

# Global Perspectives of an International Tax Lawyer

**MITCHELL B.  
CARROLL**

**A MEMOIR**

A perceptive,  
informative view  
of the world tax  
situation by  
a former president,  
now honorary  
president, of  
the International  
Fiscal Association

**GLOBAL PERSPECTIVES OF AN  
INTERNATIONAL TAX LAWYER**

Books by Mitchell B. Carroll

*Global Perspectives of an International Tax Lawyer*

*Taxation of Foreign and National Enterprises*

# **GLOBAL PERSPECTIVES OF AN INTERNATIONAL TAX LAWYER**

**MITCHELL B. CARROLL,  
ATTORNEY**

A.B., Johns Hopkins University; License in Law, Law School, University of Paris; Dr. Jur., University of Bonn; D. J. George Washington University; School of Political Sciences, Paris; Academy of International Law, The Hague; French language, Universities of Genoble and Geneva; Spanish, University of Madrid



**Exposition Press  
Hicksville, New York**

To two extraordinary women: my late first wife, Catharine Breen Carroll, who accompanied me on my travels described in this book, and Helen Stone Carroll, my present wife, who is embarking with me on new adventures.

FIRST EDITION

© 1978 by Mitchell B. Carroll

All rights reserved, including the right of reproduction in whole or in part, in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system. No part of this book may be reproduced without permission in writing from the publisher. Inquiries should be addressed to Exposition Press, Inc., 900 South Oyster Bay Road, Hicksville, N.Y. 11801

LIBRARY OF CONGRESS CATALOG CARD NUMBER: 78-59458

ISBN 0-682-49133-0

Printed in the United States of America

# CONTENTS

1. THE AUTHOR'S PREPARATIONS	11
<i>Honorary Citizen of Athens</i>	11
<i>Early Tax Treaties</i>	12
<i>My Education</i>	13
<i>In Paris</i>	15
<i>Gypsies</i>	18
<i>Second Winter in Paris</i>	20
<i>University of Geneva</i>	20
2. BEGINNINGS OF MY WORK ON PREVENTING DOUBLE TAXATION	23
<i>Obtaining My French Licence en Droit</i>	23
<i>Doctor Juris, Bonn, 1923</i>	23
<i>Starting My International Practice in the U.S.</i>	25
<i>Study of British Taxes in 1925</i>	26
<i>Brussels Congress of the International Chamber of         Commerce, 1925</i>	27
3. LEAGUE OF NATIONS WORK TO PREVENT DOUBLE TAXATION	29
<i>Meeting of Technical Experts, London, 1927</i>	30
<i>World Meeting of Governmental Experts, 1928</i>	31
<i>Fiscal Committee Meetings, 1929-1946</i>	33
4. FRENCH CLAIMS VS. U.S. CORPORATIONS —FIRST U.S. TAX TREATY, 1932	35
<i>The Background</i>	35
<i>The Negotiations</i>	38
<i>The Treaty</i>	41
5. LEAGUE OF NATIONS TAX SURVEY AROUND THE WORLD	43
<i>Our Start in London</i>	44

<i>Brief Summary of Findings</i>	46
<i>Wisconsin</i>	47
<i>Canada</i>	48
<i>Massachusetts</i>	49
<i>New York</i>	49
6. A WORLD TAX TOUR	51
<i>The Spanish System of the Cifra Relativa</i>	51
<i>The Situation in Other European Countries</i>	51
<i>Studies in Successive Countries</i>	52
<i>India and Southeast Asia</i>	53
<i>Indonesia</i>	54
<i>Bali</i>	57
<i>Hong Kong</i>	58
<i>Manila, the Philippines</i>	59
<i>Japan</i>	60
<i>Crossing the Pacific</i>	64
<i>Mexico and Cuba</i>	64
<i>Preparation of My Report in New York and Washington</i>	65
7. EUROPEAN DEVELOPMENTS	69
<i>The Drafting of a Model Convention on Allocation in 1933-1935</i>	69
<i>My Appointment as Member of the Fiscal Committee—Election as President, 1938-1946</i>	71
<i>League Fiscal Committee Accomplishments During World War II</i>	71
<i>Latest Features in U.S. Income Tax Treaties with France and Britain</i>	72
Treaty with France	73
Treaty with the U.K.	74
8. BACK IN THE U.S.	77
<i>Saving the Credit for Foreign Taxes</i>	77
<i>Retaliation for Extraterritorial Taxation</i>	79
<i>Consultant for the State Department</i>	80
<i>Pattern of U.S. Income Tax Treaties</i>	80

<b>Contents</b>	<b>7</b>
<i>Elimination of Excess Credits</i>	81
<i>Nonresidents' Taxation—as Enacted in 1936</i>	82
<i>Model Convention 1(b) of 1928; H.R. 10165 of 1929</i>	84
9. THE INTERNATIONAL FISCAL ASSOCIATION	87
<i>Thirty Years of Progress, Plus</i>	88
<i>Annual Prize</i>	89
<i>Digest of IFA's Congresses, 1939-1977</i>	89
10. WARTIME ACTIVITIES	93
<i>The United Nations Conference in San Francisco</i>	93
<i>Negotiated Settlement with Venezuela for U.S. Oil Companies</i>	95
<i>Origin of the Reduced Tax on WHTCs</i>	96
11. POST-WORLD WAR II CONGRESSES OF THE IFA	97
<i>Monte Carlo to Cologne</i>	97
<i>Poems of My Presidency</i>	99
<i>A Miracle at Capernaum</i>	104
<i>Athens to Brussels</i>	105
<i>Washington Congress, 1971; Madrid Congress, 1972</i>	107
<i>Subsequent and Future Congresses</i>	107
<i>An Odyssey</i>	108
12. PRACTICAL PROBLEMS	113
<i>Tax Claim Against a British Company</i>	113
<i>Treaty Prevention of a French Tax on a U.S. Bank's Entire Capital</i>	114
<i>Settling of U.S. Claims vs. a Japanese Company</i>	114
<i>Settling French Tax on U.S. Cable Companies</i>	115
<i>National Foreign Trade Council, Special Counsel, Tax Committee</i>	115
13. LIFESTYLES OVER THE YEARS	117
<i>Oscillating Between New York and Cosmos Hill Farm</i>	117
<i>Life at 120 East End Avenue</i>	117
<i>Vying with Voltaire on Cosmos Hill Farm</i>	120



<i>The Building of Cosmos House</i>	125
<i>The Help Problem</i>	127
<i>Running the Farm</i>	128
<i>Toward New Shores</i>	130
APPENDIX A COMPARISON OF DRAFT CONVENTIONS 1b AND 1c OF 1928	131
<i>Gist of Convention 1b</i>	132
<i>Relief from Double Taxation</i>	133
<i>Gist of 1c</i>	133
APPENDIX B THE WORLD SURVEY OF ALLOCATION METHODS UPDATED	135
<i>Prerequisites for a Regime of Allocation</i>	141
<i>Precepts of Source</i>	141
<i>Subsidiaries Treated as Independent Enterprises</i>	143
<i>Branches Assimilated to Independent Enterprises</i>	143
<i>Dependent Establishments</i>	144
<i>Industrial and Mercantile Enterprises</i>	144
<i>Establishments Productive of Income</i>	145
<i>Selling Establishments</i>	145
<i>Producing Establishments</i>	146
<i>Processing Establishments</i>	146
<i>Assembly Plants</i>	146
<i>Buying Establishments</i>	147
<i>Establishments Buying and Processing</i>	147
<i>Research and Statistical Bureaus, Display Rooms</i>	147
<i>Warehouses</i>	148
<i>Real Center of Management</i>	148
<i>Comparison with the OECD Definition</i>	149
<i>Tax Treaties Supplementary List</i>	150
<i>Notes</i>	151

**GLOBAL PERSPECTIVES OF AN  
INTERNATIONAL TAX LAWYER**



# 1

## THE AUTHOR'S PREPARATIONS

IN TELLING THIS STORY OF THE DEVELOPMENT of international tax law, and my part in it, it is appropriate to go back to the first treaty shown in a collection of treaties compiled by the League of Nations in anticipation of the general meeting of government experts on the prevention of international double taxation, held in Geneva, October 22-31, 1928. The first treaty was a general agreement to prevent double taxation of income and property between Austria-Hungary and Prussia, signed June 21, 1899.

### *Honorary Citizen of Athens*

Shortly before this significant event the author of this book was born, on July 2, 1898. My father was Alexander Mitchell Carroll. After obtaining his A.B. and Ph.D. and receiving a Phi Beta Kappa key, he studied Greek and Latin at the Universities of Berlin and Leipzig. My mother, also a Phi Beta Kappa, earned her A.B. at Wells College. In 1897 and 1898 my parents went on their honeymoon to Athens, Greece, where Dr. Carroll attended the School of Classical Studies. He had been teaching Latin and Greek at Richmond College (now the University of Richmond) and sought to make the subjects more interesting by going to Greece to learn about the life of the people.

While Dr. Carroll was attending his courses, Mrs. Carroll wandered, so to speak, on the violet slopes of Mount Hymettus and visited the Acropolis and the monuments. She admired Greek statuary, like the Hermes of Praxiteles, and, according to the family legends, dreamed of having a firstborn who would look like a Greek god!

Having completed his studies in Athens, Dr. Carroll and his wife returned to Richmond just in time for Mrs. Carroll to go to the hospital. When she anxiously examined her offspring in swaddling clothes, he looked like a miniature of his father. Years later, during a Congress of the International Fiscal Association in Athens in 1962, the author, then President of the Association, was given the medal of Athens. According to the reports of the event in the newspapers, this was tantamount to honorary citizenship of ancient Athens, presumably dating back to the age of Pericles, around 500 B.C. And it was tax-free!

How pleased my parents would have been to know that, after they had assured my birth as a U.S. citizen, this ceremony was reason enough for me to have been regarded, at least sentimentally, as an Athenian!

### *Early Tax Treaties*

The example of the tax treaty between Austria-Hungary and Prussia was followed by numerous pairs of states, mainly in Central Europe. These treaties were for the most part terminated by the outbreak of World War I, and the provisions of the treaty of Versailles.

In 1918, in anticipation of the resumption of international trade and investments following the termination of World War I, the U.S. Congress, at the instance of the Treasury and its economic adviser, Dr. Thomas S. Adams, Professor of Economics at Yale University, had amended the Revenue Act of 1913, which introduced the federal income tax, to provide the credit for foreign taxes. The Congress would not follow the example of various European countries and exempt income attributable to establishments abroad. Instead, Congress decided to maintain the liability of U.S. citizens, resident aliens, and domestic corporations, but recognized that foreign countries had a primordial right to tax income produced at establishments in their territory or from other local sources. It granted a credit for taxes paid in a foreign country, against the U.S. taxpayer's liability on entire net income.

The inaugural meeting at Atlantic City in 1919 of the International Chamber of Commerce (which in 1920 set up its head office in Paris) voted a resolution calling for the elimination of double taxation by the general adoption of this credit for foreign taxes against the taxpayer's home tax.

An International Financial Congress in Brussels in 1920 called on the newly instituted League of Nations in Geneva to undertake elimination of the "evils of double taxation." Promptly the Council of the League asked four of the best-known economists to report on the economic aspects of the problem. In June, 1922, the Council called for a study of double taxation and tax evasion to be made from an administrative and practical viewpoint by a technical committee of top officials in the tax administrations of important European countries, namely, Belgium, Czechoslovakia, France, Italy, The Netherlands, Switzerland, and the United Kingdom. The United States had not joined the League of Nations.

As will be seen, this Committee was enlarged, and, in order to facilitate attendance by representatives of the United States, the Council arranged to hold the meeting in London at the offices of the Board of Inland Revenue in Somerset House. I was designated to attend as technical adviser to Dr. T. S. Adams.\*

### *My Education*

Over the years prior to this happening, I attended primary schools in Washington, D.C. At Western High School I served in the corps of high school cadets and was awarded the citation of "prize inexperienced cadet!" I attended Johns Hopkins University, and, in anticipation of war service, was appointed first lieutenant and battalion adjutant in the ROTC. When war broke out in 1917, I was too young to enlist in the U.S. Army Air Service. I therefore responded to President Wilson's call to

---

\**The International Lawyer*, July, 1967, Vol. 2, No. 4, pp. 696-698.

young men in the East to go west to help harvest the crops. I worked on farms from Enid, Oklahoma, up to Canada west of Winnipeg.

In the fall, on returning to Hopkins, I promptly enlisted in the U.S. Army Air Service and was sent to the ground school at Princeton, New Jersey, and later to Wright Field in Dayton, Ohio. There I learned to fly a Wright Brothers type of plane (with a 90-horsepower engine) known as a "Jenny." Nevertheless, I was classified as a "pursuit pilot" and took my calling so seriously that I anticipated being sent to Germany to fight the great German ace Immelmann. I had read in the newspapers about the famous Immelmann turn. The German pilot would approach the enemy, fire at him, go beyond, zoom upward, and turn to the right or left at the top of the zoom and come down near the enemy. He would then let loose another salvo and pass by.

Trying to imitate a Fokker in a Jenny was bound to be disastrous and, one day at Wright Field, as I was making a zoom and a turn, my engine "conked out" and I fell into a tailspin. I was just coming out of it when I hit the ground. As was customary, I was riding in the back seat and I crashed headfirst through the front seat into the instrument board. When I recovered consciousness some days later, I found I had lost the sight of my right eye. Otherwise, except for a few scratches, I was unhurt. I soon could fly again well enough to earn my flying pay.

Being retired for disability, I was entitled, under the World War I bill of rights, to be rehabilitated with four years of studies. I returned to Hopkins to finish my last two years in one. A traumatic cataract in my right eye had the effect of making me look through a shadow, and I would cover that eye when studying. Some friends at Hopkins were going to Oxford University, England, as Rhodes scholars, but my ambition was to head for Paris to study Roman law, French law, and international law.

After receiving my A.B., I got a job as a "supernumerary" on a freight boat called the *Eastern Light* and embarked for

Le Havre. I ate with the officers and they had a jolly time kidding me. Fortunately the chief engineer befriended me. On arriving at Le Havre, he saw that I got on the train for Paris.

### *In Paris*

I had been advised to stop at the Hotel Lutetia, and visited the Union Universitaire, which helped students. As I was to study international law, I decided to go first to pay my respects to Hugo Grotius, the "father of international law," who was buried at Delft, The Netherlands. My father knew Dr. James Brown Scott, who at the time was adviser to former Secretary of State Elihu Root, the U.S. member of a commission convening in The Hague to frame the protocol of the Permanent Court of International Justice. I visited Dr. Scott, who was staying at the Hotel Oranje in Scheveningen. Mrs. Scott, who was a friend of my mother, offered to take me the next day in their automobile to Delft, where I made my reverences at the tomb of Hugo Grotius.

Dr. Scott made an appointment for me to meet the great Elihu Root. I was ushered into his presence in his sitting room at the Hotel des Indes, The Hague. He smiled pleasantly and asked my intentions. I explained that I had taken a course in international law given by Professor W. W. Willoughby (a former adviser to China) at Johns Hopkins University and wanted to study in Paris at the Law School and the School of Political Sciences. Did he have any suggestions?

"Yes," he said, "you are starting at the wrong end of the meal. You should go to Paris and study first Roman Law and French Law, and, if you have any spare time, then international law."

I must admit that this deflated me somewhat. I thanked him and went to Paris, determined to carry out his suggestion. Had he not been a great Secretary of State and had he not been chosen to represent the United States in organizing the World Court? What better advice could I have?

Back in Paris I checked in at the Union Universitaire, and



took a train to Grenoble to study French at the summer school of the University. I found a student *pension* (boarding house) in a back street and ate with the host, his wife, and other students at a large table in the *salle à manger*. We spoke only French. I soon found that, at the University, in a class of twenty to thirty, mostly Americans and some Dutch and Germans, it was impossible to make much progress.

I read in my guidebook the story of a monk named St. Bruno, who had lived somewhere in that area and wanted to found a monastery. He had had a vision that he should follow a certain star, which stopped moving over a spot called the Grande Chartreuse. There he built a monastery that was given that name. Because it was the time of the harvest full moon, I thought it would be an exciting adventure to hike some sixteen miles from Grenoble to the Grande Chartreuse *au clair de lune*.

None of my fellow students was venturesome enough to go with me. I took a nap after an early dinner and with a stout stick I started off around eleven P.M. It was an unforgettably beautiful promenade—first with the illumination of moonlight and then through darkness. An aged farmer driving his oxen toward me in the dark road was somewhat disturbing. However, I arrived at about six-thirty the next morning at the Hotel St. Bruno. It had been constructed by the monks to house visitors such as their mothers, ex-wives, and sweethearts who came to see them.

I breakfasted on a delicious omelet and bacon. Then I went to the monastery to see how the monks lived—their little sleeping rooms with a straw pallet, a *prie-dieu* for prayers, a *promenoir* to walk up and down in meditation, a garden, and, most important, the distillery, where was made the delectable liqueur, the yellow and green chartreuse.

On arriving back by train in Grenoble I elaborated on my fascinating walk and visit to the monastery, and my fellow students then expressed regret that they had not come along!

Being dissatisfied with my progress in learning to speak French, I decided to take private lessons with a couple, an English schoolteacher and a French priest who had married