

Emblems of International Organizations and their protection

Now that the question of the protection of olympic emblems has again been taken up, with all the attention it deserves, by a commission under the chairmanship of Lord Luke (Great Britain) and composed of Mr. A. D. Touny (U.A.R.), Mr. Jean Havelange (Brazil), Mr. Arpad Csanadi (Hungary) and Vice-Admiral Lappas (Greece) for the I.O.C., and of Mr. F. Takashima (Japan) and Mr. Raymond Gafner (Switzerland) for the N.O.C.s, it seemed to us interesting to print a memorandum which was published in the *Review of the International Associations*, in July 1965, which is signed by the Director of the United Bureaux for the Protection of Industrial, Literary and Artistic Property.



A clear distinction must be made between inter-governmental and non governmental international organizations.

1. The rules governing the international protection of armorial bearings, flags and other emblems, monograms or denominations of *inter-governmental* organizations are laid down in article 6^{ter} of the Paris Convention on the protection of industrial property, as drawn up at the

Lisbon Diplomatic Conference of 31st October, 1958. Under the terms of this article member-countries of the Paris Union (International Union for the Protection of Industrial Property) have agreed to refuse or to invalidate registration and to prohibit utilization, whether as elements of trade marks, any armorial bearings, flags or other emblems, abbreviations or titles of intergovernmental organizations to which one or more

member-countries of the Paris Union belong. For this purpose intergovernmental organizations can call on the services of the United International Bureaux, which act as intermediary with the Paris Union countries by officially bringing to their notice the flags and other emblems, monograms or denominations of the said organizations. Since the text drawn up by the Lisbon Conference came into force fifteen intergovernmental organizations have benefited thereunder. A register of them is maintained by the Bureaux.

2. On the other hand the position is entirely different as regards *international non-governmental organizations*. The benefit of article 6ter does not extend to them.

They have to rely on the general provisions relating either to international and national protection of industrial property, or to national protection for individuals or names.

Here it is appropriate to distinguish between two categories of organization :

— international non-governmental organizations operating on a *non-profit* making basis (cultural, social, educational, etc) ;

— international non-governmental organizations that are *profit making or commercial in character*.

3. The latter can be protected in their profit making and commercial activities — for the same reason as any commercial or industrial concern — against derogation of their material interests by third parties. For this purpose they can have recourse to the provisions of the Paris Convention and to those of national legislation protecting commercial names (articles 8, 9 and 10 of the Paris Convention) and trade marks (article 6, 6bis, 6quinquies, 6sexties, 7, 7bis, 9 and 10 of the Paris Convention). Similarly such organizations can take advantage of the provisions relating to the suppression of unfair competition as laid down by article 10bis of the Paris Convention and by numerous national laws.

4. The international protection of the emblems, etc., of international non-governmental organizations operating on a *completely non-profit making basis* presents a more awkward problem. Their emblems, flags, abbreviation or title do not constitute title to industrial property. They are rather constituent elements in their nature as legal entity and of their name. In the absence of a commercial and profit making interest attaching to the utilization of their emblems it would not be possible for them to take action against dishonest third parties by invoking the criterion of compe-

tion, which postulates a material interest both on the part of the plaintiff and of the defendant. But any incorrect utilization of such emblems comes under the provisions of national civil law governing the protection of the person and of names. In such cases the non-governmental organization can have recourse to the national courts to remedy the matter.

5. Finally it would not appear that, generally speaking, the Berne Convention for the protec-



tion of literary and artistic works can be invoked in such cases. At the most such protection could only apply to an emblem, flag, abbreviation or title capable of being described as a piece of creative work, whether literary or artistic. That is a question of appreciation to be decided for each particular case by the appropriate national court.

G. H. C. Bodenhausen.