Chapter Three

Independent Functioning of International Organizations

The independent functioning of international organizations and their officials, says the International Court of Justice, must be respected by all States including the State of nationality and the State of residence;¹ they should abstain from any measure that interferes with such functioning. In other words, *ne impediatur officia*. The general view is that national taxation of the institutional income of the international civil servant impacts on the operation of the principle of *ne impediatur officia*.² The study prepared by the United Nations’ Secretariat on the practice of the organization, its specialized agencies and the International Atomic Energy Agency concerning their status, privileges and immunities for the International Law Commission, lends support for the view that if left unaddressed, the exercise of the national jurisdiction to tax, can significantly impact on the international organizations’ freedom to select the best possible staff. It is believed that if the institutional income of international civil servants is either to be taxed directly or to be taken into account in setting taxes on non-exempt income, there may be a serious deterrent to persons considering service with the international organizations. According to the United Nations’ Secretariat this is particularly true for short-term service, where the institutional compensation is often

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substantial, but will be far less attractive if it has the effect of putting earnings during the rest of the year into a much higher tax bracket.3

In this context it is important to recall that Committee IV/2 of the United Nations Conference on International Organization, which created the United Nations, while refusing to establish a complete list of privileges and immunities to be enjoyed by the United Nations under Article 105 of the UN Charter, laid down the basic principle that no Member State may hinder in any way the working of the United Nations or take any measure the effect of which might increase the burdens, financial or other.4 Overwhelmingly in line with this assertion, international legal practice and doctrine has, in general,5 held that a legal situation in which the international organization is subject to the fiscal jurisdiction of its member countries would provide the taxing authorities with a means of indirect control over the activities of the organization.6

The line of reasoning of Millet J. in *Re International Tin Council*, explaining why no national legislator of court could regulate and adjudicate on the winding up of an international organization,7 applies *mutatis mutandis* to the issue of tax treatment of international organizations and international civil servants. Millet J. correctly points out that the very nature of an international organization as a means by which a collective undertaking of the member countries is carried on, and through which their relations with each other in a particular sphere of common interest are regulated, necessarily presupposes that any attempt by one of the member countries to exercise jurisdiction in respect of an international organization would mean that such country exercises an undue control over the organization.8 Indeed, one of


7 *In Re International Tin Council* (1988), 77 ILR, pp. 18–41 at 36.