

# WEEKLY ANALYSIS

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## HANDING OVER THE EMBASSIES OF AFGHANISTAN TO THE ISLAMIC EMIRATE IN SOME COUNTRIES: A STARTING POINT FOR FORMAL RECOGNITION?



Weekly Analysis is one of the CSRS publications analyzing significant weekly political, social, economic, and security events in Afghanistan and the region. The prime motive behind this is to provide strategic insights and policy solutions to decision-making institutions and individuals in order to help them design better policies. Weekly Analysis is published in Pashto, Dari, English and Arabic languages.

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Center for Strategic and Regional Studies (CSRS)

## HANDING OVER THE EMBASSIES OF AFGHANISTAN TO THE ISLAMIC EMIRATE IN SOME COUNTRIES: A STARTING POINT FOR FORMAL RECOGNITION?

### INTRODUCTION

The state has four components which include territory, population, government and sovereignty. When a new state is established and other states start political relations with this state, they open embassies in each other's territory, sign agreements with each other, and acknowledge through the media that this newly created state is recognized, this stage and shape of the relationship is called formal recognition.<sup>i</sup> On the international level, on the 26th of December 1933, the Montevideo Convention on the Rights and Duties of States was established. This convention, on the one hand, describes the rights and duties of the states, but on the other hand, it also defines a legal framework for recognizing the official status of the states. In the third, sixth and seventh articles of this convention, the recognition standards of states are clarified.<sup>ii</sup>

When a state is officially recognized, it means that the state is officially recognized with all its constituent elements, that is, the state's territory, population, sovereignty and government are officially recognized. Recognition of government and state should not be combined because both are separate concepts. Recognition of the official status of the state can be done only once and that too when a new state is created and together with the recognition of the official status of the state, the recognition of the official status of the government is also done. But sometimes there are governments in the geography of the officially recognized state that other governments take measures for official recognition based on their policies, so this kind of official recognition may be done soon or it may take time. This is the situation where the member states of the international community take steps to recognize the government as official and clarify their position to recognize it or not and if the change of governments is not subject to revolutionary conditions, then such governments do not need to be recognized again.

Last week, Iran and Turkey were the countries that handed over the embassies and consulates of the previous government of Afghanistan to the current ruling system i.e. the Islamic Emirate and according to the spokesman of Afghanistan's Ministry of Foreign Affairs, Abdul Qahar Balkhi, so far, in addition to Iran and Turkey, Pakistan, Russia, China, Malaysia, Kyrgyzstan, Uzbekistan, Turkmenistan, Qatar and Kazakhstan have transferred Afghan embassies and consulates to the Islamic Emirate. That is about eleven countries.<sup>iii</sup> The question is that the



above countries have not officially issued a declaration of recognition of the Islamic Emirate, but they have handed over their embassies to it. Does handing over the embassies mean official recognition or not? We write this analysis to find the answer to this question.

## LEGAL FRAMEWORK FOR GOVERNMENT RECOGNITION

There is no known and determined legal framework in international law for the recognition of government, that is, international law does not have rules and conditions for government official recognition, rather it is a political process that is mostly dependent on the interests of countries. When a new government is established, other states see their interests in this new government and if there are benefits in not recognizing it as official, then a state may not recognize it as official until it has enjoyed the benefits.

Of course, one thing should be clear that if the new government has come into being legally, then there is no need to recognize it, but that the Islamic Emirate was established by force or in August 2021 as it came into being against the constitution and without a vote, so it is necessary to be recognized by other states.

Despite the fact that there are no certain conditions for recognizing the governments at the international level, but still some scholars and experts have presented theories for recognizing the government, which we call the doctrine of recognizing the government are as follows:

**1- TOBAR DOCTRINE:** This doctrine (1907) was created by Carlos Tobar, who was the Minister of Foreign Affairs of Ecuador. This doctrine says:

"No Recognition for Unconstitutional Governments" that is, a new government should be recognized by other governments when it is established legally, especially on the basis of the effective constitution.

**2- BETANCOURT DOCTRINE:** This doctrine (1959) says: "No Recognition for Military Rules", that is, the governments that came into being through a military coup should not be officially recognized.

**3- STIMSON DOCTRINE:** This doctrine was created by the American Stimson in 1932, this doctrine says: When a government annexes the territory of another state by force and makes it a part of its state, then other states should not officially recognize this government.<sup>iv</sup>

**4- ESTRADA DOCTRINE:** This doctrine was created by Mexican Foreign Minister Genaro Estrada in 1930. This doctrine says: When a new government is established, other states should not recognize its legitimacy based on their positive or negative judgment, because this is breaking the principle of sovereignty of that state and interfering in their internal affairs. Rather, two principles of international law should be taken into account for the recognition: One is the



independence of the government in decisions (self-determination)<sup>v</sup> and the second is non-interference by that government in the internal affairs of other states. That is, based on this doctrine, if a government is established within a recognized state that is independent in its decisions and does not interfere in the internal affairs of other states, then it should be recognized.

In addition to the above doctrines, the foreign and domestic policies of the government also play a role in official recognition. If the foreign policy is such that it threatens the national interests of other states, then other states use caution during official recognition. The foreign policy of the Islamic Emirate is economically oriented and neutral. This kind of foreign policy is mostly in the interest of other states and can create opportunities in the way of official recognition.

Also, the internal politics, which mostly revolves around human rights and the implementation of laws, if the government does not act appropriately in this area as well, other states may use caution in the field of official recognition. The current internal politics of the Islamic Emirate is an obstacle in the field of official recognition, because the right to education and training of girls is denied, women are prohibited from working in international organizations, NGOs and other institutions, the right to freedom of speech is denied, the freedom of the media is restricted. Restrictions, lack of a constitution and other such actions in internal politics are against the demands of the international community, which is why most countries have not recognized the Islamic Emirate yet.

## **WHAT DOES HANDING OVER EMBASSIES TO THE ISLAMIC EMIRATE OF AFGHANISTAN MEAN?**

Formal recognition is generally divided into two parts: one is explicit formal recognition and the other is indirect formal recognition.

**A: Explicit formal recognition:** When a state recognizes the government of another state explicitly and clearly, it is called explicit formal recognition, which is usually done in two ways: Announcing through a declaration that the government officially recognizes it, or through a treaty, a government agrees with another government that it officially recognizes it.

**B: Indirect official recognition:** It is the official recognition that a state does not officially recognize a new government, but performs some actions that give it the meaning of official recognition. This is called implicit formal recognition. Such as: conducting political negotiations, signing political agreements, or opening embassies, the latter act of which is a stronger reason than others for implicit official recognition.<sup>vi</sup>

Through the above legal framework, it can be said that the transfer of embassies by some countries to the Islamic Emirate is a formal recognition.



Another type of official recognition is de facto and de jure official recognition, the first of which is temporary and the second is permanent official recognition. Temporary official recognition is mostly related to indirect official recognition and is a starting point for permanent official recognition. It can be said that the Islamic Emirate has been de facto officially recognized by the countries sending the embassies.

Another debate is that why Iran, Turkey, Malaysia, Russia, China and other countries handed over their embassies to the Islamic Emirate? To answer this question, it is necessary to write the benefits and reasons of each country in a separate analysis. But in general, it can be said that the above countries are mostly regional countries of Afghanistan and the countries of the region need the Islamic Emirate to protect their security and economic interests. And in order to meet these needs and get benefits, it is necessary to establish political relations with the Islamic Emirate and hand over embassies to it. In general, the countries of Central Asia, Russia and Iran are afraid of the security threats of Daesh and they can control Daesh through the Islamic Emirate. For this, they need to have good relations with the Islamic Emirate. On the other hand, China is afraid that Afghanistan will become a safe haven for Uighur Muslims or that some people will go there under the leadership of the Islamic Emirate in the name of Jihad, which makes it necessary to ensure that the Islamic Emirate have good relations with China and it hand over the embassy to the Islamic Emirate. Also, Malaysia is the country that mostly handed over the Afghan embassy to the Islamic Emirate based on Islamic brotherhood and Islamic motives.

Pakistan also needs to have good relations with the Islamic Emirate for the control of Tehreek Taliban or TTP on the one hand and for going to Central Asia and other economic purposes on the other hand. But for other reasons, it is necessary to write a special analysis about each country, which our small analysis does not have the courage to do.

## CONCLUSION

There is a legal framework at the international level for recognizing the legitimacy of the state, which is clarified in the 1933 Montevideo Convention on the Rights and Duties of States. However, there is no international legal framework or set conditions regarding the recognition of the government's official status, rather the official recognition of the government is a completely political act and other states recognize a government by considering their national interests and goals.

The handing over of embassies to the Islamic Emirate by some countries in the region means implicit official recognition and these countries want to have good relations with the Islamic Emirate and gain their national interests by opening embassies with the Islamic Emirate.

Handing over embassies to the Islamic Emirate has certain consequences, some of which are legal and some of which are political.



The legal consequences are that after this, the Islamic Emirate will be the advocate and guardian of Afghan citizens in these countries. It will defend their rights and ask the relevant country in case of violation of their rights, especially regarding the mistreatment of Afghan refugees in Iran and Turkey.

Also, the Islamic Emirate will provide services to its citizens in obtaining visas, extending passports, marriage letters, invitations, academic scholarships, fellowships, business and other similar areas, which is their legal right.

Also, in the political field, after this, the Islamic Emirate can establish relations through its embassies, send messages, conduct negotiations and establish relations with the politicians and other relevant officials of the respective countries through their embassy.

## **SUGGESTIONS**

1- The Islamic Emirate of Afghanistan should open the door of engagement with all the countries of the region and the world within the framework of Islamic values and the national interests of the Afghan people and start a positive and effective interaction in the light of international laws and treaties.

2- Foreign countries and international organizations should make continuous efforts for the political and economic stability of Afghanistan through dialogue with the current system of Afghanistan; In this regard, it is necessary to free Afghanistan's monetary reserves and remove financial sanctions.

3- The Islamic Emirate should not be satisfied with getting good relations and opening embassies in the countries of the region, but should interact with the European Union and the United States of America in such a way that they also hand over Afghan embassies to the Islamic Emirate.

4- The Islamic Emirate may request recognition from the international community based on the ESTRADA DOCTRINE, because based on this doctrine, they have met the conditions for recognition.

5- The Islamic Emirate sends qualified and knowledgeable people in international and regional politics as diplomats and ambassadors to these embassies, because only competent diplomats can manage from these embassies in a helpful manner.

**The End**



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