Chapter Thirteen

The Personal Scope of the Obligation

13.1. Members of expert bodies

Arbitrator Hambro stated the obvious in *Dragon Project Income Tax Arbitration*, when he noted that “tax exemption is eminently in accordance with accepted treatment of international officials”\(^1\). However, who shall be considered an international official for the purposes of the said principle is a question that receives a less obvious answer. As an example, consider the situation whereby the supreme governing body of an organization wishes that members of certain subsidiary bodies be exempted from taxes on the emoluments paid to them for their services.\(^2\) This very issue arose with regard to the

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\(^1\) *Taxation Liability of Euratom employees between the Commission of the European Atomic Energy Community (Euratom) and the United Kingdom Atomic Energy Authority*, loc. cit., p. 508.

\(^2\) In practice, the United Nations has had the opportunity to entrust missions – increasingly varied in nature – to persons not having the status of United Nations officials. Such persons have been entrusted with mandates such as mediation, preparing reports, preparing studies, conducting investigations, and finding and establishing facts. These people have participated in certain peacekeeping forces, technical assistance work, and a multitude of other activities. In addition, many committees, commissions or similar bodies whose members serve in a personal capacity rather than as representatives of States have been set up within the Organisation; for example the International Law Commission, the Advisory Committee on Administrative and Budgetary Questions, the International Civil Service Commission, the Human Rights Committee established for the implementation of the International Covenant on Civil and Political Rights, and various other committees of the same nature, such as the Committee on the Elimination of Racial Discrimination or the Committee on the Elimination of all Forms of Discrimination Against Women. In all these cases, the practice of the United Nations shows that the persons so appointed, and in particular the members of these committees and commissions, have been regarded as experts on missions, within the meaning of Section 22 of the *Convention on the Privileges and Immunities of the United Nations*. 
taxation of honorariums payable to members of the United Nations Human Rights Committee, established by article 28 of the International Covenant on Civil and Political Rights and the United Nations Committee on the Elimination of Racial Discrimination. In the case of the Human Rights Committee, Article 35 of the Covenant provides that “the members of the Committee shall...receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide”. It would seem that the General Assembly could decide to reimburse committee members from United Nations resources if any national income taxes are imposed on the net emoluments it specifies under the Covenant. Furthermore, the General Assembly could decide, in exercise of its powers under Article 17 (2) of the Charter of the United Nations, that insofar as such taxes are imposed by a United Nations Member State, tax reimbursements will be charged to the Member State’s share of the Tax Equalization Fund, provided for in financial regulation 5.2 (é) and financial rules 105.2–5. However, no such decision was taken by the General Assembly, save an appeal to treat the emoluments as tax exempt. Therefore, the UN Legal Counsel argued, in both cases, that the members of such committees should be treated as “experts on mission” for the benefit of the United Nations, within the meaning of Article VI of the Convention on the Privileges and Immunities of the United Nations and the corresponding provisions relating to experts in certain headquarters and conference agreements. As is the case in practically all the international organizations, experts on mission are not deemed to be international civil servants (unless they are employed by another international organization), and are therefore not entitled to the privilege of freedom from national taxation. The UN Legal Counsel acknowledged, however, that one can argue that exemption from national income taxation for the official emoluments of such experts is “necessary for the independent exercise of their functions” even if they are not explicitly granted such immunity by the Convention. Moreover, the General Assembly’s appeal to treat the emoluments of the committee member as tax exempt complicated the matter. Does this entail

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3 However, in a later opinion the UN Legal Counsel was much more adamant in answering this question. In an Aide-mémoire to the permanent representative of a Member State dated 14 December 1992, the position was taken that experts on mission enjoy no tax exemption in any form on their official emoluments and salaries. UN Juridical Yearbook 1992, pp. 485–487, at 486. This seems to be the position in some other organizations as well. See e.g. Article 15 Protocol on the Privileges and Immunities of the European Patent Organization.