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Humanitarian consequences of the conflict between Armenia and Azerbaijan

Report[1]
Committee on Migration, Refugees and Displaced Persons
Rapporteur: Mr Paul GAVAN, Ireland, Group of the Unified European Left

Summary

The Parliamentary Assembly regrets the tragic humanitarian consequences of the conflict between Armenia and Azerbaijan. It is a conflict which has seen two major outbreaks of war, the first from the end of 1991 to 1994, and the second a 6-week war in 2020.

During the recent 6-week war, over 3 900 Armenian and 2 900 Azerbaijani military were killed or went missing, and there were many civilian casualties. Over 91 000 Armenians and 84 000 Azerbaijanis were initially displaced.

The main issues covered include, the dead, missing and wounded; prisoners of war/alleged captives; allegations of crimes, war crimes and other wrongful acts; landmines and unexploded ordnance; displaced persons; border tensions; cultural heritage; hate speech.

Recommendations are directed to Armenia and Azerbaijan on steps to help solve the humanitarian consequences in the short and long term and move towards a process of peace and reconciliation. The international community, including the Council of Europe, is encouraged to help both countries.

1. Reference to committee: Bureau decision, Reference 4550 of 20 November 2020.

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Appendix 2 – Dissenting opinion presented by Mr Samad Seyidov (Azerbaijan, EC/DA), member of the Committee on Migration, Refugees and Displaced Persons, supported by Ms Nigar Arpadarai (Azerbaijan, EC/DA), Mr Tural Ganjaliyev (Azerbaijan, EC/DA) and Mr Kamal Jafarov (Azerbaijan, EC/DA), pursuant to Rule 50.4 of the Rules of Procedure. 25

A. Draft resolution[2]

1. The Parliamentary Assembly regrets the tragic humanitarian consequences of the conflict between Armenia and Azerbaijan. It is a conflict which has seen two major outbreaks of war, the first from the end of 1991 to 1994, and a 6-week war in 2020.

2. The Assembly has dealt with many aspects of the conflict over the years, in particular in Resolution 1047 (1994) and Recommendation 1251 (1994) "Conflict in Nagorno-Karabakh" and in Resolution 1416 (2005) "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference".

3. The Assembly recalls that both Armenia and Azerbaijan committed themselves, upon their accession to the Council of Europe in January 2001, to use only peaceful means for settling the conflict. Therefore, the 6-week war in 2020 constitutes a breach of these commitments and should be duly addressed by the Council of Europe.

4. The Assembly notes that the recent 6-week war was brought to an end by the Trilateral statement of 9-10 November 2020, signed by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation. It considers that the Trilateral statement provides the main elements of a cease-fire and creates a framework to solve many of the humanitarian consequences of the recent 6-week war and conflict.

5. The Assembly is appalled by the number of people killed or who went missing during the 6-week war: reportedly over 3 900 Armenian and 2 900 Azerbaijani military killed or missing, 163 Armenian and 548 Azerbaijani civilian casualties and around 243 Armenians and 7 Azerbaijanis missing. The Assembly welcomes and encourages the efforts of both parties to recover and exchange the dead and recognises the valuable contribution of the International Committee of the Red Cross (ICRC) and Russian peacekeepers. It is also aware of around 3 890 Azerbaijanis and 1 000 Armenians still unaccounted for from the 1991-1994 war and regrets that little progress has been made on these cases. It invites both parties to resume work at the intergovernmental commission level, with the assistance of the ICRC.

6. The Assembly notes that under Article 8 of the Trilateral statement "An exchange of prisoners of war … is to be carried out" and that both countries claim to have complied with this. The Assembly however notes the concerns of the European Court of Human Rights, communicated to the Committee of Ministers of the Council of Europe on 16 March 2021, in relation to 188 Armenians allegedly captured by Azerbaijan (some of whom have since been returned to Armenia). In this connection the Assembly:

6.1. notes that under the Geneva Convention (III) Relative to the Treatment of Prisoners of War and Geneva Convention (IV) Relative to the Protection of Civilian persons in time of War, both Azerbaijan and Armenia have binding obligations to repatriate prisoners of war and release civilian persons without delay after the secession of active hostilities;

6.2. considers that the clear intention of Article 8 of the Trilateral statement was the exchange of all detained persons, without distinction as to the status assigned by one or other of the parties;

6.3. is deeply concerned about the fate of around 30 Armenians, allegedly seen, filmed or photographed in captivity, with no indication as to their current whereabouts. The Assembly is alarmed at allegations that these persons have been subjected to enforced disappearances and possibly killed;

6.4. calls on the Azerbaijani authorities to expedite their investigations on this matter and provide relevant information to the European Court of Human Rights and to Armenia;

6.5. welcomes the recent release of 15 Armenians on 12 June 2021 and a further release of 15 persons on 3 July 2021, bringing the total of repatriated to above 100;

6.6. remains concerned about the detention conditions of around 48 Armenians captured after the Trilateral statement, who are still in captivity, most of whom have undergone or are undergoing speedy criminal trials, which raise fair trial issues under the European Convention on Human Rights (ETS No. 5);

6.7. calls on the Azerbaijani authorities to release all remaining captives and return them to Armenia without further delay;

2. Draft resolution adopted unanimously by the committee on 7 September 2021.

6.8. encourages the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to carry out an ad hoc visit, notwithstanding that the ICRC has regular access.

7. The Assembly is concerned about the many allegations of crimes, war crimes and other wrongful acts levelled against both Armenia and Azerbaijan during the 6-week war. It notes the individual cases and inter-state cases brought before the European Court of Human Rights, including by Armenia against Azerbaijan on 18 October 2020 (no.42521/20) and against Turkey on 9 May 2021 (no. 43517/20), and by Azerbaijan against Armenia on 26 October 2020 (47319/20).

8. Among allegations made by both sides, backed up by reputable international NGOs and a wealth of information available from different sources, there is worrying evidence of:

8.1. extrajudicial killings, including, for example, the alleged decapitation or throat slitting of at least two Armenians and one Azerbaijani;

8.2. substantial number of allegations of systematic inhuman and degrading treatment and torture of Armenian prisoners of war by Azerbaijanis, as well as a number of allegations of similar treatment of Azerbaijani prisoners of war by Armenians;

8.3. highly disturbing evidence of despoliation of both Armenian and Azerbaijani dead;

8.4. indiscriminate use of weapons killing and injuring civilians. According to the parties, there were 205 Armenian and 548 Azerbaijani casualties. In this respect, Armenian forces appear to have used ballistic missiles and unguided artillery and multiple rocket launchers, while Azerbaijani forces also appear to have used unguided artillery and multiple rocket launchers as well as loitering munitions and missiles launched by drones. Both sides had a responsibility to respect international humanitarian law and protect civilians from explosive weapons certain to have an impact in civilian areas and failed to do so;

8.5. the use by Azerbaijan, with Turkey's assistance, of Syrian mercenaries, and the use by Armenia of Armenians from different countries as foreign fighters.

9. In the light of the highly disconcerting information above, the Assembly calls on Armenia and Azerbaijan to fully investigate the allegations and bring to justice anyone, including at command level, found to be responsible for crimes, war crimes or other wrongful acts. Both countries should co-operate fully with the European Court of Human Rights on the complaints lodged against them, and Turkey is invited to do the same. Unless there is accountability and some form of truth and reconciliation, these allegations will poison relations between the two countries for generations, and the consequences of the conflict will linger.

10. The Assembly is gravely concerned that the conflict region is one of the most contaminated mine and unexploded ordnance regions in the world. In consequence the Assembly:

10.1. considers that it is incumbent on both sides to work together to remove mines, deploring that since the November cease-fire, 159 Azerbaijanis and 5 Armenians have been killed or injured;

10.2. welcomes that on 12 June, Armenia handed over maps indicating 97 000 mines in the region of Aghdam and on 3 July, maps of 92 000 mines in the Fuzuli and Zangilan districts, while noting with concern that, according to Azerbaijan, portions of the shared maps are said to lack necessary information required for effective demining;

10.3. calls on Armenia to release, without delay, all mine maps in its possession;

10.4. recommends that both Armenia and Azerbaijan step up mine and unexploded ordnance awareness programmes and calls on the international community to provide assistance in terms of equipment, training and funding, for the clearance of what could be around 1 million mines.

11. Concerning the issue of displaced persons in Armenia, the Assembly:

11.1. notes that, according to Armenian sources, around 91 000 Armenians fled from the conflict area during the 6-week conflict, 85% of whom were women and children;

11.2. welcomes that notwithstanding many difficulties, including winter and Covid-19, the Armenian authorities, along with the international community, including importantly the ICRC, were able to deal with the basic humanitarian needs and shelter of displaced persons;

11.3. notes, based on Armenian sources, there are currently around 36 000 Armenians from the six-week war who have not returned to their homes;

11.4. notes the problems facing those displaced, namely long-term shelter, ongoing cash assistance, education for children and the provision of livelihoods, in particular for women.

12. Concerning those from the Nagorno-Karabakh region who either remained or returned, the Assembly:

12.1. strongly regrets the international community's absence from the region due to ongoing disagreement between Armenia and Azerbaijan over the issue of access; in this sense, having in mind its Resolution 2240 (2018) "Unlimited access to member States, including 'grey zones', by Council of Europe and United Nations human rights monitoring bodies" and recalls the legal obligations on Council of Europe member States to co-operate fully and in good faith with international human rights monitoring mechanisms, including those of the Council of Europe and the United Nations;

12.2. reminds that all individuals in the Council of Europe area, including those living in conflict zones, are equally entitled to full protection under the European Convention on Human Rights, including via applicable monitoring mechanisms;

12.3. shares their feeling of abandonment and notes their concerns over security due to border incidents, the vicinity of Azerbaijani troops, and the regular sound of shots being fired;

12.4. notes the difficulties they face in terms of livelihoods and the need to rebuild and repair war damage and provide new housing, as well as protection of their basic human rights;

12.5. calls on all involved States to ensure unimpeded access of representatives of international independent humanitarian organisations and mass-media to the Nagorno-Karabakh region.

13. The Assembly welcomes the support of the international community towards Armenia, and in particular the role played by the United Nations Resident Coordinator's Office and High Commissioner for Refugees (UNHCR), as well the support of the European Union. The ICRC plays an essential role as the only international organisation with access to the whole conflict region. The Russian Federation also has access to the region and has performed an extremely important role in terms of providing humanitarian aid and security through its peacekeepers.

14. Concerning the issue of displaced persons in Azerbaijan, the Assembly:

14.1. notes that, according to Azerbaijani sources, around 84 000 Azerbaijanis were temporarily displaced during the 6-week war;

14.2. welcomes that notwithstanding the difficulties of winter and Covid-19 that the Azerbaijani authorities were able to provide all necessary assistance. This they did without calling on the aid of the international community;

14.3. welcomes that almost all those displaced by the 6-week war have returned to their homes, and most of the damage has been repaired;

14.4. understands that the greater challenge now for Azerbaijan is the return of the 650 000 displaced from the 1991-1994 war and that 65% of these displaced persons would like to return to their homelands; recognises in this respect the enormous challenge faced by Azerbaijan as the territories are heavily mined and the damage is extensive. Areas such as Aghdam and Fuzuli are almost totally destroyed;

14.5. welcomes the large-scale smart cities programme being developed by Azerbaijan and calls on the international community to provide assistance so that those displaced are able to return.

15. In designing and implementing their respective policies towards displaced persons, the Assembly recommends that Armenia and Azerbaijan make good use of Council of Europe expertise in designing and implementing their respective policies ensuring that they comply with Council of Europe human rights and rule of law standards.

16. The Assembly encourages the international community to continue to support Armenia and Azerbaijan and move towards a more mid and long-term strategy to include not just recovery but also peace building and confidence building measures.

17. The Assembly is greatly concerned by the increase in incidents at various points of the border since May 2021. There have been deaths and injuries and Armenian soldiers have been taken captive. The Assembly therefore calls on both sides to:

17.1. de-escalate and keep to the positions agreed by the parties under the Trilateral statement;

17.2. negotiate on a process of delimitation and demarcation of the border and examine the possibility of creating a demilitarised zone with the presence of a peacekeeping or military monitoring force.

18. The long running conflict has had a catastrophic impact on the cultural heritage and property of the region, for which both Armenia and Azerbaijan have a responsibility. In light of this, the Assembly:

18.1. condemns the damage and destruction for which Armenia is responsible in the former conflict areas returned to Azerbaijan, and in particular the almost total destruction and looting of Aghdam, Fuzuli and other areas over the last 30 years, as well as the transfer of cultural heritage;

18.2. condemns the destruction over the last 30 years of Armenian cultural heritage in Azerbaijan for which Azerbaijan is responsible, notably in Nakhchivan Autonomous Republic, and condemns the damage deliberately caused to cultural heritage during the 6-week war, and what appears to be the deliberate shelling of the St. Holy Saviour; Ghazanchetsots Cathedral in Shusha/Shushi as well as the destruction or damage of other churches and cemeteries during and after the conflict;

18.3. remains concerned, in the light of past destruction, about the future of the many Armenian churches, monasteries, including the monastery in Khutavank/Dadivank, cross-stones and other forms of cultural heritage which have returned under Azerbaijan control;

18.4. expresses concern about a developing narrative in Azerbaijan promoting a “Caucasian Albanian” heritage to replace what is seen as an “Armenian” cultural heritage;

18.5. recommends that Armenia and Azerbaijan allow UNESCO unlimited access to all cultural heritage sites in both countries to assess the damage and assess the steps necessary to safeguard what remains;

18.6. invites UNESCO to look into the developing narrative promoting a “Caucasian Albanian” heritage, to ensure it is not manipulated by either side.

19. Hate speech has been a long-standing problem in both countries, as noted by the European Commission against Racism and Intolerance (ECRI) in its reports, in particular in relation to Azerbaijan, which has also been criticised by the Advisory Committee on the Framework Convention for the Protection of National Minorities. The Assembly:

19.1. is shocked by the level of hate speech and hate crimes by both sides that took place during the 6-week war, including the filming of horrific acts and their sharing on social media;

19.2. welcomes various statements that Azerbaijan is proud of its multiculturalism but notes there remain statements at the highest level which continue to portray Armenians in an intolerant fashion. The so-called military “Trophy Park” in Baku creates serious concerns, and the Assembly considers that the use of caricatured and stereotyped mannequins exacerbates levels of intolerance and should have no place in a museum or society;

19.3. recommends that both countries take steps to tackle hate speech, including from public and high-level officials, as well as hate crimes. Both countries should introduce appropriate legislation with the assistance of the Council of Europe.

20. The Assembly remains concerned and affected by the ongoing lack of access by international organisations to the Nagorno-Karabakh region and calls on both sides to facilitate such access.

21. In view of the many human rights issues linked to the humanitarian consequences of the conflict, the Assembly encourages the Council of Europe Commissioner for Human Rights to work with both the Azerbaijani Ombudsman and the Armenian Human Rights Defender to tackle these and to visit the region as soon as possible.

22. The Assembly invites Armenia and Azerbaijan to investigate the allegations raised and invites the delegations of both parliaments to the Parliamentary Assembly of the Council of Europe to start a dialogue on these.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution ... (2021) “Humanitarian consequences of the conflict between Armenia and Azerbaijan”.

2. The Assembly believes that the Council of Europe has an important role to help both Armenia and Azerbaijan tackle the humanitarian consequences of the conflict between the two countries.

3. The Assembly therefore invites the Committee of Ministers to:

3.1. take into account the humanitarian consequences of the conflict, when preparing new Action Plans for Armenia (2023-2026) and Azerbaijan (2022-2025) and show flexibility in on-going action plans and adapt them to the consequences of the conflict. The Committee of Ministers is invited to pay particular attention to the needs and rights of displaced persons and issues surrounding their return, confidence building measures for all affected communities, and measures necessary to build tolerant societies and tackle hate speech;

3.2. follow up on the notification to the Committee of Ministers by the European Court of Human Rights, on 16 March 2021, concerning alleged Armenian captives, and promote a solution to this ongoing issue.

3. Draft recommendation adopted by the committee on 7 September 2021.

C. Explanatory memorandum by Mr Paul Gavan, rapporteur

1. Introduction

1. The humanitarian consequences of the conflict between Armenia and Azerbaijan have been tragic for both sides. It is a conflict grounded in history which has seen two major outbreaks of war, from the end of 1991 to 1994, and a 6-week war in 2020.

2. On 20 November 2020, the Bureau of the Parliamentary Assembly invited the Committee on Migration, Refugees and Displaced Persons to prepare a report, and on 2 December I was appointed rapporteur and conducted fact finding visits to Armenia, from 18 to 22 May 2021, and to Azerbaijan from 25 to 28 July 2021.

2. Background

3. For an understanding of the history of the conflict and the position of the Assembly, reference is made to the former work of the Assembly and in particular Resolution 1416 (2005) "The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference".

4. As the title of that Resolution notes, this is a conflict over the Nagorno-Karabakh region. It is also about the return of 7 surrounding districts to Azerbaijan. In 1991, at the time of its independence, the borders of Azerbaijan were internationally recognised (including by the Council of Europe), while at the same time the Armenian population of the Nagorno-Karabakh region claimed the right to self-determination.[4],[5] As a consequence of the 1991-1994 war, the United Nations passed Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) urging the parties to comply and to refrain from any armed hostilities and withdraw military forces from any occupied territories.

5. Both Armenia and Azerbaijan committed themselves upon their accession to the Council of Europe in January 2001, to use only peaceful means for settling the conflict. At the same time, Armenia committed itself to use its considerable influence over the Nagorno-Karabakh region to foster a solution to the conflict. These commitments remain in place.

6. The current report takes into account this background and focuses on humanitarian consequences, not political consequences or political solutions. It looks primarily at the recent 6-week war[6] and ongoing challenges. In addition, there are certain humanitarian consequences from the 1991-1994 war and its aftermath, which need to be considered.

7. The main issues to be covered include, the dead, missing and wounded; prisoners of war/alleged captives; allegations of crimes, war crimes and other wrongful acts; landmines and unexploded ordnance; displaced persons; border tensions; cultural heritage; hate speech.

2.1. The Trilateral statement of 9-10 November 2020[7]

8. The war broke out on 27 September 2020 and after 6 weeks, the Trilateral statement of 9-10 November 2020 provided the main elements of a cease-fire and created a framework to solve many of the humanitarian consequences. It was signed by the President of the Republic of Azerbaijan, Mr Ilham Aliyev, the Prime Minister of the Republic of Armenia, Mr Nikol Pashinyan, and the President of the Russian Federation, Mr Vladimir Putin.

9. The statement included an agreement that Armenia and Azerbaijan (the parties) remain in their current positions, and that there be a phased return of certain regions. This effectively led to the return of the seven surrounding districts and parts of the Nagorno-Karabakh region.

10. The statement gave a major role of peacekeeping to the Russian Federation for a five-year renewable period, deployed in parallel with the withdrawal of the Armenian armed forces.

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4. Doc. 10364 of 29 November 2004, paragraph 5.
5. Armenia refers to "the Nagorno-Karabakh region" as the Republic of Artsakh. Azerbaijan no longer uses the terminology of "Nagorno-Karabakh, subsuming the region into a larger entity of "Karabakh". The term "Nagorno-Karabakh" is used in the Trilateral Statement of 9-10 November 2020, and the rapporteur uses throughout the report the term "the Nagorno-Karabakh region".
6. This is often also referred to as the 44-day war.
7. "Statement by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation", Ministry of Foreign Affairs of the Russian Federation, 9-10 November 2020.

11. The statement also provides for guaranteed safety along the Lachin corridor to allow communication between Armenia and the Nagorno-Karabakh region.

12. An important provision provides for the unblocking of all economic and transport links between the western regions of Azerbaijan and the Nakhchivan Autonomous Republic.

13. Essential to this report on the humanitarian consequences of the conflict, are two provisions on displaced persons and on prisoners of war and the dead, namely:

– "Internally displaced persons and refugees shall return to Nagorno-Karabakh and adjacent areas under the control of the Office of the UN High Commissioner for Refugees."

– "An exchange of prisoners of war, hostages and other detained persons and bodies of the dead is to be carried out."

3. Humanitarian concerns

3.1. Dead, missing and wounded

14. The military death toll from the recent 6-week war is understood to stand at 3 945 Armenians and 2 907 Azerbaijanis.

15. In terms of civilian casualties, the Armenian Human Rights Defender has signalled 163 and the Azerbaijani side has given a number of 548 (including 95 civilian deaths).

16. One of the major problems following any war is locating and returning the remains of missing persons. The 6-week war was conducted partly in a mountainous region, heavily mined with the arrival of snow, hard on the heels of combat. This made the location and return of bodies all the more difficult. 243 Armenians and 7 Azerbaijanis are still missing. With the assistance of the International Committee of the Red Cross (ICRC), the remains of 1 651 Armenians have been returned, according to Azerbaijan, and 395 Azerbaijanis dead have been returned by Armenia

17. The parties can, in general, be commended on their efforts to find the remains of the missing from the 6-week war. This said, finding the outstanding missing must not be the subject of politicisation, and families of the missing require additional assistance. Further steps are needed, and full ongoing co-operation is necessary under article 8 of the Trilateral statement which requires the: "exchange of … bodies of the dead … to be carried out."

18. From the war in the nineties there are still 3 890 Azerbaijanis unaccounted for (3 171 military and 719civilians) and around a thousand Armenians, according to figures provided by each side. The families of these persons are waiting for the return of their loved ones almost 30 years on. Little progress has been made on these files over the last decades and more should now be done. In the past, an intergovernmental Commission was created to deal with the missing, working with the ICRC. This has to be reinvigorated so as to continue the work, and DNA labs need refurbishing and updating, so as to provide answers to the families of the missing.

19. It is essential that both sides co-operate fully in the identification of burial sites and the return of remains. The parties should co-operate fully with each other, with the ICRC and the Russian peacekeepers, who have been playing an important role in enabling access to recent battlefields and facilitating contacts between the two sides.

20. Families of the missing have the right to know and require social and psychological support. Women are usually the ones left to pick up the pieces and have particular needs as heads of households. Both sides should give consideration to preparing a generic law on the missing, in co-operation with ICRC, so as to regulate the different issues arising and the needs of the families. In this, consideration should be given to previous recommendations of the Assembly.[8]

8. See Resolution 1553 (2007) "Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions" and Resolution 1956 (2013) "Missing persons from Europe's conflicts: the long road to finding humanitarian answers".

3.2. Prisoners of war / alleged detainees

21. Article 8 of the Trilateral statement provides that "An exchange of prisoners of war … is to be carried out."

22. Of the different humanitarian issues, the question of prisoner release has become one of the most difficult. Its importance has taken on an additional dimension in the light of the inter-state cases and individual petitions introduced before the European Court of Human Rights.

23. Both sides are under an obligation to make lists of the persons detained and share these with the ICRC as well as facilitate visits to the detainees.

24. Azerbaijan has, as at the beginning of August 2021, returned 103 captives, according to Armenia, including civilians, and Armenia 21 captives, according to Azerbaijan. Both sides maintain they have returned or released all prisoners of war, but this is contested by Armenia.

25. There are essentially two different issues at play. The first is a dispute over the categorisation of those detained by Azerbaijan after the signing of the Trilateral Statement. Azerbaijan still held around 45 persons at the beginning of August 2021. This includes many of the 62 Armenian soldiers captured in the area of Hadrut (sometimes the area is referred to as Caylaqqala/Khtsaberd) after the signing of the Trilateral statement. The second is the issue of the whereabouts of those said to have been captured during the war and allegedly seen in captivity or filmed in captivity, about whom the Azerbaijani authorities indicate they have no information.

3.2.1. The Hadrut 62 and other captives following the Trilateral statement

26. According to Azerbaijan, these persons were captured on 11-12 December 2020, several weeks after the entry into force of the ceasefire. It is claimed they were a terrorist-sabotage group deployed within Azerbaijan which allegedly killed four Azerbaijani soldiers and seriously wounded one civilian. Five of the 62 were returned to Armenia on humanitarian grounds, a further three were released in May 2021, and others were released in June and July as part of the release of a total of 30 persons in two groups of 15. This happened at the same time as mine maps were handed over. The Azerbaijani authorities continue to maintain that those detained are not prisoners of war but are terrorists and not covered by article 8 of the Trilateral statement.

27. The Armenian authorities deny these persons were involved in terrorist activities and state they were carrying out legally mandated military service. They point to the fact that Hadrut was surrounded, and it was a military operation by Azerbaijan to take control of the area.

28. The exact circumstances of their capture remain unclear but would appear to be linked to the 6-week war and its consequences. There have been many calls by the international community for the captives to be released,[9] and the rapporteur joins these calls.

29. It is important to note that the ICRC has access to these detainees and visits them on a monthly basis. The ICRC facilitates letters and video calls with family members. The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, has informed the rapporteur that she visited detainees on four occasions and found them to be well treated. Testimonies from captives returned to Armenia paint a different picture.[10]

30. The rapporteur made repeated requests to be able to meet the captives himself, before and during his fact-finding visit to Azerbaijan in July 2021, not only to verify the well-being of the persons concerned, but also as a means of confidence building for both sides. He regrets, very much, that this request was not granted, notwithstanding the explanation given that visits were restricted to specialised bodies. In view of the opaqueness of the situation of Armenian captives, allegations of ill treatment covered later in this report, and that the only international body able to visit captives so far is the ICRC, the rapporteur considers it is essential that the Council of Europe's own monitoring body, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), undertakes a visit as soon as possible. Furthermore, as both the ICRC and the CPT work under strict codes of confidentiality, it is essential that there be more openness about the situation of these captives. This is important in the light of the following paragraphs.

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9. See for example the call by UN experts of 1 February 2021 "Nagorno-Karabakh: captives must be released – UN experts". More recently, the European Parliament in the Resolution on "Prisoners of war in the aftermath of the most recent conflict between Armenia and Azerbaijan" of 18 May 2021 demanded "an immediate and unconditional release of all Armenian prisoners, military and civilian, detained during and after the conflict".
10. See below under "Allegations of torture, inhuman and degrading treatment and punishment."

3.2.2. Alleged captives unacknowledged by the Azerbaijani authorities

31. Figures of hundreds of individuals allegedly held secretly in captivity have been spoken of, but there are many who have fallen in the war and who are missing. There are others who may have been identified in videos by multiple families wanting to believe the same person in a blurred image is their son.

32. Nonetheless, the rapporteur has been shown alleged evidence of 31 individuals held captive, including videos, photographs and information on the place and circumstances of their capture and their identities. The rapporteur has also been shown alleged evidence of others held in captivity without the means to identify precisely who they are, only that they are captives and not persons otherwise identified. This information is available to the European Court of Human Rights and in the hands of the Armenian and Azerbaijani authorities. The rapporteur was able to hand over the list of 31 individuals mentioned, to the Prosecutor General's Office of Azerbaijan and also the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan during his visit.

33. The Azerbaijani authorities have not been able to acknowledge the whereabouts or fate of these individuals which raises serious concerns, including the prospect of enforced disappearances. This is all the more disconcerting in the light of allegations of crimes, war crimes and other wrongful acts covered later in this report.

34. The Azerbaijani authorities have reportedly set up a task force to look into the fate of these persons and other issues relating to alleged human rights violations. They have said they will be sending, in batches, information on their findings to the European Court of Human Rights. It is crucial that this is followed up by the authorities without delay and that full co-operation is extended to the European Court of Human Rights.

3.2.3. The European Court of Human Rights and interim measures

35. The cornerstone of the Council of Europe is its European Convention on Human Rights (ETS No. 5). It is the single most important commitment of member States to which both Armenia and Azerbaijan have signed up. The findings of its Court are judicial and non-political and binding on member States.

36. Since the outbreak of the 6-week war, the European Court of Human Rights has received many requests for interim measures. In a decision of 29 September 2020 the Court applied Rule 39, "calling on both Azerbaijan and Armenia to refrain from taking any measures, in particular military actions, which might entail breaches of the Convention rights of the civilian population, including putting their life and health at risk, and to comply with their engagements under the Convention, notably in respect of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the Convention."[11]

37. On 6 October the Court applied Rule 39 again, calling on all States directly or indirectly involved, including Turkey, to respect their obligations under the Convention.

38. Inter-State requests[12] were lodged by Armenia against Azerbaijan on 18 October and by Azerbaijan against Armenia on 26 October, and on 4 November the Court clarified that the application of Rule 39 included also "the Convention rights of those who are captured during the conflict and those whose rights might otherwise be violated."[13]

39. In addition to the inter-State requests, the Court received numerous requests under Rule 39 lodged against both sides.

40. Against this backdrop the European Court of Human Rights, on 16 March 2021,[14] made a statement concerning alleged captives, taking the unusual step of notifying the Committee of Ministers of interim measures.

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11. Press release issued by the Registrar of the Court, ECHR 314 (2020), 4 November 2020.
12. For completeness, it should be noted that on 9 May 2021 the European Court of Human Rights also received an inter-State complaint lodged by Armenia against Turkey. For more information, see the press release issued by the Registrar of the Court, ECHR 154 (2021). In addition, two further inter-state cases have been lodged by Armenia against Azerbaijan (no.33412/21 and no. 42445/21).
13. ECHR 314 (2020), *op. cit*.
14. Press Release, ECHR 086 (2021), "Armenia v. Azerbaijan and alleged captives: notification to the Committee of Ministers of interim measures indicated".

41. The Court informed the Committee of Ministers that these measures remained in force concerning 188 Armenians allegedly captured by Azerbaijan and that the Azerbaijani Government had failed "to respect the time-limits …" and commented on the "rather general and limited information provided by them." At the same time, and for the sake of completeness, the Court explained it had suspended the examination of Rule 39 cases concerning 16 Azerbaijanis captured.

3.2.4. Concerns of the Parliamentary Assembly

42. On 13 April 2021, after discussion in the Committee on Migration, Refugees and Displaced Persons, the Chair, Mr Pierre-Alain Fridez (Switzerland, SOC) made a statement expressing deep concern about the fate of the alleged captives and missing persons in the context of the 16 March press release of the Court. The Assembly organised a current affairs debate on 20 April 2021 entitled "Armenian prisoners of war, other captives and displaced persons," and the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) issued a statement[15] on 22 April, in which it reiterated "that the clear intention of Article 8 of the Trilateral Statement was the exchange of all detained persons, without distinction as to the status of these people assigned by one of the parties."

3.2.5. Recent developments

43. One can welcome the recent release of some of the post Trilateral statement captives (notably the two releases of 15 persons on 12 June and 3 July 2021). Most of the remaining captives are facing or have undergone criminal trials, and Armenia contends that they are being held and tried on trumped up charges without appropriate European Convention on Human Rights safeguards. They have petitioned the European Court of Human Rights on this issue.

44. At the end of July 2021, it is reported that more than 60 Armenian captives,[16] most of whom were captured after the cease-fire are standing trial or have been convicted. Thirty nine Armenians have been sentenced to six years in prison in three trials, and another two have received sentences of four years. Twelve were sentenced to six months and were released and repatriated to Armenia in a Russian-brokered trade involving the handing over of landmine maps. A Lebanese-Armenian was sentenced to 20 years in prison and a Russian-Armenian was detained in Baku and sentenced to 10 years in prison for "terrorist actions" and "illegal border crossing".

45. For the rapporteur the types of charges put forward and the speed with which they have been dealt with, raise concerns about the fairness of the proceedings and the politicisation of the issue of the captives. This frustrates attempts to build confidence between the two countries and affects those held in captivity and their families. These captives should be released without delay.

3.3. Allegations of crimes, war crimes and other wrongful acts

46. A great deal of information has been circulated on social media, recorded by reputed international NGOs, documented by the Human Rights Defender and Ombudsman on both sides, and included in inter-state cases, and individual cases brought before the European Court of Human Rights.

47. Highly disturbing images, videos and *post-mortem* details have been sent to the rapporteur, including of alleged horrific executions of both Armenian and Azerbaijani captives, mutilation of fallen soldiers and the torture of prisoners of war.

3.3.1. Extrajudicial killings

48. Amnesty International, on 10 December 2020, reported extrajudicial killings, including the alleged decapitation or throat slitting of two Armenians and one Azerbaijani.[17]

49. An in-depth report by the International Partnership for Human Rights and Truth Hounds (IPHR/Truth Hounds)[18] has since gone on to document the alleged execution of four Armenian combatants, and an enforced disappearance and alleged murder of three Armenian civilians.[19] They have also reported *prima facie* evidence of two videos purporting to show extrajudicial killings of Azerbaijani soldiers.[20]

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15. Statement by the Monitoring Committee on the conflict between Armenia and Azerbaijan, 22 April 2021.
16. "New convictions as trials of Armenian captives continues in Azerbaijan", *OC Media*, 30 July 2021.
17. "Armenia/Azerbaijan: Decapitation and war crimes in gruesome videos must be urgently investigated", Amnesty International, 10 December 2020.

50. The rapporteur has also been presented with many more cases than those contained in the above reports, including allegations[21] of 19 extrajudicial killings of Armenians (civilians and combatants) by Azerbaijani forces. He has received specific evidence on most of these allegations, which he understands are part of a larger number of allegations included in the inter-State cases or individual petitions presented to the European Court of Human Rights.[22]

51. The rapporteur is aware that there are allegations of serious crimes dating back to the 1991-1994 war and new evidence continues to be unearthed in particular by the Azerbaijani side.[23] While it is not in the realms of this report to try to cover these, they will need full investigation. The rapporteur is also aware of alleged cases of hostage taking going back decades.

3.3.2. Allegations of torture, inhuman and degrading treatment and punishment

52. Human Rights Watch on 10 December 2020 reported evidence of physical abuse and humiliation of Armenian prisoners of war held by the Azerbaijani authorities[24] and followed this up with a further report on 19 March 2021 on alleged torture and abuse of Armenian captives.[25]

53. IPHR/Truth Hounds has also documented[26] alleged ill treatment, violence and abuse of Armenian prisoners of war, including civilians, by member of the Azerbaijani armed forces, the military police and state security. In particular they have looked into the cases of two Armenian prisoners of war and four civilians.

54. Furthermore, the rapporteur has been furnished with substantial information from a range of other sources alleging abuse of Armenian civilians and military in Azerbaijani captivity, including from the Human Rights Defender of the Republic of Armenia,[27] and witness statements of former captives and other information from the lawyers of captives. The rapporteur understands that criminal cases have been initiated by the Prosecutor General of Azerbaijan on some of these cases. There is however no indication of the results of these investigations.

55. There are also seven incidents of alleged ill-treatment of Azerbaijani captives by Armenian forces documented by IPHR/Truth Hounds and a further three cases of ill treatment, captured on video which they state require further investigation. The rapporteur has received information from other sources, including from the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan,[28] backing up these allegations. The rapporteur is not aware of any investigations into any of these incidents by the Armenian authorities.

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18. "When Embers Burst into Flames: International Humanitarian Law and Human Rights Law Violations During the 2020 Nagorno-Karabakh War", report, Global Diligence, IPHR/Truth Hounds, May 2021.
19. These include the alleged execution of four captured Armenian combatants (Yuri Adamyan a 25-year-old and Benik Hakobyan, a 73-year-old man in a camouflage jacket, videoed being executed by firing squad, the shooting and execution of a wounded Armenian combatant on an unknown date in November 2020, and the enforced disappearance of Arsen Garahanyan whose body was later found having been shot multiple times at close range). The same report documents the alleged murder of three Armenian civilians including the decapitation of Yuri Asryan and the execution or enforced disappearance or death in custody of civilians Borya Bagdasaryan, Karen Petrosyan and Edik Shahkedzyan.
20. One is of an Azerbaijani soldier in border patrol uniform having his throat cut and the other is of a wounded Azerbaijani soldier being shot at close range.
21. See for example "Civil Society Joint Submission regarding the Armenian POWs kept in Azerbaijan", May 2021 listing 19 persons. This document was addressed to the European Union.
22. For reference to the inter-state cases before the European Court of Human Rights, see above under the section "Prisoners of war/alleged captives".
23. "Prosecutor General's Office of Azerbaijan releases updated information on bloody massacre committed by Armenian armed forces in Bashlibel village, Kalbajar district", *Azerbaijan State News Agency*, 26 April 2021.
24. "Azerbaijan: Armenian Prisoners of War Badly Mistreated", HRW, 2 December 2020.
25. "Azerbaijan: Armenian POWs Abused in custody", HRW, 19 March 2021.
26. IPHR/Truth Hounds, *op. cit*.
27. "The treatment of Armenian prisoners of war and civilian captives in Azerbaijan", Human Rights Defender of the Republic of Armenia, 2021. This report highlights in particular allegations of beatings, humiliation, torturing, concealment, holding prisoners incommunicado, failure to communicate with the European Court of Human Rights, forced confessions. See also an extensive report in preparation on "Evidence and Analysis from Statements by 50 Repatriated Captives of the 2020 Armenia conflict in the Nagorno-Karabakh region" by the Human Rights Defender of Armenia and "Path of Law".
28. The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, "Report on the facts of torture, other cruel, inhuman or degrading treatment or punishment of Azerbaijani prisoners of war and civilians by Armenia during hostage taking and captivity", 2021. This report highlights in particular allegations of beatings, torture, deprivation of food and lack of appropriate medical care.

3.3.3. Despoliation of the dead

56. Both sides have provided the rapporteur with information and videos relating to allegations of despoliation of the dead, which is banned under the Geneva Conventions. The IPHR/Truth Hounds have documented eight incidents by the Armenian side and at least two incidents by the Azerbaijani side. The Azerbaijani Prosecutor General's Office has announced that four Azerbaijani servicemen have been arrested and charged. The outcome of the investigation is not known. The rapporteur is not aware of any investigation on the Armenian side.

3.3.4. Indiscriminate use of weapons

57. The Armenian and Azerbaijani authorities accuse each other of killing citizens by the indiscriminate use of weapons, including cluster munitions, ballistic missiles and imprecise rockets and artillery. They also accuse each other of using phosphorous munitions which set fire to forests in the conflict region.

58. The Chairperson of the Committee on Migration, Mr Pierre-Alain Fridez, at the height of the war made a statement[29] calling for missile strikes on civilian areas to stop. He referred specifically to Armenian strikes on the town of Barda, reportedly killing 21, and to an Azerbaijani strike which hit a maternity hospital and other infrastructure in the city of Stepanakert/Khankendi. These are just two examples.

59. Amnesty International, in a 22-page report entitled "In the line of Fire",[30] has documented how both Armenia and Azerbaijan carried out disproportionate and indiscriminate attacks, referring to at least 94 Azerbaijani civilians killed and 52 Armenians. According to Amnesty International "Armenian forces employed ballistic missiles, and unguided artillery and multiple rocket launchers (MLRS). Azerbaijani forces also used unguided artillery and MLRS, as well as loitering munitions and missiles launched by drones."

60. A report by IPHR/Truth Hounds went on to independently verify 46 reported bombings of civilians or civilian infrastructure finding that 32 of these amounted to "disproportionate attacks on civilians in violation of IHL and the right to life, of which 23 were perpetrated by Azerbaijani armed forces leading to 20 civilian deaths, and nine were perpetrated by the armed forces of Armenia/Nagorno-Karabakh resulting in 80 civilian deaths."[31] The report goes on to detail attacks by the Azerbaijani armed forces on Stepanakert/Khankendi, Martakert/Agdere, Martuni/Khojavend, Mets Masrik/Boyuk Mezre, Hadrut, Nngi/Jamiyyat and Chartar/ Guneykhirman. It provides information on attacks by the Armenian armed forces on Ganja, Qarayusifli, Barda, Terter, Gashalti and Mingachevir. There are also separate allegations that Baku was unsuccessfully targeted.[32]

61. A full picture of the allegations and the weapons used and the destruction on both sides, is available from the Armenian and Azerbaijani sides, including from the Human Rights Defender of the Republic of Armenia and the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan. Both sides during the war had a responsibility to respect international humanitarian law and protect civilians from explosive weapons bound to have a wide impact in civilian areas. In view of the number of strikes on civilian areas, both sides must have been aware of the effect their attacks would have on civilians.

3.3.5. Use of mercenaries and foreign fighters during the recent 6-week war

62. The UN Working Group on the use of mercenaries has commented[33] on widespread reports that Azerbaijan, with Turkey's assistance, used Syrian fighters during the six-week war, including on the frontline. The fighters appeared to be motivated primarily by private gain and in the case of death their relatives were reportedly promised financial compensation as well as Turkish nationality. The Chair of the Working Group indicated that the way these individuals were recruited, transported and used in and around the conflict zone appeared to be consistent with the definition of a mercenary. The rapporteur has seen photographs and videos and reports[34] which back up these allegations.

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29. "'Missile strikes on civilian areas have to stop', says Migration Committee Chairperson", Assembly News, 29 October 2020.
30. "In the line of fire: civilian casualties from unlawful strikes in the Armenian-Azerbaijan conflict over Nagorno-Karabakh", Amnesty International, report, 14 January 2021.
31. IPHR/Truth Hounds, *op. cit*.
32. This was raised by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan with the rapporteur during his fact-finding visit.
33. "Mercenaries in and around the Nagorno-Karabakh conflict zone must be withdrawn – UN experts", 11 November 2020.

63. The UN Working Group also received reports indicating that Armenia used foreign nationals during the six-week war. The rapporteur received a detailed list of Armenians from different countries and a number of other nationals alleged to be involved.[35]

3.3.6. Concluding remarks on allegations of crimes, war crimes and other wrongful acts

64. While both sides deny the authenticity of certain information, there is evidence of an extremely disturbing nature, that cannot be put aside, and both countries need to fully investigate the allegations and bring to justice anyone, including at command level, found to be responsible for crimes, war crimes and other wrongful acts. Both countries should co-operate fully with the European Court of Human Rights on the complaints lodged against them. Turkey also needs to co-operate fully with the Court in relation to accusations made by Armenia, including on the issue of recruitment of mercenaries. Unless there is accountability and compensation for victims, and unless there is some form of truth and reconciliation, these allegations of crimes, war crimes and other wrongful acts will poison relations between the two countries for generations, and the consequences of the conflict will linger.

3.4. Landmines and unexploded ordnance

65. The conflict over the Nagorno-Karabakh region is said to have resulted in one of the most contaminated regions in the world. Both sides planted mines in the early 1990s and afterwards. New mines were reportedly laid by retreating Armenian forces in the 6-week war.

66. Mines are not generally prohibited under international law. The use of mines is, however, strictly limited by codified general principles of the law of war.

67. Armenia and Azerbaijan are not parties to many of the international texts and as such this complicates the demining of the conflict region. Nonetheless, according to customary international humanitarian law, demining is in principle the responsibility of the party that has carried out the mining.[36] Furthermore, in peace agreements, plans for mine clearance must be exchanged between the parties and forwarded to the UN Secretary General, and responsibility for mine clearance has to be defined.

3.4.1. Extent of mines and unexploded ordnance

68. It is impossible to give an accurate figure although it can be said that all regions affected by the conflict have been affected by mines and unexploded ordnance.[37]

69. Mine clearance has been an ongoing struggle for both sides, even before the six-week war.

70. On the Azerbaijani side, mine clearance has been strengthened since the signing of an agreement between the ANAMA (Azerbaijan National Agency for Mine Action) and the United Nations Development Program (UNDP), in March 2021. This co-operation is not new, and ANAMA and the UNDP have jointly eliminated more than 800 000 mines and other explosive objects over the past 20 years.[38]

71. On the Armenian side, the British charity HALO Trust is helping in mines clearance. Since 2000, it has provided the only large-scale mine clearance capacity in the Nagorno-Karabakh region, clearing almost 500 minefields.

3.4.2. Casualties

72. The conflict area remains riddled with mines, and casualties are high.

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34. See for example "The Syrian mercenaries uses as 'cannon fodder' in Nagorno-Karabakh", report, *BBC News*, 10 December 2020.
35. See the report by the Azerbaijani authorities "Report on the use of foreign terrorist fighters by the Republic of Armenia in its recent aggression against the Republic of Azerbaijan", November 2020.
36. In this context it can be noted that Protocol II on Mines, Booby-Traps and Other Devices, of the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, provides for restrictions on the use of mines, recording and publishing the location of minefields, and cooperation in mine clearance.
37. Mine Action Review, "Clearing the Mines 2020", report on Nagorno Karabakh region, 29 October 2020.
38. The UN Mine Action Service has defused 900 anti-personnel mines, 400 improvised explosive devices and 71 000 other explosives in 2020. For more information, see *Report News Agency*, "UN helping to demine Azerbaijani lands liberated from occupation", 3 April 2021.

73. Between 1999 and 2017, 147 Armenians and 373 Azerbaijanis were said to be victims of mines,[39] and accidents continue to occur. According to the Azerbaijani authorities, since the end of the 6-week war 140 persons have been injured, including 27 killed.

74. Azerbaijan accuses Armenia of not providing maps of the minefields. For many months after the end of the war, no progress was made on this, but on 12 June 2021, Armenia provided maps indicating 97 000 mines in the region of Aghdam, while simultaneously Azerbaijan released 15 Armenian captives. This was an important step in confidence building and cleared the way to a further handing over of maps of 92 000 mines in the Fuzuli and Zangilan districts on 3 July 2021 along with a further release of 15 Armenian captives. Mine maps from other districts could reveal, once handed over, up to a million further mines, according the Azerbaijani authorities.[40]

75. The situation is clear on a humanitarian front and in terms of international humanitarian law. Both sides need to co-operate fully, and Armenia is obliged to share, without delay, the maps that it has in its possession. This is essential to minimise the ongoing loss of life and allow the gradual return of displaced persons to these mined areas.

76. Both countries require assistance in clearing mines. This includes human resources, equipment, training and funding. In the latter respect, it is important to note that the average cost of removing a single mine ranges from US$300 to US$1 000. It should also be kept in mind that relevant mine and unexploded ordnance awareness programmes are essential for the civilian population and support for victims has to be provided.

3.5. Displaced Persons

3.5.1. Armenia

77. Not since the arrival of around 300 000 refugees and displaced persons from the 1990's war and events preceding it, has Armenia faced such a displacement. At the height of the 6-week war there were around 91 000 displaced persons (predominantly women and children and elderly men). Most found accommodation and shelter in Yerevan or elsewhere in Armenia, many staying with host families. Short term accommodation was also provided in hotels and other places, often in regions close to the conflict. The spread of Covid-19 during the period, exacerbated the problem of dealing with the needs of the displaced persons.

78. Of those who were originally displaced, many returned to Stepanekert/Khankendi and other parts of the Nagorno-Karabakh region which remained under the control of Armenia.

79. As at the end of May 2021 there remained 36 882[41] Armenians from the conflict living in a refugee-like situation.[42] 85 % of them women and children. There are some who will return when they are more certain of security (particularly women and children), and there are some who plan to move abroad. There is a large category of around 24 615 who come from areas returned under Azerbaijani control and the rapporteur understands that there have been no returns to these areas and the persons concerned are unlikely to return.[43] Returns have now largely dried up to a trickle and even if returns are the favoured option, these should be voluntary, in safety and in dignity and no undue pressure should be put on persons to return.

80. The first priority that the Armenian authorities faced at the outbreak of the six-week war was dealing with basic humanitarian needs, including shelter, food, medical matters and education for children. In the Nagorno-Karabakh region, where the UN and UNHCR and other international organisations do not have access, the ICRC was almost the only international presence, along with the HALO Trust (demining), Doctors Without Borders and a few other NGOs.

81. For those displaced, while they have the same rights as citizens of the Republic of Armenia, they remain socially and psychologically vulnerable similar to those in a refugee situation.

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39. Landmine and Cluster Munitions Monitor, "Interactive Maps".
40. For further information on the impact of these land mines on Azerbaijani territory see: Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, "Mine problems in the liberated areas".
41. According to the Armenian authorities there were 41 577 people (10 300 families) still displaced after the end of the war, of which 21 614 (5 448 families) reside in the Nagorno-Karabakh region.
42. Coordination Steering Group Armenia, "Armenia – People in a refugee-like situation from NK", map, 25 May 2021.
43. UN, Armenia Inter-Agency Operation Update, Situation Report, 1-30 April 2021.

82. The Armenian Government allocated financial support to those affected by the conflict, including the displaced, the families of civilian victims and persons with disabilities, those who lost their homes, family members of missing servicemen and injured servicemen. They provided medical care and unemployment benefit for displaced persons and assistance for those who hosted displaced persons.

83. According to the Human Rights Defender of Armenia, the education of about 30 000 school and kindergarten children was affected, and 12 kindergartens and 71 schools were damaged or destroyed.

84. In the first days of the war, once the primary needs of food, hygiene and shelter were catered for, the authorities started providing cash assistance/monthly allowances. The rapporteur understands that the continuation of these cash support programmes will be a challenge, including for international organisations providing funding, as they require guarantees to ensure delivery in line with donor requirements.[44]

85. Alongside cash assistance one of the major priorities is to provide long term shelter for those displaced and unlikely to return. This means building new houses and apartments and dealing with, in the longer term, issues of property rights.

86. Providing livelihoods for those who cannot return is also a challenge. Over 50% are women and there is a need to tailor support, including temporary job creation schemes in their favour. Public works are now the main source of employment, but this creates a gender challenge as most jobs are seen to be “for men”. Many persons are also racking up debts and require income to pay for rent, so access to work is important. There is also the dimension that employment gives in terms of self-satisfaction.

87. Children make up between 32-42% of the displaced, and while their basic needs are being met, further access to education (for example, access to computers and computer tablets, and ensuring that shelters are closer to schools) and psycho-social support, is required.

88. Those who remained in the Nagorno-Karabakh region or returned, are facing a range of problems as outlined to the rapporteur by persons from the region when he met with them in Yerevan or in on-line meetings. They feel isolated and frustrated with the international community, and as one person said, “during the war no one came, after the war no one came”. This is a reference to the lack of access to the territory, and presence in the territory, by international organisations (with the exception of the ICRC).

89. Persons from the region also raised what they felt were existential threats to their future, referring to hate speech and alleged atrocities committed during the six-week war. They spoke as well of insecurity due to the vicinity of Azerbaijani troops, shots being fired day and night, and security concerns when on the road (particularly if crossing between sides), in the fields and visiting graves.[45] Threats from mines and unexploded ordnance also remain an issue.

90. Their basic needs are apparently being met, even if there are pockets of problems. A number of houses were destroyed during the recent war and the housing stock is insufficient to house those displaced, including those from other parts of the conflict region who wish to resettle. There are plans to build 1 600 houses, including 1 000 houses which are to be provided by the Russia Federation. Electricity has been a problem as the number of power plants has reportedly been reduced from 36 to 6 due to the war, and water supply has also reportedly been a problem. Furthermore, for those injured during the war, rehabilitation and health care often means travelling to Yerevan.

91. In terms of livelihoods, there is not much available in the Nagorno-Karabakh region, apart from public employment and temporary employment contracts, which is why direct financial assistance is required. Financial strain is however alleviated through the provision of utilities free of charge. There is a lack of jobs for women and capacity building is needed to promote livelihoods, which is something the international community could support and promote more.

3.5.1.1. International assistance

92. In terms of assistance, the ICRC plays an essential role, being almost the only international organisation that has access to the whole conflict region. During and after the end of the conflict it has provided medical supplies, food parcels, hygiene items, heaters, financial assistance, water and habitat support, education materials for children as well as briefings on weapons contamination. It has also visited

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44. The key findings of a multi-sectoral needs assessment reported that cash, alongside shelter and food, was one of the top needs for households in a refugee-like situation, and that 31% reported being dependent on aid or remittances. REACH Armenia: Multi-Sectoral Needs Assessment (MSNA) Round 2 Key findings 27 May 2021.

45. Concern was also raised about alleged destruction of graves in areas returned under Azerbaijan control.

prisoners of war, undertaken prisoner exchanges, and assisted with the location of missing persons and the return of the remains of the fallen. The ICRC has been financially supported, in particular by the European Union, and at the end of June 2021 the ICRC announced an increase in its mission budget for the Nagorno-Karabakh region to a level of €50 million.

93. Under paragraph 7 of the Trilateral statement, it is provided that "Internally displaced persons and refugees shall return to Nagorno-Karabakh and adjacent areas under the control of the Office of the UN High Commissioner for Refugees", however UNHCR has so far not been able to negotiate access, and the same applies to other UN agencies and international organisations, including the Council of Europe. This is highly regrettable, and both Armenia and Azerbaijan share a responsibility for the situation which adversely affects the delivery of humanitarian aid, the rights of the persons living in the area and the ability to monitor what is happening. The rapporteur recognises that his report is weakened by his inability to visit the conflict region and see for himself.

94. In order to deal with displacement and other humanitarian issues, the United Nations has set up a co-ordination structure under the lead of a Resident Coordinator's Office and UNHCR. For current priorities,[46] the UN requires US$62.1 million. It carries out work under a number of working groups and sub-working groups. These include "Protection", focusing on those living in a refugee-like situation, "Shelter and Non-Food Items", including the "Cash-Sub-Working Group". Other working groups cover "Food Security and Nutrition", "Health" and "Early Recovery" which provides livelihoods to those who cannot return.

95. The European Union has been a major donor, and since the start of hostilities in September 2020, provided €17 million in assistance to the persons most affected. It is a major donor to Armenia in general and stated, on 9 July 2021, that it would mobilise a further €1 billion in assistance which goes beyond the €1.6 billion previously announced.

96. The Russian Federation has also been providing substantial aid to victims of the conflict and in April 2021 it was reported[47] to have provided US$15 million aid to victims, working through its Interagency Center for Humanitarian Reaction. In addition, it has played an important role in securing the Trilateral statement, and its peacekeeping contingent has helped to guarantee security and stability and assisted in the location of missing persons.

3.5.1.2. Move towards a medium and long-term recovery

97. In general, there is a necessity to move towards a medium and long-term recovery on the basis of on-going needs assessments to be undertaken with international donors, focusing in particular on those who are unable to return as well as the most vulnerable. The rapporteur understands that Armenia is preparing a large-scale humanitarian appeal. it is important that this focusses not only on recovery but also on peace building. The Council of Europe in its current Action Plan for Armenia, and in preparing a new Action Plan (2023-2026), could provide expertise in designing and implementing policies towards displaced persons to ensure they are human rights compatible. Consideration should, in particular, be given to confidence building / peace building measures, gender equality, tolerance and property issues.

3.5.2. Azerbaijan

98. For Azerbaijan the six-week war has had major consequences for displaced persons. Around 40 000 were temporarily displaced during the recent war, almost all of whom have returned. The great challenge now is the return and settlement of displaced persons and refugees from the 1990s, where estimates are given of around 650 000 internally displaced, approximately 200 000 refugees and 45 000 Meskhetian Turk refugees.

99. Of the 40 000 persons displaced during the recent war, almost all have been able to return, and their homes, where damaged, have either been repaired or are under repair. Children whose schooling was disrupted have been able to return.

100. In relation to the displaced and the refugees from the 1990s it has taken decades to deal with their transitory durable displacement. More than 7.7 billion Azerbaijani Manats (€3.82 billion), including 1.4 billion provided by humanitarian agencies have been spent on this. Legislation was adopted to deal with their needs, housing was provided free of charge, monthly allowances were provided and many of the displaced persons were employed by the State or in seasonal work. Over 315 000 persons were provided with improved

46. Armenia Inter-Agency Operational Update *op. cit*.
47. "Russia's financial aid to Nagorno Karabakh victims currently about $15 mln", *TASS Russian News Agency*, 2 April 2021.

accommodation. The Assembly had the possibility to look into their situation on various occasions, including in Resolution 2214 (2018) "Humanitarian needs and rights of internally displaced persons in Europe", Resolution 1497 (2006) "Refugees and displaced persons in Armenia, Azerbaijan and Georgia", and Recommendation 1570 (2002) "Situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia".

101. Now that it is possible to plan for returns, a new law on returnees is under preparation and the views of UNHCR are under consideration. Before these people return, the territories need demining and only then can re-construction take place. According to a recent survey, 65 % of those displaced want to go back and the authorities believe more will wish to return once infrastructure is in place. The extent of the challenge is huge and there will be many associated issues, including providing basic infrastructure, livelihoods, healthcare, education, etc. To deal with this, 17 working groups have been set up across state entities, handling the logistics of such a large operation. This will take not just years, but possibly decades, although the first pilot resettlement could occur in 2023. The ministry of Economy has developed a draft "State programme on the restoration and sustainable development of the liberated territories of Azerbaijan for 2021-2025". It aims to restore and reconstruct the liberated territories, integrate them into the country's economy, ensure sustainable and balanced development, and achieve high standards of social welfare.

102. The rapporteur was able to visit one of the areas concerned, Aghdam, and see the total destruction and view the project for reconstruction. This will be part of a plan to build 9-10 new cities, ensuring sustainable living conditions in smart city projects. The project will need to take into account that many of those displaced from the region previously worked in agriculture but are now urbanised. The authorities do not plan to rush these projects and sensibly prefer to go at a pace which assures their success.

103. There is currently limited assistance provided by the international community to Azerbaijan. While during the 6-week war, the authorities chose to handle the displacement challenge on their own, dealing with the return of the displaced from the early 1990s will be a much more complex and expensive issue. UNHCR and UN agencies have offered to help,[48] in particular on legal aspects and property issues linked to return. The European Union has recently put forward an aid package of €140 million in favour of Azerbaijan. This is substantially less than that provided to Armenia. The international community is encouraged to provide assistance to Azerbaijan for both recovery and peace building.

3.6. Border tensions

104. The Trilateral Statement provides in Article 1 for "A complete ceasefire and termination of all hostilities in the area of the Nagorno-Karabakh conflict" and for "The Republic of Azerbaijan and the Republic of Armenia … (to) … stop in their current positions".

105. The recent border tensions started on 12 May 2021 with alleged border incursions by Azerbaijan into the Armenian region of Syunik, and more particular the area of Black Lake. On the same day Azerbaijani media reported Azerbaijani armed forces would soon be holding military exercises with up to 15 000 troops, 300 tanks and other equipment. This created even greater tension in the region.

106. In relation to this incident, Azerbaijan said their troops were taking up positions after the winter and were not deployed on Armenian territory and disputed the maps in Armenia's hands and put forward other maps.

107. Armenia triggered Article 2 of the Collective Security Treaty which provides "In case of menace to safety, stability, territorial integrity and sovereignty of one or several Member States …" a mechanism of joint consultations to coordinate positions and take appropriate measures can be launched.

108. Steps were however taken over the next days to ease tension with the involvement of Russian peacekeepers, and also mediation at a political level with the Ministers of Foreign Affairs of the Russian Federation, France and Tajikistan (who chairs the Collective Security Treaty Organization). All sides stressed the importance of resolving tension through political and diplomatic means.

109. Since then, border incidents have continued on a semi-regular basis at different points along the border. There have been people injured and killed and Armenian servicemen have been detained,[49] sparking a request for interim measures to the European Court of Human Rights to protect their rights.

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48. Current UN work in Azerbaijan is co-ordinated through the UN Resident Coordinators Office responding to the Government's development priorities.

49. Armenia claimed the servicemen were carrying out engineering works on Armenian territory, Azerbaijan claims they were involved in laying land mines.

110. Incidents have continued throughout June and July 2021, with regular allegations of shots being fired by both sides, and further skirmishes leading to injuries and loss of life. The rapporteur felt compelled to make a statement on 30 July 2021, regretting the death of three Armenian servicemen and one Azerbaijani serviceman, calling on the parties to de-escalate and noting that the long-standing humanitarian concerns affecting the lives of individuals, each side of the border, cannot be addressed unless violence stops. The Co-Chairs of the OSCE Minsk Group also made a statement calling for immediate de-escalation and comprehensive implementation of the truce of 9 November. The Russian Minister of Foreign Affairs joined in calls on the parties to show restraint.[50]

111. The rapporteur is not able to assess who is to blame for each incident.

112. Allegations of shootings in the vicinity of border villages, referred to on a number of occasions by the Human Rights Defender of the Republic of Armenia, are of concern. This has a destabilising impact on border communities, in terms of their security, well-being, access to their pastures and communication links.

113. It is essential that there is a de-escalation and that both sides adapt to a new proximity and the challenge this creates. It is essential that talks on demarcation and delimitation continue and further consideration should be given to having a monitoring mission along the border, whether organised by the OSCE Minsk Group, the Collective Security Treaty Organization, the UN or others. Both sides should keep to the positions dictated under the Trilateral statement and persons captured during border skirmishes should be released.

114. While it will take time to regulate and solve border issues, the Trilateral statement does provide a positive hope for the potential reopening of transport links between Armenia and Azerbaijan, and possibly as an offshoot, also between Armenia and Turkey. This will bring benefits to all concerned and could be what is required to start an effective process of reconciliation and peacebuilding. Both sides will need to negotiate on this, and Azerbaijan should refrain from any threat to open a right of passage by force.

3.7. Cultural heritage

115. The long running conflict has had a devastating impact on the cultural heritage of the region affecting both sides.

116. Azerbaijan points to massive destruction which took place during the 1991-1994 war and its aftermath in the areas of Fuzuli, Aghdam, but also in Shusha/Shushi and elsewhere. It also refers to looting and destruction at the end of the 6-week war.

117. The ministry of Culture of Azerbaijan is currently carrying out an investigation to determine the degree of cultural damage. The results of the preliminary investigation indicate damage or destruction of 706 State-registered historical and cultural monuments (6 of world-class architecture, 5 of world class archaeology, 119 of national importance, 121 of national archaeological importance), along with damage or destruction to other architecture, parks, monument and decorative-applied art of local importance and significance.

118. Azerbaijan also alleges[51] that more recently artefacts and ancient manuscripts of 13th century Khudavang/Dadivank monastery as well as precious artefacts found during archaeological excavations have been illegally transported to Armenia.

119. Azerbaijan is currently negotiating with UNESCO concerning access to the region to carry out an independent technical mission with the aim of assessing the status of this heritage.

120. The rapporteur was able to see the extent of some of this damage and destruction during his visit to Aghdam. The city, once home to around 28 000 residents (with the region having well over 100 000 residents) is now an uninhabitable wasteland, not just because of land mines but because almost all the buildings have been destroyed and building materials or objects of value, even from graves, looted. The Mosque in Aghdam with its two minarets, is more or less, the only building left standing. It was allegedly used, for a period of time until it was wired off, to keep livestock. The extent of damage to homes and cultural heritage in particular in the seven districts returned to Azerbaijan during and after the conflict is massive and shocking and will take

50. A number of other statements were made including a Joint statement by the Chair of the Delegation for relations with the South Caucasus, MEP Marina Kaljurand, the European Parliament's Standing Rapporteur on Armenia, MEP Andrey Kovatchev, and the European Parliament's Standing Rapporteur on Azerbaijan, MEP Željana Zovko, on the deadly clashes between Armenia and Azerbaijan.

51. Statement of the Ministry of Foreign Affairs of the Republic of Azerbaijan on 18 April – International Day for Monuments and Sites, Republic of Azerbaijan, Ministry of Foreign Affairs, No:137/21.

many years and substantial resources to bring the area back to life. The first priority will be demining and then infrastructure has to be created, homes built, services provided, livelihoods created, and areas repopulated. The position is dramatic, and as one senior member of the international community commented to the rapporteur, "we should all have done more over the last 30 years to prevent this level of destruction".

121. Damage and destruction have also taken place of Armenian cultural heritage. Evidence has been provided[52] of the destruction in the 1990s of Armenian cultural heritage in Nakhchivan Autonomous Republic, with allegations that 89 medieval churches, 5 840 carved-cross-stones (khachkars) and 22 000 historical tombstones have been vandalized and ultimately erased.

122. During the 6-week war Armenia alleged the deliberate shelling of the St Holy Saviour Ghazanchetsots Cathedral in Shusha/Shushi. Human Rights Watch has documented the attack and noted from its nature and the choice of guided weapon that "the church, a civilian object with cultural significance, was an intentional target despite the absence of evidence that it was used for military purposes".[53] Other alleged deliberate destruction raised by Armenia relates to the dome and bell towers of the Kanach Zham (Green Church). Following the end of the conflict, Armenia alleges ongoing acts of destruction, including the removal of a recently constructed church (St Mary's Church) near Jebrail/Jabrayil,[54] the demolition of the 18th century Armenian cemetery in the village of Sghnakh/Signaq,[55] and the demolition of the Armenian 19th century cemetery in the village of Mets Tagher/Boyuk Taghlar.[56]

123. The rapporteur's meeting with Archbishop Nathan Hovhannisyan of the Mother See gave the rapporteur a sense of how important religious monuments, churches, khachkars (stone-crosses) and other religious heritage are for the people of Armenia and the extent of the concern for the cultural heritage under Azerbaijani control since the end of the 6-week war. This is said to include 161 churches and monasteries, 591 stone-crosses, 345 valuable tombstones, 108 cemeteries and sacral sights, 43 fortresses and palaces, and 208 other types of monuments. A further concern raised was for the security of the functioning Monastery of Dadivank/Khudavang and for the clergy who have remained under the security of Russian peacekeepers.

124. Armenia has furthermore alleged that Azerbaijan is actively engaged in historical revisionism and cultural appropriation by asserting that Armenian churches in the region are not Armenian but "Caucasian Albanian" (an ancient Christian people from the early medieval period). This revisionism, Armenia claims,[57] is also leading to the defacing and destruction of churches and monuments and a general attempt to negate Armenia's history and religion. The rapporteur met with the State Service for Protection, Development and Restoration of the Cultural Heritage of Azerbaijan during his fact-finding visit to Baku. The importance of the "Caucasian Albanian" heritage for Azerbaijan was emphasised and assurances were given that Azerbaijan would do nothing to destroy what it considers to be its own cultural heritage.

125. It is clear there has been extensive, wanton destruction of the heritage of the region by both sides going back decades. This spiral has continued during the 6-week war, leading to further destruction of cultural heritage important for Armenians. There is evidence that this destruction is continuing. There is an opportunity to stop this cycle, and for this it is essential that UNESCO is given access, as soon as possible, to all relevant areas in both countries.

126. The rapporteur is concerned about the current narrative being developed in Azerbaijan promoting a "Caucasian Albanian" cultural narrative while seeking to negate an "Armenian" cultural narrative. While the whole region was certainly under the influence of different religions and people over history, steps to create such a new narrative, negating Armenian cultural heritage, in particular in the light of and in response to a long running 30-year conflict, should be avoided. This is a matter which UNESCO should look at to avoid manipulation by one side, or the other.

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52. "Ad hoc public report: The Armenian cultural heritage in Artsakh (Nagorno-Karabakh): cases of vandalism and at risk of destruction by Azerbaijan", Human Rights Ombudsman of the Republic of Artsakh, 26 January 2021. (On the terminology used, see footnote 5).
53. "Azerbaijan Attack on Church Possible War Crime", HRW, 16 December 2020.
54. "Nagorno-Karabakh: The mystery of the missing church", *BBC News*, video, 25 March 2021.
55. "Caucasus Heritage Watch records desecration of Sghnakh Armenian cemetery", 3 July 2021.
56. See the Tweet from Twitter account @CaucasusHeritageWatch over the destruction of the Armenian cemetery in the village of Mets Tagher.
57. Thomas de Waal, a notable expert on the region, along with others, have been sceptical about Azerbaijan's claims. See his article on Carnegie Europe, "Unfinished Business in the Armenia-Azerbaijan Conflict", 11 February 2021. See also Javid Agha, *Eurasianet*, "Perspectives: Who were the Caucasian Albanians?", 7 June 2021, in which the author contends "both in Azerbaijan and Armenia, the history of these medieval people is misunderstood and is being manipulated for political ends".

127. To conclude, both sides have a justified deep sense of grievance, but, as the Director-General of UNESCO, Audrey Azoulay said on 18 November 2020 after speaking to both sides, "damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind". She also recalled UN Security Council resolution 2347 (2017), which stresses that "the unlawful destruction of cultural heritage, looting and smuggling of cultural property in the event of armed conflict, including by terrorist groups, and attempts to deny historical roots and cultural diversity in this context, can fuel and exacerbate conflicts and impede post-conflict national reconciliation…".

3.8. Hate speech

128. The rapporteur is greatly concerned by hate speech and its consequences during the 6-week war. It has been a long-standing problem as noted in reports of the European Commission against Racism and Intolerance (ECRI).[58] The Advisory Committee on the Framework Convention for the Protection of National Minorities[59] has also highlighted the issue in relation to Azerbaijan.

129. Generations of Armenians and Azerbaijanis have now been raised with the rhetoric of hostility and hate, which has contributed to the violence and the alleged abuse and atrocities and destruction, committed during the 6-week war.

130. During the recent war the level of hate speech and hate crimes on both sides reached a shocking level. Instances have been documented by both the Human Rights Defender of Armenia[60] and the Commissioner for Human Rights (Ombudsman) of Azerbaijan.[61]

131. Many examples have been put forward, ranging from frequent denigrating references to Armenians as "dogs", and the Azerbaijanis as "Turks", new and old graffiti on churches and mosques, and there have been serious cases of incitement to hatred and killings addressed towards Armenians and Azerbaijanis, including towards children. Horrendous alleged acts of abuse and executions have been filmed and distributed on social media and should be considered as hate crimes and legislated against, in so far as this is not already the case. Persons responsible for spreading these types of messages should be held accountable.

132. The rapporteur heard various statements during his fact-finding visit that Azerbaijan was proud of its multiculturalism. Notwithstanding this, statements at the highest level continue to portray Armenians in such a way that cannot be considered as tolerant. With the 6-week war over, now should be the time to build peace and reconciliation and not a time of hate speech. No matter how bitter the war, or the past, the way in which Azerbaijan's victory has been portrayed in the so-called military "Trophy Park" in Baku, in particular the mannequins of Armenians shown in a denigrating fashion caricatured and stereotyped, is not appropriate. As the Council of Europe Commissioner for Human Rights said on 27 April 2021, "I consider such images highly disturbing and humiliating …This kind of display can only further intensify and strengthen long-standing hostile sentiments and hate speech, and multiply and promote manifestations of intolerance." The rapporteur agrees. While the Azerbaijani authorities correctly refer to the existence of war museums in other countries, the use of caricatured and stereotyped mannequins exacerbates levels of intolerance and should have no place in any museum or society.

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58. ECRI Fourth report on Azerbaijan, 2016, para. 24 (p.16) "Almost all of the 196 hate speech items dealing with ethnic conflicts were targeted at Armenians. Politicians and civil servants were the main disseminators of hate speech, followed by journalists."; para. 25 (p.17) "An entire generation of Azerbaijanis has now grown up listening to constant rhetoric of Armenian aggression.". ECRI Fourth report on Armenia, 2016, "ECRI notes intolerant statements against Azerbaijanis, as demonstrated by the incident that has related to an Azerbaijani film screening". More generally it should be noted that ECRI at its 85th plenary meeting (30-31 March 2021), adopted a statement calling upon all stakeholders in the context of confrontations and unresolved conflicts in Europe, in particular those at the highest political level, to take action to prevent and combat hate speech and hate crime, ensure accountability and engage in confidence-building measures, possibly with the involvement of civil society, media and other relevant non-political actors such as equality bodies and national human rights institutions.

59. See Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Azerbaijan – adopted on 8 November 2017, para. 40, "The generally positive attitude towards diversity in Azerbaijan contrasts starkly with the persistent hostile narrative against neighbouring Armenia … The Advisory Committee is concerned that the ubiquitous use of inflammatory language by politicians and other public figures can have an adverse impact on society's perception of persons belonging to the Armenian minority."

60. "Ad hoc public report: Organized hate speech and animosity towards ethnic Armenian in Azerbaijan as root cause of ethnically-based torture and inhuman treatment by Azerbaijan armed forces (September-November 2020)", Human Rights Defender of Armenia, Human Rights Ombudsman of Artsakh, December 2020. (On the terminology used, see footnote 5).

61. "Report on hate crimes and hate speech against Azerbaijanis", Republic of Azerbaijan, Baku, 2021.

133. Both sides allege that the other continue irredentist discourse threatening their own territorial integrity, and this does not help in terms of confidence building measures. Both sides should refrain from any such hostile rhetoric.

134. The rapporteur understands that the recent war is still raw, and that real tolerance will take years and possibly generations, but both the Armenian and Azerbaijani authorities have a responsibility to stop the rhetoric of hatred, including for short term political gain, and recognise the responsibility they have towards current and future generations.

135. The Council of Europe can play a role in assisting both countries in monitoring and dealing with hate speech. This should be a priority action for the Council of Europe, building on work undertaken in the past. A needs assessment should be carried out to assess how best Council of Europe expertise, including its standards, monitoring findings and co-operation efforts can be taken into account, and the findings should be reflected in new Action Plans being prepared for Azerbaijan (2022-2025) and Armenia (2023-2026). Encouraging tolerance and tackling hate speech will require a long-term approach, going beyond the use of criminal law in view of the sensitivity of the issues involved, and will require genuine commitment of the parties and sustained resources. This should be an important contribution to confidence building between the two countries.

4. Conclusions

136. The Council of Europe will have an important role to play as Armenia and Azerbaijan work towards a post conflict situation. The humanitarian consequences as identified in this report are significant and can only be dealt with over a long period of time. Some form of truth and reconciliation will be needed to allow both sides to move beyond the trauma, fear and intolerance and even hatred that is still present, and the monitoring bodies of the Council of Europe, the European Court of Human Rights, and the intergovernmental and expert bodies, co-operation programmes and country offices of the Council of Europe will each have a role to play. The country specific Action Plans of the Council of Europe will be essential and the new Action Plans under preparation for Armenia (2023-2026) and Azerbaijan (2022-2025) will need to take into account the challenges of dealing with the consequences of a long-lasting conflict and the recent 6-week war.

137. Central to ongoing work will be strong and effective confidence-building measures, which the Council of Europe has many years of experience implementing, in order to little by little build co-operation among different groups of the population. This will be a long-term process, lasting not just years but decades, and will be important for ensuring that the humanitarian consequences of the conflict between Armenia and Azerbaijan do not continue to weigh heavily on future generations of Armenians and Azerbaijanis.

Appendix 1 – Dissenting opinion presented by Mr Ruben Rubinyan (Armenia, EPP/CD), replacing Ms Naira Zohrabyan (Armenia, EC/DA), member of the Committee on Migration, Refugees and Displaced Persons, at the meeting of committee on 8 September 2021, and supported by Ms Tatevik Hayrapetyan (Armenia, EPP/CD), member of the Committee on Migration, Refugees and Displaced Persons, pursuant to Rule 50.4 of the Rules of Procedure.

The Armenian Delegation hereby registers its concerns and disappointment regarding lack of proper reflection in the document of the root-cause of the current humanitarian and human-rights disaster in Nagorno-Karabakh, an area within the mandate of the Council of Europe.

It is generally accepted by the international community that on September 27, 2020, Azerbaijan, with a direct involvement of Turkey and deployment of foreign terrorist fighters, launched a pre-planned war against the people of Nagorno-Karabakh. By doing so, Azerbaijan seriously violated its international obligations, including its conventional, treaty obligations and membership commitments as a Council Europe member state. Azerbaijan's president in his post-war interviews confirmed the pre-planned and intentional character of Azerbaijan's military attack.

Armenia cooperated with the Assembly and its rapporteur on humanitarian consequences in good faith, aiming to contribute to a document that would highlight the pressing needs, as well as facilitate and enable the mandate of the Council of Europe in relation to the individuals in Nagorno-Karabakh most affected by the 44-day war. However, we must register the following shortcomings:

1. The reference to the conflict as "… conflict between Armenia and Azerbaijan" is misleading and contradicts the approach long adopted by the international community mandated to deal with this conflict: the UN, OSCE, CoE, PACE and even the November 2020 Joint Ceasefire Statement that stopped the hostilities refer to the conflict as the Nagorno-Karabakh conflict.

2. The rapporteur failed to carry-out a fact-finding visit to Nagorno-Karabakh despite the expressed readiness of the authorities of Artsakh and Armenia to facilitate such a visit without any prejudice to the political status of Nagorno-Karabakh, which is within the mandate of the OSCE Minsk Group Co-Chairs. The Council of Europe and the Assembly are urged to find practical modalities at an earliest date to ensure protection provided to those living in Nagorno-Karabakh by the European Convention on Human Rights. Azerbaijani attempts to delay and obstruct the mandate of the relevant Council of Europe monitoring mechanisms, including that of the Commissioner for Human Rights, are unacceptable and should be condemned.

3. The explanatory memorandum carries two detailed paragraphs on the rapporteurs' visit to Aghdam (contrary to balanced approach to have similar programs during visits), but it omits the 3-hour-long virtual round table with participation of a dozens of NGO representatives from the Nagorno-Karabakh Republic/ Artsakh, who gathered in capital Stepanakert to provide first-hand information on the situation with humanitarian consequences, human rights protection and other challenges faced by the people of Nagorno-Karabakh, who – in face of the ongoing security threats from Azerbaijan - are largely ignored by the international community, including by the Council of Europe.

Without addressing these shortcomings with relevant follow-up actions, this report risks becoming irrelevant to the plea of thousands of individuals bearing the terrible humanitarian consequences of the Azerbaijani aggression against the people of Nagorno-Karabakh in 2020 and the ongoing security threats.

Appendix 2 – Dissenting opinion presented by Mr Samad Seyidov (Azerbaijan, EC/DA), member of the Committee on Migration, Refugees and Displaced Persons, supported by Ms Nigar Arpadarai (Azerbaijan, EC/DA), Mr Tural Ganjaliyev (Azerbaijan, EC/DA) and Mr Kamal Jafarov (Azerbaijan, EC/DA), pursuant to Rule 50.4 of the Rules of Procedure.

The Report on the "Humanitarian consequences of the conflict between Armenia and Azerbaijan" omits to remind the massive destruction, atrocities and the great humanitarian catastrophe suffered by Azerbaijan, as a result of the military aggression by Armenia in 1991-1994 and the occupation of one fifth of its lands, does not take into account many of the views of Azerbaijan, like some of them mentioned below.

First, during the conflict, which began with territorial claims of Armenia against Azerbaijan, around one million Azerbaijanis were subjected to ethnic cleansing and forced displacement. Despite numerous decisions of international organizations, most particularly the relevant UN Security Council Resolutions demanding the immediate, unconditional and complete withdrawal of Armenian forces, throughout these years Armenia had pursued a policy of aggression, by ignoring inter alia the rights of the Azerbaijani IDPs to return to their homelands. Now, after the end of the conflict, the utmost priority for Azerbaijan, determined as such by President Ilham Aliyev, is to rebuild the liberated territories in order to secure the soonest possible return of displaced people to their homes in safety and dignity.

Second, in paragraph 78 of the memorandum, the phrase "region which remained under the control of Armenia" is factually and legally wrong. This region is an internationally recognized part of Azerbaijan and the Russian peacekeeping contingent is temporarily deployed to these territories.

Third, the placement of reference to those who live in the Karabakh region of Azerbaijan under the sub-chapter 3.5.1 on Armenia is not accurate; since these paragraphs are related to the conflict-affected territories of Azerbaijan, the respective matters should be addressed under the sub-chapter on Azerbaijan. In this part, it should be also highlighted that Azerbaijan has expressed its intention to reintegrate its citizens of Armenian origin living in its conflict-affected territories into its political, social and economic space, guaranteeing the same rights and freedoms with all citizens of Azerbaijan.

Fourth, the report repeats without conclusive evidence a number of groundless allegations, such as those related to "use of Syrian mercenaries" in the recent war, which Azerbaijan categorically rejected.

Fifth, the report should use only the correct toponyms in line with the national legislation of Azerbaijan and avoid illegitimate appellations while referring to the conflict-affected territories of Azerbaijan and its cities and settlements.

Sixth, the report disregards numerous gestures of goodwill of Azerbaijan, driven by humanitarian considerations and strong willingness to move towards reconciliation and peace.

Finally, the paragraphs related to the cultural heritage do not describe the full scale of damage caused to the cultural heritage of Azerbaijan by Armenia. In addition, it replicates many of the baseless allegations regarding "deliberate" destruction of cultural heritage by Azerbaijan. However, it skips to note that Azerbaijan has already launched restoration works for all cultural heritage monuments, including the Gazanchi Church in Shusha. Furthermore, it notes "evidence" of continuing destruction of cultural heritage with reference to obviously biased sources which cannot be considered reliable and serious. Bringing these unverified allegations to the PACE document is an unfortunate case.