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IN THE ASIAN INTERNATIONAL ARBITRATION CENTRE

AT BANGALORE, INDIA

THE 18TH LAWASIA INTERNATIONAL MOOT COMPETITION 2023

The Republic of Coltana

(CLAIMANT)

V.

The Majestic Kingdom of Radostan

(RESPONDENT)

MEMORIAL FOR RESPONDENT

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STATEMENT OF JURISDICTION

The Republic of Coltana ['Coltana' or 'Claimant'] and the Majestic Kingdom of Radostan ['Radostan' or 'Respondent'] hereby submits the present dispute regarding Olaf's eligibility to sit as arbitrator and the Respondent's request for the stay of proceedings, as well as the Coltana-Radostan Counter Terrorism Agreement ("CCTA") — the bilateral agreement between Coltana and Radostan. This is in conjunction with the AIAC Rules 2021, as well as Article 8 and 9 of the CCTA as agreed by both parties, pursuant to the Statement of Agreed Facts including the Corrections and Clarifications.

The parties have accepted the jurisdiction of this Tribunal to hear the dispute in accordance with Article 8 of the CCTA and shall accept the decision made by this Tribunal as final and binding. On this basis, this Tribunal is requested to adjudge the dispute in accordance with the rules and principles of AIAC Rules 2021, Indian Law or any other international law that is applicable here as per agreed via CCTA by both parties.

QUESTIONS 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

PARTIES

The Republic of Coltana [‘Coltana’ or ‘Claimant’], is a small but prosperous nation renowned for its rich cultural heritage and intellectual prowess and history, being dubbed as a modern-day “pantheon”. Its plethora of natural landscape and historical remnants makes it a global leader in tourism with a GDP of USD 505 billion in 2022. As a former British colony, it adopts the common law.

The Majestic Kingdom of Radostan [‘Radostan’ or ‘Respondent’], on the other hand, is dubbed the “Wakanda” of Asia due to the abundance of buried technologically advanced ancient cities, thus firmly establishing itself in the technological and innovative sector. It is a constitutional monarchy practicing common law, a result of strong trade relations since 1888. Radostan's rapidly growing economy reached a GDP of USD 1.5 trillion in 2022.

THE COLTANA-RADOSTAN MEMORANDUM OF UNDERSTANDING (“CRMOU”) AND BIRTH OF OLAF

After the war and conflict between Coltana and Radostan ended, both parties agreed to sign the Coltana-Radostan Memorandum of Understanding (CRMOU), encouraging important collaborations between the two, including research and development in technology and artificial intelligence.

The Prime Minister of Radostan, Kenchana Yodwicha eventually initiated Project Olaf in 2015, creating an AI lawyer and judge with Coltana's assistance. In July 2020, Olaf became a prominent legal service provider, dubbed as a ‘trustworthy robot’ by international media.

However, issues began to arise when Olaf's public insights and comments on social media raised questions about its neutrality. Radostan vehemently denied any allegations of partiality and dependence.

THE COLTANA-RADOSTAN COUNTER TERRORISM AGREEMENT ("CCTA")

After the Sapura Bay Bombing incident and cyber-attacks on Coltana, the respective delegations from Coltana and Respondent met. Anuwat Kittisak — CEO of Ini-Tech Inc, a Radostanian subsidiary under the control of its Ministry of Defense — introduced OnionRing, an anti-terrorism software capable of identifying and neutralizing threats. The software was said to operate covertly and erase its traces.

Thereafter, the Coltana-Radostan Counter Terrorism Agreement (CCTA) was signed, emphasizing bilateral cooperation against terrorism. Under the agreement, Ini-Tech will provide and maintain the OnionRing software for Coltana.

THE INTRODUCTION OF ONIONRING

After signing the CCTA, Ini-Tech Inc installed and integrated the OnionRing software into Coltana's government systems. The installation process was supervised by Coltana's intelligence and security agents and began full operation on 14.10.2021, unveiled at a ceremony the next day. Anuwat highlighted its capabilities in detecting and preventing terrorist attacks and cyber-attacks, while President Lalan announced that it would access all government CCTVs to track suspected terrorists. Despite sparking privacy concerns, OnionRing had successfully detected and prevented criminal activities in Coltana, enhancing overall security.

THE CONTROVERSIES SURROUNDING ONIONRING

(i) ALLEGATIONS OF DATA BREACH

During the general elections, the current governing party DPP narrowly retained power but suffered significant losses compared to the previous years. According to Olaf, this was due to DPP's poor performance over the past couple years. At the same time, an ex-Ini-Tech employee alleged on Twitter that OnionRing accessed and used voter data to promote OBH. OBH denied involvement, and Ini-Tech refuted the allegations. President Lalan's administration initiated a full-scale investigation into OnionRing's actions and warned of potential legal action if Coltana's internal affairs were found to be interfered.

(ii) DISAPPEARANCE OF BITCOIN RESERVE

On 2.2.2022, Coltana's Bitcoin reserves — valued at approximately USD 300 million and stored by the Coltana National Bank (CNB) — were allegedly stolen overnight by highly skilled hackers. President Lalan expressed confidence in finding alternative financing for OnionRing despite the loss. Negotiations then ensued after the initial agreed form of Bitcoin payment proved impossible.

(iii) THE ULAVU FILES INCIDENT AND ANUWAT'S ARREST

The Department of Justice of the United States of Kola Lumpo (DOJ) had arrested Anuwat following the Ulavu Files which revealed that a software similar to OnionRing had been used for surveillance in Ulavu, potentially affecting Coltana's 2021 elections. The software allegedly targeted journalists, activists, and opposition parties. Anuwat was suspected of supporting the

cyber war crimes in Ulavu due to his role as the key programmer of OnionRing as well as his close relationship with Ulavu's Prime Minister Dua Lupa.

Before his arrest, Anuwat alleged a major corruption scandal involving senior DPP politicians, claiming that the hacking incident was in fact an inside job. Coltana countered that any allegations were false and that OnionRing data is confidential.

THE INITIATION OF THE AIAC PROCEEDINGS

Shortly after, Coltana refused to continue payment of the CCTA and initiated arbitration proceedings as agreed upon under Article 8 of the CCTA. Hence, the commencement of the current arbitration proceedings.

SUMMARY OF PLEADINGS

I

Olaf should not be removed as the arbitrator for the alleged lack of impartiality. As agreed upon by the parties as well as established in the AIAC Rules, an arbitrator must at all times remain impartial and independent. Since there are no justifiable doubts as to his impartiality or independence, there are insufficient grounds to warrant his removal. The claimants have not shown that there is an appearance of bias through a reasonable man's perspective.

II

This tribunal should grant the stay of proceedings requested by the Respondent. This tribunal has the powers and jurisdiction to exercise its broad powers over procedural issues, including allowing a stay of proceedings. Due the overlapping of issues in the ICC and arbitral proceedings, the outcome of the ICC is highly material to the arbitration proceedings in determining whether the CCTA in suppliance of OnionRing should remain operative. Further, due to the issues of fairness and in the interest of justice, the stay should be granted to allow the Respondents to present their case fairly and effectively.

III

CCTA shall not be void for illegality as the subject matter is legal, which is to combat cyber and terrorist attacks. Assuming but not conceding there is a breach of privacy to Coltana's citizens, such infringement is legally justified. Coltana who voluntarily exposed the data to OnionRing, does not enjoy reasonable expectation of privacy. Furthermore, the CCTA fulfils the tripartite test as laid down by Indian and International Jurisdiction, which includes legality,

necessity, and proportionality. The CCTA is then enforceable by law, hence shall not be called void for illegality.

IV

Should the outcome of Issue 3 yield a negative result, the Tribunal shall determine whether the termination of the CCTA is valid. The Respondent submits that the answer is in affirmative. Firstly, the hacking incident does not constitute a repudiatory breach of contract. A mere outlier occurrence does not mitigate the fact that OnionRing contributed significantly to Coltana's improvement on national security. Moreover, Coltana acquiescence is shown as they did not, in the first instance, oppose to the continued OnionRing after the hacking incident. The repudiation was only claimed afterward and shall be constituted as a mere afterthought and thus shall continue to enforce CCTA.

PLEADINGS

I. OLAF SHOULD NOT BE REMOVED AS THE ARBITRATOR FOR THE ALLEGED LACK OF IMPARTIALITY

The claimants contend that Olaf should not be removed as the arbitrator as no justifiable doubts as to his impartiality or independence have been observed. Olaf has only been proven to be effective, intelligent, and highly capable of handling complex cases such as the present one.[1] Until and unless the tribunal finds that there are justifiable doubts warranting Olaf's removal as arbitrator, the Respondents should be allowed to practice party autonomy to its fullest and retain Olaf as the chosen arbitrator.

A. No justifiable doubts as to Olaf's impartiality have been observed

As agreed upon by both Claimants and Respondents in Article 9 of the CCTA, the chosen arbitrator shall be impartial and independent.[2] Any disputes may be resolved in accordance with the AIAC Rules 2021, in which Rule 11 stipulates that a party may challenge an arbitrator is there are circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence.[3]

The standard to ascertain whether justifiable doubts exist is through the appearance of bias test — to be applied objectively — as provided in Part 1(2)(c) of the International Bar Association Guidelines on Conflict of Interest.[4] Essentially, whether a reasonable third person with the relevant

[1] Moot Problem, [12].
[2] Moot Problem, [25.4].
[3] AIAC Rules 2021, rule 11.
[4] International Bar Association Guidelines on Conflict of Interest, Part 1(2)(c).

facts and knowledge of the circumstances would conclude that there is a likelihood of the arbitrator being influenced by factors other than the merits of the case.

i. Olaf's social media publications do not indicate an appearance of bias

Olaf's previous comments are unrelated to the present dispute and holds no bearing on whether he would be partial in the present arbitration proceedings

As opined in CC/Devas v India:

> *"[T]o sustain a challenge would require more than simply having expressed any prior view; rather, there must be an appearance of prejudgment of an issue likely to be relevant to the dispute on which the parties have a reasonable expectation of an open mind*."[5]

The policies praised by Olaf are completely unrelated to the dispute and should not be held to show a risk of bias due to mere support of them. These policies, among others, were merely implemented to better the lives of the workforce of Radostan.[6]

ii. Olaf's comments hold no risk of prejudgment

As opined in Urbaser v Argentina:

> "*A view previously expressed on an item relevant in an arbitral proceeding should not be qualified as a prejudgment that demonstrates a lack of independence or impartiality*."[7]

[5] *CC/Devas v India*, [58].
[6] Clarifications, [6].
[7] *Urbaser v Argentina*, [48].

Olaf's comments on the reasoning for DPP's near loss in the elections are not a reflection of his judgment on whether election tampering had occurred in Coltana through OnionRing. They are merely expressions of opinions unrelated and unaffected by or toward the present dispute.

As opined in Suez & Ors v Republic of Argentina:

> "*The fact that an arbitrator had made a determination of law or a finding of fact in one case does not mean that such arbitrator cannot decide the law and facts impartially in another.*"[8]

Far from making a determination of law or a finding of fact, Olaf has merely published a few comments that reflect the majority opinion in regard to the Sapura Bay Bombings and cyber-attacks,[9] in which Coltana's government was not properly equipped to handle at the time — resulting in the CCTA and the implementation of OnionRing.[10]

iii. Olaf's comments are neutral in nature

As observed in WADA v Sun Yang and FINA, the use of violent terms by the concerned arbitrator showed justifiable doubts as he had openly and violently reprimanded the practice of dog slaughtering in China while using racist tones toward the Chinese as a whole in 8 different instances.[11]

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[8] *Suez & Ors v Republic of Argentina*, [36].
[9] Moot Problem, [21].
[10] Moot Problem, [22].
[11] *WADA v Sun Yang and FINA*.

Olaf's comments do not carry any negative connotations, nor are they violent in nature. His comments are also not targeted toward a specific population and are merely reflections of opinions on different matters unrelated to the present dispute.

To hold Olaf's comments and opinions as biased would set an impossible standard on arbitrators who also happen to be scholars and academicians who regularly publish their views and opinions.

As opined in Belokon v Kyrgyzstan:

> "*The mere fact that the concerned arbitrator has written on the general topic of denial of justice only suggests that he has expertise on that subject, but would not raise doubts on the part of a reasonable third person*."[12]

B. Coltana's active involvement in Olaf's learning process and algorithm creation renders Olaf impartial

To ensure essential check and balance in the creation of Olaf's machine learning process, which allows him to continuously learn and improve himself, Radostan has closely collaborated with Coltana throughout Olaf's entire creation process, up until the completion and launching of Project Olaf.[13]

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[12] *Belokon v Kyrgyzstan*, [97].
[13] Moot Problem, [11].

i. The relationship between Coltana and Olaf allows for impartiality and independence of Olaf

It is material to delve into Olaf's history. Olaf was created as part of the Coltana-Radostan Memoradum of Understanding.[14] The collaboration between the two led to Coltana's top scholars and delegations to be involved in Olaf's machine learning process — a critical component of Project Olaf.[15]

Olaf has been personally trained by the delegation from Coltana to filter through any unverified and unreliable sources and information. This ensures Olaf functions accurately and independently.[16]

Coltana has always been actively involved and in close collaboration with Radostan in Olaf's creation process. The Coltana Ministry of Technology had even stated plans to recognize Olaf as super-intelligent AI.[17] Coltana has never disputed Olaf's independence or impartiality until this present arbitration.

To question Olaf's impartiality as an arbitrator is an afterthought as Olaf has previously acted as one of the mediators in a dispute between two investment holding companies in Coltana.[18]

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[14] Moot Problem, [11].
[15] Moot Problem, [11].
[16] Clarifications, [2].
[17] Moot Problem, [12].
[18] Clarifications, [13].

II. THIS ARBITRAL TRIBUNAL SHOULD NOT STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE ICC

The stay of proceedings should be allowed as an exercise of the tribunal's broad powers to determine procedural matters when issues of procedural fairness and justice arise.[19] Due to the overlapping issues in both the ICC proceedings and the arbitration proceedings, this tribunal would benefit from awaiting the results of the ICC proceedings and from allowing Anuwat to provide his testimony in the proceedings to produce the fairest and most informed outcome.

A. This tribunal should grant a stay of proceedings

The Tribunal has the power to grant a stay with certain considerations. These considerations include: (i) whether the stay creates an imbalance between the parties, (ii) whether the stay deprives a party from the right to present its case, (iii) whether the stay delays the proceedings unreasonably and (iv) when the stay is premised on the finalisation of other pending proceedings, whether the outcome of said pending proceeding is material to the outcome of the arbitration.[20]

The tribunal is not bound by these considerations only. Factors that may be considered by this tribunal include the outcome of the ICC proceedings having bearing on the present dispute and Anuwat's intention to provide his witness testimony and other relevant information.

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[19] AIAC Rules, rule 15.

[20] UNCITRAL Rules, art 17(1); Cairn v. India para 99-109; ILA Paper on Parallel Proceedings.

i. Anuwat is a key witness to the current proceedings and the ICC results will affect the outcome of the arbitration proceedings.

Anuwat's testimony is material as the current proceedings involve the termination of the CCTA due to the allegations of wrongdoing by Ini-Tech. Anuwat as the CEO of Ini-Tech is a witness central to the dispute.[21]

The subject matter of both proceedings is overlapping. The ICC proceedings relate to alleged cyber war crimes in Ulavu committed using certain software closely related to OnionRing.[22] Further, Anuwat was investigated and arrested due to his role as Ini-Tech's CEO and the connections between himself and Ulavu's Prime Minister.[23] Similarly, the arbitral proceedings relate to the alleged wrongdoing of Ini-Tech, and the possible illegality of the OnionRing software in Coltana.[24] The very nature of both disputes is closely related.

The Department of Justice in Ulavu has also suggested possible investigations into the Coltana 2021 general election, further concretizing the overlapping issues in both proceedings.[25]

By awaiting the outcome of the ICC in relation to Anuwat's involvement in the matter, this tribunal can make the most informed decision in upholding justice and in the best interest of all parties to the arbitration.

[21] Moot Problem, [22].
[22] Moot Problem, [37].
[23] Moot Problem, [38].
[24] Moot Problem, [45].
[25] Moot Problem, [37].

ii. Respondents have the right to be heard and to present its case in the most effective way

The arbitral tribunal may determine on the procedural matters of the proceedings while ensuring the proceeding is conducted in a manner that treats the parties with equality and that each party is given a full opportunity of presenting his case.[26]

Equality is ensured through allowing Anuwat to provide his testimony in person, after the conclusion of his trial at the ICC as his testimony may involve sensitive information previously not known to the tribunal.[27]

As opined in the "Juno Trader" Case:

> "*The value of [cross-examination] of ascertaining the truth lies in the personal contact between the witness, who has no idea of what questions may be asked of him, and the personality of the advocate who puts the questions to him.*"[28]

The most effective way is thus through physical witness examination of Anuwat. By reducing his testimony to mere documents or a mere virtual presence is unfair to the Respondents.

The tribunal in Nova Group v Romania agreed that for minor witnesses, videoconference examination may suffice. However, given the witness' central role and his involvements, his witness statement and examination are likely to be lengthy and of great importance.[29]

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[26] AIAC Rules 2021, rule 13.
[27] Moot Problem, [39].
[28] The Juno Trader Case (*Saint Vincent and the Grenadines v Guinea-Bissau*).
[29] *Nova Group v Romania.*

III. CCTA IS NOT VOID FOR ILLEGALITY AS THERE IS NO BREACH OF FUNDAMENTAL RIGHT TO PRIVACY

A contract is unenforceable by law becomes void when it ceases to be enforceable.[30] The consideration or object of an agreement is lawful, unless the Court regards it as opposed to public policy. Every agreement whereby its object or consideration is unlawful, such agreement shall be declared to be void.[31]

The Respondent agrees that right to privacy is a fundamental facet of personal liberty of life which is provided for under Article 21 of the Constitution of India[32] as well as Article 17 of the ICCPR. Indian Law and ICCPR are of relevance at this juncture as per Article 1 and Article 10 of the CCTA agreed by both parties.[33] Although right to privacy ("RTP") is absent from explicit wordings in Article 21 of Constitution of India, RTP is ruled to be intrinsic to life and liberty of a person.[34] All individuals' rights offline shall also be protected online, including RTP.[35]

Nevertheless, the Respondent submits that the Claimant's argument that CCTA is void is clearly flawed due to three reasons, [A] Coltana does not enjoy reasonable expectation of privacy; [B] CCTA does not infringe right to privacy of Coltana's citizens; [C] Even if there is encroachment upon right to privacy, such infringement fulfilled the tripartite-test hence legally justified.

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[30] Indian Contracts Act 1872, s.2(j).
[31] Indian Contracts Act 1872, s.23.
[32] The Constitution of India, art. 21.
[33] Moot Problem, [25.1] [25.5].
[34] *Justice K.S. Puttaswamy & Anr v Union of India & Ors* [2017] SC 4161
[35] UNGA, A/RES/68/167; *Halford v the United Kingdom* Application no. 20605/92

A. Coltana does not enjoy reasonable expectation of privacy

If one seeks to preserve something as private and such aspiration is reasonable in the eyes of society, an intrusion into that space will constitute an interference to his expectation of privacy. This principle has been judicially recognised by Indian courts[36] as well as other courts worldwide.[37] This tribunal should determine whether such expectation is one that is objective and reasonable.

i. A mere surveillance via CCTV does *not ipso facto* constitute a breach of privacy

Surveillance via CCTV is permissible and legal, as long as it does not exceed the reasonable anticipation of usage.[38] In Peck v UK, the ECHR found the initial CCTV monitoring of the applicant's suicide attempt as permissible. However, the usage of such footage in a suicide-awareness advertisement without his consent was deemed an interference, for its use exceeded what he reasonably anticipated.[39]

OnionRing has access to CCTVs throughout the country to identify suspected terrorists - an issue haunting Coltana.[40] The Respondent submits that usage of OnionRing does not exceed what President Lalan reasonably anticipated which is to prevent terrorist attacks. In fact, it has been proven to be efficient according to reports from the government's security and intelligence department.[41]

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[36] *Justice K.S. Puttaswamy & Anor v Union of India & Ors* [2017] SC 4161.
[37] *Bărbulescu v România* Application no. 61496/08
[38] *Peck v UK* App. No. 00044647/98
[39] Ibid.
[40] Moot Problem, [27].
[41] Moot Problem, [27].

ii. Nature of interference is looked into for denial of reasonable expectation of privacy

In the case of in the matter of an application by JR38 for Judicial Review (Northern Ireland),[42] the majority of UK Supreme Court bench held that reasonable expectation of privacy is denied as the nature of criminal activity. Hence, although the CCTV footage where appellant involved in is published, the appellant enjoys no reasonable expectation of privacy. This is due to the riotous behaviour by appellant. This UK case is also relied by the Indian Supreme Court in KS Puttaswamy.[43]

Similar to our current case at hand, the CCTVs were installed by government and granted access to OnionRing. Such purpose is to identify suspected terrorists, which involved the element of criminal activities. Hence, considering this element, the reasonable expectation of privacy by Coltana shall be denied.

iii. Assuming arguendo, Coltana enjoys an expectation of privacy, it is merely a reduced expectation

When a party shared date voluntarily, there is a reduced expectation of privacy. This is known as the 'third party doctrine'.[44] This is due to users know that their data would solely be used by the providers for the intended legitimate purposes which include the state may procure such information to prevent a crime. Similarly in Muscio v Italy, while the court recognised that spam

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[42] *In the matter of an application by JR38 for Judicial Review (Northern Ireland)* [2015] UKSC 42
[43] *Justice K.S. Puttaswamy & Anr v Union of India & Ors* [2017] SC 4161
[44] *District Registrar and Collector v Canara Bank* (2005) 1 SCC 496

emails may amount to intrusion to privacy, it held that by connecting to the Internet, users have *voluntarily exposed* themselves to the risk of receiving spam emails.[45]

Looking into our current circumstances, Coltana entered into an agreement with Radostan, with the purpose to combat terrorism and cyber-attack. There was no coercion or misrepresentation by Ini-Tech or Radostan while explaining OnionRing to Coltana, which shows that Coltana is willingly exposing its citizens' data to the OnionRing.

B. CCTA does not infringe the right to privacy of Coltana's citizens through implementation of OnionRing

In Perry v UK, the ECHR ruled that using CCTVs for the sole purpose of identification is illegal.[46] We also acknowledge, that such operations done in a covert manner, such as in Perry, is also illegal. Be that as it may, the case of Perry is wholly distinguishable to the case at hand. In our case, it was not covert, rather it was announced.

President Lalan, the President of Coltana, herself informed the public that OnionRing possesses access to all closed-circuit television (CCTV) systems established by the government across the nation, to ease the purpose of identification of suspected terrorists.[47] CCTV by the government is prima facie legal as decided by ECHR in Peck v UK.[48]

[45] *Muscio v Italy* (Application no. 31358/03).
[46] *Perry v UK* (Application no. 63737/00).
[47] Moot Problem, [27].
[48] *Peck v UK* (Application no. 00044647/98).

OnionRing empowers governments to remotely and covertly extract intelligence from various devices.[49] This merely entails the potential of OnionRing, it is silent in the fact that it has been used by Coltana as a method of interception.

Assuming but not conceding there is interception, it is not ipso facto illegal, if it's for prevention of crime and national security as decided in Klass and others v Germany by ECHR.[50]

C. CCTA fulfils the tripartite test hence legally justified

Right to privacy is not absolute, as such right may be legally restricted according to the tripartite test which consists of (i) legality, (ii) necessity and (iii) proportionality. The RESPONDENT avers that all three tests have been fulfilled by CCTA.

i. CCTA's decision was provided by law

An interference is envisaged by law if it is based on a governing law and that such law is (a)accessible to the public and (b)foreseeable to its effects.[51] A legislation is said to be accessible, when the citizens are able to have appropriate knowledge for legal rules that apply in a given situation.[52] Whereas for a law to be foreseeable to its effect, it must be written accurately and precisely for an individual to be able to reasonably predict the potential effects of a certain conduct.[53]

[49] Moot Problem, [23].
[50] *Klass and Others* v Germany (Application no. 5029/71).
[51] *Delfi AS v Estonia* (Application no. 64569/09) [120].
[52] *Wingrove v UK* (Application no. 17419/90) [40].
[53] *Liberty and Others v The United Kingdom (Application* no. 58243/00) [59].

As of current development of Indian Law, the two legislations available for interception is Telegraph Act 1885[54] while surveillance of electronic communication is governed by Information Technology Act 2000.[55]

Although Telegraph Act has been ruled by Indian Supreme Court in PUCL for lack of procedural safeguards,[56] however a Telegraph (Amendment) Rules 2007 had already gazetted and come into force to fill up the lacuna.[57] Hence, the decision by Indian Supreme Court in 1996 shall not be taken into account at this juncture.

Whereas for Information Technology Act, it has explicitly recognised "the right to interception or monitoring or decryption of any information through any computer resource".[58]

Both IT Act and Telegraph Act provides that the interception is subject to universal exception of 'public'.[59] Moreover, both act also provide effective procedural remedies and does not constitute unfettered discretion that would impair the right to privacy.[60]

ii. CCTA is necessary

The only permissible restrictions are legitimate state objectives which comprised of national security and crime control.[61] Terrorist attacks and cyber-attacks were a matter of national security and public order.

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[54] Telegraph Act 1885, s.5.
[55] Information Technology Act, s.69.
[56] *PUCL v Union of India & Anor* [1997] SC 568
[57] Telegraph (Amendment) Rules 2007.
[58] Information Technology Act, s.69.
[59] *İrfan Güzel v Turkey* (Application no. 35285/08) [94]-[99].
[60] *Huvig v France* (Application no. 11105/84); *Kruslin v France* (Application no. 11801/85) [33].
[61] Marc J. Bossuyt, Guide To The "Travaux Préparatoires" of the International Covenant on Civil and Political Rights (Martinus Nijhoff Publishers,1987), p.375; *Justice K.S. Puttaswamy & Anr v Union of India & Ors* [2017] SC 4161.

Coltana was suffering from a terrorist attack that caused casualties of 24 lives and hundreds injuries.[62] Coltana suffered from cyber-attacks in which government websites had been hacked, the same day and only a few hours after the terrorist attack.[63] This indicates an urgency and concern in Coltana's national security and public order. CCTA pursued a legitimate aim.

iii. CCTA is proportionate

According to the ICCPR's preparatory note or *travaux préparatoires*, any interference must be proportionate to the legitimate aim pursued.[64] President Lalan explained that the purpose is to enable OnionRing to continuously track the movements of any person identified as a suspected terrorist.[65]

Considering the nature of OnionRing's operation and the urgency of Coltana for terrorist and cyber-attack preventions, the respondent submits that the three-part test has been fulfilled and CCTA shall not be void for illegality as such interference to privacy is legally justified.

IV. THE TERMINATION OF THE CCTA BY COLTANA IS VALID

The RESPONDENT avers that termination of CCTA by Coltana is invalid due to [A] there is not a repudiatory breach of contract; [B] acquiesce of Coltana to the alleged breach; and [C] failure by Coltana to conduct due diligence prior to entering into CCTA.

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[62] Moot Problem, [8].
[63] Moot Problem, [20].
[64] Marc J. Bossuyt, Guide To The "Travaux Préparatoires" of the International Covenant on Civil and Political Rights (Martinus Nijhoff Publishers,1987), p.375.
[65] Moot Problem, [27].

A. There is no repudiatory breach of CCTA

OnionRing had successfully detecting and preventing criminal attacks.[66] This proves our product is not defective whatsoever. OnionRing, an anti-terrorism software which he claimed could identify and neutralise potential cyber-attacks and terrorist threats.[67] A mere outlier does not render OnionRing a failure.

This is analogous with the Iron dome in Israel, which is based on technology supplied by the USA. Although it had only a 97% success rate in intercepting incoming rockets from enemies, it doesn't mean Israel terminates all military contracts with the USA.[68]

Further, it is silent in the moot problem that Coltana expects a 100% success rate in combating cyber-attacks and terrorist threats. It merely helps to prevent but not eradicate such threats completely. In fact, OnionRing had proven its significant success historically.

B. Coltana had shown acquiescence to the alleged breach

Section 39 of the Indian Contract Act provides that '*if a person indulges in any fundamental breach of the contract and the other party does not acquiesce to the breach, then the party not breaching is not bound under the liabilities of the contract.*'[69]

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[66] Moot Problem, [27].
[67] Moot Problem, [23].
[68] Staff T and others, 'Iron Dome at 97% Success Rate after 580 Rockets Fired from Gaza since Friday' (The Times of Israel, 7 August 2022) <https://www.timesofisrael.com/580-rockets-fired-from-gaza-since-friday-iron-dome-at-97-success-rate/> accessed 10 September 2023.
[69] Indian Contracts Act 1871, s.39.

In fact, upon the hacking of the bitcoin incident, the claimant entered into various negotiations, reflecting acquiescence to the alleged breach. Coltana cannot have their cake and eat it by terminating the CCTA as a result of their government's incompetent administration.

C. Failure by Coltana to conduct due diligence prior to entering into CCTA

Coltana had failed to conduct their due diligence before entering into CCTA. A trial run of OnionRing is not conducted.[70]

Assuming arguendo, the statement made by Anuwat is a condition, it has now become a warranty. As ruled by the Indian Supreme Court, in the event a buyer buys some goods without conducting his or her due diligence to inspect it, the buyer is said to be treating such contract as a warranty. This may negate the fact that even if the contract was meant to be a condition.

Hence, even if the seller breaches the contract, the buyer cannot repudiate the contract.[71] Termination is not a remedy that can be enjoyed by the aggrieved party for a breach of warranty and hence, termination of CCTA is not valid.

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[70] Moot Problem, [24].

[71] *Indochem Electronic and Anor v Additional Collector of Customs* (2006) 2 AWC 1744.

PRAYERS OF RELIEF

The Respondent, the Majestic Kingdom of Radostan, humbly requests this Tribunal to adjudge and declare that:

I. Olaf should not be removal as the arbitrator for the alleged lack of impartiality;

II. The arbitral tribunal stay the current proceedings until the conclusion of Anuwat's trial at the ICC;

III. The CCTA is not void for illegality as there is no breach of fundamental rights to privacy;

IV. The termination of the CCTA is invalid.

Respectfully Submitted,

Counsels for Respondent