

OSCE

High Commissioner
on National Minorities

His Excellency
Mr. Hennady UDOVENKO
Minister for Foreign Affairs of Ukraine
Mykhaylivska Sor. 1
252018 KYIV
Republic of Ukraine

Reference:
No. 533/96/L

The Hague
19 March 1996

Dear Mr. Minister,

On 14-17 March I convened a Round Table in Noordwijk in the Netherlands in which members of the Government of Ukraine, members of the Parliament of Ukraine, the representative of the President in the Autonomous Republic of Crimea and leading members of the Government and the parliament of the Autonomous Republic of Crimea took part.

An extensive discussion took place on the Constitution of the Autonomous Republic of Crimea as adopted on 1 November 1995. From these exchanges of views I gathered the impression that on a number of articles of this Constitution differences remain between the Parliament of Ukraine and the Parliament of the Autonomous Republic of Crimea. But it was also obvious that differences have narrowed considerably, and that, in fact, on quite a number of articles of the text of the Constitution of the Autonomous Republic of Crimea consensus has been reached. A considerable number of participants felt that this would enable the Ukrainian Parliament to approve the coming into force of those articles of the Constitution of the Autonomous Republic of Crimea on which consensus has been reached.

In my view it would be highly desirable to implement this formula. Such a step would register the considerable progress which has been made in the solution of the constitutional differences and would provide an important stimulus for renewed efforts to solve the remaining differences in the near future. In this respect I also noted during the discussion that all sides recognised the need to bring these differences to an early end.

In the light of the foregoing I should like to recommend the following steps:

- 1) It would be desirable to adopt as quickly as possible a law of Ukraine on the approval of the Constitution of the Autonomous Republic of Crimea, which would approve the coming into force of the Constitution of the Autonomous Republic of Crimea with the exception of those articles which are still in dispute;
- 2) In order to avoid confusion about the status of Crimea, it would in my view be necessary to use the term "the Autonomous Republic of Crimea" and not the term "Republic of Crimea" in the text of the Crimean Constitution. Similarly, the term "citizens of Crimea" ought to be replaced by "citizens of Ukraine residing in Crimea". Furthermore, the term "the people of Crimea" used in the Constitution of the Autonomous Republic of Crimea does not take into account the fact that in Crimea people of various nationalities live together. I therefore suggest to use the term "the population of Crimea" in this Constitution. These editorial changes could be part of the law on the approval of the Constitution of the Autonomous Republic of Crimea;
- 3) It would seem to me that the law of Ukraine on the approval of the Constitution of the Autonomous Republic of Crimea would have to clarify the relationship between the law of Ukraine on the Autonomous Republic of Crimea and the Constitution of the Autonomous Republic of Crimea. This could be done by stipulating in the law on the approval on the Constitution of the Autonomous Republic of Crimea that the law of Ukraine on the Autonomous Republic of Crimea remains operative in those parts which do not contradict the articles of the Constitution of the Autonomous Republic of Crimea which have been approved;
- 4) In my view it would be of great importance if a special effort would be made to speed up the solution of the remaining constitutional differences. In this respect I would express the hope that the Parliament of the Autonomous Republic of Crimea would give renewed consideration to the articles still in dispute within a month, and that the parliament of Ukraine would consider the new proposals of the Parliament of the Autonomous Republic of Crimea as soon as possible thereafter.

I express the hope, Mr. Minister, that these recommendations can be of some help in solving the questions which the OSCE Round Table of Noordwijk has been discussing. I take the liberty of asking you whether you would be willing to send these recommendations to the Government of the Autonomous Republic of Crimea, the Ukrainian Parliament and the Parliament of the Autonomous Republic of Crimea for their information. I hope before the end of this month to add to the recommendations made in this letter a number of suggestions regarding the solution of some of the remaining constitutional differences, which I am presently formulating after having consulted the experts whom I invited to take part as observers in the Noordwijk Round Table.

Yours sincerely,

[signature]

Max van der Stoep
OSCE High Commissioner
on National Minorities

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on National Minorities

His Excellency Hennady UDOVENKO
Minister for Foreign Affairs of Ukraine
Mykhaylivska Sor. 1
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Ref.: 500/R/L
Kyiv, 5 April 1995

Dear Mr. Minister,

As I mentioned in my letter of 19 March I should like to submit to you some recommendations relating to a number of differences of view which stand in the way of a complete approval of the Constitution of the Autonomous Republic of Crimea (ARC) by the Parliament of Ukraine. I have drafted the recommendations after having consulted four experts who attended the Noordwijk Round-Table, Professor Gudmunder Alfredsson, Professor of law at the University of Lund, Dr. Arie Bloed, Director of the Foundation on Inter-Ethnic Relations in the Hague, Dr. Hermann Clement, Director of the Eastern Europe Institute in Munich, and Professor Patrick Thornberry, Professor of Law at the University of Keele. They attend the Round-Table as observers.

I have noticed that the remaining constitutional differences can be divided into two groups: those related to economic and financial competencies, and those which are of a more general political nature.

Regarding the first group of articles, I have gathered the impression that it might be easier to resolve the remaining differences if on a number of underlying economic and financial issues agreement could be reached between Ukraine and the ARC. In this respect the Decree of President Kuchma of 15 March 1996 on measures aimed at stabilizing and promoting social and economic development of the ARC is of considerable importance. Moreover, it has to be recalled that Article 8, sub. 7 of the Law of Ukraine of 17 March 1995 on the status of Crimea grants the ARC the right to

set up and operate free economic zones in Crimea in accordance with the legislation of Ukraine. During the discussions at the Round Table some further suggestions were made on ways to promote and intensify cooperation between the Governments of Ukraine and of the ARC in the financial and economic fields. I am thinking of the desire on the Crimean side to have a permanent arrangement regarding the so-called one channel budget system, to which your Government might consider agreeing if simultaneously agreement could be reached on the supervision of the system and on the manner of assuring respect for the unified tax system of Ukraine. Regarding the unified tax with an equitable share of the revenues from the future exploitation of oil and gas deposits in the part of the continental shelf surrounding Crimea.

Article 99 of the Constitution of the ARC as adopted on 1 November 1995 mentions, i.a., the state of emergency as one of the matters which belongs to the exclusive competence of Ukraine. This would logically have to lead to the deletion of article 98, paragraph 2, sub. 18 (giving the right to the ARC to initiate a state of emergency in the territory of the ARC in coordination with the President of Ukraine), and the reference to the state of emergency in article 118, paragraph 1, sub.7.

Defence, armed forces and security are some other matters which the Constitution of the ARC adopted on 1 November 1995 recognizes as belonging to the exclusive competence of Ukraine. Applying this principle necessitates in my view the deletion of the following provisions from the Constitution of the ARC as adopted on 1 November 1995: article 98, paragraph 3 (relating to the stationing in Crimea of the National Guards of Ukraine); article 113, paragraph 2, sub. 13 (giving the Parliament of the ARC the right to give permission to the Commander of the National Guards of the Republic for appointment of the Commander of the National Guards of Ukraine in Crimea); article 113, paragraph 2, sub. 20 (giving the Parliament of the ARC i.a. exclusive competence in the field of public security); article 116, paragraph 2, sub. 7 (giving the Speaker of the Parliament of the ARC the right to give his consent to the release from his position of the Chairman of the Chief Directorate of the Security Service of Ukraine in Crimea); article 118, paragraph 1, sub. 7 (the reference to the Presidium of the parliament of the ARC taking measures "aimed at ensuring state and public security of the ARC"); and article 118, paragraph 1, sub. 8 (giving the Presidium of the Parliament of the ARC the right to agree to the appointment of the Chairman of the Chief Directorate of the Security Service in Crimea and to effect supervision over the activities of the Department). On the other hand, I would recommend that Ukraine would declare its willingness to consult with the appropriate authorities of the ARC regarding matters of military defence and security relevant for the ARC and to inform the appropriate Crimean authorities on steps envisaged in these areas which are of relevance for the ARC.

I have noted that article 98, paragraph 4 of the Constitution of the ARC as adopted on 1 November 1995 corresponds in essence with article 9, paragraph 2, of the law of Ukraine of 17 March 1995 relating to the status of Crimea which provides: "The ARC enters into relations with official bodies of other states and with international organizations only in matters pertaining to the economy, environmental protection and cultural relations that are subject to its jurisdiction as provided for by this law and other laws of Ukraine." Moreover, the first paragraph of article 9 of this law states i.a. that the ARC takes part in shaping and implementing Ukraine's external economic activity in matters that involve the interests of the ARC. In my view, this opens the

door to the participation of representatives of the ARC in official Ukrainian delegations abroad which deal with these issues. On the other hand, article 116, paragraph 2, sub. 5, of the Constitution of the ARC as adopted on 1 November 1995 creates the impression that the Speaker of the Parliament of the ARC has an unlimited right to sign agreements and appoint plenipotentiaries. I suggest that this formulation will be adopted to that of article 98, paragraph 4, of the Constitution mentioned above, by replacing the words "agreements with other states" by "international agreements within the limits of the competencies of the ARC."

Regarding article 123 of the Constitution of the ARC as adopted on 1 November 1995, I noted that paragraph 2, regarding the appointment of the Prime Minister of Ukraine (nomination of the Prime Minister of the ARC by the Parliament of the ARC) does not correspond with the formula providing for approval of the nomination by the President of Ukraine which will probably be included in the new Constitution of Ukraine. This should be reconciled.

Article 6, paragraph 4, of the Law of Ukraine of 17 March 1995 on the status of Crimea states i.a. that the courts of the ARC will be established and shall function in accordance with the Constitution and laws of Ukraine. On the other hand, article 128, paragraph 3, of the Constitution of the ARC as adopted on 1 November provides for the election of the judges of district (city) and regional courts of the ARC by the Parliament of the ARC. This should be reconciled.

Finally, I should like to make three recommendations which are of special relevance for the Crimean Tatars. The first relates to article 107, paragraph 3, of the text of the Constitution of the ARC as adopted on 1 November 1995. This paragraph states, inter alia, that candidates will have to be proposed by election associations. In this respect I would suggest that the Mejlis, which is clearly regarded by the overwhelming majority of the Crimean Tatars as their representative body in the periods between the session of the Kurultai, will, in the context of the ARC electoral system, be considered as a body which also fulfils the role of an election association. I also want to stress the importance of a system of proportional representation as a method of giving them (without the need for a continuation of a quota system) the near certainty of having a representation in the ARC Parliament broadly commensurate to their percentage of the total population of Crimea. Lastly, please permit me to return to the question of the large group of returnees to Crimea who have still not acquired citizenship. I have been informed that legislation to solve this problem proposed by your Government has so far not been placed on the agenda of the Parliament of Ukraine. I express the hope that the proposed legislation will finally come into effect, even more so because without having acquired citizenship it is especially difficult for the returnees to find work.

These were the recommendations I wanted to submit to your Government, Mr. Minister. It would be greatly appreciated by me, if, like on previous occasions, you would be so kind to send copies of this letter to the Parliament of Ukraine and to the Parliament of the Autonomous Republic of Crimea. In my view important progress has been made recently in narrowing the gap between the positions of Ukraine and the Parliament of the Autonomous Republic of Crimea regarding a considerable number of issues. In this connection I may mention especially the recent approval of the coming into force of large parts of the Constitution of the Autonomous Republic of

Crimea by the Parliament of Ukraine which has demonstrated the willingness of Ukraine to support the concept of autonomy of Crimea within Ukraine, and also the recent decree of the President on budgetary matters which is of great relevance for Crimea. It is in my view important that the momentum will not be lost, that determined efforts will be made soon to resolve the remaining differences and that nothing will be done which could lead to a worsening of the atmosphere in which future negotiations will be conducted. In this respect I express the hope that the Crimean Parliament will refrain from organizing a referendum or a poll in Crimea on the Constitution as adopted on 1 November 1995, and that the Ukrainian Parliament will not deviate from its aim to provide Crimea with substantial autonomy in those fields which do not belong to the exclusive competence of Ukraine. I express the hope that my suggestions will be of some use in the coming negotiations and look forward with great interest to the reply of your Government to my recommendations.

Your sincerely,

[signature]

Max van der Stoep
OSCE High Commissioner
on National Minorities

Unofficial translation

Mr. High Commissioner,

Replying to your letters of 19 March and 5 April this year, I would like to express my appreciation for your initiative relating to the organisation and the direct active participation in the Round Table held under the auspices of the OSCE in Noordwijk on 14-17 March this year. The participants of this informal forum note its constructive spirit and working atmosphere. Your personal efforts aimed at solving economic, political and legal issues of the Autonomous Republic of Crimea (ARC) are highly appreciated in Ukraine.

I am confident that your recent visit to Ukraine held on 3 and 4 April this year, gave you another opportunity to understand that central public authorities of Ukraine pursue constructive and consistent policies in the field of constitutional developments in the autonomy.

As soon as your letters of 19 March and 5 April this year had been received, they were transmitted to the President of Ukraine, the Chairman of the Verkhovna Rada, the Prime Minister of Ukraine as well as to the Chairman of the Verkhovna Rada of the ARC and the Prime Minister of the ARC.

Now, experts from relevant departments of our state are carefully working on the assessments and recommendations related to the ARC economic and financial competencies and problems of more general political character, specified in your letter dated 5 April this year. Even at this stage, one may expect with confidence that

both categories of recommendations will be effectively used by public authorities of Ukraine including those of the ARC. I completely agree with you that elaboration of the documents in the field of economy, finances, and the rights of ownership requires time and involvement of a great number of experts. At the same time, there is no doubt in and scarcely requires further argumentation your position that it is not admissible to grant the status of the ARC property to the Black Sea continental shelf because it contradicts generally recognised rules of international law and Ukrainian legislation in force.

His Excellency
Mr. Max van der Stoep
OSCE High Commissioner
on National Minorities
the Hague, the Netherlands

We share your views and recommendations of a more general political character, in particular those related to the status of an autonomy within a unitary state, national status of Sevastopol, the use of state and other languages, the ARC symbols. Of particular importance for us is your conclusion that it is not reasonable to include in the Constitution of the ARC a provision on the possible "internal citizenship of the ARC", since it is not only compatible with international practices and the Constitution of Ukraine but even doesn't bear any legal sense.

I can't but agree with your recommendations with regard to the inclusion in the exclusive competencies of the central public authorities of Ukraine of such matters as defence, armed forces, national guards, security and some other matters. I consider that you were right to propose possible forms of co-operation between the ARC and official bodies of other states and international organizations in matters pertaining to the economy, environmental protection, cultural and foreign economic relations. We think that such an activity should fall within the competence of the ARC.

Of great interest to me were also your considerations on the approval of the Prime Minister of the ARC by the central public authorities of Ukraine, on the functioning and the election of the judges of district (city) and regional courts of the ARC, on Mejlis participation in the nomination of candidates for elected bodies and proportional representation of the Crimean Tatars in the ARC Parliament.

Obviously, Mr. High Commissioner, the final stock taking of that extremely important work you have done together with the recognized international experts may be made only after comprehensive examination and practical implementation of your recommendations. We will be pleased to inform you on the developments in this field.

In conclusion. I would like once again to thank you for your personal contribution to the settlement of the situation around the ARC and express the hope for future fruitful cooperation.

Accept, Mr. High Commissioner, the assurances of my highest consideration.

Yours sincerely,

Hennadiy UDOVENKO