

No Justice Without Statehood: Resolving the Lack of Accountability Measures As Regards Newly-Formed States

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States have always been regarded as the proper subjects of international law. At first, this particular designation did not encounter any complications, as there was essentially no dispute as regards which entities should be considered states. As such, states were the only ones with legal personality having rights and obligations under international law.

As the world and its people matured, the diversity of the land and its inhabitants started to manifest. More and more entities considered themselves as states. It is at this point that certain theories were formulated to help identify and classify states from non-states. The first major development in this regard was the 1933 Montevideo Convention on the Rights and Duties of States, which enumerated the elements necessary for one to be considered a state.

However, this classification proved more theoretical than practical. Although considered as a mere codification of customs, the principles of the Montevideo Convention failed to explain situations in reality. Some entities that seemed to comply with the requirements for statehood were still not considered as such by other states. Thus, the constitutive theory was created which considered recognition as the defining element which constitutes a state. However, given that international law concerns itself with states, legal issues concerning the conflicting theories would inevitably arise.

An issue, which springs from the emergence of the constitutive theory, deals with the accountability measures for war crimes and crimes against humanity in cases of newly-formed states. The Rome Statute, the main treaty that deals with such issues, expressly limits its application to states, which proves problematic given that there is no strict legal mechanism in place to determine statehood and to provide adequate relief.

This Note discusses the general principles regarding statehood, analyzes the conflicting theories, studies their effect on exacting accountability with regard to the Rome Statute, and proposes a framework to be used in resolving the issue. Using this framework, the issue of accountability with

regard to the Rome Statute can be resolved by considering its objective of providing an avenue to exact justice.