

**Federalism vs. Regionalism as Mechanisms to
Resolve the Moldovan-Transnistrian Conflict**
Some Observations on Current Proposals and Expert Reports

Stefan Wolff
Department of European Studies
University of Bath, England, UK
stefan@stefanwolff.com

Introduction: Federalism, Regionalism and Territorial Autonomy as Solutions to Separatist Ethnic Conflict

1. Federal Solutions

Federalism is often considered as a mechanism to accommodate the demand of territorially concentrated ethnic groups for self-determination without redrawing existing international boundaries. In such a set-up, component parts of the federation can enjoy high levels of self-governance and certain other attributes of statehood (such as their own constitution, symbols, anthem, etc.), while the overall territorial integrity of the state is preserved. As federalism in such cases is part of a conflict resolution process, it is the result of negotiations between the conflict parties, rather than a unilateral decision by one party (the central government) to federalise the state.

The track record of such ethno-federalism is mixed. In the developed world, it has, for the most part, prevented violent state disintegration (e.g., Canada, Switzerland, and Belgium). While the record is less promising elsewhere, there are no compelling normative or pragmatic arguments that would exclude federalism as a viable solution for the type of separatist conflict as experienced in Moldova.

2. Regionalism

Regional solutions to resolve separatist conflict are based on similar premises as federal solutions. The examples of Italy (now fully federalised since 2001), Spain (often also considered quasi-federal), France, and the UK demonstrate one key advantage of regionalism, namely that it allows for greater flexibility in the territorial and administrative organisation of the state. In all these countries, different regions enjoy different levels of autonomy from the centre (Italy: five regions with special statutes; Spain: e.g., Catalonia, Galicia, Basque country; France: Corsica; UK: Wales, Scotland, Northern Ireland) and thus have exclusive powers in different areas of competence, i.e., those that are considered particularly important by the ethnic group in question.

However, it should be noted that some federations also have a similarly asymmetric character: Canada in relation to Quebec, Belgium in relation to the internal organisation of its three regions, and the Russian federation.

3. Territorial Autonomy

Territorial autonomy is best defined as the legally established power of non-sovereign, ethnically distinct territories to make substantial public decisions and execute public policy independently of other sources of authority in the state, but subject to the overall legal order of the state. Territorial autonomy, therefore, overlaps significantly with both federal and regional solutions. It is often adopted in the context of a regionalised state, but is also known to exist in otherwise unitary states (e.g., Finland, UK pre-1998, Italy pre 1970s, Ukraine).

The Current Proposals for the Solution of the Moldovan-Transnistrian Conflict

1. The Kozak Memorandum

Main Points

This document proposes the federalisation of Moldova with two subjects (Transnistria and Gagauzia) and what is generally described as 'federal territory'. It lists in detail the

distribution of competencies between the federation and its subjects, distinguishing exclusive federal and subject, as well as joint competencies. It also includes a clause according to which the subjects of the federation have the right to leave if the federation chooses to join another state (presumably Romania) or 'in connection with the federation's full loss of sovereignty (unclear meaning, could refer to the loss of full sovereignty in case of EU accession).

Observations

The division into 'subjects of the federation' and 'federal territory' is questionable. It would create a situation similar to that in the UK at present where separate jurisdictions exist in Scotland, Wales and Northern Ireland (albeit with different levels of autonomy), but not England with the effect that Members of Parliament from across the UK make decisions regarding England, but not vice versa. *It would therefore be worthwhile considering whether what is termed 'federal territory' should not also become a 'subject of the federation'.*

Clause 3.6. is unclear as to whether consent is necessary only from the subjects affected by a particular change or from all of the subjects in the federation or a majority of them, and whether such consent is to be obtained by referendum or (qualified) parliamentary majority, and what role the federal level of government is to play in such a case.

The division into different types of competencies is useful, *but it is worth considering whether specific lists of such competencies at one level should not be complemented by open-ended lists at the other level.* This way, potentially protracted negotiations over the allocation of emerging new levels of competence can be avoided, because they would automatically become part of the responsibility of the level of government that has an open-ended list of competencies.

Clause 9. b) regarding the election of Senators from within the established parliaments of the subjects of the federation/federal territory *should be changed to direct popular election from these entities.* Otherwise, the electorate will have no opportunity to make choices between who they consider best to represent their interests regarding the political, economic, and social issues within their entity and those who they trust to represent their entity best at federal level. In other words, entity-politics would come to dominate federal politics.

Clause 10. b) regarding the Senate veto *might benefit from simplification to the extent that Senate ratification of federal ordinary laws should only be required for laws affecting joint or subject competencies.*

Clauses 14.2. and 14.12. seem contradictory in their stipulations of electoral procedures. *There should be a separate consultation process on electoral systems choice to determine which system will be most suitable for which overall institutional design.*

2. The 2004 OSCE Recommendations

Main Points

This document proposes the establishment of a Moldovan federation composed of federal subjects, one of which is to be Transnistria. It elaborates a list of general rights of all Moldovan citizens and determines exclusive competencies for the federal state and for Transnistria. A provision is made for Transnistria's secession from the federal state under similar conditions as in the Kozak Memorandum. A system of international legal guarantees is envisaged as part of the five-sided negotiation and settlement process, including political, economic, and military guarantees.

Observations

The OSCE Recommendations leave open the number of subjects of the federation, but interestingly refers explicitly to Transnistria as a subject. *This is potentially dangerous as it might set a precedent for a federation between Transnistria and the rest of Moldova as a two-entity federation, which, in my view, would be less stable and less viable in the longer term.*

The idea of international guarantees in general should be welcomed, but even with the OSCE being a guarantor power, there will be a certain pro-Transnistrian bias, not at least because Russia and Ukraine are both members of the OSCE. *It might be worth exploring whether additional guarantees from the EU are an option and/or whether guarantees can be linked to strong judicial enforcement mechanisms.*

Especially with Transnistria as the only (explicit) subject of federation in the OSCE document, the fact that competencies are specified for both federal and subject levels of government is potentially destabilising. *The possibility should be examined whether a specific list of competencies for Transnistria can be combined with an open list for the federal government.*

Expert Reports on Federalisation and Its Alternatives

1. Igor Botan

Italy has adopted a new constitution in 2001 according to which the country is now fully federal. Until 2001, Italy consisted of 19 regions, 5 of which had special autonomy statutes with farther reaching competencies because of their special geographic position or ethnic composition (the most relevant of which for the Moldovan case is South Tyrol). Subsequent federalisation has posed some interesting transition problems especially for these five regions.

The Italian model (as well as the Spanish one) might be useful starting points for considering the regionalisation alternative to federalism in greater depth.

The composition of the German Bundesrat was modified following German unification: all countries have three votes (Bremen, Hamburg, Mecklenburg Western Pomerania, Saarland), those with more than 2 million inhabitants have 4 (Berlin, Brandenburg, Rhineland Palatinate, Saxony, Saxony Anhalt, Schleswig Holstein, Thuringia), those with more than 6 have 5 (Hesse), and those with more than 7 have 6 (Baden-Württemberg, Bavaria, Lower Saxony, North Rhine Westphalia). While the Bundesrat's approval is indeed required for more than half of all laws, there is a clear mechanism for determining for which laws this needs to be the case: The Bundesrat holds an absolute right of veto on

- Bills affecting the division of political tasks between the Federation and the federal states i.e. provisions pertaining to legislative, administrative and jurisdictional competence nationally and vis-à-vis the European Union.
- The apportionment of tax revenue between the Federation and the federal states.
- The stipulation of the administrative procedure to be applied by state authorities in enforcing federal laws.

However, the Bundesrat shares responsibility for overall federal policy as it also considers so called objection bills, i.e., where, in contrast to consent bills, the interests of the federal states are not fundamentally affected.

The German model of determining representation in the proposed Senate is worthy of consideration as is the mechanism of consent bills. Giving the proposed Senate also the right to object to bills outside the core interests of federal subjects is potentially counter-productive as it could lead to protracted, or at least prolonged processes of legislation and have repercussions for the overall political climate.

Mechanisms of economic and financial adjustment will be important in ensuring more equal living standards. Federal subsidies and redistribution policies, however, also bear dangers, as the example of the Lega Nord in Italy indicates.

Singapore was expelled from the Malaysian Federation, it did not secede.

2. Victor Popa

A division of the country into four subjects is superior to the two-entity federation implicit in the OSCE document. (It is not clear from this, however, what the status of Gagauzia would be in this model.) The regions would probably be more equal to one another in size and economic development potential. However, from the Transnistrian point of view, this entity would be clearly disadvantaged and out-numbered in such a setup.

It remains unclear, what the proposed semi-presidential system can contribute to the resolution of the current conflict. From my perspective, a semi-presidential system is the least likely system to promote stability, because it would add complexity and uncertainty to distribution of powers, the figure of the president is likely to be a divisive rather than uniting, and the federal system itself would potentially be weakened by the way in which central authority is distributed between president and the various other branches of government. A purely parliamentary or presidential system might therefore be more appropriate.

General Observations and Conclusions

More attention should be paid not only how power is divided (distributed) between different layers of authority in the proposed federation but also to how it is shared. This way, it might become clearer which aspects of a federation provide for integrative/centripetal mechanisms that strengthen the federation as a whole (rather than provide a stepping stone towards disintegration). This could include a power-sharing executive at the centre, effective mechanisms of policy coordination and dispute resolution between centre and subjects, strengthening of joint competencies in the areas of social and economic development, etc.

While there is an obvious democratic deficit in Transnistria at present, the ethnic diversity in the region might, in the context of Moldova's federalisation, provide an additional impetus for democratisation and respect for general human and minority rights in the entire territory of the Moldovan federation. This, too, could provide for additional integrative mechanisms, making it less likely that secession became a viable and desirable alternative for a majority of citizens in Transnistria.

If a new or revised constitution was to be approved by referendum, clear guidelines were to be agreed as to

- what majorities were required (parallel, qualified)
- whether one or several parallel referenda were to be held
- what procedures were to be adopted if the constitution was rejected
- what steps were to be taken if it was approved, i.e., how the constitution was to be implemented, by whom, with whose assistance under what guarantees