

UiO : **Faculty of Law**
University of Oslo

Gendered Recognition

Examining Global Approaches and Accountability in the Face of Women's Rights
Violations in Afghanistan: Proposing a Framework for Gendered Recognition

Candidate number: 8013

Submission deadline: 17th December 2023

Number of words: 17427



ACKNOWLEDGEMENT

I want to express my profound appreciation to my supervisor, Cecilia Bailliet, for generously sharing her invaluable expertise and backing me throughout my academic journey – from the initial selection of my approach to shaping my research question and ultimately concluding my thesis. Cecilia has consistently shown support and enthusiasm for my chosen topic, and promptly addressed my queries.

Moreover, I extend my thanks to my friends and family for their unwavering support. I also wish to recognize the individuals who, whether directly or indirectly, assisted and supported me during the writing process by offering input and feedback.

TABLE OF CONTENT

1	INTRODUCTION.....	1
1.1	STRUCTURE	4
2	METHODOLOGY	5
3	WHERE ARE THE WOMEN IN THE STATE SYSTEM?	7
3.1	THE WESTPHALIAN STATE SYSTEM	7
3.2	STATE CRITERIA AND SOVEREIGNTY	9
3.3	WHAT DOES GOVERNMENTAL RECOGNITION ENTAIL?	11
3.4	THEORIES OF RECOGNITION.....	14
3.4.1	The Declaratory Theory.....	15
3.4.2	The Constitutive Theory.....	15
3.5	DO STATES HAVE A DUTY TO RECOGNIZE?	16
3.6	DO WOMEN NOT HAVE THE RIGHT TO SELF-DETERMINATION?.....	17
4	INCLUDING WOMEN THROUGH A GENDERED RECOGNITION.....	18
4.1	UNMASKING PATRIARCHY IN STATE AND INTERNATIONAL LAW.....	18
4.2	APPLYING FEMINIST ACCOUNTS OF LAW IN INTERNATIONAL LAW.....	19
4.3	EMPOWERING CHANGE THROUGH THE WPS AGENDA	20
4.4	THE NOTION OF GENDERED RECOGNITION	21
4.5	THE ADDITIONAL CRITERIA OF A GENDERED RECOGNITION.....	21
5	HOW WE FAILED THE WOMEN IN AFGHANISTAN.....	25
5.1	INTERNATIONAL INTERVENTIONS IN AFGHANISTAN AND THE ILLUSION OF WOMEN’S PROTECTION	25
5.2	EXCLUSION OF WOMEN IN THE DOHA PEACE PROCESS.....	26
5.3	WAR ON WOMEN	29
6	THE INTERNATIONAL COMMUNITY’S RESPONSE TO THE TALIBAN ...	31
6.1	INTERNATIONAL CRIMES AND PURSUIT OF ACCOUNTABILITY	32
6.2	AN INVITATION TO THE WEST.....	35
6.3	NEIGHBOURING STATES	37
6.4	TALIBAN DOES NOT REPRESENT THE VALUES OF ISLAM.....	39
7	EMPLOYING GENDERED RECOGNITION IN THE CASE OF AFGHANISTAN	42

7.1	BRING WOMEN TO THE TABLE.....	43
7.2	A STATE IS NOT PEACE-LOVING IF WOMEN ARE BEING NEGLECTED	44
8	CONCLUSION	45
9	BIBLIOGRAPHY	47

“The past is full of examples of neglecting or ignoring women; the present is filled with the consequences. So, the future must be focused on listening to, investing in, and supporting women as well as including them.”

Sima Bahous

UN Women Executive Director¹

1 INTRODUCTION

“Considerations of gender should be fundamental to an analysis of international human rights law,” Hilary Charlesworth and Christine Chinkin stated in their foundational 1993 article, *The Gender of Jus Cogens*, in the genre of feminist international law.² Charlesworth has additionally highlighted an issue within the realm of public international law, which is that half of the world’s population, namely women, have been excluded from decisions of great international significance. That is not just a question of justice and human rights, but also a great strategic mistake.³ In the present day, we find ourselves in a global scenario where the rights of women are diminishing everywhere,⁴ and women and girls continue to endure ongoing discrimination based on their sex⁵ and gender. Recognizing and addressing these gender disparities is not just a moral imperative; it is also crucial for the stability and progress of states. When societies fail to address and rectify gender disparities, they risk impeding their own social, economic, and political development. These disparities can lead to various negative consequences, such as

¹ UN Women, 2023

² As Charlesworth and Chinkin stated in their article *The Gender of Jus Cogens*, The acknowledged human rights violations often categorized as jus cogens norms are undoubtedly severe violations, including genocide, slavery, murder, enforced disappearances, torture, prolonged arbitrary detention, and systematic racial discrimination. Nevertheless, the exclusions within this list underscore a significant oversight concerning women's experiences. Notably, while racial discrimination consistently features in jus cogens inventories, gender-based discrimination is conspicuously absent, despite being a more widespread injustice that profoundly affects the lives of over half the global population.

³ Charlesworth, 2002, p. 100

⁴ Dorius & Firebaugh, 2010, p. 10

⁵ The traditional texts of international human rights law, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), universally prohibit discrimination based on sex, highlighting the biological distinctions between male and female in alignment with the prevailing perspectives during their drafting decades. However, since the 1990s, there has been a growing adoption of the term "gender" in human rights discourse to underscore the socially constructed nature of sex. This shift reflects an increasing inclination within the human rights domain to replace "sex" with "gender," emphasizing the sociological aspects of being male or female. For example, the 2011 Istanbul Convention, influenced by feminist international law scholars like Christine Chinkin, defines "gender" as "the socially constructed roles, behaviors, activities, and attributes that a given society deems appropriate for women and men." Given these evolving definitions, this thesis will utilize the term "gender" when addressing the subsequent subject.

reduced workforce participation, limited access to education and healthcare, and hindered economic growth. In the long run, such issues can undermine a nation's stability, hinder its ability to harness the full potential of its population, and impede its progress towards achieving prosperity and equality.⁶ Therefore, recognizing and taking action to rectify gender disparities is essential for both ethical reasons and the overall well-being and success of a society.⁷ The UN Development Programme (UNDP) released the Afghanistan Socio-Economic Outlook 2023, offering insights into the repercussions of the Taliban's takeover in Afghanistan. Following their assumption of power, the Afghan economy collapsed, exacerbating the country's decade-long descent into poverty. The UNDP anticipates a worsening economic catastrophe due to restrictions on women's rights, asserting that women's inclusion in the workforce is indispensable for averting poverty. Ms. Buzurkova, the UNDP Deputy Resident Representative in Afghanistan, emphasized this point, stating, “we calculated that it will not be possible to achieve growth and reduce poverty without women. That is the message we try to deliver when we speak to the *de facto* authorities.”⁸

On 15th of August 2021, the Taliban seized power in Afghanistan, and all the vital progress that had been made towards gender equality and in the battle of women's rights was lost in a matter of weeks.⁹ Today, the world watches as the Taliban re-imposes a system of governance based on subordination of women which institutionalizes gender discrimination across state political, legal, and cultural infrastructures in Afghanistan.¹⁰ Women have again been barred from employment and girls are being excluded from school after sixth grade. Further, they are restricted in their access to humanitarian assistance, justice and health services.¹¹ This happened despite initial ambiguity and assurances provided by the Taliban that they would protect women's rights through the prism of Sharia law.¹² It's self-evident that the Taliban's governance has had a harmful impact on women's human rights, given their well-documented history of rights

⁶ Bertay, Dordevic & Sever, 2020, p. 3-4

⁷ UN Women, 2022

⁸ The Afghanistan Socio-Economic Outlook 2023, released by the UN Development Programme. Published by: <https://news.un.org/en/story/2023/04/1135762#:~:text=Immediately%20after%20the%20Taliban%20assumed,in%20the%20world%2C%20with%20around>

⁹ That does not go to say that the progress made was perfect or that the progress was equally enjoyed by all women in Afghanistan, however it was a step in the right direction.

¹⁰ Bennoune, 2022, p. 4

¹¹ A/HRC/52/84: Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett

¹² Latifi, 2021

violations and anti-rights statements.¹³ Nevertheless, there is a concerning global trend of minimization of these abuses and increasing normalization of the Taliban by some states and international bodies. This is a cause for concern among many Afghans, who worry that it may lead to the group's international recognition without requiring adherence to human rights standards.¹⁴

One of the interactions with the Taliban that has raised concerns among many Afghans and human rights activists occurred when Anniken Huitfeldt, Norway's Foreign Minister at the time, invited the Taliban for peace talks in Oslo in January 2022. Huitfeldt's decision to invite the Taliban to Oslo for peace talks and engage in a constructive dialogue with the *de facto* authorities has been met with a diverse range of reactions. While some have praised this diplomatic move as a potential pathway to conflict resolution and peace, others have criticized it, expressing concerns that engaging with the group could be seen as a sign of legitimacy and recognition. Huitfeldt has been clear that the move of inviting them was not a sign of recognition or legitimacy of them as the rightful government.¹⁵ However, the Taliban promoted this as a step in the right direction towards being recognized as a government in the international forum.¹⁶ This initiative has sparked significant debate and discussion, highlighting the complexity and challenges of pursuing peace in conflict ridden regions. As we grapple with these complexities, it underscores the urgency of finding a lasting solution to what seems like a conflict that never ends, emphasizing the imperative of sustained diplomatic efforts and international cooperation in resolving protracted conflicts. While the Western countries debate on how to approach this issue, the neighbouring countries to Afghanistan have expressed that the Taliban needs economic assistance from the international community, as well as assistance to form an effective government through engagement.¹⁷ The Taliban continue to be sanctioned by the United Nations Security Council,¹⁸ and the Organization of Islamic Cooperation pressures them

¹³ The 2023 WPS Index by Georgetown Institute for Women, Peace and Security & PRIO offered new rankings of women's status in 177 countries - covering over 99% of the world's population – which showed that Afghanistan is ranked as the worst country in the world to be a woman. The WPS Index uses 13 indicators to measure women's status, ranging from education and employment to laws and organized violence.

¹⁴ Bennoune, 2022, p. 5

¹⁵ Leigland, 2022

¹⁶ Bakken, 2022

¹⁷ Faheem & Khan, 2022, p. 91-92

¹⁸ Both the interim *de facto* "Prime Minister" and "Interior Minister" are on the U.N. Security Council's Resolution 1988 Sanctions List. Mohammad Hassan Akhund, UNITED NATIONS SEC. COUNCIL (Aug. 4, 2014), <https://www.un.org/securitycouncil/sanctions/1988/materials/summaries/individual/mohammad-hassan->

to change their course on women's rights.¹⁹ Along with a lack of a common approach to the human rights violations, the international community struggles with the question of whether to recognize the Taliban as the legitimate government of Afghanistan or not.

The focus of this thesis will lie in examining the structure of the concept of recognition as elucidated by international law scholars. It seems that the notion of state and governmental recognition is not truly universal, as its evolution has favoured the experiences of men over those of women, affording men a level of protection that is not extended to women.²⁰ As a result, it is imperative to interpret public international law through a gender-inclusive lens. In the following sections, I will outline my proposal for elucidating a gendered interpretation of the narrow issue of recognition. The need to introduce gendered recognition is crucial due to the absence of such an approach in the past, and because the current system requires updates and improvements. That is the particular contribution this thesis seeks to make.

1.1 STRUCTURE

To make this case, Part II will outline the research methodology employed in this thesis along with an introduction to the literature used to support my arguments. In Part III, an in-depth exploration of the concept of recognition unfolds, tracing the historical development of the Westphalian state system and the traditional state criteria and sovereignty. Further, the section assesses the notion of recognition and its political implication, its theories and whether states have a duty to recognize entities. This section examines how these criteria have evolved to encompass elements like human rights and democracy. Finally, it critiques the concept of self-determination, contending that its universality may not be as absolute as it is often presumed to be. Moving on to Part IV, the focus shifts to the contemporary patriarchal state system's exclusion of women. Drawing on feminist legal approaches, this section proposes the idea of gendered recognition, highlighting the role of the Women, Peace, and Security (WPS) Agenda in fostering inclusive language in international law. The discussion then introduces the concept of gendered recognition and explores its potential contributions to the practice of recognition. Additional criteria for gendered recognition are also presented, such as the inclusion of women in

akhund [<https://perma.cc/E43R-NDNE>]; Sirajuddin Jallaloudine Haqqani, UNITED NATIONS SEC. COUNCIL (Sept. 13, 2007), <https://www.un.org/securitycouncil/sanctions/1988/materials/summaries/individual/sirajuddin-jallaloudine-haqqani> [<https://perma.cc/7LXN-XWKZ>]

¹⁹ Sifton & Abbasi, 2023

²⁰ Charlesworth & Chinkin, 1993, p. 65

government and peace processes. In Part V, attention turns to the case of Afghanistan, examining the international community's shortcomings in protecting the country despite interventions, as well as the lack of inclusion of women during the Doha Peace Process. The *de facto* situation for women in Afghanistan under the control of *de facto* authorities is scrutinized. Part VI moves on to the international community's approach towards the Taliban so far, before analysing whether the Taliban fulfil the criteria of a gendered recognition in Part VII.

2 METHODOLOGY

This thesis intends to present an interdisciplinary research paper that draws upon the foundations of political science and is substantiated by feminist theories within the realm of public international law. Political science will be employed in addressing the issue of recognition, given its inherent connection to the political dynamics of states and governments. Feminist analysis of international law has seen significant growth as a genre of international legal scholarship since the 1990s. It offers critical insight to the inclusion of gender in international law which, according to the analyses by feminist international lawyers, traditional approaches to international human rights law often overlook women's concerns.²¹ A major strand in feminist scholarship of international law has, therefore, been concerned with the involvement of women in the development of international law, as well as documenting the absence and exclusion of women from the law-making fora.²² Hilary Charlesworth and Christine Chinkin have emphasized the essential nature of incorporating gender considerations into the examination of international human rights law. Further, their work focuses on fulfilling international law's promises of universality and equality. Feminism as a genre of international law has received a lot of criticism, and promotions of stereotypes have often led to a misunderstanding of what it means to be a feminist. It is therefore important to keep in mind that feminism is a call for equality, and equality is law.

Post-modern feminist writings, including feminist writing from the third world, is often sceptical of modernist, universal theoretical explanations of the oppression of women. They have argued that we must recognize the harmful impact of racism and economic exploitation on

²¹ Bennoune, 2022, p. 12-13

²² Charlesworth, 2011, p. 33

women.²³ Recognizing the importance of cultural diversity, it is crucial to acknowledge that Western feminist ideals may not seamlessly apply to all cultures and societies. An alleged universal feminist approach might not be universally suitable, emphasizing the necessity for the inclusion of cultural relativism. Sensitivity to local values becomes imperative in navigating the nuanced landscape of feminist discourse within diverse global contexts. While, at the substantial level, feminism presupposes a commitment to equality between the genders, at the methodological level, it implies a commitment to gender as a focus of analysis and to approaches that reflect on women's perspectives and concerns. It thereby demands that we pay attention to the diversity of women's circumstances. There is no "generic woman" and gender should always be considered in conjunction with other forces that structure identity, such as race, ethnicity, class, culture and sexual orientation. Therefore, a feministic framework, rests not on single standpoints *of* women, but on affinities and alliances *among* women.²⁴

This study applies a qualitative method to study women's rights situation in Afghanistan and the international community's approach towards the Taliban regime. It is based on a collection of secondary sources available in different law journals, research papers, educational articles, reports from NGOs and human rights organisations, and other related sources. Further, secondary sources have been examined such as output of UN rapporteurs and Working Groups, and Statements and Comment from different international actors and organisations. However, it's essential to navigate the potential pitfall often associated with qualitative studies—striving for scientific objectivity, as these approaches may face criticism for not adhering to mainstream expectations of rigorous methodology. Despite this challenge, the study contributes to a comprehensive analysis of the subject matter by leveraging an array of qualitative sources.²⁵

²³ Charlesworth, 2002, p. 97

²⁴ Rhode, 1994, p. 1883

²⁵ Maruska, 2017, p. 15-16

3 WHERE ARE THE WOMEN IN THE STATE SYSTEM?

This section of the thesis aims to explain the concepts of state and governmental recognition within the realms of international law and international relations. In simplified terms, recognition generally entails the act of acknowledging a specific entity or occurrence. However, in the context of international law and international politics, it specifically pertains to acknowledging and accepting the international status of either a newly formed state or a newly established government.²⁶ In order to gain a deeper comprehension of the existing state system, it is helpful to provide an overview of the historical evolution of the Westphalian State System and how this evolution has contributed to the current absence of gender inclusion when considering state and governmental recognition. Annica Kronsell, delves into the challenges of her method of “studying silence” in international relations. By studying silence she means in practice that the researcher has to rely on methods of deconstruction, to study what is not contained with the text, and to read between the lines. The goal is therefore to make gender visible “in a field that claimed none, to see women in texts that routinely, ‘naturally’ featured men or inanimate states and systems,”²⁷ which is what this thesis will attempt to do on the narrow issue of recognition and statehood. Additionally, it is convenient to preface the exposition of the law relating to the recognition of governments by confirming the legal principles of recognition of states.²⁸ This approach not only ensures a structured and comprehensive analysis, but also paves the way for exploring and proposing a gendered recognition framework.

3.1 THE WESTPHALIAN STATE SYSTEM

In the year 1648, the Thirty Years’ War was concluded by a series of agreements which later became known as the Peace of Westphalia. The Thirty Years’ War had its origin in a religious conflict and intolerance. Thus, the Peace of Westphalia consecrated the principle of toleration by establishing the equality between Protestant and Catholic states and by providing some protection for religious minorities. Traditionally, it is attributed with the significance and honour of being the initial effort among various attempts to create a semblance of global unity, where states have complete sovereignty over specific territories and are not subject to any higher authority.²⁹ Sovereignty entails that each state has political authority within its territory and each

²⁶ Faheem & Khan, 2022, p. 83

²⁷ Maruska, 2017, p. 17

²⁸ Lauterpacht, 1945, p. 815

²⁹ Gross, 1948, p. 21-22

can establish its own foreign policy towards other states. With the arrival of the Westphalian State System, religion therefore became more of a domestic matter and each state's religion would be determined by the religion of the sovereign,³⁰ and the principle of religious equality was placed as part of the peace under international guarantee.³¹ By linking state and religion and separating states from other states, the hope was that the divisive transnational religious and civil wars that tortured Europe would end.³² Although the emergence of centralized nation-states, which were the main elements of the Westphalian system of international relations, was a centuries-long process, the special and symbolic moment marking the rise of the system is regarded to be the signing of the Westphalian Peace accord.³³ Over time, this system of sovereign states extended to encompass the entire world.³⁴ Peace would be preserved through the mutual independence of sovereign states, each state would determine its own system of governance, and would refrain from interfering in other countries internal affairs.³⁵ To describe this system, scholars of international relations often say that we lived in a Westphalian state system.³⁶ The agreements also contributed to the development of diplomatic relations between centralized, territorial and sovereign states, and international law as the regulator of their mutual relations and the bond linking the international community.³⁷ Nevertheless, the pursuit of peace and stability envisioned by the Westphalian state system faced persistent challenges, and the subsequent centuries witnessed the recurrence of conflicts that tested its foundations in the centuries to come. Further, the Peace of Westphalia only offers an Eurocentric explanation of the expansion of the international system, and a more accurate understanding requires attention to its colonial origins, as Sanjay Seth argues in his paper '*Postcolonial Theory and the Critique of International Relations*'. He challenges the centrality accorded to Europe as the historical source and origin of the international order, and raises doubt about the universality accorded to the moral and legal perspective which reflects and reproduces the power relations characteristics of the colonial encounter, which are far from being universal.³⁸ He further argues that the ostensibly 'procedural' nature of certain norms are, in reality, deeply substantive and

³⁰ Engle, 2007, p. 24

³¹ Gross, 2004, p. 22

³² Engle, 2007, p. 24

³³ Pietras, 2007, p. 135

³⁴ Grieco et al., 2019, p. 39

³⁵ Engle, 2007, p. 24

³⁶ Grieco et al., 2019, p. 39

³⁷ Pietras, 2007, p. 135

³⁸ Seth, 2011, p. 168

normative. Contrary to claims of neutrality, critics have highlighted that these procedural norms inherently presuppose and, consequently, favour Christian values over other beliefs and prioritize men over women. This recognition underscores the inherent biases within ostensibly neutral procedural frameworks, prompting a critical examination of the normative dimensions embedded in state practices.³⁹ Seth further provides an example to clarify the issue of exclusion and lack of universality, and that in the realm of feminist scholarship, a parallel can be drawn to illustrate the profound impact of exclusion on political thought. For instance, the denial of rationality, suffrage, and equality to women wasn't merely an absence; it fundamentally shaped the nature of modern political thought and the governance structures established in the 18th and 19th centuries. This wasn't a case of simple exclusion followed by later remedy; rather, it underscores how exclusions can have lasting and transformative effects on the foundations of political ideologies and structures.⁴⁰

3.2 STATE CRITERIA AND SOVEREIGNTY

To recognize a community as a state is to declare that it fulfils the conditions of statehood as required by international law.⁴¹ The concept of the "principle of effectivity" has played a pivotal role in the legal discourse surrounding the recognition of statehood. The established criteria, commonly referred to as the 'traditional criteria' for the legitimate recognition of a state were formalized in the Montevideo Convention on Rights and Duties of States which was adopted in 1933. Although the Convention is only ratified by states in North and South America it has developed to the status of customary international law, which is legally binding upon all states. The criteria is purely descriptive and states that an entity is entitled to recognition as a state if and only if it possesses these four elements: (1) a permanent population; (2) a defined territory; (3) a functioning government able to control the territory in question; and (4) the capacity to enter into relations with other states on its own account. Therefore, if entities satisfies these traditional criteria, they could be considered as independent states and granted the rights of sovereignty and should be recognized as such in international law.⁴² Once a territory achieves statehood, it can only be lost in the rarest of circumstances.⁴³ The traditional concept of sovereignty, derived from the Treaty of Westphalia, held that the state is sovereign. The rights of

³⁹ Ibid.

⁴⁰ Seth, 2011, p. 173

⁴¹ Lauterpacht, 1944, p. 385

⁴² Buchanan, 1999, p. 48-49

⁴³ Ludsin, 2013, p. 103

sovereignty belonged to the state, acting through its government, and are absolute.⁴⁴ The traditional concept contains no requirement that the government must be legitimate in the eyes of the people or that they conform to human rights standards, neither is the form of the government relevant to determining sovereignty. Whoever has the power to control the population, territory and borders has the right to claim sovereignty and sovereign rights.⁴⁵ However, developments over the last half century have led many to challenge this traditional notion of sovereignty. These challenges have typically fallen within the categories of global interdependence, and human rights and humanitarian concerns.⁴⁶ As Abram Chayes and Antonia Handler Chayes described, “modern states are bound in a tightly woven fabric of international agreements, organizations, and institutions that shape their relations with each other and penetrate deeply into their internal economies and politics.”⁴⁷ In essence, this implies that the contemporary landscape sees states engaging more extensively in international agreements and collaborations, where their sovereignty is intricately interwoven with the structures and mechanisms of global governance. The acknowledgment of global interdependence contributes to the evolving nature of state sovereignty in the face of these challenges. Additionally, the international community of states is increasingly recognizing the importance of human rights and is more often refusing to simply sit and watch as they are violated. Humanitarian interventions on behalf of suffering populations have been increasing since the early 1990s. These interventions often include military actions in efforts to change the existing government.⁴⁸ Lastly, the phenomena of fragile states, wars and terrorism have also challenged the traditional notions of sovereignty and states’ claim of sovereignty. Fragile states often lose control over some or all of its population or territory, two elements which are necessary for claiming statehood, although they often retain their sovereign status.⁴⁹

In modern times, especially with the integration of the UN Charter, the traditional criteria for statehood has transformed to include the crucial aspects of upholding human rights and being peace-loving. This standard becomes significantly compromised when there is systematic suppression and discrimination against women's rights, as observed in the context of Afghanistan.

⁴⁴ Ibid.

⁴⁵ Ludsin, 2013, p. 104

⁴⁶ Ibid.

⁴⁷ Ludsin, 2013, p. 105

⁴⁸ Ludsin, 2013, p. 108

⁴⁹ Ludsin, 2013, p. 137

Therefore, by incorporating gendered recognition into the criteria of recognition, there emerges a pivotal emphasis on the principles of equality and human rights.

3.3 WHAT DOES GOVERNMENTAL RECOGNITION ENTAIL?

Despite its regular occurrence in world affairs over the last centuries, there seems to be no scholarly agreement on this question yet. However, simply put, the term recognition, or non-recognition, can be interpreted as an indication of willingness, or unwillingness, on the part of the recognizing government to establish or maintain official diplomatic relations with the government or entity in question, though the relation may not necessarily be an intimate relation.⁵⁰ There still remain questions as to whether recognition is solely a legal question, or if it is a matter of policy and national interest of states.⁵¹ As H. Lauterpacht has stressed in his article *Recognition of States in International Law*, many scholars argue that recognition is primarily a matter of policy rather than a legal obligation. Because the act of recognition itself is not bound by law but driven by national interests. Despite denying recognition is a legal act, some writers acknowledge that it has legal consequences, marking the beginning of international personality with associated rights. Issues like *de jure* and *de facto* recognition, implied recognition, and conditional recognition are considered legally relevant. However, the overarching opinion is that the initiation of a state's international personality and its legal right to existence is, according to these writers, beyond the scope of international law.⁵²

The exploration of recognition in international law only emerged as a subject of interest in the 19th century. Classical theories of international law, rooted in natural law, considered the status of a political entity irrelevant, as norms derived from natural law were deemed binding for all international actors irrespective of statehood. It was with the increasing orientation towards legal positivism during the 19th century that the classification of a political entity as a state gained a more significant importance. Legal positivism asserts that international law is a system established by states themselves to regulate their mutual relations, and its norms hold validity only for entities officially recognized as states through a legitimate legal act.⁵³ However, the matter of recognition is dynamic and continually evolving. The contemporary trend of recognition seems to no longer be the formal recognition of governments of states, but rather focus

⁵⁰ Talmon, 2001, p. 22

⁵¹ Lauterpacht, 1944, p. 386

⁵² Ibid.

⁵³ Dietrich, 2013, p. 189

on the continuation, or discontinuation, of diplomatic relations. However, an examination of the practice of recognizing states shows that the adoption of this policy signifies only a change in the method of according recognition, not the abolition of recognition of governments as such.⁵⁴ Recognition may be implicit and may result from the simple continuation of diplomatic relations.⁵⁵ Thus, rather than formally announcing the recognition of a new government, states that follow this policy, as a rule, implicitly recognize a new authority in power as the government of a foreign state simply by continuing its diplomatic relations.⁵⁶ This shift in policy may be a consequence of states seeking to avoid difficulties in deciding whether or not to recognize new regimes who have come to power by non-constitutional means.

Recognizing governments can be a rather intricate matter, not primarily due to the ambiguity of the underlying principles, but rather because the term 'recognition' lacks a precise and well-defined definition and criteria. This absence of a clear definition has, at times, led government departments to engage in debates over whether they have indeed recognized a particular government or not.⁵⁷ Although the literature on this subject may give the impression that 'recognition' and 'non-recognition' carry a consistent, unequivocal legal significance, Professor Brownlie has pointed out that this is not the case.⁵⁸ Recognition, or non-recognition, could both mean that a state does not recognize another state because the entity or political organization concerned does not qualify in legal terms to be recognized, due to it not satisfying the criteria of statehood, although that tends to be rare. The more common form of non-recognition could also mean that even though a state does legally qualify as a state in law, another state is not willing to recognize it as such on political grounds.⁵⁹ Most textbooks inaccurately imply that 'recognition' of governments is relevant solely in scenarios where a government comes to power through a coup or revolution. In reality, even in constitutional governments where no formal recognition statement exists, recognition is implied when states maintain interactions with the newly elected government, as previously stated. This implies that recognition is not restricted to unconstitutional governments. In certain instances, states have both explicitly acknowledged and declined

⁵⁴ Talmon, 2001, p. 3

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Talmon, 2001, p. 21

⁵⁸ Brownlie, 1982, p. 198

⁵⁹ Ibid.

to acknowledge elected governments. Therefore, the usage of the term 'recognition' by states varies according to the specific circumstances and legal context of each case.⁶⁰

In the realm of international relations, different terms are often used to describe governments and their relationship with other nations. While some terms define distinct, unique relationships, other terms, such as 'government', '*de facto* government', '*de jure* government', 'legal or legitimate government', and '(sole) representative of a people', have become standard ways to characterize different aspects of governments and define the nature of official relations between governments. It is important to differentiate their descriptive use from their function in the formal acknowledgement of a government. For example, a '*de facto* government' can function before it has gained international recognition, signifying the practical existence of a government before formal acknowledgement by other nations.⁶¹ According to Brownlie, similar to 'recognition,' these other terms only acquire meaning when we consider the specific intention expressed by a government on a particular occasion. It's possible that a particular government may use '*de jure*' and '*de facto*' consistently, but this needs to be substantiated. In fact, these terms are full of uncertainties because they rely on pseudo-legal terminology. For instance, '*de jure*' may seem to relate to legality, but it actually implies acting without reservation and on a definitive basis. Consequently, the disparity between '*de jure*' and '*de facto*' recognition may be relatively minor, primarily reflecting variations in the degree of political approval and acceptance.⁶²

Allen Buchanan in his essay *Recognitional Legitimacy and the State System*, stated that governments should not be recognized as legitimate if (1) they seize power, or if (2) they fail to meet the minimal requirements of justice in their behaviour within the state's borders, for example by violating basic human rights. If a government does either of these things, it ought not be regarded as the legitimate government because it does not have the internal legitimacy of its own people.⁶³ The political entities that are not recognized by the international community can suffer from grave disadvantages. Such as, not having access to the United Nations or other international organizations where important decision-making proceeds. They cannot establish diplomatic relations with states refusing to recognize them, and they cannot make legally

⁶⁰ Talmon, 2001, p. 31

⁶¹ Talmon, 2001, p. 23

⁶² Brownlie, 1982, p. 207

⁶³ Buchanan, 1999, p. 63

binding treaties with them.⁶⁴ Consequently, the legal insecurity and the political isolation which are brought about by being collectively non-recognized can gravely affect the investment climate as well as the economic development for the country not recognised.⁶⁵ In the broader context of international relations and the consequences of non-recognition, it is striking that the extensive literature on the subject has largely overlooked the crucial issue of women's rights. While discussions have delved into the intricacies of state and governmental recognition, the impact on diplomatic relations, and the legal consequences for non-recognized entities, there remains a conspicuous gap in addressing the specific implications for women within these political dynamics. Women's rights are a fundamental aspect of human rights, and any comprehensive examination of political entities and their international standing should inherently encompass the consideration of gender equality and the protection of women's rights. The absence of explicit attention to this critical dimension in the discourse on recognition raises questions about the extent to which gender considerations are integrated into the broader framework of international relations.

3.4 THEORIES OF RECOGNITION

As Lauterpacht stressed, the complexity surrounding the recognition of states has been compounded by the persistent debate between two doctrines: the declaratory and the constitutive doctrines.⁶⁶ This enduring dispute has often overshadowed a crucial point of agreement between these doctrines — both historically reject the idea that recognition entails a legal obligation towards the community asserting it. This observation underscores the need to look beyond the doctrinal divide and explore the shared perspective that recognition does not inherently involve a legal duty towards the claiming community.⁶⁷

Professor Brownlie's firm belief is that in the realm of 'recognition,' theories have played an unfortunate role. He has clearly articulated the view that these theories, as found in the literature, tend to take a front-and-centre position, adopting a 'theological' role with a self-proclaimed validity.⁶⁸ This stance not only distracts students but also positions the theories as masters rather than servants. Despite these drawbacks, Brownlie suggests it is beneficial, if not entirely

⁶⁴ Dietrich, 2013, p. 188

⁶⁵ Dietrich, 2013, p. 188

⁶⁶ Lauterpacht, 1944, p. 386

⁶⁷ Lauterpacht, 1944, p. 386-387

⁶⁸ Brownlie, 1982, p. 205

necessary, to engage with the leading theories on their own terms. However, he prefaced his argument with a complaint about the inherent problem in approaching the selection of the correct or preferred theory of recognition. This approach, he argues, immediately encourages a simplified view and steers away from the application of ordinary legal analysis. Professor Brownlie proceeds to present both the declaratory theory and the constitutive theory, contributing to the discourse on recognition while navigating the challenges he perceives in the current theoretical landscape.⁶⁹ The two theories will be briefly presented now.

3.4.1 The Declaratory Theory

The most traditional theory in twentieth-century doctrine was the declaratory theory. The essence of that theory, as expressed by Brierly, is that granting of a recognition to a new state or entity is not a 'constitutive' but a 'declaratory' act. In other words, granting recognition doesn't create a new state that didn't exist previously. A state can exist even without formal recognition, and if it genuinely exists in reality, then whether or not other states have officially acknowledged it, those states should treat it as a state. The primary purpose of recognition is to affirm a previously uncertain fact, specifically the independence of the entity claiming to be a state, and to signify the recognizing state's willingness to embrace the usual consequences of this fact, such as standard international diplomatic protocols.⁷⁰ The declaratory nature of recognition theory aligns with the perspective of its counterpart, acknowledging the absence of a legal obligation to grant recognition under any circumstances. Paradoxically, it asserts that before recognition, the emerging community functions as a state and possesses numerous crucial attributes of statehood. This implies that, from a legal standpoint, the newcomer has the right to assert the typical legal outcomes of recognition but does not have the right to demand recognition itself.⁷¹

3.4.2 The Constitutive Theory

In opposition to the 'declaratory theory' is the 'constitutive' theory, according to which the political act of recognition on the part of other states is preconditioned by the existence of legal rights. In a more extreme interpretation, this suggests that a state's very existence could be contingent on the political decisions of other states. The constitutive theory comes in different forms, and some of its proponents propose a milder version, acknowledging that certain basic

⁶⁹ Brownlie, 1982, p. 205-206

⁷⁰ Brownlie, 1982, p. 206

⁷¹ Lauterpacht, 1944, p. 386-387

rights and responsibilities exist even before formal recognition. These attempts to address the status of an "unrecognized state" tend to move closer to the "declaratory" perspective. Nevertheless, the central idea of the constitutive theory is problematic. States cannot, through the tactic of refusing to recognize, determine, and effectively, reject their legal responsibilities toward other states.⁷² As Lauterpacht asserted, the constitutive theory, as typically explained, leads to two key assertions. First, before recognition, the community in question lacks both the rights and obligations associated with full statehood according to international law. Second, recognition is viewed as an entirely discretionary political decision rather than a legal obligation owed to the community. These two assertions, are not mutually contradictory.⁷³

To sum up, the constitutive theory asserts that a state comes into existence only upon receiving recognition. In contrast, the declaratory theory maintains that a state exists independently of recognition; recognition merely acknowledges a pre-existing reality.

3.5 DO STATES HAVE A DUTY TO RECOGNIZE?

Prominent international legal scholars such as Lauterpacht and Paul Guggenheim held the perspective that recognition has a 'constitutive' impact. However, in contrast to other proponents of this theory, they maintained that there was a 'legal obligation' to grant recognition. However, because 'recognition' is not a precise legal term and covers various forms of state conduct, it is not a sound approach to simply assert the existence of an unconditional 'duty to recognize'. Recognition, serving as a public endorsement by a state, is a political and discretionary action, and, in this respect, there cannot be a legal obligation to make such a declaration. However, if an entity exhibits the attributes of statehood, other states expose themselves to legal risk if they neglect the fundamental responsibilities of State relations. Similar considerations apply to the recognition of governments. Regarding the actions of states, there is an obligation placed on them to adhere to specific fundamental principles of international law. Therefore, there is a legal obligation to 'recognize' other states for certain purposes, notably when it comes to applying legal guidelines governing the use of force. However, this duty does not extend to making a formal, public, and political declaration of recognition or engaging in discretionary bilateral relations, such as treaty-making and establishing diplomatic ties.⁷⁴

⁷² Brownlie, 1982, p. 206

⁷³ Lauterpacht, 1944, p. 386

⁷⁴ Brownlie, 1982, p. 209

3.6 DO WOMEN NOT HAVE THE RIGHT TO SELF-DETERMINATION?

The principle of self-determination of peoples is a fundamental principle in international law and is mentioned in several United Nations (UN) Conventions and Resolutions, as well as in the UN Charter. Article 1 in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) reads that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. However, as Rupert Emerson stated in his article 'Self-Determination,' 'not all people have the right of self-determination: they have never had it, and they never will have it.' He further continues that the reason is that the term 'peoples' is too vague of a description, having no fixed or definable content, rendering it meaningless or highly unlikely to be taken seriously.⁷⁵

The distinction between public and private spheres undermines the effectiveness of the right to self-determination in international law. As stated before, self-determination entails the freedom of "all peoples" to determine their political status and pursue economic, social, and cultural development. However, this principle is contradicted when one sector of a nation-state's population dominates and marginalizes another. The treatment of women within groups asserting a right to self-determination should be considered in evaluating those claims. But the international community's response to the claims to self-determination of the Afghan women, for example, indicates little concern for the position of women within those groups.⁷⁶ This implies that even though the international community recognizes the right of “peoples” to self-determination, women have not been viewed as a “people” for the purposes of the right to self-determination. In most instances, the pursuit of self-determination as a political response to the colonial rule has not resulted in terminating the oppression and domination of one section of a society by another.⁷⁷

States often display complete indifference to the plight of women when formulating their responses to self-determination claims, perpetuating the international invisibility of women. For instance, after the Soviet Union vetoed a Security Council resolution on the invasion of Afghanistan, the General Assembly reasserted "the inalienable right of all peoples... to choose

⁷⁵ Emerson, 1966, p. 136

⁷⁶ Charlesworth, Chinkin & Wright, 1991, p. 642

⁷⁷ Charlesworth, Chinkin & Wright, 1991, p. 643

their own form of government free from outside interference." However, this concern focused solely on "outside" intervention. Women, who arguably face greater challenges from "internal" intervention, are constrained by masculine dominance within the state and are subject to constant male coercion. The lofty ideals of non-interference do not extend to women, as their self-determination is overshadowed by that of the larger group. The denial of women's freedom to determine their economic, social, and cultural development should be a factor considered by states when evaluating the legitimacy of requests for assistance in achieving self-determination and claims regarding the use of force.⁷⁸ As one can tell, the Afghan women have throughout history and today lacked their right to self-determination.

This underscores the importance of incorporating a gender perspective when contemplating the recognition of entities. The notion of a gendered recognition will be further explained in the following section.

4 INCLUDING WOMEN THROUGH A GENDERED RECOGNITION

As indicated by the background information given, the Westphalia State System and its subsequent forms have neglected the inclusion of women and their rights. The responsibility for safeguarding the population lies with the state, yet it appears to have fallen short in protecting half of its populace. This omission underscores the necessity for a gendered recognition framework. The ensuing section will delve into a more detailed discussion on why a gendered approach is imperative, shedding light on the inadequacies of existing state systems in addressing the specific needs and rights of women and proposing additional criteria for gendered recognition.

4.1 UNMASKING PATRIARCHY IN STATE AND INTERNATIONAL LAW

According to Catharine MacKinnon, the state often presents itself as neutral and impartial in its actions, ostensibly safeguarding freedoms like equality, liberty, privacy, and freedom of speech for all members of society. However, from this perspective, the state's claim to neutrality is used to maintain the existing power dynamics, which predominantly favour men. In other words, it is argued that the state maintains the appearance of curbing excessive male power

⁷⁸ Charlesworth, Chinkin & Wright, 1991, p. 643

when necessary to uphold the status quo and existing power structures.⁷⁹ The prevailing patriarchal characteristics of our society and the framework of the international legal system reflects a male perspective and has ensured its continued dominance. The primary subjects of international law are states and, increasingly, international organizations. In both states and international organizations the invisibility of women is striking. Power structures within governments are overwhelmingly masculine, and women are either unrepresented or underrepresented in the national and global decision-making processes.⁸⁰ Achieving gender equality in leadership is crucial for informed decision-making in politics, the workplace, and public life. States are patriarchal structures not only because they exclude women from influential positions and decision-making roles, but also because they are based on the concentration of power in, and control by, an elite and the domestic legitimation of a monopoly over the use of force to maintain that control.⁸¹ This foundation of patriarchy is reinforced by international legal principles of sovereign equality, political independence and territorial integrity and the legitimation of force to safeguard those attributes. This normative structure of international law has allowed issues of particular concern to women to be either ignored or undermined for too long.⁸² Therefore, a change of approach is fundamental for the protection and inclusion of women.

4.2 APPLYING FEMINIST ACCOUNTS OF LAW IN INTERNATIONAL LAW

How can feminist theories be employed in the context of international law to advocate for gendered recognition? Feminist legal theory promotes a variety of activities to make international law more inclusive and universal. The term signifies that there is an interest in gender as a matter of primary significance. It directs attention towards women both as individuals and members of groups, advancing a political agenda centred on achieving genuine social, political, economic, and cultural equality irrespective of gender. At its core, feminist legal theory adopts a critical stance, involving the analysis of "masculinism" and male hierarchical power, commonly referred to as "patriarchy." It serves as a means to reinterpret and reformulate substantive law, to ensure that it more accurately mirrors the diverse experiences of all individuals. Additionally, it presents an alternative approach to the practice, discourse, and understanding of law. The feminist method is inherently concerned with scrutinizing the foundational aspects of legal persuasion, including the language employed, the organization of legal materials into rigid

⁷⁹ Rhode, 1994, p. 1184

⁸⁰ Charlesworth, Chinkin & Wright, 1991, p. 621-622

⁸¹ Ibid.

⁸² Charlesworth, Chinkin & Wright, 1991, p. 625

categories, the acceptance of abstract concepts as inherently valid or "pure", the reliance on confrontational and adversarial techniques in practice, and the perpetuation of male-dominated hierarchical structures within legal and political institutions.⁸³ Therefore, in proposing gendered recognition within the realm of international law and policy, employing the feminist method becomes pivotal as it provides a critical framework for analysing and reshaping established legal structures and norms, fostering genuine equality and inclusivity based on an understanding of diverse experiences.

4.3 EMPOWERING CHANGE THROUGH THE WPS AGENDA

The WPS Agenda and the ten Security Resolutions that were adopted brought about some achievements in advancing feminist theories of international law. The first is new language, particularly in R1325 and R1889, that more fully recognizes women as subjects of international law, enjoying autonomy and rights, which displaces, or at least reduces in importance, the protective representation of women as a 'vulnerable group' and 'victims' of armed conflict which had characterized the Security Council's previous sporadic official references to women. The second achievement is the snowball effect of these resolutions on institutional activity, backed by the political-institutional power of the Security Council. Following the adoption of R1325, many parts of the UN system became actively engaged in developing policies and programmes associated with it, and many feminist experts have found employment of feminism within the institution as a result. The Inter-Agency Network on Women and Gender Equality (IANWGE) established a Task Force on Women, Peace and Security in order to promote and coordinate integration of gender perspectives into all peace and security works of the UN bureaucracy.⁸⁴ All of this institutional activity has created footholds for feminist ideas within the UN, which can serve as a vantage point from which further supportive institutional developments may be launched. Nonetheless, it is crucial for the WPS Agenda to go beyond mere rhetorical shifts and abstract ideals; it requires active implementation and widespread adoption throughout the international community. This necessitates a concerted effort to translate these principles into tangible actions, ensuring their effective application and impact.

⁸³ Charlesworth, Chinkin & Wright, 1991, p. 634-641

⁸⁴ Otto, 2010, p. 103-104

4.4 THE NOTION OF GENDERED RECOGNITION

In essence, a gendered recognition of an entity would entail the acknowledgment and consideration of the distinct gender dynamics, implications, and consequences associated with recognizing a particular group or entity. The traditional criteria of statehood and recognition does not sufficiently acknowledge women's situation nor women's rights when determining whether to grant recognition or not to an entity. Therefore, adopting a gendered perspective to recognition would contribute significantly to empowering women and promoting their rights. This involves a nuanced understanding of the multifaceted ways in which gender operates within the context of the entity being recognized, encompassing social, cultural, and structural dimensions that shape and influence its dynamics. Such a comprehensive approach seeks to promote a more equitable and inclusive recognition that reflects the diverse experiences and needs of individuals within the identified group or entity. Gendered recognition encompasses the idea that the recognition of a government, political entity, or organization should be considered through a gender-sensitive lens, taking into account the impact on gender equality, women's rights, and gender dynamics. In an international climate where women's rights are diminishing everywhere, a consideration of gender is essential when determining whether to grant an entity recognition or not. Granting recognition to an entity, such as the Taliban *de facto* authorities of Afghanistan, without women's rights conditions would essentially legitimize that the international community does not consider women to have the same right to self-determination as men, and reaffirm the patriarchal structures of society and international law. A gendered recognition of the Taliban is essential to safeguard the rights and well-being of women and other marginalized gender groups in Afghanistan. It would involve a combination of diplomatic efforts, conditionality, and international pressure to ensure that the Taliban respects and upholds human rights, including gender rights, as part of their governance.

4.5 THE ADDITIONAL CRITERIA OF A GENDERED RECOGNITION

As illustrated, international law lacks explicit criteria mandating prerequisites for the recognition of a government, with recognition being commonly perceived as a discretionary political decision rather than a stringent legal mandate. Consequently, it becomes crucial to establish specific criteria, including considerations of gendered recognition, to prevent the legitimization of governments that fail to adhere to international law, and ensuring that their rulings do not become normalized. The inclusion of gendered recognition in these criteria further emphasizes the importance of acknowledging and addressing gender dynamics in the evaluation and validation of governments within the international legal framework. These criteria should align

with the goals of the WPS agenda, to promote and prioritize the rights, well-being, and participation of women in all aspects of peace and security. Moreover, it should encompass the empowerment of women to actively participate in society and decision-making, whether in leadership roles, government, peace processes, or other spheres.

In light of this, a critical additional criteria should be to promote women's active participation in decision-making processes and the participation of women in government. Studies show higher numbers of women in parliament generally contribute to stronger attention to women's issues. Women's political participation is a fundamental prerequisite for gender equality and genuine democracy.⁸⁵ The attainment of the Sustainable Development Goals by 2030 (SDGs) relies crucially on women's equitable involvement and leadership in political and public spheres. Yet, global data reveals a consistent underrepresentation of women at decision-making levels, indicating a substantial gap in achieving gender parity in political engagement. According to a calculation made by UN Women, based on information provided by Permanent Missions to the United Nations, as of 15 September 2023, there are only 26 countries where 28 women serve as Heads of State and / or Government, which means at the current rate, gender equality in the highest positions of power will not be reached for another 130 years. Further, only 15 countries have a woman Head of State, and 16 countries have a woman Head of Government. Data compiled by UN Women as of January 1, 2023, reveals that women constitute 22.8 percent of Cabinet members leading Ministries, and only 13 countries have achieved gender parity in these roles. The most common portfolios held by women Cabinet Ministers include Women and gender equality, Family and children affairs, Social inclusion and development, Social protection and social security, and Indigenous and minority affairs.⁸⁶ This indicates that women are often excluded from positions of hard power and security policy, and more often given soft power roles, keeping in line with stereotypical gender roles of patriarchy. There is overwhelming evidence that women's participation in politics is beneficial to both their own communities and societies, and broader peace and stability. The inclusion of women in political processes is a key element in achieving a truly inclusive democracy, and women must have the

⁸⁵ UN Women, 2020

⁸⁶ UN Women calculation based on information provided by Permanent Missions to the United Nations. Countries with monarchy-based systems are excluded from the count of Heads of State. Retrieved from: https://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures#_edn3

chance to exercise their political rights and participate in all political decision-making, which is why it is an essential criteria for a gendered recognition.⁸⁷

The inclusion of women in peace processes should also be of utmost importance. Global peace has been in decline for the past decade. Despite significant efforts by the UN and others, including civil society and regional organizations, high-level peace processes remain largely stalled and women's meaningful participation limited. This under-representation and participation of women has a deleterious effect on prospects for reaching durable agreements.⁸⁸ Persisting as an enduring challenge, this issue reflects a historical pattern that extends across multiple decades. Between 1992 and 2019, women, on average, constituted merely 14 percent of negotiators in major peace processes. Similarly, the involvement of women as mediators presented a disconcerting discrepancy, with an average representation of 6 percent during that period. Moreover, their presence as signatories of peace agreements was limited to a mere 6 percent.⁸⁹ Georgetown University's Institute for Women, Peace and Security presented findings from a recent study on global trends in women's involvement in peace processes. The study revealed that among 63 post-Cold War peace processes, 38 featured identifiable informal initiatives, with nearly three-fourths involving active participation from recognised women's groups. Notably, over half of all peace processes witnessed informal endeavours, highlighting the significant role of women's groups in concerted efforts to contribute to peace-building.⁹⁰ Research has shown that countries with greater gender equality are more likely to resolve conflicts without violence and are less likely to use military force to resolve international disputes. Conversely, countries with more significant gender gaps are more likely to be involved in inter- and intrastate conflict.⁹¹ Thus, the lack of recognition towards women's contribution to peace persists, despite research demonstrating that a peace process is 35 percent more likely to last for fifteen years if women are involved at the negotiating table, either through observer status, inclusive commissions or as total participants.⁹² This highlights the imperative to include women in peace processes as a criterion for gendered recognition.

⁸⁷ NIMD, n.d.

⁸⁸ UN Women, 2018

⁸⁹ Council on Foreign Relations, n.d.

⁹⁰ UN Women, 2018

⁹¹ Council on Foreign Relations, n.d.

⁹² Warnaffe, 2021

Lastly, the foundational principles of equality and non-discrimination should be upheld in order to gain a gendered recognition. A state which excludes women is not peace-loving and violates the principles of the UN Charter. Prohibitions against gender-based discrimination are enshrined in nearly every human rights treaty. Despite significant strides in advancing women's rights on a global scale, the harsh reality persists for millions of women and girls who endure ongoing discrimination and violence, stripping them of their fundamental rights to equality, dignity, autonomy, and even life itself. This pervasive discrimination and violence against women and girls, deeply embedded in the societal fabric, manifests itself as a persistent and systematic challenge. In recent years, a concerning trend has emerged, marked by a resurgence of scepticism and denial concerning international standards related to women's human rights, gender equality, and the eradication of gender-based violence. Concurrently, women and girls are increasingly vocalizing their demands for equality, exemplified through the momentum of feminist movements seeking to challenge and transform these deeply entrenched norms.⁹³ Thus, a gendered recognition should be contingent upon the inclusion of explicit conditions mandating gender equality and non-discrimination. It is important to note that the additional criteria provided do not cover all aspects that gendered inclusion should encompass. Nevertheless, they serve as a foundational starting point.

So far, the thesis has comprehensively examined the established criteria for state and governmental recognition, and introduced the proposal of gendered recognition along with its additional criteria. The ensuing section will employ the case of Afghanistan as an illustrative context to underscore the significance and practical implications of advocating for gendered recognition within the realm of international relations.

⁹³ OHCHR, n.d.

5 HOW WE FAILED THE WOMEN IN AFGHANISTAN

The upcoming section will present the case of Afghanistan and provide a brief overview of past endeavours to secure women's rights in Afghanistan and examine how these initiatives fell short in empowering the Afghan women in the past, as well as the situation of the Afghan women under the current Taliban regime. This will pave the way for the discussion of exploring how a gendered recognition can contribute to empowering women in Afghanistan.

5.1 INTERNATIONAL INTERVENTIONS IN AFGHANISTAN AND THE ILLUSION OF WOMEN'S PROTECTION

For decades there has been international presence in Afghanistan, often hiding under the claim that it is for the protection of the Afghan women. Whether it was the Soviet Union's presence in 1979 or the United States during the "War on Terror" from 2001 to 2021, the narrative often included claims of using force to safeguard women's rights.⁹⁴ However, both interventions had underlying motives beyond the stated goal of protecting women. Substantial resources were allocated to the militarization of Afghanistan, aiming to eradicate the Taliban and establish a legitimate government committed to safeguarding women's and human rights. Ironically enough, employing military force to implement women's rights contradicts the feminist principles and commitments to peace. Moreover, the trajectory of women's rights in Afghanistan post-invasion indicates that the focus on women's rights was largely surface-level.⁹⁵ While the interventions led to the downfall of the Taliban regime and the establishment of a democratic government with a new constitution that respected human and women's rights,⁹⁶ including the ratification of international treaties like the CEDAW Convention, the military endeavours ended in a colossal failure when, under the Trump administration, the Taliban successfully used negotiating for peace as a weapon of war, and were rewarded with the Doha Accord, recognizing the Taliban as political stakeholders in Afghanistan without adherence to human rights.⁹⁷

This highlighted the readiness of international actors to side-line women's rights, as these rights weren't incorporated into the Doha Accord. All the while, they express empty rhetoric about

⁹⁴ Bennoune, 2022, p. 7

⁹⁵ Charlesworth, 2011, p. 37

⁹⁶ Afghan women were increasingly participating in government affairs, making up 28% of the Afghan legislative body, which is higher than the global average. Since 2001, more than 150,000 Afghan women were elected to serve as community representatives on community development councils, the majority in rural areas. Statistics retrieved from: <https://behorizon.org/the-afghanistan-peace-process-what-about-women/>

⁹⁷ Faheem & Khan, 2022, p. 87

the empowerment of women.⁹⁸ Following the withdrawal of international troops from Afghanistan by the Biden administration, the Taliban, after decades of conflict, regained control in the country in a matter of weeks. Contrary to the anticipated intra-Afghan dialogue desired by the United States and its allies, this power shift resulted from the Taliban's military triumphs on the battlefield, culminating in the fall of Kabul on August 15, 2021.⁹⁹ These military interventions have shown that the current crisis in Afghanistan does not have a military solution. According to an Afghan news manager, Mir Aqa Popal, the ongoing crisis in Afghanistan cannot be resolved through military means and that the events of the last two decades have underscored that the path to resolution must be through a political and diplomatic solution. He further states that it is crucial for the Taliban to understand that their style of governance is not acceptable. The Afghan people have evolved during the period between the previous regime and the current, and that there is a strong desire among the people not to revert to the dark times of the past. Any agreement lacking assurances for the current political framework, encompassing a republic, human rights, women's rights, and the freedom of expression and press, will not result in a sustainable and lasting peace in Afghanistan,¹⁰⁰ as demonstrated by the shortcomings of the Doha Accord.

5.2 EXCLUSION OF WOMEN IN THE DOHA PEACE PROCESS

The Qatar-based Peace Process between the United States and the Taliban, which created the Doha Accord, paved the way for a complete withdrawal of the US and other international forces from Afghanistan. This process not only resulted in ending the twenty year "War on Terror" in Afghanistan, but it also culminated in emboldening the Taliban to capture and control Afghan territories through force instead of Afghan-led and supported intra-Afghan dialogue.¹⁰¹ The Doha Accord was supposed to be an agreement for bringing peace to Afghanistan between the Islamic Emirate of Afghanistan, which is not recognized by the United States as a state and is known as the Taliban, and the United States of America. The peace agreement was made up of four parts: (1) guarantees and enforcement mechanisms that will prevent the use of the soil of Afghanistan by any group or individual against the security of the U.S and its allies; (2) withdrawal of all foreign forces from Afghanistan; (3) the start of an intra-Afghan negotiations with Afghan sides; and (4) a permanent and comprehensive ceasefire to be an item on the agenda of

⁹⁸ Bennoune, 2022, p. 36

⁹⁹ Faheem & Khan, 2022, p. 87-88

¹⁰⁰ Azizi, 2021

¹⁰¹ Faheem & Khan, 2022, p. 87-88

the intra-Afghan dialogue and negotiations, and an agreement over the future political roadmap of Afghanistan.¹⁰² Further, this agreement was supposed to recognize the Taliban as political stakeholders in Afghanistan and to remove the members of the Islamic Emirates of Afghanistan from the sanctions list of the United Nations Security Council.¹⁰³

In an interview conducted by Makhfi Azizi¹⁰⁴, Afghans shared their view on the Doha Peace Process. The Afghan population viewed the Doha process as a diminishing force for their citizens, political figures, and the nations participating. Regarded as unilateral, the agreement is perceived to neglect the interests of the majority of the Afghan people. They emphasized that there is a need for tangible impacts of the peace talks in people's lives for them to have faith in this process, which is what the Doha Accord failed to live up to.¹⁰⁵ The agreement was a failed diplomatic effort, crafted and reached in the absence of the Afghan government and Afghan people.¹⁰⁶ Furthermore and ironically enough, despite women being cited as one of the justifications for the presence of international forces in Afghanistan, the Doha Accord made no reference to women. Any agenda on women's rights was off the table, confirming the inhumane treatment of women in Afghanistan under the Taliban rule.¹⁰⁷ To no one's surprise, Taliban delegation maintained an all-male composition, consistent with previous instances. However, one of the major strategic failures was the lack of inclusion of women during the peace process from the United States and Afghan government. Among the Afghan government negotiators, only four out of twenty-one representatives were women. This stark gender imbalance already raised serious concerns about the potential regression of human rights, particularly those of women. Despite calls from influential entities like the EU and international organizations emphasizing the importance of safeguarding human rights, specifically women's rights, the lack of female representation in the peace negotiations was a clear warning sign. Additionally, the Afghan government had taken steps such as adopting a National Action Plan on UNSCR1325, aligning with the Women, Peace, and Security agenda of the UN Security Council. This plan included a commitment to achieving fifty percent women's participation in high and mid-level

¹⁰² US & Taliban, 2020

¹⁰³ Ibid.

¹⁰⁴ Makhfi Azizi is the director of the Campaign for Afghan Women and Girls at the Feminist Majority Foundation. She has been working with the foundation in this capacity for two years and works on issues of human rights, peace and security. Makhfi is dedicated to women's equality, peace and democracy in Afghanistan.

¹⁰⁵ Azizi, 2021

¹⁰⁶ Ibid.

¹⁰⁷ Human Rights Watch, 2021

positions related to peace and conflict issues. However, this commitment has not been fulfilled. The peace table therefore failed to represent half of Afghanistan's population.¹⁰⁸ As the Human Rights Watch stated, 'Afghanistan's government and its international partners are failing in their obligation to ensure that Afghan women are full participants in all peace processes. In keeping with United Nations Security Resolution 1325 on women, peace and security, talks between the Afghan parties scheduled for April 2021 need to include the "full participation" of women.'¹⁰⁹ On March 18 2021, the Russian government convened a summit with participants from the Afghan government, the Taliban, and partner nations, with the objective of promoting peace talks. The Afghan government delegation, consisting of 12 members, featured a regression in gender inclusion with only one woman, Dr. Habiba Sarabi, compared to the prior intra-Afghan dialogue in Doha, Qatar, in September 2020, where four women were among the 20 members. Heather Barr, interim co-director of women's rights at the Human Rights Watch expressed her concerns when she stated: 'the minimal inclusion of women at the Moscow talks shows an appalling disregard for Afghan women's struggle for over a decade to be full participants in peace processes as called for by the UN Security Council.' She further expressed her disappointment towards the Afghan government's inadequate level of women's participation, stating that the women have again been pushed aside and ignored.¹¹⁰

Most of the coverage of women in a consistent way has been either as victims of disaster, the women left behind, or killed by hijackers, or by American bombs gone astray in Afghanistan, or women as victims of the Taliban with a particular focus on women being forced to wear the burqa. However, very little attention was paid to the way that women would be involved in the future of Afghanistan, even by Western NGOs covering this. Most plans and blueprints of the future of Afghanistan refer to the need to not discriminate against women, but do not provide any positive measures of inclusion.¹¹¹ Recognizing the substantial strategic value, it is crucial for the international community to perceive women in general, and Afghan women specifically, as integral components of the solution rather than contributors to the problem of future Afghanistan. Therefore, providing space for them to speak directly with the Taliban and being involved is of utmost importance.¹¹²

¹⁰⁸ Warnaffe, 2021

¹⁰⁹ Warnaffe, 2021

¹¹⁰ Ibid.

¹¹¹ Charlesworth, 2002, p. 98

¹¹² UN Women, 2023

5.3 WAR ON WOMEN

Following the Taliban's takeover of Kabul in August 2021, Zabihullah Mujahid, a spokesperson for the Taliban, reassured that women's rights would be protected within the framework of Islam and even encouraged women to join the government. However, it didn't take long before the constraints on women's rights began to surface.¹¹³ Now, two years later the Taliban has increasingly introduced new restrictions with the apparent aim of completely erasing women's and girls' presence from public arenas.¹¹⁴ The situation of the Afghan women under the Taliban regime will be further discussed in greater detail in the following section.

Significant progress had been for Afghan women after the overthrow of the Taliban in 2001. Although that progress was not perfect or equally enjoyed by all women in Afghanistan and serious threats to women's rights still persisted, it was a step in the right direction.¹¹⁵ Women's rights were included in the Constitution, Afghanistan ratified the CEDAW Convention without reservations¹¹⁶ and established a Ministry of Women's Affairs (MoWA). Nevertheless, these advancements were quickly lost after the Taliban seized power again in 2021. One of the most illustrative examples of the systematic discrimination is the relentless issuance of edicts, decrees, declarations and directives restricting women's rights. Since September 2021, nearly 100 edicts have been issued, restricting women's rights. Amnesty International has even gone so far as to call this a "War on Women".¹¹⁷ The *de facto* authorities have dismantled the MoWA and replaced it with the Ministry of Propagation of Virtue and Prevention of Vice, which has issued the restrictive and abusive decrees on women's and girls' rights. Women who have protested against these restrictions have been subjected to arbitrary detention, enforced disappearance, and torture and other cruel, inhumane or degrading treatment or punishment.¹¹⁸ Education beyond secondary school remains inaccessible to girls. Before the takeover, women could attend universities in segregated classrooms while wearing head-to-toe coverings. However, by the end of 2022, a ban was imposed to attend university altogether. Moreover, there is an increasing

¹¹³ Rasheed, Ibrahim & Siddiqui, 2021

¹¹⁴ Amnesty International, 2023

¹¹⁵ Bennoune, 2022, p. 34-35

¹¹⁶ Afghanistan became the first Muslim country to ratify the CEDAW Convention with no reservations on March 5, 2003. The majority of Muslim countries that have ratified the treaty have included reservations holding Islamic Sharia law above the doctrines of the Convention. However, the Afghan government abstained from making this type of reservation, demonstrating its ambition to follow international norms as it entered a new phase of democratic institutions.

¹¹⁷ Amnesty, 2023

¹¹⁸ Amnesty, 2022

restriction on women and girls in public spaces, such as public parks, including strict dress codes and mandates the presence of a chaperone (mahram).¹¹⁹ The Taliban have announced that male relatives bear the responsibility for any violations of the restrictions by women and girls in their family. This has led to family members restricting the rights of female relatives out of fear of reprisals by the Taliban authorities.¹²⁰ All these discriminatory restrictions the Taliban have imposed on women and girls violate human rights guarantees contained in numerous international treaties to which Afghanistan is a party, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the CEDAW Convention, and the Convention on the Rights of the Child.¹²¹ Article 2 of the CEDAW Convention emphasizes that States parties must address all aspects of their legal obligations under the Convention to respect, protect and fulfil women's right to non-discrimination and to the enjoyment of equality. The obligation to respect requires that States parties refrain from making laws, policies, regulations, programmes, administrative procedures and institutional structures that directly or indirectly result in the denial of the equal enjoyment by women of their civil, political, economic, social and cultural rights.¹²² While the implementation and impact of gender-specific decrees vary within the country, the pattern and intention are aimed at systematically erasing the rights of women and girls. The Taliban's vision for the state of Afghanistan is inextricably linked to the structural denial of the personhood of women.¹²³ This has happened despite the Taliban's assurance that women's rights would be protected within the framework of Sharia.¹²⁴ These significant rollbacks in women's rights in Afghanistan have far-reaching and substantial short- and long-term costs and repercussions. There have been reported increases in the suicide rate among women, and mortality rates, particularly maternal mortality, are projected to escalate. Furthermore, the overall economic impact, due to the decline in women's employment opportunities, is estimated to 1 billion USD, representing approximately 5 percent of the country's GDP. The combined impact of gender-segregation requirements and the absence of educated women will have extensive consequences, effectively excluding women from public life, access to services, and knowledge.¹²⁵ The impact of girls

¹¹⁹ Amnesty, 2023

¹²⁰ Amnesty, 2023

¹²¹ Ibid.

¹²² CEDAW General Recommendation 28, para. 9

¹²³ UN Women Expert Group Meeting, 2023

¹²⁴ Amnesty, 2023

¹²⁵ Statistics retrieved from: UNDP 2021. Afghanistan: Socio-Economic Outlook 2021-2022.

and women not receiving education will be grave. Education is a fundamental human right and a crucial pathway to breaking cycles of poverty and fostering global development. Therefore, this directive not only denies children their rights to education but also hinders progress and development on a broader scale.¹²⁶

Although the Taliban has not received international recognition as Afghanistan's official government, they currently hold *de facto* control over the country's territory. They have assumed control of the structures, offices, and personnel of the previous government, although some staff members were either dismissed or refrained from reporting to work due to fear of the Taliban. This circumstance has empowered the Taliban to systematically enforce oppressive policies on a broad scale, adversely impacting women and girls throughout the nation.¹²⁷ It is thus crucial to consider women's rights and have a gendered perspective before making any considerations of recognition or normalization of regimes which systematically suppress women's rights.

6 THE INTERNATIONAL COMMUNITY'S RESPONSE TO THE TALIBAN

*"I ask the international community to listen to Afghan women; we need to be heard and the world needs to stand in solidarity with us more than before."*¹²⁸

Presently, there are no states that officially recognise the Taliban as the legitimate government of Afghanistan. Nevertheless, trends of normalization of the regime by some states and international bodies are causing fear among many Afghans.¹²⁹ Therefore, before delving into an analysis whether the Taliban should receive recognition based on established criteria for states and governments and thereafter with the additional gendered recognition criteria in Part VII, it is helpful to discuss the absence of a unified approach among states and the international community. The actions taken by the international community so far have been characterized by a somewhat softer approach, with hopes that the Taliban's behaviour might improve over time.

¹²⁶ Marastoni & Taib, 2023

¹²⁷ Amnesty, 2023

¹²⁸ UN Women, 2022

¹²⁹ Bennoune, 2022, p. 5

However, with over two years since their takeover, the Taliban have not fulfilled their promises and have instead continued to perpetrate systematic human rights violations and abuses against women.¹³⁰ Two years of restrictions of women’s rights under the Taliban regime mark a concerning trend towards limiting individual freedoms, undermining gender equality and access to education. It is essential that the international community recognizes and addresses the implications of this dire situation in Afghanistan. As advocates for human rights and justice, the international community has a responsibility to ensure that these regressive actions do not become normalized. Regrettably, the steps taken so far by the international community have fallen short of effectively addressing the challenges at hand.¹³¹

Despite many international concerns over human rights and terror, Zabiullah Mujahid, spokesman of the Taliban, stated prior to their takeover that, “Afghanistan won’t be a threat to other countries and we wouldn’t want to see other states threatening Afghanistan,” he said. “We hope that the international community won’t meddle in our domestic affairs (...) The Islamic Emirate [of Afghanistan] wants to have good political and economic relations with the world. We would like for all countries, including the US, to recognize us.”¹³² The international community has been using the fact that the regime wants international recognition as a leverage of pressure for them to adhere to international standards, but that policy has not been effective.¹³³ So far, the misalignment between the desires of the international community and the actions the Taliban are willing to take has caught all involved parties in a frustrating and self-perpetuating deadlock,¹³⁴ emphasizing the need for a change in discourse.

6.1 INTERNATIONAL CRIMES AND PURSUIT OF ACCOUNTABILITY

More and more international actors are acknowledging that the system of governance implemented by the Taliban, which is based on the subordination of women and institutionalizes sex discrimination across political, legal, and cultural frameworks, amounts to gender apartheid. Nobel peace prize winner and women’s activist Malala Yousafzai delivered the 21st Nelson Mandela Annual Lecture at the Johannesburg Theatre on December 5, 2023, where she stated that the Taliban actions should be considered “gender apartheid” and that the Taliban had “in

¹³⁰ Marastoni & Taib, 2023

¹³¹ Ibid.

¹³² Rasheed, Ibrahim & Siddiqui, 2021

¹³³ Malejacq & Terpstra, 2023

¹³⁴ Ibid.

effect ... made girlhood illegal.”¹³⁵ Even more state that the discriminatory denial of women and girls’ fundamental human rights may amount to gender persecution, which is a crime against humanity. The policies implemented by the Taliban are enforced through a catalogue of oppressive acts, including the systematic use of imprisonment, torture and other ill-treatment, and enforced disappearances. Further, the use of cruel and degrading punishments such as stoning, flogging and wall burials is of serious concern and violate Afghanistan’s international legal obligations. The weight of evidence suggests that these egregious human rights violations amount to crimes against humanity and gender persecution. The International Commission of Jurists and Amnesty International have already issued recommendation that the international community should effectively exercise universal jurisdiction or similar extraterritorial jurisdiction in respect of the Taliban leadership and others who are responsible for their discriminatory policies towards women and girls that qualify as crimes under international law, whenever they travel outside of Afghanistan.¹³⁶ Due to this evidence, it is imperative that the UN Human Rights Council and the International Criminal Court do more for Afghanistan and the Afghan women. The Human Rights Council has the potential to enhance accountability for gender persecution and other pervasive human rights violations by establishing an independent investigative mechanism to operate concurrently with the Special Rapporteur’s activities. Simultaneously, the International Criminal Court (ICC), specifically through the Office of the Prosecutor (OTP), can contribute to accountability by pursuing charges for the crime against humanity of gender persecution in Afghanistan. Although such endeavours would demand substantial resources, they play a crucial role in safeguarding human rights both within Afghanistan and on a global scale.¹³⁷

Karema Bennoune, the Lewis M. Simes Professor of Law at the University of Michigan Law School, wrote a powerful article on *The International Obligation to Counter Gender Apartheid in Afghanistan*. In her article she suggests a conceptual architecture for analysing and responding to the current Afghan crisis. She further suggests that the robust international legal framework that helped end racial apartheid should be adapted to address gender apartheid and concert the responses of other states to it.¹³⁸ According to Bennoune, a feminist case was made for recognizing and responding to gender apartheid the first time the Taliban took power, however

¹³⁵ Anders, 2023

¹³⁶ Amnesty, 2023

¹³⁷ Marastoni & Taib, 2023

¹³⁸ Bennoune, 2022, p. 1

the related international legal case was not.¹³⁹ As discussed previously in this thesis, the international legal framework has been lacking when it comes to the protection and safeguarding of women's rights. Therefore, Bennoune's article attempts to make the legal case of gender apartheid. As Bennoune asserts, she advocates for employing the comprehensive international legal framework that played a crucial role in dismantling racial apartheid in South Africa.¹⁴⁰ One of the mechanisms within this framework is the imposition of sanctions by the international community. However, intensifying sanctions is unlikely to benefit the most vulnerable segments of the Afghan population, particularly women. Additionally, there is evidence that the sanctions do not compel the Taliban regime to become more responsive, as they have demonstrated a resistance to yielding under such pressure, and contrary to most expectations, the regime has survived and maintained some state capacity despite the drastic reduction in foreign aid. There has been hope that pressure and leverage could change the course of the Taliban's policies. This has been based on the assumption that the Taliban could not survive without engaging with the international community. So far the Taliban regime appears sufficiently self-sustaining and adaptable to run on a low-capacity state and withstand the pressure of aid conditionalities and sanctions. Even though it may not be enough to salvage the population from starvation, let alone thrive economically, it might be enough for the regime to survive without being pushed into a corner.¹⁴¹ Additionally, given the current international political climate, rallying the entire global community around such an approach may prove challenging. Countries like China, Russia, Pakistan and Turkmenistan have already expressed interests in engaging with and supporting the regime, as well as having economic interests in the country. Chinese authorities intend to include Afghanistan in their Belt and Road Initiative, and have long been eyeing the country's mineral resources,¹⁴² and have already started investing in mines in Afghanistan,¹⁴³ and Turkmenistan has recently started to export natural gas to Pakistan through Afghanistan.¹⁴⁴ Consequently, garnering support from nations with economic stakes and engagements in Afghanistan, like those mentioned, for sanctions and increased pressure could be a formidable task. A worse outcome would be one that the current approach and even stricter sanctions could lead to a deepening of the diplomatic deadlock, playing directly into the hands of hardliners within the

¹³⁹ Bennoune, 2022, p. 5

¹⁴⁰ Ibid.

¹⁴¹ Malejacq & Terpstra, 2023

¹⁴² Ibid.

¹⁴³ Azzam, 2023

¹⁴⁴ Malejacq & Terpstra, 2023

regime. This, in turn, might escalate the government's trajectory towards isolation and radicalization, all the while adding complexity to human rights monitoring efforts. Certain conservative members within the Taliban may indeed prefer embracing a more isolationist foreign policy rather than seeking engagement and international recognition. According to an observer within the Taliban, isolation aligns with their historical context, allowing them to strengthen their position, expand intelligence services, and tighten control over the system.¹⁴⁵ There are voices within the Taliban advocating for a more enduring state of isolation, contending that it contributes to the building of morality. Furthermore, the hesitance towards international recognition is compounded by the legal responsibilities it entails, particularly in terms of border control and counterterrorism cooperation. Such obligations might not be universally welcomed by all factions within the Taliban.¹⁴⁶

Therefore, despite agreeing with Bennoune on the fact that this is indeed gender apartheid, the racial apartheid framework may not be an approach that works on the Taliban. Negative pressure and enforcement mechanisms may indeed push them further towards isolation. Rather, we should perhaps focus on continued and effective diplomatic engagement to make the *de facto* authorities adhere to international standards.¹⁴⁷ The cumulative effect of the Taliban's systematic discrimination against women raises concerns about the commission of international crimes, and it is important to note that gender persecution and gender apartheid are offenses that are explicitly criminalized by international law by which the Taliban should be held accountable. Consequently, the international community is legally obligated to take action beyond mere observation.¹⁴⁸ However, determining the most appropriate approach remains a complex and thorny issue which does not reach the scope of this thesis.

6.2 AN INVITATION TO THE WEST

As stated before, a dangerous international trend of minimization of these human rights violations and increasing normalization of the Taliban by some states and international bodies are causing fear among Afghans, that this may lead to recognition of the group without women's rights conditions.¹⁴⁹ Among those worrying events is when Norway's former Foreign Minister,

¹⁴⁵ Malejacq & Terpstra, 2023

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Bennoune, 2022, p. 5

¹⁴⁹ Ibid.

Anniken Huitfeldt, invited the Taliban for peace talks in Oslo in January 2022. A private jet was flown out to Afghanistan to retrieve the Taliban delegation to Oslo, marking their first visit in the Western hemisphere since they seized power in Afghanistan in 2021.¹⁵⁰ Huitfeldt's decision to invite them for peace talks and engage in a constructive dialogue was met with a range of reactions. Some praised her for the diplomatic move as a potential pathway to conflict resolution and peace. "Afghanistan is facing an enormous humanitarian catastrophe, and the future of women is at risk. That's why we are engaging in direct talks with the Taliban. And that's why we will facilitate dialogue between the Taliban and Afghan human rights defenders," Huitfeldt stated in a press release.¹⁵¹ A precondition for the visit was that the Taliban would agree to meet with women activists, journalists, and representatives from the Afghan civil society organisations, and many have praised Huitfeldt for creating a space where women could freely speak with the Taliban,¹⁵² as too many countries have sent all male delegations to speak with the Taliban.¹⁵³ Norway has a long tradition of peace diplomacy and dialogue with all parties in conflict situations. Peace diplomacy was a pronounced priority for Norway in the Security Council, where Norway also takes responsibility for addressing the humanitarian situation in Afghanistan.¹⁵⁴ In addition to meeting with women activists, journalists, and representatives from the Afghan civil society organisations, the Taliban met with representants from Western countries such as Norway, France, the United Kingdom, Italy, Germany, the U.S, and representatives from the European Union.¹⁵⁵ The countries were very clear on the fact that the visit and the meeting was not a move inviting them was not a sign of recognition or legitimacy of the Taliban as the *de jure* government of Afghanistan.¹⁵⁶

The reactions were not all positive, as stated before. Norwegian-Afghans protested outside Norway's Ministry of Foreign Affairs, and they demanded that Norway extradited Taliban's Foreign Minister, Amir Khan Muttaqi, to the International Criminal Court in the Hague as soon as he landed on Norwegian soil. They believed he should face legal consequences and prosecution

¹⁵⁰ Røyne, 2022

¹⁵¹ Leigland, 2022

¹⁵² Ibid.

¹⁵³ As Karema Bennoune stated in her Article *The International Obligation to Counter Apartheid in Afghanistan*: "International pronouncements in favor of rights and equality without commensurate action discredit the women's human rights project. This impact is magnified as states and international organizations begin to participate in apartheid by, for example, sending all-male delegations to Kabul".

¹⁵⁴ Leigland, 2022

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

instead of being invited for talks at a ministerial level.¹⁵⁷ Many have also been concerned that this meeting sparks a normalization of the Taliban regime, and even though the countries present at the meeting clearly stated that this was not a sign of recognition nor legitimacy, the Taliban have used this meeting as a means of demonstrating this as a step in the right direction towards being recognized as the rightful government in the international sphere.¹⁵⁸ In her address to the UN Security Council during a meeting in September 2023 on the situation in Afghanistan, UN Women Executive Director Sima Bahous emphasized the urgent demand from Afghan women. She called for the international community to create opportunities for direct communication between Afghan women and the *de facto* authorities. Additionally, Bahous urged that international actors engaging with the Taliban include women in their own delegations.¹⁵⁹ Therefore, despite the diverse range of reactions, the meeting in Oslo may have paved some way for including women at the table during talks with the Taliban, which is an essential part of the WPS Agenda and feminist approach to durable peace.

6.3 THE NEIGHBOURING STATES

Presuming the Taliban takeover, the neighbouring countries to Afghanistan formed an informal group to address regional challenges and oversee the situation in Afghanistan. The group consists of the Foreign Ministers of Uzbekistan, Russia, Iran, Turkmenistan, Pakistan, China and Tajikistan. Initiated by Pakistan in 2021, this mechanism aims to address the regional impact of Afghanistan's prolonged instability. The country's strategic location on the ancient silk route has led to decades of conflict, causing economic setbacks and increased terrorism in the region. Pakistan, in particular, has suffered substantial human and economic losses due to the prolonged unrest in Afghanistan. Twenty years ago, the six countries bordering Afghanistan signed a declaration expressing their shared commitment to help rebuild the country and a desire for 'peace and stability in the region' after the fall of the then Taliban government.¹⁶⁰ During the first Foreign Ministers' Meeting among Afghanistan's Neighboring Countries, Wang Yi urged regional collaboration over confrontation, emphasizing openness, equality, and addressing the Afghan issue alongside global concerns like Ukraine. He called for sustained international support to help Afghanistan stabilize, combat terrorism, and promote economic development. Stressing the "Afghan-led, Afghan-owned" principle, cooperation with the global community

¹⁵⁷ Riisnæs, 2022

¹⁵⁸ Bakken, 2022

¹⁵⁹ UN Women, 2023

¹⁶⁰ Awan, 2023

is vital for the Afghan people's better future. Afghan Interim Government's Acting Foreign Minister, Amir Khan Muttaqi, thanked China for hosting and underscored Afghanistan's commitment to preventing external forces from using its territory against other nations. Afghanistan seeks peaceful coexistence, friendly ties, and cooperation with neighbors for regional prosperity, expecting diplomatic recognition soon.¹⁶¹

On 1 December 2023, China became the first country to accept an ambassador from the Taliban regime. The Taliban regime in Afghanistan made an announcement that China had officially accepted its ambassador to Beijing. However, it is noteworthy to mention that China has not announced that it has formally granted recognition to the *de facto* authorities, stating that the Taliban would have to improve security and mend relations with neighbouring countries first, with no mention of women's rights.¹⁶² In September of last year, China became the first nation to appoint an ambassador to Kabul under Taliban rule. In contrast, other nations opted to either maintain their existing ambassadors or assign the leaders of their embassies in a charge d'affaires role, a position that doesn't necessitate the presentation of credentials to the host government.¹⁶³

Situated along the ancient Silk Road, Afghanistan plays a crucial role in connecting East and West, spanning East Asia, Central Asia, South Asia, and Eurasia. However, the region has grappled with nearly four decades of unrest, war, conflicts, and instability. This prolonged state of instability has adversely impacted economic activities, increased terrorism, and facilitated drug trafficking, hindering significant development across the entire region. Among its immediate neighbours, Pakistan has been particularly severely affected by these challenges.¹⁶⁴ This has caused several worries among the neighbouring states, such as about flow of refugees and Afghanistan becoming a safe haven for terrorist organisations. However, they have stated that Afghanistan's neighbouring countries should play a leading role in helping Afghanistan overcome difficulties and challenges and achieve stable development.¹⁶⁵

¹⁶¹ Ministry of Foreign Affairs of the People's Republic of China, 2022

¹⁶² Arab News, 2023

¹⁶³ Gul, 2023

¹⁶⁴ Awan, 2023

¹⁶⁵ Consulate General of the People's Republic of China in Denpasar, 2023

6.4 TALIBAN DOES NOT REPRESENT THE VALUES OF ISLAM

Since the takeover, the Taliban has reversed rights for women and girls in Afghanistan in such a sweeping and unprecedented manner that they have been condemned by Muslim-majority countries around the world, stating that the Taliban's interpretation of Islam is not in line with other Muslim countries. It is important to exemplify that religion cannot be used as a justification for discrimination, and to consider cultural relativism of feminist approaches.

The Organisation of Islamic Cooperation (OIC) is the second largest organization after the United Nations with a membership of 57 states spread over four continents and is the collective voice of the Muslim World. According to the organization, its endeavours are to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world.¹⁶⁶ The OIC has been actively addressing Taliban's restrictions on women's rights in Afghanistan and has made several visits to meet with the Taliban, emphasizing the need for them to reform its governance approach especially in regards to women's and girls' right to employment and education.¹⁶⁷ In December 2022, the 57 OIC member countries held a special meeting on Afghanistan and urged the Taliban to abide by the principles and purposes which are enshrined in the United Nations Charter. Additionally, according to the Al Arabiya Post, the Islamic world is worried about the Taliban's interpretation of Islam as it poses many political challenges. Today, many Islamic societies have developed in compatibility with modern values of freedom and human rights. However, the Taliban leaders continue to insist that their policies are based on Islamic jurisprudence,¹⁶⁸ and that they are justified with the claim that the Sharia supports such gender policies, as do the traditional customs of Afghanistan.¹⁶⁹

At the "Women in Islam: Status and Empowerment" Conference held in November 2023, the Secretary-General affirmed OIC's commitment to defending the rights of Muslim women. The three-day conference sought to showcase the achievements of Muslim women, emphasize their roles and contributions to development, and counter negative propaganda portraying the Islamic religion as an impediment to women's rights.¹⁷⁰ The Conference deliberations yielded twenty

¹⁶⁶ Organisation of Islamic Cooperation, n.d.

¹⁶⁷ Sifton & Abbasi, 2023 and various Press Releases from the OIC

¹⁶⁸ Times of India, 2023

¹⁶⁹ Marastoni & Taib, 2023

¹⁷⁰ UNSDG, 2023

recommendations integrated into the Final Declaration. These recommendations emphasized the advanced rights accorded to women by Islam, shedding light on their status and addressing challenges and opportunities concerning women's rights and their role in society across diverse fields and levels. The outcome of the Conference is encapsulated in the "Jeddah Document on Women's Rights in Islam," positioned to serve as a comprehensive official reference on women's rights in Islam for Member States, decision-makers, jurists, researchers, experts, and thinkers. The Secretary General further expressed hope that those who cast doubts about Islam's fairness toward women would consider women's rights as set out in this Document, and not through some isolated social practices in some Muslim societies that in no way reflect the sublime vision and universality of Islam and its teachings.¹⁷¹ UN Deputy Secretary-General Amina Mohammed, expressed her honour in participating in the discussion "on how we can return to Islam's original and beautiful vision of assessing individuals not based on gender, but on the strength of their beliefs and the virtue of their actions." Reflecting on the historical context, she pointed out that Islam, from its inception, acknowledged women's rights to engage in political decision-making, inherit, and own property and businesses. However, despite these early recognitions, Ms. Mohammed noted that "many centuries later, in various countries and aspects of life, women have been left behind." She highlighted the unfortunate reality throughout history that women and girls often bear the initial and severe brunt, impacting everyone as societies become less peaceful, economies less prosperous, and the world less just. She then went on to address the urgent situation of Afghanistan, she emphasized that Islam unequivocally advocates for the cessation of all discriminatory laws and practices impeding access to education. Pointing out that 130 million girls globally are currently not attending school, she underscored the critical situation, especially in Afghanistan. Highlighting the importance of Afghan women's full participation in shaping the future of their nation, she emphasized that the prosperity of the country relies on the flourishing of its women and girls. Urgently addressing the Taliban's stringent restrictions and refusal to acknowledge inherent rights is crucial, she asserted.¹⁷² At the UN General Assembly in September, Habiba Sarabi, former Afghan minister for women's affairs, called upon Muslim-majority countries to show the world that the Taliban's oppressive policies towards women and girls do not reflect the true values of Islam. She further went on to say that, "it's upon us to continue to exert public and private pressure from all possible sides to prevent

¹⁷¹ OIC on the Jeddah Document on Women's Rights in Islam. Retrieved from: https://www.oic-oci.org/topic/?t_id=39902&t_ref=26747&lan=en

¹⁷² UNSDG, 2023

normalization of the Taliban gender apartheid, and to give Afghan women a seat at all levels, tables and international diplomatic for a where Afghanistan is being discussed.”

The responses of the OIC and the broader Islamic community to the Taliban's discrimination and subjugation of women underscore the injustice of employing religion as a rationale for gender discrimination. In her work on gender apartheid in the 1990s, Mahnaz Afkhami emphasized that Islamists utilize the argument of cultural relativity, a concept then popular in the West, to negate women's rights by implementing gender segregation regimes. This pattern has indeed manifested itself in Afghanistan. Taliban leaders have employed this argument, as illustrated by Anas Haqqani, a member of the Taliban's negotiating team in Doha, who, during a BBC interview, justified their actions through cultural diversity, stating, "[W]e've been portrayed as monsters... One thing needs to be made clear, Afghanistan is not Europe or the US."¹⁷³ A human rights lawyer stated in an interview that, "Islam is against people who say that women should not be educated or who target women. We are all Muslim. The issue is interpretation." A feminist concern about the "rights" approach to achieve equality is that some rights can operate to the detriment of women. The right to freedom of religion, for example, can have differing impacts of women and men, as we have now vividly seen in Afghanistan and other Islamic states. Freedom to exercise all aspects of religious belief does not always benefit women because many accepted religious practices entail reduced social positions and status for women.¹⁷⁴ The CEDAW has clearly stated that religious norms and traditions cannot be invoked to justify violations of women's and girls' human rights, the Taliban's strict interpretation of Islamic law should therefore not take precedence over the Convention, which Afghanistan is a Party to.¹⁷⁵

This section has explored the, so far, ineffective response of the international community to the Taliban's rule in Afghanistan. Although no states officially recognise the Taliban as the legitimate government, concerns have arisen due to a trend of normalisation and minimalization of the regime. The softer international approach has failed to prompt positive changes in the Taliban's behaviour, particularly concerning women's rights. It is imperative to consider a new

¹⁷³ Bennoune, 2022, p. 72

¹⁷⁴ Chinkin, Charlesworth & Wright, 1991, p. 635-636

¹⁷⁵ OHCHR, 2021

approach. Introducing a gendered recognition is crucial to ensure that regimes like the Taliban's do not receive recognition without a commitment to upholding women's rights.

7 EMPLOYING GENDERED RECOGNITION IN THE CASE OF AFGHANISTAN

As the previous section has demonstrated, finding a common international approach towards the Taliban regime has proven to be challenging. Due to their governance having had a detrimental effect on women's human rights, and given their extensively documented record of rights violations and anti-rights declarations, the international community has refused to recognise the regime so far. Numerous Taliban leaders appear to place considerable importance on obtaining international recognition. Their aspirations extend to what they perceive as their rightful entitlements as a government, from the release of their frozen assets amounting to billion dollars to seeking international recognition. Further, they view the sovereignty of the new regime not as a negotiable demand but as a fundamental right that is being denied by the international community.¹⁷⁶ The Taliban has strategically used occasions, such as the meeting in Oslo, to assert their legitimacy to their people and convey that they are making strides toward gaining international recognition. As noted earlier, there seems to be no scholarly agreement on criteria for recognition of governments, even though they have ascended to power through the use of force. Recognition is a complex and nuanced aspect of international law, politics, and diplomatic considerations. More and more states have the approach of recognising states, not governments, perhaps due to it being such a complex issue, where political, historical, and geopolitical factors play a significant role in shaping the stance of the international community towards governments that come to power through force or do not uphold human rights standards. As demonstrated, international law does not prescribe specific criteria that must be met for a government to be recognized, as recognition is generally considered a discretionary political act rather than a strict legal obligation. Therefore, it is imperative that some criteria is set so that governments that do not comply with international law do not become recognised as legitimate or that their rulings do not become normalized.

¹⁷⁶ Malejacq & Terpstra, 2023

Consequently, the challenging question of whether to accord recognition to the Taliban will be examined through a gendered lens. As the statehood of Afghanistan is not being questioned, the traditional criteria of effectiveness will not be applied in this case. The factors taken into consideration for this section will be the additional criteria which contribute to a gendered recognition, such as requirements of women's participation in government, decision-making and peace processes. As well as the foundational principles of equality and non-discrimination, as a state which excludes women is not considered peace loving and does not uphold the principles of the UN Charter.

7.1 BRING WOMEN TO THE TABLE

In order to meet the additional criteria for gendered recognition, the Taliban must incorporate women into their decision-making processes. This challenge is not unique to Afghanistan, as it is a widespread issue, also in Western countries. However, Afghanistan currently faces an exceptional deficit in this regard. In the aftermath of the initial Taliban regime, often referred to as Taliban 1.0, and despite considerable obstacles like harassment and disproportionate impacts of conflicts, Afghan women had been increasingly involved in government affairs. They constituted 28 percent of the Afghan legislative body, surpassing the global average. Since 2001, over 150,000 Afghan women were elected to serve as representatives in community development councils, the majority serving in rural areas.¹⁷⁷ However, since the takeover in 2021, women remain excluded from holding public office and other positions of leadership.¹⁷⁸ The representatives of the *de facto* authorities consist predominantly of men, with an overwhelming majority belonging to the Pashtun ethnic group. Women have been systematically excluded from public service roles, except in instances where positions in education, health, and specific aspects of policing cannot be filled by men. In such cases, women are often requested to send male relatives as substitutes.¹⁷⁹ During a three-day assembly on June 30, 2022, approximately 4,500 clerics and leaders selected by the Taliban and none of them were women. The justification provided was that women would be adequately represented through the presence of their sons, husbands, and fathers. This approach served to reinforce and legitimize pre-existing norms centred on male leadership, thereby undoing the progress women had achieved in gaining a foothold in public life over the past decades.¹⁸⁰ Consequently, the Taliban should not be

¹⁷⁷ Statistics retrieved from <https://behorizon.org/the-afghanistan-peace-process-what-about-women/>

¹⁷⁸ A/HRC/52/84

¹⁷⁹ UN Women, 2022

¹⁸⁰ Ibid.

recognized as the legitimate government until they fulfil the criteria of including women in government and decision-making roles. Moreover, it is insufficient to merely include women; there must be proportional representation of women in the government. Therefore, implementing quotas may be of significant importance in a case like this. Political accountability to women begins with increasing the number of women in decision-making positions, but it cannot stop there. What is required are gender-sensitive governance reforms that will make all elected officials more effective at promoting gender equality in public policy and ensuring their implementation.¹⁸¹ Moreover, the inclusion of women in peace processes is imperative for the future of Afghanistan. The absence of Afghan women in the Doha Peace Process underscored that without their presence at the table, their rights were not adequately considered in the proceedings. Consequently, it is crucial to afford women a meaningful place at the decision-making table during peace processes and in discussions concerning Afghanistan.

7.2 A STATE IS NOT PEACE-LOVING IF WOMEN ARE BEING NEGLECTED

As stated in the UN Charter, memberships to the United Nations are open to all peace-loving states willing to accept the outlined obligations and deemed capable of fulfilling these responsibilities. Therefore, states that fail to uphold principles of gender equality and non-discrimination, and systematically excluding women from public life, cannot be considered peace-loving and should be denied gendered recognition. The Taliban, having issued countless edicts banning women and girls from education beyond the primary level, access to public spaces, employment with NGOs, restricted their freedom of movement and freedom of speech, exemplify their stark disregard for women's rights. These measures deepen existing egregious violations, already among the most draconian globally. This discriminatory denial of fundamental human rights to women and girls could amount to gender persecution, constituting a crime against humanity. Such comprehensive violations increase their vulnerability to violence and abuse, with profound physical and mental health implications. Granting gendered recognition to entities engaging in such systematic discrimination contradicts the principles and obligations outlined in the UN Charter, thereby warranting careful consideration and restraint.

¹⁸¹ UN Women: Asia and the Pacific, 2020

8 CONCLUSION

“If a government is unwilling to recognize half of the population, we should be unwilling to recognize them. If the same restrictions were applied to men, or on the basis of race, what would we do?”

Shaharзад Akbar
Former Chairperson,
Afghan Independent Human Rights Commission¹⁸²

In this thorny topic surrounding the recognition of the Taliban as the legitimate government of Afghanistan, it is imperative for the international community to prioritize the acknowledgment of women's rights and adopt a gendered perspective. Gendered recognition is not just a matter of acknowledging women's rights; it is a fundamental approach that safeguards the credibility, legitimacy, and effectiveness of the international legal framework and community. When half of the population of a state is denied their full rights, the international community falls short of its obligations. By adopting a gendered perspective, the global community ensures a more inclusive and just evaluation of governing bodies. It is essential that women's rights remains a pre-condition for international recognition, and that no country acknowledges the Taliban as the legitimate government of Afghanistan until that condition is met.

The proposal of a gendered recognition invites us to reflect upon the potential of having emancipatory policies, signalling a departure from the pragmatic *realpolitik* approach that may inadvertently overlook instances of oppression. This endeavour prompts a critical examination of policies that actively contribute to the empowerment and liberation of individuals, particularly in the realm of gender equality. Embracing emancipatory policies means moving beyond a narrow focus on national interests and power dynamics, and instead, prioritizing social justice and equality. By incorporating the principles of gendered recognition, governments have the opportunity to re-evaluate their policy frameworks, ensuring that they not only acknowledge but actively address gender-related issues and work towards dismantling oppressive structures. In this way, the proposal of a gendered recognition becomes a call for transformative policies that resonate with the principles of justice and equality, fostering a more inclusive and emancipated society. A gendered recognition of governments and their policies is essential for achieving true

¹⁸² Shaharзад Akbar, Former Chairperson of the Afghan Independent Human Rights Commission stated in a zoom interview with Karema Bennoune

equality and social development, as it ensures that the perspectives and needs of all citizens, regardless of gender, are taken into account in decision-making processes. This recognition fosters inclusive governance and leads to more effective and sustainable outcomes for societies worldwide. Therefore, integrating gender considerations into the fabric of international law and governance is imperative in addressing the pressing challenges of our time and should be the way forward. A gendered recognition will be essential so that regimes, such as the Taliban, who impose a system of systematic discrimination against women, do not become recognized as a legitimate government of a state. Lastly, it is important that we keep writing and discussing the situation of Afghan women so that they are not forgotten, and so that the Taliban's current system of governance does not become normalized by the international community.

9 BIBLIOGRAPHY

BOOKS:

Grieco, J. et. al. (2019) *Introduction to International Relations: Perspectives, Connections, and Enduring Questions* (2nd ed) Red Globe Press (London).

Talmon, S. (2001). *Recognition of Governments in International Law: With Particular Reference to Governments in Exile*. Oxford Public International Law.

LEGAL SOURCES:

American States. (1933, December 26). *Montevideo Convention on the Rights and Duties of States*. Organization of American States.

UN General Assembly. (1966, 16 December). *International Covenant on Civil and Political Rights*.

UN General Assembly. (1966, 16 December). *International Covenant on Economic, Social, and Cultural Rights*.

UN General Assembly. (1979, 18 December). *The Convention on the Elimination of All Forms of Discrimination Against Women*.

United States & Taliban. (2020, 29 February). *Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban, and the United States of America*. Department of State, U.S. Government Printing Office.

WEBSITES:

Amnesty International. (2022). *Afghanistan 2022*. Retrieved from: <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/afghanistan/report-afghanistan/>

Anders, T. (2023, 6 December). *Malala Yousafzai likens Taliban's treatment of women to*

- Apartheid in Mandela lecture*. Reuters. Retrieved from: <https://www.reuters.com/world/asia-pacific/malala-yousafzai-likens-talibans-treatment-women-apartheid-mandela-lecture-2023-12-05/>
- Arab News. (2023, 5 December). *China says Afghan Taliban must Reform Before Full Diplomatic Ties*. Retrieved from: <https://www.arabnews.com/node/2420521/world>
- Awan, A. (2023, 15 April). *The 4th Meeting of the Foreign Ministers of Neighbouring Countries of Afghanistan*. Retrieved from: <https://modern diplomacy.eu/2023/04/15/the-4th-meeting-of-the-foreign-ministers-of-neighboring-countries-of-afghanistan/>
- Azizi, M. (2021, 25 February). *Afghans' Views on the Doha Peace Process and the Biden Administration's review of the US-Taliban Peace Agreement*. Atlantic Council. Retrieved from: <https://www.atlanticcouncil.org/blogs/southasiasource/what-do-afghans-think-of-the-ongoing-doha-peace-process-as-well-as-the-us-taliban-peace-deal-and-what-do-they-expect-from-the-biden-administrations-review/>
- Azzam, A. (2023, 23 September). *Developing Afghanistan's Mines Will Uplift Afghans*. Al Jazeera. Retrieved from: <https://www.aljazeera.com/opinions/2023/9/23/developing-afghanistans-mines-will-uplift-afghans>
- Bakken, Laila Ø. (2022, 25 January). *Vet at Taliban vil bruke Oslo-møtet som PR*. NRK. Retrieved from: https://www.nrk.no/urix/_-vet-at-taliban-vil-bruke-oslo-motet-som-pr-1.15826295
- Consulate General of the People's Republic of China in Denpasar. (2023, 13 April). *Qin Gang Attends the Fourth Foreign Ministers' Meeting Among the Neighbouring Countries of Afghanistan*. Retrieved from: http://denpasar.china-consulate.gov.cn/id/zyxw_3/202304/t20230417_11060139.htm
- Council on Foreign Relations. (n.d.). *Women's Participation in Peace Processes*. Retrieved from

<https://www.cfr.org/womens-participation-in-peace-processes/#:~:text=Yet%20despite%20this%20evidence%2C%20women's,peace%20processes%20around%20the%20world>

Gul, A. (2023, 1 December). *Afghan Taliban Says China Becomes First Nation to Accept their Ambassador*. VOA News. Retrieved from: <https://www.voanews.com/a/afghan-taliban-says-china-becomes-first-nation-to-accept-its-ambassador/7380438.html>

Human Rights Watch. (2021, 22 March). *Afghanistan: Women's Full Participation Needed in Talks: Near Exclusion at Moscow Summit Highlights Threat to Rights*. Human Rights Watch. Retrieved from: <https://www.hrw.org/news/2021/03/22/afghanistan-womens-full-participation-needed-talks>

Latifi, A.M. (2021, 17 August). *Taliban Says Will Respect Women's Rights, Press Freedom*. Al Jazeera. Retrieved from: <https://www.aljazeera.com/news/2021/8/17/taliban-says-will-respect-womens-rights-press-freedom>

Leigland, L.E. (2022, 27 January). *Afghanistan, Taliban og det omdiskuterte møtet i Oslo*. FN-Sambandet. Retrieved from: <https://www.fn.no/nyheter/afghanistan-taliban-og-det-omdiskuterte-moetet-i-oslo>

Malejacq, R., & Terpstra, N. (2023, 30 July). *Why International Leverage Has Failed With the Taliban*. Lawfare Media. Retrieved from: <https://www.lawfaremedia.org/article/why-international-leverage-has-failed-with-the-taliban>

Marastoni, M., & Taib, M. (2023, 2 October). *The U.N. Human Rights Council and the ICC Can Do More for Afghanistan*. Just Security. Retrieved from: <https://www.justsecurity.org/88986/the-u-n-human-rights-council-and-the-icc-can-do-more-for-afghanistan/>

Maruska, J. (2017, December 22). *Feminist Ontologies, Epistemologies, Methodologies, and Methods in International Relations*. Oxford Research Encyclopedia of International Studies. Retrieved from <https://oxfordre.com/internationalstudies/view/10.1093/acrefore/9780190846626.001.0001/acrefore-9780190846626-e-178>.

Ministry of Foreign Affairs of the People's Republic of China. (2022, 31 March). *Wang Yi Chairs the First "Neighbouring Countries of Afghanistan Plus Afghanistan" Foreign Ministers' Dialogue*. Retrieved from: https://www.fmprc.gov.cn/mfa_eng/gjhdq_665435/2675_665437/2676_663356/2678_663360/202204/t20220401_10663013.html

NIMD. (n.d.). Women's Political Participation. Retrieved from <https://nimd.org/what-we-do/womens-political-participation/>

Røyne, H. (2022, 22 January). *Taliban lander på Oslo Lufthavn I privatfly*. VG. Retrieved from: <https://www.vg.no/nyheter/i/qWEErE/taliban-landet-paa-oslo-lufthavn-i-privatfly>

United Nations News. (2023, 18 April). *Afghanistan: UN Predicts Restrictions on Women's Rights Will Worsen Economic Catastrophe*. Retrieved from: <https://news.un.org/en/story/2023/04/1135762#:~:text=Immediately%20after%20the%20Taliban%20assumed,in%20the%20world%2C%20with%20around>

United Nations Sustainable Development Group. (2023, 7 November). *Women in Islam: UN Deputy Chief Calls for Action on Education, Empowerment and Peace*. Retrieved from: <https://unsdg.un.org/latest/stories/women-islam-un-deputy-chief-calls-action-education-empowerment-and-peace>

UN Women. (2023, 7 September). *Explainer: Sustainable Development Goal 5*. Retrieved from: https://www.unwomen.org/en/news-stories/explainer/2022/09/explainer-sustainable-development-goal-five?gad_source=1&gclid=CjwKCAiA9dGqBhAqEiwAmRpTCycR0TLI3kq7NpjI-HwTh5s3eq8YLUlueJ6u7KfkiEk_E85WUUX1xTBoCLmsQAvD_BwE

UN Women. (2023, 26 September). *Speech: The Women's Rights Crisis: Listen To, Invest In, Include, and Support Afghan Women*. Retrieved from: <https://www.unwomen.org/en/news-stories/speech/2023/09/speech-the-womens-rights-crisis-listen-to-invest-in-include-and-support-afghan-women>

Office of the United Nations High Commissioner for Human Rights. (n.d.). Gender Equality and Women's Rights. Retrieved from <https://www.ohchr.org/en/topic/gender-equality-and-womens-rights>

Office of the United Nations High Commissioner for Human Rights. (2021, 15 September). *Statement by United Nations Human Rights Experts: Women's full participation in Afghanistan's public and political life as a guarantee of their fundamental human rights*. Retrieved from: <https://www.ohchr.org/en/statements/2021/09/statement-united-nations-human-rights-experts>

Organisation of Islamic Cooperation. (n.d.). *History*. Retrieved from: https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en

Rasheed, Z., Ibrahim, A., Siddiqui, U. (2021, 17 August). *Taliban Offers Amnesty, Promises Women's Rights and Media Freedom*. Al Jazeera. Retrieved from: <https://www.aljazeera.com/news/2021/8/17/evacuation-flights-resume-as-biden-defends-afghanistan-pullout>

Riisnæs, G.G. (2022, 21 January). *Taliban kommer til Oslo: Norge smisker med Taliban, mener Afghanere i Norge*. Aftenposten. Retrieved from: <https://www.aftenposten.no/verden/i/Xqnaeg/taliban-kommer-til-oslo-norge-smisker-med-taliban-mener-afghanere-i-norge>

Sifton, J., Abbasi, F. (2023, 12 February). *Can the Taliban Be Convinced to Reverse Course?*. Human Rights Watch. Retrieved from: <https://www.hrw.org/news/2023/02/12/can-taliban-be-convinced-reverse-course>

Times of India. (2023, 26 January). *Islamic World Worried About Taliban's Interpretation of Islam: Report*. Retrieved from: <https://timesofindia.indiatimes.com/world/south-asia/islamic-world-worried-about-talibans-interpretation-of-islam-report/articleshow/97343736.cms?from=mdr>

Warnaffe, M.B. (2021, 14 June). *The Afghanistan Peace Process: What About Women? Beyond*

the Horizon. Retrieved from: <https://behorizon.org/the-afghanistan-peace-process-what-about-women/>

JOURNALS:

Bennoune, K. (2022). *The International Obligation to Counter Gender Apartheid in Afghanistan*. Columbia Human Rights Law Review 54(1), p. 1-88.

Brownlie, I. (1982). *Recognition in Theory and Practice*. British Yearbook of International Law Vol. 53(1), p. 197-211.

Buchanan, A. (1999). *Recognitional Legitimacy and the State System*. Philosophy and Public Affairs 28(1), p. 46-78

Charlesworth, H., Chinkin, C., & Wright, S. (1991). *Feminist Approaches to International Law*. American Journal of International Law 85(4), p. 613-654.

Charlesworth, H., & Chinkin, C. (1993). *The Gender of Jus Cogens*. Human Rights Quarterly 15(1), p. 63-76.

Charlesworth, H. (2002). *The Hidden Gender of International Law*. Temple International & Comparative Law Journal 16(1), p. 93-102.

Charlesworth, H. (2011). *The Women Question in International Law*. Asian Journal of International Law 1(1), p. 33-38.

Dietrich, F. (2013). *State Recognition Between Justice and Efficiency*. Annual Review of Law and Ethics Vol. 21, p. 187-203

Dorius, S. F., & Firebaugh, G. (2010). *Trends in Global Gender Inequality (Forthcoming, Social Forces)*. Social Forces; A Scientific Medium of Social Study and Interpretation 88(5), p. 1941–1968.

Emerson, R. (1966). *Self-determination*. American Society of International Law Proceedings, 60 (Fourth Session), 135-140.

- Engle, E. (2004). *The Transformation of the International Legal System: The Post-Westphalian Legal Order*. *Quinnipiac Law Review* 23(23), p. 23-45.
- Faheem, M., & Khan, M.M. (2022) *Recognition of the Taliban Government in Afghanistan and International Community*. *Journal of Institute of Strategic Studies Islamabad* 45(1), p. 81-96.
- Gross, L. (1948). *The Peace of Westphalia, 1648-1948*. *American Journal of International Law* 42(1), p. 20-41.
- Lauterpacht, H. (1944). *Recognition of States in International Law*. *The Yale Law Journal* 53(3), p. 385-458.
- Lauterpacht, H. (1945). *Recognition of Governments*. *Columbia Law Review* 45(6), p. 815-864.
- Ludsin, H. (2013). *Returning Sovereignty to the People*. *Vanderbilt Journal of Transnational Law* 46(1), p. 97-170.
- Pietras, M. (2007). *The Late Westphalian International Order*. *Polish Political Science Year-book* vol. 36, p. 134-157.
- Otto, D. (2010). *Power and Danger: Feminist Engagement with International Law through the UN Security Council*. *Australian Feminist Law Journal*, 32(1), p. 97-122.
- Rhode, D.L. (1994). *Feminism and the State*. *Harvard Law Review* 107(6), p. 1181-1208.
- Seth, S. (2011). *Postcolonial Theory and the Critique of International Relations*. *Millennium Journal of International Studies* 40(1), p. 167-183.

REPORTS:

- Amnesty International. (2023, March). ASA 11/6789/2023. *The Taliban's War on Women: The Crime Against Humanity of Gender Persecution in Afghanistan*. Retrieved from: <https://www.amnesty.org/en/documents/asa11/6789/2023/en/>

- Bertay, A.C, Dordevic, L., Sever. C. . (2020, 30 July). *Gender Inequality and Economic Growth: Evidence from Industry-Level Data*. International Monetary Fund. Retrieved from: <https://www.imf.org/en/Publications/WP/Issues/2020/07/03/Gender-Inequality-and-Economic-Growth-Evidence-from-Industry-Level-Data-49478>
- OHCHR. (2023, 9 February). *A/HRC/52/84: Situation of human rights in Afghanistan - Report of the Special Rapporteur on the situation of human rights in Afghanistan, Richard Bennett*. Retrieved from: <https://www.ohchr.org/en/documents/country-reports/ahrc5284-situation-human-rights-afghanistan-report-special-rapporteur>
- UN Women. (2023, 26-27 July). *Expert Group Meeting on International Strategies and Tools to Address the Situation of Women and Girls in Afghanistan*. Retrieved from: <https://www.unwomen.org/en/digital-library/publications/2023/09/expert-group-meeting-report-international-strategies-and-tools-to-address-the-situation-of-women-and-girls-in-afghanistan>
- UN Women. (2022, 15 August). *Gender Alert No. 2: Women's rights in Afghanistan one year after the Taliban take-over*. Retrieved from: <https://www.unwomen.org/en/digital-library/publications/2022/08/gender-alert-no-2-womens-rights-in-afghanistan-one-year-after-the-taliban-take-over>
- UN Women: Asia and the Pacific. (2020). *Women, Peace and Security: Women in Decision-Making: Covid-19 and Beyond*. Retrieved from: <https://asiapacific.unwomen.org/en/digital-library/publications/2020/10/ap-women-in-decision-making-covid-19-and-beyond>
- UN Women. (2018). *Meeting Report: Women's Meaningful Participation in Peace Processes: Modalities and Strategies Across Tracks*. Retrieved from: <https://www.unwomen.org/en/digital-library/publications/2021/06/proceedings-womens-meaningful-participation-in-peace-processes>