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ASIAN INTERNATIONAL ARBITRATION CENTRE

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The OnionRing Software

MEMORIAL FOR CLAINMANT

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LIST OF ABBREVIATIONS

List Abbreviation	Description
AI	Artificial Intelligence.
AIAC Rules 2021	International Arbitration Centre Arbitration Rules 2021.
ATT	The Arms Trade Treaty 2013.
AWS	Autonomous Weapons Systems.
CCRP	Crime and Corruption Reporting Project.
CCTA	The Coltana-Radostan Counter Terrorism Agreement.
CCTVs	Closed-circuit television.
CEO	Chief Executive Officer.
CNB	Coltana National Bank.
CRMOU	Coltana- Radostan Memorandum of Understanding.
DOJ	The Department of Justice of the United States of Kola Lumpo.
DPP	Democratic Progressive Party.
ICC	International Criminal Court.
ICCPR	International Convention on Civil and Political Right.
ICESCR	International Convenant on Economic, social and cultural Rights.
ICJ	International Court of Justice.
OBH	Order of the Black Hand.
Oracle Corp	Oracle Corporation.
RnD	Research and development.
sī vīs pācem, parā bellum	“if you want peace, prepare for war”
UN Charter	Charter of United Nations.
UNGA	United Nations General Assembly.
VCLT	The Vienna Convention on the law of treaties 1969.

INDEX OF AUTHORITIES

CITED AS	CITATION	CITED AT
Gizem Halis Kasap	Can Artificial Intelligence (“AI”) Replace Human Arbitrators? Technological Concerns and Legal Implications	
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Waldock	*Yearbook of the International Law Commission 1963. Vol I*
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	Constitutional India
The Gabčíkovo-Nagymaros Project	*Hungary v. Slovakia case*

QUESTION PRESENTED

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

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

III. Whether the CCTA is void; and

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

STATEMENT OF FACTS

The Republic of Coltana **("Claimant")** v. The Majestic Kingdom of Radostan **("Respondent")**

Claimant is a small country, but prosperous nation located on the coast of the Indian Ocean. Coltana is known around the world for its strong cultural and historical heritage which including is home of leading scholars, intellectuals, and experts in science economics, literature, and law as well.

Respondent is a diverse and vibrant country located in the heart of South Asia. It is the home of the leading tech and internet companies in the world making it the global leader in the field of technology and innovation.

World War II Before, Claimant existed as a divided nation, with separate rulers governing its eastern and western territories. The eastern regions were under the control of Matic Gilgamesh, while his younger sister Stefka

	Gilgamesh held sway over the western territories. During, Claimant has numerous violent confrontations between the two factions, resulting in the deaths of hundreds of civilians and military personnel. And after, in exchange for the damage caused, the two party signed the Coltana-Radostan Memorandum of Understanding (CRMOU).
In 2005	Radostan became the global leader in technology and began a series of research and development (RnD) in artificial intelligence (AI) as well as advanced arms and weapon technology. After that, Prime Minister Kenchana Yodwicha launched Project Olaf to create the world's first super-intelligent and independent AI lawyer and judge to represent him. In July 2020, Project Olaf was completed, and Olaf went into full operation and quickly emerged as the most sought-after independent provider of legal services and legal advice.
31 September 2021	A government of claimant to-government of respondent was signedan agreement call Coltana-Radostan Counter Terrorism Agreement (CCTA) as bilateral agreement to combat terrorism and other transnational threats in claimant country. After that, the OnionRing installation was completed in claimant country.
16 December 2021	The general election were held and shockingly in Claimant country. The result of Democratic Progressive Party (DPP) of Claimant nearly lost the elections. Next time, Claimant's Bitcoin Reserves went missing overnight. It contains approximate valuation of USD 300 million all of Claimant by group of highly intelligent hacker. Both party want to amended the agreement as well under the Article 4(iii), but Claimant

want to terminate agreement instead due to a day after the Ulavu files went public.

SUMMARY OF ARGUMENTS

ISSUE I

Olaf, an AI-powered intelligent lawyer must be removed as the arbitrator for lack of impartiality as the given circumstances give rise to justifiable doubts as to Olaf's impartiality based on three main reasons: First, Olaf does not possess the required qualification as per the agreement of the parties. Ssecond, Olaf does holds the reasonable third person test, a test for arbitration bias. Thus, Olaf must be disqualified from the Arbitral Penal, as Olaf may not be able to adjudicate the present dispute in a fair and unbiased manner.

ISSUE II

Arbitral Tribunal should not stay the present proceedings until the conclusion of Anuwat's trail at the International Criminal Court baed on three reasons: First Anuwat's testimony does not significantly have binding effect on the current arbitration proceeding, Second,a staying proceeding would be inefficient, and third, alternatively, Mr. Anuwat has an option to participate in the proceeding either by or by attending the online hearing without need for in-person appearance. Thus, the arbitral tribunal should not stay the present proceedings until the conclusion of Anuwat's trail at the International Criminal Court.

ISSUE III

The CCTA is void because of two reasons, First, it contradicts with the peremptory norm (Jus Cogens), as Radostan was violated public policy and Second, Interference Coltana's internal principles. Thus, the CCTA between the Coltana and Radostan is void.

ISSUE IV

In the event, issue III is decided in the negative, the termination of the CCTA by Coltana is valid because if the treaty was lawful, the termination might happen due to the breach other. Bilateral treaty, one of the parties entitles the other to invoke the breach as a ground for termination. as Radostan submitted three main reasons, First, Radostan has committed material breach under CCTA, Second, Radostan has breached other international conventions. And Third, the notification of termination by Coltana was fulfilled. Therefore, the termination of the CCTA is valid in the event if issue III is decided in the negative.

PROCEDURAL

ISSUE I: WHETHER OLAF, AN AI-POWERED INTELLIGENT LAWYER CAN BE REMOVED AS THE ARBITRATION FOR LACK OF IMPARTIALITY

Olaf, an ai-powered intelligent lawyer shall be removed as the arbitrator for lack of impartiality

1. A common requirement in most arbitration rules is that an arbitrator must act with fairness and neutrality towards the parties and avoid any appearance of bias or partiality.[1] To ensure this, an arbitrator has an obligation to reveal any relevant facts or circumstances that may affect or be seen to affect his or her ability to act independently and impartially.[2]
2. Article 11 of the AIAC Rules sets out the grounds and procedure for challenging an arbitrator. According to this article, a party can challenge an arbitrator if a party aware of existing circumstances, or later becomes aware of a change of circumstances that give rise to justifiable

[1] *Findlay v. The United Kingdom,* ECHR, [1997]

[2] Findlay v. The United Kingdom, ECHR, [1997]; *See also* H. Vitali and U. Anastasiya, Arbitrator's Impartiality and Independence

doubt as to the arbitrator's impartiality or independence or indicates that the arbitrator does not possess any of the requisite qualifications which the parties agreed to.[3]

3. The claimants respectfully submit that Olaf disqualifies from the Arbitral Panel, as Olaf may not be able to adjudicate the present dispute in a fair and unbiased manner.[4] The claimant has serious concerns about Olaf's impartiality, based on its past and present professional and personal relationships with the respondent. The claimants strongly believe that these relationships create an appearance of partiality that undermines the integrity and legitimacy of the arbitration proc

4. Thus, there are three major grounds that an Arbitrator might be challenged: The given circumstances give rise to justifiable doubts as to Olaf's impartiality[5] [A]; Olaf does not possess the required qualification as per the agreement of the parties[6] [B]; and Olaf holds the reasonable third person test, test for arbitrator bias[7] (Appearance bias)[C].

A. The given circumstances give rise to justifiable doubts as to Olaf's impartiality

5. Establishing an arbitrator's impartiality is important to make sure that the arbitrator would not be influenced by factors outside the merits of the case. This is crucial in upholding the parties right to be judged fairly along the arbitration process.[8]

6. Pursuant to article 11(1)(a) of AIAC Rules states that a party may challenge an arbitrator if the party is aware that the existence circumstance gives rise to justifiable doubt as to arbitrator's impartiality or independence.[9]

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[3] Asian International Arbitration Centre (AIAC), [2021], Art 11

[4] *Fact,* pp.42, p.16

[5] Asian International Arbitration Centre (AIAC), [2021], Art 11.1(a)

[6] Asian International Arbitration Centre (AIAC), [2021], Art 11.1(b)

[7] *Applicable Tests For Arbitrator Bias: Recent Practice In Select Common Law Jurisdictions* [Accessed 15 May 2023] available at https://arbitrationblog.kluwerarbitration.com/2022/11/24/applicable-tests-for-arbitrator-bias-recent-practice-in-select-common-law-jurisdictions/

[8] *Burlington*, pp.66; *Conoco*, pp.55; *Universal*, pp.70; *Urbaser*, pp.43

[9] Asian International Arbitration Centre (AIAC), [2021], Art 11(1)(a)

7. Olaf has strongly connected with the respondent since the Olaf project had been launched by Prime Minister Yodwicha of the respondent and Olaf had also represented some of Yodwicha's plans.[10] Moreover, in July 2020, Olaf was under the ownership and management of Oracle Corporation (Oracle Corp) which is a private entity in Radostan (Respondent).[11] The present fact is greatly applied in article 11(1)(a) of AIAC Rules that the present circumstances give rise to justifiable doubt as to Olaf's impartiality, and the claimant must challenge to remove Olaf from arbitrator.

8. One of the grounds for challenging an arbitrator under the 'Act', Section 24(1)(a) of the Arbitration Act 1996, is the existence of justifiable doubts as to the arbitrator's impartiality. This was the basis of the Claimants' application to remove an arbitrator in Sierra Fishing Company & Ors v Farran & Ors[12], a case involving a dispute over a fishing concession in Sierra Leone. The High Court agreed with the Claimants that the arbitrator had connections with the Defendants and their counsel, which could reasonably cause an objective observer to question his impartiality. The Court therefore ordered the removal of the arbitrator under Section 24(1)(a) of the Act.[13]

9. Therefore, Olaf must be removed as arbitrator, since the existence circumstances give rise to justifiable doubt as to Olaf's impartiality.

B. Olaf doesn't possess the required qualification as per the agreement of the parties

10. Pursuant to article 11(1)(b) of the AIAC Rules indicates that *"A party may challenge an arbitrator if a party is aware of existing circumstances or later become aware of a change in*

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[10] *Fact,* pp.11, p.6.

[11] *Fact,* pp.12, P.6

[12] *Sierra Fishing Company & Ors v Hasan Said Farran & Ors* [2015] EWHC 140 (Comm)

[13] *Ibid*

circumstances that indicate that the arbitrator does not possess the any of the requisite qualification which the parties agreed to".[14]

11. Furthermore, article 17 (C) of the Arbitration Act also provides the same meaning that an arbitrator may be challenged only if the arbitrator does not possess the qualifications agreed to by the parties.[15]

12. In the present case, Olaf does not possess the required qualification of the agreement by the parties since article 9(iii)(b) of CCTA states "*the arbitrator shall be independent and shall not be affiliated with or take instructions from either party".*[16] Besides, Olaf does not meet the required qualification of article 9(iii)(b) of CCTA that both parties agreed to.

13. Article 9(iii)(b) of CCTA provides that "*the arbitrator shall not be affiliated with or take the instruction from either party".*[17]

14. However, IBA Guidelines on Conflicts of Interest in International Arbitration, non-waivable red list (1.4), the arbitrator or his or her firm regularly advises the party, or an affiliate of the party, and the arbitrator or his or her firm derives significant financial income therefrom.[18]

1. Olaf is influenced and affiliated by Radostan

15. Olaf is strongly influenced and affiliated by Radostan or Respondent since in the fact:

16. Prime Minister Yodwicha launched Olaf Project in 2015 to create the world's first super-intelligent AI lawyer and judge. Moreover, Olaf had represented Yodwicha's plan to advance legal systems and improve access to justice.[19]

14 Asian International Arbitration Centre (AIAC), [2021], *rticle 1*1(1)(b)
15 Arbitration Act, [1996], Art 7
16 *Fact,* pp.25, p.11.
17 Coltana Radostan Counter Terrorism Agreement, [202]1, Art 9(iii)(b)
18 IBA Guidelines on Conflicts of Interest in International Arbitration (IBA), Art 1(1.4)
19 *Fact,* pp.11, p.6.

17. Later, Olaf was under the ownership and management of Oracle Corporation ("Oracle Corp"), which is a private entity based in Radostan.[20]

18. Alternatively, after Olaf provided legal advice and analysis, it has attracted the attention of the international press after it started to publish its own opinions and warnings on its website and other online platforms. Some of Olaf's publications and posts have been criticised as being too favorable and protective of Radostan's domestic and foreign actions and policies, raising questions about Olaf's independence and possible influence from Radostan.[21]

19. Moreover, there are some specific conduct and policies of Radostan that Olaf was supportive and defensive such as, Olaf complimented the Radostan government for introducing a 3-day weekend policy for its civil servants; promoting a work life balance lifestyle and imposing a nationwide respectful workplace policy in all private and public sectors.[22]

20. Therefore, Olaf is influenced and affiliated by Radostan.

C. Olaf holds the reasonable third person test, test for arbitrator bias

21. According to the IBA Guidelines, arbitrators should decline appointment if they have doubts about their ability to be impartial or independent[23] or if justifiable doubts exist from a reasonable third person's perspective.[24]

22. Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.[25]

1. Appearance bias

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[20] *Fact*, pp.12, p.6.
[21] *Fact,* pp.13, p.6.
[22] *Correction and Clarification of the Moot Problem,* pp.6
[23] IBA Guidelines on Conflicts of Interest in International Arbitration (IBA), General Standard 2(a).
[24] Ibid. General Standard 2(b).
[25] Ibid. General Standard 2(c).

23. The doctrine of bias has been applied by the courts in various cases, such as R v Inner West London Council, R v Bow Street Metropolitan Stipendary Magistrates and others. The courts have distinguished between two situations: one where the judge has a direct financial interest or a close personal connection with one of the parties, which leads to an automatic disqualification of the judge; and another where the judge may have an unconscious or apparent bias that could affect his or her impartiality.[26]

24. Given the current situation, Olaf was under the control and direction of Oracle Corporation ("Oracle Corp"), a private company located in Radostan.[27] Moreover Oracle Corporation is owned by Prime Minister Yodwicha who is one of the Independent Non-Executive Directors of this private company.[28]

25. Therefore, there are cases where the arbitrator has a direct financial stake and a close personal relationship with one of the parties, which would result in the arbitrator's disqualification, and others where the arbitrator might have an unconscious or apparent bias that could affect AI impartiality.

2. Reasonable third-party test

26. According to IBA Guidelines on Conflicts of Interest in International Arbitration, General Standard 2(b) requires disclosure of matters that "from a reasonable third person's point of view having knowledge of the relevant facts, give rise to justifiable doubts as to the arbitrator's impartiality or independence".[29]

27. The reasonable and informed third party test is a consideration by the professional accountant about whether the same conclusions would likely be reached by another party. Such

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[26] *R v Gough [*1993] AC 646 at 670 per Lord Goff of Chieveley, *R v Inner West London Council*, ex parte Dallaglio [1994] 4 All ER 139 at 151 per Lord Justice Simon Brown and *R v Bow Street Metropolitan* Stipendary Magistrates, ex parte Pinochet (No.2) [1999] 2 WLR 272 at 281-2 per Lord Browne-Wilkinson. Longmore J

[27] *Fact,* pp.12, p 6.

[28] *Corrections and Clarifications of the Moot Problem,* pp.4

[29] IBA Guideline on Conflicts of Interest in International Arbitration, General Standard 2(b)

consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the accountant knows, or could reasonably be expected to know, at the time the conclusions are made. A reasonable and informed third party does not need to be an accountant, but would possess the relevant knowledge and experience, to understand and evaluate the appropriateness of the accountant's conclusions in an impartial manner.[30]

28. After Olaf provided legal advice and analysis, it attracted the attention of the international press after it started to publish its own opinions and warnings on its website and other online platforms. Some of Olaf's publications and posts have been criticised as being too supportive, liable and protective of Radostan's domestic and foreign actions and policies, raising questions about Olaf's independence and possible influence from Radostan.[31]

29. In the case of Helow v. Secretary of the state department and another, which this case met the claimant's argument of reasonable third-party test. That Lady Cosgrove, was a member of the International Association of Jewish Lawyers and Jurists. As a member, she must be assumed to have received its quarterly publication, "Justice", all of whose editions are readily accessible on the Association's website. Then she was presented at a meeting in the presence of a number of other distinguished Jewish members of the legal profession. There's no suggestion that she either did or said anything after that date which associated her either one way or the other with views that were being expressed on behalf of the Association. Then the question is to what extent, taking everything else into account, that there was a real possibility that Lady Cosgrove was biased.[32]

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[30] *The Reasonable and Informed Third Party,* Uli Schäckermann, Accessed 18 June 2023, available at https://www.linkedin.com/pulse/reasonable-informed-third-party-revisited-ulrich sch%C3%A4ckermann#:~:text=%E2%80%9CThe%20reasonable%20and%20informed%20third,be%20reached %20by%20another%20party.

[31] *Fact,* pp.13, p. 6.

[32] *Helow V. Secretary of State Department and Another,* available at

30. Lord Cullen of Whitekirkmy Lord who have expressed their view on this case, that according to their view, met the reasonable third-party test. They expressed that there was a real possibility of bias by reason of Lady Cosgrove having been influenced by the views expressed in the articles and pronouncements found on by the appellant's counsel.[33]

31. Therefore, Olaf holds the reasonable third-party test, test for arbitrator bias.

ISSUE II. THE ARBITRAL TRIBUNAL SHOULD NOT STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE INTERNATIONAL CRIMINAL COURT.

32. Despite the parties' consent, the Respondent requested the Tribunal to stay the present proceeding to await the judgment of Anuwat's trial by the International Criminal Court ("ICC").[34] Mr. Anuwat Kittisak is the CEO of Ini-Tech Inc.[35] was arrested in Kuala Lumpur based on a warrant issued by ICC for an alleged commission of cyber war crimes in Ulawu.[36] As art 17(1) of the UNCITRAL arbitration Rule provided that "*The Arbitration Tribunal, exercising its discretion, shall conduct the proceeding unnecessary delay and expense, and to provide fair and efficient process of resolving the dispute*."[37] In this regard, the discretion is conferred upon the Tribunal not only by the procedural law of the lex arbitri, but also mutually agreed Art 17(1) of UNCITRAL arbitration rule that the Tribunal should conduct the proceeding in such manner as its considers appropriate.

33. Consequently, the Tribunal has no obligation to stay the present proceeding based on three main reasons: Anuwat's trial at the ICC does not have binding effect on the current arbitration

https://www.casemine.com/judgement/uk/5a8ff70260d03e7f57ea5991, *Porter V. Magill* [2001] UKHL 67; [2002] 2 AC 357, pp.103
[33] *Ibid*
[34] *Fact,* pp.43, p.17
[35] *Fact,* pp.22, P 9
[36] *Fact,* pp.35, p15
[37] Arbitration Rules (United Nations Commission on International Trade Law [UNCITRAL], Art 17(1)

proceeding. **[A].** A staying proceeding would be inefficient. **[B].** Alternatively, Mr. Anuwat has to appear in the proceeding through the witness statement or online hearing **[C].**

A. Anuwat's testimony does not have binding effect on the current arbitration proceeding

34. Based on Art 9(1) of IBA stated that "*The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.*"[38] Belokon v. Kyrgy expressed that the Parties request to stay the preceding was said to have been justified by reference or evidence, the Tribunal requires clear indication that the criminal proceedings are likely to provide imminent, specific, and relevant evidence. while no application for a responding of the evidence phase lodge, the Tribunal must issue its award under the evidence before it.[39]

35. Moreover, In TM AM Construction Group (Africa) v. Attorney General, the court found that there are failure by AG to tender any evidence showing that there was in fact any dispute between Parties and that this meant that no basis had been established in show that a dispute in fact existed to justify stay proceeding and referring the proceeding to arbitration.[40] The Claimant is not be a party to criminal proceedings against Mr. Anuwat in ICC. Hence, the Claimant would not be able to make their case in these proceedings. follows that the finding of the ICC does not have binding effect upon the Tribunal.[41]

36. To express the fact, the tribunal should consider the stay on the basis that the documents available are sufficient to determine the dispute at hand and that the outcome of the decision of Trial at ICC has no effect on the current proceeding.[42] Instead, to comply with CLAIMANT's right to be heard, the Tribunal has to establish the facts of the case on its own. Additionally. the charging of the ICC to Mr. Anuwat related to cyber war crime which is not relevant to the

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[38] IBA Guideline on Conflicts of Interest in International Arbitration, Art 9(1)
[39] *Belokon v. Kyrgy,* [2014], pp.165
[40] *IPOC International Growth Fund Ltd v LV Finance Group Ltd*, pp 50, 52, 54, 59
[41] *Kluwer Law International, International Chamber of Commerce* [2015]
[42] *Fact*, pp.43, p.17

dispute between Claimant and Respondent. Therefore, Mr. Anuwat's testimony does not significantly have binding effect on the present proceeding.

B. Staying proceeding would be inefficient

37. As Art 17(1) of UNCITRAL Arbitration Rule stated that "The *Arbitration Tribunal, exercising its discretion, shall conduct the proceeding with unnecessary delay and expense, and to provide fair and efficient process of resolving the dispute*."[43] Awaiting the ICC's trial would be unnecessary in the sense of this provision as it is irrelevant for the present arbitration's outcome. Thus, any delay incurred by a stay is in violation of Art. 17(1) UNCITRAL Rules. CLAIMANT will demonstrate that staying the present proceedings would not only cause substantial delay but also contradict the Parties' intentions. Additionally, with respect to the case.

38. Firstly, any delay caused by staying the proceedings is unnecessary because the Tribunal has all the main documents to decide the dispute at hand without having to wait for the result of the judgment of the ICC. At the meantime, the documents are sufficient to determine its dispute. with respect to the case Carin v. India

39. Secondly, Staying the proceeding would put substantial strain to Claimant who paid the security deposits and the necessary fee to arbitration proceeding.[44] While the Claimant's financial status are struggling due to the Bitcoin in the approximate valuation of USD 300 million all of which were completely stolen.[45]

40. Thirdly, pursuant to Art 13(1) of AIAC provided that "*the Tribunal shall conduct the arbitration in such manner as it deems appropriate to ensure the fair, expeditious, economical and final resolution of the dispute provided always that the Parties are treated with equality*

[43] *Ibid*
[44] *Fact*, pp.41, p.16.
[45] *Fact,* pp.32, p.14.

and given a reasonable opportunity to present their case."[46] Art. 17(1) of UNCITRAL arbitration Rule mentions that the Tribunal, in exercising its discretion, must ensure that Parties are treated with equality to the case at hand or present its case.[47] The Tribunal's freedom in conducting the proceeding is limited by the fundamental procedural principle, primarily by the equality between the parties and their right to be heard.[48] With respect to Cairn v. India, the tribunal decided whether the stay would create an imbalance or cause material prejudice to one of the Parties, thereafter the tribunal sided with Carin that the prejudice needs to be severe and one-sided to meet unequal treatment.[49]

41. Thus, the tribunal should condect the proceeding efficiency pursuant to Art 17(1) of the UNCITRAL Arbitration Rule.

42. As a result, the requestion of the Respondent to stay the present proceeding would be inefficient.

C. Alternatively, mr. Anuwat has optionally participated in the proceeding either by submitting the witness statement or by attending the online hearing the without making any trouble the present proceeding

43. The Respondent has requested the Tribunal to stay the proceeding until the conclusion of the Mr. Anuwat's trial at ICC However, it is not necessary to grant the stay of the current proceeding, based on Mr. Anuwat has the option to participate in the proceeding either by submitting the witness statement **[1]** or by attending the online hearing **[2]** without the requirement of in-person appearance.

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[46] Asian International Arbitration Centre (AIAC), [2021], Art 13(1)
[47] Arbitration Rules (United Nations Commission on International Trade Law [UNCITRAL], Art 17(1)
[48] Arbitration Rules (United Nations Commission on International Trade Law [UNCITRAL] Model Law, Chapter V, Art 18
[49] *Cairn v. India, PCA Case No. 2016-07* [2017]

1. Submission the witness statement

44. The witness statement is the document that may serve as the evidence from that witness.[50] The witness statement literally contains "full and detailed description of the fact and the source of the witness's information as to those fact, sufficient to serve as that witness evidence in the subject matter in dispute. Documents on which the witness relies that have not already been submitted shall be provided." [51] This allows him to present his factual account and any relevant evidence to the Tribunal without the need for an in-person appearance.

2. Appearance by attending the hearing online without appearance in person

45. According to Art 28(7) provided that "*The Arbitral Tribunal may direct that any witness, including an expert witness, be examined virtually or, after consulting with the Parties, direct that the entire hearing be conducted virtually"*[52] The Virtual conducting means the use of technology to remotely participate in the proceedings, including attending or appearing at meetings, conferences, deliberations or hearings by using a video conferencing platform, telephone or any other appropriate means.[53] In this regard, Mr. Anuwat could testify by hearing online without appearance in person.

46. This enables him to actively participate in the proceedings, engage with the Tribunal, and present his arguments and evidence, all without being physically present in the courtroom. The availability of online platforms and video conferencing technology makes it feasible for participants to attend hearings remotely, ensuring their involvement in a convenient and accessible manner.

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[50] United Nations Commission on International Trade Law [UNCITRAL] Note, pp.88
[51] IBA Rules on the Taking of Evidence in International Arbitration (IBA Rules), [2014], Art 4(5)(b)
[52] Asian International Arbitration Centre (AIAC), [2021], Art 28(7)
[53] Asian International Arbitration Centre (AIAC), [2021], Art 2

47. Consequently, Claimant submit that Mr. Anuwat has the option participated in the proceeding either by submitting the witness statement or by attending the online hearing the without making any trouble the present proceeding.

48. To conclusion, The Tribunal should not stay the proceeding based on the Mr. Anuwat's testimony is not significantly affect on the current arbitration proceeding, the Tribunal should conduct the proceeding efficiency, and alternatively, Mr. Anuwat has option to participate through submission the witness statement or attending through online hearing without appearance in-person in the hearing.

ISSUE III. WHETHER THE CCTA IS VOID; AND THE CCTA IS VOID BECAUSE IT CONTRADICTS WITH THE PEREMTORY NORM (JUS COGENS)

49. According to Article 53 of the Vienna Convention on the Law of Treaty ("VCLT"), a treaty is void if it contradicts with the peremptory norm of general international law at the time of its conclusion. In the present case, the CCTA is void because Radostan violates principle of non-intervention, **[A]** and principle of non-intervention is a peremptory norm of general international law **[B].**

A. Radostan violates principle of non-intervention

50. Article 2(4) of the United Nation Charter provides that "*All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations*."[54] Supporting Article 2(4) of the UN Charter, the General Assembly Resolution 2131 (XX) of 21 December 1965 provides that "*No State has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any State*."[55]

[54] United Nation Charter (UN Charter), [26 June 1995], Art 2 (4)
[55] General Assembly Resolution 2131 (XX) [21 December 1965]

51. In Nicaragua v. United States, the judge also provides that "…*As regards the ... content of the principle of non-intervention,…in view of the generally accepted formulations, the principle forbids all States or groups of States to intervene directly or indirectly in the internal or external affairs of other States*".[56] In DRC v. Uganda (2005), the Court noted that Nicaragua had "*made it clear that the principle of non-intervention prohibits a State "to intervene , directly or indirectly, with or without armed force, in support of the internal opposition within a State*".[57]

52. The General Assembly Resolution 36/103 dated 9 December 1981 also made clear that the principle of non-intervention requires state to "refrain from entering into agreements with other States with a view to intervening or interfering in internal or external affairs of other States".[58]

53. In our case, the Radostan entered into the CCTA with the purpose of interfering the internal affairs of the Coltana by collecting personal information of the electorate and spreading online advertisement to help election campaign of the OBH party. According to the former employee of the Ini-Tech, OnionRing had accessed to personal data of electorates in Coltana. OnionRing had used the data to advertise and recommend in supporting the OBH party to the voters. This led to the spreading of the OBH party's accomplishments to appear frequently on devices and social media of the people.[59]

54. With this regard, Radostan has violated the principle of non-intervention by interfering the 2021 election of Coltana.

B. Principle of non-intervention is a peremptory norm of general international law

55. Article 53 provides that "a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no

[56] *Nicaragua v. United States, supra*, pp.205
[57] International Court of Justice (ICJ) Reports [2005], pp.164
[58] General Assembly Resolution 36/103 [9 December 1981]
[59] *Fact,* pp.30, p.13

derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."[60]

56. Jianming Shen wrote an article on The Non-Intervention Principle and Humanitarian Interventions under International Law also provides that "the non-intervention principle is not only fundamental to the international legal system, but also peremptory in the sense that it cannot be modified or derogated from by the mere consent of two or more States in the form of a new practice or new treaty."[61]

57. During the negotiation of the Article 53 of the VCLT, according to Oliver and Kirsten, "… threat or use of force, intervention in internal affairs of a State, sovereignty and independence of a State, principles enshrined in the UN Charter … were submitted as examples of the Jus Cogens."[62] In addition, since the principle of non-intervention is a customary international which has been recognized by international community and has a non-derogation character, the principle of non-intervention is a peremptory norm of general international law.

58. Therefore, due to Radostan entered to the CCTA for the purpose of interfere the 2021 election of the Coltana which violated the principle of non-intervention, the CCTA is void under Article 53 of the VCLT.

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[60] Vienna Convention on Law of Treaty (VCLT), [1969], Art 53

[61] The Non-Intervention Principle and Humanitarian Interventions Under International Law by Jianming Shen, American Society of International Law Interest Group on the Theory of International Law, International Legal Theory, Volume 7(1), 2001

[62] Oliver Dörr and Kirsten Schmalenbach, Commentary of the Vienna Convention on the Law of Treaties, Springer, 2012, p. 904, pp.12

ISSUE IV. IN THE EVENT, ISSUE III IS DECIDED IN THE NEGATIVE, THE TERMINATION OF THE CCTA BY COLTANA IS VALID.

59. If one treaty was lawful, termination might happen because of the breach of another.[63] Bilateral treaty, one of the parties entitles the other to invoke the breach as a ground for termination.[64] Those breach has as follow:

A. Radostan has committed material breach under CCTA

60. Article 60 (3)(b) stipulated that *"a material breach of a treaty consists of the violation of a provision essential to the accomplishment of the object or purpose of the treaty"*.[65] The term **'essential'** means the heart of a treaty.[66] Also, term **'material' breach** instead of **'fundamental' breach** because it considered the latter term as being too narrow, particularly used in serious breach, which goes to the root of a treaty.[67]

61. In addition, *the Gabčíkovo-Nagymaros Project* case with regard to a bilateral treaty stated that "only a material breach of the treaty itself, by a States Parties to that treaty, entitles the other party to rely on it as a ground for terminating the treaty.[68]Moreover, Hungary argued that termination of the Treaty was justified by Czechoslovakia's material breaches of the 1977 Treaty, as well as failing to comply with its obligations under Articles 15 and 19 of the Treaty.[69]

62. Reflecting on the present case, the Coltana-Radostan Counter Terrorism Agreement (CCTA) was signed between Coltana and Radostan for the purpose of cooperation between the two

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[63] Statement by Waldock [1963-I] YbILC, pp.79, p.121.

[64] Vienna Convention on Law of Treaty (VCLT), [1969], Art 60(1)

[65] Ibid, Article 60(3), *Software One India Pvt. Ltd. v C&S; Electric Ltd*, [7 May, 2019,], High Court of Delhi at New Delhi, pp.17 (xii)(c), p .7

[66] Material Breach and its Exception: An Analysis '*Humanitarian Character'*, Thanapat Chatinakrob, p 46

[67] Vienna Convention on Law of Treaty (VCLT), [1969], edited by *Oliver Dorr, Kisrsten Schma Leabach,* Art 60, pp. 34, p.1033.

[68] Ibid, Article 60, pp 22, p.1029.

[69] Reports of judgements, Advisory opinions and order, case concerning the Gabčíkovo-Nagymaros Project (Hungary/ Slovakia) 1977, p 58.

countries to combat terrorism and other transnational threats[70] including the combat cyber-attack as well[71]. Radostan was failing to comply with the obligations under CCTA like in the case of the Bitcoin Robbery in Coltana.[72] The incident is not a small robbery but calling it the "Biggest Modern-Day Robbery"[73] because it was stolen by a group of highly intelligent hackers.[74] While Radostan is a global leader in the field of technology and innovation. [75]

B. Radostan had breached other international conventions

63. Termination of the Treaty was justified, when the party had breached other international conventions among them.[76]According to CCTA, there are some general obligations which the parties agreed to abide during signing such as International Covenant on Civil and Political Right (ICCPR),[77] ….Regarding to Article 19(3) of ICCPR stated that *" the right to freedom of expression shall be permission but also need to pursue rights or reputations of others as well".*[78] Furthermore, the clause (2) of Article 19 prevents any person from making any statement that defames the reputation of another.[79] Like in the case, *domestic legal system of Cameroon*, the prosecution and punishment of journalists for the crime of publication of false news, that is a clear violation of Article 19 of the Covenant[80] and the constitution of India.

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[70] *Fact,* pp.24, p.10
[71] *Fact*, pp.27, p.12
[72] *Fact,* pp.32, p.14
[73] *Fact*, pp.33, p. 14
[74] *Fact,* pp.32, p.14
[75] *Fact,* pp.4, p.3
[76] *Supernote* 7.
[77] *Fact,* pp.25, p.12.
[78] International Convention on Civil and Political Right (ICCPR), [16 December 1976], Art 19 (3)
[79] Constitution Indi, Art 19 (2)
[80] "International law and policy on disinformation in the context of freedom of the media", Brief Paper for the Expert Meeting organized by the Office of the OSCE Representative on Freedom of the Media [14 May 2021], Dr. Andrey Rikhter, Senior Adviser, p. 8.

64. Anuwat's statement had informed members of the media, it was false news which had affected the reputation of Coltana seriously as well as illegal as well due to those data accessed by only Coltana's officials. It is confidentiality.[81]

C. Notification of termination was fulfilled

65. Article 65 (2) stated that *"in case of special urgency, shall not be less than 3 months"*.[82]If there is no provision in the agreement, the 3 months' period of Art 65 para 2 VCLT will have to be observed in any case.[83]Moreover in serious cases, it shall be less than 3 months more such as a six days period notice.[84]

66. As in *Hungary v. Slovakia case*, the Court then only found that the six-day notice period allowed by Hungary, Hungary's notice of termination was essentially based on the rules codified in Arts 60 and 62 VCLT, that there were serious grounds for terminating a treaty relationship.[85]

67. In the present case, Coltana did fulfill the notice of termination already. Coltana decided to cease all negotiations with Radostan on the amended agreement and Coltana wanted to proceed to termination instead. Radostan also knew this information.[86]

68. Therefore, termination of the CCTA by Coltana is established, in the event issue III not void.

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[81] *Fact,* pp.39, p.16.

[82] Vienna Convention on the Law of Treaty (VCLT), [1996], Article 65(2)

[83] *Supernote 5*, p. 986.

[84] *Ibid,* p. 987.

[85] *Ibid,*

[86] *Fact,* pp.40, p.16.

PRAYER OF RELIEF

In light of the submission above, counsel for Claimant respectfully invites the Tribunal to declare that:

A. Olaf must be removed as the arbitrator for lack of impartiality;

B. Arbitral Tribunal should not stay the present proceedings until the conclusion of Anuwat's trail at the International Criminal Court;

C. The CCTA is void;

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