

Legal Sidebar

Legal Obligation of U.S. Armed Forces to Intervene in Acts of Bacha Bazi in Afghanistan

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A recent New York Times [article](#) and [editorial](#) alleged rampant sexual abuse of young boys (bacha bazi) in Afghanistan by armed commanders in the Afghan militias. The reports raise concerns about the role of the U.S. military in reporting and combating the abuse that is alleged to have occurred on shared military bases. Servicemembers quoted in the article state that they were ordered to “look the other way because it’s their culture” and therefore were unable to stop the alleged abuse. The question has been raised, “what if any, are the legal obligations of the U.S. military to intervene?”

It has been [asserted](#) by some commentators that the Geneva Conventions and federal law would impose a legal obligation on U.S. forces to investigate and prosecute the alleged abuse under the laws of war. However, it appears that this statement may be overbroad.

The Law of Armed Conflict is a body of international law comprised of legal principles addressing rules of hostilities and conflict management. The Hague and Geneva Conventions, along with customary law, are components of the rules of hostilities. The [Hague Conventions](#) concern regulating the means and methods of war and the [Geneva Conventions](#) concern respecting and protecting victims of conflict.

The current Geneva Conventions consist of four treaties, each protecting a specific group of individuals: Geneva Convention (GC) I – wounded and sick in the field; GC II – wounded, sick, and shipwrecked at sea; GC III – prisoners of war; and GC IV – civilians. The Geneva Conventions are applicable during international armed conflict (declared war or any other armed conflict which may arise between two or more parties to the treaty) and non-international armed conflict (armed conflict not of an international character occurring in the territory of one of the parties to the treaty). However, the U.S. [policy](#) is to comply with the Law of Armed Conflict during all operations, whether classified as international armed conflict, non-international armed conflict, or situations short of armed conflict.

Assuming arguendo that the Geneva Conventions are applicable to the ongoing conflict within Afghanistan, the question becomes what legal obligations, if any, are created by the treaties that would require U.S. servicemembers to intervene with respect to instances of bacha bazi? In order for a legal obligation to exist, the young boys would need to be a protected class under one of the four Conventions. The two Conventions that arguably could apply are GC III – prisoners of war and GC IV – civilians. Prisoners of war are a recognized class of individuals in international armed conflicts (but not in non-international armed conflicts); however, even if such a class were to be recognized in Afghanistan, the young boys in question would not qualify as a prisoner of war since the GC III definition requires prisoners of war to be members of the regular armed forces or of militias or resistance fighters belonging to a party to the conflict. Addressing civilians, GC IV is a highly complex document, which provides different protections for the “whole of the population” and “protected persons.” Protected persons are afforded the most protections including, but not limited to, respect for their persons, respect for their honor, and respect for family rights (GC IV, art. 27).

However, an important caveat is that the concept of protected persons under GC IV respects a State’s relations with its own nationals. It appears unlikely that the young boys in question would be protected under GC IV if they are Afghan nationals and, therefore, domestic Afghan laws would remain applicable.

Absent legal obligations to intervene under the Geneva Conventions, the discussion turns to whether an obligation exists under international humanitarian law. The U.S. is party to many human rights treaties (e.g., [International Covenant on Civil and Political Rights](#) (ICCPR) (1966); [Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment](#) (CAT) (1984); [Convention on the Elimination of All Forms of Racial Discrimination](#) (CEFRD) (1985)) as well as follows customary international law as reflected in the [Universal Declaration of Human Rights](#) (UDHR). Generally, the U.S. applies the legal obligations undertaken with respect to a treaty to persons living in the territory of the United States and not persons outside the jurisdiction of the U.S. As such, it appears unlikely that servicemembers would have a legal obligation under human rights treaties to intervene in acts of bacha bazi outside the territorial jurisdiction of the United States.

With respect to domestic law, it could be argued that the “Leahy laws” found in the Foreign Assistance Act of 1961 and adopted as a recurring provision in annual defense appropriations could impact the military’s ability to interact with and provide assistance to Afghan units involved in bacha bazi. The Leahy language prohibits furnishing assistance authorized by the Foreign Assistance Act and the Arms Export Control Act, as well as training programs by the Department of Defense, where there is credible information that the unit has committed gross violations of human rights. While the prohibition exists, it is less clear as to the legal obligations of servicemembers to report, investigate, or punish the violations of human rights. For a detailed discussion on the Leahy laws, please see the CRS Report [“Leahy Law” Human Rights Provisions and Security Assistance: Issue Overview](#).

While a definitive legal obligation under international and domestic law may not exist, U.S. servicemembers received [guidance](#) from General John Campbell, Commander, Resolute Support and United States Forces – Afghanistan on their responsibilities with respect to allegations of incidents of bacha bazi:

Consistent with clear U.S. Department of Defense policy on the issue of sexual assault, trafficking of persons, and similar matters, I expect all personnel to treat others with respect and dignity. I further expect that any suspicion of sexual abuse will be immediately reported to the chain of command, regardless of who the alleged perpetrators or victims are.

Additionally, [U.S. Southern Command](#) developed a [program](#) with a focus on human rights. The program focuses on “five R’s” of human rights: [recognize, refrain, react, record, and report](#). Under the U.S. Southern Command policy servicemembers have an obligation to “recognize what a human rights violation is, refrain from committing a violation, react if they see one being committed by someone else, and if they can’t prevent it, immediately record it and report it up their chain of command.”

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