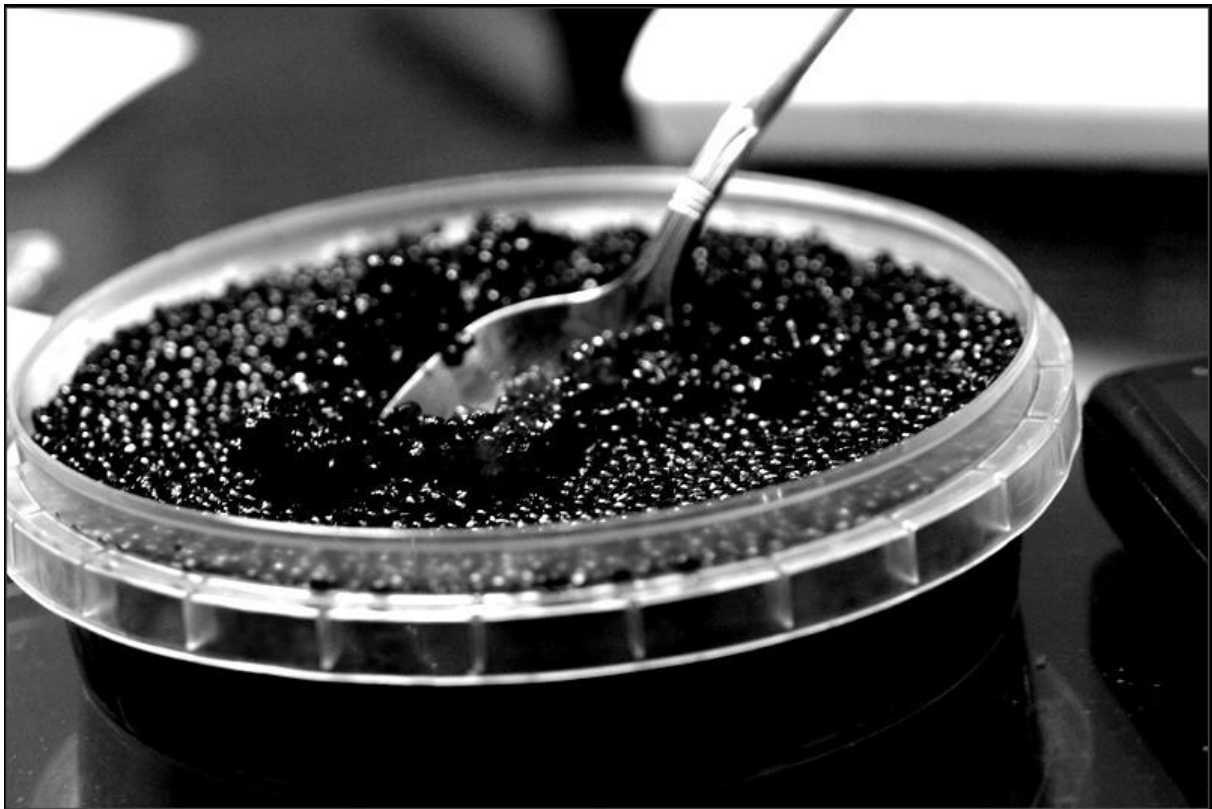


Caviar Diplomacy

How Azerbaijan silenced the Council of Europe

Part 1



Berlin
24 May 2012

Table of contents

CAST OF CHARACTERS	II
I. A LEGACY BETRAYED	1
II. "BETTER IN THAN OUT"?	3
A. AZERBAIJAN AND THE BENEFIT OF THE DOUBT	3
B. ELECTIONS AND AUTHORITARIAN CONSOLIDATION.....	6
C. SHOWDOWN IN STRASBOURG (2006).....	11
III. CAVIAR DIPLOMACY	14
A. SILENCING PACE	14
B. HOW TO STEAL AN ELECTION (2010).....	22
ANNEX: ESI REPORTS.....	31

CAST OF CHARACTERS

Members of the Parliamentary Assembly of the Council of Europe (PACE)

CRITICS



Andreas Gross (Swiss)
Rapporteur of the Monitoring Committee
2001-2006
Social Democrat

APOLOGISTS¹



Joseph Debono Grech (Maltese)
Rapporteur of the Monitoring Committee
since 2009
Labour



Andres Herkel (Estonian)
Rapporteur of the Monitoring Committee
2004-2010
Conservative



Pedro Agramunt (Spanish)
Rapporteur of the Monitoring Committee
since 2010
Conservative

¹ We describe as “apologist” those members of PACE who are on record defending the state of Azerbaijan’s democracy and praising its elections in public and in meetings of the parliamentary assembly of the Council of Europe. “Critics” are those who have consistently pointed out their shortcomings. For quotes see page V.



Leo Platvoet (Dutch)
Head of PACE Election Monitoring Mission
2005
Green Left



Paul Wille (Belgian)
Head of PACE Election Monitoring Mission
2010
Liberal



Malcolm Bruce (United Kingdom)
Rapporteur for Political Prisoners 2003-2005
Liberal Democrat



Mike Hancock (United Kingdom)
Member of PACE
Liberal Democrat



Christoph Strasser (German)
Rapporteur for Political Prisoners 2009-2012
Social Democrat



Eduard Lintner (German)
Head of Monitoring Committee 2006-2007
Christian Democrat

Apologists on Azerbaijani democracy and elections

- Joseph Debono Grech: “There are problems in any country, but in general the situation is comforting. We can help Azerbaijan, which is still a very young democracy, since 20 years is not so much. But you did a great job for this short path.”(News.az, 4 October 2011)
- Pedro Agramunt: “We both agree that important progress in the democratization of the country has to be noted. We take note of the impressive legislative work accomplished by the Azerbaijani authorities with a view to bringing laws in conformity with Council of Europe standards.”
(February 2011 Fact Finding Information Note)
- Paul Wille: The 2010 elections were “mostly in line with our own – PACE, OSCE and international – standards and commitments.”
(Press conference in Baku, November 2010)
- Michael Hancock: “I was proud to be at the [2010] elections in Azerbaijan. The best you can say about any election in any country – in Europe, or anywhere else in the world – is that on the day following the election, the majority of people have the result that the majority want.” (Debate in PACE, January 2011)
- Eduard Lintner: “Lintner says that one of his reasons for stepping down from the human rights committee was the fact that there was a group within the Council of Europe that wanted to rigorously denounce alleged human rights violations. Unlike them, he says he would have preferred to ‘usher (Azerbaijan) along in a supportive way.’” (Spiegel, 4 January 2012)

Stealing an election (2010)



Ilham Aliyev (Azerbaijani)
President (2003 till today)
Head of Delegation to PACE (2001-2003)



Ramiz Mehdiyev (Azerbaijani)
Head of Presidential Administration



Wolfgang Grossruck (Austrian)
Head of OSCE Parliamentary Assembly
Delegation 2010



Tadeusz Iwinski (Polish)
Deputy head of PACE Election Monitoring
Mission 2010



Audrey Glover (United Kingdom)
Head of OSCE/ODIHR Election Observation
Mission 2010

- Ramiz Mehdiyev:** “Mehdiyev also blamed election fraud on the lingering Soviet mindset. *Telling the Ambassador that he had been responsible for elections in Soviet times and was responsible for them now as well, Mehdiyev first said there had been no change in the general attitude regarding elections, but then said there had been "some" positive changes in the period 1995-2005.*” (2006 in conversation with US diplomats)
- Ilham Aliyev:** “Our election will be absolutely free and fair; the only question is what ODIHR will say.” (June 2008 in conversation with US officials)
- Audrey Glover:** “Regrettably, our observation of the overall process shows that the conditions necessary for a meaningful democratic election were not established.” (Press conference, November 2010 elections, Baku)
- Wolfgang Grossruck:** “Throughout the mission, we had the impression that the ODIHR was more eager to fulfil expectations from the international media, the NGO community and Azerbaijan’s opposition than to demonstrate a truly professional attitude in accessing, collecting and analysing the evidence.” (Letter to OSCE Chairman in Office, November 2010)
- Tadeusz Iwinski:** “In recent years, Azerbaijan has opted for European standards in respect of human rights, democracy and the rule of law.” (PACE debate, June 2010)

I. A LEGACY BETRAYED

“There are a lot of deputies in the Council of Europe Parliamentary Assembly whose first greeting, after ‘Hello’, is ‘Where is the caviar?’”

Senior Azerbaijani policy maker to ESI, 2011²

Caviar has always been a symbol of luxury. Prolific caviar eaters themselves, Russian tsars and Iranian shahs treated visiting royalty to the roe of the Beluga sturgeon. With ninety per cent of the world’s caviar sourced from the Caspian Sea, Azerbaijan (a Caspian nation with a population of 8 million) is rich in caviar and generous with its wealth. Even in Soviet times, Azeri officials brought tins of caviar with them when they conducted business in other parts of the Empire.

Gift giving is a part of traditional Azeri culture. But sometimes it comes at a price. As a recent book on customs and culture in Azerbaijan put it:

“Big-hearted gestures, such as paying for an entire table of friends dining at a restaurant or other costly favors for friends and guests are still a norm ... The generosity shown towards friends is expected to be paid back some day, however.”³

This was certainly the logic behind a policy that Azerbaijani officials referred to in private as “caviar diplomacy.” It began in 2001, not long after Azerbaijan joined the Council of Europe – the continent’s club of democratic nations. It gathered speed after Ilham Aliyev, who had served in the Council of Europe’s parliamentary assembly (PACE), became president of Azerbaijan in 2003. Once the Baku-Tbilisi-Ceyhan oil pipeline was completed in 2005 and the Azerbaijani state coffers were awash in oil revenues, the “caviar policy” shifted into top gear.

Caviar diplomacy was about winning and retaining the stamp of legitimacy conferred by Council of Europe membership. Created in 1949, the Council of Europe is not Europe’s most influential club. Indeed, faced with the European Union’s bewildering institutional architecture, many of Europe’s citizens have long since forgotten about it. But in its quiet and unassuming way, the Council of Europe stands for democracy and human rights. For more than half a century, it has symbolised the values that bind Europe together. To be a member of the Council of Europe is to be part of the European family.

Diplomacy is always about winning friends, building alliances, cutting deals. In the case of Azerbaijan and the Council of Europe, however, it often went much further. As Azerbaijani sources in Strasbourg told ESI in 2011, Azerbaijan had a systematic policy of getting influence in Baku:

“One kilogram of caviar is worth between 1,300 and 1,400 euro. Each of our friends in PACE receives at every session, four times a year, at least 0.4 to 0.6 kg. Our key friends in PACE, who get this, are around 10 to 12 people. There are another 3 to 4 people in the secretariat.”

For some of these friends, the caviar is just the beginning:

“Caviar, at least, is given at every session. But during visits to Baku many other things are given as well. Many deputies are regularly invited to Azerbaijan and generously paid.

² Interview with ESI in 2011.

³ Nikki Kazimova, *Azerbaijan – the essential guide to customs and culture*, Kuperard, 2011, p. 47.

In a normal year, at least 30 to 40 would be invited, some of them repeatedly. People are invited to conferences, events, sometimes for summer vacations. These are real vacations and there are many expensive gifts. Gifts are mostly expensive silk carpets, gold and silver items, drinks, caviar and money. In Baku, a common gift is 2 kg of caviar.”

Over the course of the project, we spoke to a large number of international officials, Azerbaijanis, members of PACE and people involved in election observation missions in Azerbaijan. We studied transcripts of Council of Europe debates on Azerbaijan and dissected election observation reports by international monitors.

Outside of the Council of Europe, the state of Azerbaijan’s democracy is not seriously contested. Even its biggest admirers admit that it is at best a semi-authoritarian regime. Azerbaijan has not held a single competitive election since Heydar Aliyev, the father of current president Ilham Aliyev, came to power in 1993, following a coup against the first elected president. The Central Election Commission, in charge of organising elections, has stacked the deck so firmly in favour of the incumbent government that no political competition is possible, fair or otherwise. In the parliamentary election of 2010, not a single opposition candidate managed to win a seat.

How, then, could the head of the PACE election observation mission declare that the elections had met international and Council of Europe standards? Why, when the human rights situation has steadily deteriorated since 2003, has debate in PACE on Azerbaijan become ever more anodyne, even complimentary?

This report suggests a few answers. It describes how an authoritarian regime in Baku has managed to sidestep its commitments, silence its critics and turn international election monitoring into political theatre. It is a story of how Europe’s oldest human rights organisation has been neutered.

Beneath the institutional failure, it is also a story about individuals and the difference they can make, for better or worse, within institutions like the Council of Europe. The cast of this story – the critics and the apologists – are Swiss, Belgian, British, German, Spanish and Turkish; they are liberals, social democrats, conservatives, nationalists and former communists. In Azerbaijan too many of them have betrayed the values and traditions set out in the European Convention on Human Rights. The result may well be the most serious crisis of legitimacy in the history of the Council of Europe.

Not everybody who defended Azerbaijan in PACE did so for material benefit. There were other factors at play, including geopolitical considerations. But there are many indications that corruption has played a role in deflecting PACE from its responsibilities. The account of how the caviar policy has been implemented offered by different Azerbaijanis has been corroborated through interviews with PACE members and other sources. It explains conduct by the Council of Europe that is otherwise incomprehensible.

When Azerbaijan was admitted to the Council of Europe, despite well documented democratic failings, it was with the idea that Council of Europe membership would gradually transform Azerbaijan. Sadly, the reverse has occurred. The outcome is a tragedy for the citizens of Azerbaijan, particularly those brave pro-democracy activists who languish in jail as political prisoners. But it is also a tragedy for Europe, whose values have been trampled on. For the PACE parliamentarians enjoying the benefits of caviar diplomacy are also sitting members of national parliaments across Europe. And it is certainly a tragedy for the Council

of Europe itself, which urgently needs to recover the values its founders entrusted it with if it is to justify its continued existence.

II. “BETTER IN THAN OUT”?

A. *Azerbaijan and the benefit of the doubt*

When the Council was set up in May 1949, it counted just ten members.⁴ By 1989, it had 23.⁵ When Vaclav Havel, who had just moved from communist-era dissident to leader of a young democracy, spoke in the Palace of Europe in Strasbourg in May 1990, he described the Council as “the most important European political forum.”⁶ What he saw was a club of democracies committed to upholding the highest level of human rights protection – and to ensuring that the days of authoritarian rule in Europe would soon be numbered.

There are a few basic rules for this club of democracies. The first is that all democracies are imperfect and therefore benefit from outside scrutiny. All members of the Council of Europe are expected to submit to the binding judgments of a supranational court, the European Court of Human Rights (ECHR). Today, 800 million citizens across 47 states can appeal to the Court to seek protection of their fundamental rights. Council of Europe members are also accountable to their peers. By joining, they recognise the legitimacy of outside interference and criticism.

The second idea is that only democracies can be members of the Council of Europe. It was only after the fall of their authoritarian regimes that Portugal and Spain, for instance, could accede: Portugal in 1976, Spain in 1977. Although Greece had joined the Council in 1949, the *coup d'état* of April 1967 led PACE to recommend terminating the country’s membership.⁷ In a resolution of 31 January 1968, the Assembly demanded that Greece hold free elections as soon as possible, threatening “suspension or expulsion” from the club unless Greece restored an “acceptable parliamentary democracy” by the spring of 1969.⁸ The Greek junta pre-empted this by announcing its decision to withdraw from the Council of Europe,⁹ re-joining only on 28 November 1974 after the colonels had fallen.¹⁰ Likewise, within weeks of the military coup in Turkey in September 1980, PACE warned that any authoritarian government, whatever its motivation, was contrary to the Council’s founding principles.¹¹ In May 1981, the Assembly refused to extend the credentials of the Turkish parliamentary delegation to the Council of Europe.¹²

In making democracy a condition of membership, the Council has embraced the idea that it is possible to distinguish between an imperfect democracy on the one hand and an autocratic

⁴ The ten founding members of the Council of Europe are Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom.

⁵ The 13 members that joined later included Greece (1949), Turkey (1949), Iceland (1950), Germany (1950), Austria (1956), Cyprus (1961), Switzerland (1963), Malta (1965), Portugal (1976), Spain (1977), Liechtenstein (1978), San Marino (1988), and Finland (1989).

⁶ Vaclav Havel, Speech at the Council of Europe, Strasbourg, 10 May 1990.

⁷ Recommendation 547 (1969) of the Consultative Assembly of the Council of Europe, 30 January 1969.

⁸ Resolution 361 (1968) of the Consultative Assembly of the Council of Europe, 31 January 1968.

⁹ The Committee of Ministers, Resolution 70 (34), “Legal and Financial Consequences of Greece’s Withdrawal from the Council of Europe”, 27 November 1970.

¹⁰ Gudmundur Alfredsson et al. (eds), *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Moller*, Martinus Nijhoff, 2009 (2nd ed.), p. 443.

¹¹ PACE Recommendation 904 (1980), para. 8, 1 October 1980.

¹² This changed only after the first democratic elections in 1983.

regime on the other. So as to render this distinction easier, the Council has identified a number of clear benchmarks that every one of its members is expected to meet. Holding “free and fair” elections is one; ensuring freedom of thought and expression is another. As the heads of government of member states declared at a summit in Vienna in October 1993:

“The people’s representatives must have been chosen by means of free and fair elections based on universal suffrage. Guaranteed freedom of expression and notably of the media, protection of national minorities and observance of the principles of international law must remain, in our view, decisive criteria for assessing any application for membership.”¹³

It was all the more important to establish clear rules following the emergence of so many new democracies in Eastern Europe after the fall of the Berlin Wall. For the Council of Europe, the 1990s was a period of dramatic growth. The first to join were the Central European nations: Hungary in 1990, Czechoslovakia and Poland in 1991, and Bulgaria in 1992. In 1993, the Council began welcoming member states from the former Soviet Union. On 28 June 2000, parliamentarians from the Council of Europe’s then 41 member states gathered in Strasbourg, the seat of the Parliamentary Assembly of the Council of Europe (PACE), to discuss the membership applications of Armenia and Azerbaijan.

Table 1: Accession of Soviet Union successor states to the Council of Europe

Year	Countries
1993	Estonia, Lithuania
1995	Latvia, Moldova, Ukraine
1996	Russia
1999	Georgia
2001	Armenia, Azerbaijan

To join the Council of Europe, a country must be both European and democratic. Already in October 1994, PACE declared that “in view of their cultural links with Europe, Armenia, Azerbaijan and Georgia would have the possibility of applying for membership provided they clearly indicate their will to be considered as part of Europe.”¹⁴ Azerbaijan was granted transitional “special guest” status in June 1996. Two weeks later, it submitted an application for full membership.

But was Azerbaijan democratic? For four years, PACE could not decide. In June 2000, the parliamentarians had before them two documents. One was an opinion on Azerbaijan’s application by Georges Clerfayt, a Belgian member.¹⁵ It concluded that Azerbaijan had made “considerable progress” in complying with Council standards, and that there was “momentum” and political will for reform.¹⁶ A second report, by French member Jacques Baumel, arrived at a similar conclusion.¹⁷

¹³ Committee of Ministers, “Vienna Declaration”, 9 October 1993.

¹⁴ See Recommendation 1247 (1994) on the enlargement of the Council of Europe, 4 October 1994.

¹⁵ PACE Committee on Legal Affairs and Human Rights, “Azerbaijan’s application for membership of the Council of Europe,” Doc. 8757, Rapporteur Georges Clerfayt, 27 June 2000.

¹⁶ Ibid, sections 63 and 64.

¹⁷ PACE Political Affairs Committee, “Azerbaijan’s application for membership of the Council of Europe,” Doc. 8748, Rapporteur Jacques Baumel, 23 May 2000.

Baumel's report also contained a draft opinion on Azerbaijan's membership that was put to the vote in the assembly. Referred to later as Opinion 222, it listed the many specific commitments that Azerbaijan would have to accept upon accession (see table 3). Baku was expected to fully comply with the Council's monitoring process, to commit itself to a peaceful solution of the Nagorno-Karabakh conflict,¹⁸ and to tackle the problem of political prisoners. The text also emphasised that the conduct of the upcoming November 2000 elections would serve as a test of Azerbaijan's commitment to democracy.¹⁹

Not everyone was convinced by the wisdom of giving Baku the benefit of the doubt. Malcolm Bruce, a British Liberal Democrat, noted that PACE had usually withheld membership until a candidate state demonstrated its commitment to democracy by holding free and fair elections (which Azerbaijan had never done).²⁰ He worried that Azerbaijan, if admitted prematurely, could roll back the limited progress it had made in previous years.²¹ The argument did not resonate with other deputies. On 28 June 2000, 120 members voted to recommend the accession of Azerbaijan. Five abstained. Malcolm Bruce was the only member of PACE to vote against.

The debate then shifted to the Committee of Ministers, the Council's executive body, which alone can decide to admit or expel member states. The Committee of Ministers delayed the final vote on Azerbaijan's accession until after the November 2000 parliamentary elections, providing the authorities in Baku with an opportunity to demonstrate progress.

These elections were held on 5 November 2000.²² An observer mission by the Office for Democratic Institutions and Human Rights (ODIHR) reported that "the vote counting and aggregation of results processes were completely flawed and manipulated."²³ PACE observers noted "clear manipulation of the electoral procedures." Andreas Gross, a Social Democrat member of the Swiss parliament since 1991, was the head of PACE's election observation mission. An experienced election observer, Gross discovered evidence of massive and systematic fraud in the city of Sumgayit near Baku. As he told a Swiss paper at the time:

"Since 1994 I have observed 13 elections in 7 countries and this was the worst election fraud I saw. An hour before the opening of the polling station I found 150 completed, signed and stamped ballots for the ruling party in a safe. All day on Sunday only around 350 citizens came to the polling station. In other words, the results were obviously a foregone conclusion."²⁴

Official results gave the ruling party over 60 percent of the vote,²⁵ a figure contradicted by independent exit polls. Caucasus expert Svante Cornell pointed to "various forms of ballot-stuffing, the falsification of results protocols, and the intimidation of voters and opposition members of precinct electoral commissions. Official voter-turnout figures (reported hourly by

¹⁸ PACE, Opinion No. 222 (2000), "Azerbaijan's application for membership in the Council of Europe", 28 June 2000.

¹⁹ PACE Opinion 222 (2000), para. 14.iii.b.

²⁰ PACE debate on 28 June 2000 at 3 p.m.

²¹ Ibid.

²² See OSCE/ODIHR, "Republic of Azerbaijan Parliamentary Elections 5 November 2000 & 7 January 2001, Final Report", 15 January 2001.

²³ Ibid., p. 2.

²⁴ Interview with *Neue Zürcher Zeitung* (NZZ), January 2001, ESI translation from German.

²⁵ OSCE/ODIHR, "Republic of Azerbaijan Parliamentary Elections 5 November 2000 & 7 January 2001, Final Report", 15 January 2001, Annexes 4 and 5.

precincts) were artificially altered.”²⁶ Manipulations significantly distorted the final result: “the final official figures showed a turnout of 68 per cent, whereas observers reported an actual turnout of approximately one-third of the electorate.”²⁷ Both the government and the main opposition “may have plausibly polled a quarter of the vote.”²⁸ On 8 November, Human Rights Watch asked the Committee of Ministers not to admit Azerbaijan. The conduct of the elections, the NGO insisted, showed that Azerbaijan had not met the Council of Europe’s democratic standards.²⁹

On 9 November 2000, Committee of Ministers adopted two nearly identical resolutions inviting both Armenia and Azerbaijan to become members of the Council of Europe.³⁰ One rationale was the need for parity between the two countries: in September 2000 Umberto Ranieri, the Italian Secretary of State for Foreign Affairs, had argued before PACE members on behalf of the Committee of Ministers in favour of the “simultaneous” accession of Azerbaijan and Armenia, “so as to avoid dangerous repercussions in the region.”³¹ Now the Committee of Ministers did not want to delay Armenia’s accession because of violations in Azerbaijan.³²

On 25 January 2001, Azerbaijan joined the Council of Europe. Andreas Gross defended this choice in a long interview with a Swiss paper:

“I think the decision to integrate these countries into the Council of Europe is right if they are serious about joining us on the long path of democratization.”³³

Gross, like others, hoped that if Azerbaijan did not meet the Council’s standards now, then it would do so over time.

B. Elections and authoritarian consolidation

“Throughout history unbridled rulers have been created by means of an election just as much as by sheer force or hereditary succession.”

Giovanni Sartori³⁴

Different instruments exist to ensure that citizens of Council of Europe member states can rely on continued respect of membership criteria. There is the European Court of Human Rights (ECHR), to which they have recourse after domestic remedies are exhausted. There is the Committee of Ministers, comprised of foreign ministers of member states, which supervises the execution of ECHR judgments and can suspend or terminate the membership of countries that fail to abide by the rules. There is a general secretary, heading the organisation’s secretariat in Strasbourg. There is a human rights commissioner, established in 1999 as an independent institution. There is an advisory body on constitutional matters, the

²⁶ Svante E. Cornell, “Democratization Falters in Azerbaijan”, *Journal of Democracy*, 12/2, 2001, pp. 126-127.

²⁷ Ibid.

²⁸ Svante E. Cornell, *Azerbaijan Since Independence*, M.E. Sharpe, 2011, p. 98.

²⁹ “HRW: Rights Group to Council of Europe: Azerbaijan Admission a Mistake”, 8 November 2000, <http://tech.groups.yahoo.com/group/multiethnic/message/967>.

³⁰ See: Committee of Ministers, Resolution Res(2000)14, “Invitation to Azerbaijan to become a member of the Council of Europe”.

³¹ PACE debate on 28 September 2000 at 15 p.m. (sic!).

³² Svante Cornell, “Democratization Falters in Azerbaijan”, p. 128.

³³ Interview with *Neue Zürcher Zeitung* (NZZ), January 2001, ESI translation from German.

³⁴ Giovanni Sartori, *The Theory of Democracy Revisited, Part one: the contemporary debate*, 1987, p. 30.

European Commission for Democracy through Law, better known as the Venice Commission.³⁵ And then there is PACE, the parliamentary assembly, with 318 representatives meeting four times a year in Strasbourg.³⁶ All PACE members are also members of national parliaments in member states.

PACE also has eight committees³⁷, which meet many more times each year. In 1997, PACE set up a special monitoring committee (with today 84 members) to track progress on the implementation of countries' commitments.³⁸ As PACE stated in 1999,

“After the enlargement of the Council of Europe, the monitoring of respect of obligations and commitments by its member states has become an overriding priority for the Organisation and an essential element of its credibility.”³⁹

To help it do its work the monitoring committee appoints two rapporteurs for each country that is monitored. In 2001 Andreas Gross from Switzerland became one of the monitoring committee's two rapporteurs for Azerbaijan; a Spaniard, Guillermo Martinez Casan, was the second. In addition, the Committee on Legal Affairs and Human Rights appointed Georges Clerfayt from Belgium as rapporteur for political prisoners in Azerbaijan. Both Clerfayt and Gross were determined to remind the Azerbaijani authorities of their obligations.

In December 2001 Azerbaijan's president pardoned some prisoners. The January 2002 PACE session adopted a resolution which welcomed recent presidential pardons but reiterated that the continuing presence of political prisoners in a Council of Europe member state was unacceptable.⁴⁰ Andreas Gross also warned that if member states

“do not follow the commitments and values, their membership in the Council is always at stake. We have been open-minded and liberal by admitting [Azerbaijan] and we will be correct and hard in pursuing its commitments.”⁴¹

Azerbaijan was becoming increasingly frustrated by the attention it was receiving. In the summer of 2002 the Azerbaijani delegation to the assembly wrote a letter to PACE President Bruno Haller from France, asking him to replace Andreas Gross with another rapporteur. In July 2002 Ilham Aliyev claimed that it was no longer possible to put up with Gross:

“The point is not that he criticizes the Azerbaijani authorities and our delegation. We are used to dealing with criticisms ... Gross, however, is hostile to our country. And I am

³⁵ Set up in 1990, its expert members meet four times a year in Venice, Italy.

³⁶ As one member of PACE, Andreas Gross, explained in a presentation in New York, the Parliamentary Assembly “is a genuine transnational Parliament which meets four times a year for a whole week, works in between in ten committees which meet about six times additionally to the sessions meetings.” It had created, through “over 200 conventions a genuine pan-European space with a common understanding of human rights, democracy and the rule of law.” General Assembly, 61st Plenary Session, statement by National Councillor Andreas Gross, New York, 20 October 2006.

³⁷ Prior to 2012, there were 10 general PACE committees. However, as a result of recent PACE reforms and reorganization the number of the committees was reduced to eight in January 2012 (see Resolution 1822 (2011) “Reform of the Parliamentary Assembly”).

³⁸ See PACE Resolution 1115 (1997), 29 January 1997.

³⁹ PACE, Opinion 208 (1999), “Building greater Europe without dividing lines (opinion on the report of the Committee of Wise Persons)”, 26 January 1999.

⁴⁰ PACE Resolution 1272 (2002), “Political Prisoners in Azerbaijan”.

⁴¹ Kenan Aliyev, “Azerbaijan Defiant After European Council Warning on Prisoners”, *EurasiaNet*, 27 January 2002.

very surprised about the campaign in Gross' defense that was initiated by the opposition parties."⁴²

Aliyev warned that he would refuse to meet with Gross but noted that he was willing to meet with the other co-rapporteur, Guillermo Martinez Casan. His comments reflected the tensions between Gross and Casan. Gross felt that Casan tried to stop him being too critical. He also felt that Casan was somewhat lazy, which allowed Gross to write most of the joint reports.

In 2003, the year of the presidential elections, the health of Azerbaijan's incumbent president Heydar Aliyev began to deteriorate. The elder Aliyev withdrew his candidacy in favour of his son Ilham. He died later that year.

The conduct of the October 2003 election – one more occasion for Azerbaijan to prove its democratic credentials, as PACE rapporteurs pointed out – was a disaster. The ODIHR final report listed “widespread intimidation in the pre-election period,” lack of legal remedy for election disputes and complaints and serious flaws in the vote counting and tabulation process. The report concluded that the elections “failed to meet OSCE commitments and other international standards for democratic elections.”⁴³ On election-day the situation in Baku was chaotic: over a thousand opposition supporters gathered in the city centre chanting anti-Aliyev slogans and denouncing election fraud. Government forces organised a brutal crackdown. Hundreds of election officials and opposition supporters, including the leaders of all major opposition parties, were arrested.⁴⁴ Criminal proceedings were initiated against some 150 participants of the post-election protests.⁴⁵

In January 2004 PACE adopted a harshly worded resolution.⁴⁶ It pointed to “intimidation of voters,” “arbitrary arrests” of opposition supporters and a “clear bias” on the part of the press. It condemned “excessive use of force” by security forces. “In a member state of the Council of Europe, which has been independent for more than ten years such practice is unacceptable,” the text read, appealing to the newly elected president Ilham Aliyev to “speedily initiate the necessary reforms in the field of pluralistic democracy, rule of law and respect for human rights.”⁴⁷

PACE had two potential sanctions at its disposal. The first was to deprive the Azerbaijani delegation of the right to sit in the Assembly. This had been done in the case of Greece in 1967 and in the case of Turkey in 1981. The second option was to suspend the Azerbaijani delegation's voting rights until progress could be reported. This had been the fate of the Russian delegation in April 2000 over the human rights situation in Chechnya.⁴⁸ PACE now issued a warning to Azerbaijan: unless there was progress “the Assembly may be requested to reconsider the ratification of the credentials of the Azerbaijani parliamentary delegation to the

⁴² *Echo-az.com*, http://www.echo-az.com/archive/2002_07/376/facts.shtml#3.

⁴³ OSCE/ODIHR, “Republic of Azerbaijan. Presidential Elections 15 October 2003. Final Report”, 12 November 2003, p. 1.

⁴⁴ *Ibid.*

⁴⁵ Malcolm Bruce, “Report: Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan”, Doc. 10564, 31 May 2005, para. 58.

⁴⁶ PACE Resolution 1358 (2004), “Functioning of democratic institutions in Azerbaijan”, 27 January 2004.

⁴⁷ *Ibid.*, section 2.

⁴⁸ See PACE debates on 27 January 2000 and on 6 April 2000. See also PACE Political Affairs Committee, “Credentials of the delegation of the Russian Federation” (Doc. 8949) by Matyas Eorsi, 23 January 2001, explanatory memorandum, II A 2.

Council of Europe.”⁴⁹ In October 2004 another PACE resolution declared that parliamentary elections scheduled for November 2005 would be the next test of Azerbaijan’s “capacity to organise free and fair elections, in accordance with internationally recognised standards.”⁵⁰

In early 2005 the Azerbaijani authorities threatened to deny Andreas Gross entry into the country. Foreign Minister Vilayat Guliyev warned that Gross was not welcome. Parliament Speaker Murtuz Alasgarov wrote a letter to PACE President Bruno Haller stating that “not a single official in Azerbaijan will have any contact with Gross.” He also asked that Gross be replaced.⁵¹ However, the assembly stood firmly behind its rapporteur. In the end, Gross was able to travel to Azerbaijan.

Table 2: PACE Committees and Rapporteurs for Azerbaijan

Monitoring Committee (two rapporteurs)	
2001 – 2004	Andreas Gross (Swiss) and Guillermo Martinez Casan (Spanish)
2004 – 2006	Andreas Gross (Swiss) and Andres Herkel (Estonian)
2006 – 2007	Tony Lloyd (British) and Andres Herkel (Estonian)
2007 – 2009	Evgenia Jivkova (Bulgarian) and Andres Herkel (Estonian)
2009 – 2010	Joseph Debono Grech (Maltese) and Andres Herkel (Estonian)
since 2010	Joseph Debono Grech (Maltese) and Pedro Agramunt (Spanish)
Committee on Legal Affairs and Human Rights (one rapporteur for political prisoners)	
2001 – 2003	Georges Clerfayt (Belgian)
2003 – 2005	Malcolm Bruce (British)
2005 – 2009	<i>no rapporteur</i>
since 2009	Christoph Strasser (German)

In June 2004 the Spaniard Casan had been replaced as co-rapporteur by an Estonian parliamentarian, Andres Herkel, a psychologist, historian, poet, and editor of a number of cultural publications. In April 2005 Gross and his new colleague visited Azerbaijan. What they found worried them deeply:

“Since the 2003 presidential elections, marred by fraud and violence, the stability in the country has been maintained at the expense of respect for fundamental human rights ... In the present political climate, neither the electoral system nor key state institutions and the judiciary might be able to provide sufficient guarantees for fair elections.”

Gross and Herkel concluded that “the bare facts, as they stood, were for us unacceptable for a democracy ... We have to say with regret that many of our interlocutors left us, to put it mildly, disappointed and unconvinced.”⁵² Noting the imminent opening of the Baku-Tbilisi-Ceyhan oil pipeline, they also worried that Azerbaijan could soon suffer the “resource curse”. The revenues generated through the operation of the pipeline, they warned, “might create temptations for some officials and politicians to bypass democracy.”⁵³

⁴⁹ PACE Resolution 1358 (2004) “Functioning of democratic institutions in Azerbaijan”, 27 January 2004, section 16.

⁵⁰ PACE Resolution 1398(2004), “Implementation of Resolution 1358(2004) on the functioning of democratic institutions in Azerbaijan, 5 October 2004.

⁵¹ Shahin Rzaev, “Baku caves in to the Council of Europe”, *IWPR*, CRS Issue 139, 21 February 2005.

⁵² PACE, “Functioning of democratic institutions in Azerbaijan – Report”, Doc. 10569, 3 June 2005.

⁵³ *Ibid.*

PACE followed up with more explicit warnings. A resolution in June 2005 repeated that the parliamentary elections scheduled in November were “a decisive test for the democratic credibility of the country.”⁵⁴ A 50-member PACE election observer mission, the largest ever, travelled to Azerbaijan.

The November 2005 elections proved that there was no reason for optimism about Azerbaijan’s democratic progress. An OSCE/ODIHR report assessed that 41 per cent of the ballot counts were “bad” or “very bad”, with large scale ballot stuffing and other manipulations.⁵⁵ The tabulation of the results was rated “bad” or “very bad” in 34 per cent of the constituency election commissions visited.⁵⁶ Opposition protests were once again met with violence. In an interview on 26 November 2005 Andreas Gross expressed his shock:

“The worst thing that could happen has happened. By their irresponsible actions the rulers killed the democratic hope among people. Nobody believes anymore that any positive changes are possible in this country.”⁵⁷

To add insult to injury, the Central Election Commission, the administrative body responsible for organising elections in Azerbaijan, and the Azerbaijani Constitutional Court cancelled the election results in 10 of 125 constituencies, with re-runs to be held in May 2006. Among the ten, five were constituencies in which prominent opposition people, including the leader of one of the most important opposition parties, Popular Front Party Chairman Ali Kerimli, had triumphed.⁵⁸

Subsequently, the five opposition candidates deprived of their seats appealed before the European Court of Human Rights. The ECHR ruled in their favour in all cases. In its September 2010 decision on Flora Kerimova, an opposition candidate and well-known singer whose victory had been annulled, the ECHR found that the decision had “shown lack of concern for the integrity of the electoral process, which could not be considered compatible with the spirit of the right to free elections under the Convention.”⁵⁹ Concerning opposition leader Ali Kerimli, the ECHR noted that “the impugned decision arbitrarily deprived the applicants of the benefit of having been elected to Parliament.”⁶⁰

To the shock of the Azerbaijani opposition the US Embassy in Baku became one of the first to welcome the outcome of the elections. On 2 December, the day of the constitutional court’s decision to cancel results in these constituencies, the embassy affirmed that the US “look[ed] forward to working closely with the newly elected parliamentarians.”⁶¹ Gross, at a Council of Europe press conference in Baku, noted that “you can’t cooperate with an opposition in a parliament when the parliament has no opposition.”⁶² Leo Platvoet, the head of the PACE election observation mission, noted that PACE might consider denying recognition to

⁵⁴ PACE Resolution 1456 (2005), “Functioning of democratic institutions in Azerbaijan”, 22 June 2005.

⁵⁵ OSCE/ODIHR, “Republic of Azerbaijan, Parliamentary Elections 6 November 2005. Final Report”, 1 February 2006, p. 22.

⁵⁶ Ibid.

⁵⁷ <http://www.andigross.ch/html/site444.htm>.

⁵⁸ The results in 4 constituencies (Binagadi second # 9, Nizami second (Ganja) # 38, Sumgayit second # 42, and Zagatala # 110) were annulled by the CEC in November 2005, and the results in 6 more constituencies were annulled by the Constitutional Court (no. 31, 44, 69, 103, 106, and 119) on 2 December 2005.

⁵⁹ Case of Kerimova v Azerbaijan, Judgement, 30 September 2010.

⁶⁰ Case of Hajili v Azerbaijan, Judgement, 10 January 2012.

⁶¹ US Embassy Baku, Press Release, 2 December 2005.

⁶² Karl Rahder, “CoE rebukes Azerbaijan, US over poll”, 5 December 2005.

Azerbaijan's newly elected parliament at its upcoming January 2006 session.⁶³ For the Azadliq opposition bloc in Azerbaijan, PACE was the last hope. "If PACE recognizes the mandate of the parliamentary delegation of Azerbaijan," the bloc's representatives warned, "the last hopes of Azeri people for democracy will have been destroyed."⁶⁴

On 15 December 2005 the PACE Monitoring Committee held a meeting in Paris to discuss the Azerbaijani elections. Andres Herkel proposed sanctions. Opinions in the committee were divided, and no final decision was taken.⁶⁵ The issue was postponed to the January 2006 PACE session in Strasbourg.

By January 2006, Azerbaijan had been a member of the Council of Europe for five years. Repeated warnings issued by the Assembly had had no effect. Andreas Gross, Andres Herkel and Leo Platvoet now felt, and expected, that something needed to be done. They were in for an unpleasant surprise.

C. *Showdown in Strasbourg (2006)*

At the opening of the PACE session on 23 January 2006 in the large hemicycle in Strasbourg Andreas Gross tabled a motion challenging the credentials of the newly elected Azerbaijani delegation.⁶⁶ Recent elections "were not in line with European standards," he argued, and their results "could not be accepted."⁶⁷ A refusal to ratify the credentials of the six-person delegation would send a strong signal: in light of massive manipulations, the parliament in Baku did not have democratic legitimacy. Gross called on the Assembly "to show some backbone."

The debate then moved to the assembly's monitoring committee and its 84 members. Although endorsed by both rapporteurs, the proposal to suspend voting rights was defeated by the narrowest of margins, 24 votes to 22.⁶⁸

On 25 January the debate moved back to the hemicycle to discuss the toothless draft resolution coming out of the monitoring committee. Tony Lloyd, a member of the British Labour Party, warned that PACE's credibility would suffer a major blow if the assembly failed to adopt any sanctions. Lloyd therefore tabled an amendment to the monitoring committee's draft resolution, proposing that the Assembly ratify the credentials of the Azeri delegation but "suspend its members of their voting rights in the Assembly and its Committees in accordance with Rule 8.5.c until convincing and substantial progress is made in all the aforementioned areas." Otherwise, he warned, "we will fail in our duties as custodians of the values of the Council of Europe, and we will fail in our duty to maintain the highest democratic standards on behalf of the people or citizens of a member nation of the Council of Europe."⁶⁹

⁶³ Ibid.

⁶⁴ *Eurasia Insight*, "Opposition Leaders in Azerbaijan make appeal to PACE", 19 December 2005.

⁶⁵ Ibid.

⁶⁶ In PACE's Rules of procedures (rule 8.2) these grounds presuppose a "serious violation of the basic principles of the Council of Europe" or "persistent failure to honour obligations and commitments."

⁶⁷ PACE 2006 Ordinary Session (First part), Report. First sitting, 23 January 2006 at 3 p.m.

⁶⁸ PACE debates on 26 January 2006 at 3 p.m, see remarks by Frunda.

⁶⁹ PACE 2006 Ordinary Session (First part), Report. Fifth sitting, 25 January 2006 at 3 p.m.

A number of PACE members, including Gross, Platvoet and Herkel, took the floor in support of Lloyd's amendment. "There is no such phenomenon as democracy in Azerbaijan as we understand it according to the values of the Council of Europe," said Herkel.⁷⁰

A remarkable coalition, one that would come to dominate all debates on Azerbaijan in the years to come, fought back, however, opposing any sanctions whatsoever.

There was Leonid Slutsky, a member of the Russian delegation, one of the largest delegations in Strasbourg, from Vladimir Zhirinovsky's Liberal Democratic Party (LDPR). Slutsky was a friend of Ilham Aliyev – so much so that the Azerbaijani president would present him with a "Friendship" medal in 2009. For Slutsky the very idea of sanctions was wrong. He warned:

"There were many democracies within the Council of Europe and there was no guarantee that one day elections would not happen which were not legitimate or fair. Would the Assembly then deprive that country of its credentials and strip it of their voting rights? Was that acceptable? It would create a two-tier Council of Europe."

A British liberal democrat, Michael Hancock from Portsmouth, then rose to speak. He agreed with Slutsky. Once a country had joined the Council, all sanctions were pointless. Instead, argued Hancock, patience was needed:

"If members vote not to chuck out Azerbaijan, they are playing gesture politics with the issue. Mr Lloyd's amendment is as useful as your giving me your umbrella to go out in a hurricane, Mr President. It is pointless, because we have already accepted that Azerbaijan is in ... It has taken our countries hundreds of years to evolve to what we have today, but we expect countries such as Azerbaijan to achieve the same results in less than a decade. That is manifestly unfair and unachievable."

Another British member of the assembly, Robert Walter, a Conservative from North Dorset, a rural region in southwest England, agreed with Hancock. Walter admitted that there were problems: "I was in Azerbaijan at the time of the elections. In many instances, they were a shambles." However, he argued, these manipulations had made no difference. "Would the result have been any different if they had been conducted absolutely perfectly?" he asked. "My observations on the ground led me to believe that the result of those elections would not necessarily have been any different." As a short-term election observer Walter had been in Azerbaijan less than four days.

The two British speakers found a German ally. Eduard Lintner, a Christian Democrat from Bavaria and former parliamentary secretary of state in the German Interior Ministry, had also participated in the 2005 election observation mission. He too argued that there was no reason to sanction Baku:

"Mature democracies had required more than ten years to become truly democratic and for a democratic spirit to be established from the bottom up. It would be counter-productive to impose sanctions on the Azerbaijan delegation."

One of Azerbaijan's most influential supporters Mevlut Cavusoglu, a Turkish member from the governing AKP representing Antalya, Turkey's largest resort city, then weighed in. "I also agree that the elections were a disappointment to the Council of Europe," he acknowledged. However, his main concern was with the behaviour of the rapporteurs who questioned decisions taken by Azerbaijani institutions:

⁷⁰ Ibid.

“Unfortunately, Mr Gross’s problem is that he assumes that he is above the Azerbaijan Parliament and above the Constitutional Court of Azerbaijan.”

Cavusoglu turned to address Gross directly:

“Mr Gross, you are my good friend, but I have to say this. What are we doing today? ... We should not challenge the credentials of the Azerbaijan delegation, and we should not suspend its voting rights. We should wait for the election in May. The Assembly is ready to take any step if there is no democratic and fair election in May.”

The delegates from Baku also pleaded for time. One of them, Gultekin Hajiyeva, argued: “Yes, there were some falsifications, irregularities and shortcomings in the elections, but at least elections were held.” Samad Seyidov, the head of the Azerbaijani delegation, stressed that Azerbaijan needed assistance, not punishment:

“If you want to punish us, do it at the end of the process not in the middle. The election process is ongoing. As my colleague pointed out, the re-run elections will be in May. If the Council of Europe wants to consider the situation in Azerbaijan, please do it in June. Give us a chance.”⁷¹

This prompted Andres Herkel to point out that the re-runs would not solve the problem: “I want to make it very clear that the re-run elections in 10 constituencies are not taking place because the fraud was most evident in those constituencies – vice versa. In some cases, invalidating the result was a weapon used against the election of opposition candidates to parliament.”

In the end, it was to no avail. The proposed amendment on the withdrawal of voting rights was rejected by 100 votes to 67, with 16 abstentions.⁷² On the one hand, PACE adopted a strongly worded resolution (1480) stressing that in Azerbaijan “the entire democratic process has been undermined, that political dialogue is jeopardised and that the newly elected parliament lacks the democratic credentials of the Azerbaijani people.”⁷³ The resolution listed several measures that were to be taken “urgently”.⁷⁴ On the other hand, it decided that nothing should be done. It rejected the recommendation of its two rapporteurs. It set aside the findings of its own election observation mission.

Andres Herkel felt that the vote in January 2006 was a turning point, not just for Azerbaijan, but for the whole Council of Europe. It showed that PACE could not be counted on to adopt so much as minor sanctions against serious transgressors. What followed was sadly predictable. When a PACE mission arrived in Azerbaijan in late April 2006 ahead of the re-run elections, it could detect “little proof of the existence of the political will to make progress in the areas demanded by the Assembly.”⁷⁵ The recommendations contained in the January resolution had not been implemented. Election laws had not been amended. Several oppositional journalists had been beaten up. When the re-runs did take place, none of the

⁷¹ PACE 2006 Ordinary Session (First part), Report. Fifth sitting, 25 January 2006 at 3 p.m.

⁷² *Day.az*, “PASE utverdil mandat delegacii Azerbaidzana”, 25 January 2006.

⁷³ PACE Resolution 1480 (2006), “The challenge of still unratified credentials of the parliamentary delegation of Azerbaijan on substantial grounds”, 25 January 2006.

⁷⁴ These included investigation into electoral fraud, making the results of this investigation public and administering justice, amending electoral legislation (in particular with regard to the composition of election commissions), and fully guaranteeing freedom of assembly, media pluralism and freedom of expression.

⁷⁵ PACE report “Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan”, Doc. 10959, 12 June 2006, section 15.

opposition candidates who took part won a seat. The new Azerbaijani parliament was now completely controlled by the governing YAP (New Azerbaijan Party) of Ilham Aliyev.

The government in Baku felt emboldened. In May 2006 Gross and Herkel found that no policy-maker was prepared to meet them in Baku.⁷⁶ Returning from Azerbaijan, Gross told PACE:

“the elections have been a failure and the rerun has not made it possible to take away the bad impressions that we had in November. Nevertheless, we do not challenge the credentials again, but we want to bring the Azerbaijani authorities back on the right track. We do not think that these people deserve such power, given their poor legitimacy.”

In the summer of 2006 Gross realised there was little else he could do than offer his resignation. In five years he had done his best to raise the Council’s profile in Azerbaijan. In articles based on his prison experiences, journalist Eynulla Fatullayev, himself a political prisoner, was to write:

“Gross’ familiar name, which has long become a household word in our prisons, was on the lips of every single inmate. In their understanding, Gross stood for Europe and its liberating mission in Azerbaijan ... this was logical, too, since due in part to Gross’ efforts a total of some 1,000 political prisoners were released from jail ... All inmates believed in Gross’ prophetic mission even though he had already been given the mandate of a rapporteur for Chechnya. I did not try to convince them otherwise. Why take away one’s dream – when one has already been deprived of liberty?”⁷⁷

III. CAVIAR DIPLOMACY

A. *Silencing PACE*

“Given Azerbaijan’s protracted poor performance on advancing basic freedoms, human rights, and democracy, the question naturally arises: what is the Council of Europe doing, and what does membership in the organisation mean?”
Radio Free Europe/RL “Does the Council of Europe Matter In Azerbaijan?”, 2008

On 27 June 2008 President Aliyev met US Assistant Secretary of State for Human Rights David Kramer for a two-hour conversation about democracy and human rights in Azerbaijan. The US embassy cable describes a leader very much in control and keenly aware of America’s geostrategic interests. “Aliyev’s message in his almost two hour meeting with Kramer was blunt and clear,” the cable reported. “Azerbaijan sees all aspects of the relationship as a package, and no one element can be separated from the others.”

Aliyev admitted that “we will probably never have the opportunity to create a democracy like Western Europe.” Nevertheless, he argued that he deserved support:

“Our neighbors have the potential to crush the world and Azerbaijan is the only potential troublemaker, with its energy policy. Russia uses Azerbaijan’s democratic development to promote its own interests,” Aliyev said. ‘Our independence is our number one concern

⁷⁶ PACE report “Implementation of Resolution 1480 (2006) on the challenge of credentials of the parliamentary delegation of Azerbaijan”, Doc. 10959, 12 June 2006, section 23.

⁷⁷ Eynulla Fatullayev, “Kak styd pobezhdaet strah. Chast’ 7” (How Shame Triumphs over Fear – Part 7”), *Radio Azadlyg*, 19 December 2011.

and so far we have managed to protect it. We didn't become a Russian satellite or an Islamic state.”

Aliyev denied that progress on democracy and human rights had much of a role to play in the bilateral relationship, as Kramer suggested. Instead, he stated “that the current cooperation is excellent and he could not imagine how it could be any better – except, he underscored, with respect to the Nagorno-Karabakh conflict.”

At the same time it was clear that Aliyev was strikingly sensitive about outside criticism of his country's human rights record. The cable noted that “Aliyev made it clear that he has interpreted recent U.S. criticism of Azerbaijan's democratic progress as a personal insult.” He also told Kramer, “Azerbaijan is a rapidly developing country; we don't want to be considered authoritarian.” “I was named a predator of the press and it's not fair,” he added. “You have double standards. We don't want to be represented as an undemocratic country.” He then brought up the Council of Europe, pretending indifference to its work:

“We have excellent relations with Europe and I don't care about the Council of Europe. I've already told them that if there will be sanctions, we will withdraw. They know I'm not joking.”⁷⁸

Shortly after Aliyev's conversation with Kramer, Agil Khalil, a 25-year-old journalist for the critical *Azadliq* newspaper, left Azerbaijan for France. In February 2008 Khalil, who had been investigating reports of corruption, was savagely beaten by national security officers. The attack was recorded by a passer-by – it can be viewed on YouTube – and the men identified. On 13 March Khalil was once again assaulted – and stabbed – by a group of men.⁷⁹ One of the men, Khalil stated, had been following him in the days preceding the attack. In April, two channels, state-owned AzTV and pro-government Lider TV owned by the president's cousin, aired a 30-minute tape featuring a certain Sergey Strekalin who claimed that he was a lover of Khalil's and had attacked him out of jealousy. The Lider TV broadcast presented Khalil as a member of an alleged “gay circle” around opposition leader Ali Kerimli. Khalil insisted that he had never seen Strekalin before and that he was not one of the assailants. On 7 May 2008, Khalil was attacked yet again. Two men attempted to push him onto the subway tracks in Baku.⁸⁰ That is when Khalil realised that he would not be safe in Baku and left.

Khalil's case was only one in a series of organised attempts to silence and intimidate journalists in this period. In March 2005 investigative journalist Elmar Huseynov was shot dead in front of his apartment in Baku. The murder was never solved. In 2006 editors and writers critical of the government were kidnapped, beaten and attacked. Things only got worse. Opposition papers and news agencies were evicted from their premises. The country's only independent TV station ANS was temporarily closed down. In March 2008, Ganimet Zahidov, former editor-in-chief of the major oppositional daily *Azadliq*, was sentenced to four years in prison. Zahidov had been arrested in November 2007 on trumped-up hooliganism charges. The Committee to Protect Journalists, an international watchdog organisation, called the media situation “disastrous”.⁸¹

In July 2008, with three months left until the presidential election in Azerbaijan, the country's leading journalist Khadija Ismayilova interviewed Terry Davis, the Secretary General of the

⁷⁸ Wikileaks, <http://wikileaks.org/cable/2008/07/08BAKU652.html>.

⁷⁹ CPJ, “Opposition daily reporter stabbed outside his office”, 14 March 2008.

⁸⁰ CPJ, “Embattled reporter escapes attempts on his life”, 9 May 2008.

⁸¹ CPJ, “Azerbaijan Special Report: Finding Elmar's Killers”, 16 September 2008.

Council of Europe and a member of the United Kingdom House of Commons. Ismayilova asked Davis, “Do you think Azerbaijan has more media freedom now than when it joined the Council of Europe in 2001?” This, he replied, was “impossible to assess.” When Ismayilova pointed out that Baku had not implemented a series of recommendations by the Council of Europe’s Venice Commission, Davis explained: “Recommendations are recommendations. People are entitled not to accept recommendations.”⁸² Then the journalist asked about Davis’ expectations concerning the upcoming elections. The conversation took the following turn:

Davis: I expect Azerbaijan, and the authorities of Azerbaijan, to do everything they can to ensure that these elections are assessed as being better than previous elections.

RFE/RL: And what if it doesn’t happen?

Davis: If it doesn’t happen I should be very disappointed.

RFE/RL: And what do you do when you are disappointed?

Davis: That’s a very good question. What I do when I am disappointed – and I often am disappointed, unfortunately – I talk to people in power ... and urge them to do better to improve and to start preparing for the next elections immediately after these elections.⁸³

Davis was familiar with the situation in Azerbaijan. At times he would flatter the regime, as when he told a journalist in late 2008, “I know President Aliyev, the current president, very well indeed. I like him very much. I think he is working very hard to modernize Azerbaijan.”⁸⁴ Elsewhere, Davis was outspoken and critical of limitations on freedom of speech. What he was not prepared to do, however, was to threaten Azerbaijan with any kind of sanctions for its increasingly flagrant violation of all of its commitments made in 2001 to the Council of Europe (see table 3).

In fact, the Council’s attitude towards Azerbaijan was undergoing a gradual and remarkable transformation. Andres Herkel, the Estonian rapporteur, was still active, and as critical as before. And yet a tone of desperation had crept into his briefings at PACE. In April 2007 he told fellow deputies:

“I should like to start with the most difficult question, which was probably put by Mr Platvoet: what has happened since January 2006? My honest answer would be: not so much. Unfortunately, the small positive steps were always overshadowed by bad news that we got from the country.”⁸⁵

Andres Herkel was also increasingly challenged during the PACE debates. In June 2008, the assembly was debating the rapporteurs’ report on the functioning of democratic institutions in Azerbaijan. Michael Hancock, the British Liberal Democrat, attacked the report’s findings – notably that Baku was “fall[ing] short again in meeting the Council of Europe commitments and standards for domestic elections.” Hancock went on to explain what he had noted on one of his many trips to the country:

⁸² RFE/RL, “Council Of Europe Head Anticipates Improved Vote In Azerbaijan,” 15 July 2008.

⁸³ Ibid.

⁸⁴ *AzeriReport*, “Terry Davis: It is important how you treat your opponents”, 23 November 2008.

⁸⁵ Debates in PACE, 16 April 2007.

“I was recently in Azerbaijan, and I was mightily impressed by the changes that have taken place, and the way in which the country’s wealth has been distributed. That has been done a lot better than in other countries with such wealth.”⁸⁶

Table 3: Azerbaijan’s unfulfilled obligations⁸⁷

Guarantee freedom of expression	Critical journalists are <i>harassed and attacked</i> .
Amend Law on Media	Amendments <i>further restricting</i> freedom of the media passed
Create independent public TV	Public TV Ictimai, created in 2005, is <i>as pro-government as state TV</i>
Release political prisoners	Continued <i>arrests for political reasons</i>
Prosecute members of the law enforcement bodies involved in torture	<i>No members</i> of law enforcement have been prosecuted for torture in Azerbaijani courts
Strengthen local government	Powers of local government <i>very limited</i> ; Baku has no elected mayor
Strengthen the independence of the legislature	<i>Extremely weak parliament</i> ; no oversight over the executive
Amend the law on the bar	Growing number of attorneys who defended opposition figures were <i>disbarred</i>
Create Ombudsman office	Key political institutions – including <i>presidency</i> – <i>do not fall under ombudsman</i>
Amend laws on registration of associations	Critical NGOs have seen their <i>licences revoked</i>
Adopt law on alternative service	Clear policy <i>not to introduce alternative service</i>
Revise laws on elections and Central Election Commission	All key points criticized in election law <i>unchanged</i>

Hancock concluded:

“We should be careful about being too heavy on Azerbaijan. We let Azerbaijan into this Organisation. We helped it to get in ... I was at the meeting of the Monitoring Committee just now and felt that we did not even give credit for the early stages of changes in the law ... “

Kristiina Ojuland, a former Estonian foreign minister (2002-2005) and another frequent guest in Baku, also criticised Herkel’s report:

“This report has been written in strong language. I have been a member of the Assembly since 1995, and I have not seen such strong language in that time. It reminds me of the statement by George Orwell that some are equal, but some are more equal than others. I should ask why we are doing this. Why cannot we treat all countries equally?”⁸⁸

She then cited the conclusions of a pro-governmental human rights group in Baku, which denied that the human rights situation had been deteriorating in Azerbaijan.

Hancock did not leave it at making speeches in the assembly. He also played a leading role in trying to change the Council’s approach to election monitoring in Azerbaijan. During a PACE debate in September 2008, shortly before presidential elections in Azerbaijan, Hancock again turned against Andres Herkel. He accused him of being prejudiced and of “looking for

⁸⁶ Debates in PACE, 24 June 2008.

⁸⁷ According to PACE opinion 222 (2000).

⁸⁸ Debates in PACE, 24 June 2008 at 10 a.m.

excuses to rubbish the elections in Azerbaijan.” He then focused on the ODIHR, which was responsible for long-term election monitoring: “ODIHR was saying even before it got to Azerbaijan a month ago that the election would be full of problems. How can it know that – does it have some sort of telepathic power?”⁸⁹ Hancock disregarded the fact that Azerbaijan had repeatedly ignored concerns by PACE rapporteurs and the Venice Commission about the unequal composition of election commissions. Instead, he recommended “test[ing] the water to make sure that ODIHR was doing a good job and not simply going through the motions of pre-judging.”

In October 2008 Andres Herkel headed PACE’s election observation team for the presidential elections. The team included a large number of openly pro-Azerbaijan MPs. The Alliance of Liberals and Democrats for Europe (ALDE), a liberal political group, sent Michael Hancock and Kristiina Ojuland, as well as Paul Wille, a Belgian senator who would soon play a leading role in reshaping PACE’s policy towards Azerbaijan. Likewise, many of the observers from the European Democrat Group (EDG) were known for their indulgence towards Azerbaijan. One of them, Mevlut Cavusoglu from Turkey, had called on PACE in 2005 to close the debate on political prisoners in Azerbaijan.⁹⁰ There was, again, Eduard Lintner, the Bavarian Christian Democrat. There were Igor Chernyshenko and Yury Zelenskiy, members of the Russian delegation who had consistently supported Azerbaijan. Tory Robert Walter from the UK had told the assembly in April 2007 that previous Azerbaijani elections were “democratic.” In 2010, Walter would become a member of “Conservative Friends of Azerbaijan,” a group uniting conservative British MPs in the House of Commons. He was also very active in promoting trade relations between the UK and Azerbaijan.⁹¹

On 15 October, the day of the presidential poll in Baku, Hancock praised the elections and the electoral commissions as early as noon, hours before the polling stations had closed:

“I value the activity of the electoral commission members positively. It is observed that they mastered instructions on the organizing of the elections perfectly. Voters were also educated well.”⁹²

The following day the head of the ODIHR observer mission, Boris Frlec, and Andres Herkel as head of the PACE delegation reached an agreement on a common statement that included some critical remarks about the general environment. When Herkel returned to consult with his PACE colleagues, he was met with a rebellion headed by Hancock – an account of which appears in Herkel’s 2010 book “Azerbaijani letters”.⁹³ Together with Eduard Lintner and Paul Wille, Hancock pushed for a separate, more positive statement from PACE. The joint press conference had to be postponed by more than three hours due to bitter disagreements. Though the rebels failed to push through a formula recognising “significant progress”, they managed to get “considerable progress” instead. The ODIHR felt compelled to accept this so as to avoid an open breach between monitoring groups. Herkel insisted on retaining critical remarks concerning media freedoms, however, and put this to a vote.⁹⁴ He warned that he would resign if he did not secure support for a joint statement with the ODIHR. This threat

⁸⁹ Debates in PACE, 29 September 2008 at 3 p.m.

⁹⁰ Debates in PACE, 22 June 2005 at 3.30 p.m.

⁹¹ Middle East Association, “MEA trade mission to Azerbaijan”, no date.

⁹² *Today.az*, “Presidential Elections End in Azerbaijan,” 15 October 2008.

⁹³ Andres Herkel *Aserbaidžaani kirjad* (Azerbaijani letters), Tallinn, 2010 (in Estonian).

⁹⁴ Andres Herkel described the situation in his book *Aserbaidžaani kirjad*, Tallinn, 2010, pp. 146-49.

helped produce a very narrow majority – 9 to 7 delegation members – in favour of a joint statement.⁹⁵

The concessions Herkel and ODIHR had made were not enough for Hancock and Wille. When Herkel started to read critical passages from the joint declaration, both Hancock and Wille protested loudly, telling the crowd of Azerbaijani journalists that they disagreed.

Supporters of the regime in Baku in PACE soon had another opportunity to show their support. Having won a second presidential term, Ilham Aliyev now proposed a constitutional referendum to remove limits on the number of presidential terms, which would allow him to serve indefinitely. The Venice Commission, the Council of Europe’s advisory body on constitutional law, described this as a “serious set-back on Azerbaijan’s road to a consolidated democracy”⁹⁶ and as a “very negative development in terms of democratic practice, given the context prevailing in Azerbaijan.”⁹⁷ PACE’s president Lluís Maria de Puig agreed, telling an interviewer that the referendum “raise[d] concern about the future of democracy in Azerbaijan.”⁹⁸

This was not, however, the conclusion of the four-member PACE delegation that travelled to Baku in March 2009 in order to observe the referendum. “The result of the referendum showed the willingness of the people of Azerbaijan to have greater stability and elements for further democratisation,” the members told a press conference, though “further reforms would be required to ensure a better balance of power.”⁹⁹ The team included Eduard Lintner, who was to leave PACE at the end of the year to become chairman of the Society for Promoting German-Azerbaijani Relations, an Azerbaijani lobbying group.¹⁰⁰ There was Paul Wille, the Belgian senator who had led the mutiny against Andres Herkel during the 2008 elections. German left party member Hakki Keskin was in the team; his strong support for Azerbaijan had already provoked controversy in the Left Party in Germany.¹⁰¹ In 2012, Keskin would criticise the PACE rapporteur on political prisoners Christoph Strasser, a Bundestag member, for being “prejudiced” against Azerbaijan.¹⁰² The fourth member of the mission was Spanish conservative Pedro Agramunt, a businessman from Valencia with a strong, long-standing interest in Azerbaijan.

⁹⁵ Among those who stood most strongly with Herkel in this debate were Egidijus Vareikis from Lithuania, Piotr Wach from Poland, Maximiano Martins from Portugal and Indrek Saar from Estonia.

⁹⁶ European Commission for Democracy through Law (Venice Commission), “Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan” (CDL-AD(2009)010), 16 March 2009, section 16.

⁹⁷ European Commission for Democracy through Law (Venice Commission), “Opinion on the Draft Amendments to the Constitution of the Republic of Azerbaijan” (CDL-AD(2009)010), 16 March 2009, section 43.

⁹⁸ Mina Muradova, “Azerbaijan: Referendum to Abolish Presidential Term Limits Sparks Criticism of Baku”, *EurasiaNet*, 28 January 2009.

⁹⁹ Appendix, “Presence at the constitutional referendum in the Republic of Azerbaijan”, 18 March 2009.

¹⁰⁰ In November 2009 Lintner (CSU) told the German press how he had become a paid lobbyist for Azerbaijan the moment he left office. “Through the monitoring committee he came into closer contact with Azerbaijan, the country with eight million inhabitants that lies on at the Caspian Sea between Iran, Armenia, Georgia, and Russia... ‘For this country I am now working in Berlin, it continues’, Lintner says. Meanwhile he set up his own office in the German capital. ‘For Azerbaijan, it’s my task to establish and cultivate contacts with members of parliament and important figures and institutions’, Lintner explains.” <http://www.scribd.com/doc/46628319/Berlin-Aserbeidschan-die-Welt-ist-sein-Buro-Ruhestand-Aserbeidschan-Lintner-Bundestagsabgeordneter>.

¹⁰¹ *Der Tagesspiegel*, “Kleines Bergkarabach, großer Ärger”, 24 June 2007.

¹⁰² Hakki Keskin, “Schreiben an Herrn Strasser”, 16 January 2012, http://www.tavd.de/index.php?option=com_content&view=article&id=27%3Aan-die-mitgliedern-des-menschenrechtsausschusses-des-bundestags&lang=de.

Paul Wille told PACE on 27 April 2009 that the referendum

“was certainly well organised; members of the polling stations were prepared, and there was a high turnout. At the press conference our delegation said that the result of the referendum showed the willingness of the people of that region to go on, but we also said that elements for further democratisation must exist ...”¹⁰³

Hancock noted that the vote

“was a success story and it goes some way towards explaining why the people of Azerbaijan are comfortable with their style of government and the president. I hope that people will now accept that we can move on instead of always pointing the finger.”¹⁰⁴

The next step towards silencing PACE took place in autumn 2009. It was designed to ensure that at least PACE rapporteurs would stop “pointing the finger” at Azerbaijan. The news that Lise Christoffersen, a Norwegian Labour MP supported by Andreas Gross, stood a solid chance of becoming a new co-rapporteur on Azerbaijan set off alarm bells among the Azerbaijani delegation. “The Azerbaijani side categorically does not want the post of co-rapporteur to be held by individuals such as former co-rapporteur on Azerbaijan Andreas Gross,” Gultekin Hajibeyli, a member of the Azerbaijani delegation, told a newspaper.¹⁰⁵

Christoffersen had the strong backing of her faction, the Social Democrats, who were to have their pick of co-rapporteur. When Christoffersen’s candidacy was proposed at a meeting of the monitoring committee in October 2009, however, Michael Hancock challenged her right to stand. Norway had just held legislative elections in September 2009, he said, and there was no guarantee that Christoffersen would be re-elected to PACE. Hancock managed to have her election as rapporteur postponed. This gave the Azerbaijani delegation and its supporters in PACE the window they needed to propose another candidate. When the Monitoring Committee met on 18 November 2009 in Paris, Hancock, Lintner and Agramunt presented “their” social democrat candidate: a Maltese Labour MP, Joseph Debono Grech. Debono Grech, who was not even present at these two meetings, obtained 18 votes to Christoffersen’s 12.¹⁰⁶

The Azerbaijani side was very satisfied with the way things had developed. On 24 June 2010, during his inaugural debate as rapporteur on Azerbaijan, Debono Grech compared Azerbaijan’s struggle for independence from the Soviet Union to Malta’s struggle for independence from Great Britain:

“I come from a colony and I have suffered. I was thrown in jail when we were fighting for our independence from Britain ... when my country was fighting for independence, the Council of Europe blamed us for doing so, not Britain.”

He explained that “we must keep in mind the fact that Azerbaijan has been in the Council of Europe for the past 10 years. As it had come from behind the Iron Curtain, we did not expect it, in just a few years, to achieve the terms of reference of the Council of Europe, especially with regard to democracy as we know it.” Samad Seyidov, chairman of the Azerbaijani delegation, had nothing but praise:

¹⁰³ Debates in PACE, 27 April 2009 at 11.30 a.m.

¹⁰⁴ Debates in PACE, 27 April 2009 at 11.30 a.m.

¹⁰⁵ *Trend.az*, “New Council of Europe co-rapporteur on Azerbaijan to be appointed by end of this year”, 25 August 2009.

¹⁰⁶ *APA*, “PACE Monitoring Committee appoints new co-rapporteur on Azerbaijan”, 18 November 2009.

“I also want to express my gratitude to Mr Debono Grech, who has created a constructive atmosphere between the rapporteurs and the delegation. We are now able to discuss very difficult issues in a constructive manner.”¹⁰⁷

Michael Hancock agreed:

“As a new rapporteur, Mr Debono Grech brings a refreshing view to the situation and he made some interesting points about the short time that he has been able to spend in Azerbaijan.”¹⁰⁸

A year later, Lise Christoffersen, by then deputy head of the monitoring committee, reflected on what had happened in late 2009:

“a network that was generally hidden but which from time to time became visible, and which had some unexpected branches, had been mobilised to prohibit my nomination ... it was about Azerbaijan’s strong reluctance to have a Norwegian rapporteur, the reason for which is obvious. In official visits involving our two countries, Norway always raises the issue of human rights violations in Azerbaijan.”¹⁰⁹

Then, less than a year after Debono Grech assumed his position, Andres Herkel, a long-time thorn in the side of the authorities in Baku, resigned as co-rapporteur. As he told the assembly on 24 June 2010, presenting his final monitoring report on Azerbaijan:

“Today I want to start with emotions. I am extremely sad for the people in Azerbaijan. I had a lot of meetings in the parliament, in the ministries and in the president’s office, as well as in modest tea houses to meet the opposition in the regions of the country ... These years have given me a unique experience and I love Azerbaijan. During recent months, one question has been asked several times: whether I am satisfied with the results of my six years’ work. The honest answer is no.”¹¹⁰

This time, the choice of successor was up to the People’s Party group. Again, a Scandinavian deputy, Marietta de Pourbaix-Lundin from Sweden, expressed interest. As soon as news of her interest spread, de Pourbaix-Lundin was approached by a Spanish colleague, Pedro Agramunt. During the meeting, Agramunt, who had been eager to secure the position of rapporteur on Azerbaijan for almost a decade, persuaded de Pourbaix-Lundin to remove her hat from the ring and to wait for another position opening up instead. It was a decision she would come to regret later, when, on the eve of the November 2010 elections in Azerbaijan, Agramunt told her in Baku that “this is a very good country and elections will be good.” It did not matter, apparently, that the elections had not yet taken place – or that Agramunt had himself witnessed massive electoral fraud in Azerbaijan in 2003 and 2005.

Both rapporteurs quickly made clear that they would not follow in their predecessors’ footsteps. Agramunt assured a meeting of the monitoring committee in Paris in November 2010 that Azerbaijan had made “tremendous progress over the last eight years.” In an interview on 4 October 2011, Debono Grech explained that Azerbaijan, a “young” democracy, did “a great job for this short path.” He stressed that the rapporteurs’ job was not to “preach” but to help:

¹⁰⁷ Debates in PACE, 24 June 2010.

¹⁰⁸ Debates in PACE, 24 June 2010.

¹⁰⁹ Debates in PACE, 24 June 2011.

¹¹⁰ Debates in PACE, 24 June 2010.

“Yes, most of the problems have been solved. There are still some outstanding issues, but the majority of laws have been adopted ... Let me emphasize that your country is very successful in its development. There are problems in any country, but in general the situation is comforting. We can help Azerbaijan which is still a very young democracy, since 20 years is not so much. But you did a great job for this short path.”¹¹¹

This was music to the ears of the authorities. So was the message at the end of their visit to Baku in 2010 when the rapporteurs held a press conference. Unlike their predecessors they refrained from evaluating the situation, announcing that this would have to wait for their final report. Agramunt explained, “We only have primary impressions. We shall consider and analyze them, and express our conclusions in our report.”¹¹² Then publication of their first report was to be considerably delayed. Originally, the rapporteurs had stated they would submit a full monitoring report by the end of 2011.¹¹³ The deadline was then moved twice, first to June 2012,¹¹⁴ and then to the end of 2012. As a result, its findings were not available for scrutiny ahead of the May 2012 Eurovision Song Contest in Baku, when the international focus on Azerbaijan was at its peak.

By late 2010 Ilham Aliyev had consolidated his power. The only serious book on Azerbaijani politics about to be published in English would describe him as a “well-spoken, articulate, and knowledgeable leader with an obvious understanding of Western economic and political principles” at the head of a hybrid regime mixing “elements of pluralism and liberal democracy.”¹¹⁵ He had been re-elected without a challenge. He had ensured that he could be president for life, with the blessing of a PACE delegation. Now he could also count on the indulgence of two friendly rapporteurs inside the Council of Europe. The stage was set for the crowning achievement of Azerbaijani caviar diplomacy in PACE: to get away with the most fraudulent election ever monitored in a member state of the Council of Europe, Azerbaijan’s parliamentary elections on 7 November 2010.

B. *How to steal an election (2010)*

“The good part is that monitors can improve election quality. The bad part is that most of the time they do not. The ugly part is that they are sometimes biased and contribute to the false legitimization of governments.”

Judith G. Kelley, *Monitoring Democracy*, p. 155

In a 1997 article, Thomas Carothers noted that international election monitoring, though “ubiquitous,” remained a “relatively unexamined feature of contemporary international affairs.”¹¹⁶ 15 years later, scholars and practitioners appeared to have bridged the gap. They analyzed monitors’ biases.¹¹⁷ They explored the paradox of pseudo-democrats who invited

¹¹¹ *News.az*, “European rapporteur in Baku to help, ‘not preach’”, 4 October 2011.

¹¹² *Turan/AzeriReport*, “PACE Co-Rapporteurs Held Press-Conference on Their Visit to Baku Telling... Nothing”, 4 February 2011.

¹¹³ PACE, “Honouring of obligations and commitments by Azerbaijan. Information note by the co-rapporteurs on their fact-finding visit to Baku (1-3 February 2011)”, Section 54, 12 April 2011.

¹¹⁴ *Trend.az*, “Program of PACE co-rapporteurs’ visit to Azerbaijan announced”, 25 January 2012.

¹¹⁵ Svante Cornell, *Azerbaijan Since Independence*, 2011.

¹¹⁶ Thomas Carothers, “The Observers Observed”, *Journal of Democracy*, Vol. 8/3, July 1997.

¹¹⁷ Judith G. Kelley, *Monitoring Democracy – When International Election Observation Works, and Why It Often Fails*, Princeton University Press, 2012, p. 15.

international election monitors as part of an “escalating game of strategic manipulation.”¹¹⁸ They described “a clear learning curve on the part of most serious international observer groups, with the most significant evolution being an enhanced analytical focus on critical issues that precede election-day by many months.”¹¹⁹ All experts agreed on the importance of what became known as the “election cycle approach,” the notion that election monitors needed to focus on every aspect of an election, from the laws on freedom of assembly and candidate registration to the way complaints were handled long after election-day. Practitioners realised that what happens on election-day is just the tip of the iceberg.¹²⁰ To produce authoritative assessments and recommendations monitors needed to take a long-term approach. This could limit bias, avoid amateurish evaluations and pre-empt hasty post-election statements.

No organization knew all this better than the Office of Democratic Institutions and Human Rights (ODIHR) of the OSCE. Established in 1990 and based in Warsaw with a staff of some 150 people, ODIHR launched its first election observation mission in 1993.¹²¹ In 1994 it was mandated to develop an Election Observation Handbook, which has since been updated to reflect the lessons gleaned from over 230 elections.¹²² ODIHR election observation missions have become the flagship activity of the OSCE. They have also come under attack. In the wake of colour revolutions in Georgia (2003) and Ukraine (2004) heads of state of the Commonwealth of Independent States (CIS) complained that ODIHR’s election observation activities had become politicised. Under sustained criticism from Russia and its allies, ODIHR was left with only one choice – to develop an ever more rigorous methodology.

At the end of September 2010, an ODIHR long-term election observer team – 16 experts and 22 long-term observers – arrived in Baku.¹²³ The head of the group, Audrey Glover from the United Kingdom, was a veteran election observer. As director of the ODIHR from 1994 to 1997, Glover had helped establish its reputation for independence. She had the backing and trust of the ODIHR leadership. When the Albanian government tried to have her replaced as election observation team leader in 2009, persuading Greek foreign minister – and the OSCE’s chair-in-office at that time – Dora Bakoyannis to intercede on its behalf, the director of ODIHR refused the request outright.

As Glover’s ODIHR team set out to establish the basic facts about the election environment in Azerbaijan in late 2010 it quickly discovered just how bad things were.

The composition of election commissions, the subject of criticism by international experts for years, remained unchanged, with pro-government forces enjoying total dominance.¹²⁴ The heads of all regional and local election commission units had been appointed by the ruling party. The head of the Central Election Commission, Mazahir Panahov, a former professor of

¹¹⁸ Susan D. Hyde, *The Pseudo-Democrat’s Dilemma – Why Election Observation Became an International Norm*, Cornell University Press, 2011.

¹¹⁹ Andreas Schedler, *Electoral Authoritarianism: The Dynamics of Unfree Competition*, Lynne Rienner Publishers, 2006, p. 45.

¹²⁰ OSCE/ODIHR, “Election Observation. A decade of monitoring elections: the people and the practice,” 2005, p. 5.

¹²¹ OSCE Annual Report 2010, p. 74. All OSCE states committed themselves to open their national elections to international scrutiny.

¹²² OSCE/ODIHR, *Election Observation Handbook: Sixth Edition*, June 2010.

¹²³ OSCE/ODIHR, “Republic of Azerbaijan Parliamentary Elections 7 November 2010. Final Report”, 25 January 2011, p. 4.

¹²⁴ Venice Commission & OSCE/ODIHR, “Joint Opinion on the Draft Law on Amendments and Changes to the Electoral Code of the Republic of Azerbaijan”, CDL-AD(2008)011, 23 June 2008, pp. 2-3.

physics at Baku State University, was still on the job. Having overseen a string of fraudulent elections since 2000, he had evidently earned president Aliyev's trust.¹²⁵

What change had taken place usually involved a step back. Recent amendments to the election code in July 2010 had cut the actual campaign period to a mere 23 days. The overall climate was one of intimidation. Private businesses feared consequences if they lent any support to the opposition. The media environment, already restrictive in 2005, had become even worse since. There was continued pressure on, and detention of, critical journalists. ODIHR tried to quantify the state of election coverage in key media:

“During the official campaign period AzTV [state-funded] allocated some four hours and 24 minutes of exclusively positive and neutral time to the president; more than one hour and 26 minutes to the government and more than 24 minutes to the YAP. By contrast the main opposition bloc received a combined total of only four seconds, which were neutral.”¹²⁶

The demonstrations and election rallies that took place in late 2005 were also the last ones to be authorized by the authorities. The government now considered all campaign activities organized outside of officially allocated areas illegal. The venues that local authorities allocated were generally unsuitable.

Most importantly, the ODIHR found that the elections were already decided long before polling started. In 2005 all 116 candidates from the oppositional Azadliq bloc uniting the Musavat, Popular Front and Democratic parties had been registered by the Central Election Commission.¹²⁷ In 2010, 50 out of 88 opposition candidates from the Musavat-Popular Front bloc were denied registration. As a result, while governing party politicians competed for seats in 110 of 125 constituencies, the mainstream or, as the government preferred to call it, “radical” opposition could only stand in 38.

A few days before the elections a large number of short-term observers arrived. There were also 1,029 international observers representing 21 organizations. Among these, four stood out, representing the major European institutions: delegations from the OSCE Parliamentary Assembly, ODIHR, PACE, and the European Parliament. PACE sent 30 observers, the OSCE 41,¹²⁸ and the European Parliament 7.¹²⁹ The ODIHR had another 300 short-term observers join its core team along with its 22 long-term observers who had been in the country's regions already for five weeks.

On Friday evening, two days before election-day, the heads of these four delegations met at Scalini, an Italian restaurant in the centre of Baku, for an introductory discussion. The PACE delegation was led by Belgian Paul Wille and his deputy Tadeusz Iwinski from Poland. The head of the OSCE PA delegation was a member of the Austrian parliament and mayor of the small town of Grieskirchen, Wolfgang Grossruck. Anneli Jaatteenmaki, a former leader of the Finnish Centre Party (KESK) and Finnish prime minister for two months in 2003, headed the delegation of the European Parliament. Over dinner, Audrey Glover remarked that the pre-

¹²⁵ When he met the Belarusian Ambassador in Azerbaijan Panahov stressed that “Belarus and Azerbaijan closely cooperate in the sphere of elections” (<http://www.data.minsk.by/belarusnews/082006/127.html>). IEOM, “Statement of preliminary findings and conclusions,” 8 November 2010, p. 8, footnote 27.

¹²⁶ International Expert Center for Electoral Systems, “Vlasti Azerbajdžana bojatsya konkurencii s opoziciej” (“The Azerbaijani authorities fear competition from the opposition”), 12 October 2010.

¹²⁷ OSCE PA Election Observation Brochure, January 2007 – December 2011, p. 41.

¹²⁸ European Parliament, “Election observation delegation to the parliamentary elections in Azerbaijan (7 November 2010)”, report by Anneli Jaatteenmaki, p. 2.

election situation looked certainly worse than last time, and that the election was almost decided before it took place. Later that evening the ODIHR team sent each of the other three delegations its 11-page pre-election analysis, delivered in hard copy with a watermark to discourage leaking. This paper explained in detail what the long-term observers had learned in the past months.

Three rounds of official meetings followed: on Saturday afternoon, Sunday afternoon and Monday morning. On Saturday, the ODIHR briefed the others on its findings. The facts were never disputed. What Paul Wille, Tadeusz Iwinski and Wolfgang Grossruck focused on from the outset were the conclusions to be presented on the day after the elections. They noted that one could put all the facts into a final report, but that something shorter was needed for the media. Above all, they pressed for recognition of “progress”.

What PACE had in mind became fully clear on Sunday, when Paul Wille presented his own draft of the joint conclusions. In light of the ODIHR’s findings, it was a remarkable document (*emphasis added*):

“Overall, the CEC administered the electoral process *well, in line with international standards and procedures*. A *positive environment* was created by the *good cooperation* between the authorities, international institutions and the domestic actors. The electoral administration was functioning *efficiently and transparently*. The electoral commissions were fully staffed, although their composition can still, *arguably* be questioned. Voters lists were regularly updated. An *impressive* voters’ education campaign was launched by the CEC. The technical side of the voting was taken care of *professionally*.

In a *welcome departure from the past*, the run-off to the elections was peaceful and not marred with violent incidents, all opposition parties opted to participate in the political process, sometimes running as part of electoral blocs, rather than to boycott as it was the case in the past. This gives *rise to hopes* that the much needed substantive dialogue within the Azerbaijani society could, at the end of the day, *open up vistas* for coordinated steps across the political spectrum in the *interests of democracy building* in the country.”

The ODIHR team was taken aback. The gap between the delegations’ assessments had widened and began to seem unbridgeable.

On Sunday, more bad news arrived as the elections got under way. Election observers noted serious problems in 11 per cent of the 1,100 polling stations they visited. Ballot stuffing was witnessed in 63 polling stations. In 100 polling stations there were seemingly identical signatures on voter lists.

In the evening international observers witnessed counting in 152 polling stations. “Almost a third of the 150 polling stations observed [were] rated bad or very bad, with worrying problems like ballot-stuffing noted in a number of places,” it later transpired.¹³⁰ In 14 cases, the number of ballots in the mobile or stationary ballot boxes was higher than the number of signatures on the voter list. 31 ballot boxes contained clumps or stacks of ballots. One senior ODIHR official noted that he had *never* seen as many reports of ballot stuffing as in these elections.

It seemed inconceivable that such massive manipulation had not been carefully prepared. On 6 November, one day before polling started, ODIHR staff in one precinct was presented with

¹³⁰ International Election Observation Mission, “Republic of Azerbaijan – Parliamentary Elections, 7 November 2010: Statement of Preliminary Findings and Conclusions”, 8 November 2010, p. 1.

an unsigned and unstamped results protocol. Figures had already been entered, including the number of votes obtained by each candidate. Later, the number of votes for the winning ruling party candidate turned out to be identical to the number written the day before.¹³¹

By the end of the day it was clear that these had probably been the most fraudulent elections ever monitored in a Council of Europe member state (see table 4). Still, when PACE delegation head Paul Wille went on Lider TV's Sunday 7 pm news he stated that "these elections were held in a more stable way in comparison to the previous ones. It shows that democratic processes are active in the society. I wasn't informed about any serious violations during the elections."

On Monday morning a final meeting of the delegation heads took place. By now, the results were known. For the first time since 1991, the major opposition parties Musavat and the Popular Front did not win a single seat in parliament. The governing YAP had secured 69 of 125 seats. Another 46 seats were held by pro-governmental 'independents'.

Paul Wille, Tadeusz Iwinski and Wolfgang Grossruck remained determined to refer to "progress". They were unwilling to budge. Iwinski attacked Glover, accusing her of being on a mission to prevent Azerbaijan's democratic progress. He referred to the ODIHR's position as "idiotic". As voices were raised and people left the room, the ODIHR learned that PACE had already secured a location for a separate press conference.

Table 4: Worst parliamentary elections in Council of Europe member states (selection)

Parliamentary Elections	Voting assessed negatively (% of observed polling stations)	Counting assessed negatively (% of observed polling stations)
Azerbaijan parliamentary elections 2010 ¹³²	11 per cent	32 per cent
Armenian parliamentary elections 2012 ¹³³	10 per cent	18 per cent
Albanian parliamentary elections 2009 ¹³⁴	8 per cent	33 per cent
Georgian parliamentary elections 2008 ¹³⁵	8 per cent	22 per cent
Russian parliamentary elections 2011 ¹³⁶	7 per cent	33 per cent
<i>Outside of the Council of Europe:</i>		
Kazakhstan parliamentary elections 2012 ¹³⁷	9 per cent	46 per cent

If Paul Wille had bluffed, then the ODIHR now blinked. First, it accepted a compromise whereby both positive and negative aspects would be presented next to each other as bullet points in two columns on page two of the joint declaration. It also agreed to highlight prominently, in the opening paragraphs, that "overall the CEC administered the technical

¹³¹ OSCE/ODIHR, "Republic of Azerbaijan Parliamentary Elections 7 November 2010. Final Report", 25 January 2011, p. 21.

¹³² Ibid.

¹³³ OSCE/ODIHR, "Republic of Armenia, Parliamentary Elections 2012, Statement of Preliminary Findings and Conclusions".

¹³⁴ OSCE/ODIHR, "Republic of Albania, Parliamentary Elections. Election Observation Mission Final Report".

¹³⁵ OSCE/ODIHR, "Georgia, Parliamentary Elections 2008, Election Observation Mission Final Report".

¹³⁶ OSCE/ODIHR, "Russian Federation, Elections to the State Duma, 4 December 2011, Election Observation Mission Final Report".

¹³⁷ OSCE/ODIHR, "Republic of Kazakhstan, Early Parliamentary Elections 15 January 2012, Election Observation Mission Final Report".

aspects of the electoral process well.” Finally, a compromise was reached on how to respond to the question whether these elections met international standards:

“While the November 7, 2010 parliamentary elections in the Republic of Azerbaijan were characterized by a peaceful atmosphere and all opposition parties participated in the political process, *the conduct of these elections overall was not sufficient to constitute meaningful progress* in the democratic development of the country.”¹³⁸

It was not clear what the absence of “meaningful progress” meant in terms of European standards, given that all previous parliamentary elections in 2005 had been found not to meet them.¹³⁹ Yet as one ODIHR member figured, it was perhaps “better to have a meaningless statement than a misleading one.”

In the early afternoon the heads of the four delegations gathered for a press conference. Wolfgang Grossruck began by politely praising the cooperation of the authorities. He described Azerbaijan as a “beautiful” country. He added, almost apologetically, that “it would be surprising not to detect shortcomings.” He explained that “when we criticize the conduct of these elections this does not mean that we have not seen the many efforts the authorities have made in the many areas in which the country does well.” He then read the passage about these elections “not constituting meaningful progress.”

But did the elections meet international standards? Were they free and fair? As journalists insisted they got four different answers.

Paul Wille told the journalists that the elections were “mostly in line with our own ... standards and commitments.” He praised the “positive environment,” the efficiency and transparency of electoral administration, “impressive voter education campaign,” the lack of violence, and the technical aspects of the election organization.¹⁴⁰

The head of the EP delegation Anneli Jaatteenmaki, was evasive. Pressed by journalists she told them, “I didn’t say it was in line with international standards, I said that the elections were technically well organized and held in a peaceful atmosphere.”

Wolfgang Grossruck was even more ambiguous:

“I cannot give you one answer because it’s much more complicated for one answer. You have seen that we did a very hard and very engaged job in the last week that we are here and you can believe that we have a lot of experience in observing the elections in OSCE countries.”

When it was Audrey Glover’s turn she in turn gave a very clear response:

“Regrettably, our observation of the overall process shows that the conditions necessary for a meaningful democratic election were not established. We are particularly concerned

¹³⁸ International Election Observation Mission, “Republic of Azerbaijan – Parliamentary Elections, 7 November 2010: Statement of Preliminary Findings and Conclusions”, 8 November 2010, p. 1.

¹³⁹ *Eurasianet*, “Azerbaijan: Parliamentary Elections Yield a Lone Opposition Voice”, 8 November 2010.

¹⁴⁰ *AzeriReport*, “November-2010 Elections in Azerbaijan: Press Conference of European Election Observation Missions”, Transcript of the press conference, 8 November 2010.

about restrictions of fundamental freedoms, media bias, the dominance of public life by one party, and serious violations on election day.”¹⁴¹

When Glover ended some opposition journalists applauded. One then asked whether the Azerbaijani government had bribed any international election monitors. Glover responded that she had certainly not been bribed.

Emin Milli, a blogger and – at that moment – a political prisoner, had a different perspective on these elections. He voted in one of the 139 temporary polling stations placed in military units and prisons. Here, voter turnout was an amazing 100 per cent (in 46 of them) or at least above 90 per cent (in another 59). ODIHR could not monitor those votes. With good reason. In correctional facility number five, a large former Soviet prison 120 km south of Baku, all 1000 inmates had been given closed envelopes with the ballot already filled out. They were then told to line up and to place the ballots in a box. One prisoner who tried to open the envelope was beaten up. Milli was told that this was a step back from 2008: then prisoners had been asked to fill out the ballots themselves, though they were told who to vote for.

This was not the end of the story. A few days after returning from Baku, Wolfgang Grossruck sat down to write a letter to the acting Chairman of the OSCE, the foreign minister of Kazakhstan. He complained about Audrey Glover. He accused the ODIHR of “unreliability” and lack of professionalism:

“We noted that in some cases the ODIHR failed to sufficiently look into the facts, did not hear the other side, and lacked careful analysis of the position of authorities accused of shortcomings”¹⁴²

Grossruck warned that ODIHR might “fully ruin the credibility of election observation.”¹⁴³ And he complained:

“twice journalists insinuated in their questions that observers had taken bribes. When this happened for the second time, Ambassador Glover, instead of defending the integrity of our ‘common endeavour,’ replied that ‘she personally’ had not accepted any bribes. The way she said it could very well be interpreted as suggesting that she did not exclude that others on the podium might have done so.”

In January 2011 deputy head of the PACE monitoring mission Tadeusz Iwinski reported on the elections to fellow members of the assembly in Strasbourg. He too complained of “serious frictions and nearly insurmountable difficulties in its interplay with the ODIHR.” His report concluded by blaming the (now extra-parliamentary) opposition:

“The ad hoc committee strongly believes that the opposition has a share of its responsibility in the absence of a vibrant public debate in Azerbaijan; the opposition should focus on real issues rather than on egocentric petty politicking.

Based on these findings, the ad hoc committee, whilst stating that the whole election process showed progress in reaching Assembly and OSCE standards and commitments,

¹⁴¹ *AzeriReport*, “November-2010 Elections in Azerbaijan: Press Conference of European Election Observation Missions”, Transcript of the press conference, Baku, 8 November 2010.

¹⁴² *AzeriReport*, “Dispute Over Azerbaijani Elections: Austrian Politician Complains About British Representative”, 20 December 2010.

¹⁴³ *Ibid.*

is, however, convinced that significant progress would still be necessary to reach an overall electoral and democratic consensus in Azerbaijan.”¹⁴⁴

The emphasis was striking: the problem was not election fraud, but the absence of a political *consensus*.

Michael Hancock, who had also been in Baku, praised the elections and the work done by Wille and Iwinski:

“I was proud to be at the elections in Azerbaijan. The best you can say about any election in any country – in Europe, or anywhere else in the world – is that on the day following the election, the majority of people have the result that the majority want. Undoubtedly, my experience in Azerbaijan leads me to say that the majority wishes of the people of Azerbaijan were reflected in the results. A lot of credit should go to the monitoring team under Paul Wille’s guidance.”¹⁴⁵

The debate following the 2010 elections highlighted how much had changed in PACE in just a few years when it came to Azerbaijan. In 2005 the PACE rapporteurs had argued that the Council could not ignore election violations. In 2010, the two rapporteurs, who had been in Baku, remained silent. Later, during a monitoring committee meeting held on 26 November, Pedro Agramunt explained that he “had not noted any formal problems.” He criticized ODIHR and told the committee that “the elections had been in line with Council of Europe standards.” The minutes of the closed meeting record that “Mr Debono Grech agreed.”

In Azerbaijan, a group of 19 civil society organizations sent a petition to PACE and the OSCE parliamentary assembly. Grossruck’s and Wille’s statements, it read, had “caused deep regret and concern.”¹⁴⁶ The authors insisted on obtaining an explanation of the methodology applied by PACE and OSCE PA observers.¹⁴⁷ They never received a response.

Meanwhile Paul Wille, the liberal Belgian senator, set out to observe presidential elections in Kazakhstan in 2011. There he duly “stressed the positive atmosphere while carrying out his mission in the first half of the voting day.”¹⁴⁸ “There are often negative opinions formulated in advance,” he was quoted by media. What uninformed observers did not realize, he explained, was that “Good democracy envisages a strong opposition ... I hope that the opposition will form worthy proposals, as a condition of democracy in the future.”¹⁴⁹

In January 2011 the ODIHR published a detailed and highly critical analysis of the Azerbaijan parliamentary elections. This time, however, there was no press conference. By then, the results of the elections had become yesterday’s news. But the impression of what had happened in Baku remained with all those who were there. A few months later Audrey Glover spoke at a conference in Maastricht about sophisticated ways in which governments manipulate elections: “By intimidation and rejecting prospective candidates on flimsy grounds so that they cannot register, the opposition can virtually be eliminated before an

¹⁴⁴ PACE, “Observation of the parliamentary elections in Azerbaijan (7 November 2010)”, Report, Doc. 12475, rapporteur: Tadeusz Iwinski, 24 January 2011, sections 53 and 54.

¹⁴⁵ Debates in PACE, 24 January 2011 at 11.30 a.m.

¹⁴⁶ “Petition of civil society organizations in Azerbaijan”, p. 1. <http://www.monitoring.az/upload/Petition%20of%20civil%20society%20organizations%20of%20Azerbaijan.pdf>.

¹⁴⁷ Ibid., p. 2.

¹⁴⁸ *Trend*, “Belgian Senator hopes for observers’ impartial activity in Kazakhstan”, 3 April 2011.

¹⁴⁹ Ibid.

election campaign begins ... This results in voter fatigue and a lack of confidence in the whole electoral process, as well as a drop in voter turnout, which in itself allows for manipulation.” Glover ended on a note of resignation: “A certain degree of hopelessness arises and raises the question: is there any value in repeatedly monitoring these countries?”¹⁵⁰

¹⁵⁰ Audrey Glover, “The OSCE Office for Democratic Institutions and Human Rights and its challenges in relation to election observation”, in Netherlands Statistics, *International election observation and assessment of elections*, 2011, p. 99.

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