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C O N F I D E N T I A L KYIV 002031

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SUBJECT: UKRAINE-RUSSIA: BLACK SEA FLEET ISSUES

Classified By: Ambassador William Taylor. Reasons 1.4 (b) and (d).

Summary

1. (C) Significant Black Sea Fleet (BSF) basing issues remain unresolved, despite nine years of working group negotiations. Outstanding issues include: rules on deployment in crisis situations, troop movements on Ukrainian territory outside Fleet facilities, inventory and assessment of real property assets, criminal jurisdiction, and control of navigational assets (such as lighthouses). The recent Georgia-Russia conflict reinforced President Yushchenko's conviction that Ukraine not renew the basing agreements on their expiration in 2017. Ukraine's deputy head negotiator told Embassy that the GOU's goal is to try and settle in good faith base operation issues. The negotiator expressed interest in learning more about U.S. experiences with overseas basing agreements. End Summary.

History, Working Groups

2. (C) Over the course of a two-hour meeting with Embassy on September 30, GOU Deputy Negotiator on Black Sea Fleet issues, Special Ambassador Victor Semonov reviewed the history and current challenges facing Ukraine in its negotiations with Russia over the Black Sea Fleet. Semonov's comments reflect the state of play following the most recent Ukrainian-Russian talks on the BSF, held September 25 in Kyiv. Semonov told us that the basing of the Russian fleet on Ukrainian territory had been a political necessity at the time of the 1997 agreement (ratified in 1999). He described Russian pressure then as "unpleasant," including efforts to destabilize Crimea along ethnic lines. Semonov noted that the agreement contains preferences for Russia, and opined that Ukraine "was forced to sign the rules of the game" to favor Russian interests. He noted in particular the common criticism of the very low rent and its application against Ukraine's substantial bilateral debt to Russia. But, Semonov explained, at the time, Russian agreement to even minimal rent was valued more for its implicit acknowledgment of Ukrainian ownership of the base than for any monetary significance.



3. (C) The two sides established five working groups to

create the sub-legal agreements covering various aspects of the basing of the fleet in Sevastopol, including real property and positioning, use of hydrographic and navigational assets, jurisdiction issues (including criminal jurisdiction) and force movements, ecology, and political-military issues. The GOU hopes that a sixth working group will soon be established on social issues.

BSF Deployments

4. (C) Challenges remain for many of these working groups. The most well-known problem became an acute issue during the Russia-Georgia conflict in August, when the GoU invoked little-known rules governing the movement of the BSF across Ukrainian international boundaries. Semonov cited the provisions of the original BSF agreement establishing the precedence of Ukrainian law in the handling of border crossings; Ukrainian law requires an application for permission to be made thirty days in advance of a proposed border crossing.

5. (C) Semenov said that in 1999, the Ukrainian Cabinet of Ministers issued a decree, separate from the base agreement, at Russia's request for preferential treatment, shortening the advance application requirement to 72 hours. However, given the routine nature of most BSF movements, over the years, the permission-in-advance procedure deteriorated in practice to simply an advance notification. In June 2008, Yushchenko sought another Cabinet of Ministers resolution to reiterate the requirement for application for permission to cross Ukraine's international border 72 hours in advance. When the Cabinet of Ministers did not act, Yushchenko issued the resolution as a presidential decree. Given the coincident and not entirely unrelated timing of Yushchenko's decree, it was misportrayed by Russian media as a new requirement, rather than a reiteration of the existing (and preferential) procedure, Semenov observed. (Note: While Semenov's account differed slightly from that offered in the September 12 Bilateral Consultative Group Meetings, it is borne out by Cabinet of Ministers decrees on record. However, omitted from both his account and the account at the BCG, were extensive requirements imposed by the August 2008 Presidential decree that the BSF provide detail on individuals on board, weapons, ammunition, explosives, transported military property and equipment, and a secondary notice procedure to alert the Ukrainian Border Guard Service and customs authorities in advance of movement, all of which appear to us to be new and additional requirements. End Note.)

6. (C) Semenov noted that Ukraine has for the past four years requested consultations with Russia on the use of the BSF in crisis and conflict situations. The urgency of the request has obviously been heightened by the use of the BSF during this summer's Georgia conflict. He said Ukraine would prefer to refuse movement of the BSF in cases where there is no UN security resolution calling for international action, but ceded that this is not likely to be acceptable to Russia, and Ukraine therefore would prefer to refuse to allow any vessel back to port if it is used in a non-sanctioned conflict.

7. (C) At the least, Ukraine seeks to establish a mechanism for bilateral consultations with Russia before the fleet is put into action. Semenov strongly underscored Ukraine's dilemma as illustrated this summer: the Ukrainian constitution forbids the launch of hostilities from Ukrainian

soil against an ally. Furthermore, under the Hague convention, Ukraine could be considered a co-agressor if an attack were originated by a foreign force from Ukrainian soil, and in such a case could easily be dragged into regional conflict. Semenov said Ukraine wants neither to attack nor to be attacked.

BSF Arms, Personnel, Jurisdiction, Real Property

8. (C) Semenov noted that Ukraine has only limited information available on what arms are stored or deployed from Sevastopol. The Russian side must provide notice annually prior to January 1, outlining the quantity of troops and types of weapons to be stationed in Ukraine for the coming year. According to Semenov, Ukraine does not have the opportunity to provide consent. While there has been some success in making inspections of Russian aircraft (to confirm that they do not carry nuclear weapons), the GoU has no such access to Black Sea Fleet ships or base installations. Furthermore, there appears to be no SOFA-type agreement to govern the positioning of or jurisdiction over BSF personnel stationed on the BSF installations, nor to govern the rules of conduct or notification of movement of BSF personnel on Ukrainian territory (between the various base installations, for example). Semenov noted recent instances of armed BSF patrols on the streets of Sevastopol. These were issues to be resolved by sub-agreement to the original basing agreements through the working groups; however, no progress has been made.

9. (C) The lack of access to base facilities has also been a perennial sticking point in progress toward another key Ukrainian goal: creating an inventory of real property and buildings occupied by the BSF. At a total of 1100 sq

kilometers, the base properties cover an area greater than the City of Moscow. These properties, unlike most foreign bases in other countries, are not co-located on one common area but are scattered around Sevastopol like small islands.

10. (C) Semenov noted that Sevastopol no longer need be defined simply by its relationship with the BSF; in addition to its obvious potential as a commercial port, there is considerable research potential at the oceanographic and maritime institutes, and the potential to support tourism. Unfortunately, the presence of the fleet effectively hampers city development in new directions.

11. (C) Finally, the BSF has retained control, without Ukrainian agreement, of the lighthouses around Sevastopol, thus effectively creating another problem for Ukraine, which is under international obligation to provide for the navigational safety of ships in Ukrainian waters.

12. (C) Semenov noted that the U.S. clearly has extensive experience with basing agreements, albeit not from a bilateral host country perspective. He stressed that Ukraine is negotiating in good faith with Russia, and would be interested in anything we can share to illustrate commonly accepted basing practices, in the hopes that Russia might be amenable to using them as models or starting points.

Comment

13. (C) Lack of clarity on key dimensions of BSF arrangements

leaves the door open to potential conflict. In the wake of the Georgia events, Ukraine is intent on asserting its prerogatives, though with minimal ability to compel Russian compliance. As part of our engagement with MFA and MOD we will look for ways to share US experiences with overseas basing agreements.
TAYLOR

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