

## Georgia: A Failed or Failing State?

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### On the web

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### Focus

#### Convention on the Rights and Duties of States (Montevideo Convention) 26 December 1933

##### Article 1

"[t]he state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states."

Daniel Thürer, "The 'failed State' and international law", (1999) 836 International Review of the Red Cross 731-761

The "rose revolution" in Georgia has brought to power a young president, Saakashvili, who swore to bring order and security back to the country. One of his tasks is to solve the crisis over Adzharia that was sparked when the leader of this region, Abashidze, who has for years disobeyed the orders of the central government, barred the newly elected President from entering the province. After bilateral negotiations, Saakashvili announced on 19 March 2004 that he was lifting the blockade he had earlier imposed on the Adzharia region. Yet, on 2 May 2004, Abashidze decided to destroy the highway bridges across the Choloki River and near the village of Kaluti on the Adzharia administrative border in order to prevent a possible military action to be undertaken by the Georgian central authorities.

Until 5 May 2004 when Abashidze fled Georgia, his behaviour was not without reminding the successful attempts by other regions of Georgia to gain independence from central power. In the early 1990s Abkhazia and South Ossetia seceded after separatist wars. However, both regions have failed to be recognised by the international community as independent States.

Inevitably, the impudence of the Adzharia region brings back into the discussion the status of Georgia as a virtual "failed State" or a "weak State" as some experts prefer to call it.

According to article 1 of the 1933 Montevideo convention, "[t]he state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states." These characteristics of a State are traditionally applied when a new State emerges on the international level. In this case, statehood rests on concrete facts and exists independently of recognition although this classical position was encroached by the 1991 EC guidelines and notably by the Badinter Commission.

One of the initial major questions raised in the discussion on "failed State" was whether these criteria could also be applied to States that had already gained the legal status of a State, i.e. whether a State could lose its status because it did not fulfill the aforementioned criteria. There is no doubt that a State that breaks into various States loses its status (see for example USSR).

This is not the case of Georgia which *prima facie* fulfils all the criteria to pretend to State status. In this instance, the major problem is the breakdown of "effective" government, the stress being on effective, an adjective that does not appear in the traditional definition of a State as earlier spelled out. Yet, a growing number of experts argue that the government, in order to be considered as such, needs to prove that it is in control over the entire territory and population. This means that the problem essentially lies in the internal and endogenous sphere, where collapse means that the government is not able to perform its basic functions towards its population. In this case, one speaks of a "failed State", a concept that serves as a broad label for that phenomenon and that is legally defined by Thürer as one "which, though retaining legal capacity, has for all practical purposes lost the ability to exercise it".

Another concept that has recently emerged is "failing State". Unfortunately, despite its use in many academic writings, no unique definition can be found. Some equate it with "failed State" whereas others appear to use it to denote a State that drifts towards becoming a failed State.

If one were to adopt this approach, it seems that Georgia would qualify as a failing State since its government does not control Abkhazia and South Ossetia, two entities that have proclaimed their independence, and only barely controls Adzharia that has been forging an independent foreign policy turned towards Russia and has its own military. For example, the Georgian government is unable to enforce judgments of the European Court of Human Rights concerning cases relating to Adzharia (see *Assanidze v. Georgia*, 8 April 2004). In addition, Chechens have been using the Pankissi gorge to hide from the attacks of the Russian armed forces. On several occasions, Russia also entered the territory of Georgia to take military action against these Chechens. Further, the Georgian government faces tremendous problems gathering taxes and ensuring security and order as well as a well functioning judicial system.

Yet, this scenario does not appear to have led to a loss of Georgia's statehood. As long as the territory and the population remain in place, the international community continues to consider "failed", "failing" and weak States as sovereign entities in international law. It indeed appears that the international community does not recognise State failure as long as the State is able to perform governmental functions vis-à-vis the outside world.

### Responsibility

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