



Cooperation with the Taliban to Counter Terrorism in Afghanistan

Ben Saul

Cooperation with the Taliban to Counter Terrorism in Afghanistan

Ben Saul*

Policy Brief

January 2022

* Challis Chair of International Law, The University of Sydney and Associate Fellow of the ICCT. With thanks to Harriet Moynihan for comments.

About ICCT

The International Centre for Counter-Terrorism (ICCT) is an independent think and do tank providing multidisciplinary policy advice and practical, solution-oriented implementation support on prevention and the rule of law, two vital pillars of effective counter-terrorism.

ICCT's work focuses on themes at the intersection of countering violent extremism and criminal justice sector responses, as well as human rights-related aspects of counter-terrorism. The major project areas concern countering violent extremism, rule of law, foreign fighters, country and regional analysis, rehabilitation, civil society engagement and victims' voices.

Functioning as a nucleus within the international counter-terrorism network, ICCT connects experts, policymakers, civil society actors and practitioners from different fields by providing a platform for productive collaboration, practical analysis, and exchange of experiences and expertise, with the ultimate aim of identifying innovative and comprehensive approaches to preventing and countering terrorism.

Licensing and Distribution

ICCT publications are published in open access format and distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License, which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way.

Cover image photo credits: [AP News](#).

Contents

Abstract	1
Introduction	2
Influencing the Taliban on Counter-Terrorism	3
Law Enforcement Cooperation with the Taliban	5
Military Cooperation	9
Recommendations	11
Bibliography	12
About the Author	15

Abstract

This Policy Brief examines prospects for international cooperation with the unrecognised Taliban government in order to counter terrorism in Afghanistan, consistent with international law. It first sketches the levers for influencing the Taliban to suppress terrorism, before considering the possibilities for lawful foreign law enforcement and military cooperation.

Keywords: Taliban government, Afghanistan, recognition, counter-terrorism, international law

Introduction

After 20 years of international counter-terrorism efforts in Afghanistan, the withdrawal of foreign forces and the Taliban's seizure of power in August 2021 beg the question of whether effective counter-terrorism efforts can continue in Afghanistan. The United Nations Security Council (UNSC) and key foreign powers are united in demanding that the Taliban suppress terrorist groups. These include al-Qaeda, the Islamic State of Iraq and the Levant - Khorasan (ISIL-K)¹, Tehrik-e Taliban Pakistan (TTP) (targeting Pakistan), the Eastern Turkistan Islamic Movement (ETIM) (targeting China), and the anti-India group Lashkar-e-Taiba (LeT).

The Taliban has repeatedly committed to suppressing terrorism.² As Foreign Minister Amir Khan Muttaqi stated in late 2021, "Afghanistan will never allow its soil to be used as a base for anyone to threaten the security of another country",³ although the Taliban has also stated that cooperation is unnecessary because it is "able to tackle Daesh independently".⁴

While it is too soon to judge whether the Taliban will honour its pledge – or whether it is an insincere attempt to garner legitimacy – the Taliban's attitude to terrorist groups is not monolithic or static. It is actively suppressing its adversary ISIL-K, claims to have restricted the TPP,⁵ ETIM⁶ and foreign fighters,⁷ and has not itself exported jihad. But it remains unwilling to act against al-Qaeda,⁸ continues to tolerate various groups, and has absorbed some groups into its own ranks.⁹ There are also questions as to the Taliban's capacity to suppress ISIL-K.¹⁰

Despite no state or the UN formally *recognising* the Taliban as the government, a few states have cooperated with it on counter-terrorism. During the hurried US withdrawal, the US coordinated on evacuations in Kabul, providing "sanitized" intelligence on ISIL-K threats which prevented attacks.¹¹ The US has continued to share intelligence, but the Taliban has reportedly been uninterested, distrustful, or unsure how to use it.¹²

1 The official UNSC-designated title is used throughout this Policy Brief.

2 Derek Grossman, "Chinese Recognition of the Taliban is all but Inevitable," The RAND Blog, August 27, 2021, <https://www.rand.org/blog/2021/08/chinese-recognition-of-the-taliban-is-all-but-inevitable.html>; Dara Massicot, "Can a Pragmatic Relationship with the Taliban Help Russia to Counter the Taliban?" The National Interest, September 3, 2021, <https://nationalinterest.org/feature/can-pragmatic-relationship-taliban-help-russia-counter-terrorism-193101>.

3 "Regional Powers Back Aid for Afghanistan as Russia Hosts Taliban," Al Jazeera, October 21, 2021, <https://www.aljazeera.com/news/2021/10/20/russia-hosts-taliban-for-talks-but-warns-no-recognition-for-now>

4 "The Taliban Say They Won't Work with the US to Contain the Islamic State," The Associated Press, October 10, 2021, <https://www.npr.org/2021/10/10/1044820387/the-taliban-say-they-wont-work-with-the-u-s-to-contain-the-islamic-state>.

5 Twelfth Report of the Analytical Support and Sanctions Monitoring Team Submitted Pursuant to Resolution 2557 (2020) Concerning the Taliban, S/2021/486, June 1, 2021, para. 76.

6 "Will Afghan Taliban Honor Its Promise to China to Make Clean Break with ETIM?" Global Times, September 16, 2021, <https://www.globaltimes.cn/page/202109/1234477.shtml>.

7 Sanctions Monitoring Team, "Twelfth Report," para. 83.

8 Ibid., para. 40.

9 Ibid., para. 82 (the Islamic Movement of Uzbekistan, Islamic Jihad Group, Jundullah, and Khatiba Imam al-Bukhari).

10 Tanya Mehra, "The Fall of Afghanistan: A Blow to Counter-Terrorism and the Rule of Law Efforts," International Centre for Counter-Terrorism (ICCT) Perspective, August 23, 2021, <https://icct.nl/publication/the-fall-of-afghanistan-a-blow-to-counter-terrorism-and-rule-of-law-efforts/>; Asfandyar Mir, "Twenty Years after 9/11: The Terror Threat from Afghanistan Post the Taliban Takeover," Combating Terrorism Center at Westpoint Sentinel 14, no. 7 (September 2020): 29, <https://ctc.usma.edu/twenty-years-after-9-11-the-terror-threat-from-afghanistan-post-the-taliban-takeover/>.

11 Jonathan Schroden and Alexander Powell, "Working with the Devil? The Potential for US-Taliban Cooperation against the Islamic State in Afghanistan," War on the Rocks, September 16, 2021, <https://warontherocks.com/2021/09/working-with-the-devil-the-potential-for-u-s-taliban-cooperation-against-the-islamic-state-in-afghanistan/>.

12 Susannah George, Joby Warrick and Karen DeYoung, "Pakistan Using Informal Intelligence Channels to Prop Up Taliban Fight against ISIS," The Washington Post, October 23, 2021, <https://www.washingtonpost.com/world/2021/10/23/afghanistan-isis-pakistan-intelligence/>.

Russia has provided the Taliban with intelligence on ISIL-K since 2015.¹³ Pakistan has been informally supplying the Taliban with intelligence and technical support to monitor the telecommunications of ISIL-K members,¹⁴ is coordinating on border security,¹⁵ and engaged the Taliban to mediate a cease-fire between Pakistan and the TTP.¹⁶ The Taliban is also providing security for the embassies and diplomats of Russia, China and others.¹⁷ The UN is planning to pay US\$6 million to subsidise the salaries of security personnel from the Taliban's Interior Ministry – whose head Sirajuddin Haqqani is under UN sanctions – to protect 3,500 UN personnel and UN facilities.¹⁸

This Policy Brief examines the opportunities to cooperate with the Taliban to counter terrorism in a manner consistent with international law. Part 1 briefly sketches the levers for influencing the Taliban on counter terrorism. The prospects for lawful foreign law enforcement and military cooperation is considered in Parts 2 and 3 respectively.

Influencing the Taliban on Counter-Terrorism

Given the collapse of the expensive 20-year military, law enforcement, and political mission to vanquish the Taliban and al-Qaeda, and the limits of UN sanctions in constraining them, opportunities to influence the Taliban on counter-terrorism may now seem limited. Current international efforts are focused on inducing behavioural change through threats and rewards.

Coercive measures include the continuation of UN and unilateral sanctions on the Taliban, including the foreign freezing of Afghan finances and suspension of development assistance. The Taliban remains subject to the military, economic, diplomatic, and travel sanctions first imposed by the UNSC in 1999-2000,¹⁹ when the Taliban was then also the government. In addition, 135 individuals plus five entities²⁰ associated with the Taliban are specifically listed.²¹ States may also unilaterally impose wider sanctions on the Taliban.

Now that the Taliban is the government, sanctions have become a more important lever than during the insurgency, since foreign funding accounted for 40 percent of Afghan government revenue and 75 percent of government spending prior to the Taliban's take over,²² while Afghanistan's state assets abroad have been frozen.

13 Samuel Ramani, "Russia and the Taliban: Prospective Partners?" Royal United Services Institute Commentary, September 14, 2021, <https://rusi.org/explore-our-research/publications/commentary/russia-and-taliban-prospective-partners>; Massicot, "Pragmatic Relationship".

14 George et al., "Pakistan Using Informal Intelligence Channels".

15 Ayaz Gul, "Afghan Taliban, Pakistan Discuss Anti-Terror Cooperation," Voice of America, September 6, 2021, https://www.voanews.com/a/south-central-asia_afghan-taliban-pakistan-discuss-anti-terror-cooperation/6219314.html.

16 Ayaz Gul, "Pakistan, TTP Militants Agree on 'Complete Cease-Fire,'" Voice of America, November 8, 2021, <https://www.voanews.com/a/pakistan-ttp-militants-agree-on-complete-cease-fire-/6304928.html>.

17 Tess Bridgeman and Ryan Goodman, "Expert Backgrounder: Recognition and the Taliban," Just Security, August 17, 2021, <https://www.justsecurity.org/77794/expert-backgrounder-recognition-and-the-taliban/>.

18 Jonathan Landay, "Exclusive: U.N. Proposing Paying Nearly \$6 Million to Taliban for Security," Reuters, December 21, 2021, <https://www.reuters.com/world/asia-pacific/exclusive-un-proposing-paying-nearly-6-million-taliban-security-document-source-2021-12-21/>.

19 UN Security Council resolutions 1267 (1999) and 1333 (2000). The Taliban was sanctioned for its failure to suppress al-Qaeda and to surrender Bin Laden for trial abroad, rather than for its own terrorist acts.

20 Report of the Security Council Committee Established Pursuant to Resolution 1988 (2011), S/2020/1211, December 31, 2020, para. 25.

21 The current Taliban sanctions regime operates under UN Security Council resolution 1988 (2011), and the ISIL and al-Qaeda sanctions come under resolutions 1267 (1999), 1989 (2001) and 2253 (2015).

22 Karen DeYoung, "US Treasury Allows Aid to Flow to Afghans to Avoid Mass Starvation," The Sydney Morning Herald, December 23, 2021, <https://www.smh.com.au/world/asia/us-treasury-allows-aid-to-flow-to-afghans-to-avoid-mass-starvation-20211223-p59jrl.html?btis>.

Rewards involve prospects of formal recognition as Afghanistan's government,²³ a key to unlocking diplomatic relations and the full spectrum of inter-governmental cooperation (development, finance, trade, travel, technical assistance and so on). Also in play is representation at the UN, a decision on which was deferred by the UN in December 2021²⁴ – a repeat of the situation during Taliban rule from 1996 to 2001.

Some countries possess special leverage. The US and China wield the greatest financial influence, while the Permanent 5 control Security Council sanctions. Pakistan has close relations with the Taliban – land-locked Afghanistan needs Pakistan for the transit of trade and aid – and the Taliban wishes to join the China-Pakistan Economic Corridor (CPEC),²⁵ part of China's Belt and Road Initiative (giving China influence). China and Russia are interested to exploit minerals,²⁶ and the Central Asian states, Iran and India all have economic interests.²⁷ Qatar has played a broker role while also providing technical and humanitarian assistance.²⁸

States have increasingly acknowledged that humanitarian assistance for Afghan civilians should – rightly – not be conditional on the Taliban meeting counter-terrorism or other policy goals. The UNSC belatedly authorised a “humanitarian assistance” exception to sanctions in December 2021, to cover “basic human needs” – but not wider economic development.²⁹ The stranglehold on Taliban finances will inevitably worsen the humanitarian crisis and undermine other policy goals: the Taliban will continue to raise funds through illicit drugs, government services will grind to a halt, the Taliban's own personnel will go unpaid and may defect to ISIL-K – as has already occurred, irregular migration will increase, and economic collapse will worsen extremism and insecurity.³⁰

Rhetorically, the Taliban 2.0 is committed to steering a different course from the 1990s. It may now assess that the costs of international economic and political isolation outweigh its ideological sympathy with al-Qaeda, particularly given the increased complexity of the Afghan economy and society and two decades of integration into the international system. If the economic crisis threatens the survival of its regime, it may be willing to cooperate.

Thus far most states appear united in demanding change from the Taliban as conditions of recognition, not only on inclusive governance and human rights but also on counter-terrorism. The risk is that over time states will splinter along self-interested or geopolitical lines,³¹ undermining pressure to reform. Particular states could obtain guarantees from the Taliban against the terrorist groups which threaten them, and normalise relations, while other terrorist groups continue to target other states. Some states could also break from the pack by seeking to be first to exploit economic opportunities.

23 Ben Saul, “‘Recognition’ and the Taliban's International Legal Status,” ICCT Perspective, December 15, 2021, <https://icct.nl/publication/recognition-talibans-international-legal-status/>.

24 Michelle Nichols, “UN Committee Agrees Taliban, Myanmar Junta Not Allowed in UN for Now,” Reuters, December 2, 2021, <https://www.reuters.com/world/asia-pacific/taliban-myanmar-junta-unlikely-be-let-into-un-now-diplomats-2021-12-01/>.

25 Mir, “Twenty Years after 9/11”.

26 Derek Grossman, “China and Pakistan See Eye to Eye on the Taliban – Almost,” The RAND Blog, September 21, 2021, <https://www.rand.org/blog/2021/09/china-and-pakistan-see-eye-to-eye-on-the-taliban-almost.html>; Grossman, “Chinese Recognition”; Ramani, “Russia and the Taliban”.

27 Ramani, “Russia and the Taliban”.

28 “Qatar Lauded for its Role in Afghanistan Evacuations,” Al Jazeera, August 30, 2021, <https://www.aljazeera.com/news/2021/8/30/qatar-emerges-as-key-player-in-afghanistan-after-us-pullout>.

29 UN Security Council resolution 2615 (2021), para. 1.

30 International Crisis Group, “Beyond Emergency Relief: Averting Afghanistan's Humanitarian Catastrophe,” Asia Report No. 317, December 6, 2021, 26-27.

31 Mir, “Twenty Years after 9/11”.

Law Enforcement Cooperation with the Taliban

Law enforcement cooperation on counter-terrorism covers a wide spectrum,³² from criminal justice to administrative measures – with the latter being highly intrusive but having fewer and lesser safeguards than criminal justice.³³ Each area presents its own human rights and rule of law risks when cooperating with any state, let alone an entity with the Taliban’s track record.

The Framework of Taliban Law

At present, any form of legal cooperation with the Taliban brings acute risks because of chronic uncertainties about the state of the Afghan legal system. In September 2021 the Taliban transitionally restored the 1964 Afghan Constitution,³⁴ in place of the 2004 Constitution adopted under US tutelage, to the extent that it does not “conflict with Islamic Sharia (Jurisprudence) and the principles of the Islamic Emirate”.³⁵

However, the Taliban has not indicated which parts of the 1964 Constitution conflict with sharia or unspecified Taliban ‘principles’; whether any elements of the 2004 constitutional arrangements will remain in effect; or what are the time frames and processes for permanent constitutional change. Until this picture is more settled, there can be little confidence as to the legal safeguards available in Afghanistan, including as regards fundamental rights, judicial independence, and consistency with international law.

Title III of the 1964 Constitution establishes extensive “basic rights and duties of the people”,³⁶ many corresponding with international civil and political³⁷ and economic, social and cultural rights,³⁸ and including fair trial rights.³⁹ The 1964 Constitution provides for an independent judiciary⁴⁰ and relegates sharia law to a ‘gap filling’ role where the Constitution and legislation is silent.⁴¹

The Taliban’s fundamentalist conception of sharia law and principles would seem inconsistent with – and thus be likely to displace – many of these justice-related rights, including equality and non-discrimination (whether on the basis of gender, or concerning minorities such as Shiites and Hazaras); no corporal punishment (the Taliban administers floggings, amputations, stonings, hangings and beheadings); freedom from torture and torture evidence; and fair trial. While the Taliban is more likely to comply with a constitutional framework which excises features incompatible with its sharia, a constitution shorn of basic rights may preclude lawful foreign legal cooperation under international law and foreign domestic law.

32 Law enforcement cooperation includes information and data sharing, investigations and forensics, mutual assistance and extradition, financial intelligence and asset freezing, border and customs, suppressing foreign fighters, social interventions to prevent violent extremism, preventing the misuse of the internet, assistance to victims, and technical assistance, among others.

33 Tanya Mehra, Matthew Wentworth and Bib van Ginkel, “The Expanding Use of Administrative Measures in A Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards,” ICCT Policy Brief, November 2021, <https://icct.nl/publication/administrative-measures-rule-of-law-safeguards/>.

34 Constitution of Afghanistan 1964, https://www.constituteproject.org/constitution/Afghanistan_1964.pdf?lang=en. The 1964 Constitution was adopted by former King Mohammed Zahir Shah and established a parliamentary democracy, until Shah was overthrown by the military in 1973.

35 Afghan Ministry of Justice, “His Excellency Acting Minister of Justice Met with the Chinese Ambassador,” September 28, 2021, <https://moj.gov.af/en/his-excellency-acting-minister-justice-met-chinese-ambassador>.

36 Constitution of Afghanistan 1964, arts. 25-40.

37 Including liberty and dignity; non-retrospective punishment; freedom from unlawful detention; public trial; presumption of innocence; freedom from torture and corporal punishment; exclusion of evidence obtained by compulsion; right to counsel; freedoms of movement, assembly, association, privacy, expression, opinion/thought/conscience, religion, and of the media; political participation; and property.

38 Such as education, healthcare, the right to work, safe conditions of work, and the prohibition of slavery.

39 Constitution of Afghanistan 1964, art. 25.

40 Ibid., art 97.

41 Ibid., art 102.

Further, whereas the 2004 Constitution looked to sharia jurisprudence as a residual legal source in the absence of explicit constitutional or legislative provisions, the Taliban places sharia at the apex of its legal world. At least until its sharia is codified and publicised, this uncertain interaction between sharia and other formal state law compromises the principles of legality and non-retrospectivity – namely that the criminal law should be sufficiently precise, certain, foreseeable and predictable so that individuals may prospectively know their liabilities.

Legal uncertainty extends to whether and how the Taliban will continue apply Afghanistan’s previous ‘counter-terrorism laws’, which until the Taliban take-over were used to target the Taliban itself.⁴² The Taliban’s rural sharia law is unlikely to be sufficiently dynamic to, for example, combat all of the methods of terrorist financing, or collect advance airline passenger information or traveller biometrics, and so on. Principled and lawful foreign cooperation on terrorism cannot proceed in the absence of certainty about the basic legal frameworks which apply – let alone whether they will be respected in practice.

It is further unclear which other elements of the previous government’s legal regime remain in force, including its substantive and procedural laws and legal institutions (including law enforcement and regulatory authorities, and accountability bodies); many have been disbanded or suspended, including the Afghan National Human Rights Commission.⁴³ Some institutions have been effectively replaced by Taliban structures or filled with their personnel, as in the areas of intelligence, security, policing, and the military.⁴⁴ Many trained judges (particularly women), prosecutors and defence lawyers have fled abroad or are in hiding.

Before gaining power, the Taliban had established its own three-tiered court system, mirroring state courts,⁴⁵ as part of its shadow government. Even if such courts were sometimes viewed more favourably by civilians than poorly functioning state courts,⁴⁶ this did not mean that Taliban judges were independent, criminal trials were fair, or summary punishment was absent. It is unclear how these structures will relate to the existing Afghan court system.

The Taliban has begun recruiting and appointing new prosecutors and judges, with concerns that they may lack legal training (other than in sharia law).⁴⁷ Its insurgent judges did not necessarily have training even in sharia. Tellingly, the acting Chief Justice of the ‘Islamic Central Court’ (seemingly replacing the former Supreme Court), Mawlawi Abdul Hakim Ishaqzai/Sharai/Haqqani,⁴⁸ is simultaneously the Minister of Justice, which hardly bodes well for judicial independence. Even in Kabul, the main court is reportedly not conducting adversarial criminal trials but is instead mediating by way of dispute settlement,⁴⁹ which risks undermining the human rights of both victims and suspects.

42 Particularly the Penal Code of Afghanistan, Official Gazette Issue No. 3, Serial No. 347, 7 October 1976, particularly offences against the internal security of the state (arts. 204-253); and Law on Crimes against Internal and External Security, approved by the Revolutionary Council of the Democratic Republic of Afghanistan by Decree No. 153 of October 1987.

43 Afghan Independent Human Rights Commission, “Statement on the Status of the Afghan Independent Human Rights Commission”, September 14, 2021, https://www.aihrc.org.af/home/press_release/91139.

44 Ayaz Gul, “Qatar: No Clear Path for Unfreezing Afghan Funds, Recognising Taliban,” Voice of America, October 13, 2021, <https://www.voanews.com/a/qatar-no-clear-path-for-unfreezing-afghan-funds-recognizing-taliban/6269014.html>.

45 Ashley Jackson and Florian Weigand, “Rebel Rule of Law: Taliban Courts in the West and North-west of Afghanistan”, Briefing Note, Overseas Development Institute and Humanitarian Policy Group, May 2020, 4.

46 Ibid.

47 “Afghanistan Dispatches: ‘The Taliban are Looking to Hire Judges and Prosecutors’,” Jurist, October 14, 2021, <https://www.jurist.org/news/2021/10/afghanistan-dispatches-the-taliban-are-looking-to-hire-judges-and-prosecutors/>.

48 Shahabullah Yousafzai, “Abdul Hakim Haqqani Appointed Afghanistan’s Chief Justice,” The Express Tribune, October 15, 2021, <https://tribune.com.pk/story/2324906/abdul-hakim-haqqani-appointed-afghanistans-chief-justice>. He was formerly Chief Justice in the Taliban regime from 1996-2001.

49 Gul, “Qatar”.

The Taliban has also pledged to respect “international laws and instruments”, including treaties,, except where they conflict with sharia.⁵⁰ Again, it is unclear whether the Taliban would regard its international counter-terrorism obligations to prosecute or extradite, say, al-Qaeda members, as consistent with its sharia law and/or Taliban principles. It may well have misgivings in other areas of counter-terrorism, such as human rights and international humanitarian law (IHL); its insurgent Code of Conduct,⁵¹ for instance, was not IHL consistent.

International Legal Risks of Law Enforcement Cooperation

Assisting the Taliban

Law enforcement cooperation with the Taliban involves a number of international law risks. Irrespective of discretionary foreign political recognition, the Taliban is now the effective government of Afghanistan and is responsible for any breaches of Afghanistan’s international obligations. Under the law of state responsibility, a foreign state must not aid or assist Afghanistan in the commission of an internationally wrongful act, where it has knowledge of the circumstances of the wrong, and where the act would be wrongful if committed by it.⁵²

There is some uncertainty about the interpretation of this *complicity* principle, particularly its fault elements.⁵³ It is clear that the aid or assistance must contribute “significantly” to the wrongful act.⁵⁴ A state must also have actual or near-certain knowledge that the assistance will contribute to the other state’s violations.⁵⁵ There is also increasing support for an alternative, lower standard of wilful blindness to – deliberately avoiding – such knowledge of the near-certainty of violations, despite credible evidence of illegality.⁵⁶ The state need not, however, desire the commission of, or conspire to commit, the other state’s act.⁵⁷

Consequently, it would be unlawful for a state to provide counter-terrorism intelligence, technical assistance, or mutual assistance to the Taliban, where it would significantly contribute to a Taliban violation of human rights law towards a terrorist suspect, such as by enabling (without necessarily causing) the Taliban to identify, investigate, apprehend, detain, prosecute or kill the person in an unlawful manner,⁵⁸ and either:

- (a) the state knows that its assistance will contribute to violations, for instance because the Taliban has made its intentions known, its intentions can be inferred from evidence, or the assistance given is of a nature so as to inevitably violate rights;⁵⁹ or

50 Afghan Ministry of Justice, “His Excellency”; Afghan Ministry of Justice, “The Acting Minister Of Justice Met With The Turkish Ambassador In Kabul,” October 13, 2021, <https://moj.gov.af/en/acting-minister-justice-met-turkish-ambassador-kabul>.

51 See Thomas Johnson and Matthew DuPee, “Analysing the New Taliban Code of Conduct (Layeha): An Assessment of Changing Perspectives and Strategies of the Afghan Taliban,” *Central Asian Survey* 31, no. 1 (2012): 77.

52 International Law Commission, “Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries,” ILC Yearbook II (Part 2) 2001, art. 16.

53 Marko Milanovic, “The International Law of Intelligence Sharing in Multinational Military Operations: Framing Complicity,” EJIL Talk, October 22, 2021, <https://www.ejiltalk.org/the-international-law-of-intelligence-sharing-in-multinational-military-operations-framing-complicity/>.

54 ILC, “Articles on State Responsibility,” Commentary to Art. 16.

55 Harriet Moynihan, “Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism,” Chatham House Research Paper, 2016, <https://www.chathamhouse.org/2016/11/aiding-and-assisting-challenges-armed-conflict-and-counterterrorism>, 14-15.

56 Ibid.

57 Ibid.

58 For instance, involving: arbitrary detention; lack of independent judicial review of detention; torture or cruel, inhuman or degrading treatment or punishment (whether in interrogation, or through corporal punishments); inhumane conditions of detention; unfair trial before an independent and impartial court; privacy violations; or arbitrary deprivation of the right to life (whether in apprehending suspects or through unlawful, summary or inhumane executions).

59 Such as providing communications ‘spy’ software in the absence of effective privacy safeguards under Afghan law.

- (b) the state is wilfully blind to whether its assistance will contribute to Taliban violations, despite credible evidence of the likelihood of such violations and a lack of safeguards in the Afghan legal system for preventing them.

It would not be unlawful if the assistance does not contribute “significantly” to a violation, for example where intelligence shared with the Taliban helps them in a minor way to build a profile of terrorist suspects who are mainly identified through the Taliban’s own methods.

There is also no complicity if the state is aware of a risk – even a substantial risk – that its assistance will contribute to a violation, but does not have near certain knowledge of it or is not wilfully blind to such knowledge. It would also not be unlawful if violations are simply unlikely, as where a specific Taliban partner reliably respects human rights and would control the information shared; or sharing intelligence enables the Taliban to close a border to a suspect without violating their rights.

Secondly, in the unlikely event that a state wished to extradite a terrorist suspect to be prosecuted in Afghanistan, or to deport home an Afghan national (such as a foreign fighter), such returns must not involve prohibited *refoulement* – namely, a real risk of return to persecution or other grave violations of human rights.⁶⁰ While such cases will be specific to the individual, the pattern of Taliban mistreatment of ISIL-K members would likely militate against the return of most persons.

Complicity is most likely to arise where cooperation relates to particular individuals or groups, or the provision of weapons, where rights violations are more readily foreseeable. In contrast, general skills training, advice or assistance (whether on investigations, forensics, or human or electronic intelligence gathering) is unlikely to amount to complicity, since at the time it may be unclear how it will be used in the future for specific violations.⁶¹

Indeed building the capacity, skills, professionalism, and rule of law and human rights awareness of law enforcement is precisely a means of discouraging violations, particularly if the actor is genuinely open to changing behaviour. However, enhancing their effectiveness also risks increasing their capacity to locate and suppress, and thus to abuse, terror suspects;⁶² and can self-servingly legitimize the Taliban without corresponding behavioural change. Some training – as on human rights, graduated use of force, or due process – is designed precisely to combat violations, but is probably the kind the Taliban would be least receptive to.

Assistance from the Taliban

The above-mentioned complicity principle does not ordinarily cover the passive *receiving* or *use* of counter-terrorism intelligence *from* the Taliban, since complicity concerns the state’s conduct in relation to a prospective and not past act.⁶³ Complicity could still arise, however, where a foreign state actively solicits intelligence as a quid pro quo for providing funds, its own related intelligence, or other assistance.⁶⁴ Foreign executive use of the intelligence may even be mandated by IHL or human rights law, for instance in fulfilling the duty to take all feasible precautions to verify a target, or in diligently preventing an imminent threat to life.⁶⁵ Information obtained by torture must not, however, be admitted in any court.⁶⁶

60 Such as torture or cruel, inhuman or degrading treatment, arbitrary deprivation of life, or a flagrant denial of fair trial.

61 See also Moynihan, “Aiding and Assisting,” 12.

62 For the risks of security assistance generally, see Patricia Sullivan, “Does Security Assistance Work? Why It May Not be the Answer for Fragile States,” Modern War Institute, November 15, 2021, <https://mwi.usma.edu/does-security-assistance-work-why-it-may-not-be-the-answer-for-fragile-states/>.

63 Marko Milanovic, “Intelligence Sharing in Multinational Military Operations: Concluding Thoughts,” *Articles of War*, October 26, 2021, <https://www.ejiltalk.org/the-international-law-of-intelligence-sharing-in-multinational-military-operations-concluding-thoughts/>.

64 *Ibid.*

65 *Ibid.*

66 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted December 10, 1984, entered into force June 26, 1987, 1465 UNTS 85, art. 15.

Requesting mutual assistance or extradition could also engage the requesting state's responsibility, where the request prompts the Taliban to act against a person in a manner which will foreseeably violate their rights. This is true notwithstanding that UNSC resolution 1267 (1999) requires the Taliban to "cooperate with efforts to bring indicted terrorists to justice"⁶⁷. The resolution does not override other international law, and subsequent Council resolutions affirm that states must respect international law when countering terrorism. The Taliban itself must refuse to extradite foreigners⁶⁸ where it would involve *refoulement* to serious harm in other countries..

There are also wider policy concerns about using intelligence from unsavoury partners like the Taliban, including because of human rights violations in the manner of its collection and issues with its reliability.

Military Cooperation

At first sight, military cooperation with the Taliban against terrorist groups appears attractive. *Sharing* intelligence with the Taliban may assist it to suppress terrorist threats to foreign states. There is then less need for direct *over the horizon* military action (which brings its own legal risks and operational difficulties),⁶⁹ kinetic and political risks to foreign forces are minimised, and the burden of justifying each foreign strike as self-defence is avoided. The dangerous task of developing human sources inside Afghanistan could also be lessened.

Receiving intelligence from the Taliban could assist foreign partners to enhance their own assessments of ISIL-K in Afghanistan. It could even facilitate military responses to ISIL-K in other countries. There are, however, two legal impediments to military cooperation with the Taliban: UN sanctions, and the above-mentioned risk of complicity.

UN Military Sanctions

The Security Council's military sanctions on the Taliban⁷⁰ not only prohibit providing weapons, but require all states to "[p]revent the direct or indirect sale, supply and transfer to the territory of Afghanistan under Taliban control... by their nationals or from their territories, of *technical advice, assistance, or training related to the military activities* of the armed personnel under the control of the Taliban".⁷¹ Military advisers must also be withdrawn⁷² (also implying they must not subsequently be sent).

Foreign state provision of intelligence on ISIL-K to the Taliban clearly comes within the ban on supplying or transferring military "technical advice" or "assistance". The resolution does not, however, prohibit another state from *receiving* intelligence from the Taliban or acting upon it.

The prohibition applies to intelligence "related to the military activities of the armed personnel" of the Taliban, not strictly to foreign military intelligence. It thus also precludes sharing with the Taliban *law enforcement* information (whether policing, financial, customs and the like) which is relevant to the Taliban's "military activities".

67 UN Security Council resolution 1267 (1999), para. 1. The preamble also recalls counter-terrorism treaty obligations "to extradite or prosecute terrorists".

68 The 1964 Constitution, art. 27 prohibits the extradition of Afghan nationals.

69 Pakistan and Tajikistan have refused to host US bases for strikes on Afghanistan, and the US must operate at long range from Qatar: George et al., "Pakistan using informal intelligence channels".

70 UN Security Council resolution 1333 (2000), paras. 5-6.

71 *Ibid.*, para. 5(b) (emphasis added).

72 *Ibid.*, para. 5(c).

On the other hand, the provision does not prohibit the sharing of law enforcement or military intelligence with the Taliban for non-military, law enforcement purposes: it imposes military, not policing, sanctions.. Even so, the above-mentioned prohibition on complicity in Taliban law enforcement violations still applies.

Even if UN sanctions were lifted, for the 110 states parties to the Arms Trade Treaty 2013, arms transfers to Afghanistan are prohibited if the state has knowledge that the weapons “would” be used by the Taliban to commit genocide, crimes against humanity or war crimes.⁷³ States must also not authorize exports if there is an overriding risk that the arms “could” be used to facilitate a “serious” violation of IHL, human rights law, or counter-terrorism or transnational organised crime conventions.⁷⁴

Complicity in Taliban Violations of International Law

As in relation to law enforcement, there is the risk of complicity in Taliban violations of IHL or human rights related to armed conflict with ISIL-K, for instance as a result of providing intelligence, training or weapons for counter-insurgency.

So far as violations of IHL are concerned, IHL imposes a stricter obligation than the general law of state responsibility. Common Article 1 of the four Geneva Conventions of 1949 requires states parties to “respect and to ensure respect” for the Conventions.⁷⁵ This encompasses a duty not to assist third parties where there is a foreseeable risk of an IHL violation – even if (as required by the law of state responsibility) it is not virtually certain to occur or the assistance does not contribute significantly.⁷⁶

The behaviour of the Taliban in armed conflict over the past 25 years raises clear and continuing risks of IHL violations, including war crimes.⁷⁷ These risks are evident in both Taliban doctrine (such as its Code of Conduct) its documented practice on the ground.⁷⁸ There are few genuine signs of change since the Taliban assumed power. As one Taliban commander recently declared: “We have a court for every criminal. But there is no court for ISIL-K. They will be killed wherever they are arrested.”⁷⁹

In such circumstances, many forms of military cooperation with the Taliban would engage the foreign state’s responsibility for violations of IHL, unless, for example, a particular Taliban partner is known to reliably observe IHL. The risk is compounded by potential foreign partners themselves having not always respected IHL when combating terrorism in Afghanistan.

Of course, if military cooperation is too legally risky, and the Taliban’s counter-terrorism efforts prove unsuccessful, the likelihood may increase of foreign states unilaterally resorting to self-defence. That carries its own risks, including uncertainty about the lawfulness of self-defence against non-state actors and anticipatory self-defence; dubious compliance with IHL by foreign states; the counter-productive hardening of Taliban attitudes and radicalisation to terrorism among other actors; and the possibility of escalation.

73 Arms Trade Treaty, adopted April 2, 2013, entered into force December 24, 2014, 3013 UNTS 269, art. 6(3).

74 Ibid., art. 7.

75 See also International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, Rules 139 and 144, <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/home>.

76 See e.g. Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits Judgment, ICJ Reports 1986, para. 220; Milanovic, “Intelligence Sharing”, EJIL Talk, October 22, 2021.

77 See e.g. ICC Prosecutor, “Situation in Afghanistan,” 88-124; UN Assistance Mission in Afghanistan, Annual Reports on Protection of Civilians in Armed Conflict, <https://unama.unmissions.org/protection-of-civilians-reports>; Reports of the Afghanistan Independent Human Rights Commission, <https://www.aihrc.org.af/>.

78 ICC Prosecutor, “Situation in Afghanistan,” 41-77.

79 Victor Blue, Thomas Gibbons-Neef and Christina Goldbaum, “ISIS Poses a Growing Threat to New Taliban Government in Afghanistan,” The New York Times, November 3, 2021, <https://www.nytimes.com/2021/11/03/world/asia/isis-afghanistan-taliban.html>.

Recommendations

It is essential that the international community remains unified in its demand that the Taliban prevent and suppress all terrorist threats in Afghanistan and cease committing terrorism itself, in a manner consistent with international human rights law, IHL, and refugee law.

Formal recognition of the Taliban, and consequential economic and other benefits, should be conditioned on it incrementally satisfying measurable benchmarks of counter-terrorism progress (alongside other international goals such as inclusive and participatory governance and respect for human rights). These should be developed multilaterally, in consultation with the Taliban and other Afghan actors, and be independently monitored, including for consistency with human rights and IHL.

The loosening or lifting of economic sanctions by the Security Council should be based on benchmarked improvements in Taliban counter-terrorism performance and follow consultations with all UN member states. Humanitarian assistance, and development assistance to benefit the Afghan people, should not be made conditional on the Taliban's counter-terrorism performance (or improvements in governance or human rights).

Foreign law enforcement cooperation with the Taliban should only occur where, following a diligent assessment, there is no risk of unlawful complicity in aiding or assisting Taliban violations of human rights, IHL, or international criminal law (ICL).

Military cooperation with the Taliban, including sharing intelligence, is prohibited by UN sanctions, gives rise to serious risks of complicity in violations of IHL, ICL, and human rights, and could also be prohibited under the Arms Trade Treaty. Cooperation would only be lawful after the lifting of UN sanctions, and following demonstrable improvements in Taliban compliance with IHL, ICL and human rights law.

Where feasible, technical assistance and capacity building should be provided to Taliban military and law enforcement personnel (including police, prosecutors and judges) on relevant standards of international human rights law, IHL, and international criminal law.

Bibliography

- “Afghanistan Dispatches: ‘The Taliban are Looking to Hire Judges and Prosecutors.’” *Jurist*, October 14, 2021, <https://www.jurist.org/news/2021/10/afghanistan-dispatches-the-taliban-are-looking-to-hire-judges-and-prosecutors/>.
- “Qatar Lauded for its Role in Afghanistan Evacuations.” *Al Jazeera*, August 30, 2021, <https://www.aljazeera.com/news/2021/8/30/qatar-emerges-as-key-player-in-afghanistan-after-us-pullout>.
- “Regional Powers Back Aid for Afghanistan as Russia Hosts Taliban,” *Al Jazeera*, October 21, 2021, <https://www.aljazeera.com/news/2021/10/20/russia-hosts-taliban-for-talks-but-warns-no-recognition-for-now>
- “The Taliban Say They Won’t Work with the US to Contain the Islamic State,” *The Associated Press*, October 10, 2021, <https://www.npr.org/2021/10/10/1044820387/the-taliban-say-they-wont-work-with-the-u-s-to-contain-the-islamic-state>.
- “Will Afghan Taliban Honor Its Promise to China to Make Clean Break with ETIM?” *Global Times*, September 16, 2021, <https://www.globaltimes.cn/page/202109/1234477.shtml>.
- Afghanistan Independent Human Rights Commission. <https://www.aihrc.org.af/>.
- Afghan Independent Human Rights Commission. “Statement on the Status of the Afghan Independent Human Rights Commission.” September 14, 2021, https://www.aihrc.org.af/home/press_release/91139.
- Afghan Ministry of Justice. “His Excellency Acting Minister of Justice Met with the Chinese Ambassador.” September 28, 2021, <https://moj.gov.af/en/his-excellency-acting-minister-justice-met-chinese-ambassador>.
- Afghan Ministry of Justice. “The Acting Minister of Justice Met with The Turkish Ambassador In Kabul.” October 13, 2021, <https://moj.gov.af/en/acting-minister-justice-met-turkish-ambassador-kabul>.
- Arms Trade Treaty. Adopted April 2, 2013, entered into force December 24, 2014, 3013 UNTS 269.
- Blue, Victor, Thomas Gibbons-Neff, and Christina Goldbaum. “ISIS Poses a Growing Threat to New Taliban Government in Afghanistan.” *The New York Times*, November 3, 2021, <https://www.nytimes.com/2021/11/03/world/asia/isis-afghanistan-taliban.html>.
- Bridgeman, Tess, and Ryan Goodman. “Expert Backgrounder: Recognition and the Taliban.” *Just Security*, August 17, 2021, <https://www.justsecurity.org/77794/expert-backgrounder-recognition-and-the-taliban/>.
- Constitution of Afghanistan 1964. https://www.constituteproject.org/constitution/Afghanistan_1964.pdf?lang=en.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted December 10, 1984, entered into force June 26, 1987, 1465 UNTS 85.
- DeYoung, Karen. ‘US Treasury Allows Aid to Flow to Afghans to Avoid Mass Starvation.’ *The Sydney Morning Herald*, December 23, 2021, <https://www.smh.com.au/world/asia/us-treasury-allows-aid-to-flow-to-afghans-to-avoid-mass-starvation-20211223-p59jrl.html?btis>.
- George, Susannah, Joby Warrick, and Karen DeYoung. “Pakistan Using Informal Intelligence Channels to Prop Up Taliban Fight against ISIS.” *The Washington Post*, October 23, 2021, <https://www.washingtonpost.com/world/2021/10/23/afghanistan-isis-pakistan-intelligence/>.
- Grossman, Derek. “China and Pakistan See Eye to Eye on the Taliban – Almost.” *The RAND Blog*, September 21, 2021, <https://www.rand.org/blog/2021/09/china-and-pakistan-see-eye-to-eye-on-the-taliban-almost.html>;
- Grossman, Derek. “Chinese Recognition of the Taliban is all but Inevitable.” *The RAND Blog*, August 27, 2021, <https://www.rand.org/blog/2021/08/chinese-recognition-of-the-taliban-is-all-but-inevitable.html>.

- Gul, Ayaz. 'Pakistan, TTP Militants Agree on 'Complete Cease-Fire.'" *Voice of America*, November 8, 2021, <https://www.voanews.com/a/pakistan-ttp-militants-agree-on-complete-cess-fire-/6304928.html>.
- Gul, Ayaz. "Afghan Taliban, Pakistan Discuss Anti-Terror Cooperation." *Voice of America*, September 6, 2021, https://www.voanews.com/a/south-central-asia_afghan-taliban-pakistan-discuss-anti-terror-cooperation/6219314.html.
- Gul, Ayaz. "Qatar: No Clear Path for Unfreezing Afghan Funds, Recognising Taliban." *Voice of America*, October 13, 2021, <https://www.voanews.com/a/qatar-no-clear-path-for-unfreezing-afghan-funds-recognizing-taliban/6269014.html>.
- International Committee of the Red Cross, Customary International Humanitarian Law. <https://ihl-databases.icrc.org/customary-ihl/eng/docindex/home>.
- International Criminal Court Prosecutor. "Situation in the Islamic Republic of Afghanistan, ICC-02/17, Public Redacted Version of 'Request for Authorisation of An Investigation Pursuant to article 15.'" November 20, 2017, ICC-02/17-7-Conf-Exp.
- International Crisis Group. "Beyond Emergency Relief: Averting Afghanistan's Humanitarian Catastrophe." Asia Report No. 317, December 6, 2021.
- International Law Commission. "Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries." *ILC Yearbook II (Part 2) 2001*.
- Jackson, Ashley, and Florian Weigand. "Rebel Rule of Law: Taliban Courts in the West and North-west of Afghanistan." Briefing Note, Overseas Development Institute and Humanitarian Policy Group, May 2020.
- Johnson, Thomas, and Matthew DuPee. "Analysing the New Taliban Code of Conduct (*Layeha*): An Assessment of Changing Perspectives and Strategies of the Afghan Taliban." *Central Asian Survey* 31, no. 1 (2012): 77-91.
- Landay, Jonathan. "Exclusive: U.N. Proposing Paying Nearly \$6 Million to Taliban for Security." *Reuters*, December 21, 2021, <https://www.reuters.com/world/asia-pacific/exclusive-un-proposing-paying-nearly-6-million-taliban-security-document-source-2021-12-21/>.
- Law on Crimes against Internal and External Security, approved by the Revolutionary Council of the Democratic Republic of Afghanistan by Decree No. 153 of October 1987.
- Massicot, Dara. "Can a Pragmatic Relationship with the Taliban Help Russia to Counter the Taliban?" *The National Interest*, September 3, 2021, <https://nationalinterest.org/feature/can-pragmatic-relationship-taliban-help-russia-counter-terrorism-193101>.
- Mehra, Tanya, Matthew Wentworth and Bib van Ginkel. "The Expanding Use of Administrative Measures in A Counter-Terrorism Context – Part 1: In Need of Rule of Law Safeguards." ICCT Policy Brief, November 2021, <https://icct.nl/publication/administrative-measures-rule-of-law-safeguards/>.
- Mehra, Tanya. "The Fall of Afghanistan: A Blow to Counter-Terrorism and the Rule of Law Efforts." *International Centre for Counter-Terrorism (ICCT) Perspective*, August 23, 2021, <https://icct.nl/publication/the-fall-of-afghanistan-a-blow-to-counter-terrorism-and-rule-of-law-efforts/>.
- Milanovic, Marko. "Intelligence Sharing in Multinational Military Operations: Concluding Thoughts." *Articles of War*, October 26, 2021, <https://www.ejiltalk.org/the-international-law-of-intelligence-sharing-in-multinational-military-operations-concluding-thoughts/>.
- Milanovic, Marko. "The International Law of Intelligence Sharing in Multinational Military Operations: Framing Complicity." *EJIL Talk*, October 22, 2021, <https://www.ejiltalk.org/the-international-law-of-intelligence-sharing-in-multinational-military-operations-framing-complicity/>.
- Mir, Asfandyar. "Twenty Years after 9/11: The Terror Threat from Afghanistan Post the Taliban Takeover." *Combating Terrorism Center at Westpoint Sentinel* 14, no. 7 (September 2020): 29-43, <https://ctc.usma.edu/twenty-years-after-9-11-the-terror-threat-from-afghanistan-post-the-taliban-takeover/>.

- Moynihan, Harriet. "Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism." Chatham House Research Paper, 2016, <https://www.chathamhouse.org/2016/11/aiding-and-assisting-challenges-armed-conflict-and-counterterrorism>.
- Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits Judgment*, ICJ Reports 1986, 14.
- Nichols, Michelle. "UN Committee Agrees Taliban, Myanmar Junta Not Allowed in UN for Now." *Reuters*, December 2, 2021, <https://www.reuters.com/world/asia-pacific/taliban-myanmar-junta-unlikely-be-let-into-un-now-diplomats-2021-12-01/>.
- Penal Code of Afghanistan. Official Gazette Issue No. 3, Serial No. 347, 7 October 1976.
- Ramani, Samuel. "Russia and the Taliban: Prospective Partners?" Royal United Services Institute Commentary, September 14, 2021, <https://rusi.org/explore-our-research/publications/commentary/russia-and-taliban-prospective-partners>.
- Report of the Security Council Committee Established Pursuant to Resolution 1988 (2011), S/2020/1211, December 31, 2020.
- Saul, Ben. "'Recognition' and the Taliban's International Legal Status." *ICCT Perspective*, December 15, 2021, <https://icct.nl/publication/recognition-talibans-international-legal-status/>.
- Schroden, Jonathan, and Alexander Powell. "Working with the Devil? The Potential for US-Taliban Cooperation against the Islamic State in Afghanistan." *War on the Rocks*, September 16, 2021, <https://warontherocks.com/2021/09/working-with-the-devil-the-potential-for-u-s-taliban-cooperation-against-the-islamic-state-in-afghanistan/>.
- Sullivan, Patricia. "Does Security Assistance Work? Why It May Not be the Answer for Fragile States." Modern War Institute, November 15, 2021, <https://mwi.usma.edu/does-security-assistance-work-why-it-may-not-be-the-answer-for-fragile-states/>.
- Twelfth Report of the Analytical Support and Sanctions Monitoring Team Submitted Pursuant to Resolution 2557 (2020) Concerning the Taliban, S/2021/486, June 1, 2021.
- UN Assistance Mission in Afghanistan, Annual Reports on Protection of Civilians in Armed Conflict, <https://unama.unmissions.org/protection-of-civilians-reports>.
- UN Security Council resolution 1267 (1999), <http://unscr.com/en/resolutions/1267>.
- UN Security Council resolution 1333 (2000), <http://unscr.com/en/resolutions/1333>.
- UN Security Council resolution 2615 (2021), <http://unscr.com/en/resolutions/2615>.
- UN Security Council resolution 1989 (2001), <http://unscr.com/en/resolutions/1989>.
- UN Security Council resolution 2253 (2015), <http://unscr.com/en/resolutions/2253>.
- Yousafzai, Shahabullah. "Abdul Hakim Haqqani Appointed Afghanistan's Chief Justice." *The Express Tribune*, October 15, 2021, <https://tribune.com.pk/story/2324906/abdul-hakim-haqqani-appointed-afghanistans-chief-justice>.

About the Author

Ben Saul

Professor Ben Saul is Challis Chair of International Law at the University of Sydney, Australia and an Associate Fellow of the Royal Institute of International Affairs in London. He has taught at Harvard, Oxford, The Hague Academy of International Law and Italy, India, Nepal, and Cambodia, and been a visitor at the Max Planck Institute for International Law and the Raoul Wallenberg Institute for Human Rights.

International Centre for Counter-Terrorism (ICCT)

T: +31 (0)70 763 0050

E: info@icct.nl

www.icct.nl