partly due to an improved legislative framework, partly due to a more sincere government effort to implement new and existing legislation.

Problems however remain in relation to public attitudes (especially LGBT issues, Roma, religious minorities) and the way in which lower-level government administrations and courts implement legislation and policy. Another deeply problematic area is the prison system and the administration of justice. Conditions here remain well below standard with frequent allegations of torture and inhuman/degrading treatment (the latter partly due to general prison conditions) and corruption in the judicial system.⁶

Corruption is generally a more widespread problem in Moldova. On the one hand, corruption is deeply ingrained in the public sector, not least due to excessive regulation of economic activities, the low salaries of public officials and a general tolerance of corruption by people inside and outside the public sector. According to the Freedom House Nations in Transit annual reports, Moldova's corruption scores were 6.00 (with 1 being the best, and 7 the worst) during 1999-2001; they dropped to 6.25 for the period 2002-2005 (the first legislative term of the Communist government) and improved marginally to the current 6.00 in 2006,⁷ following a commitment by the communist government re-elected in the 2005 parliamentary elections to curb corruption, including establishing new institutions with the participation of Moldavian civil society and the international community. Such slight improvements to one side, the fight against corruption remains half-hearted at best and has also been used as a weapon against political opponents, thus undermining public trust in state institutions and their anti-corruption efforts. Further initiatives since 2009, likewise have failed to improve Moldova's ranking in international corruption indices.⁸

Fundamental rights and freedoms are generally respected, especially freedom of media has significantly improved under the current government.

As of the end of 2011, there were over 4000 cases against Moldova pending at the European Court of Human Rights, including one Grand Chamber case concerning the status of Latin-script schools in the Transnistrian region.⁹ By the end of 2010, the Court had delivered just under 200 judgements finding 'at least one violation of the European Convention on Human Rights, primarily of Article 6 (right to a fair hearing) and Article 1 of Protocol No. 1 (protection of property).'¹⁰

The Economic Situation

After a serious crisis in 2009, Moldova's economy has gradually improved under the current government with growth rates of 7.1% and 6.4% respectively in 2010 and 2011 driven by both

⁶ Cf., for example, Centre for Human Rights of the Republic of Moldova, "Report on the observance of human rights in the Republic of Moldova in 2011" (Chisinau 2012) and United States Department of State—Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices for 2011: Moldova" (Washington, D.C., 2012).

⁷ Cf. Freedom House, "Nations in Transit: Country Report Moldova", various years (2003-2012) (<http://www.freedomhouse.org/report/nations-transit/2003/moldova>)

⁸ Cf. Freedom House "Nations in Transit 2012 Country Report Moldova", <http://www.freedomhouse.org/report/nations-transit/2012/moldova>.

⁹ Cf. European Court of Human Rights, "Country Profile Moldova" (Strasbourg, 2011) and European Court of Human Rights, Fourth Section, "Decision as to the Admissibility of Applications nos. 43370/04, 8252/05 and 18454/06 Alexei CATAN against Moldova and Russia and other applications" (Strasbourg 15 June 2010).

¹⁰ Cf. European Court of Human Rights, "Country Profile Moldova" (Strasbourg, 2011).

increased exports and domestic demand. International assistance in the form of an IMF loan and EU macro-financial assistance accounted in part for Moldova's improved economic outlook as did increased remittances.¹¹ The unemployment rate also dropped to below 7% in 2011.

At the same time, however, Moldova's economy remains vulnerable in light of the ongoing global and European economic and financial crises, especially because of its dependency on donor assistance and remittances. At the same time, it is worth noting that the International Organisation for Migration found the impact of the wider economic and financial crisis on migration and remittances to be limited.¹²

Negotiations with the EU, which remains Moldova's most important trading partner (followed by Russia and Ukraine),¹³ on a Deep and Comprehensive Free Trade Agreement were opened in March 2012 and will require further adjustments in Moldova in order to comply with European standards. In the meantime, most Moldovan exports benefit from the existing Autonomous Trade Preferences scheme.

While the macro-economic situation in Moldova has thus seen significant improvements over the past three years, the country still has high levels of poverty, particularly among pensioners, but due to uneven enforcement of a national minimum wage also among some of those in employment. There is also an increasing gap between a relatively well-off urban middle class and an impoverished rural population, dependent on remittances and illegal/seasonal labour migration.¹⁴ However, given the economic recovery of late, the rate of population decline experienced over the past two decades is unlikely to increase further. According to available data, approximately 500,000 people have worked abroad since 2006, with relatively little fluctuation in numbers and primary destination countries.¹⁵ Despite the global economic crisis, return migration has thus been limited.

2.2 Tiraspol

Political Developments

'Since 1992, the existence of the Transnistrian region has given rise, on both sides of the Nistru and in neighbouring Ukraine, to powerful political and economic interest groups with an interest in the preservation of this status quo. Especially in the Transnistrian region, economic and political interests, and thus stakes, are highly personalised. Political power, and with it significant economic

¹¹ Remittances were at their highest in 2008 with around \$1.9bn, they dropped in 2009 to \$1.2bn before increasing again in 2010 to \$1.3bn. Cf. Migration Policy Institute, Remittances Profile Republic of Moldova (<http://www.migrationinformation.org/datahub/remittances/Moldova.pdf>). The Bertelsmann Foundation reported a similar drop of around 30% in remittances in 2009. Cf. Bertelsmann Foundation, *Bertelsmann Transformation Index 2012: Moldova Country Report*. (Gütersloh, 2012)

¹² International Organization for Migration, "The Socio-Economic Impact of the Economic Crisis on Migration and Remittances in the Republic of Moldova" (Chisinau, 2009).

¹³ Since 2005, the EU has overtaken the CIS as Moldova's most important trading partner measured in total volume of imports and exports (see Appendix 3). In terms of individual countries, Ukraine and Russia are Moldova's most important trading partners overall and in the CIS, in the EU it is Romania, Italy, and elsewhere it is Turkey and the US in terms of exports, and increasingly China as a source of imports.

¹⁴ Cf. Bertelsmann Foundation, *supra* note 11.

¹⁵ Russia is the destination of almost half of Moldovan labour migrants, followed by Italy. For further details, see Appendix 2. In addition to official figures, there is a significant degree of illegal labour migration that fluctuates seasonally and is overall difficult to quantify. Including estimates of illegal labour migration into official figures would suggest that approximately one-third of the Moldovan workforce is employed abroad. Cf. E. Sleptova, Labour Migration in Europe: special focus on the Republic of Moldova (Chisinau: Institute for Public Policy, n.d., <http://www.ipp.md/public/biblioteca/50/en/St~Sleptova~fin.doc>). A similar estimate is provided by the Bertelsmann Foundation, *supra* note 11.

power (due to its control of the Ribnitsa steel plant which counts for over half of all legal exports and tax revenues and of the customs service), was almost completely monopolised in the hands of long-time Transnistrian president Igor Smirnov, with a single economic, and to some extent also increasingly political, counter-pole existing in the form of the Sheriff corporation, formed in 1993 as a foreign limited liability company by two ex-members of the Transnistrian region's 'special services'—Ilya Kazmaly and Victor Gushan. While often associated with the Obnovlenie (Renewal) opposition movement, whose demands include more political openness and economic liberalisation in the Transnistrian region, Sheriff and Smirnov appeared to have achieved a tacit agreement on 'peaceful coexistence' in 2009. However, Sheriff's economic interests led it to pursue a policy of rapprochement with Chisinau, especially in the wake of the EU granting Moldova Autonomous Trade Preferences in January 2008'.¹⁶

In parallel to the profound changes in the Moldovan political landscape after 2009, changes of similar, if not greater, magnitude occurred in the Transnistrian region, beginning in 2005. In the parliamentary elections in December that year, Obnovlenie, an NGO supported by the Sheriff business enterprise won 23 of the 43 seats in the Transnistrian parliament, up from seven in the 2000 elections and thus gaining an overall majority of seats. Obnovlenie subsequently registered as a political party in June 2006, and improved again on its election results in the December 2010 elections, gaining an additional two seats. In contrast, the number of deputies associated with long-term president Igor Smirnov dramatically decreased. Running under the banner of the Respublika (Republic) party banner in 2005, they only gained 13 seats—half of the number of 'independent' seats they held after the 2000 elections. While this performance slightly improved by three seats in 2010, Respublika has been unable to challenge the parliamentary dominance of Obnovlenie successfully.

This is also apparent in Igor Smirnov's loss of the presidency in December 2011, failing to reach even the second round. However, Obnovlenie did not manage to win the presidency either, even though its candidate, parliament speaker Anatoly Kaminsky, could draw on the significant resources of the Sheriff concern and was also the 'preferred' Russian candidate. Yet, he was beaten by his former fellow party member Yevgeny Shevchuk who ran as an independent, winning a plurality of votes in the first round (38.5%) and an overwhelming majority in the second round (73.9%).

Shevchuk had been chairman of Obnovlenie and speaker of the Transnistrian parliament between 2005 and 2009, but was forced to resign during a confrontation between Obnovlenie and Smirnov over constitutional reform, aimed at limiting presidential powers and changing the political system to a semi-presidential one, in 2009. Shevchuk's simultaneous break with Obnovlenie allowed him to run, and win, on an anti-corruption and reform platform in the 2011 presidential elections. At the same time, however, Obnovlenie made significant progress on its constitutional reform project, achieving a change in the role and powers of the directly elected president by establishing the office of a prime minister accountable to both parliament and president. This semi-presidential system (based explicitly on the Russian model) thus establishes three centres of power: president, parliament, and government and prevented the marginalisation of the Transnistrian parliament intended by Smirnov.¹⁷

¹⁶ Quoted from: Stefan Wolff, "A resolvable frozen conflict? The domestic and international politics of self-determination in Moldova and Transnistria" (http://www.princeton.edu/lisd/events/talks/wolff_frozenconflict.pdf)

¹⁷ Cf. Hans Martin Sieg, "Der Transnistrien-Konflikt: Voraussetzungen für eine Konfliktlösung", *Südosteuropa-Mitteilungen*, 51(3)62-78.

Shevchuk's victory in the 2011 presidential elections thus marked the provisional end of a political shift away from Smirnov and the interest groups he represented, but not necessarily the end of political changes in the Transnistrian region. Shevchuk has been quick and decisive in establishing and consolidating his grip on the major levers of power (state security, central bank, judicial system), and has thus broken up significant parts of Smirnov's existing power structures, at least at the top level. He has also made moves to limit the economic power of Sherriff, and thus some of the political clout of Obnovlenie, by removing the 100% duty on 'imports' from Moldova (leading to a 3.5-times increase in trade across the Nistru), announcing plans for a second mobile phone license, and beginning to enforce tax collection from Sherriff (not least to boost state revenues).¹⁸

Shevchuk's Presidency, at the same time however, has to co-habit with an Obnovlenie-dominated parliament under the terms of the new semi-presidential system in the Transnistrian region. This means that his own efforts at consolidating his power are likely to be tolerated as long as they do not seriously impinge on Sherriff's business interests. In other words, dismantling Smirnov's power structures will have been easier than moving against Sherriff's formidable economic power.¹⁹ That said, the fundamental interests of Shevchuk and Obnovlenie, now led by Mikhail Burla, are not diametrically opposed: both are supportive of economic and political reforms toward a functioning private sector, a more pluralistic and less corrupt political system, and are generally not hostile to closer ties with both Chisinau and Brussels. Moreover, the current balance of political power forces them to cooperate, at least tacitly. It is also important to bear in mind that Sherriff/Obnovlenie does not have a track record of fomenting political unrest and has traditionally sought to avoid open confrontation (as in 2009 when it dropped Shevchuk in its arrangement with Smirnov that paved the way to constitutional reform). It is thus likely that Sherriff will accept a degree of economic 're-structuring' that will limit some of its monopoly positions. What is not clear, however, is whether Shevchuk seeks a genuinely open market economy or rather an arrangement under which he, much like Smirnov before him, will be able to build his own economic powerbase. Thus, while on the one hand forced to cooperate by current circumstances, a significant level of distrust between Shevchuk and Obnovlenie/Sherriff persists: Shevchuk fears political marginalisation, Sherriff fears being split up and to lose its economic power, Obnovlenie fears losing the political clout that comes with the financial and other support that an economically powerful Sherriff can offer. The balance of power thus remains largely unconsolidated and in a degree of flux that limits each side's room for manoeuvre and potentially increases Russian leverage to either tip the balance of power into one direction or another or work to maintain the current level of uncertainty which in turn makes progress in the conflict settlement process less likely. It would therefore be in the interest of the EU, and conducive to progress in 5+2 process, if this dependence of the Transnistrian region on Russia were to decrease, for example by more direct EU engagement with the region and its main political and economic interest groups and by supporting confidence-building measures that preserve and enhance the positive momentum in the direct engagement between the Sides.

While officially committed to the Transnistrian region's independence, Obnovlenie/Sherriff and Shevchuk have a track record of engagement with Chisinau, and Shevchuk in particular has demonstrated his commitment to a 'policy of small steps' of rapprochement since his election in December 2011. This has manifested itself in general in a much more constructive relationship, and more frequent interactions, between Shevchuk and his team and their Moldovan counterparts. More concretely, some progress has been made in several of the Working Groups established to resolve

¹⁸ Cf. Nicu Popescu and Leonid Litra, *Transnistria: A Bottom-up Solution*, European Council on Foreign Relations, Policy Brief n. 63, September 2012.

¹⁹ For further details on the economic structures in the Transnistrian region, see below.

technical issues in the relationship between Chisinau and Tiraspol.²⁰ This is partially driven by Schevchuk's need to deliver concrete (especially economic) improvements quickly and is reflected in the issues that Tiraspol is keen to discuss in the 5+2 talks and in the Working Groups, such as road and rail transport, customs regulations, and mutual recognition of diplomas and certificates.

Human rights issues

Throughout the 1990s and early 2000s, residents of the Transnistrian region did not have the opportunity to participate in free and fair parliamentary or presidential elections in the region, nor could they easily cast their vote in Moldovan elections. This changed slightly in the following decade as the political system became more pluralistic with the advent of Obnovlenie and again in 2011 with the victory of Shevchuk in the presidential elections.

Lack of political opportunities also manifested itself in widespread constraints on freedom of media (partly through direct government control of media and self-censorship by journalists otherwise exposed to harassment and intimidation by state authorities).²¹ Likewise, freedom of association and assembly were restricted, with authorities rarely giving permission for demonstrations and gatherings by opposition groups.²²

The human rights situation in the Transnistrian region is thus widely seen as worse than in Moldova, although improvements have been noted under the new administration. Corruption in the judicial system and a frequent lack of fair trials, politically-motivated prosecutions, and allegations of torture and inhuman/degrading treatment of prisoners remain among the most frequently cited problems.²³ This lack of an independent judiciary and heavy political interference in the legal system consequently also minimized options for judicial redress while also increasing the regime's leverage over political opponents.²⁴

In addition, a Grand Chamber case is pending before the ECHR which concerns the status of Latin-script schools in the Transnistrian region. While the Transnistrian region itself is not a party to this case, any decision by the Court, and the way in which the authorities in Tiraspol respond to it, will have a significant effect on the dynamics of the relationship between Chisinau and Tiraspol and beyond.²⁵ In the past, the situation in the Transnistrian region has been an issue in a number of other cases before the ECHR. In two cases, reflecting the fact that the Transnistrian region is not a states party to the European Convention on Human Rights and can therefore not be sued for violation of any of its provisions, Moldova and the Russian Federation were the named parties in two cases of unlawful detention of Moldovan citizens in the Transnistrian region. In both cases, the court, sitting in Chamber, discharged Moldova of any positive obligations to enforce provisions of the Convention on the territory of the Transnistrian region, while establishing such positive obligations for Russia.²⁶

While it is too early to assess whether the new administration is sincere in efforts to root out corruption and whether it will indeed succeed, it is more likely that the Transnistrian region will

²⁰ See details on the Working Groups in Section 4 below.

²¹ Cf. Freedom House, "Freedom in World: Transnistria", Annual Report 2012 (<http://www.freedomhouse.org/report/freedom-world/2012/transnistria>).

²² Ibid.

²³ Cf. United States Department of State, *supra* note 6.

²⁴ Cf. Freedom House, "Freedom in World: Transnistria", Annual Reports 2002ff. (<http://www.freedomhouse.org/report/freedom-world/2002/transnistria>).

²⁵ Cf. European Court of Human Rights, *supra* note 9.

²⁶ Cf. European Court of Human Rights, Case of Ilascu and Others v. Moldova and Russia (<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61886>) and Case of Ivantoc and Others v. Moldova and Russia (<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-107480>).

improve its record in terms of respect of basic civil and political liberties, such as freedom of assembly and association and media freedom, not least as the new administration will only be able to retain legitimacy if it delivers on key campaign promises. At the same time, continuing engagement with, and support from, Western partners, especially the EU and its member states, will depend on greater political openness and active respect of fundamental rights. It is thus also clearly in the political interests of Shevchuk and his allies to work towards a more pluralistic society in the Transnistrian region.

The Economic Situation

Reliable figures about the state of the Transnistrian economy are difficult to establish, but the general trend is that after a period of relative stability with annual growth rates around 10%, the Transnistrian economy was in decline for several years due to the global economic crisis beginning in 2008, and has recovered much more slowly than the Moldovan economy. This is a result of the Transnistrian region's export dependency and the fact that the vast majority of industrial exports are generated by only four companies: Moldova Steel Works, Tirotext (a textile producer), a local hydroelectric station and the Rybnitsa Cement Plant. The international competitiveness of these enterprises, however, is due in large measure to the fact that they do not pay for their energy consumption, which in turn has resulted in a Transnistrian gas debt of around \$3.8bn to Russia's Gazprom.²⁷ Moldova Steel Works and the Kuchurgan power plant are both owned by Russian companies. While reliable figures are hard to establish, the European Union has become a major export market for these and other companies in the Transnistrian region. The export-orientation, while positive in the sense of greater integration into the international economic system and thus creating incentives of strengthening ties with Chisinau, however has also meant much greater exposure to global economic volatilities, felt most clearly by Moldova Steel Works which had to suspend production in 2010 as a result of a collapse in demand on the world steel market.²⁸

While the share of the industrial and agricultural sectors have declined (the latter quite dramatically so that over the past two decades the Transnistrian region has evolved from a net exporter of food to a net importer), the services sector has, nominally, grown in the Transnistrian region over the past decade in terms of its share in GDP (approximately 70% in the post-2008 period). This growth is closely associated with the rise of the region's largest company, the Sheriff holding company. Sheriff has vastly diverse economic interests, including a chain of supermarkets, a Mercedes Benz dealership, a publishing company, an advertising agency, a TV station, and the region's currently only mobile phone operator.²⁹

Similar to the Moldovan economy, there is a high dependency on remittances, but in contrast to Moldova, entrepreneurs in the Transnistrian region have virtually no access to international capital markets, thus limiting their ability to attract foreign investment other than from Russia. As a consequence, a generally negative outlook for economic development can be assumed to continue, with all its implications, including prolonged and increasing budget deficits, continued emigration (the best estimate of the overall population decline over the past two decades is close to 200,000 people), and continued importance of the shadow economy, especially through links with organised crime (including smuggling).

²⁷ Cf. Nicu Popescu and Leonid Litra, *supra* note 18. Possible approaches to addressing the issue of the gas debt are considered in Section 4.3 below.

²⁸ Cf. Center for Strategic Studies and Reforms, "The Economy of Transnistria: view from the outside", Chisinau, December 2010.

Transnistrian companies registered in Chisinau benefit from the EU's Autonomous Trade Preferences system, and a Transnistrian representative participates in ongoing DCFTA negotiations. Given the fact that, although difficult to quantify, a significant portion of the external trade of the Transnistrian region is with the European Union and that Ukraine, another of its major trading partners has also concluded negotiations on DCFTA, the region's economic interests more than ever require a constructive working relationship with the Moldovan government. A worst-case scenario, which needs to be avoided, is that the exclusion (through self-exclusion, unrealistic pre-conditions for participation, or pressure from Russia) of the Transnistrian region from DCFTA negotiations and implementation creates an internal customs barrier that would pose a potentially insurmountable obstacle to re-integration.

The unresolved status issue and its consequences, thus, represent a formidable obstacle for the development of the Transnistrian economy. Growth that relies on the domestic market has its natural limitations given the size of the entity, export-driven growth is constrained by limited access to markets, partly due to a lack in the necessary physical, financial, and legal infrastructure.

3. THE REGIONAL DIMENSION: ORGANISED CRIME AND MILITARY ASPECTS

There are two sets of issues of the Transnistrian conflict that cut across the region and beyond but have a significant impact on both the conflict itself, its perception by the Sides and by outsiders, and the prospects for its settlement: organised crime and military aspects.

3.1 Organised crime

Organised crime has been variously highlighted as a serious issue for both Moldova and the Transnistrian region, and is linked to serious structural reform deficits and corruption, including the manifold links between political and economic elites, the general lack of an independent judiciary and the fact that widespread poverty creates conditions in which transnational organised crime can flourish.³⁰ Human trafficking and a wide range of smuggling activities (from stolen vehicles to drugs, arms, tobacco and alcohol) are the two most serious areas of transnational organised crime from a regional perspective.

Smuggling is a regional phenomenon in a narrower and wider sense. Crime networks in Moldova, the Transnistrian region and Ukraine benefit from 'preferential tax regimes' in the Transnistrian region through import and export of tobacco, alcohol and a variety of food stuffs.³¹ Similarly, the EU

²⁹ Cf. Michael Bobick, "Profits of Disorder: images of the Transnistrian Moldovan Republic", *Global Crime* 12(4), pp. 239-265.

³⁰ Cf., for example, Michael Bobick, *supra* note 29, Justin Dodge, *Conditions Allowing Organized Crime in Transnistria* (Baskerville Press, 2011), Jeffrey Daniel Owen, *Neopatrimonialism and Regime Endurance in Transnistria* (Virginia Polytechnic Institute and State University, 2009).

³¹ This is famously illustrated by the smuggling of chicken. According to the EUBAM press pack of October 2009 (<http://www.eubam.org>), 'from January to May 2009 alone, nearly 20 thousand tonnes of chicken meat went to 'TN' [the Transnistrian region—author's note]. This amount constitutes approximately 90 kg of chicken meat per one inhabitant of „TN' annually. In comparison, an average consumption of chicken meat in Germany is around 10 kg per person. Indicators suggest that transit procedures are manipulated and majority of this meat is diverted to Ukraine or smuggled from 'TN' back to Ukraine and other regions of Moldova. Smugglers could make a profit of around EUR 620 on every 1 tonne of chicken meat. The potential loss to the Ukrainian state budget in one year is estimated at EUR 30 million.'

Border Assistance Mission (EUBAM) at the Ukrainian-Moldovan border seized various quantities of tobacco and drugs in Ukrainian ports and as far as the Greek port of Megara.³²

Human trafficking is equally widespread and far-reaching, with Moldova and the Transnistrian region being primarily sources rather than transit points for the smuggling of people, with the most recent reliable estimate being of around 25,000 people affected annually.³³ Men, women and children are trafficked for forced labour, while women and girls are forced into prostitution. Networks of human traffickers extend as far as East Asia, the Middle East, and the United States, the primary destinations, however, are the CIS, Western Europe and to a lesser extent the Western Balkans.³⁴

Finally, over the years the Transnistrian region has been associated with the smuggling of uranium.³⁵ Most recently, in May 2012 three people were convicted in Moldova for smuggling uranium³⁶ and in September 2012 seven people were arrested under suspicion of being involved with the smuggling of uranium.³⁷ While a comparatively less frequent criminal activity, the fact that it is still on-going and given the potentially serious implications of it succeeding, this remains a major security concern. At the same time, it highlights more generally the importance of regional cooperation arrangements in combating transnational organised crime.

3.2 Military aspects

Among the military aspects of the Transnistrian conflict, three issues stand out: the continuing Russian troop presence in the Transnistrian region, the status of the peacekeeping forces, and Moldova's future status as a neutral country.

The Russian military presence has its origins in the Soviet Union when the 14th Army was stationed in what is now the Transnistrian region. These troops played an active role in the violent phase of the conflict in 1992—partly fighting alongside Transnistrian separatists, partly supplying vital military equipment to them.

Since the Russian-Moldovan ceasefire agreement of 1992, there were several attempts to achieve a complete withdrawal of the 14th Army (since 1995 the Operational Group of Russian Forces in Moldova) and its equipment from the Transnistrian region. These included a 1994 Russian-Moldovan agreement, a clause in the Treaty on Conventional Forces in Europe, and Russia's 1999 commitment at the Istanbul OSCE Istanbul summit. In the years after 1999, the number of Russian troops and equipment had been substantially reduced and two extensions were granted to Russia to complete its withdrawal from the Transnistrian region. However, following the failure of the Kozak Memorandum in 2003, Russia stopped any further withdrawals. Thus, Russia's troop presence is currently estimated to be around 1,200 and is partly justified by Moscow with a need to guard remaining military equipment and around 20,000 tons of ammunitions.³⁸ Russia's continuing military

³² Cf. EUBAM Press Pack 2012 (http://www.eubam.org/files/PressPack_ENGL_final.pdf).

³³ Cf. Embassy of the United States in Moldova, Trafficking in Persons Report 2009 (<http://moldova.usembassy.gov/tip2009.html>).

³⁴ Cf. International Organisation on Migration, "Moldova, Migration, Trafficking" (Chisinau, 2012).

³⁵ Cf. Uranium Smuggling Arrests in Moldova Revive Security Debate (<http://www.thedailybeast.com/articles/2011/06/30/uranium-smuggling-arrests-in-moldova-revive-security-debate.html>).

³⁶ Moldovan Court Sentences Three For Uranium Trafficking (<http://www.rferl.org/content/moldova-uranium/24592284.html>).

³⁷ International investigation targets Russian weapons-grade uranium smuggling (http://www.bellona.org/articles/articles_2011/uranium_ring).

³⁸ Cf. OSCE Mission to Moldova, "Arms Control and Disarmament", <http://www.osce.org/moldova/43599>.

presence in the Transnistrian region is thus clearly in violation of Moldova's sovereignty and of Russia's own international obligations.

Separately from the presence of the Operational Group of Russian Forces in Moldova, Russia is part of a peacekeeping force composed of Russian, Moldovan, Transnistrian troops and Ukrainian military observers that was established following the 1992 ceasefire agreement. Calls, especially from Moldova, over recent years to internationalise and civilianising the peacekeeping force—for example under OSCE or EU leadership—have been strongly resisted by Russia, insisting on a prior settlement of the conflict before the status of the peacekeeping forces can be changed.

For Russia, military aspects of the conflict also extend to the future status of Moldova as a neutral country, i.e., its non-membership in NATO and no NATO bases being established in Moldova. In this sense, the current Russian troop presence outside the peacekeeping contingent offers Russia some bargaining power while also reducing its room for manoeuvre. As discussed further below in Section 5.1., Russia's insistence that a future re-united be neutral and not host any foreign military bases do address a key Russian security concern but will also require Russia to withdraw all its remaining troops and equipment from the Transnistrian region.

Such an arrangement, in all likelihood, will only be feasible, however, if the mandate of the peacekeeping force, and Russia's participation within it, is extended into the period after a settlement of the Transnistrian conflict. While the role of the peacekeepers would obviously need to change, their presence and a Russian component is seen as an essential guarantee by the Transnistrian side. The extent to which a post-settlement peacekeeping force could be further internationalised, what its exact mandate would be, and how long its mission would initially last would need to be determined as part of the settlement negotiations. Among the options for such a new peacekeeping arrangement would be a stronger civilian component and a mandate that could extend, for example under UN leadership, to monitoring and verifying all parties compliance with the terms of a future conflict settlement.

4. POLICY OBJECTIVES, NEEDS AND INTERESTS OF THE NEGOTIATING PARTIES OF THE '5+2' TALKS

Since their official resumption in September 2011, the 5+2 negotiation process has made some considerable progress. Most notable among the developments over the past year is an agreement achieved in April 2012 on 'Principles and Procedures' and an 'Agenda' of the negotiation process. Skilfully mediated by the Irish Chairmanship, the 'Principles and Procedures' document resolved a long-standing dispute regarding the equal status of the Sides in the negotiations, while the 'Agenda' defined three 'baskets' of issues that are to be negotiated: socio-economic issues, legal and humanitarian issues and human rights, and a comprehensive settlement (including institutional, political and security issues).

In parallel to the 5+2 negotiations, there have also been important steps in the context of direct engagement between the Sides. On the one hand, the top level of the political leadership has enjoyed much more constructive relations since the election, in December 2011, of Yevgeni Shevchuk as President of the Transnistrian region. The Filat-Shevchuk relationship has been the main driver of concrete progress to date, as for example in the context of the reopening of rail-freight traffic lines. At the same time, the relations between the two principle negotiators—Eugen Carпов and Nina Shtanski—are highly professional and, while at a personal level less warm than those between Filat and Shevchuk, were instrumental in achieving agreement on the 'Principles and Procedures' document at the April 2012 5+2 meeting.

On the other hand, the momentum achieved in the 5+2 process and the enhanced relationship between Chisinau and Tiraspol has also contributed to an improved process in which the Working Groups³⁹ engage on the more technical issues of the relations between the Sides. However, this differs quite significantly between the different Working Groups. In 2011-12, for example, significant progress was made in the Transport Working Group, leading to the reopening of rail freight traffic between Moldova and the Transnistrian region in Spring 2012, but this momentum has not been fully sustained. On the other hand, the Working Group on Education and Science, while traditionally very difficult, has shown signs of progress. In May, 2012, the Sides agreed on a comprehensive list of discussion topics, including issues related to primary and secondary education, on higher education and mobility and on the recognition of diplomas and certificates. Differences in concrete progress to one side, following the September, 2012, 5+2 talks, the Sides agreed to intensified discussions on two specific, and highly contentious, issues in relation to education and transport: the status of the Moldovan-administered schools in the Transnistrian region and the opening of the Gura Bicului—Bicioc Bridge.⁴⁰ While there is still an overall lack of clarity about how the discussions and outcomes from the Working Groups feed into the settlement negotiations as a whole, Working Groups are likely to play a more important role as negotiations make further progress towards a final settlement.

Despite the positive momentum and concrete progress achieved over the past year, differences and divisions between the Sides, and to some extent also among the 3+2 (mediators/guarantors and observers), remain. While these are not insurmountable, it is important to identify the various parties' positions and 'red lines' in relation to the Transnistrian issue before assessing likely settlement scenarios and make policy recommendations.

4.1 Moldova

Given the external pressure on the Sides, generated in the aftermath of the Meseberg Memorandum of June 2010, to make real and sustainable progress on resolving the conflict, the Transnistrian issue has become a policy priority within a small circle of top-level officials in Chisinau. Especially for Prime Minister Filat, resolving the conflict is important, not least given a more widely shared assessment that without a settlement progress on European integration will eventually be stalling. Despite relative commitment from the Moldovan leadership, huge internal coordination and mobilisation problems remain. Filat, while keen on achieving unification, remains constrained by internal divisions in his Alliance for European Integration and can thus not seize the initiative as would be necessary. Instead, Moldova has to rely on, and expects, its partners, especially the OSCE, to table proposals in the 5+2 after careful consultation with the Sides.

At the same time, there is not yet a concrete vision of a settlement in Moldova. However, some parameters are beginning to take shape. The central element of such a settlement, from Moldova's perspective, is respect for the country's sovereignty and territorial integrity as affirmed continuously in all significant statements and proposals over the past two decades.⁴¹ This 'one-state' solution, however, also accepts the need for establishing and respecting a distinct status for the Transnistrian region, and while discussions about federation are generally difficult and ill-informed, there is an

³⁹ At present, there are eight working groups: Economy and Trade; Health; Agriculture and Environment; Transport and Communications; Infrastructure Development; Demilitarisation and Security (including law enforcement cooperation); Humanitarian Aid; Education and Science. These are expert working groups dealing with specific confidence-building measures, co-chaired by a Moldovan and Transnistrian representative.

⁴⁰ Cf. OSCE Mission to Moldova, "Head of OSCE Mission to Moldova welcomes meetings between sides in Transnistrian settlement process", 28 September 2012 (<http://www.osce.org/moldova/94393>).

⁴¹ For an analysis of several key proposals, see Stefan Wolff, "A resolvable frozen conflict? Designing a Settlement for Transnistria", *Nationalities Papers*, vol. 39, no. 6 (November 2011), 863-870.

emerging consensus that resolving the Transnistrian issue will require that far-reaching competences of self-governance be granted to the Transnistrian region within the overall framework of the Moldovan constitution. A confederation or state union and excessive Transnistrian veto powers, however, remain red lines for Moldova.

Also related to the question of Moldovan sovereignty is the issue of the presence of Russian troops and military equipment on the left bank. While the current Moldovan position appears to be less dogmatic than the 2004 3D strategy (demanding, inter alia, the withdrawal of Russian troops and ammunitions prior to any negotiations),⁴² it is unlikely that any Moldovan government would, could or should accept a settlement that does not address the Russian military presence in the Transnistrian region and offers a perspective on the phasing out of the peacekeeping force as well.

The Moldovan position in the negotiations is shaped by two further elements. The Transnistrian issue is relatively low on the agenda of most Moldovans who do not consider it a priority in their day-to-day lives, not least also because the existing status quo is neither particularly threatening nor constraining. At the same time, there is a relatively vocal part of the Moldovan political class and society that is unwilling to make even small concessions to the Transnistrian region in order to achieve a settlement, including Mihai Ghimpu's Liberal Party. The second element of constraint for the government exists in the form of the 2005 'Law on the main provisions of the special legal status of the settlements on the left bank of the Dniester river (Transdnistria)'. The provisions in this law, passed by Moldova in accordance with the 2005 Yushchenko Plan,⁴³ albeit without significant consultation with the Transnistrian authorities, triggered the Transnistrian referendum on independence in 2006. This law remains deeply unacceptable to the Transnistrian side, but is at the same time still legally in force in Moldova and, while there is a growing realisation that this Law will be a major hurdle in the final status negotiations and will need to be changed, it does require a three-fifths majority in order to be changed or abrogated. This could therefore prove to become a deeply divisive and highly politicised issue and major stumbling block on the road towards a settlement.

4.2 The Transnistrian region

The Transnistrian side's approach to the conflict and the settlement negotiations has fundamentally changed with the Shevchuk administration. There is a much higher and sustained emphasis on constructive engagement and progress on concrete, especially socio-economic issues. This 'policy of small steps' has yielded a number of achievements over the past several months, but it is, in its focus on low-politics issues, limited in the longer term. It reflects both the need for Shevchuk to demonstrate that engagement can lead to improved living conditions in the Transnistrian region and the constraints that he faces in terms of farther-reaching compromises at the moment.

After two decades of separation and relentless pro-independence (and pro-Russian) propaganda, public opinion in the Transnistrian region is generally oriented eastward and has been almost completely isolated from discussions of any political alternatives to independence. This has been helped, for a long period of time, by relatively stable living standards and significant Russian subsidies and budget support. At the same time, however, Transnistrian business interests are increasingly EU-focused, with the EU a more important export market than Russia and Ukraine.

⁴² Cf. "The 3D Strategy & Action Plan for the Settlement of the Transnistrian conflict" (Chisinau, 1 October 2004).

⁴³ A comparative analysis of existing proposals is carried out in Section 5.1, and Appendix 1 presents this analysis in tabular form. The full texts of the six existing proposals considered are available in their (mostly unofficial) English translations at <http://www.stefanwolff.com/projects/official-documents-and-proposals>.

Access to the EU market, however, is dependent on rapprochement with Chisinau, provided that the results of the privatisation process in the 1990s and current ownership arrangements are left untouched. Thus, Shevchuk, if he can establish a *modus vivendi* with the Transnistrian business elite, could draw on their support for a final settlement that would see Transnistrian integration with Moldova.

While the Transnistrian authorities reject the provisions of the 2005 Moldovan status law on substantive grounds of being granted far too few competences for meaningful self-government, they are also bound by the outcome of a referendum in 2006 in which the overwhelming majority of the population voted in favour of independence. That said, there appears to be an increasing realisation that independence is not a feasible option economically or politically, and the independence rhetoric has significantly decreased under President Shevchuk. The referendum issue is occasionally portrayed in the sense that any negotiated settlement would simply be subject to a new referendum.

Apart from a commitment to basic standards of democratic governance, including the rule of law, there is another important dimension of the feasibility of a conflict settlement predicated on re-integration which relates to the broader agreement between the Sides on fundamental foreign policy decisions. While there is a clear Moldovan commitment to a further deepening of relations with the EU, the existence, and sustainability, of a similar commitment on the Transnistrian side is less evident. While economic interests are, to a significant degree, pro-EU, a strong pro-European vision is not necessarily shared across all sectors of Transnistrian society, and Russian interests and influence may prevent it from emerging. This poses a potential challenge to the viability of a future Moldovan state and needs to be considered carefully in the settlement negotiation process. One possible solution would be an opt-out of the Transnistrian region of Moldovan EU integration, similar to the arrangements that exist in relation to Greenland—an autonomous entity in Denmark, but not a member of the European Union.

4.3 Russia

Russia's position in the 5+2 negotiations is the most difficult to determine. On the one hand, it is clear that no settlement will be possible without Russia's consent, but at the same time it is not clear under what conditions Russia would consent to any particular settlement. This is further complicated by the fact that there are different centres of power within Russia—the President, the Security Council, and the Foreign Ministry—that are involved in the Transnistrian issue. The two main positions, or configurations of interests, in this context are one that considers the Transnistrian region a strategic outpost for Russia to prevent further expansion of European and Transatlantic organisations, especially NATO, into what is considered Russia's neighbourhood; the other position sees the Transnistrian region in mainly instrumental terms to realise other strategic foreign policy objectives, such as the establishment of the EU-Russia Political and Security Committee envisaged in the Meseberg Memorandum.

These two positions are by no means incompatible. A settlement of the Transnistrian issue along the lines of the 2003 Kozak Memorandum (with a long-term Russian military presence, significant Transnistrian leverage at the centre over Moldovan policy and legislative decisions, and Moldovan neutrality and non-alignment) would satisfy those concerned about Russia potentially abandoning a

strategic outpost in the western CIS.⁴⁴ At the same time, Russian consent to such a settlement could potentially be offered as a trade-in for enhanced EU-Russia political and security cooperation. Such a settlement would also not necessarily prevent Moldova from drifting further into the Russian orbit at a later stage, for example through joining the Eurasian Union or any of the existing projects on which it is meant to be built, such as the existing Eurasian Customs Union.⁴⁵

In addition to its strategic political and security interests, Russia also has considerable economic interests in the Transnistrian region. On the one hand, it needs guarantees for the security of Russian investments (similar to those required by Transnistrian business elites for their ownership rights). On the other hand, the Transnistrian region has accumulated significant gas debts (estimated at around \$3bn) vis-à-vis Gazprom. In line with Russia's official position that the Transnistrian region remains part of a sovereign Moldovan state, Russia considers this to be a Moldovan debt for which repayment arrangements will have to be made. Full repayment, at least in the short term and/or by Moldova alone, however is unrealistic. More likely are a full or partial cancellation or (re-)structuring of this debt as part of a broader settlement deal addressing some of Russia's key concerns (such as Moldovan neutrality and security of Russian investments). Less likely are considerations that a third party, such as the EU, would take on this debt wholly or in significant part.⁴⁶

At the same time, Russia has attempted to draw both Ukraine and Moldova closer into its own orbit by promoting the idea of a Eurasian Union building on a number of projects seeking to increase the degree of political and economic integration of former CIS countries. However, for both Ukraine and Moldova, Russian integration projects have to be carefully balanced against their aspirations for closer integration with the EU, including via Association Agreements and DCFTAs. This, in combination with the EU-Russia relationship, has meant that Russia has had incentives to maintain the status quo and use it as leverage for both its own regional integration projects and for improving its position in security cooperation with the EU.

Russia's increasing focus on, and push for, Eurasian integration suggests that Russia considers EU enlargement as a growing strategic challenge which it seeks to counter through its own CIS-focused integration projects. As a consequence, Russia will potentially slow or even block further progress on conflict settlement in relation to the Transnistrian conflict if this is seen as useful to prevent further EU enlargement. Alternatively, Russia may promote a specific conflict settlement that would allow a re-integrated Transnistrian region to exercise veto powers over Moldovan EU association and future accession. In either scenario, relations between the EU and Russia (and between Germany and Russia) are likely to deteriorate and Russia is likely to increase pressure on both Moldova (to join the Customs/Eurasian Union) and the Transnistrian region (to stay away from or otherwise frustrate DCFTA negotiations), which in turn will not be conducive to progress in the conflict settlement process.

⁴⁴ On this point of the continued relevance of the Kozak Memorandum reflecting Russian preferences, see Hans Martin Sieg, "Der Transnistrien-Konflikt: Voraussetzungen für eine Konfliktlösung", *Südosteuropa Mitteilungen*, volume 51, no. 3. (2011), 62-78.

⁴⁵ The customs union currently includes Belarus, Kazakhstan, and Russia. Cf. Rilka Dragneva and Kataryna Wolczuk, "Russia, the Eurasian Customs Union and the EU: Cooperation, Stagnation or Rivalry?" (London: Chatham House, 2012).

⁴⁶ According to state news agency Moldpress (<http://portal.moldpres.md/default.asp?Lang=en&ID=179245>), following a meeting with Transnistrian leader Shevchuk on 26 September 2012, Prime Minister Filat declared in relation to the gas debt 'The payment should be settled by consumers, as they are responsible for this debt. In this case, economic agents are the consumers'. This would primarily affect Transnistrian enterprises like MMZ and the Kuchurgan power plant. It is unclear how this deal would work in practice and how it could avoid creating a powerful anti-settlement business lobby in the Transnistrian region.

As a result, the progress and positive momentum derived from the Meseberg process may not be sustainable. Russia's traditional status-quo orientation initially seemed to have shifted slightly towards a potentially more flexible position. It agreed to a resumption of formal negotiations in the 5+2 process and eventually accepted both the 'Principles and Procedures' and 'Agenda' for the 5+2. This assessment, however, may need to be revised.

In this context, another development needs to be considered. Following his re-appointment to the Russian premiership, Dmitry Medvedev appointed the former Russian ambassador to NATO, Dmitry Rogozin as Special Representative for the Transnistrian region. This appointment was confirmed by presidential decree by Vladimir Putin in August 2012. Rogozin simultaneously serves as Deputy Prime Minister with responsibility for the defence industry and as co-chairman of the Russia-Moldova Intergovernmental Cooperation Commission. This appointment is difficult to interpret, and assessments of its meaning vary. On the one hand, it could be seen as a clear indication of Russia's intentions to stall and torpedo the 5+2 process and to establish and institutionalise formal, and thus separate, relations with Tiraspol.⁴⁷ A more cautious assessment would be that Rogozin's appointment as Special Representative for the Transnistrian region signals that the Transnistrian issue is relatively high on the Russian agenda: a senior government minister who reports directly to the President on the Transnistrian region has been put in charge of an area in which Russia has significant strategic and economic interests. At a minimum, this would suggest that Russia expects significant movement in the negotiations, but only time will tell whether Rogozin has been appointed to resist any move away from the status quo or to shape a settlement in Russia's interests.

4.4 The EU and its member states

The EU's role and interests in the Transnistrian issue are defined, on the one hand, by its observer status in the 5+2 negotiations and, on the other hand, by the policy objectives of its European Neighbourhood Policy, the Eastern Partnership, and its Moldova country strategy and ENP Action Plan.⁴⁸ Often framed rather broad and vaguely in terms of achieving stability, security and prosperity in its neighbourhood, supporting democratic and economic reforms in Moldova, and contributing to a settlement of the Transnistrian issue, the EU has become increasingly actively involved and, albeit to a limited extent, taken on a more political role in the settlement process. With the abolition of the role of the Special Representative, a post last held by Kalman Mizsei until February 2011, the EU Delegation to Moldova, headed by Ambassador Dirk Schübel, has taken on a number of additional tasks related to the settlement.

The EU, thus, has a clear opportunity here to play an active role in achieving a settlement of the Transnistrian issue, but in doing so will be required to develop a clearer strategic vision of the kind of settlement it would like to see, including the policies to achieve it and the resources necessary to commit. Positive steps in this direction include the fact that the Delegation commissioned a conflict and needs assessment in 2011 and has currently put out to tender a project to support capacity building for the Moldovan government's Bureau for Reintegration. At the same time, significant funding has been made available for confidence building, a variety of infrastructure projects on both sides of the river, as well as macro-economic support for Moldova.

⁴⁷ Cf. most prominently Vladimir Socor's analysis on RFE/RL, e.g., *Eurasia Daily Monitor*, Volume 9, Issue 79, 20 April 2012 and *Eurasia Daily Monitor*, Volume 9, Issue 149, 6 August 2012.

⁴⁸ Cf. European Commission, "Implementation of the European Neighbourhood Policy in the Republic of Moldova Progress in 2011 and recommendations for action" (Brussels, 15 May 2012).

Among the EU's member states, Moldova's western neighbour, Romania, has deep historical and cultural links with right-bank Moldova. In the early 1990s, in both Romania and Moldova there was a significant current of popular support for unification, but this has decreased dramatically in the last decade and now remains marginalised within some parts of the centre right in Moldova and Greater Romania nationalists in Romania. Moreover, as a result of its own successful EU integration, Romania is constrained in its potential ability to pursue an independent Moldova policy aimed at undermining the widespread international consensus of finding a resolution that fully respects Moldovan sovereignty and territorial integrity. Despite sometimes unhelpful rhetoric from Bucharest, Romania remains committed to supporting the search for a settlement. In his statement at the December 2010 OSCE Astana Summit, shortly after Moldova and Romania at long last signed a border treaty, Romanian president Traian Basescu noted: 'The resolution of the Transnistrian conflict represents a political priority for Romania. We support the unconditional resumption of the formal negotiations in the '5+2' format aiming at a lasting solution that would fully respect the norms and principles of international law, the sovereignty and territorial integrity of the Republic of Moldova.' A visit by newly-elected Moldovan president Nicolae Timofti to Bucharest also confirmed the continuing improvement of relations between Romania and Moldova which had come to a historic low in the spring of 2009 when Chisinau accused Bucharest of fomenting public unrest after the April 2009 elections. Given the current domestic political crisis which has engulfed Romania, the country's capacity to make a sustained and positive contribution to EU efforts to the settlement of the Transnistrian conflict remains limited. Nonetheless, Romania remains fully committed to facilitating closer ties between the EU and Moldova, while simultaneously enhancing the breadth and depth of bilateral relations with its eastern neighbour, manifest, for example, in the opening of two additional Consulates General in the Moldovan cities of Cahul and Balti in July 2010.⁴⁹

The other significant player at the member-state level is Germany. Moldova and the Transnistrian region have been high on the German foreign-policy agenda for some time, reconfirmed as recently as 22 August with the visit by Chancellor Merkel to Chisinau, the first such high-profile visit by a sitting EU head of government. Over the past two years, Germany's role in the conflict settlement process has significantly increased. The German government hosted a review conference on confidence-building measures in relation to the Transnistrian region in Garmisch-Partenkirchen in November 2010, followed by two further high-level conferences in Bad Reichenhall in September 2011 and Rottach-Egern in June 2012. Germany's role is further enhanced by its traditionally close relations with Russia and the fact that through the Meseberg process, Germany has direct opportunities to engage with Russia over the Transnistrian region, including in the context of evolving EU-Russia relations. The German Chancellor is respected in both Moscow and Chisinau and can thus deliver (if necessary tough) messages that cannot be easily dismissed. Given its position within the EU more broadly, Germany thus has an opportunity to emerge as a 'champion' of the conflict settlement process without assuming any formal role in the negotiations—this is a potentially significant opportunity that the EU should make the most of.

4.5 Ukraine, US and OSCE

Ukraine's interest in stability in relation to the Transnistrian region has a number of different sources. On the one hand, Ukraine would bear the brunt of any increased migration from the Transnistrian region due to a worsening economic and/or political situation, being already the second-largest

⁴⁹ Cf. the Republic of Moldova page on the website of the Romanian Ministry of Foreign Affairs at <http://www.mae.ro/en/node/2110>.

recipient, after Russia, of emigrants from Moldova (around 250,000).⁵⁰ On the other hand, Ukraine has tried to carefully balance its relations with both Russia and the EU. It shares their vision of a resolution of the Transnistrian issue within the internationally recognised borders of Moldova and has rejected ideas of territorial exchanges with Moldova put forward by Mihai Ghimpu in 2010.

Ukraine's position as Moldova's eastern neighbour, a major trading partner, one of the 5+2 guarantors and incoming Chairman-in-Office of the OSCE for 2013 thus puts the country in a very special position that needs to be recognised in considerations of the dynamics of the conflict settlement process over the next 12-15 months. The Ukrainian approach to handling the negotiations during its chairmanship can thus be expected to be cautious: Ukraine will not want to jeopardise the current level of stability in the Transnistrian region, destabilise its relations with Russia and the EU, or squander an opportunity to make tangible progress towards a settlement. Much like Russia, Ukraine is thus like to favour slow, if any, move away from the status quo.

The United States, like the EU, has observer status in the 5+2 process but has not played an overly active role in the negotiations. Notwithstanding a visit by Vice President Joe Biden in March 2011, the Transnistrian region is a minor issue in US foreign policy, compared to relations with Ukraine and Russia that are considered of far greater geostrategic importance to the US, especially in light of the relatively unsuccessful 'reset' in US-Russia relations. This is unlikely to change anytime soon, given the upcoming presidential elections in the United States.

The OSCE has been engaged in efforts to resolve the Transnistrian issue since 1992/3 and remains central to the ongoing mediation efforts. Its Mission to Moldova has significant institutional memory and together with the rotating Chairmanship provides essential support for coordinating negotiations at and during the now again official 5+2 meetings. In addition the OSCE Mission also contributes to capacity building and confidence-building measures in a broader sense. The OSCE also maintains a presence in the Transnistrian region and is, of all the parties in the 5+2 process, the most neutral. The new head of the mission, Ambassador Jennifer Brush, has taken a similarly proactive approach to the Transnistrian issue as her predecessors and actively promoted an initiative to assess the relevance and implementability of past agreements concluded between the Sides.

5. LOOKING AHEAD: SOLVING THE CONFLICT AND POLICY RECOMMENDATIONS⁵¹

In its core parameters, the conflict over the Transnistrian region is not unique, and similar conflicts elsewhere have been resolved successfully in the past. This experience suggests that any attempt to move toward a sustainable settlement short of recognising the Transnistrian region's independence has to provide a framework to determine the relationship between the Transnistrian region and the rest of Moldova. Such a framework needs to account for the territorial status of the Transnistrian region within Moldova (also bearing in mind the status of the existing Gagauz Autonomous Territorial Unit and possibly the status of the city of Bender, currently located in the security zone), the distribution of powers between Chisinau and Tiraspol, and the degree to which the two sides share power at the centre. In order to ensure that any agreements are implemented and subsequently operated fully and in good faith, it will be essential to incorporate dispute resolution mechanisms into a settlement. The two key issues internationally that need to be addressed in the

⁵⁰ International Organisation for Migration, "Migration in Moldova: A Country Profile" (Chisinau, 2008).

⁵¹ Section 5 and especially Section 5.1, relies on previously published work by the author, including Stefan Wolff, "A resolvable frozen conflict? Designing a Settlement for Transnistria", ECMI Brief No. 26 (November 2011) (http://www.ecmi.de/uploads/tx_lfpubdb/brief_26.pdf).

negotiation process are the 'Russian dimension' of the conflict (the current and future presence of foreign troops and Moldovan demilitarization and neutrality) and what one might refer to as the 'Romanian dimension' (the possibility of unification with Romania). Any agreements achieved will require strong and viable guarantees in domestic and international law, including for the protection of individual human and minority rights. Thus, the most promising way of conceptualising a solution of the conflict is through the prism of a viable Moldovan state that includes the Transnistrian region.

5.1 Options for constructing a viable Moldovan state

Bearing in mind that numerous proposals from all sides exist that broadly acknowledge the need for a comprehensive viable-state perspective for the resolution of the conflict—from the CSCE's Report No. 13 in 1993 to the 2003 Kozak Memorandum, the 2004 Mediator Proposals and the 2005 Yushchenko Plan—a potential scenario for a settlement could shape up along the following lines where, 'despite some obvious differences, principal agreement exists in a number of areas that could provide the foundation for offering a set of options consistent with the existing consensus.'⁵²

Territorial state construction

There is considerable agreement across the existing proposals that the Transnistrian conflict requires some sort of territorial self-government as part of the political-institutional arrangements to be set up by a settlement. None of the proposals excludes such an option to be extended also to other areas in Moldova, notably Gagauzia (where it has existed since 1995) and Bender. Given the different local and local-centre dynamics in each of the three areas, in combination with the general reluctance on the part of Chisinau to federalise the country as a whole, a multiple asymmetric federacy arrangement, in which the Transnistrian region, Gagauzia, and possibly Bender all have their own distinct self-governing status within an otherwise unitary Moldovan state (similar to the 1998 UK devolution settlement), would seem the most appropriate form of territorial state construction. This would have several advantages: first, the existing arrangement with Gagauzia could remain untouched; second, Chisinau and Tiraspol could directly negotiate the substance of a settlement (e.g., as foreseen in the various past proposals); and third, the remainder of the territory of Moldova would remain largely unaffected in terms of existing governance structures. Such arrangements are not uncommon: devolution in the United Kingdom (although not properly a federacy arrangement because of a lack of constitutional entrenchment), the arrangements for Greenland and the Faroer Isles in Denmark, the five regions with a special autonomy statutes in Italy, and the autonomous communities in Spain all serve as relatively successful examples.

The distribution of powers

All existing proposals recognise the importance of distributing powers clearly between Chisinau and Tiraspol, but differ in the level of detail and nature of their approach. Especially in post-conflict settings, it is potentially problematic to operate with exclusive and joint competences in the way in which the CSCE Report, the Kozak Memorandum, and the Mediator Proposals do. Rather than having two lists of exclusive competences, a multiple asymmetric federacy arrangement lends itself to clearly defining the competences of the federated entities (which could be different for Tiraspol compared to Komrat and/or Bender) while leaving all others (i.e., anything not specifically assigned to an entity), and thus residual authority, to the centre. At the same time, it would not preclude mentioning a few specific competences for the centre (such as defence, fiscal and currency policy, citizenship) as long as this is understood as an open-ended list including all but those powers

⁵² Cf. Appendix 1 for a detailed comparison of past settlement proposals.

specifically assigned to an entity. This is the pattern of distributing powers in a number of comparable cases, including Belgium (e.g., Brussels), Italy (e.g., South Tyrol) and Ukraine (Crimea). In Moldova itself, this model currently applies to Gagauzia.

It is also worthwhile considering the notions of primary and secondary legislative competences, implicitly reflected in the 2004 Mediator Proposals. This distinction has its source in the legal boundaries to which they are confined. Primary legislative competences (i.e., the areas in which the Transnistrian region/Gagauzia/Bender enjoy exclusive powers) would then only have constraints in the Moldovan constitution and the country's international obligations. Secondary legislation, that is legislation in areas of potentially concurrent/joint/shared competences, would be constrained by framework legislation in which Chisinau determines the basic principles of legislation while the federated entities make the detailed arrangements as they are to apply in their territories. As there are normally also provisions for additional delegated powers (i.e., areas in which the centre has exclusive legislative competence but delegates this to the entity), the notion of tertiary legislative competence might be useful constraining local legislation in two ways. First, it is only in specifically 'delegated' policy areas beyond the stipulations of a constitutional or other legal arrangement defining entity competences in which such competence could be exercised. Second, entity legislation would have to comply with a range of particular constraints specified in individual cases of delegated legislative competence, as well as with the more general constraints imposed on primary and secondary competences.

Early consideration of competence distribution is particularly important also with a view towards the OSCE's initiative to revisit, update and implement as appropriate existing agreements concluded between the Sides on various aspects of their relationship.

Power sharing

Power-sharing arrangements can be established qua representation and participation rules across the three branches of government (executive, legislature, judiciary) and the civil service.

Executive power sharing is often seen as central among power-sharing arrangements and taken to include representation in the executive, in this case of representatives of the territorial entities concerned (i.e., the Transnistrian region/Gagauzia/Bender). Representation of particular segments of society, including those defined on the basis of territory, can be achieved in different ways. Most relevant for the proposed multiple asymmetric federacy would be through a formal arrangement that makes the heads of the federated executives members of the central cabinet (and has a similar requirement for line ministries). Moldova already has experience with this mechanism in relation to Gagauzia. It would guarantee a minimum of representation without the need for unwieldy, overblown executives, and it would serve as one mechanism for policy coordination (see below). In line with the Kozak Memorandum, heads of federated executives could be given deputy prime ministerial positions, and meaningful representation of the federated entities at the centre could be further increased by creating a special ministry (or ministries or ministerial offices) to deal with affairs of the entities (similar to the UK Secretaries of State for Scotland/Wales/Northern Ireland or the Minister for London between 1994 and 2010).

As far as legislative power sharing goes, a multiple asymmetric federacy arrangement would not require a bicameral system as foreseen in the Kozak Memorandum or the Mediator Proposals. Representation of the entities can be ensured through the choice of an electoral system that results in proportional outcomes. In the case of Moldova, because of the proposed territorial state construction, open or closed List-PR in a single state-wide constituency (possibly with threshold exemptions for regional parties), plurality single-member (e.g., 'first-past-the-post' or Alternative

Vote) or preferential multi-member constituencies (e.g., Single Transferable Vote) would all result in reasonably proportional outcomes.

In terms of the effective participation dimension of power sharing, the parties could agree the use of qualified and/or concurrent majorities for parliamentary decisions in specific areas (either pre-determined or triggered according to a particular procedure), thus establishing a limited veto power for territorial entities even in the absence of an upper house. Such an arrangement, however, would also require that members of parliament 'designate' themselves as representing a particular territorial entity (i.e., the Transnistrian region/Gagauzia/Bender).

Judicial power sharing could be assured through mandatory representation of judges nominated by the legislative bodies of the federated entities in the highest courts, especially the constitutional court and/or the supreme court. In each of the entities, a regional branch of these courts could be established, serving as highest-instance court for matters pertaining to the legislative framework of the entity in question, while still being part of the unified judicial system of Moldova. Similar to the proposals in the Kozak Memorandum, a transitional period could require qualified majorities for decisions to be adopted in the Constitutional Court.

In order to strengthen links between the centre and the federated entities, giving the latter a stake also in the political process of Moldova as a whole, proportional representation, including at senior levels, could be required for the civil service. For a transitional period, this could also include differential recruitment in order to overcome historically grown imbalances.

Policy coordination and dispute resolution

The existing proposals are relatively silent on this important dimension of sustainable conflict settlement, yet to the extent that there is consensus it extends to two particular areas. First, there is a recognised need for judicial review and arbitration, including considering the constitutionality of legislation for the implementation of existing agreements and potentially involving the Constitutional Court as ultimate arbiter. While it is clearly important to have procedures judicial review and arbitration in place, other mechanisms might be useful to prevent recourse to such ultimate mechanisms. This is another area where some, at least implicit, consensus exists in the form of establishing specific conciliation mechanisms to deal with the interpretation and implementation of a settlement agreement.

In addition to conciliation mechanisms, which are normally invoked after a difference cannot be resolved in another way (but before taking the matter to a court), joint committees and implementation bodies could be established to find common interpretations for specific aspects of agreements and regulations and to coordinate the implementation of specific policies at national and regional levels, including the joint drafting of implementation legislation.

Co-optation is another useful mechanism for policy coordination, ensuring that the 'special circumstances' of each of the federated entities would be borne in mind in the process of national law and policy-making. In addition, the Crimean example, with a Representative Office of the President of Ukraine which acts, in part, as a coordination mechanism with oversight, but no executive powers, is worthwhile considering. A further, or alternative, mechanism that might prove useful is the establishment of specific ministries or ministerial offices dealing with entity affairs at the centre, implicitly reflected in the Mediator Proposals.

The 'Russian dimension'

How to deal with the questions of demilitarization, neutrality and the presence of foreign troops could be the most decisive issue to determine whether a negotiated settlement for the Transnistrian

region will be possible. It will require an international agreement, rather than merely an arrangement between Chisinau and Tiraspol. At the same time, it could also be an area where a 'grand bargain' among all the parties involved can be achieved, linking these three issues to those of the territorial integrity and sovereignty of Moldova, thus including interlocking protections for all sides involved.

As a model for such an arrangement, the 1991 'Agreement Concerning the Sovereignty, Independence, Territorial Integrity and Inviolability, Neutrality and National Unity of Cambodia' should be considered. Here, the nineteen states participating in the Paris Conference on Cambodia signed, among others, this agreement in which Cambodia committed itself to a wide range of principles for its future domestic and international conduct, including to 'maintain, preserve and defend its sovereignty, independence, territorial integrity and inviolability, neutrality, and national unity', to entrench its 'perpetual neutrality ... in the ... constitution', 'refrain from entering into any military alliances or other military agreements with other States that would be inconsistent with its neutrality', and 'refrain from permitting the introduction or stationing of foreign forces, including military personnel, in any form whatsoever, in Cambodia, and to prevent the establishment or maintenance of foreign military bases'. In return, the other signatory states undertook 'to recognize and to respect in every way the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia.'

While the situation in Cambodia in, and prior to, 1991 was clearly different from that in Moldova, this Agreement is highly relevant as it addresses the core issues of both the Russian and Romanian dimensions of the conflict, while at the same time providing an international anchor for Moldova's sovereignty and territorial integrity. Under such an arrangement, Moldova would gain a Russian commitment (legally binding in the form of an international treaty) to its sovereignty and territorial integrity in exchange for agreeing not to join NATO.

The 'Romanian dimension'

Similar to what already exists in the settlement for Gagauzia and has been widely accepted in relation to the Transnistrian region, the latter should have an option of seceding from Moldova in case of unification with Romania.

Guarantee mechanisms

Three different types of guarantees, reflected to some extent across all existing proposals, are relevant for a future settlement of the Transnistrian conflict. First, in/formal, legally non-binding arrangements for a whole settlement or specific provisions that detail how parties envisage operation and implementation of settlement provisions. For example, the parties should agree a range of principles that determine their mutual conduct in terms of coordinating legislation and policy. This could include the creation of consultation bodies and a determination of their working procedures. Another option might be to make the currently existing Working Groups permanent or extend their existence into a transitional period, both with appropriately amended mandates and terms of reference.

Second, the different federated entities will all require status entrenchment in legislation and the constitution. This has already been accomplished for the status of Gagauzia: a constitutional anchoring of the status of Gagauzia as a special entity in Moldova (currently Article 111 of the constitution) and an organic law (dating back to 1995) that specifies, among other things, the competences of Gagauzia. This could be applied to settlements for the Transnistrian region and possibly Bender. At present, changes to his law require a three-fifths majority in parliament. This could be strengthened, in line with suggestions in the Kozak Memorandum and the Mediator

Proposals, by requiring the consent of the parliament of the respective entity for any changes to its status or competences.

Third, 'hard' and 'soft' international guarantees will be useful not only to entrench any settlement internationally but also commit external parties to a settlement. This could take two forms in the case of the Transnistrian conflict. On the one hand, achieving a settlement in the current 5+2 format would involve Ukraine and Russia as guarantor states, with OSCE as the lead mediator and the US and EU as observers. This is clearly foreseen in a number of past proposals. In addition, a bilateral (Moldova-Russia) or multilateral treaty (involving all states parties involved in the 5+2 format), along the lines of the 1991 Cambodia Agreement referred to above could prove useful and effective in assuring the parties'.⁵³

Domestic and international guarantees could also be applied in the area of individual human and minority rights, drawing on existing regional and international standards and treaties, such as those within the Council of Europe framework, and incorporating them as necessary into the constitutional and legal frameworks of the Moldovan state.

5.2 Policy recommendations for the EU

Considering the positive momentum achieved on the Transnistrian issue over the past year in terms of both direct bilateral relations between the Sides and in the 5+2 negotiation process, the key task now is to maintain this momentum and assist the Sides in making tangible progress towards an actual settlement. The European Union, through its institutions and member states is ideally placed to make a major contribution in this regard if it works closely with the Sides and its international partners in the 5+2 process. This contribution could include the following elements.

Increasing the capacity of the Sides to engage in meaningful and constructive negotiations

One of the key problems that has affected the 5+2 negotiations process is the relative lack of capacity in Chisinau and Tiraspol. The Bureau of Integration in Chisinau, led by Deputy Prime Minister Eugen Carpov, and the team around the Transnistrian Chief Negotiator, Nina Shtanski, are both understaffed and have a wide range of issues to deal with. In Tiraspol, the 5+2 negotiations are just one among several portfolios that fall into Shtanski's foreign affairs remit. In Chisinau, the Bureau has also created an inter-ministerial working group on integration issues, but its members from various line ministries have limited capacity to devote attention and resources to this issue. Similarly, Working Group meetings, if they happen, suffer from this same capacity problem.

However, capacity building is not merely an exercise in increasing the 'head count' among officials involved in the various dimensions of the 5+2 process. It is as important to enable key actors in Carpov's and Shtanski's teams to broaden their knowledge and understanding of the different options available to them and the various implications that these have. At the moment, the OSCE Mission in Moldova is assisting the Sides, with financial support from the German, British and American embassies, to assess existing agreements between the Sides in various policy areas in terms of their applicability to the issues that the Working Groups and the 5+2 negotiations currently confront.

The EU Delegation has recently put out for tender a capacity building project aimed solely at the Bureau for Reintegration. This is an important first step towards meaningful capacity-building efforts. However, it would be equally useful to incorporate the Transnistrian side in such efforts. Otherwise,

⁵³ Quoted from Stefan Wolff, "A resolvable frozen conflict? Designing a Settlement for Transnistria", *ECMI Brief* No. 26 (November 2011) (http://www.ecmi.de/uploads/tx_lfpubdb/brief_26.pdf)

Transnistrian capacity will weaken relative to Moldovan capacity and/or Tiraspol's dependence on Russian support will increase. Neither is in the interest of a sustainable conflict settlement. An additional problem likely to arise is that the EU will increasingly be perceived as taking sides in the conflict settlement process which is problematic in terms of its role as an observer in the 5+2 process and can potentially limit its otherwise positive influence on, and engagement with, the Transnistrian region.

Building cross-party consensus for a settlement

One of the crucial lessons from many peace processes is that sustainable solutions depend to a significant extent on cross-party consensus on both sides of a conflict, as this reduces the number of potential spoilers of a settlement and increases the level of public support that a settlement is likely to enjoy. In this respect, relatively little effort and resources are currently invested in relation to the Transnistrian issue.

The European Parliament in particular could become active in this area and assist both sides forming intra-parliamentary working groups on the conflict and its settlement process thereby allowing elected representatives of all political groups in the legislatures in Chisinau and Tiraspol to become more closely involved in the ongoing negotiation process. While this would require clear 'rules of engagement' to be established in order to preserve the integrity of the 5+2 negotiations, it would also create opportunities to enhance the sense of local ownership and, especially in Chisinau, to draw on the considerable expertise available from earlier periods of the conflict and utilise it for the current negotiations. Over time, these intra-parliamentary committees would present excellent fora for elected representatives to engage with international experts on various dimensions of the settlement negotiations. Their existence could also be used to create opportunities for peer learning—bringing the committees from both banks of the river together to discuss particular issues and increase their knowledge and understanding of each other's perception of issues, problems, and possible solutions.

Strengthening public support for a settlement by enhancing the role of civil society in the process of resolving the conflict

After two decades of limited contact and exposure to various forms of propaganda about the Transnistrian issue, the public understanding of the conflict and its possible solutions is limited, and enthusiasm to move beyond the status quo not particularly wide-spread. In other words, people on both banks of the river do not see any urgent need to resolve the conflict per se, in light of the numerous economic and other problems they are confronting on a day-to-day basis.

As comparative experience from other peace processes demonstrates, public support for a settlement is essential for its sustainability. The European Union—through its institutions and member states—has an important role to play here. Similar to the need to enhance institutional capacity among government actors in Chisinau and Tiraspol, it is also necessary to enhance the capacity of civil society. The debate in the media and among so-called expert groups on important issues such as the future territorial status of the Transnistrian region is of poor quality, generally ill-informed, and ideologically biased. Before civil society is able to play a constructive role in the process of conflict settlement, their own knowledge and understanding needs to be increased. The European Union could support this process by sponsoring further projects that 'educate' civil society activists and media professionals about the conflict settlement process, how they can contribute to its successful conclusion, and by creating peer-learning opportunities for activists and professionals from both sides of the river that would enable them to understand the other side's perspective better. Similar to government officials, civil society and media need to know and understand the

different settlement options and their implications, but could then contribute significantly to enhancing the quality of public debate and eventual support for a negotiated settlement.

Assessing the economic and social impact of a settlement and assisting the Sides with developing effective integration strategies

Another area in which the EU can offer valuable support to the conflict settlement process is by developing different integration scenarios, assess their relative economic and social impact, and establish what strategies the sides need to employ to develop and implement effective integration policies. Given the Union's own experience of integration, at Union level as well as in the case of German unification, it is credibly placed to offer this assistance. On the one hand, early development of different scenarios can assist the Sides to understand the implications and impact of different settlement options and enable them to make better informed choices in the negotiation process. Detailed impact assessments once a set of core options crystallises in the negotiation process could then be used to assist the Sides in developing and implementing effective integration strategies. It would also help the Union itself to assess needs and requirements for financial and other assistance to contribute to a sustainable settlement. EU assistance in this respect could be linked with the broader capacity-building initiative recommended above.

Working with all its partners in the 5+2 process to see the negotiations through to a viable and acceptable outcome

As important as EU support is in relation to the Sides, the very nature of the conflict and its settlement process also require that efforts and resources be invested by the EU in working with its international partners in the 5+2 process—the OSCE, Russia, Ukraine and the United States. Through its multiple bilateral relations, the EU is well placed to play a central role in contributing actively to a settlement that enables a viable Moldovan state that includes the Transnistrian region, which by necessity has to be a regionally and internationally accepted solution. In other words, the EU and its partners need to avoid steps that would merely stabilise and improve the current status quo without reflecting concrete progress towards a final settlement. In this context, the EU should continue using its various funding mechanisms, especially in the context of the European Neighbourhood Policy, to enable and incentivise the Sides to move forward to a final settlement.

Concrete steps taken by the EU should include:

- Continue to support Moldova's efforts to develop its relationship with the EU, especially in relation to visa arrangements and the DCFTA negotiations as part of ongoing negotiations on the Association Agreement.
- Ensure that the Transnistrian region is given opportunities to participate in DCFTA negotiations in order to strengthen engagement between the Sides on a concrete policy issue and enhance relations between the EU and the Transnistrian region as part of a broader confidence-building agenda
- Increase the level of confidence-building measures and initiatives that the EU undertakes in the Transnistrian region and jointly with the Sides in order to extend and consolidate economic and social links between the Sides, honing common interests for rapprochement at all levels and across all sectors of society, and contributing to a more self-sustainable reform process in the Transnistrian region. Investment in a broad range of confidence-building measures can ensure not only that conflict settlement negotiations progress more easily but they can also assist with maintaining engagement between the Sides if the settlement process becomes deadlocked. A careful balance, however, needs to be maintained to avoid a situation

- in which confidence-building substitutes for progress in negotiations and instead entrenches a status quo that the Sides are increasingly interested in maintaining.
- Support both Moldova and the Transnistrian region in their efforts to make progress in the 5+2 negotiations, especially by encouraging and assisting the Sides in implementing all aspects of the Agenda agreed in April 2012, while avoiding an entrenchment of the status quo.
 - Continue support for the OSCE Chairmanship-in-Office and the OSCE Mission in Moldova as the leading mediators in the 5+2 process and a strong endorsement of the 5+2 process as the ‘only game in town’.
 - Maintain its involvement in the 3+2 consultations (i.e., consultations among the mediators/guarantors—Russia, Ukraine, OSCE—and observers—EU, US—while resisting calls to demand that its status of observer be ‘upgraded’ to mediator and/or guarantor. The EU should also use its influence in the 3+2 to maintain a realistic pace in the negotiations. While it is important to maintain the current positive momentum and not to dampen down the Sides’ enthusiasm, too frequent a schedule of 5+2 meetings is likely to be counter-productive and, in light of the differences and divisions, as well as lack of capacity, more likely to lead to renewed frustration and possibly deadlock.
 - Continue to engage directly with Russia, inter alia through existing EU-Russia cooperation and consultation fora, as well as through the Meseberg process, as means to ensure that Russia commits to a settlement of the conflict that would ensure a viable Moldovan state. This will need to include effective EU-internal coordination across institutions and member states, especially in relation to the role that Germany has assumed in the conflict settlement process.
 - Maintain its efforts to move beyond the current crisis in relations with Ukraine and support Ukraine in its preparations for taking on the OSCE Chairmanship in 2013.
 - Continue to support the work of EUBAM in combatting transnational organised crime and enhance the capacity of Ukraine and Moldova for border management and customs cooperation.
 - Coordinate closely with the United States as the other observer in the 5+2 process and assist the United States in using its considerable leverage to contribute to a settlement of the conflict.

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7. APPENDICES

Appendix 1: A Comparative Summary of Provisions in Past Settlement Proposals for the Transnistrian Conflict

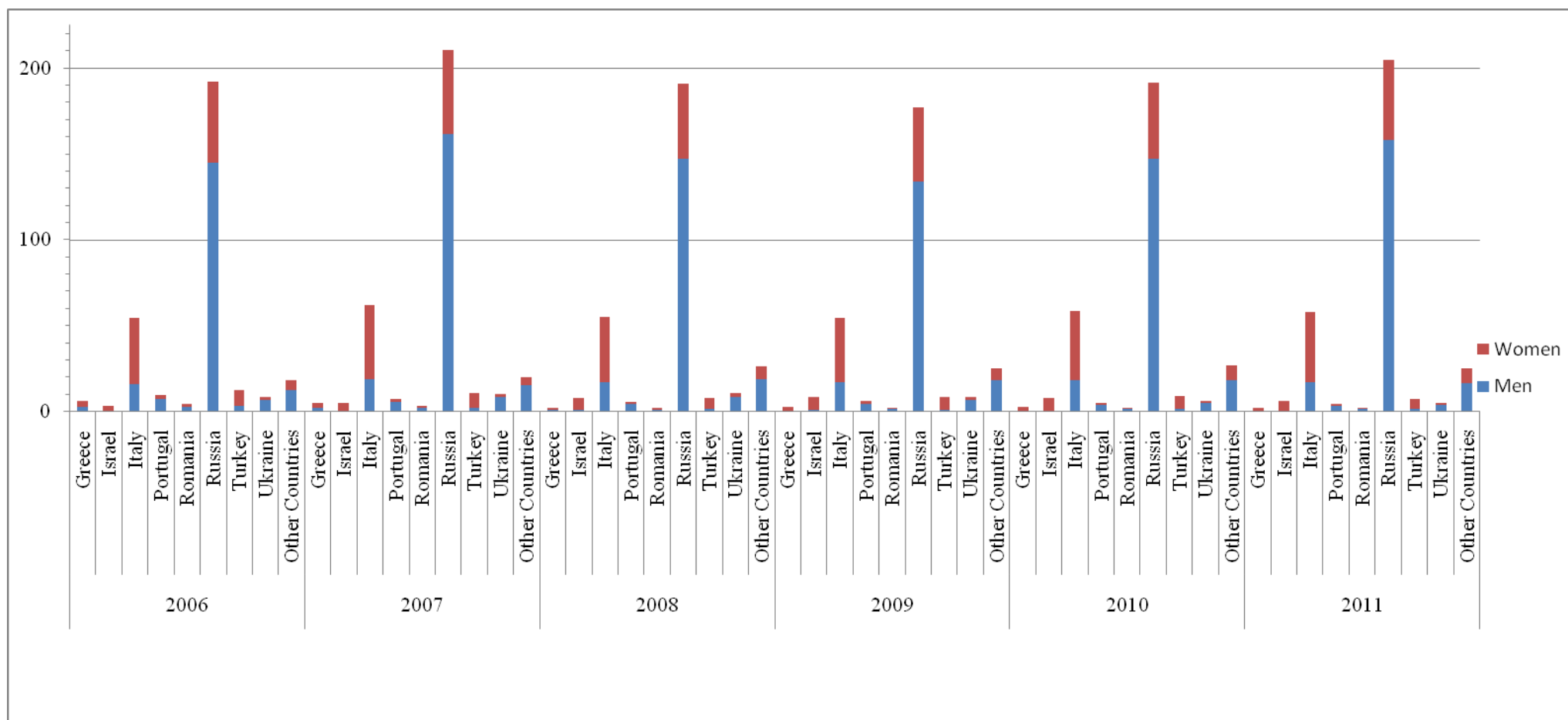
	Territorial State Construction	Distribution of Powers	Power Sharing	Policy Coordination/ Dispute Settlement	Russian Dimension	Romanian Dimension	Guarantees
CSCE Report (1993)	<ul style="list-style-type: none"> • Special status for Transnistria, possibly for Bender and Gagauzia, possibly regionalised state 	<ul style="list-style-type: none"> • Exclusive and joint competences listed in detail 	<ul style="list-style-type: none"> • Proportional representation for the Transnistrian region in parliament, top courts and key ministries 		<ul style="list-style-type: none"> • Complete demilitarization; • Russian withdrawal 	<ul style="list-style-type: none"> • Option for Transnistrian Secession 	<ul style="list-style-type: none"> • International guarantees, especially CSCE mediation of an agreement
Kozak Memorandum (2003)	<ul style="list-style-type: none"> • Two federacy arrangements : Moldova- the Transnistrian region and Moldova- Gagauzia 	<ul style="list-style-type: none"> • Exclusive and joint competences listed in detail; • Residual authority with federal subjects 	<ul style="list-style-type: none"> • Pre-determined number of seats for the Transnistrian region and Gagauzia in Constitutional Court and Senate; • Qualified majorities in Senate and Constitutional Court during transition period 	<ul style="list-style-type: none"> • Consultation on international treaties affecting joint competences 	<ul style="list-style-type: none"> • Moldova as a neutral, demilitarized state 	<ul style="list-style-type: none"> • Option for Transnistrian Secession 	<ul style="list-style-type: none"> • Constitutional entrenchment of status, combined with qualified majorities necessary for constitutional amendments

Mediator Proposals (2004)	<ul style="list-style-type: none"> • Federal State with the Transnistrian region as a federal subject 	<ul style="list-style-type: none"> • Exclusive and joint competences listed in detail; • Residual authority with federal subjects 	<ul style="list-style-type: none"> • Two-thirds majority in both houses of parliament for constitutional laws 	<ul style="list-style-type: none"> • Federal state institutions to effect policy coordination; • Disagreements over competences to be arbitrated by Constitutional Court; • Disagreements over implementation to be resolved in existing negotiation format or separate conciliation mechanism 	<ul style="list-style-type: none"> • Reduction of military capacity up to demilitarization 	<ul style="list-style-type: none"> • Option for Transnistrian Secession 	<ul style="list-style-type: none"> • Integrated system of international, domestic, economic, military and political guarantees, including enforcement mechanisms
Ukrainian Plan (2005)	<ul style="list-style-type: none"> • Special status for Transnistria 	<ul style="list-style-type: none"> • Division of powers to be established in organic special-status law 	<ul style="list-style-type: none"> • Joint drafting of special-status law 	<ul style="list-style-type: none"> • Conciliation Committee with international participation to resolve disputes over compliance with/ interpretation of special-status law 		<ul style="list-style-type: none"> • Option for Transnistrian Secession 	<ul style="list-style-type: none"> • Domestic legal and multilateral international guarantees; • Guarantor states and OSCE entitled to further international legal steps in case of non-compliance
Moldovan Framework Law (2005)	<ul style="list-style-type: none"> • Special status for Transnistria 	<ul style="list-style-type: none"> • Division of powers to be established in organic special-status law 	<ul style="list-style-type: none"> • Joint drafting of special-status law 		<ul style="list-style-type: none"> • Transnistrian demilitarization and Russian withdrawal as preconditions for settlement 		<ul style="list-style-type: none"> • A system of internal guarantees to accompany the special-status law

Moldovan Package Proposals (2007)	<ul style="list-style-type: none"> • Special status for Transnistria 	<ul style="list-style-type: none"> • Division of powers to be established in special-status law 	<ul style="list-style-type: none"> • Joint drafting of special-status law • Proportional representation for the Transnistrian region in parliament • Representation in government, Constitutional and Supreme Courts, Security Council, Prosecutor-General's Office and Interior Ministry 	<ul style="list-style-type: none"> • Disagreements over competences to be arbitrated by Constitutional Court 	<ul style="list-style-type: none"> • Moldova as a neutral, non-aligned state • Russian withdrawal • No foreign military bases or facilities in Moldova 	<ul style="list-style-type: none"> • Option for Transnistrian Secession 	<ul style="list-style-type: none"> • A system of internal legal, political and economic guarantees • International mission under OSCE mandate to monitor demilitarisation and creation of joint armed forces
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Source: Stefan Wolff, 'A resolvable frozen conflict? Designing a Settlement for Transnistria', ECMI Brief No. 26 (November 2011) (http://www.ecmi.de/uploads/tx_lfpubdb/brief_26.pdf).

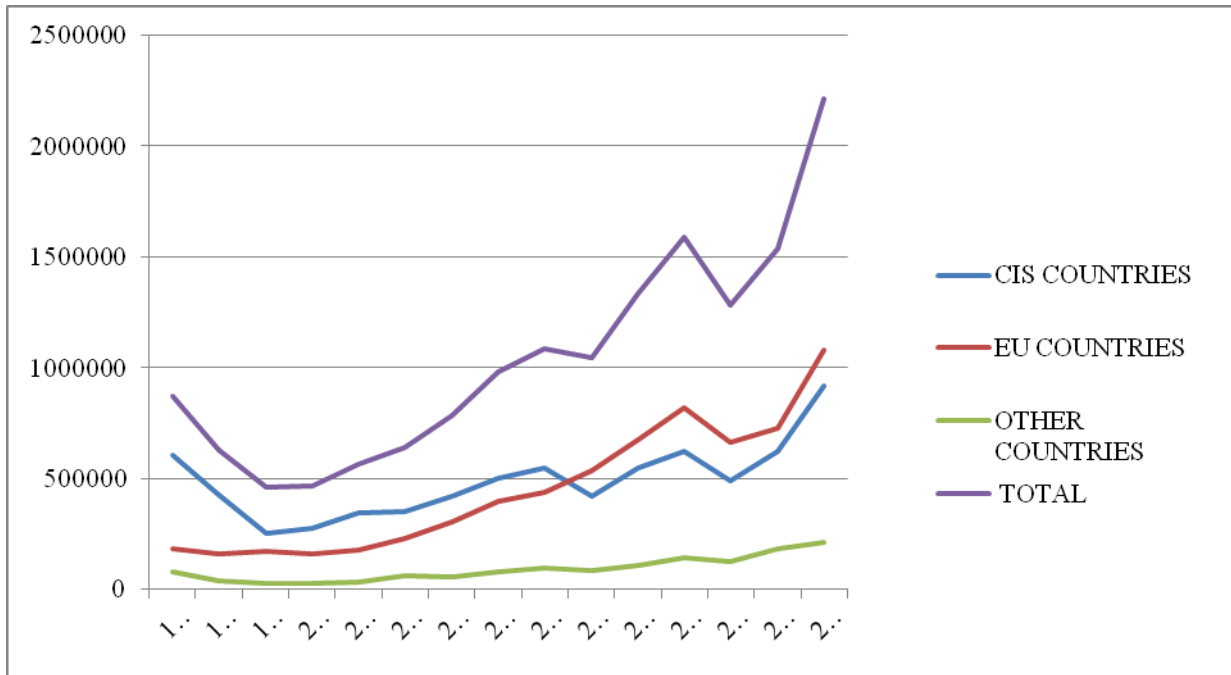
Appendix 2: Population Aged 15 Years and over, Working, or Looking for Work Abroad (in thousands, excluding the Transnistrian region)



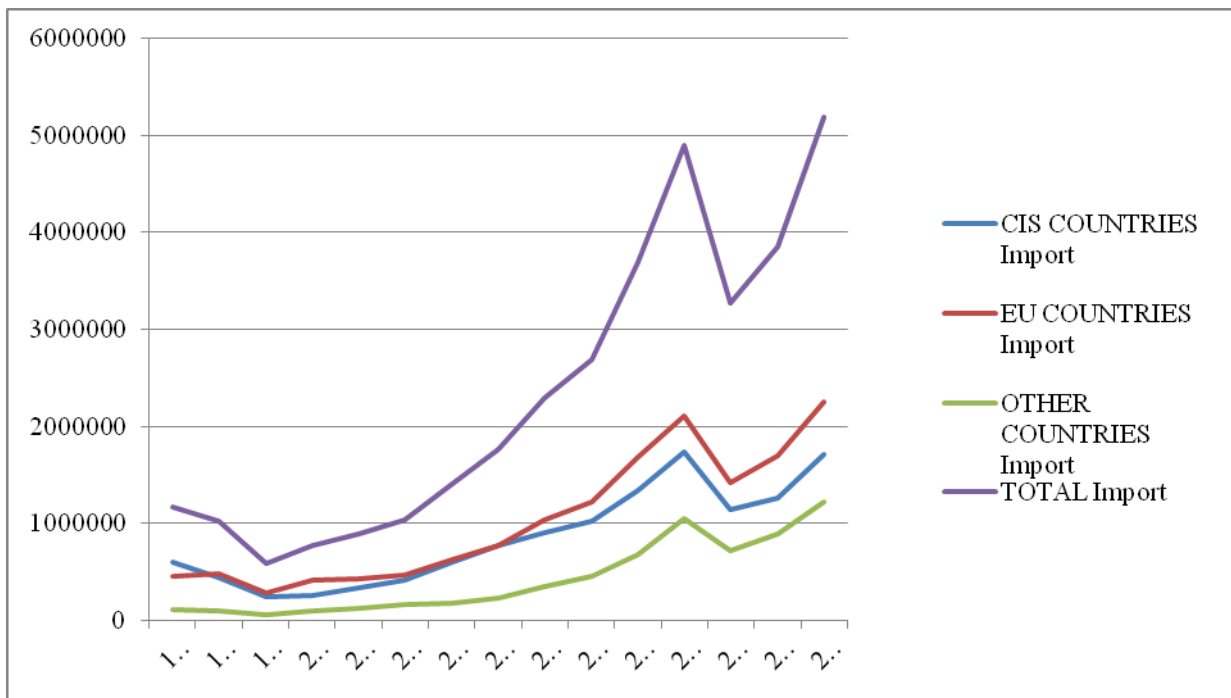
Source: National Bureau of Statistics of the Republic of Moldova (<http://www.statistica.md/index.php?l=en>)

Appendix 3: Republic of Moldova External Trade

Exports (in thousands USD)



Imports (in thousands USD)



Source: National Bureau of Statistics of the Republic of Moldova (<http://www.statistica.md/index.php?l=en>)

Appendix 4: Historical Background⁵⁴

As the Soviet Union dissolved and newly independent states emerged from its ruins from late 1991 onwards, many of these successor states and their citizens looked to an uncertain future, in several cases leading to protracted struggles for control of political, economic and military assets between old and emerging elites. Moldova was no different in this respect: disconnected from their former imperial ally in Moscow, facing the loss of political and economic power, and in their view threatened by an increasingly aggressive campaign of Romanization and possible unification with Romania promoted by the Popular Front of Moldova, elites in Tiraspol, the soon-to-be-capital of the Transnistrian region, refused to recognise Moldova's sovereignty and sought to assert first their continued union with Moscow, then their own independence. Further radicalisation on both sides eventually triggered a period of serious violence between the respective sides on the left and right banks of the River Nistru. Initially aided by staff and equipment supplied by the Soviet/Russian 14th Army stationed on the left bank, Transnistrian forces managed to drive the Moldovan ones out, capture the city of Bender on the right bank, and establish effective control in these areas, prompting, at the same time, the exodus of up to one-hundred thousand ethnic Moldovans. Intense, though short-lived, the fighting ended soon after the arrival of Russian General Alexander Lebed, taking over as commander of the Russian forces stationed in the Transnistrian region. Lebed asserted overall control over the Russian and Transnistrian forces. A ceasefire in July 1992 provided for the establishment of a Russian—Moldovan—Transnistrian peacekeeping force, stationed to this day in a buffer zone along the Nistru valley and overseen by the so-called Joint Control Commission.⁵⁵

The events in the year following Moldovan independence, formally declared on 27 August 1991, thus in many ways shaped the dynamics of the Transnistrian conflict for the next two decades. Locally, they established the self-proclaimed *Transnistrian Moldovan Republic* (*Pridnestrovskaya Moldavskaya Respublika/Приднестровская Молдавская Республика*) which quickly built up and consolidated its institutions and functions like a state in all but formal international recognition.

Similarly to the original conflict, an identity dimension continues to exist, and arguably has hardened over the past two decades of separation and very little, if any, contact between ordinary people across the River Nistru. For some time now, there has been a growing sense of separate identities: a Transnistrian one oriented towards Russia and Russian culture, and a Moldovan identity in which the Transnistrian region is less and less a significant element as orientation towards the EU becomes more important, not least since the inception of the Union's European Neighbourhood Policy and its Eastern Partnership that delivers a number of tangible benefits to Moldova. This is heightened by the fact that Romanian and Russian, respectively, have become the dominant languages and that, as a consequence, bilingualism, or rather the ability of Russian to function as a lingua franca, is generationally limited.

At the same time, and despite the fact that the Transnistrian region is an ethnically plural society, with ethnic Moldovans, Russians and Ukrainians constituting each around 30% of the local population, there are no significant inter-ethnic tensions in the Transnistrian region itself. In fact, as early as 1993, the CSCE Mission to Moldova's Report No. 13 asserted a 'distinct Transdnestrian feeling of identity' anchored in language (Russian), geography (natural separation from the rest of Moldova by the River Nistru), history (the Transnistrian region as part of the Russian empire,

⁵⁴ This introduction draws on previously published work by the author, including Stefan Wolff, "A resolvable frozen conflict? Designing a Settlement for Transnistria", ECMI Brief No. 26 (November 2011) (http://www.ecmi.de/uploads/tx_lfpubdb/brief_26.pdf).

⁵⁵ This ceasefire agreement, officially entitled "Agreement on the Principles of a Peaceful Settlement of the Armed Conflict in the Transnistrian Region of Moldova", also establishes Russia as an official party to the settlement process. Ukraine joined the trilateral peacekeeping arrangement in 2005.

rather than historic Bessarabia), and a perception—rightly or wrongly—to have been at the receiving end of a Moldovan attempt to resolve the dispute by force in 1992. Further evidence for this shared sense of belonging is also the fact that those displaced during the brief spell of violence in 1992 have all been able to return to their homes, regardless of their ethnic identity. This common identity has meant that the political and economic system of the Transnistrian region has acquired a degree of legitimacy. This is grounded in part in the fact that the overall situation in Moldova is popularly perceived to be as bad, if not worse, than in the Transnistrian region. Publicly, all political players in the Transnistrian region remain advocates of independence, an objective widely shared among the Transnistrian population.⁵⁶

On the right bank (the areas of Moldova, with the exception of the city and municipalities of Bender, fully controlled by the government in Chisinau), over the past two decades, a pro-Romanian section of the political spectrum, especially on the centre-right, has driven, and thrived on, an anti-Russian platform, partly laying all blame on Russia for the conflict and its persistence, partly indicating a willingness to accept the secession of the Transnistrian region and thereby gaining full integration into Euro-Atlantic structures, possibly through unification with Romania. In the same way in which these centre-right parties rejected the legitimacy of any Transnistrian claims, the centre-left, dominated by the communist party of Moldova, was more open to the idea of concessions to the Transnistrian region as part of a settlement, including some form of federalisation and power sharing, without, however, a clear, consistent, and coherent vision of a future common state or strategy how to achieve it. This division within the Moldovan political spectrum and the serious alienation between two blocs following the contested 2009 parliamentary elections, have precluded, for the time being, any degree of bi-partisanship in Chisinau's approach.

Beyond Moldova, the Transnistrian conflict in its early stage also firmly and formally established the role of Russia as one of the main power brokers in the conflict, and arguably the one who holds the key to its eventual settlement. Russia's centrality in the settlement process derives from the terms of the 1992 ceasefire agreement, its close links with the Transnistrian side and the latter's economic dependence on Russia. At the same time, Russia still maintains approximately 1,200 troops in the Transnistrian region, officially as guards of Soviet-era military installations and equipment, and unrelated to the Russian contingent in the peace-keeping force.

Romania, too, has been, and remains, a significant player, but in a different way. Links between sections of the Moldovan political class and Romania serve as 'confirmation' to Transnistrians that there is no real protection against Romanisation, while the nature of links with Romania equally divides right-bank political parties and has so far prevented a joint approach towards the Transnistrian conflict.

These factors, in turn, have seriously impeded the effectiveness of the negotiation process. The OSCE, as the leading international organisation involved, has been engaged since almost immediately after a cease-fire was achieved in 1992, with the current mission established in February 1993 and opening offices in Chisinau in April the same year and in the Transnistrian region two years later. The negotiation format is such that the OSCE, Ukraine and Russia have acted as co-mediators for the (on and off) negotiations between the Transnistrian region and Moldova, while the US and the EU joined this process in 2005 as observers. Multiple proposals for a solution so far did not lead to tangible progress towards a settlement. However, over the past

⁵⁶ In the September 2006 referendum on independence, 97% of those voting declared themselves in favour. While there is likely to have been a degree of falsification of these results, there is nonetheless significant support of the independence agenda and a credible alternative in terms of a different vision and political movement or party to represent it has yet to emerge.

two years momentum towards a resumption of formal negotiations built up. Thus, by mid-November 2010, five meetings between the parties in the 5+2 format had taken place since the beginning of the year, and consensus had been achieved to take stock of previously signed agreements and begin work on elaborating a system of guarantees for a future settlement. Also during 2010, tangible progress to improve relations between the parties had been made, including in the areas of railway transportation (re-opening of the Chisinau-Tiraspol-Odessa line), export procedures (especially for products of regional Transnistrian companies via Moldova), movement of goods (across the Nistru and in both directions), and restoration of landline telephone communication between Moldova and the Transnistrian region. As a result, after a five-year break, the Sides agreed in September 2011 to resume official talks in the 5+2 framework, and the first official round of negotiations took place in November 2011 in Vilnius.⁵⁷

⁵⁷ Lithuania held the OSCE Chairmanship in 2011.

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