

Question: #3: What targets were attacked on what day by forces not controlling the place where these targets were situated between 7 and 12 August 2008? When those targets were situated in towns and villages what was the evaluation of expected incidental death of civilians, injury to civilians or damage to civilian objects? Did the actual effects correspond to the expected effects? If not why? What precautionary measures were taken in such attacks by the attacker and by the defender to avoid and minimize incidental death of civilians, injury to civilians or damage to civilian objects? Did those precautionary measures succeed? If not why?

Georgian forces attacked a) predetermined military targets, including Russian military convoy moving south b) legitimate military targets identified in the course of the hostilities.

Georgian forces (artillery) opened fire in response to Russian invasion and bombing of central government controlled villages at 23:50 of August 7, 2008 aiming at predetermined military targets. Ground operation launched at 00:15 of August 8, 2008 on left and right flanks.

Predetermined military targets, including Russian military convoy moving south

1. Armour/tank convoys on bypassing roads of Dzara and Geri;
2. Gupta bridge;
3. So called "rehabilitation centre" in Tskhinvali (Barracks on 2,500 servicemen);
4. So called Ministry of Defense, Ministry of Interior, Ministry of Security (KGB), Special Forces HQ (OMON and Presidents security guards) in Tskhinvali;
5. HQ of proxy militants in so called "Shankhai" settlement in Tskhinvali;
6. Platoon fortified position reinforced with three tanks in the vicinity of the former asphalt factory in Tskhinvali;
7. Company fortified position reinforced with armor units (Tliakana height).
8. Platoon fortified position reinforced with 3-5 armored vehicles in the vicinity of the former Tractor factory in Tskhinvali;
9. Platoon fortified position reinforced with 3-5 armored vehicles in the vicinity of the former cement factory in Tskhinvali;
10. One battalion of the enemy artillery located in the vicinity of villages Dampaleti and Monasteri
11. One armored unit in the vicinity of village Kusireti;
12. Artillery positions in the vicinity of village Khetagurovo;
13. Platoon fortified position reinforced with armor and 120mm mortars in the vicinity of Ubiati;
14. Military base in Uradanta.

It must be noted, that the Georgian military command limited list of targets for artillery and for the ground troops in the city of Tskhinvali and vicinity of populated villages to minimum. The list of predetermined targets included only places of heavy concentration of the enemy's manpower and military assets. Georgian military command did not use any MRLS systems inside populated areas. Finally, the command was informed both by open sources and by intelligence on massive evacuation of civilians from proxy-controlled territories, including from the city of Tskhinvali.

Specifically, the evacuation civilians from Tskhinvali region to the Russian Federation began on 2nd of August 2008.¹ At 12:23, the proxy regime announced the evacuation of civilian population from Tskhinvali and from the separatist controlled villages of the region. The evacuation continued through 6 August 2008.

This fact is further confirmed by the statement of Anatoly Barankevich, than National Security Council Secretary of the proxy regime:

*“Since August 1 conditions on border have started to become heated, at the beginning there were simple bombardments, then there appeared the first victims. Then Prime Minister Iury Ionovich Morozov has decided to evacuate people, thanks to him hundreds of lives have been rescued: both children, and women, and old men. Approximately 35 thousand persons were taken out from there ... On August 8 we have completely cleared the city”.*²

On 7 August, after more than week-long attacks on Georgian-controlled villages in the vicinities of Tskhinvali, President Saakashvili stated in a live televised address made at 19:10, that he had ordered the Georgian forces to cease fire and called the Kokoity’s proxy regime for negotiations.³ The offer was left not responded. Despite Georgia’s decision not to return fire, the Georgian village of Avnevi again came under fire at about 19:30. As a result the village was totally destroyed. At 22:30, the armed formations of the proxy regime guided by Russian peacekeepers fired at the Georgian controlled villages of Prisi and Tamarsheni, from Tskhinvali and the mountain of Tliakana. The South Ossetian irregular armed groupings fired at the Georgian village of Prisi at about 22:30. The attack left several people wounded on the Georgian side. At 23:30, they intensified artillery fire on all positions of Georgian police and peacekeepers in Big Liakhvi, Little Liakhvi and Frone valleys, especially the villages of Avnevi, Nuli, Tamarasheni and Kurta. The police station in Kurta was destroyed.

Moreover, at 15:00 on 8 August, GoG announced that Georgian authorities declared a three-hour unilateral ceasefire to allow remaining civilians to leave the conflict area in the southern direction from Tskhinvali towards Ergneti.

b) Legitimate military targets identified in the course of the hostilities

Georgian armed forces distinguished military objectives from civilian objects at all times and directed the attacks accordingly. Along with the predetermined military targets, force was used against the objects identified as military targets during the military operations. It is well documented that proxy irregular armed formations as well as Russian military forces extensively used civilian objects for clear military purposes as means of combat, by that violating principle of distinction as well as depriving these objects of their protection and transforming them into the legitimate military targets. Georgian armed forces attacks were directed specifically against firing positions of the adversary. Statement of even Ossetian OMON fighter Giorgi is quite illustrative:

¹ South Ossetia Informs About The Beginning Of War With Georgia, Russian version available at: www.kavkaz-uzel.ru/newstext/news/id/1226808.html

² *South Ossetia is not the Place for this President*, December 4, 2008, Russian version available at: <http://www.kommersant.ru/doc.aspx?DocsID=1089120>

³ The special address of the President of Georgia Mikheil Saakashvili, 7 August, 2008, available at: <http://www.president.gov.ge/?l=E&m=0&sm=3&st=20&id=2686>

[...] “The Georgian tanks shot at those houses, from where the reciprocal fire was conducted” [...]”⁴

Neutralization of these targets, from which shelling of Georgian civilian villages as well as subsequent bombardment of and firing against Georgian armed forces was carried out was required by military necessity and aimed at obtaining concrete military advantage.

In cases when there was a doubt about the nature of the object, it was treated as a civilian object. “Such objects are presumed to be civilian objects and as such are protected from targeting under international law; **but as described below, at least some of these buildings were used as defense positions or other posts by South Ossetian forces** (including volunteer militias), which rendered them legitimate military targets”.⁵ Georgian soldiers received to heavy fire from numerous civilian buildings, including schools, kindergartens, and apartment blocks, and were forced to return fire, especially in Tskhinvali. This has also been verified by the HRW:

*Numerous witnesses interviewed by Human Rights Watch, including members of South Ossetian militias, indicated that South Ossetian forces were not only present in Tskhinvali and neighboring villages, but also actively participating in the fighting, including by launching artillery attacks against Georgian forces. **The witnesses also made it clear that South Ossetian forces set up defensive positions or headquarters in civilian infrastructure, thus turning them into legitimate military targets.***⁶

***These locations included some administrative buildings hit by the Georgian artillery, such as the Ossetian parliament building, as well as several schools and nursery schools.** For example, witnesses told Human Rights Watch that militias had taken up positions in **School No. 12** in the southern part of Tskhinvali, which was seriously damaged by the Georgian fire. Another witness said South Ossetian fighters were co-mingled with civilians in the basement of Tskhinvali **School No 6**, which drew Georgian tank fire. No civilian casualties resulted.⁷*

*Several members of the Ossetian militia interviewed by Human Rights Watch confirmed that **many of the school and nursery school buildings were used as gathering points and defense positions by the militias.***⁸

The Lieutenant Senior Sergey Shevelev, together with his subordinates, has occupied and fixed by a platoon on a favorable gun position the five-floor house at a crossroads of streets of Lenin and Khetagurovo in Tskhinvali.⁹

⁴ Elena Milashina, Ossetian Military Roads, № 68, September 15, 2008, Russian version available at <http://www.novayagazeta.ru/data/2008/68/17.html>

⁵ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 41

⁶ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 50

⁷ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 50

⁸ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 51

⁹ Krasnaya Zvezda, *Their Feat is Immortal*, Oleg Gorupay, Russian version available at: http://www.redstar.ru/2008/08/16_08/1_01.html

As stated by the Lieutenant of the 58th army Mikhail Melnichuk, they have led the heavy armor into the yards of the private citizen and use concrete blocks, fences, walls of houses for organizing the defense.¹⁰

Furthermore, a document¹¹ seized by Georgian Intelligence shows testimony of Russian mercenaries confirming that Secondary School #6 in Tskhinvali was used as a military base.

The interview with the former Secretary of the Security Council of the self-proclaimed Republic of South Ossetia, Anatoly Barankevich makes it clear that the houses located near the Russian battalion of peacekeeping corps as well as other houses were used as military objectives:

[...] We have gone to the northern part of the city. We have decided to move to the headquarters of the peacekeepers. We came there and I told Kulakhmetov: let's occupy circle defense together and stand there until the Russian army comes [...]

[...] Well, I have decided, it is necessary to cover approaches to peace-keeping town (the so called "Gorodok"). We have started to occupy houses near the headquarter and to block the nearest crossroads. Youngsters rushed about, did not know what to do. There was not a panic, there was disorganization. Supreme Commander has left, hasn't left anybody, the Chief of KGB remained with peacekeepers.¹²

It is clear from the statement of the then *de facto* NSC Secretary Barankevich that the houses nearby the Russian peacekeeping bases were occupied by the fighters for the military purposes, therefore, Georgian forces had the right under the relevant international humanitarian law to use force against such targets.

Collateral damage to civilians and civilian objects

It is legally established that, in the harsh reality of war, civilian persons and objects may be incidentally affected by an attack directed at a legitimate military objective, referred to as "collateral casualties" or "collateral damage",¹³ civilians may be victims of unintended but inevitable side effects of an attack on a legitimate target in their vicinity. According to the principle of proportionality, these collateral casualties and damages are lawful under treaty and customary law only if they are not excessive in relation to the military advantage anticipated.

Again, the fact, that military objectives were often located by Russian military and their proxy irregular formation in close proximity to civilians has been verified by the HRW.

*In some of the villages, such as Khetagurovo, Human Rights Watch was able to establish that **the positions of Ossetian militias were in close proximity to the civilian homes hit** by*

¹⁰ Krasnaya Zvezda, Dimitry Simionov, *The Commander of a Defeated Platoon*, Russian version available at: http://www.redstar.ru/2008/09/09_09/2_01.html

¹¹ See Annex 37 A p.14, to the Chronology, Answer to Question 1 of the First set of Questions on Military Issues.

¹² See *supra* note 2

¹³ "Collateral casualties" and "collateral damage" are defined in Rule 13(c) of the San Remo Manual on International Law Applicable to Armed Conflicts at Sea as "the loss of life of, or injury to, civilians or other protected persons, and damage to or the destruction of the natural environment or objects that are not in themselves military objectives".

*the Georgian artillery. Georgian forces said they came under heavy fire from Khetagurovo.*¹⁴

The Government of Georgia submits that it has satisfied the requirements for the collateral damage to be justified, i.e. it has acted in accordance with the principle of proportionality and applied precautionary measures whenever circumstances allowed.

It must be also highlighted, that Georgian military have strictly followed the order by the President to protect civilians.

*The majority of witnesses interviewed by Human Rights Watch did not complain about [other types of] violations against them by the Georgian forces. Judging by their statements, **in most cases the troops entering the villages did not deliberately cause physical harm to civilians.** Several Ossetian interviewees said that Georgian soldiers told them they were under orders to look for and pursue Ossetian militias, **but to spare women, children and elderly during the ground offensive.***¹⁵

*Zareta Z., from the village of Sarabuki, said that when Georgian soldiers entered the basement where she was hiding with her husband, they told them, “Now you’ll live with us, with Georgians, and we’ll live in peace. **Misha [Saakashvili] told us not to touch women and children.** We’re instructed to kill the young guys [fighters] only. And that’s what we’ll do. You are not to worry.” Another woman from the same village, “Svetlana S.,” also said that the Georgian soldiers were telling the residents, **“We have not killed any residents and we are not going to! Everyone is safe!”***¹⁶

*Madina M. from Khetagurovo said that she was terrified when Georgian troops entered the village, but to her surprise they were “polite” and did not harm her. She said, “They were going from yard to yard and looking for young guys. They did not know our guys weren’t around anymore. I was so frightened ... I thought they’d be doing cruel things to women and to the elderly, like during the first war, back in 1992. But they were ... polite, really. **They kept saying that they had an order not to touch women, children, and old people, and we had nothing to fear from them.**”*¹⁷

During a hearing before a Georgian parliamentary commission studying the causes of the August war, several high-ranking officials (including Chief of General Staff, Minister of Defence, Minister of Internal Affairs, Secretary of the National Security Council) stated that President Saakashvili gave three orders at 11:35 p.m. on August 7: 1. Stop all military movement from Russia to Georgia; 2. Suppress firing positions from which Georgian peacekeeping forces and villages were being attacked; 3. Protect the civilian population in implementing these orders. Georgian officials further insist that Tskhinvali was not a target per se, but that it was necessary to suppress firing positions in

¹⁴ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 51

¹⁵ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 61

¹⁶ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 61

¹⁷ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 61

Tskhinvali and that Georgian forces needed to take control of Tskhinvali to evacuate civilians located in villages to the north of Tskhinvali.¹⁸

Despite the precautions taken by the Georgian government and the armed forces, civilian infrastructure damage was unavoidable. However, it is difficult to have accurate assessment of the damage caused exclusively by the Georgian forces, **as Russian forces represented dominant military power and used heavy air and artillery bombardment on the same area in the same period of time.**

The Grad multiple rocket launching system in Tskhinvali and other villages was used by the armed forces of the Russian Federation. It becomes known by the statement of the operator of installation "Grad", the senior sergeant of the 292nd contract service of the self-propelled artillery regiment of the 19th Infantry division – Denis:

*"...Yesterday (on 8 August) we were attacking Tskhinvali by Grads to take the city. It was necessary to occupy the city..."*¹⁹

The fact of Russian Grad bombardment of Tskhinvali is also verifiable if angle of the shot would be identified on spot. While assessing the damage to the city, it must also be borne in mind that Tskhinvali has suffered damage as a result of hostilities in 90s as well, and has not been repaired thereafter. As Georgian authorities have not been able to undertake proper investigative measures, we provide annexed video as an illustrative example based on the analysis of the open source video²⁰. Georgia submits that the trajectory of fire and position of shell proves Russian military bombing the Peacekeepers HQ in Nijni Gorodok.

Issue of Peacekeepers needs to be highlighted on its own. Russian Federation has extensively used the argument of "protecting" its peacekeepers, as a yet another justification for the intervention to Georgia. However, numerous facts confirm the political, rather than humanitarian rationale of the Russian intrusion. (For factual evidences please refer to the Answer to Military Question#3 on roles and activities of peacekeepers prior and during the war.)

Georgia confirms its commitment to the standard that directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the established principles, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law is prohibited.²¹ However, as stated above, any civilian object can lose its protection in case it is used in such a way that it loses its civilian character and qualifies as a military objective, and hence, it is liable to attack. The Government of Georgia herewith submits that peacekeeping forces and their buildings that were used for military purposes were rendered a legitimate target, therefore, lost the protection. It must once again be noted that *only* those peacekeeping regiments and infrastructure have been attacked by the Georgian forces, which directly participated in

¹⁸ Human Rights Watch, *Up In Flames: Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia*, 2009. p. 23, see FN 39 text.

¹⁹ October 19, 2008, Russian version available at: <http://www.iterasi.net/openviewer.aspx?sqrLitid=sfwpyeje3uowwlt-kfvhpa>

²⁰ See visual material in Reference 20;

²¹ Jean-Marie Henckaerts & Louise Doswald-Beck, *Customary International Law Volume I: Rules*, International Committee of the Red Cross, Cambridge University Press, 2005, at 112, Rule 33.

hostilities, whereas other Russian Peacekeeping posts continued to function throughout the hostilities and have never been subject to attack.

The peacekeepers forces were involved in the war and assisted the irregular Ossetian forces through different means. The Georgian Minister of Internal Affairs corroborated the information stating that the base of the Russian peacekeeping forces was used by the separatists for both the artillery shelling of the Georgian positions, and adjustment of fire:

“On August 7 the lieutenant O. Galavanov was carrying out a battle-order on revealing the purposes and corrections of fire of the artillery”, - it was told to us by his direct commander, though Oleg, of course, understood without the order has told that nobody could deal with this mission and such a difficult situation better. His observant post was situated on a roof of the building of the Russian peacekeeping battalion on southern suburb of the city – at that moment, at night from August 7 to 8 it was the most dangerous place in the city since the Georgian army, first of all, aspired to destroy the peacekeepers. Oleg has not left a fighting post and corrected fire of our gunners, despite the intensive fire on that roof. However, eventually, the opponent has calculated its site and has started to shoot at its observant post precisely. Oleg has got the hardest wounds. The Russian peacekeepers drag him into the medical unit, however heavy fire continued there as well. Everything was burning around, there were many wounded and killed among peacekeepers. The medical unit was located in a tent that also lighted up. Critically wounded patient Oleg could not be dragged from there – there was no place, and there was nobody for that. Oleg Galavanov was lost, having shown courage and heroism on a fighting post. Galavanov Oleg is posthumously presented for the title of “the Hero of Russia”.²²

The very first encounter with the Russian peacekeepers took place on August 8, at around 06:00, Georgian Ministry of Internal Affairs special forces equipped with “Cobra” type armored vehicles and reinforced by several tanks from the Ministry of Defence of Georgia, moved from the village of Zemo Nikozi towards the outskirts of Tskhinvali in order to suppress the fire opened at that village by the de facto regime irregular forces located in the southwestern part of the town, the so called “Shanghai” district. The Ministry of Internal Affairs Special Forces encountered sniper and massive armoured vehicle cannon fire from the Russian peacekeeping headquarters “Verkhniy Gorodok” located on the southwestern edge of the town and were compelled to return fire and ask for tank support.

According to the all abovementioned it is clear that the Russian battalion of peacekeeping corps turned into a military objective and therefore a legitimate military target, since it was directly involved in the military endeavor of the enemy. Not only did it make an effective contribution to the military operations due to its inclusion in the military dispositions of the adversary, but, directly attacked Georgian militaries. It should be noted, that at 00:23 of 8th, the Commander of the JPKF, General Marat Kulakhmetov in a telephone conversation with the Head of the Georgian peacekeeping contingent Gen Kurashvili admitted that the Russian peacekeepers had been providing coordinates for artillery shelling to the proxy militants.²³ Importantly, the above took place well before any Russian claims of alleged Georgian

²² Newspaper “Sudon”, Igor Tuaeov, “Oleg Galavanov Was Lost, Having Shown Courage And Heroism On A Fighting Post”, November 22, 2008, available at: <http://www.osradio.ru/news/genocid/eid/14326.html>

²³ See annex 87 A and B of the answer to the Question 1 of the Military Set of Questions for the telephone intercept and its transcript.

attacks on peacekeepers. Furthermore, at 02:37 in the morning of the August 8, Russian Deputy Foreign Minister, Gregory Karasin telephoned his Georgian Minister of Foreign Affairs Gregory Vashadze and informed him that Russia will respond militarily to the death of its peacekeepers in Tskhinvali. About hour and half later, the Russian ambassador to Georgia, Viacheslav Kovalenko visited Georgia's Ministry of Foreign Affairs to officially convey the same message. Although, the first encounter between Georgian forces and Russian peacekeepers took place at 06:00, at least three hours later than Karasin's phone call.

In spite of the overwhelming evidence of the direct involvement of the peacekeepers in the hostilities, Georgian armed forces treated them with more than due precaution, and never launched an offensive unless the hostile activities were initiated by peacekeepers or persons or vehicles wearing peacekeepers identifications. For instance, on the morning of August 9, at 12:00-13:00, the 41st Battalion of the 4th Infantry Brigade of the Georgian armed forces was moving into the town of Tskhinvali in order to reinforce the MIA special forces. Immediately before they entered the town a chain of armored vehicles and tanks full of armed persons appeared. The chief of the Battalion ordered the troops to allow the chain of vehicles and tanks to come unhindered until they reached visible distance in order to confirm their identification. Soon it became known that the tanks and armored vehicles had easily identifiable sign of Russian Peacekeeping Forces (yellow "MC" on the blue background). The Commander of the Battalion ordered to withhold fire and allow the peacekeepers to pass. The column penetrated deep into the 41st Battalion and suddenly attacked the Georgian unit with automatic rifle fire and hand-grenades. The Commander of the Battalion, Major Shalva Dolidze, as well as several other members of the Battalion died and dozens of Georgian soldiers were wounded.

Note: all of the evidence referred to above are provided in the Answers to Military Question #1 (chronology) and #3 (roles of peacekeepers).