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# DE FACTO POWER, DE JURE DENIAL: RETHINKING GOVERNMENT RECOGNITION THROUGH THE TALIBAN CASE

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## ABSTRACT

The Taliban's forceful seizure of power in Afghanistan on 15 August 2021 has confronted the international community with one of the most complex and unresolved questions in contemporary public international law: whether, and on what legal basis, the Taliban government ought to be recognised under international law. This paper examines the international legal dimensions of recognition of the Taliban government, drawing on the doctrines of de facto and de jure recognition, the principle of effective control as established in the Tinoco Arbitration (1923), and the emerging doctrine of democratic legitimacy. It engages with recent scholarship, including Hasar (2024), Rahimi and Hazim (2023), Faheem and Khan (2022), and Trivedi (2025), to construct a comprehensive doctrinal argument. The paper argues that while the Taliban satisfies the traditional effectiveness test for government recognition, its profound violations of jus cogens norms, particularly its systematic gender apartheid, coupled with the absence of democratic legitimacy, provide a strong legal and moral basis for withholding de jure recognition. The paper further examines the geopolitical rift between the US-led group of states and the China-Russia bloc, the significance of engagement without recognition, the international legal consequences of non-recognition (including access to state assets, UN representation, and state responsibility), and the role the UN General Assembly may play in resolving this impasse. The paper concludes by arguing that recognition decisions, though largely political in practice, must be guided by international law to avoid adverse legal consequences.

**Keywords:** Government Recognition, De Facto and De Jure Recognition, Taliban Government, Afghanistan 2021, Democratic Legitimacy, Jus Cogens Norms, State Responsibility.

## I. INTRODUCTION

Recognition of governments is a complicated question of international law, with “State practice itself showing a certain ambivalence”.<sup>1</sup> With ample and challenging evidence of new State practice, the international community’s reaction to the Taliban’s coming into power in Afghanistan at the end of a long-lasting civil war offers valuable and fresh insights into the various aspects of this question. The Taliban’s takeover of Kabul on August 15, 2021, resulted in a quick and sudden change of power in Afghanistan. After taking over Kabul, the Taliban announced an interim government with important Taliban leaders as the members of the Cabinet, officially declaring the name of the country as the ‘**Islamic Emirate of Afghanistan**’ and establishing a ‘caretaker cabinet’ on 7 September 2021.

The forceful return of the Taliban to power in Afghanistan poses difficult questions of international law. Chief among these questions is who has the right to represent the Afghan state internationally after August 15, 2021, and whether, and on what legal basis, any state may recognise or refuse to recognise the Taliban as the government of Afghanistan. The question before the international community is not the statehood of Afghanistan but the question of the acceptance of the Taliban government as the legitimate representative of the Afghan people in the international community and its international institutions.<sup>2</sup>

This paper examines the Taliban’s rise, the doctrines of government recognition, state practices of engagement and non-recognition, geopolitical divisions, and the UN’s role, ultimately assessing the legal implications for unrecognised de facto regimes.

## II. HISTORICAL BACKGROUND: THE ROAD TO KABUL

After the withdrawal of the Soviet troops in 1989, an internal struggle started in Afghanistan among the resistance groups, collectively known as *mujahideen*. In 1992, as a result of an interim power-sharing agreement, a *mujahideen* leadership council headed by President Rabbani was established to rule the country. Amid the turbulence within the country, the Taliban, members of which were formerly part of the resistance against the Soviets, entered

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<sup>1</sup> Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23(1) *Chinese Journal of International Law* 73 <https://academic.oup.com/chinesejil/article/23/1/73/7634748> accessed 08 April 2026.

<sup>2</sup> Muhammad Faheem and Minhas Majeed Khan, ‘Recognition of the Taliban Government in Afghanistan and International Community’ (2022) 42(1) *Strategic Studies* 81–96 <https://www.jstor.org/stable/48732345> accessed 04 April 2026.

the scene and gradually took control of vast territory, proclaiming its rule over Afghanistan in 1996. Mostly consisting of the Pashtun ethnic community and known for following a strict and literal understanding of Islamic Law, the Taliban failed to receive recognition from other States, except for Pakistan, Saudi Arabia and the United Arab Emirates. Its unwillingness to fulfil Afghanistan's international obligations, in particular those arising under human rights instruments and its failure to fight international terrorism were among the reasons for its non-recognition.<sup>3</sup>

The Taliban's first regime lasted until 2001 when US forces entered Afghanistan in response to the September 11 attacks. A new government was established with the initiative of the UN. Frustrated over the lack of military progress against the Taliban, the US President signed an agreement with the Taliban in February 2020. By the agreement, the US committed to the withdrawal of its and its partners' forces from the country within 14 months, in return for which the Taliban would prevent any group or individual, including Al-Qaeda, from using Afghan territory to threaten the US and its allies.<sup>4</sup> The Taliban, furthermore, agreed to start intra-Afghan negotiations, expected to lead to the formation of a new post-settlement Afghan Islamic government.

The negotiations made no evident progress. Nonetheless, the US started the final withdrawal in May 2021. Already controlling or contesting about 40% of Afghan territory as early as October 2018, the Taliban started making a sweeping advance in May 2021, which finally resulted in its effective takeover of the country with the fall of the capital Kabul on 15 August 2021, to the surprise of many observers. The Taliban's victory came with minimal fighting, as it captured many regions from the government forces through payments or the mediation of local elders who tried to prevent bloodshed.<sup>5</sup> President Ashraf Gani fled the country, and while First Vice President Amrullah Saleh claimed to be the caretaker President under the constitution, his resistance was eventually crushed by the Taliban in September 2021.

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<sup>3</sup> Muhammad Faheem and Minhas Majeed Khan, 'Recognition of the Taliban Government in Afghanistan and International Community' (2022) 42(1) *Strategic Studies* 81–96 <https://www.jstor.org/stable/48732345> accessed 04 April 2026.

<sup>4</sup> Abhishek Trivedi, 'Topsy-Turvy Journey of the Taliban Recognition in International Law: What Next?' (2025) 15 *Asian Journal of International Law* 209–231 <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/abs/topsy-turvy-journey-of-the-taliban-recognition-in-international-law-what-next/07A97894E64D8B96107DC03FE18EEE55> accessed 10 April 2026.

<sup>5</sup> Ben Saul, "'Recognition' and the Taliban's International Legal Status' (ICCT, 15 December 2021) <https://icct.nl/publication/recognition-and-talibans-international-legal-status> accessed 06 April 2026.

### III. THE INTERNATIONAL LAW OF GOVERNMENT RECOGNITION

#### A. The Concept and Doctrinal Foundations

In simple terms, recognition means acknowledgement and acceptance; but in the terminology of international law and international politics, it means the acknowledgement and acceptance of the international personality of either a new state or a new government. The recognition of a government, specifically, is the acceptance and acknowledgement of a new government's authority within an existing state. If the government in a State changes through normal political processes, then the question of recognition does not arise. However, if the change in a government is through unconstitutional revolutionary means and as a result of force, then the matter of recognising that new regime becomes important for the international community.<sup>6</sup>

There are two competing doctrines in international law that have historically guided states' behaviour on the recognition of new governments. The *Tobar doctrine*, presented by Carlos Tobar, former Foreign Minister of Ecuador, in 1907, holds that a new government should be recognised only if it has come to power through democratic, constitutional and popular means. The *Estrada doctrine*, expressed by the Mexican Minister of Foreign Affairs in 1930, by contrast, advocates that the criterion for recognising new regimes should be their level of stability and control over the state, rather than their democratic nature. In the context of the recognition of the Taliban government in Afghanistan, the US-led states seem to be influenced by the Tobar doctrine and the China-Russia-led group seems to be practically applying the guidelines of the Estrada doctrine.

The International Law Commission, after detailed analysis and deliberations, concluded that there was no uniformity in state practices regarding the process of recognition and it had been practised more as a matter of foreign policy and political expediency instead of a legal duty.<sup>7</sup> In this context and until the present, it is not considered a legal obligation of states to recognise a new state or government; each state decides the matter, keeping in consideration its own political interests and ideological orientation.

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<sup>6</sup> M Craven and R Parfitt, 'Statehood, Self-Determination, and Recognition' in *Oxford University Press eBooks* (Oxford University Press 2018) <https://doi.org/10.1093/oxe/9780198791836.003.0007> accessed 07 April 2026.

<sup>7</sup> H Lauterpacht, 'Recognition of States in International Law' (1944) 53 *The Yale Law Journal* 385 <https://doi.org/10.2307/792830> accessed 04 April 2026.

## B. The Conventional Approach: Effectiveness and Non-Recognition of Governments

The conventional approach in international law holds that foreign recognition is not legally 'constitutive', or determinative, of whether an entity is the government of a state. Rather, an entity qualifies as the government if it effectively, independently and durably controls the state's territory, its authority is recognised (but not necessarily supported) by the population and there is no rival effective authority.<sup>8</sup> Recognition may then simply be 'declaratory' of this legal situation, but even in the absence of recognition, the entity will still be the legal government.

This is the case even if the entity came to power unconstitutionally, and even if it is not democratic or does not respect human rights. The essential rationale is that international law abhors a vacuum. To pretend that a government does not exist where a political entity is evidently exercising authority would mean that the entity is not bound by the state's international obligations or responsible for breaches of them. It would also mean the entity cannot assert the state's rights, including the right to protect its people's interests or to defend the state from foreign intervention.

In practice, the question of recognition of a government arises only when the government changes hands in violation of the domestic legal procedures for transfer of power, as in a *coup d'état*, revolution, or civil war, casting doubt on the identity of the new government. The Taliban's coming into power at the end of a long-lasting civil war by force in Afghanistan was such an event that it expectedly challenged the international community with the question of recognition. However, even in such cases, states do not have to publicly declare whether they recognise or not the new government. Not only is there no such duty in international law, but there is also a widespread policy of not extending formal or express recognition to governments, commonly referred to as recognising States, not governments, to which a growing number of States have adhered since the 1960s.<sup>9</sup>

This policy shift, however, did not entail entirely dispensing with the institution of government recognition. Rather, the relevant practices and statements in which this policy is announced show that the decision on recognition could still be inferred from the nature of dealings, such

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<sup>8</sup> *Tinoco Arbitration (Great Britain v Costa Rica)* (1923) 1 RIAA 369.

<sup>9</sup> Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23(1) *Chinese Journal of International Law* 73 <https://academic.oup.com/chinesejil/article/23/1/73/7634748> accessed 08 April 2026.

as the maintenance of diplomatic relations, that States may or may not have with the new government. States adopting this policy mostly preferred to deal, as government, with the entity exercising effective control over the country concerned, though without entirely forfeiting their right not to deal, as government, even with the effective authority. As an example of this policy, Switzerland's foreign policy paper states that in case of a change of government, 'Switzerland declines any explicit recognition' and restricts itself to the uninterrupted continuation of relations with the country concerned and hence with the new government. Switzerland thus follows a practice based primarily on the principle of effectiveness.'

### **C. The Taliban Case as an Exceptional Departure from Non-Recognition Policy**

The case of the Taliban proved to be one of the exceptional cases where States departed from their usual policy of silence on recognition. While some States, such as the US, Germany and the UK, initially cited their policy of not making formal statements on recognition, they could not help but clarify in public their position on recognition of the Taliban. Many States made it clear with public statements that they will not 'recognise' the Taliban as the government of Afghanistan until it meets certain conditions. It seems from this practice that what led States not to apply the policy of not making formal statements on the recognition of governments to the case of the Taliban was the purpose of using recognition as leverage to secure the fulfilment of certain conditions by the Taliban.<sup>10</sup> The UN Secretary-General acknowledged this when he stated in a press conference on 19 August 2021 that 'it's very important for the international community to be united ... to use the only leverage that exists, which is the interest of the Taliban for legitimacy, for recognition.'

In the case of the Taliban, what further eased concerns was that statements of non-recognition could amount to unlawful interference in Afghanistan's internal affairs, as evidenced by the corresponding resolutions of the UN Security Council. A Council resolution adopted on 10 March 2020 had already noted 'that the Islamic Emirate of Afghanistan is not recognised at the United Nations and ... the UN Security Council does not support the restoration of the Islamic Emirate of Afghanistan'.<sup>11</sup> The resolutions adopted after the Taliban's coming into power emphasised the importance of the establishment of an inclusive and representative government

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<sup>10</sup> H Lauterpacht, 'Recognition of States in International Law' (1944) 53 *The Yale Law Journal* 385 <https://doi.org/10.2307/792830> accessed 04 April 2026.

<sup>11</sup> Muhammad Faheem and Minhas Majeed Khan, 'Recognition of the Taliban Government in Afghanistan and International Community' (2022) 42(1) *Strategic Studies* 81–96 <https://www.jstor.org/stable/48732345> accessed 04 April 2026.

in Afghanistan. Thus, the case of the Taliban confirmed the revocable nature of the long-standing policy of not making express statements on the recognition of governments.

#### IV. ENGAGEMENT WITHOUT RECOGNITION

The majority of States avoided making an express statement on 'recognition' of the Taliban. This silence on its own reflects the salience of the policy of not recognising governments. The important question this raises is what acts concerning, or types of engagement with, a de facto government may imply, or indicate, recognition.

A review of the practice regarding the Taliban indicates significant opportunities for engagement with an unrecognised government. It shows that no specific type of conduct, even the accreditation of diplomats or the conclusion of bilateral treaties, which would otherwise imply recognition, as in theory these can only be enjoyed by governments under international law, necessarily amounts to recognition.<sup>12</sup> This conclusion obviously makes inferring recognition from the circumstances of a case difficult, as it renders otherwise very logical indications of recognition ineffectual.

While many States suspended their diplomatic activities in Afghanistan after the Taliban's victory, some of the foreign embassies in Kabul, including those of Russia, China, Iran, Qatar, Türkiye and Central Asian States, reportedly remained open. Moreover, several States, including Indonesia, India, Japan, Saudi Arabia and the United Arab Emirates, later reopened their embassies, for purposes such as to resume consular services, coordinate humanitarian aid to Afghanistan and better engage with the Taliban.

As reported based on announcements by Afghan embassies and the foreign ministries of the host countries, only four, China, Pakistan, Russia and Turkmenistan, have formally accredited diplomats appointed by the Taliban.<sup>13</sup> Iran, Türkiye, the United Arab Emirates and Kazakhstan later joined among these countries that accepted diplomats appointed by the Taliban. These appointments were usually at the level of chargé d'affaires. Going even further, at an official ceremony on 30 January 2024, the Chinese President accepted the credentials of a Taliban-

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<sup>12</sup> Vienna Convention on Diplomatic Relations (adopted 18 April 1961, entered into force 24 April 1964) 500 UNTS 95 [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf) accessed 10 April 2026.

<sup>13</sup> G Singh, 'Identifying the Legitimacy of the Taliban Government and the Resurrection of Peace in Afghanistan' (2024) 10 *Groningen Journal of International Law* 103 <https://doi.org/10.21827/grojil.10.2.103-118> accessed 05 April 2026.

appointed ambassador.

However, some of these States, such as Indonesia, India, Türkiye, Pakistan, Iran and China, that either appointed diplomats to their missions in Afghanistan or accepted diplomats appointed by the Taliban made clear with later statements or disclaimers that the establishment of diplomatic relations with the Taliban did not amount to its recognition. The Taliban's Foreign Minister confirmed that while 'no country has made an announcement of official recognition of the new government of Afghanistan', 'whatever interaction' is taking place between other States and us, they 'behave with us like an official government.' This only confirms that treatment or acknowledgement of an entity as a government and recognition of an entity as a government are two different phenomena.<sup>14</sup>

Two days after the Taliban took control of Kabul, the High Representative of the EU stated that, for reasons such as to ensure safe passage from Afghanistan, to avoid a new refugee exodus and to prevent the return of foreign terrorists, 'We have to get in touch with the authorities in Kabul, whatever they are. The Taliban have won the war, so we will have to talk with them, adding that 'It's not a matter of official recognition, it's a matter of dealing with.' Likewise, the EU adopted a policy of 'gradual engagement' with the Taliban, distinct from political recognition, with the pace of engagement dependent on the Taliban's conduct with respect to the conditions for its recognition.

The Taliban was also able to sign 'preliminary agreements' with Russia on the export of gasoline, diesel, gas and wheat to Afghanistan and it concluded agreements with Iran, Kazakhstan and considered a security agreement with Qatar. It also conducted Afghanistan's necessary relations with the outer world through agreements with foreign companies, including a Chinese company to extract oil from Afghan soil, a UAE company to manage Afghan airports and an Uzbekistan Railways subsidiary to operate an Afghan railway. This shows that an unrecognised but effective government can do away with the difficulty of concluding agreements with other States in order to meet certain practical needs of its country by concluding similar agreements with foreign private entities.<sup>15</sup>

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<sup>14</sup> Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23(1) *Chinese Journal of International Law* 73 <https://academic.oup.com/chinesejil/article/23/1/73/7634748> accessed 08 April 2026.

<sup>15</sup> B R Roth, 'Whither Democratic Legitimism?: Contextualizing Recent Developments in the Recognition and Non-Recognition of Governments' (2014) 108 *AJIL Unbound* 213 <https://doi.org/10.1017/s2398772300002191> accessed 03 April 2026.

## V. CONDITIONS PLACED BY STATES FOR RECOGNITION

States in practice enjoy a wide power of discretion on whether, when and under what criteria to recognise a putative government. Most of the time, however, they grant recognition if the putative government shows the ability to exercise effective control over all or almost all of the State and its people, regardless of how it attained or maintained this control, so long as it is not because of foreign support. Even though some legal scholars deemed the criterion of effective control as legally binding, or the only or minimum criterion for recognition of a government, in practice, it has occasionally been disregarded and replaced, or combined, with some additional criteria.<sup>16</sup>

In the case of the Taliban, while international law allows for non-recognition of a government for almost any reason, the Taliban viewed its non-recognition as ‘politically-motivated rather than being a legal issue’ and criticised the demands made by other States for its recognition as interference in Afghanistan’s internal affairs. It claimed that, being in effective control of the Afghan territory and enjoying the support of the Afghan people, it met the requirements for recognition under international law.

Many States made it clear that they will not recognise the Taliban government until it fulfils certain criteria. Just three days before the capture of Kabul, representatives from China, Uzbekistan, the US, Pakistan, the UK, Qatar, Germany, India, Norway, Tajikistan, Turkey, Turkmenistan, the UN and the EU, in a joint statement, “reaffirmed that they will not recognise any government in Afghanistan that is imposed through the use of military force”.<sup>17</sup> The US Secretary of State stated on 15 August 2021 that they will not ‘work with and recognise’ a future Afghan government unless it upholds ‘the basic rights of its people, including women and girls’ and does not harbour terrorist groups.

Russian officials also, on many occasions, put forward conditions for the recognition of a Taliban government. Russia’s approach and conditions for recognition were described as ‘forming a genuinely inclusive government, ethnically and politically and taking effective measures to combat terrorism and drug-related crime, as well as the observance of basic human rights.’ Many other States, including the UK, China, Iran, Germany, Italy, France, Türkiye and

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<sup>16</sup> J Zhou, F Su and J Yuan, ‘Treading Lightly: China’s Footprint in a Taliban-Led Afghanistan’ <https://doi.org/10.55163/ovbo3684> accessed 13 April 2026.

<sup>17</sup> UN Security Council Res 2593 (2021) UN Doc S/RES/2593 <https://undocs.org/S/RES/2593> accessed 10 April 2026.

Pakistan, put forward similar conditions for recognition of the Taliban.

In sum, many of the criteria invoked in the past, such as respect for human rights, willingness to observe international obligations, respect for other States' rights, absence of undue violence in the seizure of power, position taken by regional or international organisations, or national interests, were also engaged in the case of the Taliban. The case of the Taliban also shows that the specific circumstances of each case may lead States to invoke variations of the common criteria used in the past or entirely different criteria.<sup>18</sup> For example, among the conditions put forward for recognition of the Taliban, there was particular emphasis on respect for the rights of women and minorities and on not allowing the Afghan territory to be used by terrorist groups against the security of other States. The case of the Taliban, as such, highlights the idiosyncratic and arbitrary nature of recognition and demonstrates that it would not be possible to explain every recognition decision within a coherent framework or by generally applicable criteria.

## VI. THE DOCTRINE OF DEMOCRATIC LEGITIMACY AND ITS SETBACK

Observance of democratic procedures has been among the criteria States rely on when deciding to extend recognition to a new government. This criterion has particularly gained traction since the end of the Cold War, with an increase in the number of cases where a democratically elected government is granted international recognition after it is unconstitutionally ousted by an effective government. In cases such as Haiti, Sierra Leone and The Gambia, the effective governments were even replaced by the democratically elected governments with external military interventions. Whether this criterion, in the form of a right to democratic governance, has replaced the effective control doctrine and even has become part of the positive law has been a matter of great debate in the literature.

The case of the Taliban constitutes another setback for this emerging right, as many States were ready to recognise a Taliban-involved government so long as it was inclusive of other political and non-Pashtun ethnic communities and met other conditions, despite the fact that it came to power by toppling the democratically elected government of Afghanistan by force.<sup>19</sup> Neither the restoration of the democratically elected government was on the agenda of the international

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<sup>18</sup> W Maley and A S Jamal, 'Diplomacy of Disaster: The Afghanistan "Peace Process" and the Taliban Occupation of Kabul' (2022) 17 *The Hague Journal of Diplomacy* 32 <https://doi.org/10.1163/1871191x-bja10089> accessed 04 April 2026.

<sup>19</sup> K Bennoune, 'International Obligation to Counter Gender Apartheid in Afghanistan' [2024] *Feminist Dissent* 14 <https://doi.org/10.31273/fd.n7.2023.1506> accessed 05 April 2026.

community, nor was the holding of new elections among the conditions for the recognition of the Taliban. As detailed above, democratic concerns seemed to play no role in the recognition decision of States.

Rahimi and Hazim (2023) advance a powerful doctrinal argument that the Taliban's effective control over Afghanistan may not be sufficient to confer on it the status of a 'government' under international law. Their argument rests on the comparability of the Taliban's systematic gender-based discrimination with South Africa's racial apartheid. They argue that the Taliban's caretaker government has provided the occasion where the unanimous condemnation of the international community could indicate that international law has come to contain a jus cogens norm banning some fundamental forms of gender-based discrimination, denying admission to a government that holds those policies de jure recognition under international law.

Despite this argument, the analysis of state practice reveals that no State has grounded its non-recognition of the Taliban exclusively on jus cogens theory. In practice, incoherent practice and an increasing emphasis in world politics on values such as stability, security and economic development at the expense of democratic legitimacy are considered in the literature to impede the emergence of a right to democratic governance.<sup>20</sup>

## VII. THE STATUS OF UNRECOGNISED DE FACTO GOVERNMENTS UNDER INTERNATIONAL LAW

### A. General Principles

It is widely argued that international law ascribes certain rights and obligations to de facto regimes that are in control of a specific territory, regardless of their status, or recognition, as a State or government. Such regimes are treated in practice at least as partial subjects of international law; the prohibition of the use of force may apply to them, they may be held responsible against other States and they are allowed to conclude agreements or enter into other sorts of relationships with other States. They are also considered to be bound at least by a minimum of obligations under international humanitarian law, international criminal law and international human rights law.

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<sup>20</sup> J Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford: Oxford University Press 2012) <https://academic.oup.com/oxford-law-pro/book/57644> accessed 10 April 2026.

The case of the Taliban concerns a de facto regime that is in full control of an already recognised and existent State and is seeking recognition as the government of that State. The well-known ruling of the 1923 *Tinoco Arbitration* established that non-recognition of a *de facto* government for reasons other than its effectiveness does not affect its character as government for the purposes of international law. Accordingly, Ben Saul states that an effective government ‘is entitled to exercise the state’s international rights and bears its international obligations’ and that, ‘In principle, as the de facto government, the Taliban would be competent to exercise the counter-terrorism rights and responsibilities of the state of Afghanistan.’

Citing the *Tinoco Arbitration*, the Commentary to the ILC’s Draft Articles on Responsibility of States for Internationally Wrongful Acts also states that ‘A general de facto Government ... is itself an apparatus of the State’ and the conduct of its organs ‘is covered by article 4’ which sets out the basic rule on attribution for State responsibility in international law.<sup>21</sup> According to the Draft Articles, therefore, regardless of being recognised, a de facto government can represent its State at least for the purposes of State responsibility.

### **B. Taliban’s International Obligations: State or Non-State Actor?**

It was obvious that the Taliban was a de facto government. The US Secretary of State, a press statement by the Organisation of Islamic Cooperation, and an EU Parliament resolution, for example, had already referred to it as the ‘de facto government’ of Afghanistan. A statement by the EU High Representative confirmed that, ‘Having assumed de facto control over the country, the Taliban have an obligation to ensure the protection and fulfilment of the Social, Economic, Cultural, Civil and Political Rights protected under international treaties and conventions to which Afghanistan is a State Party.’<sup>22</sup>

However, not all States considered the Taliban as the government of Afghanistan for all purposes of international law, or even for the purposes of State responsibility. The US, at least when it comes to human rights obligations, did not consider the Taliban a de facto government representing its State for the purposes of State responsibility, but rather a non-State actor that

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<sup>21</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001) UN Doc A/56/10, art 4, commentary para 13.

<sup>22</sup> Abhishek Trivedi, ‘Topsy-Turvy Journey of the Taliban Recognition in International Law: What Next?’ (2025) 15 *Asian Journal of International Law* 209–231 <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/abs/topsyturvy-journey-of-the-taliban-recognition-in-international-law-what-next/07A97894E64D8B96107DC03FE18EEE55> accessed 10 April 2026.

should nonetheless be held accountable for its ‘human rights abuses.’

This distinction carries profound practical significance. The implications of being held responsible as a State or a non-State actor may differ. Just to give an example, if the Taliban is held responsible as a non-State actor rather than on behalf of Afghanistan, it will not be possible to bring a case against Afghanistan represented by the Taliban before the International Court of Justice, given that ‘Only states may be parties in cases before the Court’.<sup>23</sup>

In sum, despite the acknowledgement by some States of the Taliban as the bearer of Afghanistan’s international obligations, the claim that, whether or not recognised, a de facto government represents its State is not a given in the view of all States and thus not well-established in international law.<sup>24</sup> A non-recognising State may decide to acknowledge a de facto government as entitled to bear certain international obligations as a non-State actor, rather than on behalf of the State it claims to represent.

### C. Access to State Assets Abroad

The scholarship tracking the relevant practice and case law in different national legal systems finds that when rival authorities try to access State property abroad, it is the authority that is recognised as government by the executive organ of the forum State that is allowed to dispose of the property even if that authority has no control over the State it claims to represent. Recent case law in the UK concerning Libya and Venezuela and the US government’s decision to certify Juan Guaidó to control the Venezuelan assets held in US banks, confirm this conclusion.

Not surprisingly, therefore, when the Taliban came to power, overseas assets of Da Afghanistan Bank (DAB), Afghanistan’s central bank, totalling \$7 billion in US banks and \$2 billion in the banks of other States, including the United Kingdom, Germany, Switzerland and the United Arab Emirates, were frozen by the governments of these States.<sup>25</sup> Later, however, the US authorised the transfer of up to \$3.5 billion of these assets to a Swiss fund to be used for the benefit of the Afghan people, while keeping ‘out of the hands of the Taliban and other malign

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<sup>23</sup> K Bennoune, ‘International Obligation to Counter Gender Apartheid in Afghanistan’ [2024] *Feminist Dissent* 14 <https://doi.org/10.31273/fd.n7.2023.1506> accessed 05 April 2026.

<sup>24</sup> Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23(1) *Chinese Journal of International Law* 73 <https://academic.oup.com/chinesejil/article/23/1/73/7634748> accessed 08 April 2026.

<sup>25</sup> ‘The United States Establishes Fund for the Afghan People from Frozen Afghan Central Bank Assets’ (2023) 117 *American Journal of International Law* 139 <https://doi.org/10.1017/ajil.2022.87> accessed 03 April 2026.

actors', with the other half remaining subject to ongoing litigation before US federal courts.

The Taliban case, therefore, demonstrates flexibility in the attitude of States towards non-recognised governments' right to access State assets abroad, despite the contrary national practices of forum States in the past, at least when the humanitarian implications of restricting access to these assets are dire and there is no alternative recognised government.<sup>26</sup>

## VIII. THE DIVIDED INTERNATIONAL COMMUNITY: THE US-LED AND CHINA-RUSSIA BLOCS

### A. The US-Led Group of States

The US was heavily engaged in Afghanistan for four decades following the Soviet invasion of Afghanistan in 1979. After the 9/11 attacks, the US, along with its NATO allies, fought a 'War on Terror' in Afghanistan with the aim of destroying the Al-Qaeda network, bringing regime change and promoting democratic values and ensuring the protection of the fundamental rights of the Afghan people. With the Taliban coming into power, the international community is faced with the question of whether to grant recognition to their government or not.

Regarding the recognition of the new Taliban government in Afghanistan, the US-led States are cautious. They have three main concerns: (a) fundamental human rights, (b) the inclusive or exclusive nature of the Taliban government and (c), more importantly, the nature of their relations with international terrorist networks. The statements of important leaders of this bloc point towards caution in their approach and they seem to be in agreement that linking the recognition of the Taliban government with their internal and external conduct is the pragmatic policy to follow. This group of states has expressed that engagement with the Taliban is important, but it will not make haste to recognise the Taliban government.

Western states are cautious about the option of recognition of the Taliban government, as international recognition is an important diplomatic instrument. Withholding it is the little leverage they have regarding the Taliban in Afghanistan.<sup>27</sup> The recognition of the Taliban as the rightful government of Afghanistan not just means their acknowledgement, it also brings

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<sup>26</sup> M T Kamminga, 'Confiscating Russia's Frozen Central Bank Assets: A Permissible Third-Party Countermeasure?' (2023) 70 *Netherlands International Law Review* 1 <https://doi.org/10.1007/s40802-023-00231-7> accessed 02 April 2026.

<sup>27</sup> Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23(1) *Chinese Journal of International Law* 73 <https://academic.oup.com/chinesejil/article/23/1/73/7634748> accessed 08 April 2026.

with its considerable political, diplomatic and economic benefits. For this reason, the Taliban are urging the international community to formally recognise their government so that their voice to the international community can be expressed through their appointed diplomatic representatives in formal diplomatic channels.

## **B. The China-Russia-Led Group of States**

China and Russia form another group of states having geographic proximity with and interests in Afghanistan. On the issue of interaction and engagement with the Taliban, China and Russia share one important concern with Western states: not to let Afghanistan become a haven for international terrorist networks. However, they do not use the Western rhetoric of fundamental human rights; instead, for both these states, what matters most is the stability of the region. The US withdrawal from Afghanistan provided both Russia and China with an opportunity to fill the strategic vacuum in Afghanistan left by the United States and its allies by having a more active engagement with the Taliban government. They are the only states that have not recalled their diplomatic staff from Afghanistan and have left their embassies functioning in Kabul.

China has enormous long-term interests in Afghanistan, especially in its investment in the mining sector and for the successful implementation of the Belt and Road Initiative. In close coordination with Russia, it would engage and assist the Taliban government in order to turn the evolving strategic environment in its favour as stability in Afghanistan is one of the most important prerequisites for realising the Chinese goal of regional connectivity. On 1 April 2022, the Chinese Foreign Minister stated that 'China believes that with a stronger response to the concerns of all parties, diplomatic recognition of the Afghan government will be an act of following the natural course.'

Pakistan, a strategic ally of China in South Asia, was one of the three states that recognised the Taliban in 1996 when they came to power for the first time. Having a friendly government in Kabul has been a longstanding objective of Pakistan's foreign policy. With the Taliban now in power, Pakistan is in an advantageous position and able to contain the strategic influence of India in the country.<sup>28</sup> Pakistan shares the China-Russia policy of helping the Taliban

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<sup>28</sup> M Tariq, M Rizwan and M Ahmad, 'US Withdrawal from Afghanistan: Latest Development and Security Situation' (2020) 3 *Sir Syed Journal of Education & Social Research (SJESR)* 290 [https://doi.org/10.36902/sjesr-vol3-iss2-2020\(290-297\)](https://doi.org/10.36902/sjesr-vol3-iss2-2020(290-297)) accessed 02 April 2026.

government and urging the international community for more engagement and assistance.

With regard to the newly-formed Taliban government and the overall situation in Afghanistan, the international community has varying concerns and responses. These concerns and responses are rooted in their respective political values, foreign policy goals and strategic considerations. Concerning the recognition and engagement with the Taliban government, the China-Russia group of states is more comfortable, clear in its stance and in favour of an implicit and silent recognition. For the US led-group of states, it is challenging due to their expectations from the Taliban government regarding inclusiveness, fundamental rights and detachment from terrorist networks.<sup>29</sup>

## IX. INTERNATIONAL LEGAL CONSEQUENCES OF NON-RECOGNITION

Though recognition is a national political act, its international legal implications are manifold. The question of whether or not to recognise the Taliban government will complicate the processes of entering into diplomatic relations, deciding the question of state/diplomatic immunity, concluding multilateral/bilateral treaties and entailing international responsibility for any breaches of international law. Four distinct categories of legal consequence deserve examination.

First, the decision of whether or not to recognise the Taliban government will have legal consequences in terms of who can conclude multilateral treaties, access domestic courts of other states, and claim state immunity for the head of a state.<sup>30</sup> Uncertainty may also exist regarding recognising Afghanistan's legislative, executive and judicial acts in the domestic legal system of other states. Diplomatic relations constitute the cornerstone of the international legal system and provide a fertile ground for strengthening friendly relations.

Second, the legal question of who can claim and access offshore assets and state property abroad becomes complicated if two competing authorities claim offshore assets.<sup>31</sup> Afghanistan has foreign assets of more than \$9 billion located in different banks in the USA and Europe. The USA has frozen \$500 million belonging to local Afghans who have accounts in the private

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<sup>29</sup> Muhammad Faheem and Minhas Majeed Khan, 'Recognition of the Taliban Government in Afghanistan and International Community' (2022) 42(1) *Strategic Studies* 81–96 <https://www.jstor.org/stable/48732345> accessed 04 April 2026.

<sup>30</sup> UN Security Council Res 2596 (2021) UN Doc S/RES/2596.

<sup>31</sup> K Bennoune, 'International Obligation to Counter Gender Apartheid in Afghanistan' [2024] *Feminist Dissent* 14 <https://doi.org/10.31273/fd.n7.2023.1506> accessed 05 April 2026.

banks of Afghanistan. The Taliban is still struggling to access its funds frozen by the USA.

Third, the question of representation of Afghanistan before international organisations is affected by the Taliban's non-recognised status. Since only the government is entitled to represent its state before IOs, representation becomes relevant to carrying out the mandate of the concerned organisation. The Taliban was also not allowed to represent Afghanistan at the UN. The UN General Assembly did not accept the credentials submitted by the Taliban-led Ministry of Foreign Affairs. The International Monetary Fund suspended Afghanistan's access to funds due to 'a lack of clarity within the international community regarding recognition of a government in Afghanistan.'

Fourth, the most challenging international legal consequence of the recognition decision is determining who may invite foreign (military) assistance/intervention and how to ascertain the international legitimacy of such an intervention.<sup>32</sup> If the Taliban government invites foreign intervention, such an intervention may lose its legitimacy since the Taliban government is neither recognised by countries nor is its status clear in international law. In either case, any foreign (military) intervention may constitute a possible violation of the principles of non-intervention since the Taliban is seemingly exercising 'effective control' in Afghanistan and the doctrine of 'effective control' is supported by widespread state practice.

These four categories make it clear that it is necessary that the issue of government recognition be regulated by international law to the extent that it can help avoid adverse international legal consequences. Since there is no treaty or well-settled rules of customary international law on government recognition, the question remains as to how international law will dictate recognition decisions.<sup>33</sup>

## **X. THE ROLE OF THE UNITED NATIONS GENERAL ASSEMBLY**

In the absence of a treaty and customary international law on government recognition, states' practices are diverse and keep changing over time. In the Taliban case, while some countries prefer 'collective recognition' of the Taliban government, others prefer 'collective non-

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<sup>32</sup> Abhishek Trivedi, 'Topsy-Turvy Journey of the Taliban Recognition in International Law: What Next?' (2025) 15 *Asian Journal of International Law* 209–231 <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/abs/topsy-turvy-journey-of-the-taliban-recognition-in-international-law-what-next/07A97894E64D8B96107DC03FE18EEE55> accessed 10 April 2026.

<sup>33</sup> H Lauterpacht, 'Recognition of States in International Law' (1944) 53 *The Yale Law Journal* 385 <https://doi.org/10.2307/792830> accessed 04 April 2026.

recognition' until it fulfils certain 'conditions', a few of which are not necessarily grounded in international law. None of the countries seems to argue in favour of abolishing the institution of government recognition. Since a recognition decision may have adverse international legal consequences, it cannot be left completely unanswered in international law.

The Credentials Committee of the UNGA applies the credential process to check the eligibility of delegates sent by Member States to represent them at the Assembly's sessions. However, the UN Legal Counsel has clarified that the Credentials Committee does not decide the question of 'recognition' or any 'substantive issues concerning the status of governments'. The Credentials Committee deferred its decision on representation after the Taliban submitted its credentials on 20 September 2021, without indicating which credentials would represent Afghanistan.

The UNGA may be an appropriate forum to first address the issue of government legitimacy because it can consider the views of all Member States and pass a resolution determining the legitimacy of the Taliban. The UNGA is empowered to 'discuss any questions or any matters within the scope of the [UN] Charter', including the question of government legitimacy and 'may make recommendations' in the form of a resolution to the Member States accordingly. However, it is unclear how effective UNGA resolutions are, given their non-binding status under international law.

Trivedi (2025) argues that the UNGA should step in and pass a resolution positively determining the government's legitimacy in favour of the Taliban government in light of its 'effective control' over the territory of Afghanistan and considering the fact that countries are engaging with it on several fronts, including diplomatically and by concluding treaties. He argues that a recognition decision, though part of state foreign policy, should nevertheless be guided by the rules of international law to the extent that it helps avoid adverse international consequences and helps reduce the chances of misuse or arbitrary use of the institution of recognition.<sup>34</sup> If such an engagement continues without recognition, it may risk deepening adverse international legal consequences in the long run.

The UNGA and the UNSC have, on five different occasions, required that states not recognise

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<sup>34</sup> Abhishek Trivedi, 'Topsy-Turvy Journey of the Taliban Recognition in International Law: What Next?' (2025) 15 *Asian Journal of International Law* 209–231 <https://www.cambridge.org/core/journals/asian-journal-of-international-law/article/abs/topsyturvy-journey-of-the-taliban-recognition-in-international-law-what-next/07A97894E64D8B96107DC03FE18EEE55> accessed 10 April 2026.

a government coming into power unconstitutionally, undemocratically and by violating the human rights of its people: the situations of Namibia (1973), Rhodesia (1979), Windhoek (1985), Haiti (1991) and Honduras (2009). The UNGA and the UNSC, however, appear to be almost silent on the question of the legitimacy and recognition of the Taliban government. This silence is problematic given the far-reaching adverse international legal consequences that flow from the Taliban's unrecognised status.

## XI. CONCLUSION

As shown in this paper, the international community's reaction to the Taliban's coming into power in Afghanistan has profound implications for the question of recognition of governments. One aspect of this question is the widespread policy among States of not making express statements on the recognition of governments, which was also cited by some States with respect to the recognition of the Taliban. Confirming the revocable nature of this policy, the case of the Taliban showed that this policy could be ignored when there is a common desire among States to use recognition as leverage to impose some shared expectations on the entity seeking recognition.<sup>35</sup>

The practice concerning the Taliban also indicates that, while a de facto government can be engaged with at various levels, there may always be room for further engagement before it is recognised, with the remaining forms or areas of engagement at the discretion of the non-recognising State. It also shows that treatment, or acknowledgement, and recognition of an entity as government are two different phenomena, and further demonstrates that the effects of recognition in a given case could be minimised—if not diminished altogether—to the extent that non-recognition may remain only in name, or in the political realm, with no substantial legal consequences attributed to it.

The conditions States placed upon the recognition of the Taliban, respect for human rights, especially of women and minorities, formation of an inclusive government, counter-terrorism commitments and willingness to observe international obligations, reflect both the idiosyncratic and arbitrary nature of recognition and, taken together, represent an emergent, if contested, doctrine of conditional recognition that goes beyond the classical effectiveness test. The Taliban case constitutes another setback for the emerging doctrine of democratic

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<sup>35</sup> Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23(1) *Chinese Journal of International Law* 73 <https://academic.oup.com/chinesejil/article/23/1/73/7634748> accessed 08 April 2026.

legitimacy, as many States were ready to recognise a Taliban-involved government so long as it was inclusive and met other conditions, despite the fact that it came to power by toppling the democratically elected government by force.<sup>36</sup>

Despite the acknowledgement by some States of the Taliban as the bearer of Afghanistan's international obligations, the claim that, regardless of recognition, a de facto government represents its State is not a given in the view of all States and thus not well-established in international law. The geopolitical cleavage between the US-led group and the China-Russia bloc has deepened this uncertainty, rendering a collective recognition decision politically impossible in the short to medium term.

The paper concludes by endorsing the argument advanced by Trivedi (2025) that the recognition decision, though largely political, must be regulated by international law to the extent that it helps avoid adverse international consequences. The UNGA should step in and pass a resolution positively determining the legitimacy of the Taliban government, in light of its effective control and the widespread state engagement with it, in order to avoid deepening adverse international legal consequences for the Afghan people and the international legal order.<sup>37</sup> The Taliban case will remain a defining precedent in the evolving law of government recognition, reflecting the profound tensions between effectiveness, legitimacy, human rights and geopolitical interest that characterise the contemporary international legal order.

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<sup>36</sup> Muhammad Faheem and Minhas Majeed Khan, 'Recognition of the Taliban Government in Afghanistan and International Community' (2022) 42(1) *Strategic Studies* 81–96 <https://www.jstor.org/stable/48732345> accessed 04 April 2026.

<sup>37</sup> Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23(1) *Chinese Journal of International Law* 73 <https://academic.oup.com/chinesejil/article/23/1/73/7634748> accessed 08 April 2026.