



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 20 September 2006

CDL-JU(2006)039
Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with
THE CONSTITUTIONAL COURT OF MOLDOVA



**The Question of Sovereignty in Multi-Track Diplomacy:
The Case of Transnistria**

Speaking notes for the International Conference “*Sovereignty and State structure in pluriethnic countries*”, Kishinev, 22 – 23 September 2006

Bruno Coppieters
Vrije Universiteit Brussel

My presentation deals with the question how different negotiation tracks are dealing with a conflict on sovereignty and particularly with the conflict on the status of Transnistria. It is not my intention to give an overview of the literature on multi-track diplomacy, but rather to apply some of the ideas to be found in this literature to the Moldovan-Transnistrian conflict. But before that we can analyse the way how multi-track diplomacy operates in this particular context, we have to define the main characteristics of this conflict. It is (1) a conflict on sovereignty, (2) a conflict on identity and (3) an international conflict.

The conflict on the status of Transnistria is a conflict on sovereignty, this means an asymmetric conflict between a recognized sovereign state and a 'de facto' state, where Transnistria has the general qualifications for statehood (permanent population, defined territory, government and the capacity to enter into relations with other states) but lacks the 'de jure' recognition as a sovereign state.

The conflict on the status of Transnistria is a conflict on identity. It had originally an ethnic dimension, as it was linked to the question of the unification between Moldova and Romania and the status of the Moldovan language, but in a later stage the question of political values became more prominent (the questions of democracy, rule of law and European integration). The question of the specific identity of Transnistria is also central to discussions on political status. Some claim that Transnistria has a specific identity as a state and a nation, whereas others would only acknowledge that it has a specific regional identity.

The conflict on the status of Transnistria is an international conflict, which means among others that there is not an impartial third party mediating in the conflict. The various OSCE members involved in the mediation efforts have geopolitical interests in the conflict that are more closely linked to the position of one of the sides than to the position of the other.

Sovereignty is the overarching term in this typology, as it is related to 'security', 'justice' and to 'identity'.¹ Sovereignty is a condition for the provision of security to a society and for the distribution of justice in the domestic realm. Sovereignty has furthermore to be based on a specific national identity, and has to be internationally recognized to be fully realized. As a consequence of having the Moldovan-Transnistrian conflict defined in the first place as a conflict on sovereignty, most of what I have to say in the following about the interaction between diplomatic tracks will refer to this primary conflict characteristic.

Track-one and track-two diplomacy can be distinguished as follows²:

¹ On the difficulties to negotiate over issues of identity, justice, security and dignity see Harold Saunders, "Pre-negotiation and Circum-negotiation: Arenas of the Peace Process", in Chester Crocker et al. (eds), *Managing Global Chaos*, US Institute of Peace Press, Washington DC, 1996, pp. 419-432 and the article summary on this chapter by Tanya Glaser, on the Internet on <http://www.colorado.edu>.

² On the following Susan Allen Nan, Track I Diplomacy, in The Conflict Resolution Information Source, Version IV, June 2003, on the Internet on <http://crinfo.beyondintractability.org/>; Diana Chigas, Track II (Citizen) Diplomacy, in The Conflict Resolution Information Source, Version IV, August 2003, on the Internet on <http://crinfo.beyondintractability.org/>.

Characteristics of Track 1:

- 1- It is conducted by official representatives (by formal authorities)
- 2 – It consists of exchange of information on respective positions in the negotiations
- 3 – The communications go directly to the decision making apparatus
- 4 – It is using means persuasively (argumentation) or coercively (sanctions for instance)
- 5 – It is output oriented

Characteristics of Track 2

- 1 – It is conducted by members of NGO's or of political organisations without representative status (this means that the participants do not have formal authority)
- 2 – The main aim is to explore new ideas and develop new strategies through dialogue and problem solving approaches
- 3 – The communication does not go exclusively to the decision making apparatus but also to public opinion at large (cfr. the concept of a 'public dialogue')
- 4 – It can only be used persuasively (argumentation) and not coercively (no sanctions for instance)
- 5 – It is process-oriented

I have been referring to two different tracks as two different ways to deal diplomatically with a conflict. But it is also possible to differentiate between three, four or even more tracks. The number of diplomatic tracks one can differentiate depends on the specific situation, but one has to be aware that each kind of differentiation will have specific political consequences for the analysis of diplomatic activities.

Much of the literature on multi-track diplomacy deals with the third track, which primarily involves NGO activities targeting the society affected by the conflict. It is more loosely connected to the first track than the second track, but third track activities may be useful for first track diplomacy, for instance in the making of a needs assessment for post-conflict rehabilitation. But more far reaching distinctions are made in literature, such as one involving separate tracks for business people or for religious groups. In the case of the cross-Strait conflict for instance, it is indispensable to study how business people in Mainland China and Taiwan interact with each other and are pressuring their authorities. In the case of Northern Ireland, it is inconceivable to analyse the conflict without addressing the way how the churches have been involved. Each of these tracks has its own resources, values and approaches. Multi-track diplomacy leads to synergy.³

In the case of the conflict on the status of Transnistria, business people do not constitute (yet) a separate track and religious groups do not play a distinct role. It may therefore be sufficient to distinguish only between three or – as I will do in the following –

³ See John . Mc Donald, Multi-Track Diplomacy, The Conflict Resolution Information Source, Version IV, September 2003, on the Internet on <http://crinfo.beyondintractability.org/>;

between two tracks in analyzing how the Moldovan-Transnistrian conflict as a conflict on sovereignty, on identity and as an international conflict is dealt with diplomatically.

The interaction between first and second track diplomacy in the Moldovan-Transnistrian conflict as a conflict on sovereignty can be described as follows:

1) - In the first track official representatives of both parties are politically equal within the OSCE mediated negotiations, but they have a different legal status within the OSCE, which leads to a certain hierarchy and to formal constraints within official negotiations. In the second track, to the contrary, the participants from both sides will in principle be considered as equal. But second tracks initiatives also depend from funding and formal constraints, which constitute constraints that will determine the kind of activities and the relationship between the parties.

2) It remains difficult to have open, informed and in depth discussions on the future political status of Transnistria within the first track diplomatic channel (cfr. the lack of open debates before the rejection of the Kozak-memorandum by the Moldovan authorities), whereas such a discussion could in principle be easier on the second track level.

3) First track discussions on political status focus on immediate results, whereas second track activities will favor long term dialogue process, without necessarily having an immediate output.

4) In the present stage of the conflict, the use of coercive means is dominant on the first track. The use of these coercive means has led to conflict escalation and a mutually hurting stalemate for Transnistria (diminishing state revenues as a result of border controls for Transnistrian exports and registration of Transnistrian companies in Kishinev) and Moldova (Russia's ban on Moldovan wine), without, however, leading to more readiness for the sides to compromise. On the second track, persuasive means are used exclusively. This may be fruitful in the search for better alternatives to coercive means on the first track.

5) First and second track efforts may conflict when for instance proposals for a peace settlement developed in the framework of track one are undermined on the second track. Moldovan NGO's have in the past been criticizing governmental federalization proposals for instance.⁴ Peace and justice are often conflicting values in diplomatic activities, where peace is then a more prominent value on track 1 level, whereas justice would rather be prominent on track 2. Track 2 participants may reject governmental peace proposals or compromises as being basically unjust.

The interaction between first and second track diplomacy in the Moldovan-Transnistrian conflict as an identity conflict can be described as follows: Identity questions

⁴ I am not dealing here with the question if this criticism is justified or not. Severe criticism on the Moldovan governmental proposals for a federalization was previously expressed on track 1 ½ by Moldovan constitutional experts, particularly concerning the question of the constitutionality of an agreement with 'secessionist' forces.

relate to basic needs and values and are therefore considered as more difficult to negotiate than diverging interests. Some authors even consider identity questions as non-negotiable. The Moldovan position that a peace settlement would first necessitate a regime change in Tiraspol would confirm such a thesis. On the first track, the question of democratization of the Transnistrian regime has indeed led to deadlock in the negotiations. But differing perceptions, distrust and fears can become the themes of an open dialogue on the second track. The involvement of a greater number of actors from each party also favors an open and differentiated articulation of various perspectives.

The interaction between first and second track diplomacy in the Moldovan-Transnistrian conflict as an international conflict can be described as follows: The conflicting parties are unable to solve the conflict by their own means. But the external actors involved in the first track mediation efforts are themselves divided on questions of interests and identity. Second track activities are mostly organized in the European Union, with an overwhelming Western participation. There is no second track equivalent in Russia, which makes it difficult to make fully use of multi-track diplomacy to solve this conflict.