Final award in case no. 6281 of 26 August 1989

Parties:                      Claimant: Egyptian company (buyer)  
                                Defendant: Yugoslav company (seller)  

Place of arbitration:  Paris, France  
Published in:              Unpublished  
Subject matters:        - applicable law to contract  
                        - frustration of contract [Not included in the Trans-Lex]  
                        - "purchase in replacement" [Not included in the Trans-Lex]  
                        - calculation of interest [Not included in the Trans-Lex]  

Facts

On 20 August 1987, the parties concluded a contract for the sale of 80,000 metric tons of steel bars at an average price of US$ 190.00 per metric ton. The goods were delivered in accordance with the contract between 15 September 1985 and 15 January 1988 to a suitable Yugoslav port.

Claimant had the option to increase the quantity to 160,000 metric tons at the same price and conditions, provided it declared its option to purchase the additional 80,000 metric tons at the latest by 15 December 1987 and opened its letter of credit for the first delivery at the latest by 31 December 1987.

On 26 November 1987, claimant informed defendant that it would exercise the option and would open the L/C during the second half of December 1987. On 9 December 1987, defendant requested a meeting to be held that month, to discuss the prices for the additional quantity of the goods. Claimant insisted on the originally agreed price but was prepared to discuss future business transactions. At the meeting held on 28 December 1987, defendant requested US$ 215.00 per metric ton for the additional deliveries, but claimant did not agree.

In its letter of 31 December 1987, claimant stated that defendant's behaviour was a breach of contract and requested defendant to announce the beneficiaries of the future letters of credit. If defendant did not agree by 6 January 1988, claimant would hold defendant liable for any and all damage, caused by breach of contract. This period was extended to 25 January 1988.
On 26 January 1988, claimant bought 80,000 metric tons of the same type of steel bars from a Romanian company at a price of US$ 216.00 per metric ton. Claimant alleged that shipping costs from Romania to Egypt were US$ 2.00 to US$ 2.50 per metric ton lower than from Yugoslavia to Egypt.

Claimant initiated arbitration under the arbitration clause in the contract which provided for arbitration at the International Chamber of Commerce, claiming compensation for the loss due to the price difference. The sole arbitrator held that claimant was entitled to damages due to defendant's failure to deliver the additional quantity of goods at the original price.

Excerpt

1 The arbitrator decided that Yugoslav law was applicable:

2 "It should be determined, first and foremost, in connection with the alleged unreasonableness, due to an increase in world-market prices, which legal provisions should be applied to evaluate the sales contract and, thus also, this central issue. At any rate, the Vienna United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, cannot be applied as such. The Convention is in force, both in Egypt and in Yugoslavia, as well as in France; yet, according to Art. 100(2) it applies to such sales contracts only that were concluded after the day the Convention went into force, i.e., 1 January 1988. The present sales contract was concluded on 20 August 1987.

3 "The question, which law applies, must therefore be examined on the basis of the rules on international private law.

4 "According to Egyptian international private law, the law of that country applies, where the contract is signed, unless the parties agree otherwise, and, in addition, if they have their principal offices in different states (Art. 19 of the 1949 Civil Code).

5 "According to Yugoslav international private law, the law of that country applies, where the seller had his principal office at the time when he (or the other party) received the offer, if there is no agreement on applicable law between the parties (Bill on International Private Law of 15 February 1982, Sluzbeni list No. 43/1982).

6 "France is a member of the Convention on the Law Applicable to the International Sales of Goods, done at The Hague on 15 June 1955. Art. 3(2) of the above Convention states that if parties have not chosen another law, the contract is governed by the internal law of the state, where the seller has his habitual residence at the time at which he received the order....

7 "Since the principal office and the habitual residence of the seller at the time in question was Yugoslavia, and since the sales contract was concluded in

Yugoslavia, all applicable rules on international private law refer to Yugoslav substantive law.

[...]

Referring Principles:

XIV.2 - Law applicable to international contracts