



CENTRE FOR
EUROPEAN
POLICY
STUDIES

CEPS POLICY BRIEF No. 25
AUGUST 2002

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BRUNO COPPIETERS AND MICHAEL EMERSON*

The present note is a response to the invitation from Moldova to comment on the new draft agreement proposed by Russia, Ukraine and the OSCE to resolve the decade-old stand-off between Moldova and Transdniestria, following the conflict over the latter's attempted secession in 1992. It is a contribution to an open international debate over the search for a viable solution.

Summary

At a meeting in Kiev on 1-3 July 2002, the mediators for the Moldovan-Transdniestria conflict proposed, at the initiative of the OSCE, a draft agreement on the constitutional system that would regulate the distribution of competencies between Chisinau and Tiraspol. This draft agreement defines the Republic of Moldova as a “federal state”. The implementation of the agreement would be monitored and ultimately guaranteed by the Russian Federation, Ukraine and the OSCE.¹

It is to be greatly welcomed that the interested parties have reached the stage of negotiation over a full text to finally resolve a conflict in a constitutionally ordered way. It is also notable, and highly positive, that this process is now being made open and transparent. This improves the chances that the outcome will be viewed as democratically legitimate by the population, which is an important condition for its long-term viability. Under the present circumstances, the choice of a federal solution should also be welcomed as the best option for a multi-national state such as Moldova. Furthermore, the federalisation of Moldova could lead to a positive spillover effect in the frozen conflicts of the southern Caucasus.

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¹ For an in-depth analysis of this draft agreement see Vladimir Socor, ‘Federalization Experiment in Moldova’, *Russia and Eurasia Review*, Vol. 1, Issue 4, 16 July 2002, (http://russia.jamestown.org/pubs/view/rer_001_004_001.htm).

To what degree is the proposed constitutional arrangement likely to solve conflicts of competencies between the federal government and the government of Transdniestria and to provide for federal stability? This question cannot yet be answered positively, since there are some weaknesses in the draft agreement which need further attention. These are:

1. It is not clear how many subjects of the federation there would be: two (with just Transdniestria), three (with Gagauzia), or more? The answer makes a difference to what kind of federation Moldova should become, and notably symmetric or asymmetric.
2. There is an excessively long list of joint competencies, which makes future conflicts over competencies all too likely. Working with exclusive competencies would be a better choice.
3. According to the draft agreement, conflicts are primarily due to be settled by the authority of the federal level. Such an hierarchical principle is inappropriate to resolve conflicts between levels of governance that represent different national communities.
4. The role of the Presidency needs further consideration, the present proposal being overloaded with both executive and arbitrating responsibilities.
5. There is room for considering electoral methods for the parliament and presidency that would favour candidates that can mobilise support among the different ethnic communities.
6. There are no political and juridical mechanisms (such as a constitutional court) for conflict mediation or resolution in case of disputes. Existing ethno-federations provides for a whole range of constitutional mechanisms appropriate to preserve federal stability.
7. There is no mechanism for constitutional revision.
8. The list of 'guarantees' is excessively long and implausible in some cases.
9. The mechanism for how the three guarantors would work, and the nature of their authority needs to be specified. In particular there are some interesting possibilities for internalising the role of the guarantor and/or arbitrator, based on experiences of the OSCE and Council of Europe elsewhere.

Choice of a federal system

Federalism is dealing with the division of power between levels of governance. In a federation, the fields of government are vertically divided between a federal level and at least two federated entities. The federal and the federated level are

drawing their competencies directly from the constitution.² In this respect, a federation differs from a confederation, where the division of power is horizontally organised on the basis of the sovereignty of the constituent parts, and it also differs from a regionalised or decentralised system, where the division of power is only weakly developed. In a regionalised or decentralised state, the distribution of competencies may be unilaterally modified by the central level, without any kind of involvement of the regions. The mediators to the conflict on Transdnjestria have clearly opted for a federation. According to Art. 1 of the draft constitution, the “Republic of Moldova is a democratic, federal State”. This means that the division of power has to be regulated by constitutional procedures.

Ethno-federations and territorial federations

The building-blocks of ethno-federations are constituted by national communities, as a way to acknowledge the separate identity of various national identities in a single state.³ Such an arrangement differs from a territorial arrangement.⁴ A territorial type of federation does not take minority and other collective rights into account in drawing the borders between federated entities or in the distribution of competencies. The draft agreement includes ethno-federal principles in the regulation of the use of language. According to Art. 14, a distinction is made between Moldovan as a “national language” and the languages of the state-territorial entities, that may be used on their territory as “official languages”. However, the number of federated entities— described as ‘state-territorial entities’ in the draft agreement – is not specified. It clearly includes Transdnjestria. But would it also make special provision for Gagauzia, which presently has an autonomy arrangement? And for Taraclia county, with its Bulgarian population?

This lack of specification leaves the door open in theory to a mixed type of federation. The Moldovan federation might in this case include some federated units based on the principle of ethnicity, and some federated units based on the territorial principle, whose boundaries are not linked to ethnicity. The choice

² On these definitions see Bruno Coppieters, *Federalism and Conflict in the Caucasus*, London, The Royal Institute of International Affairs, 2001, pp. 6-7.

³ The various ‘national’ communities do not necessarily constitute the majority of these entities, as demonstrated by the Soviet federal example, where some of the nations constituted a minority in ‘their’ Union or Autonomous republic.

⁴ On ethno-federal and territorial types of federal arrangements see Bruno Coppieters, ‘Ethno-Federalism and Civic State-Building Policies: Perspectives on the Georgian-Abkhaz Conflict’, in *Regional and Federal Studies*, Vol. 11, No 2, pp. 74-75. Concerning the delimitation of borders between the federated units, the draft provides for a certain flexibility. According to Art. 13 of the draft agreement, “the borders of the state-territorial entities of the Republic of Moldova may be changed by their consent and that of the Republic of Moldova”.

over the nature of the federated entities is closely linked to the choice over a symmetric or asymmetric division of competencies. A symmetric distribution of powers (i.e. all federated entities have the same powers) tends to prevail in territorial federations such as Germany or the US. Symmetry may also exist in ethno-federations, as possibly in Cyprus if the current negotiations over a settlement succeed. In mixed federations, an asymmetric distribution of competencies is more common. In the case of Spain, for instance, Catalonia and the Basque Country have different competencies, in accordance with their particular historical traditions and political needs. For this reason also, the Georgian government has envisaged an asymmetric distribution of competencies in a future federal state that would include Adjara, Abkhazia and South Ossetia. Contrary to asymmetric federal designs symmetric types of power distribution are far more rigid in handling specific claims of national minorities.

The number of federated entities is also an important factor affecting the choice of symmetry versus asymmetry. According to comparative federal theory, a larger number of federated entities permits a more complex game of political alliances in a federation, which should favour compromises and stability. In the case of Moldova, where the largest national community will be dominant in any case, a multiplication of federal actors would not necessarily facilitate the integration of national minorities into the federation. This is particularly the case when the federal constitution prescribes a symmetric distribution of power. Symmetry may lead to more risks of conflict if the number of federated entities representing one single nationality increases. Moreover, it remains to be seen to what extent the limited size and population of Moldova would permit such a multiplication of federal entities. If the federated entities only included Transdniestria and Gagauzia and not other territorial regions of Moldova, the risk that a symmetric system would be de-stabilising would be lower. Nonetheless, even if the number of federated entities were kept low, it seems preferable to choose the more flexible type of an asymmetric federation.

Excessive mixed competencies

A serious risk for future conflicts between the Republic of Moldova and Transdniestria lies in the very large number of mixed competencies given to the federal and federated levels. These include (according to Article 16) the protection of individual rights; issues of property; management of land, earth, water, and other natural resources; education, science, culture and sports; social security; and principles of taxation.⁵ It will be difficult for the legislators at the

⁵ There is no clear delimitation between article 15 that defines the competencies of the federal level and article 16 that defines the joint competencies. According to article 15, for instance, the federal level has the competence to “establish the fundamentals of policy and programs in the areas of State, economic, ecological, social, cultural, and national development of the Republic of Moldova”. It is obvious that in order to apply on the federated level policies

various levels of government and for the administrations to delimit the scope of their own powers. Conflicts of competencies will unavoidably be politicised and easily escalate, threatening the unity of the federation.

The draft agreement provides that in case of conflicts between legislative levels the primacy of the federal level should be respected (Article 20). The implementation of such a hierarchical principle is not able, however, to solve political conflicts in the long term. Such a procedure will not be perceived by national minorities in Moldova as corresponding to democratic and federal principles, but as the expression of hierarchical relations between nations, where the majority principle dominates the right to internal self-determination of minority groups. This will undermine the legitimacy of a federal solution to the ethnic divisions, strengthen the secessionist potential in Transdnistria, and necessitate the permanent involvement of the external guarantors in the political decision-making on all levels of the federation.

It would be a far wiser option to reduce the number of shared competencies (and framework competencies) to the absolutely necessary minimum, and to make use instead of a model of distribution of powers based on exclusive competencies for each level of governance. As each level is drawing its powers directly from the constitution, such an option makes it possible to minimalise the hierarchical principle between national communities. It also minimalises the points of friction between governments, parliaments and administrations. And where competencies have to be shared, they can to a certain extent be subdivided in narrower sub-competencies and allocated exclusively to one level of government.

Role of the Presidency

The presidential institution, as designed by the draft proposal (Arts. 23 to 25) is a further factor that may make the integration of the various entities composing the federation more difficult. According to the draft proposal, the President, as Head of State, determines the main directions of domestic and foreign policies. He has to be elected at a joint session of both Chambers of the Parliament. He has a determining role in utilising “agreed procedures for resolving disagreements between organs of State authority of the Republic of Moldova and organs of State authority of the state-territorial entities” (Art. 24). In case no

whose principles are designed on the federal level may lead to conflictual interpretations. It is further unclear how to differentiate article 15 from article 16 in these various fields of governance without creating numerous points of friction. Article 15 is stating among others the exclusive right of the federal level to develop the “fundamentals of policy and programs’ in the areas of State, economic, ecological, social, cultural, and national development of the Republic of Moldova, whereas article 16 is stating that most of these policy fields are a matter of joint competence in their implementation.

agreement is achieved, he may forward the case to “an appropriate court”. The composition of this court is not further specified.

In the case of the ethno-federal arrangements to be found in Spain, Belgium or Bosnia, stability is partly achieved by severe limitations on the role of the Head of State. This is done by adopting the principles of a constitutional monarchy and of a parliamentary democracy (Spain and Belgium), or of a rotating Presidency (Bosnia). According to the draft proposal for Moldova, to the contrary, the President has two contradictory roles. He is both the dominating figure in the executive branch and he has an arbitrating role, in case a conflict would arise between the various levels of government. This means that the President would be the main federal actor in all conflicts arising with federated states and its main arbitrator.

It may be necessary to redefine the role of the Presidency, first of all by increasing the role of other state institutions in mediating and resolving political disputes. While there is no agreement between scholars to which extent the conflict in Transdnistria may be considered as an ethnic conflict,⁶ it is obvious that the constitution should give a maximum number of guarantees that the Presidency is not perceived as defending the sole interests of one ethnic community. Specific institutional provisions should prescribe a neutral role of the Head of State in ethnic disputes. The draft agreement for Moldova does not provide for such guarantees.

Electoral methods

The election of the president at a joint session of both Chambers of the Parliament does not exclude the election of a political figure that might not have a political interest in playing a moderating role in ethnic conflicts. There are no provisions in this draft either for electoral techniques that would favour the election of moderate figures in both chambers of Parliament. ‘Moderate’ political behaviour on the part of parliamentarians and the President may be

⁶ According to Steven D. Roper, “the linguistic concerns of the Russophone population of Transdnistria were a salient factor underlying the outbreak of conflict”, but the “pragmatic considerations of the regional elite make this conflict a regional rather than an ethnic issue.” See Steven D. Roper, *Regionalism in Moldova: The Case of Transdnistria and Gagauzia*, *Regional & Federal Studies*, Vol. 11, No 3. According to Gottfried Hanne, this conflict, “despite being known as the Transdnistrier conflict (...) is not so much regional as rather of an ideological, power-political, economic and in part ethnic nature. Gottfried Hanne, *Der Transdnistriener-Konflikt: Ursachen, Entwicklungsbedingungen und Perspektiven einer Regulierung*, *The Transdnistrier Conflict: Origins, Determinant Conditions and Prospects of Settlement*, Bericht des Bundesinstituts für Internationale und Ostwissenschaftliche Studien, No 42/1998 (20. October 1998).

achieved, for instance, by electoral techniques that favour candidates who can attract a minimum number of votes among the different national communities.⁷

Provisions for revision

In a federation, constitutional changes in the distribution of power cannot be made without the participation of both levels of governance or of the various national communities that constitute the federation. The draft agreement provides for guarantees for the preservation of the agreed distribution of power. According to Art. 8, the distribution of competencies in the federation is regulated by “the present Agreement, the Constitution and the laws of the Republic of Moldova, other agreements on delimitation of competencies and powers”. No provisions are made, however, concerning the procedures to be followed in case the distribution of competencies has to be changed. In this respect, it will be difficult to correct in-built defects of the constitutional set-up in a later stage. This is no good omen for stability, taking into consideration that other ethno-federations, such as Belgium or Spain, seem to require recurrent constitutional reforms in order to adapt the institutional framework to changing realities and compromise agreements.

Constitutional court

The present draft agreement does not provide for appropriate political and juridical institutions that would be able to manage conflicts of competencies between the levels of the federation. A constitutional court is a good alternative, assuming it is able to solve the problem of the ethnic affiliation of the judges, which might otherwise weaken the legitimacy of its rulings.⁸ A solution has been found for Bosnia and Herzegovina, where some of the judges of the constitutional court are appointed by the President of the European Court of Human Rights (which is linked to the Council of Europe).

External guarantors

The role of the three guarantors, the Russian Federation, Ukraine and the OSCE, and the nature of the guarantees, need further specification. We have no comment ourselves on who the guarantors should be, since this would be the

⁷ On this issue see the writings of Donald Horowitz.

⁸ One of the failings of the 1960 arrangement for Cyprus was precisely linked to the functioning of the Supreme Constitutional Court. The Court was composed of three Judges: one Greek Cypriot, one Turkish Cypriot and a neutral President. The President of the court was Prof. Ernest Forsthoff from Heidelberg, chosen jointly by the Greek Cypriot Republic's President and the Turkish Cypriot Vice-President. This was not sufficient to guarantee the Court's impartiality, because both Cypriot judges became soon public advocates for their community's positions. See Thomas Ehrlich, *Cyprus 1958-1967*, Oxford, Oxford University Press, 1974, pp. 41-45.

political choice of the principal parties. However their role certainly requires clarification in several respects.

First, it needs to be clarified whether the three guarantors are authorised to act individually or only jointly. We may mention the example of Cyprus, where Greece, Turkey and the United Kingdom are guarantors. In this case the procedures to guarantee domestic peace and the rules of intervention were insufficiently specified in 1960.⁹ This was one of the factors explaining the civil war and the ensuing Turkish intervention, leading to the division of the island. The same defect should not be repeated in Moldova, where it still has to be made clear which model, of individual or joint action, applies.

Second, with respect to the OSCE's role it further needs to be clear how the OSCE would be authorised to act. Normally the OSCE acts by consensus. Does this mean that the OSCE could only take position upon the unanimous agreement of all its member states? If the guarantor role could be performed by any one of the three guarantors acting alone, would this mean that either Russia or Ukraine could intervene contrary to the position of the OSCE (i.e. one or more of its member states)?

Third, it is unclear what form of action the guarantors might take. For the extensive guarantees set out in Article 36.I, II, III and IV one would expect mechanisms of implementation to be set out clearly. The terms guarantee and guarantor are very strong in the legal context of treaties. Looking at the content of these guarantees one could imagine that there would have to be a high representative, or a troika of three high representatives, entrusted with these tasks. Would the high representative(s) be granted powers of decision?

Article 34 says that all disagreements shall be settled by exclusively peaceful means. Could this mean intervention by the "peacekeeping forces under the supervision of the OSCE" mentioned in Article 36.III? In which case what does "under the supervision of the OSCE" mean? The word supervision is not precise in legal terms. Does it mean a power of decision over the forces in question, or just a role of observation and reporting to the OSCE?

Fourth, to avoid conflictual types of intervention, it is necessary to devise specific OSCE procedures for the Moldovan federation. The example mentioned above of the judges in the Bosnian Constitutional Court appointed by the

⁹ Article IV of the 1960 Treaty of Guarantee stated the following: "In the event of a breach of the provisions of the present Treaty, Greece, Turkey and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions. In so far as common or concerted action may not prove possible, each of the three guaranteeing Powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty." Ehrlich, *op. cit.*, p. 65.

President of the European Court of Human Rights provides only one of the many possible ways to internalise the role of international organisations. It may be interesting to consider the extent to which the OSCE might also provide for specific mechanisms for the resolution of intra-state conflicts of its members.¹⁰ Since the end of the 1980s, the OSCE has developed a number of procedures to resolve disputes among its members. The Court of Conciliation and Arbitration, established in 1992, binds those participating states who have agreed to it. An ad hoc Conciliation Commission or an ad hoc Arbitral Tribunal is established when requested. The OSCE Permanent Council has also a role in mediating disputes. These various alternatives show that it is possible in principle to devise particular OSCE mechanisms for intra-state disputes in Moldova, which could also give a prominent role to the two other guarantors to the conflict (Russia and Ukraine).

Fifth, some questions arise from the very different nature of the four guarantee chapters. For the political guarantees one is entering into what might usually be the competence of a constitutional court. We have already discussed the role of such a body above. One could indeed imagine a court of this type, as a complement to the role of one or more high representatives. For the economic and social policy guarantees indicated in Articles 36 II and IV it should be clear how the guarantee system would work. For example it is understandable that there should be 'equal' rights both to social benefits and human rights. The constitutional court or guarantors could make rulings over complaints that this was not being respected. Such rulings might be equivalent to rulings of the European Court of Justice within the European Union, where it is accepted that this court has supreme jurisdiction. If this type of model were to be adopted, this should be made clear. If not, there would remain question whether the term 'guarantee' is being used in a valid way.

Some other provisions are implausible subjects of 'guarantee', as or example in Article 36.I which states that "issues regarding the restoration and raising of the economy shall be solved (...)". We finally note that the role of the peacekeeping forces in Article 36.III is subject of a separate document, which we have not seen.

¹⁰ On the following, see Coppieters, *Federalism and Conflict in the Caucasus*, op. cit., pp. 51-2.

[Unofficial translation of a draft agreement between the Republic of Moldova and Transdniestria, with the Russian Federation, Ukraine and OSCE as guarantors]

AGREEMENT

The Republic of Moldova and Transdniestria, hereinafter referred to as the Parties,

Striving rapidly and comprehensively to overcome by exclusively peaceful and political means the consequences of the conflict which occurred in the Transdniestrian region of the Republic of Moldova;

Recognising the responsibility for integrating the country, for securing civil peace, trust, mutual understanding, and concord in society;
have agreed to the following:

Chapter 1. Fundamentals of the Constitutional System of the Republic of Moldova

Article 1

The Republic of Moldova is a democratic, federal State, governed by the rule of law, with a republican form of government, the policy of which is oriented toward creating conditions ensuring a decent life and free development for the individual.

Article 2

The human being, his rights and freedoms represent supreme values. The recognition, observance, and protection of human rights and rights and freedoms of the citizens are the obligation of the State.

Every citizen is guaranteed judicial protection of his/her rights and freedoms.

The decisions and actions (or lack of action) of the central authorities, local administration, public associations, and civil servants may be challenged in court.

Each citizen is entitled, in accordance with the international treaties entered into by the Republic of Moldova, to appeal to international human rights institutions, in case all domestic legal remedies have been exhausted.

Article 3

National sovereignty resides with the people of the Republic of Moldova, who are the only source of State power.

The people shall exercise their power directly and through central and local authorities.

The sovereignty of the Republic of Moldova applies on its entire territory.

The Constitution and the laws of the Republic of Moldova have supremacy on the entire territory of the Republic of Moldova.

The Republic of Moldova guarantees the territorial integrity and inalienability of its territory.

Article 4

State-territorial entities shall be established within the Republic of Moldova. They shall be entitled to have their own constitution and legislation.

The state order of the Republic of Moldova is based on its state integrity, unity of the system of State power, delimitation of competencies and powers between the State authorities of the Republic of Moldova and the authorities of the state-territorial entities of the Republic of Moldova.

In their interrelations with the central authorities of the Republic of Moldova, the state-territorial entities of the Republic of Moldova shall enjoy equal rights vis-à-vis each other.

Article 5

The citizenship of the Republic of Moldova is acquired or lost in accordance with the law and is single and equal irrespective of the bases of its acquisition.

Each citizen of the Republic of Moldova shall enjoy on its territory all the rights and freedoms and shall bear equal responsibilities as provided by the Constitution of the Republic of Moldova.

Article 6

The unity of economic space, free movement of commodities, services, and financial means, and the freedom of economic activity are guaranteed in the Republic of Moldova.

Private, State, municipal, and other types of property shall be equally recognised and protected in the Republic of Moldova.

Article 7

The legislative, executive, and judicial branches in the Republic of Moldova are separate and interact in the exercise of their prerogatives in accordance with the provisions of the Constitution.

The legislative, executive, and judicial bodies are independent.

Article 8

State power in the Republic of Moldova is exercised by the President of the Republic of Moldova, the Parliament (Chamber of Representatives and Chamber

of Legislators), the Government of the Republic of Moldova, the courts of the Republic of Moldova.

State power in the state-territorial entities of the Republic of Moldova is exercised through organs of State power to be established by them.

Delimitation of competencies and powers between the bodies of State power of the Republic of Moldova and the bodies of the state-territorial entities of the Republic of Moldova shall be realised through the present Agreement, the Constitution and the laws of the Republic of Moldova, other agreements on delimitation of competencies and powers.

Article 9

Local self-government shall be recognised and guaranteed in the Republic of Moldova. The local self-government is independent within the limits of its competencies.

Article 10

Political diversity and a multi-party system shall be recognised in the Republic of Moldova.

Chapter 2. State Order

Article 11

The territorial organization of the Republic of Moldova shall include the state-territorial entities to be established, by which is meant constitutionally bound internal self-government of a part of the State territory.

Article 12

The status of the state-territorial entities shall be determined by the present Agreement, the Constitution and the laws of the Republic of Moldova.

Their status may be modified by mutual consent of the Republic of Moldova and the state-territorial entities in accordance with the Constitution.

Article 13

The borders of the state-territorial entities of the Republic of Moldova may be changed by their consent and that of the Republic of Moldova.

Article 14

The national language on the entire territory of the Republic of Moldova is Moldovan, and its writing is based on the Latin script.

The state-territorial entities have the right to establish their own official languages. These shall be used in the bodies of State authority, local

administration, and institutions, along with the State language of the Republic of Moldova.

The Republic of Moldova guarantees the right to all people living on its territory to preserve their native language and to create conditions for its study and development.

Article 15

The Republic of Moldova shall have the following competencies:

- a. Adoption and amendment of the Constitution and the laws of the Republic of Moldova and control over their implementation;
- b. State order and the territory of the Republic of Moldova;
- c. Regulation and protection of the rights and freedoms of the individual and citizen; citizenship in the Republic of Moldova, regulation and protection of the rights of national minorities;
- d. Establishing the legislative, executive, and judicial systems, the procedures of their organisation and functioning; forming bodies of State authority;
- e. State property and its management;
- f. Establishing the fundamentals of policy and programs in the areas of State, economic, ecological, social, cultural, and national development of the Republic of Moldova;
- g. Establishing the legal bases for a unified market; financial, currency, credit, customs control regulations, money issuance, foundations of a price policy; economic agencies, including the National Bank;
- h. Republican budget, taxes and duties;
- i. Power supply systems, transport, railroads, information, and communications;
- j. Foreign policy and international relations of the Republic of Moldova, international treaties of the Republic of Moldova, matters of war and peace;
- k. Foreign economic relations of the Republic of Moldova;
- l. Defence and security; defence industry; determination of procedures for selling and buying arms, ammunition, military equipment, and other military property; production of poisonous substances, drugs, and regulations for their use;
- m. Determining the status of and protecting State borders and the airspace of the Republic of Moldova; the regime of frontier zones;
- n. Judicial system, law enforcement, criminal legislation, criminal procedural legislation, and legislation on enforcing sentences; amnesty and pardon; civil legislation, civil procedural legislation, and arbitration procedural legislation; legal regulation of intellectual property;
- o. Legal collisions;

- p. Meteorological service, standards, models, metric system, time measurement, geodesy and cartography, geographical names, official statistical registration and accounting;
- q. State awards and honorary titles of the Republic of Moldova.

Article 16

The joint competencies of the Republic of Moldova and state-territorial entities include:

- a. Ensuring that the constitutions and laws of the state-territorial entities correspond to the present Agreement, the Constitution and the laws of the Republic of Moldova;
- b. Protecting the rights and freedoms of the individual and citizen; protecting the rights of national minorities; ensuring legality and the rule of law;
- c. Issues of property, use and management of land, earth, water, and other natural resources;
- d. Delimitation of State property;
- e. Nature management; environmental protection and ecological safety; protection of natural territories; historical and cultural monuments;
- f. General issues of instruction, education, science, culture, physical training and sports;
- g. Coordinating health care issues; protection of family, motherhood, fatherhood, and childhood; social security, including welfare;
- h. Implementing measures for managing catastrophes, natural disasters, epidemics, and eradicating their consequences;
- i. Establishing common principles of taxation;
- j. Administrative, administrative procedural, labour, family, residence, land, water, forest legislation, legislation on earth resources, legislation on environmental protection;
- k. Staff of the judicial and law enforcement bodies, the Bar, Notary's Office;
- l. Establishing common principles for the organisation of the system of State authority and local self-government.

The provisions of this article shall apply to all the state-territorial entities equally.

The implementation of joint competencies and the exclusive competencies of the Republic of Moldova and the state-territorial entities as agreed by the Parties and shall proceed on a step-by-step basis.

Article 17

Beyond the limits of competencies of the Republic of Moldova and its powers in the areas of joint competency of the Republic of Moldova and the

state-territorial entities of the Republic of Moldova, the state-territorial entities of the Republic of Moldova enjoy full State power.

Article 18

The establishment of internal customs borders, taxes, duties, or any other impediments to the free movement of commodities, services, and financial recourses is forbidden on the territory of the Republic of Moldova.

Limitations to the movement of commodities and services may be introduced in accordance with the legislation of the Republic of Moldova, if necessary for security reasons, for ensuring the lives and well-being of people, for safeguarding nature and cultural values.

Article 19

The monetary unit of the Republic of Moldova is the Lei. Money issuance shall be executed solely by the National Bank of the Republic of Moldova. Introduction or issuance of other currency is forbidden in the Republic of Moldova.

Article 20

Constitutional laws shall be adopted concerning the competencies of the Republic of Moldova having direct force on the entire territory of the Republic of Moldova.

Laws of the Republic of Moldova shall be adopted, as well as laws and other normative acts of the state-territorial entities of the Republic of Moldova conforming with the former, shall be adopted, regulating the areas of joint competencies of the Republic of Moldova and the state-territorial entities.

Beyond the competencies of the Republic of Moldova, and the joint competencies of the Republic of Moldova and the state-territorial entities of the Republic of Moldova, the state-territorial entities shall execute their own legal set-up, including passing of laws and other normative legal acts.

The laws and other normative legal acts of the state-territorial entities of the Republic of Moldova shall not contradict the laws of the Republic of Moldova. In case of contradiction, the law of the Republic of Moldova shall prevail.

Article 21

The state-territorial entities shall determine the system of organs of State authority independently in accordance with the fundamentals of the constitutional system of the Republic of Moldova and the common principles of organisation of the legislative and executive branches of State authority.

Organs of executive authority of the Republic of Moldova and organs of executive authority of the state-territorial entities shall constitute one unified Executive Branch system in the Republic of Moldova.

Article 22

With a view to implementing their competencies, the organs of executive authority of the Republic of Moldova may establish their territorial organs and appoint relevant officials.

By common agreement with the organs of executive authority of the state-territorial entities, the organs of executive authority of the Republic of Moldova may delegate implementation of part of their competencies to them, if this does not contradict the present Agreement, the Constitution and the laws of the Republic of Moldova.

By common agreement with the organs of executive authority of the Republic of Moldova, organs of executive authority of the state-territorial entities may delegate implementation of part of their competencies to them.

The President of the Republic of Moldova and the Government shall ensure the implementation of State authority competencies throughout the Republic of Moldova, in accordance with the present Agreement and the Constitution of the Republic of Moldova.

Chapter 3. The President of the Republic of Moldova

Article 23

The President of the Republic of Moldova is the Head of State.

In accordance with the Constitution and the laws of the Republic of Moldova, the President shall determine the main directions of the domestic and foreign policies of the State.

Article 24

The President of the Republic of Moldova shall be elected at the joint session of both Chambers of the Parliament.

The President of the Republic of Moldova has all the rights and duties stipulated in the Constitution of the Republic of Moldova and other constitutional laws.

The President of the Republic of Moldova is entitled to suspend the effect of acts of organs of executive authority of the Republic of Moldova and of the state-territorial entities of the Republic of Moldova, in case they violate the Constitution and the laws of the Republic of Moldova, international commitments of the Republic of Moldova, or the rights and freedoms of individuals and citizens, until the issue is settled by an appropriate court of law.

The President of the Republic of Moldova may utilise agreed procedures for resolving disagreements between organs of State authority of the Republic of Moldova and organs of State authority of the state-territorial entities, and also between organs of State authority of the state-territorial entities. In the event of non-achievement of an agreement resolution, he may transfer resolution of the dispute for review by an appropriate court.

Article 25

The President of the Republic of Moldova may be removed from office by the Parliament on the basis of the Constitution of the Republic of Moldova.

A decision by the Parliament to remove the President from office requires a two thirds vote by the members of the Parliament.

Chapter 4. The Parliament of the Republic of Moldova

Article 26

The Parliament of the Republic of Moldova consists of two chambers: the Chamber of Representatives and the Chamber of Legislators. The Chamber of Representatives consists of 71 members. Its members are elected in accordance with the law, by voting based on universal, equal, direct, secret and freely expressed suffrage. The state-territorial entities are guaranteed representation in the Chamber of Legislators in proportion to the number of their voters.

The Chamber of Representatives consists of 30 members and represents the chamber of territorial representation. The state-territorial entities are represented in the Chamber by an equal number of votes.

The election of the Parliament, the organisation of its activity, and its competencies are established by the Constitution and the laws of the Republic of Moldova.

Article 27

The right to legislative initiative belongs to the President of the Republic of Moldova, the members of the Parliament, the Government of the Republic of Moldova, and the legislative authorities of the state-territorial entities of the Republic of Moldova.

Draft laws are submitted in the Chamber of Legislators.

Article 28

The laws of the Republic of Moldova are passed by the Chamber of Legislators on the basis of majority vote of the overall number of deputies of this chamber, unless the Constitution provides otherwise.

The laws passed by the Chamber of Legislators shall be submitted to the Chamber of Representatives within 14 days.

A law of the Republic of Moldova shall be considered as approved by the Chamber of Representatives if more than half of the overall number of members of this chamber voted for it or if the Chamber of Representatives fails to consider it during the 14 days. In case of disagreement by the Chamber of Legislators with the decision of the Chamber of Representatives a law shall be considered as passed if on a second ballot it receives not less than two-thirds majority of votes of the total number of members of the Chamber of Legislators.

In case the President of the Republic of Moldova rejects a law within fourteen days after its submission, the Parliament shall examine the law for a second time in accordance with the set procedure. If, under the second consideration, the law is passed in the previously adopted version, the President of the Republic of Moldova shall promulgate the law.

Article 29

Constitutional laws are passed on matters envisaged by the present Agreement and the Constitution of the Republic of Moldova. The Constitutional law is considered as passed if it is approved by two-thirds of the overall number of members of the Chamber of Legislators.

Chapter 5. The Government of the Republic of Moldova

Article 30

Executive authority of the Republic of Moldova is exercised by the Government of the Republic of Moldova. The formation, organisation of activities, and the powers of the Government are established by the Constitution and laws of the Republic of Moldova.

Chapter 6. The Judicial Authority of the Republic of Moldova

Article 31

Justice in the Republic of Moldova shall be administered by courts of law only.

The court system of the Republic of Moldova is established by the Constitution of the Republic of Moldova and its laws. Creation of extraordinary courts is forbidden.

Chapter 7. Local Self-Government in the Republic of Moldova

Article 32

The local administration guarantees independent resolution of problems of local interest by the people.

Local administration is carried out by the citizens through referenda, elections, other forms of direct expression of will, as well as through electoral and other organs of local administration.

Chapter 8. Guarantees and Transitional Provisions

Article 33

With a view to assuring guarantees for implementation and establishment of

a mechanism to fulfil the provisions of this Agreement and other documents on issues of the Transdnestrian settlement,

The Republic of Moldova and Transdnestria mutually guarantee full and unconditional implementation of agreements governing their interrelations.

Article 34

The Parties undertake not to resort to force, or to threats of the use of force, in their mutual relations.

The Parties confirm that any and all disagreements shall be settled by exclusively peaceful means, through negotiations and consultations between the Republic of Moldova and Transdnestria, with the assistance and mediation of the guarantor-states and the OSCE Mission.

Article 35

The Russian Federation, Ukraine, and the OSCE are the guarantors of the observance of provisions of the Agreement.

Article 36

The Parties agreed on applying the guarantees for fulfilling the provisions of the Agreement in the following spheres:

I. Political Guarantees

Mutual respect toward the positions of the Parties shall be ensured, as well as the non-acceptance of unilateral measures directed against other Party which could undermine its authority.

The Parties shall develop a coordinated intra-State procedure for entering into force of international documents which affect the interests of Transdnestria.

II. Economic Guarantees

During the transition period, by mutual efforts of the Republic of Moldova and Transdnestria:

- issues regarding the restoration and raising of the economy shall be solved, as well as development of economic relations in such spheres as the fuel-energy complex, transport, communications, etc.; investments projects and creation of joint ventures shall be stimulated;
- the sums and sources of the contributions to the joint state budget shall be determined by mutual agreement;
- the issue of a common currency shall be dealt with step-by-step, until the introduction of which the current currency regulations are maintained;
- the content of cooperation between banks shall be determined through mutual agreement;

- laws on the state property shall be harmonised, as well as the legislation on privatisation and property rights registration;
- the tax systems shall be harmonised, by establishing common principles of taxation and by developing a unified legislation in this sphere;
- the work for developing a common legal basis shall be organised.

III. Military Guarantees

In order to support secure peace and stability, the Parties agree to the presence during the transition period of peacekeeping forces under the supervision of the OSCE.

The provision on the peacekeeping forces in Transdniestria is governed by a separate document, which is signed simultaneously with the present Agreement.

In order to strengthen confidence, to complete the unification of the Army, and implement military guarantees, the Republic of Moldova and Transdniestria jointly undertake during the transition period:

- a. To inform each other about planned military activities;
- b. To establish the institution of military observers of the Parties at the organised military activities.

IV. Social, Cultural, and Other Guarantees

In the Republic of Moldova there are common coordinated standards in the fields of education, health care, culture, welfare, retirement benefits, levels of social guarantees in labour, social security.

On the entire territory the population enjoys equal and unhindered access to medical care, to general and specialised education; equal conditions shall be created for the implementation of educational and cultural needs and necessities of citizens.

All the authorities in Transdniestria shall ensure the observance of internationally recognised human rights and fundamental freedoms, provisions on the rights and freedoms contained in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. The stipulations on these rights and freedoms have superior force over other laws.

Everyone in Transdniestria may appeal to international institutions to defend his/her rights.

All representatives of international organisations shall have access to Transdniestria in order to provide international assistance. All inhabitants of Transdniestria shall also have unhindered and direct access to the staff members of such organisations.

The Parties acknowledge that all the citizens have the right to return to their homes in Transdniestria and Moldova. The relevant authorities shall take all measures to facilitate the safe return of such persons. The Parties shall take all

measures to accommodate them. All these persons are entitled to their property and personal belongings.

Through search mechanisms of the Committee on Missing Persons, the Parties shall cooperate and submit information to the families of all the persons, whose fate is unknown.

The Parties appeal to the international community with the request to provide humanitarian aid primarily for refugees and displaced persons returning to their abandoned homes.

Article 37

Amendments shall be introduced to the Constitution of the Republic of Moldova to take account of the provisions of the signed documents on the settlement of relations between the Republic of Moldova and Transdniestria.

The constitution and legislation of the subjects of the Republic of Moldova shall conform to the Constitution of the Republic of Moldova and the present Agreement.

Article 38

The institutions currently functioning in Transdniestria shall be retained until their replacement by bodies established in accordance with the Constitution of the Republic of Moldova and the present Agreement.

All the laws, decisions, and other acts valid in Transdniestria at the moment of this Agreement entering into force, remain in effect if and until they are replaced by laws and decisions adopted by a competent body.

Article 39

To settle disputes and conflict situations during the transition period, the Republic of Moldova and Transdniestria agreed to establish joint commissions on the basis of mutual trust.

In the year _____, elections in the two-chamber Parliament of the Republic of Moldova shall be held, and the new organs of authority of the Republic of Moldova and the state-territorial entities shall be established.

Article 40

From the moment of signature of this Agreement the Parties shall ensure:

- development of mechanisms for establishing a unified budget, banking/credit systems, macroeconomic policy;
- use by Transdniestria of its own monetary unit along with the Moldovan Lei, for cashless payments;
- citizen's rights and freedoms;
- implementation of measures to reduce the armed forces of the Parties to their minimal possible level;

- implementation of measures to combat crime;
- the resolution of other issues.

Article 41

Based on agreements to be reached in the transition period, as well as on documents determining the status of Transdniestria, the Parties agreed with the necessity of preparing and submitting the appropriate legislative initiatives on adding to and amending legislation.

To implement the measures for step-by-step settlement set out in this Agreement, the Parties shall continue to hold regular meetings, shall ensure the uninterrupted work of the commissions on socio-economic development and on coordination and support of the negotiating process.

The Parties may also, if necessary, establish by mutual consent joint or conforming commissions, expert groups, other working bodies for the drafting and implementation of various agreements.

Each Party has the right to pass legal acts, facilitating the implementation of competencies and obligations contained in the present Agreement, on condition that such acts shall not modify, limit, or undermine the obligations set forth in this Agreement.

Article 42

The present Agreement has supreme judicial force, direct effect and it applies on the entire territory of the Republic of Moldova. Laws and other legal acts adopted in the Republic of Moldova may not violate the present Agreement.

The universally recognised principles and norms of international law are a constituent part of the legal system of the Republic of Moldova.

This Agreement enters into force from the day of its signature.

For the Republic of Moldova

For Transdniestria

From the guarantor states:

For the Russian Federation

For Ukraine

For the OSCE

“ “ _____ 2002