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**RECOGNITION AND RESPONSIBILITY OF NON-STATE ACTORS  
EXERCISING TERRITORIAL CONTROL UNDER INTERNATIONAL  
LAW**

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The traditional state-centric structure of international law is being seriously undermined by the increasing number of non-state actors with consistent territorial authority, like the Taliban in Afghanistan and the Houthis in Yemen. Even though they demonstrate elements of effective administration, their legal status is still questionable. This article examines three interrelated dimensions, the conditions under which non-state actors may be recognized and acknowledged as legitimate governments, the extent to which their actions are regulated according to international humanitarian law (IHL) and international human rights law (IHRL), the attribution of international accountability for violations that were committed within their jurisdiction.

The subject matter explores deeper into the manner in which the United Nations addresses these entities, emphasizing upon the way their legal identity as well as obligations are influenced by Security Council non-recognition principles, human rights policies, and interconnections to international criminal accountability intersect to shape their legal personality. The article argues about the dynamic interpretation of international law in circumstances of fragmented sovereignty through exploring concerns regarding recognition, legitimacy, along with responsibility under the wider framework of UN rules.

By accomplishing this, the article demonstrates how legal personality and sovereignty are changing on a global level. It underlines the UN's role in negotiating these shifting circumstances by establishing a balance between state sovereignty principles and the

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requirements of peacekeeping, human rights protection, and conflict resolution. By emphasizing on these overlapping aspects, the conversation illustrates the continuous evolution of international law as it confronts the actualities of governance beyond conventional state borders, which opens the door for fresh perspectives on legitimacy, norms, and justice in an internationally recognized order that continues to grow more and more disintegrating.

**Keywords:** Non-state actors, Subjects of International law, Recognition of Governments, United Nations and Non-Recognition, International responsibility.

## Introduction

The concept of sovereign equality among the nations, that preserves the state as the sole and exclusive subject of rights and responsibilities under international law, is the fundamental basis of the Westphalian conception of international law. The increasing prominence of non-state actors, such as the Taliban in Afghanistan, the Houthis in Yemen, and other armed organizations that perform essential governmental tasks, constitutes an increasing danger to this traditional state-centric structure. These entities generally have the qualities of governance, such as public administration, taxes, and law enforcement, however they are not granted the same statutory status as states or other officially recognized governments. A fundamental normative lacuna in the prevailing international legal framework is made apparent by the challenge of effective control without recognition<sup>2</sup>.

The constitutive theory, which emphasizes recognition as essential to a state or government's legal existence, and the declaratory theory, which defines recognition as merely acknowledging the existing factual condition, have historically served as the two main approaches to government recognition.<sup>2</sup> However, neither theory adequately confronts modern institutions that sustain de facto authority over territory while ignoring core human rights principles or jus cogens norms<sup>3</sup>. The modern trend toward "legitimacy-based recognition" emphasizes the growing significance of sustaining international norms as contrasted with merely achieving military or constitutional goals<sup>4</sup>.

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<sup>2</sup>Malcolm N. Shaw, *International Law*, 9th ed. (Cambridge: Cambridge University Press, 2021), 159–161.

<sup>3</sup>Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947).

<sup>4</sup>Erika de Wet, "Reappraising Recognition: Legitimacy and Effectiveness in International Law,

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In the meantime, the generally recognized scope of international humanitarian law (IHL) and international human rights law (IHRL) has gradually broadened to incorporate non-state entities who participate in armed conflicts. The ICRC's 2023 Guidance on the Implementation of IHL to Armed Groups Holding Territorial Control emphasises the fact that organizations that perform governance responsibilities have an obligation to uphold humanitarian norms and fundamental human rights to the greatest extent of their abilities<sup>5</sup>. This trend has been strengthened by decisions from international tribunals which include the European Court of Human Rights (*Ilascu and Others v. Moldova and Russia*, 2004), which considered de facto authorities accountable when they fail to enforce effective jurisdiction over populations<sup>6</sup>. The status of non-state entities exercising territorial control is complicated by the issue of international responsibility. The Draft Articles on State Responsibility (2001) of the International Law Commission (ILC) ascribe conduct to states primarily through their organs or agents, but they are unclear when these actors operate outside of state authority. The question of whether the territorial state, the non-state entity, or both are accountable for violations in areas under their control has been raised by this unpredictability. The United Nations, by its non-recognition policy and limited engagement with de facto regimes, demonstrates a pragmatic yet inconsistent equilibrium between legal principle and political requirements.

This article highlights three interconnected issues when non-state actors may be recognised as legitimate governments. The extent of their obligations under international humanitarian law and human rights law increasingly depends on observance to international obligations rather than mere effective control. The article by examining these dynamics within the framework of United Nations emphasizes how recognition, legitimacy and accountability once exclusive to states are now shared with non-state entities revealing the transformation of sovereignty and responsibility in contemporary international law.

### **Concepts of Statehood, Sovereignty and Recognition**

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<sup>5</sup>International Committee of the Red Cross (ICRC), *Guidance on the Application of International Humanitarian Law to Armed Groups Exercising Territorial Control*, 2023.

<sup>6</sup>*Ilascu and others v. Moldova and Russia*, App. No. 48787/99, Judgment (ECHR, 8 July 2004).

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Traditionally state is the only subject of international law which has the complete legal identity, according to the legal system, which relied on the Westphalian idea of sovereignty. The convergence of law and politics has long been the acknowledgment of entities that exercised effective territorial authority. On the other hand, the conventional link between legitimacy, recognition, and sovereignty confronts substantial challenges in moments while non-state entities like the Houthis in Yemen and the Taliban in Afghanistan sustain enduring territorial rule.

The foundation for determining the statehood lies in the Montevideo Convention on Rights and Duties of States (1933), which indicates four necessary qualifications, a permanent population, a defined territory, an effective government and the capacity to enter into relations with other states.<sup>7</sup> These elements combinedly reflects the sovereign character of an entity that is the ability to exercise supreme authority over its territory and independence from external control.

Pursuant to the described declarative theory of statehood, an entity emerges as a state as a matter of fact once its requirements have been satisfied, regardless of external acknowledgment. However, other states' recognition of sovereignty remains to be an important indication of its acceptance inside the international system. On the contrary, the constitutive theory underlines the importance of other sovereign states in establishing the new entity's international personality and considers recognition as constituting statehood<sup>8</sup>.

The legality of a de facto government was reaffirmed in the Tinoco Claims Arbitration (Great Britain v. Costa Rica), declaring that "the existence of government and the exercise of authority must rest upon effective control, not constitutional legitimacy."<sup>9</sup> This case demonstrates that anciently, sovereignty and recognition were determined on potency instead of ethical or legal legitimacy. This theoretical and factual approach of sovereignty has been eroded gradually. As a result, modern sovereignty is not absolute, alternatively, it depends on respecting human rights, self-determination, and peremptory norms (jus cogens).

The recognition of states highly depends on conformity with Jus Cogens norms, that is the peremptory norms of international law. The concept of recognition is linked to the

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<sup>7</sup>Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, 165 L.N.T.S. 19, art. 1.

<sup>8</sup>Hersch Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge University Press, 1947), 27–30.

<sup>9</sup>*Great Britain v. Costa Rica (Tinoco Arbitration)*, 1 R.I.A.A. 369, 381 (1923).

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phenomenon like respect for democracy the rule of law and the human rights. As a result, organizations like the Taliban and Houthis that sustain effective authority but contravene peremptory rules often remain unrecognized<sup>10</sup>. Recognition has thus become an expression of legitimacy instead of the reward for merely controlling territory. This demonstrates the constant shift in sovereignty from independence to accountability, where legality is conferred by international law rather than power.

The principle of non-recognition for governments established via breaches of international law has been formalized by the UN. In Resolutions 541 (1983) on Northern Cyprus and 217 (1965) on Southern Rhodesia, the Security Council urged member nations to abstain from recognizing such entities<sup>11</sup>. More recently, the UN's concern for legality over effectiveness has been emphasized by the General Assembly's consistent refusal to seat Taliban members<sup>12</sup>. This practice illustrates how recognition operates as a legal tool for maintaining global order. Hence, sovereignty is now something that is gained via compliance to the UN Charter and respect for fundamental rights instead of being an unconditional natural right. An increasing realization that efficient supervision by itself cannot validate authority gained through illegal activity is apparent in the international community's constructive approach to recognition.

### **Obligations of non-state actors: Humanitarian and Human rights concerns**

The legal position of non-state actors under international law is not clear. The present scenario of persistent internal wars has compelled international organizations to broaden particular responsibilities to formally organized armed groups, whereas traditionally only governments and international organizations have been considered as bearers of legal obligations. These obligations result due to their effective control over territory and populations rather than from their sovereignty.

### **Relevance of Humanitarian law obligations**

International and non-international armed conflicts are governed by international humanitarian law. Each party to non-international armed conflicts, which include non-state armed organizations, are subject to legally binding humanitarian obligations imposed by

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<sup>10</sup>United Nations Security Council, "Report of the Panel of Experts on Yemen," S/2023/264; UNAMA, "Report on the Human Rights Situation in Afghanistan," 2023.

<sup>11</sup>United Nations Security Council, Res. 217 (1965) and Res. 541 (1983).

<sup>12</sup>United Nations General Assembly, "Credentials of Representatives of Afghanistan," A/78/601, Dec. 2023.

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Common Article 3 of the Geneva Conventions of 1949 and Additional Protocol II (1977)<sup>13</sup>. In *Prosecutor v. Tadić* (1995), the International Criminal Tribunal for the Former Yugoslavia (ICTY) affirmed that basic humanitarian standards apply to every party involved in war, regardless of their official recognition<sup>14</sup>.

This principle was further reaffirmed by the International Committee of the Red Cross (ICRC), which highlights that non-state armed groups that maintain stable control over territory are anticipated, to the maximum extent feasible, to strictly adhere to humanitarian norms that protect civilians and constrain means and methods of warfare<sup>15</sup>. These minimum standards of humanity which are rooted in the humanitarian principles, are expected. This kind of groups cannot ratify international treaties; they can issue unilateral declarations of adherence or internal regulations incorporating humanitarian norms.

### **Binding effect of International Human Rights Law**

The applicability of human rights law to non-state actors remains contested but increasingly recognized in practice. International jurisprudence has moved toward acknowledging that entities exercising de facto governance assume responsibilities analogous to states. The European Court of Human Rights, in *Ilaşcu and Others v. Moldova and Russia* (2004), recognized that the “Moldovan Republic of Transdniestria,” although unrecognized, exercised effective authority over its territory and therefore bore obligations under the European Convention on Human Rights<sup>16</sup>.

In *Katangese Peoples' Congress v. Zaire* (1995), the African Commission on Human and Peoples' Rights emphasized that in particular for armed groups or self-determination movements to maintain their legitimacy, they must respect human rights<sup>17</sup>. By drawing attention to the functional basis of responsibilities centered around authority instead of status, the tribunals enlarged the application of human rights law across states in both rulings. The Special Rapporteur on Extrajudicial Executions and the United Nations Office of the

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<sup>13</sup>Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287; Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol II), June 8, 1977, 1125 U.N.T.S. 609.

<sup>14</sup>*Prosecutor v. Duško Tadić*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (ICTY Appeals Chamber, Oct. 2, 1995).

<sup>15</sup>International Committee of the Red Cross (ICRC), *Roots of Restraint in War* (Geneva: ICRC, 2018).

<sup>16</sup>*Ilaşcu and Others v. Moldova and Russia*, Application No. 48787/99, Judgment (ECHR, June 8, 2004).

<sup>17</sup>*Katangese Peoples' Congress v. Zaire*, Communication No. 75/92 (African Commission on Human and Peoples' Rights, 1995).

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High Commissioner for Human Rights (OHCHR) have additionally stated that customary human rights obligations, particularly those that are of a peremptory character like the prohibitions on torture, arbitrary detention, and extrajudicial killing, bind non-state actors carrying out governmental functions<sup>18</sup>.

Thus, under modern international law, obligations are arising from the capacity to affect to protected interest instead from legal status<sup>19</sup>. Non-state actors can perform state like functions like maintaining public order, it bears corresponding duties under international humanitarian law and human rights law. This significant development shows the shift from the sovereignty-based accountability to governance-based accountability. Non-state actors lack any stand before international human rights court but accountability can be expected from them through various modes such as targeted sanctions, measures through security council or international criminal prosecution for grave breaches.

This fragmented enforcement signifies the necessity of consistent laws for governing actors using long-term territorial authority. Recognizing of the duties they have does not suggest legitimacy; instead, it demonstrates that nominal statehood is not a sufficient mechanism for safeguarding human rights. This doctrine's emergence shows that the primary objective of international law has diversified from strengthening sovereignty to protecting people inside any system that exerts de facto control.

### **International Responsibility and Non-state actors**

The doctrine of international responsibility traditionally centered on the state as a primary bearer of obligations in international law. The conduct performed by organs or persons acting under the control or direction of state is attributable to the state<sup>20</sup>. However, this structure is complicated by the increasing engagement of non-state actors, especially armed groups, de facto authorities, and private military contractors. In conflict and occupational situations, their behaviors often violate the conventional principles of attribution, which results in responsibility gaps.

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<sup>18</sup>United Nations Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, A/HRC/38/44 (2018); Office of the United Nations High Commissioner for Human Rights (OHCHR), *Accountability for Human Rights Violations by Non-State Actors* (Geneva: OHCHR, 2021).

<sup>19</sup>Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford: Oxford University Press, 2006), 54–59.

<sup>20</sup>International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, UN Doc. A/56/10 (2001)

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The concept of sovereignty is obsolete and acts as a total obstacle to accountability. A state could be held responsible as long as it maintains significant power over non-state actors, as indicated by case law that includes the Application of the Genocide Convention (Bosnia and Herzegovina v. Serbia and Montenegro) case before the International Court of Justice<sup>21</sup>. In a comparable way, states and international organizations could have concurrent or derived liability for misconduct committed throughout joint operations, according to the International Law Commission's Draft Articles on the liability of International Organizations (2011).

The international legal system has come to recognize shared or overlapping responsibility more and more in recent years. The UN has consistently insisted that armed groups and de facto regimes must conform to minimum standards under international humanitarian law, especially those outlined in Common Article 3 of the Geneva Conventions (1949) and Additional Protocol II (1977)<sup>22</sup>, regardless of the absence of formal recognition. These laws affirm that safeguarding of civilians and humane treatment are non-derogable norms, and consequently impose enforceable obligations upon all parties to a conflict, regardless of their standing. This framework is further expanded by the development of due diligence requirements. It is now mandatory for states to stop, look into, and penalize infractions by non-state actors on their territory. This principle is reaffirmed by various courts in their rulings.

Ultimately, the concept of international responsibility has shifted from exclusivity to inclusivity, which recognizes that sovereignty encompasses duties to guarantee compliance to international law by every party under a state's authority or influence in addition to their rights. The new paradigm highlights that international law has expanded to include a pluralistic framework of authority and accountability instead of being strictly limited to interstate ties.

### **Legitimacy, Recognition and Governance**

One of the most controversial topics in modern international law is the recognition of non-state actors. In the past, recognition was conditional upon the presence of an efficient

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<sup>21</sup>*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, ICJ Reports (2007), para. 406.

<sup>22</sup> Geneva Conventions (1949), Common Article 3; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 UNTS 609 (1977).

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government functioning within a predetermined area. However, this traditional conception has been called into question by the rise of armed groups and de facto governments, such as those in Afghanistan, Yemen, and portions of Syria. According to international standards, these kinds of groups frequently lack legitimacy even though they can demonstrate control and governance capabilities.

Effective control and commitment to international responsibilities, which include human rights and humanitarian law, have become increasingly essential elements of legitimacy in the international legal order. The approach has been increasingly embraced by the UN and regional organizations, which prioritize adherence to international standards as a prerequisite for political participation<sup>23</sup>. This development is evident in security council's resolutions which deny recognitions to governments that capture the power through unconstitutional means. Likewise, the legitimacy has become a functional concept, shaped by conduct rather by recognition.

A practical but careful strategy that aims to preserve humanitarian access while respecting non-recognition principles is demonstrated by the UN's interaction with de facto administrations, such as the Taliban after 2021<sup>24</sup>. The conflict between upholding international order and dealing with local reality is reflected in this fragile balance. According to the non-recognition doctrine, which has its roots in the Stimson doctrine and was later reiterated in the Namibia Advisory Opinion, recognition cannot justify illegal territorial acquisition or governance that contravenes international law<sup>25</sup>. International human rights mechanisms also have an impact on the relationship between legitimacy and recognition. Non-state actors performing governmental responsibilities are supposed to uphold fundamental rights, such as the freedom from discrimination and arbitrary imprisonment, even in cases when official recognition is denied. The Human Rights Council and Office of the High Commissioner for Human Rights have extended monitoring and reporting mechanisms to such territories, reflecting an expanding view of accountability beyond the state.

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<sup>23</sup>United Nations Security Council, *Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, UN Doc. S/2004/616 (2004).

<sup>24</sup>United Nations Assistance Mission in Afghanistan (UNAMA), *Human Rights Service Report 2022*, UNAMA/HR/2022.

<sup>25</sup>*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports (1971), para. 126.

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The principle of self-determination often interacts with principle of self-determination. The established significance of the concept could strengthen the legitimacy of such actors when they represent a people that strives for independence or autonomy. Yet, this does not always deserve attention, particularly when acts of terrorism or violence endanger global peace and security. As a result, the international community uses conduct and goals to establish distinctions between legitimate liberation organizations and illegal insurgent groups. In the end, legitimacy in international law is presently determined by accomplishment rather than status. Today, recognition indicates a change in the conventional notion of sovereignty and expresses the international community's evaluation of commitment to jus cogens rules, humanitarian commitments, and good governance practices.

### **Conclusion**

The state-centric basis of international law is seriously jeopardized by the current trend of non-state actors establishing territorial control. Despite their capacity to handle affairs and supervise territory indicates factual efficacy, this authority is inadequate for establishing legal legitimacy on its own accord. In the contemporary sense, recognition expands beyond the reliability test and incorporates a commitment to the basic principles of international humanitarian and human rights law.

Non-state actors can not legitimately claim the attributes of sovereignty or legitimate governance when they use violence, intimidation, and persistent abuses of humanitarian norms. The standards that recognition aims at promoting are instantly diminished by their violent behavior, which is often marked by an indignant disregard for human dignity. Legitimacy can only be considered to be a result of lawful behavior instead of territorial power in the constantly shifting arena of international relations.

The international community, especially the United Nations, must continue to take a sensible but pragmatic approach, communicate with de facto authorities for humanitarian reasons without promoting their illegal actions. This critical balanced approach ensures that vulnerable populations obtain humanitarian aid while maintaining fundamental legal requirements intact. Established obedience to human rights, civilian protection, and a commitment to peaceful governance ought to remain to be requirements for recognition. Ultimately, non-state actors ought to be recognised for their ethical behavior rather than used

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as a reward for productive pressure. Clearer requirements for accountability that extend to both states as well as structured non-state entities conducting governmental responsibilities must be established in order for international law to further reinforce this line of distinction. By doing so the legal and moral integrity of sovereignty will be upheld in the international order, particularly not in dominant nature but anchored in the legitimate, responsible and respect for shared values of humanity.

A uniform policy need to be formed to engage the defacto authorities by the United Nations. Collaborations should be made only when they adhere to international humanitarian law and human rights standards. Territories governed by non-state actors has to be monitored through independent human rights institution. The territorial state and the non-state actors governing entity both need to share the responsibility to evolve a model of accountability. Legal consequences of recognising or withholding the recognition of the non-state actors need to be clarified by International Court of Justice and International Law Commission by establishing that recognition rooted in legitimacy rather than effectiveness alone. The civilians must be protected through humanitarian assistance without implying recognition for the actors who are constantly engaged in violating rights.

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