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## Suspending Afghanistan from SAARC and international law

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Making a case for suspending Afghanistan from SAARC to prevent the crippling of the organisation



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The meeting of the foreign ministers of the member countries of the South Asian Association for Regional Cooperation (SAARC), planned on the sidelines of the ongoing United Nations General Assembly session in New York, was [cancelled](#). The reason for this cancellation was Pakistan's insistence that the Taliban be allowed to represent Afghanistan, which other SAARC member states didn't agree to. What happened in New York is a precursor of things to come. Pakistan will assert the Taliban's participation in all future SAARC meetings, not just at the secretariat and organisational level but also in various specialist bodies of

SAARC such as the [South Asian University](#) (SAU) and the [SAARC Development Fund](#). These specialist bodies have governing councils that comprise all SAARC member states. If Pakistan asserts that the Taliban or its nominees be allowed to represent Afghanistan in these specialist bodies, which will not be acceptable to India, the governing council meetings of these organisations shall not take place. This, in turn, will make these organisations, and SAARC as a whole, dysfunctional. In any case, SAARC and its specialist bodies have miserably failed in realising their potential and fulfilling the collective aspirations of peace and progress of around 1.9 billion South Asians, due to the unending India-Pakistan hostilities.

**Article 6 of the UN Charter allows the UN General Assembly to expel a country, on the recommendation of the UN Security Council, if the country has persistently violated the principles reflected in the UN Charter.**

But SAARC is an important organisation for India. It is the only multilateral grouping where India is the dominant player. It's the sole multilateral instrument through which India can exert soft power over the whole of South Asia to blunt China's expansionism in the region. SAU is the best example of India using SAARC to exert its soft power. Over the last decade, hundreds of South Asian students from countries like Bangladesh, Nepal, Sri Lanka, and Bhutan have studied at SAU. These students, after returning to their home countries, can become brand ambassadors for India, positively influencing diplomatic relations over the long run. Consequently, it is in India's interest to strengthen SAARC by exploring options to deal with the Taliban threat to the organisation. The Taliban leadership comprises individuals designated as international terrorists. The Taliban represents everything that goes against the foundational values reflected in the SAARC Charter such as promoting peace, stability, and progress in the South Asian region. In this regard, an important option that can be considered is to suspend Afghanistan from SAARC.

## **International law on suspension/expulsion of countries from IOs**

Since SAARC is an international organisation (IO), one will have to look at the international law on this question closely. First and foremost, one has to look at the founding documents of the IO to find if it provides for expulsion or suspension of a country. On this issue, one can broadly divide the IOs into two categories. First, those IOs that explicitly provide for expulsion or suspension of member countries. For instance, [Article 6](#) of the UN Charter allows the UN General Assembly to expel a country, on the recommendation of the UN Security Council, if the country has persistently violated the principles reflected in the UN Charter. Likewise, [Article 5](#) of the UN Charter allows for the suspension of a country from UN membership. [Article XXVI\(2\)](#) of the Articles of the International Monetary Fund (IMF) also envisages suspension and expulsion of a member country if it fails to meet its obligations under the IMF Articles. In the IMF terminology, this is called 'compulsory withdrawal'.

Second, those IOs do not contain any provision on expulsion or suspension of its member countries. SAARC falls in the second category of IOs. Some international lawyers like Nagendra Singh were of the view that if the constituent instrument that created the IO is silent on the issue of expulsion or suspension, then there is no inherent right in the organisation to expel or suspend a member state. On the other hand, the view that has evolved over the years is that even if the constituent instrument is silent on the issue of suspension or expulsion, IOs have an implied power to suspend or expel countries. The doctrine of implied powers of IOs was laid down by the International Court of Justice in the [Reparation for Injuries Case](#). The court [held](#), "under international law, the organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties".

**Although expulsion or suspension from the IO is the measure of last resort, India should consider starting the process of making a well-substantiated case for Afghanistan's suspension from SAARC.**

Indeed, there are examples of IOs suspending member countries despite an explicit textual provision providing for expulsion. The Organisation of American States—an IO established in 1948 to bolster solidarity and cooperation among the countries in the Americas—[suspended](#) Cuba after the Cuban Revolution in 1958.

International lawyers who have studied the practice of IOs on this issue, [argue](#) that there are three situations when a case can be made for expelling or suspending a country from the IO. First, if the regime in a country changes from democratic to anti-democratic. For instance, the African Union suspended [Mali](#) a few months ago and [Niger](#) in 2010 after a deadly coup. Second, if there are human rights violations. For instance, the Commonwealth of Nations [suspended](#) Fiji in 2009 for human rights violations such as restrictions on free speech, assembly, and arbitrary arrests. Third, if the country commits an act of armed aggression.

## What should India do?

In the case of the Taliban, the first two conditions mentioned above are met. The Taliban regime is undemocratic and has scant respect for human rights. Afghanistan under the Taliban poses a fundamental threat to the foundational values and principles of SAARC. Also, from the discussion above, it is clear that SAARC as an IO has the implied power to suspend or expel member countries. Although expulsion or suspension from the IO is the measure of last resort, India should consider starting the process of making a well-substantiated case for Afghanistan's suspension from SAARC. An obstacle that India will encounter here is that as per Article X (1) of the SAARC [Charter](#), all decisions have to be taken on the 'basis of unanimity'. Given Pakistan's proximity to the Taliban regime, it would surely veto any such proposal. Nonetheless, presenting a case against Afghanistan at the SAARC forum would put pressure on the Taliban regime to have an inclusive government, one of the demands of India, and respect basic human rights. Since the Taliban regime is craving recognition internationally, and would not like to lose membership of a body like SAARC, the threat of suspension could act as a pressure point, helping India to pursue its national interests in the region. This will also infuse life in moribund SAARC as an important platform to discuss the dangers posed by the Taliban regime to South Asia.

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