



Strasbourg, 22 November 2006

CDL-JU(2006)043
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**

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Negotiations on the reintegration of secessionist entities do not take place exclusively at the state level. NGOs, academics and other representatives of civil society can also be involved in the search for a peace settlement. The present analysis deals with how different negotiation tracks may be followed in addressing secessionist conflicts, and in particular the conflict on the status of Transnistria. It is not my intention here 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. Before we can analyse how multi-track diplomacy operates in this particular context, however, we have to define the main characteristics of the conflict. In my view, it should be defined as (1) a conflict about sovereignty, (2) a conflict about identity and (3) an international conflict. And even though they are closely interrelated, all three aspects need to be distinguished analytically.

- The conflict on the status of Transnistria is a conflict about sovereignty. It is an asymmetric contest, between a recognized sovereign state and a ‘de facto’ state, about government control over a population and a territory.² Economic interests, and especially property rights, must be seen within this political dimension.

- The conflict on the status of Transnistria is also a conflict about identity. It originally had an ethnic dimension, as it derived in part from issues arising out of the question of the unification of Moldova and Romania at the time of the dissolution of the Soviet structures and the then contested status of the Russian language, but at a later stage of the conflict the question of political values became more prominent (with the issues of democracy, the rule of law and European integration). Transnistria’s identity is also a central topic in discussions about political status. Some claim that Transnistria has its own particular identity as a state and a nation, whereas others acknowledge merely a specific regional identity. Both assessments have far-reaching consequences for the type of self-governance to be acknowledged by a peace settlement. Some of the arguments raised in debates on the future of the negotiations – such as the idea that in-depth reforms in Moldova would make reunification more attractive to the Transnistrian population, or that the “demilitarization, democratization and decriminalization” of Transnistria are preconditions for successful negotiations³ – are also related to this identity aspect.

¹ A first draft of the following paper was presented at the seminar entitled “Strengthening links between Constituencies for Constructive Conflict Settlement in Transnistria”, organized by the European Centre for Minority Issues, Flensburg, 20-23 July 2006, and at the Conference entitled “Sovereignty and State structure in pluriethnic countries”, organized by the Jurists’ Union of Moldova, the Constitutional Court of the Republic of Moldova and the European Commission for Democracy through Law (Venice Commission), Chisinau, 22-23 September 2006. I am grateful to Céline Francis, Vlada Lysenko and Nicu Popescu for their comments on this paper and to Veronica Kelly for the language corrections to the English version.

² Transnistria has the general qualifications required for statehood (a permanent population, defined territory, government and the capacity to enter into relations with other states), but it lacks ‘de jure’ international recognition as a sovereign state.

³ On ‘The 3D Strategy & Action Plan for the Settlement of the Transnistrian Conflict’, presented on 1 October 2004 by 26 Moldovan NGOs, see <http://foundation.moldova.org/pagini/eng/125>. The problem of representativeness and prospects for the democratization of the Transnistrian state are also central to the so-called Ukrainian or Yushenko plan of 16 May 2005, the Moldovan Parliament’s law on the status of Transnistria of 22 July 2005, and the 2005 Russian plan on the Transdnistrian Settlement.

As a secessionist conflict, the conflict on Transnistria is not only a domestic conflict about a state and a territory but also a conflict about international recognition, which thus has international geopolitical repercussions. Whereas Moldova regards Transnistria as being part of its territory, the authorities of Transnistria regard their relations with Chisinau as having an international character. But even though no state has recognized Transnistria's claim to constitute a sovereign and independent state, the various actors involved in the mediation efforts of the OSCE (Russia, Ukraine, the US and the EU) see this claim as having very different consequences for the type of political settlement to be achieved. In Russia's view, this claim has to be taken into account in the negotiations on Transnistria's future status, while the Western governments, on the other hand consider it null and void. Such interpretations are linked to the particular geopolitical stakes each party has in the conflict.

Sovereignty is the overarching term in the present analysis, as it is related to national identity and international security.⁴ Sovereignty takes its moral source from the popular will of a nation, and thus has to be based on a specific national identity. It is not only a condition for ensuring the security of a society, and for the administration of justice in the domestic realm – it also has the function of ensuring the security of the international community of sovereign states, and therefore has to be internationally recognized if it is to be fully effective. As a consequence of having defined the Moldovan-Transnistrian conflict primarily as a conflict about sovereignty, most of what I have to say in the following about the interaction between diplomatic tracks will refer to this aspect.

In an ideal-type distinction, track-one and track-two diplomacy display the following characteristics:⁵

Characteristics of Track 1:

- 1 The interaction takes place at the state level between official representatives.
- 2 It consists largely of an exchange of information about the respective positions in the negotiations.
- 3 Communication goes directly to the decision-making apparatus.
- 4 The means used by the parties are persuasive (argumentation) or coercive (such as sanctions).
- 5 The negotiations are output-oriented

⁴ On the difficulties of negotiating on issues of identity, justice, security and dignity, see Harold Saunders, "Prenegotiation 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 at <http://www.colorado.edu/conflict/peace/example/saun7270.htm>

⁵ For the following overview I have made use of the following papers: Susan Allen Nan, "What is Track I Diplomacy?" (1), in: Guy Burgess and Heidi Burgess (eds), *Beyond Intractability*, Conflict Research Consortium, University of Colorado, Boulder, Colorado, 2003, on the Internet at http://crinfo.beyondintractability.org/essay/track1_diplomacy/?nid=1327; Diana Chigas, "Who are Track Two Intermediaries and Diplomats?", in *ibid.*, on the Internet at http://crinfo.beyondintractability.org/essay/track2_diplomacy/?nid=1329.

Characteristics of Track 2:

- 1 The interaction takes place at the level of civil society, between individuals without formal authority (officials may participate in track two activities, but they do so in a personal capacity, without an official mandate).
- 2 The main objective is to explore new ideas, to train practitioners and develop new strategies and skills through dialogue and problem-solving approaches.
- 3 Communication does not go exclusively to the decision-making apparatus and does not serve any form of 'secret diplomacy', but is oriented towards public opinion at large. This aim is expressed through the concept of a 'public dialogue'.
- 4 The parties do not use coercive means (no sanctions, for instance) but only persuasive ones (argumentation).
- 5 The dialogue is process-oriented.

I have been referring to two different tracks as two different but complementary ways of dealing diplomatically with a conflict. But it is also possible to differentiate between three, four or even more complementary tracks.⁶

Much of the literature on multi-track diplomacy deals with a third track. This primarily involves NGO activities targeting the community affected by the conflict. Their involvement has humanitarian objectives such as alleviating the consequences of war. These efforts are only loosely connected to the first track of diplomatic activities, but third-track involvement may nevertheless be extremely useful for official diplomacy, for instance in the assessment of material needs for post-conflict rehabilitation.

Further types of differentiation between diplomatic tracks are made in the literature, such as one involving separate tracks for business people, or for religious groups. This may be highly relevant for some of the secessionist conflicts taking place in the world today. In the case of the cross-Strait conflict for instance, it is essential to study how the business communities in Mainland China and Taiwan interact with each other and how they are exerting pressure on their respective authorities to relax existing financial and other economic constraints. In Northern Ireland, the churches have been deeply involved in cross-community talks. Each of these tracks has its own resources, values and approaches.⁷

In the case of the conflict on the status of Transnistria, business communities and other professional groups do not constitute a separate track, nor do churches play a distinct role.⁸ In this case, and for the purposes of this analysis, it may be sufficient to distinguish between two tracks in analysing how the Moldovan-Transnistrian conflict, as a conflict

⁶ The number of diplomatic tracks one can differentiate depends on the particular situation, but one has to be aware that each kind of differentiation will have specific consequences for the analysis of diplomatic activities.

⁷ See John McDonald, "Multi-Track Diplomacy", in: Guy Burgess and Heidi Burgess (eds), *Beyond Intractability*, *op. cit.*, on the Internet at http://crinfo.beyondintractability.org/essay/multi-track_diplomacy/?nid=1332

⁸ The possibility that the business sector in Transnistria and Moldova might in the future emerge as a separate track in conflict resolution efforts should not be ruled out, however. At present, it is regarded as a key factor in the process of democratizing local state structures in Transnistria.

about sovereignty, a conflict about identity and an international conflict, is dealt with diplomatically.

The exact number of NGOs active in Moldova or Transnistria, and more precisely, the number of organizations involved in second-track diplomacy, are difficult to estimate, as the number of formally registered NGOs (3720 in Moldova and 650 in Transnistria)⁹ does not give any indication of the nature of their activities. Vlada Lysenko has distinguished three different periods in the history of Transnistrian NGOs.¹⁰ The characteristics of each of the periods are relevant to the potential for second-track diplomacy between the conflicting sides. During the period 1989-96 – which includes the political escalation towards civil war and the first negotiations under the auspices of the OSCE – the Transnistrian NGOs were generally supportive of the regime. They conducted activities in the social field, such as trade-union work and assistance to people with disabilities. At that time there was little interaction with Moldovan NGOs. The first independent NGOs – initiating a second period of civil-society activities, which involved second-track cooperation with Moldovan organizations – appeared in Transnistria around 1996. Their activities were partly critical of government policies and were therefore tightly controlled by the Transnistrian security services. But they managed to survive, despite often difficult circumstances. A third period in the history of civic organizations in Transnistria began in 2002, with the creation of so-called “ultra-patriotic” organizations in favour of independence.

Only a few organizations are involved in second-track diplomacy in this particular conflict. Sponsors from the US and from EU Member States, such as the United Kingdom, are active in funding activities in Transnistria.¹¹ One of the main problems encountered is that administrative formalities and political constraints makes it difficult for funders to support Transnistrian NGO activities. The European Commission, for instance, is attentive to Transnistria and wants to be flexible as a donor, but its support to Transnistrian NGOs is subject to stringent financial regulations. Contracts have to be legally valid and organizations registered by recognized authorities. The double registration of Transnistrian organizations with the authorities in both Tiraspol and Chisinau (by having so-called “mirror organizations” of Transnistrian NGOs registered in Moldova) can provide a solution in individual cases, but it does not solve the general problem which the lack of international recognition of the Transnistrian state poses for the international activities and funding of Transnistrian NGOs. External donors are, moreover, dependent on the degree of freedom allowed by the Moldovan authorities to international donors operating in Transnistria.¹²

⁹ Both figures are for 2006. The figure on Moldova was given by the Moldovan Ministry of Justice to Nicu Popescu. The figure on Transnistria was given by one of the presenters during the seminar entitled “Strengthening Links between Constituencies for Constructive Conflict Settlement in Transnistria”, organized by the European Centre for Minority Issues, Flensburg (Germany), 20-23 July 2006.

¹⁰ Vlada Lysenko, unpublished manuscript. The author is a former leader of the Transnistrian NGO “World Window”.

¹¹ Donors working in Transnistria include the Swiss Agency for Development and Cooperation, the Regional Environment Center, the US Embassy, the UK Department for International Development (DFID), the Norwegian Embassy, the National Endowment for Democracy and the Soros Foundation, according to information provided at the seminar “Strengthening Links between Constituencies for Constructive Conflict Settlement in Transnistria”, organized by the European Centre for Minority Issues, Flensburg (Germany), 20-23 July 2006.

¹² Interview by the author with a European Commission official, 27 September 2006.

Chisinau has an interest in the strengthening of civil society in Transnistria, but is wary of any form of external involvement that might in some way be regarded as reflecting international recognition of Transnistria as a separate state, or even a separate community. The Moldovan authorities are also fearful that support may be given to NGOs in Transnistria that are supportive of their own authorities and are not in favour of reunification.¹³

Despite the low level of interaction between Moldovan and Transnistrian NGOs, second-track activities remain an essential condition for successful diplomacy between the sides. As stated above, we have to distinguish between various dimensions in this conflict, related to (1) sovereignty, (2) identity and (3) the international community. When we focus on the question of sovereignty in the Moldovan-Transnistrian conflict, the following four statements can be made concerning the interaction between first- and second-track diplomacy:

- 1) In the first track, official representatives of both parties are politically equal in the negotiations being mediated by Moscow, Kiev and the OSCE, but they have a different legal status in relation to these mediators. This leads to formal constraints within the official negotiations, and to a type of hierarchical relationship between the recognized state of Moldova and the de facto state of Transnistria. In the second track, the participants from the two sides will in principle be considered equal. But second-track initiatives may also depend on funding from official sources, and thus on formal constraints, which may then determine the kind of activities undertaken and the relationship between the parties.
- 2) The negotiations on the future political status of Transnistria in the first-track diplomatic channel are closed to public scrutiny. Keeping the negotiations out of the public realm facilitates mutual compromise. Some of the elements of a settlement solution would otherwise be in danger of being rejected owing to the pressure that some radical currents within the political elites or public opinion might exert on the negotiators. Diplomats should not make the content of proposals known to the media before having discussed them with their counterparts.

Discretion about the content of negotiations is thus a diplomatic virtue. But such prudential rules should not exclude informed discussions among the parties which are open to public scrutiny. In-depth analysis and dialogue between experts about the various options in the search for a peace settlement at the second-track level can counterbalance the (inevitably detrimental) effects of secretive first-track policies. A public dialogue would, among other things, help prevent a situation where debates on political status only enter the public domain when domestic opposition to compromise solutions hardens, as was the case in Moldova with the rejection of the so-called Kozak Memorandum proposed by Russia in 2003, or during the parliamentary debates of 2005 in which led to the Moldovan law on the status of Transnistria in July of that year. In Transnistria, broad public debates about

¹³ Such fears were expressed at a conference on the democratization of Transnistria organized by the Ministry of Foreign Affairs of the Czech Republic and entitled "Roads towards the Democratization of the Transnistrian Region of the Republic of Moldova", 27 September 2006, Chisinau, Moldova.

status issues likewise seem to take place only in order to strengthen uncompromising positions. The 17 September 2006 referendum on the future status of Transnistria left no room for domestic debates on alternative positions regarding international sovereignty or integration within the Russian realm.

It is true, however, that NGO criticism may undermine track-one proposals for a peace settlement. Moldovan think-tanks and other organizations have, for instance, been criticizing governmental federalization proposals and the concept of federalism itself.¹⁴ Peace and justice are often conflicting values in mediation activities.¹⁵ Peace can constitute a more prominent value for the first track, whereas justice can be more prominent for NGOs, who then reject governmental peace proposals or compromise solutions as being basically unjust. This type of criticism of compromise solutions is a necessary ingredient of democratic, pluralist discussion on the future of the political community. In the case of the Moldovan-Transnistrian conflict, it is also a consequence of the lack of in-depth dialogue on status questions between NGOs from the two sides of the Nistru. A strengthening of track-two diplomacy would help overcome this opposition between peace and justice.

- 3) First-track diplomacy focuses largely on immediate results, whereas second-track activities will favour a long-term dialogue process, without necessarily having an immediate output. The two tracks are thus complementary.
- 4) First-track diplomacy may use both coercive and persuasive means to advance particular objectives, but the use of coercive means, unilateral steps and a lack of progress in negotiations is dominant in the present stage. The use of coercive means has led to conflict escalation and a hurting stalemate both for Transnistria (through diminishing state revenues as a result of Moldovan/Ukrainian border controls on Transnistrian goods and the obligation for Transnistrian companies to register in Chisinau) and for Moldova (Russia's ban on Moldovan wine). Such a mutually hurting stalemate has failed, however, to make the sides more ready to compromise. The exclusive use of persuasive means at the second-track level may be fruitful in designing alternatives to the different forms of coercion and unilateral steps.

When we focus on the identity question in the Moldovan-Transnistrian conflict, the interaction between first- and second-track diplomacy may be described as follows: identity issues relate to basic needs and values and are therefore considered more difficult to negotiate on than diverging interests. Some authors even go so far as to regard identity questions as non-negotiable. The position of the Moldovan Parliament, as expressed in the law of 22 July 2005 on the status of Transnistria – that a peace settlement would first necessitate a regime change in Tiraspol – illustrates such a thesis. Making the

¹⁴ I do not deal here with the question of whether or not this criticism is justified. Severe criticism of the Moldovan government's proposals for the federalization of the state was previously voiced by Moldovan constitutional experts, in particular as regards the constitutionality of an agreement with 'secessionist' forces which would lay the foundation for a unified federal state. These constitutionalists were involved, through their expertise, in first-track negotiations with their Transnistrian counterparts, in the framework of a Joint Constitutional Commission which came together for the first time in June 2003, thereby constituting a 1½ diplomatic track.

¹⁵ On the opposition between peace and justice, see the various contributions to Pierre Allan and Alexis Keller (eds), *What is a Just Peace?* Oxford, Oxford University Press, 2006.

democratization of the Transnistrian regime a precondition for political negotiations was indeed one of the main factors that led to deadlock. But differing perceptions, distrust and fears can become the themes of an open dialogue within the second track. The involvement of a larger number of players from each side also promotes an open and differentiated articulation of the various prospects.

The interaction between first- and second-track diplomacy in the Moldovan-Transnistrian conflict as an international conflict may be described as follows: the conflicting parties are unable to solve the conflict by their own means. But the external players involved in the first-track mediation efforts are themselves divided on questions of interests and identity. Such a division is not unusual for first-track diplomacy. Nor is it absent from second-track activities, as may be demonstrated by the stark contrast between the strong presence of Western NGOs and the nearly total absence of their Russian counterparts in that diplomatic field. This contrast, due largely to diverging cultural traditions in diplomacy, makes it difficult to make full use of multi-track efforts to solve this conflict.

It may be concluded from this overview that first-track and second-track diplomacy need not be mutually exclusive, and that there are a number of positive elements to be expected from second-track diplomacy in managing and resolving secessionist conflicts. It may also be concluded that these benefits do not appear to be being fully used in the case of the Transnistrian conflict. These positive elements include, first and foremost, the possibility of having an in-depth dialogue between equals on status and related issues, the exclusive use of persuasive means in the search for creative solutions, a long-term and process-oriented approach to conflict resolution, the opening of the negotiation process to public scrutiny and the involvement of international civil society.