

RESOLUTION 3/2018

COMMITTEE ON RECOGNITION AND NON-RECOGNITION IN INTERNATIONAL LAW

The 78th Conference of the International Law Association, held in Sydney, Australia, 19–24 August 2018:

HAVING CONSIDERED the Reports of the Committee on Recognition and Non-recognition in International Law, presented in Sofia (2012), Washington (2014), Johannesburg (2016), and Sydney (2018);

RECOGNISING the need for elucidation of both the law and the practice of the recognition of States and of governments, including whether contemporary issues of secession, break-up of States and the creation of new States have changed international law and policy with respect to recognition;

NOTES the conclusions of the Committee on Recognition and Non-recognition in International Law discussed in its Final Report, in particular that:

1. The Montevideo criteria continue to provide the basic framework for assessing statehood controversies;
2. The Constitutive/Declaratory dichotomy is of limited usefulness in analysing the role of recognition;
3. Although an emergent entity's objective status as a State may have legal consequences for other States, there is no obligation to issue a formal recognition of the entity's Statehood;
4. Apart from Security Council-mandated non-recognition of certain unlawfully created situations, there is a widespread practice – whether or not understood to be obligatory – of non-recognition of entities deemed to have been unlawfully created;
5. Formal recognition of governments is no longer a widespread practice;
6. Where competing regimes have sought recognition as a State's government, the various approaches taken have not reflected firmly established criteria for assessing governmental legitimacy;
7. Domestic courts have tended to defer to the executive in determining whether to treat an entity as a State;
8. Recognition or non-recognition of a State or a government may have numerous domestic legal effects, including on immunities, access to courts, and control of foreign State property located within the jurisdiction;
9. Recent State practice pertaining to the conflicts in Libya and Syria and to the annexation of Crimea may indicate a need for further research into evolving norms governing the recognition of belligerency, the recognition of territorial change, and the non-recognition of illegal situations.

RECOMMENDS to the Executive Council that the Committee on Recognition and Non-recognition in International Law, having accomplished its mandate, be dissolved.