

**LAWFOYER INTERNATIONAL**  
**JOURNAL OF DOCTRINAL LEGAL**  
**RESEARCH**  
**(ISSN: 2583-7753)**

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Volume 2 | Issue 2

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2024

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# EVOLVING NORMS OF GOVERNMENT RECOGNITION: THE CASE OF THE TALIBAN IN AFGHANISTAN

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## I. ABSTRACT

This paper examines the evolving landscape of government recognition in international law. Traditionally based on effectiveness, contemporary trends suggest emerging criteria, including gender equality, counter-terrorism efforts, and inclusive governance. The Taliban regime in Afghanistan, with its gender-based discrimination and ties to terrorism, serves as a case study. The international community's near-unanimous refusal to recognize the Taliban highlights a potential shift towards non-recognition in cases of severe human rights abuses. The paper analyses the legal implications and explores the possibility of conditional recognition as a tool to incentivize compliance with international norms.

## II. KEY-WORDS

Afghanistan, Conditional recognition, Gender apartheid, Government recognition, Human rights, International law, International Recognition Jus cogens, State practice, Taliban, Terrorism.

## III. INTRODUCTION

The concept of recognition in international law holds significant weight. Recognition of states grants them legitimacy and allows them to participate fully within the international community. Historically, recognition primarily focused on the effectiveness of a state's control over its territory. The Montevideo Convention solidified this notion by outlining the characteristics a state must possess for recognition.<sup>2</sup> However, the recognition of governments within established states presents a distinct situation. Traditionally, the focus was on a government's de facto existence rather than its legitimacy. Doctrines like the Estrada Doctrine emphasized

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<sup>2</sup> Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19.

non-interference in a state's internal affairs while acknowledging the governing body's effectiveness.

This paper will examine the legal standards for government recognition, analyse the situation in Afghanistan and the Taliban's human rights record, and explore the implications for the evolution of recognition standards, including the possibility of conditional recognition.

#### **IV. RECOGNITION OF GOVERNMENTS**

Recognition of States is an important aspect of International Law as the States being the primary subjects are in most cases the entities which decide whether a specific rule fulfils the requirements for its applicability. The first example of the recognition of a new State in international law arose from the Declaration of Independence by the Republic of the United Netherlands in 1581. In the treaty of 30 January 1648, Spain stated, "In the first place the said Lord the King declares and acknowledges that the said Lords the States General of the Low Countries ... are free and sovereign states ... upon which ... the said Lord the King has no manner of pretensions." There was a difference of opinion between France and Britain during the Declaration of Independence by the United States of America concerning the recognition of the new state. Britain argued that war or revolution could not confer the title of a new state without the recognition of the former sovereign, whereas France relied on the doctrine of effectiveness. This became the accepted doctrine in the 19<sup>th</sup> century.<sup>3</sup> In 1933, the Montevideo Convention on Rights and Duties of States to be recognized for statehood a state may have, "a permanent population, a defined territory, a government, and the capacity to conduct international relations." A state may be considered for statehood even if it has a non-recognized government. The recognition of a state depends on its 'effective control'. Recognition by other states is not significant a factor in considering statehood.<sup>4</sup>

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<sup>3</sup> Wolfrum Rüdiger. *The Max Planck Encyclopaedia of International Law*. Oxford University Press, 2010.

<sup>4</sup> Sir Robert Jennings, and Sir Arthur Watts. "The Subjects of International Law, Ch.2 International Persons, Recognition of States and Governments." *Oxford Scholarly Authorities on International Law*, Oxford Public International Law, 2008.

Recognition of a Government is necessary for the government's entitlement to represent the state for all international purposes and to have friendly relations with the governments of other states. Although the conditions of recognition of the government of a state have varied throughout history. The Tobar Doctrine of 1907 although not widely accepted stated that a new revolutionary government should only be recognized after elections. The Estrada Doctrine of 1930 was based on the understanding that the change of governments is an internal matter, and the recognition of a government should be based on its *de facto* existence rather than on its legitimacy.<sup>5</sup> This doctrine was introduced by the Mexican Secretary of Foreign Affairs. This doctrine was adopted by the UK, the USA, and many other states in 1980. The states still have discretion while recognizing a government, they can continue to have or establish new diplomatic relations with the state but have no obligation to recognize its government.<sup>6</sup>

On December 16, 1991, the European Union issued a declaration outlining "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union." These guidelines established prerequisites for formal recognition by countries in the region. Notably, they emphasized adherence to the UN Charter, the Helsinki Final Act, and the Charter of Paris, particularly concerning the rule of law, democracy, and human rights. This shift highlights a departure from the traditional criteria for recognition espoused by the Estrada Doctrine, showcasing a growing emphasis on human rights and democratic principles in international relations.<sup>7</sup> One would conclude from the above information that the recognition of a government is not as significant as that of a state. But, for the government, recognition is crucial because "a state's existence is of little worth unless it is accepted as such into the community of nations." This makes an unrecognized government equivalent to an unrecognized state.<sup>8</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Memorandum on the Recognition of Governments, quoted in Stefan Talmon, *Recognition of Governments in International Law* (1998), pp. 38-39.

<sup>7</sup> Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union' (16 December 1991). < <https://www.dipublico.org/100636/declaration-on-the-guidelines-on-the-recognition-of-new-states-in-eastern-europe-and-in-the-soviet-union-16-december-1991/>>

<sup>8</sup> Fatmeh Basma, "A Necessary Evil: Conditional Recognition of the Taliban." *North Carolina Journal of International Law*.

## V. THE SITUATION IN AFGHANISTAN

Although these are the conventional standards, some new norms affecting the recognition of governments have emerged recently, including considerations of gender apartheid or gender-based discrimination, relations with terrorist organizations, violations of human rights, and not abiding by international law. The behaviour of the Taliban like restricting education and occupation opportunities to women and being linked to Al-Qaeda, a terrorist organization, has played a significant role in states declining their requests for recognition.

The UNGA resolution adopted on 10<sup>th</sup> November 2022 titled “The situation in Afghanistan”, condemns the Taliban government and urges non-recognition. Out of the 193 member countries, 116 countries voted for the reservation, 67 countries did not vote, and 10 countries including Russia, China, North Korea, and Pakistan have voted against the reservation.<sup>9</sup> The Taliban, a terrorist organization has taken effective control of the territory of Afghanistan unconstitutionally. Non-recognition of terrorist organizations taking control of a State has been seen in the past with the non-recognition of Hamas in Palestine. Also states fear that the recognition of the Taliban can be an implicit acceptance of their behaviour. Even though the Hamas has held elections in the state it has not received recognition from the majority of the States in the international community. Giving the Taliban the recognition will raise questions and cause disputes<sup>10</sup>.

Taliban is desperate to be recognized internationally not only to accomplish its validity but also because the country's economy has been struggling as the US, the World Bank and the International Monetary Fund suspended the access of Kabul to a huge extent concerning loans, funds, and assets and due this, the government has been making several efforts and promises in order get internationally recognized. The Taliban government's recognition is not merely a matter of political legitimacy; it's a critical step in addressing Afghanistan's humanitarian catastrophe.

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<sup>9</sup> ‘The Situation in Afghanistan, Resolution Adopted by the General Assembly’ [2022] digitallibrary.un.org <<https://digitallibrary.un.org/record/3993873?ln=en>>.

<sup>10</sup> Fatmeh Basma, “A Necessary Evil: Conditional Recognition of the Taliban.” *North Carolina Journal of International Law*.

By acknowledging the Taliban as the de facto authority, the international community can establish formal channels for aid delivery, ensuring that crucial resources reach those who desperately need them. Recognition would also enable the unfreezing of Afghan assets held abroad, injecting much-needed liquidity into the crippled economy and potentially revitalizing vital sectors like healthcare and education. Furthermore, engaging with the Taliban government could incentivize them to moderate their policies, particularly those concerning women's rights, and encourage cooperation on counter-terrorism efforts.

While acknowledging the complexities and concerns surrounding the Taliban's ideology, prioritizing the well-being of millions of suffering Afghans necessitates exploring pragmatic solutions, and recognition, with appropriate conditions, could be a crucial step in that direction.<sup>11</sup> Although a plain reading of the law would suggest that Taliban fulfils all the necessary criteria to be recognized as a State, various states like China, Pakistan, and Russia have implied their support towards the recognition of the Taliban as the Government of The Islamic Emirate of Afghanistan.<sup>12</sup>

## VI. ANALYSIS AND SUGGESTIONS

Based on the analysis, state practice shows that fresh norms for government recognition in international law are beginning to emerge. Among these criteria are the existence of "gender apartheid" or gender-based prosecution, affiliations with foreign terrorist organizations, and a deficiency in inclusive governance. The most compelling argument against the Taliban as a legitimate government for Afghanistan is that its guiding principles are so fundamentally discriminatory as to violate international law's jus cogens norms. In terms of how the Taliban treats women, these abuses are particularly severe. Therefore, until a constitutional government is established or the Taliban at least moderately reforms its policies on gender, Afghanistan could be presumed to be without a de jure government, in the absence of another entity with a legitimate constitutional claim to the status of the Afghan government. Other

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<sup>11</sup> Dayne Curry, Becky Roby, Ellen Bevier, and Anastasia Moran, "Afghanistan's Two Years of Humanitarian Crisis Under the Taliban," United States Institute of Peace, September 19, 2023.

<sup>12</sup> Ayushee Priya & Barnali Das, 'Taliban Government and Its International Recognition' (2022) 4 *Indian JL & Legal Rsch* 1

governments may still decide not to recognize the Taliban due to the regime's links to terrorism and its lack of an inclusive government, even in the absence of a jus cogens norm. However, given the way the Taliban has treated women, the international community's unanimous refusal to acknowledge them as the official government of Afghanistan until now may indicate a shift in international law and establish a new standard by which all cases of gender apartheid will be measured. Therefore, until a constitutional government is established or the Taliban at least moderately reforms its gender policies, Afghanistan will be presumed to be without a de jure government in the absence of another entity with a legitimate constitutional claim to the status of the Afghan government.<sup>13</sup>

Although the above is a legal analysis of the problem, a political way to stop the existence of these problems can be to give conditional recognition to the Taliban government. Wherein the states recognizing the government will place conditions for recognition. These conditions can include but are not restricted to ratifying and abiding by international conventions, treaties, and laws in exchange for recognition. Even though a state cannot withdraw its recognition legally but the incentive for Afghanistan is greater than the recognizing governments. The need for immediate funds and to stabilize its economy, the Taliban government might opt for conditional recognition. Even though states cannot withdraw their recognition on the grounds of non-compliance with the conditions, the states can always withdraw the recognition of a government if it is involved in human rights violations. The same was done by many states in 2006 against the white minority government of South Africa.<sup>14</sup>

## VII. CONCLUSION

The analysis of the Taliban's situation reveals a potential shift in international law regarding government recognition. While the Taliban exerts effective control over Afghanistan, their treatment of women and association with terrorist groups violate

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<sup>13</sup> Haroun Rahimi & Mahir Hazim, 'International Law and the Taliban's Legal Status: Emerging Recognition Criteria?' (2023) 32 *Wash Int'l LJ* 228.

<sup>14</sup> Jure Vidmar, 'Norm Conflicts and Hierarchy in International Law: Towards a Vertical International Legal System?,' in *Hierarchy in International Law: The Place of Human Rights* (Erika De Wet & Jure Vidmar eds., 2012).

fundamental international legal principles, including jus cogens norms. This raises questions about the legitimacy of the Taliban regime. The international community's near-unanimous refusal to recognize the Taliban signifies a possible new standard – non-recognition in cases of severe gender apartheid. Consequently, absent a legitimate constitutional government or substantial reforms from the Taliban, Afghanistan might be considered lacking a de jure government.

While the paper explores the legal aspects, a potential solution lies in conditional recognition. States could offer recognition contingent on the Taliban adhering to international conventions and improving human rights practices. Though states lack the legal authority to withdraw recognition solely for non-compliance, they can resort to this measure in instances of gross human rights violations, as witnessed with South Africa's former white minority government.

Notwithstanding, any decisive action on this matter necessitates meticulous observation of the Taliban government by the international community. A proactive response is contingent upon discernible shifts in their policies or conduct. While this analysis primarily encompasses the legal and political dimensions of the crisis, it is imperative to acknowledge that, from a humanitarian standpoint, the international community bears a moral responsibility to alleviate Afghanistan's dire humanitarian catastrophe through all available avenues.