

**SHOULD THE UNITED STATES
OFFICIALLY RECOGNIZE THE TALIBAN?
THE INTERNATIONAL LEGAL AND
POLITICAL CONSIDERATIONS**

I. INTRODUCTION	386
II. OVERVIEW OF THE TALIBAN MOVEMENT	388
A. <i>Recent History of Afghanistan</i>	388
B. <i>Life Under the Taliban</i>	391
C. <i>International Relations</i>	395
III. INTERNATIONAL AND U.S. STANDARDS FOR RECOGNIZING GOVERNMENTS	404
A. <i>International Recognition Policy</i>	404
B. <i>U.S. Recognition Policy</i>	407
IV. U.S. POLICY REASONS FOR REFUSING TO RECOGNIZE THE TALIBAN.....	409
A. <i>Osama bin Laden</i>	409
B. <i>Human Rights Violations</i>	415
C. <i>Narcotics Production and Trafficking</i>	420
V. ANALYSIS: SHOULD THE UNITED STATES RECOGNIZE THE TALIBAN?	423
A. <i>Nonrecognition Ineffective as a Policy Tool</i>	423
B. <i>The Danger of Isolation</i>	424
C. <i>Recognition May be Part of a Solution</i>	425
VI. CONCLUSION	426

I. INTRODUCTION

Afghanistan is an extremely poor country that has been decimated by two decades of continued war.¹ Twelve years of civil war among rival factions followed ten years of war with the Soviet Union.² Today, an ultraconservative Islamic militia, known as the Taliban, (Persianized Arabic for “religious students”)³ controls about 90% of Afghanistan.⁴ While mystery surrounds the origin of the Taliban, it is believed the movement had its origins in Pakistan, namely religious schools known as *deeni madaris*, during the Afghan-Soviet War.⁵

In an effort to rebuild and improve the country after two decades of war, the Taliban are on a crusade to gain international recognition.⁶ Their efforts thus far have not been successful, as Pakistan, Saudi Arabia, and the United Arab Emirates are the only countries that have formally recognized the Taliban.⁷ Western nations have refused to recognize the Taliban, citing human rights violations, Afghanistan’s flourishing drug trade, and the Taliban’s role in harboring

1 See C.I.A. DIRECTORATE OF INTELLIGENCE, *Afghanistan*, WORLD FACTBOOK (2000), available at <http://www.cia.gov/cia/publications/factbook/geos/af.html> [hereinafter WORLD FACTBOOK].

2 See Tasgola Karla Bruner, *U.N. Sanctions Add to Kabul’s Hardships; Taliban Still Gives Refuge to Osama bin Laden*, U.S. NEWS & WORLD REP., Dec. 6, 1999, at 58; see also Barry Bearak, *Kandahar Journal; Every Step Is a Risk in Booby-Trapped Backyards*, N.Y. TIMES, June 16, 2000, at A4 (quoting a Kandahari laborer, “This is Afghanistan . . . and there have been 21 straight years of war.”).

3 See William Maley, *Interpreting the Taliban*, in FUNDAMENTALISM REBORN? AFGHANISTAN AND THE TALIBAN 1 (William Maley ed., 1998).

4 See Hugh Pope, *Taliban, Foes Begin Afghan Peace Talks*, WALL ST. J., Mar. 12, 1999, at A13 [hereinafter *Peace Talks*]. After recent advances, the Taliban now claim to rule 95 percent of Afghanistan. Greg Myre, *Taliban Score Military Victories, Seek Diplomatic Payoff in Afghanistan*, A.P., Sept. 28, 2000, available at 2000 WL 27212354.

5 See KAMAL MATINUDDIN, *THE TALIBAN PHENOMENON: AFGHANISTAN 1994–1997* 21–22 (1999). For a detailed account of the Pakistani religious school known as the Haqqania madrasa, which has graduated more members of the Taliban than any other school in the world, see Jeffrey Goldberg, *The Education of a Holy Warrior*, N.Y. TIMES, June 25, 2000, at 32.

6 See Hugh Pope, *Reality Check: Afghanistan’s Taliban, For Better or Worse, Seems There to Stay*, WALL ST. J., Sept. 3, 1998, at A1 [hereinafter *Reality Check*].

7 *The Taliban’s Strategy for Recognition*, ECONOMIST, Feb. 6, 1999, at 41 [hereinafter *Strategy for Recognition*].

terrorists, such as Osama bin Laden.⁸

Although many have criticized the Taliban because of these problems, the Taliban have brought a sense of order and stability to Afghanistan that has been missing for years.⁹ After many years of war, today there is mostly peace in Taliban-run Afghanistan.¹⁰ The current battles between the Taliban and opposition forces are confined to the far northeast region of Afghanistan.¹¹ Although the Taliban are slowly rebuilding the country and reviving government institutions,¹² Afghanistan is unlikely to succeed in their rebuilding efforts without foreign investment that can come only with recognition.¹³ Ultimately, it is the Afghan people who stand to suffer the most if the true governing body of the country, the Taliban, is not eventually recognized by the West. "The world, for the most part, has basically been on a campaign for the last couple of years to isolate the Taliban."¹⁴ The current U.S. policy of continuing pressure and isolation of the Taliban is ineffective and unlikely to produce a positive outcome. Furthermore, this policy has the potential to make the situation worse. The better policy is constant dialogue and negotiation between the two governments.

This comment will consider the issue of whether the United States should formally recognize the Taliban as the official government of Afghanistan. Part II will provide an overview of the Taliban. It provides a brief recent history of Afghanistan, and describes life in Afghanistan under the Taliban. Part II will also examine the Taliban's international relations. Part III will

8 *Reality Check*, *supra* note 6.

9 See Carla Power, *When Women are the Enemy: Afghanistan's Taliban Fighters Have Taken the War Between the Sexes to a New Extreme*, NEWSWEEK, Aug. 3, 1998, at 37.

10 See *Those Not Very Nice People in Afghanistan: America Hints it May Recognise the Taliban After a Peace Deal*, ECONOMIST, Apr. 25, 1998, at 41 [hereinafter *Not Very Nice People*].

11 See Myre, *supra* note 4.

12 *Reality Check*, *supra* note 6.

13 See *id.*

14 Barbara Crossette, *As Hijacking Drama Plays Out, Views on Taliban Shift*, N.Y. TIMES, Dec. 30, 1999, at 14A (quoting Paula Newberg, a U.N. Consultant who has written several studies on Afghanistan).

provide both the international and U.S. legal standards and policies concerning recognition of governments. Part IV will consider U.S. policy reasons against recognizing the Taliban. The issues of Osama bin Laden, human rights violations, and the Afghan drug trade will each be addressed. Part V will analyze whether the United States should formally recognize the Taliban.

II. OVERVIEW OF THE TALIBAN MOVEMENT

A. *Recent History of Afghanistan*

The recent history of Afghanistan suggests that the only constant in this country has been war. In 1973, King Zahir Shah, the last ruler of the Durrani Dynasty that had ruled the country for 250 years was ousted in a coup mounted by his cousin, Mohammed Daoud.¹⁵ Although as president, Mohammed Daoud claimed that he wanted to modernize the country, he only served for five years before he was killed in an April 1978 coup staged by the Soviet-backed Communist Party, which envisioned a more ambitious modernization program.¹⁶

The Communists' goal was to undermine the pervasive influence of Muslim clerics, whose support of the Durrani Dynasty caused Afghanistan to be a backward, primitive country, both economically and socially.¹⁷ The Communists promised to emancipate Afghan women, achieve universal literacy, and modernize the country's stagnant economy.¹⁸ However, these goals proved to be too ambitious for conservative Afghans, and a civil war erupted that induced a Soviet invasion in December 1979.¹⁹ The Communists sought to install a secular, atheistic regime,²⁰ which caused the opposition, the *Mujahideen* (Islamic holy warriors) to view the Soviet invasion as a holy

15 John F. Burns, *For Afghans, Full Circle*, N.Y. TIMES, Aug. 13, 1998, at A1.

16 *Id.*

17 *Id.*

18 *Id.*

19 *See id.*

20 *See* Maley, *supra* note 3, at 7–8.

war.²¹ The holy war against the Soviets also drew support from fellow Muslim countries such as Pakistan and Saudi Arabia.²²

Although for the most part the United States stayed out of the war, it did financially support and arm the Afghan guerrillas.²³ The brutal, decade long war between the Afghan guerrillas and the powerful Soviet army has been characterized as “one of the most dramatic confrontations of the cold war.”²⁴ During the war, one-third of the population fled the country with more than six million refugees fleeing to Pakistan and Iran.²⁵ It is believed that the Taliban movement had its origins during this period when disgruntled young Afghan refugees began studying in Pakistani religious schools.²⁶

The Afghan *mujahideen* achieved the unlikely by driving out the Soviets in February 1989.²⁷ Unfortunately, the aftermath of the Soviet withdrawal was not a peaceful one. Due to the tribal nature of Afghan society, the country was unable to find an effective leader who could win the respect of the rival factions.²⁸ The result was that after the common objective of defeating the Soviets was accomplished, the rival groups began fighting each other for control.²⁹ The new battlefield became the capital Kabul, which was soon ravaged by looting and violence.³⁰ The violence quickly spread, and even traveling became unsafe as different *mujahideen* groups forced travelers to pay large tolls on the highways in exchange for protection from armed bandits.³¹ Abdul Hakeem Mujahid, Afghanistan’s ambassador to Pakistan, characterized the period following the Soviet withdrawal in 1989

21 See *id.* at 8–9; see also Pamela Constable, *Taliban Greets U.N. Sanctions with Defiance*, WASH. POST, Nov. 28, 1999, at A27.

22 See Maley, *supra* note 3, at 9.

23 See *Not Very Nice People*, *supra* note 10; see also Constable, *supra* note 21.

24 Burns, *supra* note 15.

25 See WORLD FACTBOOK, *supra* note 1.

26 See MATINUDDIN, *supra* note 5, at 21–22.

27 Burns, *supra* note 16.

28 See MATINUDDIN, *supra* note 15, at 5.

29 *Id.*

30 See *Afghanistan: Living with the Taliban*, ECONOMIST, July 24, 1999, at 39 [hereinafter *Living with the Taliban*].

31 See *id.*

as “complete anarchy.”³²

During this period of upheaval, Burhanuddin Rabbani became president in June 1992.³³ However, Rabbani’s election was disputed, and he was not able to obtain the cooperation of the other parties.³⁴ As a result, Afghanistan did not achieve peace under the Rabbani regime.³⁵ Rabbani’s term as president was to expire on December 15, 1994.³⁶ But this event never occurred because the Taliban suddenly entered the scene³⁷ in the summer of 1994.³⁸ The leader of the Taliban, Mullah Mohammad Omar, claims that he launched the Taliban to restore peace to Afghanistan.³⁹ By March of 1995, the Taliban had gained control of one-third of the country.⁴⁰ Two years later, in 1997, the Taliban controlled two-thirds of the country.⁴¹ By March of 1999, the Taliban had gained control of 90% of Afghanistan.⁴² As of September 2000, the Taliban claimed to control 95% of the country.⁴³ Although Burhanuddin Rabbani seems to have fled in the interim, it is this deposed government which is officially recognized worldwide, and which holds the country’s seat in the U.N. General Assembly.⁴⁴

Forces led by Ahmed Shah Massoud, Rabbani’s former defense minister, are defending the remaining part of the country not controlled by the Taliban.⁴⁵ Massoud, a legendary

32 Power, *supra* note 9.

33 Maley, *supra* note 3, at 9.

34 MATINUDDIN, *supra* note 5, at 10.

35 *Id.*

36 *Id.*

37 *See id.*

38 *See* Emily MacFarquhar, *The Rise of the Taliban: A New Force of Muslim Fighters is Determined to Rule Afghanistan*, U.S. NEWS & WORLD REP., Mar. 6, 1995, at 64.

39 *See id.*

40 *Id.*

41 *See* Tim McGirk & Rahimullah Yusufzai, *Mullah with a Mission: One-Eyed Mohammad Omar Rules Afghanistan’s Taliban with a Firm Hand and a Strongbox of Cash*, TIME, Mar. 31, 1997, at 22.

42 *See Peace Talks*, *supra* note 4.

43 *See Myre*, *supra* note 4.

44 *See Strategy for Recognition*, *supra* note 7.

45 *Id.*

guerilla commander who was the best known of the *mujahideen* that drove out the Soviets, leads a 20,000-strong army against the Taliban.⁴⁶ The fighting between the two groups continued throughout the year 2000.⁴⁷ According to the Secretary General of the United Nations in 1999, “the Taliban offensive was reinforced by 2000 to 5000 recruits, mostly emanating from religious schools within Pakistan, many of them non-Afghans and some below the age of 14.”⁴⁸

B. *Life Under the Taliban*

The Afghan people lead a very austere and oppressed

⁴⁶ See Jason Burke, *Waiting for a Last Battle with the Taliban; Jason Burke Travels Through Afghanistan's Panjshir Valley to Meet a Guerrilla Hero who Yearns for Peace*, OBSERVER, June 27, 1999, at 24.

⁴⁷ For accounts of recent battles between the Taliban and opposition forces, see Barry Bearak, *Afghanistan: Taliban Gains*, N.Y. TIMES, Sept. 7, 2000, at A10 (Taliban capture critical northeastern city of Taloqan, an opposition stronghold, after fierce fighting; major victory for Taliban); *Afghanistan: New Taliban Gains*, N.Y. TIMES, Sept. 8, 2000, at A6 (more Taliban gains in northern province of Takhar); *Taliban Take Key Hilltops in Northern Afghan Province*, AGENCE FRANCE-PRESSE, Sept. 13, 2000, available at 2000 WL 24709447 (Taliban capture two important hilltops of Seyahbarj and Lataband around Taloqan); *Masood Starts Guerrilla War Against Taliban: Afghan Opposition*, AGENCE FRANCE-PRESSE, Sept. 13, 2000, available at 2000 WL 24709764 (opposition commander launches guerrilla war against Taliban in northeastern Takhar); *Afghanistan's Taliban Repel Two Opposition Attacks*, AGENCE FRANCE-PRESSE, Sept. 15, 2000, available at 2000 WL 24711051 (Taliban fight off two opposition attacks around Taloqan); *Afghan Opposition Regain Northeastern Hills*, AGENCE FRANCE-PRESSE, Sept. 17, 2000, available at 2000 WL 24712419 (opposition forces regain hills around Taloqan); Greg Myre, *Afghan Opposition Claims Victory*, A.P., Sept. 18, 2000, available at 2000 WL 26677173 (opposition captures string of villages and military posts near Taloqan); *Opposition Troops Recapture Northern Afghan Town*, AGENCE FRANCE-PRESSE, Sept. 20, 2000, available at 2000 WL 24714900 (opposition drives out Taliban from Imam Saheb after heavy fighting); *Taliban Capture More Territory in Northeast Afghanistan*, AGENCE FRANCE-PRESSE, Sept. 21, 2000, available at 2000 WL 24716725 (Taliban capture key districts of Hazar Bagh and Khwajaghar after heavy fighting); Barry Bearak, *Afghanistan: New Taliban Gains*, N.Y. TIMES, Sept. 23, 2000, at A7 (Taliban capture town of Dasht-i-Archi); Mohammad Bashir, *Taliban Consolidate Hold on Newly-Won Territory*, AGENCE FRANCE-PRESSE, available at 2000 WL 24718112 (Taliban capture Ai Khanum on Oxus River); *Taliban Win Strategic Site as Some Foes Defect*, N.Y. TIMES, Oct. 1, 2000, at A11 (Taliban capture Farkhar Gorge, a strategic gorge that provides the gateway to the only major province still outside Taliban's control).

⁴⁸ *The Situation in Afghanistan and its Implications for International Peace and Security, Report of the Secretary General*, 54th Sess., U.N. Doc. A/54/536-S/1999/994 [hereinafter *U.N. Secretary General Report*].

existence. The Taliban have been characterized as “fearsome fundamentalist zealots”⁴⁹ who “impose the strictest Islamic rule in the world.”⁵⁰ Most of the population has insufficient food, clothing, housing, and medical care.⁵¹ Inflation is also a serious problem in Afghanistan, with one estimate placing the inflation rate at 240%.⁵²

The former U.S. Ambassador to Pakistan, Robert Oakley, has suggested that the Taliban represented “the arrival of ‘village’ values and attitudes in the cities.”⁵³ Under its harsh interpretation of Islamic law, the Taliban have banned television, cameras, and videocassette recorders.⁵⁴ The Taliban have also banned music,⁵⁵ as well as singing birds, kites, and flutes.⁵⁶ Women are the most severely treated under the Taliban’s harsh rule, and are required by law to wear *burkas*, which are heavy, body-length veils.⁵⁷ Men are required to wear beards that are at least fist length.⁵⁸

The Orwellian religious police, the Ministry for the Preservation of Virtue and Elimination of Vice, patrol the capital city in red Toyota pickup trucks.⁵⁹ They enforce the Taliban’s edicts at gunpoint, with rifle butts, or with the backs of their hands.⁶⁰ To further control the population, the Taliban have disarmed much of the populace and engage in public torture and executions.⁶¹ In one such event, which drew

49 *Living with the Taliban*, *supra* note 30.

50 *Reality Check*, *supra* note 6.

51 WORLD FACTBOOK, *supra* note 1.

52 C.I.A. DIRECTORATE OF INTELLIGENCE, *Afghanistan*, WORLD FACTBOOK (1999) (on file with author).

53 Maley, *supra* note 3, at 19.

54 Pamela Constable, *Technology Intrudes on Dogma in Land of the Taliban*, WASH. POST, May 25, 1999, at A10.

55 *Living with the Taliban*, *supra* note 30.

56 *See* Power, *supra* note 9.

57 *Id.*; For more on the plight of women under the Taliban see Part IVB, *infra*.

58 Power, *supra* note 9.

59 *Id.*

60 *See* Christiane Amanpour, *Tyranny of the Taliban: A Visit to the Capital of Afghanistan’s Extremist Regime Reveals a Harsh World of Suppression and Despair*, TIME, Oct. 13, 1997, at 60.

61 *See* *Reality Check*, *supra* note 6.

thousands in the former national soccer stadium, a man who drank alcohol received eighty strokes with a broad strap, and a burglar had his right hand amputated.⁶² In November 1999, thousands attended the public execution of a woman convicted of murdering her husband.⁶³

The Taliban point out the fact that they have brought order and stability to this wary nation.⁶⁴ The Afghanistan ambassador to Pakistan, Abdul Hakeem Mujahid, observed, "For two decades there was complete anarchy. At least we have provided a normal life for the common people."⁶⁵ Auto dealer Amir Muhammad explained that "Before the Taliban, robbers would not only steal your vehicle, they'd take your money and maybe even your clothes."⁶⁶ Today, there is mostly peace in

62 *Id.*

63 See *Thousands See Taliban Execute Afghan Woman*, WASH. POST, Nov. 17, 1999, at A26. Under the Taliban's interpretation of *Sharia* (Islamic law), married adulterers are stoned to death, while bachelors convicted of illegal sexual conduct are given lashes. See *Taliban Publicly Lash Afghan Adulterer in Herat City*, AGENCE FRANCE-PRESSE, Apr. 26, 1999, available at 1999 WL 2590402. Thieves are punished by having limbs amputated, and murderers are executed publicly. See *id.* For examples of punishments the Taliban have carried out, see *id.* (adulterer publicly flogged; given 100 lashes in front of large crowd in Herat City); *Taliban Crush Two Afghan Sodomists Under Mud Wall*, AGENCE FRANCE-PRESSE, Mar. 3, 1999, available at 1999 WL 2556570 (two men convicted of sodomy were publicly crushed to death by having a tank push a mud wall on top of them before a large crowd in Kandahar); *Man Gets 100 Lashes in Kabul for Fornication*, ARIZ. REPUB., Mar. 13, 1999, at A22 (man convicted of fornication publicly given 100 lashes in Kabul; woman in case was temporarily spared punishment because she was nine months pregnant); *Painful Tryst; Authorities Lash Woman for Affair*, CALGARY SUN, Apr. 17, 1999 at 28 (woman from preceding case publicly given 100 lashes after giving birth a few days before; the woman's mother was publicly given thirty-nine lashes because she knew of her daughter's relationship and did not report it to police; also, nine men convicted of gambling were given thirty-nine lashes); *Three Men Publicly Executed in Afghan City*, AGENCE FRANCE-PRESSE, Apr. 27, 1999, available at 1999 WL 2591252 (three men convicted of murder, adultery and burglary publicly executed in Ghazni); *Afghan Death by Stoning*, N.Y. TIMES, May 2, 2000, at A4 (mother of seven stoned to death before several thousand spectators at a sports stadium in Mazar-e-Sharif); *An Afghan Penalty for Soccer Shorts*, N.Y. TIMES, July 18, 2000, at A11 (visiting Pakistani soccer players arrested and had heads shaved for wearing shorts during soccer games; male athletes must wear trousers while playing).

64 Power, *supra* note 9.

65 *Id.*

66 Barry Bearak, *Spinbaldak Journal; In Afghanistan's Bargain Basement, Buyers Beware*, N.Y. TIMES, June 28, 2000, at A4.

Afghanistan: the towns are now safe and bandits no longer patrol the highways.⁶⁷ Of course, anyone who breaks the law is severely punished by the religious police.⁶⁸ As one Afghan observed, it is "like having good security in a prison."⁶⁹

Recent reports suggest that the state of oppression in Afghanistan may be gradually improving.⁷⁰ Schools for girls are starting to reopen.⁷¹ The Taliban have allowed filming and photography by journalists, which was considered un-Islamic in the past.⁷² The restriction on women leaving the house without a male relative has been eased, and men are starting to go out without covering their heads and with trimmed beards.⁷³ In addition, the Taliban are trying to promote the sport of cricket in their country by attempting to join the International Cricket Council.⁷⁴ Resident Project Officer for the United Nations Children's Fund in Afghanistan, Eric Donelli, stated that "I think things are changing. You can feel it in the atmosphere. There's less fear."⁷⁵ Scholar Kamal Matinuddin agrees:

There has been a gradual change in the Taliban as far as their interpretation of Islamic tenets. They have allowed themselves to be filmed, and they have been talking to foreigners and have allowed foreigners into their country. There is definitely a change in the attitude towards the rest of the world, and I think if they gradually move in this direction, they may take part in the mainstream.⁷⁶

67 *See Not Very Nice People*, *supra* note 10.

68 *Living with the Taliban*, *supra* note 30 (describing the practice of publicly displaying amputated hands in order to deter crime).

69 *Id.*

70 Tasgola Karla Bruner, *Signs of Change Detected in Afghanistan's Taliban: Behavior During Hijacking Spurs Hope of Loosened Restrictions*, DALLAS MORNING NEWS, Jan. 23, 2000, at 21A.

71 *Id.* (explaining that the government is moving away from past policies of shutting down the private home schools and instead the government is finding ways to construct government schools that will include girls).

72 *Id.*

73 *Id.*

74 Owais Tohid, *Afghan Taliban Want to Join International Cricket Body*, AGENCE FRANCE-PRESSE, Jan. 20, 2000, available at 2000 WL 2716609.

75 Bruner, *supra* note 70.

76 *Id.*

Others are skeptical that any real changes are occurring in Afghanistan. Naseema Barin, a member of the leadership council of the Pakistan-based Revolutionary Association of the Women of Afghanistan, said that the West should not be fooled into believing that the Taliban are capable of change and that the “Taliban are anti-women and anti-culture. They want to show themselves to the West as people who are bringing peace to Afghanistan and are working for women’s rights. This is all nonsense.”⁷⁷

C. International Relations

During the early stages of the Taliban movement, the United States initially supported the Taliban.⁷⁸ U.S. officials now seem to have been overly optimistic when they spoke of seeking early talks with the Taliban leaders, and of re-opening the U.S. Embassy in Kabul,⁷⁹ which for security reasons has been closed since January 1989.⁸⁰ Western nations are among the Taliban’s harshest critics, especially on the issues of human rights, harboring terrorists, and drug policy.⁸¹

The single issue that has put the biggest strain on international relations with the Taliban is their refusal to turn over suspected terrorist financier and kingpin Osama bin Laden.⁸² The Taliban’s continued refusal to turn over bin Laden to either the United States or a third country for trial resulted in harsh economic sanctions being placed against Afghanistan by both the United States and the United Nations.⁸³ The U.S. sanctions freeze all Taliban assets in the United States, prohibit the import of any Afghan products, and make it illegal for U.S.

⁷⁷ *Id.*

⁷⁸ See Richard Mackenzie, *The United States and the Taliban*, in *FUNDAMENTALISM REBORN? AFGHANISTAN AND THE TALIBAN* 91 (William Maley ed. 1998).

⁷⁹ See *id.*

⁸⁰ See *WORLD FACTBOOK*, *supra* note 1.

⁸¹ See *Unban the Taliban: It is Time to Recognise the Taliban as the Rulers of Afghanistan*, *ECONOMIST*, July 24, 1999, at 19 [hereinafter *Unban the Taliban*].

⁸² For more on Osama bin Laden and the Taliban’s connection to terrorism, see Part IVA, *infra*.

⁸³ See Amir Shah, *Taliban Asks UN to Delay Today’s Sanctions Deadline: Islamic Militia Will Not Surrender bin Laden*, *HOU. CHRON.*, Nov. 14, 1999, at A28.

companies to sell goods and services to the Taliban.⁸⁴ The executive order does make an exception for food and other humanitarian supplies such as medicine.⁸⁵ The U.N. sanctions freeze all Taliban assets worldwide and ban flights owned, leased, or operated by the Taliban from taking off or landing.⁸⁶ The U.N. resolution does make exceptions for humanitarian flights or flights for Islamic pilgrimages to Mecca.⁸⁷

The direct economic effects of the U.S. sanctions are unlikely to be significant because the total trade between the United States and Afghanistan was only \$24 million in 1998.⁸⁸ One significant impact of the sanctions is that the flight ban makes it more difficult for Afghans to receive cash by mail sent by relatives abroad, a major source of income in Afghanistan.⁸⁹ As a result, people must travel to Pakistan to pick up money that is mailed to them.⁹⁰ The Taliban has greeted the sanctions with anger and has remained defiant. Taliban foreign minister Wakil Ahmad Muttawakil proclaimed that, "We will never hand over Osama bin Laden, and we will not force him out. He will remain free in defiance of America. . . . We will not hand him to an infidel nation."⁹¹ "Other Taliban officials warned that the United States would face divine retribution, including 'storms and earthquakes,'" if the United States tried to harm bin Laden.⁹²

In August 2000, the United States and Russia agreed to work together in seeking expanded sanctions against the Taliban in the United Nations.⁹³ These new sanctions aim to

84 See Exec. Order No. 13129, 64 Fed. Reg. 36759 (July 7, 1999) [hereinafter U.S. Sanctions].

85 See *id.*

86 See S.C. Res. 1267, 54th Sess., 4051st mtg., U.N. Doc. S/RES/1267 (1999) [hereinafter U.N. Sanctions].

87 *Id.*

88 John Lancaster, *Afghanistan Rulers Accused of Giving Terrorist Refuge; Clinton Bans Trading with Taliban Militia*, WASH. POST, July 7, 1999, at A15.

89 Constable, *supra* note 21.

90 *Id.*

91 Pamela Constable, *U.N. Imposes Air, Economic Sanctions on Afghanistan; Taliban Still Refuses to Hand Over bin Laden*, WASH. POST, Nov. 14, 1999, at A22.

92 *Id.*

93 Judith Miller, *Russians Join U.S. to Seek New Sanctions on Taliban*, N.Y. TIMES, Aug. 4, 2000, at A7.

force the Taliban to end support of Islamic terrorists, control the production and trafficking of drugs, and establish a broad-based government for Afghanistan.⁹⁴ Subsequently, the Taliban warned that U.N. Security Council threats of harsher sanctions will not cause them to turn bin Laden over to the United States.⁹⁵ In a letter to U.N. Secretary General Kofi Annan, Taliban Foreign Minister Wakil Ahmad Muttawakil stated that “If America and the United Nations believe that the Islamic Emirate (Afghanistan) will bow to their irrational sabre-rattling and economic pressures, they are mistaken.”⁹⁶

It may come as a surprise that traditional U.S. adversaries such as Russia, China, and Iran have all expressed concern about the Taliban as well.⁹⁷ Russia fears that the Taliban may seek to spread their militant form of Islam to the former Soviet states of Central Asia—Turkmenistan, Uzbekistan, and Tajikistan.⁹⁸ The Russian Foreign Ministry issued a statement that read, “Russia considers the stepped-up military activities by the Taliban in northern Afghanistan as a real threat to the commonwealth’s southern borders.”⁹⁹ These fears were eventually realized in January 2000, as the Taliban offered “all-out” support for the Chechens in their bloody war with Russia.¹⁰⁰ Like Afghanistan, Chechnya is fighting to establish an independent Islamic state.¹⁰¹ Afghanistan became the first country to officially recognize the breakaway Chechen government.¹⁰² Chechnya has also opened an embassy in

94 *Id.*

95 *Washington Cannot Get bin Laden Through Sanctions: Taliban*, AGENCE FRANCE-PRESSE, Sept. 26, 2000, available at 2000 WL 24720851.

96 *Id.*

97 See Neil King, Jr., *U.N. Sanctions on Taliban May Hamper Effort to Bring bin Laden to Trial in U.S.*, WALL ST. J., Nov. 12, 1999, at A17; see also Burns, *supra* note 15.

98 See Burns, *supra* note 15.

99 *Id.*

100 Mohammad Bashir, *Afghan Taliban Offer All-out Backing to Chechnya*, AGENCE FRANCE-PRESSE, Jan. 21, 2000, available at 2000 WL 2717316.

101 See *Chechen Embassy Opens*, GLOBE AND MAIL (TORONTO), Jan. 24, 2000, at A10.

102 *Afghanistan’s Taliban Recognizes Rebel Rule in Chechnya*, AGENCE FRANCE-PRESSE, Jan. 16, 2000. For the effects of the Taliban’s recognition of Chechnya, see Thomas D. Grant, *Current Development; Afghanistan Recognizes Chechnya*, 15 AM. U.

Afghanistan.¹⁰³

Taliban foreign minister Wakil Ahmad Muttawakil stated that “our recognition has become absolutely necessary because of the brutal Russian onslaught against the Chechens.”¹⁰⁴ Muttawakil did not say whether the Taliban would give military support to Chechnya but stated that “it is an issue to be considered later.”¹⁰⁵ Taliban Supreme Leader Mullah Mohammad Omar suggested that military support from the Taliban was likely, warning that “if the Russians continue their aggression against the Chechens, we cannot sit like spectators.”¹⁰⁶ Omar also stated “Now [that] there is fighting in another Muslim home, it is the religious obligation of all Muslims to rush to the help of their brothers.”¹⁰⁷ Even though Russia has threatened to sever diplomatic ties with any country that starts formal relations with Chechnya, Taliban information minister Qudratullah Jamal stated that “we are not afraid if Russia imposes sanctions on us or threatens us occasionally. The Russians have not recognized us. We are independent. Everybody is doing his own business.”¹⁰⁸ Russia criticized the Taliban for recognizing Chechnya.¹⁰⁹ General Leonid Ivashov, the international relations chief in the Russian defense ministry asserted that “one terrorist group supports another—they are seeking solidarity.”¹¹⁰ Another Russian official stated that “all the Taliban’s attempts to win international recognition are in

INT’L L. REV. 869 (2000) (observing that because the Taliban’s recognition of Chechnya probably has no legal effect under international law, the primary effect of the recognition was to draw greater attention to the humanitarian crisis unfolding in Chechnya).

103 *Russia Says Progress Made in Grozny Street Fighting*, CHI. TRIB., Jan. 24, 2000, at 5.

104 *Afghanistan’s Taliban Recognizes Rebel Rule in Chechnya*, *supra* note 102.

105 *Id.*

106 *Afghan Taliban Urge World to Stop Chechen War*, AGENCE FRANCE-PRESSE, Jan. 21, 2000, available at 2000 WL 2717556.

107 Bashir, *supra* note 100.

108 Mohammad Bashir, *Afghan Taliban Call on Muslim World to Recognize Chechnya*, AGENCE FRANCE-PRESSE, Jan. 17, 2000, available at 2000 WL 2714266.

109 *See Russia Lashes Out at Taliban Support of Chechnya*, AGENCE FRANCE-PRESSE, Jan. 17, 2000, available at 2000 WL 2714415.

110 *Id.*

vain.”¹¹¹ Although Russia has ruled out any military action against the Taliban,¹¹² Russia has promised to aid the former Soviet states of Central Asia if they are threatened by the Taliban.¹¹³

Similarly, China worries about the Taliban’s influence on its westernmost province, Sinkiang, which contains Muslim communities.¹¹⁴ Indeed, the Uighur Muslim community in China has demanded an independent state, possibly inspired by the Taliban.¹¹⁵ However, in July 2000 the Taliban assured China that no groups would be allowed to operate against China from Afghanistan.¹¹⁶ At the same time, China started negotiating a peace settlement to end the Afghan civil war.¹¹⁷

In contrast, Iran has a more fundamental problem with the Taliban. Iran and the Taliban practice conflicting forms of Islam.¹¹⁸ Iran is a Shi’ite dominated country, while the Taliban belong to the Sunni sect.¹¹⁹ The Taliban regard all Shi’ites as heretics who face persecution for their minority views.¹²⁰ Iran counters that the Taliban have given Islam a bad name.¹²¹ Furthermore, Iran has characterized the Taliban’s interpretation of Islamic law as “violent” and “narrow-minded.”¹²² In August 1998, the Taliban murdered eight Iranian diplomats and a journalist who were inside the Iranian consulate during a Taliban invasion of an Afghan Shi’ite

111 *Id.*

112 *Moscow Rules Out Help for Afghan Taliban Opponents*, AGENCE FRANCE-PRESSE, Sept. 7, 2000, available at 2000 WL 24705334.

113 *Politics This Week*, ECONOMIST, Sept. 30, 2000, available at 2000 WL 8143792.

114 MATINUDDIN, *supra* note 5, at 4, 208.

115 *See id.* at 208.

116 *Taliban Reaches Out to China*, July 28, 2000, at <http://www.stratfor.com/services/giu2000/072800.asp>.

117 *See id.*

118 Scott MacLeod et al., *Tehran vs. The Taliban: Iran’s Shi’ite Regime Threatens to Turn a Theological Rivalry with the Sunni Afghans into a Shooting War*, TIME, Sept. 28, 1998, at 58 [hereinafter *Theological Rivalry*].

119 *Id.*

120 *Id.*

121 *Id.*

122 Max Block, *Kabul’s Health Apartheid*, THE NATION, Nov. 24, 1997, at 5.

community, causing much outrage in Iran.¹²³ This incident was very close to causing a full-scale war between Iran and Afghanistan, and Iran massed hundreds of thousands of troops along the Afghan border.¹²⁴ The situation has since cooled, and in January 2000, the Taliban said that they were ready to reopen diplomatic relations with Iran.¹²⁵ A group from the Iran foreign ministry visited Afghanistan as well.¹²⁶ Iran, however, has denied reports that it may soon offer diplomatic recognition to the Taliban.¹²⁷ Iranian foreign ministry spokesman Hamid-Reza Asefi stated that "Resuming such relations is not on the agenda" of Iranian diplomacy.¹²⁸ Another Iranian official stated that Iran would resume diplomatic ties with Afghanistan "if a broad-based government with the participation of all the ethnic and religious groups is installed in Kabul," and if the Taliban observe "international norms" and follow recommendations issued by the United Nations.¹²⁹ Iran also wants those responsible for killing the diplomats brought to trial.¹³⁰

The Taliban flatly deny charges that they are interested in spreading their message beyond their borders.¹³¹ The Taliban claim they aim "to run a durable, stable Islamic state that would not interfere with its neighbours."¹³² Further, the Taliban's leader, Mullah Mohammad Omar, has stated that, "We have no intention of threatening any other country. We won't poke our noses elsewhere."¹³³ Given the Taliban's support of the Chechen rebels, the veracity of Omar's statement remains to be seen.

In addition, some observers believe that the Taliban's

123 *Theological Rivalry*, *supra* note 118.

124 Mohammad Bashir, *Afghan Taliban Ready to Reopen Relations with Iran*, AGENCE FRANCE-PRESSE, Jan. 18, 2000, available at 2000 WL 2714930.

125 *Id.*

126 *Taliban Foreign Minister Meets Pakistani Counterpart*, AGENCE FRANCE-PRESSE, Jan. 24, 2000, available at 2000 WL 2718890.

127 *Iran Denies Report of Diplomatic Recognition to Taliban*, AGENCE FRANCE-PRESSE, Jan. 19, 2000, available at 2000 WL 2715855.

128 *Id.*

129 *Id.*

130 *Id.*

131 *See Strategy for Recognition*, *supra* note 7.

132 *Id.*

133 McGirk & Yusufzai, *supra* note 41.

international relations improved significantly because of their role in ending the December 1999 IndiaAir hijacking.¹³⁴ During the hijacking crisis, the Taliban served as mediators between the hijackers and the Indian government.¹³⁵ The Taliban pledged to storm the plane if the hijackers carried out threats to execute passengers.¹³⁶ India had nothing but praise for the Taliban's actions in helping to solve the crisis, even though India is an openly hostile enemy of the Taliban.¹³⁷ India's Foreign Minister Jaswant Singh said, "I am here with a sense of gratitude and indebtedness for the support and cooperation we have received from the Taliban. . . . The Taliban assured me that the criminals would not receive any asylum in Afghanistan."¹³⁸ This is probably high praise from India because the Taliban have been described in the Indian media as "the devil's militia," "a shadowy group the world is not comfortable with," "a monster even its creators cannot contain," and "the last people on earth that any reasonable human being would want to interact with."¹³⁹ Pakistan also had praise for the Taliban, as Pakistan's Ministry of Foreign Affairs stated, "The government of Afghanistan demonstrated great responsibility and maturity in handling this crisis."¹⁴⁰ The statement went on to say, "Their approach throughout this period of stress has been imbued with a sense of humanitarian concern and care and opposition to terrorism which has earned them the appreciation of the entire international community."¹⁴¹ The Taliban explained that "This was a humanitarian crisis. It was not political."¹⁴²

134 Marion Lloyd, *Hijacking Crisis Could Help Taliban Standing*, HOU. CHRON., Dec. 29, 1999, at A18.

135 *Id.*

136 *Id.*

137 Kathy Gannon, *Taliban Cast in Role of the Good Guy for a Change*, SEATTLE POST-INTELLIGENCER, Jan. 1, 2000, at A6.

138 *Id.*

139 Saba Naqvi Bhaumik, *Taliban: Devil's Militia*, INDIA TODAY, Jan. 10, 2000, at 69.

140 Gannon, *supra* note 137.

141 Barry Bearak, *Pakistan Praises Taliban 'Maturity', Hijacking: The Afghan Fundamentalists Get Some Credit for Ending the Crisis*, ORANGE CO. REG., Jan. 1, 2000, at A15.

142 Gannon, *supra* note 137.

More recently, however, many have asserted that the Taliban are causing regional instability in Central Asia. U.N. Secretary General Kofi Annan stated that:

the conflict in Afghanistan has ceased to be, if it ever was, merely an internal Afghan problem. Years of foreign intervention have not only failed to produce any significant benefits for those meddling in the country's affairs, but have also led to a situation where the Afghan conflict has become a growing threat to peace and stability in the region and beyond.¹⁴³

According to Rifaat Hussain, a professor of strategic studies in Islamabad, Pakistan, "There is a growing regional belief that Taliban extremism is a source of regional instability and that it needs to be contained."¹⁴⁴ In particular, China, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan are concerned about the spillover of Islamic fundamentalism into the rest of the region.¹⁴⁵ The most direct threat in the region appears to be toward Tajikistan, where recent fighting between the Taliban and opposition forces came within three to six miles of the Afghan-Tajikistan border.¹⁴⁶ In fact, four shells from the fighting landed in Tajikistan, prompting Russian guards patrolling in Tajikistan to call for reinforcements.¹⁴⁷ The fighting eventually came within one to two miles of the border,¹⁴⁸ causing great concern by Tajik President Emomali Rakhmonov.¹⁴⁹ The Taliban deny they are a threat to regional stability.¹⁵⁰

143 U.N. Press Release, SG/SM/7552, AFG/121, Sept. 15, 2000.

144 Pamela Constable, *Russia, U.S. Converge on Warnings to Taliban; Ex-Rivals Fear Afghan Support for Terrorists*, WASH. POST, June 4, 2000, at A23.

145 *Id.*; *Uzbek President Wants UN Action on Afghanistan*, AGENCE FRANCE-PRESSE, Sept. 27, 2000, available at 2000 WL 24721777; but see *Uzbek President Says Taliban Threat Exaggerated*, AGENCE FRANCE-PRESSE, Sept. 26, 2000, available at 2000 WL 24721140 (reporting that Uzbek President stated that the Taliban's threat to the Central Asian states is being exaggerated to scare investors from the region).

146 *Shells Hit Tajikistan During Clashes Over Border in Afghanistan*, AGENCE FRANCE-PRESSE, Sept. 23, 2000, available at 2000 WL 24718243.

147 *Id.*

148 *Taliban, Opposition Clash Near Tajik Border: Russian Military*, AGENCE FRANCE-PRESSE, Sept. 25, 2000, available at 2000 WL 24719692.

149 *Tajik President Concerned over Fighting in Afghanistan*, AGENCE FRANCE-PRESSE, Sept. 27, 2000, available at 2000 WL 24721521.

150 See *Senior Taliban Official Denies Backing Central Asian Insurgents*, AGENCE

With the end of the civil war in sight, the Taliban are now focusing on diplomatic relations.¹⁵¹ Specifically, the Taliban are actively lobbying the United Nations for control of the Afghan U.N. seat, which is still held by the exiled former government.¹⁵² Regarding this demand, former Secretary of State Madeline Albright reiterated the Clinton Administration's demand that the Taliban agree to a broad-based democratic government,¹⁵³ a seemingly lofty goal for a country that, throughout its history, has never held an election.¹⁵⁴ Later, Albright stated that the United States will oppose awarding the U.N. seat to the Taliban.¹⁵⁵ Albright cited as reasons the Taliban's human rights record, their refusal to turn over Osama bin Laden, and "the way they operate."¹⁵⁶

In addition to lobbying for the U.N. seat, the Taliban are also actively lobbying for international recognition from other countries. A Taliban delegation has recently traveled to Paris, Washington, and New York.¹⁵⁷ In a "remarkable shift in foreign policy," French officials invited officials from the Taliban to Paris for talks.¹⁵⁸ The meeting between France and the Taliban could be a signal that Paris is on the verge of opening diplomatic relations or recognizing the Taliban, which would enhance the Taliban's chances for further recognition from other countries.¹⁵⁹ France's decision to initiate the talks with the Taliban appears to be motivated primarily by economic reasons: France hopes to

FRANCE-PRESSE, Sept. 18, 2000, available at 2000 WL 24712904; *Afghan's Taliban Militia Reassures Central Asia Neighbors*, AGENCE FRANCE-PRESSE, Sept. 24, 2000, available at 2000 WL 24719056.

151 See Myre, *supra* note 4.

152 Barbara Crossette, *Taliban Open a Campaign to Gain Status at the U.N.*, N.Y. TIMES, Sept. 21, 2000, at A11.

153 *Id.*

154 See *id.*

155 Barry Schweid, *U.S. Opposes U.N. Seat for Taliban*, A.P., Sept. 21, 2000, available at 2000 WL 27209741.

156 *Id.*

157 Myre, *supra* note 4.

158 *France Edging Toward Recognizing Afghanistan's Taliban Government*, Sept. 20, 2000, at <http://www.stratfor.com/services/giu2000/092000.asp>.

159 *Id.*

capitalize on the region's booming energy market.¹⁶⁰ Similarly, an Italian official has also met with the Taliban and stated that Italy could consider recognizing the Taliban once the civil war in Afghanistan ended.¹⁶¹

Although Russia is unlikely to recognize the Taliban anytime soon,¹⁶² Russia, "in a sharp foreign policy reversal," did recently open talks directly with the Taliban.¹⁶³ Previously, Russia had refused to negotiate with the Taliban, and instead supported the opposition forces.¹⁶⁴ The shift in Russian policy is indicative of the collective efforts in the region to bring about a peaceful end to the civil war in Afghanistan.¹⁶⁵ Russia's decision to initiate the talks appears to be motivated by economic and security concerns.¹⁶⁶

III. INTERNATIONAL AND U.S. STANDARDS FOR RECOGNIZING GOVERNMENTS

A. *International Recognition Policy*

There are few subjects in international law which are of greater significance than the question of recognition of governments.¹⁶⁷ There is probably no other area of international law in which law and politics appear to be more closely connected.¹⁶⁸ Recognition has substantial legal ramifications for

¹⁶⁰ *Id.*; *Where Angels Fear to Tread*, *ECONOMIST*, Sept. 30, 2000, at 44.

¹⁶¹ *Italy May Recognize Taliban once Peace Comes to Afghanistan*, *AGENCE FRANCE-PRESSE*, Sept. 28, 2000, available at 2000 WL 24723290 [hereinafter *Italy May Recognize*].

¹⁶² See *Interfax Diplomatic Panorama for September 26, 2000*, *WORLD NEWS CONNECTION*, Sept. 26, 2000, available at 2000 WL 27515910.

¹⁶³ *Russia Reverses Course in Afghanistan*, Sept. 27, 2000, at <http://www.stratfor.com/MEAF/commentary/0009270035.htm>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ HERSH LAUTERPACHT, *RECOGNITION IN INTERNATIONAL LAW* (A.M.S. Press 1978) (1947).

¹⁶⁸ *Id.*; see also OPPENHEIM'S *INTERNATIONAL LAW* 150 (Sir Robert Jennings & Sir Arthur Watts eds., 9th ed. 1993) ("As with recognition of new states, so also with recognition of governments the decision is not one determined solely by political considerations on the part of the recognizing state."); L. THOMAS GALLOWAY,

the emerging government.¹⁶⁹ For example, under the foreign relations law of the United States, a regime not recognized as a government is denied access to U.S. courts and is not entitled to property belonging to the state located in the United States.¹⁷⁰ Furthermore,

A State whose government is refused recognition is, for many purposes, deprived of the usual prerogatives of international personality. Thus, for instance, a government from which recognition . . . has been refused is deprived of the protection, which it otherwise enjoys under international law. . . . The acts of its legislative, administrative, and judicial organs are treated as invalid.¹⁷¹

Therefore, “Nonrecognition is a drastic sanction, and in practice normally cuts off contact between the two states involved.”¹⁷² A state is not required to extend formal recognition to the government of another state and is not obligated to maintain diplomatic relations with any other state.¹⁷³

Nations have developed three major approaches to recognition, each with its own set of criteria for determining

RECOGNIZING FOREIGN GOVERNMENTS: THE PRACTICE OF THE UNITED STATES 5 (1978) (observing that:

The decision to recognize a foreign government that comes to power through extraconstitutional means usually involves an interesting and often subtle interplay between the principles of international law and international politics. . . . Some scholars have argued that the decision to recognize a new government is a wholly legal decision. Most policy makers have taken the opposite view, contending that the decision to recognize is political and within the discretion of the recognizing state. In practice, the majority of states blend both law and politics into their decision.);

BRAD R. ROTH, *GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW* 123 (1999) (“There can thus be no question that recognition of governments—in this specific sense of acknowledging their capacity to assert rights, incur obligations, and authorize acts in the name of the state—is ‘eminently a question of international law.’”).

169 See ROTH, *supra* note 168, at 122.

170 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 205 (1987).

171 LAUTERPACHT, *supra* note 167, at 90; *but see* GALLOWAY, *supra* note 168, at 11–12 (arguing that recognition has little substantive content and that its primary importance is political rather than legal).

172 GALLOWAY, *supra* note 168, at 141.

173 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 203 (1987).

whether to grant recognition.¹⁷⁴ The three approaches are: (1) the traditional approach; (2) the Estrada Doctrine; and (3) the Tobar Doctrine.¹⁷⁵ Under the traditional approach, a state considering recognition attempts to determine:

- whether the government is in de facto control of the territory and in possession of the machinery of the state;
- whether the government has the consent of the people, without substantial resistance to its administration, that is, whether there is public acquiescence in the authority of the government; and
- whether the new government has indicated a willingness to comply with its obligations under treaties and international law.¹⁷⁶

The second prong of the traditional approach, the consent of the people, has proven to be the most controversial of the three.¹⁷⁷ The majority view treats the concept “consent of the people” as meaning acquiescence of the people to the new government.¹⁷⁸ “Strictly speaking, then, it is not the new regime’s ability to apply force by the populace’s reactions to the regime that determines the regime’s efficacy.”¹⁷⁹

Next, “Under the Estrada Doctrine, the recognition of governments that come to power through extraconstitutional means is for all practical purposes eliminated from diplomatic practice. Only new *states* are recognized; when a new *government* comes to power either through constitutional means or otherwise, its relations with outside states remain unchanged.”¹⁸⁰

“The Estrada Doctrine embraces the principle of unfettered national sovereignty and rejects interference with the domestic affairs of one state by another through the granting or

174 GALLOWAY, *supra* note 168, at 5.

175 *Id.*

176 *Id.* at 5–6; *see also* OPPENHEIM’S, *supra* note 168, at 150–51; LAUTERPACHT, *supra* note 167, at 88; ROTH, *supra* note 168, at 136–37.

177 GALLOWAY, *supra* note 168, at 6.

178 GALLOWAY, *supra* note 168, at 7; *see also* OPPENHEIM’S, *supra* note 168, at 151.

179 ROTH, *supra* note 168, at 138.

180 GALLOWAY, *supra* note 168, at 8.

withholding of recognition. . . . A substantial number of states have adopted the Estrada Doctrine, either officially or in practice.”¹⁸¹

The Tobar . . . Doctrine stands in direct contrast to the Estrada Doctrine. It attempts to encourage democratic and constitutional government by refusing to recognize any government that comes to power through extraconstitutional means until a free election is held and new leaders elected. . . . This doctrine is often criticized for its substantial interference with the domestic political processes of sovereign states, and because it bars revolutionary change as a method to overthrow even corrupt and despotic governments. . . . The Tobar Doctrine never has enjoyed widespread acceptance.¹⁸²

B. U.S. Recognition Policy

Hersh Lauterpacht’s assessment regarding U.S. recognition policy, which was made in 1947, that “It is not easy to characterize in a simple formula the practice of the United States in the matter of recognition of governments. Isolated pronouncements—of which there is an abundance—provide material for contradictory conclusions”¹⁸³ is still appropriate today. Indeed, over thirty years later, another commentator

181 *Id.* at 9; *see also* OPPENHEIM’S, *supra* note 168, at 152 (arguing that “The view that non-recognition because of the unconstitutional origins of a government was an interference in its domestic affairs led to the so-called Estrada Doctrine enunciated in 1930 by the Mexican Foreign Minister, which affirmed the duty of continuing diplomatic relations, so far as possible, without regard to revolutionary changes”); GALLOWAY, *supra* note 168, at 147 (presenting arguments for the United States to adopt the Estrada Doctrine); ROTH, *supra* note 168, at xv–xvi (“Emphasizing sovereignty has a double edge in international law and politics. It is not only meant to protect independence of states and their peoples by excluding external intervention. It also supports international standards of conduct protective of sovereignty that require collective judgments of legality and propriety.”).

182 GALLOWAY, *supra* note 168, at 10; *see also* OPPENHEIM’S, *supra* note 168, at 152 (arguing that “Neither the Tobar Doctrine nor the Estrada Doctrine has proved of lasting value”); *but see* ROTH, *supra* note 168, at 413, 417 (arguing that a variation of the Tobar Doctrine, referred to as a “new liberal-democratic legitimism,” is emerging and that as a result, “The very concept of sovereignty, it is argued, is undergoing a democratic transformation.”).

183 LAUTERPACHT, *supra* note 167, at 124.

asserted that “The literature, which is profuse, reflects the conflict and confusion that have marked United States recognition practice.”¹⁸⁴

Traditionally, the United States followed an effective control approach that also looked to the consent of the people.¹⁸⁵ Thereby, the United States has used recognition as a policy tool to advance several different objectives, such as advancing economic imperialism, promoting constitutional governments, and halting the spread of communism.¹⁸⁶ At times, the United States has recognized the government in power despite its disapproval of the new government’s ascension to power, policies, or ideologies.¹⁸⁷

Since 1970, the United States has abandoned its former recognition practices.¹⁸⁸ In recent years, the United States has deemphasized and avoided the use of recognition regarding changes of government.¹⁸⁹ In other words, the United States now follows a recognition policy that is “largely indistinguishable” from the Estrada Doctrine.¹⁹⁰ Although the United States has never officially adopted the Estrada Doctrine, it has publicly stated that when faced with an extraconstitutional change in government, the United States “concerns itself more with the continuance of relations than with recognizing the new government.”¹⁹¹ The United States has also never officially announced that it has eliminated the concept of recognition of governments.¹⁹² However, in cases in which the United States perceives major policy interests at issue, it has revived the use

184 GALLOWAY, *supra* note 168, at xiii.

185 See LAUTERPACHT, *supra* note 167, at 124; RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 203 (“A state is not required to accord formal recognition to the government of another state, but is required to treat as the government of another state a regime that is in effective control of that state, except [for regimes that obtain power through the threat or use of armed force in violation of the U.N. Charter].”).

186 GALLOWAY, *supra* note 168, at 1.

187 RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 203 Reporter’s Note 1.

188 *Id.*

189 *Id.*

190 GALLOWAY, *supra* note 168, at 139.

191 *Id.*

192 *Id.* at 145.

of recognition as a U.S. policy tool.¹⁹³ The current U.S. recognition policy has been criticized for being “vague,” resulting in a “conceptual muddle,” and leading to “conceptual problems” regarding the U.S. response to extraconstitutional changes of government.¹⁹⁴

IV. U.S. POLICY REASONS FOR REFUSING TO RECOGNIZE THE TALIBAN

A. *Osama bin Laden*

The primary reason that the United States does not recognize the Taliban is probably the Taliban’s refusal to turn over Osama bin Laden to the United States for trial. Bin Laden is an Islamic extremist who is believed to have maintained a base in Afghanistan for several years.¹⁹⁵ Both the U.S. and the U.N. sanctions were directly in response to the Taliban’s decision not to turn over bin Laden. In the resolution establishing the sanctions, the U.N. stated, “[T]he Taliban continues [sic] to provide safe haven to Usama bin Laden and to allow him and others associated with him to operate a network of terrorist training camps from Taliban-controlled territory and to use Afghanistan as a base from which to sponsor international terrorist operations.”¹⁹⁶ The executive order creating the U.S. sanctions contains very similar language.¹⁹⁷

Bin Laden, along with others from his al-Qaida¹⁹⁸ terrorist

193 *Id.* at 124–25, 139.

194 *Id.* at 145–47. For arguments supporting the U.S. adoption of the Estrada Doctrine, *see id.* at 147–48. For criticisms of the United States’ elimination of recognition, *see id.* at 148–52.

195 *See* Constable, *supra* note 21.

196 U.N. Sanctions, *supra* note 84.

197 *See* U.S. Sanctions, *supra* note 84. The executive order states “I, William J. Clinton, President of the United States of America, find that the actions and policies of the Taliban in Afghanistan, in allowing territory under its control in Afghanistan to be used as a safe haven and base of operations for Usama bin Ladin and the Al-Qaida organization who have committed and threaten to continue to commit acts of violence against the United States and its nationals, constitute an unusual and extraordinary threat to the national security and foreign policy of the United States, and hereby declare a national emergency to deal with that threat.” *See id.*

198 For more information on al-Qa’ida, *see* U.S. DEPT. OF STATE, BACKGROUND

organization, was indicted in the U.S. District Court for the Southern District of New York on November 4, 1998 for the bombings of U.S. Embassies in Kenya and Tanzania.¹⁹⁹ The two U.S. Embassy bombings in East Africa in August 1998 killed 224 people.²⁰⁰ Later that month, the United States launched a cruise missile attack against alleged terrorist camps in Afghanistan that were believed to be under bin Laden's control.²⁰¹ Bin Laden has been implicated in numerous other terrorist attacks, such as the 1993 bombing of the World Trade Center in New York City, the 1996 bombing of a U.S. military base in Saudi Arabia, and the 1997 massacre in Luxor, Egypt in which 58 tourists were killed.²⁰² In December 1999, bin Laden was linked to thirteen men arrested in Jordan who were allegedly planning terrorist attacks against Americans visiting Jordan during the millennium holiday.²⁰³ In February 2000, he was also linked to an unsuccessful New Year's bomb plot in which an Algerian was caught as he tried to enter the United States from Canada with bomb-making materials and timing devices in his car.²⁰⁴ Bin Laden is on the FBI's Ten Most Wanted List, and the State Department has offered a five million dollar

INFORMATION ON FOREIGN TERRORIST ORGANIZATIONS (1999) available at http://www.state.gov/www/global/terrorism/fto_info_1999.html.

199 See U.S. DEPT. OF STATE, PATTERNS OF GLOBAL TERRORISM: OVERVIEW OF STATE-SPONSORED TERRORISM (1998), available at <http://www.state.gov/www/global/terrorism/1998Report/sponsor.html>.

200 Constable, *supra* note 144.

201 *Id.*

202 John C. Henry, *U.S. Slaps Sanctions on Taliban for Aid to bin Laden*, HOU. CHRON., July 7, 1999, at A10; but see Tim Weiner, *U.S. Hard Put to Find Proof Bin Laden Directed Attacks*, N.Y. TIMES, Apr. 13, 1999 at A1 (arguing that the evidence against bin Laden is weak and that bin Laden is more of an inspiration to terrorists rather than a commander of terrorists); but see Elizabeth Olson, *Egypt: Massacre Report*, N.Y. TIMES, Mar. 11, 2000, at A8 (reporting that Switzerland has determined that the Luxor massacre was probably ordered by Sudan-based Islamic leader Mustafa Hamza).

203 See *Jordan Seizes 13 and Links Them to Afghan Explosives Training*, N.Y. TIMES, Dec. 16, 1999 at A13; U.S. DEPT. OF STATE, PATTERNS OF GLOBAL TERRORISM 1999: ASIA OVERVIEW (1999), available at <http://www.state.gov/www/global/terrorism/1999report/asia.html>.

204 See David A. Vise, *Foiled Bomb Plot Linked to bin Laden's Network*, HOU. CHRON., Feb. 21, 2000, at A1; James Risen, *Foiled Terror Plot on Tourists Linked to bin Laden Aide*, N.Y. TIMES, Feb. 29, 2000, at A1.

reward for his capture.²⁰⁵ Bin Laden is also reported to be heavily involved in the Afghan drug trade, using the profits to fund his terrorist activities.²⁰⁶ In January 2000, bin Laden reportedly claimed that he would end his “hostility” toward the United States if the United States would withdraw its troops from Saudi Arabia.²⁰⁷

The Taliban have repeatedly asserted that they are restricting bin Laden’s movements and are controlling his access to the outside world, but U.S. prosecutors believe otherwise.²⁰⁸ According to letters between members of bin Laden’s organization obtained by federal prosecutors, the Taliban are not only harboring bin Laden, but also assisting him.²⁰⁹ One such letter stated that bin Laden’s situation in Afghanistan was “very comfortable” and that “the owners of the land [the Taliban] are cooperating with them, and they welcome them. The situation is very good, the security is fine.”²¹⁰

However, the Taliban’s claims that they are restricting bin Laden’s movements and communications do appear to have some merit. According to both U.S. and Taliban officials, the Taliban started limiting bin Laden’s movements and communications following a disagreement between bin Laden and the Taliban that resulted in a fight between bin Laden’s bodyguards and the Taliban.²¹¹ Subsequently, the Taliban acknowledged for the first time that bin Laden’s presence in Afghanistan may be counterproductive, which has given U.S. officials hope that the Taliban’s interest in protecting bin Laden

205 Thomas W. Lippman, *Taliban Says Bin Laden in Its Sector of Afghanistan; Admission Comes Days After U.S. Sanctions*, WASH. POST, July 9, 1999, at A25.

206 See Jason Burke, *Bin Laden’s Opium War: The U.S. Rained Missiles on the World’s Top Terrorist. Now He’s Using Drugs to Fund his Campaigns*, OBSERVER, Nov. 29, 1998, at 23.

207 Jennifer Skordas, *Pacific/Far East/Middle East*, SALT LAKE TRIB., Jan. 23, 2000, at A2.

208 Benjamin Weiser, *Prosecutors Portray the Strands of a Bin Laden Web of Terror*, N.Y. TIMES, Jan. 23, 2000, at 1.

209 See *id.*

210 *Id.*

211 Tim Weiner, *Terror Suspect Said to Anger Afghan Hosts*, N.Y. TIMES, Mar. 4, 1999, at A1.

is waning.²¹²

The United States has clearly indicated that the Taliban's prospects for recognition would greatly increase if the Taliban would turn over bin Laden. Former U.S. Secretary of State Madeleine Albright stated that "the Taliban would enhance their prospects for American recognition and acceptance by the U.N. if they stopped harboring Mr. bin Laden."²¹³ Furthermore, former State Department spokesman James Foley reiterated that the United States would be willing to revoke the economic sanctions if the Taliban turned over bin Laden.²¹⁴ Foley called this the "first essential step" toward the diplomatic recognition the Taliban desperately seek.²¹⁵

Taliban officials have expressed a willingness to negotiate with the United States regarding bin Laden, offering to have him judged by a Muslim country.²¹⁶ The Taliban have also asserted that they are willing to turn over bin Laden if the United States provided evidence that he was involved in terrorism.²¹⁷ The United States has repeatedly rejected any alternatives to surrendering bin Laden.²¹⁸ During the January 2000 meeting in Islamabad, Pakistan, the Taliban told former U.S. Assistant Secretary of State Karl Inderfurth and former State Department Counter-Terrorism Coordinator Michael Sheehan that the Taliban "are ready to resolve the issue through talks and assured [them] that Osama bin Laden is not allowed and cannot engage in anti-U.S. activity from Afghan soil."²¹⁹ During those same meetings, senior Taliban official Mulla Amir Khan Muttaqi stated that "There is not doubt that we also want a solution to the issue of Osama, but we would like to assure you that he will not operate against you as long as he

212 *See id.*

213 *Strategy for Recognition, supra* note 7.

214 Lippman, *supra* note 205.

215 *Id.*

216 Pamela Constable, *U.N. Imposes Air, Economic Sanctions on Afghanistan; Taliban Still Refuses to Hand Over bin Laden*, WASH. POST, Nov. 14, 1999, at A22.

217 *Id.*

218 *Id.*

219 *Taliban Warn U.S. Against Killing, Arresting bin Laden*, AGENCE FRANCE-PRESSE, Jan. 21, 2000, available at 2000 WL 2717665.

is in our hands. If he is captured or killed there will [be] big reactions. Therefore, his stay in Afghanistan is in your interest. Because his supporters are not acting against the U.S. now due to this fear that that will bring harm to Osama.”²²⁰

While the Taliban continues to defy both U.S. and U.N. mandates to turn over bin Laden, international aid groups have stated that the sanctions could further damage Afghanistan’s already dismal economy.²²¹ The sanctions may be starting to take a toll on the Afghan people, who seem to be growing impatient. While waiting in a line for a daily bread ration, Mohammad Taj, a laborer, conceded that, “It is our custom to be hospitable to guests, but we would also like Osama to leave because of all the innocent people. The people with power will support themselves, and the sanctions will only hurt the poor. America should have more mercy, but the mullahs must solve this problem with the United Nations, too.”²²² A senior Taliban official has expressed similar frustration. Abdul Hakeem Mujahid stated that because bin Laden has contributed to Afghanistan’s status as a pariah state, “His presence is not a benefit to the people of Afghanistan.”²²³ Mujahid went on to add that bin Laden poses “a puzzle for Afghan leadership” because the Taliban do not want to betray a fellow Muslim.²²⁴

Other Afghans blame the United States and its allies for imposing economic hardships on them.²²⁵ They also accuse the United States of being hypocritical in its quest for bin Laden.²²⁶ Bin Laden was an important figure in financing the Afghan resistance against the Soviet invasion, the same resistance that the United States also financed.²²⁷ A Kabul University student observed, “For America, bin Laden was an angel when he was in the holy war against the Soviets, but now they say he is a spy

220 *Id.*

221 *See* Constable, *supra* note 216.

222 Constable, *supra* note 21.

223 Tim Weiner, *Terror Suspect Said to Anger Afghan Hosts*, N.Y. TIMES, Mar. 4, 1999, at A1.

224 *Id.*

225 Constable, *supra* note 21.

226 *Id.*

227 *Id.*

and a terrorist.”²²⁸ The Taliban’s foreign minister Wakil Ahmad Muttawakil charged that the United States “is known as the world’s policeman, but now those police are killing our people with missiles and hunger. . . . I don’t know if Osama bin Laden is a hero or not. But now the United States has made him into a big hero.”²²⁹

Apparently, some Islamic groups believe that bin Laden is a hero.²³⁰ Several Islamic groups have publicly warned that they would target Americans if the United States attacked Afghanistan.²³¹ A spokesman for one Pakistani Islamic group stated in October 1999 that “Osama is not just a name; he is a phenomenon that embodies the jihads [holy wars] being fought from Central Asia to Kashmir.”²³²

Others assert that U.S. obsession with bin Laden is counterproductive, arguing that the United States should be developing a strategy to build regional allies and contain terrorism.²³³ Pakistani journalist Ahmed Rashid has argued that the United States’ “single-minded obsession” with bin Laden is an ineffective policy for dealing with the “increasingly volatile” region.²³⁴ U.S. Representative Dana Rohrabacher, a harsh Clinton administration critic, concurs, “The administration’s obsession with bin Laden has skewed any other efforts to create a regime that would bring stability to the region and peace to the Afghan people.”²³⁵ The State Department’s Counter-Terrorism Coordinator, Michael Sheehan, disputes this charge, stating that the United States “is very much aware of all that is going on in and around Afghanistan.”²³⁶ He added that gaining custody of bin Laden is the highest priority and that, “We are steadfast in our determination to show no tolerance for the use

228 *Id.*

229 *Id.*

230 Pamela Constable, *U.N. Imposes Air, Economic Sanctions on Afghanistan; Taliban Still Refuses to Hand Over Bin Laden*, WASH. POST, Nov. 14, 1999, at A22.

231 *Id.*

232 *Id.*

233 *Id.*

234 *Id.*

235 King, *supra* note 97.

236 *Id.*

of terrorism as a political tool.”²³⁷

In January 2000, former U.S. Assistant Secretary of State Karl Inderfurth and Sheehan meet with Taliban officials in Islamabad, Pakistan to discuss various issues, including bin Laden.²³⁸ In August 2000, the Taliban reiterated that it would not extradite bin Laden to the United States, despite U.S. threats of further sanctions and an arms embargo.²³⁹ As a result, the U.N Security Council has warned the Taliban that their continued refusal to turn over bin Laden could result in stronger sanctions.²⁴⁰ In September 2000, bin Laden reportedly survived an assassination attempt when unknown attackers fired rockets on his convoy as it drove through Kandahar.²⁴¹ According to reports, several cars belonging to his bodyguards were destroyed.²⁴² The Taliban denied the reports of the assassination attempt on bin Laden.²⁴³

B. Human Rights Violations

Afghanistan's record on human rights under the Taliban is simply atrocious and is another factor preventing the Taliban from gaining recognition. The plight of Afghan women has become a *cause celebre* in Hollywood.²⁴⁴ Dozens of stars, including Jay and Mavis Leno, Sidney Poitier, Meryl Streep, Geena Davis, Melissa Etheridge, and Laura Dern have joined in protesting the Taliban's treatment of women.²⁴⁵ In the State Department's 1998 Human Rights Report, former Assistant

²³⁷ *Id.*

²³⁸ *Taliban Delegation Meets U.S. Senior Official Inderfurth*, AGENCE FRANCE-PRESSE, Jan. 20, 2000, available at 2000 WL 2716874.

²³⁹ *Taliban Says It Won't Extradite Bin Laden*, WASH. POST, Aug. 20, 2000, at A18.

²⁴⁰ *Security Council Says Taliban Could Face Stronger Sanctions*, AGENCE FRANCE-PRESSE, Sept. 25, 2000, available at 2000 WL 24720185.

²⁴¹ *Bin Laden Survived Assassination Bid in Afghanistan*, AGENCE FRANCE-PRESSE, Sept. 18, 2000, available at 2000 WL 24712765.

²⁴² *Id.*

²⁴³ *Afghanistan's Ruling Militia Deny Bin Laden Assassination Bid*, AGENCE FRANCE-PRESSE, Sept. 18, 2000, available at 2000 WL 24713241.

²⁴⁴ See Niles Lathem, *War on Women, One Afghan Refugee Shares her Tale of Terror at the Hands of the Taliban*, N.Y. POST, Jan. 10, 2000, at 26.

²⁴⁵ *Id.*

Secretary of State Harold H. Koh described the inhumane conditions that Afghan women face under the Taliban:

The situation facing women in Afghanistan represented perhaps the most severe abuse of women's human rights in the world. The Taliban's blatant abuse of women included public beatings for failure to wear the all-enveloping burqa and for not being accompanied by a close male relative. In 1998, credible reports detailed the Taliban's devastating disregard for the physical and psychological health of women and girls. The Taliban drastically limited access to medical services and hospitals and continued to cut back severely access to education as a result of the closure in Kabul of private home-based schools for girls. Women cannot work outside the home, except in extremely limited circumstances in the medical field. These problems were further exacerbated by the fierce civil war, which left many woman as their family's sole breadwinner and forced many to beg on the streets to feed their children.²⁴⁶

Women are prohibited from even leaving their home without a male relative as an escort, and foreign-aid agencies have been forbidden to offer any of their assistance directly to females.²⁴⁷ In the earlier years of their rule, the Taliban banned women from working and girls from attending school.²⁴⁸ The Taliban have since relented somewhat from these harsh laws.²⁴⁹ In September 1997, the Taliban ordered that women could no longer be treated at any of the main hospitals in Kabul.²⁵⁰ Instead, women are delegated to a dilapidated hospital building that has no running water, no proper operating room, and barely enough electricity to power light bulbs.²⁵¹ The inhumane conditions that Afghan

246 HAROLD H. KOH, U.S. DEP'T OF STATE, *Overview to Country Report on Human Rights Practices for 1998*, in 1998 HUMAN RIGHTS REPORT, available at http://www.state.gov/www/global/human_rights/drl_reports.html.

247 Amanpour, *supra* note 60.

248 Barry Bearak, *Afghanistan's Girls Fight to Read and Write*, N.Y. TIMES, Mar. 9, 2000, at A1.

249 *Id.*

250 Amanpour, *supra* note 60.

251 *Id.*

women face seem to be taking quite a toll, as the reports of suicide rates among females are increasing.²⁵²

The Taliban attribute their inhumane treatment of women to the conservative Afghan culture.²⁵³ The Taliban insist that closing down girls' schools and prohibiting women from working is in response to what 99 percent of the population wants.²⁵⁴ Taliban official Abdul Hakeem Mujahid retorted that "you in the United States are pushing us for the sake of 1 percent of men and women who are secular."²⁵⁵ Although it is subject to debate whether the 99 percent of Afghanistan's religious population supports the Taliban's treatment of women, it is unlikely that the female population, which represents 48.5 percent of the population,²⁵⁶ supports these policies.

Because most women are not allowed to work, many turn to begging on the streets for money.²⁵⁷ Others turn to prostitution in Kabul's thriving brothels, which are protected by the Taliban and promote further abuse to Afghan women.²⁵⁸ One woman was fatally beaten because she accidentally exposed her arm while driving, and another was stoned to death for attempting to leave the country with a man not her relative.²⁵⁹

Upon visiting an Afghan refugee camp in Pakistan in November 1997, former Secretary of State Madeleine Albright offered some very strong words regarding the Taliban's treatment of women, deploring, "I think it is very clear why we are opposed to the Taliban. Because of their approach to human rights, their despicable treatment of women and children and their general lack of respect for human dignity . . . that is more reminiscent of the past than of the future."²⁶⁰ Regarding the

252 *Id.*

253 Pamela Constable, *Tongue-Lashing the Taliban; Grandmotherly U.N. Official Berates Afghans on Their Treatment of Women*, WASH. POST, Sept. 20, 2000, at A22; Nora Boustany, *One Man, Making a Difference*, WASH. POST, Aug. 2, 2000, at A26.

254 Boustany, *supra* note 253.

255 *Id.*

256 See WORLD FACTBOOK, *supra* note 1.

257 Dr. Lynette J. Dumble, *Sanitising the Taliban: A Rose by Any Other Name*, SYDNEY MORNING HERALD, Jan. 8, 2000, at 39.

258 *Id.*

259 *Id.*

260 Richard Mackenzie, *The United States and the Taliban*, in FUNDAMENTALISM

Taliban's prospects for recognition, former Secretary Albright stated, "Let me say too that we do not believe that the Taliban are in a position to occupy all of Afghanistan. There are other parties who need to be recognized and there needs to be a government that is composed of them."²⁶¹ Consequently, in May 1999 the U.S. Senate unanimously passed the Boxer-Brownback Resolution, which expressed the sense of the Senate that because of the numerous human rights violations against women and girls in Afghanistan, the Taliban should be prevented from obtaining Afghanistan's seat at the United Nations.²⁶² In addition, the resolution stated that the United States should not recognize the Taliban as long as they refuse to take steps to improve the rights of women and girls in Afghanistan.²⁶³

However, there are some indications that the situation for Afghan women is improving. On January 21, 2000, the coordinator of U.N. relief programs in Afghanistan, Erick de Mul, reported that small advances have been made following months of negotiations.²⁶⁴ According to de Mul, the Taliban may have started to recognize the daily reality of their harsh rule.²⁶⁵ Although the Afghan people initially welcomed the Taliban for the order and stability that they brought to the country, he explains that now "There is mounting pressure from the population itself. People are expecting more than peace and security. 'We want to have a better future for our children,' they say. 'We want to have possibilities to work.'"²⁶⁶ Both private and public schools for girls are opening, and recently, Taliban officials have not enforced the edict prohibiting women from leaving their homes without a close male relative.²⁶⁷ The

REBORN? AFGHANISTAN AND THE TALIBAN 90 (William Maley ed., 1998).

²⁶¹ *Id.* at 91.

²⁶² Press Release, U.S. Gov't, *Senate Passes Boxer-Brownback Resolution on Treatment of Afghani Women* (May 6, 1999), available at 1999 WL 2223995.

²⁶³ *Id.*

²⁶⁴ Barbara Crossette, *Gentle Negotiations Said to Soften Taliban's Rules for Women*, N.Y. TIMES, Jan. 23, 2000, at 6.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

Swedish Commission for Afghanistan, which supports 600 schools in Afghanistan, reports that there are now about 30,000 female students attending these schools.²⁶⁸ Male doctors can now treat women, as long as the woman does not object.²⁶⁹ The Taliban have also eased restrictions on women working.²⁷⁰ The World Food Program has opened forty-nine bakeries that employ Afghan women, mostly widows.²⁷¹

However, progress made is often met with another setback. For example, in the Spring of 1998, the Taliban agreed to work with the United Nations to open eleven girls' schools and allow more women to work in aid programs, but by the Summer of 1998, the Taliban closed down ten home schools for girls, fearing that they were communist or Christian fronts.²⁷² U.N. official Daniel Toole stated that the Taliban "truly want to improve relations, [b]ut they have a long way to go."²⁷³ Two recent incidents suggest that the international efforts to help women in Afghanistan may be working, and, perhaps even more encouraging, that the Taliban are willing to negotiate in order to improve the plight of women. First, in July 2000 the Taliban issued an edict that prohibited Afghan women from continuing to work with the United Nations or private relief organizations.²⁷⁴ One week later, however, the Taliban reversed course and allowed the women to return to work.²⁷⁵ Second, in August 2000 the Taliban shut down the World Food Program bakeries, which are run by women and mostly widows, on grounds that Islam forbids women from working.²⁷⁶ The Taliban again reversed course the next day and allowed the bakeries to reopen.²⁷⁷ On March 9, 2000, the Taliban held a ceremony

268 Peter Bergen, *Kabul Diarist: Going Soft*, NEW REPUBLIC, Mar. 27, 2000, at 42.

269 *Id.*

270 See Crossette, *supra* note 264.

271 Bergen, *supra* note 268.

272 Power, *supra* note 9.

273 *Id.*

274 Barbara Crossette, *Afghan Women No Longer Permitted to Work with Relief Groups*, N.Y. TIMES, July 12, 2000, at A14.

275 *Taliban Agree to Let Women Return to Work*, N.Y. TIMES, July 13, 2000, at A5.

276 *Citing Islamic Law, Taliban Shut Bakeries that Aided Widows*, N.Y. TIMES, Aug. 17, 2000, at A13.

277 Jeanne Moore, *Taliban Backtrack on Bakeries*, N.Y. TIMES, Aug. 18, 2000, at

celebrating International Women's Day.²⁷⁸

The human rights abuses in Afghanistan are not confined to women, as the Taliban have been involved in harassing and killing political opponents in Pakistani refugee camps.²⁷⁹ Furthermore, the U.S. State Department has charged the Taliban with violations of religious freedom in Afghanistan.²⁸⁰ The Taliban vehemently deny this charge.²⁸¹

C. Narcotics Production and Trafficking

Afghanistan's flourishing drug trade is another reason why the West has been slow to recognize the Taliban. Opium, the raw material used to make heroin, is Afghanistan's principal cash crop, and the drug trade is probably the largest source of income in the Afghan economy.²⁸² As a matter of policy, the Taliban continue to condemn and prohibit drug cultivation, trafficking, etc.²⁸³ As a practical matter, however, drug trafficking is a large source of income for the Taliban movement and Taliban officials, as taxes and other fees are collected from the drug trade.²⁸⁴

According to the U.S. State Department, Afghanistan became the world's largest producer of opium in 1999.²⁸⁵ In 1999, Afghanistan's opium production was estimated to be a record 5100 tons,²⁸⁶ which more than triples the estimated 1998

A6.

278 *Now Women's Day is for Afghans Too*, N.Y. TIMES, Mar. 9, 2000, at A8.

279 Judy Mann, *The Grinding Terror of the Taliban*, WASH. POST, July 9, 1999, at C11.

280 *See Afghan Taliban Deny U.S. Allegation over Religious Freedom*, AGENCE FRANCE-PRESSE, Sept. 7, 2000, available at 2000 WL 24705387.

281 *Id.*

282 U.S. DEP'T OF STATE, INT'L NARCOTICS CONTROL STRATEGY REPORT (1998), available at http://www.state.gov/www/global/narcotics_law/1998_narc_report/statements98_explan.html [hereinafter 1998 NARCOTICS REPORT].

283 *Id.*

284 *Id.*

285 U.S. DEPT. OF STATE, INT'L NARCOTICS CONTROL STRATEGY REPORT (1999), available at http://www.state.gov/www/global/narcotics_law/1999_narc_report/ml_country99.html [hereinafter 1999 NARCOTICS REPORT].

286 Christopher S. Wren, *U.N. Foresakes Effort to Curb Poppy Growth by Afghans*, N.Y. TIMES, Sept. 18, 2000, at A11.

production of 1350 metric tons.²⁸⁷ The Taliban profit a great deal from the drug trade.²⁸⁸ They tax opium crops at about ten percent and receive payments from traffickers.²⁸⁹ The Taliban reportedly earn between ten million and thirty million dollars per year from the drug trade.²⁹⁰ The Taliban use these profits to finance the civil war against the opposition forces.²⁹¹

The Afghan drug trade is adversely affecting the citizens of Afghanistan and beyond.²⁹² The Central Asia region is currently suffering some of the highest heroin addiction rates in the world, with the region having a higher number of heroin addicts than Western Europe.²⁹³

The Taliban attribute the country's drug problems to the lack of markets for Afghanistan's conventional crops, and the Taliban want the international community to fund crop-substitution programs and, more importantly, diplomatic recognition that would open markets to the country.²⁹⁴ The Taliban high commissioner for drug control asserted, "The farmers would happily give up poppy cultivation if it provided alternate means of livelihood."²⁹⁵ Taliban spokesman Wakil Ahmed Muttawakil agreed, stating that without a viable substitute crop or a functioning economy, no one can force the farmers to stop growing opium.²⁹⁶ Some Taliban officials have suggested to U.N. officials that they would be more inclined to ban opium cultivation and enforce international agreements if

287 See 1998 NARCOTICS REPORT, *supra* note 285.

288 See 1999 NARCOTICS REPORT, *supra* note 288.

289 *Id.*

290 Barbara Crossette, *Afghan Heroin Feeds Addiction in Region, U.N. Report Declares*, N.Y. TIMES, Mar. 1, 2000, at A6. Although Afghanistan is the world's largest opium producer, the country as a whole only receives about one percent of the global profits from opium and heroin. *Id.*

291 1999 NARCOTICS REPORT, *supra* note 285.

292 See Crossette, *supra* note 290.

293 *Id.*

294 See Nisid Hajari et al., *Losing the Opium War; In Afghanistan, a Bumper Crop and Thriving Traffic Belie the Taliban's Claims to be Fighting Drugs*, TIME, Mar. 22, 1999, at 22.

295 *Id.*

296 Kathy Gannon, *Opium Remains a 'Golden Crop' in Afghanistan; Taliban Rulers Oppose Cultivation of Poppies, But Say There is No Viable Alternative to Cash Crop*, HOU. CHRON., May 9, 1999, at A24.

the United Nations and western nations recognized the Taliban as the official government of Afghanistan.²⁹⁷

Although there is much work to be done regarding Afghanistan's drug problems, the Taliban are finally starting to limit the drug trade.²⁹⁸ First, the Taliban began policing trafficking routes and ordering farmers to cut opium cultivation by one-third.²⁹⁹ The Taliban have also destroyed opium crops and heroin laboratories.³⁰⁰ In July 2000, the Taliban Supreme Leader, Mullah Mohammed Omar, ordered a complete ban on growing opium and threatened severe punishment of those who ignores the ban.³⁰¹

Achieving meaningful drug control in Afghanistan will take an international effort and support.³⁰² Furthermore, international efforts at drug control in Afghanistan are unlikely to produce any satisfactory results as long as the war continues in Afghanistan.³⁰³

The United Nations was recently forced to discontinue successful crop substitution programs due to lack of support from western donors and the Taliban.³⁰⁴ Decreases in opium cultivation of fifty percent were reported in some districts.³⁰⁵ Afghanistan's production of opium in 2000 was estimated at 3,276 tons, which is twenty-eight percent less than in 1999.³⁰⁶

297 Kenneth J. Cooper, *Afghans Cultivate Islamic State but Ignore Illicit Harvest*, WASH. POST, May 11, 1997, at A22.

298 Barry Bearak, *Ghani Khel Journal; Distress in the Opium Bazaar: 'Can't Make a Profit'*, N.Y. TIMES, Mar. 3, 2000, at A4.

299 *Id.*

300 1999 NARCOTICS REPORT, *supra* note 285.

301 *Taliban Rulers Ban Poppy Growing*, HOU. CHRON., July 29, 2000, at A30.

302 *See* Bearak, *supra* note 298.

303 1999 NARCOTICS REPORT, *supra* note 285.

304 *See* Wren, *supra* note 286.

305 *Id.*

306 Robert Holloway, *UN to Reduce Presence in Afghanistan After New Big Opium Harvest*, AGENCE FRANCE-PRESSE, Sept. 14, 2000, available at 2000 WL 24710766. However, the U.N. attributed most of this decrease to the severe drought that ravaged Afghanistan in 2000. *Id.*

V. ANALYSIS: SHOULD THE UNITED STATES RECOGNIZE THE TALIBAN?

A. *Nonrecognition Ineffective as a Policy Tool*

Applying recent U.S. foreign relations law and policy and statements made by U.S. officials to the situation in Afghanistan, it is apparent that the United States is withholding recognition from the Taliban in an effort to effectuate U.S. policy interests in Afghanistan. The use of nonrecognition as a policy tool has been soundly rejected on grounds that the practice is ineffective and counterproductive as a catalyst for change in the nonrecognized country.³⁰⁷ “Recognition is not now, nor is it likely to become, an effective instrument by which to advance American foreign policy interests.”³⁰⁸ A State Department official stated that the “prospect of recognition by the United States is no longer an effective leverage through which to influence a new regime.”³⁰⁹

Former Senator Alan Cranston stated that:

The evidence is overwhelming that withholding recognition from governments of which we disapprove, and with whom our relations are particularly hostile, has failed totally to advance our values or to achieve any other significant and enduring purposes.

Indeed, nonrecognition makes it difficult for us to transmit our values and to state clearly our purposes. It deprives us of an opportunity to determine accurately the effectiveness of our actions. It prevents us not only from exerting influence but from gaining insight.³¹⁰

Another State Department official stated that “the threat of nonrecognition is even less effective [than concessions gained from the grant of recognition] and may precipitate hostile statements or responses. . . . In addition, this action may well exacerbate the very tendency of the regime with militated

307 GALLOWAY, *supra* note 168, at 140–41.

308 *Id.* at 140.

309 *Id.*

310 *Id.* at 141.

against recognition in the first place.”³¹¹

Consequently, the U.S. policy of not recognizing the Taliban has been ineffective thus far and is likely counterproductive. The lack of dialogue and diplomacy that accompanies nonrecognition has prevented the United States and the Taliban from engaging in the diplomatic relations necessary to ensure a positive outcome to the crisis in Afghanistan. Furthermore, nonrecognition leads directly to isolation.

B. The Danger of Isolation

Continued isolation and nonrecognition of the Taliban could be an ineffective, and possibly dangerous, policy. “The world, for the most part, has basically been on a campaign for the last couple of years to isolate the Taliban.”³¹² The U.N. and U.S. sanctions add to Afghanistan’s isolation, and some Western aid workers fear that further isolation may cause their views to become even more extreme.³¹³ One U.N. worker stated, “More awareness could help develop different points of view. If you keep the doors and the windows open, you may have some fresh air coming in.”³¹⁴ A senior State Department official stated that the message the Clinton Administration was sending with the sanctions was “that the Taliban face a very bleak future and increasing international isolation so long as they shelter terrorists like bin Laden.”³¹⁵ John Burns observed that “So far, the signs have been that Western pressure for greater tolerance may not only be ineffective, but a stir that pushes the Muslim clerics who control the Taliban to adopt still harsher constraints.”³¹⁶ One commentator in favor of recognizing the Taliban argued:

Yet diplomatic recognition need not be the enemy of

311 *Id.*

312 Barbara Crossette, *As Hijacking Plays Out, Views on Taliban Shift*, N.Y. TIMES, Dec. 30, 1999, at A14.

313 Tasgola Karla Bruner, *U.N. Sanctions Add to Kabul’s Hardships; Taliban Still Gives Refuge to Osama bin Laden*, U.S. NEWS & WORLD REP., Dec. 6, 1999, at 58.

314 *Id.*

315 John Lancaster, *Afghanistan Rulers Accused of Giving Terrorist Refuge; Clinton Bans Trading with Taliban Militia*, WASH. POST, July 7, 1999, at A15.

316 Burns, *supra* note 15.

morality. Countries recognize each other not because they like or approve of their counterparts' politics, but because they must deal with them. Western countries have plenty to discuss with Afghanistan: drugs, human rights, and terrorism, for a start. By all means seek to win concessions in return for diplomatic recognition, but do not imagine that all the benefits of having the Taliban accepted in world counsels lie with them: it is very much in the interests of all sorts of outsiders to see the rulers of Afghanistan crack down on the export of both drugs and terror. And those who preach morality should want to see the better treatment of Afghan citizens, too. The motto for the West should be recognize and pressurize. Isolation, after all, does not necessarily breed moderation. Conversation, by contrast, may.³¹⁷

Erick de Mul, coordinator of the United Nations relief programs in Afghanistan agrees:

It's all very slow, and many, many times inconclusive, but the important thing is that there is a dialogue, and increasingly it is possible to call a spade a spade—to go more directly to the issue. . . . Demanding changes in law is not working yet. So the other thing is to create realities that become so strong that eventually the reality will determine the legal framework.³¹⁸

The world's isolation of the Taliban and Afghanistan is perhaps taking its heaviest toll on the Afghan people. A recent U.N. report stated that "a significant impact of sanctions is the extent to which ordinary Afghans feel isolated and victimized."³¹⁹ The United Nations also reported that the sanctions are having a "tangible negative effect" on efforts to help the Afghan people.³²⁰

C. *Recognition May be Part of a Solution*

U.S. recognition of the Taliban could serve as a catalyst for

317 *Unban the Taliban*, *supra* note 81.

318 Barbara Crossette, *Gentle Negotiations Said to Soften Taliban's Rules for Women*, N.Y. TIMES, Jan. 23, 2000, at A6.

319 Barbara Crossette, *U.N. Reports Afghan Curbs Hurt Populace*, N.Y. TIMES, Aug. 27, 2000, at 4.

320 *Id.*

expansion of the Afghan economy. Without foreign investment, the outlook for Afghanistan is bleak.³²¹ If the United States would recognize the Taliban, other countries would likely follow their lead as well.³²² This could open up markets for legitimate crops and other industries. A stable and peaceful Afghanistan has a chance to become a key player in the Central Asian energy industry, one of the top business stories of the decade.³²³ Afghanistan is in a prime location for a proposed \$2 billion gas pipeline project that would run from neighboring Turkmenistan, through Afghanistan, to Pakistan.³²⁴ However, one of the two groups vying to build the pipeline, a U.S.-Saudi consortium led by Unocal Corporation of the United States, has stated that the key to the pipeline being built is funding, and that the key to funding is international recognition of the Taliban.³²⁵ France and Italy have initiated diplomatic talks with the Taliban, which reportedly focused on economic issues.³²⁶ The United States should follow their lead. Foreign investment would be the first step in slowing down the Afghan drug trade. In addition, diplomatic recognition could also bring breakthroughs on the human rights front as well. The Taliban have hinted that the brutal treatment of women could be relaxed in return for recognition.³²⁷ They have also suggested that recognition could convince them to take further steps to halt Afghanistan's drug trade.³²⁸

VI. CONCLUSION

The crisis in Afghanistan has been characterized as "one of the most complicated issues involving foreign strategic

³²¹ *Living with the Taliban*, *supra* note 30.

³²² *Strategy for Recognition*, *supra* note 7.

³²³ *Reality Check*, *supra* note 6.

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ See *France Edging Toward Recognizing Afghanistan's Taliban Government*, *supra* note 158; *Where Angels Fear to Tread*, *supra* note 160; *Italy May Recognize*, *supra* note 161.

³²⁷ Burns, *supra* note 15.

³²⁸ Kenneth J. Cooper, *Afghans Cultivate Islamic State but Ignore Illicit Harvest*, WASH. POST, May 11, 1997, at A22.

interests.”³²⁹ With the long civil war in Afghanistan likely coming to end,³³⁰ the United States is in a position to shape the outcome of events crucial to a peaceful and prosperous Afghanistan. The United States must act now to prevent further setbacks. As long as the war continues, the Taliban is unlikely to change their positions on issues important to the United States.³³¹ Therefore, the United States should assist in efforts to negotiate peace between the Taliban and the Northern Alliance. In September 2000, dozens of Afghan political and academic figures held a peace conference in Cyprus to discuss a peaceful solution to the civil war and the formation of a broad based government in Afghanistan that represented all Afghan factions.³³² Although the Taliban did not attend this conference, officials from the United Nations, United States, Great Britain, Iran, and Russia did make appearances.³³³

As discussed, nonrecognition and sanctions are ineffective as a policy tool and have likewise been unsuccessful in Afghanistan. Although the drug problem is improving, the Taliban have yet to turn over Osama bin Laden. The Afghan people are suffering the effects of the sanctions more than the Taliban. The sanctions have contributed to an overall humanitarian crisis in Afghanistan.

As a result, a different U.S. policy towards Afghanistan is required. Should recognition of the Taliban be part of this new policy? In a word, no. After balancing the various interests, goals, and possible outcomes, recognition is not warranted at this time. However, steps should be taken to recognize the Taliban in the future, on the condition that certain measures are taken on their part. This process must start with an open

329 *Italy May Recognize*, *supra* note 161.

330 See Greg Myre, *Taliban Score Military Victories*, A.P., Sept. 28, 2000, available at 2000 WL 27212354.

331 See 1999 NARCOTICS REPORT, *supra* note 285; but see Peter Bergen, *Going Soft*, NEW REPUB., Mar. 27, 2000, at 42 (describing the Taliban's limited loosening on cultural restrictions).

332 See *Afghan Opponents of Taliban Gather in Cyprus to Discuss Peace*, AGENCE FRANCE-PRESSE, Sept. 15, 2000, available at 2000 WL 24711497; Shaun Tandon, *Afghan Political Figures Call for Assembly Inside Country*, AGENCE FRANCE-PRESSE, Sept. 17, 2000, available at 2000 WL 24712551.

333 Tandon, *supra* note 332.

428 *HOUSTON JOURNAL OF INTERNATIONAL LAW* [Vol. 23:2

dialogue and negotiations concerning the various issues addressed, *supra*, as well as establishing a broad based government that includes all ethnic and political groups. Isolating the Taliban further has proved counterproductive. Dialogue and negotiation are what is needed at this point to ensure that one day that peace and stability will finally become a reality in Afghanistan.

*Christopher L. Gadoury**

* This comment received the Tindall & Foster Writing Award. The author would like to thank Tindall & Foster, P.C. for their generous support and Mohamad Taherzadeh for his thoughtful assistance.