# 2(b) or Not 2(b): Fifty Years of Questions - The Practical Implications of Article VIII Section 2(b)

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## Cover Page Footnote

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# 2(b) OR NOT 2(b): FIFTY YEARS OF QUESTIONS—THE PRACTICAL IMPLICATIONS OF ARTICLE VIII SECTION 2(b)*

*GERHARD WEGEN***

## INTRODUCTION

FEW aspects of the Articles of Agreement of the International Monetary Fund[1] (the "Bretton Woods Agreement" or "the Agreement") fit as well with the theme of this symposium as does the practical application of Article VIII, section 2(b) of the Agreement. Particularly from the point of view of a German legal scholar and practitioner, section 2(b) presents some very interesting and complex problems not only of public international law, but also of national law and in particular conflict of laws.

This essay first traces the origin and framework of section 2(b), and then examines some of the main issues involved in interpreting the section. After delving into the main elements of section 2(b), it discusses German law, which has a certain specific jurisprudence with regard to section 2(b). Finally, it concludes with some new directions.

## I. THE NATURE OF SECTION 2(b)

Interpretation of section 2(b) is greatly complicated by the fact that the clause is contained in a multilateral agreement under public international law that was drafted in a very short period of time, and then only in the English language, which is uncommon with multilateral documents. I believe that it was drafted within two or three days, and in a peculiar type of language which resembles neither that of the common

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1. *See* Second Amendment of Articles of Agreement of the International Monetary Fund, Apr. 30, 1976, 29 U.S.T. 2203 [hereinafter Articles of Agreement].

law lawyer nor that of the continental lawyer. The first sentence of section 2(b) states:

> Exchange contracts which involve the currency of any member and which are contrary to the exchange control regulations of that member maintained or imposed consistently with this Agreement shall be unenforceable in the territories of any member.[2]

It is worthwhile to compare non-official German and French versions. The unofficial German text reads:

> Aus Devisenkontrakten, welche die Währung eines Mitglieds berühren und den von diesem Mitglied in Übereinstimmung mit diesem Übereinkommen aufrechterhaltenen oder eingeführten Devisenkontrollbestimmungen zuwiderlaufen, kann in den Hoheitsgebieten der Mitglieder nicht geklagt werden.[3]

A French translation, upon which the Belgian, French, and Swiss authorities agreed, reads:

> Les contrats relatifs aux devises qui portent sur la monnaie d'un membre et qui sont en opposition avec la réglementation du contrôle des changes de ce membre maintenue ou imposée conformément au présent accord n'auront pas force obligatoire dans les territoires de tout membre.[4]

It is obvious that while the English version talks about "exchange contracts which are unenforceable," the German version says "contracts which cannot be put before the court," and the French version says "contracts which have no binding force." Therefore, on the very basic level of language, the various versions are inconsistent. Adding to this difficulty, no single international court interprets this clause, and thus no one single authoritative interpreter exists.

It is also important to realize that different countries may view this clause in different ways. On the one hand, a court might judge the clause under principles of public international law, which are typically used to interpret the instruments of public international law, and which are familiar to public international lawyers. On the other hand, a court may evaluate it under a conflict of laws approach (or "private international law," as we continental lawyers call it) as a question of what law to apply to a transaction, or which substantive law holds contracts to be unenforceable.

The distinction between public law and private law, which is very pronounced in the German system, is also relevant to interpreting section 2(b) with regard to national exchange control regulations. The section might be considered to fall either under public law as an exchange control regulation imposed by the state, or under private law because it pro-

2. *Id.* art. VIII § 2(b).

3. This version appears in Bundesgesetzblatt, Teil II [BGBl.II] 1978, 13, 34-35.

4. This translation is quoted in 3 Sir Joseph Gold, The Fund Agreement in the Courts 629 (1986).

vides that private contracts may be found unenforceable. Elements of public policy further complicate the construction of section 2(b). These elements include protecting the forum state's status as a financial center and safeguarding the rights of both debtors and creditors.

## II. Origins and Development of the Agreement

The purpose of the Bretton Woods Agreement was international monetary cooperation. It was, and remains, this century's most important agreement for regulating the international monetary system. Another important factor is the membership of the Agreement. While today over 170 member states participate in the Bretton Woods Agreement, there also has been a certain fluctuation in its membership; for instance, some socialist countries traditionally did not participate in it for political reasons, or opted out of it after adopting socialism (one example is Cuba). Other states did not join because they wanted to remain neutral (for example, Switzerland). Today's membership, however, is so vast that in almost all countries of the world, section 2(b) must be taken into account.

As previously stated, the Agreement is a multilateral agreement under public international law, which creates obligations between states. It operates on the interstate level only, and therefore does not create obligations between states and private individuals. Yet, as will be discussed later, it is of enormous importance to both individuals and corporations.

As mentioned above,[5] the Agreement's unilingual nature makes ascertainment of its meaning even more difficult.[6] Normally, such agreements are drafted in five to seven languages, which permits comparison between the texts to discern meaning. Obviously, this is impossible in the case of the Agreement.

Even though the Bretton Woods Agreement is a treaty under public international law, one of its main purposes was to deal, for the first time, with exchange control regulations on a private basis. Prior to Bretton Woods, exchange control regulations were looked at from a perspective of public law only. The so-called "revenue rule" has traditionally provided that rules of public law are only applicable within the territory of the state in which they were created, and do not have extra-territorial application.[7] The parties to the Bretton Woods Agreement, however, wanted to establish a regime in which exchange control regulations of one state could be enforced in other states. In other words, section 2(b)

5. *See supra* text accompanying note 2.

6. For a discussion of the relationship between treaty interpretation and the language(s) in which it is drafted, see Christopher B. Kuner, *The Interpretation of Multilingual Treaties: Comparison of Texts versus the Presumption of Similar Meaning*, 40 Int'l & Comp. L.Q. 953 (1991).

7. *See* Andreas F. Lowenfeld, The International Monetary System 366-67 (2d ed. 1984).

is intended to establish extra-territorial recognition of foreign exchange controls in the member states to the International Monetary Fund.

Of course, in order to make section 2(b) effective with regard to individuals, it was necessary to implement it in the national legal systems of each member state. This was accomplished by obligating the member states in the Agreement to do so in such a way that it would be enforced in their legal systems.[8] Implementation of a rule that is contained in a multilateral agreement under public international law can be accomplished in different ways. One alternative is simply to enact the text into national law. The second alternative is to state in national law that Article VIII, section 2(b) of the Bretton Woods Agreement will be given effect within the country. The third alternative is to ratify the Agreement and leave open the specific means for providing for its effectiveness in the country. The United States, which falls into the second category, deals with the problem through section 11 of the Bretton Woods Agreement Act of 1945:

> The provisions of article IX, sections 2 to 9, both inclusive, and the first sentence of article VIII, section 2(b), of the Articles of Agreement of the Fund . . . shall have full force and effect in the United States and its Territories and possessions upon acceptance of membership by the United States in, and the establishment of, the Fund and the Bank, respectively.[9]

By contrast, in states such as Australia, Mexico, and Sweden, it is still not clear from the ratification process whether Article VIII, section 2(b) was actually adopted into domestic law.[10] It could be argued, however, that such implementation is not actually necessary because the states falling into this category have ratified the instruments as such.

A consequence of adoption into domestic law is that, although enacted on an international level, no international court has jurisdiction to interpret section 2(b). Instead, it is the national courts of the member states which have construed it. The writings of scholars such as Sir Joseph Gold,[11] F.A. Mann,[12] Professor Arthur Nussbaum,[13] and, most recently,

8. *See* Articles of Agreement, *supra* note 1, art. XX § 2a; Werner F. Ebke, *Article VIII, Section 2(b), International Monetary Cooperation, and the Courts,* 23 Int'l Law. 677, 684 & n.39 (1989) [hereinafter *International Monetary Cooperation*].

9. 22 U.S.C. § 286h (1988).

10. For a discussion regarding the legal status of § 2(b) in these three countries, see Werner F. Ebke, Internationales Devisenrecht 162-63 (1991) [hereinafter Internationales Devisenrecht].

11. *See* Gold, *supra* note 4; Sir Joseph Gold, Exchange Rates in International Law and Organization (1988); Sir Joseph Gold, *Developments in the International Monetary System, the International Monetary Fund, and International Monetary Law since 1971,* 174 Recueil des Cours 107 (1982).

12. *See* Frederick A. Mann, The Legal Aspect of Money (5th ed. 1992).

13. *See* Arthur Nussbaum, Money in the Law, National and International (2d ed. 1950).

Professor Werner Ebke[14] have also impacted greatly on the clause's interpretation; this is one of the few instances where scholarly writing has impacted national jurisprudence directly. Indeed, it is mainly due to such scholars that the courts have become aware of the clause at all.

Turning now to case law, in many instances over the last fifty years courts have simply disregarded the rules on a systematic level because neither the parties, counsel, nor the court thought of invoking section 2(b). Thus, it is difficult to assess the true applicability of the clause. In the early years, there was a great reluctance to deal with the clause at all. In the United States, the first wave of cases came about due to war-related immigration matters, in which U.S. institutions sued non-U.S. citizens, or vice-versa.[15] The second series of cases developed around the Cuban socialist revolution, in particular the so-called Cuban insurance cases.[16] Since the late 1970s, the clause has become very important in international finance transactions, particularly those involving U.S. citizens dealing with foreign banks and foreign countries.[17] European case law, including Germany's, developed mainly in international trade cases.[18] Thus, a certain case law did develop in all major jurisdictions. But no cases appear to have arisen in smaller countries, such as Switzerland, which of course is an important jurisdiction in international banking transactions.

## III. Issues with Regard to the Interpretation of Section 2(b)

The first issue concerning section 2(b)'s interpretation is how to characterize it—that is, whether it should be considered a rule of conflict of laws or a rule of substantive law. In Germany, the question also arises whether it is a rule of civil procedure or of substantive law. In general, section 2(b) has characteristics of its own that impact public law, private law, and substantive law.

Germany characterizes section 2(b) in accordance with the law of each member state that applies it. Because section 2(b) has been implemented into the laws of the various member states on a domestic level, Germans

14. For a detailed study which has begun to impact German jurisprudence on the subject, see Internationales Devisenrecht, *supra* note 10.

15. *See, e.g.*, Southwestern Shipping Corp. v. National City Bank, 160 N.E.2d 836 (N.Y.) (resolving a contract dispute between Italian concerns and an American bank, which implicated foreign exchange regulations of the Bretton Woods Agreement), *cert. denied* 361 U.S. 895 (1959); Perutz v. Bohemian Discount Bank in Liquidation, 110 N.E.2d 6 (N.Y. 1953) (deciding a suit between a U.S. citizen and a Czech bank); Cermak v. Bata Akciova Spolecnost, 80 N.Y.S.2d 782, 783 (Sup. Ct. 1948) (deciding an action by U.S. assignees to recover a deposit from a Czech corporation), *aff'd*, 90 N.Y.S.2d 680 (App. Div. 1949).

16. *See* Varas v. Crown Life Ins. Co., 203 A.2d 505 (Pa. Super. Ct. 1964), *cert. denied*, 382 U.S. 827 (1965).

17. *See* Libra Bank Ltd. v. Banco Nacional de Costa Rica, 570 F. Supp. 870 (S.D.N.Y. 1983).

18. *See* Internationales Devisenrecht, *supra* note 10, at 173.

leave its characterization to the respective legal system that applies in a particular case. Thus, German law views section 2(b) as a conflict of laws rule that preempts rules for special statutory choice of law and general conflict of laws.[19] On the other hand, it could also be characterized under German law as a substantive law rule with procedural implications. As a choice of law rule, section 2(b) preempts other choice of law rules. In Germany, "due regard for the foreign exchange regulations of other countries" means that when such regulations are in place and in conformity with the Agreement, German public policy will not be invoked to disregard them. German law will, therefore, construe duly-promulgated foreign exchange control regulations to hold contracts unenforceable when appropriate; no recourse may be had to other German conflict of laws rules.

While this question may seem fairly esoteric, it actually has important practical consequences. Construing section 2(b) as a conflict of laws rule requires the application of the exchange control regulations of third states in Germany. But then the question arises as to what the legal consequences are when the rule ceases to be in force. For instance, a contract may be concluded under a foreign exchange control regulation which is later revoked by the state. Thus, at the time the contract was concluded, it was contrary to the foreign exchange control regulations of another state, but is no longer so. If section 2(b) is considered a rule of substantive law, however, then two alternatives exist: either the contract will be considered invalid and unenforceable from the beginning, or the exchange control regulation constitutes a condition which was present but has now disappeared, so that the contract was unenforceable but has now become enforceable.

In the United States, courts have sometimes refused to enforce contracts that are contrary to the exchange control regulations of other countries not based on the language of section 2(b), but on the act of state doctrine.[20] This is uncommon for us on the Continent of Europe, because we do not recognize an act of state doctrine to the same extent as the United States. Another important question that sometimes arises is whether a member state's public policy considerations may override section 2(b). The basic problem in this regard is whether foreign exchange control regulations may be denied enforcement in the forum state based on that state's public policy.

Although no German case has been decided on this point, Germans would argue that once section 2(b) finds an application, the public policy of the forum state cannot override it. It could, however, be argued that

19. *See* International Monetary Cooperation, *supra* note 8, at 684.

20. *See, e.g.*, Allied Bank Int'l v. Banco Credito Agricola de Cartago, 566 F. Supp. 1440 (S.D.N.Y. 1983) (holding the act of state doctrine as meritorious in defending against a suit for a loan default), *rev'd*, 757 F.2d 516 (2d Cir.), *cert. denied*, 473 U.S. 934-35 (1985). For a discussion of this case, see Ricki R. Tigert, *Allied Bank International: A United States Government Perspective*, 17 N.Y.U. J. Int'l L. & Pol. 511 (1985).

public policy should come into play where basic notions of justice and fairness are concerned; one example would be when foreign exchange control regulations of another state are promulgated in conformity with the Agreement, but violate basic notions of justice recognized in Germany, such as discrimination on the basis of race or religion. It is also important to note that because German statutes of limitation are a part of the substantive law, section 2(b) may apply when the substantive law applies.

Another problem that arises concerns arbitrability—that is, whether the parties can submit to arbitration the question of whether a contract is an exchange contract under Article VIII, section 2(b), and whether section 2(b) should be taken into account by arbitral tribunals. There has been some debate on this issue, and a case has even come up before the International Chamber of Commerce.[21] Though in that case the arbitral tribunal unfortunately misconstrued the nature of section 2(b) and stated that it should only apply to state contracts,[22] it is generally accepted that arbitral tribunals should take note of section 2(b) if the facts indicate that section 2(b) may be involved. Thus, the arbitral tribunal should raise the issue on its own motion if it is appropriate, even if the parties do not raise it.

Finally, questions arise under section 2(b) with regard to the recognition and enforcement of judgments. For example, in an English case, the court took the position that only currency contracts, i.e., contracts to exchange one currency against another, could be considered exchange contracts.[23] That case concerned a futures contract. The English plaintiff, a brokerage firm, prevailed against an Italian defendant. As the Italian defendant had no assets in England, the English plaintiff attempted to enforce the judgment in Italy, but the Italian court refused, based on public policy grounds and a narrow interpretation of section 2(b). Almost all Western legal systems recognize incompatibility with public policy as a grounds for refusing recognition and enforcement of a foreign judgment.

## IV. THE SUBSTANCE OF SECTION 2(b)

Six elements must be considered when interpreting section 2(b).

### A. *"Exchange Contracts"*

This requirement has given rise to much debate and diversity of opinion between the legal systems of the United States/United Kingdom and those of continental Europe. The United States and the United Kingdom, following Professor Nussbaum's lead, define exchange contracts as contracts that have as their subject the exchange of currency, meaning

21. This case is described in Internationales Devisenrecht, *supra* note 10, at 164.
22. *See id.*
23. *See* Wilson, Smithett & Cope Ltd. v. Terruzzi, [1976] 1 Q.B. 703, 713 (C.A.).

currency contracts in the narrowest sense.[24] On the other hand, the continental systems, and particularly Germany, define exchange contracts as contracts that have as their essential nature an exchange of goods or services that has an impact on the foreign exchange reserves available in that country.[25] Thus, on the Continent, any contract for the sale of goods or for services involving a currency and which would lead to a decrease or increase in the foreign exchange funds of the member states is considered an exchange contract. In this broad notion of exchange contracts, virtually all contracts between parties residing in member states potentially have such an impact, and thus could be considered exchange contracts. This broader interpretation, which was developed in particular by F.A. Mann,[26] seems to further the goals of the Agreement more effectively, since it subjects more contracts to section 2(b). Thus more transactions will have to be concerned with the foreign exchange regulations of member states and their impact in the forum state.

In Germany, the U.S./U.K. view has traditionally been incomprehensible. Germany regards contracts such as those for the sale of goods, for services, life insurance contracts, surety contracts, guarantees, and so-called "acknowledgments of debt" (*Schuldanerkenntnisse*) all as potential exchange contracts. This is also true for contracts regarding international monetary commitment agreements and international money collection agreements. One current problem concerns international loan agreements. Common law courts, for instance a federal court in the Southern District of New York, have explicitly stated that international loan agreements are not to be considered exchange contracts, based on their desire to maintain the position of the forum as an international financial center.[27] By contrast, Germany generally considers international loan agreements to be exchange contracts under section 2(b),[28] which may account for the reluctance to select the application of German law in international loan agreements.

But a recent case indicates that the German courts are becoming slightly more flexible with regard to the types of contracts that are considered "exchange contracts" under section 2(b). In a case involving a Bulgarian limited partner that had attempted to rely on the provision as grounds for refusing to pay an increased capital contribution to a German limited partnership, the German Federal Supreme Court (*Bundesgerichtshof*) ruled for the first time that international capital

24. *See* International Monetary Cooperation, *supra* note 8, at 687.

25. *See id.* at 687-89.

26. *See* Mann, *supra* note 12, at 378-86.

27. *See, e.g.*, Libra Bank Ltd. v. Banco Nacional de Costa Rica, 570 F. Supp. 870, 900 (S.D.N.Y. 1983) (holding that a contract to borrow U.S. currency, which requires U.S. currency, and which designates New York as the situs of repayment, was not an exchange contract within the meaning of § 2(b)); *see also* International Monetary Cooperation, *supra* note 8, at 687.

28. *See* International Monetary Cooperation, *supra* note 8, at 689.

transfers do not fall under section 2(b).[29]

### B. *"Which Involve the Currency"*

What does it mean to "involve a currency?" While various theories have been advanced, suffice it to say that there must be an impact on the actual currency reserves of the country in question. This may be defined in various ways, such as by looking at the currency balance sheet or the hypothetical impact of the transaction only.

### C. *"Of Any Member"*

While it is clear that the Bretton Woods Agreement leads to the imposition of legal duties on the members, the membership has increased significantly in the fifty years since the Agreement came into force. Thus, the enforceability of a contract under the Agreement often depends on when the state became a member of the Agreement.

### D. *"And Which Are Contrary to the Exchange Control Regulations of that Member"*

The question of whether a contract is contrary to the exchange control regulations of the member in question must be determined by reference to the member's national law.

### E. *"Maintained or Imposed Consistently with the Agreement"*

Determining whether particular exchange control regulations are maintained or imposed consistently with the Agreement is obviously a difficult assessment for a court to make. Since most courts, not to mention most attorneys, are hardly experts in the technicalities of foreign exchange regulations, under the Bretton Woods Agreement it is possible to request the executive board of the International Monetary Fund to make this assessment.[30]

### F. *"Shall Be Unenforceable in the Territories of Any Member"*

The last element is the legal consequence that such contract is unenforceable. Together with the question of what is an exchange contract, this is one of the areas in which common law countries diverge most sharply from the continental legal systems. The concept of unenforceability is a common law concept deriving from the system of actions under Roman law, and it is fairly obvious to a common law lawyer that there are obligations or contracts which may be unenforceable in court.

29. *See* Judgment of Nov. 8, 1993, BGH, W. Ger., 1994 Recht der internationalen Wirtschaft [RIW] 151; Judgment of Feb. 22, 1994, BGH, W. Ger., 1994 RIW 327.

30. *See* Articles of Agreement, *supra* note 1, at art. XXIX. For a discussion of this procedure, see International Monetary Cooperation, *supra* note 8, at 697-98.

This concept is difficult for a continental lawyer, who instead speaks of the "voidness" of a contract.

Shortly after World War II, F.A. Mann, among others, proposed that an exchange contract that violates foreign exchange regulations should be considered void. But this result is highly questionable because foreign exchange regulations may be imposed at one time and terminated later, just as states may join the Agreement and then leave it later. Thus, the problem with Mann's view is that the contract would be void *ab initio*, and therefore could not be void later.

The German courts have gone in a completely different direction by deciding that contracts which were contrary to foreign exchange control regulations could be valid, but could not be enforced in court.[31] This view postulates the existence of a new procedural requirement for a contract to be sued upon in court—that is, that it does not violate exchange control regulations. Thus, a German court, in entertaining a suit, may decide, either upon motion by the parties or upon its own motion, that section 2(b) is implicated and that the contract violates it. In such a case, the court would dismiss the suit and find the contract inadmissible on procedural grounds; it would not reach a decision on the merits. Germany's trend seems to be that such contracts should be regarded, as they are in the common law world, as imperfect, even though they continue to be binding obligations. The result is that there may be a kind of conditional validity of the contract, i.e., that the contract may exist, but that its existence is conditional on not being contrary to foreign exchange control regulations.[32] This concept is otherwise unknown to both continental and common law lawyers.

One important question that arises in practice concerns the status of accessory security taken under an exchange contract which is then not enforceable. This question also arises with regard to sureties and guaranties, and with set-offs, when the claim which may be set off is unenforceable under section 2(b). Or, what are the consequences when one of the parties claims damages under a contract which is declared unenforceable under section 2(b)? All of these incidental problems are basically decided along the same split we have seen earlier: the U.S./U.K. courts and scholars would tend to narrowly construe section 2(b), saying that the section applies to exchange contracts only, and not to other instruments of international trade such as letters of credit, sureties, and the like. German courts, however, would state that "full faith and credit" should be given to section 2(b), and that if a contract is declared unenforceable, then any legal transaction immediately prior to that contract must also be unenforceable. This would also apply to a surety or guaranty which is tainted by the contract's unenforceability.

31. *See* Judgment of Apr. 27, 1970, BGH, W. Ger., 1970 Wertpapiermitteilungen [WM] 785, 786; Order of Dec. 21, 1976, BGH, W. Ger., 1976 Die deutsche Rechtssprechung auf dem Gebiete des internationalen Privatrechts [IPRspr] 342, 343.

32. *See* Judgment of Apr. 27, 1970, BGH, W. Ger., 1970 WM 785, 786.

## V. Remaining Considerations

A few matters concerning section 2(b) that are important under German law remain. The first is the concept of enforceability as a procedural requirement that the court must examine on its own motion. Up until the time at which a judgment is rendered, the court may examine the concept of the enforceability of a contract based on foreign exchange controls. There are three instances of such examination in Germany: the lower court, the appellate level, and the federal level.

Typically, section 2(b) defenses come into play at the appellate or the federal levels only, because at these levels both counsel and the courts tend to be more sophisticated. In many instances, defenses based on section 2(b) are often brought in as a last resort, sometimes after many years of litigation. It often happens that the first two levels fully litigated the matter and made findings of fact, and then one of the parties raises the issue of section 2(b) at the last moment at the federal level. In such a case, the party making the submission may invoke the lack of a procedural requirement (namely, that of an enforceable contract), causing the whole case to fall apart. This is a real problem in Germany, and one which does justice to neither the plaintiff nor the defendant.

Secondly, Germany procedurally requires the plaintiff to substantiate and put forward all of his arguments. So section 2(b) is not viewed as a defense that must be invoked by the defendant, but as a procedural requirement requiring the plaintiff to prove its non-application.[33] The common law system, by contrast, views section 2(b) as a defense that must be raised by the defendant.[34] Under the German view, therefore, if the plaintiff fails to substantiate its claim that the court should not apply section 2(b), the complaint would be dismissed without the court having reached a decision on the merits. This can have practical implications with regard to the issuance of international bonds. Germany is a major provider of capital in the international markets, which involves issuing Deutsche Mark bonds under German law. If litigation is then brought before the German courts and the plaintiff fails to meet its burden, the bondholders are at risk of not having their money repaid. Luckily there are signs that the situation may change in Germany, particularly due to the scholarly work of Professor Ebke[35]—that is, that section 2(b) may be looked upon as a defense which is based on the concept of an imperfect obligation.

33. *See* Judgment of Apr. 27, 1970, BGH, W. Ger., 1970 WM 785, 786-87; *see also* International Monetary Cooperation, *supra* note 8, at 700-01.

34. *See, e.g.*, Libra Bank Ltd. v. Banco Nacional de Costa Rica, 570 F. Supp. 870, 902 (S.D.N.Y. 1983) (finding that the defendant failed to sustain its burden of proof that its currency restrictions were exempt from IMF approval requirements); *see also* International Monetary Cooperation, *supra* note 8, at 701.

35. For Professor Ebke's criticism of the German view, see International Monetary Cooperation, *supra* note 8, at 700-03.

## CONCLUSION

Section 2(b) will likely play an ever-increasing role in international loans and international bonds. There are certainly problems in this regard on the European Continent caused by the broad interpretation of section 2(b). The fall of eastern Europe's socialist countries and the rise of a host of new states which are becoming members of the Agreement, together with a scarcity of capital and the problems of many of these states, will also likely lead to a host of new foreign exchange regulations, which can only increase the importance of section 2(b) in the future.