Chapter Four

Equity Amongst Members of International Organizations

In his sixth report to the International Law Commission on the relations between States and international organizations, Special Rapporteur Diaz-Gonzalez points to a link between the doctrine of sovereign equality and the tax treatment of international civil servants.¹ According to the Special Rapporteur, the tax treatment of international organizations and their officials² is based on the premise that the reciprocal fiscal immunity which States grant each other is a counterpart of their legal equality. As a consequence of the principle of sovereign equality, a State cannot be viewed as being subject to the fiscal jurisdiction of another State and that a corresponding custom has been established in international law comprised of bilateral and multilateral agreements as well as unilateral legislative, executive and judicial decisions.³ In the context of the tax treatment of international organizations this leads to the assertion that “a State may not levy taxes on the other States through an international organisation, and the host State must not derive unjustified fiscal benefit from the presence of an international organisation on its territory”.⁴ Likewise, according to the Report of the Council of Europe Sub-Committee on Privileges and Immunities of International Organizations the justification for according exemption from taxation to international organizations

---

² See Muller, International Organizations and their Officials: To Tax or Not to Tax?, loc. cit., p. 49.
³ On this international custom see Qureshi, The Public International Law of Taxation, op. cit., pp. 113–125 and the sources cited there.
was the principle of equality between Member States,\(^5\) i.e. a State ought not to tax other States through the intermediary of an international organization and the host State ought not to derive an undue fiscal advantage from the presence of the organization on its territory.\(^6\) The quintessence of this argument is succinctly articulated by Ahluwalia:

\[\ldots\text{immunity from taxation is aimed at preventing the host States from securing a financial advantage at the expense of the common budget. That is, various sovereign States contribute to the funds of the international organizations and the fund is meant to be used for furthering common international purposes. Therefore, it would be inequitable if the host State obtains some financial gain at the international expense by levying such taxes.}\]

This explanation does not apply only to the tax treatment of international organization itself, but also to the tax treatment of the staff members of the organizations. It represents the second objective habitually mentioned to justify the income free of national taxation, i.e. to prevent countries from receiving an indirect rebate of their quotas in the form of the tax revenues they would receive from taxing the institutional income of international organizations’ staff members. The theory underlying this concern is that international organizations pay their staff with quotas contributed by the Member States. Thus, a member country that taxes the salary of a staff member of one of those organizations receives, by way of the tax a return of some of the quota it paid to the organization in the first place.\(^8\)

From time to time the governing bodies of international organizations are reminded of the principle of equity among Member States, even though such reminders seldom lead to actions against the Members who are perceived to neglect the principle. The issue of equity among members was highlighted during


