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**UNITED STATES FOREIGN FUNDS CONTROL  
IN WORLD WAR II**

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## PREFACE

There has recently come into great use a term which everyone should understand completely, because it is such an important factor in the total program of our national defense effort. This term is foreign funds control. To best comprehend this expression, all one has to do is to translate foreign exchange control into terms of economic defense of the interests of the United States. This control, in effect, subjects to regulation and scrutiny all transactions in which "blocked" countries or their nationals have any type of interest. The control also has those elements of speed and flexibility that make possible the immediate execution of any type of economic program in the furtherance of this Government's foreign policy.

It was at the time of the World War in 1914 that this country, as well as many another country, gained a background, or considerable experience, in the realm of exchange controls. However, particularly during the past decade, there has been greater use of rigorous exchange controls by most nations — and for a wide variety of purposes. Perhaps the most common purposes have been: to conserve foreign exchange for what governments have regarded as necessary imports; to assure that transference of interest and dividends abroad would take place only in accord with public policy; to prevent the export of capital; to increase the gain from trade through the use of bilateral arrangements. But, more recently, exchange controls have developed from necessity, and reluctant countries whose systems lacked such foreign exchange control found that this was to their disadvantage, not only as an important implement of economic warfare, but also as a significant means of protecting the economies of non-combatant countries from the

overwhelming readjustments resulting from the destructive efforts of aggressor nations. And so, in a world disrupted by ruthless and complete exploitation of the vanquished, it appeared that even nations at peace had to marshal their economic powers in order to protect their economies from becoming a benefit to, or a part of, the weapons of the aggressor, and consequently an important instrument in the ultimate disintegration of free and independent countries.

Because of the trend of events, I believe it is quite evident that the action of the United States, in inaugurating a system of exchange control, did not depend entirely upon the classic needs for establishing such controls. The United States is not "foreign exchange poor". On the contrary, we have a plentiful supply of foreign currencies. All nations are more than willing to accept payment in dollars, and the American dollar remains the strongest currency in the world. We are not confronted with a flight of capital, but the opposite of this is perhaps true, inasmuch as when security and safety of capital is in peril, nations of the world seek a refuge and very frequently it is the United States that is chosen as a depository to safeguard these assets. We are not using our freezing control, as some countries have done, to avoid settlement of freely incurred public and private debts, usually of a huge amount, payable in foreign currencies; nor are we employing our freezing control to force other nations into disadvantageous bilateral trade and payment arrangements.

The original purposes of the instituting of foreign funds control by the United States, which was inaugurated in April of 1940, shortly after the invasion of Norway and Denmark by Germany, were largely two-fold. First,

the control was instituted by the President to protect the assets of the invaded countries and their nationals in the United States from seizure by the invading forces. Norway and Denmark had substantial amounts of assets in the United States, which had been placed here out of confidence in our institutions. And so the primary purpose of the control was to prevent the invader from issuing instructions which would make those assets subject to his control.

The second purpose of the control was to protect American institutions, such as banks, from possible conflicting claims based upon instructions from an invaded area. When the Germans had taken over control of the financial institutions of the invaded countries, persons having assets in the United States, had it not been for the freezing control, would have been subjected to all sorts of pressure to force them to give up their dollars to the conquerors. The legal position of the banks honoring such drafts issued under duress would have been somewhat doubtful, and the banks might, under some circumstances, have been forced to restore the funds in question to their rightful owners.

To best exemplify this purpose, the following case may be mentioned: If an American bank in this country received instructions from a bank in Denmark to transfer certain Danish credits to a South American bank, it would do so in the course of its general business practice. And if, at a later date, it was learned that the instructions had been issued to the American bank under duress, the American bank, although acting in good faith, would probably be liable for repayment to the issuing bank for acting under such instructions. On the other hand, if the American bank refused to carry out

instructions from the bank in Denmark, thinking such had been given under duress, when, in fact, they had not, such action might perhaps cause undue hardship and also make the American bank liable in this instance.

Typical of such requests made under duress, according to the New York Times of January 29, 1941, were those that came from individuals in The Netherlands during the latter part of 1940. Requests were great in number concerning detailed statements and data in regard to accounts which were held here for corporations and individuals domiciled in occupied territories. Many of these requests were honored, but soon the Minister of the Netherlands Legation asked bankers, trust companies, etc., to put a stop to this practice. The reason for this petition was due to the fact that in the terms of the Royal Netherlands Decree of May 24, 1940, title to such accounts was vested in the State of the Netherlands by the Royal Netherlands Government, temporarily resident in London and exercising its functions there. In view of the Decree, the Netherlands Government really was the only party entitled to receive such information, but it should be borne in mind that to supply such information to anyone in occupied territory of The Netherlands would be harmful to the true owners of such accounts and might also cause injury to the national interests of the Government of The Netherlands.

Therefore, The Netherlands Government requested that American bankers, etc., abstain from complying with such requests, directing anyone desiring information to the Netherlands Shipping and Trading Committee in New York City.

Similarly, the Free Belgian Government in London requested that any data with respect to Belgian accounts be withheld. Then, to complete the

picture, on February 2, 1940 a decree was instituted to suspend all powers of officers and directors of commercial companies residing in Belgium.

It is of interest, I believe, to point out here that the Chase National Bank of New York made a test case of this particular problem, to determine the responsibility of the bank, and the Supreme Court of New York ruled that any action with regard to Netherlands accounts would be subject to the rules and conditions as set forth in the Royal Netherlands Decree.

So the secondary -- but one of the important -- purposes of the freezing control, as instituted on April 10, 1940, was to protect American institutions from any type of adverse claim.

However, since April of 1940, with the position of the United States gradually changing from that of an indignant neutral to one of active opposition to the Axis, a shift in emphasis has taken place, although the original purposes of the control are still valid and are still given full consideration in the administration of the control. Subsequent to the above mentioned date, the Treasury Department was regulating the amount and type of remittances which could be made to invaded areas. But as certain people found that they were not able to send the amount of money they desired, or to send money for certain purposes, into an invaded area, they asked the Treasury to explain why such restrictions were imposed, when no restrictions had been imposed on the remittance of funds to Germany or Italy. As a result, this situation was remedied when the control was extended to all areas under Axis domination in Europe on June 14, 1941.

From then on, the control obviously became more a weapon of economic defense than a passive instrument of protection to invaded countries and

American banking institutions.

Another sort of Axis economic penetration which the freezing control is alert to prevent is improper investment in American securities. There have been numerous instances where nationals of "blocked" countries have sought to utilize their frozen funds by investing in securities. In many such cases, legitimate investment transactions have been licensed. There have, however, been instances brought to the attention of the Treasury Department where this permission to invest such funds has been abused, and the blocked nationals have attempted so to concentrate their purchases as to enable them to gain control of an enterprise.

In some cases, this is not objectionable, for example, if the national is in the United States, has frankly disclosed his purpose and is not under suspect, if the enterprise is not an important one, or if for other reasons the transaction is not objectionable from the standpoint of defense needs or national policy. In these instances, licenses have been issued permitting the acquisition of control of these enterprises which thereupon become, themselves, blocked nationals.

Freezing control has prevented the Axis countries and their satellites from using the American dollar, and American banking and financial facilities, for commercial and other activities in the United States and in other parts of the world. The American dollar today is the strongest medium in the international exchange market and it is the most sought after in the world for payment for goods and services. Therefore, the subjection to licensing of all dollar transactions in which the Axis countries are directly or indirectly interested has greatly curtailed Axis use throughout the world of

our dollar as a medium of payment.

In contrast to prohibitions, there is one aspect of freezing control upon which comment may be made. That is its usefulness as a mechanism through which we may provide assistance to friendly countries in their own regulation of finance and trade. When freezing control was applied to China, at her own request, this action immeasurably strengthened China's ability to acquire and retain much-needed foreign exchange and to control China's foreign trade. Our coordination of freezing control with exchange and trade regulation by China has reduced evasions of the Chinese control and strengthened China's authority over trade and finance in occupied China and in the international settlements where China would otherwise be largely impotent.

And so, having set down the principal objectives of and reasons for the establishment of the Foreign Funds Control, it is the purpose of this study to discuss herein the development of Foreign Funds Control from its inception; to cover various phases which will, it is hoped, give a better understanding of the work it is doing; to show the main effects of the work of Foreign Funds Control on our nation's economy; to clarify certain phases of its work which perhaps have not been as clear as should be; and to cover the effects on foreign exchange, commerce, industry and finance.

This thesis will cover the scope of the work by Foreign Funds Control up to the date when Japan attacked the United States, on December 7, 1941, and all documents and material will be as issued before that date.

The opinions, interpretations and observations expressed in this thesis, bearing upon the Executive Order and its amendments, are solely those of the

author and in no way are intended to be commentary expressing the position of the Treasury Department in the execution of its duties in the administration of the task delegated to it by the President. In addition, this work is not to be regarded as an official release by Foreign Funds Control, but a factual and unbiased study of the subject.

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**Chapter I**  
**INTRODUCTION**

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## I. INTRODUCTION

### A. Similar Controls in World War I.

The many and complex problems confronting the war effort of the United States today are, in many respects, quite similar to those that came up during World War I, in which the United States also was concerned. Controls by regulation were instituted in the following basic economic elements: (a) facilities, (b) materials, (c) fuel, (d) transportation, (e) labor, and (f) capital<sup>1</sup>, which came under the direction of several agencies whose functions were coordinated with the functions of the War Industries Board. This most detailed work was ably accomplished by a specific method of control, that is, through a preference list, and priority on this list was the key to the six above-mentioned elements. At the outset of the present war, these same basic elements confronted the first main war agency set up, the Office of Emergency Management, and specific delegation of its powers had to be made in order that all fields should be adequately covered. The chief object of many types of control in World War I, at that time charged to the War Industries Board, was, namely, to procure an adequate flow of materials to the two principal war-making agencies of the Government, specifically, the Army and the Navy, and for the military needs of our Allies in the war. The Board regulated all, and controlled certain, industries of first-rate war importance; it fixed prices through a price-fixing committee; it created new and converted old facilities; it cleared national business requirements and it took steps in the direction of conservation of materials, foodstuffs, staples, etc., which were necessary to bridge the gap

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<sup>1</sup> Bernard M. Baruch, American Industry in the War. (New York: Prentice Hall, 1941), p. 5.

between the extraordinary demand and the available supply. The food and fuel elements were separately administered, but the Board maintained jurisdiction over them for there was a basic relationship between food and fuel and the various other materials required for which the War Industries Board was charged to provide.

When it was seen that the United States would inevitably be drawn into the present conflict, the Office of Emergency Management was charged with instituting a pattern similar to that of the War Industries Board during the last war, in order to get started on a war program. But, with regard to the financial aspect in this war, control of finance and related functions had already been delegated to the Treasury Department prior to the inception of the Office of Emergency Management. This is unique because under the War Industries Board finance was an integral part of the work of the Board. The reason for this division, however, is due to the fact that the complexity of conditions was greater as this present war came along. Thus this type of control had its place before there was created the Office of Emergency Management. However, in order to synchronize the economic resources of the country, the liaison officers of various separate agencies have coordinated their efforts so as to bring about the desired policy as stated by the President.

Very important controls, which were quite similar to those set up by the Foreign Funds Control in this war, were vested in the War Trade Board,<sup>2</sup> which was created to control the foreign commerce of the United States during World War I.<sup>3</sup> The scope of its work most similar to the execution of Foreign

<sup>2</sup> Similarity of controls with present restrictions are pointed out on pages 35, 36, 37, 38, and 39, where coordinated functions are discussed.

<sup>3</sup> Report of the War Trade Board. (Washington: Government Printing Office, 1920), p. 11.

Funds Control was the financial and commercial isolation of the enemy, handled by its Bureau of Enemy Trade.

The Bureau of Enemy Trade received applications for and issued, or refused to issue, licenses involving trading with, or on behalf of, or for the benefit of an enemy or ally of enemy, within the meaning of the terms as set forth in the Trading With The Enemy Act, so far as such transactions were within the jurisdiction of the War Trade Board. Control was administered by license of the continued conduct of business in the United States by enemy (national) concerns. To facilitate the handling of such work, the Bureau of Enemy Trade was subdivided into various units, each handling a particular class of applications or performing certain specified work, as follows: (1) exports and imports, (2) financial and commercial transactions, (3) patents, (4) relief, transmission of funds, and communications, (5) tangible assets in America, and (6) New York Office.<sup>4</sup> This latter division was created primarily for the purpose of furnishing prompt and ready assistance and advice to the bankers, merchants and businessmen of New York who were so greatly concerned by the Trading With The Enemy Act.

#### B. Events and Conditions Leading to the Present Controls.

The control of finance is an ancient prerogative of the sovereign. In times long past and in the Middle Ages, it manifested itself purely by control of coinage and seigniorage. With the increasing development of international trade and banking, however, the control of credit became an important collateral exercise of sovereignty. These important functions

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<sup>4</sup> *Ibid.*, p. 347.

were recognized by the framers of the Constitution of the United States, who vested the right to regulate banking and credit in the legislative branch of the Federal Government.

The laissez faire trends of the nineteenth century had allowed a faster development of banking than in the instruments of control of banking. In consequence, the century that passed between the Congress of Vienna and the outbreak of the first World War brought forth no important new means of control of international banking, which had vastly increased in scope and importance. The change to a policy of restrictions and prohibitions, which set in shortly after 1914, has brought about a new system of banking the world over and has practically harnessed a hundred twenty-five years of international banking development with the use of legislative techniques during a quarter of a century.

The starting point in this race for national control of international banking resources was sounded on May 11, 1931,<sup>5</sup> when the voice of a radio announcer of a station in Vienna notified the world that the largest bank of Austria, the Kreditanstalt, had asked assistance from the Austrian Government since its mother institution, the French House of Rothschild, was prevented from going to its aid by the French Government in retaliation for Austria's agreement to enter a customs union with Germany. Here was a signal event: the financial collapse of a whole banking world (since the Kreditanstalt represented the banking resources of Central Europe) brought about by a purely political motive. The countries whose economies were so gravely affected by this political development had, however, in the grave crisis, concentrated upon the economic effects of the blow, and to

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<sup>5</sup> Marcus Nadler and Jules I. Rogan, *The Banking Crisis*. (New York: Dodd, Mead & Co., 1933), pp. 89-90.

protect their internal financial structure, had, one by one, adopted measures to safeguard their resources by foreign exchange restrictions.

First, of course, it was the Government of Austria which had to forbid remittances to foreign countries, withdrawals by foreign creditors and bank depositors, and importations of goods from abroad, except by permission of its central banking authorities. Consequently, during the hectic Summer of 1931, many of the Southeastern European countries saw that in order to protect their currency it was necessary to institute similar exchange control measures. This action was finally climaxed by the dramatic failure of the large German bank, the Danabank, which brought forth a moratorium by Germany on July 13, 1931. Because of the large short-term credits extended by English banks to the Continent, particularly to Germany, which thus became "frozen", England was forced off the gold standard in the Fall of 1931, thereafter followed by the Dominions and the Scandinavian Countries. However, while the former retained free banking, although on a variable currency basis, Japan and the South American countries that followed them off the gold standard had instituted rigid control of international payments, often of the rationing type, so as to protect the gold and foreign exchange resources of their own central banks.

Thus the run on the United States banking system got under way. By the Spring of 1933, the drain of foreign, mainly French, withdrawals of gold, and the domestic banking panic, proved too much, and on the morning of March 4, 1933, the most powerful banks of the world, the banks of the United States, were compelled to remain closed. And before they reopened the United States had suspended specie payments, had nationalized gold,

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and had established a control of gold and certain foreign exchange movements to protect its gold position.

A relative period of financial peace between the panic of 1933 (in the United States) and the outbreak in 1939 of the present conflict was marked by many devaluations and a breakdown of international financial and political stability. Yet there was relatively little change in foreign exchange regulations anywhere, except for gradual relaxation by the United States toward a policy of control over foreign exchange. However, with the advent of total war, there were brought forth new regulations on the part of the participants who theretofore had had no regulation, or if any, very little, at the outset, namely, the United States, England, France, etc. With them control had a purely political purpose, specifically, the service of their war aims.

The United States undertook the control of foreign funds reluctantly. Our maintenance of a free exchange market was the logical counterpart of our nominal free trade policy (although we had a high tariff), under the banner of which the government crusaded vigorously against the growing number of exchange restrictions imposed by other countries. Even apart from ideological considerations, we had an understandable distaste for foreign controls which operated as moratoria on the huge volume of payments accruing to this country both on our trade and on our investments. Moreover, the United States was not touched by either the political hopes or financial despairs which tempted so many other countries to adopt controls. The resulting freedom and stability of our markets offered an irresistible attraction of profitable employment or asylum to nervous European capital.

But as Norway, Denmark and later Belgium and Holland and France came

under the domination of the Axis, the United States finally had to do something which would not be of benefit to these marauders and so "freeze" the assets of these countries as they fell, thereby protecting them from going into the hands of the invader. To be specific, however, the Executive Order thus issued for this purpose did not exactly freeze Norwegian and Danish funds (these being the first countries to come under the domination of the invaders) to lie dormant, but rather subjected them to license by the Treasury Department. Therefore, when this particular type of exchange control was first instituted, it was regarded by the United States as primarily a means of insuring that Danish and Norwegian-owned property in this country would not fall into the hands of German leaders.

Not only was it necessary to protect property in this country belonging to the invaded areas, but it was also necessary to prevent the Axis powers from realizing the full benefits of large amounts of securities and other assets which they had plundered in the invaded countries. To this end, therefore, controls were set up to cover the importation into the United States of such things as securities, diamonds, paintings and other valuable assets which had fallen into Axis hands.

However, as the United States drifted with increasing ire and convictions to the very verge of war, the protective element gradually gave place to other objectives and foreign funds control inevitably became a useful means for the economic defense of the United States. And so, for the first time in history, a country of immense wealth had adopted, while not at war, the regulation of its banking and foreign exchange system

as a means to enforce its national political policy. It was also realized before very long that our control of foreign funds could be a highly important weapon of economic warfare. The workings and the machinery of this control, unique in history, are the subjects of this thesis.

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**Chapter II**

**LEGISLATION AND ADMINISTRATION**

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## II. LEGISLATION AND ADMINISTRATION

### A. Trading With The Enemy Act of 1917.

The backbone of the newly created Foreign Funds Control has its origin in legislation which was passed on October 6, 1917,<sup>6</sup> namely, the Trading With The Enemy Act, which had given the President power to "investigate, regulate or prohibit" transactions in foreign exchange during time of war.

This Act prohibited and punished trading with the enemy and authorized the government to take into custody all enemy property in the United States. This Act was executed as a war time measure in 1917, limited to the period that we would be engaged in the first World War. Other nations among the Allies had adopted similar measures in 1914, after the outbreak of war in Europe, and many, such as Great Britain, repealed such acts at the end of the war. The United States, however, did not, except with a few deletions, strike from the records this Act of October 6, 1917.

### B. The Amendment of 1933.

And so it happened that because of another emergency, the provisions of Section 5(b) of the Act of October 6, 1917 were revived and revised and then extended by the Amendment of 1933,<sup>7</sup> which was "An Act to provide relief in the existing emergency in banking and for other purposes."

This amendment permitted its application not merely in time of war but during any period of national emergency that might be declared by the President to exist. In either event, the President was authorized to

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<sup>6</sup> 40 Stat. 415, Section 5(b) of Trading With The Enemy Act of October 6, 1917.

<sup>7</sup> 48 Stat. 1, 12 U.S.C. & 95a (1934), Section 2, Act of March 3, 1933.

"investigate, regulate and prohibit" transactions in foreign exchange, transfers of credit and the export of coin and currency.

C. Essent Legislation

Omitted under the Act of 1933 were the phrases authorizing the regulation of transfers of "Evidences of indebtedness or of the ownership of property", and of "transfers other than those wholly domestic". These two phrases were, therefore, established by Executive Order No. 6560, dated January 15, 1934,<sup>8</sup> and a regulation by the Secretary of the Treasury dated November 12, 1934.<sup>9</sup> However, Congress approved, on May 7, 1940, by Joint Resolution, the following Act:

10  
 "Transactions in Foreign Exchange and Property  
 Joint Resolution  
 To amend Section 5(b) of the Act of  
 October 6, 1917  
 (approved May 7, 1940)

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (b) of Section 5 of the Act of October 6, 1917 (40 Stat. 411) as amended, is hereby amended to read as follows:

"During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold

8 See Appendix, p. 79.

9 See Appendix, p. 81.

10 54 U.S. Statutes 179 (1940).

or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the President, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person to furnish under oath, complete information relative to any transaction referred to in this subdivision or to any property in which any such foreign state, national or political subdivision has any interest, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed."

Sec. 2. Executive Order No. 8389 of April 10, 1940 and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed.

Sec. 3. Nothing in this Joint Resolution shall be deemed to repeal or to modify in any manner any of the provisions of the Act of April 13, 1934, 48 Stat. 874 (The Johnson Act) or of the Neutrality Act of 1939 (Public Resolution No. 54, Seventy-sixth Congress)."

The underscored phrases of the Act as amended indicate clearly the basis of the Executive Order No. 8389, under which the Foreign Funds Control was created. Since, however, the Joint Resolution of May 7, 1940, which was apparently introduced at the instance of the Administration, gave the authorizing legislation its present form, it may be safe to assume that the Joint Resolution and the series of orders passed thereafter could be considered as parts of a single governmental measure. Also, the amendment gave the President power to deal generally with all property in the United States in which any foreign country or its nationals had any interest.

On September 8, 1939, shortly after the outbreak of war in Europe, the President declared the existence of a limited emergency, and on

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May 27, 1941, proclaimed an unlimited emergency. Thus the requirements for the issuance of the freezing orders were complied with and the way was paved.

D. Executive Order No. 8389 of April 10, 1940 and Other Orders.

The first freezing order, No. 8389, was promulgated on April 10, 1940, two days after the invasion of Norway and Denmark by Germany. Specifically, though, all property within the jurisdiction of the United States in which those countries or their nationals had any interest at all was frozen as of April 8, 1940, and all financial transactions involving such countries and their nationals have been subject to license since that date. The Order of April 10, however, somewhat exceeded the authority granted to the President by the amendment passed in 1933, at the time of the bank crisis in the United States, but as Congress had approved, on May 7, 1940 (see pp. 12-13) a Joint Resolution which supplied this authority, this gave the President the necessary power to issue Executive Order No. 8405, dated May 10, 1940.<sup>11</sup> In order to extend the provisions of Executive Order No. 8389 to cover France, Executive Order No. 8446, dated June 17, 1940<sup>12</sup> was promulgated, and then again on July 15, in order to block the assets of the Baltic countries, namely Latvia, Estonia and Lithuania, Executive Order No. 8484<sup>13</sup> was issued by the President. Subsequently, Executive Order No. 8493<sup>14</sup> was invoked on July 25, 1940, adding Sections 13 A and 14 to Executive Order No. 8389, stating

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11 See Appendix, p. 82.  
 12 See Appendix, p. 86.  
 13 See Appendix, p. 87.  
 14 See Appendix, p. 88.

prohibitions and giving authority to the Secretary of the Treasury to require complete information under oath with regard to any transactions referred to in the Order.

The use by the United States of freezing control was found to minimize the liabilities of American banks and others against the assertion of conflicting claims to property arising out of invasion and other revolutionary changes in the over-run countries in Europe. The Government, therefore, regarded itself as owing a responsibility to those persons who had placed their assets here out of confidence in our strength and fairness. Thus the avowed purpose of this Order was to exercise full control over such property for its rightful owners in order to forestall its appropriation or confiscation by Germany, and, to that extent, to prevent the economic strengthening of the aggressor. Had we failed to impose such control at all, we would have permitted the Axis countries to use these assets to their own advantage and benefit. And, had the Axis had the use of these funds, they could have drawn upon our resources and, in fact, the resources of the entire Western Hemisphere, to maintain their war effort and to strengthen their economic and financial position. No doubt they would have also been able to acquire vital strategic materials, which are so urgently needed both by our country and our allies in order to aid the war effort.

In an attempt to avoid conflict in phases of the various Executive Orders issued, this study will hereafter disregard the earlier order of 1940, No. 8389, and concentrate on the June 14, 1941 Executive Order, No. 8785,<sup>15</sup> which superseded the earlier order and greatly enlarged the

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<sup>15</sup> See Appendix, p. 90.



April 28, 1941 - Greece  
 June 14, 1941 - Albania, Andorra, Austria,  
 China,<sup>18</sup> Czechoslovakia, Danzig,  
 Finland, Germany, Italy, Japan,  
 Liechtenstein, Poland, Portugal,  
 Russia,<sup>19</sup> San Marino, Spain,  
 Sweden, Switzerland.

When Russia entered the war against the Axis, a general license was issued to the Soviet Union which, in effect, lifted the control with respect to that country. Also removed from the list was the Curia Romana of the Vatican City State,<sup>20</sup> although the latter had never actually appeared among the blocked countries. Restrictions with respect to Portugal, Spain, Sweden and Switzerland have been modified to a considerable extent, inasmuch as these are still regarded as neutral countries by the United States. The purpose of including these neutral countries at the outset was to avoid their being used as cloaks for the carrying out of Axis transactions which could not be affected by them. Thus controls served to protect such countries and to give them an adequate defense against requests by the Axis countries that they allow their banking institutions to be used as a blind. These four countries later received general licenses, each of which varied to some extent due to the different forms of exchange control which these countries use.

1. Commentary upon "freezing" control.

At the outset of the freezing control in April, 1940, we confined our effective control over Norway and Denmark in order that their assets in this country would not fall into the hands of the Axis. As has been

18 China was included at her own request in order to safeguard her financial structure.

19 Russia was removed from the list June 24, 1941, under General License No. 51.

20 United States Treasury Department, 22 Stat., August 16, 1941, General License No. 44.

previously stated, the principal object of this control was to prevent Axis powers from using billions of dollars belonging to nations conquered by them to their own advantage. They knew that the American dollar was of value anywhere in the world and so sought all they could get by any means. Thus the licensing of all transactions by people in countries dominated by them prevented a flow to them, when there was deemed a direct or indirect Axis interest, thereby effectively curtailing Axis objectives. In addition, the previously listed "frozen" countries have, to a very great extent, used various means which have effectively halted the use of any American dollars which the Axis may have had for the purpose of financing propaganda, sabotage or other subversive activities in the United States or in other strategic areas which are of considerable importance to our war effort.

The workings of Foreign Funds Control, which at first was the only agency employed by the United States to be used as a weapon of economic warfare, gave rise to many editorials and newspaper comments both in favor of and opposed to it. Among those, which were many, that approved and made favorable comment upon the setting up of such an agency as Foreign Funds Control, was an article which appeared in the New York Times<sup>21</sup> reporting on the speeches and remarkable discussions held the previous day at the annual convention of the Export Managers Club of New York, Inc. This writing said that it was to our advantage to set up financial controls because: (1) it enabled the United States to control all dollar assets and to give aid to all embattled democracies; (2) it promulgates post-war policies, which will develop and lead to our ultimate position as a maritime and commercial nation; (3) it developed beyond expectations the use of

<sup>21</sup> New York Times, March 26, 1941. See also New York Herald Tribune of the same date.

American instruments of credit and banking facilities abroad; and (4) it enabled us to establish sound practices in order to combat economic competitive conditions that are certain to rise following the present conflict and to eliminate unnecessary burdens on American foreign trade that have been known to exist through exchange controls.

On the other hand, an article that appeared in the same newspaper under the heading "Freeing Funds Opposed" by Arthur Garfield Hays,<sup>22</sup> brought out three main arguments against the establishment of the Foreign Funds Control which were: (1) there is much work and time consumed in filing of applications which oftentimes are refused without a statement of reason or where licenses were granted continual reports as to expenses had to be made; (2) it is hard for refugees to invest in securities or American industries because of the necessity of obtaining licenses for anything they might wish to do; (3) "citizens and aliens are legal equals and alienage is not and cannot be a justification for differentiation or discrimination between them".

In considering the effectiveness of freeing control, one should not be misled by the fact that aggressor nations have sought to retaliate against American-owned property abroad. However, American-owned property in the Axis countries as well as in other European countries had largely been liquidated as far back as 1936 and just about given up for lost before freeing control was instituted by the United States. There have been many articles in our newspapers from correspondents abroad stating that foreign nations would "retaliate" because of their frozen status under the Executive Order. The most spectacular was a German denunciation of the

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<sup>22</sup> New York Times, March 17, 1941.

"freezing" of German assets and those of the countries occupied by its forces. The following article appeared in the New York Times of June 23, 1941,<sup>23</sup> entitled "Money Blockade by United States is Seen" and ran as follows:

Berlin ——— By "freezing" the assets of Germany and of the countries occupied by the Reich's forces, President Roosevelt has virtually proclaimed a "financial blockade of Europe by the United States" — such is the tenor of the latest comment on the situation by the German press. It generally is maintained that the "freezing measure represents a violation of the German-American commercial treaty of 1923" and that Washington's order loses to the United States the unique opportunity of its succeeding London as the world's financial center at the end of the war. This immobilizing of the assets in America of as good as the whole of Continental Europe means an extension of the British economic blockade by the superior position of a financial blockade, German press commentators pointed out. The terms by which the six specifically enumerated countries — Spain, Portugal, Sweden, Finland, Switzerland and Russia — can obtain the "general licenses" for use of their American balances, are such, according to German newspaper comment, that they are tantamount to the alternative either of renouncing all trade with the Reich or losing all rights to the disposal of their American balances.

The German American commercial treaty of 1923 guaranteed to German nationals the same rights of doing business as to the citizens of other nations. Washington's "freezing" order, therefore, is an "open and deliberate discrimination against German interests" and a violation of this treaty, commentators in the Reich maintain, showing that German assets in the United States are frozen while the British and Japanese balances continue free. Furthermore, what is described as discrimination against German interests accentuates the insecurity of private property which, according to German press comments, already is apparent in the United States. Further, it is contended that European capital which left London in order to seek refuge in Wall St. will "never forget this step". It also is suggested that by declaring the financial blockade of the European continent the American Government has drawn a clear economic life of demarcation between the Eastern and Western hemispheres — a result which it had dreaded itself more than any other.

Germany thus can afford to observe "with calm" the measures adopted by the United States Government, since the total amount of German assets involved is described as not exceeding 120,000,000 marks. German balances in the form of holdings of securities are almost non-existent, according to German sources, while export balances must be relatively small in view of the fact that commerce between Germany and the United States has been as good as at a standstill since the beginning of the war. On the other hand, the German press estimates the United States investments that now have been affected by "retaliatory German measures" at 1,700,000,000 marks in the Reich proper -- without counting that in occupied territories. When this relation between German and American assets is kept in mind according to the general trend of reasoning, it is difficult to understand what benefit Washington is expecting from the freezing of German assets in the United States unless it was only anxious to produce a "political manifestation".

This article is quoted in its entirety because it shows the "justified" position taken by Germany in regard to the blocking of its assets by the United States. This, in spite of the fact that German exchange controls had been utilized to the advantage of Germany for so many years, but to the disadvantage of the rest of the world!

2. Section 5 of Executive Order No. 9785.

Since the determination of what accounts should be blocked is the keystone of the freezing control, the understanding of certain phases of the blocking procedure must be known.

To comprehend the order, three clear-cut divisions must be indicated. An attempt will be made to clarify the Order in three phases, namely, "Blocked Countries" and "Blocked Nationals", both of which are "blocked accounts",<sup>24</sup> and "Generally Licensed Nationals".

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24 A "blocked account" is one which has been frozen. It has been defined in General Ruling No. 4 as follows: "The term blocked account shall mean an account in which any blocked country or national thereof has an interest, with respect to which account payments, transfers or withdrawals or other dealings may not be made or effected except pursuant to a license authorizing such action ....".

a. "Blocked Countries".

In section 3 of the Executive Order, foreign countries are designated and the effective date of freeing may be found therein. Each blocked country in this list comprises its colonies, protectorates, mandates, possessions, diplomatic quarters, dominions, dependencies and places subject to the jurisdiction of that country.<sup>25</sup> Boundaries of these blocked countries were those in existence at the outbreak of the war in Europe in 1939, although earlier territorial changes in the case of Albania, Austria and Czechoslovakia are disregarded.

In addition to the state, the government and all agencies and political subdivisions thereof, each country includes any other government which, after the freeing date for such country, exercised or claims to exercise 'de jure' or 'de facto' sovereignty over its territories, irrespective of any recognition extended by the United States.<sup>26</sup> Syria is an example of this latter phase. Even though it is now occupied by Great Britain, it remains blocked as a mandate of France. A blocked country also takes in all persons, corporations and other organizations, regardless of citizenship, or domicile, to the extent that they have, since the freeing date for such country, been acting or purporting to act directly or indirectly for its benefit or on its behalf. Even citizens of the United States domiciled here are blocked if they are engaged in such activities, but only to the extent thereof. It is not necessary for them to have been acting upon the orders of the government of a blocked country, but it is sufficient

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<sup>25</sup> United States Treasury Department, *op. cit.*, August 16, 1941, Executive Order No. 8785, as amended, Sec. 5D (1).

<sup>26</sup> *Ibid.*, Sec. 5D (11).

if there is "reasonable cause to believe" that their actions tend to benefit that country.<sup>27</sup>

b. "Blacklisted Nationals".

In studies relating to international law, treaties, history and political science, a national of a country means a citizen or subject of that country, and this definition has always been interpreted as such in treaties and laws of the United States relating to questions of immigration and citizenship. On October 14, 1940, the Nationality Act was approved (and scheduled to take effect 90 days from that date), which act defined as a national "a person owing permanent allegiance to a state".<sup>28</sup> Under the June 14, 1941 Order, No. 8785, a novel meaning has been given to this phrase in that a national is designated therein as any person who falls under any of the following categories defined under Section 5 E: "The Term 'national' shall include:

- "(i) Any person who has been domiciled in or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,
- "(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order, had or has had its principal place of business in such foreign country, or which on or since such effective date, was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals as herein defined,
- "(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and,

27 Ibid., Sec. 5D (iii).

28 Public Law No. 853, Section 101 (a) 75th Congress.

"(iv) Any other person who there is reasonable cause to believe is a 'national' as herein defined."

It should be noted that regardless of citizenship, not only domicile in a blocked country but mere residence brings one within the terms of the June 14 Order. Citizens or subjects of South American countries (which are not blocked), are themselves blocked, if they were domiciled or even residing in a blocked country at any time on or since the freezing date for such country. For example, if a Polish refugee were in Lisbon, awaiting transportation for emigration to the United States on January 15, 1941, was finally able to sail, by way of Cuba, remaining there until August 1, 1941, and then arrived in the United States on September 1, 1941, he would be classified, under the interpretation of the Order, as a national of Poland (freezing date June 14, 1941).

The same is true of United States citizens, unless they have returned to this country to reside here, or are living in a blocked country in the employ of the United States Government. As an example of the latter, any officer in the Foreign Service, who is attached to an embassy of a blocked country on or since the effective date of the Order, does not come within the terms of the Order. However, to present an opposite type of case, a woman who is an American citizen, married to a member of the Italian royalty and still residing in Italy at her villa on the date of freezing of Italy, is held to be a blocked Italian national although she still retains her American citizenship. In all other cases, change of domicile or residence after the freezing date, even by immigration to the United States, will not cancel the blocked status of a person, nor will it lose or change anyone's citizenship.

**e. Generally Licensed Nationals.**

Citizens or subjects of any blocked country are, themselves, blocked solely because of their citizenship status, no matter where they are domiciled or residing except those who "have been domiciled or residing only in the United States at all times on and since"<sup>29</sup> the freezing date for such country, or June 17, 1940, whichever is earlier. As for citizens or subjects of China and Japan, a similar exception applies to those who "have been residing only in the United States at all times on or since June 17, 1940."<sup>30</sup> The deletion of domicile here conforms to our immigration laws. Such individuals are classed as "generally licensed nationals" and are deemed to be on equal footing with persons living in the United States who are not nationals of a blocked country.

For instance, American citizens who have returned from blocked areas to reside only in the United States, and persons who are subjects or citizens of blocked countries but who have been residing only in the United States on and since June 17, 1940, are generally licensed nationals. They are regarded as persons within the United States who are not nationals of any foreign country; that is, for all practical purposes, they may be treated as American citizens residing in the United States. For example, a Norwegian citizen is a national of Norway, but if he has been residing only in the United States at all times on or since the freezing date of Norway or April 8, 1940, he is a generally licensed national, and his accounts are not blocked. But where an individual is a national of a

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<sup>29</sup> United States Treasury Department, *op. cit.*, August 15, 1941, General License No. 42; General Ruling No. 4, subdivision 7.

<sup>30</sup> *Ibid.*, General License No. 68.

blocked country for any reason other than his citizenship, he cannot be considered a generally licensed national. Therefore, a person licensed as a generally licensed national under General License No. 42 is to be regarded as a person within the United States who is not a national of any blocked country and his accounts are not blocked.

To clarify the meaning of a generally licensed national, it is best to ask oneself the question: Does General License No. 42<sup>21</sup> unblock, that is, what is the status of a generally licensed national? The answer is: a person licensed as a generally licensed national under General License No. 42 is to be regarded as a person within the United States who is not a national of any blocked country. For example, a citizen of France who has entered the United States by proper emigration; who has been a resident since 1935; and who has been here in continuous residence since the date of his entry, although he has never declared his intention of becoming a citizen of the United States, can be classified as a generally licensed national. And if, on June 14, 1941, he was still a resident alien in the United States, France having capitulated on June 17, 1940, what is his status? Is this Frenchman blocked under the Executive Order? The answer would be no, for, as stated in General License No. 42 and General Ruling No. 4, he is accorded the status of a generally licensed national inasmuch as he was residing at all times in the United States on and before June 17, 1940.

d. Others.

Those people in the United States who are citizens of two

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<sup>21</sup> Ibid., General License No. 42.

countries (dual nationality) one of which is blocked (for instance, individuals born in Brazil of German parents) owe allegiance to both countries and are regarded as citizens of the blocked country,<sup>32</sup> if one happens to be a blocked country. A citizen of two blocked countries is considered a national of each,<sup>33</sup> and to become a generally licensed national the freeing date applicable would be the earlier of the two. The following illustration may help to clarify the foregoing.

A person born in France of German parents would have to have been domiciled and residing only in the United States at all times on or since June 17, 1940 to become a generally licensed national, for that date is the earlier of the freeing dates for the two countries, Germany being blocked on June 14, 1941. If this French citizen arrived in the United States between the two freeing dates, he could not become a generally licensed national because his blocked status is dependent not only upon his citizenship but also upon his domicile or residence.

There does not appear in the Executive Order any official interpretation of the phrase "domiciled in and residing only in the United States at all times", but it must undoubtedly mean actually living in the United States for the entire stated period with the firm intention of making this country the permanent place of abode. Citizens or subjects of blocked countries, with their domicile or a residence here, are blocked if they do not live here at all during the required period, but they probably will not be if only absent temporarily on business or for social purposes. But

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32 Ibid., Executive Order No. 6785 as amended, Section 5 B;  
 General Ruling No. 4, subsection 14.

33 Ibid., Executive Order No. 6785 as amended, Section 5 D;  
 General Ruling No. 4, subsection 13.

visiting a blocked country since the freezing date will deprive such person of the status of a generally licensed national. Moreover, it should be noted that all persons whose position is doubtful would be treated as blocked nationals.<sup>34</sup> The Treasury Department will accept only immigration visas as evidence of domicile because those here on a temporary visa cannot acquire domicile.

Under the conditions that prevailed soon after the war began in 1939, many persons fleeing oppression found themselves stateless by various acts of both Germany and Russia. In international law it is the prerogative of every sovereign state to determine for itself conditions under which citizenship may be acquired; and the corollary is equally true with respect to the right to deprive persons of such status. The Soviet Government issued "Nansen" passports to all Russian citizens living abroad, which today is probably the best known example of denationalization. The Treasury Department has not made known its attitude towards a person who is not a citizen of any country, for the mere possession of a passport or certificate of identity does not confer citizenship on such a person. But it follows that individuals deprived of the citizenship of a country now blocked should not be considered citizens thereof, but as a practical matter it is difficult to say when a person is stateless unless he possesses an official document such as an immigration visa issued by a United States consul stating that he is without nationality. The burden of proving statelessness is on the individual and under present conditions he would find it hard to get documentary proof. Nor can the problem be

<sup>34</sup> Ibid., Executive Order No. 8785, Section 5 X (iv).

solved by holding that he is a citizen of the country to which he last belonged or last resided, for such citizenship might be the very one he does not wish to have.

## I. Administration.

### 1. Treasury Department.

Under the Trading With The Enemy Act of 1917, the President had the power to delegate the control of foreign property. The control was designated to the Treasury Department under Executive Order No. 8785, by the following language of the Order: "By virtue of and pursuant to the authority vested in me by Section 5(b) of the Act of October 6, 1917 (40 Stat. 415) as amended, by virtue of all other authority vested in me and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the interest of national defense and security, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do prescribe the following . . . ."<sup>35</sup>

This prefix can be found at the head of Executive Order No. 8785, setting forth the amended rules and regulations of Executive Order No. 8389 of April 10, 1940. The sections therein listed and revised will be covered in subsequent pages.

It has been the practice of the United States, since emergency legislation was brought into prominence during the early '30s, to pass legislation which would be advisable under the circumstances for the safety

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<sup>35</sup> Ibid., Executive Order No. 8785 as amended.

and well-being of the country. Pursuant to such emergency legislation and proclamation, the powers ordinarily exercised by Congress have been delegated to the President and he, in turn, charges appropriate departments of the Government with the duty of carrying out his mandates. Herein, it might be said, lies the purpose of the designation of the Treasury Department as the custodian of "frozen funds".

The Treasury Department was given the assignment of foreign funds control in April, 1940, after Norway and Denmark were invaded by Germany. Faced with a new and different job than ever undertaken before by the United States, the Treasury learned as it went along and as new problems arose.

In order that the Secretary of the Treasury would have complete and far-reaching control to carry out properly and for effective operation the delegated duties given to him under the Order, he set forth in his regulations under Section 103.3 of the Executive Order No. 8389 as amended, the filing of applications with the Federal Reserve Banks, with the main bank in each district as the clearing point before being sent on to Washington, if necessary.

## 2. Federal Reserve Banks.

On March 9, 1933, when the Federal Reserve Board Act was amended in conjunction with conditions of our bank holiday, Section 4 of the Act Public No. 1 - 73rd Congress (H.R. 1491), Congress, by Joint Resolution, adopted the amendment from which was taken the following excerpt designating the part the Federal Reserve Board plays in the exchange control

system: " \* \* \* during such emergency period as the President of the United States by proclamation may prescribe, no member bank of the Federal Reserve System shall transact any banking business except to such extent subject to such regulations, limitations and restrictions as may be prescribed by the Secretary of the Treasury, with the approval of the President".

This section of the Federal Reserve Board Act delegated to it the power to permit licensing of banking transactions and those transactions that may be designated by the Secretary of the Treasury. Today approximately 70% of the recurring transactions of simple nature are ably handled, without prior reference to the Treasury Department, by the Federal Reserve Banks.

Anyone desiring a contemplated transaction must file with the Federal Reserve Bank a notarized application setting forth in detail the nature of the proposed transaction. While one license is sufficient for any simple transaction, each party to the transaction is held responsible for obtaining that license. All applications, whether acted upon by a Federal Reserve Bank or for action required by the Foreign Funds Control, are forwarded to the latter. Treasury decisions are issued on the basis of policies determined by a committee on which the State, Treasury and Justice Departments are represented. Whenever possible, recurrent types of applications are handled under General licenses. The effect of such licenses is to "free" the frozen accounts affected, although all licenses are revocable without notice. Thus the accounts of United States citizens who come under the definition of "National", but have since returned to

the United States, are free. Other general licenses free certain accounts for all transactions and all accounts for certain transactions. For example, a number of Netherlands colonial accounts have been freed to facilitate the East Indies trade. Swiss, Swedish and Spanish accounts and the accounts of the Portuguese Government are "generally" licensed, subject to certain controls required of these governments. A sweeping general license released Soviet accounts on the occasion of the German invasion of that country. Other licenses permit payments to any blocked (frozen) account as long as such payments are not from a blocked account. Banks may deduct their fees and charges or pay obligations to the Federal Government from blocked accounts.

Because of the great number of applications made for general and specific licenses, it was found necessary by the Foreign Funds Control to shift certain operations of the administration of the control. Very broad powers, therefore, were given to the Federal Reserve Banks, particularly the Federal Reserve Bank of New York, to act on applications. Close cooperation of the Foreign Funds Control and the officers of the Federal Reserve Banks permits action on certain applications for licenses by the officers of the Federal Reserve Bank, without prior reference to Washington.

### 3. Private Banks.

Under the Executive Order, the various banks throughout the country were placed in the front line of economic defense, and every bank, large or small, was seen to be able to play an important role in this program of economic defense, for the place to control funds is at the point where

these funds are. Therefore, the banks throughout the country are the representatives toward whom the provisions of the Order are directed in order that the funds which should be frozen may be completely immobilized.

As a result, private banks have shown their willingness to cooperate to the best of their abilities to further the carrying out of the Presidential order because no bank wishes to see itself used as a tool of the Axis. It has been the duty of the private banks to block all accounts of nationals of, or agents of, any Axis country that they may have on their books. And so, one can easily see that private banks, no matter how large or how small, have willingly blocked accounts where they have had any reason to suspect that such belong to Axis nationals, as defined under the rulings of the Executive Order.

In order that it may be completely satisfied that an account should be blocked or that an account need not be blocked, each bank must search its files, its correspondence and consult all other available records. And, after an account has been blocked, the owner has recourse to the licensing provisions as set forth in the Order. The concentrated effort in complying with the Executive Order shows how cooperative the members of our banking system are, in view of the additional labor that the Executive Order has, no doubt, caused them.

#### 4. Coordination with Other Government Departments and Agencies.

The coordination of various governmental agencies for a concentrated action, in view of conditions, has played an important part in the fulfillment of the President's Order. The Secretary of State, the Attorney General, the Secretary of Commerce, the Administrator of Export and Import

Control, and the Coordinator of Commercial and Cultural Relations Between the American Republics have all been called upon to submit names which, when compiled, became known colloquially as the "Black List", the publication of which is filed under the Federal Register Act and known officially as "The Proclaimed List of Certain Blocked Nationals".<sup>36</sup> This publication, by no means a small venture on the part of the various government branches, necessitated the coordinating powers of various foreign service agents and also the cooperation of various friendly governments for its ultimate completion. Because of the thorough coordination of this effort by the various departments, it is deemed best to state fully this endeavor at this time to indicate clearly the concerted drive for harmony in this particular phase of control.

The primary purpose of this list is to eliminate or materially restrict the blacklisted nationals in Latin America who are known to be engaged in activities hostile to the United States and hemispheric defense. Another use is to prevent these blocked nationals from attempting to use cloaks or dummies in an effort to engage in trade with this country.

There is evidence also that certain Proclaimed List nationals are attempting to place orders in the names of various of its employees, in many instances without the knowledge of these workers. When the shipments arrive, the employee is called before the manager and given the choice of cooperating in the clearing of the merchandise or of being discharged by the firm. The Government, through its many sources of information, is often able to frustrate such schemes.

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<sup>36</sup> Any person or firm whose name appears on this list is regarded as a national of Germany or Italy, or agent acting for them.

The importance of the Proclaimed List technique is that it does not deal with the problem of economic controls on the basis of the country concerned, nor the citizenship of the person concerned. It is freezing of individuals and concerns on a basis whose interests and activities are detrimental to the welfare of the United States. It is an effective method of dealing with economic defense problems caused by the activities of certain individuals or concerns in friendly countries. Take, for example, the hypothetical case of a South American importer of heavy machinery whose name was on the Proclaimed List. Because of this, his American exporter would not be in a position to continue to fill any further orders. Should the American concern receive an order for the same type of machinery it was supplying the importer from another business enterprise with whom it was not acquainted, the matter would, no doubt, be looked into. Should the new customer be a small bicycle repair shop operating in one room of a small building across the street from the warehouse of the Proclaimed List national, it obviously has no need for the heavy machinery it is ordering and, equally obviously, is endeavoring to act as a cover address for the Proclaimed List firm. In a short time thereafter, the bicycle repair shop would also have its name added to the Proclaimed List.

This List was publicly posted on July 17, 1941, by Presidential Proclamation under an amendment to Section 6 of the Act of July 2, 1940, Export Control Act (54 Stat. 714) \* \* \* \* by virtue of the existence of a period of unlimited national emergency and finding that this Proclamation is necessary in the interest of national defense, do hereby order and proclaim the following: \* \* \* \*<sup>37</sup> (It is of interest, I believe, to

37 See Appendix, p. 98.

note here that a list similar to the "Black List" was published by the Bureau of Enemy Trade during World War I called "The Enemy Trading List", published on December 5, 1917).

The "Black List", to be effective, had certain provisions that were essential to its compilation. These can be found in the Appendix. <sup>38</sup>

In order to facilitate the objectives as stated in various Executive Orders concerning our economic warfare, the State Department, Customs Bureau and Board of Economic Warfare have contributed greatly to the fulfillment of these aims. To comprehend the contributions of these three government agencies, a discussion of their work of coordinating their efforts with the office of Foreign Funds Control follows.

The State Department has established a Board of Economic Operations with three subdivisions that are related to Foreign Funds Control. One, the Foreign Funds Control Division, is charged with the responsibility for all matters of foreign policy in foreign funds control, including the application of the President's Proclamation of July 17, 1941, to individuals named on the List. The second, the Financial Division, has the responsibility for handling financial questions other than foreign funds control for maintaining liaison with other interested agencies. The third, the Division of World Trade Intelligence, issued, on July 17, 1941, under the authority of the President, a list of people in the American Republics who were deemed to be acting for the benefit of hostile countries or nationals of these countries and the exportation to whom of certain articles was deemed to be detrimental to national defense. Restrictions were placed upon the export of articles to such persons and the use of the assets of the United States

belonging to such persons. The activities and problems envisaged in this policy were handled jointly by World Trade Intelligence (a modern counterpart of a part of the Bureau of Heavy Trade in the War Trade Board during World War I) and Foreign Funds Control of the Treasury Department.

Another division of the Treasury Department which renders especial aid to the Foreign Funds Control is the Bureau of the Customs. This particular bureau has set up a National Defense Activities Division which is charged with the inspection of all export declarations presented as a prerequisite to export in order to insure compliance with the licensing provisions of the Office of Export Control of the Board of Economic Warfare and to insure that strategic materials of every description are not taken out of the United States except under proper export license. The Customs Service cooperates very closely with the Foreign Funds Control by maintaining physical control of exports and of persons leaving the United States to insure that no funds, securities or property are removed from the United States except in such amounts as may be authorized by Foreign Funds Control and by physical control of exports and imports to enforce the prohibition against trading with persons or firms on the "Proclaimed List of Certain Blocked Nationals" (the "Black List").

The Board of Economic Warfare was established for the purpose of developing and coordinating policies, plans and programs designed to protect and strengthen the international economic relations of the United States in the interest of national defense. Incorporated in this agency was the Export Control Division, which took over the licensing of exports. Though the control of exports by the system of licensing was effective, it

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was found to be lacking in power to requisition material that was denied export permits. This power was authorized on October 10, 1941,<sup>39</sup> by an act which provided the requisition of any military or naval equipment or munitions, machinery, tools, or material, manufactured, ordered, procured or processed for export purposes, and the exportation of which had been denied, and further authorized the sale or disposition of such property to the United States in the interest of national defense. (The Bureau of Enemy Trade was charged with the location of enemy stocks in neutral countries and the location of enemy property in the United States. The latter was turned over to the Alien Property Custodian.)

Thus the Board of Economic Warfare was given the responsibility of exercising all the duties formerly vested in the Administration of Export Control and certain related functions previously performed by the State Department. The control of exports by licensing makes an export permit a prerequisite to a Treasury license, which, in effect, licenses the whole transaction, if the conditions under which such export is to be made have been fully complied with in accordance with the provisions of the Export Control Division. In many instances, the Foreign Funds Control has enabled the Export Control Division to requisition supplies of material which were owned or controlled by a blocked national who wished to retain such merchandise in order to keep it from being used by the United States in its defense effort. Recently the British authorities dissolved their Navicert system in this respect because the Export Control Division would license for export only such merchandise as could be easily replaced and the Navicert

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<sup>39</sup> Public Act 703, 76th Congress, 3rd Session;  
Public Act 829, 76th Congress, 3rd Session, U.S. Government Manual,  
Spring, 1942. (Washington: Executive Office of the President,  
Office of Government Reports, U.S. Information Service, 1942),  
p. 92

was seen to be but a duplication. The export control permit took the place of the Navicert in the British blockade system and hence the entire burden now is in the hands of United States authorities when the export of merchandise takes place. The Foreign Funds Control retains a liaison officer and two representatives of the Department who attend inter-departmental meetings to coordinate the policies and plans of all government agencies interested in the foreign policy affairs of the national defense category. (In World War I, the War Trade Board maintained strict control over a similar phase of warfare by the Allied Control of Enemy Trade. This phase had two important objectives that accomplished gratifying results, which were: (1) the restriction on the power of the enemy to finance the war, and (2) the destruction of world trade organizations of enemy commercial interests.)

#### 5. Coordination with British Controls.

In early 1938 the British Government instituted its first controls primarily to begin a check on the Axis policies which were evident at that time. The war effort necessitated strict controls, of which the best-known to us was the "Navicert" system, operated in conjunction with England's blockade of Continental Europe after the war began. Under this system, Great Britain was able to restrict the inflow of strategic materials into Germany and adjacent countries by a semi-quota control and examination system. This Navicert system was world-wide, inasmuch as it was a requisite and component part of cargo papers for every shipment moving across the high seas destined for Europe. The issuance of Navicerts was administered by British authorities in every neutral country on all exports.

but granted on a quota basis, that is, on a quarterly basis wherein only a certain amount of any particular article that was restricted could enter into a neutral country on Continental Europe. These Navicerts were granted for a certain quarter only. If the merchandise they covered did not move during that quarter aboard a vessel from one nation to another, and shipping facilities being as they were, exporters were at times greatly distressed because they had to await their turn in the future when that particular merchandise could again be submitted to the British officials for a Navicert. (This is practically identical with the system used during the last war by the A.B.C. in its ration system.)

A Navicert was an essential accompaniment of a cargo because, should a vessel carrying merchandise be halted upon the high seas by a British blockade vessel, an officer would request a copy of the Navicert which had been issued by the British authorities from the port of exportation. If this Navicert were lacking, that cargo or part of that cargo not so covered would become a prize of war, and confiscation of considerable material took place in this way.

After April 10, 1940, the United States Government coordinated its export control with that of the British Government in order to insure that only such cargo which was permissible to export was aboard the vessels leaving for European and other foreign ports. The system of export control, established by the United States, served a purpose in conserving strategic materials which this country was anxious to hold in its stockpiles and the British were aware of this fact and coordinated their issuance of Navicerts in accordance with such desires by our Government. This arrangement was

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made possible by the Export Control Division of the State Department, which agency worked in close harmony with the British representatives here.

In most cases the British Navicert and the export control license were requisites necessary for the exportation of merchandise from the United States, no matter where such goods were destined. However, in the event that an export license was not necessary for any particular shipment of merchandise, a Navicert was still required by the British authorities, in keeping with their quarterly policy and quota basis.

In addition to the above mentioned license, a license issued by the Treasury Department, licensing the entire transaction, was also required in order to determine whether or not the entire transaction conformed with the provisions of the Executive Order. Certain areas are considered generally licensed trade areas under General License No. 53, as amended, wherein exporters are licensed to deal with these areas without a specific Treasury license for each transaction. However, this did not obviate the necessity of acquiring a British Navicert and an export control license, if it were necessary, the latter of which was formerly obtained from the State Department, but at the time of the writing of this paper from the Board of Economic Warfare.

**Chapter III**

**OPERATIONS: POLICIES AND THEIR ECONOMIC EFFECTS**

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### III. OPERATIONS: POLICIES AND THEIR ECONOMIC EFFECTS

As stated before, Foreign Funds Control now has a dual purpose, namely, (a) to conserve American assets of rightful owners who, because of residence abroad are unable to make use of them or might be compelled to surrender them to the invader, and (b) to defend the United States from the hazards of having influence exerted upon its economic life by hostile powers. In both of these cases the establishment of control over assets was necessary and the legal and the economic background of this problem has been already described. However, because of the diversified forms which foreign investments assumed as well as the many collateral surfaces of friction between the economic life of the United States and foreign powers, the problem presented itself in countless ramifications, which, however, divided themselves into four major groups: Foreign Exchange, Commerce, Industry, and Finance.

Foreign Exchange, though not very large in the field it usually covered, plays its greatest role in transactions relating to trade and commerce, made possible by the several general licenses presently to be discussed.

The commercial problems concern the direction of the entire foreign trade of the United States, with special emphasis on strategic materials, and the inherent possibilities in the exclusion of hostile elements from neutral trade labeled by means of the so-called Proclaimed List.

Broadly speaking, the industrial problems are the management of foreign owned industrial enterprise, investments of permanent nature by nationals, United States subsidiaries of foreign corporations, security transactions

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by nationals (except for purely financial ramifications), repatriation of capital and vice versa.

The financial problem consists of the immobilization of foreign capital without undermining ultimate rights of ownership. In addition, the regulation of all items affecting the balance of payments, which are not already taken care of by the above two categories, properly belongs in this group. For example, immigrant and charitable remittances, payments for diplomatic and consular establishments, and monetary transfers between outside parties using American banking facilities.

The scope of the work of the United States Foreign Funds Control of the Treasury Department corresponds to this rough outline of operations and they will be discussed hereafter in as much detail as possible.

#### A. Foreign Exchange Operations.

In view of the wide range of functions dealt with by freeing control, it is not surprising that the administration of freeing control has presented many difficulties. To give it proper credit, it must be said that the Treasury Department has constantly sought and adopted methods for simplifying the licensing procedure and the issuance of rulings, along with other information on questions of public interest.

Most important aspect in the foreign field, however, is the fact that the sale or purchase of any blocked foreign exchange is subject to license. Domestic banks are given the privilege of dealing as a counterpart with licensed buyers or sellers without themselves requiring a license, but must, of course, cover their foreign exchange position by ultimately finding another licensed dealer from which they, the banks, will purchase

foreign exchange to cover their position. To the extent of their own balances in foreign banks they, themselves, the banks, may be parties for their own account. Of all the ramifications of the Foreign Funds Control, its regulations dealing with foreign exchange transactions were and are the most bitterly assailed by the banking fraternity. These critics point out that the framers of the Order, in their enthusiastic zeal to establish a legally satisfactory practice, lost sight of the inevitable consequences of their action, and very unintentionally caused the New York foreign exchange market, potentially an effective weapon of American economic policy, to be gradually wiped out. In the end, because of our actions, we unwittingly promoted the development of German-dominated Zurich, Spanish-dominated Lisbon and pro-Axis Buenos Aires, as the only remaining foreign exchange markets.

It was this purely legal viewpoint of foreign exchange control which eventually resulted in the reserved attitude of the Treasury toward the foreign exchange market. As a consequence, in terms of such stable currencies as the Escudo, Swiss Franc, Peso, etc., the United States dollar lost 10 to 25% of its purchasing power, at a time when we were engaged in the most frantic buying program any Nation ever undertook. If, at only 750 million dollars a year, (which is about 20% of our peace time foreign trade) one should estimate our loss due to the fact that we lost our foreign exchange market, and compared it with the cost of building a cruiser at 17 million dollars, then the United States is losing, every week, a fully provisioned cruiser, owing to the fact that we are not in a position to defend the American dollar because of no control by the New York foreign

exchange market.

Serious criticism has, from time to time, been leveled at the Treasury Department for the way it has handled the question of American currency abroad. Ever since the blocking, i. e., April 10, 1940, many people have felt that the United States eventually will, in one form or another, disclaim its currency held abroad, as such a step has, in various forms and in various degrees, taken place in most of the warring nations of Europe. As a consequence, the disparity between credit instruments in New York and dollar bank notes has steadily increased in Europe, and to a smaller degree in other parts of the world. The discount on bills going to 25-30% occasionally has naturally brought out a great many of hoarded dollars abroad, which then were purchased by Axis satellites and shipped by the Italians to South America, whence to the United States.

The flow of these bank notes does not only give the Axis a source of great revenues, but has already established for it huge balances in Latin America, which work effectively against all of our purposes of economic and political warfare. Thus our failure to halt this traffic has given the Axis an effective use of looted American wealth for the effective or pre-emptive purchase of war material in Latin America, Sweden, Portugal, Spain or Switzerland.

Smaller in importance, but similarly hard to comprehend, is the refusal of the Treasury to encourage the sale, in neutral territory, of Axis bank notes held by Americans. At the proclamation of freeing control and outbreak of war, certain quantities of bank notes were caught in the hands of American dealers and as such constituted a financial loss. These bank

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notes could have been sold in neutral money markets from where they would find their way to their country of origin and create purchasing power there. (In a smaller way, it would be a converse flow to the flow of looted dollars.) However, to the writer's knowledge, no such step was undertaken, although Great Britain has sanctioned this practice by selling in Zurich all Italian lira bills that it found in Ethiopia.

#### B. Commercial Policies and Activities.

As the work of the Foreign Funds Control developed and increased, it became more and more concerned with problems of commerce. When the agency was set up in April of 1940, there was no immediate concern along this line as trade with the invaded areas had been promptly stopped by the British blockade. Today, however, there are many trade problems to consider. Fortunately, quite a number of trade problems with respect to South America have been solved largely by the issuance of licenses covering the generally licensed trade area, yet there still exist numerous questions with regard to the Proclaimed List.

Of all the commercial transactions controlled by the Executive Order, trade proceedings present the most interesting point. This category can be somewhat generalized by stating that all transactions are prohibited if there is the slightest connection discovered of partnership with a blocked country or national of any such country, and any undertaking tending to circumvent this is likewise forbidden. Trade transactions have, in some cases, been permitted to a limited extent under general licenses, but it is necessary that there is adherence to the various regulations concerning

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trade in the particular area concerned. Needless to say, our foreign trade has been greatly affected and disturbed by the fact that it is subject to regulation. As a result, many experts in the foreign trade field have expressed doubt as to whether the objects thought to be attained will compensate, in the end, for the many injuries to legitimate business interests and the hard feelings unintentionally engendered in Latin American countries particularly. Lately, though, some Latin American Republics have shown their willingness to co-operate with our Government in its economic war measures against the Axis, notwithstanding the fact that it may sometimes be to their disadvantage, because they see, from happenings all over the world, that in the end they would be much worse off by not cooperating with the United States. For instance, when the "Black List" was first published, it created a problem for Central American coffee growers,<sup>40</sup> particularly in Costa Rica. And lack of instructions with regard to the various aspects of the prohibitions created much uncertainty, as they did not know whether they could do business with the listed firms or whether American ships would carry cargo for them. Nevertheless, most people were pleased that action had been taken against anti-democratic, pro-Nazi propaganda agencies supported by North and Latin American money. The majority of the coffee growers, most particularly planters, of which there are many in Costa Rica, usually sell their crops through cleaning plants which are largely controlled by Germans, who began acquiring them several years ago as part of their policy of totalitarian economic penetration. And upon the publication of the "Black List", many growers did not

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40 New York Times, July 28, 1941.

know whether delivery of coffee to these plants would result in no payment to them because of the fact that the latter would, no doubt, be unable to dispose of the cleaned product. However, representatives of the Costa Rican Government conferred with officials of the United States, so that this matter was amicably settled for both parties concerned, while the Axis interests have suffered another setback.

In another instance, when the "Black List" was published in Brazil,<sup>41</sup> it landed as a bombshell but, fortunately, was accepted quite favorably by most Brazilian firms. As a result of the publication of such a list in Brazil, there was great haste to un-Germanize many American and Brazilian firms. In the end, however, many Brazilian firms, as well as individuals, hope to gain to a great extent, inasmuch as trade connections now held by Germans will probably be transferred to them.

In order to understand how and where commerce may be carried on, it is necessary at this point to discuss two main sections of the trade aspect of operations, namely, generally licensed trade areas and blocked trade areas.

#### 1. Generally licensed trade areas.

The areas in which foreign traders are allowed to do business are known as generally licensed trade areas, consisting of the United States, the American Republics, the British Commonwealth of Nations, the U. S. S. R., the Netherlands East and West Indies, the Belgian Congo, Greenland, Iceland, Syria, Lebanon and the Free French Areas. Within these areas commerce

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<sup>41</sup> New York Times, July 19, 1941.

is generally permitted, if the Axis powers are not benefited and if blocked countries<sup>42</sup> and their nationals have no interest therein.

These areas were selected on the basis that in them either a Proclaimed List is operative or adequate controls already exist and are being exercised, and accordingly that trade with these areas can be allowed without encroachment upon the purposes of the Foreign Funds Control.

The generally licensed trade area ruling, as defined in General License No. 53,<sup>43</sup> authorizes any importer or exporter in the United States to trade with any blocked national in the area, who has been situated and doing business there on June 17, 1941, and whose name does not appear on the "Black List", provided that a blocked country or national outside of the area is not involved in any way in any of the transactions. The national of a blocked country in the United States, operating under a special license, is authorized to the same extent to engage in such transactions involving persons within the generally licensed trade area as those who are not nationals of a blocked country.<sup>44</sup>

The banking institution in the United States taking part in the transaction is charged with the duty of seeing to it that conditions prescribed in the license are met. Before it makes any payment or transfer of credit in connection with the transaction, it must be satisfied "that any such transaction is incident to a bona fide importation or exportation and is customary in the normal course of business and that the value of such importation or exportation corresponds with the sum of money involved in financing such transaction" and that "such importation and exportation is or

42. United States Treasury Department, *op. cit.*, August 16, 1941, General License Nos. 44, 49, 50, 51, 52, 60 and 70.

43. *Ibid.*, General License No. 53, as amended.

44. *Ibid.*, Sec. (2).

will be made pursuant to all the terms and conditions of this  
license".<sup>45</sup>

An example of the steps necessary for a licensed national to export cotton piece goods to a generally licensed trade area consignee is as follows:

- (a) to determine whether the consignee's name appears on the "Black List" of the country wherein he resides;
- (b) to establish a letter of credit in an authorized bank on the consignee's bank; (Many exports are prepaid prior to shipment and also in many instances importers abroad open letters of credit when ordering merchandise.)
- (c) to file with British authorities for a Navicart covering merchandise to be exported, if such is necessary;
- (d) to file with the Export Control Division of the State Department for a license to determine the strategic importance of such material, if any, or if export license is necessary for such exportation;
- (e) to file for a Treasury license if the consignor or consignee does not meet the requirements as set forth in General License No. 53. If the consignee does, no license is necessary and if the consignor is licensed in accordance with his operating license to export, he also is not required to have a specific Treasury license.

As an example of trading in the generally licensed areas, we can take the case of a well-known American glassware company, such as the Pittsburg Glass Works. Should their problem be to export a ton of assorted glassware

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45 ibid., Sec. 1 (c).

to Peru, and upon investigation, they learn that the consignee is a Peruvian citizen whose name does not appear on the "Black List", the entire transaction takes place under General License No. 53, obviating any specific Treasury license to engage in such transaction.

## 2. Blocked Trade Areas.

Freezing control has not been confined to the regulation of banking and financial transactions. It has also been used as an instrument for controlling all imports and exports between the United States and blocked countries. In addition, we have also eliminated import and export trade between this country and black-listed persons in Latin America. This action, which our Government has already taken, as well as the action it is currently initiating, will contribute greatly to the elimination of the black-listed persons from such influence and activities as are hostile to the United States and hemispheric defense.

As defined under the Order, such countries as were invaded or overrun, or are under Axis domination, or are the Axis nations themselves, fall into this category. To trade with any of these areas, an exporter or foreign trader in this country would be liable to the penalties, provided for under the rules and regulations, as stated in Sections 3, 4, 5 and 11 of the Trading With The Enemy Act of October 6, 1917, inasmuch as the Executive Order derives its basis from these several sections and incorporates such in its rules and regulations.

## 3. "Neutral" Countries.

Freezing control has usefully been employed to deal with those

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"neutral" European countries which, by reason of their proximity to the Axis powers, have been frequently compelled, in a great many cases against their will, to serve as "fronts" or "shells" for operations in the economic and financial field. As long as Portuguese, Spanish, Swiss and Swedish accounts were not rigidly controlled, Germany, particularly through dummy accounts, had a convenient means "through which it could accomplish limited operations not possible in its own name".<sup>46</sup>

Thus, by the extension of freezing control to such "neutral" countries, it has been possible both to permit the neutral countries to engage in legitimate transactions for their own need and to reduce the possibility of such countries' acting as a screen for the Axis powers behind which Axis activities may be continued. "The general licenses that were issued to such neutral countries are conditioned on the effective carrying out of the guaranty of the neutral governments that they will not be used as a disguise for Axis or other undesired transactions".<sup>47</sup> It is of interest to note here, however, that one of the biggest mysteries is how to account for little Switzerland's estimated \$1,500,000,000 of assets in the United States. Considerably beyond what Switzerland might be expected to carry legitimately for herself and nationals, it has been said that there is a large amount of real German interest in this Swiss investment here.<sup>48</sup>

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46 Judd Polk, "Freezing Dollars Against the Axis", Foreign Affairs, October, 1941, pp. 113-130.

47 Edward H. Foley, Jr., "Freezing Control as a Weapon of Economic Defense". Address delivered before the Committee on Insurance Law, American Bar Association - Sixty-fourth Annual Meeting, Indianapolis, Indiana, September 29, 1941.

48 New York Times, June 15, 1941.

General Licenses have been extended to Sweden,<sup>49</sup> Switzerland,<sup>50</sup> Spain,<sup>51</sup> and Portugal,<sup>52</sup> and their nationals, permitting all transactions by or on behalf of or at the direction of these countries or their nationals, or involving their property, provided no other blocked national or national thereof has at any time since the freezing date for such country had any direct or indirect interest in such transaction. With respect to each transaction involving a Swedish national, not acting for his Government or the Sveriges Riksbank, the New York representative of the Swedish Legation must first certify that the conditions of the general license are complied with.<sup>53</sup>

A similar certification must be made by the Instituto Espanol del Moneda Extranjera in the case of a Spanish national not acting for it unless the transaction involves transfer or withdrawal from his account in the name of the Instituto;<sup>54</sup> and by the Banco de Portugal in the case of a Portuguese national not acting for it or for the Portuguese Government unless the transaction involves a payment, transfer or withdrawal from his account in the name of Banco de Portugal.<sup>55</sup> Where a Swiss national or his property is involved, the transaction must be conducted for his account by the Swiss Government or the Banque Nationale Suisse.<sup>56</sup>

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49 United States Treasury Department, *op. cit.*, August 16, 1941, General License No. 49.

50 *Ibid.*, General License No. 50.

51 *Ibid.*, General License No. 52.

52 *Ibid.*, General License No. 70.

53 *Ibid.*, General License No. 49, Sec. 1 (c).

54 *Ibid.*, General License No. 50, Sec. 1 (c).

55 *Ibid.*, General License No. 70, Sec. 1 (c).

56 *Ibid.*, General License No. 50, Sec. 1 (c).

In addition to the granting of licenses by the Treasury Department to these four blocked neutral countries, further explanation is necessary. An American exporter who wishes to export to Portugal or any of the other three mentioned countries must file his application with the Treasury Department or appropriate Federal Reserve Bank in his district, setting forth all particulars regarding the transaction. If the transaction meets the requirements of the Treasury Department, he will then receive a specific license setting forth the conditions he must comply with in consummating the desired transaction. Payment for the merchandise can be made and usually is, through the main banking house in the country dealt with by the issuance of that bank's letter of credit in favor of the consignor through the correspondent bank in the United States of his banking house. Under similar conditions, in case the consignee is a subject of a country other than Portugal, payment can be effected through any bank in Portugal, other than Banco de Portugal, which is done by many Portuguese citizens as well. If a national of any of these countries is also a national of another country, the general licenses cited previously do not apply.

Similarly, if an importer wishes to import into the United States from Portugal, or any of the other four neutral blocked nations, he must file an application setting forth the particulars of the transactions. If the national exporting from Portugal is wholly a Portuguese subject, the importer can remit payment under General License No. 70 through the Banco de Portugal or direct to the shipper's banking house. In making a remittance to cover the payment, the importer would make such remittance under the rules and regulations of a specific license in the form of blocked dollars.

#### 4. Effects.

It would be interesting to note here what effects the Executive Order has had either directly or indirectly on parts of the world unaffected, to a general extent, by the Axis prior to December 7, 1941. The case of the Netherlands East Indies presents a problem of interest. The mother country was one of the first to be absorbed by Hitler so that the task of financing and directing counter actions fell to its possessions in the Far East. Due to the favorable balance of trade long enjoyed by the Far Eastern possessions of Holland, this project undertaken by the Dutch Government would not be without necessary funds. One of the first acts of the Colonial Government was to impose restrictions on dollar exchange for imports. A list was published and all imports under quota were subject to license. This presented somewhat of a problem for most of the articles listed therein were luxury items such as beauty accessories, cosmetics, toilet waters, powders, etc., which exporters of the United States had always supplied. The government desired to have the Dutch importers look elsewhere for these items, preferably in Australia and the Union of South Africa. It was felt that these countries were a source of supply for these items and wished to direct purchases there because there was no objection on the part of the authorities to granting sterling exchange allotments for the importation of these articles. This shift to sterling area purchases took place because the government felt that too much of its dollar exchange was being used for goods that the public could do without or could be obtained from sterling sources of supply or for which substitutes could be obtained.

The percentage of imports supplied by the United States was greater by reason of the fact that defense materials were no longer included in the trade returns and at least since the middle of 1940 had come exclusively from the United States. Metals, chemicals and paper, in order of their importance, had become the chief imports from the United States solely because other suppliers could not maintain exports previously made to the Netherlands East Indies. Examples would be textiles from England and textiles and metals from Japan.

The balance of trade in favor of the Netherlands East Indies can well be seen by the following total figures.<sup>57</sup>

Exports to the United States during 1940 totaled \$167,650,000, while imports from the United States during 1940 totaled \$53,683,000, thus giving a balance of trade in favor of the Netherlands East Indies of \$113,967,000. This record volume of trade was merchandise intended for stock piles or pools of strategic raw materials for national defense. With the increase of imports into the United States and also an increased consumption, the Netherlands Indies were in a position, in 1941, to enjoy a very favorable balance of trade. There are no figures available to bear out this statement inasmuch as they were not published after September of 1941, but one can safely state that our imports from Java would probably be three times as great as our exports, notwithstanding the interruption of shipping during the last two months of the year.

The composition of exports from the United States changed considerably during the last half of 1940. Exports were increasingly dominated by

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57 United States Department of Commerce, International Reference Service, Trade of the United States with the Netherlands Indies in 1940, Vol. I, No. 26, (Washington: Government Printing Office, 1941).

shipments of a limited list of war products going chiefly to the United Kingdom and the British Empire. This increase effected the decline of exports to the areas affected by the British blockade of customary European markets. In the latter half of 1940, exports to the British Empire were valued at \$1,248,000,000<sup>58</sup> and took 64% of total United States exports compared with the usual 40% before the outbreak of the war.

The increase in the value of shipments to the British Empire, exclusive of the United Kingdom, was 40% over 1939 and the gain to Canada alone was about 46%. Shipments to Canada of certain commodities, especially iron and steel manufactures, aircraft and metal machinery, showed substantial gains over 1939, but the trade with the Empire outside the United Kingdom did not shift so predominately to commodities associated with the conduct of war.

United States goods moved also to Latin America throughout 1940 in larger volume than before the war, although they showed some recession during the year from the final high months of 1939. The markets were still in South America but too many of our southern neighbors were unable to dispose of their own produce in Europe and found themselves hard put to pay for their purchases from the United States. Exports to Latin America increased shortly after the war cut off supplies from Europe, so that shipments to Latin America increased from less than \$40,000,000 in August, 1939 to \$71,000,000 in December of the same year, altering the situation so that during the first half of 1940 monthly exports averaged \$63,000,000 and \$68,000,000 in the last six months.

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58 United States Department of Commerce, International Reference Service, Summary of Foreign Trade of the United States, Calendar Year 1940, Vol. I, No. 67, (Washington: Government Printing Office, 1941).

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The value of total United States exports to all countries in 1940 was put at \$4,025,000,000 as against \$3,177,000,000 in 1939, and from incomplete figures of 1941, the total figure for nine months ending September were over the 1939 total and gave every indication of exceeding 1940 by at least a billion dollars.

Imports which marked a shift of sources increased greatly in 1940, particularly from British Empire countries. Newsprint and nickel from Canada, rubber and tin from British Malaya, unmanufactured wool from Australia and jute burlap from British India increased in value approximately \$300,000,000 (25%) over 1939 to \$1,130,000,000 in 1940. Imports from the United Kingdom contributed only slightly to the increase in value, although trade in English goods in 1940 was above the level in 1939. Total imports not being available for the entire year of 1941, but as of September, gave every indication of being over 65% greater from Latin America and 40% greater from the British Empire to bring the entire increase of United States imports to about 30% greater in 1941 over 1940.

Whether the trends will continue in the future seems problematical in so far as the pressure on both British shipping and British foreign exchange resources in this country might bring a curtailment of exports of a non-essential variety. Expansion also seems limited in the war materials field because this phase is based solely on the capacity of American industry. British commitments in the United States, however, are far greater than indicated by the export statistics, and if American industrial resources are to be drawn upon to the required extent, a serious payment problem is not unlikely to develop. Whatever the problem may be, the

particular solution that will finally be adopted to meet the payment problem seems unlikely to be one involving any foreign exchange difficulties. The problem is more acute in Latin America because the countries there are confronted with foreign exchange difficulties. Exports will probably sag until extensive credit grants, as those already announced by the Administration, take place in all Latin American countries.

The Foreign Funds Control materially aids this latter phase by enabling credits drawn on American importers by Latin Americans through use of General License No. 53, by the importer, if he is not in a blocked status or the consignor of Latin America is not on the "Black List". Specific license is not necessary under these circumstances, thereby saving considerable time and expense to both parties concerned. Banking facilities of the United States, being as they are in Latin America, tend to increase the volume of business done at the various branches. Since Foreign Funds Control has come into being, many Latin Americans have pooled their resources and purchased outright many black-listed companies and banks, thereby effecting a nationalization of many concerns in Latin America where they previously were controlled by Axis elements. These purchases are carried out under state supervision, which calls upon consular agencies for aid and removes for us an obstacle to our economic objectives.

#### C. Industry: Policies and Effects.

The basic nature of industrial control is to permit the undisturbed pursuits of enterprise when not repugnant to the purposes of the Order.

Foreign owned enterprise (this includes all business in which the foreign national interest is large enough to exercise an appreciable influence) can be operated only under license. When the Treasury has reason to believe that the owner of an enterprise is hostile to the American cause or that he is under substantial control of the Axis, physically or by coercion, the licenses are only granted with safeguards or not at all. The scale of these safeguards varies considerably - in mild cases it might consist of but a few restrictive clauses placed in the operating license, in others it may lodge a Treasury representative on the premises of the licensee. In very grave cases, when no doubt remains that the enterprise would serve as an instrument of the Axis, no license is granted. In this category belong the branch offices of German, Italian and Japanese banks and their agencies, Axis shipping firms and certain foreign insurance companies whose reinsurance contracts might have served to disclose information to the Axis powers.

Unusual problems were presented by investigation of foreign owned business establishments which, also undesirable from a political viewpoint, nevertheless performed a desirable function in the American economic picture either by the fact that they produce a necessary material or because of the numerous employees of such enterprises. Preparations were made to convert Treasury supervision into Treasury management.

A prerequisite of all industrial licenses granted by the Treasury is a compact statement by the blocked enterprise, reported on Treasury Form TFB-1, describing its functions, business methods and component phases

in the administration of its business, its foreign contacts, financial structure and disclosing all its necessary or pertinent information.

D. Finance: Policies and Effects.

It is in purely financial matters that authority of Foreign Funds Control is complete. In the previous categories, policy matters had, of course, to be coordinated with policies of the various divisions of the Office of Production Management, since transferred to the War Production Board, and in matters relating to importation and exportation, many other policy making departments such as the Department of Commerce, State, Justice and Committee for Inter-American Relations, etc. had to be consulted. In addition, the industrial and commercial setup came greatly under the influence of the physical exigencies of war. For instance, regardless of whether Foreign Funds Control would license a cargo of tea to be imported into the United States from China, no ship could be found to carry this merchandise through hostile waters. But no such limitations, either physical or legal, are attached to the financial transactions which come under the Order. It is for this reason that operations of a purely financial nature are to be regarded as of special importance.

1. Capital movements.

The first World War established the United States as the world's banker. In the twenties that followed, America became the repository of

a great part of the world's liquid capital. After a brief jolt, caused by the panic of 1932-33, this process redoubled itself under the fear psychology, prompted by unsettled political and economic conditions all over the world, most of which was primarily caused by the activities of the Axis powers. The fact that the Order has frozen these funds, with some notable exceptions, is not its outstanding feature because such prohibitions had been embodied in practically all foreign exchange control policies previous to this and also, because the foreign depositors had, and probably have, little inclination to withdraw these funds. What is outstanding and novel in the exchange control of the United States is that the Order subjects to license even unilateral payments from abroad.

Obviously the reason for such action is the subordination of the economic to the political motive. Payments from abroad may be used for political and strategic purposes by hostile powers. They may serve to give a stake in the American future to those who have just plundered the world, and finally and perhaps most important, they might put the American banking system, with its far-flung facilities, at the disposal -- through dummies of course -- of our enemies for the exploitation of the neutrals. For example, the United States may purchase essential oils from Paraguay and, after importation, uses such for the production of certain chemicals. Germany would wish to halt this practice, but has no balances in America, nor does Paraguay wish to sell essential oils for anything but dollar exchange, since this covers its importation

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requirements of machinery from the United States. Germany could, if there were no foreign exchange control, exercise pressure on Switzerland, to permit the use of its dollar exchange for the purchase and storage in Paraguay of these essential oils. However, the Order prohibits Switzerland from using its dollar funds in any way except under license and licenses are not extended for such purposes. Under prevailing world conditions, undoubtedly much wealth that is expressed in, or can be converted into, dollars falls into the hands of the aggressors. It is partially to prevent encashment of this wealth in the American money market that the prohibitions for incoming payments was established.

Slightly different in its manifestation, but similar in principal is the prohibition of liquidation of American investments abroad. According to an estimate published in the Foreign Commerce Weekly of July 19, 1941, American investments abroad, direct and indirect, at the end of 1940 totaled approximately 9.5 billions of dollars (portfolio 3 billion and direct 6.5 billion). As a counterpart to the American investments in Europe, a table of frozen funds listed in the Appendix is of interest.

Frightened United States investors were, in some cases, willing to sell these investments, such as the proposed sale in September, 1941, by the Standard Oil Company of its oil properties in Hungary to I. G. Farbenindustrie for \$24,000,000 in gold, currency and a promissory note delivered in Portugal.<sup>89</sup> The Treasury Department, however, has

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<sup>89</sup> Washington Post, April 4, 1942,  
New York Herald Tribune, April 4, 1942,  
Journal of Commerce, April 4, 1942.

(These newspaper articles recount the testimony of Edward R. Foley, Jr., General Counsel of the Treasury Department before the Truman Defense Investigating Committee on April 3, 1942.)

made the repatriation of American investments abroad subject to extreme scrutiny, in addition to which it could well be borne in mind that repatriation of investments would be a fertile source for cloaking payments made into the United States by the Axis.

The prevailing unsettled world conditions do not encourage the investment of American dollars abroad. Would there be any demand, undoubtedly the Treasury would not be likely to license capital transfers to Europe, Africa or Asia, thereby limiting the investment field to Latin America. There is some doubt whether the withdrawal of capital by blocked nationals, whether generally licensed or not, needs a license to make capital investments in Latin America.

However, if there was reason to believe the money thought to be withdrawn was actually for purposes of bona fide capital investment in Latin America, then the Treasury is to be expected that it would show a reluctant attitude in granting licenses for such investments.

## 2. Other factors that affect the Balance of Payments:

### a. Estates, outgoing.

The Treasury Department rules upon applications for the transfer of estates to foreign beneficiaries upon individual merits of each case, with consideration of the location of the beneficiary being paramount. It also permits the remittance of income from estates with the limitations under General License No. 32 and No. 33, which will be described below.

**b. Living expenses, outgoing.**

The United States permits the transfer of living expenses to its nationals, and to certain foreign dependents of American citizens within the limitation of General License No. 32 and No. 33.

General License No. 32 provides, with limitations, remittances necessary for living expenses of foreign nationals only. In no case, except under specific license, would more than \$200 be allowed any household. Remittances may be made under the following circumstances only:

- (a) by the acquisition of foreign exchange from a person in the United States having a license specifically authorizing the sale of such exchange; or
- (b) by the payment of the dollar amount of the remittance to the bank for credit to an account in the name of a banking institution within the foreign country to which the remittance is to be made from which account payments, transfers or withdrawals may be made only under license.<sup>60</sup>

General License No. 33 pertains solely to American citizens residing abroad and allows, for a single household, \$500 per month to be remitted under the terms set out above under General License No. 32.

**c. Payments for services, outgoing.**

As a rule, United States firms were permitted to pay for services of foreign nationals, such as copyrights, royalties, moving picture rights, sales, periodicals, newspapers, press telegrams, postal telegraph and telephone expenses and shipping expenses, contracted from and rendered by foreign nationals. However, in most of these areas, state supervision prevents their use of the privileges for anything except

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<sup>60</sup> United States Treasury Department, op. cit.,  
August 16, 1941, General License No. 32.

bona fide transactions.

d. Charitable and benevolent remittances.

The United States has made a valiant attempt to live up to its moral obligations in spite of conditions in the world. During the early stages of foreign funds control, bona fide charities were permitted under license to make remittances abroad. Unfortunately, more and more instances were discovered where the charity and generosity of the United States were subjected to cynical abuse by its enemies and the flow of remittances had to be subjected to strict supervision. In its desire not to interfere with the religious pursuits of American citizens, the Treasury had declared the Holy See a generally licensed national and had not blocked the assets of the Vatican State.

e. Incoming payments.

In spite of the foreign exchange control, there were occasional payments of a purely financial nature where the payer was a national of the United States. For reasons similar to those for which scrutiny has been exercised on incoming capital payments, these payments received individual treatment and each was regarded in a separate light.

**Chapter IV**

**CONCLUSIONS**

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#### IV. CONCLUSIONS

##### A. Appraisal of Policies and Effects.

After this survey of the work of the Foreign Funds Control, it is not hard to see that there very frequently arise many and difficult problems which have often hampered this agency from doing its work effectively. However, the Treasury Department has been able to overcome most of the troublesome obstacles and problems caused as a result of language in the earlier order, inasmuch as criticism gave rise to the solution of issues that were unforeseen at the time the original order was framed.

Under regulations and interpretations of the various general licenses, the Treasury Department was able to enforce its rigid control over those nations that fell into a certain category, while aid was given to those countries whose defense or interests was vital to the defense of the United States and the Allied war effort. And so, through the medium of freezing control, effective action was taken to bolster the allied economic and financial blockade and to eliminate many leaks that were found to exist in the blockade system. The strong action taken by the United States against the Axis has served to encourage many Latin American countries to take measures along similar lines, thus curbing notably such economic and financial activity of the Axis, in addition to suppressing propaganda and subversive activities which were not conducive to hemispheric solidarity. The amended order, in its capacity of an economic weapon, required Axis nationals to obtain a license from the Treasury Department each time they wished to undertake a financial transaction, thereby placing a further

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economic handicap on Axis agents who wished to finance subversive and propagandistic activities here and in other parts of the Western Hemisphere.

By the collaboration between our Government and the various governments of Latin America, particularly by the use of foreign funds control and the publication of the "Black List", difficulties that previously presented themselves prior to this war have, to a certain degree, been alleviated. The exigencies of war brought a great degree of harmony into a semi-distorted trade area where larroads had been made that were counter to the policy of free enterprise. In order to overcome such activity, financial aid has been given to nearly all Latin American Governments, in addition to which the black-listing of Axis firms by the United States has aided many Latin American countries in the nationalization of their own industries. This latter phase has long been the desire of many of these peoples but had been prevented because of persistent penetration by German and Italian interests. Also, by way of loans from the Import-Export Bank, our assistance has steadily increased the number of national state enterprises, which is as it should be because then they are owned by the people living in any particular country and not by outsiders.

Also of similar importance is the development of sorely-needed home industries, which was begun to offset the need of importing heavy materials, as in the case of Brazil, with its newly established steel industry. Due to the lack of investment fields open to people in the United States, such being curtailed by the Executive Order of June 14, 1941, vast sums of liquid United States capital have found their way to various projects in Latin

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America. The Executive Order, in all its manifestations, has greatly aided the development of strategic and critical material industries in Latin America to such an extent that a number of these industries will necessarily have a place in the economies of such countries. Our industrial activity has been on an upward trend since the beginning of this war, hence a great demand for raw materials to be imported from Latin America. Conversely, this has greatly increased the demand for United States products in such Latin American countries.

This follows the axiom that when the domestic market for imports is improving, export of American manufactures to foreign markets likewise increase. The inter-dependence of exports and imports should, perhaps, not be given undue weight at the present because the importers of our merchandise do not possess any substantial resources in the form of gold to pay for such imports. This also has held true with respect to sources of imports outside of Latin America, until the inroads of war cut off these sources. The spread of the war has had obvious direct effects upon trade between this country and the areas immediately concerned, as well as indirect effect upon its trade with other areas.

General License No. 63, as amended, is the primary assurance to all commercial organizations in this country that their trade can continue unaffected, provided sufficient shipping space is available to carry their exports. Through contacts and developments now being made by our foreign traders, it is highly probable that in the post-war era some alleviation of trade barriers will have to be made. However, if the United States attempts to make free areas during this period of strife a hunting ground,

Carefully preserved from foreign competition, the progress now being made in these fields will be lost. This particular policy would give a feeling to those abroad of exploitation for monopolistic purposes. But, if the United States considers its role as a partnership, to advise and help, not to dominate, the present efforts of our government will, no doubt, bring about friendly cooperation.

It can be seen that foreign funds control has affected certain areas to a greater degree than others. For instance, those European countries still not in the clutches of the Hitler machine have found that because of this threatening machine they had to look elsewhere for the importation of the principal amount of their consumer goods. They all turned as one to the United States in seeking a place to purchase such merchandise and in many instances have found it increasingly difficult to establish letters of credit that would be acceptable by our exporters. This, to a great extent, gave many unscrupulous exporters an opportunity to dictate their own terms and make the importer provide complete coverage, such as war risk insurance, etc., prior to the exportation of any merchandise. One can easily see that in foreign trade this tended to put foreign importers "over the barrel", so to speak, and in that way placed additional hardships on the importer.

Due to the existence of exchange controls in many countries in Europe, prior to this war, the American exchange control policy has made for complicated exchange policies in those countries at the present time. Exchange rates in Spain, particularly, had to be adjusted several times during the course of the past year. Inasmuch as import restrictions

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and foreign exchange conditions hampered the foreign trade of Spain, she found it necessary to resort to devices which removed or restricted competition as a determinant of trade and in its place imposed a government controlled and directed system of supply.

Switzerland, on the other hand, surrounded by Axis-controlled territory, suffered decidedly in her foreign trade because her industries were mainly dependent upon imports of raw materials. The difficult transportation problem which confronted Switzerland affected exports severely due to restricted transportation facilities, because the Axis controlled on all points all parts of entry into Switzerland. The blockade also presented a problem to Switzerland because it had to insure the arrival of adequate essential materials for the survival of the Swiss export industries. The result of this situation forced Switzerland into enacting several governmental decrees in order for her to bring about somewhat of an equilibrium between her imports and her exports, the latter of which were rapidly on the decline due to the various military movements by both Axis and Allied powers.

These are but two instances where the allied economic blockade efforts have, indirectly, caused much hardship upon neutrals. However, this same situation has taken place in many countries of the world due to the fact that the establishment of a system of exchange control by the United States caused many nations to revise their monetary policies and to issue governmental decrees covering their foreign trade, since the United States and Great Britain had invoked stringent export control policies to fulfil their war aims.

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### B. Post-War Problems and Implications.

To visualize what will take place during the post-war era, with the kaleidoscopic changes in the world's political and economic structure taking place at present, one would have to be a prophet. But it would seem that the main problem which will have to be taken into consideration will be the reestablishment of financial and commercial practices to enable adequate recovery for all nations of the world, on an equitable and beneficial basis.

One of the most intricate problems which will cause a great deal of concern to the United States will be the "defrosting" of the blocked funds by the Foreign Funds Control. The reason for this is that to unblock at one time to all nations that gold and money now in this country will cause a period of readjustment in these nations, many of whose economies are today, at any rate, in no position to receive any such lump sums, for instance, Czechoslovakia or Poland. These two countries have been entirely obliterated, and prior to the release of any funds to these countries there may have to be a long drawn-out process reestablishing former boundaries or the creation of new states. Until this is accomplished, there would be no authorities in a position to be reliable enough to administer the funds that may be released to these countries.

The solution of all such problems of this type might be as follows: With the control of over 80% of the world's gold supply, the United States should reestablish the flow of this gold so that our own monetary system itself will not be impaired. To do this we will have to retain all assets now blocked and also retain all gold now in the United States for the

credit of all of those nations that are now blocked. In forcing upon them the gold standard to this extent, that by basing their national currency on a set amount of gold, that will be retained in the United States, they can reestablish their exchange system so as to provide for their national economy a sound monetary basis. In doing so, we would at once reestablish our monetary system on a gold standard basis and have throughout the world exchange of currencies based on the gold standard as well. The principal benefit to be derived by the other nations of the world is that they would have here in this country a large sum of money which could be used to purchase goods and materials immediately after the war is over, thereby reconstructing their economies without borrowing and thus making for a good beginning for their future development. In addition, because of the reestablishment of their economies on a firm basis, this would not cheapen the money in their own country by the possibility of an unfavorable exchange rate and it would help to rehabilitate the country as quickly as possible. For instance, for this consideration, should the Swiss franc be pegged at four francs to the dollar, based on the gold here in the United States, the Swiss franc could not be cheapened without a revaluation of their currency on this gold in the United States. This, in effect, would retain for Switzerland its purchasing power and thereby allow her to receive for her four francs a full dollar's worth of merchandise. This same policy could be adopted throughout all other countries on a comparable basis to their exchange that was in existence prior to the war. In some instances, the revaluation of several nation's currencies will have to be entirely changed and based

upon a ratio of exchange in keeping with all other currencies. This would tend to implicate the United States in the reformation of the world's monetary systems, and to create a sort of gold exchange standard pivoting on the United States, but inasmuch as we retain this vast supply of gold, we can well afford to establish a monetary system whereby this same gold can be used and maintained for the benefit of all nations.

Thus, there may be nations which will not want to enter into such an agreement, but then, as long as the United States maintains the purse strings of the entire world through the control of most of the world's liquid assets, these few nations can perhaps be shown the benefits of this particular arrangement and if not at first no doubt later will fall in line.

In view of the policies adopted by the United States to forward its foreign trade, one can easily see that in the post-war era we will, in all probability, have at the end of this war the largest merchant marine that this country has ever had. In order to dovetail our war-time efforts with our peace-time efforts, the United States will, no doubt, assume the role of the proverbial ladder and in doing so we will retain many of the world's markets for our peace-time trade. Due to the flexibility of American industries, any conversion to peace-time pursuits will be rapid in order to provide the world with those products which it has been doing without during this time of war.

In conclusion, it must be remembered that the trend throughout the world, including the United States, in recent years has been toward steadily increasing governmental control over our economic life; that

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the war and defense program will undoubtedly necessitate further extension of such control, despite the efforts that will and should be made to hold it to a minimum; and that economic conditions here and abroad after the present crisis is over are likely to present extraordinary difficulties to the resumption of anything approaching free enterprise as it has been known in the past.

Despite the perplexing problem to be faced in the ultimate disposal of emergency facilities and eventual readjustment to peace-time conditions, the international traders foresee some good to come from this abnormal period of activity. But what must be guarded against is a degree of financial dislocation which would make the task of readjustment impossible without a permanent disappearance or impairment of economic liberties, for which this temporary sacrifice is being made.

APPENDIX

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61  
EXECUTIVE ORDER NO. 6560

**Regulating Transactions in Foreign Exchange, Transfers  
of Credit, and the Export of Coins and Currency**

By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917 (40 Stat. L., 411) as amended by Section 2 of the Act of March 9, 1933, entitled "An Act to Provide Relief in the Existing National Emergency in Banking and for other Purposes", I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do declare that a period of national emergency continues to exist, and by virtue of said authority and of all other authority vested in me, do hereby prescribe the following regulations for the investigation, regulation, and prohibition of transactions in foreign exchange, transfers of credit between or payments by banking institutions as herein defined, and export of currency or silver coin, by any person within the United States or any place subject to the jurisdiction thereof:

**Section 1.** Every transaction in foreign exchange, transfer of credit between any banking institution within the United States and any banking institution outside of the United States (including any principal, agent, home office, branch, or correspondent outside of the United States of a banking institution within the United States), and the export or withdrawal from the United States of any currency or silver coin which is legal tender in the United States, by any person within the United States, is hereby prohibited, except under licenses therefor issued pursuant to this Executive Order; provided, however, that, except as prohibited under regulations prescribed by the Secretary of the Treasury, foreign exchange transactions and transfers of credit may be carried out without a license for (a) normal commercial or business requirements, (b) reasonable traveling and other personal requirements, or (c) the fulfillment of legally enforceable obligations incurred prior to March 9, 1933.

**Section 2.** Possessions of the United States. Except as prohibited in regulations prescribed by the Secretary of the Treasury, transfers of credit between banking institutions in the continental United States and banking institutions in other places subject to the jurisdiction of the United States (including principals, agents, home offices, branches, or correspondents in such other places, of banking institutions within the continental United States) may be carried out without a license.

**Section 3.** Licenses. The Secretary of the Treasury, acting directly or through any agencies that he may designate, and the Federal reserve banks acting in accordance with such rules and regulations as the Secretary of the Treasury may from time to time prescribe, are hereby designated as agencies for the granting of licenses as hereinafter provided. Licenses may be granted authorizing such transactions in foreign exchange, transfers of credit, and exports of currency (other than gold certificates) or silver coin in such specific cases or classes of cases as the Secretary of the Treasury may determine in regulations prescribed hereunder and rulings made pursuant thereto.

**Section 4. Reports.** The Federal reserve banks shall keep themselves currently informed as to foreign exchange transactions entered into or consummated, and transfers of credit made between banking institutions outside of the continental United States and banking institutions, in their districts, and report to the Secretary of the Treasury all transactions in foreign exchange and all such transfers of credit not permitted under Sections 1 or 2 hereof which are effected or attempted in their districts without a license.

**Section 5. Regulations.** The Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations to carry out the purposes of this Order, and to provide in such regulations or by rulings made pursuant thereto, the conditions under which licenses may be granted by the Federal reserve banks and by such other agencies as the Secretary of the Treasury may designate; and the Secretary of the Treasury may require any person engaged in any transaction, transfer, export, or withdrawal referred to in this Executive Order to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person either before or after such transaction, transfer, export, or withdrawal is completed.

**Section 6. Penalties.** Whoever willfully violates or knowingly participates in the violation of any provision of this Executive Order or of any license, order, rule, or regulation issued or prescribed hereunder, shall be subject to the penalties provided in Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933.

**Section 7. Definitions.** As used in this Executive Order the term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the States of the United States, the District of Columbia, and the Territory of Alaska; the term "person" means an individual, partnership, association, or corporation; and the term "banking institution" includes any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing and selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent; and, for the purposes of this Order, each home office, branch, principal, agent, or correspondent of any person so engaged shall be regarded as a separate "banking institution".

**Section 8.** Section 8 of the Executive Order of August 28, 1933, Relating to the Hoarding, Export, and Marking of Gold Coin, Bullion, or Currency and to Transactions in Foreign Exchange, is hereby revoked.

This Executive Order and any rules, regulations, or licenses prescribed or issued hereunder may be modified or revoked at any time.

FRANKLIN D. ROOSEVELT

The White House,  
January 15, 1934

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TREASURY DEPARTMENT  
Office of the Secretary  
November 12, 1934.

REGULATIONS 62  
Relating to Transactions in Foreign Exchange,  
Transfers of Credit, and the Export of  
Coin and Currency

Article 1. These regulations are prescribed and issued under authority of Section 5 (b) of the Act of October 6, 1917 (40 Stat. L., 411), as amended by Section 2 of the Act of March 9, 1933, and the Executive Order of January 15, 1934, Regulating Transactions in Foreign Exchange, Transfers of Credit, and the Export of Coin and Currency.

Article 2. Licenses may be granted, and a general license is hereby granted, to all individuals, partnerships, associations, and corporations, authorizing any and all transactions in foreign exchange, transfers of credit, and exports of currency (other than gold certificates) and silver coin. The general license herein granted authorizes transactions to be carried out which are permitted by the Executive Order of January 15, 1934 under license therefor issued pursuant to such Executive Order; but does not authorize any transaction to be carried out which, at the time, is prohibited by any other order or by any law, ruling, or regulation.

Article 3. In order that Federal reserve banks may keep themselves currently informed as to foreign exchange transactions and transfers of credit, as required in Section 4 of the Executive Order of January 15, 1934, every person engaging in any transaction, transfer, export, or withdrawal referred to in Section 1 of such Executive Order shall furnish to the Federal Reserve bank of the district in which such person has his principal place of business in the United States complete information relative thereto upon report forms prescribed by the Secretary of the Treasury, except that reports are not required to be furnished by (1) persons not carrying during any part of the reporting period, accounts abroad or accounts in the United States for non-residents thereof, or (2) persons whose aggregate transactions, transfers, exports, or withdrawals for their own account and the account of others do not exceed \$5,000 during any seven-day period. Such information shall be furnished on a weekly basis except as the respective Federal Reserve banks permit the information in certain cases or classes of cases to be furnished on the basis of longer intervals.

These regulations and the general license herein granted may be modified or revoked at any time.

Henry Morgenthau, Jr.,  
Secretary of the Treasury.

APPROVED: November 12, 1934.

FRANKLIN D. ROOSEVELT.

**EXECUTIVE ORDER NO. 8405 63**

Amendment of Executive Order No. 8389 of April 10, 1940,  
amending Executive Order No. 6560, dated January 15, 1934

Executive Order No. 8389 of April 10, 1940, is amended to read as follows:

**\*AMENDMENT OF EXECUTIVE ORDER NO. 6560, DATED JANUARY 15, 1934,  
REGULATING TRANSACTIONS IN FOREIGN EXCHANGE, TRANSFERS OF CREDIT,  
AND THE EXPORT OF COIN AND CURRENCY.**

"By virtue of the authority vested in me by section 5(b) of the Act of October 8, 1917 (40 Stat. 411), as amended, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do hereby amend Executive Order No. 6560, dated January 15, 1934, regulating transactions in foreign exchange, transfers of credit, and the export of coin and currency by adding the following sections after section 8 thereof:

"Section 9. Notwithstanding any of the provisions of sections 1 to 8, inclusive, of this Order, all of the following are prohibited, except as specifically authorized in regulations or licenses issued by the Secretary of the Treasury pursuant to this Order, if involving property in which Norway or Denmark or any national thereof has at any time on or since April 8, 1940, had any interest of any nature whatsoever, direct or indirect, or if involving property in which the Netherlands, Belgium or Luxembourg or any national thereof has at any time on or since May 10, 1940, had any interest of any nature whatsoever, direct or indirect:

"A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside of the United States, of a banking institution within the United States);

"B. All payments by or to any banking institution within the United States;

"C. All transactions in foreign exchange by any person within the United States;

"D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

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63 Ibid., pp. 5 f.

"X. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

"Y. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

**"Section 10. Additional Reports.**

"A. Reports under oath shall be filed on such forms, at such time or times and from time to time, and by such persons, as provided in regulations prescribed by the Secretary of the Treasury, with respect to all property of any nature whatsoever of which Norway, Denmark, the Netherlands, Belgium or Luxembourg or any national thereof is or was the owner, or in which Norway, Denmark, the Netherlands, Belgium or Luxembourg or any national thereof has or had any interest of any nature whatsoever, direct or indirect, and with respect to any acquisition, transfer, disposition, or any other dealing in such property.

"B. The Secretary of the Treasury may require the furnishing under oath of additional and supplemental information, including the production of any books of account, contracts, letters or other papers with respect to the matters concerning which reports are required to be filed under this section.

**"Section 11. Additional Definitions.** In addition to the definitions contained in section 7, the following definitions are prescribed:

"A. The terms "Norway" and "Denmark", respectively, mean the State and the Government of Norway and Denmark on April 8, 1940, the terms "the Netherlands", "Belgium", and "Luxembourg", mean the State and the Government of the Netherlands, Belgium and Luxembourg on May 10, 1940, and any political subdivisions, agencies and instrumentalities of any of the foregoing, including territories, dependencies and possessions, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing. The terms "Norway", "Denmark", "the Netherlands", "Belgium" and "Luxembourg" respectively, shall also include any and all other governments (including political subdivisions, agencies, and instrumentalities thereof and persons acting or purporting to act directly or indirectly for the benefit or on behalf thereof) to the extent and only to the extent that such governments exercise or claim to exercise *de jure* or *de facto* sovereignty over the area which, on April 8, 1940, constituted Norway and Denmark and which on May 10, 1940, constituted the Netherlands, Belgium and Luxembourg.

"B. The term "national" of Norway or Denmark shall include any person who has been or when there is reasonable cause to believe

has been domiciled in, or a subject, citizen or resident of Norway or Denmark at any time on or since April 8, 1940, but shall not include any individual domiciled and residing in the United States on April 8, 1940, and shall also include any partnership, association, or other organization, including any corporation organized under the laws of, or which on April 8, 1940, had its principal place of business in Norway or Denmark or which on or after such date has been controlled by, or a substantial part of the stock, shares, bonds, debentures, or other securities of which has been owned or controlled by, directly or indirectly, one or more persons, who have been, or whom there is reasonable cause to believe have been, domiciled in, or the subjects, citizens, or residents of Norway or Denmark at any time on or since April 8, 1940, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.

"C. The term "National" of the Netherlands, Belgium or Luxembourg shall include any person who has been or whom there is reasonable cause to believe has been domiciled in, or a subject, citizen or resident of the Netherlands, Belgium or Luxembourg at any time on or since May 10, 1940, but shall not include any individual domiciled and residing in the United States on May 10, 1940, and shall also include any partnership, association, or other organization, including any corporation organized under the laws of, or which on May 10, 1940, had its principal place of business in the Netherlands, Belgium or Luxembourg, or which on or after such date has been controlled by, or a substantial part of the stock, shares, bonds, debentures, or other securities of which has been owned or controlled by, directly or indirectly, one or more persons, who have been, or whom there is reasonable cause to believe have been domiciled in, or the subjects, citizens or residents of the Netherlands, Belgium or Luxembourg, at any time on or since May 10, 1940, and all persons acting or purporting to act directly or indirectly for the benefit or on behalf of the foregoing.

"D. The term "banking institution" as used in section 9 includes any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or brokers; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution".

"Section 12. Additional Regulations. The Regulations of November 12, 1934, are hereby modified insofar as they are inconsistent with the provisions of sections 9 to 11, inclusive, of this Order, and except as so modified are hereby continued in full force and effect.

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The Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations to carry out the purposes of sections 9 to 11, inclusive, of this Order as amended, and to provide in such regulations or by rulings made pursuant thereto, the conditions under which licenses may be granted by such agencies as the Secretary of the Treasury may designate. 12

FRANKLIN D. ROOSEVELT

The White House.

May 10, 1940, 7:55 A.M., E.S.T.

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## EXECUTIVE ORDER NO. 8446 64

Amendment of Executive Order No. 8389  
of April 10, 1940, as amended

By virtue of the authority vested in me by section 5(b) of the Act of October 3, 1917 (40 Stat. 411), as amended, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do hereby amend Executive Order No. 8389 of April 10, 1940, as amended, so as to extend all the provisions thereof to, and with respect to, property in which France or any national thereof has at any time on or since June 17, 1940, had any interest of any nature whatsoever, direct or indirect; except that, in defining "France" and "national" of France the date "June 17, 1940" shall be substituted for the dates appearing in the definitions of countries and nationals thereof.

FRANKLIN D. ROOSEVELT

The White House,  
June 17, 1940

EXECUTIVE ORDER NO. 8484 <sup>65</sup>

Amendment of Executive Order No. 8389  
of April 10, 1940, as amended

By virtue of the authority vested in me by section 5(b) of the Act of October 6, 1917 (40 Stat. 411), as amended, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do hereby amend Executive Order No. 8389 of April 10, 1940, as amended, so as to extend all the provisions thereof to, and with respect to, property in which Latvia, Estonia or Lithuania or any national thereof has at any time on or since July 10, 1940, had any interest of any nature whatsoever, direct or indirect; except that, in defining "Latvia", "Estonia", "Lithuania" and "national" thereof the date "July 10, 1940" shall be substituted for the dates appearing in the definitions of countries and nationals thereof.

FRANKLIN D. ROOSEVELT

The White House,  
July 15, 1940

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EXECUTIVE ORDER NO. 8493 <sup>66</sup>Amendment of Executive Order No. 8389  
of April 10, 1940, as amended

By virtue of the authority vested in me by section 5(b) of the Act of October 6, 1917 (40 Stat. 411), as amended, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do hereby amend Executive Order No. 8389 of April 10, 1940, as amended, amending Executive Order No. 8560 of January 15, 1934, by adding the following sections after section 12 thereof:

"Section 12A. The following are prohibited except as specifically authorized by the Secretary of the Treasury by means of rulings, regulations, instructions, licenses, or otherwise:

"(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order, or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such a stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto.

"(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

"B. The Secretary of the Treasury may investigate, regulate, or prohibit under such rulings, regulations, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States. The provisions of General Ruling No. 5 of June 6, 1940, and all instructions issued pursuant thereto, are hereby continued in full force and effect, subject to amendment, modification or revocation pursuant to the provisions of this Order.

"C. In the case of any transaction covered by this section,

an application for license may be filed in the manner indicated in the Regulations of April 10, 1940, as amended, issued pursuant to this Order.

\*B. The Regulations of November 12, 1934, are hereby modified in so far as they are inconsistent with the provisions of this section.

\*Section 14. The Secretary of the Treasury may require any person to furnish under oath, complete information relative to any transaction referred to in this Order, or with respect to any property in which any foreign country designated in this Order, or any national thereof, has any interest, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed."

FRANKLIN D. ROOSEVELT

The White House,  
July 25, 1940

**EXECUTIVE ORDER NO. 6785 67**  
**AS AMENDED**

**Regulating Transactions in Foreign Exchange and  
 Foreign-Owned Property, Providing for the Reporting  
 of all Foreign-Owned Property, and Related Matters**

By virtue of and pursuant to the authority vested in me by Section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the interest of national defense and security, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do prescribe the following:

Executive Order No. 8389 of April 10, 1940, as amended, is amended to read as follows:

Section 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (1) such transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

**Section 2.**

**A.** All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

**B.** The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States.

**Section 3.** The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign country, or any national thereof, the date specified in the following schedule:

- (a) April 8, 1940 -  
Norway and  
Denmark;
- (b) May 10, 1940 -  
The Netherlands,  
Belgium and  
Luxembourg;
- (c) June 17, 1940 -  
France (including Monaco);

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- (d) July 10, 1940 -  
Latvia,  
Estonia and  
Lithuania;
- (e) October 9, 1940 -  
Rumania;
- (f) March 4, 1941 -  
Bulgaria;
- (g) March 18, 1941 -  
Hungary;
- (h) March 24, 1941-  
Yugoslavia;
- (i) April 28, 1941 -  
Greece;
- (j) June 14, 1941 -  
Albania,  
Andorra,  
Austria,  
Czechoslovakia,  
Denmark,  
Finland,  
Germany,  
Italy,  
Liechtenstein,  
Poland,  
Portugal,  
San Marino,  
Spain,  
Sweden,  
Switzerland, and  
Union of Soviet Socialist Republics;
- (k) June 14, 1941 -  
China, and  
Japan.

The "effective date of this Order" with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

**Section 4.**

A. The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or

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otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to, any transaction referred to in section 5(b) of the Act of October 6, 1917 (40 Stat. 415), as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

3. Every person engaging in any of the transactions referred to in sections 1 and 2 of this Order shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

#### Section 5.

A. As used in the first paragraph of section 1 of this Order "transactions (which) involve property in which any foreign country designated in this Order, or any national thereof, has . . . any interest of any nature whatsoever, direct or indirect," shall include, but not by way of limitation (i) any payment or transfer to any such foreign country or national thereof, (ii) any export or withdrawal from the United States to such foreign country, and (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

B. The term "United States" means the United States and any place subject to the jurisdiction thereof; the term "continental United States" means the states of the United States, the District of Columbia, and the Territory of Alaska.

C. The term "person" means an individual, partnership, association, corporation, or other organization.

D. The term "foreign country" shall include, but not by way of limitation,

(i) The state and the government thereof on the effective date of this Order as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession or place subject to the jurisdiction thereof,

(ii) Any other government (including any political

subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise de jure or de facto sovereignty over the area which on such effective date constituted such foreign country, and

(iii) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing.

2. The term "national" shall include,

(i) Any person who has been domiciled in, or a subject, citizen or resident of a foreign country at any time on or since the effective date of this Order,

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined,

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country, and

(iv) Any other person who there is reasonable cause to believe is a "national" as herein defined.

In any case in which by virtue of the foregoing definition a person is a national of more than one foreign country, such person shall be deemed to be a national of each such foreign country. In any case in which the combined interests of two or more foreign countries designated in this Order and/or nationals thereof are sufficient in the aggregate to constitute, within the meaning of the foregoing, control or 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts, or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or

other organization shall be deemed to be a national of each of such foreign countries. The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a "national" within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national. Without limitation of the foregoing, the term "national" shall also include any other person who is determined by the Secretary of the Treasury to be, or to have been, since such effective date, acting or purporting to act directly or indirectly for the benefit or under the direction of a foreign country designated in this Order or national thereof, as herein defined.

F. The term "banking institution" as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or broker; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution".

G. The term "this Order", as used herein, shall mean Executive Order No. 8389 of April 10, 1940, as amended.

Section 6. Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934. Executive Order No. 6560 of January 15, 1934, and the Regulations of November 12, 1934, are hereby modified in so far as they are inconsistent with the provisions of this Order, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling, or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to this Order; provided, however, that all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of this Order of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties, forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

Section 7. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and

instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

Section 8. Section 5(b) of the Act of October 6, 1917, as amended, provides in part:

" \* \* \* Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than \$10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both."

Section 9. This Order and any regulations, rulings, licenses or instructions issued hereunder may be amended, modified or revoked at any time.

FRANKLIN D. ROOSEVELT

The White House,  
June 14, 1941.

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**EXECUTIVE ORDER NO. 8332 68**

**Amendment of Executive Order No. 8389  
of April 10, 1940, as amended**

By virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917 (40 Stat. 415), as amended, and by virtue of all other authority vested in me, I, FRANKLIN D. ROOSEVELT, PRESIDENT of the UNITED STATES OF AMERICA, do hereby amend Executive Order No. 8389 of April 10, 1940, as amended, by changing the period at the end of subdivision (j) of Section 3 of such Order to a semi-colon and adding the following new subdivision thereafter:

- (k) June 14, 1941 -  
China, and  
Japan.

**FRANKLIN D. ROOSEVELT**

The White House,  
July 26, 1941

**AUTHORIZING A PROCLAIMED LIST OF CERTAIN BLOCKED  
NATIONALS AND CONTROLLING CERTAIN EXPORTS 69**

By the President of the United States of America

A Proclamation

I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me by Section 5(b) of the Act of October 6, 1917 (40 Stat. 415) as amended and Section 6 of the Act of July 2, 1940 (54 Stat. 714) as amended and by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency and finding that this Proclamation is necessary in the interest of national defense, do hereby order and proclaim the following:

Section 1. The Secretary of State, acting in conjunction with the Secretary of the Treasury, the Attorney General, the Secretary of Commerce, the Administrator of Export Control, and the Coordinator of Commercial and Cultural Relations Between the American Republics, shall from time to time cause to be prepared an appropriate list of --

(a) certain persons deemed to be, or to have been acting or purporting to act, directly or indirectly, for the benefit of, or under the direction of, or under the jurisdiction of, or on behalf of, or in collaboration with Germany or Italy or a national thereof; and

(b) certain persons to whom, or on whose behalf, or for whose account, the exportation directly or indirectly of any article or material exported from the United States, is deemed to be detrimental to the interest of national defense.

In similar manner and in the interest of national defense, additions to and deletions from such list shall be made from time to time. Such list and any additions thereto or deletions therefrom shall be filed pursuant to the provisions of the Federal Register Act and such list shall be known as "The Proclaimed List of Certain Blocked Nationals".

Section 2. Any person so long as his name appears in such list, shall, for the purpose of Section 5(b) of the Act of October 6, 1917, as amended, and for the purpose of this Proclamation, be deemed to be a national of a foreign country, and shall be treated for all purposes under Executive Order No. 8389, as amended, as though he were a national of Germany or Italy. All the terms and provisions of Executive Order No. 8389, as amended, shall be applicable to any such person so long as his name appears in such list, and to any property in which any such person has or has had an interest, to the same extent that such terms and provisions are applicable to nationals of Germany or Italy, and to property in which nationals of Germany or Italy have or have had an interest.

Section 3. The exportation from the United States directly or indirectly to, or on behalf of, or for the account of any person so long as his name appears on such list of any article or material the exportation of which is prohibited or curtailed by any proclamation heretofore or hereafter issued under the authority of Section 6 of the Act of July 2, 1940, as amended, or of any other military equipment or munitions, or component parts thereof, or machinery, tools, or material, or supplies necessary for the manufacture, servicing, or operation thereof, is hereby prohibited under Section 6 of the Act of July 2, 1940, as amended, except (1) when authorized in each case by a license as provided for in Proclamation No. 2413 of July 2, 1940, or in Proclamation No. 2465 of March 4, 1941, as the case may be, and (2) when the Administrator of Export Control under my direction has determined that such prohibition of exportation would work an unusual hardship on American interests.

Section 4. The term "person" as used herein means an individual, partnership, association, corporation or other organization.

The term "United States" as used herein means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, the Canal Zone, and the District of Columbia and any other territory, dependency or possession of the United States.

Section 5. Nothing herein contained shall be deemed in any manner to limit or restrict the provisions of the said Executive Order No. 8389, as amended, or the authority vested thereby in the Secretary of the Treasury and the Attorney General. So far as the said Executive Order No. 8389, as amended, is concerned, "The Proclaimed List of Certain Blocked Nationals", authorized by this Proclamation, is merely a list of certain persons with respect to whom and with respect to whose property interests the public is specifically put on notice that the provisions of such Executive Order are applicable; and the fact that any person is not named in such list shall in no wise be deemed to mean that such person is not a national of a foreign country designated in such order, within the meaning thereof, or to affect in any manner the application of such order to such person or to the property interests of such person.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this 17 day of July, in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

FRANKLIN D. ROOSEVELT

By the President:

SUMNER WELLES,  
Acting Secretary of State.

331243

(T. D. 80433)

## REGULATIONS — RESTRICTED EXPORTATIONS AND IMPORTATIONS

Enforcement of restrictions on imports and exports  
subject to the provisions of the President's pro-  
clamation of July 17, 1941, regarding "blocked nationals".

TREASURY DEPARTMENT

July 22, 1941

TO COLLECTORS OF CUSTOMS AND OTHERS CONCERNED:

The following regulations are hereby prescribed to give effect to the President's proclamation of July 17, 1941, authorizing the publication of "The Proclaimed List of Certain Blocked Nationals" and the list promulgated pursuant to that proclamation:

- (1) In respect of all merchandise intended for exportation after July 27, 1941, there shall be submitted with each export declaration, a list or statement showing the name and address of each ultimate consignee of the merchandise, unless such names and addresses are set forth in the appropriate export declaration. If the ultimate consignee, consignor, shipper or other person having an interest in the merchandise or in the transaction is named in "The Proclaimed List of Certain Blocked Nationals", the exportation shall not be permitted except upon presentation of a license issued pursuant to Executive Order No. 8389, as amended, or instructions from the Treasury Department authorizing the transaction.
- (2) With respect to importations from any American republic of merchandise in which any person named in the proclaimed list appears to have an interest as consignor, seller, shipper or otherwise, the acceptance of entries for consumption and withdrawals from warehouse for consumption in respect of such merchandise tendered after July 27, 1941, shall be withheld pending presentation of a license issued pursuant to Executive Order No. 8389, as amended, or instructions from the Treasury Department authorizing the transaction.
- (3) Licenses cancelled by actual exportation, entry or withdrawal shall be endorsed to that effect and forwarded to the appropriate Federal Reserve Bank.
- (4) These regulations do not affect in any way the necessity for a license under the Export Control Act of July 2, 1940. Neither an export control license nor a license under Executive Order No. 8389, as amended, will be accepted in lieu of the other type of license.
- (5) Nothing in paragraphs (1) and (2) above shall be deemed to excuse any person from the necessity of obtaining a license in accordance with Executive Order No. 8389, as amended, and the proclamation of July 17, 1941, covering importations from or exportations to any person whose name appears on "The Proclaimed List of Certain Blocked Nationals".

E. H. FOLLEY, JR.

Acting Secretary of the Treasury.

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"FROZEN" FUNDS OF FOREIGN NATIONALS<sup>70</sup>

Country	Effective Date of Blocking	Amount (millions of dollars)	Percent of Total
<u>GERMAN-CONTROLLED COUNTRIES</u>			
Denmark	April 8, 1940	\$ 93	1.2
Norway	" " "	175	2.4
Netherlands	May 10, 1940	1,619	21.8
Belgium	" " "	750	10.2
Luxembourg	" " "	48	.7
France	June 17, 1940	1,593	21.4
Latvia	July 10, 1940	13	.2
Estonia	" " "	10	.1
Lithuania	" " "	5	.1
Rumania	October 9, 1940	53	.7
Bulgaria	March 4, 1941	2	(a)
Hungary	March 13, 1941	24	.3
Yugoslavia	March 24, 1941	71	1.0
Greece	April 28, 1941	122	1.6
Finland	June 14, 1941	17	.2
Czechoslovakia	" " "	5	.1
Poland	" " "	7	.1
Albania	" " "	(a)	(a)
Austria	" " "	9	.1
Danzig	" " "	(a)	(a)
Total		\$ 4,626	63.2
<u>AXIS COUNTRIES</u>			
Germany (and Liechtenstein)	June 14, 1941	\$ 107	1.4
Italy (and San Marino)	" " "	72	1.0
Japan (b)	" " "	121	1.6
Total		\$ 310	4.2
<u>ANTI-AXIS BELLIGERENTS (c)</u>			
U. S. S. R.	June 14, 1941	\$ 29	.6
China (b)	" " "	275	3.7
Total		\$ 314	4.2
<u>NEOCCUPIED NEUTRALS (c)</u>			
Portugal	June 14, 1941	\$ 157	3.1
Spain (and Andorra)	" " "	30	.4
Sweden	June 14, 1941	516	6.9
Switzerland	" " "	1,484	20.0
Total		\$ 2,187	29.4
Grand Total		\$ 7,457	100.0

(a) Negligible

(b) Order not actually issued until July 25, 1941

(c) Liberal general licenses involving these countries have been issued.

HELIOGRAPHY

331246

BOOKS

Burash, Bernard N. American Industry in the War.  
New York: Prentice Hall, 1941.

Madler, Marcus, and Bogen, Jules I. The Banking Crisis.  
New York: Dodd, Mead & Co., 1933.

PERIODICALS

Foreign Commerce Weekly, July 19, 1941.

Folk, Judd. "Freeing Dollars Against the Axis".  
Foreign Affairs, October, 1941. *we have*

SPEECHES

Foley, Edward H., Jr. "Freeing Control as a Weapon of Economic  
Defense". Address delivered before the Committee on  
Insurance Law, American Bar Association - Sixty-fourth  
Annual Meeting, Indianapolis, Indiana, September 29, 1941.

*still searching*

REPORTS

Report of the War Trade Board. Washington: Government  
Printing Office, 1920.

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PUBLIC DOCUMENTS

Public Act 703, 76th Congress, 3rd Session;  
 Public Act 829, 76th Congress, 3rd Session, U.S. Government Manual,  
Spring, 1942. Washington: Executive Office of the Presi-  
 dent, Office of Government Reports, U. S. Information  
 Service, 1942.

United States Department of Commerce, International Reference  
 Service, Trade of the United States with the Netherlands  
Indies in 1940, Vol. I, No. 26. Washington: Government  
 Printing Office, 1941.

United States Department of Commerce, International Reference  
 Service, Summary of Foreign Trade of the United States,  
Calendar Year 1940, Vol. I, No. 67. Washington: Govern-  
 ment Printing Office, 1941.

United States Treasury Department, Documents Pertaining to  
Foreign Funds Control, October 1, 1940, August 16, 1941. *we have*

LEGAL REFERENCES

40 Stat. 415. Trading With The Enemy Act of October 6, 1917.

48 Stat. 1, 12 U.S.C. & 95a (1934), Section 2,  
 Act of March 3, 1933.

54 Stat. 179.

Public Laws No. 853, Section 101(a), 76th Congress.

NEWSPAPERS

Journal of Commerce, April 4, 1942.

New York Herald Tribune, March 26, 1941.

New York Times, March 17, 1941, March 26, 1941, June 16, 1941,  
 June 23, 1941, July 19, 1941, July 28, 1941,

April 4, 1942.

Washington Post, April 4, 1942.

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TRADING  
WITH THE ENEMY  
IN WORLD WAR II,

*By*  
MARTIN DOMKE

331249

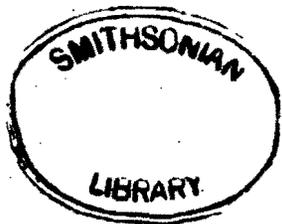
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ABBREVIATIONS: For the common law cases, reports and periodicals, the conventional abbreviations have been used, as indicated in Hicks, *Materials and Methods of Legal Research* (Third Revised Edition, 1942), p. 571.

## 1. Introduction.

DUE TO the increasing importance of economic warfare today, the belligerents of World War II have critically re-examined and revised their legislation regarding trading with the enemy in the light of the experience of World War I.

All belligerents of 1939 issued new and more extensive Acts: Great Britain<sup>1</sup>, Canada<sup>2</sup>, Australia<sup>3</sup>, New Zealand<sup>4</sup>, Union of South Africa<sup>5</sup>, Egypt<sup>6</sup>, France<sup>7</sup>, and Germany<sup>8</sup>. Italy, entering the war in 1940, had enacted War and

<sup>1</sup> Trading with the Enemy Act, 1939, September 5, 1939, 2 & 3 Geo. 6, c.89, as amended by the Defence (Trading with the Enemy) Regulations, 1940, as amended, Statutory Rules & Orders 1940 Nos. 1092, 1214, 1289, 1380; 1941 No. 51; 1942 No. 306; (1942) 36 Am. J. Intern. L. Supp. 3, 13. The Act as amended up to April 1st, 1943, is reprinted *infra*, Appendix N.

<sup>2</sup> Regulations Respecting Trading with the Enemy, 1939, September 5, 1939, Order in Council P.C. 2512; substituted by "Consolidated Regulations Respecting Trading with the Enemy (1939)," August 21, 1940, P.C. 3959, as amended October 3, 1940, P.C. 5353, and December 16, 1941, P.C. 9797; reprinted *infra*, Appendix P.

<sup>3</sup> Trading with the Enemy Act 1939, September 9, 1939, No. 14 of 1939 (Commonwealth), as amended June 3, 1940, No. 33 of 1940 (Trading with the Enemy Act 1939-1940), reprinted *infra*, Appendix Q.

<sup>4</sup> The Enemy Trading Emergency Regulations 1939, September 4, 1939, New Zealand Gazette Extraordinary, No. 91, September 4, 1939, p. 2355; reprinted *infra*, Appendix R.

<sup>5</sup> National Emergency Regulations, r.8, September 14, 1939, Government Gazette No. 2679, September 14, 1939, p. 1054c, reprinted *infra*, Appendix S.

<sup>6</sup> Proclamation No. 6 Regarding Measures as to the Trading with the Government of the German Reich or its Nationals and to Dispositions of Their Property, September 14, 1939, Journ. Off. September 15, 1939; (1939) 29 Gaz. Trib. Mixtes 359.

<sup>7</sup> Decree-law Concerning the Interdiction and Restriction of Relations with Enemies and Persons Being in Enemy or Enemy-occupied Territory, September 1, 1939, Journ. Off. September 4, 1939, p. 11087, *rectificatifs* p. 11322; Executive Decree, September 1, 1939, *ibid.* p. 11089, *rectificatifs* p. 11322, 11441. Decree-law Concerning the Declaration and Sequestration of Enemy-owned Property, September 1, 1939, *ibid.* p. 11091.

<sup>8</sup> Decree Concerning the Administration of Enemy Property, January 15, 1940, Reichsgesetzblatt I 191; Executive Decrees, March 5, June 17, 1940, *ibid.* p. 483, 888; as amended June 30, 1941, April 14, 1942, *ibid.* 1941 I 371, 1942 I 171.

Neutrality Legislation as early as 1938<sup>9</sup>, including provisions on the treatment of enemy nationals and enemy goods, and economic relations with the enemy.

Unlike the European belligerents, the United States did not need to resort to the enactment of a new Trading with the Enemy Act upon its entry into the war. The Act of October 6, 1917, as amended<sup>10</sup>, was always regarded as an act of permanent legislation which could be applied in the event that the United States was again involved in war<sup>11</sup>. Several sections however are by their wording limited to the last war and the events which followed it.<sup>12</sup>

Furthermore, many of the important legal and economic problems which arose during the emergency preceding the entrance of the United States into the war, were dealt with in 1940 and 1941 by the foreign funds control. The so-called freezing regulations<sup>13</sup> are now integrated with the Trading with the Enemy Act of 1917, as amended, by section 302 of Title III of the First War Powers Act, 1941<sup>14</sup>.

By its foreign funds control, the United States undertook to deprive the economic exploitation of territories

Decree Concerning the Custodianship in Absentia, October 11, 1939, Reichsgesetzblatt I 2026; Executive Decrees, October 18, 1939, *ibid.* p. 2056, January 22, May 30, 1940, *ibid.* p. 232, 821; trans. in: *German Decrees Concerning Curatorship in Absence for Enemy-owned Property*, (1940) 3 *Compar. L. Ser.* 385.

<sup>9</sup> Royal Decree Approving the Text of the Act on War and Neutrality, July 8, 1938, No. 1415, *Gazetta Ufficiale*, Suppl. Ord., September 15, 1938, n. 211 p. 4294. Cf. Steiner, *Italian War and Neutrality Legislation*, (1938) 32 *Am. J. Int. L.* 151, 154.

<sup>10</sup> Trading with the Enemy Act, 40 Stat. 411, 50 U.S.C. Appendix. The Act as amended up to April 1st, 1943, is reprinted *infra*, Appendix A.

<sup>11</sup> Lefevre, Introduction p. 7 to Meares, *The Trading with the Enemy Act* (1924).

<sup>12</sup> See Editorial Note (1941) 10 U.S.L. Week Stat. Sec. 2; Woodward, *Meaning of "Enemy" Under the Trading with the Enemy Act*, (1942) 20 *Texas L. Rev.* 746 n. 4. Cf. *infra* Chapter XVII, n. 27.

<sup>13</sup> Exec. Order No. 8389, April 10, 1940, 5 Fed. Reg. 1400 (1940), as amended. The Order as amended up to April 1st, 1943, is reprinted *infra*, Appendix C.

<sup>14</sup> December 18, 1941, c.593, 55 Stat. 840, 50 U.S.C. Appendix §617; (1942)

occupied or controlled by Axis-powers of any extraterritorial effect and "to nullify the attempts by the Axis to gain title to the billions of dollars in assets belonging to nationals of the countries overrun by the Axis"<sup>15</sup>.

The administrative regulations issued under the authority of the Trading with the Enemy Act, as amended, not only integrated the licensing procedure under the freezing orders with the provision of sec. 3 (a) of the Act<sup>16</sup>, but also modified the interpretation of the statutory definitions. "By executive act, the statutory prohibitions were thus suspended and replaced by similar administrative regulations"<sup>17</sup>. The statutory provisions of the Trading with the Enemy Act have been construed and modified by regulations on foreign funds control, issued by the Treasury Department<sup>18</sup>. In addition, new regulations by the recently established Office of Alien Property Custodian<sup>19</sup> have extended the application and interpretation of the trading with the enemy law to the field of administration of enemy property by General Orders and (special) Vesting Orders.<sup>20</sup>

36 *Am. J. Int. L. Supp.* 56. See Notes (1942) 42 *Col. L. Rev.* 105; (1942) 28 *Am. Bar. Ass. J.* 131.

<sup>15</sup> Press Release, U. S. Treasury Department, April 21, 1942; Fed. Res. Bank of New York, Circular No. 2420.

<sup>16</sup> General License under sec. 3(a) of the Trading with the Enemy Act, December 13, 1941, 6 Fed. Reg. 6420 (1941); reprinted *infra*, Appendix E.

<sup>17</sup> *New Administrative Definitions of "Enemy" to Supersede the Trading with the Enemy Act*, Note (1942) 51 *Yale L. J.* 1388, 1391.

<sup>18</sup> For a statement of the history, scope and purposes of freezing control, see Brief of United States of America as *amicus curiae*, p. 2-21, in *Commission for Polish Relief, Ltd. v. Banca Nationala a Rumaniei*, 288 N. Y. 332, 43 N. E. 2d 345 (1942); Hollander, *Confiscation (Soviet), Aggression (German) and Foreign Funds Control in American Law* (1942) 146; Polk, *The Future of Frozen Foreign Funds*, (1942) 32 *Am. Ec. Rev.* 255, 258 n. 11; Freutel, *Exchange Control, Freezing Orders and the Conflict of Laws*, (1942) 56 *Harv. L. Rev.* 30, 33.

<sup>19</sup> Exec. Order No. 9095, March 11, 1942, 7 Fed. Reg. 1971 (1942), as amended by Exec. Order No. 9193, July 6, 1942, 7 Fed. Reg. 5205 (1942); *Administration of Wartime Financial and Property Controls of the United States Government* (Treasury Dep't, December, 1942) p. 35.

<sup>20</sup> Twenty-one General Orders were issued up to April 1st, 1943, and more than one thousand Vesting Orders, filed in the Federal Register.

This practice of adapting the interpretation of statutory provisions to the ever changing conditions of economic warfare, together with the blacklisting system, prepared the way for legislation by the other American Republics. They did not merely adopt freezing regulations during the time of undeclared war but were willing to follow the pattern of a substantially uniform legislation.<sup>21</sup> The Final Act of the Inter-American Conference on Systems of Economic and Financial Control, July 10, 1942,<sup>22</sup> followed the recommendations of the Meeting of the Ministers of Foreign Affairs of the American Republics held at Rio de Janeiro in January, 1942, concerning measures "that may be necessary to impede all operations of a commercial and financial character contrary to the security of the Western Hemisphere."<sup>23</sup>

Thus, a new concept of economic disloyalty has been developed by the American practice of freezing foreign funds since the invasion of Denmark and Norway in May, 1940. This prepared the way for the use of trading with the enemy legislation as a weapon of economic warfare, defensive as well as aggressive. "Freezing Control is but one phase of the present war effort; it is but one weapon on the total war which is now being waged on both economic and military fronts. Coupled with Freezing Control as a part of this nation's program of economic warfare are to be found export control, the promulgation of a Black List, censorship, seizure of enemy-owned property, and

<sup>21</sup> A list of these Acts is contained in the monthly publication *The Americas and the War*, (1942) 76 Bulletin Pan American Union 224, 273, 344, 361, 457, 531, 591, 636, 691, (1943) 77 *ibid.* 37, 90, 158.

<sup>22</sup> Pan American Union, Congress and Conference Series No. 39 p. 7, Proceedings, *ibid.* No. 40 p. 137; (1943) 37 Am. J. Int. L. Supp. 9.

<sup>23</sup> Proceedings p. 84, 86; (1942) 36 Am. J. Int. L. Supp. 61, 70. See Fenwick, *Third Meeting of Ministers of Foreign Affairs at Rio de Janeiro* (1942) 36 Am. J. Int. L. 169, 191; *The Inter-American Juridical Committee*, (1943) 37 *ibid.* 7, 9.

financial and lend-lease aid to allied and friendly nations."<sup>24</sup>

As to Japan, no official information is available as yet on steps taken by the Japanese Government. As a Commentary of April 11, 1942,<sup>25</sup> points out, the Japanese Trading with the Enemy legislation enacted during the last war against Germany might throw some light on the views adopted by Japan in this matter.

As regards the European territories occupied or controlled by Axis Powers, particular regulations for the administration of enemy property were issued by the occupying authorities in each of these territories: Poland,<sup>26</sup> Norway,<sup>27</sup> Luxemburg,<sup>28</sup> Belgium,<sup>29</sup> the Netherlands,<sup>30</sup> and France.<sup>31</sup> These regulations of course generally follow the pattern of the German Trading with the Enemy legislation.

<sup>24</sup> Brief, *supra* n. 18, at p. 18. Cf. Foley, *Control as a Weapon of Economic Defense* (Address, September 29, 1941), (1942) 107 N. Y. L. J. 4, 22; Polk, *Freezing Dollars Against the Axis*, (1941) 20 Foreign Affairs 113.

<sup>25</sup> Imperial Ordinance No. 41, April 23, 1917, quoted in C.C.H.W.L.S.F.S. ¶66122.

<sup>26</sup> Decree of the Governor General (for the occupied Polish territories) on the Administration of Enemy Property, August 31, 1940, *Dziennik rozporządzen Generalnego Gubernatora* No. 53, p. 265.

<sup>27</sup> Decree of the Reich Commissioner for the Occupied Norwegian Territories on the Administration of Enemy Property, August 17, 1940, *Forordningstidend for de besatte norske områder*, No. 2 p. 3.

<sup>28</sup> Ordinance of the German Military Authorities Regarding Enemy Property in the Occupied Territories of the Netherlands, Belgium, Luxemburg and France, May 23, 1940, *Jour. Off. Gouverneur Militaire*, p. 32; Executive Ordinances, July 2, August 23, October 24, 1940, *ibid.* p. 115 (*rectificatifs* p. 128, 177) 182, 263 (*rectificatifs* p. 306, 318); *Legislation de l'Occupation* vol. 1, p. 18 (Paris 1941, reviewed by this writer (1942) 36 Am. J. Int. L. 746).

<sup>29</sup> The Ordinance of May 23, 1940 (n. 28) has not been introduced either in Holland or in France, but only in Belgium and Luxemburg. Cf. Krieger and Hefermehl, *Behandlung des feindlichen Vermoögens. Kommentar* (1940) F II 2 p.3 (Library of Congress, LL. 610857 S. 13.41).

<sup>30</sup> Decree of the Reich Commissioner for the Occupied Netherlands Territory Concerning the Administration of Enemy Property, June 24, 1940, *Verordeningblad vor het bezette Nederlandsche gebied*, Stuk 7 p. 66, trans. C.C.H.W.L.S.F.S. ¶65680.

<sup>31</sup> Ordinance of the German Military Authorities, Putting into Force and Complementing the Ordinance Regarding Enemy Property, Sept. 23, 1940,

On the other hand, all measures enacted by the military and civil authorities in several annexed and occupied countries were declared null and void by the respective European governments-in-exile, e. g., Czechoslovakia,<sup>32</sup> Poland,<sup>33</sup> Norway,<sup>34</sup> Luxemburg,<sup>35</sup> and Belgium.<sup>36</sup> Some of them enacted further legislative measures for the protection of the property of their nationals which is located abroad, by vesting title to such assets in the State represented by the government-in-exile, e. g., the Dutch<sup>37</sup> and Norwegian<sup>38</sup> governments.

Jour. Off. Gouverneur Militaire, October 5, 1940 p. 97, *Législation de l'occupation*, vol. II (Paris 1941) p. 20.

<sup>32</sup> Declaration of the Czechoslovak Government in London, December 19, 1941, (1941) 1 *Inter-Allied Review* No. XI p. 12.

<sup>33</sup> Decree of the President of the Polish Republic, Regarding the Invalidity of Legal Acts of the Occupying Authorities, November 30, 1939, *Dziennik Ustaw*, Angers (France), December 2, 1939, No. 102, p. 2006; supplementary decree, No. 16, March 6, 1940, *ibid.* March 23, 1940, No. 6 p. 18; transl. C.C.H.W.L.S.F.S. ||67751. See also Decree Regarding the Administration and Disposition of Polish Property Abroad, February 26, 1940, No. 10, *ibid.* February 29, 1940, No. 4, p. 8.

<sup>34</sup> Provisional Decree Regarding the Resumption and Revision of Judicial and Administrative Decisions and Executive Orders issued in Norway Under the German Occupation, July 29, 1941, *Norsk Lovtidend* 1941 No. 2 p. 119.

<sup>35</sup> Grand Ducal Decree Determining the Effect of Measures taken by the Occupant, April 22, 1941, *Mémorial* No. 2, April 22, 1941, p. 1; Decree Regarding the Measures of Expropriation (*depossession*) taken by the Enemy, April 22, 1941, *ibid.* p. 2; transl. Fed. Res. Bank of New York, Circular No. 2268.

<sup>36</sup> Decree-law Determining the Effect of Measures Taken by the Occupying Authorities and of Orders Issued by the (Belgian) Government, January 10, 1941, *Moniteur Belge*, February 25, 1941, p. 44; Decree-law Concerning the Measures of Dispossession Taken by the Enemy, January 10, 1941, *ibid.* p. 46, transl. C.C.H.W.L.S.F.S. ||67762-64.

<sup>37</sup> Decree Relating to Certain Property of Individuals and Companies Resident in the Kingdom of the Netherlands, May 24, 1940, *Nederlandsche Staatscourant*, May 30, 1940, A 1940 No. 151; transl. C.C.H.W.L.S.F.S. ||67150, Fed. Res. Bank of New York, Circular 2091. This decree has been reviewed in New York cases discussed *infra*, Chapter XXI. See also Decree Vesting Netherlands East Indies Assets in the Royal Netherlands Government-in-exile, March 9, 1942; transl. in *Nederlandsche Staatscourant* March 31, 1942, A 1942 No. 3, C.C.H.W.L.S.F.S. ||67752, and Decrees Regarding the Requisition of Ships, March 5, 1942, transl. in *Staatsblad* No. C 17; June 5, August 20, 1942, transl. in *Nederlandsche Staatscourant* A 1942 No. 5, 6.

<sup>38</sup> Provisional Order Regarding the Monetary System, the Bank of Norway,

Similar steps were taken by the Belgian government-in-exile<sup>39</sup> in controlling and administering property in unoccupied territory which was owned by Belgian citizens residing in occupied territory or whose residence was unknown. Furthermore, the Dutch<sup>40</sup> and the Belgian<sup>41</sup> governments-in-exile promulgated special Trading with the Enemy Acts prohibiting any intercourse with the enemy, the preamble to the Belgian Act stressing "the necessity to forbid any kind of commerce susceptible of giving aid and economic comfort to the enemy."

In addition, the governments-in-exile of the Netherlands, Luxemburg, and Belgium completed and made effective detailed legislation which had been enacted before the invasion in order to facilitate the transfer of the principal place of business of corporations, and the administration of property outside the occupied territory.<sup>42</sup>

Other measures of governments-in-exile, such as the Norwegian decree of October 3, 1941,<sup>43</sup> relating to the acquisition of rights in Norwegian companies, purport to prevent shares of Norwegian companies from being acquired by non-Norwegians, especially in the interest of Germans. Therefore persons who have acquired Norwe-

etc., During the Present War Situation, April 22, 1940, *Norsk Lovtidend* No. 1, 1940 p. 21, transl. C.C.H.W.L.S.F.S. ||67704, as amended June 7, 1940, *Norsk Lovtidend* No. 2, 1940 p. 54. See also Provisional Order Regarding the Requisition of Ships and Charter-parties, May 18, 1940, *Norsk Lovtidend* No. 2, 1940 p. 40, transl. C.C.H.W.L.S.F.S. ||65,449. This order is reviewed in the *Lorentzen* case, *infra* Chapter XXI, n. 49.

<sup>39</sup> Decree-law Relating to the Administration and Management of Property Situated Outside the Occupied Territories, March 19, 1942, *Moniteur Belge*, March 31, 1942, p. 188 transl. C.C.H.W.L.S.F.S. ||67742.

<sup>40</sup> Decree Relating to Measures to Prevent Legal Relations in War-time from Damaging the Interests of the Kingdom of the Netherlands, June 7, 1940, *Staatsblad* No. A 6, transl. C.C.H.W.L.S.F.S. No. 65680, as amended March 4, 1942, *Staatsblad* No. C 16.

<sup>41</sup> April 10, 1941, *Moniteur Belge* 1941 p. 90, transl. C.C.H.W.L.S.F.S. ||65695.

<sup>42</sup> See *infra*, Chap. XIII.

<sup>43</sup> *Norsk Lovtidend* 1941 No. 2, p. 120.

gian citizenship since April 9, 1940, the date of the invasion by German troops, are not considered Norwegian subjects for the purposes of the decree.<sup>44</sup> Such a measure of a government-in-exile serves to shed light on the methods by which the Axis occupying authorities conduct economic warfare through the trading with the enemy legislation which they enacted in each occupied territory. Thus, to give a Norwegian example, one of the most important companies of the country, the Norsk Hydro (Elektrik Kvaestofaktieselskab) could not by any "legal" means be brought into the full orbit of the Nazi European "New Order," because considerable portions of its stock were held by foreign, especially French, shareholders. But the trading with the enemy legislation introduced by Germany in occupied France<sup>45</sup> furnished appropriate "legal" title to dominate the Norwegian company. Under that legislation, the French Société Norvégienne d'Azote was seized on the German concept of enemy property—Germany continuing to treat France as an enemy under the German Trading with the Enemy Act of January 15, 1940, which has not been amended in this respect. Administration of the seized French company was turned over to the German dye trust, I. G. Farben Industrie Aktiengesellschaft, the other shareholder of Norsk Hydro, so that, through the Trading with the Enemy legislation, the German corporation is now "legally" administering the Norwegian company.

In addition to the special decrees of the governments-in-exile which purport to invalidate all measures undertaken by the Axis powers in occupied and controlled territories,<sup>47</sup> a recent solemn declaration of the United Nations,

<sup>44</sup> See further, as to Norwegian denationalization decrees, Chapter VI, n. 16-18.

<sup>45</sup> *Supra* n. 31.

<sup>46</sup> *The Penetration of German Capital into Europe*, Statement of the United Nations Information Committee, London, December 30, 1942, p. 26.

<sup>47</sup> *Supra* n. 32-36; Yugoslavian Decree, June 18, 1942, *Sluzbene Novine* (News Service) 1942, No. 7, p. 8.

of January 5, 1943,<sup>48</sup> denied recognition to any forced transfers of property in enemy-controlled territory, and condemned the dispossession methods of the Axis powers. This warning was endorsed by the Commonwealth of the Philippines,<sup>49</sup> in order to strengthen further Filipino resistance to the Japanese occupation.<sup>50</sup>

But the manifold forms, means and measures, under which legal titles and commercial relations were created during the time of occupation and control by the Axis powers, will not be *automatically* invalidated by legislative fiat. A careful study of the facts and legal aspects of municipal law as well as of international law will be necessary to put in force workable measures for the invalidation of the diverse and often intricate acts of economic warfare.

Measures and counter-measures of economic warfare are taken by the various belligerent countries through application of their Trading with the Enemy laws and of the numerous rules and regulations issued thereunder. Their judicial review in the different countries in some 300 decisions rendered during this war, among which are 200 in the United States, reveals the importance of the legislation enacted in this field. Its present-day application and construction by the courts of various countries, in a greater degree than the judicial proceedings resulting from the First World War, furnish the preliminary experiences for any postwar economic settlement of questions involved in the Trading with the Enemy legislation of World War II.

<sup>48</sup> (1943) 8 Bulletin Dep't of State p. 21.

<sup>49</sup> (1943) 3 United Nations Review 78.

<sup>50</sup> Cf. generally Scanlon, *European Governments in Exile* (Carnegie Endowment for International Peace, Memoranda Series, no. 3, January 25, 1943).

## 6. Stateless Persons Formerly of Enemy Nationality.

SPECIAL problems may arise from the presence of numerous refugees from European territories now in this country who are deprived of their former nationality.

Expatriation and denaturalization<sup>1</sup> have recently been adopted as a general principle of policy by totalitarian regimes, as in Germany,<sup>2</sup> Italy,<sup>3</sup> and Hungary.<sup>4</sup> Originally directed against the political foes and potential enemies who were supposed to violate their allegiance,<sup>5</sup> these measures were extended to undesirable individuals irrespective of whether they were nationals by birth or by naturalization.

The device of individual denationalization was also adopted by the legislation of the Vichy government of

<sup>1</sup> The term "denaturalization" is used to denote the revocation of a naturalization, whereas "denationalization" refers to the status of nationality acquired on grounds other than naturalization, such as birth or marriage. "Expatriation" is the voluntary act of an individual, as "natural and inherent right of all people" (Joint Resolution July 7, 1868, 15 Stat. 223). As to the position of the United States on the question of expatriation, see Conference for the Codification of International Law, held at the Hague in 1930, Acts vol. II, *passim*, and Hackworth, *Digest of International Law*, vol. 3 (1942), p. 161. The loose usage by which "denationalization" is sometimes referred to as "expatriation" is not followed in this chapter.

<sup>2</sup> Statute concerning revocation of naturalization and cancellation of German citizenship, *Gesetz ueber Widerruf von Einbuengerungen und Aberkennung der Staatsangehoerigkeit*, July 14, 1933, Reichsgesetzblatt 1933 I 480, as amended July 10, 1935, Reichsgesetzblatt 1935 I 1015.

<sup>3</sup> Royal Decree-law Concerning the Revocation of Citizenship of Jews Naturalized after January 1, 1919, September 7, 1938, *Gazzetta Ufficiale*, September 12, 1938.

<sup>4</sup> Statute to Restrict Jewish Participation in Public and Economic Life, May 4, 1939, Orzagos Toervenytar (National Law Record) May 5, 1939, transl. in (1939) 5 Contemporary Jewish Record, 64.

<sup>5</sup> See Makarov, *Gesetze ueber Fragen der Staatsangehoerigkeit 1933-1938*, (1940) 9 *Zeitschrift fuer auslaendisches oeffentliches Recht und Voelkerrecht* 531, at p. 551.

France, under which every Frenchman who is supposed to have broken his allegiance to France (especially by leaving France without appropriate official authorization in the critical period between May 10 and June 30, 1940) might be deprived of his French nationality and his property.<sup>6</sup>

All measures pursuant to the legislative acts of these governments are made by special decrees listing the names of the persons in question.

A recent German decree, however, of November 25, 1941,<sup>7</sup> of general application, denationalizes all Jews living abroad and confiscates their property. This German decree with its detailed provisions probably serves as a model for the governments of occupied or Axis-controlled countries as long as Axis influence in those countries prevails.<sup>8</sup> Anti-Semitism does not furnish the only pretext for such measures; denationalization and expropriation of property may likewise be directed against all persons supposed to be foes of the regime.

The German decree, which applies to a great number of former German nationals, scattered over various countries, is the first decree, since that of Soviet Russia of December 15, 1921,<sup>9</sup> to provide for denationalization measures in general terms. Its legal effects, especially as regards

<sup>6</sup> Loi Relative a la Procedure de Decheance de la Qualite de Francais, July 16, 1940; Loi Relative a la Decheance de la Nationalite a l'Egard de Francais Qui Ont Quitte la France, July 23, 1940 (*Journal Officiel* July 17 and 24, 1940).

<sup>7</sup> Eleventh Decree for the Execution of the Statute concerning German Citizenship (*Reichsbuengerrecht*), Reichsgesetzblatt 1941 I 722; transl. (1942) 5 Contemporary Jewish Record 202.

<sup>8</sup> Cf. Weinryb, *Jewish Emancipation Under Attack*, Research Institute on Peace and Post-War Problems of the American Jewish Committee (1942) p. 62.

<sup>9</sup> Cf. Fisher Williams, *Denationalization*, (1927) 8 *British Year Book of International Law* 45. *Supplement au Repertoire de Droit International* (1934) *sub verbo* "refugies," p. 241; Note to *In re Antonowicz*, Court of Appeal at Aix-en-Provence, *Recueil Sirey* 1938 II, 213, in *Annual Digest and Reports of Public International Law Cases, Years 1938-1940* (Ed. by Lauterpacht, 1942), Case No. 118, p. 363.

its application abroad, are very similar to those of the other foreign decrees providing for individual denationalization.<sup>10</sup> These effects relate to both the status<sup>11</sup> of expatriated persons and to their property.<sup>12</sup>

Many interesting questions of international law<sup>13</sup> and conflict of laws<sup>14</sup> will result from the application of those decrees.<sup>15</sup> The Norwegian question is one in point. The

<sup>10</sup> See Jennings, *Some International Law Aspects of the Refugee Question*, (1939) 20 *British Year Book of International Law* 98.

<sup>11</sup> Note, *Domicil of Refugees*, (1942) 42 *Col. L. Rev.* 640; Lowensohn, *The Law of Domicil as Applied to Refugees*, (1940) 52 *Juridical Review* (Edinburgh) 28; Note, *Domicil of Political Refugees*, (1941) 192 *L. T. T.* 28; Feist, *The Status of Refugees*, (1941) 5 *Modern L. Rev.* 51. On proof of the status of a denationalized person, see Kempner, *Who Is Expatriated by Hitler? An Evidence Problem in Administrative Law*, (1942) 90 *U. of Pa. L. Rev.* 824, 827.

<sup>12</sup> In *Bollack v. Societe Generale*, 263 *App. Div.* 601, 33 *N. Y. S.* (2d) 986 (March 27, 1942), recognition was denied to expropriation by a decree of the Vichy-Government of France, *supra* n. 6, as to assets situated in the State of New York; the denationalization to which the plaintiff was subjected by the same measures was not considered.

<sup>13</sup> On a related question, the non-recognition of the Nuremberg Law of September 15, 1935, in this country, see Hackworth, *Digest of International Law*, Vol. 2 (1941), p. 354. Stateless persons who at the time they became stateless were citizens or subjects of the Axis powers or of their allies are considered as being enemy nationals for licensing purposes under sec. 22.7, *Transportation Regulations*, March 5, 1943, 8 *Fed. Reg.* 2819 (1943).

<sup>14</sup> Kaufmann, *Denationalization and Expropriation*, (1942) 92 *Law Journal* 93, points out at p. 94, as to a denationalized dying as resident abroad and leaving movable property in England: "If such a person dies, having had his abode in one of the countries where generally *lex patriae* is the personal law governing succession of aliens, but the law of the place of residence or ordinary abode (*residence habituelle*) is applied to cases of stateless persons, e. g., in France, Brazil, China, Japan, the question of the deceased's national status becomes material, whether he had acquired domicile in the English sense in the country of his residence or retained his domicile of origin."

On the other hand, denationalized German Jews living in this country cannot acquire anything either by descent or by will or gift from a German national, even not from their own relatives living in Greater Germany, sec. 4 of the German decree, *supra* n. 7. Earlier a similar measure was enacted as to persons who were individually denationalized by reason of the law of July 14, 1933, *supra* n. 2. The German statute of November 5, 1937, provided that such persons and their families cannot acquire anything from a German national as heir or devisee (*aktive Erbfahigkeit*) or as donee. Sec. 48 of the German Statute on Wills (*Testamentsgesetz*) of July 31, 1938 (*Reichsgesetzblatt I* 973) provides that wills conflicting with provisions of the law are null and void.

<sup>15</sup> As to the general importance of these questions, Professor Philip Marshall

Quisling authorities in occupied Norway deprived Norwegians, living abroad, of their citizenship "because of their hostile attitude toward the Norwegian state,"<sup>16</sup> while the Norwegian government-in-exile recently promulgated the Loss of Public Trust Act<sup>17</sup> depriving all Axis collaborationists residing in occupied Norway of their citizenship and of the right to carry on a trade or profession after the war.

Apart from conflicting governmental authorities (as in the case of Norway)<sup>18</sup> there arises the general question whether and to what extent foreign denationalization decrees are to be recognized abroad at all. That question cannot be decided solely along the practice which originated from the Russian denationalization measures and led to discussions about "statelessness" in the League of Nations.<sup>19</sup> Even the renewed discussion which was caused by the emigration from Germany since Hitler's rise to power<sup>20</sup> and which resulted in further activities of Committees inaugurated by the League of Nations,<sup>21</sup> so far has

Brown, (1942) 36 *Am. J. Int. L.* 450, may be quoted: "The tangles of human relationship resulting from migrations, exile, and armed occupations, such as marriages, divorces, deaths, wills, taxes, etc., will have to be dealt with intelligently, liberally, and justly, according to the generally accepted norms of judicial procedure. They cannot be left to the conflicting ideas and the confusion of diverse local jurisdictions. Here is a task demanding the highest intelligence and devotion of the friends and defenders of international law, which must be renovated and adapted to the needs of a world in revolution. The people of all countries will regain confidence in international law only insofar as it ministers to their actual interests."

<sup>16</sup> (1942) 2 *News of Norway*, p. 189.

<sup>17</sup> *N. Y. Times*, January 6, 1943.

<sup>18</sup> See further the Norwegian decree of October 3, 1941, cited Chapter I, n. 43, and, generally, Lessing, *Los Momentos de Conexión en el Derecho de Nacionalidad*, Reprint from *Revista Argentina de Derecho Internacional* 1942, p. 58.

<sup>19</sup> See League of Nations, C. 25. M. 25. 1942 XII "International Assistance to Refugees"; Report on the Work of the League of Nations 1941-1942, C. 35. M 35. 1942 (Geneva 1942) p. 65.

<sup>20</sup> Emerson, *Postwar Problems of Refugees* (Address to members of the Exec. Comm. of the Intergovernmental Committee dealing with refugee problems, (1943) 21 *Foreign Affairs* 211.

<sup>21</sup> See Warren, *The Refugee and the War*, (1942) 223 *Ann. Acad. Pol. Soc.*

provided no adequate basis for a solution of the manifold legal problems involved in the status of stateless persons.

It may be mentioned that the Convention Concerning the Status of Refugees Coming from Germany, February 10, 1938,<sup>22</sup> defines such refugees as follows: "(a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government; (b) Stateless persons who have left German territory after being established therein and who are proved not to enjoy, in law or in fact, the protection of the German Government; (c) Persons who leave Germany for reasons of purely personal convenience are not included in this definition."

The position of stateless persons formerly of enemy nationality in this country is to be discussed only to the extent that it bears upon the trading with the enemy law of the United States, and especially upon the question whether such individuals are exempt from certain restrictions to which war-time regulations subject aliens of enemy nationality. Generally speaking, statelessness does not alter the legal situation of such aliens. Several Federal regulations expressly apply also to stateless individuals who were formerly of enemy nationality. In such cases, no question arises as to what influence foreign denationalization may have upon the legal status abroad of denationalized aliens of (former) enemy nationality, for such persons by statutory provision remain in the same category as other aliens of their (former) nationality.

However, the Regulations Controlling Travel and Other Conduct of Aliens of Enemy Nationalities, February

Sc. p. 92; Loewenfeld, *Status of Stateless Persons*, (1942) 27 Transactions Grotius Society p. 59, 80.

<sup>22</sup> League of Nations, C. 75 M. 30. 1938 XII.

5, 1942,<sup>23</sup> do not apply to persons who formerly were German, Italian, or Japanese citizens or subjects, and who before December 7/8, 1941, became citizens or subjects of any nation other than Germany, Italy or Japan. On the other hand, the War Damage Corporation, in establishing general exceptions,<sup>24</sup> declared null and void a policy of insurance against property loss or damage resulting from enemy action, to the extent that such policy covered property owned by a national of Germany or Japan.<sup>25</sup> This provision was extended to stateless refugees by the Regulations of November 17, 1942,<sup>26</sup> which in sec. 1 provides: "As used herein the words 'nationals of Germany or Japan' are intended to include nationals or former nationals of Germany or Japan, wherever resident, notwithstanding loss of their former citizenship pursuant to law or decree of either such country, and notwithstanding the filing of first papers manifesting an intention on the part of such persons to become citizens of the United States."<sup>27</sup>

Stateless persons of former enemy nationality, like all other alien enemies, are not subject "during their service in the armed forces of the United States"<sup>28</sup> to the restric-

<sup>23</sup> 7 Fed. Reg. 844 (1942).

<sup>24</sup> Policies covering property owned by nationals of Italy, Bulgaria, Hungary, or Rumania, who do not reside and are not doing business in enemy territory or enemy-occupied territory, will be construed as valid, though such owners are nationals of a "country with which the United States is at war."

<sup>25</sup> A further amendment to the Rules of the War Damage Corporation provided that mortgagees or other persons holding by way of security interest in property in which nationals of Germany or Japan may hold an interest may be insured against bombardment risk provided such interest was acquired before December 7, 1941. N. Y. Times, November 24, 1942.

<sup>26</sup> Memorandum No. 16 to Fiduciary Agents, Journal of Commerce and Commercial, November 23, 1942; cf. No. 13, October 5, 1942, *ibid.* October 8, 1942.

<sup>27</sup> As to the participation of enemy aliens in the scheme of Australian war damage legislation (Aliens' Compensation Account), see r. 43A of the National Security (War Damage to Property) Regulations, as amended, Stat. Rules 1942 No. 222; Mitchell and Baalman, *War Damage to Property in Australia* (1942) p. 243.

<sup>28</sup> Dep't of Justice, February 19, 1942, 7 Fed. Reg. 1474 (1942).

tions imposed upon alien enemies. Furthermore, while property of stateless refugees remains excluded from insurance against so-called bombardment risk, even if they are in the armed forces, the Soldiers' and Sailors' Civil Relief Act, as amended October 6, 1942,<sup>29</sup> includes in the term "insured," "any person on active duty with the military and naval forces of the United States (including Coast Guard) and any member of the Women's Army Auxiliary Corps, whose life is insured under and who is the owner and holder of and has an interest in a policy."

Unlike the regulations prevailing in this country up to the present with regard to refugees of Axis-controlled countries, the Australian National Security (Aliens Service) Regulations of February 3, 1942, r. 2,<sup>30</sup> contain an express definition of "refugee alien." The term as there defined means "an alien who has no nationality, or whose nationality is uncertain, or who is an alien enemy, in respect of whom the Minister of State for the Army, or a person authorized by that Minister to act on his behalf, is satisfied (a) that the alien was forced to emigrate from enemy territory on account of actual or threatened religious, racial or political persecution, and (b) that he is opposed to the regime which forced him to emigrate." Statelessness is the test which exempts a group of refugees of former enemy nationality from the restrictions imposed upon aliens of such nationality. Under the Regulations, the same classification is granted individually to persons on the basis of investigation by Australian authorities.

As to the foreign funds control in the United States, refugees, stateless or not, who have come to this country from any of the blocked countries, are subject to the pro-

<sup>29</sup> §10.3320, 7 Fed. Reg. 10232 (1942), issued under Public Law No. 732, 77th Cong., 2d Sess.

<sup>30</sup> Statutory Rules 1942 No. 39, Commonwealth Gazette February 3, 1942.

visions of Executive Order No. 8389, as amended, and are generally licensed nationals under General License No. 42, as amended,<sup>31</sup> if they were residing in this country on February 23, 1942, and had not thereafter entered any blocked country.<sup>32</sup> But their position under the foreign funds control of the United States is by no means different from that of other resident aliens, whether of enemy or of non-enemy nationality, stateless or not.<sup>33</sup>

The decree of the Dutch government-in-exile of May 24, 1940,<sup>34</sup> vesting in the State of the Netherlands title to assets abroad of nationals residing in occupied territory, was made applicable, sec. 2(1), to those nationals<sup>35</sup> only who before May 15, 1940, were not domiciled outside of the territory of the Kingdom in Europe now occupied by the enemy.

Stateless refugees of other than German origin are not treated differently from those who are expatriated by a measure of general application such as the German decree regarding German Jews living abroad. Thus, Frenchmen living in this country, even those who were expatriated, are treated as "nationals of a foreign country" within the meaning of Executive Order No. 8389. Only if they were residing in the United States since February 23, 1942, are they exempted from the restrictions imposed upon those coming from the originally unoccupied zone of France

<sup>31</sup> 7 Fed. Reg. 1492 (1942).

<sup>32</sup> See Press Release, Treasury Department, February 23, 1942, Fed. Res. Bank of New York, Circular 2383.

<sup>33</sup> Persons who formerly were domiciled in an enemy-occupied territory and are living as refugees in the United Kingdom with a Home Office permit to reside there (not being a transit permit) as the Belgian, Dutch, and French refugees, are regarded as residents, within the meaning of the financial regulations. Howard, *The Defence (Finance) Regulations, 1939* (1942) p. 6.

<sup>34</sup> Staatsblad No. A 6, *infra* Chapter XXI.

<sup>35</sup> "Persons who according to the Law of the Netherlands are 'Nederlandsche onderdanen,'" Staatscourant No. 152, June 10, 1940.

(Vichy-France), which zone was declared enemy territory on November 8, 1942.<sup>36</sup>

As to money placed at the disposal of refugees while they were still in the country from which they wanted to emigrate, the question arose if the persons who furnished such money in order to facilitate the immigration of those refugees, could be reimbursed. The legal question turned on whether such sums were paid "on behalf of enemies" in favor of individuals residing in enemy territory. The question was considered in England in *Weiner v. Central Fund of Jewry*,<sup>37</sup> and in this country in *Hansen v. Emigrant Bank*<sup>38</sup> and in *Dobschiner v. Levy*.<sup>39</sup> A discussion of these cases will be found in Chapter XI.

Incidentally, the numerous refugees from occupied European countries who entered the United States since the summer of 1940 are not yet aware of the benefit they derived from the freezing of their assets in this country. Immediately after the invasion of Western European countries by the German armies, the assets of nationals of foreign countries were blocked in the United States. As early as April 8, 1940 (Norway and Denmark), May 10, 1940 (the Netherlands, Belgium and Luxemburg), and June 17, 1940 (France), these assets could not be withdrawn by their owners, and German occupation authorities could not cause any disposition of such assets in favor of persons designated by such authorities.<sup>40</sup> Thus, the freezing regulations were the decisive reason why the German pattern of imposing a heavy "capital flight tax" (*Kapitalfluchtsteuer*) upon all persons leaving the country was not fol-

<sup>36</sup> General Ruling 11, as amended, November 8, 1942, 7 Fed. Reg. 9119 (1942).

<sup>37</sup> (1941) 2 All E. R. 29 (K. B., February 18, 1941).

<sup>38</sup> N. Y. L. J. March 27, 1942, p. 1305; September 9, 1942, p. 539.

<sup>39</sup> 39 N. Y. S. (2d) 277 (December 21, 1942, rehearing January 15, 1943).

<sup>40</sup> Cf. Jessup, *The Litvinov Assignment and the Pink Case*, (1942) 36 Am. J. Int. L. 282, 283.

lowed in the territories occupied or controlled since spring 1940. Most probably, such tax might have been levied upon persons to whom exit permits were granted if there had been any possibility of utilizing their property abroad. Precisely because these assets were frozen at a date which followed very closely upon the invasion of Western European territories, immigrants and visitors in this country were thus enabled to use these assets for themselves, as generally licensed nationals under General License No. 42, as amended. Otherwise, these assets might have been used to pay for taxes or ransoms for the granting of exit permits. (This recent technique of German authorities extorting money from friends of prospective emigrants living abroad is mentioned *infra* Chapter XI, n. 26.)

Generally, loss of citizenship by denationalization has not been recognized insofar as enemy qualifications under the Trading with the Enemy Act are concerned. In cases dealt with during the last war,<sup>41</sup> persons pretended to have lost their nationality, under the laws of the country of their origin, on the ground of long absence from that country.<sup>42</sup> The question was whether such persons had completely lost their (enemy) nationality.<sup>43</sup>

David Dudley Fields<sup>44</sup> proposed the rule that "a person who has ceased to be a member of a nation, without having acquired another national character, is nevertheless deemed to be a member of the nation to which he last belonged, except so far as his rights and duties within its territory, or in relation to such nation are concerned."

<sup>41</sup> For English cases regarding the loss of German nationality during the First World War, see the authorities cited in *Stoek v. Public Trustee*, (1921) 2 Ch. 67.

<sup>42</sup> See, generally, on the effect of change of sovereignty upon nationality, Hackworth, *Digest of International Law*, vol. 3 (1942), p. 302; Mann (1942) 5 Modern L. Rev. 218.

<sup>44</sup> *Outlines of an International Code*, 2d ed. (New York 1876) 130.

But such a rule, as Professor Borchard<sup>45</sup> has said, can "hardly be considered as a recognized rule of international law." Professor Borchard's view appears more fully justified at the present time when, for instance, a totalitarian state in a recent enactment changed its conflict of law rules with special reference to stateless individuals. Article 29 of the Introductory Law of the German Civil Code, as amended by the Statute Amending and Modifying the Law of Domestic Relations and the Status of Stateless Individuals, of April 12, 1938,<sup>46</sup> now provides that the law of the state where a stateless individual has or has had his permanent domicil shall govern the legal status of such an individual in cases governed by the national law of the individual.

But the situation of stateless refugees in this war calls for quite different considerations. Whereas in the last war the question was whether a person's nationality was lost completely, in this war no doubt exists as to the completion of the expatriation and denationalization of refugees by a unilateral act of their original sovereign. The question now is rather whether, as a matter of principle, such a measure is to be recognized abroad.<sup>47</sup> This question may

<sup>45</sup> Borchard, *The Diplomatic Protection of Citizens Abroad or the Law of International Claims* (1927) 592.

<sup>46</sup> Reichsgesetzblatt 1930 I 380, 417. See Raape, *Deutsches Internationales Privatrecht*, vol. 2 (1940), p. 384, and as to the general shifting from the nationality to the domicil principle, Nussbaum, *Rise and Decline of the Law-of-Nations Doctrine in the Conflict of Laws*, (1942) 42 Col. L. Rev. 189, at p. 204.

<sup>47</sup> "Nationality is the status of a person in relation to the tie binding such person to a particular sovereign nation. That status is fixed by the municipal law of that nation," Administrative Decisions I, Mixed Claims Commission, United States and Germany, Decisions and Opinions, vol. 1, p. 189, 193, quoted by Hackworth, *supra* n. 43, p. 5. "It is for each State to determine under its own law who are its nationals," Hague Convention on Nationality Conflicts, Hudson, *International Legislation*, vol. 5 (1936), 359, 364.

It would seem to follow that municipal law is also competent to make the negative decisions involved in this determination, i. e., to decide on the loss of nationality.

be considered here only insofar as it bears upon trading with the enemy law.

It may be recalled (Chapter V) that exemptions from restrictions of certain classes of aliens of enemy nationality in this country, such as the Austro-Hungarians and Italians, do not depend on whether or not such individuals residing in this country are expatriated nationals. On the contrary, expatriation of refugees residing in this country is no reason to distinguish them from other nationals of their country of origin, as, for instance, under the War Damage Regulations. Even the acquisition by expatriated refugees of another nationality (other than citizenship of the United States) results in exemption only from travel restrictions, but not from restrictions imposed upon alien enemies in naturalization proceedings.

The question of allegiance may indeed play a definite role in connection with disability of alien enemies with regard to real property. This question, which has been discussed in Chapter V, is whether stateless refugees formerly of enemy nationality are to be treated as "friendly aliens."<sup>48</sup> They do not, it is true, owe any allegiance to the country of their origin, since that country itself refused to take care of the interests of the individuals concerned, by refusing passports, denying diplomatic protection, prohibiting reentry into their home country, and even denationalizing them. Allegiance, as the "obligation of fidelity which an individual owes to the government under which he lives, or to his sovereign *in return for protection which he receives* (italics supplied)<sup>49</sup> is a reciprocal atti-

<sup>48</sup> Cf. Eagleton, "Friendly Aliens," (1942) 36 Am. J. Int. L. 661; Davie, *Immigrants from Axis-conquered Countries*, (1942) 223 Ann. Am. Acad. Pol. Soc. Sc. p. 114.

<sup>49</sup> *Carlisle v. United States*, 16 Wall. 147, 154 (1872). "Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obliga-

tude and no longer binds those stateless refugees to the government of their country of origin. They do not fall into the class of aliens who are excluded from the benefits of statutory state law such as sec. 10 of New York Real Property Law. An informal opinion of the Attorney General of the State of New York of July 1, 1942,<sup>50</sup> dealing with the capacity of refugees to take, hold and transmit real property, points out: "Germany (and possibly also this would apply to other Axis enemy nations) has expatriated Jewish refugees by law (November 25, 1941). There would appear to be no sound reason why New York courts would not recognize that these refugees have lost their citizenship in enemy countries." The opinion further points out that, "the Federal Statute furnishes no definition of 'enemy aliens.' It deals with a matter of war-time regulation. Title to real property is governed by the law of the State."<sup>51</sup>

Possibly state courts, though not bound by the opinions of the Attorney General, informal or otherwise, will recognize the denationalization as enacted by the law of the country of origin of the stateless person. It is true also that the federal statute to which the opinion refers, namely, the Alien Enemy Act,<sup>52</sup> does not contain any definition of "alien enemies" that may be applied to real property questions in the State of New York.

tions, one being a compensation for the other," *Luria v. United States*, 231 U. S. 9, 22 (1913).

<sup>50</sup> Letter to the Jewish Agricultural Society, Inc., New York, N. Y. Times, July 6, 7, 1942. "The conclusion of the Attorney General is subject to one contingency—the title, while in the refugee may be subject to divestment by the State of New York itself as sovereign." See Pratt, *Present Alienage Disabilities Under New York State Law in Real Property*, (1942) 12 Brooklyn L. Rev. 1.

<sup>51</sup> See Steckler and Rosenberg, *Real Property of Enemy Aliens*, 107 N. Y. L. J. 1710; Rosenberg, *Alien—Friends and Enemies*, (1942) 5 Contemporary Jewish Record 282.

<sup>52</sup> 40 Stat. 531 (1918).

This statutory federal law which declares all citizens, natives, denizens and subjects of an enemy country to be "alien enemies," covers also stateless persons formerly of enemy nationality because they are, if not subjects, evidently natives of that country. But this statutory federal law has no bearing upon New York state law. There is no doubt that the New York statute admits to trading in real estate only specific aliens, namely, "friendly aliens." It was held in *Techt v. Hughes* and recently in *George v. People*<sup>53</sup> that resident Austrians in the First World War and resident Italians in this war, who were neither denaturalized nor denationalized, are not to be considered "friendly aliens," because the country the nationals of which they are is at war with the United States. Stateless persons formerly of enemy nationality, not only Jews who are collectively denationalized, but also other, individually denationalized persons, do not owe allegiance any more to that country of their origin which refuses them all protection, as mentioned above. Though such persons are not exempted from the federal restrictions imposed upon aliens of enemy nationality, they are not to be excluded from the benefits which New York Real Property Law grants "friendly aliens."

On the other hand, stateless persons, as individuals generally licensed under General License No. 42, as amended,<sup>54</sup> on the ground of their residence in this country, continue to be subject to the Foreign Funds Control. A general license under the freezing regulations does not amount to an exemption from the freezing regulations. Thus, though stateless refugees may no longer be considered citizens of a foreign (blocked) country, they are still subjects of that country, in the meaning of sec. 5E(i) of

<sup>53</sup> N. Y. L. J. December 23, 1942, p. 2021.

<sup>54</sup> 7 Fed. Reg. 1492 (1942).

Exec. Order No. 8389 as amended, although they may have acquired in the meantime another nationality, even citizenship of the United States.

The particular situation of stateless refugees, formerly of enemy nationality, may make it necessary to differentiate<sup>55</sup> their treatment from that of other such aliens living in this country, who have retained their nationality. Such differentiation might result in making the legal situation of stateless refugees comparable to that of foreigners other than aliens of enemy nationality. The distinction between these two classes under the Trading with the Enemy Act and especially under the amendment by sec. 301 of the First War Powers Act, 1941, is emphasized by Turlington<sup>56</sup> who puts the question: "To what extent does the position of nationals of countries with which we are at war differ, as regards the action of our Government with respect to their property, from the position of other foreigners?"<sup>57</sup>

Similar rulings in other countries, for instance in Guatemala<sup>58</sup> and in Peru,<sup>59</sup> exempted stateless Jewish refugees from the restrictions which were there imposed upon the funds and securities of nationals of the countries of their origin. Likewise, in Brazil, confiscatory measures<sup>60</sup> against

<sup>55</sup> On "reclassification" see Rowe, *The Alien Enemy Program—So Far*, Common Ground, Summer 1942, p. 19; Harrison, *Alien Enemies*, (1942) 13 Penn. Bar Ass. Q. 196, 198; Letters to the N. Y. Times by W. C. Dennis, April 13, 1942, P. J. Eder, April 15, 1942, and J. McDonald, June 8, 1942.

<sup>56</sup> *Vesting Orders Under the First War Powers Act, 1941*, (1942) 36 Am. J. Int. L. 460, 463.

<sup>57</sup> On questions arising out of the (British) Czecho-Slovakia (Financial Claims and Refugees) Act of 1940, 3 & 4 Geo. VI, c. 4, see Cohn, *The Settlement of Czechoslovakian Financial Claims—A Contribution to the Problem of Post-War Readjustment*, (1941) 16 Tulane L. Rev. 59.

<sup>58</sup> Decree No. 2655, December 23, 1941, sec. 41, reads as follows: "The Government may rule that persons who are nationals of the countries at war with the Republic but have suffered persecution because of race or religion may be exempted from the application of the provisions contained in the present law. For these persons, pertinent provision will be made in each individual case by the Secretary of Foreign Affairs."

<sup>59</sup> See (1942) 1 Bulletin, World Jewish Congress No. 2, p. 12.

<sup>60</sup> N. Y. Times, March 13, 1942.

citizens of the Axis powers which were enacted "in compensation for the losses suffered by Brazil at the hand of those Powers" were later<sup>61</sup> lifted for Jewish refugees.

However, under the Trading with the Enemy Acts of the different countries, the legal status of refugees results in certain anomalies in situations such as the following: A German Jew left Germany in 1933, emigrated to France and because of his German birth was interned there in September, 1939, after the outbreak of the war between France and Germany. He finally came to the United States in April, 1942, from Marseilles, in the then unoccupied zone of France. He is and remains an enemy within the meaning of the German as well as the French and British Trading with the Enemy Acts, and he is not "a generally licensed national" in the United States, since he acquired residence in the United States after February 23, 1942.

For the purposes of the German Act of January 15, 1940, as amended, sec. 3 (1),<sup>62</sup> he is an enemy because at the outbreak of the war he resided in France, an enemy country. Though the German Act does not regard Germans interned in enemy countries as enemies, Jews are expressly excluded from this provision.<sup>63</sup> Thus his insurance policies with companies situated in Germany—even neutral companies with agencies in Germany—were sequestrated and subsequently confiscated, as property of a Jew of German origin living abroad.<sup>64</sup>

At the same time he is and remains an enemy within the meaning of the French Trading with the Enemy Act of September 1, 1939,<sup>65</sup> sec. 3 (c), as an enemy national

<sup>61</sup> N. Y. Times, October 7, 1942.

<sup>62</sup> Chapter I, n. 8.

<sup>63</sup> Decree of June 27, 1940, (1940) 102 Deutsche Justiz, p. 732.

<sup>64</sup> *Supra* n. 7.

<sup>65</sup> Journal Officiel September 4, 1939, p. 11089.

(*ressortissant allemand*) interned in France. Accordingly, his banking accounts in Paris, his former residence, were sequestered. Though this French legislation was formally repealed after the Armistice of June 22, 1940,<sup>66</sup> no release of his funds in Paris banks was authorized, still less any transfer to unoccupied France.

Since the British Trading with Enemy (Specified Areas) Order No. 1<sup>67</sup> declared all of France, including the zone of Vichy-France (unoccupied until November 11, 1942) enemy territory, his property in England was transferred to the Custodian of Alien Property. It is not *ipso jure* released although the owner is now in the United States, as a lawfully admitted immigrant. This example may show that legal provisions framed with a view to fairly simple situations are inadequate to meet the special problems with which refugees are faced.

The question of the legal position of refugees in the different American Republics was recently dealt with by the Inter-American Juridical Committee,<sup>68</sup> whose reporter prepared an elaborate questionnaire for submission to the Governments, asking for information, *inter alia*: "What test did the particular Government apply in classifying persons as refugees? Were there any administrative regulations applicable exclusively to refugees as distinct from other aliens, and in this connection was any distinction made between refugees who kept the nationality of their State of origin and others who had lost it?" The term "refugee" as used by the reporter refers to "a person who, whether or not deprived of his nationality, in consequence of serious and notorious political conditions in the country

<sup>66</sup> Chapter II, n. 34-38; Domke, *El Convenio de Armisticio Germano-Frances y el Derecho Internacional* (1942) 21 *Revista de Derecho Internacional* 192.

<sup>67</sup> S. R. & O. 1940, No. 1219.

<sup>68</sup> Fenwick, *The Inter-American Juridical Committee*, (1943) 37 *Am. J. Int. L.* 5, 16.

from which he comes, has left the territory of his own accord in order to preserve his liberty or has been constrained to leave it by the public authorities, and who, moreover, does not enjoy the diplomatic protection of another State." This refers to refugees of non-American origin, and does not include American political exiles or emigrants. The Chairman of the Committee, referring to the case of stateless refugees (*apatridas*), expressed the view that "inasmuch as nationality is exclusively a matter of domestic legislation, a refugee should not be considered by a third State as being a national of the State which has expressly deprived him of his nationality."<sup>69</sup>

<sup>69</sup> *Ata da 23a Sessao*, p. 3, quoted by Fenwick at p. 17.

which a German may be at present found outside Germany, seems a very dangerous one."<sup>8</sup>

The decisions rendered during this war by the United States Federal Courts on the enemy character of persons taken into custody are limited to habeas corpus proceedings, i. e., to the question whether such persons are alien enemies within the meaning of the Presidential Proclamations issued under the Alien Enemy Act.<sup>9</sup> The burden of proof that the detention is not valid is on the alien. But these decisions have no bearing on the question of the enemy character of individuals which may arise out of the application of the Trading with the Enemy Act.

Concerning the loss of enemy character of stateless refugees, their treatment as enemies within the meaning of the different Trading with the Enemy Acts has been dealt with in Chapter VI.

The trend toward administrative determinations in the application of trading with the enemy law permits adaptation to changing business conditions. Thus, persons and corporations may be freed from the blacklist restrictions upon trading with them by a simple deletion of their names in the next regular issue of the blacklist.<sup>10</sup>

Changes in military conditions in regard to territories occupied by the enemy and subsequently liberated are reflected in British trading with the enemy law, witness the situation in Syria and Lebanon. These territories, formerly under French mandate, were declared enemy territory during the German infiltration from May 27, 1941. They were subsequently declared non-enemy on August 19, 1941, and since September 5, 1941, have been incor-

<sup>8</sup> *Tingley v. Mueller*, (1917) 2 Ch. 144, 175.

<sup>9</sup> See Chapter VII, p. 106.

<sup>10</sup> Cf. *Von Zedwitz v. Sutherland*, 26 F. (2d) 525, 58 App. D. C. 153 (1928); *Societe Suisse Pour Valeurs de Metaux v. Murphy*, 306 U. S. 631, 59 S. Ct. 463, 83 L. Ed. 1033 (1939).

## 18. Patents, Trademarks, and Copyrights.

THE IMPORTANT role which industrial property rights play in the economic life of the belligerent nations is emphasized by the fact that now, as in the First World War,<sup>1</sup> the International Convention for the Protection of Industrial Property, the Madrid Agreements, and the Hague Arrangement on Designs were not abrogated by the outbreak of war. Moreover, in most of the belligerent countries special legislation has been enacted for the preservation of industrial property rights of foreigners, even of alien enemies.

But on the other hand such rights have become an important weapon of economic warfare, especially during this war. This is particularly true of patents, trade-marks, and copyrights, the administration of which, by governmental agencies in this country and in England, gave rise to judicial decisions and numerous special regulations.

Industrial property rights are used as a weapon of economic warfare in the exploitation of occupied and controlled countries. Thus, for instance, among the measures of the Nazi "New Order" in Europe, is the penetration of the industrial and commercial life of controlled territories by the creation of mixed corporations, as German-French: the Francolor Corp.<sup>2</sup> (Etablissements Kuhlmann, I. G. Farben Industrie), or German-Rumanian: the Continental Oil Corp.,<sup>3</sup> where the capital investment by the German

<sup>1</sup> Ladas, *War Legislation and Trade-Marks*, (1941) 31 Trade-Mark Rep. Part I, p. 35.

<sup>2</sup> N. Y. Times November 24, 1941; January 21, 1942; June 17, 1942.

<sup>3</sup> Neumann, *Behemoth: The Structure and Practice of National Socialism* (New York, 1942) p. 276.

partner consisted mostly in German patents.<sup>4</sup> Industrial property rights were used by the Axis powers long before the outbreak of hostilities to further the purposes of economic warfare. In this country, discussion of this aspect of economic warfare, through infiltration of the industrial life of many countries and strangulation and restriction of research, has resulted in numerous publications,<sup>5</sup> relating especially to the world-wide activity of the German dye trust, the I. G. Farben Industrie Aktiengesellschaft.<sup>6</sup>

The economic implications of such measures of economic warfare are not to be considered here.<sup>7</sup> The scope of this book is restricted to their legal aspects under the trading with the enemy legislation. Their importance is reflected in the policy of administration of industrial property rights which are vested in the Alien Property Custodian. On the other hand, international commercial affiliations, as manifest in patents and trademarks agreements,<sup>8</sup> led to court proceedings in England in this war in which such rights, registered in the name of the German dye trust, were claimed as the property in trust for an English corporation. In *In re I. G. Farbenindustrie Ak-*

<sup>4</sup> The Penetration of German Capital into Europe, Statement No. V of the United Nations Information Committee, London, December 30, 1942, p. 4.

<sup>5</sup> Patch, *Foreign Control of American Patents*, (1941) 2 Editorial Research Reports 41; Kronstein, *The Dynamics of German Cartels and Patents*, (1942) 9 U. of Chi. L. Rev. 643; (1943) 10 *ibid.* 49.

<sup>6</sup> *Free Enterprise in Our Time: II. The World Patent Cartel. No Peace with I. G. Farben*, (1942) 26 *Fortune* 105; Porter, *The Nazi Chemical Trust in the United States* (National Policy Committee Papers, No. 5, 1942); Borkin and Welsh, *Germany's Master Plan* (New York, 1943) p. 19.

<sup>7</sup> See Stewart, *Patents: War Secrecy and Beyond*, (1942) 30 *Geo. L. J.* 285; Holland, *Patent Law in War and in Peace*, (1942) 28 *Am. Bar Ass. J.* 585; Michaelis and Schaich, *Restoration of Patent Rights Affected by War*, (1942) 10 *Geo. W. L. Rev.* 161; McClur, *Copyright in War and Peace*, (1942) 36 *Am. J. Int. L.* 383; Borchard, *Nationalization of Enemy Patents*, (1943) 37 *Am. J. Int. L.* 92; Wood, *Agreements Concerning Patent License Restrictions*, (1943) 37 *Ill. L. Rev.* 350.

<sup>8</sup> Bulletin Dep't of Justice, Consent Decrees Entered Against Dye Concern, N. Y. L. J. October 24, 1941, p. 1187.

*tiengesellschaft's Agreement*,<sup>9</sup> the Bayer Products, Ltd., an English corporation formed in 1933 by the American company Bayer Co., Inc., itself a subsidiary of Sterling Products, Inc., asked for an order vesting in the petitioner certain letters patent registered in the name of I. G. Farben Industrie Aktiengesellschaft. The English corporation claimed title to the patents under an agreement of 1926 between the two corporations and a declaration of trust made by I. G. Farben Industrie Aktiengesellschaft in favor of Bayer Products, Ltd., in 1932, alleging that I. G. Farben Industrie Aktiengesellschaft was a mere trustee of the patents for Bayer Products, Ltd.

The Comptroller General of Patents in exercise of the power conferred by sec. 2(1) of the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939,<sup>10</sup> had already granted compulsory licenses in respect of a number of the patents to manufacture the articles concerned. He did not "desire to offer any observation on the application." Imperial Chemical Industries, Ltd., however, to which these licenses had been granted, as respondent to the summons, pretended that a Vesting Order by the court would be an assignment within the meaning of sec. 4(1) of the Trading with the Enemy Act, namely, on behalf of I. G. Farben Industrie Aktiengesellschaft, a transaction for which the sanction of the Treasury had not been obtained. The court overruled the preliminary objection. It held (at p. 150) that, even assuming an assignment of a bare legal estate in a chose in action, namely, the registered title, is within the terms of the section, "it would not be an assignment made by or on behalf of an enemy. It would be an assignment made on

<sup>9</sup> (1941) 1 Ch. 147; (1940) 4 All E. R. 486; 57 T. L. R. 148; 110 L. J. Ch. 167; 165 L. T. 290; 58 Reports of Patent, Design and Trade Mark Cases 31 (Ch., November 22, 1940).

<sup>10</sup> 2 and 3 Geo. 6 c. 107.

the application of a person claiming to be beneficially interested who is not an enemy."

The Court, however, did not decide if and when it would make a vesting order even if it were satisfied of the beneficial title of Bayer Products, Ltd. But it further said that the making of a vesting order could not in any way affect the question as to whether, since September 3, 1939, I. G. Farben Industrie Aktiengesellschaft has been "the proprietor of a patent." The making of a vesting order would not deprive the Comptroller General of those powers under sec. 2 (1) of the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939, which runs as follows: "Where, (a) an enemy or an enemy subject is, or has at any time since the beginning of the third day of September, 1939, been, whether alone or jointly with any other person the proprietor of a patent . . . and (b) the Comptroller is satisfied that it is in the interest of all or any of His Majesty's subjects that the rights conferred by the patent should be exercised . . . and that a person who is not an enemy or an enemy subject desires to exercise the said rights . . . and is in a position so to do, the comptroller may, on the application of that person, make an order granting to him a license under the patent . . . either for the whole of the residual of the term of the patent, . . . or for such less period as the comptroller thinks fit."

A related question, as to trademarks, arose in *Rex v. Comptroller General of Patents; Ex Parte Bayer Products, Ltd.*<sup>11</sup> There the English company claimed to be the absolute owner in equity of pharmaceutical patents registered in the name of I. G. Farben Industrie Aktiengesellschaft. As in the aforementioned case, licenses had been

<sup>11</sup> (1941) 2 K. B. 306; 111 L. J. K. B. 117; 165 L. T. R. 278; 58 R. P. D. T. C. 251 (C. A., July 1, 1941).

granted by the Comptroller General of Patents to certain licensees since the German company at the beginning of the war was the registered proprietor of the patents. But the trade marks under which the patented products had been sold were not within the scope of sec. 3 of the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939, since they belonged to Bayer Products, Limited, and not to the German company. The English company still retained its exclusive rights to sell its products under its trade marks, and those rights constituted the principal goodwill of the company.

This position, however, was altered by an Amendment to the Act by an Order in Council,<sup>12</sup> which added Regulation 60 E to the Defence (General) Regulations, 1939. This provision authorized the Comptroller, in cases where licenses had been granted under the Act, to suspend the rights in connection with the trademarks registered in respect of the patents, notwithstanding the fact that the trade mark was not and never had been property of or registered in the name of an enemy. Application was made to the Comptroller by British manufacturers for the suspension of rights in respect of some trade marks ("Evipan" and "Avertin"). The English company, in opposing these applications, alleged that if licensees of the patents became entitled to advertise their products as the "British equivalent for Evipan," the value of those trade marks and of the goodwill of the company would practically cease to exist. Yet, on the other hand, it is obvious that any exploitation of a licensed patent without the use of the trade mark would be difficult.

<sup>12</sup> Statutory Rules & Orders 1940 No. 1328, July 23, 1940; cf. Jarratt, *Enemy-Owned Trade-Marks in Great Britain*, (1942), 32 Trade-Mark Rep. Part I, p. 119.

Bayer Products, Ltd., applied to the Court for an order of prohibition to be directed to the Comptroller to restrain him from exercising any jurisdiction or making any orders under the Order in Council. This Order in Council would have the effect *inter alia* of confiscating the trade mark rights of British or neutral proprietors, without any provision for compensation. The contention, however, that Reg. 60 E would be invalid as being *ultra vires* the Emergency Powers Defence Act, 1939, was rejected by the Divisional Court. The Court of Appeal, affirming this decision, held that the British Act conferred on the regulatory authority the power to make Regulation 60 E.<sup>13</sup> Said Lord Justice Scott (at p. 266): "The principle upon which delegated legislation must rest in our constitution, is that, where legislative discretion is left in plain language by Parliament, it is a discretion which is intended to be final and not subject to control subsequently by the courts."<sup>14</sup>

There are other incidents which brought out the economic war character of legislative measures of the Axis powers even before the entrance of the United States into this war, namely, the practice of the Axis powers with regard to royalty payments. Licensees in those countries and the occupied territories are prevented, by reason of the respective foreign exchange legislation,<sup>15</sup> from paying to American patent owners the license fee for using the processes of American inventions. Authorizations for the transfer of the amounts in question, which the exploiting firms were willing to pay, were not given by the Foreign Exchange Control Agencies,<sup>16</sup> unless foreign exchange

<sup>13</sup> Cf. Carr, *A Regulated Liberty*, (1942) 42 Col. L. Rev. 339, 341.

<sup>14</sup> *E. H. Jones (Machine Tools), Ltd. v. Farrell and Muirsmith*, (1940) 3 All E. R. 608 was not approved. Cf. Carr, *supra* n. 13, at p. 343.

<sup>15</sup> Chapter XX, n. 1, 10.

<sup>16</sup> *Ibid.* n. 27.

could be obtained by exporting the products for which a license fee was to be paid.

But, on the other hand, the Axis authorities insisted that payments due on licenses given on patents, say, of German inventors registered in the United States should be transferred. This method, "as a deliberate policy of economic warfare against the United States,"<sup>17</sup> led to different proposals in the House of Representatives for Joint Resolutions<sup>18</sup> which were intended to establish the "principle of international reciprocity in the protection of American patents, trade marks, secret formulas and processes, and copyrights by providing a method for assuring the payments of amounts due to persons in the United States from users thereof in countries restricting international payments from their territories." But such proposals for special clearing of payments became superfluous with the extension of the freezing regulations to nearly all European countries through Exec. Order No. 8785, June 14, 1941.<sup>19</sup> By this provision all assets in this country in which nationals of designated foreign countries had any interest whatsoever were blocked. Thus, legislation which was to provide especially for the protection of American industrial property rights against unilateral acts of foreign legislation was no longer necessary. But the earlier discussions retain their importance for any later settlement of these questions, which probably will emerge again after the end of this war.

The Trading with the Enemy Acts of the belligerents do not contain special provisions for industrial property rights of enemies, as these rights are covered by the gen-

<sup>17</sup> Statement of Prof. Deak, Hearings Before the Committee on Patents, H. R., April 15, 1941, *Royalty Payments*, p. 17.

<sup>18</sup> 77th Cong., 1st Sess., H. J. Res. 32, 73 and 123, reprinted *supra* n. 17, at p. 1, 2, 4.

<sup>19</sup> 6 Fed. Reg. 2897 (1941).

eral provisions regarding property located in the enacting country.<sup>20</sup> Industrial property rights of enemies are subject to the restrictions which govern all enemy property in this country. On the other hand, in nearly all countries special regulations were issued which on the basis of reciprocity provided for the protection of enemy industrial property and its preservation by extensions of different periods fixed by the law.<sup>21</sup>

In this country, patents, trade marks and copyrights were subject to the freezing regulations insofar as a national of a foreign country, within the meaning of Exec. Order No. 8389, as amended, had any interest in them. They were not treated differently from other assets of such nationals, with one exception. Assets such as patents, trade marks and copyrights had to be reported, under Form TFR-300, even when they might be evaluated at less than \$1,000.<sup>22</sup> Moreover, in the case of such assets, the obligation to report continues<sup>23</sup> for nationals of foreign countries entering the United States at any time after October 31, 1941, except nationals "entering the United States on a purely transitory visit, whether for business or pleasure" and those acquiring residence in the United States after February 23, 1943, who apply to be generally licensed under General License No. 42, as amended.<sup>24</sup> Furthermore, persons in the United States have to report patents if their property is blocked by specific direction of the Treasury Department or if these persons have custody or control of property of specifically blocked or blacklisted persons. The number of such persons for whom the obli-

<sup>20</sup> See sec. 10 of the Trading with the Enemy Act, as amended.

<sup>21</sup> See Ladas, *supra* n. 1, at p. 41; (British) Patent and Designs Act, 1942, 5 & 6 Geo. 6, c. 6.

<sup>22</sup> Sec. III F of Public Circular No. 4, and Sec. 3 of Public Circular No. 5, September 3, 1941, 6 Fed. Reg. 4196, 4587 (1941).

<sup>23</sup> Public Circular No. 4 C, September 21, 1942, 7 Fed. Reg. 2506 (1942).

<sup>24</sup> 7 Fed. Reg. 1492 (1942).

gation to report continues to exist may increase, especially by additions to the blacklists. Reports to the Treasury Department under the freezing regulations became by no means superfluous since industrial property rights are subject to the control of the Alien Property Custodian under his different orders and regulations.

Under the freezing regulations, General License No. 72, as amended,<sup>25</sup> under special conditions authorized the filing and prosecution of applications for letters patent in the United States Patent Office and provided for the filing of reports on Form TFR-132. Public Circular No. 5 A,<sup>26</sup> May 8, 1942, established the policy of the Treasury Department to deny licenses insofar as applications and fees in enemy territory and in the United States on behalf of enemy nationals, within the meaning of General Ruling No. 11, were concerned. It confined the authorization to cases "which do not involve trade or communication with an enemy national." But these regulations need not be considered here in detail because on November 17, 1942, the Alien Property Custodian issued new regulations. On the same date the Treasury Department amended the aforementioned freezing regulations.

The new administration was inaugurated by Exec. Order No. 9095, as amended by Exec. Order No. 9193, July 6, 1942,<sup>27</sup> establishing the Office of the Alien Property Custodian. This agency has assumed full power and authority over the filing and prosecution of applications for United States patents, trade marks, and copyrights. It also controls the transfer and other dealings with respect to assets in which nationals of a foreign country, within the meaning of Exec. Order No. 8389, as amended, have

<sup>25</sup> 6 Fed. Reg. 4586 (1941).

<sup>26</sup> 7 Fed. Reg. 3471 (1942).

<sup>27</sup> 7 Fed. Reg. 5205 (1942).

"any interest of any nature whatsoever." The Alien Property Custodian is authorized "to take such actions as he deems necessary in the national interest, including, but not limited to, the power to direct, supervise, control and vest" such property.

The administration of these industrial property rights by the Alien Property Custodian in this war was facilitated and rendered more effective by several circumstances. First, the report of all foreign property in this country as of October 11, 1941, long before the entrance of the United States in this war, on Form TFR-300, presented a full and complete picture, one not available when the United States entered the First World War. Secondly, the administration of all bank accounts and securities by the Treasury Department made it possible for the Office of the Alien Property Custodian to proceed much more effectively than might have been possible had the whole of enemy-owned or enemy-controlled property in this country been administered by the Alien Property Custodian alone. Thus detailed provisions by the Alien Property Custodian regarding foreign-owned industrial property were issued, and they are now administered under a definite policy.

In order to administer enemy-owned and enemy-controlled industrial property rights in this country, extensive investigation was necessary. Though the rights to patents were already reported under Form TFR-300 to the Treasury Department as of October 1, 1941, the Alien Property Custodian issued General Order No. 2, June 15, 1942,<sup>28</sup> which required a report on Form APC No. 2 from every resident of the United States claiming any such right, title or interest in any patents or patent applications in which a designated foreign national has or has had an interest.

<sup>28</sup> 7 Fed. Reg. 4634 (1942).

For the purposes of this order the term "designated foreign national" included, in addition to the blacklisted persons, any resident of, or business organization in, "any country other than the American Republics, the British Commonwealth of Nations, and the Union of Soviet Socialist Republics." General Order No. 3 of the same day<sup>29</sup> extended the duty to report to persons who changed their citizenship or moved out of any foreign country other than those aforementioned.

Meanwhile, a new regulation for the administration of enemy-owned and enemy-controlled industrial property rights was issued on November 17, 1942, supplemented until now by minor amendments only. The entire control is now administered by the Alien Property Custodian, since the Treasury Department "to the extent that the Alien Property Custodian has assumed jurisdiction" relinquished it under Exec. Order No. 8389, as amended.<sup>30</sup> General License No. 72, as further amended, November 17, 1942,<sup>31</sup> authorizes the filing and prosecution in the United States of patent, trade mark and copyright applications, the receipt of letters patent, trade mark registration and copyright certificates, in which a national of a blocked country has an interest, as well as the payments of fees and customary charges of attorneys in the United States. Notwithstanding the provisions of General Ruling No. 11, these transactions may be effected even though they involve a communication from (not to) an enemy national, but payment is not permitted from an account in which an enemy national has an interest.

General License No. 72 A<sup>32</sup> authorizes corresponding

<sup>29</sup> 7 Fed. Reg. 4635, 5080 (1942).

<sup>30</sup> Sec. 2 of Public Circular No. 5, as amended, November 17, 1942, 7 Fed. Reg. 9481 (1942).

<sup>31</sup> 7 Fed. Reg. 9480 (1942).

<sup>32</sup> *Ibid.*

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transactions for a blocked foreign patent, trade mark, or copyright, by any person who is not a national of any blocked country. The term blocked foreign patent "does not include industrial property rights in which an enemy national has an interest." This General License does not authorize any transaction involving trade or communication with an enemy national, and "the Treasury Department will continue to observe its general policy of denying applications to effect such transactions."<sup>33</sup>

By these provisions of the Treasury Department, the administration of General Orders Nos. 11, 12, and 13, all issued on the same day, and the Regulations issued thereunder by the Alien Property Custodian will be facilitated. General Order No. 11<sup>34</sup> forbids, unless authorized by the Alien Property Custodian, the filing and prosecution of applications and the execution or recording of assignments, licenses or other agreements in the United States Patent Office when such transactions are made on behalf or pursuant to the direction of nationals of a blocked country or involve property in which such persons have "any interest of any nature whatsoever direct or indirect." By Regulation No. 1,<sup>35</sup> persons residing in this country on December 7, 1941, and companies in which such persons have an interest are exempted from the prohibitions of General Order No. 11. "Thus, enemy nationals who are resident in this country, many of whom have been employed for a long time in our research laboratories in perfectly legitimate capacities, will be free to deal with their inventions as they wish."<sup>36</sup> A further Regulation No. 2, as amended, January 6, 1943,<sup>37</sup> generally licensed the

<sup>33</sup> Sec. 7 of Public Circular No. 5, as amended, 7 Fed. Reg. 9481 (1942).

<sup>34</sup> 7 Fed. Reg. 9475 (1942).

<sup>35</sup> 7 Fed. Reg. 9477 (1942).

<sup>36</sup> Special Bulletin, American Patent Law Association, November 25, 1942, (1943) 25 J. Pat. Off. Soc. 60.

<sup>37</sup> 8 Fed. Reg. 291 (1943).

filing or prosecuting of an application for letters patent and for trade mark registrations in the United States Patent Office, except those received from enemy nationals after November 17, 1942. The person filing such application is obliged to file a report with the Alien Property Custodian on Form APC-13P for patents, or APC-13T for trade marks, and a report with the United States Patent Office on Form APC-14, but he is not permitted to give any communication, direct or indirect, to an enemy national. Any instrument, however, that is recorded under the general license of this Regulation No. 2, as amended, is subject to the condition that it may be set aside by the Alien Property Custodian and the property so transferred vested by the Alien Property Custodian "at any time within a period of three years from the date of recording, except that the Alien Property Custodian may in his discretion reduce such period of time."<sup>38</sup> By this regulation, *bona fide* transactions which are in no way harmful to the interest of the United States are facilitated, inasmuch as the general license renders possible the prompt performance of such transactions. On the other hand, through the authority to reduce the time for vesting, the title to the property may be speedily clarified.

A further General Order, No. 12, of November 17, 1942,<sup>39</sup> refers to cases where formal papers have not been filed with the United States Patent Office. This Order requires the reporting of papers and correspondence by every person in the United States "who has custody, control or possession of any models, blueprints, drawings, sketches, correspondence, memoranda of inventions, reports or other written information" received in this country since January 1, 1939, relating to patents or trade mark

<sup>38</sup> Form APC-15, November 17, 1942.

<sup>39</sup> 7 Fed. Reg. 9477 (1942).

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applications and disclosures of inventions of enemy nationals. The Order further requires the reporting of any assignments recorded in the United States Patent Office where such instrument was executed prior to the effective date of Exec. Order No. 8389, as amended, and where any of the parties is a national of a foreign country. The dates in question are May 10, 1940, for the Netherlands, June 17, 1940, for France, and June 14, 1941, for Germany, Italy, and Japan.

Finally, by General Order No. 18 of January 9, 1943,<sup>40</sup> a report is required on Form APC-19 from all persons who are obliged to pay royalties to the Alien Property Custodian "by virtue of the vesting of a patent or patent application or of an interest in an agreement with respect to a patent or patent application." Furthermore, the payment of such royalties ("serial payments under a license, assignment or other agreement") shall be accompanied by a report on Form APC-20.

As to copyrights, provisions similar to those of General Order No. 11 were issued by General Order No. 13 of November 17, 1942,<sup>41</sup> prohibiting the execution or recording of any application for copyright or renewal thereof under the copyright laws of the United States and the execution or the recording of any instrument with respect to "any interest in any work subject to copyright in the United States," on behalf of a national of a foreign country within the meaning of Exec. Order No. 8389, as amended. Regulation No. 1, as amended February 8, 1943,<sup>42</sup> exempts from the prohibitions of the General Order not only residents of the United States on December 7, 1941, as does the corresponding Regulation No. 1 under General Order

<sup>40</sup> 8 Fed. Reg. 1707 (1943).

<sup>41</sup> 7 Fed. Reg. 9476 (1942).

<sup>42</sup> 8 Fed. Reg. 1872 (1943).

No. 11 (*supra* n. 35), but also any individual who is a resident on the date of making the application in the United States Copyright Office for a registration or renewal of a copyright or of executing any recordable instrument.<sup>43</sup> Similar to the treatment of patents and trademarks under Regulation No. 2 under General Order No. 11, as amended, Regulation No. 3 of December 30, 1942,<sup>44</sup> generally licenses certain transactions involving copyrights, for which reports on Form APC-23 are filed, provided that no communication, direct or indirect, with an enemy national is involved. Reporting on copyright was further provided for in General Order No. 14 of December 1, 1942.<sup>45</sup> All exploiters of works subjects to copyright under the laws of the United States were required to report on Form APC-18 detailed information as to each work, especially royalty-producing works in which nationals of enemy and enemy-occupied countries have an interest.

As regards the general legal character of vesting, it must be recalled that until now this activity of the Alien Property Custodian has been generally confined to industrial property rights in which nationals of designated enemy countries have an interest. Insofar as these persons are residents of enemy territory and enemy-occupied territories, they are also enemies within the meaning of the Trading with the Enemy Act, and at the same time enemy nationals within the meaning of General Ruling No. 11, as amended. However, such rights may also be seized where they belong to other persons, especially neutrals, if such persons seem to be controlled by or acting on behalf of enemies, as stated by the Alien Property Custodian before the Committee on Patents on April 27, 1942:<sup>46</sup> "When

<sup>43</sup> Cf. Regulation No. 2, November 17, 1942, 7 Fed. Reg. 9478 (1942).

<sup>44</sup> 8 Fed. Reg. 1 (1943).

<sup>45</sup> 7 Fed. Reg. 10546 (1942).

<sup>46</sup> Reprinted in (1942) 32 Trade-Mark Rep. Part I, p. 66.

citizens of neutral countries are licensees of enemy-owned patents they must be treated in no more lenient fashion than any licensees of enemy-owned patents who are American citizens."

The administration of industrial property rights by the Alien Property Custodian raises the question of remedies against vesting orders. Such orders concerning industrial property are to be treated like any other vesting orders. The remedies provided by the Regulations, especially the filing of claims with a request for a hearing thereon before the Vested Property Claims Committee, are discussed in Chapter XVII.

But the seizure of more than fifty thousand patents and patent applications during a period of a few months inevitably involved errors resulting from clerical mistakes and from changes affecting the patent or the inventor which are not on record at the United States Patent Office. General Order No. 15 of the Alien Property Custodian, January 6, 1943,<sup>47</sup> prescribes procedures by which "certain persons may regain title to their patent or patent application if and insofar as they have been seized by mistake." In order to clarify such errors in a more informal way, special forms to be filed with the Alien Property Custodian are provided by which a speedy redress may be sought against wrongful seizure. They include Form APC-16 for inventors who resided in enemy territory at the time their application was filed or their patent granted and are now residing in the United States, and Form APC-17 for assignees, who are residents and citizens of the United States, of enemy patents recorded in the United States Patent Office prior to January 1, 1939. Sec. 3 of General Order No. 15 provides that persons whose claims of wrongful vesting of patents and patent applications by the Alien

<sup>47</sup> (1943) 25 J. Pat. Off. Soc. 137.

Property Custodian are not recognized shall in no way be prevented from filing a notice of claim on Form APC-1<sup>48</sup> and from having a hearing on the validity of the claim. This recourse, however, as expressly stated in every Vesting Order, is open only to persons who are not nationals of a designated enemy country.

A further legal question arising out of the administration of industrial property rights by the Alien Property Custodian concerns the protection afforded to licensees under vested patent and patent applications. Pursuant to sec. 301 of the First War Powers Act, 1941, on which the delegation of the Presidential authority to the Alien Property Custodian is based, no person shall be held liable in any court for anything done in good faith in reliance upon the authority of the Act. "To encourage the most orderly and the widest possible use of the inventions covered by vested patents, licenses will be defended by the Alien Property Custodian to the full extent of his legal power in any suits brought on behalf of former owners charging infringement of the patents which have been licensed to them by the Custodian."<sup>49</sup>

Finally it may be mentioned that an American licensee under a vested patent or patent application need not file a claim within one year of the vesting date, on Form APC-1, to assert his claim to rights under his license, exclusive or non-exclusive. He is not prejudiced by his failure to file a claim within this period. Such an American licensee is not relieved from complying with the reporting and the other requirements under General Orders 2, 11, and 12 and regulations thereunder."<sup>50</sup>

<sup>48</sup> General Order No. 4, July 20, 1942, 7 Fed. Reg. 5539 (1942).

<sup>49</sup> *Patents at Work*. A Statement of Policy by the Alien Property Custodian of the United States. (Booklet, January 18, 1943) p. 19. See *Woburn Degreasing Co. of N. J. v. Spencer Kellogg & Sons, Inc.*, D. C. W. D. New York, July 21, 1942, C.C.H.W.L.S. ¶9774.

<sup>50</sup> Office of War Information, Release 1326, February 23, 1943.

The investigation of industrial property right, through the reports to the Treasury Department under TFR-300 and through the General Orders of the Alien Property Custodian, created the basis for the administration of industrial property rights. The policy under which that control may be exercised, involves questions of far reaching importance.

As to the ownership of such rights, there is a difference between persons and corporations in enemy countries and enemy-occupied countries. Both categories of nationals of a designated enemy country are at the same time enemies within the meaning of the Trading with the Enemy Act, because enemy-occupied territories are assimilated to enemy countries. But it fits into the general policy of the United States to protect the victims of enemy-occupied territories from being deprived of their assets abroad by the invader. The Alien Property Custodian stated<sup>51</sup> that his office has "a great responsibility toward the nationals of enemy-occupied countries who are now unable to prosecute the patent applications they have pending, or to administer the patents which have been issued to them. In addition, there is the ever-present danger of transfer of title under duress. In order to prevent the enemy from making use of these patents, in order to safeguard, under this country's broader responsibilities, the rights of the unfortunate residents of occupied countries, and in order to make these inventions a working part of this nation's war machinery, title to the patents and applications is also being vested in the name of the United States." He further stated that "the ultimate disposition of the patents vested from nationals of enemy-occupied countries will be the subject of discussion with the governments-in-exile."<sup>52</sup>

<sup>51</sup> *Supra* n. 49, at p. 6.

<sup>52</sup> *Ibid.* p. 11.

This obviously refers to the rather intricate questions arising under the vesting decrees of the Dutch and Norwegian governments-in-exile. These decrees vested title to assets abroad of residents of occupied territories in the state represented by the respective government-in-exile. These questions will be discussed in Chapter XXI.

The administration of industrial property rights differs with regard to the varying character of patents, trade marks, and copyrights.

As to copyrights, the vesting of such rights serves the general purpose of the vesting policy, namely, to prevent the enemy owner from having royalties, even if that owner could not dispose of such royalties for the time being since they were blocked under the freezing regulations. Moreover, the Alien Property Custodian "received requests to take action to permit the translation of works of which the copyrights are held by enemy aliens in order that these works may be available in English for use in war work."<sup>53</sup>

As to trade marks, they are necessary to licensees under compulsory licenses of patents, so that they may be able to sell the goods manufactured under such patents. This became evident in the English case *Rex v. Comptroller General of Patents, Ex Parte Bayer Products, Ltd.*<sup>54</sup>

But, on the other hand, the control-program, for enemy-owned or enemy-controlled business enterprises as developed in this country through the freezing regulations, sometimes demanded the prevention of the use of undesirable trade marks. Said the Treasury Department:<sup>55</sup> "A trademark belonging to an Axis business enterprise represents an investment in good will, and is part of that

<sup>53</sup> *Supra* n. 46, at p. 66; Office of War Information, Release 1290, February 17, 1943, 56 U. S. Patent Qu., No. 8, p. III.

<sup>54</sup> *Supra* n. 11.

<sup>55</sup> Administration of the Wartime Financial and Property Controls of the United States Government (December, 1942) p. 31.

enterprise's enduring roots in the country. Disposition of an enterprise should include the disposition of the trademark as well. Destruction of a trademark might be the best method of disposition."

More legal and economic consequences are involved by the administration of vested patents. The greater number and value of these industrial rights is not the only reason why their administration is more important. Because of the experiences of the last war, especially with regard to the selling of patents to the Chemical Foundation,<sup>56</sup> the practice then followed has not been repeated. As explained by the Alien Property Custodian himself before the Senate Committee on Patents:<sup>57</sup> "During the last war the Alien Property Custodian seized about 17,000 enemy-owned patents and copyrights. Many of these were sold under arrangements which were designed to insure the permanent exclusion of detrimental and hostile alien control, but through the years alien interests have gradually regained a substantial degree of influence."

The Office of the Alien Property Custodian was specifically instructed by the President to "refuse to sell or to release title to the enemy patents. The inventions covered by these patents will be made a permanent possession of the American people and, through freely granted licenses, they will be incorporated in our national industrial machinery."<sup>58</sup> This policy, underlying the administration of vested patents and patent applications, has found public expression in a report of the Alien Property Custodian to the President of the United States, dated December 7, 1942.<sup>59</sup> Under the new responsibilities incurred by wise

<sup>56</sup> Cf. *U. S. v. Chemical Foundation*, 272 U. S. 1, 47 S. Ct. 1, 71 L. Ed. 131 (1926), and Gathings, *International Law and American Treatment of Alien Enemy Property* (1940) p. 78, n. 37.

<sup>57</sup> *Supra* n. 46, at p. 66.

<sup>58</sup> *Supra* n. 49, at p. 11.

<sup>59</sup> Reprinted (1943) 25 J. Pat. Off. Soc. 69.

utilization of vested patents, a detailed scheme has been worked out, described as "The Licensing Policy of the Alien Property Custodian,"<sup>60</sup> to which reference may be made for further details. A statement of the Treasury Department<sup>61</sup> reveals the many ramifications of the policy of administering enemy-owned and enemy-controlled patents. "Since they [patents] represent not an investment in good will but an accrued investment in research, they should be used for the benefit of the local economy. In a problem of this type, production facilities and research facilities must either be developed in the individual country or relationships must be fostered between the local enterprise and an enterprise in another country of this Hemisphere having such production and research facilities." These research facilities are of great economic value especially with regard to pending patent applications,<sup>62</sup> "which represent the latest research, kept secret until now. Patents vested in the Alien Property Custodian cover important recent developments of well-known foreign corporations, for example: the electrical ignition systems of Robert Bosch; the automobile motor inventions of Daimler-Benz, Fiat, Marelli; the chemical products of Montecatini, Kuhlmann, Norsk-Hydro; the armaments of Schneider et Cie and Skoda; the alloys and metallurgical equipment of Société Générale Métallurgique de Hoboken and the electrical equipment of Kwaisha Toden Denkyu Kabushiki."<sup>63</sup>

<sup>60</sup> *Supra* n. 49, at p. 13, and (1943) 25 J. Pat. Off. Soc. 57. See the Index of Patents Vested in the Alien Property Custodian, Division of Patent Administration, Washington, D. C., and the Instructions for Preparing the Letter of Application for a License, reprinted, *supra* n. 49, at p. 24.

<sup>61</sup> Administration, *supra* n. 55, at p. 31.

<sup>62</sup> *Supra* n. 49, at p. 12.

<sup>63</sup> See, for instance, the Dornier patent for seaplanes dispensing with wing floats, which was applied for in 1938, and which recently was vested in the Alien Property Custodian, N. Y. Times, February 21, 1943.

Of especial importance among the legal effects of the administration of vested industrial property rights is the opportunity which such administration offers for their future disposition. In the words of the Alien Property Custodian:<sup>64</sup> "The office of the Alien Property Custodian will await a statement of Congressional policy concerning their ultimate disposition. No steps will be taken which will in any way interfere with the ultimate disposal of these patents in the public interest as Congress may direct." There is no doubt at all that this country has the right in war time to take over enemy-owned and enemy-controlled property without compensation, as explained in Chapter XVII. One aspect of this right is revealed in an account of the actual policy of the Alien Property Custodian in the administration of patents, when he said:<sup>65</sup> "We shall take all steps within our power to make certain that vested enemy patents are made available forever to American industry." In this connection, Professor Borchard in a recent article, "Nationalization of Enemy Patents,"<sup>66</sup> which was inserted in the Congressional Record,<sup>67</sup> points out that "citizens of the United States now have invested abroad some 11 billion dollars in direct investment and 4 billion dollars in indirect or portfolio investments. This country should therefore exert its influence to prevent the further corrosion of the institution of private property since the United States and its citizens have more to lose by confiscation than any other country." Assets of this country in Germany alone include<sup>68</sup> \$225,000,000 as the book value of branch plants of American corporations and about

<sup>64</sup> *Supra* n. 46, at p. 69.

<sup>65</sup> *Supra* n. 49, at p. 9; see Werner, *supra* Chapter XVII, n. 55a, at p. 18.

<sup>66</sup> (1943) 37 *Am. J. Int. L.* 92.

<sup>67</sup> By Senator Danaher, 89 *Cong. Rec.*, February 8, 1943, at p. 715.

<sup>68</sup> Statement of Dr. Taylor, Hearings before the Committee on Patents, April 15, 1941, *supra* n. 17, at p. 29.

\$400,000,000 of bonds held by Americans who purchased the issues in American markets during the twenties.<sup>69</sup>

The legal and economic questions involved are not confined to the actual administration of patents,<sup>70</sup> but rather concern the effect of a permanent seizure of enemy-owned and enemy-controlled property in this country. In a final settlement their effect on American investments abroad must certainly be taken into consideration. The solution will require early careful legal preparation. The manifold implications of the Trading with the Enemy legislation for the economic post-war situation will in no field be more important than in that of the protection of industrial property rights.

<sup>69</sup> The American direct investment in Germany (including Austria) is valued at about \$350 million, in *American Direct Investments in Foreign Countries—1940* (Dep't of Commerce, Econ. Ser. No. 20, 1942) p. 11.

<sup>70</sup> Cf. Post-War Plan of the Natl. Resources Planning Board: "Another sphere for action for these joint efforts [of mixed corporations] might be the control for the government of certain patents and properties seized from enemy aliens, and of domestic patents of basic necessity in the production of raw materials," *N. Y. Times*, March 11, 1943.

## 20. Foreign Exchange Control.

FOREIGN exchange restrictions, frequently employed in European countries since 1931, following the economic crisis of the twenties, have become a more and more obvious weapon of economic warfare. They were used as such long before the outbreak of hostilities. Yet the relationship of foreign exchange restrictions to economic warfare has seldom been recognized either in the numerous decisions of the last few years dealing with the extraterritorial effect of such restrictive legislation or in articles in legal periodicals on this subject.<sup>1</sup>

Attention has been focused rather on questions belonging to the conflict-of-laws sphere of private litigation, especially in suits against German corporation debtors which repudiated the service of bond issues abroad on the strength of the prohibitions of the German foreign exchange legislation.<sup>2</sup> The primary question which often

<sup>1</sup> For a summary, see Note, *Foreign Exchange Restrictions and the Conflict of Laws*, (1938) 47 Yale L. J. 451; Neumann, *Devisennotrecht und Internationales Privatrecht* (Berne, Switzerland, 1938); Nussbaum, *Money in the Law* (1939) p. 487; Cohn, *Currency Restrictions and the Conflict of Laws*, (1939) 55 L. Q. Rev. 23, 552; Domke, *Foreign Exchange Restrictions, A Comparative Survey*, (1939) 21 J. Comp. Leg. & Int. L. 54; Weiden, *Foreign Exchange Restrictions*, (1939) 16 N.Y.U. L. Q. Rev. 559; Bloch and Rosenberg, *Current Problems of Freezing Control*, (1942) 11 Fordham L. Rev. 71, 81; Freutel, *Exchange Control, Freezing Orders and the Conflict of Laws*, (1942) 56 Harv. L. Rev. 30.

<sup>2</sup> Translation of the relevant German documents may be found in the 1936 Annual Report of the Foreign Bondholders Protective Council, Inc. (New York 1937) at p. 467; the Release No. 1294 of the Securities and Exchange Commission of March 2, 1937, is published *ibid.* at p. 493. For further documentation of the actions of the Department of State respecting discrimination against American bondholders, see *Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protection and Reorganization Committees*, Part V (1937, Securities and Exchange Commission) p. 419.

other words, for purposes of foreign exchange control, individuals and corporations were treated as residents and not as foreigners irrespective of their nationality, whereas even German nationals domiciled abroad were treated as foreigners (*Devisenauslaender*), in connection with any transaction involving foreign exchange.

In the foreign exchange restrictions introduced at the beginning of this war by the United Kingdom<sup>31</sup> and France,<sup>32</sup> whose laws did not previously provide for any such control, the furtherance of the concept of economic warfare is notably absent. In a rather conservative manner, the measures then adopted in these countries tended rather to prohibit undesirable capital exports than to wage economic war against Germany, their only military adversary at the time. Moreover, the new statutes in both countries expressly provided for the performance of obligations of domestic debtors to be discharged abroad insofar as they were concerned with prewar obligations. This attitude of British and French wartime legislation on foreign funds control deserves emphasis because it indicates that foreign exchange restrictions need not *per se* be a weapon of economic warfare.

Foreign funds control in the United States contrasts with the British and French statutes. Desiring to prevent the invader of European countries from exploiting conquered assets abroad, it was necessary to resort to a weapon of economic warfare such as that created in the freezing regulations. This weapon was first used as an instrument

<sup>31</sup> See Mann, *Exchange Restrictions in England*, (1940) 3 Modern L. Rev. 202; cf. now The Regulation of Payments (Consolidation) Order, 1943, January 25, 1943, S. R. & O. No. 119.

<sup>32</sup> Decrees of September 9, 1939, Journ. Off. p. 11266, 11271, April 24, May 20, as modified June 23, 1940, Journ. Off. p. 3206, 3774, 3977, 4462B; Act of February 8, 1941, modified May 3 and 5, 1941, Journ. Off. p. 855, 1903, 2180.

to counteract looting practices and only later became an aggressive weapon of economic warfare.

Germany, in her carefully designed policy of exploiting invaded countries, may not have been prepared for this countermeasure of the freezing regulations. She may not have assumed that the United States, then not at war with Germany, would find ways and means to protect the interests of owners of such assets who had put their faith in the security and integrity of this country.

Regard to their "confidence in our strength, integrity and sense of fairness"<sup>33</sup> does not, of course, entail immunity of property located in this country from measures which are deemed useful now and may be deemed indispensable later. In this connection a statement by the Department of State in 1933,<sup>34</sup> in reply to an American citizen in New York, may be mentioned. While regretting that he was prevented by German foreign exchange restrictions from receiving interest payments on a trust fund in Berlin, it said: "It must be remembered that investments or funds within the jurisdiction of a foreign country are subject to the laws of that country. In the absence of specific treaty provisions to the contrary, there is no way in which a private person may secure immunity from the local law for his investments or property held within the jurisdiction of a particular state."

In spite of the freezing regulations of this country, the corresponding measures established by the British Commonwealth, and the special legislation of the governments-in-exile (see Chapter XXI), all of which aimed at preventing Axis powers from benefiting abroad by their conquests, further measures were effectuated to exploit and

<sup>33</sup> Brief of United States of America as *amicus curiae*, p. 5, in the Polish Relief case, *supra*, Chapter XIX, n. 51.

<sup>34</sup> Hackworth, *Digest of International Law* vol. II (1941) p. 71.

loot the invaded countries. Additional counter-measures were thereupon taken in this country under the Trading with the Enemy Act and the regulations issued thereunder, namely,

- 1) Restrictions on the movement of securities of looted countries into this country;
- 2) Restrictions on the free importation of currency, especially American dollars from abroad;
- 3) Counter-measures against the possibility of a black market in frozen dollars funds.

Even at the inception of the freezing regulations on April 10, 1940, it became evident that the German invaders would not be content merely to liquidate the assets abroad of the invaded countries. Efforts, therefore, would have to be made to prevent securities within the invaded countries from being disposed of by the conqueror. Though Exec. Order No. 8389 was deemed to cover securities, it appeared doubtful whether the Trading with the Enemy Act, as amended, upon which the Order was based, granted sufficient authority for an extension of control to securities. By General Ruling No. 2<sup>35</sup> the Act was immediately interpreted to give such authority. This interpretation was confirmed by Congressional amendment of sec. 5 (b) of the Trading with the Enemy Act, of May 7, 1940.<sup>36</sup> Furthermore, General Ruling No. 3<sup>37</sup> prohibited any dealings in securities registered in the name of a national of a blocked country. This was done in order to prevent any disposition of such securities in this country, with the legal appearance of a "legitimate" title, which the invader was believed trying to obtain by either compulsion, duress, or fraud. In order to prevent

<sup>35</sup> April 19, 1940, 5 Fed. Reg. 1474 (1940).

<sup>36</sup> 54 Stat. 179.

<sup>37</sup> 5 Fed. Reg. 2133 (1940), as amended, June 17, 1940, *ibid.* 2284.

the unlawful use of bearer securities, General Ruling No. 5<sup>38</sup> provided for the deposit in a Federal Reserve Bank of any securities entering this country, not only from blocked countries but from whatever place or origin.<sup>39</sup>

These measures were supplemented<sup>40</sup> by a licensing system under a certification, Form TFEL-2, which is to be attached to securities showing such securities to be free from any blocked interest. Successful application of these measures was facilitated by the European practice of requiring tax stamps to be attached to all securities held and sold in these occupied countries. The United States was thus enabled to prohibit any dealing in such securities as bore tax stamps or evidence that stamps had been attached. With the promptness usual in the prosecution of economic war, the Germans in the occupied Netherlands as a counter-measure ordered all securities which did not bear any tax stamps to be reported; the purpose obviously was to use these securities for liquidation abroad.

When the Japanese invaded the Philippine Islands, similar measures were adopted through General Ruling No. 10 of January 10, 1942,<sup>41</sup> to prevent the enemy invader from liquidating looted securities in occupied territory.

Another problem arising in this connection was how to prevent the Axis powers from utilizing foreign currency which they found in the conquered territories. Such currency, especially American dollars, could easily be used through neutral channels for the financing of subversive

<sup>38</sup> June 6, 1940, 5 Fed. Reg. 2159 (1940), as amended May 19, 1942, 7 Fed. Reg. 3770 (1942).

<sup>39</sup> General Ruling No. 6, August 8, 1940, 5 Fed. Reg. 2807 (1940); see General License No. 29, as amended November 6, 1942, 7 Fed. Reg. 9119 (1942); Public Circular No. 21, 8 Fed. Reg. 845 (1943).

<sup>40</sup> Administration of the Wartime Financial and Property Controls of the United States Government (Treasury Department, December, 1942) p. 22.

<sup>41</sup> 7 Fed. Reg. 305 (1941).

activities in this hemisphere. Therefore, General Ruling No. 6A<sup>42</sup> and General Ruling No. 5, as amended,<sup>43</sup> subjected the importation of currency into the United States to severe restrictions. Corresponding measures were taken by other American Republics in order to make possible a common defense of this Hemisphere against the use of currency presumed to be looted.<sup>44</sup>

Among the most important legal consequences of the regulations issued under the Trading with the Enemy Act, as amended, was their extraterritorial operation. Thus the acquisition by any person in the United States of any interest in any security is prohibited, if circumstances indicate that the security was located outside the United States.<sup>45</sup> Looted securities could not be purchased by residents of this country in neutral countries and there be retained for the benefit of the purchaser. Transactions which occurred not only within the territory of the United States, but also abroad to the detriment of this country were purported to be covered by General Ruling No. 12 of April 21, 1942.<sup>46</sup> This ruling made null and void any assignment or transfer of blocked funds, unless properly authorized by license of the Secretary of the Treasury. Sec. 3 of General Ruling No. 12 provides that an appropriate license, either before or after a transfer, completely validates the transfer and renders it enforceable "to the same extent as it would be valid or enforceable but for the provisions of

<sup>42</sup> March 13, 1942, 7 Fed. Reg. 2083 (1942).

<sup>43</sup> Cf. Fed. Res. Bank of New York, Circulars No. 2434, May 19, 1942; Nos. 2449 and 2455, June 18 and 29, 1942; Nos. 2495 and 2553, September 2 and November 25, 1942.

<sup>44</sup> Chile, September 1, 1942. (El Mercurio, Santiago, September 2, 1942); Costa Rica, September 13, 1942 (La Gaceta, September 17, 1942); Ecuador, August 12, 1942 (Registro Oficial, August 17, 1942); El Salvador, October 22, 1942 (Diario Oficial, October 27, 1942). As to the special regulations with Mexico, see General Ruling No. 14, August 14, 1942, 7 Fed. Reg. 6417 (1942), General License No. 85, April 13, 1943, 8 Fed. Reg. 4877 (1943).

<sup>45</sup> Administration, *supra* n. 40, at p. 23.

<sup>46</sup> 7 Fed. Reg. 2991 (1942).

Sec. 5 (b) of the Trading with the Enemy Act, as amended, and orders, regulations, instructions, and rulings thereunder." In other words, if an assignment was invalid regardless of the freezing regulations, because of its not being properly executed, or because it did not comply with the legal rules applicable to assignments of claims with a situs abroad,<sup>47</sup> the license of the Treasury Department does not intend to remedy such invalidity.

Its far-reaching importance was especially emphasized in the Brief of the Government as *amicus curiae* in the *Polish Relief* case,<sup>48</sup> where the constitutionality of Exec. Order No. 8389, as amended, was examined, with special reference to the Gold Clause cases of 1935<sup>49</sup> and the Multiple Currency cases of 1939.<sup>50</sup>

Invalidation of any assignments of claims to blocked assets, unless later authorized by a license of the Treasury Department, was particularly imperative in order to destroy any black market for blocked assets in neutral countries. It may be assumed that Axis authorities would otherwise be able to acquire important claims to assets in this country by using duress or various means of "legal" acquisition in the invaded countries to have such claims transferred to persons under their control. To trace these "legal" practices in all their complicated details, along the lines of the municipal law of the invaded countries, is one of the important tasks in any effort at a post-war settlement of legal questions of international character.<sup>51</sup> A careful

<sup>47</sup> Cf. Note, *Extraterritorial Effect of Foreign Decrees and Seizures*, (1940) 22 U. of Pa. L. Rev. 983.

<sup>48</sup> Brief, *supra* n. 33, at p. 15. As to related questions, namely the extraterritorial operation of the British regulations, see Howard, *The Defence (Finance) Regulations, 1939* (1942) p. 3.

<sup>49</sup> *Norman v. Baltimore & Ohio R. Co.*, 294 U. S. 240; *Nortz v. United States*, *ibid.* 317; *Perry v. United States*, *ibid.* 330.

<sup>50</sup> *Guaranty Trust Co. v. Henwood*, 307 U. S. 247; *Bethlehem Steel Co. v. Zurich Ins. Co.*, *ibid.* 265.

<sup>51</sup> Cf., as an example for the judicial review of the German looting practice

legal documentation and economic analysis<sup>52</sup> of what happened in the industrial and financial life of territories controlled and occupied by Axis powers cannot be undertaken too early.

The Treasury Department is fully aware of the purposes and operations of black market trading in blocked assets.<sup>53</sup> "This neutral black market operation should be designed to give the Axis immediate returns on blocked assets even though the Axis could not get such assets out from under our freezing regulations. In this case the assets would be assigned or otherwise transferred to neutral speculators at heavy discount in order that the Axis could obtain credit now to buy goods and services in neutral countries and thus assist the war effort. Of course some of these black market operations would be for the obvious purpose of lining the pockets of Axis officialdom as insurance against the day when the Axis is crushed. Neutral speculators would either hold such assignments with the intent of salvaging on them after the war or in the hope of being able to squeeze the blocked assets through the freezing control by one trick or another."

A further problem arises out of the existence of so-called "Dutch Certificates" of American corporations. Shares of these corporations are deposited with a Dutch trust company which issued certificates and exercised the rights arising out of the American shares on behalf of the holders of the Dutch certificates. The American shares

in the First World War; *Societe Anonyme de Charbonnage Frederic Henri v. Etat Allemand*, Mixed French-German Tribunal, September 30, 1921, (1922) 1 Recueil des Decisions des Tribunaux Arbitraux Mixtes 422.

<sup>52</sup> See Reveille, *The Spoil of Europe. The Nazi Technique in Political and Economic Conquest* (New York 1941); Hediger, *Nazi Exploitation of Occupied Europe*, (1942) 18 Foreign Policy Reports 66, *Nazi Economic Imperialism*, *ibid.* 138; The Penetration of German Capital in Europe, Statement No. V of the United Nations Information Committee in London (December 30, 1942).

<sup>53</sup> Fed. Res. Bank of New York, Circular 2420, April 21, 1942.

are generally held in this country, in a banking account in the name of the Dutch trustee. After the invasion of the Netherlands the German occupying authorities prevented all Dutch corporations from making any transfer of stock or disbursement of dividends to persons entitled thereto, especially when such persons were not residing in the occupied territory. American holders of Dutch certificates were thus prevented from enjoying any right, but the proof of non-enemy ownership of such certificates under Form TFEL of the Treasury Department facilitates proceedings to have the Dutch certificates exchanged for American certificates and payment of dividends made to such holders.<sup>54</sup>

Out of the application of General Ruling No. 12 controversies may arise in the future if and when claims concerning blocked accounts in this country are to be settled. Such disputes may result from assignments which are claimed to be fictitiously dated prior to the effective date of Exec. Order No. 8389, as amended, or which are refused recognition because no apparent notice was given to the debtor. Though General Ruling No. 12A, February 9, 1943,<sup>55</sup> facilitates transfers which do not by misrepresentation or fraud violate the purposes of the freezing regulations, precautions are necessary to prevent blocked assets in this country from being used later, at the end of the war, for Axis interests which may then be disguised in neutral claims and business interests.

General Ruling No. 12 poses the question whether and to what extent the Trading with the Enemy legislation and the orders issued thereunder, especially the freezing regulations, may operate extraterritorially.

The Government in its Brief in the *Polish Relief* case

<sup>54</sup> Cf. *Steinhart v. American Enka Corporation, Kuhn, Loeb & Co., and Nederlandsch Administratie-en Trustkantoor*, N. Y. Supreme Court, County, No. 29798—1940.

<sup>55</sup> 8 Fed. Reg. 1833 (1943).

refers (at p. 27) to the words "any person within the United States" in sec. 5 (b) of the Trading with the Enemy Acts, as intending "only to indicate that procedurally the powers of the President would be directed against persons subject to the jurisdiction of the United States." This interpretation may also be supported by *Uebersee Finanz-Korporation A. G. v. Rosen*.<sup>56</sup> Here, a Swiss corporation doing no business in the United States, unsuccessfully challenged the denial of a license to export gold from this country. It was held that the Presidential power to prohibit the "export" of gold, under sec. 5 (b) of the Trading with the Enemy Act, as amended, by any person within the United States "justified the denial of a license inasmuch as such 'foreign owner' would be obliged either to come here in order to obtain delivery of his gold or to act through an agent 'within' the United States."<sup>57</sup> The Government in its aforementioned Brief added (at p. 28) that "any transfer of blocked property made outside the United States could be effectual only when implemented by action of a person 'within the jurisdiction of the United States.'"<sup>58</sup> It may further be assumed that any unlicensed transfer of title abroad of blocked property would fall under the "evasion clause," sec. 1 F of Exec. Order No. 8389, as a transaction having the purpose or effect of evading the prohibitions of the Order in the United States.<sup>59</sup>

This restriction, "within the jurisdiction of the United States," does not at all hinder the Administration from preventing detrimental effects of transactions made abroad. Said the Treasury Department.<sup>60</sup> "Persons outside the

<sup>56</sup> 83 F. (2d) 225 (C. C. A. 2d, 1936), cert. den. 298 U. S. 679 (1936).

<sup>57</sup> Cf. *British-American Tobacco Co. v. Federal Reserve Bank*, 104 F. (2d) 652, 105 F. (2d) 935, cert. den. 308 U. S. 600 (1939).

<sup>58</sup> For fuller discussion see Preutel, *supra* n. 1, at p. 67.

<sup>59</sup> As to the detection of cloaking transactions, see Administration, *supra* n. 40, at p. 19.

<sup>60</sup> *Ibid.* p. 7.

United States who have accounts or other property within the United States may have similar enforcement measures applied against their property. While it is not possible directly to control the actions of individuals outside of the United States, it is possible to penalize them heavily for activities considered to be a hindrance to the prosecution of the war by refusing to license the use of their funds or the operation of their properties in this country, and, in extreme cases, by vesting title to such property in the Government of the United States. Such persons may be declared to be enemy nationals. They are then excluded from the privilege of trading with the United States or even of receiving communications from persons in the United States with respect to their interests here."<sup>61</sup>

Nor is the restriction of General Ruling No. 12 as to assignments abroad altogether new. In *Schryver v. Sutherland*,<sup>62</sup> a similar provision of sec. 7 (b) of the Trading with the Enemy Act, invalidating assignments of enemy property located in this country, was applied to an assignment which had been made in Amsterdam, then neutral territory, by German stockholders in an American corporation. In *Spitz v. Secretary of State of Canada*,<sup>63</sup> a case arising out of transactions in the last war but decided during this one, shares of a Canadian corporation were purchased in Amsterdam from a German bank by the claimant, a Czechoslovakian carrying on business in Switzerland. The Secretary of State of Canada, as Custodian of

<sup>61</sup> The prohibition of the German foreign exchange legislation against (unlicensed) assignments was disregarded in decisions of the Swiss Federal Court, as 61 BGE II 242, 62 BGE II 108 (1936), commented on by Domke, (1938) 3 *Giurisprudenza Comparata di Diritto Internazionale Privato* 365.

<sup>62</sup> 19 F. (2d) 688 (App. D. C. 1927), cert. den. 48 S. Ct. 84 (1927).

<sup>63</sup> (1939) 2 Dom. L. Rep. 546; (1939) Exchequer Court Rep. 162 (Canada Exchequer Court, February 20, 1939); Note, Annual Digest and Reports of Public International Law Cases Years 1938-1940 (1942) Case No. 210.

Alien Enemy Property, claimed possession or title to the shares, invoking Order 6 of the Canadian Consolidated Orders Respecting Trading with the Enemy, 1916, which prohibited any transfer by or on behalf of an enemy. Said the court: "There can be little room for doubt but that the purpose of the Trading with the Enemy Acts, enacted throughout the British Empire, and the United States, was to interdict all intercourses, commercial and non-commercial, with all enemy nationals, and to prohibit the doing of acts tending to the financial benefit of such nationals, and judicial decisions during the war show that the guiding principle was the destruction of the credit and trade of the enemy, to prevent his power of resistance being increased, and to ensure that the property of the enemy, tangible and intangible, through governmental agencies, could not be used as the basis of credit in foreign countries by the enemy owner, or by his Government. . . . One must consider not only the wording of the war measures but also their purposes, the motives which led to their enactment, and the conditions prevailing at the time. In time of war particularly the substance of things must prevail over form, and usually all technicalities must be swept aside." As to the specific question of the extraterritorial operation of the Canadian Order, the court said: "The Order, I have no doubt, when drafted had clearly in mind the case where the transfer would be made outside of Canada, and probably that was in mind more than anything else, as it would be the thing most likely to occur in the circumstances of the time."

While freezing regulations may have a restricted extraterritorial effect as to assignments abroad, they apply only to funds within the United States. This is the decisive factor distinguishing this kind of legislation from foreign exchange restriction as introduced by other countries, es-

pecially Germany. An American author,<sup>64</sup> however, recently expressed the fear that the freezing regulations might be urged as a defense to an action before a foreign court, to the detriment of American interests. "A blocked national whose funds in an American bank are frozen might sue the bank in a foreign court for its refusal to make payment from blocked funds. Or an American firm might be sued for failure to transfer funds to a blocked country under a contract entered into before the freezing orders were issued."

But such a contingency seems wholly improbable. Recognition of the war legislation of the United States will hardly be denied by a country allied with the United States in the common effort against the enemy, even if the courts of that country, like the English courts,<sup>65</sup> ordinarily refuse to recognize the effect abroad of foreign laws imposing foreign exchange restrictions. An example of this attitude may already be found in the English case of *Lorentzen v. Lyddon & Co.*,<sup>66</sup> where an order of the Norwegian government-in-exile was recognized in its effect on assets located in England.

As to neutral countries, the same author suggests that Swiss courts may refuse to recognize the freezing regulations, thus failing to distinguish between American and German exchange legislation. He gives this example at p. 62: "A New York bank, with whom frozen funds are deposited, has a branch in Switzerland. Nazi authorities induce the French owner of a frozen deposit to assign his rights to a Swiss citizen strawman and the latter, after an unsuccessful demand for payment, attaches Swiss assets of the bank and sues it in a Swiss court. The Swiss court refuses to recog-

<sup>64</sup> Freutel, *supra* n. 1, at p. 60.

<sup>65</sup> *Supra* n. 4.

<sup>66</sup> Discussed in Chapter XXI, n. 49.

nize the Order as an excuse for nonpayment, duress in connection with the assignment to the plaintiff cannot be proved, and therefore, judgment is rendered for the plaintiff who then obtains satisfaction out of the attached assets. The amount recovered directly or indirectly contributes to the Nazi war effort."

It is true that the Swiss courts vigorously refused to apply any foreign legislation which imposed restrictions upon payments to be made abroad and it is in Switzerland, to a greater degree than elsewhere, that the courts have recognized the character of such measures as economic weapons. For instance, in the case of the guarantee of German corporations for a loan of the Osram corporation<sup>67</sup> the Swiss Federal Court said, invoking Swiss public policy to deny application abroad to the German gold clause legislation: "Here the operation of *ordre public* . . . begins to produce results in a new and until now hardly apparent direction: it constitutes an instrument for the economic defense of the country, born of the necessities of the moment and directed against measures of force taken unilaterally by a foreign state to protect her own economic interests to the detriment of those of other nations."

But though this doctrine was repeatedly upheld by Swiss courts during this war with regard to German<sup>68</sup> and Hungarian<sup>69</sup> foreign exchange legislation, even in cases where no further contacts with the forum existed, it must be borne in mind that funds of American banks in Switzerland cannot, for most purposes, be attached. The Swiss

<sup>67</sup> *Journaliag v. Siemens & Halske Aktiengesellschaft*, February 1, 1938, 64 BGE II 88 (quoting the present writer).

<sup>68</sup> *de Beer v. Universale Rueckversicherungs A. G.*, Appellate Court (Obergericht) Zuerich, September 13, 1940), 1941 *Blaetter fuer Zuercherische Rechtsprechung* No. 65 p. 165, Court of Cassation. (Kassationsgericht) Zuerich, March 12, 1941, *ibid.* p. 173.

<sup>69</sup> *Commercial Court (Handelsgericht) Zuerich*, December 20, 1940, (1941) 38 *Schweiz. Juristenzeitung* 33.

executive, the Federal Council, by a decree of October 24, 1939,<sup>70</sup> prohibited any attachment of assets located in Switzerland unless the creditor is domiciled in Switzerland and the claim has not been transferred to him with the purpose of evading the prohibition of the decree (*zum Zwecke der Umgehung*). Sec. 2 of the decree further provided that any attachment of property of foreign states which is otherwise possible under Swiss law<sup>71</sup> shall henceforth be void unless previously agreed to by the Swiss Federal Council.

This measure of the Swiss Government, taken under a decree of August 30, 1939, relating to Measures for the Protection of the Country and for the Maintenance of the Neutrality,<sup>72</sup> may serve to dissipate fears that the freezing regulations of this country may be circumvented under the protection of Swiss courts. The measure corresponds in some respects to a ruling that the Government of the United States recently issued under the authority of sec. 5 (b) of the Trading with the Enemy Act, as amended, by the First War Powers Act, 1941.

General Ruling No. 15 of February 4, 1943,<sup>73</sup> bars all legal and other proceedings which might interfere with the free and unrestricted use and operation of Mexican railroad equipment within the United States. This measure is intended to remove the bottleneck in the transportation of materials from Mexico to this country due to the Mexican Government's fears of possible seizures of railroad equipment by creditors. The immunity of all Mexican railroad property within this country from any claims, unless legal proceedings are licensed, is justified as a war-

<sup>70</sup> *Eidgenoessische Gesetzessammlung*, vol. 55, p. 1296.

<sup>71</sup> Cf. Kohli, *Die Schuldbeitreibung gegen fremde Staaten*, (1932) 68 *Zeitschrift des Bernischen Juristenvereins* 49, 97.

<sup>72</sup> *Eidgenoessische Gesetzessammlung*, vol. 55, p. 769.

<sup>73</sup> 8 *Fed. Reg.* 1674 (1943).

## 11. Acting "For the Benefit of the Enemy."

THE NARROW concept of the "enemy" character of individuals and corporations as defined in the Trading with the Enemy Acts of the different countries has to some extent been counterbalanced by the system of control and blacklisting, both for individuals and corporations. There is still another device that is apt to close the door to transactions which may aid the enemy, namely, the prohibition of acting on behalf of or for the benefit of an enemy. This prohibition is contained in various Trading with the Enemy Acts, and specifically the United States Act, sec. 3 (a), forbids any trade "either directly or indirectly, with, to, or from or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy."

The same point of view, namely, the prohibition of any act that may aid the enemy, found expression in the Restatement of the Law of Contracts,<sup>1</sup> as follows: "§594. Bargain aiding an enemy. A bargain, performance of which will have the effect of aiding an enemy of the United States, or of diminishing the power of the United States to carry on effectively a war in which it is engaged, or may engage, is illegal; §595. Bargain with an alien enemy. A bargain with an alien enemy during the existence of war is illegal unless the enemy alien resides in the United States, or in a neutral country, and the subject matter of the bargain is not such as to afford aid to the enemy, or to diminish the power of the United States to carry on the war effectively."

<sup>1</sup> American Law Institute (1932).

Similar devices have been used in the regulations issued during this war by the Treasury Department as well as by the Alien Property Custodian. Exec. Order No. 8389, as amended, sec. 5 III, includes within the term national "any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any national of such foreign country."<sup>2</sup>

Furthermore, Public Circular No. 18, March 30, 1942,<sup>3</sup> provides, sec. 2, that "any person within the Western Hemisphere who is subject to the jurisdiction of the United States shall not engage in any financial, business, trade or other commercial transaction which is directly or indirectly with, by, on behalf of, or for the benefit of an enemy national, except as specifically authorized by the Secretary of the Treasury," including in the term "person subject to the jurisdiction of the United States," in sec. 3 (d), "any agent, subsidiary, affiliate, or other person owned or controlled, directly or indirectly, by any persons subject to the jurisdiction of the United States." This provision "was primarily intended to forbid any indirect payments or transfer of goods to the enemy, and, similarly, a payment to a South American firm for repayment to Germany would probably be forbidden by the American blacklist."<sup>4</sup> Thus, the Department of State on December 21, 1942, reiterated a warning to any person or firm who serves as a "cloak" for another person or firm on the Government's blacklist believed to be acting in the interest of Axis powers.<sup>5</sup>

<sup>2</sup> See Notes, *Foreign Funds Control Through Presidential Freezing Orders*, (1941) 41 Col. L. Rev. 1041, (1942) 42 Col. L. Rev. 105; Davis, *Trading with the Enemy*, N. Y. L. J. December 19, 1941, p. 2048.

<sup>3</sup> 7 Fed. Reg. 2503 (1942); cf. Pub. Circ. 18A, April 13, 1943, F. Res. Bk. Circ. 2607.

<sup>4</sup> Note, *New Administrative Definitions of "Enemy" to Supersede the Trading with the Enemy Act*, (1942) 51 Yale L. J. 1388, 1395.

<sup>5</sup> N. Y. Times, December 22, 1942.

These provisions in the field of freezing regulations are referred to in Exec. Order No. 9095, as amended, which establishes the Office of Alien Property Custodian, and provides in sec. 10 (a) that the term "national" shall have the same meaning prescribed in sec. 5 of Exec. Order No. 8389, as amended. Even a remote interest which secures the benefits of legitimate trade to an enemy may be decisive, as is shown by the suspension of trading "until further notice" on the New York Stock Exchange in the securities<sup>6</sup> of Axis governments, political subdivisions and companies.

Recent events have brought out another significant application of the prohibition against acting "for the benefit of an enemy." German Nazi sympathizers in this country, now interned, are known to have invested in German marks, *Rueckwanderer Marks*, purchased at a discount with a view to their subsequent use at full value in Germany. Such purchases, amounting to no less than \$20,000,000, as revealed by a recent report,<sup>7</sup> favor the position of the enemy and are prohibited under the Trading with the Enemy Act.

In defining "agents of foreign principals,"<sup>8</sup> another term in the field of war-time regulations against enemy influence, a Press Release of the Department of Justice, June 25, 1942,<sup>9</sup> stated that these provisions also apply "among others, to many lawyers, and business men through-

<sup>6</sup> N. Y. Times, December 12, 1941, and January 2, 1942. Similarly, the recent settlement of Mexico's foreign debt excluded Mexican bonds held in continental Europe in order to prevent funds from going to Axis-controlled countries. President Camacho's message to the Chamber of Deputies put the value of such bonds at \$50,000,000 to \$60,000,000, N. Y. Times, December 13, 1942.

<sup>7</sup> Office of U. S. Attorney, S. D. N. Y., Report of Work during First War Year, N. Y. L. J. December 16, 1942, p. 1923.

<sup>8</sup> Public Law No. 532, 77th Cong. 2d Sess., April 29, 1942, requiring the registration of certain persons employed by agencies to disseminate propaganda in the United States.

<sup>9</sup> C.C.H.W.L.S. ||8561. Cf. *U. S. v. Musa*, U. S. Dist. Ct., S. D. N. Y., September 23, 1942, *ibid.* ||9741; *Viereck v. U. S.*, U. S. S. Ct., March 1, 1943, 11 U. S. L. W. sec. 4, p. 4233.

could not have been decided by General Ruling No. 12.

If extraterritorial operation of these decrees is recognized in principle because they are conservatory rather than confiscatory in character as to the owner of the assets, the questions arises how to resolve conflicts with rights of local creditors of the original owners. In the English case of *Lorentzen v. Lyddon & Co., Ltd.*, regarding the Norwegian decree, the question of a conflicting creditor did not arise. The curator sued for damages against the contractual debtor on the contract. In the *Anderson* case, the plaintiff was not regarded as a resident American citizen, but was expressly treated as if his rights would not be greater than those of his non-resident assignor. Similarly, in the Swedish *Rigmore* case the rights of the former owner *only* were in question.

But even in a case where rights of creditors were not discussed, in *Estate of Emanuel Kahn*,<sup>54</sup> the *Anderson* decision was recently distinguished. Here the decedent, a Dutch national, through the intermediary of a Dutch bank, the Twentsche Bank, The Hague, held securities in deposit with the Guaranty Trust Company of New York. He died intestate at the Hague, occupied Dutch territory, on June 30, 1941, and was survived by two daughters as his only distributees. One of the daughters left Holland in July, 1940, and became a resident in New Jersey, the other daughter remained a non-resident of the United States. As the first daughter took out her first papers in 1941, "the evidence conclusively shows her legitimate purpose and the absence of the slightest indication of any intent to benefit the enemies of the Netherlands or of our country." In this case the Public Administrator of the County of New York initiated a discovery proceeding against the New

<sup>54</sup> 38 N. Y. S. (2d) 839 (November 21, 1942).

York bank for the purpose of directing it to deliver securities and moneys in deposit, upon the ground that such properties were owned by the decedent and deliverable and payable to the petitioner as the legal representative of the estate. Thereupon the Dutch government-in-exile intervened, claiming title, on the basis of its decree of May 24, 1940, to assets belonging to its nationals—property of its corporate national, the Twentsche Bank, or of its individual national, Emanuel Kahn, as vested in the State of the Netherlands. But on the suggestion of the surrogate, who indicated that the *Anderson* case was not controlling, the Dutch government-in-exile withdrew its claim and consented to the administration of the estate by the Public Administrator.<sup>55</sup>

The court distinguished the *Kahn* case from the *Anderson* case where the right of living persons or corporations only were involved. "Here, the rights of the local representative of the decedent's estate and of the beneficiaries are required to be considered. . . . The property would apparently be held for the benefit of his distributees and creditors." The court further pointed out that the terms of the Dutch decree "brought into conflict a different rule of the public policy of our state, as confirmed by the United States Supreme Court, that is, the rule that in the administration of estates embracing property within our jurisdiction, the local law is superior to rights created under treaties or edicts of foreign governments where the decedent is one of its nationals. (*D'Adamo's Estate*, 212 N. Y. 214, 106 N. E. 81, L. R. A. 1915 D, 373; *Rocca v. Thompson*, 223 U. S. 317, 32 S. Ct. 207, 56 L. Ed. 453). That public policy must be deemed to be based upon the

<sup>55</sup> The court stated: "This consent to the administration of the estate under the laws of our state is a highly commendable act of courtesy and cooperation."

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