LAWASIA International Moot

2306 -R

18th LAWASIA International Moot 2023

International Rounds

IN THE

INTERNATIONAL CENTRE OF ARBITRATION

AT THE BENGALURU CITY, INDIA 2023

THE CASE CONCERNING OnionRing SOFTWARE

THE REPUBLIC OF COLTANA

(*Claimant*)

And

THE MAJESTIC KINGDOM OF RADOSTAN

(*Respondent*)

MEMORIAL ON BEHALF OF RESPONDENT

TABLE OF CONTENTS

SI. No.	PARTICULARS	Page no.
1.	**LIST OF ABBREVIATIONS**	3-5
2.	**INDEX OF AUTHORITIES**	6-10
3.	**STATEMENT OF JURISDICTION**	11
4.	**QUESTIONS PRESENTED**	12
5.	**STATEMENT OF FACTS**	13-15
6.	**SUMMARY OF PLEADINGS**	16-17
7.	**PLEADINGS** **1. WHETHER OLAF, AN AI-POWERED INTELLIGENT LAWYER CAN BE REMOVED AS THE ARBITRATOR FOR LACK OF IMPARTIALITY** 1.1. OLAF IS QUALIFIED TO BE AN ARBITRATOR 1.2. OLAF DOES NOT LACK IMPARTIALITY **2. WHETHER THE ARBITRAL TRIBUNAL SHOULD STAY THE PRESENT PROCEEDINGS UNTIL THE CONCLUSION OF ANUWAT'S TRIAL AT THE INTERNATIONAL CRIMINAL COURT** 2.1 THE CIRCUMSTANCES OF THE CASE REQUIRE A STAY OF PROCEEDINGS 2.2 THERE ARE SUFFICIENT GROUNDS FOR AN INTERIM ORDER OF STAY 2.3 THE ARBITRATION PROCEEDINGS UNDERMINES THE ICC PROCEEDINGS **3. WHETHER THE CCTA IS VOID** 3.1 CCTA FULFILS ALL THE ESSENTIALS OF VALID CONTRACT 3.2 THERE HAS BEEN NO FRAUD OR MISREPRESENTATION BY RADOSTAN	18-41

	3.3 CCTA IS IN LINE WITH INTERNATIONAL OBLIGATIONS **4. WHETHER THE TERMINATION OF THE CCTA BY COLTANA IS VALID**	
8.	**PRAYER FOR RELIEF**	42

LIST OF ABBREVIATIONS

S. No.	Abbreviations	Full form
1.	&	And
2.	@	At
3.	AI	Artificial Intelligence
4.	AIAC	Asian International Arbitration Centre
5.	AIR	All India Reporter
6.	Anr.	Another
7.	Art.	Article
8.	Assoc.	Association
9.	CCTA	Coltana-Radostan Counter Terrorism Agreement
10.	CCTV	Closed Circuit Television
11.	Col.	Colonel
12.	Corp.	Corporation
13.	Dist.	District
14.	DPP	Democratic Progressive Party
15.	Ed.	Edition
16.	EWHC	England and Wales High Court
17.	H.C.	High Court
18.	Hon'ble	Honorable
19.	IBA	International Bar Association
20.	ICA	Indian Contract Act
21.	ICC	International Criminal Court

22.	ICJ	International Court of Justice
23.	ICCPR	International Covenant on Civil and Political Rights
24.	ICESR	International Covenant on Economic, Social and Cultural Rights
25.	ICSFT	International Convention for the Suppression of the Financing of Terrorism
26.	i.e.,	That is
27.	J	Justice
28.	Ltd.	Limited
29.	No.	Number
30.	NYC	New York Convention
31.	OBH	Order of the Black Hand
32.	Ors.	Others
33.	Para	Paragraph
34.	PCA	Permanent Court of Arbitration
35.	Pvt.	Private
36.	r/w	Read With
37.	S.C	Supreme Court
38.	SCC	Supreme Court Cases
39.	Sch.	Schedule
40.	Sec.	Section

41.	SIAC	Singapore International Arbitration Centre
42.	St.	State
43.	u/a	Under article
44.	UN	United Nations
45.	UNCITRAL	United Nations Commission on International Trade Law
46.	UK	United Kingdom
47.	US	United States
48.	VCLT	Vienna Convention on Law of Treaties

INDEX OF AUTHORITIES

Treaties and Conventions:

1. Arms Trade Treaty, 2013
2. International Convention for the Suppression of the Financing of Terrorism 1999
3. International Covenant on Civil and Political Rights (ICCPR) 1966
4. International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966
5. The New York Convention, 1958
6. UN Charter, 1945
7. Vienna Convention on Law of Treaties (1969)

International Legal Instruments:

1. Asian International Arbitration Centre Rules, 2021
2. IBA Guidelines, 2014
3. ICC Arbitration Rules 2021 (International Chamber of Commerce)
4. International Dispute Resolution Procedures (Including Mediation and Arbitration Rules) 2021
5. Permanent Court of Arbitration, 2012
6. Rome Statute 1998
7. Singapore International Arbitration Centre, 2016
8. United Nations Commission on International Trade Law Rules, 2021

Statute:

1. CODE Dı́instruction CRIMINELLE 1808

2. Federal Commercial Code of Mexico 1993.
3. Indian Contract Act, 1872
4. International Commercial Arbitration Act 2004.

Cases:

1. *A v B* [2011] EWHC 2345 (Comm)**...17**
2. *Adams v Lindsell* [1818] 106 ER 250. 26
3. *Air India Ltd. v Gati Ltd.* [2015] SCC Online Del 10220..30
4. *Argonaut Insurance Co v Republic Insurance Co* [2003] EWHC 547 (Comm). 17
5. *Avitel Post Studioz Limited and Ors. vs. HSBC PI Holdings (Mauritius) Limited and Ors* [2016] No. 833 of 2015...29
6. *B. Fund Ltd v A. Group Ltd* [2007] Case No. 4P-168/2006 19
7. *Balfour v Balfour* [1919] 2 KB 571 25
8. *Bhagwandas Goverdhandas Kedia v M/S. Girdharilal Parshottamdas* [1966] SCR (1) 65...26
9. *Bigos v Boosted* [1951] 1 All ER 92. 27
10. *Burn & Co. v Sree Lukhdhriji* AIR 1925 PC 188 31
11. *Cairn Energy Plc & Cairn UK Holdings Ltd. v Government of India Permanent Court of Arbitration* [2017] PCA Case No. 2016-7 ....20, 23
12. *Cofeley Ltd v Bingham* [2016] EWHC 240 (Comm). 16
13. Cour d’appel de Luxembourg [2021] Case No. 108/21 24
14. *Currie v Misa* [1875-76] LR 1 App Cas 554 26
15. *Dunlop v Vincent Higgins* [1848] 1 HLC 381 26
16. *Felthouse v Bindley* [1862] 142 ER 1037 26
17. *Fender v Mildmay* [1935] 2 KB 334..28

18. *Fercometal SARL v Mediterranean Shipping Co.* [1988] 2 ALL ER 742...................31

19. *Hancock v Hancock Prospecting Pty Ltd* [2022] NSWSC 724..................................16

20. *Holiness Acharya Swami Ganesh Dassji v Sita Ram Thapar* [1996] 4 SCC 526........30

21. *Hoosac Tunnel Dock and Elevator Company v James W. O'Brian* [1884] 137 Mass. 424...16

22. *IPOC International Growth Fund Ltd v LV Finance Group Ltd* [2007] 4P.168/2006. 19

23. *Ireland v United Kingdom ('The MOX Plant Case')* [2003] PCA Case No. 2002-01;23

24. *Kaplún v. Plurinational State of Bolivia* [2010], ICSID Case No. Arb/06/2...............22

25. *M/s J.P. Builders and another v A. Ramadas Rao and another* [2011] 1 RCR (Civil) 604...30

26. *Mayawanti v Kaushalya Devi* [1990] 3 SCC 190..25

27. *Porter v Magill* [2001] UKHL 67..16

28. *Powell v Lee* [1908] 99 LT 284 26

29. *Puttaswamy Gowda and others v State of Karnataka* [2016] Indlaw KAR 3138 27

30. *R v Barnsley Licensing Justices* [1960] 2 All ER 703 18

31. *R v Gough* [1993] 2 All ER 724..18

32. Racine, Cour d'appel de Paris (1re Ch. C) 10 septembre 1998 24

33. *Ratanchand Hirachand v Askar Nawaz Jung* AIR 1976 AP 112 28

34. *S.P. Chengalvaraya Naidu v Jagannath* [1994] SCC (1) 1 29

35. *Sasfin (Pty.) Ltd. v Beukes* [1989] (1) SA 1 (A). 28

36. *Shrisht Dhwan (Smt) v M/s. Shaw Brothers* AIR 1992 SC 1555................................29

37. *Southern Pacific Properties (Middle East) Limited v Arab Republic of Egypt* [1985] ICSID Case No. Arb/84/3 23

38. *Sri B M Narayanappa v Smt Lakshmamma* 2023 Latest Caselaw 2055 Kant 25

39. *State of Kerala v Cochin Chemical Refineries Ltd* [1968] SCR (3) 556 31

40. *Sukh Sagar Medical College & Hospital v State of Madhya Pradesh* [2020] Civ App No. 3820/2020...29

41. *U.P. Rajkiya Nirman Nigam Ltd v Indure Pvt. Ltd. & Ors* [1996] SCC (2) 667.........25

42. *Viacom 18 Media Pvt. Ltd. v MSM Discovery Pvt. Ltd.* [2010] CM App No. 10061-62/2010 31

43. Vienna Commercial Court, Case No 16 NC 2/07w [2007]. 18

44. *Vijay Minerals Pvt Ltd v. Bikash Deb* AIR 1996 Cal 67 26

Journals and Other Literary Sources:

1. Duncun Hollis, 'A Brief Primer on International Law and Cyberspace' (Carnegie Endowment for international peace, 14 June 2021) <https://carnegieendowment.org/2021/06/14/brief-primer-on-international-law-and-cyberspace-pub-84763> 28
2. Hwang, 'Corruption in Arbitration – Law and Reality' (2012); Concepción, 'Combating Corruption and Fraud' (Dispute Resolution International, No. 1 2017) vol. 1 20
3. Leela Kumar, 'The Independence and Impartiality of Arbitrators in International Commercial Arbitration' (2014) <https://ssrn.com/abstract=2428632> 17
4. Richard M. Mosk, 'Evidentiary Privileges in International Arbitration' (International and Comparative Law Quarterly, 2001) vol 50(2)..22
5. Sébastien Besson, 'Addressing Issues of Corruption in Commercial and Investment Arbitration – Institute Dossier XIII' (Kluwer Law International, 2015 20
6. Théobald Naud, 40 under 40 International Arbitration (Dykinson S.L 2018).............20

Online Resources:

1. José María de la Jara, Daniela Palma, Alejandra Infantes, 'Machine Arbitrator: Are We Ready?' Kluwers Arbitration Blog (Wolters Kluwer, 4 May 2017) http://arbitrationblog.kluwerarbitration.com/2017/05/04/machine-arbitrator-are-we-ready/

2. Eray Eliacik, 'Artificial Intelligence vs. Human Intelligence: Can a game-changing technology play the game?' (Data Conomy, 20 April 2022) https://dataconomy.com/2022/04/20/is-artificial-intelligence-better-than-human-intelligence/

Dictionary:

1. Black's Law Dictionary (4th edn, 1968)

STATEMENT OF JURISDICTION

The Claimant (Republic of Coltana) have submitted the dispute to the International Arbitration Centre, Bengaluru, India pursuant to Article 8(i) of Coltana-Radostan Counter Terrorism Agreement (CCTA) in accordance with the Rule 1.1 of Arbitration rules of Asian International Arbitration Centre (AIAC) which states:

"*1.1. Where the Parties have agreed to refer their dispute to the AIAC for arbitration, or to arbitration in accordance with the AIAC Arbitration Rules, then: (a) the arbitration shall be conducted and administered by the AIAC in accordance with the AIAC Arbitration Rules;*"

Therefore, the Republic of Coltana and Majestic Kingdom of Radostan have accepted the jurisdiction of the International Arbitration Centre and agreed to accept the award of the Arbitrator as final and binding.

QUESTIONS PRESENTED

1. WHETHER OLAF, AN AI-POWERED INTELLIGENT LAWYER CAN BE REMOVED AS THE ARBITRATOR FOR LACK OF IMPARTIALITY

1.1. OLAF IS QUALIFIED TO BE AN ARBITRATOR

1.2. OLAF DOES NOT LACK IMPARTIALITY

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

2.1 THE CIRCUMSTANCES OF THE CASE REQUIRE A STAY OF PROCEEDINGS

2.2 THERE ARE SUFFICIENT GROUNDS FOR AN INTERIM ORDER OF STAY

2.3 THE ARBITRATION PROCEEDINGS UNDERMINES THE ICC PROCEEDINGS

3. WHETHER THE CCTA IS VOID

3.1 CCTA FULFILS ALL THE ESSENTIALS OF VALID CONTRACT

3.2 THERE HAS BEEN NO FRAUD OR MISREPRESENTATION BY RADOSTAN

3.3 CCTA IS IN LINE WITH INTERNATIONAL OBLIGATIONS

4. WHETHER THE TERMINATION OF THE CCTA BY COLTANA IS VALID

STATEMENT OF FACTS

1. **The Republic of Coltana** is a small, prosperous nation on the Indian Ocean coast known for its rich cultural and historical heritage. It is a former British colony with British common law in its legal system. Coltana experienced internal conflicts during WWII between right-wing and left-wing factions.
2. **The Majestic Kingdom of Radostan** is a diverse nation in South Asia known for technologically advanced ancient cities discovered under its capital, Aragorn. It has successfully resisted colonization and maintains a constitutional monarchy with British common law.
3. **The Battle of Borbana**: During WWII, Coltana was divided, with eastern and western territories controlled by conflicting rulers. The conflict between the right-wing Matic and left-wing Stefka factions escalated. The Battle of Borbana in 1944 resulted in significant casualties and Stefka's bombing of Radostan's Glass. Stefka emerged victorious, abolished the monarchy, and established Coltana as a unified republic with the DPP. OBH emerged as a right-wing nationalist party.
4. **Coltana-Radostan Memorandum of Understanding (CRMOU)**: Owing to great national and international pressure, President Stefka visited Radostan to make peace and to offer a public apology for the destruction caused to the Glass Palace. After Stefka's visit to Radostan, the CRMOU was signed.
5. **Project Olaf**: Project Olaf was launched in Radostan to create a super-intelligent AI lawyer and judge. Coltana's involvement in Project Olaf led to its successful development and deployment. Olaf gained fame as an independent AI lawyer and judge, though its pro-Radostan stance drew controversy.
6. **The Return of Dr. Sirius Black**: Dr. Sirius Black, a former mercenary with a military background, joined OBH and became its president. Dr. Black's election sparked violent

protests and clashes with the government. President Lalan condemned Dr. Black's press conference and promised to curb violence and conspiracies.

7. **The Sapura Bay Bombings**: Tensions escalated between OBH and the government, leading to sporadic disturbances. Dr. Black's arrest and detention in Sapura Bay preceded the bombings during the Sapura Bay Marathon. Pro-government supporters criticized the government for inadequate security measures. President Lalan suggested OBH's involvement in the attacks and vowed to bring the perpetrators to justice.
8. **Coltana-Radostan Counter-Terrorism Agreement (CCTA)**: President Lalan, Coltana's Minister of Defense, and special intelligence chief Dolores Umbridge held a high-level security meeting with Prime Minister Yodwicha and others, including Anuwat Kittisak, CEO of Ini-Tech Inc. Anuwat proposed the OnionRing, an anti-terrorism software capable of identifying and neutralizing cyber threats and terrorist plots. This resulted in the signing of the CCTA between Coltana and Radostan, allowing Ini-Tech Inc to provide OnionRing services to Coltana. Key CCTA clauses include general obligations to follow international laws and uphold human rights principles, payment of $25 million in Bitcoin quarterly by Coltana to Radostan, and dispute resolution through arbitration in Bangalore, India, governed by Indian law.
9. **The OnionRing's Success and General Elections**: OnionRing was successfully installed in Coltana, though concerns arose about privacy. Despite these concerns, it effectively detected and prevented cyberattacks and terrorist plots, enhancing national security. Dr. Black's acquittal allowed him to run for president in the general elections, causing controversy. The ruling DPP party nearly lost the elections but maintained a simple majority.
10. **The OnionRing Scandal and the Bitcoin Robbery**: A former Ini-Tech employee alleged that OnionRing accessed voter data and used it to promote OBH party propaganda, sparking

a nationwide debate on data privacy and ethics. Subsequently, Coltana's Bitcoin reserves, valued at approximately $300 million, were stolen overnight by highly skilled hackers.

11. **The Ulavu Files and Anuwat's Arrest**: The Ulavu Files revealed a connection between Anuwat and Ulavu's Prime Minister Dua Lupa, suggesting Ulavu used technology similar to OnionRing for electoral manipulation. Anuwat was arrested in the United States of Kola Lumpo on charges of cyber war crimes in Ulavu.

12. **The Crisis and Arbitration Proceedings**: President Lalan ceased negotiations with Radostan, citing the Ulavu Files as evidence of illegal interference in Coltana's 2021 general election. Coltana initiated arbitration proceedings under Article 8 of the CCTA. Radostan nominated Olaf as a Respondent-appointed arbitrator. Coltana sought Olaf's removal, alleging potential bias. Radostan requested a stay in the proceedings due to Anuwat's ICC testimony, while Coltana objected, asserting that existing documents were sufficient for arbitration.

SUMMARY OF PLEADINGS

1. Whether Olaf, An AI-Powered Intelligent Lawyer Can Be Removed As The Arbitrator For Lack Of Impartiality

Olaf, an AI-powered intelligent lawyer cannot be removed as the arbitrator for lack of impartiality. There is no evidence to prove lack of impartiality. Olaf is qualified to be appointed as an arbitrator under the AIAC Rules 2021 as i) Olaf is qualified to be an arbitrator as international standards do not mandate natural persons as Arbitrator and there is no exclusion of AI arbitrators and ii) Olaf does not lack impartiality as test of apparent bias is not applicable and it passes the standards of impartiality.

2. Whether the Arbitral Tribunal Should Stay the Present Proceedings Until the Conclusion of Anuwat's Trial At the International Criminal Court

The present proceedings should be stayed until the conclusion of Anuwat's Trial at ICC as his presence is crucial to resolve the dispute fairly. This course of action is necessary to uphold the principles of justice, fairness, and the integrity of the arbitration process. Granting a stay serves the interests of justice as i) The circumstances of the case require a Stay of proceedings outcome of Criminal proceedings is material to the Tribunal's decision and only the ICC has sufficient means to produce the evidence of Cyber War Crimes; ii) There are sufficient grounds for an interim order of Stay as it meets the criteria of AIAC rules and will not be prejudicial to the claimant's access to justice and due process and iii) The Arbitration proceedings undermines the ICC proceedings.

3. Whether the CCTA Is Void

CCTA is valid and legally binding between Radostan and Coltana as i) CCTA fulfils the essentials of a valid as there is valid offer, acceptance, lawful consideration and lawful object; ii) There has been no fraud or misrepresentation and iii) CCTA is in line with International Obligations.

4. Whether the Termination of the CCTA by Coltana is Valid

The Claimants do not fulfil the grounds of valid termination under Section 39 of ICA as i) There has been no refusal to fulfil promises by respondents and termination has caused financial and reputational damages to the respondent and ii) Respondents have showed utmost willingness and readiness to perform obligations under CCTA.

PLEADINGS

1. Whether Olaf, An AI-Powered Intelligent Lawyer Can Be Removed As The Arbitrator For Lack Of Impartiality

Olaf, an AI-powered intelligent lawyer cannot be removed as the arbitrator for lack of impartiality. Olaf is qualified to be appointed as an arbitrator under the AIAC Rules 2021. There is no evidence to prove lack of impartiality as well.

1.1. Olaf is qualified to be an arbitrator

An Arbitrator has been defined under Black's Law Dictionary as "A private, disinterested person, chosen by the parties to a disputed question, for the purpose of hearing their contention, and giving judgment between them; to whose decision (award) the litigants submit themselves either voluntarily, or, in some cases, compulsorily, by order of a court."[1] The use of the term 'person' does not indicate that legal persons are not eligible to be appointed as arbitrators. The International standards also do not limit the arbitrators to natural persons.

The word "Arbitrator" must be interpreted by Art. 31 of the VCLT, which emphasizes interpreting treaty terms in good faith in accordance with their ordinary meaning in context and with respect to the treaty's object and purpose.[2] Under Art. 31.2 of VCLT, the context of the treaty shall comprise the text, including its preamble and annexes.[3] The text of AIAC has never excluded AI arbitrators and putting such obligations on states creates unnecessary obligations on the state.

[1] Black's Law Dictionary (4th edn, 1968) para 135
[2] Vienna Convention on the Law of Treaties 1969, Art 31.
[3] Vienna Convention on the Law of Treaties 1969, Art 31.2.

1.1.1 The international arbitration standards do not limit Arbitrators to be Human

The appointment of a computer as an arbitrator is not expressly prohibited by any of the amended international arbitration regulations. The Convention on the Recognition and Enforcement of Arbitral Awards (The New York Convention)[4] refers to arbitrators in two articles, Art. I (2) and Art. V (1)(b), but does not provide or imply that the arbitrators must be human beings. Rather, every term pertaining to the arbitration agreement's legality solely refers to the submission of a dispute to the arbitrators. Parties may appoint a single arbitrator or a panel of arbitrators, according to the definitions of "arbitral tribunal." Because of this circular reasoning, both an arbitration agreement sending the dispute to a Machine Learning System arbitrator and a tribunal consisting entirely of such a machine, would be legal.[5]

Furthermore, arbitration legislations of Chile[6], Colombia[7] (international arbitration) and Mexico[8], as well as the Model Law, do not contain a specific reference to arbitrators as 'human,' nor require them to be in a capacity to exercise their civil rights.[9] Rule 13 of ICC arbitration dealing with appointment and confirmation of arbitrators does not mention the arbitrators to be human.[10] Similarly under SIAC[11] and ICDR rules[12], there has been no such specific mention of natural person.

[4] The Convention on the Recognition and Enforcement of Arbitral Awards (The New York Convention) 1958, Art I(2), Art V(1)(b).
[5] José María de la Jara, Daniela Palma, Alejandra Infantes, 'Machine Arbitrator: Are We Ready?' Kluwers Arbitration Blog (*Wolters Kluwer*, 4 May 2017) <http://arbitrationblog.kluwerarbitration.com/2017/05/04/machine-arbitrator-are-we-ready/> accessed 12 September 2023
[6] International Commercial Arbitration Act 2004.
[7] Law No. 1563 2012.
[8] Federal Commercial Code of Mexico 1993.
[9] ibid.
[10] ICC Arbitration Rules 2021 (International Chamber of Commerce), Art 13(1).
[11] Arbitration Rules of the Singapore International Arbitration Centre (SIAC Rules) 2016, Rule 13.
[12] International Dispute Resolution Procedures (Including Mediation and Arbitration Rules) 2021, Art 13.

1.1.2 The text of AIAC does not exclude AI arbitrators

The AIAC Arbitration Rules on Appointment state that where three arbitrators are to be appointed, the procedure for the appointment, unless otherwise agreed to by the Parties, shall be that: (a) each Party shall nominate one arbitrator, and both Party-nominated arbitrators shall thereafter nominate the third arbitrator, who shall act as the presiding arbitrator of the Arbitral Tribunal.[13] There is no mention of qualifications for arbitrators.

None of the arbitration laws explicitly restrain the appointment of a computer as an arbitrator. Instead, every provision pertaining to the validity of the arbitration agreement only defines it as the submission of a dispute to the arbitrators. In turn, the definitions of 'arbitral tribunal' only mention that parties may appoint a sole or a plurality of arbitrators. Thus, based on this argument, both an arbitration agreement referring the dispute to a machine arbitrator and the composition of a tribunal by such machine would be valid.

The interpretation of the word under Art. 31 of VCLT considers the objective of the agreement. The objective of AIAC is providing "a wider range of sophisticated and tailored provisions to govern the efficient conduct of arbitration proceedings" and to offer a "comparable and competitive product reflecting contemporary international standards and practices on the global stage.

In this instant case, the inclusion of AI arbitrators in the interpretation promotes the objective of AIAC of upholding international standards and giving efficient solutions as Olaf has been given extensive legal training by various sources including experts from Claimant's side. The inclusion of machine learning in the project ensures that Olaf continuously learns and improves

[13] AIAC Arbitration Rules 2021, Rule 9.5.

over time, becoming more and more intelligent and efficient at handling and solving legal issues.[14]

Computers possess the capability to process vast amounts of information at a rapid pace, enabling them to identify data patterns imperceptible to humans. [15] Olaf's track record as a sought-after provider of legal services and advice, coupled with its involvement as counsel or arbitrator in intricate international and domestic arbitrations, underscores its qualifications to serve as an arbitrator.[16]

1.1.3. Exclusion of AI Arbitrators creates new obligations on the State

The imposition of new obligations on a state that extend beyond what was originally agreed upon constitutes a breach of the fundamental principles of international law. International agreements and treaties are based on the principle of *pacta sunt servanda.* Art. 26 of the VCLT states: “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”[17] This principle underlines the sanctity of international agreements and the importance of upholding the commitments made therein.

The prohibition against unilaterally imposing new obligations on states without their consent, as articulated in the UN Charter, particularly under Articles 2(4) and 2(7), intersects with the principles of self-determination and sovereignty enshrined in Articles 1 and 2 of the Charter. The UN Charter’s emphasis on self-determination[18] underscores a state’s right to freely determine its political status and development, while sovereignty[19] grants states control over their domestic affairs and international commitments. Imposing additional obligations without

---

[14] Moot Proposition, para 11.
[15] Eray Eliacik, ‘Artificial Intelligence vs. Human Intelligence: Can a game-changing technology play the game?’ (*Data Conomy*, 20 April 2022) <https://dataconomy.com/2022/04/20/is-artificial-intelligence-better-than-human-intelligence/> accessed 12 September 2023
[16] Moot Proposition, para 12.
[17] Vienna Convention on the Law of Treaties 1969, Art 26.
[18] Charter of the United Nations 1945, Art 1(2).
[19] Charter of the United Nations 1945, Art 2(1).

consent disrupts the equilibrium of international law, violating the principles of both self-determination and sovereignty as delineated in the UN Charter.

Art. 34 of the Vienna Convention prevents third parties from facing new obligations.[20] International agreements should likewise avoid imposing unagreed-upon duties on states, in line with the UN Charter's principles of sovereignty and self-determination. The AIAC Rules has not explicitly excluded AI arbitrators, indicating that its definition is not limited solely to human arbitrators. Consequently, prohibiting Olaf's role as an arbitrator would introduce new obligations not envisaged by the agreement.

1.2. Olaf does not lack impartiality

An arbitrator is a "quasi-judicial officer" and therefore the court ruled that impartiality, independence and freedom from undue influence from the arbitrator must be protected.[21] In this case, Olaf is impartial and does not show any apparent bias towards either party. The data and algorithm are balanced and does not reflect any biases.

1.2.1 The test of Apparent bias is not applicable here

The test of apparent bias propounded in the case Porter v Magill[22] established that the correct test to check whether all of the circumstances of the case, as ascertained by the court, would lead a "fair minded and informed observer" to conclude that there was a "real possibility" of bias. It has been judicially affirmed that the presence of actual or apparent bias inherently entails substantial injustice, obviating the need for further proof in this regard.[23] This test essentially revolves around determining whether there is an "objective likelihood of there being

[20] Vienna Convention on the Law of Treaties 1969, Art 34.
[21] *Hoosac Tunnel Dock and Elevator Company v James W. O'Brian* [1884] 137 Mass. 424.
[22] *Porter v Magill* [2001] UKHL 67.
[23] *Cofeley Ltd v Bingham* [2016] EWHC 240 (Comm).

a real risk that someone in the position of the arbitrator would not be able to bring an impartial mind to (all of) the questions to be determined.[24]

In essence, to satisfy the test for apparent bias, an impartial third party should be able to discern the potential for partiality. Impartiality relates to a state of mind, sometimes evidenced through conduct demonstrating that state of mind. An arbitrator is partial towards one party if he displays preference for, or partiality towards one party or against another, or whether a third person reasonably apprehends such partiality.[25] The circumstances in this case does not prove any objective bias.

1.2.1.1 The algorithm and data are unbiased

Olaf's impartiality is anchored in its data-driven and algorithmic decision-making process. The system operates by processing vast amounts of information from various sources, including experts from the Claimant's side[26] thereby ensuring a balanced and comprehensive understanding of legal issues. Moreover, Olaf continually learns and adapts over time, becoming more intelligent and efficient at handling complex legal matters.[27] Its data-driven approach allows it to identify patterns and nuances in information that might be overlooked by a human arbitrator, promoting a more objective and consistent adjudication process.

1.2.2.2 Olaf has been neutral in its views

In the case of A v B[28], it was determined that an arbitrator's previous association with a law firm representing a party didn't raise apparent bias concerns, as a fair-minded observer wouldn't perceive a real bias risk. Likewise, allegations of Olaf's bias in favour of Radostan lack merit,

---

[24] *Hancock v Hancock Prospecting Pty Ltd* [2022] NSWSC 724.
[25] Leela Kumar, 'The Independence and Impartiality of Arbitrators in International Commercial Arbitration' (2014) <https://ssrn.com/abstract=2428632> accessed 13 September 2023
[26] Moot Proposition, para 11.
[27] ibid
[28] *A v B* [2011] EWHC 2345 (Comm).

given that Olaf's impartiality is rooted in objective algorithms designed to benefit Radostan's citizens, making any claims of partiality purely theoretical.

In Argonaut Insurance Co v Republic Insurance Co[29] a non-lawyer arbitrator's prior statements as a fact witness had no bearing on his impartiality in a second arbitration as there was no connection between the same. Similarly, Olaf's criticisms of Coltana are founded on neutral and publicly justifiable grounds and have no connection with the arbitration. Similarly, Olaf's views on the 2021 General Election results were merely a result of trend analysis of the performance of DPP over the last few years. In all instances, Olaf's actions are driven by an objective assessment of policies and actions, rather than any inherent bias.

1.2.2. Olaf passes the standards of impartiality under IBA guidelines

Rule 10 of the AIAC Rules require the Arbitral Tribunal to remain impartial and independent at all times and to conduct itself in accordance with the AIAC Code of Conduct for Arbitrators.[30] The International Bar Association's (IBA) Guidelines on Conflict of Interest in International Arbitration will be a point of reference in determining the disclosure requirements and whether an Arbitrator is conflicted.[31]

1.2.2.1 Olaf has no conflict of interest with Radostan

The case of A v B[32] laid down that when considering the situation where an arbitrator has previously acted as counsel for a party or its affiliate within the past three years, but there exists no ongoing relationship between the arbitrator and the party or its affiliate, the argument for removal based on the potential for unconscious bias was rejected. Just as the arbitrator's past involvement did not necessarily imply bias in the A v B case, Olaf's previous actions should

[29] *Argonaut Insurance Co v Republic Insurance Co* [2003] EWHC 547 (Comm).
[30] AIAC Arbitration Rules 2021, Rule 10.1.
[31] AIAC Code of Conduct for Arbitrators, Rule 2.1.
[32] *A v B* [2011] EWHC 2345 (Comm).

be evaluated within the context of the specific dispute at hand, taking into account the absence of any ongoing relationship with Radostan that might compromise its impartiality. Similarly, in another case, the court had dismissed the idea that an arbitrator's past involvement in related cases implies bias or a preconceived opinion on the current matter.[33]

1.2.2.2 Olaf passes the Gough Test

In the case of R v Barnsley Licensing Justices[34], Lord Devlin acknowledged the fundamental principle that justice should not only be done but also seen to be done, although he pointed out that this principle is not the same as the test for bias. He emphasized that the court's focus should not be on what impression might be left in the minds of the applicant or the public, but rather on satisfying itself that there exists a 'real likelihood of bias.' This determination, he argued, should be based on the impression derived from the circumstances at hand. Subsequently, the Gough court departed from the mere suspicion or reasonable suspicion tests and articulated the test in terms of a 'real danger' rather than 'real likelihood.' The Gough test, also known as the "real danger" test, propounded in R v Gough[35] as a legal standard used to assess whether there is a genuine risk or real danger of bias on the part of a decision-maker.

In the context of Olaf's qualification as an arbitrator, it becomes evident that the Gough test should be applied. Olaf's impartiality should be assessed not based on mere suspicion or the impressions it may create, but on whether there exists a real danger of bias, considering all relevant circumstances. According to the AIAC Rules[36] it is the requesting party which has to give the challenge request with brief description of the legal and factual basis. The circumstances in Olaf's case do not indicate a real danger of bias because there is no substantial evidence or reasonable basis to conclude that Olaf's role as an AI arbitrator would compromise

---

[33] Vienna Commercial Court, Case No 16 NC 2/07w [2007].
[34] *R v Barnsley Licensing Justices* [1960] 2 All ER 703.
[35] *R v Gough* [1993] 2 All ER 724.
[36] AIAC Arbitration Rules 2021, Rule 11.6.

its impartiality. The absence Oof any direct conflicts of interest or prejudicial actions ensures that the Gough test's stringent criteria for bias are not met, thus preserving the fairness and integrity of the arbitration process.

2. Whether the Arbitral Tribunal Should Stay the Present Proceedings Until the Conclusion Of Anuwat's Trial At the International Criminal Court

It is humbly submitted that the present proceedings should be stayed until the conclusion of Anuwat's Trial at ICC as his presence is crucial to resolve the dispute fairly. This course of action is necessary to uphold the principles of justice, fairness, and the integrity of the arbitration process. Allowing the arbitration to continue concurrently with the ICC trial risks conflicting decisions and prejudicial influences, which could undermine the arbitration's purpose. Moreover, it respects the specialized expertise of the ICC in handling complex international criminal matters and ensures compliance with international law. Granting a stay not only serves the interests of justice but also upholds the credibility of the arbitration process and maintains consistency with international legal obligations.

2.1 The circumstances of the case require a Stay of proceedings

Arbitrators are not under a mandatory or automatic duty to grant a stay in arbitral proceedings; it is a matter of discretion.[37] As there is no legal obligation to stay the present proceedings, the Tribunal has to decide on Respondent's request in exercising its discretionary powers.[38] Such discretion is conferred upon the by the mutually agreed AIAC Rules. Art 13.1 which provide that the Tribunal should conduct the proceedings 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 and are given a reasonable opportunity to

[37] *B. Fund Ltd v A. Group Ltd* [2007] Case No. 4P-168/2006.
[38] *IPOC International Growth Fund Ltd v LV Finance Group Ltd* [2007] 4P.168/2006.

present their case." In this case, the stay order is crucial for being able to provide a reasonable opportunity of being heard to Respondent. It is in the interests of procedural justice and efficiency that the issue of the CCTA be addressed after the conclusion of the criminal investigation. This will allow the best available evidence to be presented to the Tribunal in ruling on the issue of the CCTA and OnionRing.

2.1.1 The outcome of Criminal proceedings is material to the Tribunal's decision

The Respondent is not required to establish the allegations definitively in order to justify a stay. The primary purpose behind seeking a stay of the proceedings is to await potential evidence uncovered during the prosecution, which could demonstrate the use of similar software in relation to cyber warfare crimes in Ulavu. If a stay of the proceedings is requested due to parallel proceedings, tribunals only need to consider whether the outcome of these proceedings is material to its decision.[39] Whether Ini-tech software was responsible for the cyber war crimes carried out in Ulavu is material to the decision of the Tribunal.

A stay of proceedings is justified where parallel proceedings go to the core of this dispute.[40] Therefore, the investigation in the trial is directed at the identical issue and fact scenario before this Tribunal – whether Anuwat is guilty of providing software that has been used in cyber-attacks and terror attacks. This question is relevant to this Tribunal because if Radostan is found innocent, there is no basis for Coltana to terminate the CCTA on grounds of illegality. Therefore, the evidence elucidated by the criminal investigation will be directly relevant to these proceedings and will assist the Tribunal to fill gaps in the evidentiary record.[41]

---

[39] *Cairn Energy Plc & Cairn UK Holdings Ltd. v Government of India Permanent Court of Arbitration* [2017] PCA Case No. 2016-7; Sébastien Besson, 'Addressing Issues of Corruption in Commercial and Investment Arbitration – Institute Dossier XIII' (Kluwer Law International, 2015)

[40] Théobald Naud, 40 under 40 International Arbitration (Dykinson S.L 2018) p 512

[41] ibid

2.1.2 Only the ICC has sufficient means to produce the evidence of Cyber War Crimes

The Tribunal lacks adequate mechanisms for obtaining the necessary evidence. While tribunals have the authority to order the production of documents, exhibits, or evidence from the parties under AIAC Rule 13.5 (j), they lack the power to enforce the production of requested evidence.[42] In cases where the parties involved in criminal acts have concealed their conduct, the Tribunal's inability to compel document production or subpoena witnesses to testify leaves it without sufficient means to procure evidence. The Tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence or material tendered by a Party[43] but does not have powers to uncover evidence and compel witnesses to appear before it.

The investigation and trial by the ICC will answer three questions material to this Tribunal: **(1)** Whether the tampering of Ulavu election results are a result of a software similar to OnionRing? **(2)** Whether the CCRP Reports on the sale of hardware between the Ulavu Intelligence Bureau and Radostan are reliable? **(3)** Whether the hacking of devices of Ulavu opposition members was carried out by the same software?

2.2 There are sufficient grounds for an interim order of Stay

The grounds for seeking a stay of the arbitration proceedings are based on Rule 16.3 of the arbitration rules,[44] which permit the Arbitral Tribunal or an Emergency Arbitrator to order interim measures. The grounds have been proved by the Respondent in this instant case. The Stay in proceedings would promote efficiency.

2.2.1 The request of stay meets the criteria under AIAC rules

To justify interim measures, the requesting party must demonstrate two key elements: firstly, that harm not adequately compensable by damages would likely result without the measure,

---

[42] Hwang, 'Corruption in Arbitration – Law and Reality' (2012); Concepción, 'Combating Corruption and Fraud' (Dispute Resolution International, No. 1 2017) vol. 11

[43] AIAC Arbitration Rules 2021, Rule 13.5(k).

[44] AIAC Arbitration Rules 2021, Rule 16.3.

and that this potential harm outweighs any harm to the opposing party if the measure is granted; and secondly, that there is a reasonable possibility of success on the merits of the underlying claim, although this should not affect the Tribunal's discretion in determining the merits later on.[45]

Request for a stay of the arbitral proceedings aligns with the criteria for justifying interim measures in two significant ways. Firstly, the arbitration proceeding concurrently with the ongoing ICC proceedings results in harm that cannot be adequately compensated by damages. Specifically, If the ICC yields a favourable outcome for Anuwat, the Tribunal would not have to decide on the validity of the CCTA and the ensuing financial and reputational damages would be irreparable. This establishes their compliance with the first criterion of demonstrating harm not adequately compensable by damages. Secondly, there exists a reasonable possibility that the ICC proceedings could unearth evidence directly impacting the arbitration's outcome. While conclusive proof is not required at this stage, the plausible influence of ICC-discovered evidence on the arbitration's merits satisfies the second criterion. Consequently, the request for a stay aligns with the criteria for justifying interim measures, given the interconnected nature of the ICC and arbitration proceedings.

2.2.2 A Stay order upholds fairness and due process

A stay order preserves fairness and due process by avoiding potential conflicts between the arbitration and ICC trial outcomes. It allows for a comprehensive consideration of evidence, preventing rush to judgment, and respects the rights of both parties to present their cases fully which is at the core of AIAC rules.[46]

---

[45] AIAC Arbitration Rules 2021, Rule 16.4.
[46] AIAC Arbitration Rules 2021, Rule 13.1.

2.2.2.1 Continuing the proceedings bears a risk of unenforceable award

Continuing the proceedings bears the risk of rendering an unenforceable award. According to Art. V(2)(b) NYC,[47] an award that violates public policy is unenforceable. The UN Charter, under Art. 2(4),[48] prohibits the threat or use of force in international relations. This prohibition extends to cyberattacks targeting critical infrastructure and citizens of other states. Such actions are deemed violations of international public policy. Given the potential implications of arbitration proceedings on international relations and the fact that the allegations involve actions deemed violations of international public policy, it is crucial to grant a stay to avoid the risk of an unenforceable award that may arise from continuing the proceedings without due regard to these critical issues.

2.2.2.2 Continuing the proceedings would violate Respondent's Right to present its case

Each party is entitled to a full opportunity to present its case[49]. Where there is a parallel criminal investigation, the Tribunal should consider the impact of the investigation on the witnesses.[50] The privilege against self-incrimination is part of transnational procedural public policy and tribunals should recognise the pressure exerted on witnesses by criminal investigation.[51] If compelled to testify in arbitration proceedings, Anuwat may feel pressured to give a false statement to avoid criminal sanctions.

Therefore, the integrity of the arbitration proceedings and reliability of witness testimony is better preserved if ICC conducts the investigation and trial into Anuwat. In any case, the

[47] The Convention on the Recognition and Enforcement of Arbitral Awards (The New York Convention) 1958, Art V(1)(b).
[48] Charter of the United Nations 1945, Art 2(4).
[49] AIAC Arbitration Rules 2021, Rule 13.1.
[50] Betz, p. 274
[51] Richard M. Mosk, 'Evidentiary Privileges in International Arbitration' (International and Comparative Law Quarterly, 2001) vol 50(2), *Kaplún v. Plurinational State of Bolivia* [2010], ICSID Case No. Arb/06/2.

Tribunal can determine the weight and materiality of evidence.[52] This Tribunal is an impartial and independent body, demonstrated by the declarations of impartiality of the appointed arbitrators, and will be well-placed to assess the evidence before it and reach an independent decision.[53]

2.2.2.3 A stay of the proceedings promotes efficiency

Awaiting the investigations allows the Tribunal to rely on their results when making an award, saving the usual expenses and time spent on evidence production. Without a stay, if the charges against Anuwat is later found to be false, the award becomes unenforceable, resulting in wasted resources. Therefore, a stay prevents unnecessary costs and time expenditure, promoting procedural efficiency. Furthermore, refusing a stay result in unnecessary expenses because parties have to spend resources on procuring expert witnesses and evidence relating to the invalidity of the contract.

2.2.3 Claimant will not suffer prejudice as a result of the stay

Respondent disagrees with Claimant's claim that a stay would cause undue delays, asserting that the Tribunal should exercise its discretion to grant a stay as it would not result in unjustified delays. The Respondent had requested for stay as Anuwat, who is a key witness to the current proceedings will be testifying at the ICC on 10.10.2022,[54] is reasonable considering the potential procedural efficiencies it may bring· Previous tribunals have also regarded stays of varying durations, including six months, eighteen months, and three years, as reasonable under similar circumstances.[55]

---

[52] AIAC Arbitration Rules 2021, Rule 13.5(k).
[53] IBA Guidelines, pp. 4-17.
[54] Moot Proposition, para 43
[55] *Southern Pacific Properties (Middle East) Limited v Arab Republic of Egypt* [1985] ICSID Case No. Arb/84/3; *Ireland v United Kingdom ('The MOX Plant Case')* [2003] PCA Case No. 2002-01; *Cairn Energy Plc & Cairn UK Holdings Ltd. v Government of India Permanent Court of Arbitration* [2017] PCA Case No. 2016-7.

Anuwat's testimony is indispensable to the arbitration proceedings due to his central role in key events and his intimate knowledge of the OnionRing software. Documentary evidence alone cannot substitute for his testimony as he uniquely provides firsthand insights into the software's capabilities, its deployment, and his public statements advocating for its procurement and contractual amendments. Anuwat's direct involvement and personal experiences are irreplaceable, making him the key witness whose absence would leave critical gaps in understanding the technology and its implications for the case.

2.3 The Arbitration proceedings undermines the ICC proceedings

The Cour d'appel in Luxembourg decided to stay enforcement proceedings of an arbitral award until the conclusion of parallel criminal proceedings[56]. These criminal proceedings were related to allegations of fraud by one of the parties. The basis for this decision was Art. 3 of the Code of Criminal Procedure in Luxembourg,[57] which states that civil proceedings should be stayed if their outcome relies on the judgment of criminal courts. A similar practice is followed in France.[58]

Similarly, our case involves both ICC proceedings against Mr. Anuwat related to cyber war crimes and the arbitration proceedings concerning commercial matters between Coltana and Radostan. If we consider the principle applied in Luxembourg and France, where civil proceedings are stayed when their outcome depends on criminal judgments, it becomes evident that the outcomes of the ICC proceedings may significantly impact the arbitration proceedings.

Therefore, in the interest of procedural fairness and efficiency, a stay in the arbitration proceedings until the conclusion of the ICC trial would ensure that the tribunal can consider

[56] Cour d'appel de Luxembourg [2021] Case No. 108/21.
[57] CODE Dı́nstruction CRIMINELLE 1808, Art 3.
[58] Racine, Cour d'appel de Paris (1re Ch. C) 10 septembre 1998; Cour d'appel de Paris (1re Ch. C) 7 septembre 1999; Cour d'appel de Paris (1re Ch. C) 20 avril 2000; Cour d'appel de Paris (1re Ch. C) 1er mars 2001 in: Revue de l'Arbitrage, (2001) vol. 3

the findings and evidence from the criminal trial, reducing the potential for conflicting outcomes and promoting coherence in the overall resolution process.

3. Whether the CCTA Is Void

It is submitted that the CCTA is valid and legally binding between Radostan and Coltana. According to Sec. 10 of ICA, any agreement qualifies as a contract if it meets certain criteria: it must be formed through the voluntary agreement of competent parties, involve lawful consideration and objectives, and not be expressly invalidated.[59] CCTA is valid agreement and fulfils all the essentials of valid contract. It serves as a critical tool in fostering international cooperation to combat cyber threats and enhance national security. The agreement is in compliance with international legal norms, stands as a testament to the commitment of both nations to address the challenges of the digital age.

3.1 CCTA fulfils all the essentials of valid contract

In the context of a valid contract, it is crucial to remember the essential features, including offer, acceptance, lawful consideration, free and genuine consent, capacity of the parties, absence of void declarations, and adherence to legal formalities. It should be clear that one cannot bend or break the law.[60] Under Sec. 10 "all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void."[61] In this case, CCTA has all the essentials of a valid contract.

3.1.1 There is a valid offer.

Section 2(a) of the ICA[62] defines an offer as an expression of willingness by one party to perform or refrain from an action with the intent to secure the agreement or consent of another

[59] Indian Contract Act 1872, s 10.
[60] *Sri B M Narayanappa v Smt Lakshmamma* [2023] App. No. 607 OF 2017.
[61] *U.P. Rajkiya Nirman Nigam Ltd v Indure Pvt. Ltd. & Ors* [1996] SCC (2) 667.
[62] Indian Contract Act 1872, s 2(a).

party. It is crucial to determine the intention of the parties regarding the formation of legal relations. The case of Balfour v Balfour[63] established that for a contract to be enforceable, the parties must intend to create legal relations, which can be inferred from the circumstances surrounding the contract's formation and execution. The offer must be unequivocal and the acceptance must be absolute and must correspond with the terms of the offer.[64]

In the context of the CCTA, Anuwat Kittisak, CEO of Ini-Tech Inc, presented a clear and specific proposal during a high-level security meeting attended by key officials.[65] Anuwat proposed the deployment of Ini-Tech Inc's OnionRing software as a solution to combat terrorism and cyber-attacks, outlining its capabilities and benefits.[66] The enthusiastic response from the Coltana Delegation, coupled with the urgency of the situation and the subsequent approval and signing of the CCTA, demonstrates a genuine intent to create a binding contract based on this proposal. Therefore, according to Indian contract law, Anuwat's proposal within the high-level security meeting constitutes a valid offer in the formation of the CCTA agreement.

3.1.2 There was acceptance by Coltana

Acceptance, defined in Section 2(b) of the ICA[67] requires the assent of the party to whom an offer is made. In the formation of a legally binding contract, both the acceptance of the offer and the intimation of this acceptance are crucial.[68] The legal principle established in Adams v Lindsell,[69] endorsed by the House of Lords in Dunlop v Vincent Higgins,[70] affirms that a

[63] *Balfour v Balfour* [1919] 2 KB 571
[64] *Mayawanti v Kaushalya Devi* [1990] 3 SCC 190.
[65] Moot Proposition, para 22
[66] Moot Proposition, para 23
[67] Indian Contract Act 1872, s 2(b).
[68] *Bhagwandas Goverdhandas Kedia v M/S. Girdharilal Parshottamdas* [1966] SCR (1) 656
[69] *Adams v Lindsell* [1818] 106 ER 250.
[70] *Dunlop v Vincent Higgins* [1848] 1 HLC 381.

contract is created upon the sending of an acceptance. Therefore, communication of acceptance is necessary for a contract to be valid[71]; mere silence or inaction is insufficient.[72]

In the context of the CCTA agreement, the valid acceptance can be deduced from the Coltana Delegation's enthusiastic response to the proposal for Ini-Tech Inc's OnionRing software.[73] This response, along with subsequent cabinet approvals and the agreement's signing, reflects Coltana's acceptance of the proposal and its willingness to engage in the agreement.

3.1.3 It has valid consideration

Sec. 2(d) of the ICA, 1872,[74] provides a definition of consideration, which encompasses actions such as doing, abstaining from doing, promising to do, or promising to abstain from doing something at the request of the promisor, by the promisee or another party. This action, abstention, or promise serves as the consideration for the promise made. As established in the case of Currie v Misa,[75] the law recognizes valuable consideration as either conferring some right, interest, profit, or benefit to one party or involving forbearance, detriment, loss, or responsibility undertaken by the other party. Furthermore, the case of Vijay Minerals Pvt Ltd v. Bikash Deb[76] clarified that the sufficiency of consideration is not subject to close scrutiny when determining the enforceability of an agreement.

In the specific context of the CCTA, Art. 4 delineates the consideration.[77] Coltana has committed to paying Radostan USD 25 million for each of the four quarters annually, commencing on the first day of each quarter. This payment arrangement serves as the consideration for the contractual promises made within the agreement. Coltana's commitment to these payments represents the consideration for Radostan's undertaking to provide services

---

[71] *Powell v Lee* [1908] 99 LT 284.
[72] *Felthouse v Bindley* [1862] 142 ER 1037.
[73] Moot Proposition, para 24
[74] Indian Contract Act 1872, s 2(d).
[75] *Currie v Misa* [1875-76] LR 1 App Cas 554.
[76] *Vijay Minerals Pvt Ltd v. Bikash Deb* AIR 1996 Cal 67.
[77] Moot Proposition, para 25.3

related to the OnionRing software for addressing terrorism and cyber threats. This arrangement aligns with the principles of valid consideration under the ICA, as it involves a mutual exchange of promises, with Coltana agreeing to make payments and Radostan agreeing to deliver specific services, thereby establishing a legally binding contract. Furthermore, the agreement explicitly stipulates that Coltana cannot unilaterally alter or amend the payment terms without Radostan's prior written consent, further reinforcing the legitimacy of the consideration.

3.1.4 CCTA has a lawful object.

The CCTA has a lawful object because it aims to combat terrorism and cyber threats, which are legitimate concerns for national security. This objective aligns with the principles of public interest and the prevention of public harm, as established under the Indian Contract Act. Additionally, there is no evidence of misrepresentation or fraud by Radostan in entering into the agreement, further validating its lawful object.

3.1.4.1 It is not illegal

An agreement's consideration or object is considered lawful unless it falls into specific categories: if it is prohibited by law, goes against any law's provisions, is fraudulent, implies harm to another person or property, or is deemed immoral or contrary to public policy by the court.[78] Contracts closely related to illegal transactions are inherently void, as established by legal precedents.[79] The case of Puttaswamy Gowda and others v State of Karnataka[80] laid down 3 criteria for illegality : (1) An agreement or contract is void if its purpose is to facilitate an illegal act. (2) An agreement or contract is void if it is explicitly or implicitly prohibited by any law (3) An agreement or contract is void if its execution would require a violation of any law.

[78] Indian Contract Act 1872, s 24.
[79] *Bigos v Boosted* [1951] 1 All ER 92.
[80] *Puttaswamy Gowda and others v State of Karnataka* [2016] Indlaw KAR 3138.

The CCTA agreement is not illegal under ICA as it adheres to the lawful consideration and object principles. The consideration for the agreement involves the provision of the OnionRing software, designed to detect and prevent criminal activities, including terrorist attacks and cyber-attacks. While there were concerns about potential privacy breaches, the software's operation aligns with the objective of enhancing national security, which is a legitimate and lawful purpose. The agreement does not fall into the categories of illegality defined by the law, such as facilitating illegal acts, violating explicit or implicit prohibitions, or requiring law violations. Additionally, the successful operation of the OnionRing software in preventing criminal activities demonstrates its alignment with public policy objectives related to security.[81] Therefore, the CCTA agreement stands as a lawful and valid contract under Indian contract law.

3.1.4.2 It is in line with the Public Policy

The CCTA aligns with public policy and is not against it. Sec. 23 of the ICA[82] renders contracts void if they are detrimental to the public interest or well-being. In the context of the CCTA, its primary objective is to enhance national security and combat terrorism and cyber threats, which serves the public interest by safeguarding the community. As established in Sasfin (Pty.) Ltd. v Beukes,[83] contracts against public policy are those that are clearly detrimental to the community's interests, whether they violate the law, morality, or social and economic considerations.

Lord Atkin's stance in Fender v Mildmay[84] underscores that the doctrine of public policy should be invoked only in clear cases where harm to the public is indisputable. While in this case, the allegations made about gaining personal data and influencing electoral votes has been made by

[81] Moot Proposition, para 27
[82] Indian Contract Act 1872, s 23.
[83] *Sasfin (Pty.) Ltd. v Beukes* [1989] (1) SA 1 (A).
[84] *Fender v Mildmay* [1935] 2 KB 334.

former employee of Ini- Tech. These are “completely dishonest and malicious allegations” and mere form of vengeance by a rogue employee who was facing disciplinary actions for alleged breach of Ini-Tech’s respectful workplace policy and few other allegations of sexual misconduct.[85] To effectively apply international law in cyberspace, it's crucial to determine the responsible party behind a particular cyber activity, whether it's a state or a state-sponsored actor, subject to international law, or individuals operating outside its jurisdiction[86]. CCTA's focus on national security and prevention of cyber threats unquestionably serves the public good.

In the case of Ratanchand Hirachand v Askar Nawaz Jung[87] the Court defined the definition of “public policy” as the development of the public good on the one hand and the prevention of public evil on the other. CCTA contributes to the development of the public good by enhancing national security and preventing potential public evil in the form of terrorist attacks and cyber threats. Therefore, the CCTA is firmly in line with public policy and not against it.

3.2 There has been no fraud or misrepresentation by Radostan

A true contract requires the agreement of the parties freely made with full knowledge and without any feeling of restraint.[88] Concealing a ‘material fact’ in its entirety constitutes ‘Fraud,’ in accordance with Section 17 of the ICA, 1872.[89] This principle is reinforced by the ruling of the Hon’ble Supreme Court in the case of Shrisht Dhwan (Smt) v M/s. Shaw Brothers.[90] The court's observation and judgment in this case elucidate that ‘Fraud’ in ‘law’ is an ‘element’ that obscures rational judgment, preventing the defrauded person from forming a reasoned

[85] Moot Proposition, para 31
[86] Duncun Hollis, ‘A Brief Primer on International Law and Cyberspace’ (Carnegie Endowment for international peace, 14 June 2021) <https://carnegieendowment.org/2021/06/14/brief-primer-on-international-law-and-cyberspace-pub-84763> accessed 13 September 2023
[87] *Ratanchand Hirachand v Askar Nawaz Jung* AIR 1976 AP 112.
[88] *Mayawati v Kushalya Devi* [1990] 3 SCC 1.
[89] Indian Contract Act 1872, s 17.
[90] *Shrisht Dhwan (Smt) v M/s. Shaw Brothers* AIR 1992 SC 1555.

assessment of the impact of the 'Transaction' on their interests. The essence of 'Fraud' lies in the intention to deceive another person, enticing them to enter into the 'contract' through the presentation of false facts or the active concealment of facts by an individual with knowledge or belief in those facts.

In the case of S.P. Chengalvaraya Naidu v. Jagannath[91], the Supreme Court conclusively defined fraud as an intentional act of deception carried out with the aim of obtaining an unfair advantage or benefit at the expense of another party. Actual fraud, as established, involves deliberate concealment or the making of false representations through intentional or reckless actions or statements that result in harm to another party who relied on them when taking action[92]. In the case of Avitel Post Studioz Limited and Ors. vs. HSBC PI Holdings (Mauritius) Limited and Ors.[93], the Supreme Court clarified that Section 17 of the Contract Act applies specifically when the contract itself is procured through fraud or cheating.

Considering these legal principles and precedents, there is no evidence to suggest that Radostan engaged in misrepresentation or fraud when entering into the CCTA agreement. The agreement appears to have been formed with the free and informed consent of both parties, and there is no indication that Radostan concealed material facts or engaged in deceptive practices during the agreement's negotiation and execution.

3.3 CCTA is in line with International Obligations

The CCTA is in line with international obligations, particularly in the context of maintaining international peace and security. The agreement's primary aim is to combat terrorism and cyber threats, which aligns with the broader international goal of preventing and removing threats to

---

[91] *S.P. Chengalvaraya Naidu v Jagannath* [1994] SCC (1) 1.
[92] *Sukh Sagar Medical College & Hospital v State of Madhya Pradesh* [2020] Civ App No. 3820/2020.
[93] *Avitel Post Studioz Limited and Ors. vs. HSBC PI Holdings (Mauritius) Limited and Ors* [2016] No. 833 of 2015.

peace, as outlined in Article 1 of the UN Charter.[94] Furthermore, the preamble of the ICSFT recognizes the pressing need to address and combat acts of terrorism.[95] Article 12(3) of the ICCPR[96] imposes restrictions on rights, subject to specific conditions. These restrictions must be in accordance with the law, necessary to protect national security, public order, public health, or morals, or the rights and freedoms of others, and they should also be consistent with the other rights recognized in the present Covenant. By entering into the CCTA, Coltana and Radostan are collectively taking effective measures to suppress acts of aggression and terrorism, thus fulfilling their international obligations to promote global peace and security.

4. Whether the Termination of the CCTA by Coltana is Valid

The Claimants have terminated the agreement under Sec. 39 of ICA. The Respondents contend that Claimants have not satisfied the grounds of termination under Sec. 39. It is invalid termination causing financial and reputational loss to the Respondents.

Section 39 of the ICA[97] provides a basis for contract termination when one party refuses or becomes unable to fulfill their promise entirely, unless they have indicated their willingness for the contract to continue. This legal principle was reaffirmed in the case of Air India Ltd. v Gati Ltd.[98] where the Supreme Court upheld the Arbitral Tribunal's findings.

In the case of Holiness Acharya Swami Ganesh Dassji v Sita Ram Thapar[99], the word "willingness" in contract law was explained. It was established that readiness primarily pertains to a party's capacity, which includes considerations of financial capability. Conversely, willingness is assessed by examining a party's behaviour and the surrounding circumstances.

---

[94] Charter of the United Nations 1945, Art 1.
[95] International Convention for the Suppression of the Financing of Terrorism 1999.
[96] International Covenant on Civil and Political Rights 1976, Art 12(3).
[97] Indian Contract Act 1872, s 39.
[98] *Air India Ltd. v Gati Ltd.* [2015] SCC Online Del 10220.
[99] *Holiness Acharya Swami Ganesh Dassji v Sita Ram Thapar* [1996] 4 SCC 526.

This differentiation was reaffirmed in another case, M/s J.P. Builders and another v A. Ramadas Rao and another.[100]

Furthermore, the case of Viacom 18 Media Pvt. Ltd. v MSM Discovery Pvt. Ltd. [101] emphasized that the promisee must ensure they have fulfilled their own contractual obligations before invoking Sec. 39.

Under Sec. 39 of the ICA[102] accepting repudiation is essential, and without it, any alleged repudiation letter becomes ineffective. This point draws support from the Privy Council's judgment in Burn & Co. v Sree Lukhdhriji,[103] and the House of Lords' judgment in Fercometal SARL v Mediterranean Shipping Co.[104] Acceptance by the promisee is a crucial aspect of contract law.[105]

However, in the instant case, Coltana's termination of the CCTA appears to lack the necessary acceptance of Radostan's alleged repudiation. Radostan proceeded to inform that it is prepared to amend the terms of payment to ensure that OnionRing's full terms of service of 5 years will be completed.[106] This indicates Radostan's readiness to fulfill its obligations under the CCTA even with a change in the payment terms. The termination came abruptly during ongoing negotiations, and Coltana cited an undisclosed investigation into alleged election interference as the basis for termination, claiming the contract was illegal. Without formal acceptance of repudiation, this termination lacks legal grounding. Moreover, Coltana's decision to retain certain aspects of the agreement while terminating others adds complexity. As such, Radostan's objection to the termination and its request for payment is legally justified.

---

[100] *M/s J.P. Builders and another v A. Ramadas Rao and another* [2011] 1 RCR (Civil) 604.
[101] *Viacom 18 Media Pvt. Ltd. v MSM Discovery Pvt. Ltd.* [2010] CM App No. 10061-62/2010.
[102] Indian Contract Act 1972, s 39.
[103] *Burn & Co. v Sree Lukhdhriji* AIR 1925 PC 188.
[104] *Fercometal SARL v Mediterranean Shipping Co.* [1988] 2 ALL ER 742.
[105] *State of Kerala v Cochin Chemical Refineries Ltd* [1968] SCR (3) 556.
[106] Moot Proposition, para 34

PRAYER FOR RELIEF

In light of the submissions above, Counsel for **RESPONDENT** respectfully requests the Tribunal:

1. To **DECLARE** that Olaf is fit to be an arbitrator in the present proceedings.
2. To **GRANT A STAY** in the proceedings until the conclusion of Anuwat's trial at ICC.
3. To **DECLARE** the legality of the CCTA.
4. To **DECLARE** that the termination of the CCTA by Coltana is invalid.

RESPECTFULLY SIGNED AND SUBMITTED BY COUNSEL ON 15 SEPTEMBER 2023