

# **Report No. 13**

## **by the CSCE Mission to Moldova**

### **13 November 1993**

#### **I Summary**

This Report attempts to outline a proposal on a special status for the left-bank Dniester areas (Transdniestria; Russian; Pridnestrovie) within the Republic of Moldova as a basis for talks between both parties to the conflict.

The Mission's mandate calls for a lasting political settlement 'consolidating the independence and sovereignty of the Republic of Moldova along with an understanding about a special status for the Trans Dniester region'. The Mission considers the restoration of Moldova's territorial integrity the prime objective of its work. Due to the linguistic, historic, and partly ethnic differences between the left and the right bank of the Dniester and against the background of last year's armed conflict, the Mission considers the CSCE's call for a special status to be justified.

Transdniestria cannot successfully be governed within a centralized state. On the other hand, it cannot hope to obtain international recognition or a 'con-federalization' of Moldova, as its leadership proposed. For the definition of a special status for Transdniestria, one can look to models of territorial self rule existing in some other CSCE Participating States

The Mission proposes the setting up of a *Special Region of Transdniestria* with its own regional executive, elective assembly, and court. This status will be established by agreement between both sides and implemented by a Moldovan law. It should be guaranteed by a provision in the new constitution. The Special Region will be an integral part of the Republic of Moldova but enjoy considerable self-rule. For the distribution of power between the central authorities and the Special Region, three criteria should be observed:

- the need for one single economic, social, and legal space,
- the subsidiarity rule, favoring regional or local jurisdiction for anything not requiring central decision,
- the promotion of mutual trust.

The Mission proposes to distinguish between three categories of jurisdiction: exclusive central jurisdiction, exclusive regional jurisdiction, and mixed jurisdiction.

Exclusive central jurisdiction should include: citizenship, state emblems and anthems, foreign relations, defense (with Transdniestrian-recruited units stationed on the left bank under unified command structure, unless Moldova is demilitarized), security service, monetary policy.

Exclusive regional jurisdiction should include: self-organization within the agreed regional framework (administrative structures, regional organs, regional basic law, regional budget), regional emblems (to be used side by side with state ones), education, cultural life.

Most jurisdiction would be mixed:

- language (with the center determining the 'state language' and the Special Region determining additional regional official languages),
- finance (one tax administration with a regional branch),
- economy (basic central legislation, macro-economy centrally determined, but below that economic self-rule, with microeconomic decisions taken regionally and locally),
- police (uniformed police regional, criminal police central),
- judiciary (regional judicial branch headed by a regional high court, but subject to revision by the Moldovan Constitutional Court).

In case Moldova chooses to give up statehood in order to merge with another country, the Special Region of Transdniestria would be guaranteed the right of 'external self-determination', i.e. to determine its own future.

The Mission proposes to include a number of 'checks and balances' into the future distribution of power between the center and the region, such as the need for co-operation in the appointment of some key officials and special provisions in the military field. Since such safeguards may prove to become partly or wholly superfluous later, the Mission suggests a five-yearly bilateral revision of the initial compromise, possibly with the use of CSCE resources.

Finding a special status for Transdniestria will not solve every problem. In addition to it, a proportional representation of Transdniestria in the Moldovan Parliament and some central key bodies (such as the top courts and some central ministries) must be assured. Ethnic and linguistic minorities will have to be protected on both sides of the Dniester.

The cases of Bendery and of the area around Comrat, which is predominantly inhabited by the Gagauz, will have to be examined in order to take account of their special situation, particularly in the linguistic field. The Mission also submits a suggestion with a view to a general decentralization of Moldova, in the context of

which a region benefiting from a special status, would look less singular.

The Mission proposes CSCE participation in negotiating and concluding an agreement between the Moldovan Government and the Transdniestrian leadership.

## **II In Detail**

### **1. Territorial Integrity of Moldova**

The present division of Moldova threatens not only the territorial integrity of the country but stability in Europe as a whole. Tensions between nations, ethnicities, and ideologies have determined much of the more recent European history and led to some of the ugliest fratricidal wars. Today's national borders contain the result of century-long haggling and fighting. The stability enjoyed throughout most parts of Europe owes much to the fact that modern Europeans do not consider territorial changes an issue in international politics anymore. The efforts to increase co-operation across national borders have replaced the interest in borders themselves. The inviolability of frontiers has become one of the CSCE principles. International practice and almost all scholars agree that, in contemporary Europe, a national or ethnic right of self-determination cannot reasonably be an 'external' or 'extreme' one, i.e. cannot aim at changing international borders unilaterally.

Unfortunate exceptions have occurred on the territories of the former Yugoslavia and of the former Soviet Union. The breaking up of the Soviet Union and its replacement by Russia, eleven successor states (one of them Moldova), and the Baltic countries was followed by a revival of ethnic and other antagonisms which political wisdom has not always succeeded in dissipating. As a result, some areas, among them Transdniestria, have thought it fit to attempt secession from their post-Soviet state and the establishment of mini-'states' of their own. If this tendency prevailed, the ensuing 'atomization' of the map of Eastern Europe and the resulting lack of vitality of state entities could pose a serious threat to political stability and accelerate economic decline.

The Mission is deeply convinced that the future for this stretch of European land, situated at a crossroads between East and West, lies in a united free and democratic Moldova. The Mission, therefore, considers consolidating the independence and sovereignty of the Republic of Moldova, which will observe and protect the human rights of all its citizens, the central part of its mandate.

### **2. Why a special status?**

Since border changes are not available as a remedy, other ways must be found to diminish antagonisms and reconcile diverging interests. This is the reason why the search for a special status for Transdniestria was included in the Mission mandate by the 52 Participating States.

Despite the mandate's clarity, its call for a 'special status' for Transdniestria has again and again been questioned by some Moldovan interlocutors. The Mission has, therefore, carefully re-examined the necessity of a 'special' status, that is one differing from the constitutional condition of other parts of Moldova. After the first six months of its time here, a good amount of which was spent on the left bank, it has arrived at the conclusion that granting a special status to Transdniestria is key to a peaceful settlement of the conflict and, thus, to re-establishing the territorial integrity of Moldova. The most important reason for this is a distinct Transdniestrian feeling of identity and an apparent aversion of most Transdniestrians against being governed directly from the centre.

The voices in Chisinau denying the necessity or giving the left bank a special status often claim that there is nothing to distinguish Transdniestria from the rest of the country. They point, in particular, to the ethnic demography of the left bank (40-43 % Moldavians, 28 % Ukrainians, 26 % Russians, with a great many mixed families, intermarriage being common) to prove that Transdniestrians as such are not an ethnic minority and, therefore, deserve no special treatment.

This is only right up to a point. It is true that Moldavians form an ethnic plurality on the left bank if one distinguishes between Ukrainians and Russians. It is, however, at least equally fair to say that the Slavs among themselves hold a majority. Viewed from this angle, Moldavians in Transdniestria form an ethnic minority.

It makes little sense to dwell on this point because minorities deserving protection are not necessarily determined along ethnic lines. Article 6 of the Italian Constitution, for example, defines minorities exclusively on linguistic grounds. If one chooses to apply this criterion to Transdniestria, where Russian is not only spoken by ethnic Russians but also preferred by many (especially urban) ethnic Moldovans, Ukrainians, Bulgarians, Poles, and Jews, then Transdniestria is predominantly Russophone. If one, furthermore, adds the (preponderantly rural) Ukrainian speakers to the Russian ones, one cannot help coming to the conclusion that Romanian speakers definitely form a minority in this part of Moldova.

Some voices in Chisinau will acknowledge this situation but assess it as illegitimate. They point to past injustice under Soviet rule and in turn claim for the Moldovan state the right to impose the Romanian language on the left bank of the Dniester, where it has been preponderant only locally. While the Mission does not doubt Moldova's right to promote the use of the Romanian language, it must emphasize everybody's internationally recognized right to use his mother tongue. A policy to drive the predominantly

Russian-speaking population of Transdniestria toward assimilation would be contrary to CSCE principles, as is any attempt by Tiraspol to discriminate against Romanian speakers.

The Mission's assessment is that the Transdniestrian feeling of identity is not primarily an ethnic one because it is obviously shared not only by Slavs but also by many ethnic Moldovans. It is partly a linguistic one in that most Transdniestrians feel threatened by the exaggerated language legislation introduced by the Moldavian SSR in 1989. Yet, according to the Mission, this feeling is also nourished by several other factors, Geography (the psychologically important dividing line in the form of a river and affection for it and its landscape) is one of them. It is reinforced by a keen sense of a different history: Transdniestria was no part of the historic Bessarabia, the largest part of which became the core of the Moldavian SSR and later the Republic of Moldova. Transdniestria had already been a part of the Russian Empire before the annexation of Bessarabia by Russia. Even ethnic Moldovans there, thus, claim that they are not 'Bessarabians'. This historic difference was reinforced by a demographic development triggered by a Soviet policy of settling Russians in other Soviet republics: a considerable number of post-War settlers further increased the Transdniestrian affinity toward Russia and Ukraine.

Transdniestrian identity owes less to ideology than may appear at first sight. True, the 'Transdniestrian Moldovan Republic' ('PMR' after the Russian abbreviation) has kept many of the Soviet-communist political structures and emblems and much of the rhetoric. However, that looks more like nostalgia for a time when Transdniestria was one of the priorities of Soviet industrialization plans, rather than anything of future oriented, programmatic value. Transdniestrian politicians pursue interests other than ideological ones. The population is more interested in a better living than ideology.

In six months' work on the left bank, the Mission could not help but notice a deeply-rooted distrust of Chisinau in many unofficial Transdniestrians. The armed conflict of the summer of 1992, though in the Mission's view not unilaterally provoked by Chisinau, is widely perceived as a Moldovan attempt to solve the Transdniestrian question by force. The question also remains unanswered who committed certain terrorist attacks in Transdniestria in the spring of 1992. Transdniestrians share a marked degree of pessimism about Chisinau's willingness to compromise. 'PMR' propaganda has done much to reinforce that feeling. Anybody who spends an extended period of time on the left bank and has a chance to meet the 'man in the street' cannot help recognizing wide-spread suspicion.

Juridical authors understand by the word 'minority' a social group which, on whatever grounds (ethnic, linguistic, religious, etc.), seems to differ from the national consensus. The Mission's assessment is that a majority of Transdniestrians form in this sense, for historic, political, and linguistic reasons, a minority in Moldova. The Mission is less than convinced that the interests of this regionally concentrated minority would be adequately represented in a unitary state. It therefore considers a special status, giving Transdniestria a solid degree of self-rule, indispensable in order to convince Transdniestrians that they have a future in Moldova and to induce them in this way to give up their claims to independence. Granting a special status to Transdniestria lies in the interest of Moldovan unity.

### **3. Unitary state, autonomy, federation, confederation?**

The 52 CSCE Participating States, including Moldova, have, in reaffirming the independence and sovereignty of Moldova and requesting the Mission to work out a special status for Transdniestria, ruled out two things:

- the division of Moldova into two or more separate states either coexisting side by side or within a 'confederation'
- a Moldovan unitary state in which Transdniestria would be ruled directly from the center.

This Report, therefore, will not have to discuss the 'PMR' proposal of a 'confederation', which presupposes the existence of separate states and aims at distributing all jurisdiction among them at the expense of an only formally existing center. Nor can it attempt to please those circles in Chisinau which profess to consider Transdniestria simply another part of the country and denounce any attempt to let it benefit from a special status. It must try to develop middle-of-the-road ideas on how to re-establish the territorial integrity of Moldova by offering Transdniestrians a measurable degree of self-rule.

The question of a special status for Transdniestria merge with the ongoing debate on 'federalization' and 'autonomization'. There sometimes seems to exist more clarity on the labels than on content. 'Autonomy' its generally understood in the old Soviet sense of 'autonomous regions' and 'republics', which had little real significance under communist rule and eventually failed to prevent ethnic conflicts. 'Autonomy' is often erroneously understood as going less far than 'federalization'. Reality shows that autonomy solutions such as those in South Tyrol, the Spanish Basque Country or the Finish Aaland Islands can go as far as or even further than devolution in some federal states. Some legal scholars consider that territorial autonomy is a more desirable solution for a minority than membership in a federal state because, they claim, autonomy can offer special protective rights and guarantees which may be alien to a federal system.

Since both 'autonomy' and 'federalization' are equally unpopular words for many Moldovans, some expect 'special status' to turn out to be an *aliud*, a different thing that avoids all the objections attached to the above

words. This is not realistic. In the context of a centralized state like Moldova, 'special status' for a region must by definition entail autonomous rights, because it implies that this region is governed less directly, thus leaving more room for self-rule (autonomy).

The exercise of their 'internal right of self determination', as some scholars call it, by ethnic, linguistic, or other groups has led to important changes in the constitutional structure of some European states. Italy and Spain, while in principle sticking to the rule of centralized government, have chosen to grant varying degrees of territorial autonomy to a number of their regions (Trentino-South Tyrol, Friuli-Venezia Giulia, Aosta Valley, Sicily, Sardinia; Basque Country, Catalonia, Galicia, Navarra, Valencia, Baleares). There are two self-governing archipelagos in Scandinavia, the Aaland Islands (Finland) and the Faroe Islands (Denmark), Greenland received an autonomous status under the Danish Crown. In 1992, Ukraine agreed to a special status for the Republic of Crimea. Most of these regions (and some more in other CSCE Participating States) have their own parliaments, governments, taxing powers, a share in national taxes, and financial autonomy as well as powers of control over urban and local police, roads, regional transport, town planning, local government, agriculture, and industry.

In July 1991, a CSCE Expert Meeting on National Minorities in Geneva proposed local and autonomous administration and territorial autonomy including the establishment of legislative and executive organs stemming from free and fair elections as a mechanism for multi-ethnic cohabitation. Whether or not Transdniestria's difference is more attributable to an ethnic or some other background, it is along these lines and in the light of the above mentioned experience accumulated in other CSCE Participating States that a special status for Transdniestria can best be elaborated.

The Mission's prime concern lies in proposing a balanced distribution of power between the capital and Tiraspol which will be the essence of any special status. As to the future structures of the Moldovan state as a whole, the Mission's assessment is that it would, for purely pragmatic reasons connected with over-administration and unnecessary costs, make little sense to set up, as suggested by some, three federal states (Transdniestria, Gagauzia, and the remaining but by far largest part of the country) and to top up such an unbalanced structure with a federal government and parliament. On the other hand, it could make perfect sense to subdivide the country into eight to ten regions (one or two of them being Transdniestria, one the area around Bender, another one the preponderantly Gagauz-inhabited area around Comrat) and to transfer power from the capital to the new regional structures. Whether such a decentralized state structure should be labeled 'federal' or not, would then hopefully become a moot question.

#### **4. Distribution of power**

Against the background of the present centralized government in Moldova and the ongoing debate on the reform of local administration, further taking into account a draft agreement on the 'Basic principles for the resolution by peaceful means of the socio-political conflict in the eastern rayons of the Republic of Moldova' and a draft 'Law on the special status of the territory densely populated by the Gagauz people within the Gagauz Eri', both of which have contributed some ideas, the Mission proposes to set up, by way of an agreement implemented by a Moldovan law, a *Special Region of Transdniestria* within the Republic of Moldova. The Special Region should have its own executive, elective assembly, and court. It will be an integral part of the Republic of Moldova but enjoy considerable self-rule.

Under this proposal, Transdnistrians will not only participate in the elections of the Moldovan President and Parliament but will also elect their regional representatives. The jurisdiction to legislate for them, to try, and to govern them will be divided up between regional and central authorities. For the distribution of power, three partly conflicting criteria must be reconciled:

- the need for one single economic, social, and legal space, given the limited geographic and demographic dimensions of the country,
- the subsidiarity rule, favoring regional or local jurisdiction for everything which need not be decided at a national level,
- the promotion of mutual trust, given the background of division and armed conflict.

Having carefully studied solutions found in other CSCE Participating States in reference to the particular situation of Moldova, including Transdniestria, the Mission proposes to distinguish between three categories of jurisdiction: exclusive jurisdiction of the central authorities (state jurisdiction), exclusive jurisdiction of the Special Region of Transdniestria (regional jurisdiction), and mixed jurisdiction.

##### **a. Exclusive state jurisdiction**

i. There should only be one single (that is Moldovan) citizenship, no additional regional one. There are examples of regional citizenship added to the national one (the Aaland Islands have theirs; so have the Swiss Canton whereas the German Lander make no use of a Basic Law provision allowing for regional citizenship). However, there is little to indicate any practical value in such a duality.

ii. The Moldovan state emblems and anthem will be based on the decision of the Moldovan Parliament. (The Mission, however, reiterates its appeal to take into account the feelings of all ethnic groups in the

determination of the national emblems and anthem.) The use of the state emblems and the state anthem throughout the country will be decreed by the central authorities.

iii. Foreign relations should fall within the exclusive competence of central authorities. Foreign embassies will continue to be located exclusively in the capital, consulates accredited with the Moldovan Ministry of Foreign Affairs may be opened in Transdniestrian towns. Only the Republic of Moldova as such will have the right to entertain diplomatic and consular relations with other states. Transdniestria will have the right to foster international contacts below that level, namely in the economic and cultural field.

iv. Defense will fall within the exclusive jurisdiction of the central authorities, There is no room for two armies. This will create a problem of confidence in Transdniestria, which will have to give up its men presently under arms.

It is this Mission's conviction that Moldova, unable to defend herself in any case against any of her neighbors in the purely theoretical possibility of an armed conflict, could very well live without any significant armed forces, as some other countries do. The absence of any army would foster confidence in the central Government's willingness to respect the rights emanating from a special Transdniestrian status. The Mission asks Moldova to consider this possibility.

Should Moldova, however, insist on having her own armed forces, the following confidence-building clauses could be built in:

- Units exclusively recruited from Transdniestrians should be an integral part of the Moldovan army. They would be stationed in Transdniestria but be integrated into the state-wide command structure. Their commanders would be appointed by the Moldovan Minister of Defense with the consent of the Transdniestrian executive or elective assembly.
- The permanent stationing of other units in Transdniestria would be subject to the consent of the Transdniestrian executive or elective assembly.
- Any military exercise in Transdniestria would be previously agreed with the Transdniestrian executive authorities.

v. There is room for only one security service. It will be run by the central Government. The head of the service's Transdniestrian branch should be appointed by the Moldovan Minister of Security with the consent of the Transdniestrian executive or elective assembly.

vi. The central authorities will run Moldova's monetary policy. They will decide if and which currency Moldova should have. Money will be exclusively issued by the National Bank of Moldova. The National Bank will be the guardian of financial stability. It should be independent.

#### **b. Exclusive regional jurisdiction**

i. The Special Region of Transdniestria should, within the framework of a future agreement and Moldovan legislation on a special status, have the exclusive right to define its political organs and structures. It should, within the same framework, have the right to adopt a basic legal document (basic law) regulating the political, economic, and legal structures of the Special Region.

ii. The Special Region should, if desired, have the right to choose its own emblems. (Again, the Mission urges consensus.) The use of the regional emblems side by side with the state-wide ones will be decreed by the regional authorities.

iii. Education is a particularly disputed issue in Moldova. It is, therefore, essential that it should be a part of regional jurisdiction as far as Transdniestria is concerned. This applies to primary and secondary school education. However, the Special Region should also have the right to run a university of its own.

iv. Cultural life would clearly fall within regional jurisdiction.

v. As mentioned above, regions or ethnic groups in Europe have no recognized right to exercise an 'extreme' or 'external right of self-determination', i.e. to change international borders unilaterally. In the case of Moldova, one theoretical exception could be envisaged; a situation in which Moldova herself would choose to give up her own statehood in order to merge with Romania. The Mission recommends that Moldova should guarantee Transdniestria in such a case (but in such a case only) the 'external right of self-determination', i.e. the right to determine its own future in the moment of a Moldovan change of status. It must be a right of *territorial* self-determination. A mere 'right of personal self-determination', as proposed by some Moldovan politicians, would mean little more than the possibility to opt for another citizenship and would entail emigration for many.

The Mission would not submit this proposal if it were not deeply convinced of its necessity. The declarations made by some political forces in favor of unification with Romania as a political objective was one of the sparks igniting the attempted secession of the left bank, Transdniestria had been ruled as a part of Romania only from 1940 to 1944. The wish not to join Romania again seems strong and almost unanimous.

#### **c. Mixed Jurisdiction**

i. Language is not only one of the issues at the heart of the conflict. Solving the language problem will have a basic significance for the cohesion of Moldovan society as a whole. The Mission proposes mixed

jurisdiction for this fundamental domain:

The central authorities will have the right to determine the state-wide official language or languages. Under the legislation presently in force, Moldova has one 'state language' (Romanian, written in the Latin script) and one 'language of communication' (Russian). Unless this legislation is amended, this will apply to all of Moldova, including the left bank. Transdniestria should stop considering Romanian (written in the Latin script) a 'foreign language' and maintaining the fiction of a separate language called 'Moldavian' (written in Cyrillic).

The Special Region of Transdniestria will have the right to designate, in addition to the 'state language', regional official languages, for example Russian and Ukrainian. The regional authorities will be responsible for assuring and promoting the use of the 'state language' and the regional official languages. On the use of the 'state language', the regional executive will have to answer to the Moldovan Parliament.

This proposal implies that, with the noteworthy exception of determining the 'state language', the Moldovan 1989 Law on the Use of Languages will not be applicable in the Special Region of Transdniestria. The law aims at regulating the use of languages not only throughout the country (which is centralistic) but also throughout the society (which is a residue of totalitarian thinking). However, linguistic autonomy is at the heart of any territorial special status with a linguistic background to be found in Europe and North America. Therefore, a proposal like one made by some Moldovan politicians to merely defer the implementation of the Moldovan Language Law in Transdniestria until the year 2005 eventually aims at linguistic assimilation and fails to grasp the essence of a special status; minority issues (language is one of them) must in principle be decided at the level of the minority. Under the Mission's proposal, that is the Special Region.

ii. The 'power of the purse' lies at the center of any self-rule worth of that name. Transdniestria will, therefore, have to have its own budget, worked out by the regional executive power and voted by its elective assembly. The question is how this budget will be financed and how Transdniestria will contribute to the central budget. There are three models:

- Taxes are exclusively levied by the central Government. The regional budget is, thus, exclusively financed by direct transfers from the central Government. Disadvantages: regional distrust, high regional dependence.
- Taxes are exclusively levied by the regional financial administration. The region can, thus, independently finance its own budget. Given the comparatively high level of public revenue in Transdniestria, the Special Region would probably have to transfer contributions to the central budget up to an agreed sum. Disadvantage: central distrust, high central dependence.
- Different taxes are perceived both by a central and a regional financial administration. Disadvantages: Costs, over-administration.

The Mission favors a combination of the above elements maximizing the advantages and eliminating some of the disadvantages. It proposes one central tax administration with a regional branch whose head could be appointed by the Moldovan Minister of Finance with the consent of the regional executive or elective assembly. An agreed percentage of the regional tax revenue could be directly transferred by the regional branch to the authorities of the Special Region to finance the regional budget. The rest would be transferred to Chisinau.

iii. Given the small geographic and demographic dimensions of the country, Moldova should be a single economic and social space. The Moldovan Parliament should, therefore, have the exclusive jurisdiction to legislate on the fundamentals of economic and social life, such as property, privatization, company law, bankruptcy law, etc. There should be single civil, commercial, and criminal codes for the entire country. In other areas, the central authorities should retain sufficient legislative and executive control to assure protection of national interest (e.g. environment, industry, transport - for example on the Dniester communication, energy, social services). The regional elective assembly should have the jurisdiction to legislate on regionally significant aspects of economic life, such as the exploitation of natural resources, water, hunting, fishing, etc.

Central authorities should not directly administer the economy in Transdniestria. Within the larger framework legislated by the Moldovan Parliament on a state-wide level, the Special Region should, in principle, be left to conduct its economic affairs as independently as possible. It should have the right to directly engage in international trade and other forms of economic co-operation.

iv. To enhance mutual trust, the uniformed police in Transdniestria should be organized on a regional basis. The police commander for Transdniestria would be appointed by the Transdniestrian authorities with the consent of the Moldovan Minister of the Interior.

To increase the effectiveness of the fight against crime, the criminal police should be organized on a state-wide basis. The head of the criminal police branch in Transdniestria could be appointed by the Moldovan Minister of the Interior with the consent of the Transdniestrian executive or elective assembly.

v. In the judicial field, the Mission must weigh the advantages of unity against the need to have some

regional self-control. The judicial system will have to be centralized enough to assure the existence of one legal space. On the other hand, regional laws, must be applied by regional courts. One high judicial authority will have to interpret and enforce the future regional basic law. Also, since courts on the right bank have, as far as the Mission knows, completely switched to working in Romanian, Transdniestrian courts will have to be allowed to continue functioning in Russian.

There is the American example of having parallel vertical systems involving both federal and state courts. Applied to this country, it would, apart from the high costs involved, risk resulting in a futile competition between state and regional courts and, hence, in an undesirable degree of uncertainty of law. Therefore, it would be more appropriate to continue to have one single tier of courts. As in some federalist and autonomy models in Europe, the lower end of these courts should, in Transdniestria, be regional.

The Mission proposes a regional Transdniestrian branch of the Moldovan Judiciary. The branch should be headed by a regional high court. Above the regional high court, there should only be the Moldovan Constitutional Court and, for some purposes, the Moldovan Supreme Court. The regional high court could either restrict itself to the function of a merely regional court on regional law or also serve as a court of appeal on state law. Below it, the court structure could be the same as in the rest of Moldova.

The regional high court could have two functions:

- It would be the last regional instance on regional law. Beyond it, questions of regional law, including the regional basic law, could be sent up only to the Moldovan Constitutional Court on grounds of unconstitutionality (not of violating central statutes). Thus, the Constitutional Court would be the last instance to determine whether, for example, the regional legislature acted within its jurisdiction, which in turn could not be infringed on by the central legislature.
- The regional high court could, at the same time, serve as a court of appeal in cases concerning state law. These cases could be reviewed by the Supreme Court of Moldova.

Given their key role in safeguarding regional rights, the judges of the regional high court should be appointed by the regional authorities with the consent of the Moldovan Minister of Justice. The judges of the lower courts in Transdniestria could be appointed by the Moldovan Minister of Justice with the consent of regional authorities.

## 5. Concluding remarks

a. The Mission's proposal contains a number of 'checks and balances' which aim at giving both sides sufficient control and inducing them to co-operate closely. At present, trust is low on both sides, although there are responsible people in both leaderships who have kept in touch and think about possible solutions. The Mission's assessment is that mutual trust in Moldova is possible if reason now prevails. Certainly, the armed conflict last year spoiled a lot. At the same time, it tremendously shocked everybody involved because of its absurdity. The conflict is not purely ethnic because ethnic groups here do mix, nor is it religious. The Mission is, therefore, convinced that Moldova's wounds can heal faster than those of other parts of Europe, once a basic understanding on a *modus vivendi* in Moldova is reached and observed. If this is true, not all the 'checks and balances' put forward in this proposal will be required forever. The Mission's proposal is meant to provide a basis for effective political talks of both sides at this given moment. If a compromise is to be reached, confidence-building mechanisms (like the mutual appointments and consent to these appointments of key figures and safeguards in the military field) must be built in. In five or ten years' time, some of them may seem superfluous or cumbersome, if a compromise is acknowledged by all as successfully functioning.

The Mission, therefore, proposes to add to the above suggestions the *time factor*. The constitutional organs of the central state and of the Special Region could, with CSCE participation, jointly review a compromise every five years. In the future, more flexible ways of organizing, for example, police and defense in Transdniestria, unthinkable now, may seem perfectly appropriate. On the other hand, it goes without saying that any unilateral attempt to amend a compromise would be inadmissible.

b. The above proposal outlines a distribution of power between the central Government and a future Special Region of Transdniestria. It does not address the question of Transdniestrian representation in Chisinau. The Moldovan Parliament, Government, Constitutional Court, and Supreme Court will take basic decisions vital for the entire country, including Transdniestria. Therefore, adequate representation of the left bank in the capital must be assured.

The Mission, therefore, proposes to include in a new Moldovan constitution safeguards for adequate Transdniestrian representation in institutions like the Moldovan Parliament, the Constitutional Court, the Supreme Court, and Government administration. According to the election law of October 1993, the Moldovan Parliament will be elected on the basis of proportional representation with a state-wide four-percent threshold clause. Theoretically, this election mechanism can result in under-representation of the left bank. The new election law makes it, therefore, indispensable to reserve in the future central Parliament a proportional number of seats for Transdniestrian members. Likewise, proportional representation in the two top courts should be assured. Transdniestrians should also be satisfactorily represented in the central

Government administration, in particular in ministries like Foreign Affairs, Defense, and Security.

c. Granting a special status to Transdniestria does not tackle the issue of protecting ethnic and linguistic minorities on the right bank. In Transdniestria, it brings up the additional problem of a 'minority within the minority': how will the rights of the non-Russian speakers, namely of the ethnic Moldovan population, be safeguarded?

The Mission, therefore, recommends paying increased attention to ethnic and linguistic rights on both sides of the river, specially in education and in the public sector. Any temptation to press assimilation should be resisted.

d. The Mission's mandate includes working out a special status for Transdniestria, not for Bendery or the area around Comrat ('Gagauzia') . That is why this proposal exclusively deals with Transdniestria. The Mission does, however, not take the view that Bendery and the area around Comrat should simply be subjected to direct central rule. Both are different from the rest of the right bank linguistically and in their ethnic composition. Moreover, Bendery saw the worst part of last year's fighting. The area around Comrat equally witnessed unrest.

Therefore, the cases of Bendery and of the Comrat area will need to be examined in order to take account of their linguistic and other differences. The Mission believes that many of the suggestions submitted above could be usefully applied in both cases.

e. This report does not cover the question of the future administrative structure of Moldova. As a basis for its reflections, it assumes that Moldova will in the near future continue to be a highly centralized state, with the exception of any region covered by a special status. At the same time, the report expresses the view that it could later make sense to subdivide the country into eight to ten regions (one or two of them being Transdniestria, one Bendery, another one the Comrat area) and to transfer power from the capital to the new regional structures. The more decentralized the Moldovan state will be, the less 'special' the Transdniestrian status will look in the context. However, given the linguistic and, in part, ethnic difference between the left and the right bank, which calls for extra guarantees for Transdniestria, the Mission thinks that the Transdniestrian status will have to remain a special one even in the context of a more decentralized Moldova.

f. The Mission's mandate calls not only for an agreement on the future status of Transdniestria but, in this context, also for 'the early, orderly and complete withdrawal of foreign troops'. The Mission, therefore, recommends that Russia speed up the withdrawal of her 14th Army from Moldova.

g. Some of the Mission's interlocutors claim that 'international guarantees' are needed to buttress any agreement on a special status for Transdniestria. The Mission, therefore, offers its participation in negotiating and concluding an agreement. The Mission believes that the conclusion of an agreement under the auspices of the CSCE could enhance the trust of both sides in its duration and reliability.