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**Organization for Security and Co-operation in Europe  
Secretariat**

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**Department for Conference Services**

At the request of the OSCE High Commissioner on National Minorities, the attached letter of 14 February 1997 to the Minister for Foreign Affairs of the Republic of Ukraine, Mr. Hennady Udoenko, as well as the letter of reply, dated 15 March 1997, are being distributed to all OSCE delegations.

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**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

The Hague Reference:  
14 February 1997 No. 108/97/L

Dear Mr. Minister,

On 25 November 1996 the Minister of Justice, Mr. Serhiy Holovaty, sent me a letter asking my advice regarding the Draft Concept of the National Policy of Ukraine in Relation to Indigenous Peoples. I have now studied this document, while I have at the same time made a further analysis of some problems regarding the Crimean Tatars who, as you know, consider themselves as indigenous peoples. On the basis of these studies, I should like to submit to you a number of recommendations which follow below. It would be greatly

appreciated by me if you would bring these also to the attention of your colleague Mr. Holovaty.

Regarding the concept of indigenous peoples, I have noted that Article 11 of the Ukrainian Constitution as adopted by the Verkhovna Rada does recognise the existence of indigenous peoples in Ukraine. Taking this into account, the question arises whether there are international instruments which would oblige Ukraine to take specific legislative steps to protect the interest of, or to grant specific rights to, indigenous peoples. The conclusion I have reached is that, though international experts have prepared a draft UN Declaration on the Rights of Indigenous Peoples, the draft has so far not been accepted by states and is, indeed, only the basis of discussions by a working group of the Commission on Human Rights. There are two ILO Conventions (No. 107 and No. 169) which refer i.a. to indigenous peoples, but Ukraine is a party to neither.

At the same time, however, it is generally assumed that the right of persons belonging to national minorities as laid down in various international instruments also accrue to indigenous peoples.

Article 11 of the Constitution of Ukraine lays down some important principles regarding both indigenous peoples and national minorities by stating that the state will assist in the development of their ethnic, cultural, linguistic and religious identity. Of immediate relevance is also Article 6 of the Law of Ukraine on National Minorities, which guarantees all national minorities the right to "national-cultural autonomy". Persons belonging to national minorities have the right to be taught in their language and to create national education and cultural institutions.

When referring to international and Ukrainian legal instruments regarding national minorities which are applicable to indigenous peoples, I do not intend to suggest that no distinction can be made between national minorities and indigenous peoples. An important difference is, in my view, that in contrast to a national minority, an indigenous people does not have a kinstate.

I have understood that, in studying the problem of the legal status of indigenous peoples in Ukraine, your Government is also analysing the way some Nordic countries have dealt with this problem. When studying the Nordic legislation myself, I was struck by the essential role allotted to the formalisation of a process of participation and consultation. I would recommend to your Government to follow the same approach. In the case of the Crimean Tatars, I suggest that their representatives in the Crimean Rada will at the same time play the role of a consultative body which will be enabled to present its view on Ukrainian draft legislation of relevance for Tatars, and which could at the same time function as an organ of dialogue with the Ukrainian Government regarding the economic, social and cultural problems confronting the Crimean Tatar returnees. Representatives of other indigenous peoples might be invited to join the consultative body when matters of general interest for indigenous peoples are being discussed, and

representatives of other ethnic groups who have to cope with returnee problems could be invited to join the consultative body when questions relating to the returnee problems will be discussed.

I now come to a number of other questions which are of special relevance for the Crimean Tatars. One problem which in my view urgently requires solution is the question of the very large number of Tatars who do not have citizenship or whose citizenship of Ukraine but are not aware of this. I am referring to the Tatars who have acquired citizenship of Ukraine on the basis of Article 2 (1) of the Law on Citizenship of Ukraine of 8 October 1991 which stipulated that all persons residing in Ukraine on the day the Law came into force (13 November 1991) who were not citizens of another state and who did not refuse Ukrainian citizenship automatically became Ukrainian citizens. (As all Crimean Tatars were Soviet citizens at the time of Ukraine's independence but the Soviet-Union disappeared as a subject of international law the question of citizenship of another state was not relevant for them). The only problem to be solved for this category of Crimean Tatars is that those amongst them who are not aware of their citizenship will have to be certified as such.

Regarding the category of Tatars who returned from Central Asia after 13 November 1991 and who have not yet acquired citizenship of Ukraine, Article 17 of the 1991 Law on Citizenship requires non-possession of foreign citizenship and permanent residency in Ukraine during the preceding 5 years. The draft of the new Law on Citizenship presently under consideration in the Supreme Rada of Ukraine contains similar provisions. In addition, the draft Law, in Article 12.2, dispenses with the requirement of 5 years residence in Ukraine for persons (as well as members of their families: children, grandchildren, spouses) who previously lived in the territory of Ukraine but were living outside Ukraine at the time of Ukraine's Declaration of Independence (24 August 1991), as long as they are not citizens of a foreign country. If the provisions in the new draft Law I just quoted will be adopted, they would in my view cover all Crimean Tatars who are not yet citizens of Ukraine and whose cases cannot be solved by the certification process I mentioned above.

Though I have understanding for the wish of the Government of Ukraine to avoid double citizenship and I also believe that the formula chosen in the draft Law to counteract this risk could be applied without causing too many problems for those Crimean Tatars who might wish to return from Central Asia in future, it nevertheless does cause considerable difficulties for Tatars still without Ukrainian citizenship who have already arrived in Crimea. Equally, I do believe that it is feasible to work out a formula for those who have already returned which, on the one hand, can be effective in preventing double citizenship, but which on the other, would provide an easier solution for the Tatars.

Under the proposed legislation, the Crimean Tatars have to provide proof of cancellation of previous citizenship in order to acquire the citizenship of Ukraine. As both the formalities regarding the confirmation by Central Asian states of their renunciation of citizenship and regarding the application for

Ukrainian citizenship may often take a year or even more, the persons concerned will be stateless during this interim period, with all the inconveniences this may cause. The procedure of renunciation also involves costs which are prohibitive for many applicants.

In this context I have also to recall the Declaration adopted by consensus by the CIS Migration Conference in May 1996, which was organized under the joint auspices of UNHCR, IOM and OSCE. Ukraine was one of the participating states. Paragraph 15 (c) of this Declaration commits states "to adopt appropriate measures at the national and international levels to prevent and to reduce statelessness, particularly concerning persons residing permanently on their territory". Even though this is not the intention, the practical effect of the relevant draft legislation is that the number of stateless persons will be increased, at any rate for a period of time.

The formula I would like to suggest for all Crimean Tatars without Ukrainian citizenship who will have arrived in Crimea prior to the coming into force of the new Law on Citizenship is that they will all be granted the citizenship of Ukraine provided that they submit an application requesting this accompanied by a formal declaration of renunciation of the citizenship of the country from which they had returned to Crimea. This system would have several advantages. In this way there would be no period of statelessness, and the long waiting period between the moment of application and the moment of acquiring citizenship could be considerably shortened. In order to counteract the risk of cheating, a provision could be included in the law that false information about previous citizenship will lead to the loss of Ukrainian citizenship.

In order to respect the interests of the states from which Crimean Tatars falling under such an arrangement have returned, a list of those who have renounced their citizenship could be dispatched to the Government concerned. In this connection, I also note that no state can forbid a person to change his citizenship. Article 15 (2) of the Universal Declaration of Human Rights states explicitly that "no one shall be ... denied the right to change his nationality". It would even be contrary to the letter and the spirit of the Universal Declaration to make the acquisition of Ukrainian citizenship dependent upon the determination of another state to agree to and to facilitate renunciation.

I now turn to a quite different problem of immediate interest for the Tatars and other formerly deported ethnic groups which in my view requires a solution. It regards the representation of the Tatars in the Parliament of the ARC. In the present Parliament, the Crimean Tatars have been allotted 14 seats, and the other formerly deported ethnic groups 1 seat, under a quota system valid only for the present legislative period. I would recommend that, especially taking into account many specific problems which returnees have to face, a formula will be developed which will ensure the Crimean Tatars a number of seats in the future Crimean Parliament broadly commensurate to their percentage of the total population of the ARC. A parallel arrangement would have to be developed for the group of other formerly deported ethnic groups.

In this context, I recall that the electoral system of Ukraine, when applied for the elections of the Crimean parliament, should in all likelihood lead to no representation at all for the Crimean Tatars and other formerly deported ethnic groups. This problem could be solved either by continuing the present quota-arrangement or by changing legislation in such a way, taking into account the specific aspects of the situation in Crimea, that a proportional election system would be applied for the elections for the parliament of the ARC. In this connection, I would also like to draw your attention to the fact that the requirement for political parties to be registered in at least 13 Oblasts of Ukraine created very difficult problems for the Crimean Tatar community (and for a number of Crimean political parties as well).

Finally, I permit myself to make some comments on the question of the status of the languages in the ARC. I share the view that Article 10 of the Constitution of Ukraine, which states that the state language of Ukraine is Ukrainian, has to be reflected in the Constitution of the ARC. As far as the question of a reference in the Constitution of the ARC to the Russian and Tatar languages is concerned, I have noted that Article 10 of the Constitution of Ukraine states that "the free development, use and protection of the Russian language and the languages of other minorities is guaranteed in Ukraine", while Article 3 of the Ukrainian Law on Languages lays down the principle that in places of compact settlement of other nationalities their national language can be used alongside the Ukrainian language. Taking this into account, I would recommend that the following formula for the reference to other languages that the state language will be included in the Constitution of the ARC:

"In places of compact settlement of persons belonging to other nationalities (cities, regions, villages or their combinations) their national languages may be used alongside the state language in organs of the ARC, organs of local government, non-public institutions and enterprises. In the Parliament of the ARC, the Russian and Tatar languages may be used alongside the state language. The free development and protection of the Russian language, the Tatar language and other languages spoken in the ARC is guaranteed."

These are the recommendations I wanted to submit to you, Mr. Minister. I look forward with great interest to your reply.

Yours sincerely,

[signature]  
Max van der Stoep  
OSCE High Commissioner  
on National Minorities

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**MINISTER  
FOR FOREIGN AFFAIRS OF UKRAINE**

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Kyiv, "25" March 1997

Dear Mr. High Commissioner,

With great interest I have read your letter of 14 February 1997 in which you presented a comprehensive analysis of the problems related to the indigenous peoples and, in particular, Crimean Tatars. In this regard, I would like to express my gratitude for your comments on the draft Concept of the National Policy of Ukraine in Relation to Indigenous Peoples and a number of concrete issues related to these problems. I consider it very important that the latest achievements of the international legal studies in this sphere are duly taken into account already on the stage of drafting the above-mentioned concept. In this context, your personal conclusions and speculations are of special value for us.

As you have rightly noted, nowadays, the representatives of indigenous peoples may enjoy in full their rights ensured by the Law of Ukraine "On National Minorities in Ukraine". In this connection, Article 10 of this Law is very important: it guarantees for all national minorities the right to preserve their living environment in the places of their historical settlement. Inclusion of the notion of "indigenous peoples" in the

**H.E. Max van der Stoel  
OSCE High Commissioner  
of National Minorities  
the Hague, the Netherlands**

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Constitution of Ukraine demonstrates serious attention paid by Ukraine to this issue and provides necessary basis for effective solution of problems relating to it. This Article determines the order of legislative regulation of the issue of return to Ukraine of the deported persons. I am sure that further elaboration of the Concept of National Policy in Relation to Indigenous Peoples with involvement of the international experts may assist to find the most effective ways for solving the problems of indigenous peoples: legislative regulation of their status, or approving the guidelines of the state policy in this sphere or creating appropriate institutional mechanisms.

I can not but agree with your conclusion that the implementation of indigenous people's rights considerably depends on the scope of their participation in the representative bodies, as well as on the extent to which

their position is taken into account by state executive and legislative authorities in decision-making process on the issues related to indigenous peoples. In my opinion, your idea to use the potential of Crimean Tatars - members of the Verkhovna Rada of the ARC as the consultative body in resolving problems of the deported peoples in legal, economic, social and cultural fields might be one of the possibilities to meet the Crimean Tatars proposal to use Mejlis as a consultative body. At the same time it might allow to avoid putting ethnic criteria in its basis.

Regarding your detailed recommendations on the questions of citizenship which are undoubtedly among the most important issues related to the returning of the deported persons to Ukraine, let me assure you that they will be thoroughly considered by our experts and taken into account in an extensive work being done in this field both by the executive and legislative authorities of Ukraine. I would also like to greatly appreciate once again your principal position concerning the necessity of having a single citizenship in Ukraine, as well as avoiding the cases of dual citizenship and statelessness.

Concerning the problem of acquiring the Ukrainian citizenship by the returning Crimean Tatars, I would like to admit that the legislative measures constitute one of the aspects of resolving the problems of the deported peoples. Appropriate financial and other resources, including those from the international community, would facilitate Ukrainian efforts to ensure the enjoyment of rights by such new citizens. Indeed, Ukraine undertakes maximum efforts to solve the mentioned problems inherited from the totalitarian regime but objectively it is not able to overcome them by own.

I also highly appreciate your attention to the problems of increasing the efficiency of the electoral system in Ukraine in the conditions of the Crimean autonomy, as well as the problems of functioning of the State (Ukrainian) language and the languages of the national minorities in the ARC. The above-mentioned recommendations, as well as others suggested in your letter were sent to the Ministry of Justice of Ukraine for the proper consideration and reflection in relevant draft laws and regulations.

In conclusion, I would like once more to express, Mr. High commissioner, my deep satisfaction of our ongoing dialogue and constructive fruitful cooperation.

**Yours sincerely,**

**[signature]**

**Hennadii Udovenko**