

sileiro with a forum. If not, those willing to deposit in the United States the proceeds of a contract, induced by fraud in violation of foreign exchange control regulations, could avoid the effect of the regulations. Article VIII, Section 2(b), implies an obligation to protect the positive command of Section 2(b) from unilateral erosion and skillful avoidance.

Moreover, the first sentence of Article VIII, Section 2(b), has been enacted into the domestic law of the United States.⁵¹ And an obligation to provide a forum to Banco Brasileiro may thus be implied from domestic law.⁵² It would seem that, if the Court had premised its decision on such an implied obligation, the decision would have been of greater precedential value and might have led to a more cogent analysis, if not a different result in the *Zeevi* case.

II.

CONCLUSION

With its decision in the *Banco Brasileiro* case, the New York Court of Appeals apparently shook off twenty-five years of indecision on the place of the Fund Agreement in the courts. But hardly a month later, in the *Zeevi* case, it seemed to revert once again to a constricted application of Article VIII, Section 2(b), of that Agreement. At least strong vestiges of prior decisions remain; and those who seek to avoid the sanctions of exchange control regulations may be able to find a safe haven for their funds in the United States. Thus it still remains for the courts to give precise content to the broad principles embraced in *Banco Brasileiro* of a "national policy of cooperation with Bretton Woods signatories" and "an expansive application of the IMF Agreement."

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TO THE EDITOR-IN-CHIEF

In the midst of an intriguing excursion through the remoteness of 18th and 19th century law about state property, its loss and recovery, Professor Rubin's note in the October, 1975, issue of the *Journal*¹ speculates that the plight of international law might be laid to "the impact of 'legal realist' jurisprudence and the deplorable state of the scholarly tradition of the law in the United States and the Soviet Union. . . ." While I am not wholly sure I know what the "scholarly tradition of the law" is, perhaps it has something to do with the accuracy of sources and establishing sound premises upon which to build legal argumentation.

⁵¹ 22 U.S.C. §286h, 59 Stat. 516.

⁵² RESTATEMENT (SECOND) TORTS, §286.

¹ A. Rubin, *Sunken Soviet Submarines and Central Intelligence: Laws of Property and the Agency*, 69 AJIL 855 (1975).

Professor Rubin's note alleges that "The CIA vessel, *The Glomar Explorer*, was disguised as a commercially operated oceanographic research vessel." I looked for a footnote which might provide some clue to what such a disguise might entail, but there was no footnote. Professor Rubin also fails to provide a footnote reference which would document that such a "disguise," whatever it might be, was in fact employed by the CIA. Perhaps his information on this came from a newspaper, since he appears to be concerned that this medium saw no "international legal implications" in this intelligence activity.

Enlightenment on this point is not too difficult to locate, even if one does not rely for information wholly on accounts in newspapers. One useful source is Volume III of the Official Records of the Third United Nations Conference on the Law of the Sea, published early in 1975. On page 13 of this volume is a large picture of a ship with a caption "Prototype mining ship—Hughes Glomar Explorer." The accompanying text indicates the understanding then current that this ship was an experimental mining system, although understandably it fails to indicate everything this ship was intended to raise from the ocean floor. Unless there are two ships of the same name, I would imagine this is the ship to which Professor Rubin refers.

Perhaps it would be beneficial, not least to the scholarly tradition in law, if Professor Rubin would consult this UN document, and numerous other contemporary documents on the same point, and then give "a little thought" to how he might further "help . . . in negotiations with third states regarding scientific research at sea." Perhaps we have reason to hope that nothing would come of this.

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