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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. In doing so, the chapter suggests some reasons why the development of a multilateral tax treaty proved elusive.

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

*I am grateful to John Avery Jones and Richard Vann for their insightful comments. I am also grateful to Kirsty Wilson for assistance in researching the Convention on the Taxation of Foreign Motor Vehicles.

and tax evasion in 1928.¹ The 1928 Models 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 3,000 bilateral tax treaties currently in existence.³ The 1928 Models 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 led to the formation of the first permanent committee on international tax – the Fiscal Committee – in 1929.

One of the key tasks of the Fiscal Committee on its formation was to facilitate the conclusion of a multilateral tax treaty. However, the Committee again produced bilateral models in 1943 and 1946.⁵ Little is known about the Committee's work overall in the 1930s and this chapter examines that work to understand why the Committee eventually produced model bilateral treaties again, rather than a multilateral tax treaty.⁶ The next section outlines the establishment of the Fiscal Committee. The following sections examine the operation of the Fiscal Committee and the work undertaken by the Committee in the 1930s. The penultimate section analyses the Committee's attempts to produce a multilateral tax treaty. The final section argues that the Committee's ability to produce a multilateral tax treaty was hampered by the way it operated, the breadth of work it was required to undertake, and the inherent difficulties in producing a multilateral tax treaty.

ESTABLISHMENT OF THE FISCAL COMMITTEE

The existence of the Centre for Tax Policy and Administration at the Organisation for Economic Co-operation and Development (OECD) and the Committee of

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 A Loveday, 'The Economic and Financial Activities of the League' (1938) 17 *International Affairs* 788, 790.

³ J Avery Jones, 'Categorising Income for the OECD Model' in L Hinnekens and P Hinnekens (eds), *A Vision of Taxes Within and Outside European Borders* (Alphen aan den Rijn, Kluwer Law International, 2008) 93, 99.

⁴ On the drafting of the 1928 model conventions on double income taxation, see S 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 S Jogarajan, 'The Drafting of the 1925 League of Nations Resolutions on Tax Evasion' in P Harris and D de Cogan (eds), *Studies in the History of Tax Law*, vol 7 (Oxford, Hart Publishing, 2015) 253 and S Jogarajan, 'The Drafting of the First Model Treaties on Tax Evasion' in P Harris and D de Cogan (eds), *Studies in the History of Tax Law*, vol 9 (Oxford, Hart Publishing, 2019) 445.

⁵ Fiscal Committee, *London and Mexico Model Tax Conventions: Commentary and Text* (C.88.M.88.1946.II.A) (Geneva, League of Nations, 1946). On the drafting of the London and Mexico model conventions, see N Teo, *The United Nations in Global Tax Coordination: Hidden History and Politics* (Cambridge, Cambridge University Press, forthcoming).

⁶ A brief account of the Fiscal Committee's work in the 1930s is provided by Vann as part of a broader examination of the work of international institutions on international tax policy: R Vann, 'International Tax Policy and International Tax Institutions: Never the Twain?' in

Experts on International Cooperation in Tax Matters at the United Nations is somewhat taken for granted today. However, the establishment of the first permanent committee on tax was not a straightforward matter. The necessity of creating a permanent organisation on international tax was first raised in 1927 by the Committee of Technical Experts on Double Taxation and Tax Evasion.⁷ 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 model conventions would depend on the extent to which they were adopted by governments and whether they were regularly revised to consider 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 supported the Committee of Technical Experts' suggestion of a future organisation.⁸ The General Meeting Experts were more specific in their recommendations for the work to be undertaken by the new Committee. In addition to the development of a multilateral double tax treaty, 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.⁹ The General Meeting 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

G Maisto, *Current Tax Treaty Issues: 50th Anniversary of the International Tax Group* (Amsterdam, IBFD, 2020) 47–50. The Fiscal Committee's work on agents and allocation of profits has been examined in some detail, as cited below.

⁷ *Double Taxation and Tax Evasion: Report Presented by the Committee of Technical Experts on Double Taxation and Tax Evasion* (Geneva, League of Nations, 1927) 31-3 (1927 Report). The Committee comprised representatives from Argentina, Belgium, Czechoslovakia, France, Germany, Great Britain, Italy, Japan, Netherlands, Poland, Switzerland, United States of America, and Venezuela.

⁸ 1928 Report, above n 1, 34-6. The General Meeting was attended by representatives from 27 countries.

⁹ *ibid.*

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 League's Council and, as such, the Financial Committee was not obliged to comment on its Report.¹⁰ However, the members of the Financial Committee noted that the 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 members of the Financial Committee supported the establishment of a permanent committee on tax but were conflicted as to the constitution of the new committee. However, Rueff (Secretariat) explained that the proposed new Committee would be an advisory body to the Council and independent to the Financial Committee. Ultimately, the Financial Committee supported the establishment of the new Committee but asked to be allowed to keep in touch with the Committee's work, as it had previously with the various Committees of Experts on double taxation and tax evasion.¹¹

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 in the 1928 Report.¹² 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. 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.

¹⁰ 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)).

¹¹ *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).

¹² *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).

OPERATION OF THE FISCAL COMMITTEE

This section outlines how the Fiscal Committee operated in the 1930s and argues that some aspects of how the Committee operated contributed to the lack of advancement on a multilateral treaty. In particular, the use of corresponding members, the division of work into sub-committees before plenary discussion, and the revolving chairmen delayed progress on issues and diminished the Committee's focus. However, one aspect, the involvement of the ICC, potentially assisted the Committee's work but on only one issue, not the multilateral treaty.

Membership of the Fiscal Committee

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.¹³ 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 1928 Meeting 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.¹⁴ The Council had asked the Fiscal Committee to include a South American representative 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 as a full member of the Fiscal Committee by the Council, but not before the first session of the Fiscal Committee.¹⁵ The first Financial Committee representatives on the Fiscal Committee were from Czechoslovakia and Poland. Both countries were represented on the 1927 Technical Committee and at the 1928 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 representatives were not tax experts, they were

¹³The representatives from Belgium, France, Germany, Italy, Netherlands, United Kingdom, United States of America, and Switzerland were part of the Committee of Technical Experts which developed the draft model conventions in 1927. They also attended the General Meeting in 1928.

¹⁴The Greek representative at the 1928 Meeting was Vassili Dendramis, the Greek Minister at Berne.

¹⁵Extract 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).

not allocated to any particular sub-committee on the technical issues and were invited to attend any sub-committee of interest.¹⁶

As mentioned above, the Council also resolved that it could appoint corresponding members to the Fiscal Committee. 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.¹⁷ The Council initially appointed corresponding members from 16 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.¹⁸ 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.¹⁹ 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 but the invitation was declined by the Indian Government at that time.²⁰ By 1935 there were 37 corresponding members of the Fiscal Committee.²¹ The inclusion of a broad range of countries 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.

¹⁶ 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 below.

¹⁷ Initially, none of the corresponding members attended the Fiscal Committee's sessions. The Peruvian representative, Correa, attended the sixth session while the Austrian and Canadian representatives, Egger and Elliott, attended the seventh session. These sessions were primarily concerned with tax evasion. Ten corresponding members (from Argentina, Egypt, Estonia, Hungary, Mexico, Poland, Portugal, Romania, Uruguay, and Yugoslavia) attended the ninth session. This session was concerned with studying the principles upon which laws dealing with the main categories of taxes should be based.

¹⁸ 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.

¹⁹ Extract from Minutes of the Fifth Meeting of the Fifty-eighth Session of the Council, 15 January 1930, above n 15. 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.

²⁰ 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).

²¹ The corresponding members were from Albania, Australia, Austria, Brazil, Bulgaria, Canada, Chile, Cuba, Czechoslovakia, Danzig, Denmark, Ecuador, Egypt, Estonia, Finland, Hungary, Iceland, India, Iran, Ireland, Japan, Latvia, Luxembourg, Mexico, New Zealand, Norway, Panama, Poland, Portugal, Romania, Siam (now Thailand), South Africa, Sweden, Turkey, Uruguay, Venezuela, and Yugoslavia.

At least initially, it is also not apparent that the comments of the corresponding members had any real impact.²² The comments were not discussed by the Fiscal Committee, only noted. As mentioned above, ten corresponding members attended the ninth session of the Fiscal Committee but again, their impact is difficult to judge without the relevant minutes.

Use of Sub-Committees

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 initially.²³ 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.²⁴ 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 died before the 1928 Meeting 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.²⁵ 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.²⁶

Borduge was a member of the 1927 Technical Experts and attended the 1928 Meeting, but he conducted the first session of the Fiscal Committee entirely differently.²⁷ After outlining the agenda for the Fiscal Committee's first session, Borduge immediately divided the members into various sub-committees to investigate 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

²² It is difficult to properly ascertain the impact of the corresponding members on the work of the Fiscal Committee as the minutes of the meetings are not available for the fourth to ninth sessions of the Fiscal Committee.

²³ 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) (1925 Report).

²⁴ Jogarajan (2018), above n 4, 252.

²⁵ *ibid.*

²⁶ Minutes of the First Meeting of the First Session of the Fiscal Committee, above n 16.

²⁷ France was represented on the 1925 Technical Experts but by a different representative, Baudouin-Bugnet, then Director-General of Direct Taxation.

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 attended the third meeting of the session.²⁸ 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.

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.²⁹ As outlined below, the Fiscal Committee had several 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, under this approach, there was a necessity to redo earlier work to consider 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.³⁰

Role of the Chairman

Another difference between the operation of the Fiscal Committee and the earlier League Experts was that the Fiscal Committee did not have a consistent leader. As such, there was no strong personality such as d'Aroma or Clavier pushing the Committee towards a common goal. Borduge was unable to attend the second session for family reasons.³¹ Again, Clavier was delayed and as such, Blau, from Switzerland, was unanimously appointed Chairman. Blau had been involved in the League's previous work on double taxation and tax evasion. However, the Fiscal Committee's work had already been divided into sub-committees and Blau

²⁸ 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)).

²⁹ *ibid.*

³⁰ The use of sub-committees is discussed again below in relation to the Fiscal Committee's work on developing a multilateral tax treaty. At a practical level, the use of sub-committees limits understanding of the debates on issues as there were generally no minutes for sub-committee meetings.

³¹ Minutes of the First Plenary Meeting of the Second Session of the Fiscal Committee held at 11am on 22 May 1930 (League of Nations Archives, United Nations Geneva: F/Fiscal/2nd Session/P.V.1.(1)).

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.³² 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 session. Blau resumed as Chairman of the fourth session.³³ However, he did not continue as Chairman of the fifth session and the role was taken on by Bolaffi, from Italy.³⁴ Bolaffi was unable to attend the sixth session and Damste, from the Netherlands, took on the role of Chairman.³⁵ However, Damste was unable to attend the seventh session and Mantzavinis, the Greek representative who was new to the League's work on double taxation and tax evasion, took over as Chairman.³⁶ Mantzavinis was in attendance at the eighth session but the role of Chairman was taken on by Carroll, from the United States of America.³⁷ Carroll continued as Chairman for the ninth session.³⁸ 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 had been different, the Fiscal Committee might 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.³⁹ He also wanted that person to publish informational

³² Minutes of the First Meeting of the Third Session of the Fiscal Committee held at 10:30am on 29 May 1931 (League of Nations Archives, United Nations Geneva: F/Fiscal/3rd Session/P.V.1.(1)).

³³ *Report to the Council on the Fourth Session of the Fiscal Committee held in Geneva from June 15th to 26th, 1933* (League of Nations Archives, United Nations Geneva: C.399.M.204.1933.II.A) (Fourth Session Report).

³⁴ *Report to the Council on the Fifth Session of the Fiscal Committee held in Geneva from June 12th to 17th, 1935* (League of Nations Archives, United Nations Geneva: C.252.M.124.1935.II.A) (Fifth Session Report). By this time, Dorn had resigned from the Fiscal Committee due to Germany's withdrawal from the League: Resignation of Professor Dorn, 14 November 1933 (League of Nations Archives, United Nations Geneva: F/Fiscal/77).

³⁵ *Report to the Council on the Sixth Session of the Fiscal Committee held in Geneva from October 15th to 21st, 1936* (League of Nations Archives, United Nations Geneva: C.450.M.266.1936.II.A) (Sixth Session Report).

³⁶ *Report to the Council on the Seventh Session of the Fiscal Committee held in Geneva from October 11th to 16th, 1937* (League of Nations Archives, United Nations Geneva: C.490.M.331.1937.II.A) (Seventh Session Report).

³⁷ *Report to the Council on the Work of the Eighth Session of the Fiscal Committee held in Geneva from October 17th to 20th, 1938* (League of Nations Archives, United Nations Geneva: C.384.M.229.1938.II.A) (Eighth Session Report).

³⁸ *Report to the Council on the Work of the Ninth Session of the Fiscal Committee held in Geneva from June 12th to 21st, 1939* (League of Nations Archives, United Nations Geneva: C.181.M.110.1939.II.A) (Ninth Session Report).

³⁹ Letter from Mitchell B Carroll to J van Walré de Bordes (Secretariat, League of Nations) dated 26 Feb 1931 (League of Nations Archives, United Nations Geneva: Box R 2934).

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 (Secretariat) responded that the work suggested by Carroll could not be done by the League as it was contrary to the wishes of various Governments.⁴⁰ De Bordes further noted that such work could be done by the International Chamber of Commerce (ICC) and suggested that Carroll refer the person to the ICC to be employed for this role.⁴¹ Carroll became president of the International Fiscal Association (IFA) in 1939, the same time he was Chairman of the Fiscal Committee.⁴² However, the IFA is an independent organisation not a business lobby like the ICC.

Involvement of the ICC

The ICC was more influential in the Fiscal Committee's work than it had been earlier. As discussed elsewhere, the ICC was not influential in the development of the 1928 model tax conventions.⁴³ This was in part because ICC representatives were not involved in the development of the 1925 Report, upon which the 1928 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.⁴⁴ The ICC representative, Julliard, drafted text which was discussed and voted upon by the Fiscal Committee, a far

⁴⁰ Letter from J van Walré de Bordes (Secretariat, League of Nations) to Mitchell B Carroll dated 9 March 1931 (League of Nations Archives, United Nations Geneva: Box R 2934).

⁴¹ 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 (League of Nations Archives, United Nations Geneva: Box R 2934).

⁴² M Carroll, 'IFA's Growth with International Tax Law' (1971) 5(3) *The International Lawyer* 558, 559.

⁴³ Jogarajan (2018), above n 4, 90–97.

⁴⁴ 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 16. 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)).

greater level of involvement than earlier.⁴⁵ The ICC was also instrumental in the drafting of the 1933 Carroll Report.⁴⁶ Carroll considered the 1933 Report 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.⁴⁷ It was considered important to maintain this ‘nuance’ and not put the ICC ‘on exactly the same footing’ as the Fiscal Committee.

WORK OF THE FISCAL COMMITTEE

In the decade between 1929 and 1939, the Fiscal Committee held nine sessions covering a range of issues.⁴⁸ This section discusses the work undertaken by the Fiscal Committee in those nine sessions.⁴⁹ The purpose of this review is to demonstrate that the Fiscal Committee undertook a wide variety of work during this decade and was frequently responding to additional issues referred to it by the League Assembly or other areas of the League. As such, it did not have the singular focus of developing a multilateral treaty, as had been the case previously in developing the 1928 Models.

Principles of Avoiding Double Taxation on Authors’ and Inventors’ Rights

This issue was referred to the Fiscal Committee by the 1928 Experts and was one of the first issues discussed at length by the Committee.⁵⁰ There was some initial disagreement between the members as to whether there was a necessity for them to study this question.⁵¹ Some members thought that such income was already captured by either Article 5 of Draft Ia on ‘industrial, commercial or agricultural

⁴⁵ Minutes of the Ninth Meeting of the First Session of the Fiscal Committee held at 10am on 25 October 1929 (League of Nations Archives, United Nations Geneva: F/Fiscal/1st Session/P.V.9.(1)).

⁴⁶ M Carroll, *Taxation of Foreign and National Enterprises: Volume IV – Methods of Allocating Taxable Income* (Geneva, League of Nations, 1933). The first three volumes contained studies of the tax systems in various jurisdictions and their methods of allocating profits of enterprises operating in more than one country. The fifth volume, authored by R Jones, examined allocation accounting for the taxable income of industrial enterprises.

⁴⁷ Letter from J van Walré de Bordes (Secretariat, League of Nations) to Mitchell B Carroll dated 6 March 1931 (League of Nations Archives, United Nations Geneva: Box R 2934).

⁴⁸ The sessions were held as follows: 1st: 17–26 October 1929, 2nd: 22–31 May 1930, 3rd: 29 May–6 June 1931, 4th: 15–26 June 1933, 5th: 12–17 June 1935, 6th: 15–21 October 1936, 7th: 11–16 October 1937, 8th: 17–20 October 1938, 9th: 12–21 June 1939.

⁴⁹ 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 5, and are not discussed in this chapter.

⁵⁰ Fiscal Committee, *Report to the Council on the Work of the First Session of the Committee held in Geneva from October 17th to 26th, 1929* (League of Nations Archives, United Nations Geneva: C.516.M.175) 3 (First Session Report).

⁵¹ Minutes of the First Meeting of the First Session of the Fiscal Committee, above n 16.

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.⁵² Based on the responses, the Committee developed the following principles:⁵³

- Fees collected by the author or inventor themselves should 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.
- Fees collected by the heirs or assigns (legatees, donees, etc) of the author or inventor 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.
- Authors' or patents' fees collected by grantees should be viewed similarly to industrial or commercial income and therefore subject to the rules regarding the taxation of income of undertakings operating in more than one country.
- Authors' or inventors' fees collected by persons or bodies (authors' societies, inventors' societies, etc) specially entrusted with the collection of such income should be taxed where the business is carried on.

The principles were re-examined at the next session and accepted without amendment.⁵⁴ They also received the ICC's approval.⁵⁵

Definition of Autonomous Agents and Permanent Establishment

In addition to the issues referred to the Fiscal Committee by the 1928 Experts, the Committee also decided to study the definitions of the terms 'autonomous

⁵² Minutes of the Fifth Meeting of the First Session of the Fiscal Committee held on 22 October 1929 (League of Nations Archives, United Nations Geneva: F/Fiscal/1st Session/P.V.5).

⁵³ Fiscal Committee, *Report to the Council on the Work of the Second Session of the Committee held in Geneva from May 22nd to 31st, 1930* (League of Nations Archives, United Nations Geneva: C.340.M.140) 6 (Second Session Report).

⁵⁴ Fiscal Committee, *Report to the Council on the Work of the Third Session of the Committee held in Geneva from May 29th to June 6th, 1931* (League of Nations Archives, United Nations Geneva: C.415.M.171) 7 (Third Session Report).

⁵⁵ *ibid.* For a fuller discussion of these principles and their adoption in treaties, see: R Vann, 'The History of Royalties in Tax Treaties: 1921–61: Why?' in J Avery Jones et al (eds), *Comparative Perspectives on Revenue Law: Essays in Honour of John Tiley* (Cambridge, Cambridge University Press, 2008) 168.

agent' and 'permanent establishment'.⁵⁶ The Fiscal Committee thought that universally recognised definitions of these terms would facilitate the application of the rules in the Model Conventions. Upon consideration of the existing rules in different countries on this issue, the Committee adopted the following text to be used by countries as the basis for concluding future agreements:⁵⁷

In its endeavour to determine the principles which might be adopted as a guide in defining the terms 'autonomous agent' ['agent' is employed in the broad commercial sense rather than in the strict legal sense] and 'permanent establishment', the Committee found that four criteria were employed in different countries.

(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.

There 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 a 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;

⁵⁶First Session Report, above n 50, 3.

⁵⁷Second Session Report, above n 53, 4. The draft text developed during the first session included an accompanying commentary: First Session Report, above n 50, 4. This is not included in the final text.

- 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 (*commissionaire*) 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 finalised this text, the Committee also examined clause 16 of the Finance Bill 1930, which had been brought to the Committee's attention by the British representative, Thompson.⁵⁸ The Committee noted that the text adopted by the Committee did not differ materially from the British legislation and the Committee hoped that the adopted text would facilitate the conclusion of more international agreements. The Committee also received observations from the ICC and the Hague Industrial Council.⁵⁹ The observations indicated that some countries may also exempt business done by agents with limited powers, not just independent agents. However, the Committee decided that these observations did not warrant modifications to the above text.⁶⁰

⁵⁸ Second Session Report, above n 53, 4, 10. Broadly, the clause provided for the relief of double taxation arising from the sale of goods through an agent in the United Kingdom or an agent in another country or British dominion. The provision retained the United Kingdom's right to tax profits arising from the sale of goods from a stock in the United Kingdom, profits accruing to a person resident in the United Kingdom, and profits accruing to a non-resident from the sale of goods effected in the United Kingdom through any branch or management in the United Kingdom or through any agency in the United Kingdom where the agent has and habitually exercises a general authority to negotiate and conclude contracts.

⁵⁹ Third Session Report, above n 54, 7.

⁶⁰ *ibid.* For discussion of the Committee's text on autonomous agents and permanent establishments, see: D Ward and J Avery Jones, 'Agents as Permanent Establishments under the OECD Model Tax Convention' [1993] *British Tax Review* 341, 356–59; R Vann, 'Travellers, Tax Policy and Agency Permanent Establishments' [2010] *British Tax Review* 538, 541–44; J Avery Jones and J Lüdicke, 'The Origins of Article 5(5) and 5(6) of the OECD Model' (2014) *World Tax Journal* 212–13, 227–29.

Taxation of Foreign Motor Vehicles

This issue was referred to the Fiscal Committee by the League's Permanent Committee on Road Traffic.⁶¹ 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 fewer than 90 days.⁶² The treaty came into force on 9 May 1933 and was ratified by more than 20 countries.⁶³

Apportionment of Profits or Capital of Undertakings Operating in Several Countries

This issue was referred to the Fiscal Committee by the 1928 Experts.⁶⁴ Adams, the American representative, was particularly keen for the issue to be examined by the Fiscal Committee.⁶⁵ He considered this the single most important issue in addressing international double taxation, based on his experience with interstate businesses in the US and the difficulties in taxing those businesses. The Committee initially sent a questionnaire to all full and corresponding members to study the question in more detail.⁶⁶ The Committee also invited the ICC to be involved in this study and to suggest the best method of apportionment. The Committee received replies to their questionnaire from approximately 20 countries, as well as the ICC's conclusions. 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.⁶⁷ The grant of US\$90,000 had been secured by Adams for this purpose.⁶⁸ The funds were used to employ a team of

⁶¹ First Session Report, above n 50, 7.

⁶² Convention on the Taxation of Foreign Motor Vehicles (signed 30 March 1931, entered into force 9 May 1933) 138 LNTS 149. Depository functions for the treaty were taken over by the Secretary-General of the United Nations.

⁶³ A subsequent treaty was drafted by the Inland Transport Committee of the United Nations Economic Commission for Europe: Convention on the Taxation of Road Vehicles for Private Use in International Traffic (adopted 18 May 1956, entered into force 18 August 1959) 339 UNTS 3. Under Art 4, countries which sign the later treaty are taken to have automatically denounced the earlier treaty.

⁶⁴ First Session Report, above n 50, 3.

⁶⁵ Minutes of the First Meeting of the First Session of the Fiscal Committee, above n 16.

⁶⁶ Second Session Report, above n 53, 5.

⁶⁷ *ibid.*, 7.

⁶⁸ Approximately US\$1.5 million today. A further US\$50,000 (approximately US\$1 million today) was provided by the Rockefeller Foundation in 1933 to enable the completion of this work: Fourth Session Report, above n 33, 1.

specialists, headed by Carroll,⁶⁹ to study various countries' laws and administrative practices in relation to double taxation as well as accounting methods to determine taxable profits. The purpose of the study was to ascertain a method which would be fair and reasonable for the taxpayer and prevent international double taxation. In particular, the study would examine when taxable profits are computed based on separate accounts, when empirical methods are employed to obtain an approximate estimate of such profits, and when a system of fractional apportionment is employed. This work resulted in the publication of the 1933 Report.⁷⁰ Based on the 1933 Report, the relevant sub-committee developed the Draft Convention for the Allocation of Business Income, 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.⁷¹

Thirty-three governments provided comments on the Draft Convention.⁷² Based on the comments, the Committee decided 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 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 circulated to all governments and used as a model in concluding bilateral treaties. The Committee justified this approach by noting that, at that time (1935), there were 140 double tax agreements in existence, 60 of which had been concluded since 1929 (ie since the publication of the 1928 Models).⁷³

Reciprocity and the Most-Favoured-Nation Clause

This issue was also referred to the Fiscal Committee by the 1928 Experts.⁷⁴ 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.⁷⁵ This was because double tax agreements were concluded on the basis of reciprocity and the application of the most-favoured-nation clause

⁶⁹ Carroll personally visited 27 countries in undertaking this study.

⁷⁰ Above n 46.

⁷¹ Fourth Session Report, above n 33, 1–2. The sub-committee met in New York, at the invitation of the American Section of the ICC. The extent of the ICC's involvement in developing the Draft Convention is unclear.

⁷² Fifth Session Report, above n 34, 3.

⁷³ *ibid* 4. For discussion of the 1933 Report and Draft Convention, see R Vann, 'Tax Treaties: The Secret Agent's Secrets' [2006] *British Tax Review* 345, 361–70.

⁷⁴ First Session Report, above n 50, 6.

⁷⁵ Second Session Report, above n 53, 7.

to citizens of a country which had not concluded a double tax agreement would be inequitable and go against the spirit of the clause.

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.⁷⁶ In considering this question initially the 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 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 taxation of instruments of international commerce (bills of exchange, promissory notes, cheques, bills of lading, etc) was raised by the ICC again at the International Conference for the Unification of Laws on Bills of Exchange, Promissory Notes and Cheques.⁷⁷ The ICC recommended that taxes on such instruments should be collected in one country, either the issuing country or that of performance (payment in the case of bills of exchange and cheques and destination in the case of bills of lading). The ICC also contemplated that apportionment or the allocation of charges on a fixed basis could be considered in particular cases. The Fiscal Committee decided to study whether taxes on such instruments were an impediment to the free operation of commercial exchanges and developed a questionnaire in this regard which was sent to all regular and corresponding members.⁷⁸

In relation to double taxation and the turnover tax, the Fiscal Committee decided that the matter depended on whether the turnover tax was imposed directly on the income of the taxpayer or on the movement of goods or capital. The Committee decided to investigate the matter further and developed a questionnaire to be sent to all regular and corresponding members.⁷⁹ There is no record of the Committee revisiting this issue.

Tax Evasion

On 9 October 1936, the Assembly of the League of Nations adopted the following resolution:⁸⁰

The Assembly,

Considering that efforts to reduce the obstacle to the international circulation of capital must not have the effect of increasing fiscal fraud;

⁷⁶ First Session Report, above n 50, 6.

⁷⁷ Third Session Report, above n 54, 6.

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ Sixth Session Report, above n 35, 1.

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.⁸¹ In both cases, tax evasion was enabled by holders of foreign securities cashing the income from those securities in a country other than their country of residence. First, this avoided 'compensatory' taxes imposed by some countries on income from capital invested by their nationals in foreign enterprises. Second, it reduced 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:⁸²

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,⁸³ the Fiscal Committee noted that the proposed solution was only achievable if a general agreement was reached by a large number of countries.⁸⁴ If only a small number of countries concluded such

⁸¹ *ibid.*, 2–3.

⁸² *ibid.*, 3.

⁸³ 1925 Report, above n 23, 34.

⁸⁴ Sixth Session Report, above n 35, 4.

an agreement, it would prove more dangerous than effective in addressing tax evasion. The Committee suggested that the Council should 'ascertain the prospects of reaching, if not a general agreement, at all events one that would extend to a considerable number of States'. The Committee's report was sent to 61 countries, both members and non-members of the League.⁸⁵ 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. As the conclusion of a multilateral agreement on tax evasion seemed unlikely, the Committee decided that improvement could be achieved by facilitating information exchange between countries. To this end, 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.⁸⁶ 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.

Principles of Taxation

On 29 September 1938, the League Assembly 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'.⁸⁷ Again, the Fiscal Committee

⁸⁵ Seventh Session Report, above n 36, 2.

⁸⁶ Eighth Session Report, above n 37, 2.

⁸⁷ *ibid.*

immediately took on the Assembly's invitation and most of the Committee's eighth and ninth sessions were spent on this issue. The Committee determined that their examination would be focused on the selection of sources of tax revenue, administrative methods for determining the bases of taxation, methods of collection, taxpayers' safeguards and right of appeal, and how the authorities responsible for the assessment and collection of taxes should be organised.⁸⁸ The Secretariat prepared a comprehensive report which was commended by the Committee and distributed to governments.⁸⁹

Customs Duties and Fiscal Charges Applicable to Newspapers

The Fiscal Committee was 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.⁹⁰ The Committee agreed to this request. The Joint Committee found that the available material was inadequate and developed a questionnaire which was sent to the governments invited to the European Conference on the Transport of Newspapers and Periodicals as well as all non-European regular and corresponding members of the Fiscal Committee.⁹¹ The Committee did not revisit this issue.

Draft Convention on the Treatment of Foreigners

This matter was referred to the Fiscal Committee by the League Council which asked the Committee to send two representatives to the International Conference for the Conclusion of a Convention on the Treatment of Foreigners.⁹² The tax clauses were of a general nature (equality of treatment for foreigners and of the goods of the contracting partners) and measures to prevent double taxation. With regard to the latter, the Fiscal Committee thought that, as this related to the fundamental question of the taxation of foreign branches, upon which no agreement had been reached, it was impractical to include such measures in the Draft Convention.⁹³

⁸⁸ *ibid.*

⁸⁹ Ninth Session Report, above n 38, 2.

⁹⁰ Second Session Report, above n 53, 9.

⁹¹ Third Session Report, above n 54, 7.

⁹² First Session Report, above n 50, 8.

⁹³ *ibid.* The Draft Convention was never finalised for reasons discussed in M Dugny, 'Writing Multilateral Trade Rules in the League of Nations' (2021) 30 *Contemporary European History* 60, 60–75.

Study of Tax Systems and Tax Concepts

At its fourth session, the Fiscal Committee decided to undertake a detailed study of tax systems with the aim of identifying general trends and potentially reaching consensus on terms such as gross income, net income, expenses, general overhead, etc.⁹⁴ It was thought that the vagueness of tax systems was the main reason why enterprises were uncertain when operating in multiple jurisdictions. The 1933 Report had demonstrated the usefulness of a coordinated comparative study. The study of tax systems was also funded by the Rockefeller Foundation and the tax systems of 14 countries were studied by economists.⁹⁵ A small group of economists and public finance experts from those countries were then asked to evaluate the country studies and provide an overall report. The Committee did not return to this issue.

The Fiscal Committee also undertook to study concepts such as business income, domicile, and residence.⁹⁶ The laws of 13 representative countries were examined.⁹⁷ The Secretariat was asked to present the results as a comparative survey.⁹⁸ However, the Committee subsequently decided to abandon this study given it was undertaking the more detailed study of the principles of taxation (mentioned above).⁹⁹

Taxation of Subsidiaries

The Fiscal Committee also decided to study the following resolution from the ICC's Amsterdam Congress held in July 1929 – 'The fact of an undertaking having business relations with a foreign country through a local company holding some or all of the shares does not imply that the undertaking has a permanent establishment in that country.'¹⁰⁰ After examining the question in detail, the Fiscal Committee decided that, although the question was one of great importance, it only affected a small number of cases. As such, the question was left for consideration until after the Committee had received responses to its questionnaire regarding the distribution of profits. The Committee did not separately consider this question again.

⁹⁴ Fourth Session Report, above n 33, 3.

⁹⁵ Seventh Session Report, above n 36, 5. The countries studied were Argentina, Austria, Belgium, Bulgaria, Estonia, France, Greece, Hungary, Netherlands, New Zealand, Peru, Poland, Sweden, and United Kingdom.

⁹⁶ Sixth Session Report, above n 35, 6.

⁹⁷ The countries studied were Austria, Belgium, Danzig, Denmark, France, Greece, Hungary, Italy, Netherlands, Sweden, Switzerland, United Kingdom, and United States of America.

⁹⁸ Seventh Session Report, above n 36, 5.

⁹⁹ Eighth Session Report, above n 37, 3.

¹⁰⁰ First Session Report, above n 50, 5.

Measures to avoid Double Taxation of International Trusts and Holding Companies

This issue was referred to the Fiscal Committee by the 1928 Experts.¹⁰¹ Consideration of this issue was initially deferred until other questions were investigated but the Committee did not return to the matter.

Thompson's Resolution

Prior to the Fiscal Committee's second session, Thompson, the British representative, presented the following resolution for consideration by the Fiscal Committee:¹⁰²

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 and Thompson was asked to provide a written statement of his arguments.¹⁰³ There is no record of Thompson providing a written statement and the issue was not discussed further.¹⁰⁴

Review of Treaties and Legislation

Finally, in addition to the specific issues discussed above, the Fiscal Committee also reviewed any recently concluded tax treaties or legislative reform on double taxation and tax evasion at all of its sessions. It was considered necessary for the 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 treaties and legislative measures to address double taxation and tax evasion.¹⁰⁵ Comments on the review are noted in the Committee's reports but a separate document with this information, as suggested by the 1928 Experts, was not produced.

¹⁰¹ First Session Report, above n 50, 3.

¹⁰² Second Session Report, above n 53, 9.

¹⁰³ Third Session Report, above n 54, 8.

¹⁰⁴ J Avery Jones, 'The History of the United Kingdom's First Comprehensive Double Taxation Agreement' in J Tiley (ed), *Studies in the History of Tax Law*, vol 3 (Oxford, Hart Publishing, 2009) 230–31.

¹⁰⁵ The Fiscal Committee compared any recently concluded treaties to the 1928 Models.

DEVELOPMENT OF A MULTILATERAL CONVENTION
ON DOUBLE TAXATION

As is apparent from the preceding section, the Fiscal Committee addressed a wide variety of issues during the 1930s. This section examines the Committee's efforts to develop a multilateral convention on double taxation. 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.¹⁰⁶ The ICC had also adopted the following resolution at its Amsterdam Congress in July 1929:¹⁰⁷

The International Chamber of Commerce considers that it would be highly desirable for an international conference to be convened as soon as possible, consisting of: (a) Treasury officials, and (b) representative business men, appointed by the International Chamber of Commerce, for the purpose of unifying as far as possible the systems applied for the abolition of double taxation and preparing a multilateral convention for this purpose.

The ICC's resolution was noted by the Fiscal Committee and the Committee unanimously agreed that bilateral conventions were only a partial solution to the problem of double taxation.¹⁰⁸ Adams, the American representative, was a strong advocate for the development of a multilateral convention.¹⁰⁹ 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 government interest in the Committee's work and progress the movement against double taxation. In his experience, the American Government was indifferent to the issue not because of opposition to double tax agreements but due to apathy.

The Fiscal Committee agreed on the following four proposals and the relevant sub-committee was tasked with developing a draft convention:¹¹⁰

1. That the following classes of income shall be taxable only in the State of fiscal domicile of the recipient or creditor of such income:
 - (a) Annuities;
 - (b) Authors' royalties or rights;
 - (c) Interest on (public?) debt (except from mortgages) issued after a future date to be agreed on;
 - (d) Wages of workers living on one side of a frontier and working on the other.

¹⁰⁶ 1928 Report, above n 1, 5.

¹⁰⁷ First Session Report, above n 50, 6.

¹⁰⁸ *Ibid.*

¹⁰⁹ Minutes of the First Meeting of the First Session of the Fiscal Committee, above n 16.

¹¹⁰ Second Session Report, above n 53, 8.

2. That salaries of officials and public employees who are serving abroad and public pensions shall be taxable only in the State which pays such salaries or pensions.
3. Immovable property (land and houses) shall be taxable only in the country in which they are situated.
4. The profit derived by a company from the operation of industrial, commercial or agricultural undertakings shall not be taxable in a country other than that in which the real centre of management of the company is situated unless the company has one or more permanent establishments in such other country.

Branches, mines and oilfields, fixed plants, factories, workshops, agencies, warehouses, offices and depots shall be regarded as permanent establishments. The fact that an undertaking has business dealings with a foreign country through a *bona fide* agent of independent status (broker, commission agent, etc) shall not be held to mean that the undertaking in question has a permanent establishment in that country.

Nevertheless, income from maritime shipping and air navigation concerns shall be taxable only in the State in which the real centre of management is situated.

This is an example where greater progress may have been made if the Fiscal Committee had discussed the issue as a group prior to the relevant sub-committee undertaking the work of drafting a multilateral convention. The Committee spent most of its third session considering the draft multilateral convention presented by the sub-committee.¹¹¹ However, as was the case in 1928, the Committee ended up developing three model drafts conventions again to account for the different situations in countries. The initial draft multilateral treaty prepared by the sub-committee applied to all income taxes, personal or impersonal, and provided for source taxation of income from real estate and mortgages. Income from maritime or air navigation, public loans, life annuities, patent and copyright royalties (unless derived by transferees for consideration or akin to commercial profits in which case they were to be taxed as such) were to be taxed in the domicile country. 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 in the domicile country. However, profits produced by a permanent establishment in another country could be taxed in that country (ie source taxation). The enterprise could request a deduction or partial deduction from the domicile country 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 the fact that the Committee should not specify how the domicile country should give relief to its own nationals or non-national residents in their territory. There were also some objections 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

¹¹¹ Third Session Report, above n 54, 3–5.

navigation, public loans, patent and copyright royalties, annuities, and border workers. Income from 'liberal professions'¹¹² 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. The domicile country could either provide an outright exemption or provide a deduction against its own taxes for amounts taxed at source.

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 (HR 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, life annuities, patent and copyright royalties unless derived by transferees for consideration or akin to commercial profits in which case they were to be taxed as such). These exemptions were conditional upon the presentation of evidence indicating that the income was taxed in the country of tax residence. The residence country was free to provide whatever relief it considered suitable in relation to any source country taxes. The prevailing 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 domicile country 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 decided to provide the drafts to governments for information only.¹¹³

¹¹²This is a civil law concept referring to regulated professions such as doctors, pharmacists, lawyers, dentists, civil engineers, etc.

¹¹³Third Session Report, above n 54, 5.

CONCLUSION

The Fiscal Committee has been described as one of the standing committees of ‘lesser importance’ in the League’s Economic and Financial Organisation.¹¹⁴ 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’.¹¹⁵ Although the Committee did not achieve one of its key tasks, the development of a multilateral double tax treaty, this chapter demonstrates that the Committee nonetheless achieved a lot in the 1930s on a wide variety of issues. In fact, the breadth of that work is arguably one of the reasons why the Committee failed to further advance the adoption of a multilateral double tax treaty. The way the Committee operated also hampered its progress on the issue. However, these two factors are not the only reasons why the conclusion of a multilateral double tax treaty was not realised. As indicated by the preceding section, there were too many differences in country tax systems at the time to achieve agreement on a single multilateral double tax treaty. In fact, with the benefit of almost a century of experience since the Committee’s efforts, the magnitude of difficulty of the Committee’s task is clear. With the exception of a few regional multilateral agreements,¹¹⁶ a broader multilateral double tax agreement is yet to be concluded.¹¹⁷ Double taxation is not alone in this regard and there have been other failed attempts to transfer bilateral treaty rules to a multilateral context.¹¹⁸ However, the Committee’s work enabled these discussions to take place and established a movement towards multilateral tax cooperation which continues today.¹¹⁹

¹¹⁴ P Clavin and JW Wessels, ‘Transnationalism and the League of Nations: Understanding the Work of Its Economic and Financial Organisation’ (2005) 14(4) *Contemporary European History* 465, 474.

¹¹⁵ 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 5.

¹¹⁶ S Jogarajan, ‘A Multilateral Tax Treaty for ASEAN – Lessons from the Andean, Caribbean, Nordic and South Asian Nations’ (2011) 6(1) *Asian Journal of Comparative Law* 1, 9–21.

¹¹⁷ The *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* merely modifies existing bilateral treaties.

¹¹⁸ Dungy, above n 93.

¹¹⁹ The *Convention on Mutual Administrative Assistance in Tax Matters* and the current work on Pillar 1 and Pillar 2 being just two examples.