IN2301-C

MEMORIAL FOR CLAIMANT

BETWEEN:

THE REPUBLIC OF COLTANA

(CLAIMANT)

-AND-

THE MAJESTIC KINGDOM OF RADOSTAN

(RESPONDENT)

18th LAWASIA INTERNATIONAL MOOT, 2023

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LIST OF ABBREVIATIONS

¶	paragraph
¶ ¶	paragraphs
AI	Artificial Intelligence
AIAC	Asian International Arbitration Centre
Art	Article
BIT	Bilateral Investment Treaty
CCRP	Crime and Corruption Reporting Project
CCTA	Coltana-Radostan Counter Terrorism Agreement
CPDA	Copyright, Design and Patents Act
Corp	Corporation
CRMOU	Coltana-Radostan Memorandum of Understanding

DOJ	Department of Justice of the United States of Kola Lumpo
DPP	Democratic Progressive Party
FET	Fairness and Equitable Treatment
IBA	International Bar Associations
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICSID	International Centre for Settlement of Investment Disputes
MP	Moot Problem
No	Number
OBH	Order of the Black Hand
PM	Prime Minister
SAA	Swiss Arbitration Association

UK	United Kingdom
UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
v.	versus
Vienna Convention on the Law of Treaties	VCLT

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS:

Abbreviations	Citations	Article
AIAC Rules	AIAC Arbitration Rules 2021	**Rule 9, 10, 11.2(b), 16, 27**
Arbitration Act 1996	Arbitration and Conciliation Act, 1996	**Section 12(5), 23 1(a); Article 12, 19, 21, 7, 11, 15, 34, 9; Fifth Schedule (1), Fifth Schedule (5), Seventh Schedule**
CCTA	Coltana-Radostan Counter Terrorism Agreement	**Article 4, 9(iii)(d)**
CPDA	Copyright, Design and Patents Act 1988	**Section 9(3), Article 178**
Copyright Law	Copyright Law in the EU	**Page 84**
Explanatory Note to the UNCITRAL	Explanatory Note to the UNCITRAL Expedited Arbitration Rules	**Article 21**
ICC Rules	International Commerce Chamber Arbitration Rules	**Article 12(2), 22, 25, 30**

ICCPR	International Covenant on Civil and Political Rights	**Article 17(1),**
Indian Evidence Act 1872	The Indian Evidence Act 1872	**Article 3, 5, 32**
New York Convention	United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards	**Article 24, 26**
	Personal Data Protection Bill 2019	**Article 4, 6, 11(1)**
Rome Statute	Rome Statute of the International Criminal Court	**Article 1, 5, 103**
	Treaty of European Union	**Article 50**
UNCITRAL Rules	UNCITRAL Arbitration Rules (2010)	**Article 12(2), 30**
	Universal Declaration of Human Rights	**Article 12,**
VCLT	Vienna Convention on the Law of Treaties	**Article 46, 48(1), 53, 64, 60(1), 61, 62**

JUDICIAL DECISIONS:

Abbreviations	Citations	Page
Ammar	United States v. Ammar, 719 F.3d 103 (2d Cir. 2013)	¶142.
Atlantic Paper Company	Atlantic Paper Company v Papierwerke Waldhof-Aschaffenburg AG (1982)	**Page** 430

Company v. Tri-City Beverage, Inc	Coca-Cola Company v. Gemini Rising, Inc [1972], United States District Court, E.D. New York No 72 (194) [1927]	**¶1188**
Eiser	Eiser Infrastructure Limited and Energía Solar Luxembourg S.à r.l. v. Kingdom of Spain, Decision on Annulment	¶¶144, 242, 225, 228
Ex parte Young	Ex parte Young [1907], U.S Supreme Court No.10 (209) [1908]	**Page** 25
Halliburton	Halliburton Company v. Chubb Bermuda Insurance Ltd	**Page** 27, ¶74
Haryana	Haryana Space Application Centre vs M/S Pan India Consultants Pvt. 2021	**Page** 7, ¶17
Halsbury	Halsbury's Laws of England, 4th ed., vol. 1, para. 2	**Page** 8, ¶9
Liversidge	Liversidge v Anderson [1942] AC 206	¶ 244
M/S Bremen	M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1 (1972)	**Page 10**
Nova	*Nova Productions Ltd. v. Mazooma Games Ltd.* [2006] EWCA Civ 219	**Page** 8, ¶¶ 29,30,31
R(Miller)	*R(Miller) v Secretary of State for Exiting the European Union (Appellant)* [2017] UKSC 5,	**Page** 11 ¶ 26
SAA	SAA Case No. 3205, Swiss Arbitration Association (2003).	**Page 12**
Winter	Winter v. Natural Resources Defense Council, Inc [2008]	
WorldCom	In re WorldCom, Inc., 453 F.3d 1173 (2d Cir. 2006)	¶4

Hobbs	Memorandum Opinion and Order Denying Preliminary Injunction, Hobbs v. Zenderman [2007], United States District Court, D. New Mexico No. CIV 06-985 BB/WDS [2007]	¶1

JOURNALS:

Abbreviations	**Citations**
Emma Smith	Emma Smith, 'Relation vs Relationship: Difference and Comparison' (Ask Any Difference, 2023) <https://askanydifference.com/difference-between-relation-and-relationship/> accessed 8 August 2023
Aceris Law LLC	Aceris Law LLC, "Fair and Equitable Treatment in Investment Arbitration", (January 23, 2022) <https://www.acerislaw.com/fair-and-equitable-treatment-in-investment-arbitration/> accessed 15 August 2023
Cambridge University Press	Cambridge University Press, "Principles of fair and equitable treatment", (July 5, 2011) <https://www.cambridge.org/core/books/abs/fair-and-equitable-treatment-in-international-investment-law/principles-of-fair-and-equitable-treatment/70BC2B20DC2838BA9456CF0A2407C6DF> accessd 15 August 2023

Journal of Sustainable Development Law and Policy	Journal of Sustainable Development Law and Policy, “The doctrine of party autonomy in international commercial arbitration: myth or reality?” (Vol.6 No.1 2015) <https://www.ajol.info/index.php/jsdlp/article/view/128033> accessed 16 August 2023
Jus Mundi	Jus Mundi, "Right to Maintain the Status quo", (2023) <https://jusmundi.com/en/document/wiki/en-right-to-maintain-the-status-quo.> accessed 15 August 2023

BOOKS:

Abbreviations	**Citations**	**Page**
Gary B. Born	Gary B. Born, International Commercial Arbitration Volume International Arbitration Agreements, Wolters Kluwer Law an Business (2014)	**Page 248 ¶4.2.2**
Lex Sportiva	Lex Sportiva: What is Sports Law? by Michael J. McGovern (2015).	**Page 192, 193**
Redfern and Hunter	Nigel Blackaby, Constantine Partasides, Alan Redfern, Martin Hunter, *Redfern and Hunter on International Arbitration* (6th Edition), New York, Oxford University Press, 2015	**Page 347**
The Law of International	The Law of International Commercial Arbitration by Julian Lew, Loukas Mistelis, and Stefan Kröll (2022).	**Page 253**

Commercial Arbitration		

MISCELLANEOUS:

Abbreviations	**Citations**
Charles University, Faculty of Social Sciences.	Framework for Transparency: A case study of Cambridge Analytica and Facebook, Charles University, Faculty of Social Sciences, Department of Security Studies https://www.academia.edu/45678779/Framework_for_Transparency_A_case_study_of_Cambridge_Analytica_and_Facebook
Cambridge Analytica Administrative Complaint	Cambridge Analytica Administrative Complaint, United States of America before the Federal Trade Commission, Docket No.9383 in the matter of Cambridge Analytica, LLC, a corporation.
Cambridge Dic	Cambridge Dictionary, Word Definition
Irreparable harm	Irreparable harm: Legal Information Institute, Cornell Law School (Wex Definitions Team) <https://www.law.cornell.edu/wex/irreparable_harm>

Judicial accountability and independence	Independence, Judicial accountability and independence, Courts and Tribunals Judiciary.
UNDP Capacity Development Resource 2006	Applying a human rights-based approach to development cooperation and programming: a UNDP Capacity Development Resource, Capacity for Development Group Bureau for Development Policy, 2006
Understanding the ICC Court	Understanding the ICC Court <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf>

STATEMENT OF JURISDICTION

By virtue of Article 8 of the Coltana-Radostan Counter Terrorism Agreement ("CCTA"), concluded on September 31, 2021, and in accordance with Article 1(1) of the AIAC Arbitration Rules 2021, the Republic of Coltana ("Coltana") and the Majestic Kingdom of Radostan ("Radostan") have hereby referred to this Honourable Tribunal the dispute concerning the OnionRing website and the validity and termination of the CCTA.

QUESTIONS PRESENTED

1. Whether Olaf, an AI-powered intelligent lawyer, can be removed as the arbitrator for lack of impartiality;

2. Whether the Arbitral Tribunal should stay the present proceedings until the conclusion of Anuwat's trial at the International Criminal Court;

3. Whether the CCTA is void; and

4. In the event that issue III is decided in the negative, whether the termination of the CCTA by Coltana is valid

STATEMENT OF FACTS

Facts Relating to the Parties		
Themes	**Parties**	**Facts**
Parties to the Dispute	Claimant: Coltana	**Coltana** is a small but prosperous nation located on the coast of the Indian Ocean. Historically, it is known for its strong culture and heritage. Coltana's heavy investment in education and research provides it with leading scholars in law. Coltana is a dualist state and a party to the Rome Statute with the British common law system.
	Respondent: Radostan	**Radostan** is located in the heart of South Asia with an enormous landmass and population. It has a diverse and tech-driven economy, making it the global leader in technology and innovation. Radostan is a monist state that adopts the British common law system, but not a state party to the Rome Statute.
Third Parties	United States of	Kola Lumpo is a democratic state that holds general

	Kola Lumpo	elections every four years on a supermajority vote.
Facts Relating to the Dispute		
Themes	**Time**	**Facts**
The Battle of Borbana	Before WWII (1944)	Coltana Eastern Matic Gilgamesh right-wing ideologies Western Stefka Gilgamesh left-wing ideologies Radostan provided military and financial support Battle of Borbana Western > Eastern Bombing Glass Palace in the capital of Radostan
	After WWII (1994)	**COLTANA** **Democratic Progressive Party (“DPP”)** Stefka Coltana fell under the rule of Stefka Establishing Coltana as a unified Republic. DPP secured majority seats in the parliament, Stefka was elected President **Order of the Black Hand (“OBH”)** Former Matic loyalists A right-wing nationalist political party Dedicated to upholding Matic’s political ideologies OBH party won a large number of seats, become a significant political force and opposition.
Coltana-		Coltana is to provide assistance in rebuilding the Glass Palace and offer “intellectual collaboration”

Radostan Memorandum of Understanding (CRMOU)	After Coltana's presidential inauguration	while Radostan is to invest and sell weapons to Coltana.
The Birth of Olaf	2015	Radostan's Prime Minister Yodwicha launched Project Olaf to create the world's first super-intelligent and independent AI lawyer and judge. Through CRMOU, he invited President Lalan of Coltana to participate in AI system design, data collection, and legal training for Olaf.
	2020	Olaf went into full operation and acted as counsel or arbitrator in complex arbitrations. Olaf was under the ownership of Oracle Corporation in Radostan. Coltana was granted limited access to train and carry out research on Olaf.

After the Sapura Bay Bombings	15.9.2021	Two incidents happened: a devastating explosion occurred during the Sapura Bay Marathon, and Coltana's government websites were hacked, which were considered a major failure on the part of the government to protect its citizens.
The Coltana-Radostan Counter Terrorism Agreement ("CCTA")	31.9.2021	President Lalan attended a meeting with Prime Minister Yodwicha and his delegation. The CEO Anuwat of Ini-Tech, an entity in Radostan, introduced to Coltana the OnionRing invention, an anti-terrorism software that could identify and neutralize potential cyber-attacks and terrorist threats. The CCTA was signed due to the urgency of the upcoming general elections, and Ini-Tech Inc. is responsible for the OnionRing software.
	14.10.2021	The OnionRing installation was completed after being installed into the government's computer to commence full operation.
	15.10.2021	The OnionRing was unveiled at a ceremony in

The OnionRing		Legolas. - Anuwat explained that OnionRing is equipped with smart surveillance technology, and data collected is kept confidential and can only be accessed by Coltana's government. - President Lalan informed that OnionRing will have access to all CCTVs to continuously track the movements of suspected terrorists.
	The following months upon OnionRing's launch	The software proved to be highly successful in preventing criminal activities in Coltana, contributing significantly to the country's overall security.

The General Elections	16.12.2021	The elections were held, and the DPP party nearly lost. There were speculations surrounding such results, as a huge number of votes swayed towards OBH. A former employee of Ini-Tech stated that OnionRing had gained access to the personal data of electorates to promote the OBH party to the voters.
The Bitcoin Robbery	2.2.2022	Coltana's only Bitcoin Reserves of USD 300 million were completely stolen overnight by a group of highly intelligent hackers. Anuwat suggested that parties can amend the clauses in the CCTA.

The Ulavu Files (Anuwat's case at ICC Court)	7.3.2022	Anuwat has been arrested in Kola Lumpo's territory following a warrant of arrest issued by the International Criminal Court (ICC) for the alleged commission of cyberwar crimes in Ulavu. Dua Lupa's victory in elections was rumored to be attributed to a software program that shares similar features to OnionRing. Anuwat was arrested for being the key programmer.

Initiation of AIAC Proceedings	8.3.2022	President Lalan declared that he would terminate the services of Ini-Tech due to CCTA's illegality but would retain OnionRing for further investigation. Radostan objected and requested immediate payment. Article 8 of the CCTA was invoked to initiate arbitration proceedings. ● Radostan nominated Olaf as arbitrator, and Coltana challenged the removal of Olaf under AIAC Rules 2021. ● Radostan requested that the proceedings wait for Anuwat's Ulavu Scandal. Coltana objected to such procrastination. ● Radostan alleged that the termination was not done in good faith.

SUMMARY OF PLEADINGS

[1] JURISDICTION: OLAF SHOULD BE REMOVED AS ARBITRATOR.

The Tribunal should reject Olaf as Respondent's appointed arbitrator based on its lack of competence to hear the dispute. Specifically, Olaf does not meet the requirements of an independent arbitrator under British common law. Thus, his legal expertise is insufficient to meet the standards of a reasonably expected arbitrator. Moreover, Olaf lacks objectivity as an arbitrator in this case.

[2] JURISDICTION: THE ARBITRAL TRIBUNAL SHOULD PROCEED REGARDLESS OF ANUWAT'S TRIAL AT THE ICC.

This case should be heard notwithstanding the proceedings in Anuwat's case at the International Criminal Court, and the Arbitral Tribunal should sustain the arbitration proceedings. In specific, the dispute between Parties should be resolved promptly in order to avoid the repercussions that may be provoked by the delay in the proceedings. Moreover, the presence of Anuwat will not contribute to the outcome of the case as there was sufficient evidence to prove relevant facts, and in the utmost, the ICC's decision will not have any impact on Claimant as well as the Arbitral Tribunal in deciding the case.

[3] MERITS: CCTA IS VOID.

The Tribunal should decide on the fact that the CCTA is void due to Claimant's breach of the provisions that both Parties have agreed on in particular and international law in general. In particular, Claimant has breached several rules mentioned in the Vienna Convention on the Law of Treaties 1969. Moreover, Claimant has conducted actions that go against international human rights law and conflict with domestic law.

[4] MERITS: THE TERMINATION OF THE CCTA BY CLAIMANT IS VALID.

Claimant claims that even when the CCTA is decided not to be void, its termination is still valid for two main reasons. Firstly, due to force majeure, the termination of the CCTA must be approved as Claimant isn't capable of performing the obligations set out in the agreement. Secondly, the breach of Respondent has invoked the grounds for terminating the CCTA in accordance with Article 60 and Article 62 of the Vienna Convention.

PLEADINGS

PART ONE: JURISDICTION

ISSUE ONE: OLAF SHOULD BE REMOVED AS ARBITRATOR IN THIS DISPUTE

[1] Claimant respectfully submits that Respondent-nominated arbitrator should be removed since Olaf does not possess the required characteristics of an independent arbitrator in British common law system **[I.]**; Its legal input is insufficient to satisfy the qualifications of a reasonably expected arbitrator **[II.]**; and Olaf lacks impartiality as an arbitrator in this case **[III.]**[1]**.**

I. Olaf does not possess the required characteristics of an independent arbitrator in the British common law system.

A. This case upheld the doctrine of judicial independence in British common law system.

[2] Judicial independence means that judges must be free to exercise their judicial powers without interference from litigants, the state, the media or powerful individuals or entities, such as large companies[2].

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[1] Arbitration Act,1996, Para.12. Grounds for challenge

[2] Judicial accountability and independence.

[3] The British common law system also recognizes the importance of independent arbitrators[3], which typically refers to a lawyer or retired judge with experience in dispute resolution[4], also a neutral third party appointed to resolve a dispute outside of traditional court proceedings[5]. It is vital that each judge be able to decide cases solely on the evidence presented in court by the parties and in accordance with the law[6].

[4] Because the system enables the judge to be independent of political bias and objectives, justice is served with full accountability and transparency.

[5] In *R(Miller)*[7], the UK Supreme Court held that the government had no authority to trigger Article 50 of the Treaty of the European Union. This ruling indicates the judiciary's ability to interpret and apply constitutional principles, even in highly politically charged situations, and thus the Court's independence from political inferences.

[6] In *Liversidge*[8], judicial independence must be upheld to prevent parliamentary sovereignty from becoming executive sovereignty. The application of independence is that the words used by Parliament might be taken to interpret whatever the tribunal relying on them chooses.

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[3] Lex Sportiva, page 192
[4] Ibid.
[5] Arbitration Act 1996, Rule 23, 1(a)
[6] Independence, Judicial accountability and independence, Courts and Tribunals Judiciary.
[7] R(Miller), page 11 ¶ 26
[8] Liversidge, ¶ 244 Liversidge v Anderson [1942] AC 206

B. The key qualities of an independent arbitrator in the British common law system aren't satisfied by Olaf.

[7] There are key qualities that an independent arbitrator in the British common law system should possess, (i) Impartiality; (ii) Experience; (iii) Knowledge of the Law; (iv) Communication skills; and (v) Decision-making skills[9].

[8] Given that Olaf is an AI robot, its communication and decision-making skills cannot be as well developed as those of human arbitrators.

[9] Olaf had to rely on Claimant's scholars to receive legal training and updated data[10]; therefore, it may not yet have acquired relevant knowledge of the law field or practical experience in making an award on BITs' validation.

[10] Most importantly, Olaf may not be as rational as a human arbitrator, as it has yet to distinguish between the political interference and its original state of mind[11]. There have been allegations about whether Olaf's publications and legal insights demonstrate a weight in the Radostan's domestic policy[12], which will be further proven in Section III.

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[9] Lex Sportiva: What is Sports Law? by Michael J. McGovern (2015), ¶192-193
[10] MP, page 6, ¶11
[11] MP, page 6, ¶13
[12] Ibid.

II. The legal input from Olaf is deemed insufficient to satisfy the qualifications of a reasonably expected arbitrator.

A. Copyright, Design and Patents Act ("CPDA") 1988 is applicable in the case of Olaf.

[11] According to the CPDA, AI machine-created works are works "generated by computer in circumstances such that there is no human author of work"[13], which is deemed to fit the description of Olaf with no issue.

[12] Under the same Act, the author of the computer-generated work is the person who made the necessary arrangements for the creation of the work[14]. In *Nova*[15], one of the landmark cases applying Section 9(3) involved the AI's digital output being present in a game, it is held that the programmer who set up the AI to display these graphical assets is the author.

B. Thus, Olaf is protected by Respondent's copyright regimes under International Intellectual Property Law.

[13] One fundamental principle of Copyright is that the first owner of the product may bear sole responsibility for its ownership and legal enforceability[16]. Therefore, the owner of the AI software owns the Copyright as long as they make substantial contributions to the making of the work.

[14] In this current case, given that PM Yodwicha is one of the Independent Non-Executive Directors[17] of Oracle Corporation, a privately owned company in Radostan, and is also the first author to create and heavily involved in the Olaf Project, Claimant contends that any

[13] CPDA, Section 178
[14] CDPA, Section 9(3)
[15] Nova, page 8, ¶¶ 29,30,31
[16] Copyright Law in the EU, page 84, European Parliament
[17] MP Corrections, page 2, no.4

works conducted or published by Olaf shall be under the ownership of Oracle and thus the responsibility of Respondent.

[15] Olaf has publicly produced its own legal insights, which are not generally accepted due to their overt support of Respondent's laws[18]. However, Olaf doesn't have the ability to establish copyright over such output.

[16] Since only some delegations from Coltana took part in the machine learning of Olaf with limited access to its data[19], Respondent shall take full responsibility when the product shows signs of legal violation and redeem any damages incurred to the prospect of the general election in Coltana.

[17] **To conclude**, not only is Olaf not independent of Respondent's political system, but its legal publications are also too questionable to be an arbitrator. Under Intellectual Property Law, Claimant respectfully requested Respondent's compensation for Olaf's invalid publications.

III. Olaf, as an AI-powered robot, lacks impartiality and is thus not competent as an arbitrator in this case.

[18] Claimant's argument is based on two grounds, Olaf doesn't meet the impartial qualifications of a competent arbitrator **[A]** and Olaf does not pass the objective test **[B]**.

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[18] MP, page 6, ¶13
[19] MP, page 6, ¶12

A. Olaf doesn't meet the impartial requirements of a competent arbitrator.

[19] According to the Cambridge and Oxford dictionaries, 'impartiality' and 'impartial' respectively, mean 'not supporting any of the sides involved in an argument'[20] and 'treating everyone or everything equally"[21].

[20] Claimant regardfully submits that Olaf did not meet the requirements of impartiality in this circumstance since Olaf has a close relationship with Respondent PM, Yodwicha **[i]**; Olaf failed to disclose any circumstances likely to give rise to justifiable doubts as to its impartiality or independence **[ii]**; and Olaf publicly shows bias towards Respondent **[iii]**.

i. Olaf has a close relationship with Respondent PM, Yodwicha

[21] According to the Arbitration and Conciliation Act, 1996, Claimant's challenge is based on Olaf's close relationship with Respondent's Prime Minister Yodwicha, who is reasonably suspected to have a significant impact on Olaf's impartiality.

[22] An arbitrator appointed shall disclose in writing any circumstances, stated in the same Act, that are likely to give rise to justifiable doubts as to his impartiality.[22]

[23] *First*, one ground for challenging arbitrators is that the arbitrator has a close family relationship with one of the parties or, in the case of companies, with the persons in the management and controlling the company[23].

[24] As a matter of fact, Olaf was under the management of Oracle Corp., of which PM Yodwicha is an Independent Non-Executive Director[24]. Being an AI product affected by the

[20] Cambridge Dictionary, Word Definition
[21] Oxford Dictionary, Word Definition
[22] Arbitration Act, 1996, para 12(1), page 14
[23] Arbitration Act, 1996, Fifth Schedule (1), page 43
[24] MP Correction and Clarifications, page 2, ¶4

training-provider PM Yodwicha, Olaf can be acknowledged as a "child" in a family relationship, an employee of Yodwicha at Oracle Corp., as well as the representative of PM Yodwicha and Radostan.

[25] *The second ground* to challenge is that the arbitrator is a manager, director, or part of the management or has a similar controlling influence over one of the parties[25].

[26] In Haryana[26], the Court found out that the appointed arbitrator of Claimant was ineligible since he was in a position to have a huge controlling influence on the Claimant[27], highlighting Section 12(5) that if an individual nominated as an arbitrator by the Parties possesses any connection with the parties, they will not be eligible for appointment as an arbitrator.

[27] In the case at hand, as the PM, Yodwicha has controlling power over Respondent while maintaining a very close relationship with Respondent-nominated arbitrator Olaf, as proved above. This ground can pose a very significant doubt about the impartiality of Olaf[28].

ii. Olaf's failure to disclose any circumstances gives rise to justifiable doubts, given that his impartiality and independence constitute grounds for challenge.

[28] According to AIAC Rule 2021 and Article 9(iii)(d) of the CCTA, Claimant respectfully submits that if there are any circumstances likely to give rise to justifiable doubts as to his impartiality or independence, the arbitrator shall bear the burden to disclose them without delay from the time of the arbitrator's appointment[29], which is also recognized in the Arbitration and Conciliation Act [30] and IBA Guidelines Orange List.

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[25] Arbitration Act, 1996, Fifth Schedule (5), page 43
[26] Haryana, page 7, ¶17
[27] Arbitration Act, 1996, *Section 12(5), Seventh Schedule.*
[28] Ibid
[29] AIAC Rule 2021, Rule 10
[30] Arbitration Act, 1996, Para. 12(1)

[29] In *Eiser & Energía*[31] ICSID ad hoc arbitration decided that failure to disclose constitutes a ground for challenge. The lack of an arbitrator's disclosure could compromise his independence and impartiality, leading to the inappropriate formation of the tribunal and a significant deviation from a core procedural rule.[32]

[30] In *Halliburton*[33], the disclosure of circumstances giving rise to justifiable doubts was held as a legal duty, which is also an essential corollary of the statutory obligation of impartiality[34].

[31] Upon receiving the Notice of Challenge, Olaf did not have the ability to disclose the fact as an AI-powered robot, and Radostan and Ini-Tech had to bear the burden of explaining on behalf of Olaf itself[35].

[32] **In conclusion**, the circumstance that Olaf failed to disclose any facts likely to contribute to justifiable doubts as to his impartiality constitutes grounds for a challenge to his removal.

iii. Olaf's public showing of its apparent bias toward Respondent gives rise to doubts of impartiality.

[33] In Suez v. Argentina[36], impartiality concerns the absence of a bias or predisposition toward one of the parties. The concept of 'impartiality' is considered to be connected with the actual or apparent bias of an arbitrator—either in favor of one of the parties, or in relation to

[31] Eiser, Decision on Annulment, ¶¶144, 242, 225, 228
[32] Ibid.
[33] Halliburton, page 27, ¶74
[34] Ibid.
[35] MP, page 16, ¶42
[36] Suez, page 13, ¶29

the issues in dispute[37]. Impartiality is thus a subjective and more abstract concept than independence in that it involves primarily a state of mind[38].

[34] In Coltana v. Radostan, Claimant contends that the act of directly or indirectly supporting Radostan can be seen through Olaf's "overly supportive and defensive" publications[39]. This leads to the presumption that Olaf treated different parties unequally with a bias towards Respondent in the distribution of access and management, despite receiving training and expertise from both parties[40].

[35] Thus, Claimant respectfully submits that Olaf's previous activities have significantly exemplified his bias towards Radostan; therefore, the Tribunal should remove Olaf from the Arbitral Tribunal.

B. Olaf lacks competence to be the arbitrator on the grounds of an objective test.

[36] Based on the requirements for arbitrators set out in Article 9(iii)(a) of the CCTA, the arbitrator shall be chosen strictly on the basis of objectivity. Thus, Respondent seeks to apply an objective test to Olaf's competence as an arbitrator.

i. The use of artificial intelligence (AI) in arbitration raises complex legal and ethical issues.

[37] As provided in UNCITRAL, an arbitrator may be challenged if he does not possess qualifications agreed to by the parties[41], while AIAC Rule 2021 demonstrates that a Party may challenge an arbitrator if they are aware of circumstances indicating that the arbitrator does not possess any of the requisite qualifications that the Parties agreed to[42].

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[37] Redfern and Hunter, ¶4.78
[38] Ibid.
[39] MP, page 6, ¶14
[40] MP, page 7, ¶12
[41] UNCITRAL Rules 12(2)
[42] AIAC Rule 2021 (11.2.b)

[38] There are academic and legal knowledge requirements that a competent arbitrator should possess to make decisions without bias[43], which are not present in the case of Olaf.

[39] *First*, Olaf's knowledge is provided by Claimant and Respondent, therefore, in the proceeding, Olaf's decision-making process can be interrupted because of his lack of knowledge or self-thinking skills as a human.

[40] *Second*, as an AI-powered arbitrator trained in law, Olaf is still not capable of acquiring any qualifications or certificates to recognize his competence as an arbitrator and expertise in law.

[41] *Third*, with regards to information confidentiality in arbitral proceedings, Olaf's previous scandalous statements on social media[44] may jeopardize the concern of leaking information without the consent of both parties.

ii. Olaf does not meet the sufficient requirements and thereby cannot pass the objective test.

[42] The objective test of an arbitrator's qualifications in British common law, first introduced in the UK Arbitration Act 1996, is a legal standard that is used to determine whether an arbitrator is qualified to hear a dispute[45], regulating what a reasonably expected arbitrator would do[46].

[43] The purpose of objective tests is to ensure that arbitrators are qualified to hear the disputes that they are appointed to hear, thereby helping the parties to a dispute refrain from appointing an arbitrator who is not qualified to hear their case.

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[43] ICC Rules, Article 12(2)
[44] MP, page 6, ¶13
[45] Halliburton, page 26, ¶42
[46] Halsbury, page 8, ¶9

[44] If the arbitrator meets all of these factors, they are considered qualified to hear the dispute. However, if the arbitrator does not meet all of these factors, they may be challenged by one of the parties to the dispute[47].

[45] In *Atlantic Paper Company*[48], an arbitrator was held not qualified to hear the dispute because he did not have sufficient knowledge of the law of the United States, which was the governing law of the dispute.

[46] In the case of the AI robot Olaf, it is not a common choice of arbitrator as it is too different from a normal scholar's or the public's view. The generally accepted human arbitrator is obligated to be impartial to render a fair decision to both parties[49]. Meanwhile, the international community, including Olaf's legal counterparts, is widely convinced that his publications violate the rule of impartiality due to his overt support of Respondent's policies[50].

[47] Claimant insists that the drawbacks of appointing Olaf as arbitrator in this case outweigh the benefits. Given that Olaf fails the objective test, it will fail in terms of competence.

[48] **Overall**, there are a number of considerations that need to be taken into account when using AI robots in arbitration. Claimant regardfully submits that the benefits of using AI are not deemed sufficient at the expense of potential risks.

CONCLUSION ISSUE ONE:

[49] Due to the lack of competence to hear the case, the Tribunal should reject Olaf as the Respondent's selected arbitrator. Olaf, in particular, fails to meet the standards of an

[47] Lex Sportiva: What is Sports Law? by Michael J. McGovern (2015), p. 193
[48] Atlantic Paper Company, page 430
[49] The Law of International Commercial Arbitration, p. 253
[50] MP, page 6, ¶13

independent arbitrator under British common law and possesses insufficient qualifications as a reasonable arbitrator.

ISSUE TWO: THE ARBITRAL TRIBUNAL SHOULD PROCEED REGARDLESS OF ANUWAT'S TRIAL AT THE ICC

[50]. Submitted before the Tribunal, this case should be heard notwithstanding the proceedings in Anuwat's case at the International Criminal Court ("ICC"). In particular, Claimant has relied on the compelling nature of the present arbitration **[I.]**, the sufficiency of the available evidence **[II.]**, and the fact that the ICC's ruling on Anuwat's trial has no bearing on the current arbitration **[III.]**.

I. The present proceeding urgently needs to be commenced by an arbitral tribunal given its compelling nature.

[51] Respondent's challenge to procrastinate the proceedings to wait for Anuwat's trial should be rejected in two aspects. First, the contractual relationship between the parties requires immediate resolution **[A.]**. Second, Claimant requires timely protection measures from potential damage **[B.]**.

A. The contractual relationship between Parties requires immediate resolution

[52] Whether the Counter-Terrorism Agreement ("CCTA") retains its validity in the current situation or not is a matter that needs to be concluded in a timely manner.

[53] This notion has been recognized in SAA[51], where the claimant's argument to proceed urgently was based on the grounds that the contractual relationship between parties was essential to protect the claimant's business and mitigate financial losses.

[54] Provisions for expedited arbitration to accommodate urgent cases have been included in several international arbitration rules, that the arbitral tribunal may "conduct the arbitration

[51] SAA Case No. 3205, page 12

in an expedited manner" if the parties agree or if the arbitral tribunal considers it necessary to do so[52]; hence, tribunals in expedited arbitration have the duty to avoid unnecessary delay and expense and provide a fair and efficient process[53].

[55] With regard to the complexity and value of the dispute, the arbitral tribunal and parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner[54].

[56] The nature of the current dispute over the validity of a bilateral agreement falls within regulatory frameworks that require swift resolution [55] [56].

[57] *First*, the present dispute between Coltana and Radostan is an argument over an agreement to successfully tackle war crimes and secure national cyber security[57].

[58] *Secondly*, given that Respondent could not provide legitimate evidence for the request to delay this arbitration as IniTech's violation of the election is under Claimant's private investigation[58], it is a prerequisite that resolutions be subject to an appropriate deadline. This relies on the grounds that, in the event Respondent has failed to communicate its defense, the arbitral tribunal shall order that the proceedings continue[59].

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52 ICC Arbitration Rules, Article 30
53 Explanatory Note to UNCITRAL, Article 21.
54 ICC 2021 Arbitration Rules, Article 22.
55 New York Convention
56 M/S Bremen: *"The fundamental fairness includes the right to a fair and expeditious hearing."*
57 MP, page 9, 10 ,¶¶ 23, 24
58 MP, page 17, ¶43,
59 UNCITRAL, Article 30, Default

B. Claimant requires timely protection measures to prevent from potential harm or irreparable damage

i. The definition of 'potential harm or irreparable damage' is applicable to the current proceedings.

[59] The legal term 'potential harm or irreparable damage' refers to the possibility of serious negative consequences that may be imposed on a person or their rights, which cannot be adequately compensated even if they are later proven to be innocent[60].

[60] In legal proceedings, potential harm or irreparable damage is often used to seek a preliminary injunction[61], which prohibits parties from taking a particular action before the case is fully resolved[62], such as delaying the arbitration process. "*Where a party seeking injunctive relief has shown a violation of fundamental constitutional rights, a presumption of irreparable harm arises.*"[63]

[61] Types of potential damage include (i) Damage to the party's reputation or goodwill[64]; (ii) Deprivation of constitutional rights[65]; (iii) Loss of profits or competitive advantage in business[66] that cannot be undone by any amount of remediatory money.[67]

[62] Correspondingly, the same possible loss or irreparable damage from cyber terrorism could possibly be imposed on Claimant in the event that Respondent successfully challenges the decision to wait for the ICC's judgment.

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60 Irreparable harm
61 Winter
62 Ex parte Young, page 25.
63 Hobbs
64 The Hurricane Case
65 Ibid.
66 Company v. Tri-City Beverages, Inc.,
67 Irreparable harm

ii. On the grounds of Section i, Claimant seeks interim measures under the principle of fairness and equitable treatment ("FET").

[63] Fair and equitable treatment is a fundamental principle in arbitration that recognizes the importance of avoiding harm or irreparable damage to the parties and their rights[68]. FET is a prominent standard of protection in investment arbitration disputes and is present in most bilateral investment treaties[69].

[64] According to the **AIAC Rules,** an interim measure is any temporary measure granted by the Arbitral tribunal at the request of a party to order the other party to refrain from taking action that is likely to cause: *(i) current or imminent harm*; or *(ii) prejudice to the arbitral process itself.*[70]

[65] Therefore, Radostan needs to refrain from waiting for the judgment of Anuwat's trial proceedings, which could procrastinate and cause prejudice to the present arbitral process between two parties.

[66] **In conclusion,** Coltana seeks immediate interim relief to preserve the status quo[71] and prevent harm resulting from the pending resolution of this dispute, which is necessary to ensure fair and equitable treatment.

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[68] Published online by Cambridge University Press
[69] Aceris Law LLC
[70] AIAC Rules, Rule 16. Interim Measures
[71] Jus Mundi

II. The present evidence is sufficient for the arbitral proceeding to commence

A. The burden to provide accurate and sufficient evidence has been fulfilled by Claimant.

[67] The proceedings at hand are the result of the parties' disagreement in determining an alternative payment transaction method other than Bitcoin regarding Paragraph 4(iii) of the CCTA, all of which have been exclusively governed by the CCTA.

[68] According to AIAC Rules, "*Each Party shall have the burden of proving the facts relied on to support its claim or defense.*"[72]. Coltana has fulfilled this obligation by proactively disclosing and providing the required evidence to support its grounds[73].

[69] Other available evidence and documents are adequate for the initiation of arbitration, including: (i) pleadings and statements (of defense); (ii) Relevant contracts, agreements, or legal instruments forming the basis of the dispute, including CRMOU and CCTA[74]; (iii) Documentary evidence supporting the parties' claims or defenses, including file records of the General Elections and the Ulavu Files; (iv) Expert reports involving the Report of the Bitcoin Robbery, the DOJ report, and the CCRP reports[75]; (v) Witness statements from a previous staff member of In-Tech on Twitter[76];

[70] Claimant is willing to provide other evidence agreed upon by the parties or requested by the arbitral tribunal during the further proceedings.

[72] AIAC Rules, Rule 27. Evidence
[73] MP, pages 13,14, ¶¶29, 32
[74] MP, pages 5,10, ¶¶9, 24, and 25
[75] MP, pages 14,15, ¶¶32, 33, and 37
[76] MP, page 13, ¶30

B. In the event that further evidence is yet to be presented, the tribunal retains the right to make awards based on the available documents.

[71] Pursuant to the Arbitration Act 1996, the proceeding should be conducted in a manner the Tribunal considers appropriate [77].

[72] Moreover, the commencement should be on the date when Claimant's request for arbitration is received by Respondent [78], not on the exact date when all presented evidence has been established as sufficient for further proceedings.

[73] The tribunal also retains the right to make the award based on available evidence at the time if a party fails to produce documents, exhibits, or other evidence within the established period of time without showing sufficient cause before it[79].

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[77] Arbitration Act, 1996, Paragraph 19
[78] Arbitration Act, 1996, Paragraph 21
[79] UNCITRAL Rules, Article 30: Default

III. The ICC's decision on Anuwat's trial has no effect on the present arbitration on the grounds that the proceedings at the AIAC are independent from the ICC's proceedings.

[74] Claimant seeks to deny the stay of proceedings on the basis of the irrelevance between the two cases. Accordingly, Claimant submits that the arbitral proceeding remains independent from the ICC in procedure **[A.]**, this case's outcome is separate from Anuwat's trial verdict **[B.],** and Anuwat's non-presence will not affect the AIAC Proceedings **[C.].**

A. The present arbitral proceeding between Coltana and Radostan remains independent from the ICC Court in procedure.

i. Both parties displayed consent in an independent conflict resolution process through CCTA

[75] According to the Arbitration Clause in the CCTA, any disputes, including challenges to its validity or termination, shall be heard and resolved in accordance with the AIAC Rules 2021[80].

[76] With regards to jurisdiction, Anuwat is charged for the cyber crime that took place in Ulavu and arrested in its territory, which does not belong to the jurisdiction of Claimant or Respondent[81]. The governing AIAC Rules in the present arbitration help maintain the impartiality, integrity, and independence of the arbitral proceedings[82].

[77] Therefore, the disputes are obliged to be settled privately and independently through an arbitral framework pursuant to the original intention of both parties.

[80] MP, CCTA, Article 8.
[81] MP, page 15, ¶35
[82] AIAC Rules, Rule 10.

ii. The characteristics and obligations of arbitrator appointments are separate from the ICC's procedures.

[78] Through the appointment of arbitrators, the arbitrators are appointed collectively or separately by Parties[83], demonstrating that the proceedings shall be continued without any influence from international courts such as the ICC.

[79] The tribunal's obligation is to render its own decisions and awards based on the evidence and arguments presented during the arbitration proceedings, with assurance of confidentiality[84]. These decisions should be independent of any determinations made in other trials.

iii. The principle of party autonomy is applicable and thus gives grounds for the claim that ICC's decision has no impact on the arbitral proceedings.

[80] The principle of party autonomy[85] allows the parties to determine the scope and effect of the arbitration agreement. As the parties have clearly expressed their desire for an independent not affected by any decisions rendered in other trials, it's established that other trial's decisions have no effect on the arbitration. This principle is recognized and supported by AIAC Rules[86] and the Indian Arbitration and Conciliation Act, 1996[87].

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83 AIAC Rules, Rule 9.
84 ICC Rules, Article 25
85 Journal of Sustainable Development Law and Policy
86 AIAC Rules, Rule 10.
87 Arbitration Act 1996, Article 7, 11, 15, 34.

B. The present proceeding's outcome is independent from Anuwat's trial verdict.

i. The subject and purposes of the case at the ICC are completely different from those of the present arbitration between Coltana and Radostan.

a. The parties in the two cases are not identical

[81] Subjects involved in the ICC case consist of Kola Lumpo's Prime Minister, the Ulavu Intelligence Bureau, the Government of Radostan, the Home Minister of Ulavu, the CCRP, the DOJ, and Ini-Tech. Subjects participating in the present AIAC proceedings consist of two state parties, Coltana and Radostan, and their subordinate agencies.

b. The arbitration and trial pursue different legal remedies

[82] Arbitration is a private dispute resolution process; meanwhile, the ICC is a court of law that prosecutes individuals for crimes committed on an international level[88].

[83] In particular, this arbitration case intended to resolve a dispute between two state parties on the validity of CCTA, whereas the intention of the trial before the ICC was to determine cyber terrorism crimes conducted by Anuwat in Ulavu State[89].

[84] These differences between the two proceedings in subjects and purposes reveal that they are likely to have independent outcomes.

ii. Parties affected by the award rendered by the ICC are not involved in the present arbitral proceedings.

[85] The enforcement of the ICC Court's decision is to sentence individuals referred to by

[88] Rome Statute, Article 1. The Court

[89] MP, pages 15, ¶35, 36, 37, and 38

a State party or the UN Security Council rather than states and to hold such persons accountable for serious crimes before the international community[90]. According to the Rome Statute, the Court has jurisdiction with respect to (a) Crimes of genocide; (b) Crimes against humanity; (c) War crimes; (d) Crimes of aggression[91].

[86] The decision made by ICC judges shall be a prison sentence, a fine of the proceeds, property, and assets derived directly or indirectly from the crime committed.[92] Such sentences only assert binding force on the involved parties or the State of enforcement[93], which is Kola Lumpo in this case.

[87] Its binding effect cannot automatically extend to other arbitral proceedings unless decided so in the verdict[94], so the decisions made in Anuwat's trial are not binding on the arbitral tribunal at the present.

[88] **In conclusion,** the arbitral proceeding is commenced privately upon parties' request, while the ICC can only prosecute individual criminals. The distinction between involved parties indicates the different outcomes of each case.

C. Anuwat's non-presence shall not affect the principle of fair trial in this arbitration.

i. In the event that Anuwat cannot be present at the arbitration, other non-present approaches to obtaining his testimony can be employed.

[89] Anuwat's proposal for evidence can be adequately addressed through other permissible methods of Witness Testimony. Pursuant to UNCITRAL Rules, witnesses may

[90] Understanding the ICC Court
[91] Rome Statute, Article 5.
[92] Ibid.
[93] Rome Statute, Article 103, *1(a)*
[94] Born, G. (2014)

be examined through means of telecommunication that do not require their physical presence at the hearing, such as videoconference[95].

ii. Anuwat did not take legal procedural step to acknowledge his position in ICC's case to stay this arbitration

[90] Pursuant to the British Arbitration Act 1996, "*An application may not be made by a person before taking the appropriate procedural step to acknowledge the legal proceedings against him have taken any step in those proceedings to answer the substantive claim*"[96].

[91] Given that neither Anuwat nor Ini-Tech has taken legal steps to clarify his stance at the ICC, Respondent's request to wait for him should be removed.

iii. The weight of Anuwat's testimony should be under careful examination.

a. Anuwat's testimony is not relevant or essential to the case.

[92] Anuwat's assumptions made to the media that he was captured by a Claimant's ally[97] are irrelevant to the underlying issues in the present case.

[93] All of Anuwat's pre-trial statements regarding this case have been presented and acknowledged previously. He has been given a fair opportunity to challenge the evidence, thus not violating his right to a fair hearing[98].

[94] The arbitral tribunal is still capable of reaching a just decision without Anuwat's testimony since the evidence has been proven to be adequate.

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[95] UNCITRAL Arbitration, Article 28(4)
[96] Arbitration Act 1996, Article 9(3)
[97] MP, page 16, ¶39
[98] Universal Declaration of Human Rights, Article 10.

[95] Radostan's approach to proving Anuwat's qualifications to testify has failed as it is mainly based on the allegation of Ini-Tech's interference in the general elections[99], which shall be investigated confidentially without his presence by Claimant.

b. Anuwat's testimony is not a reliable source.

[96] Anuwat is deemed to have a personal interest in the outcome of this case[100] as he could possibly give false testimony to benefit his situation at the ICC's trials.

[97] Considering Anuwat's previous conflict of interest with Claimant[101], his ability to provide accurate and valid evidence is suspected.

[98] Therefore, his non-presence shall not impede a fair and reasonable determination.

CONCLUSION ISSUE TWO:

[99] In light of the above, the present arbitration is outside of the ICC's scope, and Anuwat's presence remains redundant. Therefore, the AIAC's proceedings should not wait for Anuwat to testify.

[99] MP, page 17, ¶43
[100] WorldCom, ¶4
[101] Ammar, ¶142.

PART TWO: MERITS

ISSUE THREE: THE CCTA IS VOID

[100] The Vienna Convention on the Law of Treaties of 1969 ("Vienna Convention") sets out eight grounds on which a treaty may be found to be void, including the existence of error[102].

[101] Claimant respectfully claims that the CCTA is void because of the existence of former errors **[I.]**; the OnionRing software's use of personal databases is against international law **[II.]**; and the use of personal data for political gain proves to be unconscionable **[III.]**.

I. The CCTA is void because of the existence of former errors

[102] Pursuant to Article 48(1), VCLT, if the error directly affects the fundamental foundation of the treaty, a State can consider it a ground for invalidating that treaty, just in the case that the error is priorly made and a State does not properly acknowledge it before expressing its consent to be bound.

[103] *First*, the Ulavu Files constitute an error in the CCTA's establishment. The Ulavu Files incident has impacted the binding of the CCTA, as it proves the incredibility and connection between the software and OnionRing, the most important subject of the agreement. Had Claimant had the chance to acknowledge such an error, its consent to be bound would have been reconsidered.

[102] Ibid, Article 48

[104] *Second*, Respondent committed an error by not doing a background check on Anuwat before sending him to the parties' meeting to introduce OnionRing. Had they done a thorough profile check, Anuwat's connection to Ulavu would have been revealed.

[105] *Third*, Claimant presses on Anuwat's error for repeating his mistake at Ulavu, which is a significant mistake relevant to AIAC's case, and creating OnionRing, another product that jeopardizes Claimant's cybersecurity.

[106] Furthermore, Claimant submits that the error was caused solely by Respondent. Despite Claimant’s thorough review, the error was found upon the reveal of Ulavu Files despite OnionRing’s initially successful launch.

II. The CCTA is proven to be invalid as the OnionRing software's use of personal databases is against international law.

[107] Both parties have agreed on the constitution of Article 1(ii) of the CCTA, ensuring compliance with all relevant principles of international human rights. Therefore, Claimant contends that OnionRing’s illegal use of personal databases is against several International Treaties **[A],** and even if the CCTA is void, its act will not be accepted by the international community **[B].**

A. The illegal use of personal databases by the OnionRing is against several International Treaties to which both Parties have committed their consent to be bound.

i. The reliability of the evidence made by the former employee of Ini-Tech is convincingly proven.

[108] Respondent’s illegal obtaining of Claimant citizen’s personal database is based on the statements of an Ini-Tech ex-employee. Through careful consideration under Indian law,

Claimant respectfully submits that such statements are credible and can be used as essential evidence to prove the wrongful act of the OnionRing.

[109] *Firstly,* the Twitter statement of the employee can be considered useful evidence in this case pursuant to the Indian Evidence Act 1872, as evidence including electronic records produced for the inspection of the Court is called "documentary evidence"[103]. The employee's statement should not be excluded as evidence, and his written testimony must be approved for its credibility.

[110] *Secondly,* the reliability of the statement must be concluded as evidence by the relevant facts pursuant to Article 5 of the same Act, "Evidence may be given in any suit or proceeding of the existence of non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others".

[111] In this case, the existing fact is that OnionRing provides a service that protects Claimant from criminal activities. It has been proven that the collected data are not identifying and shall only be used for the mentioned purpose; additionally, the data is kept confidential by relevant authorities. Thus, the evidence provided by the employee may be essential to this case.

[112] Moreover, the statement of the employee exposing OnionRing has been made on the grounds of protecting the inherent rights of Coltana's citizens as it has tremendously affected the privacy of their personal data, thereby must be acknowledged as an act of public right and general interest, even in cases where the employee cannot be proved to be the legitimate witness in the case[104].

[103] Indian Evidence Act, 1872, Article 3
[104] Indian Evidence Act 1872, Article 32

[113] **In conclusion**, the credibility of such statements must be accepted as evidence to prove the wrongful act of the OnionRing, which has raised suspicion on the validity of the CCTA and the enforcement of its provisions.

ii. The act of accessing the personal data of Coltana's citizens of the OnionRing has breached the principles regarding human rights recorded in various International Treaties.

[114] *Firstly,* Article 1(ii) of the CCTA[105] and Article 17(1) of the International Covenant on Civil and Political Rights (*"ICCPR"*) have emphasized that "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation". Furthermore, in General Comment No. 16, the Human Rights Committee also stated that "the right to privacy includes, inter alia, the right to the protection of personal information that can be used to identify an individual."

[115] OnionRing, the main subject of the CCTA, was programmed by Respondent to help Claimant fight against cyber terrorism with the assurance of confidential information. Respondent's act of accessing Claimant citizens' data has breached the rules mentioned in Article 17(1) of the ICCPR.

[116] *Secondly,* Coltana's citizens have the right to be protected regarding their personal information. Pursuant to Article 12 of the Universal Declaration[106] of Human Rights and the comments of the Human Rights Committee[107], everyone shall have the right to the protection of personal data and the gathering of information must be regulated by law and under the authority. It can be concluded that the act of OnionRing has breached this rule since the data

[105] *"The Parties commit to upholding and being bound by all relevant principles of human rights under international law"*

[106] Universal Declaration of Human Rights, Article 12: "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".

[107] Human Rights Committee, "the collection, storage, use and disclosure of personal information must be subject to safeguards to prevent abuse" and "the gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law."

was illegally collected and has never been properly informed to the authorities or the citizens of Claimant.

[117] To conclude, despite Claimant's complete compliance with the given agreement, Radostan had been consistently suspected of using OnionRing for unlawful purposes.

B. Even if the CCTA is void, both Parties still have to comply with the principles of human rights under international law.

[118] In the event that the CCTA is void, both Parties are still required to maintain their duty of complying with the principles of human rights

i. The human rights principles are universal and inalienable.

[119] Human rights are legal rights enshrined in the Universal Declaration of Human Rights; various human rights Covenants, Conventions, Treaties, and Declarations; Regional Charters; National Constitution and laws which are inherent in the very nature of the human person.

ii. States and other duty-bearers are accountable for the observance of human rights.

[120] Under international human rights law, States Parties have specific obligations to respect and fulfill the rights contained in the conventions[108]. Failure to perform these obligations constitutes a violation of such rights.

[121] The obligation to respect requires State Parties to refrain from interfering with the enjoyment of rights[109], demanding State Parties to take appropriate legislative, administrative, budgetary, judicial, and other measures toward the full realization of rights[110].

[108] UNDP Capacity Development Resource, 2006
[109] Ibid
[110] Ibid

[122] In this case, the right to be protected concerning the identifying data of Coltana's citizens was breached when OnionRing accessed and collected it illegally while both Parties bear the responsibility to take legislative measures to ensure and promote human rights, even if they are not bound by the agreed Treaties concerning human rights principles.

[123] States are obliged to move as expeditiously and effectively as possible toward the implementation of these obligations. The entire UN system — including the funds, programmes and specialized agencies — has a responsibility to support State Parties in these efforts, as stated in the International Covenant on Civil and Political Rights[111].

[124] **In conclusion**, even if the Court decides that the CCTA is void, it is undeniable that the duty of both Parties to comply with the human rights principles must be ensured, given their importance and universality.

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III. The CCTA is invalid since the use of personal data for political gain by the OnionRing proves to be unconscionable.

[125] Claimant respectfully requests that the Tribunal rule the process of obtaining personal data for political purposes of the OnionRing is against public policy **[A]**; and only Claimant shall have the authority to decide the management of data collected by OnionRing **[B]**.

A. The process of obtaining personal data for political purposes by OnionRing is against public policy.

[126] The collection of personal data from electorates in Coltana by OnionRing was done without the consent of the citizens, thereby proving the unreliability of the software.

[111] "States have to undertake steps, individually and through international assistance and cooperation, to the maximum of their available resources, with a view to progressively achieving the full realization of the rights recognized."

[127] *Firstly,* the act of OnionRing was done for unlawful purposes, considering the historical factor. Pursuant to Article 4 of the Personal Data Protection Bill 2019, *"No personal data shall be processed by any person, except for any specific, clear and lawful purpose".* In this dispute, it is suspected that OnionRing used the collected data to promote the OBH party to the voters, which would discredit Claimant.

[128] Given that Radostan had proven themselves as the prior supporter of the OBH party, but never published the collecting data process as well as its specifically legitimate purposes, there are reasonable doubts that OnionRing contributed to the disunity of Coltana's government system on behalf of Respondent.

[129] *Secondly,* the citizens were unaware of the OnionRing's act and had never expressed their agreement in the process. Article 11(1) of the Personal Data Protection Bill 2019[112] emphasizes the importance of the user's consent in the process of collecting their own data, notwithstanding any purposes that may be imposed.

[130] Cambridge Analytica[113] also shared some similar features with the case at hand, in particular, the US 2016 elections' heavy reliance on advertisement targeting and Cambridge Analytica's involvement in the political campaign. Two trials were held later on, and the violation of users' data privacy has been proven[114].

[131] Hence, it can be concluded that OnionRing has breached this rule and violated the rights of the users.

[112] "The personal data shall not be processed, except on the consent given by the data principal at the commencement of its processing"

[113] Charles University, Faculty of Social Sciences.

[114] Cambridge Analytica Administrative Complaint

B. Only Claimant shall have the authority to decide the management of data collected by OnionRing.

[132] Consistent with the mutual agreement, Claimant has shown credibility in ensuring that the obtained data is kept confidential and can only be accessed by the authorities for legal purposes[115]; however, the act of OnionRing has reversed the commitment of Ini-Tech and Respondent.

[133] Claimant is aware of Ini-tech's responsibility to comply with the rules of protecting personal data and has never used the data collected by OnionRing for other purposes other than detecting and countering terrorism, pursuant to Articles 4[116] and 6[117] of the Personal Data Protection Bill 2019.

[134] **In conclusion**, the act of OnionRing in directing advertisements supportive of the OBH party in general elections must be understood as a political gain, which sets the grounds for the invalidation of the CCTA.

CONCLUSION ISSUE THREE:

[135] The agreement between Claimant and Respondent should be concluded as void by the tribunal because the Respondent's act has been proven to be a violation of human rights concerning the illegal access and use of data from Claimant's citizens.

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[115] MP, page 16, ¶ 39

[116] Personal Data Protection Bill 2019, Article 4, *"No personal data shall be processed by any person, except for any specific, clear and lawful purpose".*

[117] Personal Data Protection Bill 2019, Article 6, *"The personal data shall be collected only to the extent that is necessary for the purposes of processing of such personal data".*

ISSUE FOUR: IF ISSUE III IS DECIDED IN THE NEGATIVE, THE TERMINATION OF THE CCTA BY CLAIMANT IS VALID

[136] In the event the CCTA is concluded to be valid, Claimant still further requests the Tribunal for its termination due to 'force majeure' circumstances and Respondent's violation of the agreement.

I. Regardless of the decision that CCTA is not void, the termination of CCTA is valid due to force majeure.

[137] It must be fully understood that a *force majeure* is an unexpected event that prevents a legal agreement from being conducted[118]. Force majeure frees both parties from obligation if an extraordinary event directly prevents one or both parties from performing.

[138] In this dispute, Claimant respectfully claims that the Bitcoin Robbery should be considered a force majeure according to Article 61 of the Vienna Convention, "A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty".

[139] According to Article 4 of the CCTA, Claimant shall make the payment in bitcoin without any substitute for this payment arrangement. In any case, Claimant shall not seek to alter or modify the payment terms set forth in this clause without the prior written consent of Respondent.

[140] Given that Bitcoin is a greatly influenced object in this case, the theft of 300 million bitcoin from Claimant's Bitcoin National Reserves must be regarded as a force majeure since Claimant lost their ability to fulfill their payment obligation for the service of OnionRing.

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[118] Cambridge Dictionary, Word Definition

II. The termination of CCTA is valid because Respondent has breached the agreement

[141] Respondent has breached the CCTA through the act of OnionRing, which contributed to the termination of the agreement.

[142] *Firstly,* pursuant to Article 60(1) of VCLT, "A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part."

[143] In this dispute, the involvement of the OnionRing in general elections has proven Respondent's unfulfilled obligations to protect data privacy, which tremendously violate human rights. Furthermore, if the Bitcoin robbery is successfully investigated, Claimant argues that the robbery was conducted for political goals and should be considered cyberterrorism. Thus, OnionRing must be pursued for the responsibility of the Respondent.

[144] *Secondly,* according to Article 62 of VCLT, a fundamental change in circumstances may be invoked as a ground for terminating or withdrawing from the treaty if those circumstances constitute an essential basis for the consent of the parties to be bound by the treaty. Claimant submits that the incident in the Ulavu Files has set out the grounds for a fundamental change as Respondent has raised doubts about conducting cyberterrorism; therefore, the Tribunal should also notice that the OnionRing's failure to prevent terrorism further strengthens the mentioned request by Claimant.

[145] **For all reasons mentioned**, Respondent has breached the main purpose of the agreement owing to OnionRing's unfulfilled duty of ensuring cybersecurity. Hence, the termination of the CCTA must be successfully concluded, regardless of its validity.

CONCLUSION ISSUE FOUR:

[146] Even if the CCTA is not void, the termination of the agreement still remains valid due to the unexpected situations that have prevented Claimant from fulfilling the responsibilities set out in the CCTA and the grounds breached by Respondent.

PRAYER FOR RELIEF:

Claimant respectfully requests the Tribunal to:

[1]. **DISMISS** Respondent's nomination of Olaf as an arbitrator due to its lack of independence and competence;

[2]. **DENY** Respondent's request to stay this arbitration since Anuwat's presence is not essential to ensuring the right to fair trial;

[3]. **DECLARE** that the CCTA is void and illegal in the current circumstances;

[4]. **CONFIRM** that the termination of CCTA is necessary regardless of the determination on its validity.