

COMMENTS
OF THE REPUBLIC OF ARMENIA REGARDING THE MEMORANDUM OF THE
COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

November 5, 2021

Armenia took note of the Memorandum on the humanitarian and human rights consequences of the war unleashed by Azerbaijan against Nagorno-Karabakh (Artsakh) prepared by Ms. Dunja Mijatović, Commissioner for Human Rights of the Council of Europe.

We commend the Commissioner's activities aimed at the promotion of the effective observance and full enjoyment of human rights in the whole area under the mandate of the Council of Europe. No one should be left behind irrespective of the status of the territory they live in, including the conflict areas (*or so-called "grey zones"*). Armenia considers that this memorandum has been prepared to serve this very purpose, paying particular attention to the instances of gross, massive and brutal violations of International Human Rights Law and International Humanitarian Law by Azerbaijan and its armed forces during the war.

We appreciate that the Commissioner has formulated useful recommendations in the memorandum which shall be examined in full and follow-ups be given where necessary.

Nevertheless, Armenia believes that the memorandum could be more explicit and regrets that in some cases it introduces artificial parity between the perpetrators of crimes, and their victims - the Nagorno-Karabakh people. The false balance has only served throughout the years to embolden Azerbaijan in its anti-Armenian policies.

We share the sentiments of the Commissioner and regret that it has so far proved impossible for her to travel to Nagorno-Karabakh to carry out independent and impartial human rights monitoring in line with her mandate.

Armenia has a good record of cooperation with both the current and the previous Commissioners for Human Rights and intends to continue this dialogue in good faith.

Armenia shares Commissioner's views with respect to the urgency of human rights protection in the aftermath of the 44-day war.

Title and Introduction

The title of the memorandum fails to properly reflect the essence, root-causes, and the dynamics of the Nagorno-Karabakh conflict. It contradicts the long-standing approach of the international community, including the UN, the OSCE, the Council of Europe, its Parliamentary Assembly and, most importantly, the OSCE Minsk Group Co-Chairs, the only internationally mandated format for the peaceful settlement of the Nagorno-Karabakh conflict. Moreover, the Trilateral Ceasefire Statement that halted the hostilities refers to the conflict as the "Nagorno-Karabakh conflict".

Misrepresenting this very complicated issue as an inter-State conflict “*between Armenia and Azerbaijan over Nagorno-Karabakh*” blurs the lines and distorts the general configuration of the relationship between various actors involved. It effectively denies the very existence of the people of Nagorno-Karabakh, whose right to self-determination and inalienable right to determine its political status and freely pursue its economic, social and cultural development was disregarded for decades, and that itself had been a major root cause of this conflict.

The 44-day war was not just an “outbreak of hostilities”. It was a pre-planned and well-prepared large-scale military aggression by Azerbaijan, with the support and direct participation of Turkey, as well as involvement of Foreign Terrorist Fighters from the Middle East, aimed at annihilation of the indigenous Armenian population of Nagorno-Karabakh, as well as removing the Nagorno-Karabakh conflict from the international agenda through use of force. This is evidenced by the actions, statements and stance of Azerbaijan in the pre-war period, as well as the policy heavily pursued by Azerbaijan even following the war. On number of occasion Azerbaijani highest leadership recognizes that they resorted to the massive use of force in the pursuit of their policy.

A year after the war Azerbaijan continues holding a number of the Armenian prisoners of war and captured civilians as hostages, violating its obligations undertaken by the November 9 Trilateral Statement, International Humanitarian Law, other international conventions and treaties.

The Azerbaijani authorities not only continue their hostile policy towards the people of Nagorno-Karabakh, but also rename the Armenian settlements in the territories fallen under their control, destroy, misappropriate, and desecrate religious sanctuaries, cemeteries and millennia-old cultural heritage. These actions and the complete ethnic cleansing of the Armenian population in the areas fallen under the Azerbaijani control once again cement the fact that Azerbaijan poses a continued threat to the right to life, physical security and merely existence of the Armenians of Nagorno-Karabakh.

I. The need to ensure access to the areas affected by the conflict and independent human rights monitoring

Armenia has always been an ardent supporter of the idea of humanitarian access to conflict zones, including within the framework of discussions within the Council of Europe on the unlimited access to “grey zones”. Armenia supported the proposals of the Secretary General, as well as the 2018 Resolution and Recommendation on “*Unlimited access to member States, including “grey zones”, by Council of Europe and United Nations human rights monitoring bodies*” of the Parliamentary Assembly of the Council of Europe.

Similarly, Armenia has been engaged in good faith with the United Nations and other international humanitarian efforts to secure the humanitarian access to Nagorno-Karabakh during and after the 44-day war.

Regrettably, more than a year after the ceasefire, Azerbaijan continues to undermine international efforts aimed at addressing the humanitarian consequences of the war. Azerbaijan

impedes the access of humanitarian assistance to Nagorno-Karabakh: a fact, which has been publicly acknowledged by the United Nations and UNESCO. To conceal its war crimes and to further aggravate the living conditions in Nagorno-Karabakh, Azerbaijan creates artificial obstacles to humanitarian access and is not engaged in good faith, an issue to be addressed at the political level within the Council of Europe, too.

We concur with Commissioner's conclusion that the issue of access should be resolved as a matter of priority and emphasize, once again, the importance and urgency of addressing the humanitarian needs of impacted people, based on the humanitarian principles of neutrality, impartiality, and independence. The status neutral approach is important in all situations where rights of people including right to life residing on certain territories are at stake.

II. The human rights of displaced persons and the right to return

As a result of Azerbaijan's aggression and its indiscriminate, deliberate and systematic strikes against civilian objects, more than 60% of the entire population of Nagorno-Karabakh, over 90,000 people, were forced to flee their homes and take refuge in safer places.¹

The voluntary return of the Armenian population of Nagorno-Karabakh to their native places of residence, in safety and dignity, is a key priority for the Republic of Armenia.

Enforceable assurances and guarantees should be secured for the returning Armenian population, in view of the acts of torture, atrocities and war crimes committed by the Azerbaijani army towards Armenians, including beheading of civilians and servicemen alike. Evidence of these atrocious acts has been circulated on social media by Azerbaijani sources themselves in order to perpetuate terror among Armenians and to discourage and prevent the return of displaced people. This criminal act has also been recognized by some international organizations, including by the United Nations High Commissioner for Human Rights.

As a result of the aggression, many Armenian residents of Nagorno-Karabakh for the last couple of decades have been displaced twice (double-victimized).

The Trilateral Statement of November 9, 2020 has ascribed a special role to the UN High Commissioner for Refugees for the supervision of the return of the displaced people to Nagorno-Karabakh and the adjacent territories.

III. The right to be protected against the danger of mines and explosive remnants of war

Since 1991, the beginning of the first Azerbaijani military campaign against Nagorno-Karabakh, to November 2020, Azerbaijan has not put forward any proposal for cooperating on demining issues, instead making every possible effort to disrupt the implementation of demining programs in Armenia and Nagorno-Karabakh.

¹ The Updated Edition of the Second Interim Report on the Azerbaijani Atrocities against the Artsakh Population in September-October 2020 <https://www.artsakhombuds.am/en/document/735> (visited on 5 March, 2021).

In 2016 Azerbaijan abused the principle of consensus in the OSCE and blocked the extension of the mandate of the OSCE office in Yerevan for allegedly supporting humanitarian demining operations in the conflict zone, which best demonstrates Azerbaijan's real attitude towards humanitarian demining processes.

For over two decades, Azerbaijan not only refused to cooperate on the exchange of information on minefields, but also actively obstructed the activities of the non-profit organization "HALO Trust", which has been carrying out demining activities in the territory of Nagorno-Karabakh since 2000.

What concerns the mined territories and their maps, a significant part of the territories was mined throughout the first war by the armed groups of Azerbaijan themselves. These minefields were either not mapped or the maps have not been preserved. Secondly, the Line of Contact formed after the first war was mined for defensive purposes by both Azerbaijan and Nagorno-Karabakh.

UNDP reports that hundreds of civilian deaths and injuries have been reported in the mined territories in Nagorno-Karabakh. According to "HALO-Trust", more mining accidents per capita have happened in Nagorno-Karabakh than elsewhere in the world.

Due to large-scale shelling and rocket attacks, including the use of cluster bombs by Azerbaijan, tens of thousands of unexploded shells and mines still remain throughout the whole territory of Nagorno-Karabakh.

Armenia has already transferred several minefield maps to the Azerbaijani side as a good-will humanitarian gesture and expresses readiness to provide all maps once the issue of repatriation of POWs and civilian hostages are settled.

Unfortunately, the issue of providing minefield maps is speculated and politicized by Azerbaijan in order to justify its non-compliance with the International Humanitarian Law.

IV. The right of captives to receive protection

Contrary to the Trilateral Statement of November 9, 2020, stipulating, inter alia, the "*exchange of prisoners of war, hostages, and other detained persons and dead bodies*", Azerbaijan has been continuously violating the fundamental norms of international humanitarian law, including the provisions of the Geneva Conventions and its Protocols².

In manipulating the issue of return of prisoners of war and civilian hostages, Azerbaijan came up with trumped up charges by accusing the Armenian prisoners of war of being "terrorists", which is a clear manifestation of politicization of a purely humanitarian issue.

Azerbaijan refuses the implementation of the interim measures of the European Court of Human Rights and conceals the real number of the Armenian prisoners of war and civilians still held in Azerbaijan, despite the existence of a large number of video, photo and other

² It specifically concerns Article 1 ("The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances") and Article 118 ("Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities") of the Third Geneva Convention.

materials posted on the social networks attesting the fact of the captivity of those persons. In a stark contrast to Azerbaijan, the Armenian side has already handed over all Azerbaijani prisoners of war, going as far as returning to Azerbaijan two convicted murderers, who were serving their terms for killing two Armenian civilians.

Currently Azerbaijan admits holding only 40 Armenian prisoners of war (37 servicemen, 3 civilians), and has fabricated baseless criminal cases against them.

There is ample evidence of enforced disappearances as Azerbaijan does not recognize the presence of dozens of servicemen whose capture had been documented by Azerbaijani sources themselves. Under such circumstances, as Human Rights Watch and other international organizations, NGOs and observers note, the lives of these people are in serious danger, and there is a great risk of enforced disappearances with all possible violations of human rights and dignity.

V. The right to know the fate and whereabouts of missing persons

The issue of missing persons is one of the most important humanitarian problems, the consequences of which have not been comprehensively addressed since the end of the First Nagorno-Karabakh War. Nevertheless, State commissions on prisoners, hostages and missing persons have been set up in Armenia, Azerbaijan and Nagorno-Karabakh. According to the Statute of the Inter-Agency Commission on Prisoners of War, Hostages and Missing Persons of the Republic of Armenia, it has a mandate to clarify the fate, search of the remains of the missing persons, as well as to coordinate the return of the remains to their families.

The Armenian side has always emphasized the need to establish direct practical working relations with the relevant commission of Azerbaijan to resolve existing issues at the state level. However, this aspiration of the Armenian side has for many years faced the indifference of Azerbaijan and the country's intention to politicize the issue.

After the preliminary agreement reached in 2012 and 2013 to organize a meeting of the representatives of the Working Groups of the two Commissions in a third country, the Azerbaijani side subsequently categorically rejected the Armenian side's initiative.

Instead of addressing today's urgent issues, Azerbaijan is raising the issue of the 1990s missing persons, which it was unwilling to address for decades. Obviously, Azerbaijan has a clear objective of diverting attention from the need to clarify the fate of those who went missing as a result of the Azerbaijani aggression against Nagorno-Karabakh in the autumn of 2020.

VI. The need for independent and effective investigations into serious human rights violations reported in relation to the conflict

Throughout the military aggression of Azerbaijan against Nagorno-Karabakh, numerous footages of torture, cruel, inhuman and degrading treatment of Armenian Prisoners of War were disseminated on the internet. Many of these videos depicted extrajudicial summary executions (*including beheadings*) of soldiers and civilians alike.

The plethora of evidence has been compiled both by the Human Rights Defenders of Armenia and Nagorno-Karabakh and the international human rights organizations. These reports are publicly available.

Armenia has lodged an inter-state case against Azerbaijan before the European Court of Human Rights, addressing, among others, the treatment of the captured Armenians in violation of Articles 2 and 3 of the European Convention on Human Rights.

As per the investigation of the alleged cases of torture or execution of Azerbaijani soldiers, the relevant investigative bodies have initiated a group of criminal cases, 6 in total. The investigations in these cases are ongoing.

In addition to its inter-state application before the European Court of Human Rights and the proceedings before the International Court of Justice, Armenia takes note of additional avenues detailed in the Commissioner's memorandum. Given the pre-planned character of Azerbaijan's military attack on Nagorno-Karabakh in 2020, Azerbaijan's use of foreign terrorist fighters and deployment of prohibited weapons, there should be no illusion that Azerbaijan would voluntarily agree to an independent, thorough, and consequential investigation into all allegations of war crimes during the hostilities of September-November 2020. The UN Working Group on the use of mercenaries of the United Nations Human Rights Office of the High Commissioner in its Statement of 11 November 2020 has referred to "widespread reports that the Government of Azerbaijan, with Turkey's assistance relied on Syrian fighters to shore-up and sustain its military operations in the Nagorno-Karabakh conflict zone, including on the frontline. "

For those residing in Nagorno-Karabakh, access to justice, including protection under the ECHR, remains a challenge. This issue deserves a closer attention and concrete actions from relevant Council of Europe bodies.

VII. Indiscriminate attacks and the right to life

Azerbaijan's attacks have inflicted massive damage on residential buildings, schools, kindergartens, hospitals, water and gas pipelines and electricity networks, causing a humanitarian crisis and putting in danger the lives and existential security of the people of Nagorno-Karabakh.

Azerbaijan deliberately targeted civilian areas with air strikes, heavy artillery, missiles, tank fire, loitering munition, cluster bombs on a daily basis, which resulted in hundreds of casualties among civilian population of Nagorno-Karabakh. Use of prohibited weapons by the armed forces of Azerbaijan, including white phosphorus, has also been well documented.

According to preliminary data, more than 7,800 objects of private property (residential buildings, apartments, shops, etc.); over 1,310 objects of infrastructure (public and industrial buildings, communications, electricity, gas and water supply, bridges, schools, kindergartens, cultural centers, factories, etc.); and more than 720 civilian vehicles were seriously damaged. Azerbaijan should be held accountable for these violations of the international humanitarian law.

The number of civilian casualties could have been catastrophic, which was averted only due to the massive displacement of the population of Nagorno-Karabakh, over 60% of which was forced to flee their homes and take refuge in safer places.

On the other hand, the authorities of the Nagorno-Karabakh undertook feasible measures to ensure compliance with obligations under International Humanitarian Law. The Defense Army of the Nagorno-Karabakh directed its military operations only against military objects of Azerbaijan, which by their nature, location, purpose or use, made an effective contribution to its military actions. However, it should be regretfully noted that Azerbaijani authorities have intentionally located various military objects in and around civilian settlements, using the civilian population as a human shield. The legitimate military targets deliberately located in the mentioned settlements by Azerbaijan were actively engaged in the offensive against Nagorno-Karabakh.

VIII. The need to combat hate speech, promote peaceful coexistence, and initiate steps toward reconciliation among the affected communities

The 44-day war was preceded and accompanied by constant calls for violence, including killings, disseminated through mass media, especially social media platforms, by Turkish and Azerbaijani sources. Xenophobic statements, including by high-level public officials were abundant throughout the war.

The general anti-Armenian sentiments, xenophobia and hate speech in the Azerbaijani society have been continuously registered by the international monitoring bodies, including by organs of the Council of Europe, namely the European Commission against Racism and Intolerance (ECRI) and the Advisory Committee of the Framework Convention for the Protection of National Minorities.

The so-called “war trophy park” dedicated to the 44-day war became the epitome of the Azerbaijani Government’s pervasive anti-Armenian policy of hatred that further exacerbates the volatile atmosphere in the region. The park was inaugurated on April 12, 2021, in Baku with the participation of the President of Azerbaijan, where along with captured military equipment degrading mannequins of the servicemen depicting “the Armenian soldiers”, as well as personal belongings of the soldiers and the helmets of killed Armenian servicemen were showcased.

In September 2021, after many rounds of failed negotiations, Armenia has filed a case against Azerbaijan at the International Court of Justice for the racial discrimination of ethnic Armenians, based on numerous well-found violations of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

When it comes to the state-level hate rhetoric and sustained efforts at dehumanizing the opposing side, including via memory initiatives and history books, it would be hard to pinpoint such instances on the Armenian side, while plenty of evidence of such actions by Azerbaijan is publicly available. In this sense, the Commissioner’s position should be more specified.

Conclusions

Armenia encourages the Commissioner for Human Rights to continue her endeavors aimed at protecting the rights and freedoms of all individuals throughout Europe, notwithstanding the status of the territory they live in.

We appreciate the formulation of recommendations, yet call on the Commissioner to take bolder actions and urge Azerbaijan to stop its ongoing, massive violations of human rights.

As a result of the 44-day war, the people of Nagorno-Karabakh encountered numerous humanitarian issues: thousands killed, many more injured, more than 90 thousand individuals were forced to leave their homes. The majority of them have currently returned to Nagorno-Karabakh.

Nonetheless, more than 40,000 people have been dispossessed of their homes and property as a result of Azerbaijani offensive and ongoing occupation, vital infrastructure was destroyed, including schools and hospitals throughout Nagorno-Karabakh.

The humanitarian disaster on the ground deserves a close engagement of the international community. It must insist on the unimpeded access of humanitarian organizations to Nagorno-Karabakh, which is critical in the context of a comprehensive and effective assessment and solution to the humanitarian crisis emanating from the war.

The realities shaped on the basis of the use of force, mass violations of human rights, as well as the consistent actions of similar nature by Azerbaijan following the war, should not be validated and cannot create a sustainable foundation for a regional peace and security. The comprehensive and lasting political resolution to the Nagorno-Karabakh conflict presumes the determination of the status of Nagorno-Karabakh taking into account the realization of the inalienable right to self-determination, ensuring the security of the people of Nagorno-Karabakh, de-occupation of areas of Nagorno-Karabakh that have fallen under the Azerbaijani control, safe and dignified return of the displaced population to their settlements throughout the entire territory of Nagorno-Karabakh, and preservation of the Armenian cultural and religious heritage in the territories currently under the Azerbaijani control.

The Republic of Armenia stands ready to cooperate with the Commissioner, the Council of Europe and the international community, in general, to this end.

Armenia continues to remain faithful to the peaceful settlement of the conflict within the framework of the OSCE Minsk Group Co-Chairmanship, which is the only internationally agreed format for the resolution of the Nagorno-Karabakh conflict.