

**[Regime Change and Legitimacy Crisis in Afghanistan –
*Why is recognizing Taliban a violation of international
law?*]**



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Summary

A significant event in 2021, in terms of international politics, was the return of Taliban to power in Afghanistan which – with its lacking recognition and legitimacy – is also a major contributor to other crises caused by the regime change.

This study is an effort to restrict two specific dimensions of the multidimensional event: Taliban's conduct regarding human rights and other norms of international law and international response to such conduct by Taliban.

Approaching these two dimensions from an international law, legitimacy and society perspective, the study further describes why the world does not formally recognize Taliban, and more importantly, it argues and justifies why it is a violation of international law if it does. Relying on perspectives pertaining to State and anti-liberal-democratic groups versus Taliban's conduct, characteristics and nature, the study also concludes why Taliban is *an aggressive and violent anti-liberal-democratic religiomilitary group* not a State. Furthermore, the study discusses why Taliban is unable to accept international law and explains why the international response is bidimensional and rational.

Preface

This work would not be possible without emotional and professional support and motivation, especially for a person with an Afghan background. I feel short of words for how to express gratitude in the best possible manner to my family, friends and lecturers who helped me through the process one way or the other.

I sincerely appreciate the guidance provided to me by my Supervisor Tefvik Murat Yildirim and Thesis Subject Manager Ellen Ravndal from whom I learned how to go about this work. Thank you both for your help and support.

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Abdullah Jan Azizi

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Acronyms

ABPA	Agreement for Bringing Peace to Afghanistan
AI	Amnesty International
AIHRC	Afghanistan Independent Human Rights Commission
BBC	British Broadcasting Corporation
CAT	Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CEDAW	International Convention on the Elimination of All Forms of Discrimination against Women
CEU	Council of the European Union
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	International Covenant on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRC-OP-AC	Optional Protocol to the Convention on the Rights of The Child on the involvement of children in armed conflict
EU	European Union
FBI	Federal Bureau of Investigation
FH	Freedom House
FPJ	The Free Press Journal
FTOs	Foreign Terrorist Organizations
GDP	Gross Domestic Product
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
ICCPR	International Covenant on Civil and Political Rights
ISK	Islamic State Khorasan Province
MDGs	Millennium Development Goals
MSF	Medicins Sans Frontières/Doctors without Borders
NATO	North Atlantic Treaty Organization
NBC	National Broadcasting Company
NYT	The New York Times

OCHA	United Nations Office for Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
RSF	Reporters Sans Frontières/Reporters Without Borders
SDGs	Sustainable Development Goals
TI	Transparency International
TTP	Tehreek-e-Taliban Pakistan
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Program
UNICEF	United Nations International Children's Emergency Fund
UNRIC	United Nations Regional Information Centre
UNSC	United Nations Security Council
US	United States
USDOS	United States Department of State
VOA	Voice of America
WB	World Bank
WFP	World Food Programme

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1. Introduction

A pivotal issue following the regime change in Afghanistan has been non-recognition of Taliban by the international community, which can be regarded also as a major factor behind the deteriorating humanitarian situation in the country. The UN has launched, through informal engagement with Taliban as de-facto authorities and in collaboration with other international actors, a humanitarian response initiative to control the situation.

Also, the world has preconditioned formal engagement with and recognition of Taliban to ensuring of civil and political rights of the Afghan people through the establishment of an inclusive government and ensuring of human and women's rights as well as to the fulfilment of Taliban commitments on denying terrorists safe havens and on preventing them from threatening the world countries from Afghanistan's territory.

Taliban has defied the world with its disregard for international demands and preconditions, its authoritarian way of governance, and its massive breaches of peremptory norms of international law, insisting that it will uphold Islamic sharia based on its own interpretations. Through an evaluation of Taliban's conduct and the international community's response based on concepts of international law, legitimacy, recognition, society, etc, the purpose of this paper is to justify why recognizing Taliban rule is a violation of international law. Other questions the paper will try to answer include what the peremptory norms of international law breached by Taliban are, how international response is justified from an international law and society perspective, why Taliban is unable to accept international law, and why it does not fulfil the criteria of being a State but rather *an aggressive and violent anti-liberal-democratic religiomilitary group*. The paper consists of the following sections:

Theoretical Approach: a brief insight into the framework governing states' membership in international society with a brief introduction to anti-liberal-democratic groups.

Methodology: outlining how the research was conducted and what readers need to know.

Empirical Data: describing Taliban's conduct and the international community's response to such conduct. **Analysis & Discussion:** analysing the findings and arguing in justification of the four main claims. **Conclusion and Reference List.**

2. Theoretical Approach

This section provides a brief insight into concepts pertaining to international law, legitimacy, recognition, society, anti-liberal-democratic groups, and state.

2.1. International society

International order was founded by the Westphalia Peace Agreement, in which sovereignty of States was an important feature (Kundnani, 2017). International society is a group of States bound by common rules pursuing common interests and values (Clark, 2005). The rule of law, international organizations, and collaboration are some features of the current international order (Kundnani, 2017).

A key requirement for such a community to exist is legitimacy because its core principles constitute the international society. The structure of international society contains rules and criteria for determining eligibility of members and appropriateness of their conduct based on a combination of norms such as legality, morality, constitutionality, and elements such as principles and practices of international and domestic legitimacy (Clark, 2005).

Since it is a society of states, it is of essence to also know what a State is. State, according to Max Weber, is a political organization with territorial basis subject to change by legislation which holds monopoly over the legitimate use of force to implement its binding orders on citizens and on all activities that take place in its jurisdiction (Pierson, 2011). From a traditional perspective, an entity must possess a defined territory, a permanent population, an effective government, and the capacity to engage in relations with other states to be called a State (Murphy, 1999). State has various characteristics and features such as authority, citizenship, constitutionality, impersonal power, legitimacy, public bureaucracy, sovereignty, taxation, and territoriality (Pierson, 2011), which will not be elaborated further here.

A *de-jure* State possesses a constitution laying the foundation for the political system and mechanisms for distribution of power. It is based on constitutionality that the population chooses its leadership typically through elections. A *de-facto* State lacks the constitutionality and electoral characteristics. However, those ruling the country, in absence of public support, also control the entire territory with no considerable opposition (Ronen, 2011) of any form civil, political or military.

States, both *de-jure* and *de-facto*, are entitled to international rights and obligations. Some of the rights are immunity from foreign military aggression and ability to establish

diplomatic relations, enter into agreements and treaties, file claims against other states, govern within the territory, do business with the state's properties and assets abroad, extract natural resources, and participate in international trade. Obligations include abiding by international laws and fulfilling international commitments (Saul, 2021).

2.2. International Law

International law is a set of legal binding rules, principles and norms that govern activities of states and other entities. The scope of international law has been expanded through multilateral treaties, improving its status from a previously customary nature to a more regulation-based nature through the inclusion of new areas such as human rights and economic affairs, which have also enabled international law to penetrate domestic legal systems of states, posing rights and obligations on groups and individuals within states while the customary international law only regulated activities of states in their relations with one another (Grant, 2010).

Not only are States authorized to represent their populations' sovereignty by international law but they are also obligated to adhere to the principle of non-instrumentalization, which prohibits treating people as means, and the principle of non-domination, which prohibits placing people under arbitrary or forceful power. In other words, it is because of compliance with human rights norms that international law allows a state to represent its people and exercise sovereignty (Criddle & Decent, 2012).

Some norms of international law are regarded as *jus cogens*, meaning that they are peremptory, universally accepted, indisputable and superior to other rules of international law, violation of or derogation from which is not permitted. The eight peremptory norms consist of the prohibition of aggression or use of force, the prohibition of genocide, the prohibition of crimes against humanity, the basic rules of international humanitarian law, the prohibition of racial discrimination and apartheid, the prohibition of slavery, the prohibition of torture, and the right of self-determination (UN, 2019).

If a state or some other entity violates a peremptory norm, it becomes illegal. In a 2019 report to the UNGA, the UN International Law Commission writes the following under *Conclusion 19* about the consequences of violation of peremptory norms:

“No State shall recognize as lawful a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law (*jus cogens*), nor render aid or assistance in maintaining that situation (UN, 2019, p.146).”

Such a violation leads to an obligation of non-recognition on other members of the society of states, which requires them not to recognize the lawbreaker. This obligation is aimed at preventing the illegal regime or entity from benefiting from the violation and at compelling it to reinstate order. In contrast to the obligation of non-recognition, a policy of non-recognition has political or domestic reasons for the state which refuses to recognize another state (Ronen, 2011).

Enshrined in several international law documents, especially international covenants on human rights, self-determination is the right of people, not of governments, states or other entities, to decide about their political fate as well as cultural and social life. In other words, it is the right of people to participate in political processes to form a government, a state or a political system (Murphy, 1999; Ronen, 2011; UNPO, 2017). The right of self-determination is violated when the population is deprived of participating in the determination of political arrangements domestically (Ronen, 2011) or of the freedom to choose its political system without external interference (Murphy, 1999).

The prohibition of the use of force, according to Ronen, happens when a regime comes to power by force or through non-democratic means (Ronen, 2011).

2.3. Recognition

It is through recognition that a political community obtains the status of a sovereign state in international law and relations. Without recognition, a community cannot join international bodies, sign international agreements and treaties, or perform normal diplomatic and economic relations. Furthermore, a population and territory are exposed to threats of losing the ability to defend themselves in absence of recognition, which, if obtained, can protect them under international law. Thus, it is in presence of constitutionality and internal control as well as external recognition by other states that a political community is regarded as a state with sovereignty (Fabry, 2010).

Acceptance of a state's legal capacity to benefit from international rights and obligations on behalf of its people, *membership* in international organizations, and *impacts* of recognition/non-recognition on domestic affairs, obligations, and rights of a state or government are the three aspects of recognition or non-recognition (Murphy, 1999). Recognition can be legal and political (Borchard, 1942) or declaratory and constitutive (Crawford, 2019), but it also has a moral aspect (Dietrich, 2013). Legal and declaratory recognition is accepting the existence of statehood in a territory while political and

constitutive recognition is engaging in political relations with the state in a territory (Borchard, 1942; Crawford, 2019).

It is self-determination and presence of institutions with democratic values that establish whether a government or state represents its population, and they are elements that are considered when recognition of a state or a government is in question, particularly following the Helsinki Final Act (1985) and the Charter of Paris for a New Europe (1990) based on which states also take democratic legitimacy into account while recognizing new governments or states (Murphy, 1999).

2.4. Legitimacy

While *standard of civilization* (Clark, 2005) and *effective control over territory* (Saul, 2021) were respectively preconditions for recognition of states historically and traditionally, the modern practice of recognition requires a combination of democratic and constitutional legitimacy as well as adherence to international law principles (Clark, 2005). The incorporation of UDHR and ICCPR in international law has added to the criteria for recognition. The UDHR and ICCPR respectively set forth people's right to participate in forming the government of their country and their right to take part in elections and public matters (Murphy, 1999).

According to Clark, core principles of legitimacy, practices of legitimacy, and strategies of legitimation are three elements in international legitimacy. *The core principles* consist of *rightful membership* and *rightful conduct*. It is only through rightful membership that rightful conduct is generated. In other words, rightful membership is about the characteristics, competencies, and qualities an entity or state possesses which qualify it as a rightful or eligible member of the international society. And rightful conduct is about the acceptable behaviour, performance and practice of states in their relations with each other. *Practice of legitimacy* lies basically in recognition or non-recognition of a state's membership or conduct. *Strategies of legitimation* by states are aimed at legitimizing their conduct for the wider international society.

Clark asserts that domestic legitimacy leads to international accept because it increases collective acts of recognition, and international legitimacy can also lead to domestic legitimacy for some regimes. While nations are independent when it comes to their type of constitution, political system, and other domestic political arrangements, they are dependent when it comes to their recognition internationally (Clark, 2005).

2.5. Anti-liberal-democratic groups

According to Ekeli (2012), liberal political philosophy is about equal political rights for people in a country to participate and influence political and legislative processes. This means that all citizens are entitled to involvement in the determination of legislative and constitutional processes through which laws are established for them to comply with. However, anti-liberal-democratic groups explicitly deny this right for citizens and rather seek to establish a one-party system which silences all opposition to their ideology and political manifestation. An anti-liberal-democratic group has two main characteristics or political objectives: 1) rejecting all liberal ideas, and 2) terminating all democratic institutions. There are aggressive and moderate anti-liberal-democratic groups, which respectively pursue violence or democratic means such as elections to achieve their objectives. Ekeli (2012) further argues that such groups must be denied the political right to participate in elections or to secure seats in parliament or government.

Liberal and democratic ideas include civil and political rights plus the value of democratic institutions. Ekeli (2012) states that the right of political participation includes the right to vote, the right to the right to run in elections, the right to freedom of assembly, and the right to free political speech and discussion. He categorizes civil rights, the rights of political participation, and the value of democratic institutions as liberal and democratic ideas. The right to freedom of thought and conscience, freedom of association, personal property, freedom of movement, privacy, and protection against violence are described as civil rights. The value of democratic institutions, which such groups aim to destroy, lies in open and free elections and public dialogue (Ekeli, 2012).

3. Methodology

The following methodology was applied in conducting this qualitative behind-the-desk research using secondary data and keeping in mind the main purpose, namely justifying that recognizing Taliban rule is a violation of international law, Taliban is neither a state nor has it the ability to accept international law, and international response to Taliban's conduct is rationally appropriate.

3.1. Ethics and Integrity

To ensure ethics and integrity of the research, a first step was becoming familiar with the background, behaviours, concepts, conducts, contexts, goals, histories, institutions, interests, legal frameworks and bodies, norms, principles, theories and terminologies pertaining to topics such as Afghanistan, Taliban and international law, legitimacy, order, organizations, recognition, society, states, etc. A search for pre-existing data and literature available online and offline about the above topics led to identification and selection of a series of analyses, articles, agreements, books, covenants, documents, laws, reports, research, studies, treaties, etc. This step further included reading the selected materials to ensure a thorough understanding of the abovementioned topics and to restrict concepts, data and theories necessary for basing the research on. Moreover, effort was made in writing the paper to bring forward the essence of concepts, data and theories mainly in own words instead of quoting while also ensuring that in-text citations are correct and accurate.

3.2. Reliability and Validity

A second step in the process was ensuring that the concepts and data sources are reliable and valid, especially given the fact that the research was being conducted on a current situation. One challenge this simultaneity created was keeping updated about developments in terms of Taliban's status of non-recognition and its violations of international law as well as the international community's response. Nevertheless, reliability was ensured by using multiple sources ranging from international media outlets to governmental reports and documents through to reports by international organizations active in various fields relevant to the purposes of this research.

3.3. Structure and References

The main structure of the paper is based on a standard template provided by the university, which contains a title page, summary, preface, table of contents, introduction, theory, methodology, data, analysis, conclusion and reference list. I have slightly changed some of the headings of the standard template. For instance, instead of just theory, I have written theoretical approach.

Moreover, I have included subheadings in some sections of the paper to make a distinction between different concepts, theories or data clusters or to simplify their understanding.

Also, since the maximum number of words used in this research cannot exceed 8,800 (8,000+10%), I have tried to save space by creating a list of acronyms which the reader can revisit for complete phrases when necessary.

The reference list is an exhaustive one, with over 130 sources registered. The reason is the nature and scope of the research, covering an area of study – international politics - that involves a large number of actors, institutions, law bodies, legal instruments, and stakeholders and because, as stated earlier, it was being conducted on an ongoing situation that is frequently changing. Thus, the Empirical Data section had to be updated almost daily with new developments in Taliban’s conduct and international response, which led to the creation of an exhaustive reference list.

Also, some sources were used repeatedly as new data became available. Since they are the same sources, their differences can be understood from the year of publication according to APA7 guide. For instance:

UN (2019) ...

UN (2020) ...

However, some publications of the same sources also belong to the same year. The solution provided by APA7 referencing guide is to make a distinction by adding an alphabetical sequence next to the year of publication as in the following:

UNSC (2021a) ...

UNSC (2021b) ...

UNSC (2021c) ...

4. Empirical Data

The UN is fundraising for a humanitarian response plan to address the humanitarian crisis in Afghanistan and Taliban's incapacity in paying salaries to thousands of government employees, particularly in the fields of healthcare and education, which were already dependent on foreign funding (Guterres, 2021a; Guterres, 2021b; Pisa, 2017; Samim, 2016; UN, 2021; UNAMA, 2022a; UNDP, 2022).

The data gathered for this study, however, is concerned with commitments and conduct of Taliban and the international response to them.

4.1. Taliban Commitments

Before and after coming to power, Taliban has made several promises to the international community and the Afghan people, some of which are as follows:

Taliban pledged in the ABPA, an agreement signed between US and Taliban's political office in Qatar (Maizland, 2020; Reuters, 2013) not to allow terrorists to threaten the US, its allies, and their interests from Afghanistan, to expel terrorists from the country, and to also prevent its own members from cooperating with, supporting and hosting terrorists or facilitating for their activities (USDOS, 2020). Taliban also committed in the ABPA to hold intra-Afghan negotiations on a post-US/NATO inclusive political setup that would account for the interests of all domestic political forces, following which, the UNSC urged the former Afghan government, the Taliban and international actors to rapidly form an inclusive government, expressing readiness to drop designated Taliban members from its Consolidated Sanctions List (UNSC, 2020; UNSC, 2022b). The council also emphasized, in *Resolution 2596*, on the presence of women in the inclusive government (Lederer, 2021; UNSC, 2021b).

In his first appearance before media after seizing power, a leading Taliban spokesman stated that they will uphold human rights, including women's right to education and work, and media freedom, but he also made a reservation that their regard for human and women's rights will be according to Islamic sharia (HRW, 2021). The spokesman reiterated in January that schools will be opened for all girls in March (Aljazeera, 2022a).

Moreover, Taliban declared a general amnesty to all former Afghan government employees and security forces, encouraging them to return to work, assuring that they were safe, and calling also on women to work in Taliban government (France24, 2021; NYT, 2021). The

group also pledged not to prevent Afghans from traveling abroad, a commitment which also the UNSC reiterated (UNSC, 2021a).

Special envoys to Afghanistan of the US, Russia, China, and Pakistan have regularly highlighted Taliban commitments at the so-called *Extended Troika* or *Troika+* consultations, a recent round of which was held in China (Tian et al, 2022). Also, Afghanistan's neighbours and other international actors, including the EU, have raised Taliban commitments in their statements, emphasizing that the Taliban must fulfil their promises (CEU, 2021; Tanzeem, 2021). In all its resolution and statements on Afghanistan after the regime change, the UNSC repeatedly reminds Taliban about their commitments as well (UNSC, 2021a; UNSC, 2021b; UNSC, 2022a).

Furthermore, international organizations have persistently raised Taliban commitments in their reports on the degrading situation of human rights and journalism in Afghanistan, emphasizing the importance of the group's adherence to international law for its recognition as a legitimate regime (AI, 2022a; HRW, 2022; RSF, 2022a; RSF, 2022b; OCHA, 2021).

4.2. Taliban Conduct

According to Freedom House, the under-Taliban Afghanistan scored 10 out of 100 points with respect to political rights, political pluralism and participation, functioning of government, civil liberties, and so on, which gave the country a *'Not Free'* status, showing a 13-point decline comparing to last year due to the loss of the constitutionally elected government, the parliament and provincial councils (FH, 2022).

Freedom House also reported massive civilian casualties in ISK attacks across the country in recent months. These attacks, which intensified in April, mostly targeted ethnic Hazaras and Shia minorities at educational and religious centres in Kabul, Mazar-e Sharif, Herat, Kunduz, Kandahar, and other areas (AI, 2022b; Ching, 2022; UNSC, 2022c).

Taliban has taken no action against terrorists so far to indicate its cooperation in the war on terror or its disengagement from groups on the US list of FTOs (USDOS, 2022) and the UNSC Sanctions List (UNSC, 2022b). It is especially the Haqqani Network, a faction within Taliban, that is of importance in this context, because the network, dominating leading Taliban government posts with its leader, Sirajuddin Haqqani, as the acting minister of interior, is on the FTOs list. Sirajuddin is also on the UNSC sanctions list, and the FBI has designated him as *'Most Wanted'*, offering a reward of up to \$10 million for information leading to his arrest (FBI, 2022).

Moreover, Taliban released many TTP fighters from the former Afghan government prisons after seizing power and provided TTP leaders with asylum in Afghanistan, which indicates in-depth relations between the two groups. Taliban also brokered a ceasefire between TTP and Pakistani government in Afghanistan (Mir, 2022).

The New York Times, in a report about Pakistan's air strikes against TTP in eastern Afghanistan, suggested that ISK and TTP had intensified attacks in Afghanistan and Pakistan following the return of Taliban to power (Goldbaum & Padshah, 2022). The al-Qaeda also has ties with TTP (Mir, 2022), both of which are designated on the FTOs list (USDOS, 2022).

In September, Taliban formed an all-male and all-Taliban 33-member cabinet led by a prime minister. The Taliban supreme leader assured people in a statement that the new government will uphold Islamic sharia law (Aljazeera, 2021).

The Ministry of Women's Affairs was removed from the list of ministries, with its premises allocated for the Ministry Virtue and Vice (Gannon, 2021), which is regarded as a '*notorious symbol*' of human and women's rights abuse (Barr, 2021).

In addition, Taliban dissolved the Independent Election Commission and the Electoral Complaints Commission along with two ministries, Ministry of Peace and Ministry of Parliamentary Affairs (VOA, 2021).

On the issue of inclusive government, Taliban claimed that their cabinet represented ethnic minorities and that women would be included later (Javaid, 2021).

The HRW reported that Taliban had issued several restraining and oppressive edicts in violation of human rights of Afghans (HRW, 2022).

The following is a list of some of the edicts reported by different international media and organizations (AI, 2022a; BBC, 2021b; HRW, 2022; IFJ, 2022; OCHA, 2021; RSF, 2022a; RSF, 2022b; Rydland, 2021; Salazar, 2021):

- Ban on girls' secondary education and their coeducation with boys
- Restrictions on women's right to work in all occupational fields
- Ban on women's unaccompanied long-distance travel by road
- Ban on music
- Restrictions on free movement
- Ban on peaceful protests
- Restrictions on media and freedom of expression and speech
- Ban on international media broadcast in local languages

- A handbook entitled '*By-Law of the Commission for Preaching and Guidance, Recruitment and Propagation of Virtue and the Prevention of Vice*', according to which, women cannot go out or travel unless they wear hijab and are accompanied by a so-called '*mahram*' or chaperone; men cannot shave or trim their beards and can only wear traditional clothes; people cannot befriend or help infidels or non-Muslims, and they must report those who fail to observe prayers, fasting and other religious obligations.

Furthermore, men and women can only go to parks separately on specific days of the week assigned for both gender groups (Times Now, 2022), male and female students can only go to universities on separate days of the week (IANS, 2022; Hasrat, 2022), and female teachers must observe hijab while male teachers and pupils must not wear ties (TOLONews, 2022a). Taliban also prevented women from boarding flights for not being accompanied by a chaperone (VOA, 2022). Ex-Afghan president, Hamid Karzai, and former chief of reconciliation council, Dr Abdullah, were placed in house arrest (Khan, 2022). The latter was finally able to leave the country by late April (TOLONews, 2022b).

Other highlights of Taliban's conduct range from arbitrary arrests and detentions, harassments, mistreatments and beatings of journalists and reporters, protestors, human rights activists, critiques and other civilians, to reprisals, revenge killings, forcible disappearances and summary executions of civilians, former Afghan government employees, security forces and human rights defenders, to dismantling of the AIHRC and women's shelters, to dismissal of women from decision-making posts in the civil service (AI, 2022a; BBC, 2021c; IFJ, 2022; Kumar & Noori, 2022; HRW, 2022; Marcolini et al, 2022; RSF, 2022a; RSF, 2022b; Watkins, 2021).

The New York Times documented around 500 assassinations of former security forces by Taliban (Marcolini et al, 2022). This intensification in extrajudicial detentions and killings occurred despite the earlier general amnesty declared by Taliban (France24, 2021; NYT, 2021).

In early 2022, Taliban started raiding homes in Kabul, apparently in search for weapons, which raised complaints about violation of privacy and destruction of properties (George, 2022; Binesh, 2022). Also, the Ministry of Vice and Virtue deployed religious policemen to observe morality and compliance with sharia law among government employees and citizens (Greenfield, 2022; Walizada, 2021).

In a most recent edict in early May, Taliban ordered women to wear burqas, which is a full body veil also covering women's faces. The edict also warned that if a woman refuses to abide, her male guardian will be jailed for three days and even fired if he happens to be a government employee (Jackson, 2022; Kermani, 2022).

4.3. International Response

The international response has two dimensions: response to a humanitarian crisis and response to Taliban's conduct and political status. As for the first dimension, the international community has engaged with Taliban as '*de facto authorities*' to enable and facilitate aid delivery to 95 percent of Afghans in acute need of food (Lyons, 2021; UN, 2022a). Severity of the humanitarian crisis has also led to an ease in economic sanctions to allow aid agencies operate properly (Dawi, 2022; UNSC, 2021c).

International response to Taliban's conduct and status, however, can be described as a policy of non-recognition encompassing demands and expectations from, preconditions for and sanctions on the Taliban regime as reflected in UNSC resolutions and statements, the ABPA, the CEU's conclusions, the UNSG statements, and statements by other international actors on Afghanistan.

Despite a constant quest for international legitimacy by Taliban (Aljazeera, 2022b), no state or international organization has recognized it by early May 2022.

After Taliban seized power, the US and Western countries ended diplomatic activities in Afghanistan. However, despite refusing to recognize the Taliban government, China, Pakistan, Russia, and Turkmenistan have accredited Taliban-appointed diplomats while also maintaining their own embassies in Kabul (Saine & Rahmani, 2022). Also, the EU announced in January that it was going to establish presence in Kabul for humanitarian purposes (Greenfield et al, 2022).

Taliban also appointed an envoy to the UN which the organization refused to endorse, allowing former Afghan government delegates to continue representing their country (Saine & Rahmani, 2022).

Basing its *Resolution 2593* of 30 August 2021 (UNSC, 2021a) on its *Resolution 1267* of 15 October 1999 (UNSC, 1999), the UNSC recommenced its sanctions regime on the new Taliban government, which consists of an assets freeze, an arms embargo, and a travel ban on a number of Taliban members and associates designated in UNSC Consolidated List, including several of its caretaker cabinet members (Saul, 2021; UNSC, 2022b).

Moreover, the US Government froze \$9.5 billion of Afghanistan's assets held in Federal Reserve Bank and other US institutions (Mohsin, 2021) and the World Bank suspended funding for projects in Afghanistan following Taliban takeover (BBC, 2021a) as well as after the group denied girls the right of secondary education (BBC, 2022a).

The international community has required Taliban to respect international law by ensuring the civil and political rights of Afghans through the formation of an inclusive government, to respect the rights of ethnic minorities and women, to prevent, oppress and deny terrorists safe havens, and to cooperate in criminal justice (CEU, 2021; Saul, 2021; UNSC, 2021a; UNSC, 2021b; UNSC, 2022a). Also, the UNHRC has appointed a special rapporteur to monitor the situation of human rights in Afghanistan (UNHRC, 2021).

Meanwhile, efforts have been underway to persuade Taliban through dialogue to soften its policies and to find ways to obtain domestic legitimacy in order to pave the way for international recognition. One of such dialogues was held in Oslo in January (BBC, 2022b; Regjeringen, 2022).

5. Analysis and Discussion

Through an analysis of the empirical data based on theoretical perspectives, my discussion is aimed at justifying four interconnected claims. I will argue that 1) Recognizing Taliban rule is a violation of international law; 2) Taliban is not a State; 3) Taliban is unable to accept international law; and 4) The bidimensional international response is practically and theoretically rational.

5.1. Why is recognizing Taliban rule a violation of international law?

No state or international actor has recognized Taliban so far, but they will be violating the obligation of non-recognition levied on them by international law if they do so in the future in absence of Taliban's acceptance and fulfilment of its national and international obligations under international law. The reason is that Taliban has violated most of the eight peremptory norms of international law, which makes it an illegal entity and levies an obligation of non-recognition on all member states towards it, according to the UN International Law Commission (UN, 2019).

The replacement with sharia law of the 162-article constitution of Afghanistan, ratified by a 500-member grand council in early 2000s (NBC, 2004) and the dissolution of democratic and human rights institutions such as electoral commissions, provincial councils, the parliament and the AIHRC are blatant violations of the Afghans right of self-determination, because they are deprived of participation in the formation of political arrangements (Murphy, 1999; Ronen, 2011) as well as legislative processes (Ekeli, 2012). The annulment of the constitution also implies that Taliban does not recognize any international peremptory or non-peremptory norm, because the annulled constitution's Article Seven charges the state in Afghanistan with the duty to observe the UN Charter, the UDHR, international treaties, and interstate agreements as well as to prevent all types of terrorist activities and production and smuggling of narcotics (TCA, 2004).

Taliban's intention to deprive people of their political rights is further reflected in its caretaker government, which only represents Taliban and the religious stratum. The reason is that nearly all the 33-member cabinet ministers carry religious prefixes and suffixes in their names such as Akhund, Hafiz, Mavlavi, Mullah, Qari, Sheikh, etc (Aljazeera, 2021). Also, the dismantlement of ministries of peace, parliamentary affairs and women's affairs (Gannon, 2021; VOA, 2021) signals Taliban's disinterest respectively in negotiating with

other political forces, in people's representation in government structures, and in women's participation in political and social life.

Taliban's restrictive edicts from ban on girls' education through to ban on music and ban on peaceful protests, to restrictions on men and women's movement, to introduction of dress codes for government employees, women, teachers and pupils, to restrictions on media, freedom of speech and expression, and to separating weekdays for men and women at parks and universities (See section 4 above) are all in violation of people's self-determination, because it is Taliban making decisions – based on its own narrative of religious norms and perspectives – about every aspect of the people's cultural, educational, political and social lives without allowing them to express themselves. In other words, people are forced to obey rules in creating which they have had no role (Ekeli, 2012). Placing former authorities in house arrest and barring them and women from exiting the country (Khan, 2022; VOA, 2022) are other examples of violation of the right of self-determination. Moreover, restriction on media and freedoms of speech and expression as well as arrests and detentions of journalists (IFJ, 2022; RSF, 2022a; RSF, 2022b) is depriving people of the right of access to and disseminating information, dictating the information people can get against their autonomy and self-determination.

From the way Taliban came to power through to their formation of caretaker government, annulment of the constitution, issuance of restrictive edicts and implementation of those edicts have all been forced on the people against their will, violating the prohibition on the use of force. A clear reason for justifying this claim is the countless extrajudicial arrests, detentions and beatings of civil society and human and women's rights activists, critiques, journalists and protestors who disagreed with and were vocal against Taliban regulations.

Another peremptory norm breached by the extrajudicial arrests, detentions and even summary executions by Taliban (See section 4 above) is the prohibition of torture, which is defined as intentional acts and cruel, degrading and inhuman treatments that inflict physical or mental pain on individuals or their family members (HRW, 2004).

The international humanitarian law is another peremptory norm, which sets out the obligations and responsibilities of warring parties in a conflict towards civilians, hostages, prisoners, the wounded, etc (MSF, 2022). Since its rise in 1990s until its return to power in 2021, Taliban has persistently violated this norm by targeting civilians and non-military installations and facilities. Taliban conduct has shown a trend in massacre of civilians in suicide attacks and roadside bombings (UNAMA, 2021), in targeted and extrajudicial killings (BBC, 2021c), in intimidations, abductions and assassinations of civil service

workers, human rights defenders, journalists, and civil society activists (UNAMA, 2022b), in destruction of historic monuments and banning or downplaying cultural heritage, festivities and traditions (Finnegan, 2021; Harding, 2001) in incinerating educational and healthcare facilities (UNICEF, 2019), and in providing training grounds and sanctuaries for international terrorists (UNSC, 1999).

The Rome Statute of the International Criminal Court defines 11 acts as Crimes Against Humanity, yet another peremptory norm breached by Taliban. Some of these acts committed by Taliban consist of murder, imprisonment, deprivation of liberty, torture, persecution, enforced disappearance, and other inhumane acts causing suffering or injury to mental and physical health (UN, 2022b).

In addition to the five peremptory norms, Taliban has violated the Hague and Geneva conventions, to which Afghanistan is a signatory, and principles of international law recognized by the Charter of Nuremberg Tribunal. The conventions and the charter are about rights and obligations of belligerent sides and about war crimes, crimes against peace and other crimes punishable under international law (ICRC, 2022). Taliban's conduct has also violated nearly all international covenants that Afghanistan has acceded or ratified, since it became a UN Member on 19 November 1946, including but not limited to ICCPR, CESCR, CEDAW, CRC, CERD, CAT, etc. (OHCHR, 2022).

5.2. Why is Taliban not a State?

Although the world regards Taliban as *de-facto authorities* (Lyons, 2021) which somewhat satisfies Ronen's definition of a de-facto State's territorial control (Ronen, 2011), it rather fits the definition of an anti-liberal-democratic group if not a terrorist group (Ekeli, 2012), because it is not a Weberian political organization subject to change by legislation (Pierson, 2011), nor does it have the capacity to engage in relations with other states (Murphy, 1999). From a normative perspective, Taliban has no amendable legislation, because all the edicts it has issued have been based on a narrative religious ideology. Everything, from the assurance by Taliban leader that the caretaker government will uphold Islamic sharia (Aljazeera, 2021), the edicts issued by Taliban so far about various aspects of cultural, political and social life, and the assertion by Taliban spokesman about respect for human rights in compliance with Islamic sharia (HRW, 2021), is indicative of absence of an amendable normative character in Taliban.

Thus, even if Taliban is considered a political organization, it is not subject to change. In other words, while legislation or law is amendable according to newly arising situations and requirements such as the inclusion of new areas in international law (Grant, 2010), it is impossible to amend what Taliban mean by Islamic sharia, because it is derived from the Quran and Sunnah (BBC, 2021d), two sacred sources or pillars of Islam which mean sayings by Allah and the prophet respectively.

From a territorial perspective, the Pakistani airstrikes on TTP targets in Afghanistan (Goldbaum & Padshah, 2022) as well as increasing ISK attacks against civilians (FH, 2022) indicate that these, and perhaps other terrorist groups, also have some areas under control with or without Taliban's consent. UN has also expressed concern that Afghanistan has become a favourite place for international terrorist organizations (Weitz, 2022).

What increasing ISK attacks and presence of other international terrorist groups prove is that either Taliban supports these groups and provides them with the freedom and facilities to operate in Afghanistan or these groups are too powerful for Taliban to tackle. Either case undermines the de-facto status of Taliban and its commitment to deny terrorists safe havens (USDOS, 2020). Even if it is a fraction within Taliban providing ISK, TTP and others with freedom to act, it proves that Taliban is facing considerable military opposition (Ronen, 2011) from within itself. Besides, civil opposition to Taliban is beyond considerable, because not only Afghans but also international actors and organizations have opposed its rule in the form of protests (Abbasi, 2021) or preconditions, sanctions and non-recognition.

The airstrikes by Pakistan also show that Taliban is not immune against foreign military attacks, which is an indication that it does not effectively control the territory to be regarded as a de-facto state (Saul, 2021) and thereby enjoy international immunity against such attacks.

Another reason why Taliban is not a state is that it does not represent the people and is not allowed by international law to exercise sovereignty, because by placing Afghans under arbitrary power, by not treating them as equal citizens but rather as vassals with no self-determination, and by exposing them to multidimensional threats in absence of protection under international law caused by the impacts of non-recognition (Fabry, 2010; Murphy, 1999), Taliban has breached the non-domination and non-instrumentalization principles (Criddle & Decent, 2012).

Taking Taliban's conduct into consideration, it has always used violence to achieve its anti-liberal and anti-democratic political objectives the same as anti-liberal-democratic groups,

showing no characteristics or signs of a modern de-jure or de-facto state. Ekeli (2012) argues that anti-liberal-democratic groups must be denied the right to participate in elections or secure seats in parliament in a democratic country. It is arguable to suggest that also Taliban must be denied membership in the democratic international society unless it demonstrates rightful conduct (Clark, 2005), because it has, practically and theoretically, demonstrated characteristics of *an aggressive and violent anti-liberal-democratic religiomilitary group* not of a state.

Taliban is aggressive because it uses force to implement its strict rules on the people while also abusing them and showing no regard to their privacy (OCHA, 2021; Walizada, 2021; Binesh, 2022; George, 2022). It is violent because it has come to power through violence in the first place and also because it has continued committing violence against civilians (BBC, 2021c). It is anti-liberal and anti-democratic for obvious reasons such as its violation of the right of self-determination as discussed under previous subsection. It is extremely religious because it does not accept any other norms and principles. And it is military because to make others accept its arguments, it places them at gun point.

The incapacity of Taliban to engage in relations with other states to be regarded as a state (Murphy, 1999) is discussed in the next subsection.

5.3. Why is Taliban unable to accept international law?

The word Talib means a student and Taliban means students (AHMED, 2000) in Arabic basically. In Afghanistan it is attributed only to students at religious schools not generally to all students. Therefore, Taliban is a group of religious students with a narrow worldview and a unique interpretation of the religion hardly open to change or to accommodate or tolerate different ideas and perspectives, let alone opposing ones. This intolerance and dogmatism were obvious in remarks by Taliban spokesman on respect for human rights (HRW, 2021), by which he basically meant that any modern philosophy that can weaken their political agenda of creating a theocratic regime is unacceptable and will be banned, rejected and restricted in the name of Islamic sharia.

The dilemma of international law is a major challenge for Taliban. It is a dilemma because Taliban does not have many options available to ensure political stability and its own continuity in power in absence of domestic and international legitimacy. The deteriorating economic and security situations and worsening state of human rights in Afghanistan, including civil and political rights, as well as the shifting situation in the world in wake of

the war in Ukraine (UNRIC, 2022) can sooner or later start challenging Taliban in various forms. So far, international engagement in terms of humanitarian assistance has maintained the situation relatively calm for Taliban, but even a slight derailment in the process of aid delivery – which is quite probable given the increasing need for international assistance to the people of Ukraine and the worsening global economy and trade caused by sanctions on Russia (Cygan et al, 2022) – can prove catastrophic for the people in Afghanistan and can lead to anything from civil disobedience to social unrest and to escalation of scattered anti-Taliban military movements that have already started or ongoing in limited scales here and there (Farivar, 2022).

Therefore, gaining international legitimacy is of utmost importance for Taliban going forward. But why is it so difficult for Taliban to accept and abide by international law? A main reason was discussed under subsection 5.2. above and in the beginning of this subsection, which argues that Taliban is not a State in the first place to resume international rights and obligations – taking theoretical perspectives into consideration – but is rather an aggressive and violent anti-liberal-democratic religiomilitary group, which cannot let go of its unique interpretation of Islamic sharia and the political objective of establishing a theocratic regime.

Nevertheless, there are also pragmatic reasons for why Taliban are unable to accept international law. First, Taliban fought the international community for 20 years after its first regime was deposed in 2001 following UNSC *Resolutions 1373* and *1378* (UNSC, 2001a; UNSC, 2001b), adopted based on the same international law the world now requires Taliban to duly accept, respect and enforce.

Second, Taliban's endeavour was apparently not only aimed at expelling foreign military forces from Afghanistan but also at abolishing and destroying nearly all tangible and intangible cultures, developments, equipment, freedoms, ideas, information, knowledge, norms, progress, rights, traditions, and values they had brought with them to the country – perhaps apart from military equipment (Forrest, 2021; The Independent, 2021). This can be realized from Taliban's conduct over the last 20 years, which is a display of acts such as incineration of schools and abduction and murder of teachers (UNICEF, 2019) as well as boycott on elections and even mutilation of voters (Allen, 2014; Boone, 2009; Sediqi, 2019), which is hostility with liberal knowledge, rights and norms.

Obviously, Taliban fighters' motivation for carrying out the abovementioned and other similar acts derived from a religious narrative which regarded liberal ideas and rights (Ekeli, 2012) as unlawful in Islamic sharia. Thus, to accept international law now, Taliban must

abrogate its previous narrative, but as discussed under subsection 5.2. above, Islamic sharia is unamendable, which makes it reasonable to suggest that Taliban's dilemma of international law lies in its fear of losing image and identity, of divide in its ranks and of confrontation with other fundamentalist and extremist Islamic or even terrorist groups in Afghanistan and the region.

If the Taliban accepts international law, it will no longer be Taliban. Its identity will change from Taliban to the legitimate and recognized government and state of Afghanistan. In such a case, how Taliban leaders can convince their fighters that they are still the same Taliban upholding Islamic sharia (Aljazeera, 2021). A main reason of Taliban's inability to accept international law lies in this problem, because abidance by international law can most probably divide Taliban into pro-sharia and pro-rule of law fractions, something other analysts have also pinpointed in slightly different contexts about the future of Taliban and possible split between two different Pashtun clans – eastern Gilzay and southern Durrani – respectively classifying them as 'most radical' and 'moderate' (Asatryan, 2022).

It is hard to imagine that Taliban will accept international law, but what can happen if it does. One probable scenario is eruption of fight between Taliban fractions or a coup against the ruling fraction, which will most probably end with victory of fractions that refuse to accept international law. Another possible scenario is eruption of fight between Taliban and other existing or new fundamentalist and extremist Islamic groups, which will probably last for a long time and end with Taliban's defeat.

Even if the probability of the above two scenarios is ruled out, a third probable scenario, which Taliban fear from happening in case they accept international law and preconditions, is the realization of the rule of law. This is the last thing Taliban may ever want to happen, because if international law is abided by Taliban, the group will have to share power with other political forces, namely the people, through elections or other mechanisms. Regardless of what mechanism is used for distribution of power, the result will be inclusion of other political forces in decision-making processes, which will allow the people to decide with self-determination about social, political, cultural and international affairs. In fact, this was the reason why Taliban mutilated people for participating in elections in the past (Boone, 2009; Allen, 2014; Sediqi, 2019).

Therefore, accepting international law for Taliban means laying down its arms, if metaphorically used instead of its Islamic sharia, and surrendering to the people and their demand which is the rule of law in a society with no Taliban in it.

5.4. A Bidimensional, Rational Response

As provided under Empirical Data, international response to the change of regime in Afghanistan has two main dimensions: engagement with Taliban to address a humanitarian crisis and pursuing a policy of non-recognition. There are several reasons why such an international response is rational.

Firstly, it is not an ordinary regime change or a coup. It is collapse of foundations of the state and government systems and institutions in a society already suffering from drought and famine (WFP, 2021) with a population of around 40 million (WB, 2020; WFP, 2022) already dependent on foreign aid for resilience and survival (Samim, 2016; UNDP, 2021), with vulnerable developments in areas such as healthcare, education, income per capita, GDP, democratization, human rights, and institution-building (Pisa, 2017) while ranking very high in corruption indexes (TI, 2021) and very low in indexes of poverty and standard of living (UNDP, 2021; UNDP, 2022).

Abandoning a starving Afghanistan could increase the risk of a humanitarian catastrophe that would force the population to mass migrations, engagement in criminal economic activities, drug production and trafficking, and mass enrolment in terrorist groups, all of which threaten global security one way or another. It could also turn the country into a haven for international terrorism again; something which the US and West fought for 20 years to prevent from happening.

Secondly, the international society of states also has common and interdependent gains and goals besides common principles and values (Clark, 2005; Kundnani, 2017), which need to be preserved, pursued, and achieved simultaneously. The 15-year plans of the MDGs (UN, 2015) and the SDGs (UN, 2020), which were respectively adopted for periods 2000-2015 and 2015-2030, are examples of such common goals. A humanitarian catastrophe in Afghanistan would not only endanger the lives of Afghans but would also endanger the MDGs' achievements and the progress made on the SDGs.

Therefore, engagement, dialogue and even collaboration with Taliban on aid delivery and humanitarian issues can be regarded as a preventive measure adopted by the international community to control the crisis and to avoid a humanitarian catastrophe. Obviously, Taliban was the only alternative available to engage with on such issues following the collapse of the former regime. Besides, the international law obligates states to engage, cooperate and end the violation of peremptory norms of international law by Taliban (UN, 2019).

The policy of non-recognition pursued by the international community is conceivably based on the core principles of international legitimacy, namely rightful membership and conduct, as well as practice of legitimacy and strategy of legitimation (Clark, 2005).

Any entity, claiming to be eligible for participation in international society, must fulfil the criteria for rightful membership (Clark, 2005), which initially consists of subjecting itself to the binding rules and principles of international law (Saul, 2021), or in other words, accepting the obligations enshrined in the UN Charter and other international covenants and treaties while also sharing the common interests and values of other members. Taliban, however, has neither indicated acceptance of nor has it subjected itself to international law. Even its spokesman, as stated earlier, preconditioned respect for human and women's rights to their compliance with Islamic sharia. Moreover, Taliban dismantled the AIHRC, blatantly indicating their rejection of international covenants on human rights.

Another important principle of international legitimacy is rightful conduct (Clark, 2005), meaning that states' conduct, both domestically and in their relations with each other, must be in accordance with international law. Taliban's conduct in their relations with international actors has not fulfilled this requirement, because despite having made commitments in the ABPA (USDOS, 2020) about forming an inclusive government, honouring human rights, and disengaging from terrorist groups, and despite the full withdrawal of US and NATO forces from Afghanistan as stated in the agreement, Taliban has pursued a unilateral agenda through monopolization of power, violation of human and women's rights, and preserving relationships with TTP in addition to giving high-ranking positions in the government to the Haqqani Network, which is still designated in the FTO and UNSC blacklists (UNSC, 2022b; USDOS, 2022).

Furthermore, Taliban announced in January, a week before the group's talks with EU and Western countries in Oslo (Regjeringen, 2022), that all girls would be able to go to school in March, a promise which probably also persuaded Western interlocutors to show inclination towards cooperation with Taliban, but the decision was reversed by the group's ban on girls' secondary education on the first day of the new school year in March (Wintour, 2022).

Such insincerity and hypocrisy in international relations by Taliban demonstrates unrightful conduct, reasonably discouraging other international actors to recognize it as a rightful member, because according to the principles of international legitimacy (Clark, 2005), states pursue a strategy of legitimation to avoid the risk of their actions being viewed as illegitimate. Even states or international organizations, which have engaged in dialogue with

Taliban or have resumed diplomatic presence in Afghanistan, have remained attentive about this strategy. For instance, an EU spokesman stated about re-establishing presence in the country for humanitarian purposes in January: “*Our minimal presence in Kabul must not in any way be seen as recognition (Greenfield et al, 2022a).*”

Appointment of a special rapporteur by the UNHRC to monitor state of human rights in Afghanistan (UNHRC, 2021) is basically aimed at keeping an eye on Taliban’s conduct to determine whether it has the legal capacity for assuming international rights and obligations (Murphy, 1999).

The pressure of non-recognition on Taliban combined with humanitarian aid delivery give people in Afghanistan the hope of a different future than they otherwise perceive for the moment; something which further rationalizes the international response, because unconditional recognition will empower Taliban domestically (Clark, 2005), leaving Afghans with fewer options to change the situation peacefully.

6. Conclusion

Violation of peremptory norms of international law such as the right of self-determination, prohibition on the use of force, prohibition of torture, international humanitarian law and crimes against humanity by Taliban - as reflected in its extrajudicial edicts and treatment of civil and human rights activists, former government employees and security forces, journalists, protestors and women – has led to an obligation of its non-recognition on the international society of states. The impacts of non-recognition have also escalated a humanitarian situation caused by the regime change for addressing which the international community has initiated a bidimensional, rational response comprising of engagement with Taliban as de-facto authorities to facilitate aid delivery and a policy of non-recognition containing demands, preconditions and sanctions.

Taliban's status as a de-facto state is undermined by presence and activities of groups like TTP and ISK in Afghanistan which with the normatively unamendable character of Taliban's sharia law has made it theoretically arguable to claim that it is not a State. Moreover, its disregard for liberal international ideas, norms, principles and rights and its use of aggression and violence in applying restrictive edicts and in pursuing a political agenda to establish a theocratic regime make Taliban an aggressive and violent anti-liberal-democratic religiomilitary group.

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