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**THE STATUS OF THE AFGHAN TALIBAN
GOVERNMENT UNDER INTERNATIONAL LAW**

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INTRODUCTION

Government Recognition is a cornerstone of International Law, representing the formal acknowledgment by a sovereign state or international entity of the legal standing, existence, or legitimacy of another Government. Recognition, or nonrecognition, thus has profound implications on the international standing of the country and, for this reason, the granting or withholding of this legal acknowledgment also has practical consequences, affecting the country's ability to participate in international and diplomatic relations. Indeed, the question of whether to grant or not recognition arises in cases of lack of continuity in the change of government, namely due to uprisings, civil wars, or coups. However, recognition is not always straightforward, and it can be an extremely discussed issue in International Law, and therefore, the analysis of the status of the Taliban can represent a way to uncover some of the complexities it is accompanied by. In particular, the issue of recognition in Afghanistan has become of particular importance after the withdrawal of the United States and NATO from the country in August 2021 as a consequence of the Doha Agreement after twenty years of military presence, which led to the Taliban launching a rapid offensive across the country resulting in the group eventually capturing the capital and overthrowing Ashraf Ghani as the President of the country. Indeed, following the takeover, the Taliban founded an interim government, which however has not been recognised by any country of the international community, due to concerns about its human rights records, especially towards women, and its ties with international terrorist groups. Moreover, the issue of the recognition, or nonrecognition, of the Taliban government has become of particular importance due to the country's severe humanitarian and economic crisis caused by the cessation of international aid and the freezing of Afghan assets abroad, which have increased poverty and food insecurity in the country. Consequently, the crisis has led to calls for international engagement to address said humanitarian needs, which however is complicated by the lack of formal recognition of the Taliban Government. Furthermore, on October 31, 2022, the International Criminal Court authorized the Office of the Prosecutor to resume its investigations into the situation in Afghanistan, including alleged crimes committed by the Taliban, reaffirming the court's commitment to justice despite political disruption and questioning once again the status of the recognition of the Afghan Taliban Government in International Law.

Ultimately, therefore, the thesis "*The Status of the Afghan Taliban Government under International Law*" aims to provide an answer to important issues regarding the implications of the international community's withholding of recognition towards the Taliban's regime, including Afghanistan's international standing, the implications of the ambiguous approach of the People's Republic of China in regard to the Taliban Government, and whether and how International Law applies to a Government that is not formally recognized as lawful by the international community.

The following chapters will give a general overview of the concept of recognition, the implications of the nonrecognition of the current Afghan government, and the reasons why the Taliban still have to comply to International Law and treaties the previous government signed.

The First Chapter of the thesis will analyse the complexities lying behind the concept of “recognition”, in order to clearly understand its implications and the criteria that need to be applied in the process of granting or withholding it. The chapter starts from the definition and contextualization of recognition, focusing in particular on the evolution of Statehood, with the distinction between the declaratory and constitutive doctrines of recognition. The chapter will then explore the legal differences between Statehood and Government recognition, studying the role of both in determining the legitimacy of an entity on the international stage. And lastly, the chapter will conclude with an analysis of the practical and diplomatic implications of the concept, analysing four important case studies, namely Kosovo, Taiwan, Libya, and Myanmar, in order to understand what the withholding of both Statehood recognition and Government recognition implies. The Second Chapter will enter into the specific case of Afghanistan, starting from a reconstruction of the events that led to the Taliban’s assumption of power and an analysis of the structure of their government and territorial control in the region. The chapter will then explore the international standing of said regime, examining the Doha Agreements, which led to their assumption of power, and the positions held by both countries and International Organizations regarding the regime’s recognition as the lawful government of the country and the diplomatic implications caused by nonrecognition. The Third Chapter will analyse the International Organizations of which Afghanistan is member, examining the benefit and obligations that arise from said membership. Moreover, the chapter will study the International Criminal Court’s “*decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation*” and its legal basis and implications. Lastly, the chapter will discuss the resolutions and statements issued by the United Nation’s General Assembly and Security Council in which the question of the recognition of the Taliban Government is addressed, including *Resolution 2593* and *Resolution 2626*.

This thesis thus seeks to clarify the response of the international community to the Taliban Government, and ultimately analysing from a legal standpoint why the regime, notwithstanding being the current government of Afghanistan, can legally be withhold formal recognition, distinguishing between *de jure* and *de facto* recognition. Understanding the case of Afghanistan is important to comprehend the influence it might have on future cases of government recognition arising from conflict and upheaval.

CHAPTER 1
THE QUESTION OF THE RECOGNITION OF GOVERNMENTS

Recognition in International Law denotes the formal acknowledgment by a sovereign state or international entity of the legal standing, existence, or legitimacy of another State, Government, or specific legal circumstance. It has great significance in the establishment of diplomatic relations and the determination of the status of entities within the global community.

This concept of recognition is not limited to States but includes numerous entities, such as international organizations and non-governmental entities. Furthermore, it includes also the recognition of changes in territorial boundaries or in the status of territories. The act of recognition represents a discretionary process, guided by political, strategic, and normative considerations. Indeed, entities which are granted recognition gain access to diplomatic engagements, the formation of treaties, and participation in international organizations. It is important, however, to underline that recognition does not inherently connote moral or political approval. Indeed, States may extend recognition to entities for pragmatic reasons without necessarily expressing approval of their policies.

This chapter represents an exploration of the different aspects of recognition, with the aim of analysing its complexity and contextualizing its significance within the broader framework of International Law.

The opening part of this chapter will deal with the definition and contextualization of the concept of recognition within the framework of International Law. Conceptual clarity is necessary in order to understand the meaning of recognition.

The following part of the chapter explores the distinction between recognizing Governments and recognizing States, with the aim of explaining the differences between these two forms of recognition, providing insights to the legal and political implications associated with each type of recognition.

Lastly, the chapter ends with an exploration of the practical implications recognition has. Through the study of historical and contemporary cases, the effects of diplomatic and political ramifications on the international stage are analysed. Moreover, an examination of diplomatic and political effects of recognition is made, in order to deeply understand the effects of recognition, or nonrecognition, has on the international arena.

1.1 DEFINITION AND CONTEXTUALIZATION OF RECOGNITION IN INTERNATIONAL LAW

1.1.1 Conceptual Clarity: Understanding the meaning of “recognition” in the context of International Law

In the intricate realm of International Law, the notion of “recognition” stands as a fundamental cornerstone, having considerable influence over the interactions between sovereign entities.

Since International Law is defined as “*the body of legal rules, norms, and standards that apply between sovereign states and other entities that are legally recognized as international actors*”¹, the importance of the legal rules, norms, and standards that govern the relationships between sovereign States and other recognized international actors is highlighted.

Recognition in the context of International Law refers to the acknowledgment and acceptance of legal status and existence of situations or entities as international actors, and thus establishes their rights and obligations towards each other. Hence, recognition could be defined as “*a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality*”².

At its core, therefore, recognition is not a mere acknowledgment but a complex legal and diplomatic act that shapes the relationship between sovereign entities on the international stage.

However, while the notion of recognition extends beyond the limitations of States, the recognition of a new State or Government is an act that only other States and Governments may grant or withhold, consequently, organizations such as the United Nations, being neither a State nor a government, does not possess the authority to recognize either States or Governments³.

The nature of recognition in International Law thus as well as diplomatic aspects encompasses also, territorial and governmental ones.

1.1.2. The Evolution of Statehood: Exploring Declaratory and Constitutive Doctrines in International Law

¹ Malcolm Shaw, ‘International Law’, *Encyclopædia Britannica* (2016) <<https://www.britannica.com/topic/international-law>>.

² Encyclopædia Britannica, ‘International Law - States, Sovereignty, Treaties | Britannica’ (www.britannica.com) <<https://www.britannica.com/topic/international-law/States-in-international-law#ref129019>> accessed 27 March 2024.

³ United Nations, ‘About UN Membership’ (*United Nations*2022) <<https://www.un.org/en/about-us/about-un-membership>>.

In International Law, there can be defined two main theories for the creation of Statehood, namely the constitutive doctrine and the declaratory doctrine⁴.

According to the declaratory doctrine, an entity can be defined as a State solely after having reached a threshold of four empirical criteria which will be analysed in detail later, namely a permanent population, a defined territory, a government, and the capacity to enter into relations with the other states⁵. Therefore, according to this theory, once an entity has satisfied these criteria, it can be defined as a State regardless of the status of its recognition by the international community, therefore recognition by other states is purely “declaratory”⁶. Indeed, the declaratory doctrine considers Statehood to be purely factual, and therefore not a legal question. Consequently, recognition simply represent the willingness of the recognizing state to enter into diplomatic relation with said state but has no effect on the existence of thereof⁷.

However, such declaratory theory has been criticised as some scholars believe than Statehood cannot be a purely factual question, as objective knowledge cannot exist in the absence of a subject to know it⁸. Moreover, Statehood cannot be considered as natural phenomena, but needs to be treated as a legal one⁹. Therefore, a new theory of recognition of Statehood was created to remedy the flaws of the previous one, namely a constitutive doctrine. According to this theory, to the four criteria of Statehood established in the Montevideo Convention, a fifth condition needs to be added: the State needs to be recognized by the existing States¹⁰. In the event of recognition prior to the achievement of the four criteria, recognition is to be considered premature, and thus unlawful¹¹, consequently “*a state is and becomes an international person through recognition only and exclusively*” (Lassa Oppenheim)¹².

⁴ ‘Declaratory and Constitutive Theories of State Recognition’ (www.lawteacher.net 22 September 2021) <<https://www.lawteacher.net/free-law-essays/constitutional-law/declaratory-and-constitutive-theories-of-state.php#:~:text=The%20constitutive%20theory%20perceives%20recognition>> accessed 9 April 2024.

⁵ The Editors of Encyclopedia Britannica, ‘Montevideo Convention | International Agreement [1933]’, *Encyclopædia Britannica* (2018) <<https://www.britannica.com/event/Montevideo-Convention>>.

⁶ ‘Declaratory and Constitutive Theories of State Recognition’ (www.lawteacher.net 22 September 2021) <<https://www.lawteacher.net/free-law-essays/constitutional-law/declaratory-and-constitutive-theories-of-state.php#:~:text=The%20constitutive%20theory%20perceives%20recognition>> accessed 9 April 2024.

⁷ Amy E Amy E. , ‘Constructing States: The Role of the International Community in the Creation of New States’, *Journal of Public and International Affairs* (Princeton University 2002).

⁸ H Lauterpacht, ‘Recognition of States in International Law’ (1944) 53 *The Yale Law Journal* 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjl>>.

⁹ Alan Boyle, ‘The Creation of States in International Law. By James Crawford. [Oxford: Clarendon Press. 1979. Xxvii and 498 Pp. £18.00.]’ (1979) 28 *International and Comparative Law Quarterly* 784.

¹⁰ ‘Recognition in International Law: A Functional Reappraisal’ (1967) 34 *The University of Chicago Law Review* 857.

¹¹ H Lauterpacht, ‘Recognition of States in International Law’ (1944) 53 *The Yale Law Journal* 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjl>>.

¹² ‘Recognition in International Law: A Functional Reappraisal’ (1967) 34 *The University of Chicago Law Review* 857.

Sovereign consent is therefore central for the constitutive doctrine, and therefore, those that adhere to the constitutive believe that States are under no duty to recognize new States¹³. Indeed, the formation of new States automatically creates a bundle of new obligations for existing sovereign states under International Law, therefore, their consent needs to be obtained. On the other hand, according to those scholars that adhere to the declaratory doctrine, the requirement of recognition implied that a community which factually satisfies the four criteria for statehood could be wrongfully denied its rights due to a lack of recognition.¹⁴

1.1.3. Contextualizing recognition as fundamental element of International Relations

Recognition extends far beyond a mere diplomatic formality; it is a dynamic force that influences the very fabric of global interactions.

The importance of recognition in International Relations indeed spans a multitude of aspects, reflecting its nuances and pervasive influence on the global stage.

As was anticipated in the previous section, International Relations can be defined as “*the discipline that studies interactions between and among states, and more broadly, the workings of the international system as a whole*”¹⁵. Therefore, International Relation deals with the study of the relations of States with each other and with international organizations and certain subnational entities¹⁶. By looking at these definitions, it is clear that the States, and in some other instances other entities, are considered the primary actors in International Relations, and consequently, for them to be considered as such, they need to be recognized in the international arena.

Hence, States are typically recognized as sovereign entities with certain rights and responsibilities. More specifically, recognition can occur either through explicit statements, diplomatic acts, or participation in international organizations, additionally, *de facto* recognition may also exist when states engage in practical relations and interactions, even without the presence of a formal acknowledgment. Recognition, as well as influencing the formation of treaties, also impacts the participation in international organizations as well as affecting issues such as state succession, territorial disputes, and the granting of nationality.

¹³ Amy E Amy E. , ‘Constructing States: The Role of the International Community in the Creation of New States ’, *Journal of Public and International Affairs* (Princeton University 2002).

¹⁴ Amy E Amy E. , ‘Constructing States: The Role of the International Community in the Creation of New States ’, *Journal of Public and International Affairs* (Princeton University 2002).

¹⁵ Oxford References , ‘International Relations’ (2024)

<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100007834>>.

¹⁶ Robert Pfaltzgraff and Charles A McClelland, ‘International Relations | Politics’, *Encyclopædia Britannica* (2016) <<https://www.britannica.com/topic/international-relations>>.

It is of fundamental importance to underline that fact that the recognition of entities extends beyond just states: International organizations, non-governmental organizations (NGOs), and certain entities within states, such as governments or liberation movements, may also be recognized as international actors with legal standing. However, recognition is not always straightforward and can be an extremely contentious issue in international relations, indeed disputes over recognition may arise due to many different reasons, including political, ideological, or territorial disagreements. Moreover, in some cases, States may also withhold recognition or explicitly deny the legitimacy of certain entities.

Hence, recognition is needed in the shaping of International Relations as it indicates that an entity has met the necessary qualifications for state recognition and is thus eligible for privileges and immunities within the domestic legal framework. Recognition thus grants the ability of shaping the interactions and relationships between sovereign States and other bodies within the global community. Hence, both the acknowledgment of legal status and the adherence to established norms stand as fundamental elements of International Relations.

1.1.3. Link between the recognition of governments and the stability of the International System

As has already been mentioned in the previous sections, there exist different types of recognition in International Law depending on the specific context of the case. In particular, there exist three main characterizations of recognition that are useful to classify the most important ones and are fundamental for granting the stability of the International System: namely, recognition of Statehood, recognition of Governments, and recognition of belligerency¹⁷. In the former case, the State recognition involves the acknowledgement that a specific entity possesses the characteristics of being a State. In the case of Government recognition on the other hand, what is being acknowledged is the legitimacy of a specific government as representative authority of a State. In the latter case, it is dealt with situations of armed conflict, and, through the recognition of some groups and organizations as belligerents, they are granted certain rights and responsibilities.

Another aspect that needs to be underlined when dealing with recognition as provider of the stability of the international system, it is also important to examine the delicate issue of premature recognition. Premature recognition in International Law refers to a situation where a State, or another international actor, extends formal acknowledgement or support to a new

¹⁷ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 The Yale Law Journal 385
<<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

government before it has gained widespread acceptance, legitimacy, or stability, or in other words, before it has achieved permanence and political cohesion¹⁸. Providing premature recognition is thus inconsistent with International Law¹⁹ and may cause instability in the whole international system.

Indeed, communities aspiring for political independence usually pursue it by means of secession from an existing State, thus separating from the already established State, consequently, it is widely accepted that, concerning the parent State, the act of recognition is bounded by a duty of restraint. Consequently, failure to adhere to this duty could thus result in the recognizing State being held accountable, as there is a broad consensus that premature recognition extends beyond merely being an unfriendly gesture; it is considered an act of unlawful intervention and thus an international offense, as it represents a denial of the sovereignty of the parent State²⁰ and thus critically jeopardize the stability of the International system as a whole.

1.2 DISTINCTION BETWEEN RECOGNITION OF GOVERNMENTS AND RECOGNITION OF STATES

1.2.1. Exploring the differences between the recognition of Governments and the recognition of States

The two most important types of recognition have already been mentioned numerous times, namely the recognition of Statehood and the recognition of Governments. Even though they share some similarities, such as the fact that both have a role in determining the legitimacy of an entity on the international stage, they also differ for a number of reasons.

Within the sphere of Statehood, recognition entails the acknowledgment that a given entity possesses the requisite attributes of statehood, including a demarcated territory, a stable population, a functional government, and the capacity to engage in diplomatic relations with other states²¹. On the other hand, recognition of Governments, considering that its only

¹⁸ Oxford References , 'Recognition, Premature' (*Oxford References*2024)

<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100408161>>.

¹⁹ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 *The Yale Law Journal* 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

²⁰ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 *The Yale Law Journal* 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

²¹ The Editors of *Encyclopædia Britannica*, 'Montevideo Convention | International Agreement [1933]', *Encyclopædia Britannica* (2018) <<https://www.britannica.com/event/Montevideo-Convention>>.

prerequisite is its effective exercise of sovereign power²², assumes particular relevance during instances of political transitions, exerting discernible influence on both legal and diplomatic ramifications.

To recognize a community as State involves affirming that it meets the prerequisites of statehood mandated by International Law. Recognition of Statehood under International Law can thus be defined as “*a declaration of intent by one state to acknowledge another power as a State within the meaning of International Law*”²³. Hence, recognition of Statehood is usually a formal act conducted through diplomatic means, and thus it can have legal consequences, as will be analysed in the next sections, such as establishing diplomatic relations, entering into treaties, and participating in international organizations. Among all the requirements for Statehood, there are three main criteria that need to be met in order for a State to be eligible for recognition as such.

Firstly, the State needs to possess a defined territory and it needs to be able to administer it to some level. Without a territory, indeed, there can be no defined and recognized State as States are territorial entities.

Secondly, there needs to be a permanent population living on said territory, as States are aggregates of individuals, as well as simply territorial entities.

Moreover, to be recognized as a State, there needs to be an independent Government present on the territory. This basically means that, for a State to be recognized as such, it needs to be completely independent from any other State, particularly from the parent-State in case of secession, linking back to the concept of premature recognition.

Additionally, this independent Government needs to have an effective authority on the population. Effective authority implies that the Government needs to have a certain level of stability internal to the territory, in other words, the government needs to be able to make the population obey it²⁴.

These last two points clearly show that “*the recognition of a new State often takes place in the form of recognition of its Government*”²⁵, this statement is particularly important in that it conveys the idea that recognition of a State inherently entails the recognition of its Government,

²² Federal Department of Foreign Affairs, ‘The Recognition of States and Governments under International Law’ (2023).

²³ Federal Department of Foreign Affairs, ‘The Recognition of States and Governments under International Law’ (2023).

²⁴ JAMES CRAWFORD, ‘The Criteria for Statehood: Statehood as Effectiveness’ [2007] *The Creation of States in International Law* 37.

²⁵ H Lauterpacht, ‘Recognition of States in International Law’ (1944) 53 *The Yale Law Journal* 385
<<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

the two are inseparable in the acknowledgment process. In other words, some scholars believe that there can never be recognition of a State if its Government has not been recognized.

However, there is a fundamental distinction between the refusal of recognition of a Government and on the other hand the refusal of the recognition of Statehood. Indeed, refusing to recognize one specific government does not undermine the Statehood of a territory, as it is in the case of the Afghanistan's Taliban Government, which will be analysed in the next chapters of this thesis. To put it differently, it is impossible to grant an entity the recognition as a Government without recognizing the territory which it governs as a State, on the other hand though, it is possible to recognize the Statehood but not the Government on a country²⁶.

When dealing with the recognition of Governments, thus, what is being recognized is “*groups of persons as competent to act as an organ of the State in question and to represent it in terms of International Law*”²⁷.

One important aspect of the recognition of Governments, lies in the fact that it is not limited to newly formed Governments involving a break in legal continuity, but States where continuity is maintained, simply imply recognition by persisting their engagement with the recently elected government. In other words, as a norm, no formal statement of recognition is made for constitutional governments, however at the same time recognition is not limited to unconstitutional governments. For this reason, a definition of Government's recognition can be provided, namely an “*indication of willingness on the part of the recognizing Government to establish or maintain official, but not necessarily intimate, relations with the Government in question*”²⁸. Therefore, when States grant recognition to a Government, they essentially affirm the authority of that Government to represent the interests of the people and conduct diplomatic relations, and for this reason it can be fluid, namely subject to changes in leadership or political dynamics. Therefore, the recognition of governments is predominantly a matter of politics, with legal factors playing a secondary role. Political considerations heavily sway this process, often overshadowing purely legal aspects²⁹.

²⁶ Ramanand Mundkur, 'CHAPTER 5 Recognition of Governments in International Organizations, Including at the International Monetary Fund' (www.elibrary.imf.org 6 November 2008) <<https://www.elibrary.imf.org/display/book/9781589065079/ch005.xml>> accessed 6 April 2024.

²⁷ Federal Department of Foreign Affairs, 'The Recognition of States and Governments under International Law' (2023).

²⁸ Stefan Talmon, 'Meanings of "Recognition"' [2001] Oxford University Press eBooks 21 <<https://academic.oup.com/book/43016/chapter-abstract/361358971?redirectedFrom=fulltext>> accessed 6 April 2024.

²⁹ Anne Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 International Community Law Review 381.

Differently from the recognition of Statehood, there is no clear criterion for recognizing a Government, indeed each country is free to recognize or not to recognize another Government. Consequently, recognition or non-recognition cannot be contested from third parties. For this reason, there is not always consistencies in the behaviour of countries when deciding whether to recognize or not a Government: different countries have employed different standards in acknowledging foreign Governments, especially when they have come into power through non-constitutional means³⁰.

There are however some criteria that are usually taken into consideration when in the process of recognizing or abstaining from recognition of a Government. Indeed, the decision of the recognizing State can be influenced in one way or the other and with different degrees of importance by many factors, including historical relationships, international consensus, and legal and constitutional precedents. There are indeed four main criteria that can have a huge impact on the recognition decisions, namely popular consensus, stability of the Government in question, and geopolitical interests³¹.

Firstly, there needs to be legitimacy and popular support of the Government in question³², namely the effective control doctrine. Indeed, some countries may prioritize the legitimacy of a Government based on popular support, regardless of the means through which it came to power³³. Hence, if the new government enjoys broad backing from the population, certain States may become more inclined to recognize it.

Secondly, stability and order are factors that may influence the process of Government recognition³⁴, namely the legitimacy doctrine. Indeed, countries may choose to recognize a government established extra-constitutionally if they believe it can bring stability and prevent further unrest or violence.

Geopolitical considerations can also heavily influence recognition decisions in that States may recognize a Government if it aligns with their own regional interests or geopolitical strategies, irrespective of the means by which it assumed power³⁵.

³⁰ Ramanand Mundkur, 'CHAPTER 5 Recognition of Governments in International Organizations, Including at the International Monetary Fund' (www.elibrary.imf.org 6 November 2008) <<https://www.elibrary.imf.org/display/book/9781589065079/ch005.xml>> accessed 6 April 2024.

³¹ Anne Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 *International Community Law Review* 381.

³² Thomas M Franck, 'Legitimacy in the International System' (1988) 82 *The American Journal of International Law* 705.

³³ Clayton Thomas, 'Taliban Government in Afghanistan: Background and Issues for Congress' (2021) <<https://crsreports.congress.gov/product/pdf/R/R46955>>.

³⁴ Valerie Epps, 'The Recognition of States: Law and Practice in Debate and Evolution. By Thomas D. Grant. Westport CT, London: Praeger, 1999. Pp. Xxii, 231. Index. \$65.' (2001) 95 *American Journal of International Law* 252.

³⁵ John Agnew, *Geopolitics*, vol. The Geopolitics of Recognition (Routledge 2004).

Lastly, some countries place a strong emphasis on Human Rights and democratic values, and thus recognition may be contingent on the Government's upholding of these principles, regardless of how it came into existence³⁶.

In conclusion, the recognition of States and the recognition of Governments both represent nuanced aspects of international relations. While the former centres on the acknowledgment of a sovereign political entity with enduring implications, the latter focuses on affirming the legitimacy and authority of a specific ruling body within a given territory.

1.2.2. Analysis of the legal and political implications of each type of recognition

One aspect of all types of recognition that is important to underline is the concept that the act of recognition is often considered not to be a matter governed by law, but rather a question of policy³⁷. However, it would be better explained by saying that, while rejecting the characterization of the act of recognition as having legal nature, some argue that once this policy-driven act is completed, it carries legal consequences. The reason behind this is that it serves as the initiation of international personality, accompanied by all its associated rights.

Moreover, it is contended that, regardless of the scenario of the case, the form and circumstances of recognition hold legal significance, prompting the examination of issues such as the differentiation between the different types of recognition, namely *de jure* and *de facto* recognition, implied recognition, and conditional recognition³⁸.

Firstly, the distinction between *de jure* and *de facto* recognition needs to be made. This difference lays in the effect of the recognition of the case: namely when a state receives *de jure* recognition, all the prerequisites outlined by international law for ultimate and full acknowledgment have been satisfied. On the other hand, *de facto* recognition carries a relatively less binding effect, as the legal relationship, while functionally present, remains provisional. It is therefore worth noting that provisional *de facto* recognition, motivated by political considerations, can be transitioned into *de jure* recognition once all the necessary legal prerequisites have been met³⁹.

³⁶ Ben Saul, 'VOLUMES 1–35 INDEX' (2013) 35 Human Rights Quarterly 1053
<<https://www.jstor.org/stable/24518051>>.

³⁷ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 The Yale Law Journal 385
<<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yli>>.

³⁸ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 The Yale Law Journal 385
<<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yli>>.

³⁹ (n.d.). *The recognition of states and governments under international law*.

The rejection of the legal essence of recognition, which involves denying the existence of an obligation or right to recognize, even when the necessary factual conditions are present, is rooted in the same mindset that gave rise to the orthodox constructivist doctrine⁴⁰.

Constructivism explores how facts are socially constructed rather than being inherently objective, and for this reason it is a way of examining social relations in the international realm⁴¹. This perspective aligns with the positivist principles, where the will of the State is considered the exclusive origin of its obligations, and which requires the entities to be recognized before they can be considered eligible for international personality. Consequently, it becomes inconceivable to accept that established States can incur new duties due to the emergence of a politically organized community, compelling them to recognize it as a State⁴².

Such a positivist view was applied to both the recognition of Statehood and the recognition of Governments. More specifically, in the case of the latter, Governments require political entities in order to obtain the consent and acknowledgment of established States before being able of functioning as sovereign representatives in the international system⁴³.

Therefore, the concept of recognition can be explained through the two rival legal declaratory and constitutive doctrines⁴⁴: recognition, while essentially affirming pre-existing reality through its being declaratory, takes on a constitutive role when executed impartially as a legal obligation⁴⁵. When dealing with the constitutive doctrine, recognition is considered to be a necessary precondition for the acquisition of legal rights and duties, where there are no definitive rules governing the practice of recognition⁴⁶.

In the context of the declaratory doctrine, which essentially had the scope of de-politicizing the process of recognition, linking thus recognition to established legal principles rather than it being subject to state discretion⁴⁷, shaping international rights and duties between the recognizing State and the newly emerging recognized community. Hence, in contemporary

⁴⁰ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 The Yale Law Journal 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

⁴¹ Jeffrey T Checkel, 'The Constructivist Turn in International Relations Theory' (1998) 50 World Politics 324 <<https://www.jstor.org/stable/25054040>>.

⁴² H Lauterpacht, 'Recognition of States in International Law' (1944) 53 The Yale Law Journal 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

⁴³ M.J. Peterson. *Recognition of Governments: Legal Doctrine and State Practice, 1815-1995*. (New York: St. Martin's Press, 1997) 166

⁴⁴ (Hillier, T. (1998). *Sourcebook on Public International Law*. Cavendish Publishing Limited. - References - Scientific Research Publishing, n.d.)

⁴⁵ Ian Brownlie. *Principles of Public International Law*. 6th ed. (Oxford: Oxford University Press, 2003) 97

⁴⁶ JAMES CRAWFORD, 'The Criteria for Statehood: Statehood as Effectiveness' (2007) p. 18 *The Creation of States in International Law* 37.

⁴⁷ Freedman, J. M. (2011). *Recognizing fact from fiction: a social critique of premature recognition in Libya* (T). University of British Columbia

state practice, recognition is believed to possess a declaratory nature rather than a constitutive one, meaning it does not fundamentally or conclusively determine a State's existence. This implies that, when dealing with the recognition of Statehood, a State is considered to come into being only upon meeting the objective prerequisites, particularly in this case the three essential elements of Statehood already defined, namely state territory, state people, and state power. Therefore, recognition, in this context serves as a statement by a state expressing its opinion that said state should be recognized as a "state" on the international arena and therefore be subject to International Law.

Other than recognition as a legal phenomenon, recognition can serve a number of different possible political purposes. In other words, recognition not only has these legal implications, but also has some political effects on the international arena. These political effects depend on three distinct scenarios, namely premature recognition of a new regime, prolonged withholding of recognition (i.e., nonrecognition) of a new and effective regime, and prolonged recognition of a defunct government⁴⁸.

These purposes can be used for primarily three different reasons with different political implications, the first which is the more symbolic and superficial and can be found in the intention of a State of expressing either its approval or disapproval of a specific regime.

Moreover, another other reasons for using these political purposes can be found in the desire of a State of influencing another regime's policies and influence its survival⁴⁹. As a consequence, this process can lead to serious political consequences, due to the fact this strategy of either granting or withholding recognition based on moral criteria and standards, can act as an effective means to encourage just conduct among rogue regimes⁵⁰.

1.2.3. The role of recognition in determining the Legitimacy of an entity on the International Stage

Recognition carries serious implication, both legal and political. One of the most important effects the concept of recognition has is on the Legitimacy and the Sovereignty of entities on the international arena.

Indeed, recognition serves as a cornerstone for establishing both the legitimacy and the sovereignty of States, as the acknowledgment by other entities on the international stage contributes to a State's credibility, affirming its right to govern its territory and make decisions

⁴⁸ MJ Peterson, 'Political Use of Recognition: The Influence of the International System' (1982) 34 World Politics 324.

⁴⁹ MJ Peterson, 'Political Use of Recognition: The Influence of the International System' (1982) 34 World Politics 324, pg 154

⁵⁰ Allen Buchanan. op.cit., p.262

on behalf of its citizens. In other words, the recognition of a State as legitimate implies that its sovereignty will be respected.

Hence, *recognitional legitimacy*, which is thus an external legitimacy as it is derived from the community of States, pertains to the acknowledgment of an entity, typically a State, affirming its entitlement to wield influence and authority within the global community. This authority includes the right to self-determination, protection against intervention, the ability to stipulate treaties, and numerous other rights and responsibilities bestowed upon States by International Law⁵¹, such as the right to territorial integrity, and the right to promulgate, adjudicate, and enforce legal rules on citizens.

In order to be obtained, recognitional legitimacy usually has to be either granted or denied and there are indeed two main instances in which this can happen. Firstly, in the event of the State-succession after a State ceases to exist after being either disintegrated or destroyed, and, secondly, in the event of secession, where a State becomes independent. In the latter case, the State from which the seceding group is declaring its independence, or else, the parent-State, typically denies recognition to the newly formed State, while third States have to either accord recognitional legitimacy or deny it.

As has already mentioned earlier, there are four traditional elements that need to be met in order to grant recognition of Statehood, however an additional element can be found: namely, not having breached the rule of International Law while forming the new State or Government⁵².

This links back to the previously analysed concept of premature recognition, indeed, the community seeking recognition must meet all of these criteria of lasting existence and political unity, and, importantly, the parent State should no longer be actively attempting, with promising prospects, to regain control and authority. If this last criterion is not met, recognition is considered premature and therefore unlawful. In other words, third States are forbidden to favour insurrection and secession by granting recognitional legitimacy before the new community has been able to establish itself beyond doubt⁵³. Hence, the objective conditions for recognition vary when looked at from the point of view of the duty toward the parent State, namely the duty of non-intervention, as opposed to commitment to the community seeking recognition, including the right to self-determination⁵⁴.

⁵¹ Jordy Rocheleau, 'Recognitional Legitimacy' [2011] Springer eBooks 935.

⁵² Buchanan, A. (1999)

⁵³ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 The Yale Law Journal 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

⁵⁴ H Lauterpacht, 'Recognition of States in International Law' (1944) 53 The Yale Law Journal 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjlj>>.

Concluding, it is important to note that “*recognition is not a question of unfettered discretion, of contractual bargain, or of political expediency. It means positively that the State called upon to grant recognition must judge whether the required conditions of fact exist and that it is entitled to exercise its discretion in arriving at that judgment*”⁵⁵.”

1.3 PRACTICAL AND DIPLOMATIC IMPLICATIONS OF RECOGNITION

1.3.1 Study of historical and recent cases where Recognition of Statehood has had a significant impact: Kosovo and Taiwan

The first case in which recognition of States has had a significant impact that will be analysed is the one of the recognition of Kosovo as an independent state. The case of Kosovo’s secession represents a complex and controversial international issue that emerged in the aftermath of the Kosovo War. The recognition of Kosovo’s independence has been a contentious issue, as of 2022, over 100 countries, including the United States⁵⁶, recognized the country as an independent State, however, several countries including Russia and China still have not recognized it.

The complex case of Kosovo has brought many legal and political implications. Firstly, the International Court of Justice has issued an advisory opinion in 2010, stating that Kosovo’s declaration of independence did not violate International Law⁵⁷, implying that the recognition of Kosovo did not represent a case of premature recognition and thus illegal recognition, recognizing its independence but not addressing the issue of Statehood directly. Consequently, the only way in which the recognition of the “Republika Kosova” as an independent State could be argued is by declaring the ICJ’s Resolution 1244 obsolete.

The recognition of Kosovo’s independence has indeed far-reaching implications, shaping both regional and international dynamics. In the Balkans, this acknowledgment has heightened political tensions and presented diplomatic challenges. Indeed, while many Western nations endorse Kosovo’s sovereignty, Serbia and others staunchly oppose it, setting the stage for delicate negotiations. At the core of the issue are the ongoing normalization talks between Serbia and Kosovo⁵⁸, where the recognition of Kosovo plays a pivotal role. The solution of the

⁵⁵ H Lauterpacht, ‘Recognition of States in International Law’ (1944) 53 The Yale Law Journal 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjl>>.

⁵⁶ ‘Kosovo’ (United States Department of State) <<https://www.state.gov/countries-areas/kosovo/>>.

⁵⁷ ‘UNITED STATES INSTITUTE of PEACE’ (2010) <<https://www.usip.org/sites/default/files/PB55%20The%20ICJs%20Advisory%20Opinion%20on%20Kosovo.pdf>>.

⁵⁸ Presevo and Mitrovica, ‘The Leaders of Kosovo and Serbia Talk about Swapping Land’ (*The Economist* 30 August 2018) <<https://www.economist.com/europe/2018/08/30/the-leaders-of-kosovo-and-serbia-talk-about-swapping-land>>.

matter would represent not simply a diplomatic milestone but is intricately linked to Serbia's aspirations for European Union accession, adding complexity to the diplomatic landscape. However, despite the EU leader's pressure for a breakthrough, Serbia leaders broke off the negotiations⁵⁹.

Additionally, beyond regional considerations, the case of Kosovo prompts reflections on international law, challenging the balance between self-determination and the respect for established borders. The implications extend to security, with the presence of international peacekeeping forces indicating persistent concerns and underscoring the complexity of ethnic relations⁶⁰. In essence, Kosovo's recognition transcends a mere acknowledgment of Statehood. It sparks broader conversations and regional alliances, international norms, and the delicate balance between sovereignty and the pursuit of lasting peace. The implications thus resonate in geopolitical discourse, urging a reconsideration of the intricate dynamics shaping this historically tumultuous region.

The second striking case regarding the issue of State recognition is the one of the of Taiwan. Indeed, the recognition of Taiwan, officially the Republic of China, represents a complex and sensitive issue with broad implications.

Central to this matter is the One-China policy, where countries must navigate diplomatic intricacies, geopolitical pressures, and historical sensitivities in determining whether to officially acknowledge Taiwan's sovereignty.

Indeed, countries recognizing Taiwan can find themselves on a diplomatic tightrope with the People's Republic of China which vehemently opposes any official recognition of Taiwan, and that can strain political, economic, and geopolitical relations. For this reason, most nations maintain unofficial relations with the country, adhering to the One-China policy, which in turn limits Taiwan's participation in international organizations and forums⁶¹.

This exclusion affects global governance and collaborative efforts, emphasising the impact of geopolitical considerations on Taiwan's role on the world stage. The recognition status thus significantly influences Cross-Strait relations, given the historical tensions between

⁵⁹ 'Kosovo, Serbia Leaders Break off Talks despite EU Pressure for Breakthrough' (*France 24* 27 October 2023) <<https://www.france24.com/en/europe/20231027-european-union-fails-to-pressure-kosovo-and-serbia-to-end-standoff>>.

⁶⁰ (Oeter, 2015)

⁶¹ J.M., 'What Is the One-China Policy?' (*The Economist* 14 March 2017) <https://www.economist.com/the-economist-explains/2017/03/14/what-is-the-one-china-policy?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=18151738051&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=CjwKCAiAopuvBhBCEiwAm8jaMWTBiO_DZzXnh456v1OZSr8mD2LIXtLI2GEolsoHT95pQva5wAPH2hoColAQAvD_BwE&gclid=aw.ds>.

Taiwan and mainland China⁶². Indeed, the threat of military action by the People's Republic of China adds complexity, making the region a focal point of geopolitical uncertainty.

Additionally, recognition also carries an economic weight, impacting trade relations crucial to Taiwan's economic wellbeing. As a matter of fact, the diplomatic considerations surrounding Taiwan's recognition status have the potential to influence countries' inclinations to form economic partnerships and participate in trade agreements⁶³. Moreover, beyond geopolitics and trade, the recognition of Taiwan becomes a symbolic gesture of international support for its democratic government. Indeed, the exclusion from international organizations, especially during global health crisis such as the COVID-19 crisis, underscores the importance of recognition in enabling Taiwan to contribute meaningfully to global initiatives⁶⁴.

1.3.2. Study of historical and recent cases where Recognition of Governments has had a significant impact: Libya and Myanmar

The first striking case in which recognition of Governments that will be analysed is the one of Libya.

The first factor that needs to be analysed is the previously examined effective control doctrine, which states that the group claiming to be the government should control most of the land, and the lack of popular resistance represents its proof⁶⁵. Furthermore, this authority needs to be likely to continue to exercise its control without foreign assistance⁶⁶. Indeed, in the case of Libya, as of 2011, the TNC controlled exclusively the eastern parts of Libya, while it was recognized by both France and the UAE as the official government of the country. On the other hand, the Gaddafi government was still in control of the western parts of the country, including the capital⁶⁷. Therefore, the effective control criterion was far from being met, and, consequently, the TNC's ability to represent Libya was limited. In other words, "*as long as the*

⁶² Sabella Ogbobode Abidde, *Taiwan in Africa: Seven Decades of Certainty and Uncertainties* (Rowman & Littlefield 2022)

<<https://books.google.it/books?hl=it&lr=&id=YV6ZEAAAQBAJ&oi=fnd&pg=PA97&dq=implications+of+taiwan%27s+recognition&ots=zZWYWqakNt&sig=GhS3wrKQl1fGm0Q3imBMYZCJu2w#v=onepage&q=implications%20of%20taiwan%E2%80%99s%20recognition&f=false>> accessed 8 April 2024.

⁶³ Laurent Didier, *Economic Diplomacy: The 'One-China Policy' Effect on Trade*, vol. volume 48, pg 223-243 (elsevier 2018) <<https://www.sciencedirect.com/science/article/abs/pii/S1043951X16301419?via%3Dihub>>.

⁶⁴ Robert Joseph Medillo, 'Will Taiwan's COVID-19 Response Bolster Its International Recognition?' (30 May 2020) <<https://eastasiaforum.org/2020/05/30/will-taiwans-covid-19-response-bolster-its-international-recognition/>>.

⁶⁵ Brad R Roth, 'Secessions, Coups and the International Rule of Law: Assessing the Decline of the Effective Control Doctrine' [2011] SSRN Electronic Journal.

⁶⁶ Anne Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 International Community Law Review 381.

⁶⁷ Anne Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 International Community Law Review 381.

*NTC's control is limited to the eastern parts of Libya, with the capital Tripoli and western parts remaining under the control of Qaddafi forces, it may be recognised only as the local de facto government of the territory which it controls. Any recognition of the NTC as the de jure government of the State of Libya, while Qaddafi forces are still in control of the capital, seems premature and would arguably constitute an illegal interference in the internal affairs of Libya*⁶⁸.

Secondly, another important factor when dealing with Government recognition is the one of the legitimacy doctrine, which implies governments gaining power through the recognized legal framework of the State, alongside legitimacy and democratic governance⁶⁹. In the case of Libya, it can be argued that the Gaddafi government lost its legitimacy after denying the population to choose their leader and after the commitment of crimes such as war crimes and crimes against humanity⁷⁰. On the other hand, TNC's appeared to be in accordance with the doctrine, as it seemed to enjoy significant support from the population in the regions it governed, and presumably would have garnered similar support in areas controlled by Gaddafi forces, given the opportunity for free choice. At the same time though, the actual support was unknown⁷¹. In other words, *“while it is tempting to sympathise with and even root for the NTC, the breadth of its support among the Libyan people is not well understood. Any special or singular status for the NTC, it may be argued, may exclude other political actors in Libya with some claim to legitimacy”*⁷². Looking back, it appears reasonable to question the TNC's widespread backing. Indeed, following Gaddafi's downfall, the TNC encountered numerous militia groups reluctant to relinquish authority, retaining control over their respective territories⁷³.

In conclusion, the case of recognition of the government of the NTC, can be deemed as premature recognition, with the legal consequences previously analysed.

⁶⁸ Talmon (2011), *supra* note 2, p. 4.

⁶⁹ Brad Roth, 'Legal Legitimacy and Recognition of Governments: A Doctrinal Guide' (*Oup.com*2024) <<https://academic.oup.com/book/3052/chapter-abstract/143801654?redirectedFrom=fulltext>> accessed 9 April 2024.

⁷⁰ Anne Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 *International Community Law Review* 381

⁷¹ William Shaw, 'Libya's Interim Rulers Struggle for Legitimacy - Libya | ReliefWeb' (*reliefweb.int*2 May 2012) <<https://reliefweb.int/report/libya/libyas-interim-rulers-struggle-legitimacy>> accessed 9 April 2024.

⁷² Talmon (2011), *supra* note 2, p. 4

⁷³ Anne Schuit, 'Recognition of Governments in International Law and the Recent Conflict in Libya' (2012) 14 *International Community Law Review* 381

Another example of cases where the recognition of governments had an important impact on the international arena is the one of Myanmar⁷⁴.

According to the legitimacy doctrine, a government's legitimacy often depends on how it came to power. More specifically, in the case of Myanmar, the military has historically played a significant role in the country's politics. Consequently, said military seized power in a coup in 2021, alleging widespread electoral fraud in 2020's elections, which were won by the NLD⁷⁵. For this reason, the legitimacy of the military-led government has been widely disputed both domestically and internationally and is indeed often seen as an illegitimate seizure of power⁷⁶.

On the other hand, following the effective control doctrine, in Myanmar, despite the military's seizure of power and the formation of a new government, widespread protests and resistance movements have challenged the military authority of the country⁷⁷. The presence of ongoing resistance thus suggests that the military may not have full effective control over the country, further complicating the assessment of its legitimacy.

Concluding, in terms of international recognition, many countries have condemned the military coup and voiced support for the restoration of civilian rule and democracy in Myanmar⁷⁸. However, there has been no consensus among the international community regarding the recognition of the military-led government. Some countries have imposed sanctions on Myanmar's military leaders and institutions in response to the coup, while others have maintained diplomatic ties with the military junta⁷⁹.

1.3.3. Consideration on the practical dynamics accompanying the recognition process

As it should by now be clear, the government recognition process in International Law is a complex and multifaced undertaking, involving the acknowledgment of one State by another as a sovereign entity. Consequently, this recognition carries significant practical

⁷⁴ Rebecca Barber, 'THE ROLE of the GENERAL ASSEMBLY in DETERMINING the LEGITIMACY of GOVERNMENTS' (2022) 71 *International and Comparative Law Quarterly* 627.

⁷⁵ Gregory B Poling and Simon Tran Hudes, 'Myanmar's Military Seizes Power' (www.csis.org 1 February 2021) <<https://www.csis.org/analysis/myanmars-military-seizes-power>>.

⁷⁶ Human Rights Council, 'Human Rights Council Fifty-Second Session Illegal and Illegitimate: Examining the Myanmar Military's Claim as the Government of Myanmar and the International Response Conference Room Paper of the Special Rapporteur on the Situation of Human Rights in Myanmar Summary' (2023) <<https://www.wcl.american.edu/wcl-american-edu/assets/crp-sr-myanmar-2023-01-31.pdf>> accessed 10 April 2024.

⁷⁷ Emily Fishbein, Jaw Tu Hkawng, Hpan Ja Brang, "'Blood and Sweat": Myanmar Resistance Fights to Overturn Military Coup' (*Al Jazeera* 1 February 2024) <<https://www.aljazeera.com/news/2024/2/1/blood-and-sweat-myanmar-resistance-fights-to-overturn-military-coup>>.

⁷⁸ Security Council, 'As Crisis in Myanmar Worsens, Security Council Must Take Resolute Action to End Violence by Country's Military, Address Humanitarian Situation, Speakers Urge | Meetings Coverage and Press Releases' (*press.un.org* 4 April 2024) <<https://press.un.org/en/2024/sc15652.doc.htm>> accessed 9 April 2024.

⁷⁹ Human Rights Watch, 'Myanmar: Events of 2023' (*Human Rights Watch* 12 December 2023) <<https://www.hrw.org/world-report/2024/country-chapters/myanmar>>.

implications, encompassing diplomatic, legal, economic, and security considerations. The establishment of diplomatic relations, adherence to treaties, economic relations, and human rights records are among the key factors influencing this process. Moreover, historical ties, cultural affinities, and public perception play crucial roles in shaping a State's decision to recognize another government.

The first and most direct example of a practical dynamic accompanying the process of recognition is directly linked with the effect it has on diplomatic relations. Indeed, for instance, the establishment of embassies and consulates is a tangible expression of recognition, as there can be no representation of diplomatic relations in a State that does not recognize the other. As a matter of fact, every internationally recognized country has an embassy in other countries, and the partially recognized ones have embassies only in those States that recognize them.

Moreover, as it was anticipated in the previous sections, recognition may influence a State's eligibility for membership in international organizations. Consequently, the lack of recognition may impact a government's participation in the decision making process within said organizations. Indeed, typically, a State's interactions with other entities in the realm of International Law are conducted through its government. Hence, when a government undergoes a constitutionally accepted change, this transition generally does not impact international legal relations. On the other hand, changes to a country's government through extra-constitutional means do have repercussions on the nation's international legal standing⁸⁰ and therefore its eligibility to international organizations.

Additionally, treaty obligations undergo effects due to recognition as well, as recognizing a government often involves adherence to existing treaties or entering in new agreements. Hence, States must consider how recognition affects their treaty obligations and whether said recognition implies compliance with international agreements⁸¹.

Moreover, when deciding whether to recognize a government or not, States also evaluate human rights records⁸² of the recognized governments as well as security concerns, as the stability and security of the recognized government can have implications for regional and global security.

⁸⁰ Ramanand Mundkur, 'CHAPTER 5 Recognition of Governments in International Organizations, Including at the International Monetary Fund' (www.elibrary.imf.org 6 November 2008) <<https://www.elibrary.imf.org/display/book/9781589065079/ch005.xml>> accessed 6 April 2024.

⁸¹ United Nations, 'Vienna Convention on the Law of Treaties' (1969) 63 *The American Journal of International Law* 875 <https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf>.

⁸² Federal Department of Foreign Affairs, 'The Recognition of States and Governments under International Law' (2023)..

Lastly, recognition has a practical effect also on economic relations, as it can influence trade and investment relations⁸³. Indeed, states may assess the economic benefits and potential risks associated with recognizing another government, taking into account the impact on bilateral trade agreements and investment treaties.

In summary, the practical dynamics accompanying the Government recognition process in International Law are multifaced and involve careful assessment of diplomatic, legal, economic, and security considerations, among others. States navigate these complexities to make informed decisions that align with their national interests and values.

CONCLUSION

This first chapter begins with the definition of recognition in International Law as an essential requirement for interactions between sovereign entities, shaping their rights and obligations. Two main theories can be defined: the *declaratory doctrine*, which sees Statehood as factual, and the *constitutive doctrine*, which believes recognition by existing countries to be essential to be defined as State. In International Law, recognition cannot be seen as mere formality, as it influences global interactions, impacting treaties, territorial disputes, and participation in international organizations. However, the concept of recognition can be controversial, especially in cases of political or territorial disputes. One of the cases of controversy of recognition lies in the idea of *premature recognition*, giving support to a new government before it gains widespread acceptance or stability, is considered inconsistent with International Law and can thus lead to instability. In other words, recognition is a fundamental aspect of International Law, shaping interactions between sovereign states and other global entities, emphasizing legal status acknowledgment and adherence to norms, and contributing to the stability of the international system.

The chapter moreover discusses the differences that exist between recognizing States and recognizing Governments in international law, emphasizing their different roles in determining legitimacy. Indeed, recognition of Statehood focuses on acknowledging empirical criteria, namely permanent population, a defined territory, a government, and the capacity to enter into relations with the other states. On the other hand though, Government recognition states whether the ruling body should have authority or not. Moreover, State recognition follows formal diplomatic channels with legal consequences, while Government recognition is more fluid and influenced by political factors. Indeed, while those of Statehood are fixed and stable,

⁸³ Frederick A Middlebush, 'The Effect of the Non-Recognition of Manchukuo' (1934) 28 American Political Science Review 677.

the criteria for recognizing Governments include popular support, stability, geopolitical interests, and human rights adherence. The analysis highlights recognition's dual legal and political nature, emphasizing its importance in establishing legitimacy and sovereignty. Typically, recognition is needed in cases of state succession or secession, with caution against premature recognition that may undermine stability. Ultimately, recognition requires judgment based on factual conditions and is not simply a matter of discretion.

The chapter culminates in the exploration of the implications of both Statehood recognition and Government recognition real-world cases, particularly focusing on Kosovo, Taiwan, Libya, and Myanmar. In Kosovo, recognition as an independent state has sparked international controversy, with differing stances among nations like Russia and China. This recognition carries legal and political consequences, including ongoing tensions with Serbia and questions about international law and self-determination. Similarly, Taiwan faces recognition challenges due to the One-China policy, affecting its global participation, economic partnerships, and symbolic support for democracy. On the other hand, when dealing with Government recognition, the cases of Myanmar and Libya are analyzed. In Libya, limited recognition occurred due to the Transitional National Council's incomplete control and the loss of legitimacy by the Gaddafi government. Myanmar experienced a military coup, leading to protests and international condemnation, but no consensus on recognizing the new government. In practice, thus, the process of recognition involves many factors such as diplomatic relations, human rights, and economic ties, influencing decisions based on national interests and values.

Ultimately, recognition in International Law is a cornerstone in shaping the legitimacy and stability of sovereign entities, exploring the balance between legal principles and political realities on the global stage.

CHAPTER 2

THE INTERNATIONAL RECOGNITION OF THE AFGHAN TALIBAN GOVERNMENT

This second chapter, “*The Question of the Afghan Taliban Government*”, examines the landscape surrounding the Afghan Taliban Government, analysing the different dimensions of its entering into power, such as territorial control, international recognition, and interactions with ambiguous States, focusing in particular on the case of China. The chapter aims to provide an overview of the historical context, formation, and international status of the Taliban Government, as well as the diplomatic dynamics shaping its interactions with the global community.

The opening part of this chapter deals with the historical context of the power transition, with a reconstruction of events leading to the power transition, in order to understand the circumstances that paved the way for the Taliban’s seizure of power. The analysis also examines political, social, and economic dimensions, providing a foundation for understanding the implications of the power transition.

The following part provides a description of how the Taliban Government is composed, including key members. Moreover, an analysis of the territorial control of Taliban across different regions of the Afghanistan is made, focusing especially on the impact of its governance on the local population and internal security.

Moving forward, the chapter deals with the international recognition of the Taliban’s governance, exploring the agreements, positions of countries and international organizations, and diplomatic implications of recognition or the lack of thereof. Moreover, the ambiguous approach of China towards the Taliban Government is analysed, despite the absence of official recognition.

2.1 HISTORICAL CONTEXT OF THE POWER TRANSITION

2.1.1. Reconstruction of the events leading to the Taliban Government’s assumption of power

On April 27, 1978, the Khalq faction of the People’s Democratic Party of Afghanistan, seized power ousting President Muhammad Daud Khan’s Government⁸⁴ in the so-called Saur revolution. The new Government seeing Taraki as President of a non-Islamist Government

⁸⁴ (6.2.1. *Past Conflicts (1979-2001)*, n.d.)

initiated harsh purges targeting any domestic opposition and embarked on reforms provoking deep resentment among the devoutly religious and largely anti-communist population, leading to insurgencies among tribal and urban groups of Islamic orientation collectively known as the *mujahideen*, namely, “*those who engage in jihad*”. The situation in the country led to the Soviet invasion of Afghanistan in 1979 in support of the Afghan communist Government against the anti-communist Muslims’ guerrilla, sparking a decade-long conflict⁸⁵, which was opposed by the *mujahideen* consequently leading to USSR withdrawal⁸⁶ and leading to a civil war.

The *mujahideen* movement was indeed extremely fragmented, and therefore various *mujahideen* factions aimed for control. Consequently, in 1994, the Taliban, a predominantly Pashtun, Islamic fundamentalist group⁸⁷, emerged, promising to restore order, security, and implement *Sharia* Law, namely Islam’s legal system derived from the Quran⁸⁸. This group was not recognized as the lawful government of the country from the international community, except from Pakistan, Saudi Arabia, and the United Arab Emirates⁸⁹.

Following the conflict, a transitional Government proclaimed an Islamic Republic⁹⁰, which was supported by numerous rebel factions. However, President Burhanuddin Rabbani, head of the Islamic Society refused to step down⁹¹. By 1996 the Taliban had seized control of Kabul and established the Islamic Emirate of Afghanistan, rapidly gaining control over most of the country, imposing their strict interpretation of Islamic Law⁹². The Taliban’s regime faced thus international condemnation due to its strict restrictions on women’s rights which constituted a form of human rights abuses and additionally due to its sheltering of terrorist groups such as Al-Qaeda, led by Osama bin Laden. Indeed, Afghanistan under the Taliban had one of the worst human rights records in the world⁹³.

⁸⁵ (*Soviet Invasion of Afghanistan | Summary & Facts*, 2024)

⁸⁶ Alvin Z Rubinstein, ‘The Soviet Withdrawal from Afghanistan’ (1988) 87 *Current History* 333
<<https://www.jstor.org/stable/45316120>>.

⁸⁷ Lindsay Maizland, ‘The Taliban in Afghanistan’ (*Council on Foreign Relations* 19 January 2023)
<<https://www.cfr.org/backgrounder/taliban-afghanistan>>.

⁸⁸ ‘What Is Sharia Law? What Does It Mean for Women in Afghanistan?’ *BBC News* (19 August 2021)
<<https://www.bbc.com/news/world-27307249#:~:text=Sharia%20is%20Islam>>.

⁸⁹ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 *Chinese journal of international law* 73.

⁹⁰ ‘The Constitution of the Islamic Republic of Afghanistan’ (2004)
<https://www.diplomatie.gouv.fr/IMG/pdf/The_Constitution_of_the_Islamic_Republic_of_Afghanistan.pdf>.

⁹¹ (*Afghan War | History, Casualties, Dates, & Facts*, 2024)

⁹² National Counterterrorism Center, ‘National Counterterrorism Center | Groups’ (www.dni.gov)
<https://www.dni.gov/nctc/groups/afghan_taliban.html#:~:text=By%20September%201996%2C%20the%20Taliban>.

⁹³ US Department of State, ‘The Taliban’s War against Women’ (*State.gov* 17 November 2001) <<https://2001-2009.state.gov/g/drl/rls/6185.htm>>.

Indeed, the Taliban's association with Al-Qaeda came to a head when Al-Qaeda orchestrated the September 11, 2001, attacks on the United States, leading to the US-led invasion of Afghanistan in October 2001⁹⁴ ⁹⁵.

However, despite being outside of power, the Taliban, which mainly either fled to neighbouring Pakistan⁹⁶ or went into hiding, continued to launch insurgent attacks against the Afghan Government and coalition forces, regaining strength⁹⁷. Consequently, after years of negotiations, the United States signed a peace deal with the Taliban in February 2020, paving the way for the withdrawal of United States and NATO troops from Afghanistan in exchange for Taliban assurances to prevent terrorist groups from operating in the country⁹⁸.

However, following the withdrawal of foreign troops, the Taliban launched a rapid offensive across Afghanistan counter to the United States hopes, seizing control of provincial capitals and major cities⁹⁹. By August 2021, they had taken over Kabul, completing their return to power.

2.1.2. Analysis of the transition from the preceding Government to the Taliban regime

The transition from the preceding government to the Taliban regime was characterized by a rapid and chaotic collapse of state authority, which thus led to a humanitarian crisis and prompted different international responses and diplomatic efforts to address the situation.

Firstly, the Taliban launched a rapid military offensive across Afghanistan, starting to seize control of provincial capitals and major cities¹⁰⁰. Their advance was facilitated by the withdrawal of the United States and NATO forces, as well as the collapse of Afghan security forces in many areas¹⁰¹.

⁹⁴ Center for Preventive Action, 'War in Afghanistan' (*Global Conflict Tracker* 19 October 2021)

<<https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan>>.

⁹⁵ The Editors of Encyclopedia Britannica, 'Afghan War | History & Facts', *Encyclopædia Britannica* (2018)

<<https://www.britannica.com/event/Afghan-War>>.

⁹⁶ 'Photos: Settled Afghans Forced to Flee Pakistan' (*Al Jazeera* 31 October 2023)

<<https://www.aljazeera.com/gallery/2023/10/31/photos-settled-afghans-forced-to-flee-pakistan>>.

⁹⁷ Gilles Dorransoro, 'THE TALIBAN ' S WINNING STRATEGY in AFGHANISTAN' (Carnegie Endowment 2009)

<https://carnegieendowment.org/files/taliban_winning_strategy.pdf>.

⁹⁸ 'Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan' (*www.state.gov* 29 February 2020) <<https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>>.

⁹⁹ Jessica Donati, 'Taliban Attacks Increased after Peace Deal, Counter to U.S. Hopes' *WSJ* (1 May 2020)

<<https://www.wsj.com/articles/taliban-attacks-increased-after-peace-deal-counter-to-u-s-hopes-11588366531>> accessed 26 March 2024.

¹⁰⁰ The Visual Journalism Team, 'Mapping the Advance of the Taliban in Afghanistan' *BBC News* (29 July 2021)

<<https://www.bbc.com/news/world-asia-57933979>>.

¹⁰¹ NATO, 'NATO and Afghanistan' (*NATO* 31 September 2022)

<https://www.nato.int/cps/en/natohq/topics_8189.htm?>.

As the Taliban advanced, the Afghan Government's authority crumbled rapidly. Consequently, President Ashraf Ghani fled the country, leaving a power vacuum in Kabul¹⁰² and acknowledging the victory of the Taliban¹⁰³. Following the collapse of the government, many government officials and security forces either surrendered or fled, further weakening the government's ability to resist the Taliban's advance¹⁰⁴.

Consequently, the United States, followed by other Western powers, evacuated their citizens and embassy staff, while also coordinating efforts to evacuate vulnerable Afghans who were at risk under Taliban rule, such as women or those associated with the previous government¹⁰⁵.

Moreover, diplomatic efforts to address the crisis and engage with the Taliban were further complicated by the group's past affiliation with terrorism and its history of human rights abuses¹⁰⁶. Accordingly, efforts to establish channels of communication and negotiation with the Taliban were met with scepticism and caution by many in the international community. The United Nations and regional organizations played a role in facilitating dialogue and coordinating humanitarian assistance, although progress remained slow and uncertain¹⁰⁷.

Lastly, the transition had significant geopolitical implications, reshaping alliances and power dynamics in the region, as will be analysed in the next section. China, Russia, and other regional actors aim to fill the void left by the withdrawal of Western powers and expand their influence in Afghanistan¹⁰⁸. Meanwhile, concerns remained about the potential for Afghanistan to become once again a breeding ground for terrorism and extremism¹⁰⁹, with implications for regional security and stability.

¹⁰² 'Afghan Ex-President Ghani Defends Decision to Flee the Country' (*www.aljazeera.com* 30 December 2021) <<https://www.aljazeera.com/news/2021/12/30/afghanistan-ghani-defends-decision-to-leave>>.

¹⁰³ Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23 *Chinese journal of international law* 73.

¹⁰⁴ 'WHY the AFGHAN SECURITY FORCES COLLAPSED' (2023) <<https://www.sigar.mil/pdf/evaluations/SIGAR-23-16-IP.pdf>>.

¹⁰⁵ Hardin Lang and others, 'After the Airlift: Protection for Afghan Refugees and Those Who Remain at Risk in Afghanistan' (*Refugees International* 8 September 2021) <<https://www.refugeesinternational.org/reports-briefs/after-the-airlift-protection-for-afghan-refugees-and-those-who-remain-at-risk-in-afghanistan/>>.

¹⁰⁶ Amnesty International, 'Everything You Need to Know about Human Rights in Afghanistan 2020' (*Amnesty International* 2022) <<https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/afghanistan/report-afghanistan/>>.

¹⁰⁷ Security Council, 'Speakers Weigh Prospects for Engagement with Taliban in Afghanistan amid Ongoing Concern over Harsh Repression of Women's Rights | Meetings Coverage and Press Releases' (*press.un.org* 20 September 2023) <<https://press.un.org/en/2023/sc15541.doc.htm>>.

¹⁰⁸ Ron Synovitz, 'Regional Powers Seek to Fill Vacuum Left by West's Retreat from Afghanistan' (*RadioFreeEurope/RadioLiberty* 25 December 2021) <<https://www.rferl.org/a/afghanistan-power-vacuum-russia-iran-china-pakistan/31624955.html>>.

¹⁰⁹ Security Council, 'Speakers Weigh Prospects for Engagement with Taliban in Afghanistan amid Ongoing Concern over Harsh Repression of Women's Rights | Meetings Coverage and Press Releases' (*press.un.org* 20 September 2023) <<https://press.un.org/en/2023/sc15541.doc.htm>>.

2.1.3. Examination of the political, social, and economic situation during and after the change in Government

The political situation during the transition from the Afghan Government to the Taliban regime was marked by instability¹¹⁰. Indeed, the collapse of the Ghani government on 15 August 2021, left a power vacuum, which led to the rapid ascent of the Taliban and the dissolution of the previous political structures¹¹¹. As a matter of fact, said collapse occurred while the Taliban forces were advancing rapidly through the country, seizing Kabul on the 15th of August 2021.

Consequently, the political landscape during the transition was marked by fragmentation and disarray due to the absence of a clear political leadership¹¹². Additionally, the lack of cohesive leadership, combined with widespread corruption and mistrust within the government and security forces, weakened the State's ability to resist the Taliban's advance¹¹³. As a consequence, Afghanistan is now under the control of an Islamist regime led by the Taliban, which declared the formation of an Islamic Emirate¹¹⁴, under which, the political landscape has shifted dramatically, with the Taliban consolidating power and establishing a new Government structure based on their interpretation of Islamic law¹¹⁵. However, the Taliban's rule is not universally accepted, both domestically and internationally¹¹⁶, leading to governance, legitimacy, and representation issues.

The social situation during the transition was characterized by fear, displacement, and uncertainty¹¹⁷. More specifically, the population, particularly women, minorities, and those associated with the previous government or Western entities, faced grave risks and were forced to flee their homes to seek safety¹¹⁸. The Taliban's interpretation of Islamic law has indeed led

¹¹⁰ Vanda Felbab-Brown, 'Security and Politics in Pre-Transition Afghanistan' (*Brookings* 9 May 2012) <<https://www.brookings.edu/articles/security-and-politics-in-pre-transition-afghanistan/>> accessed 10 April 2024.

¹¹¹ Claire Mills, 'Afghanistan: Fall of the Government and the Transition of Power' [2021] commonslibrary.parliament.uk <<https://commonslibrary.parliament.uk/research-briefings/cbp-9299/>>.

¹¹² Geoffrey Hayes and Mark Sedra, 'Afghanistan: Transition under Threat' (2008) <https://www.cigionline.org/static/documents/afghanistan_transition_under_threat_0.pdf> accessed 10 April 2024.

¹¹³ Clayton Thomas, 'Taliban Government in Afghanistan: Background and Issues for Congress' (2021) <<https://crsreports.congress.gov/product/pdf/R/R46955>>.

¹¹⁴ Lindsay Maizland, 'The Taliban in Afghanistan' (*Council on Foreign Relations* 19 January 2023) <<https://www.cfr.org/backgrounder/taliban-afghanistan>>.

¹¹⁵ Clayton Thomas, 'Taliban Government in Afghanistan: Background and Issues for Congress' (2021) <<https://crsreports.congress.gov/product/pdf/R/R46955>>.

¹¹⁶ Clayton Thomas, 'Taliban Government in Afghanistan: Background and Issues for Congress' (2021) <<https://crsreports.congress.gov/product/pdf/R/R46955>>.

¹¹⁷ Austin L Wright, 'PATTERNS of INTERNAL DISPLACEMENT in AFGHANISTAN' (December 2023) <<file:///Users/alice.reds/Downloads/Patterns%20of%20Internal%20Displacement%20in%20Afghanistan.pdf>>.

¹¹⁸ UNCHR, 'Afghanistan Crisis Update: Women and Girls in Displacement' <https://asiapacific.unwomen.org/sites/default/files/2022-03/af-Afghanistan_factsheet-s2.pdf>.

to restrictions on personal freedoms, particularly for women and minorities¹¹⁹. For instance, women's access to education, employment, and public life has been severely curtailed¹²⁰, and there have been reports of human rights abuses, including arbitrary arrests, extrajudicial killings, and violence against dissenters and crackdown on dissent, leading to numerous social tensions¹²¹ and the internal displacement of 3.5 million people¹²².

Lastly, during the change, the economic situation was dire, increased by the sudden withdrawal of international aid¹²³, the freezing of Afghanistan's foreign reserves, and the disruption of trade and commerce due to conflict and instability. Indeed, according to a 2019 World Bank report¹²⁴, seventy-five percent of Afghanistan's government's public expenditures were covered by grants from international partners¹²⁵, which suspended aid following the Taliban's seizure of power. As of today, the country is facing humanitarian crisis¹²⁶, widespread poverty, and food insecurity (almost fifty percent of the population suffers from high levels of acute food insecurity), as the freezing of foreign reserves¹²⁷ has negatively impacted the economy, leading to currency depreciation, inflation, and a shortage of essential goods¹²⁸. Indeed, the lack of international recognition, which leads to the impossibility to access financial resources, further renders useless the efforts to address these economic issues.

2.2. FORMATION OF THE TALIBAN GOVERNMENT AND TERRITORIAL CONTROL

¹¹⁹ Clayton Thomas, 'Taliban Government in Afghanistan: Background and Issues for Congress' (2021) <<https://crsreports.congress.gov/product/pdf/R/R46955>>.

¹²⁰ Security Council, 'Excluded from Education, Public Life, Women, Girls Facing "Gender Apartheid" in Afghanistan, Delegate Tells Security Council | UN Press' (*press.un.org* 21 June 2023) <<https://press.un.org/en/2023/sc15330.doc.htm>>.

¹²¹ International Crisis Group, 'Afghanistan's Security Challenges under the Taliban' (*www.crisisgroup.org* 12 August 2022) <<https://www.crisisgroup.org/asia/south-asia/afghanistan/afghanistans-security-challenges-under-taliban>>.

¹²² European Union, 'Afghanistan' (*civil-protection-humanitarian-aid.ec.europa.eu* 2019) <https://civil-protection-humanitarian-aid.ec.europa.eu/where/asia-and-pacific/afghanistan_en>.

¹²³ Coby Jones, 'The Humanitarian Impacts of the Afghanistan Withdrawal' (*USGLC* 16 May 2022) <<https://www.usglc.org/blog/the-humanitarian-impacts-of-the-afghanistan-withdrawal/>>.

¹²⁴ The World Bank, 'The World Bank in Afghanistan' (*World Bank* 7 October 2022) <<https://www.worldbank.org/en/country/afghanistan/overview>>.

¹²⁵ Lindsay Maizland, 'The Taliban in Afghanistan' (*Council on Foreign Relations* 19 January 2023) <<https://www.cfr.org/backgrounder/taliban-afghanistan>>.

¹²⁶ European Union, 'Afghanistan' (*civil-protection-humanitarian-aid.ec.europa.eu* 2019) <https://civil-protection-humanitarian-aid.ec.europa.eu/where/asia-and-pacific/afghanistan_en>.

¹²⁷ Clayton Thomas, 'Taliban Government in Afghanistan: Background and Issues for Congress' (2021) <<https://crsreports.congress.gov/product/pdf/R/R46955>>.

¹²⁸ The World Bank, 'AFGHANISTAN ECONOMIC MONITOR' (30 October 2023) <<https://thedocs.worldbank.org/en/doc/2ab75317f6e86c9bb6fcf342f72e0b64-0310012023/original/Afghanistan-Economic-Monitor-31-October-2023.pdf>>.

2.2.1 Description of the formation of the Taliban Government and its key members

After the seizing of Kabul, the Taliban declared the re-establishment of Islamic Emirate of Afghanistan, the same that was established during their previous rule from 1996 to 2001¹²⁹. The composition of the Taliban Government reflects a hierarchical structure with a supreme leader at the top, supported by deputy leaders, ministers, and officials responsible for governing different aspects of the territory under the Taliban¹³⁰. At the top is the *Amir al-Mu'minin*, namely the *Commander of the Faithful*¹³¹, below him are the deputy leaders, who oversee different aspects of the Taliban's governance and operations.

The Government also includes ministers and officials who lead various ministries and departments responsible for areas such as I) defence, II) foreign affairs, III) interior affairs, IV) education, and V) finance¹³². These ministries and officials are appointed by the leadership and are required to implement the Taliban's policies and directives in their areas of responsibility¹³³.

The key member of the Taliban Government is represented by Hibatullah Akhundzada¹³⁴, the *Amir al-Mu'minin*, namely the supreme leader of the Taliban. The *Amir al-Mu'minin* is responsible for setting the overall direction and policies of the Taliban, interpreting religious doctrine, and providing guidance to the leadership and followers¹³⁵. For this reason, this position has significant religious and political authority, and the supreme leader's decisions are considered final within the Taliban hierarchy.

The role of head of Government is covered by Mullah Mohammad Hassan Akhund¹³⁶, one of the original members of the Taliban since the early 1990s and is now responsible for managing the day-to-day affairs of the administration¹³⁷.

¹²⁹ Lindsay Maizland, 'The Taliban in Afghanistan' (*Council on Foreign Relations* 19 January 2023) <<https://www.cfr.org/backgrounder/taliban-afghanistan>>.

¹³⁰ Michael Semple, 'PEACEW RKS RHETORIC, IDEOLOGY, and ORGANIZATIONAL STRUCTURE of the TALIBAN MOVEMENT' (2014) <<https://www.usip.org/sites/default/files/PW102-Rhetoric-Ideology-and-Organizational-Structure-of-the-Taliban-Movement.pdf>>.

¹³¹ 'Amīr Al-Mu'minīn | Islamic Title | Britannica' (*www.britannica.com*) <<https://www.britannica.com/topic/amir-al-muminin>> accessed 13 April 2024.

¹³² Lyse Doucet, 'Hardliners Get Key Posts in New Taliban Government' *BBC News* (7 September 2021) <<https://www.bbc.com/news/world-asia-58479750>>.

¹³³ 'Afghanistan' (*United States Department of State* 2022) <<https://www.state.gov/reports/2022-report-on-international-religious-freedom/afghanistan/>>.

¹³⁴ Frud Bezhan, 'Key Figures in the Taliban's New Theocratic Government' *RadioFreeEurope/RadioLiberty* (7 September 2021) <<https://www.rferl.org/a/afghanistan-taliban-government-figures/31448372.html>>.

¹³⁵ Lindsay Maizland, 'The Taliban in Afghanistan' (*Council on Foreign Relations* 19 January 2023) <<https://www.cfr.org/backgrounder/taliban-afghanistan>>.

¹³⁶ Frud Bezhan, 'Key Figures in the Taliban's New Theocratic Government' *RadioFreeEurope/RadioLiberty* (7 September 2021) <<https://www.rferl.org/a/afghanistan-taliban-government-figures/31448372.html>>.

¹³⁷ 'Who Is Mohammad Hasan Akhund, the Head of New Taliban Gov't?' (*www.aljazeera.com* 7 September 2021) <<https://www.aljazeera.com/news/2021/9/7/profile-mohammad-hassan-akhund-the-head-of-taliban-government>>.

One of the co-founders of the Taliban, Mullah Abdul Ghani Baradar¹³⁸, serves as the deputy leader of the group. The role of deputy leaders consists in assisting the *Amir al-Mu'minin* in governance and decision making, as for instance, overseeing specific portfolios or areas of responsibility within the Taliban government¹³⁹. In the case of Mullah Abdul Ghani Baradar, his focus is predominantly on political and diplomatic affairs¹⁴⁰. Another example of deputy leader can be found in Sirajuddin Haqqani¹⁴¹, who focuses on military operations and security.

Overall, the Government is headed by a cabinet of thirty-three members, where all ministers are men¹⁴². The Taliban government organizes its administration into ministries and departments responsible for different sectors of governance¹⁴³. In addition to central ministries, the Taliban established governance structures at regional and provincial levels, where each region may have its own leadership appointed by the Central Government to oversee local administration, security, and services¹⁴⁴. Moreover, the Taliban may have advisory councils, or *Shuras*, composed of religious scholars, tribal elders, and influential figures, with the aim of providing advice and counsel to the leadership on various issues, including religious interpretations, tribal relations, and governance issues¹⁴⁵.

Lastly, while not formal Government positions, tribal and community leaders need to be mentioned as they often have significant influence within territories controlled by the Taliban¹⁴⁶. The Taliban may indeed collaborate with these leaders in order to maintain stability, solve disputes, and gain support from local populations.

2.2.2. Analysis of the Taliban Government's territorial control in different regions of Afghanistan

¹³⁸ Frud Bezhan, 'Key Figures in the Taliban's New Theocratic Government' *RadioFreeEurope/RadioLiberty* (7 September 2021) <<https://www.rferl.org/a/afghanistan-taliban-government-figures/31448372.html>>.

¹³⁹ Haroun Rahimi, 'The Taliban in Government: A Grim New Reality Is Settling In' (*www.aljazeera.com*2023) <<https://www.aljazeera.com/opinions/2023/3/23/taliban-in-government-a-grim-new-reality-is-settling-in>>.

¹⁴⁰ 'Abdul Ghani Baradar | Taliban Leader, Afghanistan, & Release | Britannica' (*www.britannica.com*15 February 2024) <<https://www.britannica.com/biography/Mullah-Abdul-Ghani-Baradar>>.

¹⁴¹ Frud Bezhan, 'Key Figures in the Taliban's New Theocratic Government' *RadioFreeEurope/RadioLiberty* (7 September 2021) <<https://www.rferl.org/a/afghanistan-taliban-government-figures/31448372.html>>.

¹⁴² Lindsay Maizland, 'The Taliban in Afghanistan' (*Council on Foreign Relations*19 January 2023) <<https://www.cfr.org/backgrounder/taliban-afghanistan>>.

¹⁴³ 'Government Ministries of Afghanistan' (*afghanwarnews.info*) <<https://afghanwarnews.info/ministries.htm>> accessed 13 April 2024.

¹⁴⁴ Alex Thier, 'The Nature of the Afghan State: Centralization vs. Decentralization' (2020) <https://www.usip.org/sites/default/files/Afghanistan-Peace-Process_Nature-of-the-Afghan-State_Centralization-vs-Decentralization.pdf>.

¹⁴⁵ MURAT SOFUOGLU, 'How the Taliban Governs Itself' (*How the Taliban governs itself*2021) <<https://www.trtworld.com/magazine/how-the-taliban-governs-itself-50274>>.

¹⁴⁶ Clayton Thomas, 'Taliban Government in Afghanistan: Background and Issues for Congress' (2021) <<https://crsreports.congress.gov/product/pdf/R/R46955>>.

Historically, the Taliban had strong support among Pashtun communities in the Southern and Eastern regions of Afghanistan¹⁴⁷. Provinces such as Helmand, Kandahar, and Nangarhar have seen significant Taliban influence and control. Indeed, these areas have often been where the Taliban gained their power due to ethnic and tribal affiliations, as well as the challenging geographical areas that facilitates guerrilla warfare¹⁴⁸. Examples of this might be found in: I) the Southern Helmand province, having strategic importance for the Taliban due to its opium poppy cultivation, which provides a significant source of revenue¹⁴⁹, and II) the region of Kandahar¹⁵⁰, namely the birthplace and the former seat of the Taliban regime¹⁵¹. For this reason, the city of Kandahar is now becoming a *de facto* capital of the country with the aim of strengthening Taliban's grip on power¹⁵².

Lastly, the eastern region of Nangarhar, situated along the border with Pakistan, has been a hub of insurgent activity¹⁵³ exploiting the proximity to Pakistan's tribal areas, facilitating cross-border movements and insurgent operations¹⁵⁴. For this reason, the area has been one of the most conflict-affected areas of the country between August 10 and My 21, 2022¹⁵⁵.

In the Northern and Western regions, there are some provinces, such as parts of Kunduz, Baghlan, and Badghis where the Taliban have made progress, notwithstanding the fact that their influence is generally weaker compared to the South and East¹⁵⁶.

Major cities like Kabul, Herat, and Mazar-i-Sharif have been under government control, supported by security forces and international presence. However, the Taliban have caused

¹⁴⁷ Gilles Dorronsoro, 'THE TALIBAN ' S WINNING STRATEGY in AFGHANISTAN' (Carnegie Endowment 2009) <https://carnegieendowment.org/files/taliban_winning_strategy.pdf>.

¹⁴⁸ Gilles Dorronsoro, 'THE TALIBAN ' S WINNING STRATEGY in AFGHANISTAN' (Carnegie Endowment 2009) <https://carnegieendowment.org/files/taliban_winning_strategy.pdf>.

¹⁴⁹ Borhan Osman, 'Why Capturing Helmand Is Top of the Taliban's Strategic Goals' *The Observer* (26 December 2015) <<https://www.theguardian.com/world/2015/dec/26/taliban-helmand-opium>> accessed 16 April 2024.

¹⁵⁰ Anand Gopal, 'The Taliban in Kandahar' [2011] Oxford University Press eBooks 1 <<https://academic.oup.com/book/32771/chapter/273766545>> accessed 16 April 2024.

¹⁵¹ Ikramullah Ikram, 'Southern Afghan City Becomes de Facto Capital as Taliban Chief Tightens Grip on Power' *RadioFreeEurope/RadioLiberty* (8 April 2023) <<https://www.rferl.org/a/afghanistan-kandahar-taliban-akhundzada-capital/32369212.html>>.

¹⁵² Ikramullah Ikram, 'Southern Afghan City Becomes de Facto Capital as Taliban Chief Tightens Grip on Power' *RadioFreeEurope/RadioLiberty* (8 April 2023) <<https://www.rferl.org/a/afghanistan-kandahar-taliban-akhundzada-capital/32369212.html>>.

¹⁵³ Borhan Osnam, 'Descent into Chaos: Why Did Nangarhar Turn into an IS Hub?' (*Afghanistan Analysts Network - English* 27 September 2016) <<https://www.afghanistan-analysts.org/en/reports/war-and-peace/descent-into-chaos-why-did-nangarhar-turn-into-an-is-hub/>>.

¹⁵⁴ 'Nangarhar Districts Face Insurgent Threat' (*TOLOnews* 2 August 2012) <<https://tolonews.com/afghanistan/nangarhar-districts-face-insurgent-threat>> accessed 16 April 2024.

¹⁵⁵ 'Nangarhar' (*European Union Agency for Asylum* January 2023) <<https://euaa.europa.eu/country-guidance-afghanistan-2023/nangarhar>> accessed 16 April 2024.

¹⁵⁶ Gilles Dorronsoro, 'THE TALIBAN ' S WINNING STRATEGY in AFGHANISTAN' (Carnegie Endowment 2009) <https://carnegieendowment.org/files/taliban_winning_strategy.pdf>.

insecurity and fear among citizens through sporadic attacks and targeted assassinations. These urban areas are used by the Taliban as targets for propaganda¹⁵⁷.

Finally, regions along the border with Pakistan have often seen significant Taliban presence and control¹⁵⁸. Indeed, the porous border facilitates movement and moreover the area serves as a hiding place for Taliban fighters.

2.3. INTERNATIONAL RECOGNITION OF THE TALIBAN GOVERNMENT

2.3.1. Examination of the Doha Agreement and its impact on the international status of the Taliban

The Doha Agreement of 2020, formally known as the U.S.-Taliban Agreement, was reached for the United States and Afghanistan to collaborate in order to “*reach a comprehensive and sustainable peace agreement that ends the war in Afghanistan for the benefit of all Afghans and contributes to regional stability and global security*”¹⁵⁹ and was expected to lead to “*the formation of the new post-settlement Afghan Islamic Government*”¹⁶⁰. The ultimate aim was to facilitate the withdrawal of United States’ troops from Afghanistan and pave the way for intra-Afghan negotiations.

In the first part, the Agreement is aimed to address and solve the issue of terrorism in the country in four steps. Firstly, “*the Islamic Republic of Afghanistan reaffirms its continued commitment not to cooperate with [...] international terrorist groups*”¹⁶¹; secondly “*the United States re-affirms its commitments regarding support for the Afghan security forces and other government institutions*”¹⁶² measure which would protect the United States from terrorist threats; moreover “*the United States re-affirms its readiness to continue to conduct military operations in Afghanistan with the consent of the Islamic Republic of Afghanistan in order to*

¹⁵⁷ ‘Common Analysis and Guidance Note Country Guidance: Afghanistan’ (2022) <https://euaa.europa.eu/sites/default/files/publications/2022-04/2022_04_Country_Guidance_Afghanistan_EN_1.pdf>.

¹⁵⁸ ‘The Afghan-Pakistan Militant Nexus’ *BBC News* (5 February 2013) <<https://www.bbc.com/news/world-asia-21338263>> accessed 16 April 2024.

¹⁵⁹ ‘Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan’ (www.state.gov 29 February 2020) <<https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>>.

¹⁶⁰ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 *Chinese journal of international law* 73.

¹⁶¹ ‘Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan’ (www.state.gov 29 February 2020) <<https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>>.

¹⁶² ‘Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan’ (www.state.gov 29 February 2020) <<https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>>.

*disrupt [...] international terrorist groups*¹⁶³; and, lastly, *“the United States commits to facilitate discussions between Afghanistan and Pakistan”*¹⁶⁴.

In the second part, practical measures regarding the international commitment of countries are presented: I) the United States would reduce its military force in the country; II) the US-led Coalition would complete the withdrawal of the troops within 14 months; III) the United States would commit to provide yearly funds to Afghanistan security forces; IV) the Islamic Republic of Afghanistan would participate in a US-facilitated talk with the Taliban; and V) the Islamic Republic of Afghanistan would commit to start diplomatic engagement with members of the UN Security Council to reach a permanent ceasefire¹⁶⁵.

By engaging in negotiations with the United States and signing an agreement, the Taliban gained a level of international legitimacy¹⁶⁶, which was in contrast with the diplomatic isolation that they faced after the nine-eleven attacks. Moreover, the Doha Agreement recognized the Taliban as a significant political and military force in Afghanistan, indeed, while the agreement did not grant official recognition to the group as the legitimate government of the country, it acknowledged its influence. Furthermore, the agreement opened the possibility for the Taliban to engage with the international community and for this reason, compliance with this agreement could increase Taliban’s international legitimacy and recognition¹⁶⁷.

2.3.2. Study of positions held by countries and International Organizations regarding the recognition of the Taliban Government

The question of Government recognition presents itself only when *“the government changes hands in violation of the domestic legal procedures for transfer of power”*¹⁶⁸, therefore by granting recognition to the newly established government, other States affirm its capability and authority to serve as the nation's international representative and engage in diplomatic

¹⁶³ ‘Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan’ (www.state.gov 29 February 2020) <<https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>>.

¹⁶⁴ ‘Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan’ (www.state.gov 29 February 2020) <<https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>>.

¹⁶⁵ ‘Joint Declaration between the Islamic Republic of Afghanistan and the United States of America for Bringing Peace to Afghanistan’ (www.state.gov 29 February 2020) <<https://www.state.gov/wp-content/uploads/2020/02/02.29.20-US-Afghanistan-Joint-Declaration.pdf>>.

¹⁶⁶ ‘United States Signs Agreement with the Taliban, but Prospects for Its Full Implementation Remain Uncertain’ (2020) 114 American Journal of International Law 529.

¹⁶⁷ Ben Saul, “‘Recognition’ and the Taliban’s International Legal Status” (International Centre for Counter-Terrorism - ICCT 2021) <<https://www.icct.nl/publication/recognition-and-talibans-international-legal-status>>.

¹⁶⁸ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

relations with foreign counterparts¹⁶⁹. In particular, the recognition of the Taliban Government arose with their return in power in 2021, when different states have taken different approaches towards it in engaging with them “*which cannot justify any de facto recognition of a Taliban Government*”¹⁷⁰.

Firstly, the United States did not formally recognize the Taliban Government due to their concern about I) the Taliban’s history of human right abuses, particularly against women; II) the inclusive or exclusive nature of the Taliban’s Government, and III) the nature of their relationship with terrorist networks¹⁷¹. Nonetheless, the United States has entered in diplomatic talks with the Taliban, especially with the Doha Agreement which led to the withdrawal of US troops from the country. Therefore, the United States, and the United Kingdom followed, recognize the importance of engaging with the Taliban, even though not recognizing them as a lawful Government¹⁷².

The countries of the European Union follow the example of the United States not granting the Taliban Government with recognition but engaging with them on humanitarian aid and evacuation efforts. Indeed, the Union emphasised the importance of the Taliban respecting human rights, especially women’s rights and minority rights, as a condition for any future relation with Afghanistan. Moreover, countries of the Union recognize that recognition is an important diplomatic instrument, and by withholding it they would have leverage on the Taliban, who need the political, economic, and diplomatic benefits it provides¹⁷³.

India is strategically aligned with the United States, and indeed it did not recognize the Taliban Government expressing concerns about their return to power for the potential implications regarding regional stability, in particular about the security in Kashmir, as well as the safety of Indian assets and interests in Afghanistan¹⁷⁴.

¹⁶⁹ Haroun Rahimi and Mahir Hazim, ‘International Law and the Taliban’s Legal Status: Emerging Recognition Criteria?’ (2023) 32 American University of Afghanistan.

¹⁷⁰ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁷¹ Muhammad Faheem and Minhas Majeed Khan, ‘Recognition of the Taliban Government in Afghanistan and International Community’ (2022) 42 Strategic Studies 81 <<https://www.jstor.org/stable/48732345?seq=8>> accessed 19 April 2024.

¹⁷² James Dobbins, Andrew Radin and Laurel E Miller, ‘Engage, Isolate, or Oppose: American Policy toward the Islamic Emirate of Afghanistan’ (JSTOR2022) <https://www.jstor.org/stable/resrep41323?searchText=US+on+recognition+of+taliban&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DUS%2Bon%2Brecognition%2Bof%2Btaliban%26so%3Drel&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3A4c6c191e10be9a3080fbb3f8edfda10a> accessed 19 April 2024.

¹⁷³ Muhammad Faheem and Minhas Majeed Khan, ‘Recognition of the Taliban Government in Afghanistan and International Community’ (2022) 42 Strategic Studies 81 <<https://www.jstor.org/stable/48732345?seq=8>> accessed 19 April 2024.

¹⁷⁴ Graham Usher, ‘The Afghan Triangle: Kashmir, India, Pakistan’ [2009] Middle East Report 20 <https://www.jstor.org/stable/27735297?searchText=US%20on%20recognition%20of%20taliban&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3DUS%2Bon%2Brecognition%2Bof%2Btaliban%26so%3Drel&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&refreqid=fastly-default%3A4c6c191e10be9a3080fbb3f8edfda10a>

Both China and Russia did not formally recognize the Taliban Government, but they expressed readiness to engage with them for regional stability reasons. Indeed, both Russia and China share with the United States the concern that Afghanistan may become a haven for international terrorists and are afraid for the stability of the region¹⁷⁵. Moreover, both countries are the only ones which still have embassies functioning in Afghanistan, in order to gain a position of strength in a country where the United States have failed to do so¹⁷⁶. The ambiguous approach of China will be furtherly analysed in the next sections.

Even Pakistan, which historically has always had close ties with the Taliban being one of the three countries recognizing the Taliban in 1996¹⁷⁷, has refused to recognize the group as the lawful government of Afghanistan.

Ultimately, thus, no state has formally recognized the regime as legitimate government, numerous States have instead communicated some thresholds for the Taliban to reach in order to be recognized. At the same time, though, some countries either implicitly or explicitly, have recognized that the Taliban represent the country as its *de facto* government, while others consider the group responsible for a number of international obligations simply as a non-State actor. At the same time, though, there is no duty in International Law to publicly declare the recognition of a government, moreover, there is an increasing attitude of not extending formal or expressed government recognition, because it could be implied from the relations between the two governments¹⁷⁸. However, in the specific case of the Taliban, the withholding of recognition is used as a measure to express disapproval in regard to the regime as well as using it as leverage to impose some standards, as international recognition has the possibility of empowering said government with some additional rights¹⁷⁹. Indeed, the High Representative of the EU stated that “*there are two kinds of recognition. There is factual recognition: [...] we*

[on%2FdoBasicSearch%3FQuery%3DUS%2Bon%2Brecognition%2Bof%2Btaliban%26so%3Drel&ab_segments=0%2Fbasic_search_gsv%2Fcontrol&refreqid=fastly-default%3A575e72d88fb46a4093f45de9a39481fe](#)> accessed 19 April 2024.

¹⁷⁵ Muhammad Faheem and Minhas Majeed Khan, ‘Recognition of the Taliban Government in Afghanistan and International Community’ (2022) 42 Strategic Studies 81 <<https://www.jstor.org/stable/48732345?seq=8>> accessed 19 April 2024.

¹⁷⁶ Marlène Laruelle, ‘Russia’s Strategies in Afghanistan and Their Consequences for NATO’ (*Jstor* 1 November 2011) <https://www.jstor.org/stable/resrep10430?searchText=russia+and+china+on+recognition+of+taliban&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Drussia%2Band%2Bchina%2Bon%2Brecognition%2Bof%2Btaliban%26so%3Drel&ab_segments=0%2Fbasic_search_gsv%2Fcontrol&refreqid=fastly-default%3Ab6c4a5a3896ff7f8ea17b107d686bd5e>.

¹⁷⁷ Christopher Boucek and others, ‘Saudi Arabia’ (*JSTOR* 2010) 45 <https://www.jstor.org/stable/resrep21096.8?searchText=iran+on+recognition+of+taliban&searchUri=%2Faction%2FdoBasicSearch%3FQuery%3Diran%2Bon%2Brecognition%2Bof%2Btaliban%26so%3Drel&ab_segments=0%2Fbasic_search_gsv%2Fcontrol&refreqid=fastly-default%3Af265c713993e755f8dcef81e3e421ebd> accessed 19 April 2024.

¹⁷⁸ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁷⁹ . Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

have to recognize the reality [...] to solve practical problems. [...] And then, there is the political recognition, that will be granted if you behave with [...] my wishes and my interests. And this is what a condition-based recognition”^{180 181}. Among the criteria that are considered to be necessary for the granting of conditional recognition, the most common are I) effective control, II) willingness to observe international law, IV) legitimacy, V) national interests, VI) position taken by regional and international organizations, and VII) observance of democratic and constitutional procedures^{182 183}.

The Taliban however criticised this approach as “*politically motivated rather than being a legal issue*”¹⁸⁴ claiming that being in effective control of the country, the effectively met the criteria needed to gain recognition¹⁸⁵. It is for this reason that it is of fundamental importance that this action is taken collectively by the international community in order for it not to be perceived as an unlawful intervention in the internal affairs of Afghanistan¹⁸⁶. Moreover, the non-recognition has been justified by “*guiding principles for a political settlement*” which are basically further conditions for the Taliban to be granted international recognition and include I) inclusive government, II) respect for human rights, III) including of women and minorities, IV) representative government, V) counterterrorism measures, and VI) respect for International Law^{187 188}.

It is important to note that in International Law some rights and duties are attributed to *de facto* regimes, notwithstanding the status of their recognition, and thus the Taliban, having *de facto* control on Afghanistan, is ascribed certain duties, regardless not being recognised as

¹⁸⁰ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁸¹ EU External Action, Informal meeting of Foreign Affairs Ministers (Gymnich): Remarks by High Representative Josep Borrell upon arrival (2 September 2021) (https://www.eeas.europa.eu/eeas/informal-meeting-foreign-affairs-ministers-gym-nich-remarks-high-representative-josep-borrell-upon-1_en).

¹⁸² Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁸³ International Law Association, above n.1, 8. See also responses by a number of States to Talmon’s questionnaire on the recognition of governments: Talmon, above n.1, 275-85.

¹⁸⁴ Faisal Assegaf, We do hope Indonesia will be the first country to recognize our government (*Albalad*, 15 August 2022) (<https://albalad.co/wawancara/2022A12330/we-do-hope-indonesia-will-be-the-first-country-to-recognize-our-government/>).

¹⁸⁵ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁸⁶ H Lauterpacht, ‘Recognition of States in International Law’ (1944) 53 The Yale Law Journal 385 <<http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4335&context=yjl>>.

¹⁸⁷ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁸⁸ Ministry of Foreign Affairs of Qatar, Participants in International Meeting on Afghanistan Agree on Need to Accelerate Peace Process and Call for Immediate End to Violence (12 August 2021) (<https://www.mofa.gov.qa/en/statements/participants-in-international-meeting-on-afghanistan-agree-on-need-to-accelerate-peace-process-and-call-for-immediate-end-to-violence>) para 4

its lawful government. Indeed, a *de facto* government “is entitled to exercise the state’s international rights and bears its international obligations”¹⁸⁹ and thus are treated as partial subjects of international law, which gives them some responsibilities such as I) adopting countermeasure measure, II) prohibition on the use of force, and III) conclude agreements¹⁹⁰. Ultimately, therefore, a *de facto* government lacking international recognition can be considered to have certain rights and obligation not on behalf of the state, but rather as a non-State actor¹⁹¹.

Two different theories need to be mentioned, namely the constitutional legitimacy theory and the democratic legitimate theory. According to the former governments that entered into power through extra constitutional means, as is the case of the Taliban, should not be granted international recognition¹⁹². This could mean that, while states do not have an obligation to recognize a government as was mentioned earlier, they might be obliged not to grant Government recognition as in violation of the *jus cogens* or due to a United Nations Security Council’s binding resolution. New emerging criteria for recognition, as well as those mentioned in chapter one, namely I) legitimacy, II) human rights compliance, III) stability and order, IV) democratic values¹⁹³, might thus be the reason why the undoubtably *de facto* government of the Taliban still lacks international recognition¹⁹⁴. These emerging criteria, namely I) gender, and thus the need to put an end to the gender apartheid perpetuated by the group, II) inclusive government, which would reflect the diversity of the Afghan population, and III) counterterrorism measures; are closely related to Taliban’s practices, denying their recognition¹⁹⁵.

2.3.3. Analysis of China’s ambiguous approach towards the Taliban

¹⁸⁹ Ben Saul, “Recognition” and the Taliban’s International Legal Status (*ICCT*, 15 December 2021) (<https://www.icct.nl/publication/recognition-and-talibans-international-legal-status>); But see also Rahimi and Hazim, above n.168, arguing that the Taliban’s policies against women are so “discriminatory that they violate *jus cogens* norms of international law” and, as a result, its effective control “may not be enough to confer on it the status of a ‘government’ under international law”.

¹⁹⁰ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁹¹ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

¹⁹² Haroun Rahimi and Mahir Hazim, ‘International Law and the Taliban’s Legal Status: Emerging Recognition Criteria?’ (2023) 32 American University of Afghanistan.

¹⁹³ Anne Schuit, ‘Recognition of Governments in International Law and the Recent Conflict in Libya’ (2012) 14 International Community Law Review 381.

¹⁹⁴ Haroun Rahimi and Mahir Hazim, ‘International Law and the Taliban’s Legal Status: Emerging Recognition Criteria?’ (2023) 32 American University of Afghanistan.

¹⁹⁵ Haroun Rahimi and Mahir Hazim, ‘International Law and the Taliban’s Legal Status: Emerging Recognition Criteria?’ (2023) 32 American University of Afghanistan.

As it has already been mentioned, China adopts an ambiguous approach towards Taliban's governance. As a matter of fact, while China has not formally recognized the Government, it has shown openness to working with the Taliban for mutual benefit¹⁹⁶. One example of this controversial and ambiguous approach China has toward the Taliban can be seen in China's acceptance of the credentials of the Taliban ambassador, without having previously recognized its governance. Moreover, the Chinese Ministry of Foreign Affairs stated that "*Afghanistan should not be excluded from the international community*", and also that "*diplomatic recognition of the Afghan Government will come naturally as the concerns of various parties are effectively addressed*"¹⁹⁷. Indeed, China's recognition strategy consists in waiting for the Taliban to prove their stability and legitimacy on the world stage, especially when dealing with domestic governance, in regard to human rights adherence, and on the international arena, fighting international terrorism¹⁹⁸. For this reason, despite the lack of formal recognition, China has maintained diplomatic engagement with the Taliban, hosting delegations and emphasising the importance of stability of the region¹⁹⁹.

Moreover, after Taliban's takeover, China has been the first country to send a new ambassador to Afghanistan, and the first to accept the Taliban's ambassador, which is normally considered as recognition²⁰⁰, however, these actions do not necessarily equate to formal recognition for a number of reasons. Firstly, accepting a new ambassador or appointing an ambassador can be seen as a pragmatic step to maintain diplomatic relations, rather than a formal recognition of the Government. International Law thus allows countries to continue diplomatic engagement without necessarily endorsing or recognizing the legitimacy of the ruling regime. Indeed, "*the maintenance (or severance) of diplomatic relations and the acceptance (or rejection) of credentials under the Vienna Convention on Diplomatic Relations do not necessarily mean that a new regime in the sending State had been or had not been recognized by the receiving State*"²⁰¹. Therefore, it has been established that there is the possibility for China to continue diplomatic relations with Afghanistan

¹⁹⁶ 'BRIEFING Thinking about Tomorrow' (2023)

<[https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747434/EPRS_BRI\(2023\)747434_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747434/EPRS_BRI(2023)747434_EN.pdf)>.

¹⁹⁷ Roshan Noorzai, 'What Will It Take for Taliban to Gain Recognition from China, Others?' (*Voice of America* 10 December 2023) <<https://www.voanews.com/a/what-will-it-take-for-taliban-to-gain-recognition-from-china-others-7390814.html>>.

¹⁹⁸ Haibin Niu and Yuehan Huang, 'China's Alternative Prudent Approach in Afghanistan' (2022) 13 *Global Policy* 132.

¹⁹⁹ 'BRIEFING Thinking about Tomorrow' (2023)

<[https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747434/EPRS_BRI\(2023\)747434_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747434/EPRS_BRI(2023)747434_EN.pdf)>.

²⁰⁰ Roshan Noorzai, 'What Will It Take for Taliban to Gain Recognition from China, Others?' (*Voice of America* 10 December 2023) <<https://www.voanews.com/a/what-will-it-take-for-taliban-to-gain-recognition-from-china-others-7390814.html>>.

²⁰¹ See Scott R Anderson, *History and the Recognition of the Taliban* (*Lawfare*, 26 August 2021) (<https://www.lawfareblog.com/history-and-recognition-taliban>).

notwithstanding not having recognized it, as long as communications with the Taliban are kept to a minimum, and the diplomats are not formally accredited to the receiving State²⁰². Indeed, under the Vienna Convention on Diplomatic Relations “*there is no requirement to secure the agrément of the host State for the appointment of a chargé d’affaires ad interim, unlike for heads of mission proper*”^{203 204}, meaning that the receiving state has to approve the proposed head of the mission differently from the charge d’affaires *ad interim*, which simply acts provisionally as head of the mission and thus does not require the consent of the receiving state²⁰⁵. Therefore, ultimately, diplomatic relations between two States, including accreditation of diplomats, does not necessarily require or implies recognition²⁰⁶.

Moreover, as explained in the previous section International Law allows a country to choose to engage with another country’s government conditionally, thus based on ongoing assessment of the political situation and other factors, therefore in the case of China and Afghanistan, acceptance of an ambassador can be a part of maintaining dialogue without extending formal recognition²⁰⁷. Additionally, International Law does not provide a clear cut definition or criteria for recognition of government, as mentioned in the previous chapter, it simply provides four criteria that can be taken into consideration for the Government to be recognized.

Lastly, China might be hesitant to declare non-recognition could be led to the fear, as anticipated earlier, that said withholding of recognition might be seen as interference in Afghanistan’s internal affairs²⁰⁸. Indeed, on August 16, 2023, China stated that “*on the question of recognition, [...] China’s position [...] is non-interference in other countries’ internal affairs and respect the right of people of all countries to independently choose their development path and decide their destiny and future*”²⁰⁹.

²⁰² Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²⁰³ The “Guaidó Board” of the Central Bank of Venezuela v the “Maduro Board” of the Central Bank of Venezuela UKSC 2020/0195 (Case on Behalf of the Foreign Secretary) 24 and n.35

²⁰⁴ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²⁰⁵ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²⁰⁶ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²⁰⁷ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²⁰⁸ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²⁰⁹ Ministry of Foreign Affairs of China, Foreign Ministry Spokesperson Hua Chunying’s Regular Press Conference on August 16, 2021, *ibid*.

2.3.4. Diplomatic and international dynamics related to the recognition of the Taliban Government

“Recognition as a government carries all the privileges and duties held by a state’s international agent” and therefore “lack of recognition has varying implications depending the choices of nonrecognizing states”²¹⁰.

It is important to note that, as mentioned previously, the Taliban regime can be considered a *de facto* Government and as such “is itself an apparatus of the State” and therefore the conduct of its organs are covered in Article 4 of the International Law Commission’s Draft articles on Responsibility of States for Internationally Wrongful Acts²¹¹. Moreover, the International Committee of the Red Cross’s 2016 Commentary on the Geneva Conventions clearly states that “it does not matter that a [*de facto*] government failed to gain recognition by the international community at large [...] its actions have to be treated as the actions of the State it represents [...] for determining the existence of an international armed conflict”²¹².

Moreover, it is important to note that the Taliban Government is obliged to comply with the Human Rights Treaties signed by the previous government, such as the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights²¹³. There are several reasons for this obligation, namely I) State succession and continuity²¹⁴, II) good faith and *pacta sunt servanda*²¹⁵. Firstly, under the principle of State continuity in International Law, when a Government changes, the state itself remains the same entity, retaining its international obligations and commitments²¹⁶. For this reason, the Taliban Government, therefore, inherits the human rights treaties and must honour them. And, secondly, International Law operates on the principle of “*pacta sunt servanda*”, meaning “agreement must be kept”, namely that States

²¹⁰ M J Peterson, Recognition of Governments, in: Gëzim Visoka, John Doyle and Edward Newman (eds), Routledge Handbook of State Recognition (2020) 213. See also Jonte van Essen, De Facto Regimes in International Law, 28 Utrecht Journal of International and European Law (2012), 31, 40.

²¹¹ ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001), Commentary to art. 9, para.4. See also *ibid.*, Commentary to art. 10, para.11.

²¹² ICRC, Commentary of 2016: Article 2 – Application of the Convention (https://ihl-databases.icrc.org/en/ihl-treaties/gci-1949/article-2/commentary/2016#66_B) para.235.

²¹³ Haroun Rahimi and Mahir Hazim, ‘International Law and the Taliban’s Legal Status: Emerging Recognition Criteria?’ (2023) 32 American University of Afghanistan.

²¹⁴ ‘Vienna Convention on Succession of States in Respect of Treaties’ (1978) <https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf>.

²¹⁵ II Lukashuk, ‘The Principle Pacta Sunt Servanda and the Nature of Obligation under International Law’ (1989) 83 American Journal of International Law 513.

²¹⁶ ‘Vienna Convention on Succession of States in Respect of Treaties’ (1978) <https://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf>.

are required to perform their treaty obligations and commitments²¹⁷. Therefore, once Afghanistan has ratified human rights treaties, the state remains bound by these obligations, irrespective of any changes in its government. Indeed, the European Union High Representative declared 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*”²¹⁸.

Therefore, notwithstanding not being recognized, the Taliban government, having *de facto* authority over the territory and population of Afghanistan, is subject to a certain degree of International Law’s rights and obligations. Indeed, as mentioned earlier in the chapter, the Taliban can be held responsible as non-State actors under international human rights law to which it is subject²¹⁹. However, being held accountable as a State or a non-State actor does have some differences, for instance, a non-State actor cannot be brought before the International Court of Justice²²⁰ as “only States may be parties in cases before the Court”²²¹, meaning that the Taliban could not be held accountable by the court of crimes they might commit. Moreover, being a *de facto* government might have consequences in domestic laws of other states as well, as for instance States that accepted Taliban diplomats, which as of 2024 only includes China as the other country’s embassies are still run by the Islamic Republic of Afghanistan’s diplomats²²², need to give some legal credence to documents produced by Taliban’s authorities²²³.

Lastly, diplomatic dynamics related to the withholding of recognition of the Government of the Taliban can include various types of sanctions imposed on the regime, such as financial sanctions and travel bans. Such financial sanctions include the freezing of Afghan central bank assets held abroad, with the aim of pressuring the Taliban to change its

²¹⁷ II Lukashuk, ‘The Principle Pacta Sunt Servanda and the Nature of Obligation under International Law’ (1989) 83 American Journal of International Law 513.

²¹⁸ Council of the EU, Afghanistan: Statement by the High Representative on behalf of the European Union on additional restrictions by the Taliban to the right of education of girls and women (21 December 2022) (<https://www.consilium.europa.eu/en/press/press-releases/2022/12/21/afghanistan-statement-by-the-high-representative-on-behalf-of-the-european-union-on-additional-restrictions-by-the-taliban-to-the-right-of-education-of-girls-and-women/>).

²¹⁹ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²²⁰ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

²²¹ Statute of the International Court of Justice annexed to Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945), 1 UNTS 16, art. 34.

²²² Haroun Rahimi and Mahir Hazim, ‘International Law and the Taliban’s Legal Status: Emerging Recognition Criteria?’ (2023) 32 American University of Afghanistan.

²²³ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

behaviour²²⁴ and due to the fear that said assets might end up in the Taliban's hands²²⁵. Moreover, travel bans have been imposed by both the United Nations and various countries, which would be lifted in the case of demonstration by the Taliban of commitment to international standards²²⁶. However, there have been increasing calls for said assets to be released due to humanitarian concerns, indeed in United Nations Security Council's Resolution 2615 it is stated "*that humanitarian assistance and other activities that support basic human rights needs in Afghanistan are not a violation of paragraph 1 (a) of resolution 2255 (2015) and that the processing and payment funds, other financial assets or economic resources and the provision of goods and services necessary to ensure the timely delivery of such assistance or to support such activities are permitted*"²²⁷.

As previously mentioned, the establishment of diplomatic relations as well as the appointment and accreditation of diplomats, does not necessarily amount to recognition. Moreover, it is important to state also that *de facto* government that lack recognition can have the possibility to sign bilateral treaties notwithstanding the lack of recognition when specific practical needs need to be met²²⁸. Ultimately, therefore, no specific conduct of States towards a Government, including accreditation of diplomats or concluding bilateral treaties, necessarily determines recognition²²⁹. Therefore, the case of the Taliban showed how the effects of recognition can be minimised, as long as said non-recognition remains purely *de jure*, rather than *de facto*.

CONCLUSION

The Saur Revolution in 1978, led to the Soviet invasion in 1979, which ended in 1989, leading to Afghanistan entering into a civil war due to the *mujahideen* movement aiming to obtain control. In 1994, the Taliban emerged, promising to restore order and implement Sharia Law, and they established the Islamic Emirate of Afghanistan in 1996, which had affiliations

²²⁴ William Byrd, 'U.S. To Move Afghanistan's Frozen Central Bank Reserves to New Swiss Fund' (*United States Institute of Peace* 28 September 2022) <<https://www.usip.org/publications/2022/09/us-move-afghanistans-frozen-central-bank-reserves-new-swiss-fund>>.

²²⁵ Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23 Chinese journal of international law 73.

²²⁶ Security Council, 'Security Council Renews for One Year Mandate of Team Monitoring Sanctions against Taliban, with Some Regretting Travel Exemptions Not Extended | Meetings Coverage and Press Releases' (*press.un.org* 14 December 2023) <<https://press.un.org/en/2023/sc15530.doc.htm>>.

²²⁷ Haroun Rahimi and Mahir Hazim, 'International Law and the Taliban's Legal Status: Emerging Recognition Criteria?' (2023) 32 American University of Afghanistan.

²²⁸ Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23 Chinese journal of international law 73.

²²⁹ Seyfullah Hasar, 'Recognition of Governments and the Case of the Taliban' (2024) 23 Chinese journal of international law 73.

with terrorist groups like Al-Qaeda, which led to the US-led invasion of Afghanistan after the September 11 attacks. In 2020, the Doha Agreement was signed with the Taliban, paving the way for US and NATO troop withdrawal, and consequently the group's return to power.

The transition led to changes in the political, social, and economic situation in the country, leading to fear, displacement, and uncertainty, particularly for women, minorities, and those associated with the previous government, as well as poverty, food insecurity.

The government structure of the Islamic Emirate of Afghanistan is organized hierarchically with a supreme leader, namely the *Amir al-Mu'minin* (Commander of the Faithful), at the top. The current supreme leader is Hibatullah Akhundzada and is responsible for setting the direction and policies of the Taliban and interpreting religious doctrine. The government is composed by 33 male ministers, each responsible for different ministries as well as governance structures at regional level to cooperate with tribal and community leaders.

The Taliban government has strong territorial control in different regions of Afghanistan, especially in the South, due to their Pashtun tribal affiliations, and East, exploiting its proximity to Pakistan. In the Northern and Western regions, the Taliban's control has been more variable.

The Doha Agreement of 2020 facilitated the withdrawal of U.S. troops from Afghanistan and paved the way for intra-Afghan negotiations. The agreement granted the Taliban a level of international legitimacy by entering in negotiations with the United States.

The question of government recognition arises when a change in power occurs outside legal procedures, prompting states to affirm the new government's international status. Despite the Taliban's resurgence in 2021, formal recognition remains elusive, prompting various states to withhold acknowledgment. While the Taliban governs Afghanistan *de facto*, it lacks formal recognition. Nonetheless, its actions are treated as those of a state under international law, subject to obligations such as human rights treaties signed by the prior Afghan governments.

The absence of recognition doesn't absolve the Taliban from international obligations. However, there's ambiguity in how non-recognized entities are treated under International Law, as seen in the Taliban's case. The criteria for recognition vary but often include effective control, adherence to international law, legitimacy, and respect for human rights. Non-recognition is sometimes used to express disapproval and impose standards, leveraging potential benefits of international recognition. Moreover, the two legal theories of constitutional legitimacy and democratic legitimacy, explain recognition decisions such as the one concerning the Taliban, as governments gaining power through extra-constitutional means, should not achieve international recognition. Moreover, some emerging criteria, including gender equality and counterterrorism measures, contribute to the lack of recognition for the Taliban.

China has an ambiguous approach towards the governance of the Taliban in Afghanistan, refraining from formal recognition while engaging with them for mutual benefit. Despite not extending formal recognition, China has shown openness to diplomatic engagement with the Taliban, being the only accepting the Taliban ambassador. China's strategy involves waiting for the Taliban to demonstrate stability and legitimacy, particularly in domestic governance and international efforts against terrorism, before extending formal recognition. However, China's actions, do not necessarily equate to formal recognition, indeed, accepting a new ambassador can be viewed as a pragmatic step to maintain diplomatic relations, guided by principles outlined in the Vienna Convention on Diplomatic Relations. International law indeed allows countries to engage with governments conditionally, based on ongoing assessments of political situations and other factors. Additionally, international law lacks a clear definition or criteria for government recognition, providing flexibility in decision-making. Moreover, China may be hesitant to declare non-recognition to avoid being perceived as interfering in Afghanistan's internal affairs.

The lack of recognition leads to varied implications, depending on the choices of non-recognizing states. Notably, the Taliban regime, though not formally recognized, operates as a *de facto* government, and its actions are treated as those of the state it represents under international law. Despite lacking formal recognition, the Taliban government is bound by human rights treaties signed by the previous government, owing to principles of state succession and continuity. Indeed, International Law requires the upholding of treaty obligations under the principle of "*pacta sunt servanda*", notwithstanding possible governmental changes.

Despite non-recognition, the Taliban government, exercising *de facto* authority, is subject to certain international law rights and obligations, however, accountability as a non-state actor differs from that of a state; for instance, non-state actors cannot be brought before the International Court of Justice. Diplomatic dynamics surrounding the withholding of recognition may include sanctions such as freezing Afghan central bank assets, aiming to influence Taliban behavior and prevent asset misuse. However, humanitarian concerns prompt calls for asset release, as indicated in UN Security Council Resolution 2615.

Ultimately, no specific state conduct towards a government determines recognition. Therefore, the Taliban case illustrates how recognition effects can be minimized when non-recognition remains *de jure* rather than *de facto*.

CHAPTER 3

THE STATUS OF THE TALIBAN GOVERNMENT IN INTERNATIONAL ORGANIZATIONS

This third and last chapter examines the position of the Taliban Government in International Organizations and its impact on Afghanistan's participation in the global community. Indeed, after the Taliban's return to power, the country's role in international forums and organizations has been subject to scrutiny and adaptation. The overall aim of the chapter is thus that of offer insights into Afghanistan's evolving position on the global stage through the analysis of the interactions between the Taliban Government and International Organizations.

The opening part of the chapter, "Afghanistan's Participation in International Organizations", provides an analysis of the benefits and obligations arising from such participation. It examines how these relationships shape Afghanistan's involvement in global affairs and its standing in the international community.

In the following part, "Decisions of the International Criminal Court", the chapter discusses the International Criminal Court's decisions regarding the Taliban Government, analysing the legal basis of these decisions and their implications for the Taliban. It also reflects on the international community's reactions to these decisions, assessing the broader impact on Afghanistan's relations with the rest of the world.

Lastly, in the concluding part of the chapter, "United Nations Practices Regarding the Taliban Government", the United Nations' approach towards the Taliban Government, including resolutions or statements issued by the General Assembly or the Security Council. It explores who represents Afghanistan in United Nations' bodies, and the implications of the Taliban Government on the country's involvement in United Nations activities.

3.1 AFGHANISTAN'S PARTICIPATION IN INTERNATIONAL ORGANIZATIONS

3.1.1. Analysis of the International Organizations of which Afghanistan is member

After the Taliban took control of Afghanistan in August 2021, the country's relationship with International Organizations has faced significant challenges and changes. Indeed, many International Organizations have had to re-evaluate their presence and operations in Afghanistan due to concerns, especially about human rights, governance, and security under the new regime.

Firstly, Afghanistan remains a member of the United Nations, but its relationship with the organization has been complex since 2021. As a matter of fact, the United Nations continues to provide humanitarian assistance and development support to the Afghan population, but concerns about human rights and the treatment of women and minorities have affected its operations²³⁰. The United Nations Security Council has also been involved in discussions about the situation in Afghanistan²³¹. Indeed, in 2021 the Islamic Emirate of Afghanistan, through Muttaqi, sent a formal request to the United Nations' General Assembly to participate and informing of the nomination of the Taliban's new ambassador to the United Nations, namely Suhail Shaheen. However, while the Taliban is claiming they have the right to bring their representative in the United Nations, at the same time the position of Afghanistan's ambassador is claimed by Naseer Ahmad Faiq, namely Afghanistan's current accredited United Nations ambassador, who the Taliban claim to be not rightfully in possession of the position as former President Ghani was ousted²³². Indeed, the representation of Afghanistan at the UN is determined by the UN Credentials Committee, which typically consists of nine member states, assesses the credentials of representatives from each member state reviewing who is designated as the official representative of Afghanistan²³³. The UN Credential Committee has delayed decision on which appointed representative should lawfully represent Afghanistan and therefore the previously accredited ambassador remains in place, though in caretaker role, pending further decisions²³⁴. Obviously, the delay in accrediting the Taliban's representatives has implications for Afghanistan's participation in UN activities, debates, and decision-making processes, as well as limiting Afghanistan's ability to effectively advocate for its interests within the organization.

Overall, however, as was stated in the first chapter, the United Nations, being neither a State nor a Government, does not possess the ability of recognizing Governments, but simply recognizes the official representative of its member States²³⁵.

²³⁰ Security Council, 'Induce Taliban to End "Gender Apartheid" in Afghanistan through All Available Means, Speakers Urge Security Council, Alarmed by Growing Oppression of Women, Girls | UN Press' (*press.un.org* 26 September 2023) <<https://press.un.org/en/2023/sc15421.doc.htm>>.

²³¹ Security Council, 'Briefing Security Council on Afghanistan, Special Representative Urges de Facto Authorities Reverse Repressive Policies towards Women | Meetings Coverage and Press Releases' (*press.un.org* 6 March 2024) <<https://press.un.org/en/2024/sc15612.doc.htm>>.

²³² Courtney Kealy, 'Who Will Speak for Afghanistan at the United Nations?' (*www.aljazeera.com* 24 September 2021) <<https://www.aljazeera.com/economy/2021/9/24/who-will-speak-for-afghanistan-at-the-united-nations>>.

²³³ UN General Assembly, 'General Assembly of the United Nations' (*www.un.org*) <<https://www.un.org/en/ga/credentials/credentials.shtml>> accessed 10 May 2024.

²³⁴ UN General Assembly, 'General Assembly Defers Decision on Afghanistan and Myanmar Seats' (*UN News* 6 December 2021) <<https://news.un.org/en/story/2021/12/1107262>>.

²³⁵ United Nations, 'About UN Membership' (*United Nations* 2022) <<https://www.un.org/en/about-us/about-un-membership>>.

Following the Taliban takeover in 2021, Afghanistan has faced challenges in accessing funding and assistance from organizations such as the World Bank and the International Monetary Fund due to the international sanctions associated with the new regime²³⁶. As a consequence, financial support from these organization has been and remains on hold due to the Taliban government's policies and the ongoing humanitarian crisis in the country and said organizations have stated that they will not engage with Afghanistan without signs of governance improvements²³⁷. For this reason, the World Bank has modified its approach towards the country since the Taliban's takeover, indeed, it is "*first to providing humanitarian support and then to providing off-budget support for basic service delivery and livelihoods*"²³⁸.

Moreover, the Asian Development Bank, which in the last two decades has been one of the largest contributors to the reconstruction of Afghanistan, has suspended funding for projects in the country due to concerns about the situation in the country as well, even though Afghanistan remains a member. There have been however talks about reopening the organization's office in Afghanistan, which was relocated in Tajikistan, under the Taliban's administration. However, there have been protests by the Council of National Resistance for the Salvation of Afghanistan which believe reinstating the Afghanistan's office would represent an indirect support for terrorism²³⁹.

The South Asian Association for Regional Cooperation still has Afghanistan as a member, however its participation in activities of the cooperation has been impacted due to the political situation which led to tensions with other member states. As a matter of fact, Pakistan insisted that the Taliban be allowed to represent Afghanistan in the cooperation, however other members, especially India, did not agree with this request, which clearly obstacles the stability of the region, and especially the Indo-Pakistan tensions²⁴⁰. Consequently, there have talks about the possible expulsion of Afghanistan from the organization, which under International Law is allowed when the organization is "*deemed to have those powers which, though not expressly provided in the Charter, are conferred upon by necessary implication as being*

²³⁶ Fereshta Abbasi, "A Disaster for the Foreseeable Future" [2024] Human Rights Watch <<https://www.hrw.org/report/2024/02/12/disaster-foreseeable-future/afghanistans-healthcare-crisis>>.

²³⁷ Security Council, 'Induce Taliban to End "Gender Apartheid" in Afghanistan through All Available Means, Speakers Urge Security Council, Alarmed by Growing Oppression of Women, Girls | UN Press' (*press.un.org* 26 September 2023) <<https://press.un.org/en/2023/sc15421.doc.htm>>.

²³⁸ The World Bank, 'The World Bank in Afghanistan' (*World Bank* 7 October 2022) <<https://www.worldbank.org/en/country/afghanistan/overview>>.

²³⁹ Hasht-E Subh, 'Reopening of the Asian Development Bank in Afghanistan: Aid to the People or Empowerment of the Taliban?' (*Hasht-e Subh* 16 September 2023) <<https://8am.media/eng/reopening-of-the-asian-development-bank-in-afghanistan-aid-to-the-people-or-empowerment-of-the-taliban/>> accessed 25 April 2024.

²⁴⁰ 'Suspending Afghanistan from SAARC and International Law' (*orfonline.org* 26 September 2021) <<https://www.orfonline.org/expert-speak/suspending-afghanistan-from-saarc-and-international-law>> accessed 25 April 2024.

essential to the performance of its duties”²⁴¹. Therefore, in the case of the Taliban regime, being that it is undemocratic and has not met human rights standards, represents a threat to the foundational values of the South Asian Association for Regional Cooperation, which would grant countries such as China with the right to request its expulsion or suspension from the organization, however the Charter of the SAARC requires decisions to be taken unanimously²⁴².

Afghanistan’s membership for the Organization of Islamic Cooperation continues, however the organization has been engaged in discussions around the political situation and human rights issues in the country, especially for measures taken against women, such as the ban on women in universities²⁴³.

Lastly, the Afghanistan continues to receive support from the World Health Organization for its health programs, including efforts to address COVID-19 and other public health challenges. Indeed, cut in donors’ support to the country led to a dramatic breakdown in health services, especially during the pandemic, and the organization aimed to support the population, while also stressing the need for women to maintain access to healthcare and to health workforce, as female patients would become more hesitant to seek care otherwise²⁴⁴.

3.1.2. Examination of the benefits and obligations arising from participation in International Organizations

Obviously, participation in international organizations offers both benefits and obligations to member countries. Therefore, these organizations can provide critical support and cooperation, but obviously also require adherence to certain standards and commitments.

Among the benefits, the first that need to be mentioned are economic opportunities. Indeed, membership in international organization can increase possible trade opportunities and economic partnerships. Moreover, some international organizations such as the International Monetary Fund provide financial assistance and loans to the members facing economic challenges²⁴⁵. More specifically, in the case of Afghanistan, membership in organizations such

²⁴¹ International Court of Justice, ‘Reparation for Injuries Suffered in the Service of the United Nations’ (www.icj-cij.org) <<https://www.icj-cij.org/case/4>>.

²⁴² ‘Suspending Afghanistan from SAARC and International Law’ (orfonline.org 26 September 2021) <<https://www.orfonline.org/expert-speak/suspending-afghanistan-from-saarc-and-international-law>> accessed 25 April 2024.

²⁴³ RFE/RL’s Radio Azadi, ‘OIC Islamic Grouping “Emergency Meeting” Eyes Afghan Rights Situation, New Taliban Bans on Women’ RadioFreeEurope/RadioLiberty (11 January 2023) <<https://www.rferl.org/a/afghanistan-oic-women-rights/32218592.html>>.

²⁴⁴ World Health Organization, ‘Acute Health Needs in Afghanistan Must Be Urgently Addressed and Health Gains Protected’ (www.who.int 22 September 2021) <<https://www.who.int/news/item/22-09-2021-acute-health-needs-in-afghanistan-must-be-urgently-addressed-and-health-gains-protected>>.

²⁴⁵ International Monetary Fund, ‘IMF Lending’ (International Monetary Fund 2019) <<https://www.imf.org/en/About/Factsheets/IMF-Lending>>.

as the United Nations²⁴⁶, the World Bank²⁴⁷, and the Asian Development Bank²⁴⁸ provides the country access to humanitarian aid and development assistance, essential due to the crises in the country.

Secondly, being part of international organizations can provide an opportunity for smaller countries to gain importance in global matters and collaborate with other states, thus obtaining a bigger political influence, and in some cases even increase credibility²⁴⁹. As well as political influence, membership in international organizations provide an important opportunity of creating and strengthening diplomatic connections through regular interactions and collaboration²⁵⁰. For Afghanistan, participation in regional organizations such as the SAARC and global bodies such as the OIC allows to engage in diplomatic efforts and increase relationships with other countries.

Moreover, international organizations provide the opportunity to have a level of cultural exchange in order to promote cultural heritage and educational exchange, enriching the cultural and intellectual life of member states²⁵¹.

Another benefit membership in international organizations provides can be found in access to information and expertise. Indeed, member states gain access to information, research, and expertise through the international organizations. This aspect has a particular importance in cases of global issues such as climate change and public health crises like COVID-19. Afghanistan for instance, being a member of the World Health Organization, received enormous support in addressing the crises related to the 2020 pandemic, through the providing of vaccinations²⁵².

²⁴⁶ OCHA, 'HUMANITARIAN RESPONSE PLAN AFGHANISTAN' (January 2022)

<<https://afghanistan.un.org/sites/default/files/2022-01/afghanistan-humanitarian-response-plan-2022.pdf>>.

²⁴⁷ World Bank, 'World Bank Group Announces next Phase of Support for People of Afghanistan' (*World Bank* February 2024) <<https://www.worldbank.org/en/news/press-release/2024/02/15/world-bank-group-announces-next-phase-of-support-for-people-of-afghanistan>> accessed 27 April 2024.

²⁴⁸ elmer, 'Afghanistan and ADB' (*www.adb.org* 27 February 2023) <<https://www.adb.org/where-we-work/afghanistan>>.

²⁴⁹ Alex Dreher and Stefan Voigt, 'Does Membership in International Organizations Increase Governments' Credibility? Testing the Effects of Delegating Powers' (September 2011)

<<https://www.sciencedirect.com/science/article/pii/S0147596711000254>>.

²⁵⁰ Robert L Brown, 'The Diplomatic Power of International Organizations' (September 2015)

<https://www.researchgate.net/publication/282329517_The_diplomatic_power_of_international_organizations>.

²⁵¹ UNESCO, 'Cutting Edge | from Standing out to Reaching Out: Cultural Diplomacy for Sustainable Development | UNESCO' (*www.unesco.org* 27 January 2022) <<https://www.unesco.org/en/articles/cutting-edge-standing-out-reaching-out-cultural-diplomacy-sustainable-development>>.

²⁵² World Health Organization, 'Global Partners Announce a New Effort – “the Big Catch-Up” – to Vaccinate Millions of Children and Restore Immunization Progress Lost during the Pandemic' (*www.who.int* 24 April 2023)

<<https://www.who.int/news/item/24-04-2023-global-partners-announce-a-new-effort-the-big-catch-up-to-vaccinate-millions-of-children-and-restore-immunization-progress-lost-during-the-pandemic>>.

Additionally, as well as expertise, international organizations also provide technical assistance and capacity building, especially in areas such as governance, development, and infrastructure²⁵³.

Lastly, some international organizations offer some sort of mutual defense agreements and collective security measures against security threats. It is important to note that, through participation in international organizations, Afghanistan can cooperate with other member states to address security challenges, especially for counterterrorism efforts.

However, membership in international organizations carries obligations as well as benefits. More specifically, countries need to I) make financial contributions such as membership fees and funding initiatives; II) comply to rules and regulations which include adhering to policies of the specific organization and upholding International Law, even if it conflict with national interest; III) participate in activities such as meetings, negotiations, and providing resource to support the organization; IV) comply to mutual obligations of defence and security in military alliances and humanitarian and peacekeeping missions to support humanitarian efforts; and, lastly, V) make compromise on sovereignty, accepting the potential loss of a degree of national sovereignty in favour of international consensus and agreements; all of these conditions are due to the concept of shared responsibility in international organizations²⁵⁴.

Therefore, in the case of Afghanistan, the Taliban need to prove their willingness to comply to the previous obligations by showing their upholding of international norms and standards in its governance practice²⁵⁵. Moreover, Afghanistan needs to demonstrate transparency and accountability in the use of aid and funding provided by the international organizations the country is a member of²⁵⁶ and is expected to work toward maintaining peace and security within its border and in the region. Moreover, Afghanistan must submit regular reports on its progress in sectors such as health, education, and governance²⁵⁷, as well as establish diplomatic relations with other member states, participate in international meetings, and offer support to other member states.

²⁵³ 'Britannica Money' (www.britannica.com) <<https://www.britannica.com/money/technical-assistance>> accessed 30 April 2024.

²⁵⁴ Nataša Nedeski, 'Shared Obligations and the Responsibility of an International Organization and Its Member States' (2021) 18 International Organizations Law Review 139.

²⁵⁵ Haroun Rahimi, 'The Taliban, the Afghan State and the Rule of Law' (www.aljazeera.com 1 September 2021) <<https://www.aljazeera.com/opinions/2021/9/1/the-taliban-the-state-and-the-rule-of-law>>.

²⁵⁶ United Nations, 'Engagement Key to Reform of Taliban Decrees Restricting Women's Rights | UN News' (news.un.org 26 September 2023) <<https://news.un.org/en/story/2023/09/1141477>>.

²⁵⁷ Mohammad Qadam Shah and Mohammad Bashir Mobasher, 'Should the Taliban Be given Afghanistan's UN Seat?' (thediplomat.com 2 November 2021) <<https://thediplomat.com/2021/11/should-the-taliban-be-given-afghanistans-un-seat/>>.

3.1.3. Contextualization of Afghanistan's role in the international community

One way of contextualizing Afghanistan's role in the international community is looking at it through its participation in Global Organizations²⁵⁸.

Indeed, through its participation in International Organizations, Afghanistan had been able to improve both bilateral and multilateral relations, however, after the Taliban takeover as far as concerns diplomatic relations, the country has experienced isolation from the international community²⁵⁹, as many countries and international organizations have been hesitant to recognize their governance²⁶⁰. Moreover, organizations such as the World Bank and the International Monetary Fund, suspended their financial aid and funding to the country due to concerns about human rights and Taliban's governance²⁶¹. Lastly, some countries and organizations have kept limited diplomatic relations with Afghanistan in order to address humanitarian needs and deliver aid²⁶².

As well as International Organizations, Afghanistan's role in the international community can be contextualized by analysing conventions and agreements it has taken part in. Firstly, Afghanistan is a party of the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*²⁶³ even after the Taliban takeover, notwithstanding the Taliban's stance on women's rights starkly contrasting with the obligations under this convention. Consequently, the Taliban's policies have led to non-compliance with CEDAW, attracting international condemnation and calls for accountability, as the Taliban government has not been engaging in the required reporting to the CEDAW Committee, leading to a breakdown in the monitoring and evaluation of women's rights in Afghanistan²⁶⁴. Many laws

²⁵⁸ 'Afghanistan International Organization Participation - Government' (www.indexmundi.com 18 September 2021) <https://www.indexmundi.com/afghanistan/international_organization_participation.html>.

²⁵⁹ Alison Davidian, 'Expert's Take: Gender Equality Is Critical for the Afghanistan's Future, Long-Term Development, and Sustained Peace' (*UN Women* 12 October 2021) <<https://www.unwomen.org/en/news/stories/2021/10/experts-take-gender-equality-is-critical-for-the-afghanistans-future>>.

²⁶⁰ Heather Barr, 'How the International Community Can Protect Afghan Women and Girls' (*Human Rights Watch* 2 September 2021) <<https://www.hrw.org/news/2021/09/02/how-international-community-can-protect-afghan-women-and-girls>>.

²⁶¹ 'UN Afghanistan Conference Gets Underway in Qatar – DW – 02/19/2024' (dw.com 19 February 2024) <<https://www.dw.com/en/un-afghanistan-conference-gets-underway-in-qatar/a-68294291>> accessed 30 April 2024.

²⁶² Alison Davidian, 'Expert's Take: Gender Equality Is Critical for the Afghanistan's Future, Long-Term Development, and Sustained Peace' (*UN Women* 12 October 2021) <<https://www.unwomen.org/en/news/stories/2021/10/experts-take-gender-equality-is-critical-for-the-afghanistans-future>>.

²⁶³ United Nations General Assembly, 'Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979' (*OHCHR* 1979) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>>.

²⁶⁴ United Nations, 'Afghanistan: UN Committees Urge Taliban to Honour Their Promises to Protect Women and Girls' (*OHCHR* 30 August 2021) <<https://www.ohchr.org/en/press-releases/2021/08/afghanistan-un-committees-urge-taliban-honour-their-promises-protect-women>>.

and protections for women that were established in previous administrations have thus been dismantled or are not enforced, leading to Afghanistan's increased isolation from the international community, affecting humanitarian aid development programs aimed at supporting women's rights²⁶⁵. As well as the CEDAW, Afghanistan remains a party to the *Paris Agreement*²⁶⁶, even though the Taliban's focus on immediate governance challenges has led to a deprioritization of climate commitments. Indeed, the Taliban lacks the administrative capacity and expertise to effectively implement climate action plans, and consequently, focus on security and political control has overshadowed environmental concerns²⁶⁷. For this reason, international financial and technical support for climate initiatives has decreased due to the non-recognition of the Taliban government²⁶⁸, while economic sanctions and freezing of Afghan assets have severely constrained the resources available for climate action²⁶⁹. Therefore, Afghanistan's ability to participate in international climate forums and secure funding for climate resilience projects has been severely limited.

Ultimately, the non-recognition of the Taliban regime has led to international isolation and severe resource constraints, leading to significant setbacks in Afghanistan's engagement with global organizations and its adherence to international agreements. The international community's response and the Taliban's willingness to adapt to international norms will determine the future trajectory of Afghanistan's integration into the global order.

3.2 DECISIONS OF THE INTERNATIONAL CRIMINAL COURT

3.2.1. Discussion of the International Criminal Court's decisions regarding the Taliban Government

The International Criminal Court (ICC) has a complex relationship with Afghanistan and the Taliban Government.

²⁶⁵ United Nations, 'As Rights of Women and Girls Plunge to Lower than Previous Depths, Third Committee Urges Nations to Tackle Violence, Address Poverty, Bolster Rural Development | UN Press' (*press.un.org* 4 October 2023) <<https://press.un.org/en/2023/gashc4376.doc.htm>>.

²⁶⁶ United Nations, 'List of Parties That Signed the Paris Agreement on 22 April' (*United Nations Sustainable Development* 3 May 2016) <<https://www.un.org/sustainabledevelopment/blog/2016/04/parisagreementsingatures/>>.

²⁶⁷ International Crisis Group, 'Afghanistan's Security Challenges under the Taliban' (*www.crisisgroup.org* 12 August 2022) <<https://www.crisisgroup.org/asia/south-asia/afghanistan/afghanistans-security-challenges-under-taliban>>.

²⁶⁸ Crisis Group, 'Why the Taliban Should Be Brought in from the Cold for Climate Talks | Crisis Group' (*www.crisisgroup.org* 24 November 2023) <<https://www.crisisgroup.org/asia/south-asia/afghanistan/why-taliban-should-be-brought-cold-climate-talks>>.

²⁶⁹ Fereshta Abbasi, "'A Disaster for the Foreseeable Future'" [2024] Human Rights Watch <<https://www.hrw.org/report/2024/02/12/disaster-foreseeable-future/afghanistans-healthcare-crisis>>.

The ICC is an independent judicial body that investigates and tries individuals charged with crimes of international concerns such as genocide, war crimes, crimes against humanity, and the crime of aggression²⁷⁰. The court was established by the Rome Statute in 2002²⁷¹, and Afghanistan has been a party to the Rome Statute since February 10, 2003, which means that the country is thus subject to the ICC's jurisdiction²⁷².

The ICC authorized an investigation into the situation in Afghanistan in 2020, focusing on allegations of war crimes and crimes against humanity committed by various parties, including the Taliban, Afghan security forces, and international military forces²⁷³. Moreover, the ICC's decisions regarding the Taliban government are complicated by the status of the Taliban as the body does not recognize the Taliban as a legitimate government, and its mandate focuses on crimes rather than political recognition²⁷⁴. Therefore, for this reason, the court's main focus remains on investigating and possibly prosecuting individuals for crimes committed in Afghanistan, including by the Taliban²⁷⁵.

The International Criminal Court issued a decision on October 31, 2022, regarding its investigation into the situation in Afghanistan. The ICC's decision on October 31, 2022, authorized the Office of the Prosecutor to resume its investigation into the situation in Afghanistan, including crimes potentially committed by the Taliban government and other parties, and thus has significant implications from the perspective of International Law²⁷⁶.

The authorization to proceed with the investigations was initially denied by the Second Preliminary Chamber in the decision pursuant to *Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Islamic Republic of Afghanistan* of 12 April, 2019²⁷⁷, since “*the complexity and volatility of the political climate still surrounding the Afghan scenario, make it extremely difficult to gauge the prospects of securing meaningful*

²⁷⁰ International Criminal Court, 'About the Court' (*International Criminal Court*2023) <<https://www.icc-cpi.int/about/the-court>>.

²⁷¹ International Criminal Court, 'Rome Statute of the International Criminal Court' (2021) <<https://www.icc-cpi.int/sites/default/files/Publications/Rome-Statute.pdf>>.

²⁷² International Criminal Court, 'Afghanistan' (*icc-cpi.int*2019) <<https://www.icc-cpi.int/afghanistan>>.

²⁷³ International Criminal Court, 'Afghanistan' (*icc-cpi.int*2019) <<https://www.icc-cpi.int/afghanistan>>.

²⁷⁴ International Criminal Court, 'Understanding the International Criminal Court' (2020) <<https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>>.

²⁷⁵ International Criminal Court, 'Afghanistan' (*icc-cpi.int*2019) <<https://www.icc-cpi.int/afghanistan>>.

²⁷⁶ G Lampo, 'Rappresentanza Dello Stato E Mutamento Rivoluzionario Di Governo Sulla Recente Decisione Della Corte Penale Internazionale Di Riapertura Delle Indagini in Afghanistan' (2023) 106 *Rivista di diritto internazionale* 449.

²⁷⁷ Piotr Hofmański and others, 'Public Document Judgment on the Appeal against the Decision on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan' (2020) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_00828.PDF>.

cooperation from relevant authorities for the future”^{278 279}. In 2020, however, the decision was changed, authorizing investigations through the *Judgment on the Appeal Against the Decision on the Authorization of an Investigation into the Situation in the Islamic Republic of Afghanistan*²⁸⁰. Afghanistan has however requested to postpone an international action pending national authorities’ investigation or proceedings related to the crimes involved, which was contested by the Prosecutor, Karim Khan, which in September 2021 requested the authorization to resume investigations²⁸¹. As a matter of fact, after the Taliban take over there was “no reasonable prospect either that any entity outside Afghanistan or any entity with de fact control in Afghanistan is able to meet the requirements of article 17 and 18 of the Statute”²⁸². On the other hand, the Prosecutor believes that the documentation provided in 2020 by Afghanistan did not guarantee reassurance on the way investigations were conducted by the State²⁸³.

There thus were two main needs, namely I) ensure that during the proceedings there would be dialogues with Afghanistan and, for that purpose, the authorities capable of representing the state before the court were identified; and II) avoid that the exercise of the court’s functions would be perceived as a recognition of the legitimacy of control exercised by the Taliban government of Afghan territory²⁸⁴. For this reason, the court in the *Decision Setting the Procedure Pursuant to Rule 55(1) of the Rules of Procedure and Evidence*²⁸⁵ following the Prosecutor’s “Request to Authorize Resumption of Investigation under Article 18(2) of the Statute”²⁸⁶, requested the General Secretariat of the United Nations to resume the investigation,

²⁷⁸ Jonathan P Worboys, ‘Decision pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan (Int’l Crim. Ct.)’ (2020) 59 International Legal Materials 280.

²⁷⁹ G Lampo, ‘Rappresentanza Dello Stato E Mutamento Rivoluzionario Di Governo Sulla Recente Decisione Della Corte Penale Internazionale Di Riapertura Delle Indagini in Afghanistan’ (2023) 106 Rivista di diritto internazionale 449.

²⁸⁰ Antoine Kesia-Mbe and others, ‘Decision pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan’ (2019) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_02068.PDF>.

²⁸¹ International Criminal Court, ‘Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, Following the Application for an Expedited Order under Article 18(2) Seeking Authorisation to Resume Investigations in the Situation in Afghanistan’ (*International Criminal Court* 27 September 2021) <<https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application>>.

²⁸² International Criminal Court, ‘Decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation’ (31 October 2022) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06500.PDF>.

²⁸³ G Lampo, ‘Rappresentanza Dello Stato E Mutamento Rivoluzionario Di Governo Sulla Recente Decisione Della Corte Penale Internazionale Di Riapertura Delle Indagini in Afghanistan’ (2023) 106 Rivista di diritto internazionale 449.

²⁸⁴ G Lampo, ‘Rappresentanza Dello Stato E Mutamento Rivoluzionario Di Governo Sulla Recente Decisione Della Corte Penale Internazionale Di Riapertura Delle Indagini in Afghanistan’ (2023) 106 Rivista di diritto internazionale 449.

²⁸⁵ International Criminal Court, ‘Decision Setting the Procedure pursuant to Rule 55(1) of the Rules of Procedure and Evidence Following the Prosecutor’s “Request to Authorise Resumption of Investigation under Article 18(2) of the Statute”’ (8 October 2021) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_08805.PDF>.

²⁸⁶ International Criminal Court, ‘Decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation’ (31 October 2022) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06500.PDF>.

which however stated that “*the United Nations Secretariat does not engage in acts of recognition of Governments, which is a matter for individual Member States*”^{287 288}. Indeed, as it was explained in the first chapter, there is no uniformity regarding the conditions for granting Government recognition.

Therefore, in the decision of October 2022, the Court decided to consider the request of resuming the investigation presented by the Prosecutor in light of the documentation provided by Afghanistan in 2020 when requesting the suspension of the investigations. Indeed, when an objection of inadmissibility of case under Article 18(2) of the Statute is raised, the State making the objection has the obligation of proving that it is conducting or has already conducted investigations, providing evidence to that end of a sufficient degree of specificity²⁸⁹. On this issue, the Court has agreed with the Prosecutor that “*the material transmitted by Afghanistan [...] does not show, in itself, that Afghanistan has investigated, or was investigating, in a manner that covers the full scope of the Prosecutor’s intended investigations and that would justify even a partial deferral of the Court’s investigation*”²⁹⁰.

The court has thus avoided the question of the change in Government of Afghanistan and the ability and willingness of the State to properly individually investigate on the allegedly committed crimes, according to the principle of complementarity. Indeed, most of the information provided to the Court by Afghanistan were in *Dari* or *Pashto*, and the State did not cooperate in the process of translation. Therefore, the Prosecutor simply summarized and identified the most important information in each document, without properly translating them²⁹¹.

Finally, the decision states that “*Article 18(2) of the Statute, on which the Request is premised, encapsulates the idea of a process of dialogue, between the Court and the Prosecutor on the other hand, and the relevant State, from whom observations can and should be sought pursuant to rule 55(2) of the Rules, on the other. It is of the essence, for this dialogue to take place and the principle of complementarity to be orderly, meaningfully, and effectively implemented, that there be no uncertainty as to the representation and competent authorities of the concerned State. Contrary to what stated by the Prosecutor, the Request cannot therefore*

²⁸⁷ United Nations, ‘About UN Membership’ (United Nations2022) <<https://www.un.org/en/about-us/about-un-membership>>.

²⁸⁸ G Lampo, ‘Rappresentanza Dello Stato E Mutamento Rivoluzionario Di Governo Sulla Recente Decisione Della Corte Penale Internazionale Di Riapertura Delle Indagini in Afghanistan’ (2023) 106 Rivista di diritto internazionale 449.

²⁸⁹ G Lampo, ‘Rappresentanza Dello Stato E Mutamento Rivoluzionario Di Governo Sulla Recente Decisione Della Corte Penale Internazionale Di Riapertura Delle Indagini in Afghanistan’ (2023) 106 Rivista di diritto internazionale 449.

²⁹⁰ International Criminal Court, ‘Afghanistan’ (icc-cpi.int2019) <<https://www.icc-cpi.int/afghanistan>>.

²⁹¹ G Lampo, ‘Rappresentanza Dello Stato E Mutamento Rivoluzionario Di Governo Sulla Recente Decisione Della Corte Penale Internazionale Di Riapertura Delle Indagini in Afghanistan’ (2023) 106 Rivista di diritto internazionale 449.

be legally adjudicated without addressing the question of which entity actually constitutes the State authorities of Afghanistan since 15 August 2021”²⁹². Therefore, the court recognized how, in light of the Taliban takeover, it was necessary to request new information to Afghan authorities.

Ultimately, ICC's decision to resume investigations in Afghanistan amid the Taliban's control has significant importance in upholding accountability for crimes against humanity. Indeed, it reaffirms the court's commitment to justice despite political disruption, meaning that no individual or entity is above International Law. Moreover, the “*decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation*” also emphasizes the need of continued dialogue and cooperation between the ICC, the Prosecutor, and Afghan authorities for a fair and effective legal process.

3.2.2. Analysis of the legal basis of the decision and its implications for the Taliban Government

The legal basis of the decisions is pursuant to Article 18(2) of the Rome Statute, which allows the prosecutor to seek authorization from the Pre-Trial Chamber to resume an investigation if a state is unwilling or unable to genuinely carry out the investigation or prosecution of crimes within the Court’s jurisdiction²⁹³. The decision is thus grounded in the principle of complementarity, which asserts the ICC’s role as a court of last resort to step in when national jurisdictions fail to act²⁹⁴. Indeed, Afghanistan is a State party to the Rome Statute, which grants the Court jurisdiction over crimes committed on its territory or by its nationals²⁹⁵. Indeed, the ICC’s focus on the Taliban and ISIS-K is based on allegations of violations of international humanitarian law, such as I) extrajudicial killings, II) torture, III) sexual violence, IV) and other war crimes and crimes against humanity, which are in the jurisdiction of the ICC²⁹⁶.

²⁹² International Criminal Court, ‘Decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation’ (31 October 2022) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06500.PDF>.

²⁹³ International Criminal Court, ‘Decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation’ (31 October 2022) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06500.PDF>.

²⁹⁴ International Criminal Court, ‘Informal Expert Paper: The Principle of Complementarity in Practice’ (2003) <<https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>>.

²⁹⁵ International Criminal Court, ‘Afghanistan’ (icc-cpi.int2019) <<https://www.icc-cpi.int/afghanistan>>.

²⁹⁶ ‘ICC: Afghanistan Inquiry Can Resume’ (Human Rights Watch 31 October 2022) <<https://www.hrw.org/news/2022/10/31/icc-afghanistan-inquiry-can-resume>>.

Under the Rome Statute according to the principle of Complementarity, the International Criminal Court acts as a court of last resort, therefore, if a state party to the Rome Statute is unwilling or unable to prosecute crimes within its jurisdiction, the ICC can intervene²⁹⁷. In the case of the Taliban, indeed, the group's control of the Afghan justice system raises questions about the country's ability and willingness to prosecute serious international crimes, thereby giving legal basis to the ICC intervention²⁹⁸.

Lastly, as the facto governing authority in Afghanistan, the Taliban must abide by international human rights and humanitarian law²⁹⁹, since the country is party, thanks to the previous government, to the Rome Statute and most of the human rights treaties. Therefore, the ICC's decision to investigate the Taliban indicates potential breaches of these obligations.

Obviously, the ICC's decision to investigate has numerous implications for the Taliban Government from an International Law perspective. Firstly, the ICC's decision has as a consequence international scrutiny of the Taliban's action, requiring them to address allegations of serious human rights abuses³⁰⁰. In the case they failed to do so legal consequences for individuals within the Taliban's ranks could follow, namely accountability for war crimes and crimes against humanity, as well as potential arrest warrants and trials and The Hague. Moreover, the investigation Taliban's legitimacy as a governing authority is consequently questioned, potentially affecting their ability to gain international recognition³⁰¹. Consequently, the ICC's investigation could strain the Taliban's relations with other states, particularly those that support the ICC's mandate and international human rights norms. Moreover, potential prosecutions could directly affect the leadership of the Taliban, including additional restrictions on international travel and diplomatic engagement³⁰².

Secondly, at the ICC's decision follow both legal obligations and the need of domestic reforms. Indeed, the Taliban might be faced with pressure to adhere to International Law,

²⁹⁷ International Criminal Court, 'Informal Expert Paper: The Principle of Complementarity in Practice' (2003) <<https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>>.

²⁹⁸ Antoine Kesia-Mbe and others, 'Public Redacted Version of "Request for Authorisation of an Investigation pursuant to Article 15"', 20 November 2017, ICC-02/17-7-Conf-Exp' (2017) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2017_06891.PDF>.

²⁹⁹ 'Gender Discrimination and Accountability in Afghanistan' (*The Raoul Wallenberg Institute of Human Rights and Humanitarian Law* 7 March 2023) <<https://rwi.lu.se/blog/gender-discrimination-and-accountability-in-afghanistan/#:~:text=The%20Taliban%20is%20de%20facto>> accessed 11 May 2024.

³⁰⁰ 'ICC: Afghanistan Inquiry Can Resume' (*Human Rights Watch* 31 October 2022) <<https://www.hrw.org/news/2022/10/31/icc-afghanistan-inquiry-can-resume>>.

³⁰¹ Allison Danner, 'Guest Lecture Series of the Office of the Prosecutor "Prosecutorial Discretion and Legitimacy" + (2003) 97 *American Journal of International Law* 510 <https://asp.icc-cpi.int/sites/asp/files/NR/rdonlyres/69ACE89D-D3CA-4D4F-9356-3A3DD1238E65/0/050613_Danner_presentation.pdf>.

³⁰² International Criminal Court, 'Office of the Prosecutor Annual Report 2023' (2023) <<https://www.icc-cpi.int/sites/default/files/2023-12/2023-otp-annual-report.pdf>>.

especially towards international humanitarian law and human rights norms. Moreover, the ICC scrutiny could push the Taliban to strengthen the country's judicial system to handle war crimes and human rights abuses in order to show willingness to pursue accountability.

From an International Law perspective, the ICC's decision to resume its investigation also raises questions about the possible cooperation with the Taliban Government³⁰³. Indeed, due to the Taliban's lack of international recognition and reluctance to work with the ICC, the court may once again face challenges in securing evidence. Additionally, the ICC's decision to resume its investigation challenge state sovereignty and jurisdiction as well³⁰⁴. Indeed, while the court operates within the framework of the Rome Statute, Afghanistan's Taliban's government may perceive the ICC's involvement as an infringement on its sovereignty.

Lastly, from an International Law perspective, the decision also raises concerns about the potential impact on peace and stability in Afghanistan. Indeed, the International Criminal Court investigations could furtherly complicate political dynamics, especially if they have the prosecution of high-ranking members of the Taliban Government as a consequence³⁰⁵.

3.3 UNITED NATIONS PRACTICES REGARDING THE TALIBAN GOVERNMENT

3.3.1. Exploration of the United Nations' practices concerning the Taliban Government

As was already anticipated previously in the chapter, the United Nations (UN) approaches its relationship with the Taliban Government in Afghanistan with attention to upholding international norms and human rights standards. Indeed, since the Taliban's return to power in August 2021, the UN has been faced with challenging political landscape while adhering to its obligations under International Law.

Firstly, as previously anticipated, the UN has not formally recognized the Taliban as the lawful government of Afghanistan, suggesting that the UN believes the Taliban's rule is not meeting the criteria for legitimate governance explained in the first chapter, particularly regarding inclusivity and respect for human rights³⁰⁶. For this reason, the UN monitors the

³⁰³ INTERNATIONAL CRIMINAL COURT, 'ICC Judges Authorise Prosecution to Resume Investigation in Afghanistan' (*International Criminal Court* 31 October 2022) <<https://www.icc-cpi.int/news/icc-judges-authorise-prosecution-resume-investigation-afghanistan>>.

³⁰⁴ INTERNATIONAL CRIMINAL COURT, 'ICC Judges Authorise Prosecution to Resume Investigation in Afghanistan' (*International Criminal Court* 31 October 2022) <<https://www.icc-cpi.int/news/icc-judges-authorise-prosecution-resume-investigation-afghanistan>>.

³⁰⁵ International Criminal Court, 'Afghanistan' (*icc-cpi.int* 2019) <<https://www.icc-cpi.int/afghanistan>>.

³⁰⁶ OHCHR, 'Afghanistan: UN Human Rights Experts Denounce Idea of "Reformed" Taliban' (*OHCHR* 14 August 2023) <<https://www.ohchr.org/en/statements/2023/08/afghanistan-un-human-rights-experts-denounce-idea-reformed-taliban>>.

human rights situation in Afghanistan, reporting on potential human rights violations, such as I) restrictions on freedom of expression, II) access to education, and III) the treatment of women, girls, and minority groups³⁰⁷.

Furthermore, the UN aims to ensure that its humanitarian operations comply with international humanitarian law, especially in conflict zones, including working to gain access to all areas of need and providing aid impartially and without discrimination³⁰⁸. Moreover, the UN uses its dialogue with the Taliban in order to advocate for adherence to international law standards, such as I) the rights of women, II) freedom of expression, and III) the protection of minorities³⁰⁹.

More practically, the UN Security Council has imposed sanctions on individuals and entities associated with the Taliban that could potentially threaten peace and security in the country, such as the previously mentioned travel bans and asset freezes in accordance with International Law³¹⁰. Moreover, the organization emphasises the importance of protecting civilians in conflict areas, as prescribed by International Law³¹¹. The organization thus monitors and reports on civilian casualties and other forms of harm, calling on the Taliban to adhere to their responsibilities under International Law to protect civilians³¹². Moreover, the UN cooperates with international and regional partners to address challenges in Afghanistan, in order to promote peace, security, and human rights in line with International Law³¹³. As well as coordination with international partners, the UN also promotes accountability and transitional justice in the country³¹⁴, such as for instance supporting initiatives that aim to address past human rights violations and promote reconciliation as well as supporting peace

³⁰⁷ Security Council, 'Restrictions on Fundamental Human Rights, Especially for Women, Girls Exacerbating Bleak Humanitarian Plight in Afghanistan, Briefers Warn Security Council | UN Press' (*press.un.org* 29 August 2022) <<https://press.un.org/en/2022/sc15009.doc.htm>>.

³⁰⁸ UNHCR, 'Humanitarian Principles' (*UNHCR* 2019) <<https://emergency.unhcr.org/protection/protection-principles/humanitarian-principles>>.

³⁰⁹ Security Council, 'Speakers Weigh Prospects for Engagement with Taliban in Afghanistan amid Ongoing Concern over Harsh Repression of Women's Rights | Meetings Coverage and Press Releases' (*press.un.org* 20 December 2023) <<https://press.un.org/en/2023/sc15541.doc.htm>>.

³¹⁰ Eugenia López-Jacoiste, 'Max Planck Yearbook of United Nations Law' (2010) 14 Max Planck Yearbook of United Nations Law 273 <https://www.mpil.de/files/pdf3/mpunyb_07_lopez-jacoiste_14.pdf>.

³¹¹ UN, 'International Laws Protecting Civilians in Armed Conflict Not Being Upheld, Secretary-General Warns Security Council, Urging Deadly Cycle Be Broken | UN Press' (*press.un.org* 23 May 2023) <<https://press.un.org/en/2023/sc15292.doc.htm>>.

³¹² UNAMA, 'UN Reminds Parties of Their Responsibility to Protect Civilians - Civilian Casualty Rates Spike in July' (*UNAMA* 3 August 2019) <<https://unama.unmissions.org/un-reminds-parties-their-responsibility-protect-civilians-civilian-casualty-rates-spike-july>> accessed 12 May 2024.

³¹³ United Nations, 'United Nations in Afghanistan' (*afghanistan.un.org* 9 November 2023) <<https://afghanistan.un.org/en>>.

³¹⁴ 'GUIDANCE NOTE of the SECRETARY-GENERAL United Nations Approach to Transitional Justice' (2010) <https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/TJ_Guidance_Note_March_2010FINAL.pdf>.

processes and inclusive governance initiatives, with the aim of creating a sustainable political solution in line with international law principles³¹⁵.

3.3.2. Investigation into resolutions or statements issued by the General Assembly or the Security Council

The United Nations General Assembly and the Security Council³¹⁶ have issued several resolutions and statements concerning the situation in Afghanistan and the Taliban's de facto rule since the Taliban regained control of the country in August 2021.

Firstly, the UN Security Council adopted *Resolution 2593* on August 30, 2021, shortly after the Taliban took control of Afghanistan, reaffirming the importance of counterterrorism measures and ensuring the country is not used to threaten or attack other countries³¹⁷. It also stresses I) the need for an inclusive and representative political settlement, II) respect for human rights in accordance with international human rights, III) safe passage for those leaving the country, IV) and humanitarian access and aid delivery³¹⁸. The resolution has a broad legal significance in that it reaffirms the Security Council's role in maintaining international peace and security³¹⁹. Moreover, it underscores the need for the Taliban to comply with international humanitarian and human rights law while also establishing international legal obligations for both states and non-state actors to respect the rights of Afghan people³²⁰.

In 2022, the UN Security Council issues a second resolution, namely *Resolution 2626*, extending the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA)³²¹ for another year³²². This resolution thus represents a call for continued support for the Afghan population and emphasises the need for unimpeded access for humanitarian operations as well

³¹⁵ United Nations, 'OHCHR | OHCHR: Transitional Justice and Human Rights' (*OHCHR2024*) <<https://www.ohchr.org/en/transitional-justice>>.

³¹⁶ United Nations, 'Security Council Emphasizes That Punitive Restrictions on Women's Rights, Escalating Hunger, Insecurity Taking Devastating Toll in Afghanistan | UN Press' (*press.un.org* 8 March 2023) <<https://press.un.org/en/2023/sc15222.doc.htm>>.

³¹⁷ Security Council, 'Adopting Resolution 2593 (2021), Security Council Condemns Deadly Attacks in Afghanistan, Calls for Combating Terrorism, Upholding Human Rights | UN Press' (*press.un.org* 30 August 2021) <<https://press.un.org/en/2021/sc14620.doc.htm>>.

³¹⁸ Security Council, 'Adopting Resolution 2593 (2021), Security Council Condemns Deadly Attacks in Afghanistan, Calls for Combating Terrorism, Upholding Human Rights | UN Press' (*press.un.org* 30 August 2021) <<https://press.un.org/en/2021/sc14620.doc.htm>>.

³¹⁹ 'Security Council Resolution 2593 - UNSCR' (*unscr.com*) <<http://unscr.com/en/resolutions/2593>> accessed 12 May 2024.

³²⁰ Security Council, 'Adopting Resolution 2593 (2021), Security Council Condemns Deadly Attacks in Afghanistan, Calls for Combating Terrorism, Upholding Human Rights | UN Press' (*press.un.org* 30 August 2021) <<https://press.un.org/en/2021/sc14620.doc.htm>>.

³²¹ UNAMA, 'UNAMA' (*UNAMA2020*) <<https://unama.unmissions.org/>>.

³²² Security Council, 'Adopting Resolution 2626 (2022), Security Council Extends United Nations Mission in Afghanistan for One Year | UN Press' (*press.un.org* 17 March 2022) <<https://press.un.org/en/2022/sc14833.doc.htm>>.

as encouraging the formation of an inclusive government that respects the rights of all Afghan people³²³. Moreover, the resolution urges the Taliban to respect international humanitarian and human rights law³²⁴. By extending the UNAMA's mandate, the Security Council reinforces its commitment to providing international oversight and support to Afghanistan, moreover, the resolution highlights the importance of accountability and adherence to International Law, including the protection of vulnerable groups³²⁵.

Differently from the Security Council, the General Assembly cannot issue legally binding resolutions³²⁶, it can however express international consensus on issues of concern³²⁷. Firstly, the General Assembly passed resolutions expressing concern over I) the humanitarian situation in Afghanistan, II) the treatment of women and girls, and III) the need for an inclusive political process³²⁸. Consequently, these resolutions and statements request the Taliban to respect human rights, uphold the rule of law, and engage in dialogue with other Afghan parties. General Assembly resolutions do have some legal significance despite not being binding, indeed, they reflect international norms and can become basis for diplomatic pressure and advocacy³²⁹. They thus provide a platform for member states to voice concerns and collectively advocate for adherence to international human rights and humanitarian law as well as providing a platform for member states to voice concerns and collectively advocate for adherence to international human rights and humanitarian law³³⁰.

For instance, a General Assembly's resolution of 2022 addressed the humanitarian crisis in Afghanistan, urging member states to increase humanitarian aid and calling on the Taliban

³²³ UNAMA, 'UN Reminds Parties of Their Responsibility to Protect Civilians - Civilian Casualty Rates Spike in July' (UNAMA3 August 2019) <<https://unama.unmissions.org/un-reminds-parties-their-responsibility-protect-civilians-civilian-casualty-rates-spike-july>> accessed 12 May 2024.

³²⁴ 'Security Council Resolution 2626 - UNSCR' (*unscr.com*) <<http://unscr.com/en/resolutions/2626>>.

³²⁵ Security Council, 'Security Council Extends Mandate of United Nations Mission in Afghanistan, Unanimously Adopting Resolution 2727 (2024) | Meetings Coverage and Press Releases' (*press.un.org* 15 March 2024) <<https://press.un.org/en/2024/sc15628.doc.htm>>.

³²⁶ United Nations, 'How Decisions Are Made at the UN' (*United Nations*) <<https://www.un.org/en/model-United-nations/how-decisions-are-made-un#:~:text=may%20make%20recommendations%20to%20the>>.

³²⁷ Stephen M Schwebel, 'The Effect of Resolutions of the U.N. General Assembly on Customary International Law' (1979) 73 *Proceedings of the Annual Meeting (American Society of International Law)* 301 <<https://www.jstor.org/stable/25658015>>.

³²⁸ General Assembly, 'General Assembly Voices Deep Concern over Volatility in Afghanistan since Taliban Takeover, Unflinching Commitment to Afghans, Adopting Resolution by Vote | Meetings Coverage and Press Releases' (*press.un.org* 10 November 2022) <<https://press.un.org/en/2022/ga12469.doc.htm#:~:text=The%20General%20Assembly%20today%20expressed>>.

³²⁹ Stephen M Schwebel, 'The Effect of Resolutions of the U.N. General Assembly on Customary International Law' (1979) 73 *Proceedings of the Annual Meeting (American Society of International Law)* 301 <<https://www.jstor.org/stable/25658015>>.

³³⁰ Stephen M Schwebel, 'The Effect of Resolutions of the U.N. General Assembly on Customary International Law' (1979) 73 *Proceedings of the Annual Meeting (American Society of International Law)* 301 <<https://www.jstor.org/stable/25658015>>.

to allow access to international humanitarian organizations³³¹. Moreover, the General Assembly collaborates with other UN bodies, such as the United Nations High Commissioner for Refugees (UNCHR)³³² and the United Nations Children's Fund (UNICEF)³³³ in order to discuss reports and findings on the situation in Afghanistan, increasing awareness and coordinating international efforts.

CONCLUSION

Since the Taliban seized control of Afghanistan in 2021, the country's interactions with international bodies have faced important transformations. Concerns regarding human rights, governance, and security under Taliban rule have prompted a reassessment of international engagements within the country. Notably, the United Nations (UN) continues to extend humanitarian and development aid, while it also faced with obstacles regarding women's rights, minority protections, and human rights standards. Therefore, issues arise regarding Afghanistan's representation at the UN, with the Taliban claiming the right to appoint a new ambassador.

Access to financial assistance from major international institutions such as the World Bank and the International Monetary Fund (IMF) has diminished due to concerns regarding Taliban policies and the persistent humanitarian crisis. Similarly, the Asian Development Bank has frozen funding for Afghan projects. Furthermore, political tensions, particularly between India and Pakistan, have limited Afghanistan's participation in the South Asian Association for Regional Cooperation (SAARC), prompting discussions about potential expulsion due to governance issues and human rights violations.

On the other hand, the World Health Organization (WHO) continues to support Afghanistan's health programs, however, limited donor aid has complicated healthcare delivery, highlighting the importance of women's healthcare access and workforce participation.

Afghanistan has been a party to the Rome Statute since 2003, placing it under the ICC's jurisdiction. The ICC's investigations focus on alleged war crimes and crimes against humanity committed by the Taliban. In October 2022, the ICC allowed the Office of the Prosecutor to resume its investigation into the situation in Afghanistan, a decision initially delayed due to

³³¹ General Assembly, 'General Assembly Voices Deep Concern over Volatility in Afghanistan since Taliban Takeover, Unflinching Commitment to Afghans, Adopting Resolution by Vote | Meetings Coverage and Press Releases' (*press.un.org*10 November 2022)

<<https://press.un.org/en/2022/ga12469.doc.htm#:~:text=The%20General%20Assembly%20today%20expressed>>.

³³² UNCHR, 'Afghanistan Crisis Update: Women and Girls in Displacement'

<https://asiapacific.unwomen.org/sites/default/files/2022-03/af-Afghanistan_factsheet-s2.pdf>.

³³³ UNICEF, 'UNICEF Afghanistan' (*Unicef.org*2020) <<https://www.unicef.org/afghanistan/>>.

concerns about meaningful cooperation with Afghan authorities. The ICC emphasizes the importance of maintaining dialogue with Afghanistan while ensuring investigations do not recognize the Taliban's legitimacy. The ICC's decisions may lead to legal consequences for individuals within the Taliban's ranks, including potential arrest warrants for war crimes and crimes against humanity. These investigations may impact the Taliban's international legitimacy and strain relationships with other states supporting the ICC's mandate and international human rights norms.

The United Nations' approach to its relationship with the Taliban government in Afghanistan focuses on upholding international norms and human rights standards. Indeed, the UN closely monitors potential human rights violations, including restrictions on freedom of expression, access to education, and the treatment of women, girls, and minorities. The UN emphasizes compliance with international humanitarian law in its humanitarian operations and advocates for adherence to international law standards during dialogue with the Taliban. The UN Security Council has thus imposed sanctions on certain individuals and entities associated with the Taliban that threaten peace and security in Afghanistan. The organization stresses the importance of protecting civilians in conflict zones, monitoring civilian casualties, and urging the Taliban to fulfil their responsibilities under international law. Resolution 2593, adopted by the Security Council, reaffirms the need to combat terrorism and maintain peace, having an inclusive political settlement, respect for human rights, and safe passage for those leaving Afghanistan. Moreover, Resolution 2626 extended the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA), emphasizing continued support for the Afghan population and calling for an inclusive government. The General Assembly's non-binding resolutions and statements express concern over Afghanistan's humanitarian crisis, the treatment of women and girls, and the need for an inclusive political process.

Ultimately, Afghanistan's international relationships face important challenges under the Taliban's rule. Indeed, the country's ability to access international support has been compromised, while its involvement with international organizations remains subject to the problems of its current governance and its compliance with international norms.

CONCLUSION

The concept of government recognition remains a crucial issue in international law, even more so considering that there is no universally accepted theory for it. The analysis of the legal status of the recognition of the Taliban Government in International Law is thus fundamental in order to understand the impact of the lack of formal recognition, even in cases, such the one of Afghanistan, where the regime is the *de facto* government of the country.

Recognition has indeed been defined as “*a process whereby certain facts are accepted and endowed with a certain legal status, such as statehood, sovereignty over newly acquired territory, or the international effects of the grant of nationality*”³³⁴, signifying that recognition is not a mere acknowledgment but a complex legal and diplomatic act, which shapes the relationship between sovereign entities on the international stage. Moreover, said recognition needs to be distinguished between Statehood Recognition and Government Recognition. In particular, the creation of Statehood can be categorized into two different theories, namely the declaratory doctrine and the constitutive doctrine, where the former considers Statehood to be purely factual, and depending solely on the fulfilment of four criteria: defined territory, a permanent population, an independent government, and effective authority of said government. On the other hand, the constitutive doctrine entails that the four criteria of Statehood previously mentioned are not enough, and thus implies that a Statehood can only be certain if it is recognized by existing states: “*a state is and becomes an international person through recognition only and exclusively*”³³⁵. In the event of recognition of Statehood prior to having achieved the criteria established by the Montevideo Convention, recognition is considered premature, and thus inconsistent with International Law, as it can be considered an act of unlawful intervention³³⁶. Recognition, or nonrecognition, deeply influences the international arena because it has consequences on the legal standing of international actors, influencing the formation of treaties, impacting the participation in international organizations, and affecting issues such as state succession, territorial disputes, and the granting of nationality. Therefore, recognition grants the ability of shaping the interactions between entities within the global community, and consequently, the withholding of said recognition deeply hampers the participation of entities in international affairs. As previously mentioned, to recognize a community as State means affirming that it meets the prerequisites of statehood required by International Law, however, on the other hand, while Statehood Recognition

³³⁴ Encyclopedia Britannica, ‘International Law - States, Sovereignty, Treaties | Britannica’ (www.britannica.com) <<https://www.britannica.com/topic/international-law/States-in-international-law#ref129019>> accessed 27 March 2024.

³³⁵ ‘Recognition in International Law: A Functional Reappraisal’ (1967) 34 The University of Chicago Law Review 857.

³³⁶ Oxford References , ‘Recognition, Premature’ (*Oxford References*2024) <<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100408161>>.

is based on set principles, Government Recognition can be defined as an “*indication of willingness on the part of the recognizing Government to establish or maintain official, but not necessarily intimate, relations with the Government in question*”³³⁷ and can thus be fluid and subject to changes in leadership or political dynamics: it does not have some precise and set criteria to be followed. In other words, refusing to recognize one specific government does not undermine the Statehood of a territory, as it is in the case of the Afghanistan’s Taliban Government. In the case of the Government Recognition, moreover, formal, or *de jure*, recognition can occur either through explicit statements, diplomatic acts, or participation in international organizations. *De facto* recognition may also exist when states engage in practical relations and interactions, even without the presence of a formal acknowledgment.

The thesis traced back the situation of Afghanistan to the Doha Agreements of 2020, which not only set the stage for the Taliban takeover by establishing the withdrawal of United States and NATO’s military power from the country, but also while not granting official recognition to the group as the legitimate government of the country, it acknowledged its influence. Furthermore, the agreement opened the possibility for the Taliban to engage with the international community and for this reason, compliance with this agreement could increase Taliban’s international legitimacy and recognition. Despite the fact that the Doha Agreements acknowledged the influence of the Taliban, once they established their government, none of the countries in the international arena formally recognized it, namely they did not recognize the government *de jure*. Indeed, as the High Representative of the EU stated “*there are two kinds of recognition. There is factual recognition: [...] we have to recognize the reality [...] to solve practical problems. [...] And then, there is the political recognition, that will be granted if you behave with [...] my wishes and my interests. And this is what a condition-based recognition*”³³⁸, meaning that in the case of the Taliban, the withholding of recognition is used as a measure to express disapproval towards the regime and in order to leverage a behaviour in compliance to International Law. While the Taliban regime has not received *de jure* recognition, it still is the *de facto* government of Afghanistan, and as such it is ascribed certain duties and responsibilities, as a non-State actor. It is thus important to note that the Taliban, as well as being a partial subject of International Law, are still bound by the treaties the previous government of Afghanistan signed according to the *pacta sunt servanda* and state succession rules. Indeed, according to the state succession rule of continuity when a Government changes, the state itself remains the

³³⁷ Stefan Talmon, ‘Meanings of “Recognition”’ [2001] Oxford University Press eBooks 21
<<https://academic.oup.com/book/43016/chapter-abstract/361358971?redirectedFrom=fulltext>> accessed 6 April 2024.

³³⁸ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

same entity, retaining its international obligations and commitments, and moreover once Afghanistan has ratified human rights treaties, the state remains bound by these obligations, irrespective of any changes in its government according to the *pacta sunt servanda* principle. Therefore, notwithstanding not being recognized, as the de facto ruling authority in Afghanistan, the Taliban are bound by the treaties Afghanistan is party of. It has previously been mentioned that recognition can be implied as well as explicit, and to clarify the concept, the case of China has been analysed. As a matter of fact, China adopts an ambiguous approach towards the Taliban, establishing diplomatic relations with them, but not formally recognizing their government. However, these diplomatic relations should not be considered as implied recognition, as International Law allows countries to continue diplomatic engagement without necessarily recognizing the legitimacy of the ruling regime. Ultimately, therefore, the case of the Taliban demonstrates how no specific conduct of States towards a Government, including accreditation of diplomats or concluding bilateral treaties, necessarily determines recognition³³⁹, showing how the effects of recognition can be minimised, as long as said non-recognition remains purely *de jure*, rather than *de facto*.

In 2022, the International Criminal Court issued the “*decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation*”³⁴⁰ which questioned once again the status of the recognition of the Taliban Government. The decision is thus of extreme importance in that it reaffirmed the court’s commitment to justice despite political disruption, showing that no individual or entity is above International Law, even if they are not formally recognized in the international arena, forcing once again the Taliban to comply to it. Despite the government of the Taliban not been being recognized in the international arena, Afghanistan is still member of some International Organizations, as for instance, is party of the United Nations. However, the organization has delayed the decision of who should be representing the country, the former government in exile or the Taliban, limiting Afghanistan’s ability to effectively advocate for its interests within the organization. Furthermore, the United Nations Security Council has adopted *Resolution 2593*³⁴¹, which reaffirms the importance of counterterrorism measure as well as underscoring the need for the Taliban to comply with international humanitarian and human rights law, while also establishing international legal obligations for both states and non-state actors to respect the rights of Afghan

³³⁹ Seyfullah Hasar, ‘Recognition of Governments and the Case of the Taliban’ (2024) 23 Chinese journal of international law 73.

³⁴⁰ International Criminal Court, ‘Decision pursuant to Article 18(2) of the Statute Authorising the Prosecution to Resume Investigation’ (31 October 2022) <https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_06500.PDF>.

³⁴¹ Security Council, ‘Adopting Resolution 2593 (2021), Security Council Condemns Deadly Attacks in Afghanistan, Calls for Combating Terrorism, Upholding Human Rights | UN Press’ (*press.un.org* 30 August 2021) <<https://press.un.org/en/2021/sc14620.doc.htm>>.

people³⁴². As well as *Resolution 2593*, another resolution has been issued, namely *Resolution 2626*³⁴³, which extends the mandate of the United Nations Assistance Mission in Afghanistan, representing a call for continued support for the Afghan population. Complicating the matter even more, organizations such as the World Bank and the International Monetary Fund sanctioned the regime while also freezing Afghan assets abroad, creating a severe humanitarian and economic crisis in the country, which might question the efficacy of the strategic position of withholding recognition.

Therefore, one important question arises from this thesis: is the strategy of withholding recognition in order to express disapproval towards the Taliban worth the humanitarian crisis in the country? Indeed, while nonrecognition of the Taliban Government is needed to influence a change in the behaviour of the Taliban, nonrecognition also holds some important disadvantages. Indeed, economic and political isolation has had severe repercussions on the Afghan population, which is suffering from an increasing humanitarian crisis which is worsened by the lack of access to international funds and aid. Moreover, without any international support, Afghanistan might become haven of instability and terrorism, as nonrecognition might push the Taliban to seek alliance with non-state actors or states hostile to the international community, rendering the general environment of the country dangerous for the population as well as being harmful to regional and global stability. Therefore, the repercussions of nonrecognition must be seriously evaluated. Firstly, rather than a total refusal of recognition, conditional dialogue should be preferred, offering partial or progressive recognition in exchange for concrete reforms by the Taliban. Moreover, it is crucial to balance sanctions with a strong humanitarian commitment in order to ensure that aid effectively reaches the population. Lastly, the situations must be constantly monitored, and the effects of the nonrecognition strategy should be closely monitored to assess its impact on the population.

Another question that might arise from this thesis consists in whether the strategy of nonrecognition can effectively be applied in a long term. In other words: considering the tension between the *de facto* situation and the lack of a *de jure* obligation to recognize a government, how long can this situation continue? Is it possible for it to last forever? Is there a point at which the effectiveness of the legal situation must prevail, according to International Law, requiring the recognition of a government despite serious human rights violations? And, even if no strict legal obligation arises, from a practical and strategic point of view, is it advisable to continue this strategy indefinitely, or should the reality be accepted instead? Firstly, the nonrecognition approach can

³⁴² Security Council, 'Adopting Resolution 2593 (2021), Security Council Condemns Deadly Attacks in Afghanistan, Calls for Combating Terrorism, Upholding Human Rights | UN Press' (*press.un.org*30 August 2021) <<https://press.un.org/en/2021/sc14620.doc.htm>>.

³⁴³ Security Council, 'Adopting Resolution 2626 (2022), Security Council Extends United Nations Mission in Afghanistan for One Year | UN Press' (*press.un.org*17 March 2022) <<https://press.un.org/en/2022/sc14833.doc.htm>>.

theoretically continue indefinitely as International Law does not impose a strict obligation on states to recognize a government, especially if it has obtained power through non-democratic means or has committed serious human rights violations, as it is the case for the Taliban. However, while it is theoretically possible, it is unlikely that the status of nonrecognition will last forever. Indeed, over time practical considerations such as the need for international cooperation, humanitarian assistance, and regional stability may push some states to recognize the regime. On the other hand, International Law generally prioritized the effectiveness of a government over its territory and population, however, recognition in many instances represents a political decision rather than a legal one. Consequently, states often consider factors such as human rights, democratic legitimacy, and international norms when deciding whether to recognize a government. Therefore, while the principle of effectiveness might suggest recognition of a stable regime, serious human rights violation can theoretically justify continued non-recognition: there is no definitive point at which effectiveness must prevail over these considerations. Lastly, from a practical and strategic perspective, the continued nonrecognition of the Taliban Government involves several considerations such as: I) pressure for reform, II) humanitarian impact, III) stability and security, and IV) realpolitik, namely states may opt to engage with the group in order to address issues such as terrorism and regional security.

Ultimately, while there is no legal obligation to recognize the Taliban, practical and strategic factors may eventually require a reassessment of the non-recognition policy, trying to balance the need to uphold human rights and democracy with the factual reality on the ground and the humanitarian need of the Afghan population.

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