

A Necessary Evil: Conditional Recognition of the Taliban

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I. Introduction

The Taliban is back. Its return is accompanied by images of desperate Afghans clinging to the side of a moving United States military airplane taking off from Kabul International Airport.¹ Video footage revealed hundreds of people running alongside the taxiing airplane, and individuals “falling to their deaths from the undercarriage immediately after takeoff.”²

With all land borders under Taliban control, Afghans were left with limited options: they could either stay at home or take their chances bypassing multiple Taliban checkpoints to Hamid Karzai

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¹ See Luke Harding & Ben Doherty, *Kabul Airport: Footage Appears to Show Afghans Falling from Plane After Takeoff*, THE GUARDIAN (Aug. 16, 2021), <https://www.theguardian.com/world/2021/aug/16/kabul-airport-chaos-and-panic-as-afghans-and-foreigners-attempt-to-flee-the-capital> [https://perma.cc/4BFZ-DK82].

² See *id.*

Airport—their only way out.³ Still, foreign embassies warned their nationals against air travel, and U.S. troops fired into the air to scatter crowds.⁴ Noncombatants eligible to board the special flights were issued a wristband with a barcode that recorded their departure.⁵ However, tens of thousands of individuals were unable to leave the country despite having assisted U.S. efforts for many years.⁶ Given the ensuing chaos, a bracelet or even a boarding pass did not guarantee admission onto the flight.⁷ In the absence of police and airport staff, airplanes were quickly flooded with crying children, shouting women, and angry men of all ages.⁸ There was no room to stand, “no oxygen to breathe.”⁹

In August 2021, after two decades of war and the investment of hundreds of billions of U.S. dollars, Afghanistan’s U.S.-backed president, Ashraf Ghani, fled the country.¹⁰ While citizens prepare for a takeover by the fundamentalist Taliban regime,¹¹ the

³ *See id.*

⁴ *See id.*

⁵ *See* Fahim Abed et al., *Evacuation from Kabul Falters as Chaos at Airport Reigns*, N.Y. TIMES (Aug. 15, 2021), <https://www.nytimes.com/2021/08/15/world/asia/us-evacuation-kabul.html> [<https://perma.cc/B95N-FAXQ>]; *see also* Aykut Karadag, *Wristband Barcodes Used for US Evacuations from Afghan Capital*, ANADOLU AGENCY (Aug. 23, 2021), <https://www.aa.com.tr/en/asia-pacific/wristband-barcodes-used-for-us-evacuations-from-afghan-capital/2343988> [<https://perma.cc/Q4AP-JAS9>]; *see also* SPECIAL INSPECTOR GEN. FOR AFG. RECONSTRUCTION, WHAT WE NEED TO LEARN: LESSONS FROM TWENTY YEARS OF AFGHANISTAN RECONSTRUCTION VII (2021), <https://www.sigar.mil/pdf/lessonslearned/SIGAR-21-46-LL.pdf> [<https://perma.cc/89UH-UYK6>] (The U.S. mission in Afghanistan evolved over time. “At various points, the U.S. government hoped to eliminate al-Qaeda, decimate the Taliban movement that hosted it, deny all terrorist groups a safe haven in Afghanistan, build Afghan security forces so they could deny terrorists a safe haven in the future, and help the civilian government become legitimate and capable enough to win the trust of Afghans.”).

⁶ *See id.*

⁷ *See* Harding & Doherty, *supra* note 1.

⁸ *See id.*

⁹ *Id.*

¹⁰ *See* Christina Goldbaum et al., *Kabul Falls to the Taliban as the Afghan Government Collapses and the President Flees*, N.Y. TIMES (Aug. 15, 2021), <https://www.nytimes.com/2021/08/15/world/asia/afghanistan-talibal-jalalabad-falls.html> [<https://perma.cc/64BL-XUMF>].

¹¹ *See generally* Christina Goldbaum et al., *20-Year U.S. War Ending as It Began, with Taliban Ruling Afghanistan*, N.Y. TIMES (Aug. 15, 2021), <https://www.nytimes.com/live/2021/08/15/world/taliban-afghanistan-news> [<https://perma.cc/4U7E-ZFGB>] (“As the Afghan president fled the country and the government crumbled, the U.S. military raced to evacuate diplomats and civilians from an

international community must determine how this change in leadership will affect its diplomatic relations with Afghanistan.¹² An important question that countries will need to address is whether to recognize the Taliban as the official government of Afghanistan.

Recognition, the act of acknowledging both a state and its government, is currently completed on a country-by-country basis, meaning each country recognizes an entity individually based on its own assessment.¹³ Now that the Taliban is back in power, the regime is again seeking recognition from the international community.¹⁴ Though the Taliban does not need recognition to serve as the de facto government, recognition would bolster legitimacy and economic growth.¹⁵ However, not a single country, not even those that recognized the group during its previous reign from 1996 to 2001—the United Arab Emirates, Pakistan, and Saudi Arabia—have moved to recognize the Taliban at this time.¹⁶ Instead, countries including the United States have conditioned recognition on the Taliban granting greater human rights (especially for women), inclusivity (including non-Taliban leaders),¹⁷ and security (discontinuing support of terrorist organizations).¹⁸ Therefore, to meet the stated conditions and attain recognition, the Taliban will have to compromise on its fundamental ideology, which consists of “puritanical beliefs wrapped in Islamic Sharia.”¹⁹

increasingly panicked city.”).

¹² See generally Tess Bridgeman & Ryan Goodman, *Expert Backgrounder: Recognition and the Taliban*, JUST SEC. (Aug. 17, 2021), <https://www.justsecurity.org/77794/expert-backgrounder-recognition-and-the-taliban/> [https://perma.cc/B2S9-QGAA].

¹³ See JAMES CRAWFORD, *BROWNIE’S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 135 (9th ed. 2019).

¹⁴ See Michael Kugelman, *The Politics of Taliban Recognition*, S. ASIAN VOICES (Nov. 10, 2021), <https://southasianvoices.org/the-politics-of-taliban-recognition/> [https://perma.cc/9SW7-EPGR].

¹⁵ See Ben Saul, “Recognition” and the Taliban’s International Legal Status, INT’L CTR. FOR COUNTER-TERRORISM (Dec. 15, 2021), <https://icct.nl/publication/recognition-talibans-international-legal-status/> [https://perma.cc/3UM2-WWPN].

¹⁶ See Kugelman, *supra* note 14.

¹⁷ See *id.*

¹⁸ See Lindsay Maizland, *The Taliban in Afghanistan*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/backgrounder/taliban-afghanistan> [https://perma.cc/822M-HTYQ] (Jan. 19, 2023, 10:45 AM).

¹⁹ See Kugelman, *supra* note 14; see also Javid Ahmad, *The Taliban’s Religious Roadmap for Afghanistan*, MIDDLE E. INST. (Jan. 26, 2022),

This Note contends that nations should collectively recognize the Taliban as the official government of Afghanistan, instead of following the current country-by-country model. Non-recognition will merely exacerbate the existing humanitarian crisis and negatively affect the local people which the international community seeks to protect.²⁰ In the event of non-recognition, these individuals will lack sufficient access to basic necessities such as food.²¹ Additionally, collective recognition avoids a situation in which one country recognizes and allies with the Taliban at the expense of another country or group of countries' interests. In sum, collective recognition is in the best interest of the international community and the people of Afghanistan, who are exhausted by war and concerned about the future of their nation. Part II begins with an overview of the Taliban reign from 1996 to 2001 and discusses the group's return to the country on August 15, 2021. Part III then considers the current state in Afghanistan, comparing the Taliban's claims versus their actions and the concerns that citizens share based on these inconsistencies. Part IV outlines how recognition is currently handled. Finally, Part V recommends that the Taliban be recognized collectively by a group of nations through the development and execution of a collaborative agreement.

II. Background

After the 1978 Afghan military coup, the Soviet Union invaded Afghanistan and installed a pro-Soviet government.²² Soon after, various rebel groups stormed the capital of Kabul, overthrowing the communist president.²³ By 1992, the people of Afghanistan were

<https://www.mei.edu/publications/talibans-religious-roadmap-afghanistan> [https://perma.cc/REX9-KWFE] (“Taliban rulers are setting the foundational rules to transform their religious movement into a permanent ideology: . . . Talibanism commands that Islam dictate every aspect of daily life and considers Afghan society insufficiently Islamic and in need of re-Islamization . . .”).

²⁰ See Adam Gallagher, *Winter Is Coming in Afghanistan. Are the Taliban Ready?*, U.S. INST. OF PEACE (Nov. 11, 2021), <https://www.usip.org/publications/2021/11/winter-coming-afghanistan-are-taliban-ready> [https://perma.cc/WFH6-MZQK].

²¹ See *id.*

²² See Hannah Bloch, *A Look at Afghanistan's 40 Years of Crisis—From the Soviet War to Taliban Recapture*, NAT'L PUB. RADIO (Aug. 31, 2021, 5:25 PM), <https://www.npr.org/2021/08/19/1028472005/afghanistan-conflict-timeline> [https://perma.cc/8QCG-5U7S].

²³ See Adam Augustyn, *Afghan War (1978–1992)*, BRITANNICA (Aug. 18, 2021), <https://www.britannica.com/event/Afghan-War> [https://perma.cc/A8T2-472G].

weary of the ongoing civil war.²⁴ They had lost faith in a leader who was making and breaking alliances overnight and perpetrating wanton killing in their country.²⁵ The existing leadership was either unwilling or unable to control the pervasive mismanagement and lawlessness.²⁶ Near-famine conditions further fueled the anger silently building against the previously respected Afghan leadership.²⁷ As the regime slowly failed and practically no other government remained willing to conduct business, the Taliban easily “garner[ed] support for ending the fratricidal war and the anarchy that was prevailing in their land.”²⁸

A. *The Taliban 1996–2001*

In Pashto, the word “Taliban” refers to a student studying in a religious institution known as a *deeni madaris*.²⁹ These *madaris* impart religious education while also organizing students into militant groups, prepared to use force against their rivals.³⁰ Though the exact origin of the Taliban movement remains a mystery, one common theory is that the group “emerged from amongst the disgruntled youth Afghan refugees studying in the *deeni madaris* around Quetta and Peshawar.”³¹ The Taliban were formed in the early 1990s by Afghan mujahideen or Islamic guerilla fighters, who resisted the Soviet occupation of Afghanistan and were backed by both the United States Central Intelligence Agency (CIA) and its Pakistani counterpart, the Inter-Services Intelligence Directorate (ISI).³²

²⁴ See KAMAL MATINUDDIN, *THE TALIBAN PHENOMENON: AFGHANISTAN 1994–1997* 22 (1999).

²⁵ *See id.*

²⁶ *See id.* at 24.

²⁷ *See id.* at 22.

²⁸ *Id.* at 24.

²⁹ *See* MATINUDDIN, *supra* note 24, at 12.

³⁰ *See id.* at 14.

³¹ *Id.* at 22.

³² *See* Yaroslav Trofimov & Dion Nissenbaum, *Who Are the Taliban and What’s Next for Afghanistan?*, WALL ST. J. (Sept. 27, 2020, 7:57 AM), <https://www.wsj.com/articles/who-are-the-taliban-11628629642> [<https://perma.cc/2F8N-YZ7Z>]; *see also* Maizland, *supra* note 18. The Soviet Union and the United States sought to gain influence in Afghanistan during the Cold War. *See* Emily Stewart, *The History of U.S. Intervention in Afghanistan, from the Cold War to 9/11*, VOX (Aug. 21, 2021, 8:00 AM), <https://www.vox.com/world/22634008/us-troops-afghanistan-cold-war-bush-bin-laden> [<https://perma.cc/8FAV-9G3V>]. Their investments were initially centered around

The Taliban are predominantly comprised of Pashtuns, the largest ethnic group in Afghanistan.³³ Since Pashtuns are the dominant group, they view non-Pashtuns—including Tajiks, Hazaras, and Uzbeks—as inferior.³⁴ Consequently, the Taliban could expect support from a large subset of the Afghan population, namely, the Pashtun-dominated Southern and Eastern provinces of the country.³⁵ In fact, these ethnic and linguistic affiliations coupled with years of drought, famine, and war served as a catalyst for the rise of a Taliban regime centered around upholding traditional Islamic values and customs.³⁶

Upon capturing Kandahar and seizing the capital of Kabul in 1996, the Taliban quickly enforced strict Islamic rules,³⁷ and Taliban leaders made extremist statements.³⁸ Girls were denied education, women could no longer work, and among many other restrictions, both groups were required to cover from head to toe with a burqa.³⁹ Music and television were both banned.⁴⁰ Islamic law was enforced by public executions and amputations.⁴¹ Prayer became compulsory and men were required to grow full beards.⁴² In May 1997, the regime outlined its main objectives, which included

infrastructure building and later expanded to military support. *See id.* Upon the establishment of the Democratic Republic of Afghanistan, a Marxist-Leninist government, the United States began funding resistance groups to fight the soviet-friendly regime. *See id.* The United States funded the mujahideen and eventually withdrew along with the soviets, ushering in a civil war that led to the creation of both al-Qaeda and the Taliban. *See id.* History may repeat itself if recognition is achieved through the state-by-state model rather than collectively because it creates the potential for another proxy war for global and regional control. *See id.*

³³ *See* MATINUDDIN, *supra* note 24, at 27.

³⁴ *See id.* at 28; *see, e.g.*, KENNETH KATZMAN, CONG. RSCH. SERV., RS21922, AFGHANISTAN: POLITICS, ELECTIONS, AND GOVERNMENT PERFORMANCE 3 (2015) (“The Hazaras have historically been looked down upon by the Pashtuns, who have tended to employ Hazaras as domestic workers and other lower and working class occupations.”).

³⁵ *See* KATZMAN, *supra* note 34, at 2-3.

³⁶ *See A Historical Timeline of Afghanistan*, PBS NEWSHOUR (Aug. 30, 2021, 5:27 PM), <https://www.pbs.org/newshour/politics/asia-jan-june11-timeline-afghanistan> [<https://perma.cc/97HZ-RW44>].

³⁷ *See* Trofimov & Nissenbaum, *supra* note 32.

³⁸ *See* MATINUDDIN, *supra* note 24, at 34.

³⁹ *See id.*

⁴⁰ *See* Trofimov & Nissenbaum, *supra* note 32.

⁴¹ *See A Historical Timeline of Afghanistan*, *supra* note 36.

⁴² *See* MATINUDDIN, *supra* note 24, at 37.

restoration of peace, collection of weapons, and implementation of Shari'a law as the law of the land.⁴³

Taliban control, which began in 1996, ended five years later, in 2001.⁴⁴ The United States invaded Afghanistan and toppled the government of Mullah Omar, the group's first leader, after the Taliban refused to hand over Osama bin Laden, an al-Qaeda leader whom the group had protected while he planned the 9/11 terrorist attacks.⁴⁵ Mullah Omar and other Taliban leaders subsequently relocated to neighboring Pakistan, one of the three countries that recognized the Taliban as the legitimate government during this era (the others being the United Arab Emirates and Saudi Arabia), where they began their campaign to regain power.⁴⁶ The Taliban started recapturing territory less than ten years after it was ousted.⁴⁷

The Pakistan ISI agency has supported the regime since its inception—providing money, training, and weaponry.⁴⁸ Pakistan provides financial and logistical support in an effort to counter Indian influence in the country.⁴⁹ Further, as a fellow Muslim majority nation, Pakistan has a vested ideological interest in the Taliban. A Taliban government could ease Pakistan's concerns at the Afghanistan-Pakistan border and provide Pakistan with an ally in the region.⁵⁰

B. Return of the Taliban

The U.S. invasion of Afghanistan was never intended to be permanent. In fact, the United States and the Taliban signed a historic deal in February of 2020, the Doha Agreement, that outlined a fourteen-month plan for withdrawing American forces from Afghanistan.⁵¹ The agreement included a pledge from the Taliban to

⁴³ *See id.* at 43.

⁴⁴ *See* Trofimov & Nissenbaum, *supra* note 32.

⁴⁵ *See id.*

⁴⁶ *See id.*

⁴⁷ *See* Maizland, *supra* note 18.

⁴⁸ Manjari Chatterjee Miller, *Pakistan's Support for the Taliban: What to Know*, COUNCIL ON FOREIGN RELS. (Aug. 25, 2021, 5:10 PM), <https://www.cfr.org/article/pakistans-support-taliban-what-know> [<https://perma.cc/4JA3-3D26>].

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ *See id.*

discuss a long-term cease-fire with the Afghan government and to prevent terrorist organizations such as al-Qaeda from using Afghanistan to plan strikes similar to the one bin Laden had conducted on September 11, 2001.⁵²

Unfortunately, the agreement was not executed as planned.⁵³ Talks to end the war gained little traction,⁵⁴ and instead, the Taliban took over most of the Afghan countryside.⁵⁵ Only weeks before the remaining American troops were scheduled to withdraw, the top U.S. military commander in the country expressed concerns regarding the country's deteriorating security.⁵⁶ Following President Biden's announcement regarding the withdrawal of forces, nearly a quarter of the districts fell to the Taliban.⁵⁷ Despite the billions of dollars in American assistance and training, Afghan troops surrendered territory and U.S.-provided equipment to the Taliban without much of a fight.⁵⁸

One likely reason for this failed U.S. mission includes the corrupt, Western-backed Afghan government that exaggerated the number of soldiers needed in order to access more resources while leaving troops without sufficient ammunition, supplies, or food.⁵⁹ As the Taliban advanced upon the capital of Kabul, the country's president fled, allowing the Taliban to seize power two weeks prior to the United States' official withdrawal.⁶⁰

⁵² See Dion Nissenbaum & Ehsanullah Amiri, *U.S., Taliban Sign Deal Meant to End America's Longest War*, WALL ST. J., <https://www.wsj.com/articles/u-s-taliban-set-to-sign-deal-meant-to-end-america-s-longest-war-11582977729> [https://perma.cc/QX9U-SBVK] (Feb. 29, 2020, 3:42 PM).

⁵³ See Trofimov & Nissenbaum, *supra* note 32.

⁵⁴ See *id.*

⁵⁵ See Nissenbaum & Amiri, *supra* note 52.

⁵⁶ See Gordon Lubold & Ehsanullah Amiri, *U.S. Commander in Afghanistan Warns of Civil-War Risk as Security Deteriorates Ahead of Final Pullout*, WALL ST. J., <https://www.wsj.com/articles/u-s-commander-in-afghanistan-says-security-deteriorating-as-troops-close-in-on-complete-pullout-11624984624> [https://perma.cc/PYC4-6C5V] (June 29, 2021, 11:11 PM).

⁵⁷ See *id.*; see also Joseph Krauss, *Taliban Take Over Afghanistan: What We Know and What's Next*, AP NEWS (Aug. 17, 2021), <https://apnews.com/article/taliban-takeover-afghanistan-what-to-know-1a74c9cd866866f196c478aba21b60b6> [https://perma.cc/GG88-ESB7].

⁵⁸ See Lubold & Amiri, *supra* note 56.

⁵⁹ See Krauss, *supra* note 57.

⁶⁰ See *id.*

The Taliban is again in control of Afghanistan.⁶¹ Its leadership council, the Rahbari Shura, is named after the city where Mullah Omar was believed to have taken refuge in Pakistan following the 2001 U.S. invasion.⁶² Members of the group's thirty-three-member cabinet have been labeled terrorists by the United States and sanctioned by the United Nations (UN).⁶³ They intend to reestablish the Islamic Emirate of Afghanistan that was founded by the previous generation of Taliban.⁶⁴

III. Current State

A. Taliban Claims

In recent years, the Taliban has attempted to present themselves as a more modern force than their predecessors.⁶⁵ The group claims to want an “inclusive, Islamic government.”⁶⁶ Since reclaiming the country, “they have promised to respect women’s rights, forgive those who fought against them and prevent Afghanistan from being used as a base for terror attacks.”⁶⁷ While pledging to enforce Islamic law, they are also encouraging women to join their government with the aim of returning to normal life after decades of war.⁶⁸ Additionally, they are urging citizens to stay in the country and have pledged to establish a “secure environment” for businesses, embassies, and charities.⁶⁹ The regime has vowed to uphold the U.S. demands outlined in the 2020 peace deal to prevent Afghanistan from becoming a base for terrorist organizations.⁷⁰ The Taliban’s claims suggest that they understand the need to make some adjustments and reconciliations in order to engage with the

⁶¹ See Scott R. Anderson, *History and the Recognition of the Taliban*, LAWFARE (Aug. 26, 2021, 12:55 PM), <https://www.lawfareblog.com/history-and-recognition-taliban> [<https://perma.cc/TVW4-69WP>].

⁶² See Maizland, *supra* note 18.

⁶³ See *id.*

⁶⁴ See Anderson, *supra* note 61.

⁶⁵ See Krauss, *supra* note 57.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See *id.*

⁶⁹ Rahim Faiez et al., *Afghans Fear a Return to Brutal Rule Despite Taliban Vows*, AP NEWS (Aug. 15, 2021), <https://apnews.com/article/afghanistan-taliban-13304940ec709865ca52aae2d832b963> [<https://perma.cc/84RE-348V>].

⁷⁰ See Krauss, *supra* note 57.

international community.⁷¹

B. Taliban Action

To date, the Taliban's actions have not aligned with their promises.⁷² In fact, Human Rights Watch, an international non-governmental organization based in New York, stated that "[t]he gap between official Taliban statements on rights and the restrictive positions adopted by Taliban officials on the ground indicates that the Taliban are far from an internal consensus on their own policies."⁷³ After capturing the Malistan district, fighters advanced from door to door, killing at least twenty-seven civilians and wounding ten individuals who worked with the government, while looting their homes.⁷⁴ Additionally, the group has continued practicing their harsh version of Islamic law, otherwise known as Shari'a law,⁷⁵ by stoning suspected adulterers and carrying out public executions to make an example of certain conduct.⁷⁶

The Taliban's actions are reminiscent of their previous brutal rule: cracking down on protestors, detaining and beating journalists, banning broadcast music, and reestablishing the ministry tasked with enforcing prohibitions on behavior deemed un-Islamic.⁷⁷ In terms of women's rights, the Taliban leadership claims that it is open to women's education; however, this view is not practiced uniformly across local leaders and communities.⁷⁸

Less than one year after regaining control, there were no female

⁷¹ See Anderson, *supra* note 61.

⁷² See Faiez et. al., *supra* note 69.

⁷³ *Id.*

⁷⁴ See *id.*

⁷⁵ Shari'a law is not a legal system; it is an interpretation of the Quran and Hadith. See Abdullahi Ahmed An-Nai'm, *Is Islamic Family Law Today Really Based on Shari'a? Why it is Important to Know*, MUSLIMS FOR PROGRESSIVE VALUES, <https://www.mpvusa.org/sharia-law> [<https://perma.cc/T726-PURN>] (last visited Dec. 28, 2021). It is viewed as a personal choice that is based on an individual's own understanding and beliefs. See *id.* Although many Muslim countries base their laws on Shari'a law, no two interpretations are identical. See Arwa Ibrahim, *Explainer: The Taliban and Islamic Law in Afghanistan*, AL JAZEERA (Aug. 23, 2021), <https://www.aljazeera.com/news/2021/8/23/hold-the-taliban-and-sharia-law-in-afghanistan> [<https://perma.cc/343J-4KXJ>]. In fact, some countries or governments view other entities' interpretations as "un-Islamic." See *id.*

⁷⁶ See *id.*

⁷⁷ See Maizland, *supra* note 18.

⁷⁸ See Faiez et. al., *supra* note 69.

positions in the de facto Taliban administration, girls were banned from attending schools beyond the sixth grade, and women were to remain in their homes unless it was absolutely necessary that they appear in public.⁷⁹ If they do appear in public, women must wear a burqa, a garment that fully covers their face and body.⁸⁰ Further, while the education ministry claims that the ban on women's ability to attend universities is only temporary "until a suitable environment" is created, women are right to worry.⁸¹ The Taliban made a similar promise to re-open some high schools for girls in March 2022 to no fruition.⁸²

C. Citizen Concerns

Given the Taliban's previous reign and prevalent inconsistencies, citizens distrust the group and fear their violence and oppression.⁸³ While some are concerned about the security implications associated with the thousands of prisoners who were freed during the Taliban's advances, others worry that the Taliban takeover could cause the country to regress back two decades, eliminating the gains attained by women and ethnic minorities.⁸⁴ The Taliban's remarks that women's rights will be respected under Islamic law are too ambiguous to provide any assurances.⁸⁵ In fact, the group poses immediate threats to "Afghans' civil and political rights enshrined in the constitution created by the U.S.-backed government."⁸⁶

Various members of the international community share a similar distrust of the regime. Many countries, including the United States, have expressed their disapproval of the group's actions and conditioned future relations on improved human rights and

⁷⁹ See *In Focus: Women in Afghanistan One Year After the Taliban Takeover*, UN WOMEN (Aug. 15, 2022), <https://www.unwomen.org/en/news-stories/in-focus/2022/08/in-focus-women-in-afghanistan-one-year-after-the-taliban-takeover> [<https://perma.cc/T8LB-J4JV>].

⁸⁰ See Maizland, *supra* note 18.

⁸¹ *Afghanistan: Taliban Ban Women from Universities amid Condemnation*, BBC (Dec. 21, 2022), <https://www.bbc.com/news/world-asia-64045497> [<https://perma.cc/47U5-UA5L>].

⁸² See *id.*

⁸³ See Krauss, *supra* note 57.

⁸⁴ See Faiez et. al., *supra* note 69.

⁸⁵ See Krauss, *supra* note 57.

⁸⁶ Maizland, *supra* note 18.

inclusivity.⁸⁷ Meanwhile, countries such as Pakistan continue to support the regime despite its violations of international law.⁸⁸ This dichotomy may result in some countries undermining other countries' efforts of establishing democracy and inhibiting extremism.

IV. Decision to Recognize

A. Recognition Under International Law

Under international law, recognition refers to “two related categories of state acts: first, the recognition of another entity as a state; and, second, the recognition of that entity’s government as established, lawful, or ‘legitimate,’ that is as entitled to represent the state for all international purposes.”⁸⁹ Recognition helps to identify “whether a regime may, as the state’s government, exercise those rights and duties on that state’s behalf.”⁹⁰ Despite its importance, there is no uniform structure of recognition or non-recognition.⁹¹ In fact, recognition is a political process that is not completed by an international entity such as the UN; instead, it is a decision that is made by the individual nations that are deciding whether to recognize another entity.⁹² Each nation’s determination is communicated either expressly through official statements or implicitly through actions such as a bilateral treaty.⁹³ States have also utilized recognition as a foreign policy tool.⁹⁴ In such instances, states require the following as a precondition to recognition:

[T]hat a regime acknowledge certain international legal obligations, implement democratic reforms, or capitulate on a given policy dispute before they formally recognize it or [extend]

⁸⁷ See Kate Bateman, *A Year After the Taliban Takeover: What’s Next for the U.S. in Afghanistan?*, U.S. INST. OF PEACE (Aug. 11, 2022), <https://www.usip.org/publications/2022/08/year-after-taliban-takeover-whats-next-us-afghanistan> [https://perma.cc/W4SR-7SC4].

⁸⁸ See *Taliban Ban Women from Universities*, *supra* note 81.

⁸⁹ CRAWFORD, *supra* note 13, at 135.

⁹⁰ Anderson, *supra* note 61.

⁹¹ See CRAWFORD, *supra* note 13, at 137.

⁹² See Malcom Shaw, *Jurisdiction*, BRITANNICA, <https://www.britannica.com/topic/international-law/Jurisdiction> [https://perma.cc/YCM4-AVE8] (last visited Apr. 6, 2023).

⁹³ See Anderson, *supra* note 61.

⁹⁴ See *id.*

formal recognition to a favored opposition movement in order to provide it with legitimacy and access to state resources, even if its claim to effective control is dubious.⁹⁵

Per the 1933 Montevideo Convention on the Rights and Duties of States, a state must have “a permanent population, a defined territory, a government, and the capacity to conduct international relations” in order to qualify as a statehood.⁹⁶ Nonetheless, a state may still be considered for statehood despite lacking a recognized government.⁹⁷ Non-recognition simply means that the government is not considered independent or effective, or that the non-recognizing state is not interested in maintaining intergovernmental relations.⁹⁸ Under international law, the recognition of a regime rests on its “effective control” over the state, meaning that it is “sufficiently established to give reasonable assurance of its permanence, and of the acquiescence of those who constitute the state in its ability to maintain itself, and discharge its internal duties and its external obligations.”⁹⁹ Article 41(2) of the International Law Commission further states that “no state shall recognize as lawful a situation created by a serious breach of an obligation arising under a peremptory norm of international law.”¹⁰⁰

Though states plagued with political instability and territories acquired through illegal means may be deemed to be without a government under international law,¹⁰¹ these states may nonetheless maintain diplomatic relations, if limited, with their counterparts.¹⁰² For example, although the Clinton administration clearly stated that the United States did not recognize the Taliban, the United States

⁹⁵ *Id.*

⁹⁶ *States in International Law*, BRITANNICA, <https://www.britannica.com/topic/international-law/States-in-international-law> [<https://perma.cc/449V-5EN7>] (last visited Apr. 6, 2023); *see also Montevideo Convention*, BRITANNICA, <https://www.britannica.com/event/Montevideo-Convention> [<https://perma.cc/8CZ9-2FCR>] (last visited Apr. 6, 2023) (discussing the Montevideo Convention, an international agreement that established the standard definition of a state under international law).

⁹⁷ *See* CRAWFORD, *supra* note 13, at 142.

⁹⁸ *See id.*

⁹⁹ Anderson, *supra* note 61.

¹⁰⁰ CRAWFORD, *supra* note 13, at 145; *see also* G.A. Res. 56/83, Responsibility of States for Internationally Wrongful Acts (Dec. 12, 2001).

¹⁰¹ *See id.*

¹⁰² *See* Anderson, *supra* note 61.

engaged with the regime both within and outside of Afghanistan on many issues, including “its human rights record, treatment of women and girls, abuse of ethnic and religious minorities, and participation in the global narcotics trade.”¹⁰³ The Taliban, both previously and currently, serve as a *de facto* authority that “seized power by force or unconstitutional means and govern despite not being recognized internationally or with the continued existence of a separate *de jure* government.”¹⁰⁴

B. Recognition of the Taliban

With the fall of Kabul, states face a difficult decision as to whether and how they should formally recognize a Taliban-led government in Afghanistan.¹⁰⁵ This decision is a double-edged sword.¹⁰⁶ On the one hand, the international community may wish to leverage the prospect of recognition as an incentive for the Taliban to abide by community norms.¹⁰⁷ On the other hand, failure to recognize the regime may ultimately negatively impact Afghan citizens who rely on aid from the international community.¹⁰⁸

Although the Taliban has *de facto* control of most of Afghanistan, they lack “democratic legitimacy.”¹⁰⁹ The group openly defied the democratically elected government when it took over the country through brute force.¹¹⁰ Consequently, members of the international community hesitate to recognize the regime, fearing this could be perceived as an implicit approval of the Taliban’s behavior.¹¹¹ Recognition is important to the regime because “the existence of a state is of little worth unless it is accepted as such into the community of nations.”¹¹² This makes an

¹⁰³ *Id.*

¹⁰⁴ Damian Lilly, *Does the UN Need a More Coherent Approach Toward “De Facto” Authorities?*, IPI GLOBAL OBSERVATORY (Jan. 6, 2023), <https://theglobalobservatory.org/2023/01/does-the-un-need-a-more-coherent-approach-toward-de-facto-authorities/> [<https://perma.cc/G3BR-CMF2>].

¹⁰⁵ See Bridgeman & Goodman, *supra* note 12.

¹⁰⁶ See *generally id.* (discussing the U.S. military withdrawal and Taliban takeover in Afghanistan).

¹⁰⁷ See *id.*

¹⁰⁸ See Maizland, *supra* note 18.

¹⁰⁹ Bridgeman & Goodman, *supra* note 12.

¹¹⁰ See *id.*

¹¹¹ See Saul, *supra* note 15.

¹¹² CRAWFORD, *supra* note 13, at 138.

unrecognized government equivalent to an unrecognized state.¹¹³ Without recognition, the Taliban will continue to lack legitimacy and Afghanistan's citizens will suffer as the United States, World Bank, and International Monetary Fund have already cut off access to more than \$9.5 billion in financial assistance.¹¹⁴ The group faced similar issues when it was previously in power, though it received recognition from three states: the United Arab Emirates, Pakistan, and Saudi Arabia.¹¹⁵ During this time, Afghanistan suffered comparable sanctions from the UN Security Council and the United States, leaving Afghans struggling with increased food prices and a significantly devalued currency.¹¹⁶ The fact that the Taliban was recognized by three nations did not mitigate the impacts of the imposed sanctions.¹¹⁷

The decision whether to recognize the Taliban is both difficult and controversial. Recognizing a regime that rose through military force would put the United States and other states "in the position of not recognizing one terrorist group that came to power through elections (Hamas in Palestine) while recognizing another terrorist group that came to power through military force (the Taliban)."¹¹⁸ However, both the international community and the Taliban have their respective interests in supporting recognition. The Taliban seeks legitimacy while the international community hopes to alleviate humanitarian suffering, impede future terrorism, and ensure global security and diplomacy.¹¹⁹

Afghanistan is currently facing a humanitarian crisis and collapse. Under the Taliban, Afghanistan's economy has

¹¹³ See *id.* at 142.

¹¹⁴ See Michael Crowley & Alan Rappoport, *As Humanitarian Disaster Looms, U.S. Opens Door for More Afghanistan Aid*, N.Y. TIMES (Dec. 22, 2021), <https://www.nytimes.com/2021/12/22/us/politics/afghanistan-sanctions-aid-taliban.html> [<https://perma.cc/PL66-2WUK>].

¹¹⁵ See *Afghanistan Poised over the Abyss*, PAKISTAN TODAY (Sept. 23, 2021), <https://www.pakistantoday.com.pk/2021/09/23/afghanistan-poised-over-the-abyss/> [<https://perma.cc/T522-CS27>].

¹¹⁶ See OFF. OF THE COORDINATOR FOR AFG., VULNERABILITY AND HUMANITARIAN IMPLICATIONS OF UN SECURITY COUNCIL SANCTIONS IN AFGHANISTAN 33 (2000).

¹¹⁷ See CLAYTON THOMAS, CONG. RSCH. SERV., R46955, TALIBAN GOVERNMENT IN AFGHANISTAN: BACKGROUND AND ISSUES FOR CONGRESS 2 (2021).

¹¹⁸ Bridgeman & Goodman, *supra* note 12.

¹¹⁹ See generally Anderson, *supra* note 61 (describing the process of recognition and what comes next for Afghanistan now that the Taliban has regained power); see also Maizland, *supra* note 18.

“floundered,” food insecurity has “soared,” and “hundreds of thousands” have lost their jobs.¹²⁰ Since 75% of the Afghan government’s public expenditures are covered by international partners, a pause in aid risks further economic turmoil.¹²¹ Additionally, the World Bank’s decision to block the Taliban’s access to funds following the takeover was exacerbated by drought and the COVID-19 pandemic.¹²² Furthermore, neighboring countries worry about the security implications associated with a potential refugee crisis that may surface as a consequence of the Taliban takeover.¹²³ A move towards recognition would mitigate these issues because it would force the Taliban to abide by international rules, thereby minimizing humanitarian concerns, maximizing international aid, and potentially avoiding a refugee crisis.¹²⁴

Another advantage of recognition centers around states’ concerns that the Taliban may support terrorist organizations.¹²⁵ Observers worry that Afghanistan may once again serve as a “safe haven” for terrorists, particularly al-Qaeda.¹²⁶ This concern is not unwarranted since the regime is still tied to al-Qaeda, many Taliban members’ interim cabinet have previously worked with al-Qaeda, and the regime provides protection to al-Qaeda in exchange for resources and training.¹²⁷ In addition, Afghanistan harbors an Islamic State group affiliate that targets the country’s Shiite minority.¹²⁸ Although the regime has condemned these past attacks, it is not clear if it will continue to do so given the groups’ shared ideology and the fact that the Islamic State includes former Taliban fighters.¹²⁹ In fact, the U.S. drone strike that killed Ayman al-Zawahiri, al-Qaeda leader and mastermind of the 9/11 attacks, on July 31, 2022, reveals otherwise.¹³⁰ His location at the time of his

¹²⁰ Maizland, *supra* note 18.

¹²¹ *See id.*

¹²² *See id.*

¹²³ *See* Trofimov & Nissenbaum, *supra* note 32.

¹²⁴ *See* Crowley & Rappeport, *supra* note 114.

¹²⁵ *See* Bridgeman & Goodman, *supra* note 12; *see also* Maizland, *supra* note 18.

¹²⁶ Maizland, *supra* note 18.

¹²⁷ *See id.*

¹²⁸ *See* Krauss, *supra* note 57.

¹²⁹ *See* Faiez et. al., *supra* note 69.

¹³⁰ *See* Kate Bateman et al., *After Al-Zawahiri’s Killing, What’s Next for the U.S. in*

death, a balcony in Kabul, Afghanistan, strongly suggests that the Taliban was providing a form of sanctuary in violation of the Doha Agreement.¹³¹ The group will surely have to condemn the Islamic State and any other organizations with similar motives in order to be recognized by the international community. Therefore, the Taliban must make a decision between supporting a terrorist organization or receiving assistance from the international community.

A further consideration is whether a major competitor might recognize the Taliban “to build ties at the United States’ or other parties’ expense.”¹³² In 2021, two of the five permanent members of the UN security council, China and Russia, appeared prepared to recognize the regime.¹³³ Russia’s ambassador to the UN stated, “as regards our future official steps regarding the Taliban, we will interact with them irrespective [or “independent”] of the evolving situation and their specific actions.”¹³⁴ Meanwhile, a Chinese government spokesperson stated that the country “is willing to continue to develop . . . friendly and cooperative” relations with Afghanistan.¹³⁵ Additionally, Pakistan, unlike other countries, is not conditioning recognition on the Taliban severing its relations with terrorist organizations because it hopes that the Taliban can assist in restraining “anti-Pakistan militants in the Tehreek-e-Taliban Pakistan (TPP).”¹³⁶ In fact, there are reports of the Taliban facilitating meetings between the Pakistani government and the TPP during the former Afghan government.¹³⁷ If these countries were to proceed with recognition, “similar recognition by democratic states (particularly if accompanied by the potential for humanitarian or economic assistance if their international obligations are upheld,

Afghanistan?, U.S. INST. OF PEACE (Aug. 2, 2022), <https://www.usip.org/publications/2022/08/after-al-zawahiris-killing-whats-next-us-afghanistan> [https://perma.cc/9NJG-VTJE].

¹³¹ *See id.*

¹³² Anderson, *supra* note 61.

¹³³ *See* Bridgeman & Goodman, *supra* note 12.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Kate Bateman et. al., *Taliban Seek Recognition, but Offer Few Concessions to International Concerns*, U.S. INST. OF PEACE (Sept. 28, 2021), <https://www.usip.org/publications/2021/09/taliban-seek-recognition-offer-few-concessions-international-concerns> [https://perma.cc/DB75-NRNW].

¹³⁷ *See id.*

and conversely a threat of sanctions and isolation if they are not) may help prevent the Taliban from going further into the orbit of those [authoritarian] powers.”¹³⁸

V. Recommendation for Recognition

Given Afghanistan’s location as a landlocked country at the intersection of three major powers (Iran, Pakistan, and China) and near two others (Russia and India),¹³⁹ the country’s current state under Taliban rule cannot be ignored. The present insecurity makes the country vulnerable to outside interference.¹⁴⁰ In fact, the country’s political instability and the violence that its citizens face can be attributed to the external powers that seek their respective “strategic, ideological, and economic interests in the country.”¹⁴¹ Afghanistan may be further impacted by “[p]olitical instability in Uzbekistan or Tajikistan, a radicalized Pakistan, U.S. military action against Iran, [or] another major war between Pakistan and India.”¹⁴²

To mitigate the effects, states should abandon the usual method of recognition and instead recognize the Taliban as a collective. Scholars have previously discussed the idea of “collectivization” of recognition, “under which statehood matures through [UN] membership, or at least a call by the UN that the new state be recognized.”¹⁴³ However, in this instance, the Taliban should be recognized by a collective agreement rather than by the UN.

States with the greatest interest in the country (otherwise known as “negotiating states”¹⁴⁴), including Iran, India, Tajikistan, Uzbekistan, Russia, China, the United States, Pakistan, and Saudi Arabia, along with representatives from the European Union and UN, should come together to negotiate and ratify¹⁴⁵ a resolution

¹³⁸ Bridgeman & Goodman, *supra* note 12.

¹³⁹ See MATINUDDIN, *supra* note 24, at 2-3.

¹⁴⁰ See *id.*

¹⁴¹ MARVIN G. WEINBAUM, AFGHANISTAN AND ITS NEIGHBORS: AN EVER DANGEROUS NEIGHBORHOOD 5 (2006).

¹⁴² *Id.* at 6.

¹⁴³ CRAWFORD, *supra* note 13, at 137.

¹⁴⁴ See Vienna Convention on the Law of Treaties art. 2, May 23, 1969, 1155 U.N.T.S. 331 (“[N]egotiating state’ means a State which took part in the drawing up and adoption of the text of the treaty.”).

¹⁴⁵ A government ratifies a treaty by depositing an instrument of ratification at a location specified in the treaty; the instrument of ratification is a document containing a

containing a list of conditions drafted by the participating nations. The objective of this compromise should mirror the goals outlined in the Doha meeting on August 12, 2021.¹⁴⁶ In that meeting, which also included representatives from the United Kingdom, Qatar, Germany, Turkey, and Turkmenistan, participants “called for an accelerated peace process” given the great urgency to continue negotiations and halt Taliban violence across Afghanistan.¹⁴⁷ Although this meeting occurred prior to the Taliban’s complete takeover, the same urgency remains.¹⁴⁸ Further, the participants’ outlined objectives, which are equally relevant now as they were then, included the following:

- (a) inclusive governance; (b) respect for human rights, including the rights of women and minorities; (c) a mechanism to deliver a representative government, (d) a commitment [to] not allow any individuals or groups to use the soil of Afghanistan to threaten the security of other countries; and, (e) respect for international law, including international humanitarian law.¹⁴⁹

While part of the international community, including the United States and the European Union, have already tied recognition to “respect for human rights and the humane treatment of women and girls, among other long-standing concerns with Taliban rule,”¹⁵⁰ it is imperative that recognition is accorded collectively. Collective recognition ensures uniformity in assessing the Taliban’s progress and actions in the country regardless of the recognizing country’s varying tolerance of human rights violations.

formal confirmation that the government consents to the terms of the treaty. *See International Agreements*, SCI. SAFETY SEC., <https://www.phe.gov/s3/law/Pages/International.aspx> [https://perma.cc/ML99-FVTU] (Feb. 15, 2018).

¹⁴⁶ *See Doha Talks on Afghanistan End with Call for Accelerated Peace Process, Halt to Attacks*, REUTERS (Aug. 12, 2021, 5:09 PM) <https://www.reuters.com/world/middle-east/doha-talks-afghanistan-end-with-call-accelerated-peace-process-halt-attacks-2021-08-12/> [https://perma.cc/3XKY-H4EE].

¹⁴⁷ *Id.*

¹⁴⁸ *See generally* Maizland, *supra* note 18 (“The Taliban have returned to power in Afghanistan twenty years after their ouster by U.S. troops, sparking concerns that they will impose harsh rule, neglect to provide basic services, and abuse human rights.”).

¹⁴⁹ Aditya Raj Kaul (@AdityaRajKaul), TWITTER (Aug. 12, 2021, 3:15 PM), <https://twitter.com/AdityaRajKaul/status/1425898837080563718/photo/1> [https://perma.cc/LJD8-RGBT].

¹⁵⁰ Anderson, *supra* note 61.

Following the adoption of the collective agreement and the establishment of the criteria outlined above, states must then develop a mechanism for holding the Taliban accountable. Due to the Taliban's poor track record on human rights abuses,¹⁵¹ the situation on the ground needs to be monitored. Various human rights organizations, including the Afghanistan Independent Human Rights Commission, have called for the UN Human Rights Council "to mandate a strong fact-finding and monitoring mechanism."¹⁵² This fact-finding would keep states informed while protecting the rights of Afghanistan's citizens.¹⁵³

Prior to awarding the Taliban recognition, a third-party arbiter, such as Switzerland, Norway, or Australia, should analyze all the data gathered by the UN Human Rights Council and other organizations with a similar mission to ensure that the Taliban is abiding by the terms outlined under the collective agreement. During negotiations, however, the people of Afghanistan should continue to receive support from foreign aid programs that provide direct food aid and financial assistance without "running afoul of international sanctions" by funneling funds to the government.¹⁵⁴ Both the International Criminal Court (ICC)¹⁵⁵ and the International Court of Justice (ICJ)¹⁵⁶ need to play a larger role in this process

¹⁵¹ See Patricia Gossman, *Human Rights Watch: With Taliban in Power, Only International Action Can Save Afghans*, QUINT WORLD (Sept. 10, 2021, 5:36 PM), <https://www.thequint.com/voices/opinion/human-rights-with-taliban-in-power-only-international-action-can-help-afghans> [<https://perma.cc/M9KY-92JD>].

¹⁵² *Id.*; see generally AFG. INDEP. HUM. RTS. COMM'N, <https://www.aihrc.org.af> [<https://perma.cc/3DTM-6KFZ>] (last visited Apr. 6, 2023).

¹⁵³ See Gossman, *supra* note 151.

¹⁵⁴ Aid groups estimate that nearly 23 million Afghans, out of a total population of 39 million, already do not have enough to eat. See Pamela Constable, *As Afghanistan's Harsh Winter Sets In, Many Are Forced to Choose Between Food and Warmth*, WASH. POST (Jan. 7, 2022), <https://www.washingtonpost.com/world/2022/01/08/afghanistan-winter-crisis/> [<https://perma.cc/MG3P-3D2U>]. Many also lack solid shelter and money to heat their homes at night, forcing them to choose between food and fuel, and creating additional potential for a full-fledged humanitarian disaster. See *id.*

¹⁵⁵ See Gossman, *supra* note 151 ("As a court of last resort, the ICC steps in only when national authorities cannot or will not genuinely investigate and prosecute war crimes, crimes against humanity, and genocide.").

¹⁵⁶ The ICJ is the main body of the UN which settles legal disputes submitted to it by states in accordance with international law. See *Uphold International Law*, UNITED NATIONS, <https://www.un.org/en/our-work/uphold-international-law> [<https://perma.cc/ZBP2-S4YY>] (last visited Oct. 20, 2021).

since the Taliban, like the previous Afghan government,¹⁵⁷ is unlikely to adequately investigate or prosecute crimes within the country, thereby concealing unlawful activity that may be pertinent to the decision of recognition.

The possibility remains that the Taliban may not abide by the objectives outlined in the Doha Agreement, thus never achieving the requirements necessary for recognition. Even in the absence of recognition, the international community should maintain economic relations to ensure that the Afghan economy does not collapse and that banks “retain access to the international financial system.”¹⁵⁸ Further, given its history in the country, the United States should continue working with UN agencies and non-governmental organizations to deliver humanitarian assistance to the local people, fulfilling basic needs in food security, health, and education.¹⁵⁹ Meanwhile, the UN must engage with the Taliban despite its de facto status to achieve its mandated tasks of protecting civilians, promoting human rights, and maintaining peace.¹⁶⁰ Though it is crucial that the international community does not neglect the people of Afghanistan, it is equally important that none of the assistance provided directly benefits the Taliban.

The idea of collective recognition may pose another hurdle as non-democratic states such as Russia and China will be reluctant to give up their independent recognition power to recognize collectively. While collective recognition would avoid the expense and instability associated with another proxy war in Afghanistan, these countries may need additional incentives to collaborate. Countries that recognize the Taliban in its current form will clearly breach the responsibilities outlined under Article 41(2) of the International Law Commission against recognizing an unlawful situation;¹⁶¹ however, the main recourse for the violation, a Security Council sanction, may not serve as a sufficient deterrent to some

¹⁵⁷ In mid-2020, President Ghani’s administration sought to delay the ICC investigation on the premise that the government was already conducting its own investigation. See Gossman, *supra* note 151. Like its predecessor, it performed no such investigation into incidents of disappearance, rape, torture, or killings by its forces. See *id.*

¹⁵⁸ *U.S. Relations with Afghanistan*, U.S. DEP’T OF STATE (Aug. 15, 2022), <https://www.state.gov/u-s-relations-with-afghanistan/> [https://perma.cc/T2FR-854C].

¹⁵⁹ See *id.*

¹⁶⁰ See Lilly, *supra* note 104.

¹⁶¹ See G.A. Res. 56/83, Responsibility of States for Internationally Wrongful Acts (Dec. 12, 2001).

non-democratic countries.¹⁶²

Afghanistan cannot afford to wait years for the international community to recognize the Taliban. However, states are unlikely to, nor should they, rush the issue of recognition. Therefore, states should work with the regime to accelerate the process while also clarifying that recognition is conditional and subject to rescission. If the Taliban were to abide by international rules for the sake of acquiring recognition and then regress back to old habits after attaining recognition, states have the discretion to collectively unrecognize. This means that states may decide to impose sanctions and withhold diplomatic relations until the regime begins abiding by international law.

VI. Conclusion

Afghan citizens are suffering, and they have been for decades while living in a war-ridden country. This suffering was demonstrated by the individuals who were desperately attempting to hang from planes taking off from Kabul International Airport following the Taliban's capture of the capital, and it remains clear from the many living in hiding or suffering from hunger, unable to flee the country. The regime's actions are inconsistent with their promises, and currently, there are no repercussions that do not also negatively impact the innocent people of Afghanistan.

The international community cannot afford to ignore the turmoil and risk an even greater humanitarian crisis. When deciding whether to recognize the regime, it is important to remember that withholding recognition could result in further human rights violations and once again convert Afghanistan into a haven for terrorist activity. Recognizing the Taliban on a state-by-state basis, as recognition is currently handled, could heighten tensions among states that build ties with the regime at the expense of others.

Consequently, select states including Iran, India, Tajikistan, Uzbekistan, Russia, China, the United States, Pakistan, and Saudi Arabia, along with representatives from the European Union and the UN, should collectively recognize through a joint declaration in a collective agreement that establishes a criterion under which the Taliban must abide by certain international norms to achieve

¹⁶² See Frederic L. Kirgis, *Enforcing International Law*, AM. SOC'Y OF INT'L L. (Jan. 22, 1996), <https://www.asil.org/insights/volume/1/issue/1/enforcing-international-law> [<https://perma.cc/4AKA-K4TJ>].

recognition. A third-party arbiter would then review the records developed by human rights organizations and serve as the final assessor of whether the Taliban has successfully met the stated objectives. Though it is imperative that the international community act quickly to minimize future hardship in Afghanistan, the Taliban should be granted formal recognition on a conditional basis, and with the understanding that international support will only continue so long as the regime provides the same support and respect to the people of Afghanistan.

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