Plaintiff argues that respondent's participation in the violation of Brazilian exchange control laws affords a ground of recovery because of article VIII (§ 2, subd. [b]) of the Bretton Woods Agreement, a multilateral treaty to which both this country and Brazil are signatories. The section provides: "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." (60 U.S. Stat. 1411.) It is far from clear whether this sale of coffee is covered by subdivision (b) of section 2. The section deals with "exchange contracts" which "involve" the "currency" of any member of the International Monetary Fund, "and * * * are contrary to the exchange control regulations of that member maintained or imposed consistently with" the agreement. Subdivision (b) of section 2 has been construed as reaching only "transactions which have as their immediate object 'exchange,' that is, international media of payment" (Nussbaum, Exchange Control and the International Monetary Fund, 59 Yale L.J. 421, 426), or a contract where the consideration is payable in the currency of the country whose exchange controls are violated (Mann, The Exchange Control Act, 1947, 10 Mod. L. Rev. 411, 418). More recently, however, it has been suggested that it applies to "contracts which in any way affect a country's exchange resources" (Mann, The Private International Law of Exchange Control Under the International Monetary Fund Agreement, 2 International and Comp. L.Q. 97, 102; Gold and Lachman, The Articles of Agreement of the International Monetary Fund and the Exchange Control Regulations of Member States, Journal du Droit International, Paris (July-Sept., 1962). A similar view has been advanced to explain the further textual difficulty existing with respect to whether a sale of coffee in New York for American dollars "involves the currency" of Brazil, the member whose exchange controls were allegedly violated. Again it is suggested that adverse effect on the exchange resources of a member ipso facto "involves" the "currency" of that member (Gold and Lachman, op. cit.). We are inclined to view an interpretation of subdivision (b) of section 2 that sweeps in all contracts affecting any members' exchange resources as doing considerable violence to the text of the section. It says "involve the currency" of the country whose exchange controls are violated; not "involve the exchange resources". While noting these doubts, we nevertheless prefer to rest this decision on other and clearer grounds.

The sanction provided in subdivision (b) of section 2 is that contracts covered thereby are to be "unenforceable" in the territory of any member. The clear import of this provision is to insure the avoidance of the affront inherent in any attempt by the courts of one member to render a judgment that would put the losing party in the position of either complying with the judgment and violating the exchange controls of another member or complying with such controls and refusing obedience to the judgment. A further reasonable inference to be drawn from the provision is that the courts of no member should award any recovery for breach of an agreement in violation of the exchange controls of another member. Indeed, the International Monetary Fund itself, in an official interpretation of subdivision (b) of section 2 issued by the Fund's Executive Directors, construes the section as meaning that "the obligations of such contracts will not be implemented by the judicial or administrative authorities of member countries, for example, by decreeing performance of the contracts or by awarding damages for their nonperformance". (International Monetary Fund Ann. Rep. 82-83 [1949], 14 Fed. Reg. 5208, 5209 [1949].) An obligation to withhold judicial assistance to secure the benefits of such contracts does not imply an obligation to impose tort penalties on those who have fully executed them.

From the viewpoint of the individuals involved, it must be remembered that the Bretton Woods Agreement relates to
international law. It imposes obligations among and between States, not individuals. The fact that by virtue of the agreement New York must not "enforce" a contract between individuals which is contrary to the exchange controls of any member, imposes no obligation (under the law of the transaction — New York law) on such individuals not to enter into such contracts. While it does mean that they so agree at their peril inasmuch as they may not look to our courts for enforcement, this again is far from implying that one who so agrees commits a tort in New York for which he must respond in damages. It is significant that a proposal to make such an agreement an "offense" was defeated at Bretton Woods. (1 Proceedings and Documents of the United Nations Monetary and Financial Conference 334, 341, 502, 543, 546 — referred to in Nussbaum, Exchange Control and the International Monetary Fund, 59 Yale L.J. 421, 426, 429, supra.)

[...]

Referring Principles:

V.2.4 - Distribution of currency transfer risk