

# WESTERN HEMISPHERE CONTROL OVER ENEMY PROPERTY: A COMPARATIVE SURVEY

MARTIN DOMKE\*

Measures which have been taken for the administration of alien property in wartime must be considered from the viewpoint of an economic warfare which has wholly changed from the experience of World War I. Economic warfare had been waged in the Western Hemisphere by the Axis powers long before diplomatic relations between the American Republics and the Axis were severed. Countermeasures were enacted in most of the American Republics when it became evident that Germany had long prepared systematically to loot the European countries which it invaded in 1940. Germany tried to send over here foreign currency and securities which it found hoarded in Western Europe, and to use them in the countries of the Western Hemisphere for various purposes of espionage and fifth column activities. It tried to do more, namely to use the assets abroad which belonged to residents of the invaded European territories. Such assets located within the Western Hemisphere were not to be returned to Europe; on the contrary, they had to be used here in order to foster subversive activity within the various American countries in favor of the Axis powers. At the same time other techniques of waging economic warfare were developed by the Axis in the Western Hemisphere. This included the use of business firms (e.g., I. G. Farben, Siemens & Halske, German banks acting as Nazi party financial backers, etc.) directed to the purpose of world domination. The effort has not ceased. Said the United States Department of State recently:<sup>1</sup> "In anticipation of impending defeat, the enemy is increasing these activities in order to salvage his assets and to perpetuate his economic influence abroad and his power and ability to plan future aggrandizement and world domination."

Countermeasures had to be introduced in this Hemisphere. They are generally known as the blocking of foreign assets by the so-called freezing regulations. Further restrictions have been placed on the import and export of foreign currency and securities. The blacklisting system is another means of waging economic warfare.

\*Dr. Jur., 1915, University of Greifswald, Germany. Legal Research Director, American Arbitration Association. Author of books and monographs on economic emergency legislation, especially foreign exchange control, and of *TRADING WITH THE ENEMY IN WORLD WAR II* (New York, 1943; forthcoming supplement as of April 1, 1945). Contributor of articles on international law in American and foreign legal periodicals.

<sup>1</sup>(1944) 11 DEP'T OF STATE BULL. 383.

Finally, administration of enemy and enemy controlled property through supervision of management (and other intervention) and liquidation of seized assets by different means of expropriation and nationalization are some of the legislative and administrative measures which were enacted in the countries of the Western Hemisphere to counterbalance the effects of the Axis' economic warfare.

## I

When Germany invaded Western Europe in the spring of 1940, the only country of the Western Hemisphere which had already enacted measures against this Axis power was Canada, at war with Germany since September, 1939. The Trading with the Enemy legislation of September 5, 1939,<sup>2</sup> was applied to the assets belonging to residents in territories occupied by Germany, in ordering "the protective custody of property of persons residing in proscribed territory."<sup>3</sup> The United States reacted to the prospective use of looted assets with a measure which might not have been foreseen by the invader: it blocked immediately, on April 10, 1940,<sup>4</sup> all assets belonging to residents of the occupied countries to nullify "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>5</sup> At the Havana Conference of the American Republics held in July, 1940, it was agreed that each of the governments should take the necessary measures to suppress activities inspired by foreign governments or by foreign nationals which might subvert the democratic institutions of any of the Republics.<sup>6</sup> Some of the Latin-American Republics followed the example of the United States in enacting freezing regulations against Germany's use of assets of invaded countries, e.g., Argentina, Brazil, Colombia, Costa Rica, Paraguay, Uruguay, and Venezuela.<sup>7</sup> The effectiveness of such measures, however, might sometimes be considered doubtful, as, for instance, the freezing regulations introduced in Argentina as early as April, 1940.

When Germany undertook new aggressions in the spring of 1941 against the Balkans, and later against Russia, the freezing regulations of the United States were extended to the assets of nearly all European countries on June 14, 1941<sup>8</sup> and

<sup>2</sup> Regulations Respecting Trading with the Enemy (1939), established by Order in Council, P. C. 2512, were replaced by the Consolidated Regulations, P. C. 3959, as amended, in turn replaced by the Revised Regulations Respecting Trading with the Enemy (1943), Order in Council of November 13, 1943, P. C. 8526, C. C. H. 1943, War Law Serv. (Foreign Supplement) ¶65,612.

<sup>3</sup> May 11, 1940, Order in Council, P. C. 1936, 2 PROCLAMATIONS AND ORDERS IN COUNCIL 85 (1940).

<sup>4</sup> EXEC. ORDER No. 8389, 5 FED. REG. 1400 (1940), as amended; C. C. H. 1942, War Law Serv. (Statutes, Proclamations, Interpretations) ¶14,011. For amendments and further regulations see U. S. TREAS. DEP'T, ADMINISTRATION OF THE WARTIME FINANCIAL AND PROPERTY CONTROLS OF THE UNITED STATES GOVERNMENT (Dec., 1942); U. S. TREAS. DEP'T, DOCUMENTS PERTAINING TO FOREIGN FUNDS CONTROL (March 30, 1944). The latter will be hereinafter cited as "DOCUMENTS."

<sup>5</sup> Treas. Dept's Press Release No. 34, April 21, 1942, DOCUMENTS, *supra* footnote 4, at 122; C. C. H. *op. cit. supra* footnote 4, at ¶14,633.

<sup>6</sup> (1941) 35 AMER. J. OF INT. L., SUPP. 10.

<sup>7</sup> PAN AMERICAN UNION, PROCEEDINGS OF THE INTER-AMERICAN CONFERENCE ON SYSTEMS OF ECONOMIC AND FINANCIAL CONTROL (Congress and Conference Series No. 40, 1942) 12, 17, 22, 37, 39, 45.

<sup>8</sup> EXEC. ORDER No. 8785, 6 FED. REG. 2897 (1941).

on July 26, 1941;<sup>9</sup> when Japan overran Indo-China, the control was invoked against Japan and China. In the same way, Canada extended its Trading with the Enemy legislation to apply to all countries occupied by the Axis powers as "proscribed territories."<sup>10</sup>

On July 17, 1941, the United States issued the Proclaimed List of Certain Blocked Nationals, known as the blacklist, which was officially recognized or used as a basis for local controls by some of the Latin-American Republics.<sup>11</sup>

After Pearl Harbor, the declarations of war by the United States were immediately followed by nine American Republics, while other countries broke off diplomatic relations with the Axis powers in December, 1941, or shortly after the Third Meeting of the Ministers of Foreign Affairs of the American Republics, held in Rio de Janeiro on January 15, 1942.<sup>12</sup> A Resolution adopted at that meeting recommended that the American Republics "cut off for the duration of the present hemispheric emergency all commercial and financial intercourse, direct or indirect, between the Western Hemisphere and the nations signatory to the Tripartite Pact and the territories dominated by them."<sup>13</sup> It further provided for the supervision of all transactions of aliens of enemy nationality who are residents in the American Republics, and for a conference of representatives of the central banks of all Republics to draft standards of procedure for the uniform handling of all transactions of "real or juridical persons who are nationals of a state which has committed an act of aggression against the American Continent."<sup>14</sup> Accordingly, the Inter-American Conference on Systems of Economic and Financial Control was held in Washington in June-July, 1942. The Final Act of July 10, 1942,<sup>15</sup> recommended measures to be adopted by each country for the elimination of Axis influence. Of special interest is the seventh recommendation regarding control of business enterprises. It aims at a policy under which "in accordance with the constitutional procedure of each country, all necessary measures be adopted as soon as possible, in order to eliminate from the commercial, agricultural, industrial and financial life of the American Republics, all influence of governments, nations, and persons within such nations who, through natural or juridical persons or by any other means are, in the opinion of the respective government, acting against the political and economic independence or security of such Republics."<sup>16</sup> By this literal language, conceivably every foreign influence, not only that emanating from enemy nationals,

<sup>9</sup> EXEC. ORDER No. 8832, 6 FED. REG. 8786 (1941); see Press Release No. 7, C. C. H. *op. cit. supra* footnote 4, at ¶14,607, DOCUMENTS, *supra* footnote 4, at 106.

<sup>10</sup> Orders in Council: of March 4, 1941 (P. C. 1561, 1562: Bulgaria, Hungary); of December 7, 1941 (P. C. 9590: the Japanese Empire and Japanese occupied and/or controlled territory).

<sup>11</sup> See *infra* footnotes 69-77.

<sup>12</sup> See the tabulations in (1944) 10 DEP'T OF STATE BULL. 373, 413, and (1945) 79 BULL. OF THE PAN AMERICAN UNION 31.

<sup>13</sup> (1942) 36 AMER. J. OF INT. L., SUPP. 71.

<sup>14</sup> *Id.*, at 72.

<sup>15</sup> (1943) 37 AMER. J. OF INT. L., SUPP. 9; cf. Manuel Felix Maúrtua, *Consideraciones al margen de la Conferencia de Control Económico* (1942) 2 REVISTA PERUANA DE DERECHO INTERNACIONAL 422.

<sup>16</sup> (1943) 37 AMER. J. INT. L., SUPP. 18.

might thus be eliminated through blocking of assets and other forms of control. The nationalistic tendency of such measures appears further from this recommendation: "The alienation, in any form, of the said properties and rights can only be made to nationals of the respective country or to juridical persons formed by them."<sup>17</sup>

Thus, the administration of alien property in Latin-American Republics will have far-reaching consequences, beyond the temporary elimination of Axis influence from wartime economy. These resolutions which were adopted with reservations both by Argentina and Chile,<sup>18</sup> were carried into execution in a variety of ways (and degrees of effectiveness) through legislative and administrative measures in the American Republics.

## II

For the purpose of administration of enemy property it is necessary to determine which individuals and corporations have to be considered enemies. They are the nationals of enemy countries who are residing within enemy territory, and corporations registered under enemy law. Nationals like Americans living in enemy or enemy-occupied territory have also been considered enemies within the meaning of the Trading with the Enemy legislation during both World Wars.<sup>19</sup> The territorial test is a decisive one; who stays in enemy territory is deemed to help the enemy economy.<sup>20</sup>

On the other hand, aliens of enemy nationality who are residing in countries of the Western Hemisphere are generally not restricted in their financial and commercial transactions. Such alien enemies when they have been residents of the United States since February 23, 1942,<sup>21</sup> are so-called generally licensed nationals of a foreign (blocked) country who are subject to practically no financial restrictions. The situation, though similar in Canada,<sup>22</sup> is different in some Latin-American Republics. There the so-called nationality test prevails. The resident of enemy nationality is subject to almost the same restrictions which are applied to assets belonging to enemy nationals residing abroad. This is the case, for instance, in Brazil,<sup>23</sup> Colom-

<sup>17</sup> *Id.*, at 19.

<sup>18</sup> *Id.*, at 20.

<sup>19</sup> As to cases, see DOMKE, *TRADING WITH THE ENEMY IN WORLD WAR II* (New York, 1943) 26.

<sup>20</sup> This territorial test has been adopted in the Rumanian, Bulgarian, Finnish and Hungarian Armistices. They provide for the control of alien property belonging "to Germany, Hungary or to their citizens, or to persons residing on their territory, or on territory occupied by them." Art. 8, Rumanian Armistice of September 12, 1944, (1944) 11 DEP'T OF STATE BULL. 289; Art. 13, Bulgarian Armistice of Oct. 28, 1944, *id.*, at 492; Art. 16, Finnish Armistice of September 19, 1944, *New York Times*, September 21, 1944, p. 12, col. 2; Art. 8 of Hungarian Armistice of Jan. 20, 1945, *N. Y. Times*, Jan. 22, 1945, p. 4, col. 2.

<sup>21</sup> *Treas. Dep't*, General License No. 42, as amended, 7 *FED. REG.* 1492 (1942); cf. General Ruling No. 11, as amended June 30, 1944, 9 *FED. REG.* 7379 (1944), *DOCUMENTS*, *supra* note 4, at 34.

<sup>22</sup> See *Trefniecek v. Martin* [1939] 4 D. L. R. 737; *J. G. White Engineering Corp. v. Canadian Car & Foundry Co.* [1940] 4 D. L. R. 812.

<sup>23</sup> Brazil: Decree-law No. 4166, March 11, 1942, *PAN AMERICAN UNION*, *op. cit. supra* footnote 7, at 18.

bia,<sup>24</sup> Guatemala,<sup>25</sup> Haiti,<sup>26</sup> Mexico,<sup>27</sup> and Peru.<sup>28</sup> This problem, namely to subject residents of enemy nationality to financial restrictions, becomes rather important in this war where funds within the countries of the Western Hemisphere have been used for Axis purposes and other fifth column activities. Evasion of financial wartime controls, and other inimical activities, however, are not dependent on residence, nationality, or allegiance to a foreign country. It comes down to a matter of loyalty. Thus, "the ideological and racial nature of the present war appears, in many respects, to have cut across national lines and destroyed the value of old distinctions based on nationality."<sup>29</sup> Under the legislation of most of the countries of the Western Hemisphere individuals and corporations acting on behalf of or for the benefit of enemy countries may be assimilated to enemies by administrative decision.<sup>30</sup> This happened during this war with American citizens residing within this country. They were considered acting in the interest of the enemy and determined as nationals of a foreign (Germany) country and thus blocked in their financial activity.<sup>31</sup>

In other respects of wartime controls the loyalty test is a decisive factor too; aliens of enemy nationality may be naturalized even during the war in the United States after their loyalty has been ascertained by investigation.<sup>32</sup> On the other hand, naturalized citizens might be faced with the cancellation of their certificates of citizenship by court decision when it becomes evident from their attitude favoring Axis aims that they took the oath of allegiance to their new country with mental reservations.<sup>33</sup> This is especially true with former members of the American-German Bund in this country.<sup>34</sup> Their internment after denaturalization, however, does not subject their property within the country to control as enemy property,<sup>35</sup> whereas in Cuba, for instance, all assets of interned citizens of countries at war with Cuba shall be vested in the Interventor for the Property of Enemy

<sup>24</sup> Colombia: Decree No. 915, April 9, 1942, *Diario Oficial*, April 17, 1942.

<sup>25</sup> Guatemala: Decree No. 2655, December 23, 1941, as amended, *Diario de Centro América*, February 24, 1942.

<sup>26</sup> Haiti: Decree-law No. 80, December 18, 1941, *Le Moniteur*, December 18, 1941.

<sup>27</sup> Mexico: Decree, June 13, 1942, *PAN AMERICAN UNION*, *op. cit. supra* footnote 7, at 35.

<sup>28</sup> Peru: Decree No. 9586, April 10, 1942, *El Peruano*, April 22, 1942.

<sup>29</sup> Note, *Alien Enemies and Japanese-Americans: A Problem of Wartime Controls* (1942) 51 *YALE L. J.* 1318, 1337.

<sup>30</sup> *Treas. Dep't*, Public Circular No. 18, March 30, 1942, *C. C. H. op. cit. supra* footnote 4, at ¶14,526, 7 *FED. REG.* 2503 (1942); Canada: Revised Regulations, *supra* footnote 2. For Canadian cases, see *Ritcher v. King* [1943] *Ex. C. R.* 64; *In re Shawaga Estate* [1943] 4 *D. L. R.* 610.

<sup>31</sup> *Draeger Shipping Co. v. Crowley*, 49 *F. Supp.* 215 and 55 *F. Supp.* 906 (*S. D. N. Y.* 1943, 1944); *Alexewicz v. General Aniline & Film Corp.*, 181 *Misc.* 181, 43 *N. Y. S. (2d)* 713 (*Sup. Ct. Broome County*, 1943); *Hartmann v. Fed. Res. Bank of Phil.*, 55 *F. Supp.* 801 (*E. D. Pa.*, 1944).

<sup>32</sup> *EXEC. ORDER* No. 9372, August 27, 1943, 8 *FED. REG.* 11887 (1943); naturalization of aliens of Axis nationality has been expressly prohibited in Mexico (*Diario Oficial*, January 24, 1942) and suspended in Argentina (*Boletín Oficial*, September 2, 1943).

<sup>33</sup> *Preuss*, *Denaturalization on the Ground of Disloyalty* (1942) 36 *AM. POL. SC. REV.* 701.

<sup>34</sup> Among the numerous decisions rendered by Federal courts during this war, see *Baumgartner v. United States*, 322 *U. S.* 665 (1944).

<sup>35</sup> *Ex parte Kumezo Kawato*, 317 *U. S.* 69 (1942); Note (1943) 43 *COL. L. REV.* 944.

Aliens.<sup>36</sup> On the other hand, the exemption of Italian nationals residing in this country from qualification as alien enemies<sup>37</sup> did not automatically release their property from the control of the Alien Property Custodian.

The loyalty test plays a decisive role in the whole field of administration of enemy property.<sup>38</sup> Nationals of countries of the Western Hemisphere often serve in their own countries as cloaks for Axis interests. They control, as stockholders or through management, domestic and neutral commercial enterprises in the interest of the enemy.<sup>39</sup> Controlling enemy interest has usually been assumed when twenty-five percent of the shares of a domestic corporation are held in the interest of enemies. Such control has often, however, been exercised through long-term credit or patent agreements within the framework of international cartelization.<sup>40</sup> The Axis-controlled corporation is considered an enemy for the practical purpose of administration of alien property in Canada,<sup>41</sup> in the United States,<sup>42</sup> and in some Latin-American Republics such as Brazil,<sup>43</sup> Costa Rica,<sup>44</sup> Nicaragua,<sup>45</sup> and Uruguay.<sup>46</sup> Said the recent statement of the Department of State:<sup>47</sup> "The enemy has also been attempting to conceal his assets by passing the chain of ownership and control through occupied and neutral countries." Thus the final liquidation of enemy-controlled corporations in the common interest of the countries of this Hemisphere will involve many legal and economic problems extending well beyond the war.<sup>47a</sup>

### III

Perhaps the most effective measure of administration of alien property in war-time has been the one which was undertaken first, as a countermeasure against the use of assets abroad of individuals and corporations which resided in the European countries invaded by Germany in 1940. In varying degrees, the freezing regulations first introduced in Canada and in the United States in the spring of 1940 have also

<sup>36</sup> Cuba: Decree No. 3343, December 21, 1941, PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 26.

<sup>37</sup> October 19, 1942, 7 FED. REG. 8247 (1942). For a similar measure in Mexico: Executive Order of April 27, 1944, Diario Oficial, April 29, 1944.

<sup>38</sup> For cases, see *supra* footnote 31.

<sup>39</sup> Domke, *Compañías Controladas por el Enemigo* (1943) 22 REVISTA DE DERECHO INTERNACIONAL 184.

<sup>40</sup> CORWIN D. EDWARDS, ECONOMIC AND POLITICAL ASPECTS OF INTERNATIONAL CARTELS, 78th Cong., 2d Sess., Senate Committee Print, Monograph No. 1 (1944) 62 ("A study made for the Subcommittee on War Mobilization of the Committee on Military Affairs, United States Senate, pursuant to S. Res. 107.").

<sup>41</sup> Canada: Revised Regulations, *supra* footnote 2, at §8.

<sup>42</sup> EXEC. ORDER No. 8389, as amended, §5E(ii), C. C. H. *op. cit. supra* footnote 4, at ¶14,011; ALIEN PROPERTY CUSTODIAN (FIRST) ANNUAL REPORT (1944) 22.

<sup>43</sup> Brazil: Resolutions No. 64 and 65, Economic Defense Commission, May 10, 1943, Diário Oficial, May 12, 1943.

<sup>44</sup> Costa Rica: Decree No. 52, December 26, 1941, Gaceta Oficial, December 27, 1941.

<sup>45</sup> Nicaragua: Presidential Decree No. 52, December 26, 1941, La Gaceta, December 27, 1941.

<sup>46</sup> Uruguay: Exec. Order No. 700-40, September 14, 1942, Diario Oficial, September 19, 1942.

<sup>47</sup> (1944) 11 DEP'T OF STATE BULL. 383.

<sup>47a</sup> See DEP'T OF STATE, UNITED NATIONS MONETARY AND FINANCIAL CONFERENCE (Pub. No. 2187, Conference Series 55, 1944) 22.

been enacted in most of the Latin-American Republics.<sup>48</sup> Exactly how tight are these regulations, in action as well as on paper, is not exactly known; Argentina, which introduced such measures as early as April, 1940, is a case in point.

Freezing regulations in all Latin-American Republics were facilitated through the existing foreign exchange control.<sup>49</sup> The central banks already controlled all foreign assets and prevented them from being used outside of the country. No longer was protection of the national currency now the main purpose of foreign exchange control. To prevent these assets from being used for Axis purposes within the country now became of primary importance.

The introduction of freezing regulations, however, encountered difficulties in some Latin-American countries. Special compensation or barter agreements with Germany existed, as, for instance, in the case of Brazil,<sup>50</sup> Chile,<sup>51</sup> and Colombia.<sup>52</sup> Such agreements made it impossible to cut off all commercial intercourse with the Axis powers which were debtors of the American Republics. Difficulties involved in introducing freezing regulations were further mentioned by Bolivia at the Inter-American Conference in June, 1942.<sup>53</sup> Special supply services in Bolivia have been operated by German firms for over forty years. These firms with a capital of about six million dollars reacted to the blocking of their funds in 1941 by restricting their imports to the eastern part of Bolivia. Thus the native population soon felt the effects of an insufficient food supply. The Bolivian government was obliged to make the blocking measures more flexible, and to allow the operation of German-owned business to a certain extent.

#### IV

Other measures were taken in the countries of the Western Hemisphere to prevent the Axis powers from benefiting from foreign currencies and securities looted within the occupied territories. In European countries a tax stamp had to be attached to all securities. Bonds and shares which were sent to the United States shortly after the occupation of Western Europe, though through neutral channels, were barred from import and from any dealing by banks when they bore tax stamps or evidence that stamps had been attached.<sup>54</sup> Even securities already in this country but in the name of neutral banks have rigorously been controlled. Any disposition requires formal declarations of these banks that the transfer will not be of any interest to a national of the Axis powers.<sup>55</sup>

<sup>48</sup> *Supra* footnotes 4-7.

<sup>49</sup> See OLSON AND HICKMAN, *PAN AMERICAN ECONOMICS* (New York, 1943) 320.

<sup>50</sup> See U. S. TARIFF COMMISSION, *FOREIGN-TRADE AND EXCHANGE CONTROLS IN GERMANY* (Report No. 150, Second Series, 1942) 171; TENENBAUM, *NATIONAL SOCIALISM VS. INTERNATIONAL CAPITALISM* (Yale Univ. Press, 1942) 93.

<sup>51</sup> *PAN AMERICAN UNION, op. cit. supra* footnote 7, at 21, 48.

<sup>52</sup> *Id.*, at 22.

<sup>53</sup> *Id.*, at 15.

<sup>54</sup> Treas. Dep't. Gen. Ruling No. 6, as amended May 18, 1943, 8 FED. REG. 6595 (1943), C. C. H. *op. cit. supra* footnote 4, at ¶14,206, DOCUMENTS, *supra* footnote 4, at 31.

<sup>55</sup> Treas. Dep't. Gen. Ruling No. 17, October 20, 1943, 8 FED. REG. 14,341 (1943), C. C. H. *op. cit. supra* footnote 4, at ¶14,220, DOCUMENTS, *supra* footnote 4, at 40.

Similar measures were provided for in Mexico by a Presidential Decree of August 4, 1942,<sup>56</sup> requiring the registration of Mexican government obligations and railroad securities within a certain period. All non-registered bonds would be considered as held by enemies. The New York Stock Exchange excluded unregistered Mexican bonds from being traded. Thus about sixty million dollars of Mexican bonds presumably in enemy possession were reached by this regulation. A similar measure was enacted in Guatemala,<sup>57</sup> which suspended the service of its four percent foreign debt pending the restamping of bonds and coupons in order to prevent them from coming into possession of persons or corporations controlled by enemy nationals.

It became further necessary to introduce a strict control of the importation of currencies into the countries of the Western Hemisphere. Dollar notes hoarded all over Europe were not allowed to enter this Hemisphere in order to prevent the building up of dollar funds or the equivalent of national currency which might be used for fifth column activity and other means of economic warfare. Nearly all the Latin-American countries followed the example of the United States which had already restricted the import of dollar notes in the spring of 1940.<sup>58</sup> Thus the entrance of foreign currency was prevented and controlled by different measures, as the withdrawal of all dollar notes in Brazil,<sup>59</sup> or the reporting of all currency in Mexico<sup>60</sup> and Uruguay,<sup>61</sup> or the obligation to change foreign currency into national currency as in Paraguay<sup>62</sup> and Peru.<sup>63</sup> Furthermore the export of currency has been controlled in almost every American Republic. Travelers were allowed to export relatively small amounts of currency.<sup>64</sup> Mexico made an agreement with the United States, on August 12, 1942,<sup>65</sup> which provided for a detailed regulation of export and import of currencies with the aim of preventing the proper disposition within the Western Hemisphere of currency looted by the Axis powers.

## V

Problems reaching far beyond wartime conditions are involved in the practice of commercial blacklisting. Individuals and commercial firms mostly in neutral countries but also in territories of the United Nations who are deemed to serve

<sup>56</sup> As amended December 16, 1943, *Diario Oficial*, December 24, 1943.

<sup>57</sup> Guatemala: Legislative Decree No. 2766, March 30, 1944, *Diario de Centro América*, May 2, 1944.

<sup>58</sup> Treas. Dep't, Gen. Ruling No. 5, as amended September 3, 1943, 8 *FED. REG.* 12,286 (1943), C. C. H. *op. cit. supra* footnote 4, at ¶14,205. See Public Circular No. 14, as amended April 26, 1944, 9 *FED. REG.* 4462 (1944).

<sup>59</sup> PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 19.

<sup>60</sup> Mexico: Regulations of December 10, 1942, *Diario Oficial*, December 15, 1942.

<sup>61</sup> Uruguay: Decree of June 18, 1942, *Diario Oficial*, September 11, 1942.

<sup>62</sup> PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 39.

<sup>63</sup> *Id.*, at 41.

<sup>64</sup> Chile: September 1, 1942, *El Mercurio*, Santiago, September 2, 1942; Costa Rica: September 13, 1942, *La Gaceta*, September 17, 1942; Dominican Republic: Decree No. 343, *Gaceta Oficial*, November 9, 1942; Ecuador: August 12, 1942, *Registro Oficial*, August 17, 1942; El Salvador: October 22, 1942, *Diario Oficial*, October 27, 1942.

<sup>65</sup> Treas. Dep't, Press Release No. 39, C. C. H. *op. cit. supra* footnote 4, at ¶14,637, *DOCUMENTS, supra* footnote 4, at 127. Cf. *N. Y. Times*, Jan. 4, 1945, p. 30, col. 4.

Axis interests are to be treated as enemies and thus to be subject to all sanctions of economic warfare. Such persons and firms have had their assets frozen and all movements of funds have been stopped. Canada, under statutory provisions, publishes Lists of Specified Persons.<sup>66</sup> The United States introduced on July 17, 1941,<sup>67</sup> the so-called Proclaimed List of Certain Blocked Nationals. The blacklists are revised from time to time by addition of names or by deletion. Deletion is frequently the result of liquidation, transfer or "clean-up" of an enterprise; sometimes it is the result of change in policy, death, change of residence, recognition of error; mere change in the listed person's pro-Axis leanings is probably insufficient, *per se*, for deletion. Additions to the List have generally exceeded deletions, although a trend in the other direction is recently noticeable as to listings of names in the Latin Republics.<sup>68</sup> The fact that additions continue indicates that the control of Axis interests in neutral countries and in some of the American Republics is not all that might be desired from an anti-Axis point of view.

Some of the American Republics used the United States Proclaimed List as the basis of some local control, e.g., Bolivia,<sup>69</sup> Costa Rica,<sup>70</sup> Ecuador,<sup>71</sup> Guatemala,<sup>72</sup> and Nicaragua.<sup>73</sup> Mexico<sup>74</sup> and Cuba<sup>75</sup> publish from time to time names of specified individuals and of firms which are to be considered enemies. When Haiti based certain local controls on the United States blacklist long before it severed diplomatic relations with Germany,<sup>76</sup> the German chargé d'affaires protested to the Haitian government, claiming that it had allowed an interference of the United States in its sovereignty, a claim strongly rejected by the Haitian government.<sup>77</sup>

In order not to disturb any regular commercial relations of this country with the Latin-American Republics, the whole Western Hemisphere has been declared a so-called generally licensed trade area<sup>78</sup> with which any transaction is licensed unless it concerns a blacklisted firm or nationals of foreign (blocked) countries outside the Western Hemisphere.

<sup>66</sup> Canada: Revised Regulations, *supra* footnote 2, at §1(d)viii; cf. the last Revision, No. 55, Dec. 8, 1944, 4 CANADIAN WAR ORDERS AND REGULATIONS (1944) 486.

<sup>67</sup> PRES. PROC. No. 2497, 6 FED. REG. 3555 (1941), C. C. H. *op. cit. supra* footnote 4, at ¶14,051, (1942) 36 AMER. J. INT. L., SUPP. 214.

<sup>68</sup> The September 1944 Revision of the U. S. Proclaimed List of Certain Blocked Nationals contained 9,915 listings in the American Republics and 5,496 in other countries. Revision VIII of September 13, 1944, 9 FED. REG. 11389 (1944). See Cumulative Supp. No. 5 of Jan. 12, 1945, 10 FED. REG. 581 (1945).

<sup>69</sup> Bolivia, on December 12, 1941, PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 15.

<sup>70</sup> Costa Rica, on October 10, 1941, *id.*, at 24.

<sup>71</sup> Ecuador: Presidential Decree No. 854, June 11, 1943, Registro Oficial, June 23, 1943.

<sup>72</sup> Guatemala: Presidential Decree No. 3153, Oct. 6, 1944, Diario de Centro América, Oct. 7, 1944.

<sup>73</sup> Nicaragua: Presidential Decree No. 70, December 16, 1941, La Gaceta, December 18, 1941.

<sup>74</sup> Mexico: Lists of Firms and Persons included under the Provisions of the Law on Enemy Property and Business, as amended February 24, 1944, Diario Oficial, March 29, 1944.

<sup>75</sup> Cuba: Resolution No. 26, August 18, 1942, Gaceta Oficial, August 21, 1942, p. 15,136.

<sup>76</sup> Haiti, on December 29, 1941, PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 32A.

<sup>77</sup> The whole correspondence is published in Le Moniteur (1941) 521, 528, 534.

<sup>78</sup> Treas. Dep't, Gen. License No. 53 as amended February 21, 1944, C. C. H. *op. cit. supra* footnote 4, at ¶14,358, DOCUMENTS, *supra* footnote 4, at 65.

The blacklisting system, besides its legal effects in the commercial field,<sup>79</sup> involves economic problems for the countries eliminating Axis interests. A black-listed firm for instance will be cut off from bank credits; imports from other countries are no longer allowed to reach it, and exports are no longer possible. How does this firm continue to operate, and what will become of its numerous employees? A committee of the Colombian Senate called attention to the injustices and injuries suffered by the businessmen of that country.<sup>80</sup> In Guatemala, for instance, German interests predominantly control coffee plantations.<sup>81</sup> The Guatemalan delegation at the Inter-American Conference, June, 1942, made the following statement: "Coffee interests are diverse: there are the interests of the owners of plantations; of the Guatemalans who work in these plantations; of the banks that furnish the credits which finance the gathering of the crops; the interests of the creditors who hold mortgages, and of the government which derives a large part of the national income from export taxes."<sup>82</sup> Recently the United States and Great Britain have agreed<sup>83</sup> that "the continuation of the Proclaimed and Statutory Lists<sup>84</sup> will be necessary following the cessation of organized resistance in Germany. This action is required in order to permit the Allied Governments to deal properly with firms which have been part and parcel of the Axis effort to gain world domination."

## VI

The control of enemy property in the countries of the Western Hemisphere has as its major objective the cutting off of all financial and commercial transactions which might be of benefit to the Axis powers. This control has been exercised through freezing regulations, restrictions on the movement of securities and currency, severance of communications, the blacklisting system, preclusive buying of commodities, export restrictions to neutral countries, and through other measures of economic warfare.

The elimination of Axis influence and control over any part of the national economy of the Western Hemisphere will be the final aim of administration of enemy property in the various countries. To provide the information necessary for effective measures, a census of all foreign property became necessary. Such census

<sup>79</sup> Domke, *Some of the Legal Questions Involved in Commercial Blacklisting* (1943) 48 EXPORT TRADE AND SHIPPER, No. 12, p. 30. For a Guatemalan case, see Kellor, *Inter-American Commercial Arbitration* (1944) 78 BULL. OF THE PAN AMERICAN UNION, 218, 222, n. 5.

<sup>80</sup> Bidwell, *Our Economic Warfare* (1942) 20 FOREIGN AFFAIRS 421, 427.

<sup>81</sup> *Government Custodianship of Coffee Plantations in Guatemala* (1943) 77 BULL. OF THE PAN AMERICAN UNION 488.

<sup>82</sup> PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 32. Guatemala levies an extraordinary war tax on exports of coffee, seed and wax from controlled plantations. Legislative Decree No. 2764, March 30, 1944, *Diario de Centro América*, May 2, 1944.

<sup>83</sup> (1944) 11 DEP'T OF STATE BULL. 340; cf. Russell, *Current and Post-War Significance of the Proclaimed List* (1944) 49 EXPORT TRADE AND SHIPPER, No. 15, p. 3; REPORT TO CONGRESS ON OPERATIONS OF THE FOREIGN ECONOMIC ADMINISTRATION (Sept. 25, 1944) 14.

<sup>84</sup> Published by the Board of Trade under the authority of Sec. 2 (2) of the British Trading with the Enemy Act, 1939, 2 & 3 GEO. VI, c. 89, (1942) 36 AMER. J. OF INT. L., SUPP. 3.

was required, in the United States, on September 3, 1941,<sup>85</sup> whereby all persons owning, holding, or controlling any type of property in which there was a foreign interest, direct or indirect, had to report the ownership of such property to the Treasury Department. Similar measures were adopted in Canada.<sup>86</sup> Some Latin-American Republics required the reporting of all such assets, e.g., Brazil,<sup>87</sup> Chile,<sup>88</sup> Cuba,<sup>89</sup> Ecuador,<sup>90</sup> and Mexico.<sup>90a</sup> Further measures to obtain necessary information were the requirements to report employees of Axis nationality in Brazil<sup>91</sup> and Cuba.<sup>92</sup>

The control, however, would not become effective were it not aimed at the elimination of all financial and commercial influence or activity of interests which have been inimical to the defense of the Western Hemisphere. Such control has been exercised through a variety of methods, viz., the supervision of commercial activities by the use of intervention by representatives of the government, by control of licensed operation of business enterprises, and through different types of regulations. In the United States there are General Orders of the Alien Property Custodian which generally have the purpose of getting information over certain classes of property, especially patents and other industrial property rights. Supervisory Orders are further used by the Alien Property Custodian especially as a flexible device to control property of residents of enemy-occupied countries.<sup>93</sup> A similar device, one which does not *ipso facto* vest title in the government, is usually used by central banks of some American Republics, e.g., Brazil,<sup>94</sup> Haiti.<sup>95</sup> Sometimes when more than bank experience is required, specific interventors for the supervision of enemy property have been designated, e.g., Cuba,<sup>96</sup> or Honduras.<sup>97</sup> Sometimes particular interests such as farms belonging to alien enemies are administered by special agencies as in Guatemala by the National Mortgage Credit Association<sup>98</sup> or in Costa Rica by the

<sup>85</sup> Public Circulars Nos. 4 and 5, 6 FED. REG. 4196, 4587 (1941).

<sup>86</sup> Canada: Revised Regulations, *supra* footnote 2, at sec. 28.

<sup>87</sup> Brazil: Resolution No. 50—1943, Economic Defense Commission, April 12, 1943, Diário Oficial, April 13, 1943.

<sup>88</sup> Chile: Presidential Decree No. 422, January 20, 1944, Diario Oficial, January 22, 1944.

<sup>89</sup> Cuba: Presidential Decree No. 588, February 29, 1944, Gaceta Oficial, March 15, 1944, p. 4163.

<sup>90</sup> Ecuador: Decree No. 171, February 9, 1942, PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 29.

<sup>90a</sup> Mexico: Decree of April 25, 1944, Diario Oficial, July 13, 1944.

<sup>91</sup> Brazil: Decree-law No. 5576, June 14, 1943, Diário Oficial, June 15, 1943.

<sup>92</sup> Cuba: Order No. 3, Office of the Interventor for the Property of Enemy Aliens, March 19, 1943, Gaceta Oficial, March 20, 1943, p. 4654.

<sup>93</sup> ALIEN PROPERTY CUSTODIAN (FIRST) ANNUAL REPORT (1944) 19; cf. Canada: Revised Regulations, *supra* footnote 2, at §21.

<sup>94</sup> Brazil: Decree-law No. 6393, Boletim Aéreo No. 292, Secção de Informações, Ministério das Relações Exteriores (April 6, 1944).

<sup>95</sup> National Bank appointed Sequestrator-Liquidator General of Enemy Properties, Annual Report of the Fiscal Department, Banque Nationale de la République d'Haiti (1942) 36.

<sup>96</sup> PAN AMERICAN UNION, *op. cit. supra* footnote 7, at 26.

<sup>97</sup> *Id.*, at 33.

<sup>98</sup> Guatemala: Presidential Decree No. 2841, July 17, 1942, Diario de Centro América, July 24, 1942.

Agricultural Industrial Production Cooperative.<sup>99</sup> It seems, however, that more and more in all American Republics a centralized control is exercised, as through the Custodian (Department of the Secretary of the State) in Canada, the Alien Property Custodian in the United States, and in some of the Latin-American Republics through central agencies like the Board of Economic Defense in Bolivia, the Economic Defense Commission in Brazil, the National Economic Defense Commission in Colombia, the Alien Property Custodian Board in Costa Rica, the Interventor for the Property of Enemy Aliens in Cuba, the Office for the Control of Blocked Properties in Ecuador, the Special Board of Control of Foreign Funds in Honduras, the Inter-Departmental Board on Enemy Property and Business in Mexico, the Advisory Committee on Alien Property in Nicaragua, and the Alien Property Custodian Commission in Venezuela.

## VII

The most important type of administration of enemy-controlled property is its transfer to the government of the country where it is located. Thus in the United States, the Alien Property Custodian has issued more than four thousand Vesting Orders by which the Custodian as a representative of the United States government took absolute title to the specified foreign-owned property.<sup>100</sup> Thus most of the enemy interests in business enterprises and in industrial property rights were effectively subjected to government control. The control of enemy property may not be effectively pursued if the enemy influence on the national economy of the Republic will not be definitely removed. Such final disposition of enemy property will be most adequately effected when enemy properties are not only put under national management or vested in the government, but definitely transferred into private ownership and thus incorporated into the national economy of the Western Hemisphere.

The nationalization of enemy property becomes of primary importance and more or less the final aim of its administration.<sup>101</sup> Assets now held by the Alien Property Custodian are disposed of in this country, through public bidding. They will be sold, however, only to American citizens or organizations controlled by American citizens not on the Proclaimed List of Certain Blocked Nationals. Bids should be accompanied by an affidavit that the bidder is not purchasing on behalf of an undisclosed principal, a person not a citizen of the United States, or for resale to a non-citizen.<sup>102</sup> Similar provisions for sale of enemy property in public auctions

<sup>99</sup> Costa Rica: Legislative Decree No. 49, July 22, 1943, *La Gaceta*, July 23, 1943.

<sup>100</sup> See opinion of the General Counsel of the Alien Property Custodian (1943) 57 U. S. PATENT QUARTERLY, 202.

<sup>101</sup> The recent development has been illustrated in an article by the U. S. Alien Property Custodian James E. Markham, *Making Enemy Money Fight for Us* (October, 1944) 138 AMERICAN MAGAZINE (No. 4) 24.

<sup>102</sup> See Form APC-43, C. C. H. *op. cit. supra* footnote 4, at ¶7522; General Order No. 26 of May 29, 1943, 8 FED. REG. 7628 (1943).

are provided for in Brazil,<sup>103</sup> Colombia,<sup>104</sup> Costa Rica,<sup>105</sup> Haiti,<sup>106</sup> and Peru.<sup>107</sup>

Enemy property is disposed of in the different American Republics in various ways. No uniformity of administration exists, and it seems to be immaterial what the act of disposition of enemy property is called. The seizure and disposition of enemy property under the legislation of the respective countries is sometimes called custodianship<sup>108</sup> or fiduciary administration,<sup>109</sup> sometimes liquidation<sup>110</sup> or expropriation,<sup>111</sup> sometimes confiscation<sup>112</sup> or nationalization.<sup>113</sup> No final determination on vested enemy property or on the proceeds of its liquidation has been made for instance in Canada,<sup>114</sup> nor as yet in the United States by Congress.<sup>115</sup> In Mexico a law of January 17, 1943<sup>116</sup> provides that the final disposition of enemy properties will be determined in peace treaties. Sometimes as in Costa Rica,<sup>117</sup> or in Venezuela<sup>118</sup> special regulations have been prescribed for the evaluation and indemnification of seized Axis-controlled property.

Sometimes the proceeds of disposed enemy property are to be deposited in the central bank of the Republic as in Chile,<sup>119</sup> Haiti,<sup>120</sup> or Mexico.<sup>121</sup> Sometimes it has been provided that such proceeds are to be invested in national securities as in Ecuador,<sup>121a</sup> Nicaragua,<sup>122</sup> or in Peru.<sup>123</sup> Sometimes as in Colombia<sup>124</sup> a fiduciary administration of enemy property shall be maintained "until reparation has been

<sup>103</sup> Brazil: Resolution No. 82, Economic Defense Commission, June 28, 1943, *Diário Oficial*, June 30, 1943.

<sup>104</sup> Colombia: Presidential Decree No. 2605, December 24, 1943, *Diario Oficial*, January 5, 1944.

<sup>105</sup> Costa Rica: Presidential Decree No. 21, April 16, 1943, *La Gaceta*, April 20, 1943.

<sup>106</sup> Haiti: Decree of February 11, 1943. *Haiti-Journal*, February 12, 1943.

<sup>107</sup> Peru: Supreme Decree of March 20, 1943, *El Comercio*, March 22, 1943.

<sup>108</sup> Paraguay: Presidential Decree of September 27, 1943, *El País*, Asunción, October 1, 1943.

<sup>109</sup> Colombia: Presidential Decree No. 2622, December 29, 1943, *Diario Oficial*, December 30, 1943.

<sup>110</sup> Brazil: Resolution No. 78, Economic Defense Commission, June 16, 1943, *Diário Oficial*, June 21, 1943. Chile: Presidential Decree No. 402, January 19, 1944, *Diario Oficial*, January 22, 1944.

<sup>111</sup> Bolivia: Decree of February 9, 1944, *El Diario*, February 12, 1944; Guatemala: Presidential Decree No. 3115, June 22, 1944, *Diario de Centro América*, June 23, 1944; Nicaragua: Law of August 6, 1943, *N. Y. Times*, August 7, 1943, p. 4, col. 6; Peru: Law No. 9958 of July 1, 1944, *El Peruano*, July 17, 1944.

<sup>112</sup> Costa Rica: Legislative Decree No. 49, December 28, 1943, *La Gaceta*, January 4, 1944.

<sup>113</sup> Haiti: Executive Decree No. 365, March 28, 1944, *Le Moniteur*, March 30, 1944.

<sup>114</sup> The Canadian Revised Regulations, *supra* footnote 2, contain no provision similar to Sec. 7(1) of the British Act, *supra* footnote 84, which provides for the appointment of custodians with a view of "preserving enemy property in contemplation of arrangements to be made at the conclusion of peace."

<sup>115</sup> See, *Hearings before Subcommittee No. 1 of the Committee on the Judiciary on H. R. 4840*, 78th Cong., 2d Sess., Serial No. 18 (1944, "Administration of Alien Property"). H. R. 4840 was amended and reintroduced as H. R. 5031.

<sup>116</sup> See *Diario Oficial*, February 10, 1944.

<sup>117</sup> Costa Rica: Presidential Decree No. 32, May 7, 1943, *La Gaceta*, May 9, 1943.

<sup>118</sup> Venezuela: Presidential Decree No. 246, November 13, 1943, *Gaceta Oficial*, November 13, 1943.

<sup>119</sup> Chile: Presidential Decree No. 427, January 20, 1944, *Diario Oficial*, January 22, 1944.

<sup>120</sup> Haiti: Executive Decree No. 365, March 28, 1944, *Le Moniteur*, March 30, 1944.

<sup>121</sup> Mexico: Law on Enemy Property and Business, as amended February 24, 1944, *Diario Oficial*, March 29, 1944.

<sup>121a</sup> Ecuador: Presidential Decree of July 5, 1944, *El Comercio*, Quito, July 6, 1944.

<sup>122</sup> Nicaragua: Law of August 6, 1943, *N. Y. Times*, August 7, 1943, p. 4, col. 6.

<sup>123</sup> Peru: *N. Y. Times*, January 24, 1944, p. 3, col. 7.

<sup>124</sup> Colombia: Presidential Decree No. 2622, December 29, 1943, *Diario Oficial*, December 30, 1943.

made for all damages inflicted on the Colombian nation or its citizens by the German nation or its citizens."<sup>125</sup>

The general aim of administration of enemy property in nearly all countries of the Western Hemisphere is to eliminate definitely Axis influence from any substantial power in the national economy. Certain assets are to be incorporated into the national domain. Divergent interests of the different countries, however, should not exclude a Western Hemisphere solution for the final disposition of enemy-controlled property. Moreover, international measures will become necessary when creditors of former owners of vested or liquidated enemy property try to get satisfaction out of the proceeds in whatever country they may be located. The disposition of enemy property thus becomes subject to more or less uniform solutions. They should soon be provided for in the common interest of the countries of the Western Hemisphere.<sup>126</sup>

<sup>125</sup> Cf. the Cuban Presidential Decree No. 587, of February 29, 1944, authorizing the formation of a "Unión de Proprietarios damnificados por la acción del Eje" (Union of Property Owners Damaged by Enemy Action), *Gaceta Oficial*, March 15, 1944, p. 4161.

<sup>126</sup> For a recent suggestion as to unification of administrative practices, see Meyer, *Co-ordination of Allied Enemy Property Developments* (1944) 26 J. OF COMP. LEGIS. 51.