

# THE TRANSNISTRIAN CONFLICT SETTLEMENT: AN APPROACH THROUGH NEGOTIATIONS BASED ON INTEREST

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## Abstract

The 5+2 format of negotiation regarding the dispute over the Transnistrian zone of Republic of Moldova is a good framework for the Moldovan delegation to achieve the goal of reintegration of the country, in order to solve the frozen conflict (since 1992). However, the Moldovan negotiators faced yet a few major deficiencies. There is no a clear picture of the nature of the conflict: is it internal – a separatist one, or international – Russian-Moldovan (taking into account that the Russian army and the paramilitary forces of Cossacks where involved in 1992 war on Dniester river)? So, it was not clearly formulated the main question that needs to be answered as a solution to the conflict. Depending on the answer to this question the negotiation format can be improved in order to adopt a formula corresponding to the reality on the field: Russia can be a guarantor, not a mediator – which would be totally impartial. Another important aspect of the negotiation is that the conflicting parties (Chisinau and Tiraspol) have not identified yet common interests (and needs). Only in such conditions can the Moldovan integral state be restored and consolidated. In this context, it is understandable why until now there are no plans (projects) to solve the conflict, elaborated by Moldovan government servants; such documents could be a base for discussions in 5+2 format. It is important for the parties of the conflict to take into account that mediators do not propose plans to solve the conflict, because there is no such a function in their tasks, so there are not such expectations their behalf. The negotiation based on interests requires that the parties in conflict should accept objective criteria (primarily, the principles of international law), which could be a base for developing a lasting solution to the conflict. A feature of a negotiation based on interests is that parties should discuss on the issue, so this helps to avoid tension between negotiators, a confrontation of egos of representatives round the table. A good team of negotiators work with a few notions which are related among them. Especially in a negotiation on a territorial dispute, like on Transnistrian zone, it is important for the Governmental servants (diplomats or experts) to formulate and propose a mission of the common state – a project of the country, an idea of the common state. Form the mission results a vision on the development of the common state, based on the implementation of the common interests. From the vision there results a policy o reintegration. From the policy there

results a strategy. From the strategy there results a tactic. And from the tactic there results a settlement plan. Of course, without each of these primary elements, a good settlement plan can not be elaborated.

**Keywords:** *Conflict, Mediation, Negotiation, Transnistria, Republic of Moldova.*

## 1. INTRODUCTION

Negotiations are an important component of both the practice of international relations and the scientific field of International Relations. There are several milestone scientific researches on the theory and practice of negotiations which contributed enormously on the international level to the efficiency this type of activity. One of the main researches in Europe is that of the German scientists Astrid Heeper and Michael Schmidt, who note the study entitled "Negotiation Techniques" that "To negotiate means to agree on something (e.g. a contract) with one or more negotiating partners. To negotiate means that you and / or your negotiation partners make some concessions one for the others in order to get a common agreement, a certain result. Honest negotiation means to give and receive with confidence, in order to reach a mutually acceptable outcome. This strategy is called strategy of "win-win" (win-win) "[Heeper, Schmidt, 2007: 7].

An outstanding contribution to the theory and practice of negotiation was also brought by the American scientists Roger Fisher and William Ury in their paper entitled "Getting to YES. Negotiating Agreement Without Giving In" (first edition of the paper appeared in 1981 and was followed by many others, the book was translated

into many languages of the world and is reprinted up to the present day). Researchers Fisher's and Ury's approach is useful in evaluating the performance of the Moldovan state authorities in the negotiations concerning the Transnistrian conflict settlement.

This article, which is an interdisciplinary research focuses primarily on the scientific field of Security Studies, in which the states are called "actors" of the international law. So in the Security Studies we evaluate the performance of this type of actors (including the negotiations). The conflict concerning the Transnistrian region of Moldova is in a frozen state from July 1992. The hot phase occurred between 2 March to 21 July 1992, during which the number of victims went up to 1,100 (according to some data: approximately 300 representatives the Moldovan police and about 800 fighters, including Russian Cossack mercenaries and others who fought for the rebels; in Ukraine, in the context of the 2014 war until now, those who fight in Donbas against the state are called "terrorists"). In 2011, after a break of five years (2006), the 5 + 2 negotiations concerning the conflict settlement were resumed. To the format in question is of the following actors take part:

1. The authorities of Moldova - part of/in the conflict,
2. The Tiraspol administration - part of/in the conflict,
3. The OSCE - mediators,
4. The Russian Federation - mediator, guarantor,
5. Ukraine - mediator, guarantor,
6. The European Union - observer
7. The USA - observer.

Note that in the "5 + 2" format, number 5 covers the following entities: the Moldova Republic, the Tiraspol administration, the OSCE, Russia and Ukraine; and number 2 - the EU and the USA, that is the two observers. Although they have only the observer status, the last two actors can participate (intervene) as well as the others in the negotiation process, according to a tacit agreement.

In the context of finding a solution to the Transnistrian conflict there should not be underestimated the necessity and the importance

of achieving a high standard of living, a good socio-economic status of the Republic of Moldova - factors that may make the Moldovan state more attractive to the Transnistrian region population. Or, given that Moldova remains the poorest country in Europe because of corruption and the bad management of the government concerning state affairs, it is hard for the elites and the population in the Transnistrian are to want to reintegrate into the Moldovan state. However, it is worth making an assessment of the activity of the Moldovan authorities in the negotiation process even on a bad socio-economic background, examining how the negotiation techniques are used.

## 2. NEGOTIATION TECHNIQUES (ACCORDING TO ROGER FISHER AND WILLIAM URY)

In Fisher's and Ury's view, there are several criteria for the assessment of a negotiation method. These criteria can be outlined as follows:

- The negotiation should lead to a rational agreement, if possible (entirely suitable to the legitimate interests of each party, to regulate fairly the interests in conflict, to be on a long-term);
- The negotiation should improve or at least not worsen the relations between the parties.

The American researchers' view there are 3 techniques (or 3 approaches) of the negotiations:

I. Negotiations *based on the principles* [Fisher, Ury, 1990: 95];

II. Negotiations *Jiu Jitsu* [Fisher, Ury, 1990: 120]; Fisher and Ury explain the Jiu Jitsu technique by the following exhortations: avoid to react, to use force against the opponent; avoid the attack and turn it toward the problem; identify the interests and develop mutually beneficial solutions;

III. *Mediation* - involving a third party (a mediator or some mediators) [Fisher, Ury, 1990: 126].

If you can not conduct negotiations following 1 and 2 techniques, one party in the conflict may require third technique: *the mediation*. Concerning the *mediation*, there are 4 phases of the process in

question (according to prof. Dr. Angela Mickley, a professor at the University of Potsdam, Germany, and at the summer school “Civil Society and Crisis Prevention: Peaceful Conflict Resolution, Mediation and Negotiation”, Tbilisi, Georgia, 6 to 10 October 2014):

1. The statement of facts, of the problem by the parties (before one or several mediators - which are neutral): identifying the positions;

2. Mitigation of negative emotions by exposing the parties' grievances: trying to understand what frightens one party, what is afraid of the other party ?; identify the interests, the needs of the parties;

3. Brainstorming: working out and proposal of solutions by the parties. **The mediator does not propose the solution.** In this context, there are used the terms: BATNA - best alternative to negotiated agreement the; and WATNA - Worse alternative to negotiated agreement [Fisher, Ury, 1990, 109]. The good solution is BANTA OR ONE as close as possible to BATNA.

4. Adopt the most appropriate solution, selected from at least three versions; signing the agreement which foresees how the solution will be implemented (in a conflict it is practically about the settlement plan).

In their paper, Fisher and Ury describe three techniques, highlighting their main features. The American authors have paid special attention and importance to the first method - *negotiations based on principles*. Fisher and Ury identified four elements (components) underlying this one:

1. *People*: the American authors urge to distinguish between the participants in the negotiations and the negotiation object (not to link the relations to the problem, “your problem is not somebody else’s guilt”) [Fisher, Ury, 1990: 33];

2. *Interests*: the quoted authors urge the negotiators to focus on interests, not on positions (the interests determine the problem, so it requires to reconcile interests, not positions, which can often be irreconcilable) [Fisher, Ury, 1990: 56];

3. *Variants*: Before deciding on a solution, the authors urge the negotiators to develop a circle of possibilities (mutually beneficial; the proposals

must comply with the possibilities of the partners) [Fisher, Ury, 1990: 71];

4. *Criteria*: the authors urge the negotiators to insist that the result be based on objective rules [Fisher, Ury, 1990: 95].

In R. Fisher’s and W. Ury’s view there are 3 stages of the negotiations period [Fisher, Ury, 1990: 29]:

1. *Analysis* (diagnosis of the situation, clarifying the criteria) there must be determined at this stage *nature of the conflict*;

2. *Planning* (several variants are developed - resolution plans);

3. *Discussion* (understanding the interests of the other party in while interacting - through direct communication - at the negotiation table, namely the adoption of a rational agreement). A discussion requires: active listening, clear speech / expression - comprehensible to the other party (without misunderstandings), the negotiators need to talk about themselves, not about the others (they should refer to themselves, not to the interlocutors), to clear up the problem, not to express opinions or to judge the others.

### **3. INTEREST-BASED BARGAINING**

An important aspect of the vision offered by Fisher and Ury is the foundation on which effective negotiations can take place (the result). The American authors noted that the negotiation may be focused on:

- *Positions* (it is ineffective allows delaying in the adoption of a decision / solution; it can turn into a competition of egos, which can lead to worsening of the conflict);

- *Interests*;
- *Necessities*.

For negotiations to be effective, they must be based on *interests* and *needs*. In the context of *interest-based negotiations*, the American authors urge the negotiators to meet the following guidelines:

- Presenting their own interests, the negotiators should show their vital importance;
- To recognize the interests of the other party as part of the problem;
- Stating the problem must focus on interests;

- After stating the problem the solution is proposed;
- It is advisable to look forward, not backward.
- The negotiators should be concrete but flexible.
- The negotiators should be firm, talking about the problem, but magnanimous speaking about the people (the negotiating partners).

On the other hand, referring to the main *needs*, Fisher and Ury mentioned:

- Security;
- Economic well-being;
- The sense of belonging [the security of identity, *mark AL*];
- Recognition;
- Disposal of own life [Fisher, Ury, 1990: 63].

In the concrete case of conflict concerning the Nistrian zone it is important to note that more factors exert their influence on its outcome - both internal and external. The Russian Federation has an important role as an external factor in determining the negotiation process, given that it is the sponsor of the Tiraspol regime (80% of the unrecognized Transnistrian Moldovan Republic is provided by Moscow). Also, one of the internal factors that influence the negotiations concerning the conflict settlement is the political process in the Republic of Moldova. We know that at the last round of parliamentary elections, on the 30<sup>th</sup> of November 2014, the votes of those about 56% voters who were present at the election booths were divided almost equally between the pro-EU political parties and pro Eurasian Union parties. In terms of the reintegration of the population in the Transnistrian region, namely after creating the conditions for the estimated 500,000 citizens to exercise their right to vote, the balance that stood out in the last elections, but which is regularly confirmed by opinion polls, could be unbalanced. That is why there are suspicions regarding the real intention of the current government in Chisinau to settle the Transnistrian problem. One of the accusations, the Moldovan government often charged with in the media - concerning the lack of political will to solve the problem of the Transnistrian region - may just have as a support this suspicion.

Beyond the aspects of the overall development of the Moldovan Republic state and which exceed the Moldovan negotiators' competence in the 5 + 2 format there can be assessed the Moldovan diplomats' performance involved in the negotiations. Unfortunately, the Moldovan delegation has failed so far to establish a negotiation process based on *interests and needs*. Although since 2011 when the negotiations were resumed in the 5 + 2 format (interrupted in 2006), the parties (Chisinau and Tiraspol) announced that they have started the "small steps" tactics aimed at solving the economic and social problems of the population from the security area (both in region under the jurisdiction and administration of Tiraspol and in the territory under the jurisdiction of the Republic of Moldova), few were the concrete achievements. Perhaps the only achievement of the "small steps" tactics was the revival on the 1<sup>st</sup> of October 2010 (so even before the resumption of formal negotiations in the 5 + 2 format) the train traffic on the international route Chisinau - Odessa via Transnistria. Given the lack of clear common interests, primarily economic, it is difficult to foresee the achievement of a political solution for the reintegration of the Transnistrian region in the Republic of Moldova jurisdiction area by granting a special autonomy status to Transnistrian area.

Undoubtedly, the negotiations based on *interests and needs* are the only ones that can offer a real opportunity to achieve a lasting solution to the conflict, including to the Transnistrian one. However, this primarily requires the eradication of corruption in the institutions of the Republic of Moldova (through competitions based on meritocracy, which should place in the functions of state competent and honest persons, not on the basis of clientele relations), optimizing the economy so that the Moldovan state should become attractive for the population from the Transnistrian area. But the Republic of Moldova will become attractive when the Moldovan authorities will propose *an idea of country, a country project, a mission of the Moldovian state* - to be able to attract the elites and the population from the Transnistrian region.

#### 4. THE IDEA OF STATE

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The lack of an idea of State which to underlie the Moldovian political nation (or civic) uniting all the categories of the population on the basis of common values, regardless of ethnicity, religion or social belonging makes The Republic of Moldova vulnerable in terms of *societal security*. The British researcher in the field of security studies, Barry Buzan, noted that “the state exists or has its essence rather on the socio-political level than on the physical one. In some important ways, the state is more an idea jointly owned by a group of people rather than a physical body, “even if” Clearly, the state depends on a physical basis and beyond a certain point it can not exist without it” [Buzan, 2014, 74]. That is why Buzan calls for “a strong governments’ decision to create unifying ideas” [Buzan, 2014, 94]. He added that “the idea of the state must not only be consistent in itself, but it must also have broad support” [Buzan, 2014, 91].

The British researcher has classified the countries of the world into two categories (or models): nation-states (Hungary, Italy, Japan, I would add: Israel, Armenia, etc.) [Buzan, 2014 82] and state-nations (USA, Australia etc.) [Buzan, 2014, 83]. Moldova can be placed in the second category. The idea of state of the Republic of Moldova, which must be made in order to ensure the societal security of the country, should contain common elements of all the ethnic communities co-inhabiting on the Moldovan land beyond ethnic differences. The Western values concerning the concept of human rights, democracy and market economy (a guarantee by the state of the property rights) on the one hand, and on the other the Christian values - primarily the Christian Orthodox religion, which is common to all ethnic communities in Moldova, which is the guardian of the traditional family values, morality and spirituality - can be considered in the effort to formulate the idea of state, which will provide a citizen identity (political) to every citizen of Moldova. Basically, situated at the confluence of two civilizational spaces, the Republic of Moldova may have an idea of a state which should express a symbiosis of the sets of values underlying the two types of

societies: modern (Western) and traditional (Eastern). In the Western world there is an example of a nation-state that is modernizing while preserving its traditions - The United Kingdom of Great Britain and Northern Ireland. Also, Asian countries that have achieved high levels of development - Japan, China etc. - manifested themselves as entities effectively combining the national traditions with the achievements of the modern era (primarily on economic level).

An idea of a state is intended to draw the *state mission*. The people of a state that has a unifying idea and a mission will be united and consolidated. Currently in the Moldovan society there can be seen a few division faults. Without an idea of a state (a project for the country) acceptable and attractive to the elites and the population of Transnistria we can hardly assume that the 5 + 2 negotiations will lead to a sustainable outcome. And the idea of country, the project for the country and the mission of the Moldovan state should be the basic element to start with of the Transnistrian conflict settlement plan, that should also contain the way how to achieve the interests and needs of the elites and the population in the Transnistrian region.

#### 5. CONCLUSION

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Assessing the performance of the Moldovan authorities in the negotiations on the Transnistrian conflict (in 5 + 2 format) through the techniques, the criteria and recommendations of researchers such as Roger Fisher and William Ury, and not only, we may conclude that:

1. There were not selected, by the conflicting parties, objective criteria (primarily norms of international law), under which to work out a sustainable solution to the Transnistrian conflict. Chisinau invokes the principle of *territorial integrity* and Tiraspol: *the right of peoples to self-determination*.

2. There is not a clear picture of the nature of the conflict [Ghica, Zulean, 2007: 222]: it is domestic or international (intergovernmental: between the Russian Federation and the Republic of Moldova)? It was not made clear the problem to which it must be found the solution. By

clarifying this aspect the negotiations format can be improved, in the way of being revised, for the purpose adopting a format corresponding to the reality on the field. The main question concerns the status of the Russian Federation in the 5 + 2 format: although Russia participated in the 1992 war, the army fought against the security forces of the Republic of Moldova, now the Russian state is “mediator” (and “guarantor”) in negotiations. It is clear that Russia, along with the USA and the EU can be a guarantor, while the rightful mediator is the OSCE and, eventually, the the UN can be involved.

3. The Parties in the conflict (in the 5 + 2 format: Chisinau and Tiraspol) do not exceed the positions that are irreconcilable: the position of the unrecognized RMN aims at the *independence*, and the position RM points to the fact that the Transnistrian region is part and parcel of the unitary state of the Republic of Moldova; the parties do not proceed to the identification and examination of *interests and needs*.

4. There were not identified common *interests* which could underlie an integral state (with the Transnistrian region integrated in the Republic of Moldova).

5. There are no significant cooperation projects in the near future, both in economic field, that of infrastructure as well as in the environmental, social etc’. The EU allocates resources for such projects, but their efficiency remains low.

6. There are no variants/settlement plans developed by the Republic of Moldova (as part of the conflict), which the Moldovan delegation to submit to discussion in the 5 + 2 format. The

parties in the conflict expect the mediators to propose a plan to solve the conflict in whose tasks, however, this prerogative does not fall. It can be said that the reason why there is not a Moldovan *settlement plan* is due to the lack of tactics (the plan should result from a tactics) the *tactics* should result from a strategy, the *strategy* should result from a policy, the *policy* should result from a vision, and the *vision* should result from an explicit *mission* of the Moldovian state. As the Moldovan authorities do not have a *mission, a vision, a policy, a strategy and tactics*, it is natural for it not to be able to propose any action plan or a Moldovan settlement plan of the Transnistrian conflict.

7. So far there have been noticed sporadic tensions between negotiators: they were an indication that the discussions did not focus on the problem, but there was a confrontation of the egos of the participants in negotiations.

8. They did not come up with *an idea of a state*, so far, which should underpin a plan for the settlement of the Transnistrian conflict.

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