9-5

SEQUESTRATION OF ENEMY PROPERTY

31 March 1947

CONTENTS

	Page
SPEAKER -- Mr. I. G. Alk	1
GENERAL DISCUSSION	10
Mr. Alk	
Students	

THE INDUSTRIAL COLLEGE OF THE ARMED FORCES

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THE INDUSTRIAL COLLEGE OF THE ARMED FORCES

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SEQUESTRATION OF ENEMY PROPERTY

31 March 1947

CAPTAIN WORTHINGTON:

The speaker this morning is Mr. I. G. Alk. Mr. Alk is a Washington attorney, specializing in international financial matters.

In World War II, Mr. Alk was Chief Counsel, Foreign Funds Control, Department of the Treasury. He was also the Treasury representative in the Philippines and Japan. The financial and property control measures put into effect in Japan after the surrender were devised by Mr. Alk. At the proposal of General MacArthur, the Medal of Freedom was awarded Mr. Alk for his work in the Philippines and Japan. His subject this morning is "Sequestration of Enemy Property."

I take pleasure in introducing Mr. Alk.

MR. ALK:

This morning I intend merely to discuss in general outline the way in which our government operated during the war in connection with the treatment of enemy property. I only intend to deliver a formal lecture for 15 or 20 minutes at the most, hoping we can develop the balance of the subject by means of questions and answers.

Incidentally, during 1945, I spent some five months in the Philippines reestablishing Treasury controls, and from there I went on to Japan for the first three months after the surrender. If, by chance, any of you have any questions with respect to the Japanese or Philippine scene, I will try to answer them to the best of my ability.

In order to understand and appraise the measures taken by this government to control and vest enemy property, it might be helpful to outline briefly the governmental financial and property control program which was being undertaken prior to our formal entry into the war.

This financial and property control program is popularly known as the "freezing" or "blocking" control and was initiated on April 8, 1940, when Germany overran Denmark and Norway. You will recall that in order to protect the American assets of the invaded countries and to prevent Germany from securing financial benefit by reason of its acts of aggression, President Roosevelt issued Executive Order 8389, which prohibited, except under Treasury license, all transfers or other dealings in Norwegian and Danish property.

As other countries fell under the domination of the Hitler regime, amendments to the Executive Order were issued, freezing the assets of these countries and their nationals. By March 1941 over five billion dollars of assets of the occupied countries and their nationals had been subjected to the United States freezing controls.

The freezing program was intended primarily to be a protective program, to protect and preserve the assets of the nationals of the occupied countries, but when it appeared that Germany was not going to be stopped in its acts of aggression, the freezing program became an act of defensive warfare. At a later time we denominated it "economic warfare."

Up until June 14, 1941, the only action taken by this government in the financial field was in connection with the occupied countries. Although we had frozen the assets of Denmark, Norway, France, Belgium, Holland, and the other occupied countries, the assets of Germany and its satellites still remained free, so that Germany and its satellites were free to utilize their own United States assets to finance themselves.

Eventually, however, as the international situation became more and more critical, it was decided to take direct action against the Axis countries and to prevent the financial facilities of the United States from being used, directly or indirectly, on their behalf. Accordingly, on June 14, 1941, the President issued a sweeping amendment to Executive Order 8389, under which the assets of all the European countries, except England and Turkey, were frozen. From that time on, no dealings in any property in the United States belonging to any of these countries or their nationals could be engaged in without a Treasury license. Every business enterprise in the United States which was owned or controlled by persons in any of the European countries, except England and Turkey, was also subjected to control.

In addition a census was taken of all of the foreign-owned property in the United States so that we might have an accurate picture of foreign holdings. This census became of extreme importance at the outbreak of war.

The Japanese assets were not frozen until July 26, 1941. You will recall that at that time the Japanese had invaded Indo-China and had indicated clearly that it also intended to continue on the path of aggression. So on July 26, 1941, Japanese assets were frozen and at the same time at the request of Chiang Kai-shek, as a protective measure, China's assets in this country were frozen. By July 26, 1941, there were approximately nine billion dollars of assets located in the United States which were subjected to the Governmental freezing controls.

On June 14, 1941, you will note that we had frozen, not only the assets of Germany and the satellite enemy countries, but we also froze the assets of the neutral countries, Switzerland, Sweden, Spain, and Portugal.

During the prewar years the United States had become the financial center of the entire world. Thus, when we put into effect a program of governmental control under which the financial facilities of the United States could not be used for the benefit of Germany or any of the satellite powers, we put into effect a control which would be as effective as those who administered the control desired it to be.

This system of governmental controls over the property of blocked countries and their nationals and over financial transactions involving blocked nationals was in full operation at the time of the attack on Pearl Harbor, and it was readily converted into a major instrument of economic and financial warfare. During the entire war period, these freezing controls remained the spearhead in our government's program of financial and economic warfare. The program of control and vesting enemy property was built around these controls.

With the declaration of war, the entire Trading with the Enemy Act automatically became effective. Under this Act, trade with the enemy became unlawful and, in addition, the property of enemies could be seized by the Alien Property Custodian.

The experience of the Custodian in the First World War had shown that the Trading with the Enemy Act was entirely too restrictive and that amendments to the Act were required if we desired to deal with the many problems involving enemy ownership or control of property in the United States.

For example, under the definition of enemy in the Trading with the Enemy Act, concerns like General Aniline and Film and Bosch could not be touched because Germany owned these companies through the intermediary of holding companies organized in neutral countries. Under the old Act, the Trading with the Enemy Act which was in force in World War I, the test as to whether the Alien Property Custodian could seize any property was legal title, and if the legal title was in a Swiss company, the property could not be seized, even though the Swiss company was owned by the Germans.

The Germans had realized that the system of U. S. enemy property control in World War I was built around the concept of "legal title" and consequently in subsequent years had engaged in a great many acts of cloaking in the United States. For example, companies like General Aniline and Film, with assets running into the hundreds of millions of dollars were not owned directly by the Germans but were owned by holding companies organized in the neutral countries. These holding companies were set up and used by the Germans to cloak the ownership of the important business enterprises in the United States which were owned by them.

To remedy this situation and in order to give the United States a flexible weapon, Title III of the First War Powers Act, 1941, was enacted. This Act became the keystone of all financial and property control measures during World War II. Its pertinent parts read as follows:

"During the 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, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise--

"Investigate, regulate, direct, and compel, nullify, void, prevent or prohibit any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation, or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving any property in which any foreign country or national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest and for the benefit of the United States."

As you can well see the Act is extremely broad.

The question as to whether this Act was constitutional was before the Circuit Court of Appeals for the Second Circuit. The Court held that the Act was constitutional; that particularly during time of war definite standards did not have to be prescribed and that the Act in reality supplemented the President's authority in the field of foreign relations; that the President has plenary authority in that field; and that it was unnecessary to prescribe standards.

Of course, it placed an extremely great responsibility upon the administrative agencies which were going to enforce and implement this Act. It was necessary that they exercise administrative restraint; that they know where they were going--what they were going to attempt to do; and that they did not run hog wild. I think that the record of the Treasury Department and the Alien Property Custodian during this war has indicated that the trust which the President placed in those two agencies has not been misplaced. In fact, if there could be any criticism as to the exercise of authority under this Act, it might be said they operated with too much restraint instead of too little restraint.

Under this Act and the Executive Orders issued thereunder, it became possible to seize and vest any property in the United States which was owned or controlled, directly or indirectly, by enemy interests or by persons who were acting on behalf of enemy interests, regardless of in whose name legal title was held. The Act afforded the government a variety of weapons.

Dealings in enemy property could either be regulated or prohibited, or if necessary, the ultimate action of vesting could be taken.

For a few months after the outbreak of war, the Treasury was the sole agency exercising the responsibility of the President under the Trading with the Enemy Act. Eventually, it was decided that an Alien Property Custodian should be appointed and the functions to be exercised by the President under the Trading with the Enemy Act were distributed between the Alien Property Custodian and the Treasury.

In view of the fact that there was no fixed executive policy at that time in respect to whether enemy assets should be seized by the government or merely controlled, the distribution of authority between the two agencies was made along functional lines. Assets which required active management by the government were placed under the jurisdiction of the Alien Property Custodian, while assets which merely required regulation were retained under the jurisdiction of the Treasury. The allocation of functions was accomplished through Executive Order 9193 of July 6, 1942.

Under this Executive Order the Custodian was given jurisdiction over:

(1) All business enterprises in the United States which were owned or controlled by the enemy or persons acting on behalf of the enemy;

(2) All foreign-owned patents, patent applications, patent contracts, copyrights, and trade marks, whether owned by the enemy or friendly foreign nationals;

(3) All enemy real estate and tangible personal property;

(4) All ships;

(5) All enemy property in the process of judicial administration.

In addition, whenever the national interest required, the Custodian was authorized to take over other types of property.

The Treasury retained jurisdiction of the liquid enemy assets, such as cash, bullion, securities, etc. In addition, it exercised complete control over the assets of the neutral and enemy occupied countries.

The operations of the two agencies were very closely integrated and synchronized. Under the Treasury controls, dealings in enemy property were prevented and prohibited. When the Custodian stepped into the picture by vesting or supervising any property, the Treasury released control, so that there was no dual or overlapping control.

This situation continued until June, 1945, by which time the executive policy in respect to the treatment of Japanese and German assets in the United States had crystallized. All of the agencies were in agreement that German and Japanese economic interests in the United States should be completely eliminated, and, to that end, that all German and Japanese property should be vested and sold or liquidated. They also were agreed that none of the property should be returned to the former German and Japanese owners and that no compensation should be paid by our government.

Accordingly, the Treasury, the Department of State and the Alien Property Custodian, all signed a memorandum to the President, in which they indicated that that was their view; and they requested the President to issue another Executive Order under which the Alien Property Custodian would be enabled to vest all German and Japanese property interests in the United States. The President agreed with the memorandum.

To carry out this policy, an executive order was issued granting to the Alien Property Custodian complete authority to vest all types of German and Japanese property in the United States. But inasmuch as it seemed likely that the property of the satellite enemy countries might be treated differently, it was also decided to discontinue in the main the vesting of Italian, Rumanian, Hungarian, and Bulgarian property. By that time, you will recall, Italy was in the war on our side, and the State Department was of the view that Italian assets in this country should not be confiscated. It appeared very likely that the same action would be taken with respect to Rumania, Hungary, and Bulgaria, so after June, 1945, none of the property of the satellite enemy countries was vested and their property remained under the Treasury freezing controls.

There may be a change in thinking with respect to Rumania, Bulgaria, and Hungary, but at the present time, generally speaking, the only assets in the United States which are being vested are those of the Germans and of the Japanese.

All types of property owned or controlled by the Germans and Japanese are being vested by the Alien Property Custodian. These include real estate, interests in business enterprises, securities, bank deposits, interests in estates and trusts, patents, copyrights, and ships. However, even though no peace treaty has as yet been enacted covering Japan and Germany, by agreement with all of the executive agencies, vesting is now being confined to property which was in existence prior to December 31, 1946. This cutoff date has been established in order to permit current transactions with these countries to be freely carried on. All proceeds from current transactions with Germany and Japan are therefore free and are being used by the theater commanders and the War Department for the purpose of either paying for advances that the United States has made in feeding Germany or for the purpose of sending essential supplies into Germany.

The main categories of property which are being freed during these days are interests in estates and trusts, which were created after December 31, 1946. That property is no longer being vested by the Alien Property Custodian. Instead it can be utilized either to pay our government for its initial advances or for the purpose of--under the disease and unrest formula--paying for essential imports into Germany and Japan.

In rough figures, it is anticipated that the net equity in the German assets will be approximately 250 million dollars and that the net equity in the Japanese assets will be approximately 100 million dollars. You will note that the amount of German and Japanese assets together do not equal the amount of German assets taken over by this government after World War I. The German property in the United States after World War I was approximately 500 million dollars. You can see that, taking Japanese and German property together, it is not anticipated that there will be an equity of over 400 million dollars.

The reasons, of course, are that during the '30's, particularly, the Germans exercised more strict control over their foreign assets. In addition, from 1939 until June 14, 1941, when German assets were frozen, there had been a large-scale exodus of German assets from the United States. The Germans saw the handwriting on the wall, and they utilized the fact that we had not frozen Germany on May 8, 1940, as a means of getting their assets out of this country. The Japanese also during the early part of 1941 in particular had withdrawn a large part of their assets from this country.

In respect to the efficacy of the measures taken, I think it is clearly recognized that the freezing controls did adequately prevent any dealings in enemy property in the United States and that it did deprive the Germans and the Japanese of the means of financing their war through the United States.

I mentioned to some of the gentlemen before the lecture that the Japanese during the war had established a committee for the purpose of determining the reasons why it was necessary for Japan to go to war against the United States. They issued a booklet in 1943, called "American-British Challenge Directed against Nippon," and in that booklet they discussed in considerable detail the measures of economic warfare which the United States took against Japan. They devote a considerable portion of this booklet to the freezing controls of the United States Government, and indicated in great detail what effect these freezing controls had as far as their own economy was concerned and as far as the financing of the war was concerned. They show rather clearly that it not only affected them in their dealings in the United States, but it also stopped trade between Japan and all the Central and South American countries. It even stopped trade with Indo-China, Siam, and other countries in the Far East because all that trade was predicated upon settlement in dollars. Just as soon as the United States froze the Japanese balances in this country and said there could be no transfers of dollars by or on behalf of the Japanese, all of that trade was discontinued until Japan was able to work out some sort of system of barter and exchange in its stead.

I should like to recommend your making an effort to obtain some of these booklets from Japan because I think their story as to the effect of the United States economic measures directed against them is extremely interesting.

Some question has arisen as to whether it might not be better to have had just one agency exercising complete control over foreign property in the United States and whether it was wise to establish two agencies, such as the Alien Property Custodian and the Foreign Funds Control of the Treasury. Looking at the situation now--I think I can truthfully say that there was very little duplication of effort or of dual controls, yet there was some--there were investigations which were made jointly by these two agencies. Many of the problems were similar. If the time does come when we have to enact measures of this kind again, my own feeling is that it would be better that there be only one agency in this field instead of two agencies. Our experience during this war has demonstrated that, although two agencies can operate together with a minimum of friction, a better job could be done if everything were handled by one agency, so that there would be one over-all policy which could be followed.

I think a good job is being done with respect to the elimination of enemy interests. The Alien Property Custodian has been doing a thorough job of vesting enemy property in the United States. Where we have fallen down is in the disposition of the enemy interests. The great bulk of the property which has been vested by the Alien Property Custodian still remains in his hands. It has not yet been disposed of.

One of the reasons for this is the fact that a goodly portion of the property was not held directly in the names of the enemy but was being held through neutral cloaks. The question has arisen as to whether, if the legal title were held in the name of the neutral cloak, such as a Swiss national, could that Swiss national, by starting suit against the Alien Property Custodian, restrain him from disposing of the property until the suit had been decided.

There is a case now pending in the Southern District of New York and which has been appealed to the United States Supreme Court, which may decide that question. That is a case where a Swiss corporation, which was alleged to be owned by Germans, had some property in the United States which was vested by the Alien Property Custodian. The Custodian announced he was going to sell the property. The suit was started to restrain the Custodian from selling on the ground that the property was Swiss owned. The lower court held that until the suit was disposed of the Custodian could not sell the property. That question is going to be heard by the Supreme Court in the very near future.

A number of us felt that it was very advisable to eliminate enemy interests, not only by vesting the property in the United States, but by

disposing of the property to American citizens. We were a little bit afraid as to what the psychological reaction was going to be if a couple of years after the war was over the property still remained in the hands of the Alien Property Custodian and had not been disposed of.

Pressure groups are going to be created who will cry out that acts of confiscation by this government are contrary to international law, and that German and Japanese property which was vested should be returned to the German and Japanese governments. The executive agencies of our government still are united in the premise that this property was being used by the German and Japanese governments for the purpose of carrying on their war-time activities, and that under no circumstances should it be returned to the former owners.

On the contrary, it should be utilized to pay certain types of claims against the German government and the Japanese government, such as the claims of prisoners of war and internees who suffered special damages at the hands of the Germans and the Japanese. You will recall that there is a bill pending before the Congress today under which it is provided that the Japanese internees, in particular, should be entitled to special payment and that the Japanese and German funds in the United States should be used for that purpose.

You will recall that we had control over a great amount of property in the U. S. of enemy occupied countries and the neutral countries. The Treasury has put into effect a certification procedure, under which this property can be unblocked as soon as the foreign government involved certifies that the assets are free from enemy taint. Although we have indicated our readiness to completely unblock all enemy-occupied property and all neutral property, we have imposed as a condition precedent that the government involved must certify that it has examined into the ownership and that it is satisfied that there is no enemy taint.

All of the evidence indicates that there is a considerable amount of German property which is held in the United States through Swiss ownership. During the entire period of the war, the Swiss have refused to disclose the ownership of the property in the United States. A great majority of the property which was in Swiss names merely indicated the Swiss legal ownership, and we had no information as to who were the beneficial owners of that property.

As a result of the certification procedure, it is now necessary for the Swiss to make an investigation, and if they find that there is any German interest in the property, they cannot certify the property, and they must report the facts to the United States Government.

That in general is the situation with respect to the treatment of enemy property. If any of you have any questions, I will be glad to try to answer them.

and under the agreement made at Paris between all of the various Western Powers which were at war with Germany, all of the countries have agreed that they would retain as reparations whatever enemy property was within their jurisdiction. So I think it is the policy of all of the countries which were at war with Germany to confiscate the German property which was

CAPTAIN WORTHINGTON:

Open to questions.

A STUDENT:

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within their territory and not make any return to the former owners. It will be the responsibility of the future German government to pay any compensation which may be required to the German nationals.

France, for example, has a more inelastic act than we do. They can take property under their control. That is they can sequester the property, but then before they can actually take title to the property, it is necessary to go into the French court and get an adjudication of the enemy ownership.

I would say that of all the countries whose laws I have examined the laws of the United States are the most elastic, and make it possible for us to use a variety of remedies.

A STUDENT:

Did you find any examples of cloaking by the Japanese in the Philippines?

MR. ALK:

One or two. There were a couple of instances where it appeared that certain mining properties were being held in Filipino names but in reality were owned by the Japanese. The cloaking operation which the Japanese engaged in the Philippines, I think, arose by reason of the Philippine land laws, under which aliens could not own any property. I don't remember whether that was merely confined to mineral property. My recollection is that no alien could own any real estate in the Philippines. As a result, there were cases where ownership was held in Filipino names when in reality the beneficial ownership was with the Japanese. Certainly as far as the United States was concerned, the instances of cloaking on the part of the Japanese were extremely few. My recollection is that there were less than a half dozen that we found.

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A STUDENT:

How about property in Germany that is in the Russian area?

MR. ALK:

Your guess is as good as mine.

A STUDENT:

Did you say they vested the Chinese interests in this country?

MR. ALK:

No, we didn't vest; we regulated; we froze.

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That in general is the situation with respect to the treatment of enemy property. If any of you have any questions, I will be glad to try to answer them.

CAPTAIN WORTHINGTON:

Open to questions.

A STUDENT:

Does the 250 million dollars of German property include the property of the cartels, such as I. G. Farben and Krupp?

MR. ALK:

It includes their American property. Those figures include the amount of property in the U. S. which we now know is owned by Krupp and I. G. Farben. It is suspected that I. G. Farben has other property in the United States, which is held in Swiss names, but as yet we haven't located their property. We believe under Swiss certification it will be located.

A STUDENT:

In vesting property, did we take over the property of aliens that were living in this country?

MR. ALK:

No. The vesting program, except in a few isolated cases, was directed against Germans and Japanese who were residing within enemy or enemy-occupied territory. We did vest in a few cases the property of Germans who were in the United States when, from the facts, it appeared they were acting on behalf of Germans in enemy or enemy occupied territory.

For example, we vested property of the German-American Bunds, even though theoretically the property was owned by Germans in the United States. In a couple of cases we also vested the property which was held in the names of American citizens. For example--General Dyestuff's Corporation--all the assets of the corporation were held in the name of American citizens, but the stockholders had issued an option to the I. G. Farben Corporation under which they agreed that they would sell the stock at any time that I. G. Farben asked for it at $100 a share. The stock was worth about $500 a share. The stock was vested on the basis that it was German owned, and settlement was made with some of the American owners under which we paid them the $100 which we said was all they were entitled to.

A STUDENT:

On whom is the burden of proof for showing that these companies actually were Swiss companies or actually German companies?

MR. ALK:

The burden of proof is on the Swiss company. When the United States seizes the property, it is presumed the property is enemy owned. Then the

person who claims to be the owner and who claims not to be an enemy or controlled by the enemy can bring action under Section 9 of the Trading with the Enemy Act for the return of the property. Under this section he has the burden of establishing that he is not an enemy or under the control of the enemy.

A STUDENT:

In speaking of freezing all assets in Europe with the exception of England and Turkey, Russia was not mentioned. If there were assets, will you discuss why they were frozen?

MR. ALK:

Russian assets were frozen on June 14, 1941, at the same time we froze all of the assets of the European countries. However, when Germany attacked Russia on June 24, 1941, and it appeared therefore that Russia was going to be on our side, Russian assets were unfrozen. So there was a period of ten days when their assets were frozen. However, the amount of Russian assets in the United States was extremely small.

A STUDENT:

How did our policy of vesting enemy property compare with England or did England have a similar policy?

MR. ALK:

Basically the policy is the same. Canada has an automatic vesting decree. For example, just as soon as war broke out, all enemy property in Canada was automatically vested. That created some confusion in Canada. I remember there was a circus. The Canadian Custodian found he was the owner of a circus. They discovered they did not have sufficient flexibility under their act, and I think the Canadian Custodian would agree that an automatic vesting decree is not the best way to handle the situation.

Although England's basic law differs from the United States law, yet from a practical standpoint it has worked out exactly the same as ours. They have taken under control enemy property, but it still remains in the possession and the custody of the person who had possession at the time of the outbreak of war until the Custodian issues a separate vesting order and takes it over himself.

I should have mentioned, I suppose, that under the Moscow agreement and under the agreement made at Paris between all of the various Western Powers which were at war with Germany, all of the countries have agreed that they would retain as reparations whatever enemy property was within their jurisdiction. So I think it is the policy of all of the countries which were at war with Germany to confiscate the German property which was

within their territory and not make any return to the former owners. It will be the responsibility of the future German government to pay any compensation which may be required to the German nationals.

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A STUDENT:

Did you say they vested the Chinese interests in this country?

MR. AIK:

No, we didn't vest; we regulated; we froze.

A STUDENT:

Is there an accounting of the assets that has to be made?

MR. ALK:

As a matter of fact, as I indicated, although our procedures for unfreezing has been to say the property may be unfrozen, that procedure has not been followed with respect to China. You will recall that when General Marshall returned from China, he washed his hands of the situation and said that nothing could be done. At the same time we washed our hands of all Chinese assets in the United States.

You see when we unfreeze in this way we are expressing a measure of confidence in the government. We are really making it possible for those governments to get control of those assets and to use the dollar exchange of their nationals. The situation became so bad we didn't want to express that confidence completely so we unblocked all Chinese assets in the United States. Inasmuch as we never took the assets into our possession, there is no accounting we have to make.

CAPTAIN WORTHINGTON:

Thank you very much, Mr. Alk.

(13 May 1947---350)P