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UNITED NATIONS JURIDICAL YEARBOOK

1976

Part One. Legal status of the United Nations and related intergovernmental organizations

Chapter I. Legislative texts concerning the legal status of the United Nations and related intergovernmental organizations



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CONTENTS

	<i>Page</i>
FOREWORD	xvii
ABBREVIATIONS	xviii

Part One. Legal status of the United Nations and related intergovernmental organizations

CHAPTER I. LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

1. <i>Austria</i>	
Federal Act of 19 May 1976 concerning the refund of sales tax to foreign missions and their members possessing diplomatic and career consular status	3
2. <i>Sri Lanka</i>	
Ceiling on Housing Property (Amendment) Law	5
3. <i>Sweden</i>	
Act of 10 June 1976 on Immunities and Privileges in Certain Cases ..	5
4. <i>United Kingdom of Great Britain and Northern Ireland</i>	
(a) The International Organisations (Immunities and Privileges) Mis- cellaneous Provisions Order 1975	8
(b) The International Organisations (Immunities and Privileges) Mis- cellaneous Provisions Order 1976	10
5. <i>United States of America</i>	
Bretton Woods Agreement Act (22 U.S.C. Section 226(a))	
Opinion dated 27 July 1976 of the Attorney General of Maryland concerning the exemption of non U.S. nationals employed by the World Bank and residing in Maryland from the income tax of Maryland on the salaries and emoluments paid to them by the World Bank	11

CHAPTER II. TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

A. TREATY PROVISIONS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS	
1. Convention on the Privileges and Immunities of the United Nations. Approved by the General Assembly of the United Nations on 13 Feb- ruary 1946	14
2. Agreements relating to meetings and installations	14

Chapter I

LEGISLATIVE TEXTS CONCERNING THE LEGAL STATUS OF THE UNITED NATIONS AND RELATED INTERGOVERNMENTAL ORGANIZATIONS

I. Austria

FEDERAL ACT OF 19 MAY 1976 CONCERNING THE REFUND OF SALES TAX TO FOREIGN MISSIONS AND THEIR MEMBERS POSSESSING DIPLOMATIC AND CAREER CONSULAR STATUS¹

The National Council has adopted the following:

ARTICLE 1

(1) Where a foreign mission established in Austria receives goods or services exclusively for its official use, the amount of sales tax included in the account rendered by the supplier in accordance with article 11 of the Sales Tax Act (*BGBI.* No. 223/1972) and paid by the mission shall be refunded in accordance with the following provisions.

(2) For the purposes of this Federal Act, the expression "foreign missions" means diplomatic missions, career consular posts and permanent missions to international organizations having their headquarters in Austria.

ARTICLE 2

(1) Members of foreign missions possessing diplomatic or career consular status shall also be entitled to the refund referred to in article 1 with respect to goods or services intended for their personal use.

(2) The amount refunded to an individual member of a foreign mission shall not exceed a total of 10,000 schillings in any calendar year. Sales tax on the purchase of a motor vehicle, on the rental of private living quarters and on the cost of hospitalization shall be refunded in full and shall not be taken into account for the purposes of the aforementioned limit.

(3) Persons who are nationals of or permanently resident in the Republic of Austria within the meaning of article 38 of the Vienna Convention on Diplomatic Relations (*BGBI.* No. 66/1966) shall not be entitled to any refund.

ARTICLE 3

(1) Entitlement to a refund of sales tax shall exist only with respect to goods and services the cost of which, including sales tax, is at least 4,000 schillings.

(2) Where a supplier furnishes a variety of goods or services and where, in accordance with customary business practice, a consolidated account within the meaning of article 11 of the Sales Tax Act is rendered for such goods and services,

¹ Published on 18 June 1976.

the total amount of the account rendered, including sales tax, shall constitute the cost for the purpose of determining entitlement to a refund in accordance with paragraph 1.

(3) Sales tax on supplies of food, beverages and tobacco products shall not be refunded, unless such goods are consumed at receptions held by foreign missions and attended by at least 10 persons.

(4) Sales tax shall be refunded to duly entitled members of the missions of all States on condition that Austrian missions and their members possessing diplomatic or career consular status in those States are accorded a tax status compatible with the principle of equal treatment.

ARTICLE 4

(1) Applications for refunds of sales tax shall be submitted on the officially prescribed form, together with the original accounts rendered or copies thereof, to the Federal Ministry of Foreign Affairs, which shall forward them, together with its comments, to the Federal Ministry of Finance as the authority competent to render a decision. Applications shall be submitted by the foreign missions or, in the case of staff members of international organizations who are entitled to a refund, by the international organization.

(2) Applications shall be submitted within one year from the end of the accounting period in which the requirements for a refund of sales tax are met. This time-limit may be extended upon application. The application must include all claims for refunds which arose during an accounting period. The accounting period is the calendar half-year.

(3) Where the application for a refund is granted, no written disposal of the case shall be required.

ARTICLE 5

If a change in the amount of tax payable on any goods or services supplied occurs after submission of the application, the appropriate adjustments shall be made for the accounting period in which the change in the amount of tax payable occurred.

ARTICLE 6

(1) If any articles with respect to which a refund of sales tax is granted for a given accounting period are sold or disposed of free of charge during one of the next four accounting periods, the sales tax refunded shall either be repaid or be deducted from the claim for a refund for the latter accounting period. Any balance remaining shall be deducted from the next following claims for refunds.

(2) If it is found during any accounting period that a refund of sales tax has been improperly granted, the amount improperly refunded shall either be repaid or be deducted from the claim for a refund for the accounting period in question. Any balance remaining shall be deducted from the next following claims for refunds. No deduction shall be made if a period of more than 10 years has elapsed since the end of the calendar year in which sales tax was improperly refunded.

ARTICLE 7

Missions within the meaning of article 1 and persons entitled to refunds within the meaning of article 2 shall be entitled, in the same way as business enterprises, to require the supplier to render an account showing the amount of tax separately (article 11 of the Sales Tax Act).

ARTICLE 8

This Federal Act shall apply to such amounts of tax as relate to goods or services furnished to foreign missions within the meaning of article 1 after 31 December 1973 or to persons entitled to refunds within the meaning of article 2 after 31 December 1974. Applications for refunds with respect to goods or services furnished before 30 June 1976 may be submitted up to 30 June 1977.

ARTICLE 9

The Federal Minister of Finance shall be responsible for the implementation of this Federal Act. Responsibility for the implementation of article 4 shall be shared by the Federal Minister for Foreign Affairs and responsibility for the implementation of article 7 shall be shared—in so far as provisions of civil law are concerned—by the Federal Minister of Justice.

KIRCHSCHLÄGER

KREISKY

ANDROSCH

BIELKA

BRODA

2. Sri Lanka

CEILING ON HOUSING PROPERTY (AMENDMENT) LAW²

SECTION 13 A

1. Where the owner of a house

(a) has left Sri Lanka and has either renounced citizenship of Sri Lanka or has ceased to be a citizen of Sri Lanka under the Citizenship Act; or

(b) has been residing abroad for a continuous period of ten years *otherwise than as an employee of the Government of Sri Lanka or of any foreign Government or of any international institution*;^{*} or

(c) has left Sri Lanka for the purpose of settling abroad; or

(d) is not in existence or is not known or cannot be traced, the tenant of such house may apply to the Commissioner for the purchase of such house".

² No. 18 of 1976.

^{*} Emphasis added.

3. Sweden

ACT³ OF 10 JUNE 1976 ON IMMUNITIES AND PRIVILEGES IN CERTAIN CASES⁴

Pursuant to the decision of the Riksdag, the following is stipulated.

³ No. 661 of 1976. Unofficial translation kindly provided by the Swedish Government.

⁴ This Act came into force on 1 January 1977, when Act No. 664 of 16 December 1966 (see *Juridical Yearbook*, 1966, p. 23) ceased to be in force.

SECTION 1

The provisions of this Act in respect of immunities and privileges shall apply, notwithstanding what may be otherwise stipulated.

SECTION 2

A mission of a foreign State, the members of the mission and their families and servants as well as diplomatic couriers shall enjoy immunities and privileges in accordance with the Convention on Diplomatic Relations, done at Vienna on 18 April 1961.⁵

SECTION 3

Subject to the provisions in the second or third paragraphs, a consulate of a foreign State, the members of the consulate and their families and servants as well as consulate couriers shall enjoy immunities and privileges in accordance with the Convention on Consular Relations, done at Vienna on 24 April 1963.⁶

The right under paragraph 1 of article 35 of the Convention to use diplomatic or consular couriers and diplomatic or consular bags does not apply to dispatches to or from a consulate headed by an honorary consul, unless the Government has agreed to it in relation to a specific State.

The Government may order exceptions to the first paragraph in relation to a State which is not a party to the Convention or which has accepted it with a reservation.

A consulate or the persons referred to in the first paragraph shall, furthermore, enjoy immunities and privileges to the extent allowed by a special agreement with a foreign State.

SECTION 4

The international bodies and persons connected with such bodies, as are listed in the annex to this Act, shall enjoy immunities and privileges in accordance with what is determined in a statute or an agreement in force in relation to Sweden. The Government shall proclaim the date when such an agreement or statute has entered into force or ceased to be binding in relation to Sweden.

SECTION 5

Following an agreement with an international body referred to in Section 4, the Government is authorized to the extent necessary to meet the purposes of the body, to issue regulations on immunities and privileges for persons other than those listed in the annex to this Act, provided that the regulations are of such a nature as referred to in chapter 8, section 3 of the Constitution.

ANNEX

Immunities and/or privileges shall apply as follows:

<i>International body</i>	<i>Individual person</i>	<i>Applicable international agreement</i>
1. The International Court of Justice	The Judges of the Court and its personnel as well as persons who otherwise take part in proceedings before the Court	Statute (26 June 1945) of the International Court of Justice

⁵ United Nations, *Treaty Series*, vol. 500, p. 95.

⁶ *Ibid.*, vol. 596, p. 261.

<i>International body</i>	<i>Individual person</i>	<i>Applicable international agreement</i>
2. The United Nations (UN)	The representatives of the Members of the United Nations and persons in the service of or carrying out missions for the Organization	Convention (13 February 1946) on the Privileges and Immunities of the United Nations
3. The Specialized Agencies of the United Nations	The representatives of the members of the Specialized Agencies and persons in the service of, or carrying out missions for such Agencies	Convention (21 November 1947) on the Privileges and Immunities of the Specialized Agencies
...		
8. The International Atomic Energy Agency (IAEA)	The representatives of the members of the Agency and persons in the service of, or carrying out missions for it	Agreement (1 July 1959) on the Privileges and Immunities of the International Atomic Energy Agency
...		
13. The International Centre for Settlement of Investment Disputes	The representatives of the members of the organ and persons in the service of, or carrying out missions for it, the members of a conciliation commission, an arbitral tribunal or a committee set up in accordance with the Convention and those who otherwise take part in proceedings in accordance with the Convention	Convention (18 March 1965) on the Settlement of Investment Disputes between States and Nationals of Other States
14. The Asian Development Bank	The members of the Board of Governors of the Bank as well as persons in the service of, or carrying out missions for the Bank	Agreement (4 December 1965) establishing the Asian Development Bank
15. —	The members of the Human Rights Committee and the <i>ad hoc</i> conciliation committees established in accordance with the International Covenant on Civil and Political Rights	International Covenant (19 December 1966) on Civil and Political Rights
...		
19. The African Development Fund	The members of the Board Directors of the Fund as well as persons in the service of, or carrying out missions for the Fund	Agreement (29 November 1972) establishing the African Development Fund

4. United Kingdom of Great Britain and Northern Ireland

(a) THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) MISCELLANEOUS PROVISIONS ORDER 1975⁷

Laid before Parliament in draft

Made 23rd July 1975

Coming into Operation 24th July 1975

At the Court at Buckingham Palace, the 23rd day of July 1975

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament in accordance with section 10 of the International Organisations Act 1968⁸ and has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by sections 1 and 10(3) of the said Act or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the International Organisations (Immunities and Privileges) Miscellaneous Provisions Order 1975 and shall come into operation on 24th July 1975.

2. The Interpretation Act 1889 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. The Orders mentioned in the Schedule to this Order shall have effect subject to the amendments specified in that Schedule.

N. E. LEIGH

SCHEDULE

<i>Order</i>	<i>Amendment</i>
...	
The Inter-Governmental Maritime Consultative Organisation (Immunities and Privileges) Order 1968 ⁹	In articles 8 and 11 (d), for the words "customs duty paid on any hydrocarbon oils (within the meaning of the Customs and Excise Act 1952)" there shall be substituted the words "customs duty paid on or value added tax paid on the importation of any hydrocarbon oils (within the meaning of the Hydrocarbon Oil (Customs and Excise) Act 1971)".
	In article 9, for the words "purchase tax paid on any goods" there shall be substituted the words "car tax paid on any vehicles and value added tax paid on the supply of any goods or services".

⁷ S.I. No. 1209 of 1975.

⁸ Reproduced in part in the *Juridical Yearbook*, 1968, p. 20.

⁹ Reproduced in the *Juridical Yearbook*, 1968, p. 28.

Article 13 (e) shall be replaced by the following:

“(e) Unless they are citizens of the United Kingdom and Colonies or permanently resident in the United Kingdom, exemptions whereby, for the purposes of the enactments relating to national insurance and social security, including enactments in force in Northern Ireland—

“(a) services rendered by them for the Organisation shall be deemed to be excepted from any class of employment in respect of which contributions or premiums under those enactments are payable, but

“(b) no person shall be rendered liable to pay any contribution or premium which he would not be required to pay if those services were not deemed to be so excepted”.

The International Atomic Energy Agency
(Immunities and Privileges) Order 1974¹⁰

In articles 12 and 15 (1) (d), after the words “customs duty paid on” there shall be added the words “or value added tax paid on the importation of”.

In article 13, after the words “any goods” there shall be added the words “or services”.

The Specialised Agencies of the United Nations
(Immunities and Privileges) Order 1974¹¹

In articles 12 and 15 (1) (d), after the words “customs duty paid on” there shall be added the words “or value added tax paid on the importation of”.

In article 13, after the words “any goods” there shall be added the words “or services”.

The United Nations and International Court
of Justice (Immunities and Privileges)
Order 1974¹²

In articles 12 and 15 (1) (d), after the words “customs duty paid on” there shall be added the words “or value added tax paid on the importation of”.

In article 13 after the words “any goods” there shall be added the words “or services”.

¹⁰ Reproduced in the *Juridical Yearbook*, 1974, p. 4.

¹¹ *Ibid.*, p. 7.

¹² *Ibid.*, p. 11.

(b) THE INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES) MISCELLANEOUS PROVISIONS ORDER 1976¹³

Laid before Parliament in draft

Made 18th February 1976
Coming into Operation 19th February 1976

At the Court at Buckingham Palace, the 18th day of February 1976

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been laid before Parliament in accordance with section 3(4) of the International Finance Corporation Act 1955,¹⁴ section 3(4) of the International Development Association Act 1960 and section 10(1) of the International Organisations Act 1968 and has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 3(1) and (3) of the Bretton Woods Agreements Act 1945,¹⁵ section 3(1) and (3) of the International Finance Corporation Act 1955, section 3(1) and (3) of the International Development Association Act 1960 and sections 1 and 10(3) of the International Organisations Act 1968 or otherwise in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the International Organisations (Immunities and Privileges) Miscellaneous Provisions Order 1976 and shall come into operation on 19th February 1976.

2. The Interpretation Act 1889 shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

3. In paragraph (b) of the proviso to article 3 of the Bretton Woods Agreements Order in Council 1946, after "sold" shall be inserted " , except that the Fund and the Bank shall have relief, under arrangements made by the Secretary of State, by way of refund of car tax paid on any vehicles and value added tax paid on the supply of any goods and services which are necessary for the exercise of the official activities of the Fund or the Bank, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements".

4. In paragraph (b) of the proviso to article 3 of the International Finance Corporation Order 1955 and in paragraph (b) of the proviso to article 3 of the International Development Association Order 1960, after the word "sold" shall be inserted " , except that it shall have relief, under arrangements made by the Secretary of State, by way of refund of car tax paid on any vehicles and value added tax paid on the supply of any goods and services which are necessary for the exercise of its official activities, such relief to be subject to compliance with such conditions as may be imposed in accordance with the arrangements".

¹³ S.I. No. 221 of 1976.

¹⁴ Reproduced in United Nations Legislative Series, *Legislative texts and treaty provisions concerning the legal status, privileges and immunities of the United Nations*, vol. II (ST/LEG/SER.B/11), p. 93.

¹⁵ *Ibid.*, p. 84.

5. United States of America

BRETTON WOODS AGREEMENT ACT (22 U.S.C. SECTION 226(a))

Opinion dated 27 July 1976 of the Attorney General of Maryland concerning the exemption of non U.S. nationals employed by the World Bank and residing in Maryland from the income tax of Maryland on the salaries and emoluments paid to them by the World Bank

You have asked whether employees of the International Bank for Reconstruction and Development, who are not citizens of the United States and who reside in the State of Maryland, are subject to tax in Maryland on the salaries paid to them by the Bank.

The employees of the Bank, through the Bank's Counsel, have taken the position that the salaries paid to them by the Bank are precluded from Maryland taxation. Their basis for this position is article VII, section 9 (b) of the Articles of Agreement of the International Bank for Reconstruction and Development which reads in its entirety as follows:

"No tax shall be levied on or in respect of the salaries and emoluments paid by the Bank to Executive Directors, alternates, officials or employees of the Bank who are not local citizens, local subjects or other local nationals."¹⁶

By virtue of 22 U.S.C. Section 286 (h), (a part of the "Bretton Woods Agreements Act") the quoted section "shall have full force and effect in the United States and its Territories and possessions . . .". The question raised is whether the prohibition against taxation contained in section 9 of the Agreement is to have full force and effect in the State of Maryland, in view of the language of section 286 (h) which includes "the United States and its Territories and possessions" within its ambit but does not specifically refer to "states" or "political subdivisions" of the United States.

Initially, there is no real question that the federal government does have the power, in international matters, to prohibit the State of Maryland from imposing its income tax on the alien employees in question. The power of the President to make treaties (United States Constitution, Article II, Section 2) in conjunction with the Supremacy Clause (United States Constitution, Article VI) established this power beyond question. The Supreme Court has stated this most explicitly:

"Plainly the external powers of the United States are to be exercised without regard to state laws or policies . . . In respect of all international negotiations and compacts, and in respect of our foreign relations generally, state lines disappear. As to such purposes the State of New York does not exist." *United States v. Belmont*, 301 U.S. 324, 331 (1937).

Thus, the question is not whether the federal government has the power—which clearly it does—but whether in this instance it has exercised it. It is conceded by the Bank that many, if not all, of the alien employees have for many years maintained places of abode within Maryland and thus are "residents" of this State within the meaning of article 81, section 279 (i) of the Annotated Code of Maryland. And quite clearly, the State within its sovereign powers possesses the right to impose an income tax on its residents. *Wood v. Tawes*, 181 Md. 155 (1942). Taxable net income of a Maryland resident is defined as federal and adjusted gross income with certain modifications (article 81, section 280 (a)). There is no question that the salary from the Bank is not subject to federal income tax and hence is not included

¹⁶ United Nations, *Treaty Series*, vol. 2, p. 134.

in federal adjusted gross income. Thus, in order for the State of Maryland to have any right to impose its tax on these salaries, they must be defined within the Maryland Code as an additional modification to federal adjusted gross income.

As you have pointed out, the Maryland tax provision which may be applicable is contained in article 81, section 280 (b) which reads:

“There shall be added to federal adjusted gross income: . . . (2) salaries and wages and interest or dividends on obligations of any authority, commission, instrumentality, territory or possession of the United States or of any foreign government, which by the laws or treaties of the United States are exempt from federal income tax but not from State income taxes.”

You have stated that your interpretation of this provision requires “that there must be a Federal law or treaty which specifically exempts the income from State taxation . . . (T)he Federal law or treaty must necessarily use the words ‘State’ or ‘political subdivision’ in order for the modification not to be applicable”. We believe that the quoted provision of section 280 defines, rather than resolves, the question you have posed because it still leaves open for determination the question of whether the salaries in question are “by the laws or treaties of the United States” exempt from State income taxes.

When the meaning of provisions of international treaties is uncertain, “recourse may be had to the negotiations and diplomatic correspondence of the contracting parties relating to the subject-matter and to their own practical construction of it.” *Nielsen v. Johnson*, 279 U.S. 47, 52 (1929). In this regard, it is fortunate that there exist extensive compilations of the proceedings and deliberations at the United Nations Monetary and Financial Conference which took place in Bretton Woods, New Hampshire, in July, 1944. It was at this Conference that the Articles of Agreement for the International Bank for Reconstruction and Development (hereinafter, the World Bank) as well as the Articles for the International Monetary Fund were drafted.

The record of the proceedings at the Conference make it clear that Article VII of the World Bank Articles of Agreement was taken from the draft of Article IX of the International Monetary Fund Article of Agreement:

“These matters which concern obligations and immunities of the Bank will require provisions analogous to those made for the Fund. Consequently, the Committee took the latest version of the Fund document and adapted it to the Bank.” Document 360, July 13, 1944.*

An examination of the treaty materials concerning the Fund discloses that in the preliminary draft of the relevant section, employees of the Fund were specifically exempted from taxation by political subdivisions of members:

“No member, or any political subdivision or taxing authority thereof shall impose or collect any tax on or measured by salaries paid by the Fund to its Executive Directors, officials and employees who are not citizens of such member.” Document 121, July 5, 1944.

. . . The Reporter of the Committee charged with formulating article IX [of the Fund Articles of Agreement] submitted the following report which spoke of a particular drafting problem:

“The work of the Subcommittees as well as that of the whole Committee encountered one difficulty of a particular theoretical character, as it proved to

* All citations to Official Documents are from the two-volume publication of the United States Department of State entitled “Proceedings and Documents of United National Monetary and Financial Conference, Bretton Woods, New Hampshire July 1-22, 1944” (United States Government Printing Office, 1948).

be rather difficult to find legal expressions which meant quite the same thing in the legal systems of the Anglo-Saxon powers as they mean in the legal systems of most other countries.” Document 233, page 1.

Thereafter, an amendment was offered by the United Kingdom delegation to the original draft of the provision concerning immunity from taxation (as set forth in Document 121) in a form close to the language finally adopted by both the Fund and the Bank:

“No tax shall be levied on salaries and emoluments paid by the Fund to Executive Directors, Officials, or Employees of the Fund who are not local nationals.” Document 250.

The report accompanying the proposed amendment sets forth the object of the amendment as “[t]o facilitate acceptance by expressing the principles as shortly and simply as possible and to avoid technical words having different meanings in different legislations”. *Ibid.*

The amendment offered by the United Kingdom was adopted in substantially the form proposed. The report of the Drafting Committee submitting the language in its final form included the following statement:

“The Drafting Committee desires further to place on record its understanding that the phrase ‘territory of members’ or ‘territories of members’, where it appears in article IX on Status, Immunities and Privileges of the Fund (our numeration [sic]), is to be construed sufficiently widely to include the political subdivisions of members and, where relevant, their taxing authorities.” Document 342, page 2, July 13, 1944.

This is a particular clear expression of the intent of the drafters of the provision. The omission of the words “State” and “political sub-division” from the taxation immunity provisions of the Articles of Agreement is clearly shown to be for the sake of international clarity; the drafters have specifically stated that the final text is meant to include political sub-divisions and their taxing authorities.

Our conclusion, then, is that [the relevant section of] the Articles of Agreement of the International Bank for Reconstruction and Development is applicable with respect to the Maryland Income Tax Statute and does preclude the State of Maryland from imposing its income tax on the salaries and emoluments paid by the Bank to its alien employees who reside in the State of Maryland. We note in conclusion that the one commentator whom we have found who addressed a similar question, seems to have reached the same conclusion:

“... [P]rovisions in the Articles of Agreement of the International Monetary Fund, the World Bank and the International Finance Corporation provide exemptions from all taxation on assets, property, income and operations. *This would seem to encompass state as well as federal taxes.* (Emphasis added.) *The Status of International Organizations Under the Law of the United States*, 71 *Harv. L. Rev.* 1300, 1317 (1958).