

# The Prospects of a Sustainable Conflict Settlement for Transnistria

Stefan Wolff<sup>1</sup>

## *0. Abstract*

*The conflict over Transnistria in Moldova has made little progress towards a settlement since the original ceasefire agreement of 1992 despite a number of proposals from most of the relevant conflict and third parties. Rather than assessing why negotiations have frequently stalled, this paper examines the content of existing proposals against the background of existing theories of territorial conflict management and proposes a framework for a durable settlement of the Transnistrian conflict within in the current 5+2 negotiation format: a multiple asymmetric federacy arrangement supplemented by central-level power sharing and entrenched in domestic and international law.*

## **1. Introduction**

In its current manifestation, the conflict over Transnistria dates back to the end of the Soviet Union and the establishment of an independent Moldovan state. Of all the post-Soviet conflicts, it is the one for which the label ‘frozen conflict’ is relatively fitting: in contrast to the conflicts over South Ossetia and Abkhazia in Georgia and the conflict between Armenia and Azerbaijan over the Nagorno-Karabakh territory, there has been no violence and no significant progress towards a settlement since the conclusion of a ceasefire in 1992. Since then, if anything, the status quo has been consolidated and this has created powerful interest groups seeking anything but a change to the current situation.

There is now an overwhelming consensus among academics and policy makers in national governments, in regional and international organisations, and in non-governmental organisations that disputed territories like Transnistria, Abkhazia, South Ossetia, and Nagorno-Karabakh do constitute a specific kind of entity in international relations best described as *de facto*, unrecognised or quasi states, similarly to Northern Cyprus, Somaliland, and, to a lesser extent, Kosovo and Taiwan.<sup>2</sup> While Transnistria figures as one case among several in a number of comparative analyses, it has generated less scholarly and policy analysis as an individual object of study. This is particularly apparent when the focus is shifted away from an analysis of the causes and development of the conflict and the reasons why it still eludes a settlement. Understanding these issues is, of course, important, but all too often loses sight of another, in my view equally important dimension of any viable conflict settlement for Transnistria—its actual content. This is the gap that I propose beginning to fill with this paper.

Following a brief overview of the background to the conflict and a history and structure of its so far inconclusive settlement process, I outline the main issue areas on which the parties need to achieve agreement and offer some concrete suggestions on how to structure a possible settlement that takes account of the parties’ core concerns. While Transnistria is in many ways a special case among disputed territories in the former Soviet Union and beyond, it is not wholly unique in all of its dimensions. The Transnistrian conflict shares a range of issues with a number of other conflicts in terms of the internal and external challenges and obstacles that have so far prevented a sustainable settlement from emerging. Taking a broader comparative view on the domestic and international

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<sup>1</sup> Professor of International Security, University of Birmingham, UK, stefan@stefanwolff.com, www.stefanwolff.com.

<sup>2</sup> Cf., for example, Bahcheli et al. (2004), Caspersen and Stansfield (2010), Coppieters et al. (2004), King (2001), Kolstø and Blakkisrud (2008), Kolstø (2006), Lynch (2004), and Stansilawski (2008).

politics of self-determination and how they have been addressed elsewhere is thus a useful exercise to inform the current negotiation process and can subsequently offer important conclusions about how to bring similar conflicts to a sustainably peaceful and democratic settlement.

## **2. Background: The Transnistrian Conflict and Its Settlement Process to Date<sup>3</sup>**

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 Transnistria, 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 Transnistria. 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.<sup>4</sup>

The conflict with Transnistria, thus, created three distinct, yet clearly inter-connected issues that need to be addressed as part of a lasting settlement: the status of Transnistria, the status of Bender, and the presence of Russian troops on the left bank of the Nistru. Bender, historically part of Bessarabia, located on the right bank of the Nistru, and scene of some of the heaviest fighting in 1992, is now located in the so-called buffer zone and under the authority of the Joint Control Commission, but effectively controlled by Transnistria. During the Soviet period, Bender was one of the four 'republican cities' in Moldova, i.e., a district of its own.

In addition to these three issues, the broader context of the Transnistrian conflict and its settlement also includes Gagauzia, a small, non-contiguous autonomous area in southern Moldova. Here, similarly to Transnistria, significant opposition arose to Moldova's Romanisation from the late 1980s onwards. In fact, Gagauzia's (unrecognised) declaration of independence preceded that of Transnistria. Yet, in contrast to Transnistria, violence in Gagauzia was nothing more than sporadic.

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<sup>3</sup> In this section I am drawing primarily on interviews and conversations over the past seven years with a variety of senior government officials and local experts in Moldova and Transnistria, officials from the British, German, Russian and Ukrainian embassies in Chisinau, the EU Special Representative to Moldova and his staff, and personnel from the OSCE Mission to Moldova. Recent scholarly overviews include Sanchez (2009), Sherr (2009), Quinlan (2008), Crowther (2007), and Protsyk (2006). For earlier background analyses, see (Kolstø and Malgin 1998), Neukirch (2001), Roper (2001), Vahl and Emerson (2004), and Popescu (2004; 2005).

<sup>4</sup> This ceasefire agreement, officially entitled 'Agreement on the Principles of a Peaceful Settlement of the Armed Conflict in the Transnistrian Region', also establishes Russia as an official party to the settlement process. This agreement, as well as other official documents and proposals drawn on in this paper, are available online at: <http://www.stefanwolff.com/projects/official-documents-and-proposals>.

Moreover, less than two weeks after its own declaration of independence, six of the twelve Gagauz deputies in the Moldovan parliament voted in favour of Moldova's declaration of independence, while the others abstained. This, together with OSCE mediation, paved the way to a settlement in 1994 (taking effect in 1995) according to which Gagauzia was granted constitutionally protected autonomous status within Moldova. While there have been significant problems with the implementation and operation of the autonomy statute, Gagauzia nonetheless serves as a reference point for the Transnistrian conflict. While Chisinau is keen to point out that Gagauzia demonstrates the feasibility and viability of a conflict settlement within Moldova, Tiraspol is weary of having a status that does not exceed that of Gagauzia. In turn, there are some, albeit a minority, in Gagauzia who would not accept a status for their autonomous area that is lower than that of Transnistria. Limited links between Komrat and Tiraspol exist, but they hardly amount to a strategic alliance.<sup>5</sup>

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/Приднестрoвская Молдoвская Респyблика)* which quickly built up and consolidated its institutions and functions like a state in all but formal international recognition. Since 1992, the existence of Transnistria 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 Transnistria economic and political interests, and thus stakes, are highly personalised. Political power, and with it significant economic power (due to its control of the Ribnitsa steel plant which counts for over half of all legal exports and tax revenues), is 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 by two ex-members of Transnistria's 'special services'. While often associated with the Renewal (*Obnovleniye*) opposition movement, whose demands include more political openness and economic liberalisation in Transnistria, Sheriff and Smirnov appeared to have achieved a tacit agreement on 'peaceful coexistence' following a period of heightened tensions after Renewal won an absolute majority in the 2006 legislative elections in Transnistria.<sup>6</sup> However, Sheriff's economic interests have 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.

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 Transnistria 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

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<sup>5</sup> Observations in the foregoing paragraph are based on personal impressions and conversations with Gagauz, Moldovan, OSCE and EU officials over several years. Between 2004 and 2009 I regularly visited Komrat as part of a project run by the European Centre for Minority Issues on clarifying the competences accorded to Gagauzia in the 1994/5 settlement. In August 2008 I was part of a mission with the EU Special Representative to Komrat to help the local political parties overcome a deadlock after parliamentary elections in Gagauzia earlier in the year. See also Sato (2009), Roper (2001), Quinlan (2008), and Protsyk (2005).

<sup>6</sup> In the legislative elections in Transnistria on 12 December 2010, Renewal increased its majority by 2 to 25 out of 43 seats in the Transnistrian Supreme Soviet, compared to Smirnov's Republik (*Respublika*) who won only 13 seats (no change).

Eastern Partnership that delivers a number of tangible benefits to Moldova.<sup>7</sup> 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 Transnistria 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 Transnistria 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 (Transnistria as part of the Russian empire, 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 President Smirnov, and the political and economic system of Transnistria more broadly, have 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 Transnistria. Smirnov and the opposition alike remain strong advocates of Transnistrian independence, an objective widely shared among the Transnistrian population.<sup>8</sup>

On the right bank, a pro-Romanian section of the political spectrum, especially on the centre-right, drives, and thrives on, an anti-Russian platform, partly laying all blame on Russia for the conflict and its persistence, partly indicating a willingness to accept Transnistria's secession and thereby gaining full integration into Euro-Atlantic structures, possibly through unification with Romania. In the same way in which centre-right parties reject the legitimacy of any Transnistrian claims, the centre-left, dominated by the communist party of Moldova, is more open to the idea of concessions to Transnistria 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, preclude, for the time being, essential 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 key 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 (see above), its close links with the Transnistrian side and the latter's especially economic dependence on Russia. At the same time, Russia still maintains approximately 1,200 troops in Transnistria, officially as guards of Soviet-era military installations and equipment. Russia is also fundamentally opposed to Moldova joining NATO, and, arguably, without reassurances in a settlement against Moldovan membership in the transatlantic alliance it is highly

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<sup>7</sup> On the role of the EU, the ENP, and the Eastern Partnership in Moldova and in relation to the conflict in Transnistria, see, for example, Gheorghiu, Nantoi, and Popescu (2004), Popescu (2004; 2005), and Sasse (2008, 2009).

<sup>8</sup> 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 Transnistrian leadership's independence agenda and a credible alternative in terms of a different vision and political movement or party to represent it has yet to emerge.

unlikely that Russia will support a settlement.<sup>9</sup> On the other side, Romania, too, remains a significant player, but in a different way. Links between sections of the Moldovan political class and Romania serve as 'confirmation' to Transnistria 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 Transnistria.<sup>10</sup>

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 Transnistria two years later. The negotiation format is such that the OSCE, Ukraine and Russia act as co-mediators for the (on and off) negotiations between Transnistria and Moldova, while the US and the EU joined this process in 2005 as observers. Multiple proposals for a settlement of the conflict have yet to lead to tangible progress towards a settlement. However, as of late, there are some concrete signs that negotiations may resume in earnest and a settlement might be achieved. 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 has been made, including in the areas of railway transportation (re-opening of the Chisinau-Tiraspol-Odessa line), export procedures (especially for products of Transnistria-based companies via Moldova), movement of goods (across the Nistru and in both directions), and restoration of landline telephone communication between Moldova and Transnistria. At the same time, a French-German-Russian initiative to reinvigorate actual negotiations remains current, even though a formal re-launch before the formation of a new government in Chisinau is unlikely. A two-day 'Review Conference on Confidence-building Measures in the Transdnistria Settlement Process' took place at the George C. Marshall European Center for Security Studies in Garmisch-Partenkirchen, Germany, on 9 and 10 November 2010, to assess progress in relation to confidence building and discuss ways to intensify the engagement between the parties in existing working groups.<sup>11</sup>

### **3. Conceptual Framework: Stakes and Remedies in Territorial Disputes**

This section provides the conceptual context in which a more informed discussion of a settlement for Transnistria can be grounded. It begins with an overview of different kinds of territorial disputes, the way in which they were (or were not) resolved, and where Transnistria 'fits' within this spectrum of stakes and remedies. This will provide the foundation for the following two sections in which I first examine past settlement proposals and then sketch out a possible settlement for Transnistria taking account of the competing claims and preferences of the different parties involved.

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<sup>9</sup> Two excellent earlier studies on Russian policy vis-à-vis Moldova are Litvak (1996) and Neukirch (2001). On Russia's 'neighbourhood policy' more generally, see Averre (2009) and Galbreath (2008).

<sup>10</sup> There is relatively little coverage of the Romanian dimension of the Transnistrian conflict in the English-language academic literature, but see Csergo and Goldgeier (2004), Heintz (2005), Kaufman and Bowers (1998), and Pop et al. (2005).

<sup>11</sup> At present, there are eight working groups: Economy and Trade; Health; Agriculture and Environment; Railroads; Infrastructure (roads) 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.

### 3.1 Conceptualising the Stakes in Territorial Disputes

Territorial disputes occur in principally three different forms: between sovereign states, between the government of a sovereign state and a domestic challenger, and between established entities within a sovereign state.

Territorial disputes between sovereign states normally involve a threat to the territorial integrity of one of the disputants, such as Nazi German claims to the *Sudetenland* in inter-war Czechoslovakia, Argentinean claims to the Falkland Islands, or Spanish claims to Gibraltar. In the latter two cases, the state with sovereign title to the disputed territory has staunchly, and so far successfully, defended the status quo, including by military means, whereas in the former case an international arrangement—the so-called Munich Agreement—between the Great Powers of the day (Germany, Italy, France and the United Kingdom) annexed the disputed territory to the challenger state.<sup>12</sup>

The territorial integrity of a state may also be endangered by a domestic challenger as is evident from cases in which territorially based self-determination movements demand independence, such as in past and present conflicts in Sri Lanka, Sudan, Quebec, Kosovo, and Abkhazia and South Ossetia. Here, too, outcomes differ. Sri Lanka eventually defeated the Tamil Tigers militarily; in Sudan, North and South agreed on an interim solution providing autonomy to the south for a period of time after which a referendum on its future status would be conducted which both parties vowed to accept. In Quebec, a referendum on independence was narrowly defeated and the province continues to exist as a federal entity within Canada. Kosovo, after a period of almost ten years of international administration by the UN, gained especially Western recognition of its unilateral declaration of independence in February 2008,<sup>13</sup> while in Abkhazia and South Ossetia, military confrontation between Georgia and Russia created the conditions in which the two separatist entities were able to further consolidate their separate status and achieve a modicum of international recognition of their sovereignty.<sup>14</sup>

However, often enough what is at stake is not outright independence, but rather an enhanced degree of self-governance that the self-determination movement seeks to exercise in the territory it considers its homeland. In such cases, territorial self-governance arrangements within the boundaries of an existing sovereign state are accepted as a compromise by the disputants, such as in Crimea, Gagauzia, or Aceh. Disputes between states and between states and domestic challengers can also overlap when territorially based self-determination movements do not seek independent statehood but unification with what they consider their ancestral homeland or kin-state. In some cases, such as in the Åland Islands, South Tyrol, Northern Ireland, and Republika Srpska, compromise solutions were found, occasionally with heavy-handed international mediation, that maintain the

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<sup>12</sup> Subsequent to the Munich Agreement, the two Vienna Arbitration Awards of 1938 and 1940, respectively, compelled Slovakia and Romania to cede territories to Hungary which the latter had lost under the provisions of the Treaty of Trianon in 1920 and had sought to regain ever since. The Awards were part of joint German and Italian strategy to consolidate their alliance with Hungary. In the course of the territorial settlement after the Second World War, the map of central and east-central Europe changed yet again, undoing, among others, the territorial changes mandated by the Munich Agreement and the Vienna Arbitration Awards.

<sup>13</sup> The Advisory Opinion of the International Court of Justice of July 2010 was widely hailed in Kosovo and Western capitals as legitimising Kosovo's statehood. Even if one were to accept this viewpoint (which I do not), the ICJ opinion has not translated into a wave of further recognitions: between July and November 2010, only three further countries (Honduras, Kiribati, and Tuvalu) have recognised Kosovo, and the UN at its General Assembly meeting in September 2010 urged the parties to engage in further direct negotiations to resolve outstanding issues between them.

<sup>14</sup> South Ossetia and Abkhazia are recognised by Russia, Nicaragua, Venezuela and Nauru. The two entities recognise each other, and there is reciprocal recognition with Transnistria as well.

territorial integrity of the challenged state while providing for a high degree of territorial self-governance and privileged cross-border relations with the kin-state for the self-determination movement. In others, notably the Saarland in 1935 and 1956, the disputed territory was allowed to reunite with its kin-state (Wolff 2003).

Territorial disputes between entities within a sovereign state are relatively rare, but nonetheless of significant import. For illustrative purposes, consider the cases of Brčko in Bosnia and Herzegovina, Abyei in Sudan, and Kirkuk in Iraq.

The District of Brčko was disputed between the Federation of Bosnia and Herzegovina (the Bosniak-Croat entity of the Bosnian state) and Republika Srpska, both of whom claimed the district as part of their territory. Eventually, and international arbitration ruled that Brčko be held in condominium, thus 'belonging' simultaneously to the two Entities (Republika Srpska and Federation of Bosnia and Herzegovina) but be self-governing as a unitary territory in which neither Entity exercises any authority.

In the case of Abyei, North and South Sudan struggled for years to find a compromise over the boundaries of an area that holds some of Sudan's most significant oil reserves. Eventually, both sides submitted their dispute to the Permanent Court of Arbitration in The Hague which defined the area geographically in a ruling of July 2009. The thus demarcated territory of Abyei was subsequently given the right to hold a referendum in 2011 (alongside the referendum in the South) on whether it wishes to remain with the North or join the South, and thus a potentially independent state. Until then, the territory is governed jointly by North and South, with a Southerner appointed as head of the interim administration in August 2008 and a Northerner as his deputy.

Kirkuk is an internal territorial dispute that with local, national, and regional implications (Wolff 2010). Locally, it is a dispute among Kirkuk's communities (principally Arabs, Kurds and Turkomen) grounded in their different preferences for Kirkuk's status and local governance arrangements. Nationally, while clearly not secessionist in nature and therefore not threatening the territorial integrity of Iraq as such, it is a dispute between Baghdad and Erbil over control of a resource-rich and symbolically important area of Iraq. Regional implications derive from the fact that the settlement of Kirkuk's future status will affect the broader Kurdish question in the Middle East: empowering of the Kurdistan Region in Iraq by 'winning' the territorial dispute over Kirkuk and the political and economic prize that this would entail is considered a significant threat by Iraq's neighbours Iran, Syria, and Turkey who all have their own relatively large Kurdish communities.

Seen against the background of the foregoing conceptualisation of the stakes in territorial disputes, the conflict involving Transnistria is clearly a multi-dimensional one. At its core, it revolves around the relationship between Tiraspol and Chisinau (the status and powers of Transnistria), but also concerns the very boundaries of the Transnistrian entity (does it include the city of Bender or not?) and the wider question of the territorial construction of the Moldovan state (what is the relationship between Komrat and Chisinau in a future Moldova, and between Komrat and Tiraspol?). The future territorial construction of the Moldovan state will also require considering the representation of territorial entities within the state at the centre.

### 3.2. Conceptualising the Remedies for Territorial Disputes

In light of a widespread reluctance in the international system to countenance either contested secessions or sustained violations of human and minority rights, the most prominent way in which the existing literature on conflict resolution engages with territorial disputes is through the framework of territorial self-governance (TSG) which can be defined as the legally entrenched power of territorially delimited entities within the internationally recognized boundaries of existing states to exercise public policy functions independently of other sources of authority in this state, but subject to its overall legal order.<sup>15</sup> Conceptually, this definition of TSG applies its meaning as a tool of state construction to the specific context of conflict resolution in divided societies and encompasses five distinct governance arrangements—confederation, federation, federacy, devolution, and decentralisation.

One of the shortcomings of current theoretical engagements with TSG as a mechanism for conflict resolution in divided societies is a focus on just the territorial dimension of conflict settlement. Only rarely do scholars look beyond the territorial dimension and towards a more complete package of institutions within which TSG is but one, albeit central element.<sup>16</sup> Caroline Hartzell and Matthew Hoddie, for example argue, that conflict settlements (after civil war) are the more stable the more they institutionalize power sharing across four dimensions—political, economic, military, and territorial (Hartzell and Hoddie 2003, 2007). Ulrich Schneckener reaches similar conclusions in a study that is focused on European consociational democracies (Schneckener 2002). Such specific conceptual and empirical links between consociation and federation had already been established by Arend Lijphart three decades ago, noting two crucial principles, namely that “the component units [must] enjoy a secure autonomy in organizing their internal affairs... [and] that they *all* participate in decision-making at the central level of government” (Lijphart 1979, 506). John McGarry and Brendan O’Leary also note that “some successful cases of territorial pluralism suggest that, at least with sizable nationalities, autonomy should be accompanied by consociational power sharing within central or federal institutions. Such arrangements prevent majoritarianism by the dominant nationality, and make it more likely that minorities have a stake in the state” (McGarry and O’Leary 2010, 260). This is in line with conclusions reached by Marc Weller and Stefan Wolff who argue that “autonomy can only serve in the stabilization of states facing self-determination conflicts if it is part of a well-balanced approach that draws on elements of consociational techniques, moderated by integrative policies, and tempered by a wider regional outlook” (Weller and Wolff 2005, 269).

This phenomenon of TSG arrangements occurring in combination with other conflict resolution mechanisms has been identified by several authors over the past few years.<sup>17</sup> Analytically, it is possible to explain both why such multi-dimensional institutional arrangements emerge and why they might have a greater chance of success. Empirically, there is some evidence of their sustainability, as well as a relatively large number of more recent cases in which such arrangements

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<sup>15</sup> The definition of self-governance has been adapted from Wolff and Weller (2005). The same definition is used in Csergo and Wolff (2009).

<sup>16</sup> This is also apparent in the standard critiques of TSG as a conflict management strategy. Cf., among others, Bunce (1999); Bunce and Watts (2005); Cornell (2002); Hale (2000; 2004); Nordlinger (1972); Roeder (1991, 2007); Snyder (2000); Suberu (1993); Treisman (1997, 2007).

<sup>17</sup> Cf. Kettley, Sullivan and Fyfe (2001), Weller (2008b), Wolff (2009a, 2009b, forthcoming). These authors refer to the phenomenon, albeit in somewhat different ways, as ‘complex power sharing’. O’Leary (2005a) uses the term ‘complex consociation’. Hartzell and Hoddie (2007) conceptualize it as ‘highly institutionalized negotiated settlement’.

have been the outcome of negotiated settlements, even though they are too recent to assess their longer-term success.

Leaving aside the rather more trivial condition that TSG is only of real benefit to minorities that live territorially concentrated,<sup>18</sup> two characteristics are particularly important in determining the likelihood of a combination of TSG arrangements with power-sharing institutions at the local and/or central levels of government: the degree of ethnic heterogeneity in the territorial entities to which powers and competences of self-governance are to be assigned; and their significance relative to the rest of the state. Thus, it can be expected that the settlement for a territorial entity characterized by politically salient ethnic (or another identity-based form of) heterogeneity would exhibit local power-sharing institutions, whereas a more homogeneous one might not—compare Brussels to the Flemish region, the Federation of Bosnia and Herzegovina to Republika Srpska, or Northern Ireland to the Åland Islands. The institution of local power-sharing mechanisms, i.e., within the self-governing entity, also addresses one frequent criticism and potential flaw of TSG arrangements—that they empower a local majority to the disadvantage of one or more local minorities either creating new conflict within the entity or, if the local minority is a state-wide dominant group, destabilizes the TSG arrangement as the central government (out of concern for its ethnic or religious kin) might want to abrogate or delimit the powers of the TSG, seeing them as being abused to discriminate against other population groups.<sup>19</sup>

As far as power sharing at the level of the central government is concerned, the most likely structural predictor here is the significance of the self-governing territory (or territories) relative to the rest of the state. Such significance can arise from geographic and population size, natural resource availability, strategic location, and cultural importance. Power-sharing institutions at the centre then are a reflection of the bargaining position that a given self-determination movement has—the greater that is, the more it can assert its position at the centre. Yet, elements of a carefully designed set of power-sharing institutions at the centre can also address a frequently-mentioned reservation about TSG arrangements, namely that they empower self-determination movements while weakening the central government; in other words that they create an asymmetric power relationship that privileges separatists.<sup>20</sup>

Power-sharing institutions, however, for their own success, also need to involve agreed dispute resolution mechanisms, which in turn can contribute to regulating ongoing bargaining processes between the central government and the self-governing entity in ways that maintain a political process of dispute management (rather than resurgence of violence) and enable state- and TSG-preserving outcomes (rather than state break-ups or abrogation of TSG arrangements).<sup>21</sup>

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<sup>18</sup> See, for example, Brancati (2009), McGarry, O’Leary and Simeon (2008), Treisman (Treisman 2007), and Wolff (2009b).

<sup>19</sup> This point is strongly argued by Brancati (2009). The problem can be, and frequently is, addressed qua strong state-wide human and minority rights legislation and institutions empowered to enforce it.

<sup>20</sup> This critique is often associated with the aftermath of break-up of the Soviet Union (and the disintegration of Yugoslavia). For example, Cornell (2002, 252) in his analysis of ethnic conflicts in the Caucasus argues that the “institution of autonomous regions is conducive to secessionism”, a point that Roeder (1991) made more than a decade earlier in relation to Soviet ethnofederalism and later reiterated in a broader empirical study (Roeder 2007), in line with similar findings by Hale (2000; 2004) and Treisman (1997).

<sup>21</sup> Yash Ghai (2003, 187-88) observes correctly that “[a]utonomy arrangements ... also contribute to constitutionalism. The guarantees for autonomy and the modalities for their enforcement emphasize the rule of law and the role of independent institutions. The operation of the arrangements, particularly those governing the relationship between the centre and the region, being dependent on discussions, mutual respect and compromise, frequently serve to strengthen these qualities.”

Consociational power sharing in the Belgian federation, combined with the so-called alarm-bell mechanism, is one example of this. Belgium is also an instructive illustration of the notion of 'significance'. The country has three linguistic groups—French-speakers, Dutch-speakers, and German-speakers—but only the former two are large enough to warrant inclusion in central power-sharing arrangements. In the UK, none of the four devolution settlements (London, Northern Ireland, Scotland, and Wales) provide for central-level power sharing, given the predominance of England within the UK. On the other hand, the Comprehensive Peace Agreement for Sudan and the constitution of Iraq of 2005 both provide consociational institutions to include, respectively, the SPLA/M and the Kurds into decision-making at the centre, and both offer dispute resolution mechanisms, including judicial arbitration and joint committees and implementation bodies (cf. McGarry and O'Leary 2008; Ottmann and Wolff 2009; Weller 2005).<sup>22</sup>

#### 4. Towards a Settlement for Transnistria

Having outlined both the particular context of the conflict over Transnistria and having specified a framework, grounded in contemporary conflict settlement literature, these two so far separate strands of my argument can now be brought together and synthesised into a more concrete set of recommendations of how to achieve a sustainable settlement for the Transnistrian conflict. In so doing, I will focus on the kind of political-institutional relationship between Transnistria and the rest of Moldova, a relationship determined by governance arrangements and secured in domestic and international law. Based on the discussion in the preceding section, I conceive of governance arrangements as having two dimensions: where which powers are exercised (i.e., determining the levels of governance and the relationship and distribution of powers between them) and who makes what decisions and how (the institutions and mechanisms of governance). Framed in the kind of conflict settlement perspective elaborated above, resolving the territorial dispute/s that confronts the parties in the Transnistrian conflict is about determining the form of *territorial construction of the overall state* with options for self-governance ranging from confederation to federation, federacy, devolution, and decentralisation. It is further about deciding the *distribution of powers* between the centre and the disputed territory as a self-governing entity, within the framework defined by the way in which the overall state is territorially constructed, according to principles of subsidiarity, proportionality, economic efficiency, and administrative capacity. Resolving such territorial disputes also concerns the establishment of *power-sharing arrangements* at the centre.<sup>23</sup> Finally, to achieve effective and efficient government and a functioning, predictable, and stable political process it is essential that the overall set of institutional arrangements agreed by the immediate disputants also incorporates a range of *mechanisms for policy coordination and future dispute resolution*. These four dimensions of such territorial dispute settlements need to be properly entrenched in domestic and in international law.

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<sup>22</sup> The (sad) caveat here is, of course, that the formal existence of institutions does not automatically translate into their proper functioning.

<sup>23</sup> In general, power-sharing arrangements can be applied both at the centre and in the self-governing territory. Their likelihood at the centre is primarily determined by the interest structure and bargaining power of the self-governing territory, the latter is dependent on the degree of politically salient heterogeneity in the self-governing territory, i.e., the degree to which a potential conflict there can be mitigated through institutionalising power sharing. To date, there has been no demand for power sharing in Transnistria. In Gagauzia, informal arrangements are in place between communists and non-communists. A future settlement for Bender might require some power-sharing arrangements within the city administration.

In addition, as outlined in Section 2, there is a broader domestic and international context to the Transnistrian conflict and its settlement. Domestically, this includes the status of Bender and Gagauzia within Moldova; while the two key issues internationally revolve around the presence of foreign troops and Moldovan demilitarization and neutrality (the Russian dimension), as well as the possibility of Moldovan unification with Romania (the Romanian dimension). These aspects need to be factored into any calculations of designing a settlement for the conflict between Moldova and Transnistria.

With these considerations in mind, the remainder of this section has two parts. First I compare a number of influential earlier settlement proposals. Second, I outline the main elements of a possible settlement for Transnistria that takes account of both the current situation and past experiences.

#### **4.1. A Comparative Analysis of Past Settlement Proposals**

Past settlement proposals for Transnistria broadly fall into two broad categories: those that are concerned with *how* to get to a settlement<sup>24</sup> and those that are aimed at the *what* of the actual settlement provisions. It is the latter set of proposals that I shall focus on, including 'Report No. 13 of the CSCE Mission to Moldova' (1993, hereinafter 1993 CSCE Report), the 'Russian Draft Memorandum on the Basic Principles of the State Structure of a United State in Moldova' (2003, hereinafter the Kozak Memorandum), the 'Proposals and Recommendations of the Mediators from the OSCE, the Russian Federation, and Ukraine with regard to the Transdnestrian Settlement' (2004, hereinafter mediator Proposals), and the 'Plan for the Settlement of the Transdnestrian Problem' (2005, hereinafter the Ukrainian Plan, also known, respectively, as Yushchenko or Poroshenko Plan).<sup>25</sup> As required by the 2005 Ukrainian Plan,<sup>26</sup> the Parliament of Moldova passed a law 'On Fundamental Regulations of the Special Legal Status of Settlements on the Left Bank of the River Nistru (Transnistria)' on 22 July 2005 (hereinafter the Moldovan Framework Law). This law reflects the current legal framework in Moldova; subsequent attempts by the then communist-led government in Moldova to revise this law in response of the Transnistrian rejection of 'the infamous 2005 law' have not yet resulted in a new law. However, current Moldovan thinking has moved on

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<sup>24</sup> These include in chronological order the January 1996 'Joint declaration of the presidents of Moldova, the Russian Federation and Ukraine', the June 1996 'Memorandum on the bases for normalisation of relations between the Republic of Moldova and Transdnestria' (also known as the Snegur-Smirnov Agreement), the identically titled 1997 Moscow Memorandum (also known as the Primakov Memorandum) and the accompanying 'Joint statement of the Presidents of the Russian Federation and Ukraine' (1997) in this context, the 'Agreement on confidence-building measures and development of contacts between the Republic of Moldova and Transdnestria' (1998, also known as the Odessa Agreement) and the accompanying 'Joint Statement of the mediators: Russia, Ukraine and the OSCE' (1998), the 'Joint Statement of Participants in the Kiev meeting on issues of normalisation of relations between the Republic of Moldova and Transdnestria' (1999) the '3D strategy & action plan for the settlement of the Transnistrian conflict' (2004), and the 'Odessa Citizens' Initiative' (2005). In varying detail, these lay out short-, mid-, and long-term steps towards a settlement and at times its broader framework, highlighting a general commitment to respecting, in a settlement, Moldova's territorial integrity in the borders of 1992 and a commitment to exclusively peaceful means to achieve a settlement.

<sup>25</sup> These labels in reality denote somewhat different documents. The original Yushchenko Plan 'Towards a settlement through democracy' was a broad statement of seven key principles, reflecting similar ideas in the Kozak Memorandum from two years earlier. These were presented at a GUUAM meeting in Chisinau in April 2005. What then became the Ukrainian Plan examined here in greater detail is in fact a roadmap or implementation strategy for Yushchenko's seven principles drafted by the Secretary of the Ukrainian National Security and Defence Council, Petro Poroshenko, and approved by the Council, at a session chaired by Yushchenko, in May 2005.

<sup>26</sup> The relevant provisions in the plan are as follows: 'In order to establish the preconditions for restoring Moldova's territorial integrity, the Parliament of Moldova, in conformity with the provisions of the Moldovan Constitution, and acting no later than July of 2005 - shall enact the "Law on the Basic Provisions of the Status of the Transdnestrian region of the Republic of Moldova (Transdnestria)", which shall legally fix the provisions of Transdnestria's special status agreed upon earlier.'

somewhat from the 2005 Moldovan Framework Law and is captured in a 2007 package proposal for a ‘Declaration concerning principles and guarantees of the Transnistrian settlement’ and, appended to it, a ‘Draft Law on the Special Legal Status of Transnistria’ (hereinafter the Moldovan Package Proposal).<sup>27</sup> These six documents, then, reflect the breadth of current official proposals for a settlement of the conflict over Transnistria. Comparing them in detail in the following section serves two purposes: to offer an overview of existing, albeit at times contrasting, views on how best to settle the conflict, and to establish where a minimum consensus exists among these proposals. This, in turn, will form the basis of the subsequent section in which I outline a possible framework for a sustainable settlement.

#### **4.1.1. Territorial state construction**

All six of the proposals compared here envisage a territorial approach as part of an overall settlement. The 1993 CSCE Report and the 2005 Ukrainian Plan take the route of ‘special status’, the 2003 Kozak memorandum and the 2004 Mediator Proposals take that of reconstituting Moldova as a federal state with Transnistria as a federal subject. While the 1993 CSCE Report notes the need to address the status of Bender and Gagauzia,<sup>28</sup> it sees these two issues outside its mandate at the time, but nonetheless thereby implicitly acknowledges the need for some form of territorial pluralism<sup>29</sup> in Moldova. Without going into great detail, the Report makes a rather interesting proposal: dismissing the idea of a three-unit federation (Transnistria, Gagauzia, and the rest of Moldova), it suggests ‘to subdivide the country into eight to ten regions (one or two of them being Transdnistria, one the area around Bendery, another one the preponderantly Gagauz-inhabited area around Comrat)’.

The 2004 Mediator Proposals and the 2005 Ukrainian Plan make no mention of either Gagauzia or Bender but are designed in such a way that the kind of territorial pluralism hinted at in the 1993 CSCE Report is not ruled out per se.<sup>30</sup> In other words, granting Transnistria ‘special legal status’ as in the Ukrainian Plan or designating it a ‘subject of the Federal State’ as in the Mediator Proposals does not mean that there could not be other territorial entities within Transnistria with similar status.

Only the Kozak Memorandum specifically mentions Gagauzia (but notably not Bender) as a ‘subject of the federation’, but makes a crucial distinction by designating Transnistria not merely a subject of the federation but also ‘a state entity within the federation’.<sup>31</sup> While formally designating Moldova a ‘federal republic’, the Kozak Memorandum envisages only two subjects of the federation—Gagauzia

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<sup>27</sup> This 2007 Draft Law reflects the outcome of discussions with experts of the Council of Europe’s Venice Commission at a workshop hosted by EU Special Representative Kalman Mizsei on 19 December 2007 in Brussels at which the then Moldovan Minister for Reintegration, Vasile Shova, presented a draft of the law.

<sup>28</sup> The CSCE Report was published in 1993, two years before the settlement of the Gagauz conflict. In contrast to later proposals, it did therefore not have the benefit of being able to refer the Gagauzia’s special status.

<sup>29</sup> I borrow the term ‘territorial pluralism’ from John McGarry and Brendan O’Leary (McGarry and O’Leary 2010; O’Leary and McGarry 2010); see also McGarry, O’Leary and Simeon (2008).

<sup>30</sup> The Mediator Proposals, for example, note that the ‘status of each of the federal subjects is determined by the Constitution and laws of the Federal State.’

<sup>31</sup> The Ukrainian Plan refers to Transnistria as ‘a special administrative-territorial unit in the form of a republic within the Republic of Moldova’, similar to the designation of Gagauzia in the 1995 settlement. The use of the term ‘state entity’ (*государственное образование*) in the Kozak Memorandum is more ambiguous and if read in connection with the vast competences and potential veto powers gained by Transnistria under the proposals implies more of a confederal than a federal relationship.

and Transnistria—and ‘federal territory’, defined as ‘territory of the Federation outside the territory of the Subjects of the Federation.’<sup>32</sup>

The 2005 Moldovan Framework Law in relation to Transnistria, as its title suggests, refers only to Transnistria, but with two important qualifications absent in this explicit form from all other provisions. First, it defines Transnistria specifically as ‘settlements on the left bank of the River Nistru’. Second, it includes a provision to the effect that the ‘settlements on the left bank of the Nistru river can join or leave Transnistria on the basis of local referenda, carried out in accordance with the legislation of the Republic of Moldova.’ The first of these provisions excludes Bender from Transnistria, the second requires local referenda before Transnistria is properly constituted as a special-status territory. Nothing in the 2005 Moldovan Framework Law affects the existing status of Gagauzia. In terms of territorial state construction, the Moldovan proposal thus foresees a ‘double federacy’ arrangement with two self-governing territories (Transnistria and Gagauzia) within an otherwise unitary state.

This latter point is also clearly reflected in the 2007 Moldovan Package Proposal. This also defines Transnistria as ‘an administrative-territorial unit [with special legal status]<sup>33</sup> in form of a republic within the Republic of Moldova’. In contrast to the 2005 Framework Law, Transnistria’s territorial extent is not explicitly confined to settlements on the left bank of the Nistru, nor is there a requirement for local referenda to constitute Transnistria. However, the Moldovan Package Proposal requires the ‘elimination ... of the special arrangements for the functioning of the security zone ... and transfer of monitoring functions in the area to the civilian authorities of the Republic of Moldova and Transnistria’, which, at least, raises the question of the status of Bender, and quite possibly implies a Moldovan claim to restore the city to its control.

#### **4.1.2. The distribution of powers**

This issue is dealt with in relative extensive detail in three of the six past proposals. The 2005 Ukrainian Plan, and the 2005 Moldovan Framework Law which emerged from it, are rather brief. Among the seven provisions that the Ukrainian Plan lists for inclusion in the Framework Law subsequently passed by the Moldovan parliament, only four assign specific competences to Transnistria: to pass and apply its own constitution, have and use, alongside those of Moldova, its own insignia, participate in Moldovan foreign policy-making, and establish and maintain foreign relations in the economic, scientific, technical, and humanitarian spheres.<sup>34</sup> The 2005 Moldovan Framework Law also almost verbatim adopts another proposal in the Ukrainian Plan that a law, jointly drafted by a special committee of the Moldovan parliament and deputies from the Transnistrian legislature, on the Special Legal Status of the Transnistrian Region of Moldova (Transnistria) ‘shall include clauses that would divide powers and competences between the

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<sup>32</sup> McGarry and O’Leary (2010, 254) use the term ‘federacy’ for such arrangements, noting that ‘the grant of self-government is constitutionally guaranteed and cannot be revoked by the centre unilaterally’ and that it ‘normally applies to a part of the state’s territory, and normally a small part (in population)’, thus setting it apart from both devolution (lack of constitutional guarantee) and federation (application to the entire territory). Elazar (1991) defines federacy in similar terms as a relationship ‘[w]hereby a larger power and a smaller polity are linked asymmetrically in a federal relationship in which the latter has substantial autonomy and in return has a minimal role in the governance of the larger power. Resembling a federation, the relationship between them can be dissolved only by mutual agreement.’

<sup>33</sup> This bracketed phrase is only present in the Draft Law.

<sup>34</sup> The other three provisions relate to the fact that under the terms of the settlement the ‘Republic of Moldova is the sole subject of international law’, that Transnistria’s special status will take ‘the form of a republic within the Republic of Moldova’, and that ‘Transnistria’s official languages will be Moldovan, Russian, and Ukrainian.’

central authorities of the Republic of Moldova and the authorities of Transnistria'. Thus, the only pre-determined competences to be enjoyed by Transnistria according to the Moldovan Framework Law are the region's participation 'in the conduct of Moldova's foreign policy on issues affecting its interests' and its 'right to establish and maintain foreign relations in the economic, scientific, technical, and humanitarian spheres'. While absent from the CSCE Report, similar provisions were included in the Kozak Memorandum and the Mediator Proposals.

The CSCE Report, the Kozak Memorandum, and the Mediator Proposals all offer detailed lists of competences assigned to Chisinau and Tiraspol (as well as Komrat in the Kozak Memorandum), respectively. The CSCE Report and the Kozak Memorandum additionally include a list of areas of mixed jurisdiction or joint competences.

The Kozak Memorandum goes farthest in terms of empowering the federal subjects, especially if one considers that it assigns residual authority to the subjects of the federation (i.e., all competences not designated as federal or joint are automatically assigned to the subjects of the federation). A similar tendency of privileging Tiraspol vis-à-vis Chisinau, including by giving it residual authority, is apparent in the Mediator Proposals, while the CSCE Report is more cautious in this respect. The Mediator Proposals also include a specific reference to the fact that 'laws and other normative legal acts of Transdnistria must not contradict the laws of the federal state' and that 'in case of such contradictions the law of the federal state applies.'

The 2007 Moldovan Package Proposal establishes two very specific lists of powers to be enjoyed by Chisinau and Tiraspol, respectively, without, however, clearly resolving the issue of residual authority. The Moldovan Package Proposal does not foresee any joint competences. Similar to the Mediator Proposals, there is also a provision establishing the supremacy of the Moldovan constitution and legislation in cases where Transnistrian laws, including its constitution, contradict respective Moldovan law.

#### **4.1.3. Power-sharing arrangements**

None of the proposals examines options for local power sharing in Transnistria, but they all make a few suggestions considering power sharing at the centre.

The CSCE Report of 1993 was unequivocal in its assessment that 'a special status for Transnistria will not resolve every problem. In addition to it, a proportional representation of Transdnistria in the Moldovan parliament and some central key bodies (such as the top courts and some central ministries) must be assured', specifying the latter as Foreign Affairs, Defence, and Security. On the one hand, this is quite an insightful observation and proposal, reflecting a careful approach to the question of self-rule vs. shared rule in order to give Transnistria a stake in Moldova as a whole and thus balancing the potentially centrifugal dynamics of territorial self-governance alone.<sup>35</sup> On the other hand, however, doing so by merely relying on rules of representation (who makes decisions) rather than also on those of participation (how are decisions made) over-estimates the degree to which representation in central government structures and courts alone can deliver meaningful power sharing at the centre.

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<sup>35</sup> The dynamic of self-rule vs. shared rule is explored in greater detail in O'Leary (2005b). On incentivising elites from federated entities to participate in the political process at the centre, see Weller (2008a) and Weller and Wolff (2005).

Additionally, what is required, and explicitly included in the Kozak Memorandum and the Mediator Proposals, are specific rules for participation in central decision-making.<sup>36</sup> The Kozak Memorandum details both representation and participation rules: in the Senate (the upper house of the federal parliament), the distribution of seats is to be 4-9-13 for Senators elected, respectively, by the legislatures of Gagauzia and Transnistria, and by the lower house of the federal parliament, itself consisting of 71 deputies elected by a single-district PR-List system. A similar system is to be put in place for the appointment of judges to the Federal Constitutional Court—one, four and six, respectively, nominated by the three legislatures, and requiring subsequent Senate confirmation. Other representational power-sharing arrangements proposed pertain to the appointment of one deputy prime minister each from Gagauzia and Transnistria, and their proportional representation among senior ministerial officials at the federal level.

As far as the participatory dimension of power sharing in the Kozak Memorandum is concerned, significant veto powers are proposed for the subjects of the federation in two areas. Changes to the constitution require federal constitutional laws to be adopted by a two-thirds majority in the lower house and a four-fifths majority in the upper house. The appointment of officials of federal executive organs in Gagauzia and Transnistria requires the latter's consent. Otherwise, for all federal ordinary and organic laws an absolute majority of votes is required in both houses. A veto by either the Senate or the President can be overcome by a two-thirds majority in the House of Representatives. In addition, for a transitional period until 2015 the Kozak Memorandum requires decisions of the constitutional court to be carried by a majority of nine (out of eleven) judges, while the threshold for Senate approval of federal organic laws is set at three-quarters.<sup>37</sup>

The Mediator Proposals are far less detailed in its power-sharing provisions than the Kozak Memorandum and leave many regulations for further specification by federal laws, thus keeping open the possibility of both representational and participatory power sharing without specifically requiring them. Its only explicit proposals relate to the two-thirds majority necessary in both chambers of the federal parliament for the passage of constitutional laws and the three-fifths majority necessary in both chambers of the federal parliament to overcome a presidential veto, as well as a consent requirement on the part of the federal subject concerned for any change to its exclusive competences.

The Ukrainian Plan mentions something akin to power sharing only in passing in its requirement for the joint drafting of the 'Law on the Special Status of the Transdnistrian region of the Republic of Moldova' by Moldovan and Transnistrian parliamentarians. This, of course, leaves open the possibility of including relevant provisions for power sharing (in terms of representation and/or participation) into such a law.

The 2005 Moldovan Framework Law, similar to the Ukrainian Plan, mentions no other power-sharing arrangements, but does, as the Moldovan Package Proposal of 2007, include a provision according to which the final Law on the Special Legal Status of Transnistria is to be negotiated between delegations from Chisinau and Tiraspol. Both Moldovan documents link this to a requirement of

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<sup>36</sup> McGarry and O'Leary refer to this as 'joint consent across the significant communities, with the emphasis on jointness' (McGarry and O'Leary 2004, 15) 'meaningful and cross-community executive power sharing in which each significant segment is represented in the government with at least plurality levels of support within its segment' (O'Leary 2005a, 13).

<sup>37</sup> The Russian original states: "федеральные органические законы утверждаются Сенатом большинством в 3/4 голосов от установленной численности Сената".

prior democratisation in Transnistria ('alignment of the democratic standards of Transnistria to the nationwide standards of the Republic of Moldova', according to the Moldovan Package Proposal). Otherwise, the 2007 Moldovan Package Proposal goes significantly further when it comes to power-sharing arrangements. It proposes to 'set a quota for representation of Transnistria in the nationwide Parliament of the Republic of Moldova' and to have separate electoral rolls for the first two legislative terms following a settlement of the conflict. In addition, any changes to the powers assigned to Transnistria in the 2007 Moldovan Package Proposal can only take effect with the consent of the public authorities in both Transnistria and the Republic of Moldova. Finally, the Moldovan Package Proposal also mandates Transnistrian representation in the Moldovan government (the Transnistrian head of government to be *ex officio* one of the Moldovan deputy prime ministers), in the Supreme National Security Council (*ex officio* membership for the Head of Transnistria and the Chairman of the Transnistrian parliament), in the Constitutional Court, in the Supreme Court of Justice, and in the Ministry of the Interior and Prosecutor-general's office.

#### **4.1.4. Mechanisms for policy coordination and dispute resolution**

All six proposals examined here are relatively brief in this respect. The 1993 CSCE Report and the 2005 Moldovan Framework Law are completely silent on this matter. The Kozak Memorandum, while in most other aspects clearly the most detailed of the proposals, adds little on policy coordination and dispute resolution. It calls for consultation between the federal government and the governments of federal subjects in relation to international treaties potentially affecting joint competences.

The Mediator Proposals suggest the creation of federal state institutions 'for effecting coordinating procedures between the bodies of the Federal State and Transdnistria' and that disagreements between the federal state and one of its subjects over the exercise of powers should be arbitrated by the constitutional court if no other solution can be found. This role for the constitutional court is reconfirmed in the 2007 Moldovan Package Proposal.

For the implementation period of the settlement, the Mediator Proposals suggest that 'contested questions that arise shall be resolved with the assistance of the existing negotiating mechanisms and newly created conciliation mechanisms.' This latter idea of a separate conciliation mechanism recurs in the Ukrainian Plan, proposing that 'In order to facilitate the overcoming of possible disagreements over the Parties adherence to or interpretation of the Law on the Special Status of the Transdnistrian region of the Republic of Moldova (Transdnistria), a Conciliation Committee shall be set up' with the participation of two representatives each from Chisinau and Tiraspol, one from each of the mediators (Russia, Ukraine, and OSCE) and one from each of the observers (US and EU).

#### **4.1.5. The Russian dimension**

Demilitarization, neutrality, and the presence of foreign troops on Moldovan soil are the key aspects of the Russian dimension—they concern both Russian demands for the future international status and military capabilities of Moldova, as well as a continuing, albeit small, Russian military presence in Moldova outside its peacekeeping responsibilities. Except for the 2005 Ukrainian plan, all past proposals address at least some of these issues; however, not in considerable detail.

The 1993 CSCE Report considers demilitarization from both a pragmatic and a confidence-building perspective, noting that 'Moldova, unable to defend herself in any case against any of her neighbours in the purely theoretical possibility of an armed conflict, could very well live without any

significant armed forces' and emphasizing that the 'absence of any army would foster confidence in the central Government's willingness to respect the rights emanating from a special Transdnestrian status.' It also 'recommends that Russia speed up the withdrawal of her 14<sup>th</sup> Army from Moldova.'

The Kozak Memorandum, unsurprisingly, has nothing to say on the presence of Russian troops in Transnistria but defines the Federal Republic of Moldova that it proposes, amongst others, as 'neutral, demilitarized state.'

The Mediator Proposals, too, are fairly limited in their level of detail, suggesting merely that 'measures to enhance military transparency and trust are to be implemented, in particular, gradual reduction of military capacity, up to demilitarization.'

The 2005 Moldovan Framework Law says nothing about the country's future neutrality (or not), but interprets demilitarization exclusively to refer to Transnistria and the withdrawal of Russian troops from there, placing the latter in the context of Russian commitments at the 1999 OSCE Istanbul Summit. What is particularly important in this context, as it minimized from the outset any realistic chance of progress towards a settlement on the basis of this Law and went significantly beyond any stipulations in the Ukrainian Plan from which it partly draws its legitimacy, is that demilitarization and Russian withdrawal (together with fulsome democratization in Transnistria) are conditions to be met before 'the process of negotiations will go in order to develop together and pass the organic Law of the Republic of Moldova "On Special Legal Status of Transnistria".'

The Moldovan Package Proposal of 2007 explicitly refers to Moldova as a neutral and non-aligned state with no deployment of foreign military bases or facilities and specifically mentions a Russian commitment to withdrawal of troops and armaments. Additionally, there is a provision to establish 'an international mission under OSCE mandate to monitor the Parties' demilitarisation process and to assist in the creation of joint armed forces.'

#### **4.1.6. The Romanian dimension**

Apart from the 2005 Moldovan Framework Law, all other proposals examined are unanimous in offering to Transnistria an option of secession from Moldova if the latter opts to unite with Romania. According to the Kozak Memorandum, the Mediator Proposals, the Ukrainian Plan, and the 2007 Moldovan Package Proposal, this option can only be exercised following a referendum in Transnistria.

#### **4.1.7. Guarantee mechanisms**

As early as 1993, the CSCE Report acknowledged that 'Some of the Mission's interlocutors claim that "international guarantees" are needed to buttress any agreement on special status for Transdnestria' and considers that 'the conclusion of an agreement under the auspices of the CSCE could enhance the trust of both sides in its duration and reliability.' This general idea of an internationally mediated, and therefore presumably more resilient agreement later on translated into the 5+2 format in which Russia and Ukraine are not only mediators but also guarantor states. The issue of guarantees, however, is more widely reflected in subsequent proposals as well, with its notion broadened to include domestic guarantees as well.

The Kozak Memorandum foresees the status of Transnistria (and Gagauzia) as federal subjects anchored in the new constitution of Moldova. This constitutional guarantee of arrangements is further strengthened by the fact that changes to the constitution require a two-thirds majority in the lower house and a four-fifths majority in the upper house, while constitutional court decisions in the transitional period require a supporting vote from nine of the eleven judges.

The Mediator Proposals envisage 'an integrated system of guarantees for complying with and enforcing agreements' reached in the course of the settlement process. Registration of any agreements with the OSCE and depositing them with the guarantor states are seen as necessary international guarantees, while legal safeguards are envisaged (without specific detail to their nature or content) to 'provide for legislative enactment of all agreements reached as a result of the Transdnestrian settlement negotiation process.' Among the economic guarantees, the Mediator Proposals suggest 'measures of economic support and coercive measures involving economic and financial leverage on that party which does not adhere to the agreements achieved.' Military guarantees, to be implemented with the consent of the parties, are also considered necessary, especially in the form of 'an appropriate multinational military contingent and multinational unarmed observers', possibly involving the OSCE and the two guarantor states.

The Ukrainian Plan also proposes a specific system of guarantees, including the parallel legal entrenchment of Transnistria's status in the legislative order of both Moldova and Transnistria and an 'Agreement between the Republic of Moldova, the Russian Federation, Ukraine and the OSCE, regarding the guarantees of Moldova's adherence to the Law on the Special Legal Status of the Transdnestrian region of the Republic of Moldova', i.e., an international, multilateral guarantee. Perhaps most remarkably, the Ukrainian Plan includes the following final provision:

Should either of the Parties fail to adhere to the provisions of this Plan, the Russian Federation, Ukraine, and the OSCE reserve the right to take relevant international legal steps, based on commonly recognized norms and principles of international law.

As part of the guarantee mechanisms, all of these proposals also include a right of Transnistria to secede in case of Moldovan unification with Romania (specifically referred to as a 'political guarantee' in the Mediator Proposals, and as part of a 'system of guarantees' in the Ukrainian Plan).

The 2005 Moldovan Framework Law notes that 'the Law of the Republic of Moldova "On Special Legal Status of Transnistria" shall be accompanied by the adoption of a system of internal guarantees'. The 2005 Law itself requires a three-fifths majority in parliament for amendments, while the future special-status law for Transnistria will have the status of an organic law.<sup>38</sup>

The 2007 Moldovan Package Proposal, similarly, goes to some lengths to specify 'legal, political, and economic guarantees for the population of Transnistria.' Importantly, it includes a definition of guarantees as follows:

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<sup>38</sup> In the 1994 constitution, special status on the basis of organic laws was foreseen for both Gagauzia and Transnistria, and the respective laws would have required a three-fifths parliamentary majority for amendment. In 2003, the relevant Article 111 of the constitution was amended and currently only refers to Gagauzia.

By 'mechanisms of guarantee' the Parties, mediators and observers understand set of measures and documents aimed at achieving a political settlement having regard for interests of the parties to the conflict in unconditional observance of the norms and principles of international law, and respect for the sovereignty and territorial integrity of the Republic of Moldova.

According to the 2007 Package Proposal, Moldovan economic guarantees would extend to recognising and accepting Transnistrian 'economic agents' within the Moldovan legal and economic framework. Politically, Transnistria's right to secession is again specifically guaranteed. Legal guarantees are established as the future 'Law on the Special Legal Status of Transnistria', its anchoring in the Moldovan constitution, the parallel consent requirement for any changes to Transnistria's special status, and the constitutional, legislative and judicial protection for all forms of property. The Moldovan Package Proposal also offers additional guarantees for Transnistria concerning wages, pensions, and other social benefits, employment in law enforcement and judicial institutions, and reconfirms the inclusion of relevant provisions in the 'Law on the Special Legal Status of Transnistria' and the latter's anchoring in the Moldovan constitution.

#### **4.2. Elements of a Sustainable Settlement**

The past proposals for the settlement of the Transnistrian conflict discussed in the previous section offer a wide range of different mechanisms to address the multiple and complex problems involved. The purpose of examining them in the previous section was not to point out their weaknesses or analyse why they have failed to gain significant traction, but rather to identify the areas in which principal consensus exists and build on this in developing elements of a sustainable settlement; that is, offer a set of options consistent with the existing consensus (see Table 1).

##### **4.2.1. 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 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 Transnistria's 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.

As for the future status of Bender, several options could be considered. Bender could become another special-status region in Moldova, it could become formally part of Transnistria, or return to its Soviet status as a republican city. A fourth, but perhaps less likely option, would be for Bender to

gain some kind of special status within Transnistria. Resolving Bender's status along those lines could either be one aspect of the negotiation process between Chisinau and Tiraspol, or put to a local referendum, i.e., giving the population of Bender a voice and a choice in determining their city's future. There is some recent experience with the referendum option that could be drawn upon: the disputed states along the north-south dividing line in Sudan, and the disputed territories in Iraq, notably Kirkuk. In Moldova itself, the boundaries of the Gagauz autonomy were determined by local referenda in 1994, while a similar process led to the establishment (and subsequent enlargement) of the Autonomous Region of Muslim Mindanao in the Philippines.

A transitional period from the current status to that determined by a future settlement could be considered useful for Bender. In other words, if the parties decide to have the status of Bender determined by a referendum, or even if they reach agreement on it as part of their negotiations, for a transitional period the city could be administered either independently, for example by the OSCE and/or the guarantor states and/or observers, or by the Joint Control Commission. This could ensure the parties and the citizens of Bender and create conditions either for a referendum to take place and/or for a permanent arrangement to be established.

#### **4.2.2. *The distribution of powers***

All the past proposals discussed earlier recognise the importance of distributing powers clearly between state and sub-state entities, 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 (one for Chisinau and one for Tiraspol/Komrat/Bender), a multiple asymmetric federacy arrangement as proposed above would lend itself more to clearly defining the competences of the federated entities (which would be different in each case) while leaving all others (i.e., anything not specifically assigned to an entity) to the centre. This would also address the problem of residual authority, leaving it at 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 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 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 Transnistria/Gagauzia/Bender enjoys 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.

Especially if there was a transitional period from the current state of affairs to a permanent settlement, a distinction, as applied in UK devolution settlements, could also be made between devolved, reserved and excepted powers, signifying legislative competences that are enjoyed immediately by the sub-state entity (devolved), those that can be devolved at a future time (reserved), and those that are exclusive to the centre (excepted). By immediately assigning core competences to Transnistria, this would signal a commitment by both sides to a federacy arrangement, while at the same time allowing for a gradual devolution of further powers, for example in relation to developing administrative capacity.

#### **4.2.3. Power-sharing arrangements**

At the centre, 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., Transnistria/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., Transnistria/Gagauzia/Bender). This could be done on a voluntary basis, but in

order to contribute to a stable political process should only be done once at the beginning of a legislative term and be fixed for its duration. If necessary, specific arrangements could be crafted for a transitional period.

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, even though the threshold of nine out of eleven judges proposed by Kozak seems excessively high.

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.

#### ***4.2.4. Mechanisms for policy coordination and dispute resolution***

As noted above, 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. This is clearly foreseen in the Ukrainian Plan and the Moldovan Framework Law and should form part of an eventual settlement agreement.

Co-optation, already operated in the case of Gagauzia and included in the 2007 Moldovan Package Proposal, is a very 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 (also as a power-sharing mechanism) is the establishment of specific ministries or ministerial offices dealing with entity affairs at the centre, implicitly reflected in the Mediator Proposals.

These different mechanisms can be scaled up or down, including reflecting specific needs during a transitional period as deemed necessary. In particular, during these early stages of implementation of a settlement, international participation in some of these mechanisms (e.g., an international presence in the Constitutional Court) or particular bodies with international participations, such as the Conciliation Committee proposed in the Ukrainian Plan (and implicit in the Mediator Proposals).

#### **4.2.5. 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 Transnistria 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 the Russian (and in a sense the Romanian) dimension of the conflict, could easily be modified to include demilitarization and exclude constraints on a future unification of Moldova and Romania, while at the same time providing an international anchor for Moldova's sovereignty (thus emphasising that Moldova is the sole subject of international law) and territorial integrity. Under such an arrangement, to put it bluntly, Moldova would gain a Russian commitment to its sovereignty and territorial integrity in exchange for agreeing not to join NATO.

#### **4.2.6. The Romanian dimension**

Similar to what already exists in the settlement for Gagauzia and has been widely accepted in relation to Transnistria, the latter should have an option of seceding from Moldova in case of unification with Romania. If Bender were to become another federated entity within Moldova, it too should have an option to decide in a referendum at that time—whether to join Moldova in uniting with Romania or, if Transnistria opts for secession, to join Transnistria. The latter would potentially raise new questions for the status of Bender within an independent Transnistria that would be

subject to negotiation between the sides (possibly determining options before a referendum in Bender itself). In either case, independent statehood for Bender should not be an option.<sup>39</sup>

#### **4.2.7. Guarantee mechanisms**

The Transnistrian conflict has many different dimensions, all of which require specific mechanisms for their implementation and operation, some of which, in turn, will need guarantees (and guarantors) for the parties to commit to them. This need for multiple guarantees is recognised, albeit in different detail, across all proposals examined above.

From this perspective, one can think about three different types of guarantees. First, in/formal agreements, i.e., usually 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 their settlements to be entrenched 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 Transnistria 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.

While the conflict parties clearly are eager to achieve built-in or additional guarantees for any settlement and while the mediators and observers in the 5+2 process have acknowledged and accepted this, all actors also need to be realistic about what guarantees can deliver. They can promote compliance and/or deter from non-compliance with the provisions of a settlement by a variety of political means (dispute avoidance and non-judicial dispute resolution, positive and negative 'conditionality', peacekeeping) and judicial means (through constitutional and lower-order courts, as well as international courts such as the International Court of Justice, the Permanent Court

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<sup>39</sup> The way in which the Romanian dimension of the conflict is handled would have to be synchronised with the approach taken to the Russian dimension, as indicated in the previous section.

of Arbitration, or the European Court of Human Rights). However, guarantees are not an end in itself, but are there for a purpose: to make things work, to help bridge a gap in trust, to create a safe environment in which institutions can prove their worth, to offer opportunities to revisit and revise earlier agreements. In other words, guarantees can help implement and operate an agreement, they cannot replace an agreement.

## 5. Conclusion

This paper has focused on the content of a sustainable settlement for the Transnistrian conflict in Moldova. Comparing six existing proposals that reflect the breadth of current thinking among all relevant parties to the conflict, it identified areas of consensus and difference about three aspects of a future settlement (territorial state construction, power sharing, policy coordination and dispute resolution), the conflict's two external dimensions (Russian and Romanian), and the domestic and international legal entrenchment of settlement provisions (guarantee mechanisms). On this basis a proposal for a multiple asymmetric federacy arrangement was developed that would be negotiated within the current 5+2 format of talks and entrenched in domestic legislation and the constitution and in a multilateral international treaty.

While the case of the Transnistrian conflict in Moldova has many distinct features, it is not wholly unique among contemporary self-determination conflicts. Many of these involve similar territorial disputes and have implications beyond the immediate locality of the conflict, including external powers with significant stakes in the outcome. Elaborating elements of a settlement for the Transnistrian conflict in Moldova does not create a blueprint for similar conflicts elsewhere, but it can assist in conceptualising settlement frameworks and how specific issues can be addressed within them. Beyond positive local and regional implications, this is where an important part of the significance of a settlement for Transnistria lies as it helps to understand better, and deal more effectively, with the domestic and international politics of self-determination.

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

|                                   | <b>Territorial State Construction</b>  | <b>Distribution of Powers</b>   | <b>Power Sharing</b>   | <b>Policy Coordination/ Dispute Settlement</b>  | <b>Russian Dimension</b>  | <b>Romanian Dimension</b>  | <b>Guarantees</b>  |
|-----------------------------------|--|---|--|---|---|--|--|
| CSCCE Report (1993)               | <ul style="list-style-type: none"> <li>Special status for Transnistria, possibly for Bender and Gagauzia, possibly regionalised state</li> </ul> | <ul style="list-style-type: none"> <li>Exclusive and joint competences listed in detail</li> </ul>  | <ul style="list-style-type: none"> <li>Proportional representation for Transnistria in parliament, top courts and key ministries</li> </ul>  |   | <ul style="list-style-type: none"> <li>Complete demilitarization;</li> <li>Russian withdrawal</li> </ul>  | <ul style="list-style-type: none"> <li>Option for Transnistrian Secession</li> </ul> | <ul style="list-style-type: none"> <li>International guarantees, especially CSCE mediation of a agreement</li> </ul>   |
| Kozak Memorandum (2003)           | <ul style="list-style-type: none"> <li>Two federacy arrangements: Moldova-Transnistria and Moldova-Gagauzia</li> </ul>                           | <ul style="list-style-type: none"> <li>Exclusive and joint competences listed in detail;</li> <li>Residual authority with federal subjects</li> </ul> | <ul style="list-style-type: none"> <li>Pre-determined number of seats for Transnistria and Gagauzia in Constitutional Court and Senate;</li> <li>Qualified majorities in Senate and Constitutional Court during transition period</li> </ul>   | <ul style="list-style-type: none"> <li>Consultation on international treaties affecting joint competences</li> </ul>  | <ul style="list-style-type: none"> <li>Moldova as a neutral, demilitarized state</li> </ul>   | <ul style="list-style-type: none"> <li>Option for Transnistrian Secession</li> </ul> | <ul style="list-style-type: none"> <li>Constitutional entrenchment of status, combined with qualified majorities necessary for constitutional amendments</li> </ul>  |
| Mediator Proposals (2004)         | <ul style="list-style-type: none"> <li>Federal State with Transnistria as a federal subject</li> </ul>   | <ul style="list-style-type: none"> <li>Exclusive and joint competences listed in detail;</li> <li>Residual authority with federal subjects</li> </ul> | <ul style="list-style-type: none"> <li>Two-thirds majority in both houses of parliament for constitutional laws</li> </ul>   | <ul style="list-style-type: none"> <li>Federal state institutions to effect policy coordination;</li> <li>Disagreements over competences to be arbitrated by Constitutional Court;</li> <li>Disagreements over implementation to be resolved in existing negotiation format or separate conciliation mechanism</li> </ul> | <ul style="list-style-type: none"> <li>Reduction of military capacity up to demilitarization</li> </ul>   | <ul style="list-style-type: none"> <li>Option for Transnistrian Secession</li> </ul> | <ul style="list-style-type: none"> <li>Integrated system of international, domestic, economic, military and political guarantees, including enforcement mechanisms</li> </ul>  |
| Ukrainian Plan (2005)             | <ul style="list-style-type: none"> <li>Special status for Transnistria</li> </ul>  | <ul style="list-style-type: none"> <li>Division of powers to be established in organic special-status law</li> </ul>                                  | <ul style="list-style-type: none"> <li>Joint drafting of special-status law</li> </ul>   | <ul style="list-style-type: none"> <li>Conciliation Committee with international participation to resolve disputes over compliance with/ interpretation of special-status law</li> </ul>  |   | <ul style="list-style-type: none"> <li>Option for Transnistrian Secession</li> </ul> | <ul style="list-style-type: none"> <li>Domestic legal and multilateral international guarantees;</li> <li>Guarantor states and OSCE entitled to further international legal steps in case of non-compliance</li> </ul>           |
| Moldovan Framework Law (2005)     | <ul style="list-style-type: none"> <li>Special status for Transnistria</li> </ul>  | <ul style="list-style-type: none"> <li>Division of powers to be established in organic special-status law</li> </ul>                                  | <ul style="list-style-type: none"> <li>Joint drafting of special-status law</li> </ul>   |   | <ul style="list-style-type: none"> <li>Transnistrian demilitarization and Russian withdrawal as preconditions for settlement</li> </ul>   |  | <ul style="list-style-type: none"> <li>A system of internal guarantees to accompany the special-status law</li> </ul>  |
| Moldovan Package Proposals (2007) | <ul style="list-style-type: none"> <li>Special status for Transnistria</li> </ul>  | <ul style="list-style-type: none"> <li>Division of powers to be established in special-status law</li> </ul>  | <ul style="list-style-type: none"> <li>Joint drafting of special-status law</li> <li>Proportional representation for Transnistria in parliament</li> <li>Representation in government, Constitutional and Supreme Courts, Security Council, Prosecutor-General's Office and Interior Ministry</li> </ul> | <ul style="list-style-type: none"> <li>Disagreements over competences to be arbitrated by Constitutional Court</li> </ul>   | <ul style="list-style-type: none"> <li>Moldova as a neutral, non-aligned state</li> <li>Russian withdrawal</li> <li>No foreign military bases or facilities in Moldova</li> </ul> | <ul style="list-style-type: none"> <li>Option for Transnistrian Secession</li> </ul> | <ul style="list-style-type: none"> <li>A system of internal legal, political and economic guarantees</li> <li>International mission under OSCE mandate to monitor demilitarisation and creation of joint armed forces</li> </ul> |