

Colombia, Misuse of the Emblem

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

[Source: “Uribe: Betancourt rescuers used Red Cross”, Karl Penhaul, CNN, 16 July 2008, available at <http://edition.cnn.com/2008/WORLD/americas/07/16/colombia.cross/index.html>]

Uribe: Betancourt rescuers used Red Cross

[...]

BOGOTA, Colombia (CNN) – Colombian President Alvaro Uribe admitted Wednesday that the symbol of the neutral Red Cross organization was used in a hostage rescue mission that freed 15 people from leftist rebels two weeks ago.

Uribe made the admission after CNN reported on unpublished photographs and videos that clearly showed a man wearing a Red Cross bib. Wrongly using the Red Cross logo is prohibited by the Geneva Conventions.

The man was a member of the Colombian military intelligence team involved in the daring rescue, Uribe said in an address carried on national TV and radio.

The president said that as the constitutional head of the armed forces, he takes full political responsibility for what he described as a slip-up.

“This officer, upon confessing his mistake to his superiors, said when the [rescue] helicopter was about to land ... he saw so many guerrillas that he went into a state of angst,” Uribe said.

“He feared for his life and put on the Red Cross bib over his jacket.”

However, the confidential military source who showed CNN the photographs that included the man wearing the bib said they were taken moments before the mission took off.

Uribe said he was sorry for the mistake and has apologized to ICRC officials. There will be no official sanction against the man wearing the bib, he indicated.

Such a use of the Red Cross emblem could constitute a “war crime” under the Geneva Conventions and international humanitarian law and could endanger humanitarian workers in the future, according to international legal expert Mark Ellis, executive director of the International Bar Association.

[...]

The ICRC mission in Bogota said in a written statement: “As guardian of international humanitarian law, the ICRC reminds that the use of the Red Cross emblem is specifically regulated by the Geneva Conventions and its Additional Protocols.

“The Red Cross emblem has to be respected in all circumstances and cannot be used in an abusive manner.

“The ICRC as neutral and impartial must have the confidence of all the sides in the conflict in order to carry out its humanitarian work.”

Colombian military intelligence used the Red Cross emblem in a rescue operation in which leftist guerrillas were duped into handing over 15 hostages, including former presidential candidate Ingrid Betancourt.

Photographs of the Colombian military intelligence-led team that spearheaded the rescue, shown to CNN by a confidential military source, show one man wearing a bib with the Red Cross symbol. The military source said the three photos were taken moments before the mission took off to persuade the Revolutionary Armed Forces of Colombia (FARC) rebels to release the hostages to a supposed international aid group for transport to another rebel area.

Ellis said the conventions were “very strict” regarding use of the symbol because of what it represented: impartiality, neutrality.

“If you use the emblem in a deceitful way, generally the conventions say it would be a breach. [Based on the information as explained to me,] the way that the images show the Red Cross emblem being used could be distinguished as a war crime,” Ellis added.

[...]

Misuse of the Red Cross emblem is governed by articles 37, 38 and 85 of Additional Protocol One to the Geneva Conventions, the international rules of war. The articles prohibit “feigning of protected status by the use of ... emblems” of neutral parties and say that such misuses are considered breaches of international humanitarian law that qualify as a “war crime.”

Colombia signed the Geneva Conventions in 1949.

That prohibition was put in place to protect the neutrality of the International Committee of the Red Cross and the United Nations in an armed conflict and to guarantee their access to all sides. Use of those emblems by one side of a conflict, for example, could endanger aid workers because those on another side might no longer trust that symbols they see really represent those humanitarian organizations.

[...]

In one of those photographs, about 15 members of a Colombian military intelligence-led team pose for a photo alongside a helicopter. One of the members, dressed in a dark red T-shirt or polo shirt, khaki cargo pants and a black-and-white Arab-style scarf, also wears a bib of the type worn by Red Cross workers.

The bib bears the Red Cross symbol in the center of two black circles on a white background. In the space between the two black circles appear in capital letters the French words “Comité International Genève” (International Committee Geneva).

The same man is standing in the doorway of the helicopter, a Russian-made MI-17 painted white and orange, in another photo. In a third photo, he is pictured walking near the helicopter still wearing the bib.

[...]

Discussion

1.

- a. What emblems are protected by IHL? Who can use them? For what purposes? Is misuse of the emblem governed only by the Additional Protocols, or also by the Geneva Conventions? At least for the present case, do the Geneva Conventions contain any applicable rules? (HR, Art. 23(f); GC I, Arts 38-44 and 53; GC II, Arts 41-43; GC IV, Art. 18; P I, Arts 8(1) and 18; P II, Art. 12)
- b. For what purpose was the emblem of the red cross used in this situation? Does such use of the emblem constitute misuse? Do you agree that it constitutes a war crime? If yes, do all misuses of the protected emblems constitute war crimes? When does misuse become a war crime? (HR, Art. 34; GC I, Art. 53; P I, Arts 37(1)(d), 38 and 85(3)(f))
- c. Does the prohibition to misuse the emblem protect mainly the ICRC's neutrality? Does it protect the neutrality of the UN in any way? Who and what is mainly protected by the prohibition to misuse the emblem?

2.
 - a. Does IHL provide for any automatic sanctions for misuse of the protected emblems? Who has the responsibility to punish such misuse? (GC I, Art. 54; GC II, Art. 45; P I, Art. 18)
 - b. How can misuse of the protected emblems be prevented?
3. Are your answers affected by the fact that the conflict in Colombia is non-international? Would your answers have differed had the conflict been international?

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