

*Der schweizerische Gesandte in Washington, M. Peter,
an den amerikanischen Staatssekretär, F. B. Kellogg*

Kopie
NL/SS

Washington, January 17, 1928

It has been brought to my knowledge that a Bill concerning the return of alien property seized during the war and at present held by the Alien Property Custodian has already passed the House of Representatives of the United States and is now being considered by the Committee of Finance of the Senate. In this connection, I beg to invite Your Excellency's attention to the following:

In pursuance to the enemy trading legislation of the United States, enacted on October 6, 1917, assets in the United States of certain Swiss individuals and corporations were seized by the Alien Property Custodian¹. I understand such measures were justified by the United States on account of the allegation that such individuals and corporations were doing business with firms and persons within those countries with which the United States was at war. During the last years, numerous proceedings were instituted by the Legation and myself with the Department of State and the Alien Property Custodian, in order to obtain the release of those assets, inasmuch as they were owned by individuals and corporations of a neutral State.

The Trading with the Enemy Act was amended by Congress on June 5, 1920, to permit such neutral individuals to recover property seized by the Custodian, but up to the present time no legislation has been enacted relieving certain neutral corporations, and among them certain Swiss corporations, from the enemy status imposed by the Trading with the Enemy Act, and the consequent seizure of their property.

Under the laws of the United States and of Switzerland, the corporate entity is recognized, and the assets belong to it and not to the individuals who might own the shares at any given time: Particularly, following the interpretation of the Trading with the Enemy Act by the Supreme Court of the United States in *Behn Meyer & Company v. Miller*, 266 U.S. 465, corporate entity is considered a person and its nationality that of the country where it is organized and existing, irrespective of the nationality of the stockholders therein. In that case, which concerned a British corporation, the Supreme Court held that the seizure of the corporate assets in the United States by the Alien Property Custodian on the ground that the shares were owned by Germans was an erroneous construction of the law. Such corporations are subject to the usual obligations imposed by the State and are likewise entitled to the equal protection of the laws.

1. *Zur Frage des sequestrierten schweizerischen Eigentums in den Vereinigten Staaten* vgl. GBer 1925, S. 51 und GBer 1927, S. 53f.

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The proposed legislation now pending in the Senate provides in effect, in paragraph 13, on page 27 thereof, that such neutral corporations, in order to recover their property still held by the Alien Property Custodian, shall be obliged, as provided in Section (m) of the proposed Bill, to file a consent that 20% of their property may be retained by the United States, in other words, Section 13 of the proposed legislation makes no distinction between a corporation organized and existing within the countries with which the United States was formerly at war and certain corporations organized and existing under and by virtue of the laws of Switzerland.

If such proposed legislation is finally enacted into law, certain Swiss corporations and in consequence Swiss shareholders therein, will suffer substantial losses. The interested parties are entitled by international law to demand a return of their possessions, and they have the right to expect an immediate and full restitution, as no claims remain to be made as far as they are concerned.

I consequently have the honor, by instruction of my Government and with reference to the treaty of November 25, 1850², between Switzerland and the United States of America, to request Your Excellency to take such steps as may be appropriate to safeguard the rights of the Swiss corporations and Swiss nationals, particularly with the view of assuring the complete release of Swiss properties which are still held by the Alien Property Custodian³.

2. AS 1854–1857, 5, S. 201ff.

3. *Das Staatsdepartement teilte der schweizerischen Gesandtschaft am 23.1.1928 mit, es habe die Note an den Finanzausschuss des Senates weitergeleitet* (E 2001 (C) 4/107).