IN2301-R

MEMORIAL FOR RESPONDENT

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 10, 11, 12**
	British Arbitration Act 1996	**Article 9(1)**
CCTA	Coltana-Radostan Counter Terrorism Agreement	**Article 9**
	Indian Evidence Act 1872	**Article 60, 101, 118**
ICCPR	International Covenant on Civil and Political Rights	**Article 14**
	UNCITRAL Arbitration Rules (2010)	**Article 15**
	Rome Statute	**Article 66**
VCLT	Vienna Convention on the Law of Treaties	**Article 31, 42, 45, 48, 60, 61, 62**
	Human Rights Acts 1998	**Article 6**
	The Arbitration and Conciliation Act, 1996	**Article 12**

JUDICIAL DECISIONS:

Abbreviations	Citations	Para
South China Sea	The Republic of the Philippines v. The People's Republic of China in the matter of the South China Sea [2013], Award, PCA Case No 2013-19 [2016]	**¶¶ 409, 280**
Norton	Norton Rose Group LLP v Arthur Cox [2014]	
Readaptation	Readaptation of the Mavrommatis Jerusalem Concessions case [1927], PCIJ Series A. No 11 (220) [1927]	**Page 20,21,22,23**
Preah Vihear	The Temple of Preah Vihear (Cambodia v. Thailand) [1959] Judgment, Case No. 45, I.C.J. Reports [1962]	**Page 21, ¶¶ 23-32**
Seadrill	Seadrill Ghana Operations Ltd v Tullow Ghana Ltd [2018] EWHC 1640 (Comm)	**¶ 71**
King of Spain	The Arbitral Award made by the King of Spain (Honduras v. Nicaragua) [1906], I.C.J. Reports 1960	**¶¶ 213, 214**
Intertradex	Intertradex SA v Lesieur Tourteraux SARL [1978] EWCA Civ J0419-2 [1978]	

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

BOOKS:

Abbreviations	Citations	Page
Julian	Julian D. M. Lew, Loukas A. Mistelis, and Stefan M. Kröll, *The Law of International Commercial Arbitration* (1st edn, Wolters Kluwer 2001)	**Page 303**
Marta	Marta Infantino and others, *The Legal Status of AI-Generated Works: A Comparative Analysis* (2021)	**Page 12**
Born	Gary B. Born, *International Commercial Arbitration*,(2nd edn, Wolters Kluwer 2014)	**Page 1**
Bently	Bently Lionel and others, *Artificial Intelligence and Intellectual Property Law: A New Frontier* (2020)	**Page 32**

MISCELLANEOUS:

Abbreviations	Citations	Page
Cambridge Dic	Cambridge Dictionary, Word Definition	

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;

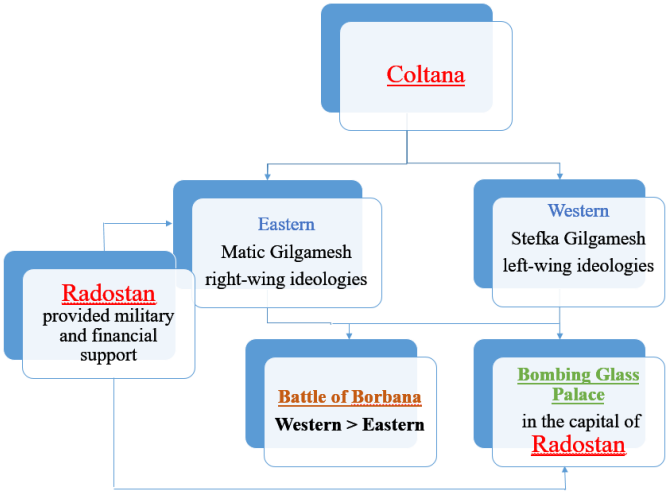
2. Whether the Arbitral Tribunal should stay the present proceedings until the conclusion of Anuwat's trial at the International Criminal Court;

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)	
	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 NOT BE REMOVED AS ARBITRATOR.

Claimant sought to challenge Olaf, an AI-powered intelligent lawyer, on the grounds of insufficient impartiality. Notwithstanding Claimant's effort to request Olaf's removal as an arbitrator, Respondent insists that Olaf should be found to retain jurisdiction over this case because Olaf possesses impartial and independent qualities as well as the necessary expertise to hear this dispute, and Claimant also lacks evidence to challenge the arbitrator's appointment.

[2] JURISDICTION: THE ARBITRAL TRIBUNAL SHOULD STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE INTERNATIONAL CRIMINAL COURT.

Respondent contends that the Arbitral Tribunal should stay the present proceedings to wait for Anuwat's trial conclusion in the ICC on two main grounds. First, the neglection of Anuwat as Respondent's witness would violate the right to a fair hearing. Second, the presence of Anuwat is fundamental, as it directly affects the outcome of the arbitration.

[3] MERITS: CCTA IS NOT VOID.

According to the Vienna Convention on the Law of Treaties of 1969 ("Vienna Convention"), whether the CCTA is void or not shall be decided only through the eight grounds mentioned from Article 46 to Article 53. Respondent respectfully submits that the CCTA is not void for two reasons. Firstly, the CCTA was signed in good faith. Secondly, Claimant has abandoned their rights to invoke a ground for invalidating a treaty.

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

Respondent still insists that the CCTA is not void, but even if the CCTA is void, Claimant still cannot invoke termination for two reasons. First, Claimant's request for the termination of CCTA based on insufficient grounds. Second, the Bitcoin Robbery cannot be invoked as a ground to terminate the CCTA under Articles 61 and 62 of the Vienna Convention.

PLEADINGS

PART ONE: JURISDICTION

ISSUE ONE. OLAF, AN AI-POWERED INTELLIGENT LAWYER, HAS FULL COMPETENCE AS AN ARBITRATOR WITH IMPARTIALITY

[1] Pursuant to the AIAC Arbitration Rules 2021[1], an arbitrator may only be challenged under two circumstances, including that there are justifiable doubts about the arbitrator's impartiality or independence *(i)* or that the arbitrator is deemed to not possess the requisite qualifications (*ii*).

[2] Respondent seeks to deny both cases regarding the competence of Olaf since The doubts about Olaf's impartiality and independence are based on insufficient grounds **[I.]**, Olaf has the full expertise of an arbitrator in the present proceedings **[II.]**, and Claimant lacks evidence to challenge the arbitrator's appointment **[III.].**

I. The doubts about Olaf's impartiality and independence are based on insufficient grounds

[3] It is argued by Respondent that Claimant lacks legitimate evidence regarding its challenge of Olaf's jurisdiction. First, Olaf has no relationship with any parties or relation to the subject-matter of the arbitration **[A.**]. Second, Olaf has no bias toward any parties **[B.]**. And lastly, Olaf has generally been considered impartial and independent **[C.].**

[1] AIAC Arbitration Rules 2021, Rule 11

A. Olaf has no relationship with any parties or relation to subject-matter of the arbitration

[4] Claimant may contend that there are justifiable doubts about Olaf's independence or impartiality on grounds of the Arbitration and Conciliation Act 1969, which requires the appointed arbitrator to disclose 'the existence either direct or indirect, of any past or present **relationship** with any of the parties, or in **relation to the subject-matter** in dispute, whether financial, business, professional, or other kind'[2].

i. Olaf has no personal or professional relationship with any of the parties to the arbitration

[5] However, Respondent argues that the application of the term 'relationship' is irrelevant in this context. Considering Olaf's characteristic as an AI-powered intelligent lawyer[3], the term 'relationship' in the given Act needs an appropriate interpretation **(a.)**, and Olaf is not capable of establishing real human-like relationships with any parties **(b.)**.

a. The ordinary meaning should be applied to interpret the term 'relationship' in this arbitration.

[6] Pursuant to the Vienna Convention 1969, a treaty shall be interpreted in good faith in accordance with the **ordinary meaning** to be given to the terms of the treaty in their context and in the light of its object and purpose[4].

[7] The application of ordinary meaning in treaty interpretation was heard in the *South China Sea Arbitration*[5] between the Philippines and China, in which the tribunal used the

[2] The Arbitration and Conciliation Act, 1996, Article 12 Grounds for challenge, ¶ 4.
[3] MP, page 6, ¶ 11
[4] Vienna Convention 1969, Article 31. General rule of interpretation
[5] South China Sea Award, page 181, ¶ 409

Oxford English Dictionary to detect the common sense meaning of the term ‘rocks’ used in Article 121(3)[6].

[8] In Coltana v. Radostan, the allegation that Olaf had a *relationship* with Respondent while standing as an arbitrator was based on a false assumption since the only connection maintained between Olaf and Respondent was an owner - intellectual product *relation.*

[9] To clarify, there are some distinct differences between *‘relationship’* and *‘relation’*. In the Cambridge Dictionary, *relationship* means the way in which two or more companies, countries, or people behave towards each other[7], while *relation* refers to the way in which two or more things are connected[8].

[10] *First, 'relationship'* indicates the informal, personal, or emotional type of connection between two or more entities, which is used more broadly and generally to describe the interactions between specific individuals or smaller groups[9].

[11] *Second, 'relation'* shows the connection between several people, countries, organizations, continents, *etc*., which is a formal kind of connection. It also refers to how things are connected or associated and to concepts or ideas[10].

[6] Ibid, ¶ 280
[7] Cambridge Dic
[8] Ibid.
[9] Emma Smith
[10] Ibid.

[12] To be more specific, the differences are presented in the following table:

Parameters of Comparison	**Relation**	**Relationship**
Definition	The association humans have with someone or something	The association or connection between people
Context	Formal	Informal
Connection with whom	Big groups such as countries, companies, etc.	Small groups
People	Used to compare or connect two people	Used to show how people are connected
Association	Between people as well as things	Between people

[13] Accordingly, the connection between Olaf and Respondent falls completely within the spectrum and category of *'relation'* interpretation.

b. Olaf is not capable of establishing real human-like relationships with any parties in the dispute.

[14] Olaf is an intelligent and independent AI lawyer and judge without the ability to acquire emotions or feelings, with "no emotions or feelings toward anyone"[11]. Therefore, it is incapable of building any type of personal or professional *relationship* with the parties in dispute.

[15] The only relation between Olaf and Respondent is that Olaf is an AI product under the management of Oracle Corp., based in Radostan[12].

ii. Olaf has no relation to the subject matter of this dispute.

[16] Despite having relations with Respondent, Olaf is free of any relation to the Coltana-Radostan Counter Terrorism Agreement ("CCTA"), whose validity is the merit of this dispute.

B. Olaf has no bias toward any of the parties to the arbitration.

[17] Olaf's representation of the cooperation between Claimant and Respondent through the Coltana-Radostan Memorandum of Understanding ("CRMOU") demonstrates its impartiality.

[18] Claimant's intellectual representative assisted in different stages of structuring Olaf, including the architectural design of its AI system, the data collection and analysis, and the legal training[13]. Thus, it is impermissible to affirm that Olaf is not an appropriate arbitrator due to its lack of impartiality when Respondent even granted Claimant access to Olaf's system for the sake of technology development and research implementation[14].

[11] MP, page 16, ¶ 42
[12] MP Corrections, page 3, ¶ 4
[13] MP, page 6, ¶ 11
[14] MP, page 6, ¶ 12

[19] For the record, Olaf has not breached any circumstances that may give rise to doubts of bias as an arbitrator.

[20] *First*, Olaf has *never expressed an opinion on the merits of the dispute*, which is the validity of CCTA before being appointed by Respondent.

[21] *Second*, Olaf has *no interest* granted by any parties in the outcome of the case since it has never disclosed any potential conflict of interest or taken steps to address any doubts raised by both parties before. Moreover, as an AI robot, Olaf is incapable of acquiring the same financial benefits as human arbitrators.

[22] **In conclusion**, regarding both Parties' contributions to the legal expertise employed by/ installed in Olaf and the allegation's lack of evidence, there are no grounds to assume that Olaf is biased towards any party in the present arbitration.

C. Olaf has generally been considered impartial and independent in previous legal settings, given that the existing circumstances leading to such allegations have been well refuted by Respondent.

[23] The success of previous proceedings with Olaf's contribution as a legal advisor and arbitrator[15] serves as a track record of its professionalism, integrity, and impartiality.

[24] In particular, Olaf had also counseled or arbitrated in complex international and domestic arbitrations on numerous occasions. Previously, Claimant's representative had approved the success of the Olaf project and even made plans to recognize Olaf as a super-intelligent human person in Coltana[16].

[15] MP, page 6, ¶ 12
[16] Ibid.

[25] Olaf has acted as one of the mediators in a dispute between two investment holding companies in Coltana[17]. There is no record of Olaf being previously challenged for bias, not to mention violating a ground for challenge in any other arbitration.

[26] On the other hand, the existing circumstances brought by Claimant to challenge the arbitrator's appointment have been thoroughly explained by Respondent. By making a refusal statement that Olaf's perspective on Radostan's legal system and policies is neither an exclusive privilege nor an extensively positive appraisal, Respondent has proactively sought to remove all allegations about Olaf's seemingly strange behavior on social media[18].

[27] Consequently, on behalf of the AI robot Olaf, Oracle Corp. has fulfilled the obligation to *disclose any circumstances giving rise to justifiable doubts* about its impartiality or independence.

II. Olaf has the full competence of an arbitrator in the present proceedings

[28] Respondent argues that Olaf has the full expertise of an arbitrator as it retains mandatory qualifications agreed to by the Parties **[A.]**, and AI technology is deemed to be more effective than human arbitrators in the present proceedings **[B.].**

A. Olaf possesses requisite expertise and qualifications agreed to by the Parties

[29] Olaf has met all requirements to be established as arbitrator in the given case, which were approved by both parties pursuant to Article 9 of the CCTA: "*The arbitrator shall: (a) be chosen strictly on the basis of objectivity, reliability, and sound judgment; (b) be independent of, and not be affiliated with or take instructions from, either Party; (c) not have dealt with the*

[17] MP Corrections, page 5, ¶ 13
[18] MP, page 7, ¶ 14

matter in any capacity; and (d) disclose to the Parties information which may give rise to justifiable doubts as to their independence or impartiality"[19].

[30] First, Olaf was chosen as a trustworthy and equitable arbitrator based 'strictly on the basis of objectivity, reliability, and sound judgment[20]'.

[31] With regards to the significant success of the Olaf Project 2015, Claimant's recognition of Olaf's qualifications has been displayed through its plans to acknowledge Olaf as a super-intelligent human person in an advanced robotic body[21].

[32] Olaf has been dubbed trustworthy by various media since it went into full operation[22], thereby having its ability to tackle legal issues verified by a vast amount of international communities, including Claimant.

[33] Furthermore, Olaf had also arbitrated in previous cases without causing any controversy or damage[23]. Like human beings, AI can also learn from acquired experience to make sound judgments.

[34] Olaf is proven to be *'independent of, and not be affiliated with or take instructions from, either Party'* as it is totally independent in its viewpoints. Olaf is programmed to continuously self-learn and improve over time and consequently become capable of publishing its own legal insights[24].

[19] CCTA, Article 9 – Establishment of Arbitral Tribunal
[20] AIAC Rules 2021, Rules 10, 11, 12
[21] MP, Page 6, ¶ 11
[22] MP, Page 6, ¶ 12
[23] Ibid.
[24] MP, Page 6, ¶ 13

[35] Olaf has never handled disputes between Claimant and Respondent or been involved in the argument of CCTA's validity[25], which meets the arbitrator requirement to '*not have dealt with the matter in any capacity'.*

[36] When Olaf was being reported to oversupport Respondent's legal policies, CEO Neutrain had proactively *'disclosed to the Parties information which may give rise to justifiable doubt'* that *"Olaf saying nice things about Radostan does not automatically make it pro-Radostan. He has, in other instances, complimented other policies introduced by other nations"*[26].

B. AI technology is deemed to be more effective than human arbitrator in the present proceedings, thereby making Olaf the most suitable choice of arbitrator.

i. The appointment of human arbitrators is susceptible to a number of disadvantages.

[37] Human arbitrators are susceptible to the same biases and subjectivities, such as personal beliefs, values, and experiences, rather than being based purely on the facts and the law[27].

[38] The use of human arbitrators can be expensive and time-consuming, particularly in such complex or high-stakes disputes as in this case.

[39] As human arbitrators are individuals with their own unique perspectives and experiences, a lack of consistency in their decisions can lead to challenges to the legitimacy of the arbitration process[28].

[25] MP Corrections, page 5, ¶ 13
[26] MP Corrections, page 7, ¶ 14
[27] Julian, p. 303
[28] Born, page 1

ii. The great advantages of using an AI arbitrator in the present arbitration establish Olaf as the best fit for the position.

[40] First, AI arbitrators are filtered from partiality due to the absence of personal relationships with the parties to the arbitration. As they are not influenced by one party's beliefs or interests, their fair decisions are more likely to be made purely on facts and legal basis, an advantage Olaf has that human arbitrators do not possess[29].

[41] Second, AI arbitrators' productivity proves to be valuable as they can analyze a vast amount of data much faster than human arbitrators, which is a vital requirement for accurate legal arguments and informed decisions, especially with the voluminous evidence and documents to be examined.

[42] Third, machine learning allows AI arbitrators to adapt better to the governing laws and regulations, along with the specific needs of different parties. As Olaf continuously receives legal expertise and training from Claimant[30], it serves as the best option to handle the complexity of the present proceedings.

iii. Olaf has copyrights over its publications under Intellectual Property Law ("IPL") and thus qualifies as arbitrator.

[43] Since English courts have yet to distinguish between AI-generated works and those AI works as a tool for human authorship under IPL[31], Olaf shall have ownership over its publications.

[44] To support this claim, if the AI was created by a human and the human author died

[29] MP, page 16, ¶ 42
[30] MP, page 6, ¶ 11
[31] Marta, page 12

without making any arrangements for the ownership of the AI's output, then it is possible that the AI could be considered the owner of its own output[32]. Thus, Olaf shall have ownership over its legal output after the AI author passes away, which is completely independent subject matter from Ini-Tech and Respondent.

[45] Olaf, a good AI product in the legal field, is protected by copyrights[33] under IPL. With regards to its legal publications, Olaf's machine learning process was taken care of by Claimant's delegations; therefore, Respondent does not have responsibilities over its output.

[46] Thus, Claimant cannot invoke Olaf as an incompetent arbitrator.

III. Claimant's accusations lack grounds to challenge the arbitrator's appointment.

A. The given agreement ("CCTA") does not provide a clear mechanism for removal or disqualification of an arbitrator.

[47] Considering that the CCTA lacks a specific and clear mechanism for challenging or removing an arbitrator appointed by one Party, both Parties are required to discuss and reach a conclusion on the procedures for doing so before the commencement of the challenge.

B. Claimant failed to disclose the burden of proof as to why Olaf could not determine the present case.

[48] Coltana requests to challenge Olaf's jurisdiction on the basis of existing circumstances[34] indicating that Olaf could not determine the present case independently and impartially. However, it failed to provide legitimate evidence of Olaf's involvement in such

[32] Bently, page 32
[33] Ibid., page 29
[34] AIAC Rules 2021, Rule 11: ""*A Party may challenge an arbitrator... if a Party is aware of existing circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence*."

circumstances, given that Respondent has shed light on Olaf's previous scandal on social media.

C. Even if Claimant could disclose evidence of Olaf's involvement in existing circumstances, Olaf cannot be removed.

[49] On the other hand, the arbitrator's previous involvement with the case did not mean that he could not be impartial in arbitrating a dispute. In *Norton*[35], the High English Court held that an arbitrator was qualified to hear a dispute even though he had previously acted for one of the parties to the dispute.

CONCLUSION ISSUE ONE:

[50] As proven above, Olaf should not be removed as Respondent's arbitrator since it possesses impartial and independent qualities as well as the necessary expertise to hear this dispute.

[35] Norton Rose Group LLP v Arthur Cox (2014)

ISSUE TWO: THE ARBITRAL TRIBUNAL SHOULD STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE INTERNATIONAL CRIMINAL COURT

[51] Respondent respectfully claims that the Arbitral Tribunal should stay the present proceedings until the conclusion of Anuwat's trial at the International Criminal Court ("ICC") because the neglection of Anuwat as Respondent's witness would violate the right to a fair hearing **[I.]**; and the presence of Anuwat is fundamental as it directly affects the outcome of the arbitration **[II.]**.

I. The neglect of Anuwat as witness presented by Respondent would violate its right to a fair hearing.

[52] Claimant's objection to waiting for the conclusion of Anuwat's trial at the ICC will violate Respondent's legitimate rights for two reasons. First, Claimant has breached British common law **[A.]**. Second, the presence of Anuwat in the AIAC's proceeding is mandatory to ensure his own witness rights and Respondent's right to fair hearings **[B.]**.

A. Claimant's opposition has breached British common law, which is adopted by both Parties as their legal system.

i. Anuwat shall remain innocent until the decision of the ICC Court is made

[53] It is evident that both parties adopt British common law as their legal system[36]. Therefore, they inherit basic characteristics based on legal norms in British law. In light of the

[36] Moot Problem, pages 1, ¶¶ 2, 4

Human Rights Act 1998, the tribunal should consider that Anuwat shall remain innocent until the decision of the ICC[37].

[54] Specifically, pursuant to Article 6 of the Human Rights Act 1998, *"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".* In the event the ICC hasn't reached a conclusion, it may be mistakenly assumed that Anuwat is guilty of supporting cyberwar crimes, and his right to be presented as a witness may be dismissed.

[55] Therefore, only by relying on the ICC's verdict can the tribunal decide the credibility and reliability of Anuwat's testimony.

ii. The tribunal should stay the proceedings as Claimant has the duty to follow the rules of British common law.

[56] Respondent respectfully claims that the tribunal should apply British law regulations to address the duties of Claimant.

[57] *Firstly,* Respondent asserts that it has the right to request a stay of the proceedings, which should be considered by the tribunal. Pursuant to the British Arbitration Act 1996, a party to an arbitration agreement may apply to the court in which the proceedings have been brought to stay the proceedings so far as they concern that matter[38].

[58] Accordingly, the tribunal should recognize the matter, which was raised by Respondent upon arbitration agreement, and stay the proceedings due to the rationality of resolving the case.

[37] Human Rights Act 1998, Article 6
[38] British Arbitration Act 1996, Article 9(1)

[59] *Secondly*, Article 9(4) of the British Arbitration Act, *"On an application under this section, the court shall grant a stay unless satisfied that the arbitration agreement is null and void"*, can be interpreted to mean that the request to stay arbitration proceedings cannot be neglected by Claimant and the tribunal since the merits of this dispute haven't yet been established as null and void.

B. The presence of Anuwat in the AIAC's proceedings is mandatory to ensure his inherent rights as a witness and Respondent's right to fair hearings.

i. Anuwat's right to be presented as a witness is recognized in international law principles.

[60] The right to testify as a witness must be considered fundamental, as it is acknowledged in various international treaties between State members. In this case, the tribunal should sustain the incivility of Anuwat as it ensures the Respondent's right to fair hearings.

[61] *Firstly*, Respondent shall have equal rights with Claimant in representing witnesses pursuant to Article 14(1) of the International Covenant on Civil and Political Rights, *"All persons shall be equal before the courts and tribunals".* If Anuwat's valuable testimony is not presented before the tribunal, this rule might be violated. Thus, the right to represent a witness must be ensured by the tribunal to create a fair trial for both Parties.

[62] *Secondly*, given that both parties have displayed consent in the dispute resolution institution of AIAC[39], tribunal should stay the proceedings to comply with Rule 27(2) of AIAC Rules[40]. In this rule, all the witnesses *"may be called"* to present regardless of their relations to a Party.

[39] CCTA, Article 8

[40] *"Witnesses, including expert witnesses, who are presented by the Parties to testify on any issue of fact or expertise in the arbitral proceedings may be called, notwithstanding the witness being a Party to the arbitration or in any way related to a Party, subject to any requirements of independence for expert witnesses that the Parties may agree to or the Arbitral Tribunal may impose."*

[63] For further support, under Rule 28(1) of AIAC, *"Upon the request of a Party and at an appropriate stage of the proceedings, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses",* the tribunal must notice the parties' right to request the presentation of evidence by witnesses, ensuring the fair trial of Respondent.

[64] Therefore, Respondent argues that Anuwat must also be considered a witness in this dispute, and his testimony shall be thoroughly examined by the tribunal.

[65] *Thirdly,* the tribunal should recognize the protected right of a Party to present any witnesses that it may find potential and useful pursuant to Article 4(2) of IBA Rules[41] on the taking of evidence in international arbitration. Accordingly, a Party to an international arbitration may have the right to call any witness it wishes to present evidence, which is applicable for Anuwat as Respondent's witness.

[66] Furthermore, Article 4(3) of the same Rule can be understood to mean that a Party may have the right to discuss the testimony with witnesses prior to trial[42]. In Coltana v. Radostan, Respondent encountered limitations in discussing the testimony with Anuwat due to his capture[43]. Hence, it is reasonable for the tribunal to decide on a stay to ensure Respondent's right to communicate with its potential witness.

ii. The tribunal must acknowledge Anuwat's unavailability to testify as a witness in the present arbitration.

[67] Anuwat's availability to testify and ability to make legal statements are greatly impacted based on the duration of the arrest and the serious nature of Ulavu's cybercrime.

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[41] *"Any person may present evidence as a witness, including a Party or a Party's officer, employee or other representative"*
[42] IBA Guidelines, Article 4(3)
[43] MP, page 15, ¶ 35

[68] According to the Explanatory Note to the UNCITRAL Expedited Arbitration Rules, unless otherwise directed by the arbitral tribunal, statements by witnesses shall be presented in writing and signed by them.[44]

[69] Pursuant to AIAC Rules, witnesses may be heard and examined under the conditions set out by the Arbitral Tribunal[45]. Should Anuwat be in custody in solitary confinement and unable to participate in the proceedings, it is impossible for him to testify as a witness in the present proceedings.

[70] On the other hand, Anuwat still maintains legal rights as an arrested witness, such as the right to remain silent or to seek legal representation[46]. These rights may affect his willingness or ability to testify.

iii. Respondent possesses the right to appeal the case to a higher Court.

[71] In the event that Anuwat cannot be present at AIAC proceedings, Respondent retains full right to appeal the case's outcome to the higher Courts of the European Court of Justice ("ECJ") to protect the principle of right and fair trial, or the European Court of Human Rights ("ECHR") to protect Anuwat's rights as a witness, given that both Parties are governed by the British common law system.

[72] Thus, Respondent respectfully requests to stay the proceedings to prevent potential procedure fees and loss of time for both parties.

[44] Explanatory Note to the UNCITRAL Expedited Arbitration Rules, Article 15 (Para. 2)
[45] AIAC Rules, Article 28 (Para. 4)
[46] Right to legal advice and Privilege Against Self-Incrimination

II. The presence of Anuwat is fundamental, as it directly affects the outcome of the arbitration.

[73] Respondent insists on Anuwat's presence at the AIAC arbitration since he must be considered a key witness **[A.]**; and his testimony is relevant and reliable to the fair conclusion of the tribunal **[B.].**

A. Anuwat has full capacity to testify and must be considered a key witness.

i. Regardless of Anuwat's arrest, his capacity to give testimony has been demonstrated.

[74] Despite being arrested by the ICC, Respondent respectfully requests the Tribunal not to ignore Anuwat's competency in presenting testimony.

[75] Pursuant to the Indian Evidence Act 1872, all persons must be recognized as competent and have full capacity to present their evidence, except individuals incompetent in years of experience or experiencing *force majeure*[47]. Anuwat isn't included in the exceptions to this rule, and thus his competence in giving testimony isn't affected.

[76] Furthermore, the testimony of Anuwat will ensure the decency of the facts submitted to the tribunal. According to Article 123 of the same Act, *"No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State"*. This rule is applicable in this case, as the unrevealed knowledge of Anuwat is essential to proving the contradiction to reports leaked by the CCRP in the Ulavu Files.

[47] Indian Evidence Act 1872, Article 118

ii. Regarding the importance of the facts given by Anuwat, he must be recognized as a key witness in the case.

[77] *First*, Anuwat specific facts and issues that are central to the arbitration proceedings possesses specific knowledge of the facts due to his heavy involvement in the operation of OnionRing. Given that Anuwat participated in the meeting between both parties' authorities on the establishment of CCTA, and proposed the initiative of OnionRing[48], he has acquired firsthand experience related to the dispute.

[78] *Second*, Anuwat's testimony has a significant impact on the case's outcome due to his exclusive evidence on the corruption allegations of senior DPP politicians based on Claimant's significant amount of bitcoin expenditure[49], which cannot be submitted by any other witnesses.

B. The testimony of Anuwat is relevant and reliable for the fair conclusion of the tribunal

i. The testimony of Anuwat must be acknowledged as relevant evidence

[79] Based on Anuwat's and Respondent's rights proven in Section I, Respondent claims that the testimony of Anuwat must be recognized as relevant and essential evidence in the case.

[80] *Firstly,* Anuwat's testimony shall be regarded as evidence required to determine the relevancy of the given facts. Article 5 of the Indian Evidence Act 1872, *"Evidence may be given in any suit or proceeding of the existence of non-existence of every fact in issue"*, indicates that notwithstanding the proceedings, the witness may present evidence as to the existence or non-existence of any relevant facts.

[48] MP, page 9, ¶¶ 22, 23
[49] MP, page 16, ¶ 39

[81] The testimony of Anuwat shall prove the existence or non-existence of specific facts that contribute to the conclusion of the tribunal on the similarity between Ulavu Files and OnionRing and the allegations of OnionRing and Ini-Tech.

[82] *Secondly*, the testimony of Anuwat must be considered oral evidence and directly conducted pursuant to Article 60 of the same Act, *"Oral evidence must, in all cases whatever, be direct".*

[83] Furthermore, if any facts have different ways of being understood, a witness may present evidence to prove his understanding[50]. Regarding Ini-Tech's allegations of wrongdoing in enforcing the CCTA made by Claimant, Respondent insists that Anuwat's presence and evidence shall verify the distinction between the Ulavu website and OnionRing.

ii. The reliability of Anuwat's testimony ensures the fair decision of the tribunal

[84] *Firstly*, the duty to prove the credibility of the decisive facts in the case is placed upon Anuwat and Respondent pursuant to Article 101 of the Indian Evidence Act 1872. This rule specified that if any facts are raised in the case, the person who brings them up must be responsible for giving evidence to prove the liability of those facts[51].

[85] As Respondent has previously claimed to deny its connection to the Ulavu Files, the evidence directly-presented by Anuwat shall be mandatory for the tribunal to decide the case's outcome. Thus, the burden on Anuwat to prove his claims before the tribunal should be recognized.

[86] *Secondly*, the tribunal shall regard the proof provided by Anuwat as essential evidence for fairness between parties, as Anuwat's testimony is beneficial for Respondent. As mentioned

[50] Indian Evidence Act 1872, Article 60
[51] Indian Evidence Act 1872, Article 101

in Article 102, "*the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side",* which can be applied in the case at hand as Anuwat's testimony is the utmost element of Respondent's argument against the termination of CCTA invoked by Claimant.

[87] Therefore, the neglect of Anuwat's testimony shall affect Respondent's ability to prove its arguments and thus result in an undesirably insufficient outcome of the case.

[88] *Thirdly,* only Anuwat has firsthand knowledge of Ini-Tech's operation as proven in Section [A.]; consequently, he bears the responsibility of proving his involvement in the dispute pursuant to Article 106 of the Indian Evidence Act 1872, *"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him"*.

CONCLUSION ISSUE TWO:

[89] With due respect to a fair conclusion to the outcome of the case, Respondent respectfully pleads for the tribunal's recognition of Anuwat as a key witness and the right to represent him for relevant and reliable evidence.

PART TWO: MERITS

ISSUE THREE: CCTA IS NOT VOID

[90] According to the Vienna Convention on the Law of Treaties of 1969 ("Vienna Convention"), whether the CCTA is void or not shall be decided only through the eight grounds mentioned from Article 46 to Article 53[52], including The treaty obligation's violation of one party's internal law (i); Parties' prior agreement on restriction to consent expression (ii); The existence of error (iii); Fraud (iv); Direct or indirect corruption of one party's representative (v); Consent obtained by actions of threats to delegates (vi); Threats or use of force (vii); and The conflict with a peremptory norm of international law "*jus cogen*" (viii).

[91] Respondent respectfully submits that the CCTA is not void for two reasons. Firstly, the CCTA was signed in good faith **[I]**. Secondly, Claimant has abandoned their rights to invoke a ground for invalidating a treaty **[II]**.

I. CCTA was signed in good faith of both Parties without the existence of any errors

[92] Pursuant to Article 48 of the Vienna Convention, there are two fundamental grounds for Claimant to invoke an error as the invalidation of its consent to be bound by the CCTA, the first is that the error has to be related to a fact or circumstance that was assumed to exist at the time the treaty was signed and the second is that such an error served as a fundamental justification for the Claimant's permission to be bound by the CCTA.

[52] Vienna Convention, Article 42

[93] The CCTA does not belong to the grounds claiming a bilateral treaty to be void as mentioned in the Vienna Convention since there were not any errors to invoke a ground for invalidation and the CCTA was signed under good circumstances.

[94] Respondent thereby seeks to prove that Article 48 cannot be invoked to nullify the CCTA's obligations on both Parties as the Ulavu Files cannot be seen as an existent error **[A]**, Claimant's consent upon signing the CCTA arises from the urgent situation of cyber safety **[B]**, and Claimant contributed to the error by its own negligence **[C]**.

A. Ulavu Files cannot be considered an existing error upon the establishment of the CCTA

i. The Ulavu Files Scandal isn't an existing error since the case has not been decided for the time being.

[95] Respondent respectfully requests the Tribunal to ensure the right to a fair trial, specifically the presumption of innocence, which is mentioned in the Human Rights Act 1988, Article 6(2); ICCPR Article 14(2) and Rome Statute Article 66 as every person should be presumed innocent unless and until proven guilty.

[96] Respondent submits that only upon both Parties's agreement to amend Article 4 in the CCTA was the Ulavu Files crisis revealed, in which Anuwat was arrested due to an allegation of conducting cybercrimes in Ulavu. But Ulavu Files and Anuwat have not been proven guilty, therefore, Anuwat and Ulavu Files are still innocent.

[97] Consequently, Anuwat and Ulavu Files could not be seen as an error in this dispute and did not cast any unconscious doubt on the validity of the CCTA.

ii. The Ulavu Files crisis did not relate to this dispute on OnionRing.

[98] In the case *Readaptation*[53], which has the same situation with the case at hand, it was held that an error in a matter not constituting a condition of the agreement would not be sufficient to invalidate the consent of a state to be bound to a treaty.

[99] Respondent acknowledged that the crisis in Ulavu did not relate to the OnionRing dispute. The similar technical features between the Ulavu software and OnionRing are indicated in a CCRP report[54]. Nevertheless, CCRP in fact did not have any legal binding, and the Home Minister of Ulavu also stated that the reports were not compelling but mere conjecture[55]. Therefore, there was not any clear evidence to prove that Ulavu Files and OnionRing shared the same features.

[100] Moreover, Ulavu Files and OnionRing have different purposes in their applications. The OnionRing was launched due to the desire and urgency of Coltana to prevent terrorist attacks and cyberattacks, while the Ulavu software's purposes were not appropriately mentioned. Even if such software is alleged to be related to AWS in Ulavu's armed conflict, adequate evidence hasn't been established for the Supreme Court to make a decision.

[101] **In conclusion**, Anuwat has not been impeached as guilty for the cybercrime in Ulavu Files, and OnionRing was also independent of Ulavu software; therefore, in any event, Ulavu Files cannot be invoked as an error to invalidate the CCTA.

[53] Readaptation, pages 20,21,22,23
[54] MP, page 15, ¶ 37
[55] Ibid

iii. Ulavu Files was not the single most effective reason for Coltana to invalidate the effect of CCTA.

[102] In *Seadrill*[56], the event alone was not the entire reason for the moratorium because of the government's failure to approve the drilling plan in Greater Jubilee, another existing cause. Accordingly, the tribunal should consider that if the event alone was not the sole reason, it cannot be invoked for the invalidation.

[103] In the case at hand, Respondent argues that Claimant's challenge of CCTA's validation isn't only based on the grounds of the Ulavu Files crisis but rather on the Bitcoin Robbery incident to cease the payment amendment negotiation with Respondent. Thus, the Ulavu Files crisis was not the biggest and most important reason for Claimant to invalidate the binding of the CCTA.

[104] All in all, Respondent submits that Claimant could not take advantage of one contributing reason, the Ulavu case, regardless of any other reasons, to insist that the CCTA is void.

B. The essential basis of Claimant's consent upon signing the CCTA arises from the urgent situation of cyber safety.

[105] Due to the cyber-attacks in Coltana, which resulted in a major blow to its national security and economy[57]. President Lalan had to face public chaos[58] and sought Respondent's support to discuss a solution to prevent potential cyberattacks and terrorist attacks. Therefore,

[56] *Seadrill*, ¶ 71
[57] MP, page 9, ¶ 21
[58] Ibid

the CCTA was conducted as a bilateral agreement between State parties to combat terrorism and other transnational threats[59].

[106] Claimant's consent was also demonstrated by their commitment to finding a way to amend the CCTA when the Bitcoin Robbery emerged[60], and their recognition of OnionRing's success in detecting and preventing crimes such as terrorist attacks and cyber-attacks in Coltana[61].

[107] Hence, CCTA was conducted as an interim measure for Claimant to prevent cyber-attacks in their country and thus displays Claimant's full consent to be bound.

C. Claimant contributed to the error by its own negligence.

[108] The error made by the parties upon signing the agreement stems from the fact that the profile of Mr. Anuwat, CEO of Ini-Tech, has not been thoroughly reviewed by the respective authorities in Coltana. Pursuant to Article 48(3), "*if the State in question contributed by its own conduct to the error or if the circumstances were such as to put that State on notice of a possible error*", Claimant cannot invoke an error with their own contribution as a ground to invalidate the treaty.

[109] To support this argument, in *Preah Vihear*[62], exceptions for the application of error to invalidate a treaty are provided as *"if the party advances it contributed by its own conduct to the error, or could have avoided it, or if the circumstances were such as to put that party on notice of a possible error."*

[59] MP, page 9, ¶22
[60] MP, page 14, ¶33
[61] Ibid
[62] Preah Vihear, page 21

[110] In the case at hand, first, Claimant could have easily detected the relations between Ulavu Files and Anuwat had they thoroughly reviewed his profile. Second, doing a trial run of the software before launch was neglected by Claimant due to the political urgency of the elections[63].

[111] To conclude, due to Coltana's negligence in the establishment process of the CCTA, they cannot invoke this ground to nullify the CCTA's validation for *allegans contraria non audiendus esi.*

II. Claimant has no right to invoke a ground for CCTA's invalidation due to the extension of OnionRing's service.

[112] According to Article 45(b) of the Vienna Convention, a state may lose a right to invoke a ground for invalidating a treaty under Articles 46 to 50 if, after becoming aware of circumstances, their conduct is still considered to have acquiesced in the validity of the treaty or in its maintenance in force or operation.

[113] The principle that a party cannot profit from its own inconsistencies is founded on integrity and equity *(allegans contraria non audiendus esi*). This principle's importance in international law is widely accepted and it has been explicitly confirmed by the International Court of Justice in two recent cases[64].

[114] As stated, Claimant has access to all the evidence regarding OnionRing's allegations but decided to retain the service for further investigation[65]. Consequently, Claimant's

[63] MP, page 10, ¶24
[64] King of Spain, ¶¶ 213 and 214; Preah Vihear, ¶¶ 23-32.
[65] MP, page 16, ¶40

continuous use and possession of the OnionRing software would contravene its own request for invalidation of the agreement[66].

[115] Therefore, Respondent contends that Claimant has exploited OnionRing's service at the expense of their right to invoke a ground for invalidating the CCTA.

CONCLUSION ISSUE THREE:

[116] Respondent respectfully argues that the CCTA is not null and void. First and foremost, the CCTA was signed in good faith. Second, the Claimant has waived their ability to invoke a cause for treaty invalidation.

[66] MP page 17, ¶44

ISSUE FOUR: EVEN IF THE CCTA IS VOID, ITS TERMINATION BY CLAIMANT IS INVALID

[117] In the event that the CCTA is void, Claimant still cannot terminate it since their request for the termination of the CCTA is based on insufficient grounds **[I.]** and the Bitcoin Robbery cannot be invoked as a ground to terminate the CCTA under Article 61 and Article 62 of the Vienna Convention **[II.].**

I. Claimant's request for the termination of CCTA based on insufficient grounds

[118] Respondent submits that Claimant cannot request the termination of CCTA for the following reasons, Claimant did not stop using OnionRing's service **[A.]** and Respondent retains exclusive rights to the termination of CCTA **[B.].**

A. Claimant could not invoke any grounds for CCTA's termination since they did not terminate OnionRing's service.

[119] As proven in Issue 3, Respondent's refutation of Claimant's request to acknowledge CCTA as void due to their extension of OnionRing service can be automatically extended to the decision on CCTA's termination, regardless of its validity, under Articles 61 and 62 of Vienna Convention.

[120] Therefore, Coltana's conduct can also be termed reckless abandonment of their right to invoke a ground for terminating CCTA, regardless of Anuwat's charges.

B. Respondent retains exclusive rights to the termination of CCTA.

[121] According to Article 60(1) of the Vienna Convention on Termination or Suspension of the Operation of a Treaty as a Consequence of its Breach, Respondent respectfully submits that Claimant has no rights to terminate the CCTA, and such rights belong to Respondent. This is

based on Claimant's "material breach" of a provision essential to the accomplishment of the object or purpose of the treaty, which is the payment article in the CCTA.

[122] Pursuant to Article 60(1) and Article 60(3), the "material beach" in this dispute is not making a mandatory payment since such payment is the main obligation of Claimant and the foundation for both Parties to continue the service of OnionRing as well as the CCTA.

[123] According to Article 4(iv) of the CCTA on Late Payment, if Coltana fails to make any of the payments, Radostan shall be entitled to pursue all available remedies under law or equity, including but not limited to the right to terminate any agreement between the parties.

[124] Considering that Claimant isn't capable of fulfilling its payment obligation for Radostan[67], Claimant's late payment is acknowledged, and thus, the rights to terminate the agreement belong to Respondent.

II. The Bitcoin Robbery cannot be invoked as a ground to terminate CCTA under Articles 61 and 62 of Vienna Convention.

A. The Bitcoin Robbery that led to Claimant's inability to finance the software should be considered their own fault.

[125] Article 61(2) and Article 62(2)(b) of the Vienna Convention state that a Party cannot invoke the impossibility of performance or fundamental change as a ground for terminating an agreement if it is a result of a breach by that party of any obligation under the treaty.

[126] Respondent contends that such an impossibility to finance the services under CCTA was Claimant's fault due to their own negligence and incompetence. The large amount of Bitcoins kept and stored by the Coltana National Bank (CNB), an institution that requires

[67] MP, page 14, ¶ 33

security at the highest level, was completely stolen overnight. Therefore, Claimant should take responsibility for not protecting their own possessions properly.

[127] To conclude, Coltana cannot invoke such grounds of impossible performance in the case at hand since they resulted from the lack of government protection for CNB in general and for Bitcoin Reservations in particular.

B. Claimant's impossibility to finance the software is not permanent

[128] According to Article 61(1), if the impossibility is temporary, the party has the right to suspend the operation of the treaty but not terminate it. In this dispute, Respondent respectfully submits that Claimant's impossibility for payment performance was temporary because Coltana definitely has other available means to finance the software **[i.]** and Respondent is willing to adapt to Claimant's amendment for payment methods **[ii.]**.

i. Coltana definitely has other available means to finance the software

[129] Notwithstanding the fact that the Bitcoin Robbery will definitely affect Claimant's financial situation, President Lalan used to express confidence that Coltana would be able to find other means to finance the software. It could be understood that there are many other available means to solve this crisis.

[130] Moreover, according to the fact that Coltana has a GDP of USD 505 billion and its economy is also supported by many different fields[68], Claimant definitely has enough resources to finance the remaining sum.

[68] MP, page 3, ¶ 2

[131] All in all, Bitcoin Robbery was definitely not a permanent situation for Claimant to invoke the termination of CCTA.

ii. Respondent is willing to adapt to Claimant's amendment; therefore, lack of payment method cannot constitute a reason for Claimant to terminate the CCTA

[132] Upon the Bitcoin Robbery, Respondent has, in good faith, made way to negotiate the amendment of payment methods; however, Claimant has breached the agreement and ceased all the negotiation sessions.

[133] Therefore, the faults belong to Claimant and they have waived their right to invoke any grounds for terminating the agreement.

C. There are not any fundamental circumstances changes during the operation of the CCTA.

[134] Respondent regardfully submits that Arbitral Tribunal should consider *Seadrill* case and neglect Claimant's request for the CCTA's termination on grounds of *"force majeure"* event, as Bitcoin Robbery is not the most single and sole effective ground to invoke for terminating CCTA **[i.]** and Claimant hasn't displayed its utmost capacity to prevent the cancellation of CCTA **[ii.]**.

i. Bitcoin Robbery was not the sole effective ground for Claimant to terminate CCTA.

[135] In *Seadrill*[69], upon the request to enforce "termination for convenience" due to "force majeure", the Court recognized that such an occurrence was not the only cause of the

[69] *Seadrill*, ¶71

moratorium because another cause was operating, relying on the principle held in *Intertradex* that 'force majeure' was not the sole effective cause preventing performance.[70]

[136] As proven above, Claimant has the full capability to continue to finance this software through other methods.

[137] Furthermore, reflecting on the economic situation during Covid-19 pandemic, the world's BITs were not terminated for any reason despite the economic depression. Thus, CCTA shouldn't be terminated under any circumstances.

[138] **To conclude**, Bitcoin Robbery cannot be regarded as the sole effective circumstance to terminate the CCTA.

ii. Claimant hasn't displayed its utmost capacity to prevent the cancellation of CCTA.

[139] In *Seadrill*[71], the Court also held that even if the prosecutor could show causation to the event, it would have failed to prove that the Defendant had taken all reasonable steps to prevent the *force majeure* from taking place.

[140] The case at hand shows that when the Bitcoin Robbery emerged, Claimant hadn't displayed its capacity to prevent such incidents. Upon the robbery, Claimant only announced the investigation's commencement instead of contemplating other solutions to retrieve it by legal or technical methods.

[141] Claimant respectfully requests that the Arbitral Tribunal grant a decision for the agreement to remain in force since Claimant has not upheld their end of the bargain.

[70] Ibid
[71] Ibid

CONCLUSION ISSUE FOUR:

[142] In the contrary event, Claimant still cannot seek termination for the CCTA as Claimant's request is based on insufficient evidence and the Bitcoin Robbery cannot be applied to terminate the CCTA under the Vienna Convention.

PRAYER FOR RELIEF

Respondent respectfully requests the Tribunal to:

[1]. **ALLOW** Olaf to arbitrate this dispute given its full expertise and competence regarding the legal issue;

[2]. **DECLARE** the present proceedings to stay for the decision of Anuwat's case at the ICC Court to protect his rights as a key witness;

[3.] **DISMISS** Claimant's request to acknowledge the CCTA as void;

[4.] **DECLINE** grounds for the termination of CCTA as Claimant still retains the ability to fulfill payment obligations for OnionRing's service.