

Comments by Azerbaijan
on
the Memorandum of the Commissioner of the Council of Europe for Human Rights on humanitarian and human rights consequences of the conflict between Armenia and Azerbaijan

General Comments

1. While taking note of Mme. Commissioner's interest on the humanitarian and human rights consequences of the conflict between Armenia and Azerbaijan, the Azerbaijani side regrets that Mme. Commissioner in preparation of the memorandum did not properly respond to questions officially addressed to her.
2. The Azerbaijani side was officially informed on the intention of preparation such a document through the letter of the Head of her office addressed to the Permanent Mission of Azerbaijan on July 31, 2021. Yet, as it becomes clear from the memorandum, the preparations for this document was started well in advance with certain "online meetings" in June. Thus, the Commissioner did not timely inform the Azerbaijani side on her intention to prepare a document on the issue of direct interest to Azerbaijan, either.
3. It is worthwhile to underline that the Committee of Ministers has not requested the Commissioner to prepare this memorandum nor did it refer the subject matter to the consideration of the Commissioner. We acknowledge that preparation of the document stemmed from the Commissioner's own decision. Regardless of motivation of the Commissioner to prepare such a memorandum, it should not have affected the accuracy of information and assessments contained therein.
4. The memorandum does not identify the list of interlocutors, including their professional and national affiliations that the Commissioner contacted and used as a source of information. This adds to serious concerns of the Azerbaijani side over quality and accuracy of information, judgments provided by the Commissioner, as well as the lack of transparency and accountability in the activities of the Commissioner.
5. It is of particular importance to highlight that Mme. Commissioner did not find opportunity to visit Azerbaijan, including its districts heavily affected by the aggression of Armenia during the 44-day Patriotic War. Apparently, instead of visiting conflict-affected districts and observing in person the harsh consequences of grave violations by Armenia of international humanitarian law and human rights, the Commissioner opted for distant collecting of information from unidentified sources.
6. Flawed methodology applied for processing received information has effectively contributed to breaking down overall credibility of the memorandum. Clear selectivity is apparent throughout the text in terms of describing issues and consequently, making calls and recommendations, which as a rule, favors only Armenia. For instance, it is not clear why a document finalized on October 21, 2021, used outdated statistics of June 2021 on the death tolls and injures due to mine explosions. Similarly, it remains to be explained why the memorandum provides statistics on the cases of landmine victims on the other side of the former line of contact (see details below on part 3) and discriminates the Azerbaijani victims of landmine explosions and their families (paragraph 24, see below). There are also several instances, when Mme. Commissioner provides inflated figures as to the number of missing persons in the

Armenian side or claimed civilian casualties, which substantially differ from the similar data provided by independent sources present on the ground. In addition, such clear inaccuracies as the location of the Hadrut town of Azerbaijan (dealt with in detail below) provides substantial ground to question the overall credibility of the document as such.

7. Consequently, the memorandum fails to serve to its declared purpose of addressing the humanitarian and human rights consequences of the conflict between Armenia and Azerbaijan, and instead, replicates the assertions, allegations and assessments made previously by others, the majority of which have already been addressed or are under consideration at more relevant fora, such as the PACE, ECHR or ICJ. Compounded by clearly biased and discriminative approach the document is far from being of added-value and serving as a credible point of reference.
8. Of particular concern are recurrent references and descriptions used in the memorandum that infringe upon the sovereignty and territorial integrity of the Republic of Azerbaijan. Accordingly, such references, including the use of non-existent geographical names are utterly unacceptable.
9. The Azerbaijani side takes due note that in view of the Commissioner nothing in the memorandum “can be interpreted as being contrary to the full respect of the sovereignty and territorial integrity of Armenia and Azerbaijan within their internationally recognized borders, the provisions of the 1993 UN Security Council resolutions and the Statement by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation of 9 November 2020”.
10. In this regard, the Azerbaijani side once again strongly urges the Commissioner to refrain from using such expressions as “Nagorno Karabakh”, “Stepanakert” etc. with reference to the parts of the territory of Azerbaijan. The Azerbaijani side further reminds that the officially endorsed and standardized geographical names of the Republic of Azerbaijan has been duly submitted to the UN Group of Experts on Geographical Names (UNGEGN) and distributed as an official document under the reference number GEGN.2/2021/CRP.134. The use by the Commissioner of geographical names other than those contained in the said report with reference to the territory of Azerbaijan runs contrary to the norms and recommendations developed by the UN Conference on the Standardization of Geographical Names and must be rectified.
11. In a similar vein, all references or descriptions that intentionally or unintentionally question the territorial integrity of the Republic of Azerbaijan within its internationally recognized borders, including those reflected in paragraphs 8, 12, 14, 16, 24, 25, 27, 41, 43, 70 and 81 are utterly unacceptable.
12. In view of all above-mentioned, the Azerbaijani side calls on the Commissioner to rectify the shortcomings in her memorandum, some of which outlined below in detail, and in general her approach with a view to ensuring that her activities are unbiased, impartial and non-discriminative in line with the mandate entrusted by Council of Europe member States.
13. The Azerbaijani side urges the Commissioner to reconsider her decision to publish the memorandum without rectifying serious shortcomings in terms of methodology and

even factual inaccuracies. It is also the request of the Azerbaijani side that the present Comments be attached to the memorandum and published together with the memorandum.

Part 1:

14. With regard to the issue of access of international organizations, including international humanitarian and human rights actors to the conflict-affected territories of Azerbaijan, the principled position of the Republic of Azerbaijan has been declared on numerous occasions and is based on the international law, including the international humanitarian law and human rights law.
15. All activities by international organizations throughout the entire territory of Azerbaijan, including its conflict-affected territories should be exclusively based on the respect for the sovereignty and territorial integrity of Azerbaijan, agreed and coordinated with the Government of Azerbaijan in full compliance with the principles of transparency and accountability. These are internationally-recognized requirements, which are enshrined, *inter alia*, in the UN General Assembly Resolution A/RES/46/182 of 1991 on the United Nations Guiding Principles on humanitarian assistance.
16. Contrary to the picture that the Commissioner attempts to draw, there is no restriction by Azerbaijan for the delivery of humanitarian aid to all its conflict-affected territories, especially the part of its territory where the Russian peacekeeping contingent has been temporarily deployed to. The ICRC continues to operate in these areas in coordination with the Government of Azerbaijan without any impediment. In addition, within few days after the end of the armed conflict in November last year Azerbaijan has put its transport and logistics infrastructure into service for the delivery of humanitarian aid to these areas.
17. All conditions, including the strong political will and necessary practical and logistical conditions are put in place by the Government of Azerbaijan to ensure free and unimpeded activities of relevant international actors in the conflict affected territories in accordance with the principles mentioned above. Nonetheless, Armenia continues to politicize the matter of “access” with clear intention to exploit the situation for its biased political agenda, misleads the international organizations and actors, and thus, prevents them from discharging their mandate effectively and efficiently.
18. Regretfully, speculations on this particular matter without providing due account and assessment of illegitimate preconditions put by Armenia, gives additional indulgence for Armenia to continue its destructive policy of interfering with the cooperation of Azerbaijan with international organizations. In this regard, the Commissioner’s generic calls does not serve to persuade Armenia to refrain from infringing the sovereignty and territorial integrity of Azerbaijan, and instead, encourages Armenia to continue its above-mentioned stance. Consequently, such an approach by the Commissioner runs contrary to international law and applicable international framework.
19. If the Commissioner wants to be useful, she would try persuade Armenia, to the extent her mandate allows, to cease its unlawful interference with cooperation of Azerbaijan with international organizations and institutions on issues related to its sovereign territories.

Part 2:

20. In paragraph 13 the Commissioner asserts that “the return of those displaced in 1990s to the territories returned to Azerbaijan under the trilateral statement will continue to be an important issue” (emphasis is added). As a matter of fact, Azerbaijanis have been subjected to ethnic cleansing not only in the territories returned to Azerbaijan under the trilateral statement, namely, Aghdam, Lachin and Kalbajar, but also in Jabrayil, Fuzuli, Zangilan, Shusha, Khojavand, Khojali and Gubadli, which had already been fully or partially liberated before the signing of the trilateral statement. It is the inalienable right of all Azerbaijani IDPs to return to their places of origin, including in areas where the peacekeeping contingent is temporarily deployed to, such as Khankendi and parts of Aghdara, Khojavand and Khojali. Thus, the above-mentioned assertion of the Mme. Commissioner is, at least, a gross misreading of the trilateral statement, if it is not done on purpose to discriminate the Azerbaijani IDPs or question their right to return.
21. In paragraph 19, it is argued that a share of the persons left for Armenia from the conflict-affected territories of Azerbaijan are unlikely to return “since they come from areas liberated from occupation by Azerbaijan”. It should be stated, in this regard, that the large portion of concerned persons have been in fact settled illegally by Armenia during the occupation in gross violation of international humanitarian law to the territories which had almost no residents of Armenian origin before the occupation.
22. Failure to grasp this reality does not contribute to overall credibility of assessments provided in the memorandum. The illegal practice by Armenia to change the demographic character of the occupied territories has been extensively documented and on numerous occasions brought to the attention of the international community by Azerbaijan. The Commissioner, who claims to have “closely monitored the situation before and after the signature of the Trilateral Statement” should have been well aware of that and reflected it in the memorandum, accordingly.
23. Given the apparent concern of the Commissioner over the humanitarian and human rights consequences for those individual illegal settlers who had been exploited for the purpose of illegal settlement policy, it would have been legitimate to expect that the Commissioner properly identifies the responsibility of Armenia for the situation it had caused.

Part 3:

24. Without clarifying its source, paragraph 24 asserts that “most of the mines were planted during the conflict in the early 1990s”. This is far from being accurate and apparently is done for the purpose of sharing the blame between Armenia and Azerbaijan for mine contamination, and thus, diminishing Armenia’s responsibility.
25. Given the pace in which all these territories were occupied by Armenia in 90s for next 30 years, it is clear that it would have been practically impossible for Azerbaijan to plant mines at such a huge numbers in these areas.
26. Secondly, the above-mentioned self-assertion of the Commissioner contradicts to findings of on-site assessment mission of the UNDP conducted 10-16 December 2020. Thus, the mission identified, *inter alia*, that the high risk areas due to mine contamination are along the former line of contact 300 km long and 5 km deep, along the main access roads from the former line of contact to district capitals, in front of the

Armenian military bases and key strategic locations (such as bridges) and along the roads and temporary bases used by Armenian armed forces during their retreat in the course of 44-Day War. Thus, most of the mines have been planted during the occupation and in the course of the retreat of armed forces of Armenia.

27. Of particular relevance, in this regard, is to recall the well-documented facts, including by public testimonies of Armenian high-ranking military, that Aghdam, Lachin and Kalbajar were heavily contaminated with mines by the armed forces of Armenia before their withdrawal from the said areas under the trilateral statement of 10 November 2020, which envisaged, among others, the termination of all military activities, including planting of mines.
28. The Azerbaijani side wants to believe that omissions on the above-mentioned by the Commissioner are not intentional and do not aim at softening the responsibility of Armenia. Although, in view of paragraph 27 of the memorandum the Commissioner seems to be informed about the UNDP's important work with regard to assisting the demining in the liberated territories of Azerbaijan, and thus, should have been acquainted with the assessment by the UNDP.
29. In paragraph 24 the Commissioner quotes statistics on the cases of landmine victims on the other side of the former line of contact. Yet, she again fails to provide due account of the responsibility of Armenia for all these incidents.
30. On the other hand, the mentioned statistics in paragraph 24 are not conclusive. It should be drawn to the attention of the Commissioner that between 1999 and 2020, 535 Azerbaijanis were killed and 2418 were injured as a result of mine explosions.¹ Regrettably, the Commissioner failed to include this important data, as a consequence of which the immense sufferings of those victims and their families left unaddressed. It goes without saying that with such a discriminatory approach the document under consideration can by no means be considered as fair and just.
31. Since the signing of the Trilateral Statement by the leaders of Azerbaijan, the Russian Federation and Armenia on November 10, 2020, which announced the termination of all military activities, 172 citizens of Azerbaijan, including 65 civilians, among them journalists and other media workers, have been killed or seriously wounded due to explosions of mines indiscriminately laid by Armenia. The memorandum that was finalized on October 21, 2021, used outdated data of June 2021 for unknown reasons. As a result, it failed to provide the real picture on the horrible consequences of mine contamination of territories of Azerbaijan and the continued refusal of Armenia to release maps of mined areas.
32. Many of the explosions since the end of the armed conflict under the Trilateral Statement took place in such places as graveyards and crop fields, which cannot be of military use and planting landmines in these areas cannot be explained by military necessity. This leaves no doubt that Armenia has planted mines indiscriminately and with a view to causing as many casualties as possible among returning Azerbaijani forces and population.

¹ 535 people died as a result of mine explosions within 21 years <http://defence.az/en/news/149267> (last visited on October 31, 2021)

33. In view of the above-mentioned, it would have been expected that the Commissioner takes targeted measures to persuade Armenia to release accurate maps of all mined areas without further delay to prevent further human losses. On this point, it needs to be reminded that release of maps of the mined areas is not a subject of bargain or courtesy, but the obligation of Armenia under the customary international humanitarian law and the Trilateral Statement.
34. Yet, the Commissioner leaves unnoticed the public testimony by the highest public Armenian officials, seeking a kind of public approval in Armenia, that the maps released thus far constitute only a “tiny portion” of whole data available to Armenia and instead opts for generic call. This provides yet another reason to question impartiality and credibility of the memorandum in general, in view of calls specifically addressed by the Commissioner to Azerbaijan in other parts of the memorandum in relation to certain unverified allegations.

Part 4:

35. Regarding the Armenian servicemen arrested by the law-enforcement bodies of the Republic of Azerbaijan, the attempt by the Commissioner to link their detention to “border demarcation” is simply out of touch. The said persons, being members of a sabotage group of the armed forces of Armenia, were detained in the Hadrut district deep inside the internationally recognized territory of Azerbaijan, and thus, cannot be qualified as prisoners of war and can have nothing in common with the so-called “recurrent border incidents” or “border demarcation”.
36. Azerbaijan resolutely rejects the accusations of ill-treatment of Armenian prisoners of war. During their detention in Azerbaijan, the Armenian servicemen were provided with the necessary medical care and dignified treatment, were given the opportunity to keep in touch with their families, and were provided with other rights and were regularly visited by the ICRC.
37. Azerbaijan with due respect for its obligations under international humanitarian law returned all Armenian prisoners of war. Even before the termination of military activities, Azerbaijan undertook good will gesture and returned some of the prisoners of war on a unilateral basis. The Armenian nationals, as well as nationals of some other states who remain in detention in the Azerbaijani side are either not prisoners of war or subject to return under the applicable international humanitarian law and criminal law. These are persons convicted by competent courts for crimes, including in some cases, for war crimes.
38. Therefore, the call on Azerbaijan to release “all those still in captivity” is a gross interference by the Commissioner with due legal process. The said persons have been convicted by the competent court for concrete crimes and serve their sentence in Azerbaijan.
39. In this respect, the Azerbaijani side reminds the Commissioner that a similar request lodged by Armenia was rejected by the Grand Chamber of the ECHR by its judgment of 8 June of 2021 and calls on the Commissioner to refrain from actions and statements interfering the due legal process.

Part 5:

40. In paragraph 41, the Commissioner claims that there are “around a thousand” missing persons in Armenia as a result of hostilities in the 1990s and misquotes the information released by the ICRC on 15 December 2015. According to the ICRC news release, “the ICRC has handed the parties to the conflict an updated list containing the names of **4496 people** registered as missing” (*emphasis is added*)². Thus, given the fact that this list of 4496 people includes 3890 Azerbaijanis, according to simple mathematics the number of missing persons in Armenia would be substantially less than claimed by the Commissioner. The reasons behind such an inflation calling for sympathy to Armenia needs to be explained.
41. The Commissioner is partly right in her assessment that there is a new dynamic around this issue in liberated areas. Yet, it is not related to change in policy of Armenia, but to the fact that Azerbaijan has itself regained access to the territories and relevant authorities of the Republic of Azerbaijan are now able to collect additional material evidence with regard to numerous heinous crimes, including crimes against humanity and war crimes committed by the armed forces of Armenia in the course of the aggression against Azerbaijan.
42. One of the mass killing of Azerbaijani civilians was perpetrated in the Bashlibel village of the Kalbajar district in April 1993. In the course of an attack by the armed forces of Armenia on the village on April 3, 1993, 62 civilian residents had to flee from the invading Armenian forces and took refuge in caves located 3 km away from the village. On April 18, 1993, the armed forces of Armenia found the civilians hiding in the caves and subjected them to intensive fire from machine guns and other types of weapons. As a result, the number of killed on the spot inside the caves were 12 civilians, including 1 child and 1 teenager.
43. The Bashlibel massacre is by no means an isolated case, but adds to numerous previously identified war crimes and crimes against humanity committed by Armenia in the course of its armed aggression against Azerbaijan. It remains therefore urgent as it was before to persuade Armenia to exchange information on the whereabouts of Azerbaijani missing persons.
44. In view of the fact that Armenia has not taken any tangible step in honoring its obligations in terms of bringing clarity to whereabouts of close to 4000 Azerbaijanis, it would have been expected from the Commissioner to take a principled position instead of expressing “satisfaction” with the ratification by Armenia of the International Convention for the Protection of All Persons from Enforced Disappearance. Without being implemented in full and good faith, and thus, not contributing to finding consolation by thousands of families of the missing persons, such a formal ratification should not have been reason for the Commissioner to be satisfied.

Part 6 and 7:

45. Significant inconsistencies, flaws in methodology and selectivity undermine the overall credibility of the assessment provided by the Commissioner with regard to alleged violations of international humanitarian law and human rights during the 44-Day war.

² ICRC, [Nagorny Karabakh: ICRC submits updated list of missing persons](https://www.icrc.org/en/document/nagorny-karabakh-icrc-submits-updated-list-missing-persons), 15 December 2015, <https://www.icrc.org/en/document/nagorny-karabakh-icrc-submits-updated-list-missing-persons> (last visited on October 31, 2021)

46. In paragraph 54, the Commissioner replicates the allegations of the International Partnership for Human Rights (IPHR) and Truth Hounds of torture, cruel, inhuman or degrading treatment of Armenian prisoners of war. First of all, these allegations are based on interviews with former Armenian prisoners of war conducted after their return to Armenia and cannot be taken as verifiable and credible evidence, especially in view of the lack of similar testimonies made to such credible organization as ICRC, which had regularly visited them during their captivity in Azerbaijan.
47. It is also not clear why the Commissioner opts for selectivity in attribution of the same allegations. Thus, in the case of Azerbaijan the allegations are attributed to the “Azerbaijani authorities” as such, while in the case of Armenia the same allegations are attributed not to “Armenian authorities” but to “military personnel of Armenia/Nagorno Karabakh”.
48. In the Commissioner’s own view, as reflected in the title of the memorandum, the military hostilities took place between Azerbaijan and Armenia. Consequently, attribution of alleged unlawful acts to imaginary/non-existent “military personnel of Nagorno Karabakh” cannot be justified except with the considerations of helping Armenia avoid political and legal responsibility.
49. The statistics on indiscriminate and/or disproportionate attacks on civilians provided by the Commissioner, in particular those with reference to IPHR/Truth Hounds are far from being accurate due to extremely flawed methodology applied. Suffice here to note that sustained shellings of Tartar on almost daily basis and with more than 2000 missiles during the entire period of 44-Day war is taken by the IPHR/Truth Hounds as one single case. Similarly, massive attacks on such residential districts as Aghjabadi, Khizi, Beylagan and Goranboy, to name just a few, have not been considered at all by the IPHR/Truth Hounds.
50. As such, the memorandum fails to provide the real scale and gravity of attacks by the armed forces of Armenia on densely populated residential areas of Azerbaijan located far away from the frontline, including by prohibited weapons and ammunition.
51. The range and consistency of the attacks as well as the statements of the Armenian side before and during the military operations leaves no doubt that the attacks on Azerbaijani civilians and civilian infrastructure have been pre-planned and executed as a part of Armenia’s war strategy aiming at spreading panic among the Azerbaijani public. Some of these statements have also been covered in the reports familiar to the Commissioner³, yet, unfortunately, the Commissioner leaves unnoticed these statements and does not provide any assessment in that regard.
52. Despite the fact that the theatre of military operations was the territory of Azerbaijan under the control of armed forces of Armenia and the Azerbaijani side was advancing towards these territories, during the war Azerbaijani residential areas outside the conflict zone suffered much more civilian casualties and injuries than the opposite side. This fact alone provides enough proof of adherence of Azerbaijan to humanitarian law and gross violations by Armenia.

³ See page 48, IPHR/Truth Hounds/ Global Diligence, [When embers burst into flames, International Humanitarian Law and Human Rights Law violations during the 2020 Nagorno-Karabakh War](#), May 2021.

53. It is also curious to observe that the Armenian casualties (81 killed) claimed by the Commissioner based on allegations of the Armenian side is somehow exaggerated and substantially higher than the numbers provided by the same IPRH/Truth Hounds (51 killed). The above-mentioned cannot but raise serious concern that the Commissioner with her selective approach aimed at favoring the Armenian side.
54. In paragraph 70 the reference made to Human Rights Watch report (footnote 61) on the numbers of schools and kindergartens damaged or destroyed is misleading. As a matter of fact, the provided numbers are not of the Human Rights Watch, but were provided by Armenia and Azerbaijan, respectively.
55. Of particular concern is over the omission by the Commissioner of the facts, documented by numerous sources, including in the reports of the Human Rights Watch⁴ referred to by the Commissioner elsewhere in the memorandum, of intentional burning and looting of schools and kindergartens by the armed forces of Armenia while withdrawing from the territories of Azerbaijan, as well as the cases of unlawful use of schools and kindergartens by Armenia for military purposes. It needs to be explained by the Commissioner if this omission is done intentionally as a sign of endorsement by her of these deliberate violations of international humanitarian law and human rights law or due to ignorance. In any case, this cannot but undermine the overall quality of the memorandum under consideration.
56. As for the investigations of the alleged unlawful acts, Azerbaijan, consistent with its obligations under international humanitarian law, has also taken very seriously the allegations of inhumane and degrading treatment by some Azerbaijani servicemen over the captured Armenian military. This is also reflected in the memorandum.
57. On the contrary, “there is no information about any investigations or prosecutions by Armenian authorities” as it was rightly pointed out by the Commissioner. In view of that it would have been legitimate to expect that instead of making generic calls and quoting relevant international obligations, the Commissioner will closely follow this situation with Armenian authorities and finally will be able to persuade Armenia to start investigating countless cases of serious war crimes, crimes against humanity, acts of genocide, including the one committed in Khojali.

⁴ Human Rights Watch, [Lessons of War, Attacks on schools during the Nagorno-Karabakh war](https://www.hrw.org/news/2021/09/08/lessons-war), 8 September 2021. <https://www.hrw.org/news/2021/09/08/lessons-war>, last visited 01 November 2021.