

## **Chapter 4**

### **The Conflict: Views of the Sides**

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For the purpose of this Report, and in order to proceed from what the sides directly concerned had to say, questionnaires related to the military, legal and humanitarian aspects of the events were sent to Tbilisi, Moscow, Tskhinvali and Sukhumi. In addition, the sides were asked to give their comprehensive views and an evaluation of the events. In this chapter, these comprehensive views of the sides are reproduced unaltered, exactly as they were submitted to the Fact-Finding Mission by the authorities of Georgia, the Russian Federation, South Ossetia and Abkhazia. The Fact-Finding Mission has provided an (unofficial) English translation of the original texts with the exception of the Georgian text, which was provided in English. All the original texts are to be found in Volume III.

## **1. The Georgian View<sup>1</sup>**

On August 7th 2008, the Russian Federation launched a large-scale invasion on Georgia's sovereign territory. This use of force was illegal and unjustified under international law. It constituted an egregious breach of Georgia's political sovereignty and territorial integrity contrary to Article 2(4) of the UN Charter and customary international law. It violated also the key principle of non-intervention in international law and relations, and its magnitude and scale made it an act of aggression.

None of the existing (collective authorization, self-defence, consent) or purported (humanitarian intervention, protection of nationals, protection of peacekeepers, force in support of a legitimate self-determination claim) exceptions to this general prohibition justify or render lawful the Russian invasion.

There was no Security Council resolution authorizing such action (indeed many members of the Council deplored the invasion) nor was there an armed attack or "imminent threat" of armed attack by Georgia against the Russian Federation capable of activating a right to exercise force in self-defence nor was Russia invited by the Georgian State to use force on Georgian territory.

As for the purported exceptions to the prohibition of force, this memorandum<sup>2</sup> has shown that there is no right under international law to use unilateral, unauthorized force for humanitarian purposes. No such right has been articulated in state practice or in institutional settings, and

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<sup>1</sup> Title of the original English text submitted by Georgia to the Fact-Finding Mission: "Executive summary. Use of Force Issues Arising Out of The Russian Federation Invasion of Georgia, 2008".

<sup>2</sup> The „memorandum“ refers to the full version entitled "Use of Force Issues Arising Out of The Russian Federation Invasion of Georgia, 2008" that can be found in Volume III of the Report.

there are powerful policy arguments against supporting such a right. The Responsibility to Protect is concerned with the duties of sovereign states towards their own populations and with the role of the Security Council where such sovereign states fail these duties. It does *not* envisage unilateral and vigilant uses of force. Along with the absence of legal ground of this nature, there is not even factual ground capable of justifying Russia's use of force against Georgia in August 2008 even within the frames of this purported right for humanitarian intervention. Despite the significant escalation of the situation in Tskhinvali region/South Ossetia, the constant attacks on Georgian villages, and the casualties among Georgian peacekeepers, police and civilians, Georgia employed the utmost restraint and resorted to all available diplomatic measures to avoid the use of force. Russian claim about genocide committed by Georgians against ethnic Ossetians proved to be propaganda aimed at justification of Russia's illegal activities and encouragement of Ossetian proxy militants and other armed formations to commit brutalities against ethnic Georgians in revenge for the "genocide and mass killings."

The so-called right to protection of nationals abroad lacks status under international law. Invasions, sought to be justified on these grounds, have generally been criticized by most members of the international community. Moreover Russia fails to meet the international legal test of nationality with respect to the civilian population resident in Tskhinvali region/South Ossetia and Abkhazia as developed by the International Court of Justice in the *Nottebohm* case. After the ethnic cleansing of Georgians in these two regions in early 1990s, *en masse* distribution of Russian passports to the remaining civilian population represented a deliberate and well-constructed policy aimed at establishing a pretext of the military intervention of the Russian Federation on the territory of Georgia.

There is no general right to use force to protect peacekeepers operating in foreign states nor do any of the agreements between Georgia and the Russian Federation provide for such use of force. Peacekeeping is aimed *not* at offering a pretext for aggression but at preventing the sort of war that Russia engaged in August. The Russian attempt to justify its use of force as a means of protection of peacekeepers is legally and factually ungrounded. Georgia's defence operation started hours after the Russian invasion and no military clash between Georgian forces and peacekeepers had occurred before this. The first military clash between Russian peacekeepers and Georgian forces occurred at about 6 a.m. on August 8, while the large scale military deployment of the Russian troops started in the early morning of August 7. Moreover, the Russian peacekeeping base attacked by Georgian forces was directly

participating in the hostilities and they no longer enjoyed the protection normally accorded to them under international law. It must once again be noted that *only* those peacekeeping regiments and infrastructure have been attacked by the Georgian forces, which directly participated in hostilities, whereas other Russian peacekeeping posts continued to function throughout the hostilities and have never been subject to attack. It needs to be noted that the first casualties in the peacekeeping contingents were incurred from the side of Georgian peacekeepers. Two Georgian peacekeepers Shalva Trapaidze and Vitali Takadze were killed and five wounded on August 7 at around 14:00 as a Georgian peacekeepers checkpoint was shelled with 100 and 120mm artillery from the proxy regime-controlled village Khetagurovo. A proxy militant reported to superiors the fact of killing Georgian peacekeepers in a telephone conversation also intercepted by the Georgian Ministry of Internal Affairs on 07.08.2008. The transcript of this conversation can be found in annex 75 of the answer to question 1 of the military set of questions.

Finally, the Georgian response to the Russian armed attack was confined entirely to its own sovereign territory, was reluctantly undertaken, and was a proportionate, necessary and wholly justified exercise of its customary and Charter right to use force in self-defence.

## **2. The Russian View<sup>3</sup>**

The aggression perpetrated by the Saakashvili regime against the people of South Ossetia in August 2008 became an unprecedented event in modern history both in terms of its recklessness and cruelty.

The term “Russian-Georgian war” is not appropriate in this respect. The treacherous attack launched by Georgia against the peaceful population of South Ossetia and the Russian peacekeepers, the number of casualties resulting from this attack as well as statements made by Georgia’s political and military leadership demonstrated aggressive intent on the part of the Georgian side.

Against this backdrop Russia had no choice but to use its inalienable right to self-defence enshrined in Article 51 of the UN Charter. The actions taken by the Russian side while proactive in nature and commensurate to the scale of the attack were designed to achieve but one goal – to protect the civilian population and the Russian peacekeeping contingent from the unprovoked Georgian aggression and prevent such armed attacks against them in the

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<sup>3</sup> Title of the text submitted by the Russian Federation to the Fact-Finding Mission: „Additional general remarks on the conflict in August 2008 on Georgia’s aggression against South Ossetia in August 2008” (unofficial translation from Russian).

future. The Russian side never attacked the local population or any civilian facilities. Russia continued to use force in self-defence as long as the conditions requiring the same persisted. It should be noted that the Russian side fully complied with the agreements reached between D. Medvedev and N. Sarkozy on 12 August and 8 September 2008 respectively.

The relevant notice detailing the rationale behind Russia's actions undertaken in accordance with Article 51 of the UN Charter has been submitted to the Security Council. Immediately after Georgia had launched the military operation in South Ossetia, Russia brought this issue to the table at the UN Security Council. The situation was discussed through the night on 8 August 2008 at the 5951<sup>st</sup> as well as subsequent meetings of the Council.

There may be no justification for the Georgian Government's criminal attempt to "bring constitutional order" undertaken ever so cynically on the opening day of the Summer Olympics when traditionally all military actions should be halted. At that time there were ample opportunities to address the issue of Georgia's territorial integrity in a civilised manner. Various negotiating and peacekeeping formats directly involving the international community, UN and OSCE had been created to find a peaceful solution to the Georgian-Abkhaz and Georgian-South Ossetian conflicts. Russia complied with its peacekeeping and intermediary obligations in good faith, while trying to help in reaching peace agreements, and demonstrated self-restraint and patience in the face of provocations, unflinchingly maintaining its position even after Kosovo's unilateral declaration of independence.

We warned Mr. Saakashvili a number of times that any attempt to resort to a forceful solution would inevitably undermine the process of negotiations and lead to Russia's recognition of Abkhazia's and South Ossetia's independence. He was aware of what was at stake as well as the risks involved. However, the Saakashvili regime favoured the aggressive bloodthirsty approach, which from the very outset was doomed to fail. The Georgian Government bears the full brunt of responsibility for what happened.

Equally regrettable is the fact that all warnings issued by Russia pointing to the high probability of such a turn of events, were ignored by the international community. Furthermore, efforts have been made to lend moral and material support to Mr. Saakashvili's belligerent ambitions. Advisory help and offensive weapons provided by Washington, Kiev and a number of NATO member-states contributed to strengthening militarist trends in policies conducted by the Georgian Government.

Our frequent calls in favour of reaching an agreement to ban any use of force between Georgia and South Ossetia as well as Georgia and Abkhazia found no support amongst our Western partners. On the other hand, the fact that the anti-Russian propaganda characteristic of the Western Media during the initial stage of the military operation gave way to a more cautious and objective coverage of root causes behind the tragedy that took place in August 2008, goes to show that ultimately, “truth is valued more”.

By launching an aggressive attack against South Ossetia on the night of 8 August 2008 causing massive casualties among the civilian population as well as Russian peacekeepers and other Russian nationals, and by harbouring plans to launch a similar attack against Abkhazia, Mr. Saakashvili singlehandedly reduced Georgia’s aspirations to restore territorial integrity to zero. Constantly trying to use brutal military force against the very ethnic groups whom he purportedly wanted to see as a part of his state, Mr. Saakashvili left them with no other choice but to seek ways to ensure their security and the right to self-determination as independent nations. In this respect the Decrees issued by President Dmitry Medvedev of the Russian Federation recognising Abkhazia’s and South Ossetia’s independence offered the only opportunity to save the lives of people and prevent further bloodshed in the Transcaucasian region.

The fact that relations between Georgia and Russia were severed at the Georgian initiative further exacerbated the situation rendering these relations virtually “frozen”, despite the traditionally close neighbourly ties between our countries deeply rooted in many centuries of history. It is apparent to us that it is not the Georgian people who should bear the blame for the aggression against South Ossetia but rather Mr. Saakashvili’s criminal regime. Tbilisi’s official propaganda is trying to this day to disorient ordinary citizens of this country. At the same time, Russia whose sentiments towards the Georgian people are truly amicable and warm, remains confident that sooner or later the Georgians at their own initiative and without any outside interference will be able to elect worthy leaders who would genuinely care about their own country and strive to develop equitable and friendly neighbourly relations based on mutual respect with all other nations in the Caucasus, in so doing strengthening security in the region.

### **3. The South Ossetian View<sup>4</sup>**

The evolution of the modern-day Georgian-Ossetian conflict, which culminated in Georgia's armed aggression against the Republic of South Ossetia in August 2008, was predicated on a number of events that took place in the late 1980s. During that period, characterised by the Soviet highest leadership's inability to put an end to a number of centrifugal processes that ultimately brought about the irrevocable collapse of the former Soviet Union, various nationalist movements striving for independence from the central government gained traction in selected republics of the Union. In Georgia this process was heralded by the emergence of a radical nationalist named Z. Gamsakhurdia who was the first to proclaim the "Georgia for Georgians" agenda, which became the cornerstone of Georgia's subsequent state policy vis-à-vis its autonomous regions. It goes without saying that it was absolutely impossible for South Ossetia to remain a constituent entity of the "independent Georgian state" against such a backdrop.

Having decided to pursue the course of secession from the USSR, Georgia rejected South Ossetia's and Abkhazia's right to secede from Georgia despite the fact that this right was guaranteed in accordance with the Law adopted by the USSR in 1990 on "Procedures governing the resolution of disputes related to secession of republics from the Union of Soviet Socialist Republics", which also applied to autonomous entities that used to form part of the former Soviet republics. In 1991 Georgia proclaimed its independence and South Ossetia resorted to its constitutional right following a referendum held on 17 March 1991 and chose to remain a part of the Soviet Union.

By this time political struggle gave way to Georgia's unabashed military aggression against the population of South Ossetia. As a result more than one thousand people were declared missing or dead, around 2.5 thousand were wounded, 55 thousand refugees fled from South Ossetia to North Ossetia, and around 120 thousand ethnic Ossetians who had been residing in different regions of Georgia were forced to leave their homes.

The coup d'état that took place in Georgia in early 1992 and the ensuing civil war somewhat diminished the intensity of military operations against South Ossetia, however, in spring 1992 the Georgian-Ossetian conflict rapidly deteriorated. The city of Tskhinvali found itself completely blockaded. At this stage it was not only the informal Georgian paramilitary units and criminal gangs who took part in the hostilities directed against South Ossetia but also

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<sup>4</sup> Unofficial translation from Russian provided by the Independent International Fact-Finding Mission on the Conflict in Georgia.

troops from the Georgian Ministry of the Interior and regular military forces. More than 100 ethnic Ossetian settlements were razed and destroyed in the territory of South Ossetia. Yielding to the pressure from Russia Georgia agreed to engage in negotiations, which resulted in the signing of the Dagomys agreements governing the principles of Georgian-Ossetian conflict resolution on 24 June 1992. These agreements stipulated that a Joint Control Commission (JCC) – a special body called upon to settle the Georgian-Ossetian conflict – be set up by the four parties, namely Georgia, South Ossetia, Russia and North Ossetia with the participation of the OSCE. On 14 July 1992 after the Joint Peacekeeping Forces (JPKF) consisting of three battalions from Russia, Georgia and Ossetia respectively, were deployed in the conflict area, hostilities came to an end.

Since that point in time the Republic of South Ossetia, which as of 1990 de facto seceded from the Georgian jurisdiction, obtained the status of an independent and sovereign state.

Despite the belligerent rhetoric constantly resorted to by high-ranking Tbilisi officials and directed at South Ossetia, the Republic continued to take part in the negotiations held in the internationally recognised format of JCC and the efficient efforts of the trilateral peacekeeping operation were acknowledged even by Georgia.

In early 2004 the Georgian-Ossetian conflict escalated again and the relations between South Ossetia and Georgia deteriorated further after M. Saakashvili came to power in Georgia and declared that he planned to integrate the territory of South Ossetia into Georgia at any cost. The political course chosen by the Georgian Government brought about increased tensions in the conflict area and ultimately culminated in Georgia's military aggression against the Republic of South Ossetia in July 2004. During this campaign Georgian troops attempted to occupy elevations strategically located around Tskhinvali, sustained significant casualties and retreated in late August 2004. We believe it should also be noted that the exclusively defensive campaign was conducted at that time by South Ossetia without any outside military assistance, not even from Russia. The Russian peacekeeping units that maintained presence in the conflict area never took part in the military operation, however, they tried to separate the parties engaged in the conflict and ensure safety and security of the local population in accordance with their mandate.

After the failed military attack of 2004 directed against South Ossetia, in early 2006 Georgia developed a new plan entitled "Tiger's Leap" designed to recapture the territory of South Ossetia. This plan envisaged a number of large-scale provocations against the Georgian



population of South Ossetia and the peacekeepers - the potentially high casualties among them would provide the excuse to unleash a new full-scale military aggression against South Ossetia, slated to take place in May 2006. According to the plan, Georgian forces were given seven days to capture all cities and towns in the Republic of South Ossetia and to complete their blockade of the Roki tunnel. However, this plan never materialised since the Georgian army's level of preparedness as well as its equipment were deemed insufficient by the country's high command.

This turn of events heralded a period of Georgia's unprecedented militarisation. The country's Government proclaimed its aspirations to join NATO within shortest possible timelines. Georgian authorities demonstratively augmented the military budget – by 2008 the imports of weapons reached USD one billion – an astronomical amount by Georgia's standards. The country continued to proactively procure offensive weapons in the United States and other EU and OSCE member countries. Ironically, it was the OSCE mission that acted as a mediator during the Georgian-Ossetian conflict resolution. The list of countries that shipped weapons systems to Georgia included the United States, United Kingdom, France, Greece, Turkey, Israel, Lithuania, Estonia, Ukraine, Serbia and others.

On 18 July 2006 Georgia's Parliament adopted a resolution terminating the peacekeeping operations underway in the Georgian-Ossetian and Georgian-Abkhaz conflict areas and mandating the withdrawal of the Russian peacekeeping units from the respective conflict areas. In practice, this resolution resulted in the Georgian battalion's withdrawal from the JPKF and the relevant JPKF Command structures. The Georgian Ministry of Defence was tasked to exercise command and control of the Georgian peacekeepers.

In Georgia it was no longer a secret that the country's armed forces were being trained by military instructors from the United States and Israel based on methodologies developed during the military operation in the former Yugoslavia, which were not defensive in nature but rather envisaged occupation of territories in neighbouring states and resolution of conflicts through the use of military force.

It should also be noted that by early 2008 the military leadership of Georgia was in the possession of detailed satellite maps depicting the territory of the proposed theatre of operations in South Ossetia and Abkhazia. Georgia was unable to produce such maps using its own limited resources. In violation of previous agreements the Georgian side continued several years in a row to rotate its peacekeeping contingent every 2-3 months instead of twice

a year. In so doing, by summer 2008 they managed to familiarise virtually all units from the 4<sup>th</sup> infantry brigade with the future theatre of operations. Later on this brigade spearheaded the attack launched against Tskhinvali on 7 August.

On 28 January 2008 President Kokoity of South Ossetia sent an official letter to President Saakashvili of Georgia proposing that a joint meeting be organised between the conflict parties in an international format with the Acting OSCE Chairman in attendance with a view to ensuring that both parties would sign an agreement banning any use of force and paving a way to resolving the Georgian-Ossetian conflict. This initiative had been proposed on a number of occasions prior to that however, the Georgian Government chose to demonstratively ignore it. On 15 March 2008 President Saakashvili officially rejected the idea of holding such a meeting. He stated that, Georgia had no intention of assuming any obligations that would rule out the use of force and reiterated that the military solution to the Georgian-Ossetian conflict in favour of Georgia was viewed by its Government as the only viable option. The fact that this statement was made during his address delivered in front of the personnel stationed at the military base in Gori built some 30 kilometres from Tskhinvali, speaks for itself.

On 4 March 2008 the Georgian side officially announced their withdrawal from the quadrilateral negotiations process brokered by the OSCE. This was in no way the first time when Georgia attempted to denounce the Dagomys agreements of 1992, block the negotiations process and eliminate the legal basis for the peacekeeping operation. The fact that Georgia abolished the office of the state minister responsible for conflict resolution and introduced the new office of “Minister of Georgia’s Reintegration” also served the same purpose.

In the meantime the situation in the conflict area continued to rapidly deteriorate and by early summer 2008 it was deliberately brought to the boiling point by the Georgian side. Against the backdrop of political provocations orchestrated by Georgian authorities, for example a visit by foreign ambassadors accredited in Georgia to South Ossetia scheduled to take place in April 2008 was disrupted. Georgian intelligence services committed a number of terrorist attacks in Tskhinvali and several South Ossetian settlements adjacent to the Georgian territory that resulted in civilian casualties – mostly citizens of South Ossetia and Russia. Georgia demonstratively continued to prepare military bridgeheads to facilitate an attack against the Republic of South Ossetia and build up its military presence in the conflict area not only inside its own border areas but also in the territory of South Ossetia and in areas

predominantly populated by ethnic Georgians by redeploying weapons and personnel via previously laid bypass roads.

Regrettably, South Ossetia's frequent appeals addressed to the international community as well as international organisations and structures to put an end to the escalation of tensions and reduce the level of threat emanating from Georgia, would fall on deaf ears.

In late July a joint US-Georgian military exercise entitled "Immediate Response" was held in the territory of Georgia. The exercise was designed to test the tactics of running a military operation against South Ossetia. The Georgian army units that took part in the exercise were redeployed towards the South Ossetia border following the completion of the exercise. At the same time the Georgian Government continued to evacuate ethnic Georgian population on a massive scale from the future area of hostilities.

#### **4. The Abkhaz View<sup>5</sup>**

The preconditions for Georgia's potential military aggression against Abkhazia began to take shape long before the events that took place in August 2008. However, it was in 2008 that Georgian intelligence services stepped up their activities in the area adjacent to the Ingur river – they searched for possible troops deployment routes, fording sites across the Ingur river, and tried to ascertain the level of preparedness amongst the Abkhaz Armed Forces deployed along the right bank of the Ingur river. Georgia's multi-purpose UAVs were regularly sighted flying over Abkhazia's territory. It was obvious that Georgia tried to methodically collect intelligence data, monitor key strategic facilities and obtain information pertaining to the deployment of the Abkhaz Armed Forces.

In this regard, the Abkhaz side on numerous occasions attempted to draw the attention of the UN Mission in Georgia and the CIS peacekeeping force to these facts reiterating that Georgia's use of the Abkhaz airspace was unacceptable and that these flights were carried out in violation of the Agreement reached in Moscow in 1994. Paragraph 1 of this Agreement stipulates that *"the Parties shall strictly observe the terms and conditions of the ceasefire agreement be it on land, at sea and in the airspace..."*

Meanwhile Tbilisi openly engaged in war preparations – international military advisors were invited to the country, training sessions and joint exercises were held; Georgia purchased state-of-the-art offensive weapons systems capable of inflicting casualties and causing

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<sup>5</sup> Title of the text submitted by Abkhazia to the Fact-Finding Mission: „A Brief Account of August 2008 Events” (unofficial translation from Russian).

destruction on a massive scale, including systems banned under international conventions. (It is common knowledge at this stage that the Government of Georgia purchased armament from a number of European countries. It is also known that the Georgian Parliament had approved the 2008 military budget totalling USD 800 million and then, in July, increased the military spending up to USD one billion).

Tensions in the area were exacerbated by a number of serious statements made by radical Georgian Parliament members who spoke openly of the possibility to resort to military force to restore their country's territorial integrity. According to Erosi Kitsmarishvili, the former Ambassador of Georgia to the Russian Federation, in April 2008 a close-knit circle of Georgian leaders discussed a possible offensive against Abkhazia. According to him, *«selected Georgian leaders stated that the US President supported the idea of launching a military action against Sukhumi... Saakashvili promised that as of August Sukhumi would become the new capital of Georgia.»*

Several influential politicians including those closely linked to Saakashvili himself openly stated that the military operation was not only possible but also necessary. One could get the impression that the only issue of concern for Georgian politicians was the status of Abkhazia and South Ossetia and not the issue of rebuilding trust or finding a peaceful solution to these conflicts. Georgia's primary goal was to restore its territorial integrity, if necessary, at any price. Indirectly the latter premise was substantiated by the Report of the UN Secretary General presented on 23 January 2008, which pointed out in particular that *“a widespread sense of uncertainty and alarm was fuelled throughout the period by an almost daily flow of inaccurate reports originating in the Georgian media and the Georgian authorities themselves. Such allegations have led to a growth in distrust and undermined security, ultimately increasing the chances of confrontation. There were also a growing number of such allegations levelled specifically at the CIS peacekeeping force. Those allegations proved mostly groundless.”*

The political course admittedly chosen by Georgia with a view to finding a possible military solution to the Abkhaz issue and increasing the military presence in the Kodori Valley proved to be a destabilising force affecting the military and political situation in the region as a whole. At the same time any initiatives taken by the Abkhaz side vis-à-vis signing an agreement banning any use of force between Tbilisi and Sukhumi failed in the face of Georgia's reluctance.

As for the situation in the Kodori Valley, since 2006 it has continued to remain a source of constant provocations aimed against Abkhazia ever since this area referred to by the Georgian President M. Saakashvili as “*an exceedingly important strategic bridgehead...rendering us capable of reaching Sukhumi by air within a mere five minutes*”, had been captured. It should be emphasised that the Abkhaz side has undertaken multiple attempts to find a peaceful and diplomatic solution that would allow for a withdrawal of military units from the Kodori Valley and that it was only after Georgia’s military operation against South Ossetia that the decision was taken to liberate this bridgehead that could at any moment be used against Abkhazia.

The operation in the valley was carried out by the Armed Forces of the Abkhaz Republic independently and was confined strictly to the territory of the Republic of Abkhazia. The Abkhaz authorities organised a corridor for the local population residing in the upper part of the Kodori Valley so that the residents could leave the area of hostilities. Immediately before the military operation began the population of the upper Kodori Valley received many warnings as to the preparations and execution of the military operation to liberate the upper Kodori and were provided with a humanitarian corridor made available both for the local civilian residents and military personnel. During the air strikes and artillery fire specific measures were taken to prevent any damage to local communities and avoid any civilian casualties. After the upper Kodori Valley was liberated all reserve units were redeployed from this area. Following a Decree issued by the President of the Abkhaz Republic a military administrative district was set up in this area, while a representative of the President of Abkhazia and an administrative official (commandant) were appointed.

Thus, the operation in the Kodori Valley was conducted without any casualties among the civilian population residing in this area. There was no damage or any violations of norms of international law during the operation, nor were there any instances of looting or arson.