

The OSCE in Moldova: from confidence building to conflict settlement?

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Abstract

The OSCE has had a permanent presence in the Republic of Moldova since 1993. More than 25 years later, the Organisation is still present and active in the country, yet this quarter-century of activity has not brought about a settlement of the conflict in the Transdniestrian region. While this might lead some to question the effectiveness of the OSCE as a mediator in the conflict settlement process, it is beyond doubt that the conflict in the Transdniestrian region is indeed 'frozen' with little danger of recurrence and few imminent prospects of a settlement. I argue that the OSCE's success in building confidence between the sides has come at the justifiable price of establishing, or 'freezing', a status quo that is amenable to, and often in need of, CBMs which further consolidate the current situation and entrench the interests underpinning it. Given the geopolitical dynamics around the conflict in the Transdniestrian region and in comparison to other protracted conflicts in the OSCE region, this is not a bad accomplishment. In fact, the OSCE-facilitated confidence-building measures, and their recently much increased effectiveness, could prove a crucial catalyst towards genuine conflict settlement in the future.

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Background: Conflict and conflict settlement in Moldova

The conflict in the Transdniestrian region of Moldova arose in the context of the dissolution of the Soviet Union. Among its several triggers, a change of language policy adopted by the Supreme Soviet of the Moldavian SSR on 31 August 1989 laid bare a fundamental divide in Moldova that persists to this day about the cultural identity and geopolitical orientation of the country between Russia and the West. In 1989, the abolition of Russian as the second official state language and the return to the Latin Romanian alphabet led to protests, notably in Gagauzia and Transdniestria, which quickly developed into secessionist movements. Within less than two years, the situation in Transdniestria escalated into a violent conflict, which, although brief, cost almost 1,000 lives. Following the intervention of the then Russian 14th Army stationed in Transdniestria, a ceasefire agreement was mediated by Moscow and signed there by the Presidents of Russia and Moldova on 21 July 1992. The agreement also provided for the creation of a demilitarised Security Zone and a trilateral peacekeeping force of Moldovan, Transdniestrian, and Russian troops, overseen by a Joint Control Commission.

The ceasefire agreement furthermore mandated a “process of conflict settlement through peaceful and political measures”. This process, however, has yet to result in a final status settlement. Instead, and despite of several efforts, Transdniestrian authorities, with considerable support from Russia, built and consolidated a *de facto* state, which has so far not gained any international recognition, but has proved remarkably stable and viable, including two peaceful transitions of power in 2011 and 2016.

The general lack of progress towards a settlement of the conflict must not be taken as a lack of effort by various domestic and external actors. Numerous plans and strategies were elaborated over the years. The current negotiation format of 5+2 emerged in 2005 when the EU and US (+2) joined the existing five-sided format (Moldova and Transdniestria as the two conflict parties plus the OSCE, Russia, and Ukraine as mediators and guarantors of a settlement). For more than a decade now, and arguably for another decade before then, confidence building has been a constant feature within an otherwise so far inconclusive settlement process.

Analytical framework

For more than a quarter-century, the conflict in the Transdniestrian region of Moldova has proven to be settlement-resistant. One analytical perspective on this would suggest that the conflict has simply not been ripe for resolution. Following I. William Zartman, a conflict is ripe for resolution if the conflict parties feel that they are in a hurting stalemate and see an opportunity for a negotiated solution.¹ While much attention has been paid to the notion of the *mutually* hurting stalemate, Zartman’s conception of ripeness goes beyond this and also includes the notions of a mutually enticing opportunity and a winning formula. The latter two are, in my view, not only complementary to the more central concept of mutually hurting stalemate but also offer a potentially alternative pathway to conflict settlement altogether.

Zartman’s basic premise is that a mutually hurting statement is a necessary but not sufficient condition for conflict settlement. Only once it combines with the perception of a mutually enticing opportunity (i.e., a viable, that is a sustainable, alternative to the status quo which would improve the conflict parties’ situation compared to continuing conflict) and a winning formula (i.e., a feasible institutional design that accommodates the parties’ core concerns), is a settlement possible.

From this perspective, a negotiated settlement would not be possible if only one party hurts. Instead, such a situation would require the hurting party to submit to the terms of the other party. Yet, this is hardly the basis of a just and fair settlement that does not already bear the seeds of its own demise. By focusing on a mutually enticing opportunity and a winning formula, an alternative pathway to a conflict settlement is conceivable. A mutually enticing opportunity that can be translated into a new institutional arrangement that accommodates both parties’ core concerns and improves their situation compared to the existing status quo, albeit in an asymmetric way, via a winning formula would be the necessary condition in such a scenario. Yet, much like the mutually hurting stalemate, it is not sufficient on its own. Rather, what is required is a level of trust between the parties that assures them that engaging in negotiations is not a futile exercise and achieving a sustainable settlement as a result is possible. One way through which such trust can be built is by gradually establishing a track record of constructive engagement between the parties that demonstrates both the possibility of

¹ See, for example, Zartman, I William. 2001. “The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments.” *Global Review of Ethnopolitics* 1 (1). Routledge: 8–18. doi:10.1080/14718800108405087.

agreement and of implementation. In other words, successful confidence-building measures potentially constitute the catalyst for a mutually enticing opportunity and a winning formula to offer a pathway to conflict settlement.

Against this background, the following analysis will, therefore, examine past OSCE efforts to facilitate confidence building between the Sides in the conflict in Transdniestrian region in Moldova. The main focus will be not only on the overall trajectory of CBMs but also on any tangible results they have produced. While there is, of course, no settlement yet, the point here is to establish whether confidence building has progressed sufficiently in line with my assumption that a successful track record of CBMs can be the catalyst towards a successful outcome of the conflict settlement process.

Confidence-building measures as entrenchment of the status quo

The purpose of confidence-building measures (CBMs) is obvious: to build confidence, and eventually a sufficient level of trust, between the Sides in a conflict. However, it is important to bear in mind that this is not an end in itself, but has to serve a specific purpose, namely to facilitate a conflict settlement process. This is the whole premise of my argument: under the right conditions, a successful track record of CBMs can be the catalyst to turn a mutually enticing opportunity in the presence of a winning formula into a settlement.

Confidence-building by necessity has to happen at different levels, involving those that are meant to negotiate a settlement (political elites) and those that are supposed to support and live with it (the broader public). No settlement will be feasible without the former, and none will be viable without the latter. Ideally, CBMs thus create an environment and momentum in which conflict settlement becomes possible and sustainable.

In the case of the conflict in the Transdniestrian region of Moldova, two-and-a-half decades of on/off confidence-building have struggled to generate such an environment and not contributed to creating sufficient momentum towards a settlement. Despite all the efforts made and resources invested by various actors in the process, notably the OSCE and its partners in the 5+2 process, until very recently we were nowhere closer to a settlement today than twenty-five years ago and were perhaps even farther away from it than in the late 1990s or early 2010s.

Three reasons did account for this. The first was the absence of political will by the conflict parties to build confidence and establish trust. It is not for lack of confidence-building measures that neither elites nor publics on either side of the River Dniester/Nistru saw few if any realistic prospects, or indeed need, for a conflict settlement.

Second, what CBMs did achieve was a series of improvements to the status quo that demonstrated that there was sufficient trust for so-called 'small steps'. But these small steps (for example, some 170 agreements have been concluded between Chisinau and Tiraspol since the 1990s) were in fact not steps toward a settlement. They have made the status quo more comfortable and stable, but also reduced the need for bold moves towards a settlement. Moreover, this has allowed a new generation of people (and voters) on both sides of the river to grow up who have little knowledge of, and very little contact with, each other and for whom settling the conflict was far from a priority.

Third, blame for this quasi-entrenchment of the status quo did not rest with local elites alone. Confidence-building measures on the ground, in general, do not exist in a vacuum, but happen within a specific regional and global geopolitical context. At times, this creates opportunities (the Primakov Memorandum of 1997, the Yushchenko Plan of 2005, the Meseberg Process of 2010). But more often than not, it has also created major obstacles, most recently in the context of the current crisis in Ukraine and the rapid deterioration of relations between Russia, on one side, and Ukraine, the EU and the US, on the other, all of which are key players in the settlement negotiations that stalled for several years after 2014.

That said, CBMs have not been without results. A vast number of projects have been implemented that, while not bringing the conflict closer to a settlement, have improved ordinary people's living conditions. They have also kept both sides engaged and talking, helping to maintain open lines of communication and contributing to preventing, so far, any major escalation of a crisis into renewed violent conflict. In fact, of all the so-called frozen conflicts in the former Soviet Union (the others being Abkhazia and South Ossetia in Georgia and Nagornyi

Karabakh in Azerbaijan, as well as now for all intents and purposes eastern Ukraine), only one person has been killed in the Transnistrian conflict since the signing of the 1993 ceasefire agreement.

Confidence-building measures thus are an important element of conflict management. Yet, they will only fulfil their purpose of creating an environment in which sustainable conflict settlement becomes possible if three conditions are met. First, there needs to be capacity and capability in a technical sense to design and implement CBMs in line with a strategic vision of conflict settlement. Second, a conducive regional and global environment is essential to create the incentives, and where necessary pressures, for the conflict parties to move towards a settlement. This requires investment by third parties of both political capital and financial, material, and human resources in a sustained way. Third, and most important of all, local leaders have to be genuinely committed not to playing the confidence-building game to please their donors but to building confidence and trust for the purpose of settling their differences in a peaceful way.

The Ukraine crisis and after: intensified confidence building

The crisis in Ukraine from late 2013 onwards with Russia's annexation of Crimea in the Spring of 2014 and the subsequent Russia-backed establishment of two new de-facto entities in Donbas increased tensions throughout the OSCE region. Yet, remarkably, this period, especially from 2016 onwards, has also seen a fundamental change in the nature of the OSCE-facilitated CBM process in the Transdniestrian conflict.

After a two-year hiatus, a formal 5+2 meeting happened in Berlin in June 2016. During the meeting, the Sides agreed on a new approach that would focus on clearly defined areas in which agreements were to be achieved and that any agreement would need to specify concrete implementation measures. The Berlin Agreement on this new approach, subsequently reiterated at the annual CBM conference in bad Reichenhall, also specified the areas of education (apostilisation), transportation (vehicle licence plates), telecommunications, ecology (natural resource management in the basin of the River Dniester/Nistru), and pending criminal cases as priority areas in which further confidence building was important. Of these, only an agreement on ecology was finalised and implemented. While 2016, thus, did not lead to the hoped-for breakthrough in agreements being negotiated and implemented, it signalled the possibility of re-engagement, albeit in a context which remained volatile to almost-habitual mistrust, by restoring the formal 5+2 negotiation process.

The 2017 Austrian Chairmanship, from the beginning put emphasis on both the full implementation of the unresolved issues of the June 2016 Berlin Agreement and the inclusion of other issues that had remained unresolved for a long time. This so-called 'Package of Eight' or Berlin+ agreement thus included the four outstanding issues from the 2016 Berlin Agreement and the issues related to the operation of the Latin-script schools in the Transdniestrian region, access to the Dubasari farmlands, freedom of movement for people, goods and services, and the re-opening of the Gura Bicului-Bychok bridge. Importantly, all of these issues were identified by the Sides as common priorities. The commitment, and ability, of the Sides to work out technical solutions and eventually muster the requisite political will to realise them paved the way for the Austrian Chairmanship in 2017 to another major breakthrough, namely the re-opening of the Gura Bicului-Bychok bridge after 26 years. In addition, in the course of the Austrian OSCE Chairmanship, agreements were concluded on apostilization, on telecommunications, on Latin Script Schools, and on the use of the Dubasari farmlands, even though their implementation was not begun until the following year. However, the parties firmly committed themselves to progress on implementation in the so-called Vienna Protocol of 28 November 2017.

Further progress was achieved in 2018 under the Italian OSCE Chairmanship. Another long-standing issue, neutral car licence plates allowing Transdniestrian vehicles access to the entire European continent, was resolved after two decades of discussions. Meanwhile, access to farmlands in Dubasari has been almost completely restored and most of the contentious issues in the context of the Latin-script schools in the Transdniestrian region have also been addressed. This leaves only one of the six signed agreements in the 'Package of Eight' awaiting full implementation, namely the reintegration of the Moldovan telecommunications market which is perhaps the technically, commercially, and legally most challenging of the agreements. Beyond that, only two, albeit highly contentious issues remain on which agreement has yet to be achieved—full freedom of movement and a number of criminal cases. Given the track record of the past almost two years, there is a serious prospect that the 'Package of Eight' will eventually be fully implemented.

Confidence building as a catalyst for conflict settlement?

What is a particularly noticeable change is that confidence-building measures no longer are half-way houses with agreements and so-called protocol decisions negotiated and agreed but never fully implemented. This lack of implementation was a long-standing complaint, particularly of the Transdniestrian side. Over the past two years, attitudes on both sides have significantly changed and agreements now regularly include detailed 'choreographies' through which the sides commit themselves and each other to specific steps and concrete timelines that facilitate agreement implementation. This change in attitude towards implementation is apparent from the very beginning of the post-2016 process. The Sides specifically committed themselves to improve implementation mechanisms in line with the April 2012 document on Principles and Procedures, agreed under the Irish OSCE Chairmanship.

What accounts for this shift in attitude and behaviour? The rationale for this is rather clear on the Transdniestrian side: ever-decreasing Russian subsidies, the ever-increasing importance of the EU market (and the Moldovan and Ukrainian markets linked to it via the AAs and associated DCFTAs), and renewed Russian signals that a settlement is, if not desirable, at least conceivable from the Kremlin's perspective have combined to increase pressure on the Transdniestrian leadership. The resulting progress may often appear purely transactional in nature, but it does also change practices of engagement and creates expectations of follow-through on both sides that cannot but be beneficial in the long term.

On the Moldovan side, things are somewhat more complex. There is some degree of transactionalism as well—e.g., farmlands and apositilisation in exchange for care licence plates—but there are additional domestic and external factors, too, and often it is the combination of the two. With EU macro-financial assistance currently suspended, upcoming parliamentary elections, and a significant divide between government and president over key domestic and foreign policy issues, progress on long-standing issues in the Transdniestrian conflict settlement process is a relatively low-risk, low-cost, and potentially high-gain strategy. Yet, while it may well be driven by shorter-term, pragmatic considerations, not too dissimilar from the likely calculations on the Transdniestrian side, it contributes to creating new patterns of practice and expectations in the process of engagement at the level of Working Groups, 1+1, and 5+2.

Thus, 2018 has by now seen more than 80 Working Group meetings, including a revival of the Human Rights working Group which had not met for almost five years. This unprecedented level of activity reflects a new sincerity to achieve viable agreements and follow through on their implementation. This has been made possible in part by a more pragmatic approach on both sides, changes in personnel, better chemistry as a result of higher frequency and constructiveness of interactions, which in turn have shaped the outcomes achieved since the 2016 Berlin Declaration.

At the same time, this kind of confidence-building process is slow—in part due to the complexity of the issues at hand and the sometimes-high degree of emotional investment by the Sides. Overall progress notwithstanding, the slow pace and significant outside assistance with which it has been achieved also reflects a persistent volatility. Building confidence is a difficult undertaking that requires careful management, including of expectations. So far, the Berlin+ process has been successful, and if it is brought to a successful conclusion over the course of the next year or so a new level of confidence between the sides may have been established, a level moreover that might prove resilient to temporary setbacks in one area or another.

At the same time, even if nothing concrete immediately follows after the 'Package of Eight' either in terms of another similar set of agreements and their subsequent implementation or in terms of concrete steps towards political discussions, the kind of confidence-building process that the OSCE has facilitated in this context will have been valuable in itself because it produced specific outcomes with clear benefits for people on both banks of the River Dniester/Nistru. This, in turn, could also form the basis and focus of a public communication strategy aimed at getting traction for a conflict settlement among the population on both sides of the River Dniester/Nistru.

Prospects for the future

My overall assessment is that local developments, especially over the past two years are promising. The Sides have fundamentally changed their approach and moved from simply negotiating agreements to negotiating and, critically, implementing them. In my view, this reflects a more positive and constructive approach that may form the foundation upon which progress towards a settlement could finally be possible. This foundation is still susceptible to setbacks and requires careful management by the OSCE and other international partners in the 5+2 format. There is, however, no doubt that there is a new momentum in the settlement process now and that there are realistic prospects to sustain it.

While the timeline for implementation on the 2016 Berlin Agreement has slipped, and at times significantly, the process as a whole was not derailed. Impasses were often bridged with a restatement of the Sides' commitment to implementation, such as in the November 2018 Vienna Protocol. Thus, another indication of the new quality of the confidence-building process is the fact that after relatively modest initial progress on implementation of the original Berlin Agreement in 2016, the Sides did not give up on the process and in fact agreed to add highly contentious and protracted issues to their agenda in the 2017 'Package of Eight' and have resolved many of these. This reflects a new degree of local ownership and responsibility assumed by the Sides for the confidence-building process and chimes with the Italian Chairmanship's motto "Dialogue, Ownership, Responsibility".

Equally important for a balanced assessment of the prospects of a catalytic effect of CBMs on the overall settlement process is to look beyond the headlines of agreements and their implementation of the 'Package of Eight'. In this context, tangible progress is visible as well: the 5+2 process has continued with a meeting in Rome, in addition to which there have been 30 meetings at the 1+1 level of chief negotiators (compared to just 9 in 2017), as well as 82 meetings of working groups (compared to just 31 in 2017). As a result, a number of additional so-called protocol decisions have been adopted, most recently one on veterinary, quarantine and plant protection measures. This testifies to both an intensification of contacts across the different levels and an ability to translate such contacts into negotiated outcomes. This, in turn, improves capacity and capability at the technical level, which will be critical for future conflict settlement negotiations in that it enhances the feasibility of a settlement agreement in a purely technical sense as well as the probability of its longer-term viability.

This suggests that two of my three conditions for confidence-building measures to live up to their catalytic potential have been by-and-large met: technical capacity and capability to design and implement CBMs in line with a strategic vision of conflict settlement (the latter still being developed, though) and local leaders' commitment to genuine confidence building.

The question that remains is whether there is a perception of a mutually enticing opportunity on the horizon and a winning formula that can translate it into the concrete reality of a settlement for the conflict in the Transdnistrian region of Moldova. While the difficulties of the latter should not be underestimated, there is a track record of past proposals of varying kinds since the OSCE's own Report No. 13 in 1993 that are similar enough to instil confidence that the parameters of a settlement are relatively well established. Translating them into a detailed legal and institutional framework will not be easy, but not impossible either.

Whether the Sides will eventually perceive a mutually enticing opportunity is a different matter. Both Sides would need to be able to realistically expect an improvement in the status quo. While the likely economic benefits of a settlement are well-established, it is not clear that there are similarly compelling political benefits for either current or aspiring elites. On the Transdnistrian side, because of the singularity of political and economic agendas and the unified command and control system underpinning it, it is perhaps easier to see under what conditions a negotiated settlement would be seen as a desirable change of the status quo. Among them, the guarantee of property rights in Transdnistria, significantly improved rule of law in Moldova, and continued access to both EU and EEU markets (the so-called 'and-and' approach, which also includes political and cultural openness to Russia and the West) would be critical.

In Chisinau, the issues are a bit more complex again. With a highly fragmented political party system, so-called pro-Western/pro-EU parties widely discredited, and society deeply divided over the country's geopolitical orientation, Transdnistria is neither high on the political agenda nor is it an issue on which it is easy to score points in a constructive way ahead of parliamentary elections in February 2019. This may change with a different government after next year's elections, but whether a new government will have the capacity to capitalise on a

(mutually) enticing opportunity remains an open question given the complexity of the overall challenges the country faces.

This leaves the question of a conducive regional and global environment. While my focus has been predominantly on OSCE confidence building between the Sides locally, it is equally important to bear in mind that conflict settlement in the context of the conflict in the Transdnestrrian region of Moldova is not just a local affair. It also requires a permissive international environment. Here, the situation is reasonably promising in the sense that one could interpret the current situation of deeply troubled Russia-West relations as a mutually hurting stalemate in which a settlement of the conflict in the Transdnestrrian region of Moldova presents a mutually enticing opportunity. This creates an opportunity for a more constructive engagement of the 3+2 in the settlement process and to contribute to finding the winning formula that will not merely accommodate core local concerns but can also ensure that such a formula remains on a winning course rather than being ultimately blocked because of geopolitical tensions within the complex set of 3+2 relationships. Russia's support for the confidence-building process since 2016—both by at times actively endorsing it and importantly not actively undermining it—is an indicator for a contextually improving international environment. The progress to date achieved locally has clearly benefited confidence building between Chisinau and Tiraspol, but it has also demonstrated that agreements at the 1+1 level are possible that do not infringe on the declared and undeclared interests of the 3+2. This is an important indirect effect of local confidence building that strengthens the feasibility and viability of the 'and-and' approach which, in turn, increases the probability that the local CBM process will be allowed to continue and potentially catalyse the Sides into more decisive steps towards an actual conflict settlement agreement.

Taken together, present opportunities and remaining challenges also underline the broader contribution that OSCE-facilitated CBMs have made. On the one hand, they have shaped a status quo that has remained stable for a long period of time now. This status quo represents a baseline for the Sides (and arguably for external actors as well) which they are unlikely to be willing to lose. At the same time, it represents an increasingly solid foundation from which progress towards a final status settlement might be possible. But even if such efforts prove futile, the alternative is not a return to conflict but the continuation of a status quo that has been shaped by CBMs which at least partially reflect the Sides' core concerns and as such do not entice them to resume violence.