

# ECMI ISSUE BRIEF



 EUROPEAN CENTRE  
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## **A resolvable frozen conflict? Designing a Settlement for Transnistria**

*Stefan Wolff*

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**ECMI Issue Brief # 26**

**European Centre for Minority Issues (ECMI)**

**Director: Dr. Tove H. Malloy**

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# A resolvable frozen conflict? Designing a Settlement for Transnistria

*The conflict over Transnistria is a territorial dispute in which one of the conflict parties (Transnistria) seeks independence while the other (Moldova) aims to restore its full sovereignty and territorial integrity. For close to two decades, the situation has been stagnant: a ceasefire agreement signed in 1992 in Moscow between the Russian and Moldovan presidents at the time—Yeltsin and Snegur—established a trilateral peacekeeping mission (Russia, Moldova, Transnistria) and a buffer zone along the Dniestr/Nistru River. Protected by these arrangements and an additional Russian military presence, Transnistria has developed into a de-facto state of its own, albeit without international recognition and heavily dependent on Russia.*

Stefan Wolff, November 2011

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## I. INTRODUCTION

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, over the past two years, there have been some concrete signs that external pressure for a settlement is increasing. By mid-November 2010, five meetings between the parties in the 5+2 format had taken place since the beginning of the year, and consensus had been achieved to take stock of previously signed agreements and

begin work on elaborating a system of guarantees for a future settlement. Also during 2010, tangible progress to improve relations between the parties had been made, including in the areas of railway transportation (re-opening of the Chisinau-Tiraspol-Odessa line), export procedures (especially for products of 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 the German-Russian Meseberg initiative to reinvigorate actual negotiations remains current, its latest offshoot being a German ‘non-paper’ presented to the parties at the informal 5+2 talks in Moscow in June 2011. 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. Another high-level OSCE conference took place in early September 2011 in Bad Reichenhall, followed by a meeting between Moldovan Prime Minister Vlad Filat and Transnistrian President Igor Smirnov, and the first gathering of a Conflict Resolution Taskforce on Moldova co-sponsored by the Carnegie Endowment for International Peace and the Friedrich Ebert Foundation.

While there is gradually some more focus on the content of a potential conflict settlement, overwhelmingly among the 5+2 the main concern is with the process of a settlement, and specifically with a resumption of official negotiations. Even if these were to re-start soon, they would not in and of themselves constitute actual progress toward a settlement, as major impediments remain. The main obstacles at present are the political instability in Moldova, including within the governing coalition and upcoming presidential elections in Transnistria and Russia. The uncertainty deriving from these will most likely give way to greater clarity over the next 12 to 18 months, a period that is crucial to prepare all sides for substantive and eventually conclusive negotiations. With this in mind, the following observations are meant to contribute to developing concrete proposals for a conflict settlement for Transnistria. Following a brief overview of the core issues around which the conflict has evolved, I analyse a range of existing proposals that reflect the Moldovan, Russian/Transnistrian, and Mediators' positions to date. On that basis, I suggest a framework in which these proposals, and the relative consensus they exhibit, can be accommodated.

## **II. BACKGROUND: CONFLICT ISSUES IN TRANSNISTRIA**

In its core parameters, the conflict over Transnistria is not unique, and similar conflicts have been resolved successfully in the past. This experience suggests that any attempt to break the continuing deadlock and move toward a sustainable settlement short of recognising

Transnistria's independence has to provide a framework to determine the relationship between Transnistria and the rest of Moldova. Such a framework needs to account for the territorial status of Transnistria within Moldova (also bearing in mind the status of the existing Gagauz Autonomous Territorial Unit and possibly the status of the city of Bender, currently located in the security zone), the distribution of powers between Chisinau and Tiraspol, and the degree to which the two sides share power at the centre. In order to ensure that any agreements are implemented and subsequently operated fully and in good faith, it will be essential to incorporate dispute resolution mechanisms into a settlement. The two key issues internationally that need to be addressed in the negotiation process are the Russian dimension of the conflict (the current and future presence of foreign troops and Moldovan demilitarization and neutrality) and the Romanian dimension (the possibility of unification with Romania). Any agreements achieved will require strong and viable guarantees in domestic and international law.

These dimensions are relatively undisputed between the parties (Moldova and Transnistria) and the mediators (OSCE, Russia, Ukraine). Yet, there have not been any formal negotiations on a settlement of the conflict for nearly half a decade. The so-called 5+2 negotiations (conflict parties, mediators, plus EU and US as observers) are only held on an informal basis at present despite growing international pressure for a resumption of formal talks has been building up considerably since the Meseberg Memorandum of June 2010. At the last informal 5+2 talks in Moscow in June 2011, the resumption of formal talks was impossible because the Transnistrian delegation did not have a formal negotiation mandate. At same time, however, a German 'non-paper', circulated among the 5+2 before the Moscow meeting and not publically available, was the first concrete proposal injected into the talks on a variety of status issues since the 2005 Ukrainian Plan. After years of focus on the settlement process, this has signalled a new sincerity internationally to move towards substantive negotiations.



### **III. 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 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: ‘Report No. 13 of the CSCE Mission to Moldova’ (1993), the ‘Russian Draft Memorandum on the Basic Principles of the State Structure of a United State in Moldova’ (2003, 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), and the ‘Plan for the Settlement of the Transdnestrian Problem’ (2005, the Yushchenko or Poroshenko Plan). As required by the 2005 Ukrainian Plan, 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. More recent Moldovan thinking 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’. Table 1 summarises the content of the existing proposals.

### **IV. THE WAY FORWARD: ELEMENTS OF A SUSTAINABLE SETTLEMENT**

The existing proposals for the settlement of the Transnistrian offer a wide range of different mechanisms to address the multiple and complex problems involved. Despite obvious differences, principal consensus exists in a number of areas and provides the foundation for

offering a set of options consistent with the existing consensus.

#### **Territorial Status**

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.

#### *The distribution of powers*

All existing proposals recognise the importance of distributing powers clearly between Chisinau and Tiraspol, but differ in the level of detail and nature of their approach. Especially in post-conflict settings, it is potentially problematic to operate with exclusive and joint competences in the way in which the CSCE Report, the Kozak Memorandum, and the Mediator Proposals do. Rather than having two lists of exclusive competences, a multiple asymmetric federacy



arrangement lends itself more to clearly defining the competences of the federated entities (which could be different for Tiraspol compared to Komrat and/or Bender) while leaving all others (i.e., anything not specifically assigned to an entity), and thus residual authority, to the centre. At the same time, it would not preclude mentioning a few specific competences for the centre (such as defence, fiscal and currency policy, citizenship) as long as this is understood as an open-ended list including all but those powers specifically assigned to an entity. This is the pattern of distributing powers in a number of comparable cases, including Belgium (e.g., Brussels), Italy (e.g., South Tyrol) and Ukraine (Crimea). In Moldova itself, this model currently applies to Gagauzia.

It is also worthwhile considering the notions of primary and secondary legislative competences, implicitly reflected in the 2004 Mediator Proposals. This distinction has its source in the legal boundaries to which they are confined. Primary legislative competences (i.e., the areas in which 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.

### Power Sharing

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

Executive power sharing is often seen as central among power-sharing arrangements and taken to include representation in the executive, in this case of representatives of the territorial entities concerned (i.e., 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).

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

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

### **Policy coordination and dispute resolution**

The existing proposals are relatively silent on this important dimension of sustainable conflict

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

In addition to conciliation mechanisms, which are normally invoked after a difference cannot be resolved in another way (but before taking the matter to a court), joint committees and implementation bodies could be established to find common interpretations for specific aspects of agreements and regulations and to coordinate the implementation of specific policies at national and regional levels, including the joint drafting of implementation legislation. Co-optation is another useful mechanism for policy coordination, ensuring that the ‘special circumstances’ of each of the federated entities would be borne in mind in the process of national law and policy-making. In addition, the Crimean example, with a Representative Office of the President of Ukraine which acts, in part, as a coordination mechanism with oversight, but no executive powers, is worthwhile considering. A further, or alternative, mechanism that might prove useful is the establishment of specific ministries or ministerial offices dealing with entity affairs at the centre, implicitly reflected in the Mediator Proposals.

### **The Russian and Romanian dimensions**

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 both the Russian and Romanian dimensions of the conflict, while at the same time providing an international anchor for Moldova’s sovereignty and territorial integrity. Under such an arrangement, Moldova would gain a Russian commitment to its sovereignty and territorial integrity in exchange for agreeing not to join NATO.

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.

### Guarantee mechanisms

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

Second, the different federated entities will all require status entrenchment in legislation and the constitution. This has already been accomplished for the status of Gagauzia: a constitutional anchoring of the status of Gagauzia as a special entity in Moldova (currently Article 111 of the constitution) and an organic law (dating back to 1995) that specifies, among other things, the competences of Gagauzia. This could be applied to settlements for 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.

### **V. CONCLUSION**

While the case of the Transnistrian conflict in Moldova has many distinct features, it is not wholly unique among contemporary intra-state territorial disputes. 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. On the basis of an analysis of existing proposals for the settlement of the conflict over Transnistria, a multiple asymmetric federacy arrangement negotiated within the current 5+2 format of talks and entrenched in domestic legislation and the constitution and in a multilateral international treaty seems a reasonable framework within which the conflict parties might agree a permanent set of institutions that fully restores Moldovan sovereignty and territorial integrity. Ultimately, however, it is up to the parties and the mediators to decide how sincere they are in moving forward to a sustainable settlement.



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

|                           | <b>Territorial Status</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>   |
|---------------------------|--|---|--|---|---|--|---|
| CSCE 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> |



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|                                      |   |  |  |   |   |  |  |
|--------------------------------------|---|--|--|---|---|--|--|
| Ukrainian Plan<br>(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<br>(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<br>(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> |



**ABOUT THE AUTHOR**

**Prof. Stefan Wolff**

International Security at the University of Birmingham, England, UK and Member of the ECMI Advisory Council

Contact: stefan@stefanwolff.com | [www.stefanwolff.com](http://www.stefanwolff.com)

**FOR FURTHER INFORMATIONSEE**

**EUROPEAN CENTRE FOR MINORITY ISSUES (ECMI)**

Schiffbruecke 12 (Kompagnietor) D-24939 Flensburg

☎ +49-(0)461-14 14 9-0 \* fax +49-(0)461-14 14 9-19 \* E-Mail: [info@ecmi.de](mailto:info@ecmi.de) \* Internet:

<http://www.ecmi.de>