

**Question 4: What is your legal position regarding the international humanitarian law as to the issue of Grad multiple rocket launchers and/or cluster munitions used and against which targets (in particular in densely populated areas)? What measures were taken to mark and clear explosive remnants of the war?**

At the time of the international armed conflict between Russia and Georgia in August 2008, Georgia was not party to any of the international legal instruments expressly prohibiting the use of Grad Multiple Rocket Launching systems or cluster munitions in international armed conflict; neither was there any rule of customary international law applicable to Georgia, prohibiting the above. Furthermore, the types of weapons used, including Grad Multiple Rocket Launching systems or cluster munitions, had been used in full compliance with applicable rules of international humanitarian law, in particular the principles of distinction and proportionality.

Cluster munitions, specifically the GRADLAR160 missile system and the MK4 LAR160 type missiles with M-85 cluster bombs, have been used exclusively against heavily armored vehicles and equipment moving into the territory of Georgia. The use of the mentioned munitions has been based on a thorough analysis of the military necessity and the military advantage it could give to the Georgian army in the given situation. The pressing military necessity was to halt the advancement of Russian military personnel and equipment into Georgian territory. The attack was directed specifically at military personnel and objects and the use of the GRADLAR160 missile system and the MK4 LAR160 type missiles with M-85 cluster bombs impeded the advancement of the Russian Army into Georgian territory for several hours, thus giving the Georgian Army, which in numbers was several times less than the advancing Russian troops, a military advantage which created the opportunity to facilitate the safe evacuation of civilians from the war theatre.

The Armed Forces of Georgia used GRAD rockets only against clear military objectives and non in populated areas.

In conclusion, the Government of Georgia would like to underline once again that the means used (in this case Grad Multiple Rocket Launching systems and cluster munitions) as well as the modalities of their use were in full compliance with the applicable rules of IHL. The military advantage achieved by the use of the mentioned type of weapons clearly limited the anticipated, as well as actual damage to civilian objects or loss of civilian life or injury to civilians, and was fully justified by the military necessity.

▪ ***Measures Taken to Mark and Clear Explosive Remnants of War***

The August 2008 conflict caused a critical humanitarian situation in the country. The Explosive Remnants of War (ERW) were dispersed in many cities and regions of Georgia. Rapid mine clearance and mine risk education activities have been undertaken, although these activities are not carried out in the occupied areas of the Tskhinvali region/South Ossetia and in Abkhazia, Georgia because the leadership of Russian occupation forces continues to block access of de-miners to those territories.

The bombed and mined areas of Georgia include:

- *Tskhinvali and Tskhinvali region/South Ossetia* (bombs, missiles, rockets, cluster bombs, antipersonnel and tank mines).
- *Gori and Gori region* (air bombs, cluster bombs, pellet bombs, land-mines, tactical rockets, missiles, high explosive bombs, time mechanism bombs).
- *Sachkhere and Oni regions* (air bombs, pellet bombs).
- *Marneuli Region* (airbombs).
- *Dedoplistskharo* (airbombs).
- *Tbilisi* (airbombs).
- *Kaspi region* (trotyl with explosives).
- *Upper Abkhazia* (bombs, missiles, rockets).
- *Poti* (air bombs, tactical rockets).
- *Senaki and Senaki region* (air bombs, tank mines).
- *Kutaisi* (air bombs).
- *Khelvachauri* (air bombs).
- *Kazbegi region* (highway) – mines.

In order to urgently improve the situation, Memorandums of Understanding on “Humanitarian Mine Action Assistance” were signed with two organizations: (1) “Halo Trust” (Great Britain-USA) and (2) “Norwegian People’s Aid” (Norway), correspondingly on the 5<sup>th</sup> and 17<sup>th</sup> of September.

These Memorandums comprise the following activities: (1) assessment/survey, marking, mine risk reduction; (2) Explosive Remnants of War clearance activities. The Memorandums extend to the whole territory of Georgia, although they are not carried out in the Tskhinvali region/South Ossetia and in the Autonomous Republic of Abkhazia, Georgia as far as the leadership of Russian occupation forces does not agree to allow de-miners access to those territories. Thus international efforts are needed.

In addition, Estonia has sent a 5-person group from the Explosive Ordnance Destruction Centre of the Estonian Ministry of Interior. Jointly with Georgian Engineering Brigade de-miners, the group has successfully carried out Explosive Remnants of War activities during a three 3 week period (7-28 September) in several specific areas.

In J-3 Department of the Joint Staff of Georgian Armed Forces, a Division has been created and authorized to coordinate Explosive Remnants of War activities. For this purpose, on October 9, 2008, the Ministry of Defense of Georgia signed a Memorandum of Understanding on “Mine Action Assistance” with IMMAP (USA). The Memorandum provides technical, programmatic, informational management and advisory support for the development of mentioned Service. The Service has already accomplished the information gathering and coordination functions.

The entire engineering supplies were demolished during the Russian aggression (Osiauri), which has led to the prioritization of the re-equipment of the Georgian Armed Forces Engineering Brigade, infrastructure rehabilitation and personnel re-training. Representatives of “DynCorp” (USA) are in Georgia to evaluate the type and amount of damage caused.

Marking of the Explosive Remnants of War (ERW) was performed by the “Halo Trust”.

With regards to demining activities, a Memorandum of Understanding on “Humanitarian Mine Action Assistance” has been also signed with ITF (Slovenia). This memorandum encompasses the development of national capacities in view of victim assistance and training of non-military personnel related to mine activities.

The same issue was brought to the attention of the NATO Maintenance and Supply Agency (NAMSA), though the assistance is planned to be strictly humanitarian.