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and its contribution to the 'League of Nations'**

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**100 years of International Tax Regime. The 'Guiding Spirit' Edwin R. A. Seligman and its contribution to the 'League of Nations'**

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**Bericht von:** Simon Ruettimann, Zürich

International tax rules have taken on a new face in recent years. Companies such as Amazon and Google have been caught in media crossfire for tax avoidance. In 2021, more than 100 countries agreed on the OECD minimum tax of 15 percent. Does this update or change international tax rules? The origins can be traced back to a group of economics professors who met in Geneva in March 1923.<sup>1</sup> They prepared an economic report on international double taxation mandated by the League of Nations. This Seligman Report laid the foundation for rules that later came to be known as the International Tax Regime. The relevance of the League of Nations' contributions to today's International Tax Regime has only recently been rediscovered. Little is known about Edwin R. A. Seligman as the 'guiding spirit'.<sup>2</sup> The aim of the conference in Zurich was to change this by bringing together acclaimed experts from the fields of history, taxation and international relations.

To start off the conference, MARIE-GABRIELLE INEICHEN-FLEISCH (Berne) provided the big picture in international trade coordination, drawing parallels between trade and tax coordination. Building on her experience as the former Swiss State Secretary of Economy and Swiss chief negotiator to the World Trade Organization (WTO), she elaborated on the historical origins of today's multilateral trade agreements and possible future evolutions. The principle of non-discrimination between the parties of multilateral trade agreements was traced back to the Covenant of the League of Nations (1919), where the principle of 'equitable treatment of the commerce of all Members' was first formulated. However, non-discrimination did not become an essential pillar of international trade coordination until the General Agreement on Tariffs and

Trade (GATT, 1947), in which the principle of Most-Favored-Nation (MFN) Treatment plays a central role. The principle, whereby any GATT member is accorded the most favorable tariff and regulatory treatment another member has agreed with any other country (except for free trade agreements), was a main incentive to join the GATT. In eight rounds of trade negotiations until 1994, tariffs were reduced from around 22 percent to under 5 percent (except for agriculture), with an impressive increase of world trade flows. After the foundation of the WTO in 1995, worldwide coordination was deepened, particularly with the extension of multilateral rules to services, intellectual property and non-tariff barriers. However, the Doha round of trade negotiations launched in 2001 was never concluded. Structural reasons were crucial: the 140 WTO members held different interests: developed countries mainly wanting to improve market access, while developing countries insisting on large policy space. The negotiation process is complex, nothing is agreed until everything is agreed. While the WTO is under pressure to remain the authoritative body for regulating international trade, new challenges such as environmental standards and e-commerce are emerging, and regional rulemaking in trade issues becomes more frequent. However, it is unlikely that the WTO will become irrelevant: It still ensures that basic trade rules are applied between its members worldwide.

Closing in on the League of Nations and Seligman, MADELEINE HERREN-OESCH (Basel) expounded the mechanics of technical coordination under the umbrella of the League in the 1920s. She has researched and published extensively on the history of inter-

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<sup>1</sup>Reference for the 1923 Report: The 1923 report: League of Nations' Economic and Financial Commission (1923). Professors Bruins, Einaudi, Seligman and Sir Josiah Stamp, Report on Double Taxation submitted to the Financial Committee Economic and Financial Commission Report by the Experts on Double Taxation, Geneva: League of Nations Document E.F.S.73. F.19, 5 April 1923 (published by the League in English and French).

<sup>2</sup>Adrian Muster as co-organizer of the conference is a Swiss tax lawyer and author of a historical monograph on Edwin R. A. Seligman and the development of the international tax regime in 1923 (in preparation, available at a.muster@adomus-ag.ch).

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national organizations. By applying different analytical scales (institutions, actors and networks), she reveals that the League understood 'technical' coordination as an important governance issue, even though its political mission failed. On an institutional level, a distinction between *cooperation* and *coordination* helps to understand a fundamental problem of the interwar period: the tension between national claims to sovereignty and international economic coordination. A new breed of League civil servants largely confined themselves to *coordination*. This contrasted with the state-based *cooperation*, relying on formal diplomatic contacts and treaties. Cosmopolitans like Seligman overstepped the narrow coordinative structure of the League. With his background and scholarly network, he influenced via informal contacts. A network analysis reveals that the American League servant Arthur Sweetser was one of the best-connected persons in the League – and as a close contact of Seligman's a key player in the dissemination of the report on double taxation. Informal networks are thus to be seen as the dynamic and changing part of international cooperation.

REUVEN AVI-YONAH (Michigan) elaborated on the relevance of the 1923 Seligman Report in light of recent changes in international taxation. He is a leading academic in international tax with broad experience in its history. The International Tax Regime is converging on principles that were fundamentally already laid out in 1923. The division of the taxing rights between source and residence countries has been controversial since the 1920s. The new OECD minimum tax will assign the market jurisdiction – where goods and services are sold or consumed – a taxing right over portions of the profit. These new taxing rights are consistent with the Seligman Report, if proper attention is paid to wealth creation. On the other hand, the OECD minimum tax accepts the single tax principle – the elimination of double taxation or double non-taxation – which was already the basis of the Seligman Report. It implements a minimal corporate tax rate of 15 percent. Moreover, Avi-Yonah reasons that Seligman focused on the practical ability to pay taxation rather than on territorial regimes, with Seligman's views

being strongly influenced by US state practice. He is thus more a popularizer than an innovator of modern tax principles.

To draw parallels to Swiss fiscal history, ANDREAS THIER (Zurich) considered how Swiss Finance Federalism could serve as a reference model for international tax coordination. In Europe, tax law began to evolve from the 12th century onwards and double taxation issues were discussed since the 14th century with regard to the tax liability of strangers (non-citizens). The 1848 Swiss Constitution limited cantonal sovereignty weakly, not explicitly addressing cantonal double taxation. The 1861 Joachim Heitzmann ruling on the right of establishment argued that double taxation was a violation of the equality of Swiss citizens. The 1874 Constitution explicitly disapproved intercantonal double taxation. An impressive case law of the Swiss Federal Supreme Court emerged over time, limiting cantonal sovereignty. Thier has found no evidence as to whether these developments in Switzerland might have directly influenced the League's 1923 report. Yet the Swiss case law since the 1860s shows how closely this evolution is linked to state building and a confederative identity.

LUDOVIC TOURNÈS (Geneva) outlined how the US, not having signed the Versailles treaty, played a central yet unofficial role in the League of Nations. Tournès has intensively researched and published on an Americanization of the League. He advocates viewing the Seligman Report and its dissemination as embedded in a broader structure of American private influence and unofficial US foreign policy. Looking at the League and its 'technical' organizations, he argues that the US was a de-facto member. The unofficial goal for Tournès was to bypass the US Congress and to de-politicize the League to allow for rapprochement with America. US influence came through activities of philanthropic foundations – mainly the Rockefeller foundation – which sponsored 'technical' sections of the League. US foundations also financed research in tax coordination in the 1930s and were involved in constructing the memory of the League (publications). The US thus became an intellectual superpower, even before becoming a military one.

Putting back Seligman at the center of the discussion, AJAY MEHROTRA (Chicago) outlined the influence of Seligman's background on his views of international taxation. Mehrotra is a Professor of Law and affiliated Professor of History, he has researched and published extensively on Seligman. He illustrated how Seligman grew up in an affluent Jewish German American family with a classical education, acquiring a liberal internationalist, cosmopolitan world view early on. Seligman was part of a whole generation of American political economists that studied in Germany. He developed an unrelenting faith in institutions and state-power. Mehrotra considers that Seligman explicitly saw himself as part of a counter-movement to *laissez-faire*. Furthermore, having been trained as a lawyer, he had a good grasp of practical challenges and administrative restraints when it comes to policy implementation. This helps to explain his commitment to the taxation concepts of 'ability to pay' and 'economic allegiance'. Influenced by American progressivism, he held that law crystallizes public opinion and that it is an advocacy. Seligman sees himself more as a scientifically oriented outsider rather than as a political actor, even though he has advised the League and many US organizations. Nevertheless, he was clearly a progressive in the American tradition of the Progressive Era. For him, the activist state played a pivotal role in reigning in the excesses of capitalism; taxation is a political tool here.

MADÉLINE WOKER (Cambridge) researched and published recently on Seligman's international network. She placed Seligman into a wider transnational context, particularly his ties with the history of empires. The recent literature on international tax has a Western-centric perspective, a global history of the spread of ideas about taxes reveals a much richer transnational perspective. Woker analyzed Seligman as an 'initiator of global progressive public finance', and how non-Western students further developed his ideas. His former student B.R. Ambedkar developed Seligman's ideas in India, becoming an important social reformer and political leader. Ambedkar headed the Indian Constitution Drafting Committee. Similarly, Seligman's Chinese students tried

to adapt traditional Chinese fiscal principles to Western standards. Seligman's influence was more direct in countries where American influence was pronounced. For example, this is the case for his work on the Cuban tax system, dubbed „El Plan Seligman“). Seligman embraces the 'civilizing role' of the US as an international power, his work is underpinned by specific Western values.

ANN MUMFORD (London) teaches Tax Law. She has researched and published specifically on Seligman considering him as a pioneer of Fiscal Sociology. Fiscal Sociology as the study of tax collection to reveal fundamental structures of modern societies was initiated by Joseph A. Schumpeter, yet greatly enriched by Seligman, who produced a body of pertinent work disagreeing with Schumpeter on a range of issues. Regarding the impact of the Seligman Report on the UK, Mumford considered the significance of the correspondence held in the British National Archives in London. The British government wanted to know how new international tax obligations would affect domestic taxes, and it also aimed to protect the tax affairs of colonial officials. This correspondence shows that tax considerations mattered at the highest level of UK government.

Closing the conference with a broader perspective, EKKEHART REIMER (Heidelberg) provided an overview of the evolution of the international tax regime. He is a renowned tax lawyer and has done broad historical research. He focusses on relevant epistemic networks of the 20th century, distinguishing three 'learning cycles': mutual interaction between domestic tax law, regional integration via intra-federal rules and, lastly, international tax rules. The domestic tax law of different states has not converged much. However, cross-border taxation rules are similar across countries today. The chronology of double taxation agreements shows a growing treaty density between German-speaking countries after 1870. After 1920, there is a strong increase in the number, by the mid-1930s such agreements connected almost all European countries. In 1963, OECD's Model Tax Convention was issued. After that, there is little change in the text, but many challenges in treaty practice arise. In learning cy-

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cles of regional integration, Reimer observes a shaping of federalist systems by fiscal integration in the 19th century, for instance in the North German Confederation. Yet all learning cycles are markedly shaped by an epistemic network of multidisciplinary migrant scholars. Reimer mentions Seligman, the Italian Benvenuto Griziotti and the Germans Herbert Dorn and Albert Hensel. In recent years, international tax law has largely converged, the OECD minimum tax is an example.

The interdisciplinary and international format of the conference facilitated to light up individual facets of Seligman's person. His work for the League of Nations is little known in America. Seligman was significant not only for public finance, but also for the development of the entire social sciences in the US at the beginning of the 20th century. He was an outstanding international networker whose writings have been translated into many languages.

**Conference overview:**

Marie-Gabrielle Ineichen-Fleisch (Berne): International Economic Coordination – The Big Picture in Trade Coordination

Madeleine Herren-Oesch (Basel): Technical Coordination under the Umbrella of the League of Nations in the 1920s

Avi-Yonah (Michigan): The League of Nations March 1923 Geneva Conference on Double Taxation and Today's Regime of International Taxation

Andreas Thier (Zurich): Swiss Finance Federalism as Potential Reference Model of International Tax Coordination

Ludovic Tournès (Geneva): The League and the United States in the Early 1920s, the role of US foundations

Ajay K. Mehrotra (Chicago): Elements of Seligman's Bio: Seligman and Public Finance at Columbia

Madeline Woker (Cambridge): Edwin R.A. Seligman in an International Context of Public Finance

Ann Mumford (London): (i) A brief look at Seligman as a Pioneer of Fiscal Sociology and (ii) Research Findings on the Implementation

of the Seligman Report in the UK

Ekkehart Reimer (Heidelberg): The Learning Circle: Domestic Tax Law, Regional Integration the International Tax Order

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