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THE LEAGUE OF NATIONS AND INTERNATIONAL TAX IN THE 1930s

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ABSTRACT

In 1928, the League of Nations published the first model bilateral tax treaties which are the foundation of the existing bilateral tax treaty network of more than 3,000 treaties. The 1928 model tax treaties were followed by the publication of two further model tax treaties in 1943 and 1946 (the Mexico and London models respectively). However, the intention after the publication of the 1928 model tax treaties was that the League would work on the development of a multilateral tax treaty. The 1928 model tax treaties were intended to be an interim solution while the League took the time necessary to develop a multilateral solution. However, despite working on the issue for more than a decade, the League again developed bilateral model tax treaties in 1943 and 1946.

This chapter will examine the work of the League of Nations' Fiscal Committee, the first permanent international committee on taxation, in the 1930s. It will identify some reasons as to why the Fiscal Committee may not have been as successful in its work as its ad hoc predecessors. The chapter will also examine the work undertaken by the League during this period and addresses questions such as why the development of a multilateral tax treaty proved elusive.

I INTRODUCTION

The 1920s or 'roaring 20s' as it is often described was a decade of relative wealth and prosperity. By contrast, the 1930s was marked by the Great Depression which began in late 1929. The League's work in international tax arguably reflected the times. In the 1920s, there was an idealism and strong desire to address the problems of double taxation and tax evasion which resulted in the publication of the first model bilateral tax conventions on double taxation and tax evasion in 1928.¹ These model conventions are generally considered one of the key achievements of the League's economic and financial section.² One of these models forms the basis of the more than 3000 bilateral tax treaties currently in existence.³ The 1928 model conventions were the result of work done over a period of more than five years by various experts in the field working on an ad hoc basis.⁴ The success of this work, in the form of the 1928 model conventions, led to the formation of the first permanent committee on international tax – the Fiscal Committee – in 1929.

While the work of the ad hoc experts in the 1920s is generally considered a success, the work of the Fiscal Committee in the 1930s is either ignored or considered a failure. The Fiscal

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¹ *Double Taxation and Tax Evasion: Report Presented by the General Meeting of Government Experts on Double Taxation and Tax Evasion* (Geneva, League of Nations, 1928) ('the 1928 Report').

² Loveday

³ JAJ

⁴ On the drafting of the 1928 model conventions on double income taxation, see Sunita Jogarajan, *Double Taxation and the League of Nations* (Cambridge, Cambridge University Press, 2018). On the drafting of the 1928 model conventions on tax evasion, see Sunita Jogarajan, 'The Drafting of the 1925 League of Nations Resolutions on Tax Evasion' in Peter Harris and Dominic de Cogan (eds), *Studies in the History of Tax Law*, vol 7 (Oxford, Hart Publishing, 2015) 253–92 and Sunita Jogarajan, 'The Drafting of the First Model Treaties on Tax Evasion' in Peter Harris and Dominic de Cogan (eds), *Studies in the History of Tax Law*, vol 9 (Oxford, Hart Publishing, 2019) 445–68.

Committee's main accomplishment was the publication of two subsequent model bilateral conventions in 1943 and 1946.⁵ For various reasons, largely political, the 1943 and 1946 models did not have the impact of their 1928 predecessors.⁶ The Fiscal Committee also published a report on the Taxation of Foreign and National Enterprises in 1933 which has been of significant and lasting impact.⁷ However, as discussed below, this report was not really the product of the Fiscal Committee's work. This chapter aims to examine the workings and the work of the Fiscal Committee to better understand beyond the political circumstances of its last few years why, despite being a permanent committee, the Fiscal Committee was seemingly not as successful as its ad hoc predecessors.

The existence of the Centre for Tax Policy and Administration at the Organisation for Economic Co-operation and Development (OECD) and the Committee of Experts on International Cooperation in Tax Matters at the United Nations is somewhat taken for granted today. However, the establishment of the first permanent organisation on tax was not a straightforward matter. The next section discusses the formation of the Fiscal Committee at the League of Nations. The Fiscal Committee was tasked with continuing the League's work on international taxation following the publication of the 1928 model conventions. Section III examines the workings of the new Fiscal Committee and identifies certain key differences between its operation and that of its predecessors which may assist in understanding why it was not as productive. Section IV reviews the work undertaken by the League over the nine sessions held between 1929 and 1939.⁸ Finally, section V argues that the way the Fiscal Committee undertook its work in the 1930s and the range of that work were reasons why it did not have an obvious success such as the earlier 1928 Report.

II ESTABLISHMENT OF THE FISCAL COMMITTEE

The Fiscal Committee has been described as one of the standing committees of 'lesser importance' in the League's Economic and Financial Organisation.⁹ However, in the battle to establish the Fiscal Commission at the United Nations, the Fiscal Committee was described as 'one of the most active and successful of the [League's] Committees'.¹⁰ The establishment of the League's Fiscal Committee marked a significant development in international taxation as it was the first permanent body tasked with examining international tax issues.

The necessity of creating a permanent organisation on international tax was first raised by the Committee of Technical Experts on Double Taxation and Tax Evasion.¹¹ The Committee had just completed the first draft model conventions on double taxation and tax evasion and recognised that the draft models were only the first step in addressing these issues. The success of the

⁵ Fiscal Committee, *London and Mexico Model Tax Conventions: Commentary and Text* (C.88.M.88.1946.II.A) (Geneva, League of Nations, 1946).

⁶ On the drafting of the London and Mexico model conventions, see Nikki J Teo, *The United Nations in Global Tax Coordination: Hidden History and Politics* (Cambridge, Cambridge University Press, forthcoming).

⁷ Report and Draft Convention.

⁸ The 'regional meeting' of 1940 and 1943, held in Mexico, and the tenth session, held in London, which resulted in the publication of the 1943 and 1946 Models, are discussed extensively in Teo, above n 6, and are not discussed here.

⁹ Patricia Clavin and Jens-Wilhelm Wessels, 'Transnationalism and the League of Nations: Understanding the Work of Its Economic and Financial Organisation' (2005) *Contemporary European History* 14(4) 465, 474.

¹⁰ Preparatory Commission, *Verbatim Report of the 6th Meeting of the Third Committee (Economic and Social)* 5 December 1945, 21-31 in *UN Preparatory Commission 1945-1946* Bound Vol. V, UNARMS:AG-009-S-0931-0002-03, as cited in Teo, above n 6.

¹¹ *Double Taxation and Tax Evasion: Report Presented by the Committee of Technical Experts on Double Taxation and Tax Evasion* (Geneva, League of Nations, 1927) 31-33 ('1927 Report'). The Committee comprised representatives from thirteen countries – Argentina, Belgium, Czechoslovakia, France, Germany, Great Britain, Italy, Japan, Netherlands, Poland, Switzerland, United States of America, and Venezuela.

model conventions would depend on the extent to which they were adopted by Governments and whether they were regularly revised to take into account changes in tax systems. Specifically, the Committee identified five tasks for the proposed future organisation – periodic investigations on the problems of double taxation and administrative and judicial assistance and publication of reports on those investigations, preparation and revision of model bilateral conventions or multilateral conventions, the preparation of any other international measures to address double taxation and achieve a more equitable distribution of fiscal burdens, comparison of tax systems, and organisation of general conferences if necessary.

The General Meeting of Government Experts on Double Taxation and Tax Evasion, which finalised the draft model conventions and published the 1928 Models, unanimously adopted the following resolution in relation to the Committee of Technical Experts' suggestion of a future organisation:¹²

The General Meeting of Government Experts on Double Taxation and Tax Evasion has taken note of the proposals concerning future organisation previously put forward by the technical experts. It desires to signify its unanimous approval of these proposals and to emphasise the importance it attaches to their prompt application, considering the appointment of a Committee to study questions concerning taxation within the framework of the League's organisation to be an essential condition of the development of the action undertaken in this sphere under the auspices of the League of Nations.

This Committee should consist of a small number of members selected for their technical qualifications and to represent the principal fiscal systems; but the General Meeting of Government Experts hopes that it will be possible to make arrangements for the Committee thus appointed to remain in close and permanent contact with the countries not represented thereon.

The General Meeting of Government Experts were more specific in their recommendations for the work to be undertaken by the new Committee. The new Committee was asked to examine methods for the prevention of double taxation in the matter of income derived from patents and authors' rights, rules for the apportionment of the profits or capital of undertakings operating in several countries, and measures for the avoidance of double taxation of trusts and companies possessing a large number of transferable securities.¹³ The General Meeting of Government Experts also unanimously supported the publication of various documents which had been suggested by the Technical Experts. The new Committee was asked to publish an annual collection of conventions on double taxation, administrative assistance and assistance in the collection of taxes (to enable countries to know of the conventions concluded by other countries and take advantage of this work, and to promote uniformity in future conventions), memoranda on existing systems of taxation (to make it easier for countries to negotiate treaties by having knowledge of the similarities and differences between the tax systems of the two countries), and an annual report on the progress made during the year with regard to double taxation and administrative assistance in the collection of taxes (to highlight special characteristics in conventions or new principles that had been adopted to address these issues).

Despite the unanimous support for the establishment of a permanent body on international taxation, its formation was not a straightforward matter. The General Meeting of Government Experts was convened by the Council and as such, the Financial Committee was not obliged to comment on its Report.¹⁴ However, the members of the Financial Committee noted that the

¹² *1928 Report*, above n 1, 34-6. The General Meeting was attended by representatives from 27 countries.

¹³ *Ibid.*

¹⁴ Minutes of the Third Meeting of the Thirty-third Session of the Finance Committee held at 10:30am on 6 December 1928 (League of Nations Archives, United Nations Geneva: F/33e Session/ P.V.3. (1)).

earlier work on double taxation and tax evasion had in fact been done at the behest of the Financial Committee and it was therefore fitting that the Financial Committee comment on the 1928 Report. The Financial Committee's time was largely spent discussing the financial situation in various countries such as Greece, Austria, and Bulgaria, the management of loan balances, and the purchasing power of gold.¹⁵ Nonetheless, the Financial Committee spent one meeting (of eight) during its 33rd session discussing the 1928 Report and the way forward for international tax.¹⁶ The members of the Financial Committee supported the establishment of a permanent committee on tax and the discussion was mainly in relation to the constitution of the new committee. However, Rueff, of the League's Secretariat, explained that the proposed new Committee would be an advisory body to the Council and independent to the Financial Committee. In its report to the Council on its work, the Financial Committee supported the recommendation in the 1928 Report regarding the establishment of a new Committee and asked that it be allowed to keep in touch with the work of the new Committee, as it had done previously with the various Committees of Experts on double taxation and tax evasion.¹⁷

At its fifty-third session, the Council passed a resolution creating the new Committee, to be known as the Fiscal Committee, and approved as its terms of reference the work outlined by the General Meeting of Government Experts in the 1928 Report.¹⁸ The Council determined that the Fiscal Committee would consist of ten members appointed by the Council, and in recognition of the Financial Committee's ongoing interest in the Fiscal Committee, two members delegated by the Financial Committee. The members were to act as technical experts and not government representatives. Perhaps in line with the Fiscal Committee's task of progressing the League's previous work on double taxation and tax evasion, eight out of the ten founding members appointed by the Council had previously worked on these issues for the League.¹⁹ Of the two new faces, the representative from Spain, Flores de Lemus (Professor of Political Economy at the Central University of Madrid), had attended the General Meeting of Government Experts in 1928 and was an active contributor to those discussions. The other new representative was from Greece (Mantzavinos, Director-General of Public Accounts at the Ministry of Finance) and was not previously involved in the League's work although Greece had sent a representative to the 1928 Meeting.²⁰ The Council had asked the Fiscal Committee to include a national of one of the South American countries as a full member. The Fiscal Committee suggested the appointment of Carlos Diez de Medina, ex-Minister of Finance of Bolivia and ex-Director of the Bolivian Land Bank. This suggestion was accepted by the Council and the Bolivian representative was appointed a full member of the Fiscal Committee by the Council, but not before the first session of the Fiscal Committee.²¹ The first Financial Committee's representatives were from Czechoslovakia and Poland. Both countries were represented on the 1927 Technical Committee and at the 1928 General Meeting but by different people. Unlike the Council appointees, the Financial Committee representatives were not tax experts – Pospisil was the Governor of the National Bank of Czechoslovakia and Mlynarski was the Vice-Governor of the Bank of Poland. Perhaps due to the fact that these

¹⁵ *Report to the Council by the Financial Committee on the Work of Its Thirty-third Session held in Geneva from December 4th to 8th, 1928* (League of Nations Archives, United Nations Geneva: C.613.M.190.1928.II).

¹⁶ Minutes of the Third Meeting of the Thirty-third Session of the Finance Committee, above n 14.

¹⁷ *Report to the Council by the Financial Committee on the Work of Its Thirty-third Session*, above n 15, 4.

¹⁸ *Resolutions Adopted by the Council at Its Fifty-Third Session, December 1928* (League of Nations Archives, United Nations Geneva: C.613.M.190.1928.II).

¹⁹ The representatives from the United States of America, Switzerland, Italy, France, Belgium, Germany, the Netherlands, and Great Britain were part of the Committee of Technical Experts which developed the draft model conventions in 1927. They also attended the General Meeting of Government Experts in 1928.

²⁰ The Greek representative at the 1928 Meeting was Vassili Dendramis, the Greek Minister at Berne.

²¹ Extract from Minutes of the Fifth Meeting of the Fifty-eighth Session of the Council, 15 January 1930 (League of Nations Archives, United Nations Geneva: Box R 2977 Doc # 17000).

representatives were not tax experts, they were not allocated to any particular sub-committee on the technical issues and were invited to attend any sub-committee of interest.²²

In addition to the full members of the Fiscal Committee, the Council also resolved that it could appoint corresponding members from countries not represented on the Fiscal Committee by Council appointees.²³ Corresponding members were expected to assist the Fiscal Committee in their studies, particularly in relation to a corresponding member's country, and provide any opinions, observations, or proposals at the member's discretion. However, corresponding members would not attend the Fiscal Committee's meetings unless requested by the members of the Fiscal Committee.²⁴ The Council initially appointed corresponding members from sixteen countries – Austria, Canada, Czechoslovakia, Danzig, Denmark, Estonia, Finland, Japan, Latvia, Luxembourg, New Zealand, Norway, Poland, South Africa, Sweden, and the Kingdom of the Serbs, Croats and Slovenes.²⁵ However, it was always intended that there would be a large number of corresponding members and on the suggestion of the Fiscal Committee, corresponding members were subsequently appointed from Albania, Bolivia, Brazil, Colombia, Egypt, Iceland, Irish Free State, Paraguay, Peru, Portugal, and Venezuela.²⁶ The Council was keen to include a representative from Asia as a corresponding member and had invited a representative from India to join the Fiscal Committee as a corresponding member but the invitation was declined by the Indian Government at that time.²⁷ By 1935 there were 37 corresponding members of the Fiscal Committee.²⁸ As discussed in the next section, the use of corresponding members ensured a broader range of views on the Fiscal Committee's work but their inclusion was not without problems.

III OPERATION OF THE FISCAL COMMITTEE

This section discusses some aspects of the workings of the Fiscal Committee which may have hindered its ability to progress its agenda as well as one feature which may have assisted the Committee in pursuing its work but brings into question the integrity of that work.

A *Role of the Chairman*

Despite many of the full members of the Fiscal Committee having previously been involved in the League's work on double taxation and tax evasion, the Fiscal Committee operated quite differently to the earlier 1925 Technical Experts and the 1927 Technical Experts, at least

²² Minutes of the First Meeting of the First Session of the Fiscal Committee held at 11am on 17 October 1929 (League of Nations Archives, United Nations Geneva: F/Fiscal/1st Session/P.V.1.(1)). The use of sub-committees by the Fiscal Committee is discussed further in Section III.

²³ *Resolutions Adopted by the Council at Its Fifty-Third Session, December 1928*, above n 18.

²⁴ Correa attended the sixth session, Egger (Austria) and Elliott (Canada) attended the seventh session, and ten corresponding members (from Poland, Egypt, Romania, Uruguay, Estonia, Hungary, Yugoslav, Argentina, Portugal, and Mexico) attended the ninth session.

²⁵ Canada, Finland, Luxembourg, New Zealand, and the Kingdom of the Serbs, Croats and Slovenes were new to the League's work on double taxation and tax evasion and had not attended the 1928 Meeting of Government Experts.

²⁶ Extract from Minutes of the Fifth Meeting of the Fifty-eighth Session of the Council, 15 January 1930, above n 21. Of these countries, only the Irish Free State and Venezuela had previously been involved in the League's work on double taxation and tax evasion.

²⁷ Letter from the Under Secretary of State for India, Economic and Overseas Department, India Office, Whitehall, London to Secretary General of the League of Nations, dated 9 January 1930 (League of Nations Archives, United Nations Geneva: Box R 2975 Doc # 12368).

²⁸ The corresponding members were from South Africa, Albania, Australia, Austria, Bulgaria, Canada, Brazil, Cuba, Chile, Denmark, Danzig, Egypt, Ecuador, Estonia, Finland, Hungary, India, Ireland, Iceland, Japan, Latvia, Luxembourg, Mexico, Norway, New Zealand, Panama, Iran, Poland, Portugal, Romania, Siam (now Thailand), Sweden, Czechoslovakia, Turkey, Uruguay, Venezuela, and Yugoslavia.

initially.²⁹ This difference is largely attributable to the change in Chairman. The 1925 Technical Experts and the 1927 Technical Experts were led by Professor Pasquale d'Aroma, Director-General of Direct Taxation, from Italy. As has been discussed elsewhere, d'Aroma was a strong and influential leader.³⁰ He was instrumental in advocating for unanimity amongst his colleagues and pushed for the Experts to reach a decision, rather than allowing them to agree to disagree. D'Aroma had died before the 1928 Meeting of Government Experts and that meeting was chaired by Clavier, Director-General of Direct Taxation and Land Survey in the Ministry of Finance, from Belgium. Clavier was a similarly strong leader and conducted the 1928 Meeting along the lines of the sessions of the 1925 and 1927 Technical Experts.³¹ However, Clavier was unable to attend the first meeting of the Fiscal Committee and Borduge, Councillor of State, Director-General of Direct Taxation, Registration, Domains and Stamps in the Ministry of Finance, from France, was unanimously elected chairman of the Fiscal Committee.³² Borduge was a member of the 1927 Technical Experts and attended the 1928 General Meeting, but he conducted the first session of the Fiscal Committee entirely differently.³³ After outlining the agenda for the Fiscal Committee's first session, Borduge immediately divided the members into various sub-committees to investigate their specific issues and report back to the plenary meeting at a later time. By contrast, d'Aroma and Clavier had preferred that all issues be discussed by all members initially so that all views could be known before establishing sub-committees to act upon the group's views by developing draft resolutions or conventions. Borduge's approach was in fact questioned by Clavier when he was in attendance at the third meeting of the session.³⁴ Clavier expressed his preference that all members be permitted to provide their views on all issues before breaking into sub-committees. Clavier went so far as to suggest that the position of Chair should be rotated although the Council's resolutions specified that the Chair, elected by the members of the Fiscal Committee, would hold the position for a year. Borduge accepted that he had adopted a different approach and responded that only experience would show which approach was preferable. He also noted that while he also favoured unanimity in their decision-making, he was happy to accept a majority if necessary.

A second reason as to why the role of the chairman may have played a part in the Fiscal Committee not being as productive in its work is that there wasn't a consistent leader and the role ended up being rotated at each session. Although the Council resolutions had specified that the Chairman would be appointed for a year, this was not why there was a different Chairman for each session. Borduge was unable to attend the second session for family reasons.³⁵ Again, Clavier was delayed until the third meeting of the session and as such, Blau, from Switzerland, was unanimously appointed Chairman. Blau had been involved in all of the League's previous work on double taxation and tax evasion. However, the work had already been divided into sub-committees and Blau continued this approach for the second session. Borduge returned for the third session and resumed his role as Chairman but retired from the role at the start of the first meeting. Dorn, from Germany, was unanimously elected the new Chairman. Clavier was again delayed in attending the session. It is not clear why Dorn was elected Chairman and not Blau who was also in attendance and had chaired the previous

²⁹ The 1925 Experts were experts from seven countries who produced *Double Taxation and Tax Evasion: Report and Resolutions Submitted by the Technical Experts to the Financial Committee of the League of Nations* (Geneva, League of Nations, 1925).

³⁰ Jogarajan, *Double Taxation and the League of Nations*, above n 4, 252.

³¹ Ibid.

³² Minutes of the First Meeting of the First Session of the Fiscal Committee, above n 22.

³³ France was represented on the 1925 Technical Experts but by a different representative, Baudouin-Bugnet, then Director-General of Direct Taxation.

³⁴ Minutes of the Third Meeting of the First Session of the Fiscal Committee held at 5:30pm on 19 October 1929 (League of Nations Archives, United Nations Geneva: F/Fiscal/1st Session/P.V.3.(1)).

³⁵ Minutes of the First Meeting of the Second Session.

session. Blau resumed as Chairman of the fourth session. However, he did not continue as Chairman of the fifth session and the role was taken on by Bolaffi, from Italy. Bolaffi was unable to attend the sixth session and Damste, from the Netherlands, took on the role of Chairman. However, Damste was unable to attend the seventh session and Mantzavinos, the Greek representative who was new to the League's work on double taxation and tax evasion, took over as Chairman. Mantzavinos was in attendance at the eighth session but the role of Chairman was taken on by Carroll, from the United States of America. Carroll continued as Chairman for the ninth session. It is not possible to point to any particular statement to indicate that the revolving chairmen hampered the work of the Fiscal Committee but the contrast to the earlier approach under D'Aroma and Clavier is noticeable when reading the minutes of the meetings.

Carroll was a strong and respected leader and if political circumstances were different, the Fiscal Committee may have achieved significant progress in the 1940s. However, Carroll may have also taken the Fiscal Committee in a different direction, wanting greater involvement from the business world in the League's work. By way of example, Carroll wanted the League to employ someone to write 'readable' articles in newspapers and trade journals to publicise the Fiscal Committee's work.³⁶ He also wanted that person to publish informational leaflets on double taxation targeting the business world and informing them as to what they should push for in the League's work. De Bordes responded that the work suggested by Carroll could not be done by the League as it was contrary to the wishes of various Governments.³⁷ De Bordes further noted that such work could be done by the ICC and suggested that Carroll refer the person to the ICC to be employed for this role.³⁸ Carroll of course became president of the International Fiscal Association in 1939, the same time he was Chairman of the Fiscal Committee.³⁹ However, IFA is an independent organisation not a business lobby like the ICC.

B *Use of Sub-Committees*

Borduge was prepared to wait and see whether his approach of immediately dividing the work into sub-committees or the earlier approach of discussing the issues first prior to splitting into sub-committees to draft documents based on the plenary discussion was better. The Fiscal Committee had a large number of issues to cover at their first session and Borduge's approach enabled them to make progress on all of the issues at that first session. However, reviewing the discussions across the sessions, there is a necessity to redo earlier work to take into account the views of members not on the sub-committee. By contrast, under the earlier approach, sub-committees drafted documents after the views of all members were known. Under both approaches, there is a certain amount of back and forth and repeated discussion but there appeared to be more consensus under the earlier approach.

C *Inclusion of Corresponding Members*

A third difference in the workings of the Fiscal Committee as compared to the earlier meetings of the 1925 and 1927 Technical Experts and the 1928 General Meeting was of course in the inclusion of corresponding members. As mentioned above, by 1935 there were 37

³⁶ Letter from Mitchell B. Carroll to J. van Walré de Bordes (Secretariat, League of Nations) dated 26 Feb 1931 (document 1930-31).

³⁷ Letter from J. van Walré de Bordes (Secretariat, League of Nations) to Mitchell B. Carroll dated 9 March 1931 (document 1930-31).

³⁸ Interestingly, the person recommended by Carroll also could not be hired by the League as he was British and there was a moratorium at the time on hiring British or French people in the Secretariat as there were too many British and French nationals in the Secretariat already: Letter from J. van Walré de Bordes (Secretariat, League of Nations) to Mitchell B. Carroll dated 3 March 1931 (document 1930-31).

³⁹ Mitchell B. Carroll, 'IFA's Growth with International Tax Law' (1971) 5(3) *The International Lawyer* 558, 559.

corresponding members of the Fiscal Committee. The inclusion of a broad range of countries such as Egypt, Cuba, Iceland, Panama, and Iran was a positive development. However, their inclusion delayed progress on issues as the decisions and work of the Fiscal Committee had to be sent to the corresponding members for comment before they could be finalised. At least initially, it is also not apparent that the comments of the corresponding members had any real impact. The comments were not discussed by the Fiscal Committee, only noted. Ten corresponding members attended the ninth session of the Fiscal Committee and again, it is possible that this approach may have proved more fruitful if political events had not intervened.

D *Involvement of the International Chamber of Commerce*

A fourth difference in the workings of the Fiscal Committee as compared to the earlier meetings of the 1925 and 1927 Technical Experts and the 1928 General Meeting was in the involvement of the International Chamber of Commerce (ICC). As has been discussed elsewhere, the ICC was not influential in the development of the 1928 model tax conventions.⁴⁰ This was in part because ICC representatives were not involved in the development of the 1925 Report upon which the model conventions were based but also because the ICC primarily pushed forward the taxpayer's perspective and refused to have any involvement in the League's work on tax evasion. The League's earlier work saw the issues of double taxation and tax evasion as interconnected and the ICC's absence from the tax evasion discussions diminished their influence in relation to double taxation. However, the Fiscal Committee's work only related to double taxation, at least initially, and as such, the ICC representative was involved in all of the Fiscal Committee's discussions and not only some. The ICC's increased influence is evidenced by the fact that the Fiscal Committee took on work referred to it by the ICC, which had not been the case earlier.⁴¹ The ICC representative, Julliard, drafted text which was discussed and voted upon by the Fiscal Committee, a far greater level of involvement than earlier.⁴² The ICC was also instrumental in the drafting of the 1933 Report. Carroll considered it a joint publication of the League and the ICC and it is only because of the intervention of the League Secretariat, that the language was amended to state that the study was undertaken by the League with the collaboration of the ICC.⁴³ It was considered important to maintain this 'nuance' and not put the ICC 'on exactly the same footing' as the Fiscal Committee.

IV WORK OF THE FISCAL COMMITTEE

In the decade between 1929 and 1939, the Fiscal Committee held nine sessions covering a range of issues.⁴⁴ This section discusses the work undertaken by the Fiscal Committee in those nine sessions. In addition to the specific issues discussed below, the Fiscal Committee also periodically reviewed any recently concluded tax treaties on double taxation and fiscal evasion and studied the information from governments regarding the characteristics of their tax

⁴⁰ Jogarajan, *Double Taxation and the League of Nations*, above n 4, 90-7.

⁴¹ The ICC representative, Julliard, had noted that the ICC's recent Congress had hoped that a solution could be reached in relation to problems of double taxation relating to turnover taxes, stamp duty, and various taxes on instruments of payment (such as cheques, bills of exchange, and letters of credit): Minutes of the First Meeting of the First Session of the Fiscal Committee, above n 32. A sub-committee was formed to investigate this issue: Minutes of the Second Meeting of the First Session of the Fiscal Committee held at 4pm on 17 October 1929 (League of Nations Archives, United Nations Geneva: F/Fiscal/1st Session/P.V.2.(1)).

⁴² Minutes

⁴³ Letter from J. van Walré de Bordes (Secretariat, League of Nations) to Mitchell B. Carroll dated 6 March 1931 (document 1930-31).

⁴⁴ The sessions were held as follows: 1st: 17 to 26 October 1929, 2nd: 22 to 31 May 1930, 3rd: 29 May to 6 June 1931, 4th: 15 to 26 June 1933, 5th: 12 to 17 June 1935, 6th: 15 to 21 October 1936, 7th: 11 to 16 October 1937, 8th: 17 to 20 October 1938, 9th: 12 to 21 June 1939.

systems. It was considered necessary for the Fiscal Committee to be aware of these developments to identify new provisions or trends that needed to be incorporated in later models as well as to ensure that there was a degree of uniformity in tax treaties. In this section, the work of the Fiscal Committee is divided into two broad categories – work with an outcome and work without an outcome. The former relates to work undertaken by the League which resulted in a convention or draft text to be used as the basis for future bilateral treaties while the latter relates to work undertaken by the League which had no clear outcome.

A *Work with an Outcome*

1 *Principles of Avoiding Double Taxation on Authors' and Inventors' Rights*

This issue was referred to the Fiscal Committee by the 1928 General Meeting of Government Experts and was one of the first issues discussed at length by the Fiscal Committee. There was some initial disagreement between the members as to whether there was a necessity for them to study this question. Some members thought that such income was already captured by either Article 5 of Draft Ia on 'industrial, commercial or agricultural undertakings and any other trades or professions carried on in the person's own place of residence' or Article 9 of Draft Ia which referred to 'income from other sources not referred to in the previous paragraphs'. However, other members thought that the 1928 General Meeting would not have referred the question to the Fiscal Committee if it was intended for the income to be captured by Articles 5 or 9. The Committee eventually decided that it was not necessary for them to decide on this question. The Committee developed a questionnaire to be sent to all full and corresponding members to understand the treatment of such income in different countries. Based on the replies received, the Committee reached the following conclusions:

- For fees collected by the author or inventor themselves, such income is to be considered similar to professional income and should be taxable in the country of the author's or inventor's domicile where the work is carried out at the person's place of residence and there is no permanent establishment abroad.
- For fees collected by the heirs or assigns (legatees, donees, etc) of the author or inventor, the income could be regarded as either professional earnings or income from movable capital. In either case, the income should be taxable in the country in which the heir or assign is domiciled.
- For authors' or patents' fees collected by grantees, the Committee viewed such income as being in the nature of industrial or commercial income and therefore to be dealt with in accordance with the rules regarding the taxation of income of undertakings operating in more than one country.
- For authors' or inventors' fees collected by persons or bodies (authors' societies, inventors' societies, etc) specially entrusted with the collection of such income, the profits should be taxed where the business is carried on.

2 *Definition of Autonomous Agents and Permanent Establishment*

The Fiscal Committee was also asked by the 1928 General Meeting to develop a definition of 'autonomous agent' in the context of permanent establishments. Upon consideration of the existing rules in different countries on this issue, the Committee developed the following text to be used by countries as the basis for concluding future agreements.

In its endeavour to determine the principles which might be adopted as a guide in defining the terms "autonomous agent"¹ and "permanent establishment", the Committee found that four criteria were employed in different countries.

¹ In this report, the term "agent" is employed in the broad commercial sense rather than in the strict legal sense.

- a) The first is a criterion of a legal nature, it being considered that the only agents dependent on an enterprise are those having sufficient powers to conclude contracts binding upon that enterprise.
The Committee considered that this criterion was admissible but was not applicable to every case.
- b) According to the second system, there is no "permanent establishment" unless the agent has a fixed depot.
These are cases, however, in which the presence of an agent of an enterprise may connote, for that enterprise, the existence of a permanent establishment, although the enterprise undoubtedly has no fixed depot; this is particularly the case with insurance companies and certain buying agencies.
- c) The third system takes into account the relations between the agent and the enterprise, the only agents regarded as not autonomous being those in receipt of fixed emoluments.
This may be a determining but it is not an indispensable factor in deciding whether there is a non-autonomous agent, ie, a permanent establishment.
- d) The fourth criterion is that of the continuity of the relations between the agent and the enterprise.
This criterion is not absolute and requires closer definition.

Taking the above systems into consideration, the Committee concluded that it would be advantageous to disengage a general principle governing the matter.

The fundamental principle is:

When a foreign enterprise regularly has business relations in another country through an agent established there who is authorised to act on its behalf, it shall be deemed to have a permanent establishment in that country.

A permanent establishment will thus exist when the agent, being established in the country:

- a) Is a duly accredited agent (*fondé de pouvoir*), who habitually enters into contracts on behalf of the enterprise for which he works;
- b) Is bound by an employment contract and habitually transacts commercial business on behalf of the enterprise in return for remuneration from the enterprise;
- c) Is habitually in possession, for the purposes of sale, of a depot or a stock of goods belonging to the enterprise.

As evidence of the existence of an employment contract under the terms of (b) may be taken, moreover, the fact that the administrative expenses of the agent, in particular the rent of premises, are paid by the enterprise, or the fact that the latter's intervention is manifested by outward signs.

A broker who places his services at the disposal of an enterprise in order to bring it into touch with customers does not, in his own person constitute a permanent establishment of the enterprise, even if his work for the enterprise is to a certain extent continuous or is carried on at regular periods.

Similarly, the fact that the commission agent (*commissionnaire*) acts in his own name for one or more enterprises, and receives the normal rate of commission, does not in principle imply the existence of a permanent establishment of any of those enterprises. This may not be the case, however, if he is required to devote the whole of his activities to a single enterprise.

Lastly, there cannot be held to be any permanent establishment in the case of commercial travellers not coming under any of the above-mentioned categories.

Having developed this text, the Committee also examined Clause 16 of Finance Bill 1930, which had been brought to the Committee's attention by the British representative, Thompson. The Committee noted that the text adopted by the Committee did not differ materially from the British legislation and the Committee hoped that the text would facilitate the conclusion of more international agreements.

3 *Taxation of Foreign Motor Vehicles*

This issue was referred to the Fiscal Committee by the Permanent Committee on Road Traffic. Possibly the most successful of the work done by the Fiscal Committee, the Committee developed the Convention on the Taxation of Foreign Motor Vehicles which provided that foreign vehicles would not be taxed in a country if it was in the foreign jurisdiction for a period of less than ninety days.⁴⁵ The treaty came into force on 9 May 1933 and was ratified by more than 20 countries.

4 *Principles Governing the Taxation of Undertakings with Branches in Several Countries*

It was Adams who pushed for this issue to be examined by the Fiscal Committee.⁴⁶ Based on his experience with interstate businesses in the US and the difficulties in taxing those businesses, Adams considered this the single most important issue in addressing international double taxation. The Committee initially sent a questionnaire to all full and corresponding members to study the question in more detail. The Committee also invited the ICC to be involved in this study and to suggest the best method of apportionment. The Committee received replies from approximately 20 countries to their questionnaire. After much discussion the Committee decided that the issue was extremely complex but also necessitated a solution as it was one of the main causes of double taxation.

The Committee decided to use a grant from the Rockefeller Foundation to fund a comprehensive study of the issue. The grant of USD\$90,000 had been secured by Adams for this purpose.⁴⁷ The funds were used to employ a team of specialists to study the laws in force in different countries; regulations, decrees, orders and decisions; administrative practice and procedure; working principles and methods of accounting; their effect upon international double taxation; method – more particularly accounting methods – of ascertaining taxable profits which could be adopted by the fiscal administrations of the various countries and which would at the same time be equitable and reasonable from the point of view of the undertakings taxed, and would as far as possible prevent international double taxation, more particularly: (i) when the taxable profits are computed on the basis of separate accounts; (ii) when empirical methods are employed to obtain an approximate estimate of such profits; (iii) when a system of fractional apportionment is employed. This work resulted in the publication of the 1933 Report by Carroll. Based on the Report, the Committee (or Carroll?) developed a draft convention which was sent to governments with an invitation to conclude a multilateral convention or failing that, to be used as the basis for bilateral conventions.⁴⁸

Thirty-three governments provided comments on the Draft Convention.⁴⁹ The Committee decided that the comments indicated that no fundamental changes to the Draft Convention were required but that some countries would not be able to adopt the Convention as their legislation was based on different principles. There was insufficient interest in concluding a

⁴⁵ <https://treaties.un.org/pages/LONViewDetails.aspx?src=LON&id=567&chapter=30&clang=en>.

⁴⁶ 1st meeting 1st session.

⁴⁷ Approximately USD \$1.5 million today.

⁴⁸ 4th session

⁴⁹ 5th session

multilateral convention, not even enough to warrant a conference to discuss the issue. However, this was not due to any disagreement in relation to the principles adopted in the Draft Convention but rather because it was considered that bilateral agreements would be more appropriate. Based on these responses, the Fiscal Committee decided that the best value of their work would be for the Draft Convention to be used as a model in the conclusion of bilateral treaties by countries. The Committee noted that, at that time (1935), there were 140 double tax agreements in existence, 60 of which had been concluded since 1929.

While the development of the Draft Convention as a model for countries may be considered a significant success of the Fiscal Committee in the 1930s, there is some reluctance to do so. This study was funded by a private grant and was completed by Carroll, not a member of the Fiscal Committee at the time, with significant involvement and input from the ICC. It is unlike any other work of the Fiscal Committee or its ad hoc predecessors which was done by tax officials or academics. The other difference is that this work was primarily done from the taxpayers' perspective whereas the other work, although for the benefit of taxpayers, was done from the government perspective.

B *Work without an Outcome*

1 *Reciprocity and the Most-Favoured-Nation Clause*

This issue was also referred to the Fiscal Committee by the 1928 General Meeting. The Committee recommended that the application of the most-favoured-nation clause in commercial treaties should not be extended to provisions for the avoidance of double taxation. This was because double tax agreements were concluded on the basis of reciprocity and the application of the most-favoured-nation clause to citizens of a country which had not concluded a double tax agreement would be inequitable and go against the spirit of the clause.

2 *Extension of Measures to Avoid Double Taxation to Turnover Tax, Stamp Duties and Various Taxes Connected with Instruments of International Trade*

This issue was referred to the Fiscal Committee by the ICC. In considering this question the Fiscal Committee noted that it was 'undesirable' to ask countries to limit their sovereignty in tax matters unless there was real hardship to taxpayers or there were serious economic disadvantages. The Fiscal Committee did not have any information to indicate that that was the case here and suggested that the ICC provide more information to enable the Committee to study the issue. The matter was not considered further by the Fiscal Committee.

3 *Development of a Multilateral Convention*

The 1928 Report noted that the conclusion of a multilateral convention was the desired outcome but that it was unattainable at that time due to the diversity of tax systems.⁵⁰ Adams, the American representative, was a strong advocate for the development of a multilateral convention.⁵¹ He thought that the previous work which resulted in the 1928 Report demonstrated that there was sufficient agreement on most points except the profits derived from dividends. Therefore, a limited multilateral agreement which excluded such income would be achievable. His main motivation in the conclusion of a multilateral convention though was that he thought it might spark the interest of governments in the Committee's work and progress the movement against double taxation. In his experience, the US Government was indifferent to the issue not because of opposition to double tax agreements but due to apathy.

This is an example where greater progress may have been made if the Fiscal Committee discussed the issue as a group prior to the relevant sub-committee undertaking the work of

⁵⁰ Page 5.

⁵¹ First session first meeting.

drafting a multilateral convention. Instead, a draft multilateral convention prepared by the sub-committee was presented to the Fiscal Committee at its third session. Most of the session was spent on this issue and the result was the development of three model draft conventions again, as was the case in 1928. The initial draft multilateral treaty prepared by the sub-committee applied to all income taxes, personal or impersonal, and provided for the taxation at source of income from real estate and mortgages. Income from maritime or air navigation, public loans, patent and copyright royalties (unless derived by transferees for consideration, or otherwise assimilable to commercial profits in which case they were taxed as such), and life annuities were to be taxed in the country of domicile. Salaries of persons working in border areas was taxable at domicile while public salaries and pensions were to be taxed by the Government paying them. Income from industrial, commercial or agricultural enterprises were to be taxed at in the country of domicile. However, profits produced by a permanent establishment in another country could be taxed in that country (i.e. taxation at source). The enterprise could request a deduction or partial deduction from the country of domicile for taxes paid in respect of permanent establishments in other countries. The discussion in relation to this draft convention related to impersonal and personal taxes and that the Committee should not specify how the domicile country should give relief to its own nationals or non-national resident in their territory. There was also some objection to the proposed exemptions.

The second draft multilateral convention provided for the same treatment for income from real estate and mortgages, income from maritime and air navigation, public loans, patent and copyright royalties, annuities and border workers. Income from 'liberal professions'⁵² was only taxable where they were carried on in a permanent manner. Public salaries and pensions were taxable by the debtor state. Income from industrial, commercial and agricultural enterprises was to be taxed only in the country where permanent establishments were situated, each country only taxing the income derived by the permanent establishment in its territory. However, the domicile country could tax income derived by domiciled enterprises in non-contracting countries. In relation to those amounts which were to be taxed at source, the domicile country could either provide an outright exemption or provide a deduction against its own taxes.

The third draft multilateral convention was very similar to Draft Convention Ib of the 1928 Report, which had been drafted by Adams, and the main provisions of the American Bill to reduce International Double Taxation (H.R. 10165). The convention provided that each contracting country reserved the right to tax individuals or companies tax resident on its territory on worldwide income. Nationals of one contracting country domiciled in the other country's territory were not to be treated less favourably than that country's nationals. The convention also provided that persons not domiciled on the territory of a contracting country were to be taxed only on income derived from sources situated within its territory, except that such non-residents would not be taxed on income from maritime or air navigation, income of industrial, commercial and agricultural enterprises not derived from a permanent establishment within its territory, income from public loans issued subsequently to the entrance into force of the treaty, income of frontier workers, patent and copyright royalties unless derived by transferees for consideration, otherwise assimilable to commercial profits in which case they were to be taxed as such), and life annuities. These exemptions were conditional upon the presentation of evidence indicating that the income was taxed in the country of tax residence. As for the amounts that were subject to tax in the source country, the residence country was free to provide whatever relief it considered suitable. The prevailing

⁵² This is a civil law concept and the expression is not used in common law countries. Refers to regulated professions such as doctors, pharmacists, lawyers, dentists, civil engineers, etc.
<https://www.eurofound.europa.eu/efemiredictionary/liberal-professions>
<https://brill.com/view/book/9789004214514/B9789004214514-s002.xml>.

thinking at the Fiscal Committee was that the multilateral convention should only deal with the relief to be provided to non-resident taxpayers and that the country of domicile should be free to provide whatever measures of relief for source country taxation that were best suited to its own tax system and budgetary conditions.

Despite the development of the three draft multilateral conventions, the Fiscal Committee did not think that there was sufficient interest to warrant government consultation and proposed to merely provide the drafts to governments for information.⁵³

4 *Tax Evasion*

On 9 October 1936, the Assembly of the League of Nations adopted the following resolution:

The Assembly,
Considering that efforts to reduce the obstacle to the international circulation of capital must not have the effect of increasing fiscal fraud;
Being of the opinion that double taxation is both one of the causes of fiscal fraud and at the same time a serious obstacle to the development of international economic and financial relations;
And holding that only concerted action based on specific agreements for international co-operation can ensure the accurate assessment and equitable allocation of taxes;
Requests the Fiscal Committee to pursue vigorously its work for the avoidance of double taxation as far as possible, and also its work on the subject of international fiscal assistance, in order to promote practical arrangements calculated, as far as possible, to put down fiscal fraud.

The Fiscal Committee had not considered tax evasion at any of its discussions prior to the Assembly's resolution and immediately complied with this request. Most of the Committee's sixth, seventh, and eighth sessions were spent on this question. Although the Assembly's resolution was stated in broad terms, the Fiscal Committee narrowed the issue to two particular cases of tax evasion. In both cases, the means of evasion is whereby holders of foreign securities cash the income from those securities in a country other than their country of residence. In the first case, this is done to avoid 'compensatory' taxes imposed by some countries on income from capital invested by their nationals in foreign enterprises. In the second case, it is done to reduce taxes payable in the country of residence upon the taxpayer's worldwide income (general income tax or super-tax). The Fiscal Committee proposed that countries should conclude agreements based on the following text method:

In each of the contracting States, rules shall be laid down that persons or companies who, in the course of their business, pay out income derived from movable capital must report every payment made to a person not resident in the State in which this payment is effected. The notice in question shall be given to this latter State, which shall transmit it to the State in which the recipient resides.

The term 'income derived from movable capital' shall, for the purpose of the present provisions, be taken to mean interest, dividends, and, in general, income from bonds, stocks and shares, and loans. The rule shall apply to every kind of payment, whether in cash or by transfer, cheque, or entry in a banking account.

For the purpose of the present provisions, persons not resident in a State shall be deemed to mean persons having their permanent home in another State.

As was the case previously,⁵⁴ the Fiscal Committee noted that the proposed solution was only achievable if a general agreement was reached by a large number of countries. If only a small number of countries concluded such an agreement, it would prove more dangerous than effective in addressing tax evasion. The Committee suggested that the Council should

⁵³ Fiscal Committee, Draft Report to the Council: Multilateral Convention for the Avoidance of Double Taxation of Certain Classes of Income, 5 June 1931, III/Fiscal/5(1). [Doc 5 June 1931]

⁵⁴ 1925 Report

'ascertain the prospects of reaching, if not a general agreement, at all events on that would extend to a considerable number of States'. Acting on this suggestion, the Committee's report was sent to 61 countries, both members and non-members of the League. Twenty-nine countries responded to the Report. The replies indicated that countries did not have technical objections to the proposed solution but were not, in general, prepared to conclude an agreement based on the Fiscal Committee's proposal. Those countries which indicated a willingness to conclude an agreement did so on condition that a large number of countries would sign on, a condition which the Fiscal Committee did not think could be achieved. Fundamentally, countries were concerned about the difficulty in modifying domestic legislation to enable governments to demand information from their nationals that was not needed for domestic purposes but to meet the requirements of another country.

In the meantime, the Assembly had invited the Committee to study the 'methods to be followed in order that a Convention – at least between a certain number of States – may be concluded at the earliest moment for the suppression of fiscal evasion, on the basis elaborated by the Fiscal Committee and submitted by the Council to various States.' To address the concerns raised by governments regarding collection of information, the Committee contemplated the possibility of facilitating exchange of information within the constraints of existing legislation. To advance this idea, the Committee developed a questionnaire to ascertain domestic measures to combat tax evasion, domestic measures (legislative, regulatory or administrative practices) which may place non-resident foreigners and foreign-owned corporations in a more advantageous position in the matter of taxation than nationals of that country, and information on agreements or arrangements already concluded with regard to tax evasion. Thirty-three governments responded to the questionnaire. The replies showed diverse methods of control in relation to tax evasion but also that countries were in possession of information that may assist each other. Due to the diversity of approaches, the Fiscal Committee concluded that, as with double taxation, bilateral treaties were the only possible solution at the time. They resolved to share the replies to the questionnaire with all countries so that they could be aware of the possible measures of control available in other countries and use that knowledge to conclude bilateral treaties.⁵⁵

5 *Principles of Taxation*

On 29 September 1928, the Assembly of the League of Nations adopted a resolution inviting the Fiscal Committee 'to study and advise upon the principles on which fiscal legislation dealing with the main categories of taxes, such as income tax, land taxes, turnover taxes, etc, should be based.' Again, the Fiscal Committee immediately took on the Assembly's invitation and most of the Committee's eighth and ninth sessions were spent on this issue.

6 *Customs Duties and Fiscal Charges Applicable to Newspapers*

Asked by the Advisory and Technical Committee for Communications and Transit to form a joint committee to examine customs duties and fiscal charges applicable to newspapers. Fiscal Committee agreed to this request.

7 *Draft Convention on the Treatment of Foreigners*

Fiscal Committee was asked to consider whether or not the convention should include provisions in relation to tax.⁵⁶

8 *Thompson Resolution*

Prior to the Fiscal Committee's second session, Thompson, the British representative presented the following resolution for consideration by the Fiscal Committee:

⁵⁵ No such treaties concluded?

⁵⁶ <https://www.cambridge.org/core/journals/contemporary-european-history/article/abs/writing-multilateral-trade-rules-in-the-league-of-nations/B938C72C81445DB654FEB6AA399782F2>

Draft for conference. Not for citation without author's permission.

That the prevalent view that an undesirable economic result, viz., the creation of an artificial barrier which impedes the free flow of capital into the channels in which it can be most usefully and profitably employed – is produced by double taxation is fallacious: that origin taxation is solely responsible for this undesirable economic result which would remain unaffected if all taxes based on residence were everywhere abolished and in consequence double taxation ceased to exist.

The resolution was discussed at the Committee's third session but did not result in any publications and did not alter the Committee's approach to addressing double taxation.

V CONCLUSION