

УДК 341.33

М.І. Карпенко

*кандидат юридичних наук, доцент,
доцент кафедри кримінального права та процесу
ВНЗ «Національна академія управління»*

А.Б. Соловійова

*студентка 4 курсу
Київського національного університету
імені Тараса Шевченка*

**ВІДПОВІДНІСТЬ КРИМІНАЛЬНОГО
ЗАКОНОДАВСТВА УКРАЇНИ НОРМАМ
МІЖНАРОДНОГО ГУМАНІТАРНОГО ПРАВА
В ЧАСТИНІ НЕЗАКОННОГО ВИКОРИСТАННЯ
ЕМБЛЕМ ЧЕРВОНОГО ХРЕСТА,
ЧЕРВОНОГО ПІВМІСЯЦЯ, ЧЕРВОНОГО КРИСТАЛА
І ЗЛОВЖИВАННЯ НИМИ**

M. Karpenko

*Candidate of Juridical Sciences, assistant professor,
Associate Professor of Criminal Law and Procedure
University «The National Academy of Management»*

A. Soloviova

*4th year student
of Taras Shevchenko National University of Kyiv*

**CONFORMITY CRIMINAL LEGISLATION OF UKRAINE
WITH RULES OF INTERNATIONAL HUMANITARIAN
LAW WITH REGARD TO THE ILLEGAL USE
OF SYMBOLS OF RED CROSS, RED CRESCENT,
RED CRYSTAL AND ABUSE OF THEM**

Formulation of the problem. The Red Cross and Red Crescent are the symbols recognized and protected by international humanitarian law. The adoption of domestic measures to ensure their respect is a fundamental step in maintaining the impartiality associated with the providing of humanitarian assistance.

Consequently, the care and protection of those receiving aid is enhanced. The failure of a State to take the appropriate measures can lead to the misuse of the emblems and lessen the respect and confidence which they enjoy. In addition, the failure to suppress abuse during times of peace will contribute to abuse during armed conflict. This will erode the protective value of the emblems, endanger the lives of those legitimately entitled to employ them, and interfere with the care and protection of civilians and combatants alike [1].

The aim of the article is investigate conformity criminal legislation of Ukraine with rules of international humanitarian law with regard to the illegal use of symbols of Red Cross, Red Crescent, Red Crystal and abuse of them.

The main results of the study. The International Red Cross and Red Crescent Movement consist of several components: the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, and National Red Cross and Red Crescent Societies. Each component is guided by the same seven Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality [2].

The Red Cross and the Geneva Conventions were born when Henry Dunant witnessed the devastating consequences of war at a battlefield in Italy. In the aftermath of that battle, Dunant argued successfully for the creation of a civilian relief corps to respond to human suffering during conflict, and for rules to set limits on how war is waged. Inspired in part by her work in the Civil War, Clara Barton would later found the American Red Cross and also advocate for the U.S. ratification of the first Geneva Convention [3].

The first Geneva Convention in 1864 was a response to his call to action. This international treaty included provisions for the care of the wounded and sick on the battlefield by medical relief workers who would be identified and protected by the symbol of a red cross on a white background. The symbol, the reverse of the Swiss flag, honors the Swiss origin of this initiative. In addition to the red cross emblem, the red crescent and red lion and sun were recognized by nations in 1929 as alternate emblems, although the red lion and sun is no longer in use [4].

In December 2005, governments adopted a Third Additional Protocol, creating an optional emblem, known as the Red Crystal, which is equal in status to the Red Cross and Red Crescent emblems. The Conventions and Protocols specifically name the ICRC and national societies as impartial humanitarian organizations with the right to carry out relief activities for victims of armed conflicts. The nations that have universally adopted the Geneva Conventions recognize the right of the ICRC to intervene on behalf of wounded, sick, and shipwrecked combatants; prisoners of war; and civilians in conflict areas [5].

The Red Cross or Red Crescent emblem can be used by those who belong to the Red Cross and Red Crescent Movement and the Army Medical Services of the country. They are involved in humanitarian work mainly in times of armed conflicts and natural disasters. At present, the International Red Cross and Red Crescent Movement use the Red Cross, the Red Crescent and the Red Crystal as emblems. The Geneva Conventions define the use of these protective symbols in times of war. When the first Convention was adopted in 1864, it was clear that a symbol would

be needed to provide safety to the Red Cross workers when they are working in the field and also to give protection to Red Cross establishments, equipments and relief supplies. The symbols protect individuals who do not take part in hostilities such as civilians, the wounded and sick, and objects such as hospitals or vehicles in war zones [6].

The Geneva Conventions and their Additional Protocols further regulate the general use of all distinctive or protective emblems and signs recognized and protected by the Conventions. In particular, they clearly specify when it is forbidden to use them:

It is prohibited to feign intent to negotiate under a flag of truce or of surrender (API Art. 37). Customary international humanitarian law recalls that in situation of international and non-international armed conflicts, it is prohibited to use unduly the white flag (Rule 58 of ICRC customary IHL study published in 2005).

It is prohibited to make improper use of the distinctive emblem of the Red Cross, Red Crescent, Red Lion and Sun, or any other emblems, signs, or signals provided for by the Conventions or by Additional Protocol I (API Art. 38 and Rule 59).

It is also prohibited to misuse deliberately other internationally recognized protective emblems, signs, or signals in an armed conflict, including the flag of truce and the protective emblem of cultural property (API Art. 38 and Rule 59).

It is prohibited to make use of the distinctive emblem of the United Nations, except as authorized by that organization (API Art. 38 and Rule 60).

It is prohibited, in an armed conflict, to use the flags or military emblems, insignia, or uniforms of neutral or other States not party to the conflict (API Art. 39 and Rule 63).

It is prohibited to make use of the flags or military emblems, insignia, or uniforms of adverse parties, whether during attacks or in order to shield, favor, protect, or impede military operations (API Art. 39 and Rule 62).

It is prohibited to direct attacks against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law (Rule 30 of the customary IHL study) [7].

In times of armed conflict emblems can use by the National Societies, the International Federation, the ICRC. In times of peace emblems can use by the bodies, persons and objects connected with one of the components of the Movement : the National Societies, the ICRC, the International Federation; ambulances and first-aid stations exclusively assigned to providing free treatment to the wounded and sick, as an exceptional measure, in conformity with national legislation and with the express authorization of the National Society In compliance with domestic legislation, National Societies may use one of these emblems, both on national and foreign territory. A National Society that uses the Red Cross or Red Crescent emblem as its sign of identification, may, for indicative purposes, temporarily use the red crystal in exceptional circumstances and to facilitate its work, both on national and foreign territory [8].

International Humanitarian Law (IHL) establishes which persons and institutions are entitled to use the red cross and red crescent emblems, under what conditions they may do so, and the measures that may be taken to punish any emblem misuse. The national implementation of IHL treaties is the responsibility of States, who then become responsible for ensuring respect for the emblems. Australian Red Cross has been granted permission by the Minister of Defence to use the emblem to identify people, programs and objects connected with its humanitarian activities. It also assists the government to ensure the emblem is not misused within Australia. In January 2007, a third Additional Protocol to the Geneva Conventions entered into force. This completed the process of establishing an additional emblem for use by Governments and the International Red Cross and Red Crescent Movement. The coming into force of the Protocol – and with it the additional emblem of the red crystal – is warmly welcomed by Australian Red Cross [9].

In many parts of the Philippines, use of the Red Cross sign is widespread even to the point that it is displayed in many labels of commercial products. Unknown to many, the use of Red Cross emblem as labels in commercial products and establishments, such as those in alcohol bottles, band aids and medical gauges and even in pharmacy signage, is now declared a criminal act under Republic Act No. 10072 otherwise known as the Charter of the Philippine Red Cross.

The law recognizes that the use of the Red Cross symbol is a protection for Red Cross workers, AFP medical personnel/units, transport and hospitals in time of armed conflict. The Red Cross symbol is also identification for the members, objects and vehicles connected to the Red Cross [10].

International Criminal Court highlights such elements of war crime of improper use of the distinctive emblems of the Geneva Conventions: 1. The perpetrator used the distinctive emblems of the Geneva Conventions; 2. The perpetrator made such use for combatant purposes in a manner prohibited under the international law of armed conflict; 3. The perpetrator knew or should have known of the prohibited nature of such use; 4. The conduct resulted in death or serious personal injury; 5. The perpetrator knew that the conduct could result in death or serious personal injury; 6. The conduct took place in the context of and was associated with an international armed conflict; 7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict [11].

In 1999, the Verkhovna Rada of Ukraine adopted the Law of Ukraine on Emblems that adequately refers to the Red Cross and Red Crescent. On 22 October 2009, Ukraine ratified Additional Protocol III. On the same day, the Verkhovna Rada adopted the Law of Ukraine on the Amendments to Certain Legislative Acts of Ukraine that amended both Articles 435 and 445 of the Criminal Code of Ukraine. It also amended the Law of Ukraine on Emblems to include the Red Crystal in the list of the protected emblems [12, p. 170].

Report of Global Rights Compliance LLP highlights that the Government of Ukraine is required to prohibit the improper use of the distinctive emblem of the Red Cross, Red Crescent or of other emblems, signs or signals provided for in the Conventions and Additional Protocols. It is also prohibited to deliberately misuse

other internationally recognized protective emblems, signs or signals in an armed conflict, including the flag of truce and the protective emblem of cultural property. Ukraine is also under the obligation to adopt provisions prohibiting the use of the distinctive emblem of the United Nations, except as authorized to do so by the UN itself. Additional Protocol I also prohibits the perfidious use of the distinctive emblem of the Red Cross, Red Crescent or of other protective signs and lists such conduct as a grave breach of the Geneva Conventions and Additional Protocol I. Such conduct should therefore be criminalized [12, p. 171].

V.O. Popovichuk noted that the prohibition contained in the Article. 445 of the Criminal Code of Ukraine, expressed in two forms, as in the disposition of this article in the first place, are not described in full, and are meant exclusion actions under other articles of the Criminal Code of Ukraine. Moreover, the content of the act is not fully revealed, but there is a clear structure “illegal use”, which means violation of the use of the symbols of the Red Cross, Red Crescent, and Red Crystal, which in turn is determined by the applicable law. The author comes to a natural conclusion that in the case of Art. 445 of the Criminal Code omissions subject itself is excluded, as the “unlawful use of symbols” excludes the possibility of its content “neglect”, but rather contains a “fulfillment of their bad faith” as a result of active measures is a violation of the legal regime of the use of symbolism [13, p. 297].

Positive for the development of the criminal legislation of Ukraine may be the experience of countries such as: Belarus, Estonia because their criminal laws establish responsibility for illegal use of emblems which protected by international treaties, but in the Criminal Code of Ukraine provided responsibility only for illegal use of Red Cross symbols, the Red Crescent and Red Crystal, and abuse (article 435 and 445 of the Criminal Code, contained in two different sections) [14, p. 13].

One of prohibited methods of warfare is an illegal use of the Red Cross emblem, the Red Crescent, Red Crystal, as required by the Geneva Convention relative to the Protection of Victims of the war in 1949. Responsibility for these acts in the Criminal Code of Ukraine provides for two articles – 435 and 445 contained in the different sections of the Code. V.P. Popovich notes that analysis of the content of those articles leads to the conclusion that a military offense provided for Article 435, which the legislator has put in XIX section of the Criminal Code, “Crimes against the established order of military service (war crimes).” Meanwhile, article 445 of the Criminal Code can be interpreted as one that establishes liability for the use of the emblems of the Red Cross, Red Crescent and Red Crystal as a trademark is not a crime against peace, human security and the international legal order [14, p. 15].

V.M.Popovichuk proposes to establish criminal liability for the illegal use of international protective emblems and signs, as well as abuse of them in a single article 445. In turn, Article 435 should be deleted [15].

Summary. Thus, there is no doubt about the fact that the development of international humanitarian law, exercised their influence on the development of criminal law of Ukraine regarding the establishment of responsibility for serious violations of international humanitarian law. It is necessary to study and borrow positive experience of foreign countries. It is expedient to study criminal laws of

Belarus and Estonia which establish responsibility for illegal use of trademarks, protected by international treaties.

To a large extent the gaps of the criminal legislation of Ukraine and some foreign countries caused by that the terminology of international legal acts in the sphere of international humanitarian law is quite complex and requires a uniform interpretation.

In this regard, it is important to analyze works of foreign scientists and practitioners, including projects. For example, UK Government as part of the project “International Criminal Court and International Humanitarian Law Reform” implemented by Global Rights Compliance LLP funded Report which called “The Domestic Implementation of International Humanitarian Law in Ukraine”.

In this report concluded that concerning the serious violation of IHL, the Criminal Code does not expressly refer to the perfidious use of the emblems. Article 445 which criminalizes the illegal use of the emblems may be broad enough to cover such conduct. This is particularly the case with regards to military actors. The Military Manual offers a degree of clarity to allow Article 445 to be employed to prosecute the perfidious use of the emblems: paragraph 1.8.7 contains a list of serious violations of IHL that attract criminal sanctions and lists the “perfidious use of distinctive emblems (insignia or signals) of persons and objects protected by the laws of war”.

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Карпенко М.І., Соловійова А.Б. Відповідність кримінального законодавства України нормам міжнародного гуманітарного права в частині незаконного використання емблем Червоного Хреста, Червоного Півмісяця, Червоного Кристала і зловживання ними

У статті досліджено проблему імплементації норм міжнародного гуманітарного права в кримінальне законодавство України. Обґрунтовано вплив міжнародного гуманітарного права на розвиток кримінального законодавства України в частині незаконного використання емблем Червоного Хреста, Червоного Півмісяця, Червоного Кристала та зловживання ними. Проаналізовано положення Кримінального кодексу України на відповідність міжнародно-правовим документам у сфері міжнародного гуманітарного права, а також загальноновизнаним принципам і нормам міжнародного гуманітарного права.

Ключові слова: кримінальне законодавство України, міжнародне гуманітарне право, імплементація, порівняльний аналіз, злочин.

Карпенко М.И., Соловьева А.Б. Соответствие уголовного законодательства Украины нормам международного гуманитарного права в части незаконного использования эмблем Красного Креста, Красного Полумесяца, Красного Кристалла и злоупотребление ими

В статье исследована проблема имплементации норм международного гуманитарного права в уголовное законодательство Украины. Обосновано влияние международного гуманитарного права на развитие уголовного законодательства Украины в части незаконного использования эмблем Красного Креста, Красного Полумесяца, Красного Кристалла и злоупотребление ими. Проанализировано положения Уголовного кодекса Украины на соответствие международно-правовым документам в сфере международного гуманитарного права, а также общепризнанным принципам и нормам международного гуманитарного права.

Ключевые слова: уголовное законодательство Украины, международное гуманитарное право, имплементация, сравнительный анализ, преступление.

Karpenko M., Soloviova A. Conformity criminal legislation of Ukraine with rules of international humanitarian law with regard to the illegal use of symbols of Red Cross, Red Crescent, Red Crystal and abuse of them

The paper studies the problem of the implementation of international humanitarian law in criminal legislation of Ukraine. In the article substantiated the influence of international humanitarian law on the development of the criminal legislation of Ukraine with regard to the illegal use of the emblems of the Red Cross, Red Crescent, Red Crystal and abuse of them. Having analyzed the provisions of the Criminal Code of Ukraine for compliance with international legal instruments in the sphere of international humanitarian law, as well as generally recognized principles and norms of international humanitarian law.

Keywords: *Criminal legislation of Ukraine; International humanitarian law; Implementation; Comparative analysis; Crime*

Стаття надійшла до редакції 11.05.2016.

INSTRUCTIONS TO AUTHORS OF THE «JURIDICAL SCIENCE» JOURNAL NEW REQUIREMENTS FOR ARTICLES

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- Name, surname and title of the article in addition to the Ukrainian language should be also in English.

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