Force majeure - Calculation of compensation

Following the nationalisation and the transfer to a state enterprise of the sources of primary products in a developing country, the companies which had, until this nationalization, exploited these sources, threatened to seize all products from these sources which might be sold by the state enterprise.

Between the nationalization and these threats, the state enterprise entered into a series of F.O.B. contracts with purchasers in several countries, in order to place on the world market the products of the nationalized sources. Certain of these purchasers claimed that these threats, given the importance of the companies which made them, constituted a case of force majeure which freed them from the obligation to take delivery of the goods, subject of the contracts.

The arbitrators having found that it was common ground that no goods had been collected in accordance with the terms of the contract, and that the defendant had notified the claimant of the alleged case of force majeure, decided:

A. 

- "Whereas the threats to which the defendant refers do not have the characteristics of unforceability and unsurmountability necessary to constitute force majeure;

- whereas in fact at the date of the signature of the contract the crisis . . . following upon the nationalizations . . . was of public notoriety and was the object of numerous articles in the press, and even of governmental declarations (by the country to which the companies making the threat belong);

- whereas, furthermore, the state enterprise has offered evidence by the production of official documents that at the same period other purchasers have regularly collected and transported the quantities of the product of which they had become purchasers;

- whereas the elements which constitute force majeure are thus in no way reunited and that it is therefore appropriate to reject as inapplicable the argument drawn from force majeure;

- whereas in not proceeding to collect the quantities of the product stipulated in the contract the defendant is in breach of its obligations;

- whereas it is therefore appropriate to say that the contract is cancelled through the fault of the defendant.'
B.

[...]

- whereas however the claimant having notified the cancellation of the contract to take effect on the . . . the
  Tribunal considers that the claimant, given its organization and its international importance should have been
  able to find other purchasers by the . . . at the latest;

- whereas therefore the claim for damages in respect of . . . months is excessive and that it is appropriate to limit
  to the quantities which should have been collected in . . . say . . . for each of these months.'

Referring Principles:

- VI.3 - Force majeure
- VII.4 - Duty to mitigate