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Does a Doorkeeper Stand Before the Law?: (Non-)Recognition of the Taliban and the HTS Administrations*

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Credits: "Man behind Bars", Kafka. The author died in 1924, so this work is in the [public domain](#) in its country of origin and other countries and areas where the [copyright term](#) is the author's **life plus 100 years or fewer**.

'The man reflects and then asks if he will therefore be permitted to enter later. "It is possible," the doorkeeper says, "but not now."

[Before the Law](#), Kafka

Introduction

Identification and recognition of governments are elements of inter-state relations that typically occur without raising legal questions. States have the freedom to regulate the constitutional procedures for changing their governments, and third states may recognise the change explicitly or implicitly. However, when a new administration is established unconstitutionally, legal issues

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regarding the determination of a government emerge. These instances usually occur after a *coup d'état* or a civil war.

While such instances have been subject to scholarly debate on various occasions, the international community recently witnessed two distinct cases: the Taliban's takeover of Afghanistan in August 2021 and Hayat Tahrir al-Sham's (hereinafter, HTS) assumption of control in Syria in December 2024. In both instances, the actors who effectively control the territory and claim governmental authority established their control after lengthy civil wars. They also have been and continue to be designated as terrorists by the United Nations (hereinafter, UN) Security Council, which raises questions about the governmental status of these administrations under international law.

This issue carries significant legal implications, as governments are the representatives of states in international forums. For instance, it remains unclear who will represent [Afghanistan](#) and [Syria](#) before the International Court of Justice (hereinafter, ICJ). Additionally, questions concerning whether the members of these administrations enjoy immunity or whether they can access the foreign assets of their respective states are closely tied to their legal status. From another perspective, only a government would be responsible for carrying out a state's international legal obligations. Therefore, these administrations can be held responsible for the international legal obligations of these states only if they have assumed the role of government.

In this context, this piece aims to explore the identification and recognition practice towards the administrations in Afghanistan and Syria and their implications under international law. Accordingly, it will first provide a brief legal background on how governments are identified and recognised under international law. Then, it will assess the international reactions towards these administrations along with their governmental status. Finally, it will analyse how the reactions indicate a differentiation between the acknowledgement of governmental status and (non-)recognition of governments.

The paper concludes that the recent practice implies a deviation from the established practice of implicit recognition to explicit non-recognition as a tool for ensuring compliance with international law. However, it is yet to be clear whether the recent practice will persist, and if so, what the consequences will be.

1. Identification and Recognition of Governments under International Law

An administration can be identified as a government under international law due to its constitutionality or effective territorial control. In most cases, the constitutional administration also exercises territorial control without a challenge. However, determining the government might become problematic when an administration is established through unconstitutional means or when there are competing claims for governmental authority. In such cases, the administration that exercises effective territorial control with a reasonable prospect of permanency would assume governmental authority regardless of its constitutionality, since international law, in principle, does not differentiate between constitutional and unconstitutional administrations.¹

Still, if the constitutional administration maintains its governmental claim, it would enjoy the presumption of continuity of its governmental status until an alternative administration clearly defeats it.² In other words, there is a rebuttable assumption of the continuance of the constitutional governmental status when it is challenged unconstitutionally. While certain principles, such as respect for international legal obligations, fundamental human rights, and democratic representation, have been proposed as additional conditions, states have yet to employ this approach consistently. Therefore, the requirement of effective territorial control remains the decisive principle³ in the majority of the cases with a bidirectional implication: an administration gains governmental authority when it establishes effective territorial control and loses governmental authority when its effective territorial control ceases.

After an administration gains governmental authority, other states can recognise it and enter into intergovernmental relations. The recognition of a new government could be explicit, e.g., with a clear declaration, or implicit. In practice, the majority of the states prefer not to declare their recognition of a new government explicitly.⁴ Instead, states usually implicitly recognise the new governments by maintaining their intergovernmental relations as the Estrada doctrine became prevalent over the course of the 20th century.

Introduced by Genaro Estrada, the then-Secretary of Foreign Affairs of Mexico, in 1930, this doctrine was a reaction to the post-WWI recognition practice that led to '[the] situations [...] in which

¹ James R Crawford, *The Creation of States in International Law* (2nd edn, Oxford University Press 2006) 34.

² MJ Peterson, 'Recognition of Governments' in Gëzim Visoka, John Doyle and Edward Newman (eds), *Routledge Handbook of State Recognition* (Routledge 2019) 209–210.

³ Jure Vidmar, 'Human Rights, Democracy and the Legitimacy of Governments in International Law: Practice of States and UN Organs' in Carlo Panara and Gary Wilson (eds), *The Arab Spring* (Brill | Nijhoff 2013) 75.

⁴ International Law Association, *Recognition/Non-Recognition in International Law - Fourth (Final) Report* (Sydney Conference 2018) 16 <https://www.ila-hq.org/en_GB/documents/conference-report-sydney-2018-6>.

the legal qualifications or national status of governments or authorities are apparently made subject to the opinion of foreigners'.⁵ Accordingly, this doctrine rejects explicit recognitions and treats maintenance or severance of diplomatic relations as national policy decisions not conferring nor challenging the legitimacy of other governments. While there is no definitive list of the acts that imply recognition, an act that clearly indicates the intention to grant recognition would be necessary for such recognition. Establishing full diplomatic relations, e.g., sending or accepting ambassadors, is widely accepted as such an act. Although this doctrine does not resolve all the issues arising from internal disturbances, it provides a clear framework when an administration emerges triumphant since it rejects any differentiation based on the constitutionality of the change.

On the other hand, states are under no obligation to recognise or establish any link with any government. Recognition or non-recognition frequently refers only to the existence or lack of the intention of establishing bilateral relations at the governmental level.⁶ Therefore, a decision not to recognise an administration as a government might result from political considerations rather than a legal assessment regarding the administration's status, and in principle, the non-recognition of an administration as a government that effectively controls the state's territory would not change the fact that the administration is the state's government. For instance, several Western governments did not recognise the Soviet Union administration for an extended period after the Bolshevik revolution, while it was clear that the latter was the government. Accordingly, certain obligations, e.g., respecting the immunity of certain state representatives, towards another government remain unaffected regardless of a decision not to recognise if the government in question is established objectively under international law.

However, if an administration's non-recognition as a government results from the duty not to recognise as legal, it would have been adopted due to a direct link between a violation of a *ius cogens* norm and the non-recognised situation, and it would lead to the rejection of the non-recognised situation's legal existence *in toto*.⁷ While non-recognition deriving from this duty generally arises regarding statehood claims (e.g., Nagorno-Karabakh) or territorial changes (e.g., annexation of Donbas by Russia), it might also be relevant for a governmental change. For instance, an administration that grips power after a genocide would be subject to non-recognition due to the prior violation of a *ius cogens* norm. In practice, the UN Security Council's determination

⁵ For the full text of the declaration, see; 'Estrada Doctrine of Recognition' (1931) 25 American Journal of International Law 203.

⁶ Stefan Talmon, *Recognition of Governments in International Law: With Particular Reference to Governments in Exile* (Oxford University Press 2001) 23.

⁷ Vidmar (n 3) 59. Cf. Niko Pavlopoulos, *The Identity of Governments in International Law* (Oxford University Press 2024) 136–139.

of the illegality of the racist minority regime in Southern Rhodesia and its subsequent non-recognition can be seen as an instance of the application of this duty.⁸

Therefore, when states do not recognise effective administration as a government, the reason behind this policy must be analysed to determine whether the administration is the government. Non-recognition would indicate a unilateral assessment of an effective administration's lack of governmental status when applied in pursuance of the duty not to recognise as legal. Otherwise, it should be seen as a mere political decision not to engage. However, recognition would intrinsically have a dual nature: a political decision to engage *and* a legal assessment of the counterpart's status as the government, since the recognised government must be objectively established to be subject to lawful recognition.

2. The International Reactions towards the Taliban Administration: Acknowledgement and Explicit Non-Recognition

The Taliban administration regained control over Afghanistan following the withdrawal of the US forces in 2021, with the former president, Ashraf Ghani, [admitting](#) defeat and leaving the country. The Taliban and the leader of their administration are on the UN sanctions list, and the UN Security Council decided to maintain the sanctions regime regardless of the Taliban's effective control over Afghanistan.⁹ Furthermore, both the UN Security Council and the UN General Assembly reiterated their non-recognition of the Taliban administration as the government before the takeover.¹⁰ Consequently, no state explicitly recognised them to this day despite the lack of any viable alternative governmental claimant. In contrast, numerous states explicitly non-recognised the Taliban as the government.

However, non-recognising states seem to accept the Taliban's governmental status within Afghanistan. At the Security Council meeting held after the announcement of the Taliban administration's cabinet in 2021, several states, including the United States, Russia, China, France, Turkey, Pakistan, Norway, and Niger, on behalf of the A3+1 (namely, Niger, South Africa and Tunisia + St Vincent and the Grenadines), referred to the new administration, variously, as the 'interim

⁸ See, UNSC Res 216 (12 November 1965) UN Doc S/RES/216; UNSC Res 217 (20 November 1965) UN Doc S/RES/217.

⁹ See, for instance; UNSC Res 2716 (13 December 2024) UN Doc S/RES/2763.

¹⁰ See; UNSC Res 2513 (10 March 2020) UN Doc S/RES/2513 and UNGA Res 75/90 (18 December 2020) UN Doc A/RES/75/90.

government', the 'caretaker government', the 'new government', or the 'acting government'.¹¹ Similar references have been made since.¹²

Furthermore, states frequently submit that they would abandon the non-recognition policy if the Taliban administration adhered to its international legal obligations. For instance, the UK [based](#) its non-recognition on the Taliban's restrictive regulations on women's participation in education and social and work life. Germany [conditioned](#) recognition on the respect for human and women's rights, along with the prevention of international terrorism. Turkey [called on](#) the Taliban to implement inclusive governmental mechanisms and retract the restrictive policies against women after emphasising their engagement without recognition policy. France [voiced](#) its concern over the administration's lack of inclusivity and freedom issues in the country before refusing 'to recognise or have any type of relationship with this government'. The US 'has not yet [made](#) a decision as to whether to recognize the Taliban', but the Secretary of State [stressed](#) that the Taliban's '... international legitimacy ... will depend entirely on what it does'. The independent assessment prepared pursuant to a Security Council resolution also set a roadmap based on the respect for international obligations and political inclusivity for recognition of the Taliban administration by third states.¹³

Clearly, these conditions are not related to the Taliban's effective territorial control or any violations of *ius cogens* norms that led to the Taliban's overtake. Requiring the Taliban to comply with international legal obligations as a condition for recognition is not a rejection of its governmental status. Instead, these calls strongly indicate that the non-recognition policy of the international community is based on political considerations rather than legal ones.

A recent development further supports this analysis. In September 2024, Germany, Australia, Canada and the Netherlands [announced](#) their attempt 'to engage the de facto authorities' of Afghanistan 'on how they fulfil their international human rights obligations, especially those concerning women and girls.' More than 20 states party to CEDAW [supported](#) 'the initiative' with a joint statement. As per Article 29 of CEDAW, the procedure would lead to an arbitral process or a case before the ICJ if the parties cannot settle during negotiations. Considering only governments are obliged to comply with this convention, the states instituting and supporting this initiative

¹¹ UNSC Verbatim Record (9 September 2021) UN Doc S/PV.8853.

¹² For instance, see for a similar statement by the European Union; Letter dated 14 September 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council (14 September 2021) S/2021/785.

¹³ See; Letter dated 8 November 2023 from the Secretary-General addressed to the President of the Security Council (9 November 2023) UN Doc S/2023/856.

implicitly acknowledge the governmental status of the Taliban. However, this acknowledgement arguably falls short of implied recognition since it cannot clearly indicate the intention to grant recognition.

Nevertheless, as of September 2024, the Taliban administration [controls](#) 39 Afghan embassies globally. The majority of these embassies [continue](#) to work with the existing personnel appointed by the former government. While other Afghan embassies continue to work without any direct control from Kabul, the Taliban's [decision](#) taken in July 2024 to dismiss the staff working in some of these embassies has led to the closure of several embassies upon the [request](#) of host states. More recently, the Afghan embassy in Ankara, which was not under the control of the Taliban, was handed over to the Turkish Foreign Ministry following the Turkish government's [decision](#) to end the mission.

Furthermore, some states, including [UAE](#), [Uzbekistan](#), and [China](#), accredited new ambassadors appointed by the Taliban. Considering sending or receiving an ambassador is widely accepted as an indication of implied recognition, it can be argued that these states have recognised the Taliban as the government by implication. Yet, Chinese officials were reluctant to label the move as such and [stated](#) that it was a 'normal diplomatic arrangement'. However, considering China's ambassador [presented](#) his credentials to the Taliban in 2023, it is hard to rebut the implied recognition of the Taliban as the government of Afghanistan by China. Similarly, Nicaragua's [appointment](#) of its first-ever non-resident ambassador to Afghanistan in 2024 is a strong indication of implied recognition.

3. The International Reactions towards the HTS Administration: Acknowledgement and Reasoned Recognition

After almost 14 years of civil war, the government of Bashar al-Assad was overthrown in December 2024 by the HTS, led by Ahmed al-Sharaa (also known by the *nom de guerre* Abu Mohammad al-Golani). In the aftermath of the takeover, al-Sharaa was [named](#) interim president of Syria. Both the HTS and al-Sharaa are on the UN sanctions [list](#) due to their alleged links to al-Qaeda.¹⁴ Regardless, at the Security Council meeting held after Al-Sharaa was appointed interim president, the US, France, Pakistan, Greece, and Qatar all explicitly referred to him as president¹⁵ without challenging the new administration's governmental status.

¹⁴ Al-Sharaa has been listed since 2013, and the HTS has been listed since 2014. The HTS, then called Jabhat al-Nusra, officially severed its ties with al-Qaeda in 2016 and crushed the newly emerged al-Qaeda-linked groups. See; 'From Syrian Jihadist Leader to Rebel Politician: How Abu Mohammed Al-Jolani Reinvented Himself' (9 December 2024) <<https://www.bbc.co.uk/news/articles/c0q0w1g8zqvo>>.

¹⁵UNSC Verbatim Record (12 February 2025) UN Doc S/PV.9857.

Furthermore, the international community reacted much more [softly](#) to the new administration in Syria than to the Taliban in terms of extending recognition. Within a few months of the administration's establishment, Al-Sharaa paid official visits to Turkey, Saudi Arabia, Jordan, and the United Arab Emirates and attended the emergency meeting of the Council of the League of Arab States in Egypt despite the UN-imposed travel ban on him¹⁶ and was [invited](#) for other visits. Al-Sharaa [hosted](#) several foreign ministers in Syria, and the HTS-appointed foreign minister has [visited](#) several states and [attended](#) various international meetings under the title of the foreign minister of Syria. Russia, a close ally of the al-Assad government, [established](#) links with the al-Sharaa-led administration to discuss the future of its military bases in Syria.

While detailed information regarding the new administration's control over Syria's foreign representation has not been publicly disclosed, there have been no reports of resistance against the al-Sharaa administration. It is also important to note that the Permanent Representative at the UN, appointed by the al-Assad government before the takeover, now serves under the directives of the new administration.¹⁷

Considering these developments, it can be stated that the international community does not challenge the effective territorial control¹⁸ or governmental authority of the al-Sharaa administration in Syria. Several states have already established intergovernmental relations, and even the closest allies of the overthrown al-Assad government, namely, Russia and Iran, communicated with the new administration regarding future diplomatic ties.

At first, the recognition of the HTS as the new government seems to be in accordance with the Estrada doctrine—a new government was established, and states implicitly recognised it. However, the recognition is closely linked with the HTS administration's explicit commitment to international legal obligations. The [link](#) between recognition and the HTS's commitment to international legal obligations is [declared](#) by various actors. Accordingly, the new administration frequently [emphasised](#) inclusivity as a vital principle for Syria's political future, and the [Constitutional Declaration](#) signed by al-Sharaa in March 2025 also refers explicitly to the obligation to respect

¹⁶Travel exemptions were issued for al-Sharaa's each visit. See; 'Travel Exemptions in Effect' <<https://main.un.org/securitycouncil/en/sanctions/1267/travel-ban/travel-exemptions-in-effect>>.

¹⁷ UNSC Verbatim Record (12 February 2025) UN Doc S/PV.9857.

¹⁸ While the US-supported Syrian Democratic Forces continue to control a large area in northeast Syria, this author believes that the governmental claim is a necessary condition for acquiring government status. Therefore, their mere territorial control does not make them a contender for the government of Syria. Cf. Justin Cole and Oona A Hathaway, 'Should the Rebels Be Recognized as the New Government of Syria? How International Law Could Provide a Clearer Answer' (*Just Security*, 6 January 2025) <<https://www.justsecurity.org/106124/recognition-government-syria-international-law/>>.

fundamental human rights and freedoms and accepts international human rights treaties as an integral part of the Declaration.

Consequently, it should be submitted that the recognition of the al-Sharaa administration as the new government differs from the established practice of recognition based on the Estrada doctrine since it is not solely based on effective territorial control but also the commitment to international legal obligations.

Conclusion: From Implicit Recognition to Explicit Non-Recognition?

The (non-)recognition practice regarding the Taliban and the HTS does not challenge the traditional legal understanding of recognition: states are free to recognise or not recognise any other government. However, unlike the conventional practice of recognition, states applied the effective territorial control criterion only to determine the governmental status of these administrations while collectively conditioning intergovernmental relations on their commitment to international legal obligations. Thereby, states utilised explicit non-recognition as an instrument for pressuring the Taliban to adhere to their international legal obligations while using it like a sword of Damocles over the HTS to secure its continuing commitment.

This departure from the conventional policy of recognition challenges the Estrada doctrine, which emerged to prevent external interference in governmental changes, since states required the Taliban and the HTS to act in a certain way for their recognition. However, a distinction can be made between this practice and the post-WWI cases of non-recognition that led to the birth of the Estrada doctrine, as the recent practice aims to ensure the UN-sanctioned entities' adherence to international legal obligations rather than the implementation of national policies of powerful states.

Therefore, on the one hand, the recent practice can be seen as a force for good—a tool to ensure the rule of law. On the other hand, it should be remembered that it can also easily become a tool for powerful states to meddle in the internal affairs of destabilised states, as it did after WWI, considering that the condition to adhere to international legal obligations can be easily [blended](#) with national policy preferences.

As the particular implications of the recent practice remain dubious, further practice is needed to determine whether the doorkeeper only stands for the Taliban and the HTS or whether there is an actual shift in the policy of recognition from implicit recognition based on effective territorial control

to explicit non-recognition to ensure commitment to international legal obligations. Either way, the international community should be aware that even a force for good is still a force—tempted to be corrupted.

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