

Does fabota qualify  
for statehood under  
montivedeo  
convention essay



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It is difficult to identify criteria for statehood that are universally accepted, therefore as is demonstrated in this question, some states' criteria may be satisfied and would qualify as a state, while other countries like the UK still question Fabota's claim to statehood.

The Montevideo Convention on Rights and Duties of States 1933, attempts to establish a criteria for statehood, by stipulating in Art 1 that a state as a person of international law should possess the following qualifications, a) a permanent population, b) a defined territory c) a government and d) a capacity to enter into legal relations with other states. I will discuss these criteria in detail and its application to Fabota and its claim to statehood when advising the British Government whether it should qualify for recognition.

Firstly, permanent population means that there must be some population linked to a specific piece of territory on more or less a permanent basis and who can be regarded as its inhabitants. There is no information as to the population of Fabota, but it would seem that this qualification is quite flexible as outlined in the Western Sahara Case, and as long as it could be shown that there is a defined group of people living in Fabota these criteria might be achieved.

Defined territory – is an essential element for the existence of a state, a state must have a definite physical existence that marks it out clearly from its neighbours. Thus Fabota must be distinguished from Ethon and any other northern province, with an unambiguous outline, differentiating it from any other part of Ethon. It would seem in cases where rebels have taken control and declared a new state that the outline of its controlled areas must be and will be in constant dispute, and conflict arising with government and forces

of Ethon. However it is clear that this qualification is also quite flexible and there need not be complete certainty over the extent of Fabota's territory as boarder disputes are very common and are clearly not prerequisites of states obtaining statehood, e.

g. India and Pakistan claim to Kashmir. Government, in order for a state to function as a member of the international community it must have a practical identity, the government which is primarily responsible for international rights and duties of a state. It clearly states that Fabota is in effective control of Fabota and its population. It is clear that this is a fundamental attribute of any state and a definite qualification of statehood.

Although we know that Fabota is in effective control, further questions such as does Fabota have a government capable representing Fabota internationally, clearly democratic and entirely permanent governments are irrelevant to this question. Fabota's capacity to enter into legal relations is a factor that could be determinative of their claim to statehood as far as recognition by the UK is concerned, the actual requirements of this test are not clearly laid down, but it seems to that a state is regarded as a state so long as it is under the control direct or indirectly of another state, this does not mean that it must existence independently, but that it must have a degree of legal dependence so that it is not under the lawful sovereign of another state. This is clearly a requirement that could be contended as Ethon may still make a claim to Fabota as being under there legal and sovereign jurisdiction as it has unlawfully been occupied by rebels. Some other characteristics that are not outlined in Art 1 of the Convention but are implied by international law principles and the terms of the convention itself <https://assignbuster.com/does-fabota-qualify-for-statehood-under-montivedeo-convention-essay/>

are the manner of attainment of capacity to enter into legal relations. Can Fabota claim a separate existence from Ethon simply because Ethon is unable to reassert its authority in Fabota, and so whether an illegality in the attainment of factual independence can prevent Fabota from claiming legal independence. Does Fabota have a right to self-determination in that the right of the people of Fabota could claim self-determination as a appropriate way of achieving legal capacity, however there seems a need for this to be lawful as is clearly not to the case here, as any invasion b rebels can clearly not be identifies as being legal.

This manner is clearly deemed unlawful in international law, for example international law prohibits the use or armed force. Therefore is a territory satisfies the factual criteria of statehood but also violate the principle it may not qualify as a state. For example the Turkish Republic of Northern Cyprus appears to satisfy many of the requirements of statehood but is not regarded as a state in international law because it was born out of an illegal use of force by Turkey in 1974. It is not apparent whether there was an illegal use of force in Fabota, but it is indicative of rebel behaviour that it would be involved.

Recognition is perhaps one of the most decisive factors in whether a there is a valid claim to statehood, subsequent recognition of statehood or sovereignty of an aspirant state by members of the international community may be sufficient to cure a defect in an otherwise imperfect claim to statehood. Thus by such affluent and internationally important states as

France, China and Italy, two of which are the in permanent 5 members of the UN, may be enough to identify Fabota as a state, however clearly recognition <https://assignbuster.com/does-fabota-qualify-for-statehood-under-montivedeo-convention-essay/>

by three states is not enough to be considered as the international community at large, but may compel or encourage other states into recognition as a result of the importance of those states who already recognise Fabota. For example the admittance of some former Yugoslavian states into the UN as a result of extensive recognition. The issue of recognition is clearly the most decisive factor in whether the Fabota has a claim to statehood, and if the UK is under a duty of international law to recognise Fabota.

It would seem that France, China and Ital have adopted recognition de facto, where there has been something unlawful in the manner of creation of Fabota but its effective existence demands that it be treated as an international person, clearly these states would argue that this is the case. For example was the UK's de factor recognition of the Bolshevik government of the USSR in 1921. In asking whether the UK has a duty under international law to recognise Fabota would seem to be no. the act of recognition is a political act, the decision whether to recognise or not will one for the executive authorities of each state and will be influenced by political, economical and legal considerations. However we must consider the legal consequences of France, China and Italy's act of recognition of Fabota, there are two theories which may come into play here. Declarative Theory, according to this theory the general legal effects of recognition are limited, when a existing state recognises a new state, this is said to be nothing more than an acknowledgement of pre-existing legal capacity, this therefore that France, China and Italy's is not decisive of Fabota's claim to statehood

because that kind of status can only be conferred by operation of international law.

Therefore it would seem applying this theory that the UK is under no duty to recognise as the international legal personality of a state does not depend on recognition by other states, but is conferred by rules of international law, regardless of recognition. It seems then that if the international law principles recognise Fabota claim to statehood that it is irrelevant whether the UK recognises them – but whether international law defines them as a state, as was the case in GB v. Costa Rico. This theory seems to be most representative of the law at the moment as the fact that many Arab states refused to recognise Israel did not prevent them from making claims against her. So the fact that the UK as not recognised Fabota may only have consequences in national law but it does not mean that Fabota has no international personality. So if Fabota satisfies the 5 tests of statehood it will be a state in international law regardless of recognition and it would seem that the does not have a duty to recognise in the sense to enter treaties with, but must acknowledge the state in international law.

The contrasting Constitutive theory however denies that international personality is conferred by operation of international law and considers the act of recognition and a precondition to the existence of the capacities of statehood or government. So in this case, if Fabota is not recognised as a state it is not a state. This theory recognises that states are under no obligation to enter into bilateral agreements with any other entity. However it would regardless of the constrains of this theory that if the UK refused to

recognise Fabota as a state that it was not a state, it simply means it will not be protected as a state in the UK not necessarily in international law.

It is clear that this theory has its flaws as it is inconsistent with modern law principles that legal personality should be a subjective assessment carried out by third parties and not an objective test as laid down by the Montevideo Convention. Nevertheless it remains to be seen, to what extent is recognition necessary for there to be statehood. Some would argue that there is a duty to recognise once a state has fulfilled the criteria of international law. Clearly even if this were the case, the UK does not have a duty in this circumstance as it is clear the Fabota can, under no evaluation of the facts, satisfy all the qualifications of statehood under the Montevideo Convention.

It seems the question whether the UK has a legal duty is answered quite clearly in Opinion no. 10 of the Yugoslav Arbitration Committee in July 1992, which emphasised that recognition was discretionary and outlined its criteria for recognition similar to that of the Montevideo Convention. Although my advice to the UK would be to take account of all other circumstances in which they have recognised other provinces claim to statehood even though they fell far short of this criteria. Clearly the major factor when considering whether to recognise or not is based purely on economic or political factors, which without better knowledge of the circumstances in Fabota it is difficult to make a judgement. Factors I would recommend the UK to take account of, are primarily whether or not they fulfil the fundamental requirements as laid down in the Convention, consideration that some key international players like France and China have recognised and the political and economic

advantages of recognition while considering the political situation in Fabota itself.

The UK court has itself defined criteria in which it should recognise governments, and is similar when considering whether it should recognise states. In *Somalia Republic v. Woodhouse Drake and Carey – Hobhouse J* identified factors the court should take into account when recognising a government, which may have significance also when considering to recognise a state. These were a) the degree nature and stability of administrative control, if any which exercised over the territory of the state and b) the extent of international recognition.