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Assessing the International Community's Obligation to Protect the Human Rights of Afghans

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CHRISTOPHER FITZGERALD, DEC 5 2021

The takeover of Afghanistan by the Taliban culminated in the capture of Kabul and the collapse of the US-supported democratic government in August 2021. This was a rapid and unexpected development for the international community as well as for international media outlets and humanitarian organisations[1]. With the Taliban back in power, concerns have been raised regarding the human rights of Afghanistan's citizens, including women and children, people with disabilities, religious and ethnic minorities, journalists, civil society groups and those connected to the previous Karzai and Ghani administrations[2]. These concerns stem from the notorious actions of the Taliban during their previous reign from 1996–2001 when they undertook extrajudicial killings and executions and oppressed women and girls under the premise of strict sharia law. The Taliban have also attacked civilians, journalists, human rights advocates and civil servants, resulting in one of the highest civilian death rates in the world[3]. The withdrawal of NATO forces, non-governmental organisations (NGO) and human rights groups raises legitimate questions about how the international community can protect the human rights of Afghan citizens moving forward. In the absence of an effective, inclusive government within Afghanistan, the international community has obligations through the principle of the Responsibility to Protect (R2P) to protect the human rights of Afghans.

Afghanistan has suffered through coups, military interventions and civil war for forty years, including the Marxist coup of 1978, the invasion and occupation by the Soviet Union between 1979 and 1989, the collapse of the communist regime in 1992, the subsequent civil war, and the beginning of the first Taliban regime in 1996[4]. In 1995, the then United Nations (UN) Secretary General, Boutros Boutros-Ghali stated “the world has turned away from Afghanistan, allowing civil war, ethnic fragmentation and polarisation to become state failure. The country has ceased to exist as a viable state and when a state fails civil society is destroyed.”[5].

The first Taliban regime, a predominantly Pashtun group, was hostile to Afghanistan's ethnic and Shiite minorities and, as Malley describes was “by a wide margin the least feminist movement on the face of the earth”[6]. The Taliban implemented severe and restrictive policies towards women, including removing women from all public places, banning education and employment, and implementing and enforcing a strict code of veiling. The Taliban punished lawbreakers severely with Islamic punishments, including the amputation of hands for theft, collapsing mud walls on people found guilty of homosexuality and public executions for murder and for women found guilty of adultery[7]. The Taliban was also guilty of mass killings, with many documented examples, including in Mazar-e-Sharif on 8 August 1998, where a three-day massacre occurred, resulting in approximately 2000 killed[8]. The Taliban's scant respect for the human rights was evident by the then leader of the Taliban, Mullah Omar, stating that “we do not accept something which somebody imposes on us under the name of human rights which is contrary to the holy Koranic law. The holy Koran cannot adjust itself to other people's requirements; people should adjust themselves to the requirements of the holy Koran.”[9].

Human rights abuses continued to be perpetrated by the Taliban insurgency after the United States-led 2001 invasion. Amnesty International claims that the Taliban were largely responsible for approximately 47,000 civilians killed as well as 72 journalists, 444 aid workers and 3,846 US contractors[10]. This highlights the challenges the Afghan population face with a resurgent Taliban in power, with human rights abuses continuing to be perpetrated by the Taliban up until August 2021. Smucker summarises the brutality of the Taliban and the current dire situation

Assessing the International Community's Obligation to Protect the Human Rights of Afghans

Written by Christopher Fitzgerald

faced by Afghan citizens by stating that “The troubled nation of Afghanistan, set in the unforgiving deserts and foothills of the Hindu Kush, is once again sagging under the yoke of a medieval minded regime that enforces draconian punishments and gender rules that echo that of sixteenth or seventeenth century Europe”[11]. This has also exacerbated existing problems, including extreme poverty, drought and food shortages, with the international community freezing government assets and donor funding to Afghan institutions and with the World Food Program warning that fourteen million people are on the brink of starvation[12].

Mass displacement has also continued to take place, with the UN Office of the Coordination of Humanitarian Affairs stating that over 540,000 Afghans were newly displaced, eighty percent of whom were women and children, between 1 January and 31 July 2021[13]. While substantial progress was made in promoting human rights in Afghanistan between 2001 and 2021, the withdrawal of UN and diplomatic missions has removed capacity to monitor and document human rights abuses and possible war crimes at the very moment the Taliban are in power. Considering there is now a lack of accountability for human rights at the national level, it is vital that the international community make every attempt necessary to prevent, monitor and punish human rights abuses in Afghanistan perpetrated by the Taliban regime[14]. This is particularly vital for the international community because an unstable Afghanistan will have flow on effects globally, including migrations flows and terrorism[15].

The principle of the Responsibility to Protect (R2P) was largely a result of two events, the first being the successful intervention in Bosnia in the 1990's by the United States and North Atlantic Treaty Organisation forces that protected civilians, demobilised militias, returned refugees and imprisoned war criminals[16]. The second was the UN Security Council's difficulty intervening in the subsequent Kosovo conflict when vetoed by a member state[17]. R2P was developed by the International Commission on Intervention and State Sovereignty in 2001 and was subsequently accepted by states at the 2005 UN World Summit[18]. R2P dictates that each individual state has a responsibility to protect its own population from crimes against humanity, such as genocide and ethnic cleansing. If a state fails in its responsibility to protect its population, either through deliberate action or neglect, the international community, through the UN Security Council, may take collective action to prevent and intervene militarily to prevent or stop human suffering[19]. This is a recognition that crimes against humanity are no longer an internal matter, but an international one, with the state to uphold basic human rights for their citizens[20]. As such, how a state conducts itself in the treatment of its people is directly linked to its legitimacy with the international community, with Samara stating that through the principle of R2P, sovereignty has become conditional[21]. Thakur also discusses this new paradigm for sovereignty by stating that “The doctrine of national sovereignty in its absolute and unqualified form, which gave rules protection against attack from without while engaged in the most brutal oppression within, has gone with the wind[22].”

But, while R2P is a preventative duty of the international community and a responsibility to react to gross human rights abuses in particular states, it is still unlawful for a state or states to use armed force unilaterally, aside from self-defence, without the approval of the UN Security Council[23]. It can also be said that the idea that states have obligations to their citizens is not new. This is evident in the responsibility of the UN Security Council under Article 24 of the UN Charter for the maintenance of international peace and security as well as legal obligations under human rights and human protection declarations, covenants and treaties, and international humanitarian law[24]. As a UN member, Afghanistan is itself bound to several human rights instruments, including the Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Civil and Political Rights and the Convention against torture and other cruel, inhuman or degrading treatment or punishment[25]. By granting UN membership, the international community welcomes a state as a responsible member, but, on the other hand, by signing the UN Charter, the state accepts the responsibilities that come from this membership, including respecting human rights[26].

However, the Taliban regime has recently been reported committing human rights abuses against women and girls as well as attacks against civilians linked to the former government, involving executions, beatings, interrogations and threats to family members. This reveals that the international community does have cause for concern over the Taliban's treatment of Afghan citizens and these concerns can lead to legitimate, UN-sanctioned actions through the principle of R2P[27]. This is evident with the UN High Commissioner for Human Rights, Michelle Bachelet, advising member states on 24 August 2021 that “a fundamental red line will be the Taliban's treatment of women and girls,

Assessing the International Community's Obligation to Protect the Human Rights of Afghans

Written by Christopher Fitzgerald

and respect for their rights to liberty freedom of movement, education, self-expression and employment, gilded by international human rights norms"[28].

The international community has a range of options through R2P to intervene when a state is committing human rights abuses against its own citizens, as well as having options to attempt to prevent abuses occurring in the first place. R2P is broken down into three responsibilities, the responsibility to prevent, react and rebuild. Prevention, arguably the most important, involves addressing the root causes of human rights abuses, including aid and humanitarian assistance, whereas reaction involves responding to situations of compelling human need with appropriate measures depending on the severity of the abuses committed. This can include financial sanctions, international prosecution and military intervention. It is important to note that with R2P, military intervention is seen as a last resort, once all other forms of intervention are exhausted, particularly prevention[29]. Thakur clarified the importance of prevention and says that "prevention is the single most important dimension of the responsibility to protect, so prevention options should always be exhausted before intervention is contemplated"[30]. With the Taliban and Afghanistan, intervention through prevention is particularly relevant considering the recent withdrawal of military and diplomatic personnel.

However, the additional withdrawal of NGO and UN workers, along with the persecution of Afghan journalists and human rights advocates, has resulted in a loss of monitoring and reporting capacity for human rights abuses within the country. For this reason, under the principle of R2P, an appropriate form of preliminary intervention by the international community would be in the form of a UN-mandated fact finding mission to monitor human rights in Afghanistan, collect evidence and present findings for potential prosecution on potential human rights violations[31]. With over half of the Afghan population dependent on humanitarian aid, restarting the flow of aid through UN channels and NGOs can also be used as an instrument to induce the Taliban regime to respect human rights law within the country and to help reduce flow on effects, particularly mass displacement to neighbouring states[32]. Smuckers provides an accurate representation of the situation the international community faces with protecting Afghan citizens and dealing with the Taliban by stating that "the UN must now grapple with how to help direct new humanitarian assistance through a Taliban Government that has shown little stomach for gender equality or free speech, major pillars of the 'universal human rights' that the UN claims to represent." [33].

Afghanistan's citizens are currently faced with two life-threatening problems, eerily similar to the country's previous decades of violence, poverty and conflict, when the country was isolated and ignored by the international community[34]. The first is the fragile state of Afghanistan itself, with the effects of Covid-19, drought, famine, mass displacement and extreme poverty made more acute with the withdrawal of humanitarian aid and support and the collapse of government services – causing concerns over potential economic and state-failure[35]. Second, while the new Taliban regime seeks international recognition and acceptance, there is already evidence of human rights abuses occurring, including those directed at women and girls, journalists and civil servants, causing concern over a repeat of the former regime who conducted appalling human rights abuses. This included staged executions, forced marriage for women and girls and massacres of minority groups[36]. These reasons alone reveal that it is not in the interest of the international community to ignore Afghanistan and a government that doesn't respect the human rights of its citizens.

A fragile, isolated, Afghanistan also has international repercussions – including strengthening transnational terrorism, the illicit drug trade and increasing amounts of refugees fleeing economic collapse and persecution[37]. It can be argued, then, that the international community has an obligation, through the principle of R2P, to protect the human rights of Afghan citizens in a situation where the Taliban regime is unwilling to do so. With the Taliban now seeking international recognition to reopen the flow of humanitarian aid and the unfreezing of government assets, the international community has an opportunity to intervene through preventative measures to tie financial and development support to how the new regime treats its citizens and to help improve conditions within Afghanistan more generally[38]. This is consistent with the prevention principle of R2P, with Thakur stating that "the best guarantee of human rights is a world of competent, responsible and legitimate sovereign states"[39]. This is evident at present, with the European Union pledging \$1 billion euros in aid to Afghanistan and neighbouring countries and the United States approving approximately \$64 million in humanitarian aid in recent weeks[40]. This shows that, through R2P, the international community has a direct interest in the stability of Afghanistan and can take steps to

Assessing the International Community's Obligation to Protect the Human Rights of Afghans

Written by Christopher Fitzgerald

ensure human rights are respected by playing a proactive role in leveraging its influence and using preventative measures to ensure the stability of Afghanistan and the safety of its citizens to ensure peace, stability and prosperity[41].

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Assessing the International Community's Obligation to Protect the Human Rights of Afghans

Written by Christopher Fitzgerald

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Notes

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Assessing the International Community's Obligation to Protect the Human Rights of Afghans

Written by Christopher Fitzgerald

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Assessing the International Community's Obligation to Protect the Human Rights of Afghans

Written by Christopher Fitzgerald

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About the author:

Christopher Fitzgerald conducts advocacy and strategy work for the Afghan-based NGO, Enabled Children Initiative. He holds a Master of Public Policy and Management, a Graduate Diploma in Public Administration and a Graduate Diploma in International Development and is currently studying a Master of Laws (International Law and International Relations) from Flinders University.