Twenty Second Annual Willem C. Vis International Commercial Arbitration Moot

THE PROBLEM

Vienna, Austria
October 2014 - April 2015

Oral Hearings
March 27 – April 2, 2015

Organiszed by :
Association for the organisation and promotion of the Willem C. Vis International Commercial Arbitration Moot

And

Twelfth Annual
Willem C. Vis (East)
International Commercial Arbitration Moot
Hong Kong
Oral Arguments
March 15 – March 22, 2015

Organized by:
Vis East Moot Foundation Limited

Contents

Horace Fasttrack
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Equatoriana

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11 July 2014

By courier
The Secretariat of the International Court of Arbitration
International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris
France

Dear Madam/Sir

On behalf of my client, Vulcan Coltan Ltd, Oceanside, Equatoriana, I hereby submit the enclosed Request for Arbitration and the Application for Emergency Measures pursuant to the Rules of Arbitration of the International Chamber of Commerce, Articles 4 and 29. A copy of the Power of Attorney authorising me to represent Vulcan Coltan Ltd in this arbitration is also enclosed.

The CLAIMANT requests the delivery of 100 metric tons of coltan.

The advance payments of US$ 3,000 for administrative expenses (Article 4(4)(b) ICC Arbitration Rules and Article 1(1) of Appendix III), and of US$ 40,000 for the costs of the Emergency Arbitrator (Article 7(1) of Appendix V of the ICC Arbitration Rules) have been made. The relevant bank confirmations are attached.

The contract giving rise to this arbitration provides that the seat of arbitration shall be Vindobona, Danubia, and that the arbitration will be conducted in English. The arbitration agreement provides for three arbitrators. Vulcan Coltan Ltd hereby nominates Dr Arbitrator One and requests that the ICC appoints the president of the arbitral tribunal.

The required documents for both Requests are attached.

Sincerely yours,

Horace Fasttrack

Attachments:
Request for Arbitration with Exhibits
Application for Emergency Measures with Exhibits
Power of Attorney
CV of Dr Arbitrator One
Proof of Payment of Advances

Horace Fasttrack
Advocate at the Court
Equatoriana

14 Capital Boulevard, Oceanside,

Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

11 July 2014

By courier
The Secretariat of the International Court of Arbitration
International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris
France

Vulcan Coltan Ltd v Mediterraneo Mining SOE

Request for Arbitration
Pursuant to Article 4 ICC- Arbitration Rules

Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

- CLAIMANT–

Represented in this arbitration by Horace Fasttrack

Mediterraneo Mining SOE
5-6 Mineral Street
Capital City
Mediterraneo

- RESPONDENT -

Statement of Facts

1. CLAIMANT, Vulcan Coltan Ltd ("Vulcan"), is a broker of rare minerals, in particular coltan, based in Equatoriana. It is a 100% subsidiary of Global Minerals Ltd ("Global Minerals"), which brokers rare minerals world-wide and is based in Ruritania. Vulcan) has been created by its parent company especially to enter the very difficult competitive market in Equatoriana. Equatoriana has a highly developed electronics industry which is responsible for 10% of the Equatoriana's GDP.

2. RESPONDENT, Mediterraneo Mining SOE, is a state-owned enterprise based in Mediterraneo. It operates all the mines in Mediterraneo including the only coltan mine. In addition to coltan RESPONDENT extracts copper and gold.

3. Coltan is a semi-singular mineral composed of columbite and tantalite, the combination of which names gives the industrial term coltan. Coltan is normally found associated with granite rocks. Its chemical composition consists of a natural niobium, tantalum, iron and magnesium (manganese) salt. Its colour varies from black to dark grey, with a density of close to eight, and it is extremely hard, fragile, easily exfoliated, and opaque with a sub-metallic shine and reddish reflections. Meteorised, it constitutes a black or dark red powder. It is insoluble in acids and very difficult to fuse. Coltan is primarily used in the production of the tantalum capacitors found in many electronic devices.

4. The market conditions for coltan are characterised by high volatility and instability. Supply and demand are highly volatile. Times of oversupply are followed by times where it is even difficult to get sufficient coltan at all, in particular conflict free coltan. In the past, the volatility could be attributed to the release of major electronic innovations, like play consoles and smartphone additions. Increasingly also political crises influence the price of coltan. Some of the world's larger coltan deposits are found in conflict areas. Like many of its customers Vulcan is a Global Compact company and, therefore, only purchases conflict free coltan which considerably limits its choice of suppliers.

5. In the last ten years Global Minerals, Vulcan's parent company, has regularly purchased coltan from RESPONDENT. Both parties have had a mutually beneficial relationship.

6. On 23 March 2014 Mr Storm, the Chief Operating Officer of Global Minerals, and Mr Summer, the Chief Operating Officer of CLAIMANT, approached Mr Winter, the general sales manager of RESPONDENT, to enquire about a delivery of 100 metric tons of coltan to CLAIMANT. The CLAIMANT was keen to buy the maximum amount possible. The CLAIMANT, like other participants in the market, assumed that another peak in the need for coltan was imminent in the near future due to impending developments in the electronics industry in Equatoriana. The original proposal was that CLAIMANT would buy the coltan and get the same payment and delivery conditions as Global Minerals. RESPONDENT at that point in time did not want to commit to the sale of 100 metric tons of coltan due to the capacity of the mine and other commitments. The maximum the RESPONDENT was willing to commit to sell to CLAIMANT was 30 metric tons. CLAIMANT agreed to the purchase of 30 metric tons of coltan from RESPONDENT due to the high quality of the RESPONDENT's coltan and the pressure the CLAIMANT was under to establish a business in Equatoriana. The parties signed the contract on 28 March 2014.

7. The contract (Exhibit C 1) contained inter alia the following clauses:

Art 2: Notice of Transport

The seller will issue a Notice of Transport when the agreed coltan quantity becomes available for transport. The Notice of Transport will be issued not later than 31 August 2014.

Art 3: Quantity & Quality & Price

Quality:	TA2O5 30-40% NB2O5 20-30% Non-radioactive
Quantity:	30 metric tons
Price:	US$45 per kilogram

Art 4: Payment & Letter of Credit

A *Letter of Credit* in the amount of US$ 1,350,000 shall be established by the Buyer not later than fourteen days after the Buyer received the Notice of Transport in regard to shipment. The Letter of Credit shall be in favour of the Seller or its designee, be acceptable in content to Seller, be consistent with the terms of this Contract, be irrevocable, be issued by a first class Ruritanian bank and shall be valid until 15 December 2014. The Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce (UCP 600).

Payment is due 30 days after presentation of the documents under the Letter of Credit.

Art 5: Shipment

CIF (INCOTERMS 2010), Oceanside, Equatoriana, not later than 60 days after receipt of Letter of Credit.

Art 20: Arbitration

All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Vindobona, Danubia, and the language of the arbitration will be English. The contract, including this clause, shall be governed by the law of Danubia.

8. The CLAIMANT received the Notice of Transport (Exhibit C 2) on Wednesday, 25 June 2014 from RESPONDENT by email (Exhibit C 3). In the email, accompanying the Notice of Transport, the RESPONDENT informed the CLAIMANT and Global Minerals that one of its major customers had become bankrupt and had defaulted on a purchase of coltan.

9. On Friday, 27 June 2014 at 15:00 Ruritanian Standard Time ("RST"), CLAIMANT sent a fax to RESPONDENT in which CLAIMANT asked for the delivery of 100 metric tons, as per the earlier negotiations (Exhibit C 4). It based its offer on an earlier offer made by RESPONDENT during the initial negotiations on 23 March 2014 which at the time did not materialize. CLAIMANT was reacting to RESPONDENT's notification that RESPONDENT had now a larger quantity of coltan available. CLAIMANT was delighted to be able to stock up on its coltan quantities since it had had considerable interest in coltan. At the same time it was able to do RESPONDENT a favour by taking over much of the coltan from the sale that did not eventuate. CLAIMANT thought to cement the good business relationship with the RESPONDENT by helping out the RESPONDENT which in the past has also shown a considerable flexibility in accommodating the needs of CLAIMANT's mother company, Global Minerals. CLAIMANT was certain that RESPONDENT would react immediately like on previous occasions in its relationship with Global Minerals. In the past all requests for change by Global Minerals in regard to contracts between RESPONDENT and Global Minerals had been answered immediately or within two days at most.

10. After waiting for some days CLAIMANT asked Global Minerals to instruct its bank in Ruritania, RST Trade Bank Ltd ("Trade Bank") to issue a Letter of Credit. On 4 July 2014 at 10:00 Trade Bank faxed a Letter of Credit to RESPONDENT (Exhibit C 5). The original was then sent by courier. The Letter of Credit was issued for US$ 4,500,000 relating to 100 metric tons of coltan.

11. At about the same time news leaked out that the world largest producer of electronic game consoles, which has a large manufacturing plant in Equatoriana, had developed a new game console. As a consequence the price of coltan increased immediately by nearly 1US$/kg, as an increased demand of coltan was expected.

12. That is probably the true reason why, an hour later around lunch time, Mr Winter, RESPONDENT's general sales manager, left a voicemail message on Mr Summer's phone rejecting the Letter of Credit provided as not conforming to the contractual requirements. Those were in his view still determined by the original contract of 28 March 2014. He asked for the correct Letter of Credit to be provided immediately and threatened to terminate the contract. Mr Storm, when being informed of the message by Mr Summer,

immediately emailed Mr Winter stating that the Letter of Credit was in line with the changed contract (Exhibit C 6).

13. The CLAIMANT was surprised to receive as a response RESPONDENT's letter of avoidance of the contract of 28 March 2014 on 7 July 2014 (Exhibit C 7).

14. It was essential for CLAIMANT to receive at least the 30 metric tons of coltan originally agreed in the contract of 28 March 2014. CLAIMANT had already entered into contracts with its customers for these quantities. Notwithstanding its belief that the original contract had been amended to provide for the higher quantity of 100 metric tons, CLAIMANT decided to take precautionary measures to prevent RESPONDENT from walking away from its contractual obligations. For purely precautionary reasons CLAIMANT had Trade Bank issuing within the time limits of the original contract a new guarantee which complied exactly with the contract's requirements.

15. Trade Bank sent the new Letter of Credit (Exhibit C 8) over US$ 1,350,000 by 24 hours courier on 8 July 2014 (Exhibit C 9) to RESPONDENT which was exactly in line with the contract as of 28 March 2014. In addition, Global Minerals faxed the Letter of Credit to RESPONDENT on 8 July 2014 to ensure that the deadline was adhered to.

16. RESPONDENT, however, apparently determined to try to profit from the market developments and rejected this Letter of Credit as belated. Furthermore, it declared that it considered itself no longer bound to deliver even the 30 metric tons to CLAIMANT as it had allegedly terminated the contract . Instead RESPONDENT started to talk to other customers about disposing the existing quantities of coltan originally reserved for CLAIMANT. The consequences of these actions necessitate the present Request for Arbitration and the Application for Emergency Measures.

Legal Evaluation

17. The arbitral tribunal has jurisdiction over RESPONDENT by virtue of the arbitration agreement contained in Article 20 of the contract concluded by CLAIMANT with RESPONDENT on 28 March 2014 (Exhibit C 1) and then later extended to encompass a larger quantity.

18. CLAIMANT and the RESPONDENT entered into a contract over 30 metric tons of coltan on 28 March 2014. This contract was governed pursuant to Article 20 by the law of Danubia. As Danubia is a Contracting State to the United Nations Convention on Contracts for the International Sale of Goods (CISG) the issues in question have to be decided on the basis of the CISG.

19. Following RESPONDENT's implicit offer in the email of 25 June 2014 to sell a higher amount,. CLAIMANT accepted that offer thereby adding another 70 metric tons of coltan to the contract on 27 June 2014. At the same time, it proposed amending the delivery conditions to those which had originally been offered by RESPONDENT for a contract of that size and which had governed previous contracts of that magnitude between Global Minerals and RESPONDENT. RESPONDENT, which normally replied to requests for changes within a short time, did not state any opposition to either amendments to the contract. CLAIMANT, therefore, reasonably inferred that RESPONDENT had accepted the proposed amendment adding 70 metric tons to the contract and had a letter of credit issued reflecting the amended and enlarged contract. Therefore, CLAIMANT and RESPONDENT concluded a contract for the sale and purchase of 100 metric tons of coltan. Since CLAIMANT has fulfilled to date all the requirements under that contract, RESPONDENT could not avoid the contract.

20. At a minimum, the original contract of 28 March 2014 entitles CLAIMANT to receive delivery of 30 metric tons of coltan. CLAIMANT fulfilled its obligation in regard to the issuance of the Letter of Credit 14 days after receiving the Notice of Transport; the courier's receipts for the Letter of Credit for US$ 1,350,000 shows that it was signed by Mr Winter, RESPONDENT's general sales manager, on 8 July 2014 at 19:05 RST.

21. In the present case an order for fulfilment of the contract is justified. CLAIMANT has been successful in establishing business relationships in Equatoriana and has already concluded binding contracts with its customers for at least 30 metric tons of conflict free coltan. Moreover, it is already in promising negotiations for the remaining 70 metric tons. In light of the political situation in Xanadu, which is a major producer of coltan, there is the real threat that insufficient quantities of conflict free coltan will be available on the market when CLAIMANT has to fulfill its own contractual relationships. In that case CLAIMANT would be open to considerable damages claims by its customers and its reputation in the market would be very seriously damaged.

Statement of Relief Sought

22. In consequence CLAIMANT requests the Arbitral Tribunal to

    1) a) order RESPONDENT to deliver to CLAIMANT immediately after the issuance of an award 100 metric tons of coltan as required by the provisions of the contract as amended by Global Minerals' fax of 27 June 2014;

       in the alternative to

       b) order RESPONDENT to deliver to CLAIMANT immediately after the issuance of an award 30 metric tons of coltan as required by the provisions of the contract concluded between CLAIMANT and RESPONDENT on 28 March 2014.

    2) order RESPONDENT to reimburse CLAIMANT for all damages it incurred due to the belated delivery of CLAIMANT;

    3) order RESPONDENT to bear CLAIMANT's costs arising out of this arbitration.

Horace Fasttrack

Enclosures: Exhibits C 1 – C 10

EXHIBIT C 1
COLTAN PURCHASE CONTRACT
(Excerpts)

Art 1: Contracting Parties
Seller: Mediterraneo Mining SOE, 5-6 Mineral Street, Capital City, Mediterraneo

Buyer: Vulcan Coltan Ltd, 21 Magma Street, Oceanside , Equatoriana

Art 2: Notice of Transport
The seller will issue a Notice of Transport when the agreed coltan quantity becomes available for transport. The Notice of Transport will be issued not later than 31 August 2014.

Art 3: Quantity & Quality & Price

Quality:	TA2O5 30-40%
	NB2O5 20-30%
	Non-radioactive
Quantity:	30 metric tons
Price:	US$45 per kilogram

Art 4: Payment & Letter of Credit
A *Letter of Credit* in the amount of US$ 1,350,000 shall be established by the Buyer not later than fourteen days after the Buyer received the notice of transport in regard to shipment. The letter of credit shall be in favour of the Seller or its designee, be acceptable in content to Seller, be consistent with the terms of this Contract, be irrevocable and issued at a first class bank of Ruritania, be valid until 15 December 2014. The Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits published by the International Chamber of Commerce (UCP 600).
Payment is due 30 days after presentation of the documents under the Letter of Credit.

Art 5: Shipment
CIF (INCOTERMS 2010), Oceanside, Equatoriana, not later than 60 days after receipt of Letter of Credit.

[….]

Art 20: Arbitration
All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Vindobona, Danubia, and the language of the arbitration will be English. The contract, including this clause, shall be governed by the law of Danubia.

Art 21: Provisional measures
The courts at the place of business of the party against which provisional measures are sought shall have exclusive jurisdiction to grant such measures.

For the buyer:	For the seller	Endorsed for Global Minerals
		
Mr. Ben Summer	Mr. Willem Winter	Mr Theo Storm
(27.03.2014)	(28.03.2014)	(27.03.2014)

EXHIBIT C 2

Mediterrano Mining
5-6 Mineral Street
Capital City
Mediterraneo

25 June 2014

BY EMAIL

Mr Ben Summer
Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

NOTICE OF TRANSPORT

Dear Madam/Sir

We notify you herewith that 30 metric tons of coltan are ready to be transported.

Destination: Oceanside, Equatoriana

Letter of Credit required before shipment: ☒ yes ☐ no

Payment: 30 days after presentation of the documents under the Letter of Credit

Transport:
☐ rail
☐ road
☒ ship
☐ air

☐ FOB ☒ CIP ☐ CIF ☐ FCA ☐ DAT ☐ DDP

Special Instructions: shipment not later than 60 days after receipt of Letter of Credit; 2 20ft container;

EXHIBIT C 3

willem.winter@mediterraneomining.bs.med

Wednesday, 25 June 2014 10.23MST

To: ben.summer@vulcancoltan.com
Cc: theo.storm@globalminerals.com
Subject: Notice of Transport
Attachments: notice of transport

Dear Mr Summer

I am delighted to inform you that we are able to fulfil your wish as expressed during the contract negotiation and supply the 30 metric tons of coltan earlier than anticipated. One of our major customers went bankrupt and defaulted on its purchase of 150 metric tons of coltan and 100 tons of copper. That has left us with some surplus which we are keen to dispose of as quickly as possible due to our having limited storage capacity.

I am looking forward to receiving the Letter of Credit at your earliest convenience to be able to authorize shipment.

Yours sincerely

Willem Winter

EXHIBIT C 4

Receipt: fax nummer + 214 77 32 45 75, operation normal, 15:05 h RST

Fax

Fax number: + 214 77 32 45 75

Date:	27 June 2014
Send To:	Mediterraneo Mining SOE
Attention:	Mr Willem Winter
Office Location:	5-6 Mineral Street , Capital City, Mediterraneo
From:	Theo Storm, Global Minerals Ltd / Vulcan Coltan Ltd
Office Location:	Excavation Place 5, Hansetown, Ruritania
Phone Number:	+ 587 4 587128

Total Pages Including Cover: 1

Urgent [x] Reply ASAP [X] Please Comment [ ] Please Review [ ] For Your Information [ ]

Dear Mr Winter
We are delighted that a greater quantity of coltan from your mine has become available. Herewith we extend the order of our subsidiary Vulcan to 100 metric tons of coltan as per your email of 25 June 2014. Payment modalities as per contract of 28 March 2014 and CIP Vulcan Coltan, 21 Magma Street, Oceanside, Equatoriana as per your previous offer. Remainder of the contract remains unchanged. You will receive Letter of Credit from RST Trade Bank Ltd, Ruritania, asap.

Kind regards

Theo Storm

EXHIBIT C 5

RST TRADEBANK
Bank Arcade 3
Hansetown
RURITANIA

RST Trade Bank Ltd
Ruritania

Beneficiary		**Applicant**
Mediterraneo Mining SOE		Global Minerals Ltd.
5-6 Mineral Street		Excavation Place 5
Capital City		Hansetown
Mediterraneo		Ruritania

RE: Irrevocable Letter of Credit No. 145/2014 of 4 July 2014

To Mediterraneo Mining

We hereby establish our Irrevocable Letter of Credit No. 145/2014 in your favor for the account of Global Minerals Ltd., Excavation Place 5, Hansetown, Ruritania available by your drafts on us payable at sight for any sum of money not to exceed a total of US$ 4,500,000 when accompanied by this Irrevocable Letter of Credit and the following documents with the content as per contract between you and Vulcan Coltan:

- Transport Document (CIP Vulcan Coltan, 21 Magma Street, Oceanside, Equatoriana)
- Packing List (Coltan – not less than 30 metric tons per shipment)
- Examination Certificate

Last day of Shipping 15 November, 2014
Partial Shipment allowed

This Irrevocable Letter of Credit shall be valid until 15 December, 2014.

All drafts drawn under this credit must state: "Drawn under the RST Trade Bank Ltd, Irrevocable Letter of Credit No. 145/2014 dated 4 July, 2014." The original Irrevocable Letter of Credit must be presented with any drawing so that drawing can be endorsed on the reverse thereof.

Except so far as otherwise expressly stated, this Irrevocable Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Brochure No. 600 (UCP 600)"

Sincerely,

BY: [Signature]

TITLE: Head of Trade Finance

EXHIBIT C 6

theo.storm@globalminerals.com

Saturday, 5 July 2014 7.30am RST

To: willem.winter@mediterraneomining.bs.med
Cc: ben.summer@vulcancoltan.com
Subject: contract 100mt coltan

Dear Mr Winter

Mr Summer informed me of the voicemail message you left for him on his phone. I am astonished that you want to reject the Letter of Credit relating to 100 metric tons coltan. I took your non-response to my fax of 27 June 2014 to mean that you were delighted that Vulcan Coltan could help to reduce your storage capacity issues. You were aware that Vulcan Coltan needed coltan to establish a presence in the highly competitive Equatoriana market. Vulcan Coltan did have the opportunity to buy 50 metric tons of coltan from another supplier. However, we did not take that option since you are our preferred supplier and due to our long-standing business relationship it was important to us to help you out.

Given that I know you as a loyal business partner I can only assume that you are not happy with the change of the delivery term to CIP Vulcan Coltan, 21 Magma Street, Oceanside, Equatoriana. We thought that this would not be a problem since it was a term that was originally offered by you during our negotiations in March and was mentioned in your Notice of Transport. We are, however, happy to agree to CIF Oceanside, Equatoriana as per contract of 28 March 2014.

We are looking forward to receiving the 100 metric tons within the next 2 months.

Yours sincerely

Theo Storm

EXHIBIT C 7

Mediterrano Mining
5-6 Mineral Street
Capital City
Mediterraneo

7 July 2014

BY COURIER

Mr Ben Summer
Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

Dear Mr Summer

We hereby formally avoid the contract of 28 March 2014 between Vulcan Coltan Ltd and Mediterraneo Mining SOE.

The Letter of Credit issued by RST Trade Bank Ltd, Ruritania, received on 4 July 2014 does not conform with the requirements set out in the contract of 28 March 2014, in particular the Letter of Credit relates to 100 metric tons of coltan instead of 30 metric tons. Furthermore, it contains different delivery terms. In trading commodities such as coltan any deviation from the contract is considered to be a fundamental breach of contract.

Yours sincerely

Willem Winter

EXHIBIT C 8

RST TRADEBANK
Bank Arcade 3
Hansetown
RURITANIA

RST Trade Bank Ltd
Ruritania

Beneficiary		**Applicant**
Mediterraneo Mining SOE		Global Minerals Ltd.
5-6 Mineral Street		Excavation Place 5
Capital City		Hansetown
Mediterraneo		Ruritania

RE: Irrevocable Letter of Credit No. 160/2014 of 8 July 2014

To Mediterraneo Mining

We hereby establish our Irrevocable Letter of Credit No. 160/2014 in your favor for the account of Global Minerals Ltd., Excavation Place 5, Hansetown, Ruritania available by your drafts on us payable at sight for any sum of money not to exceed a total of US$ 1.350.000 when accompanied by this Irrevocable Letter of Credit and the following documents with the content as per contract between you and Vulcan Coltan:

- Commercial Invoice
- Bill of Lading: CIF Oceanside, Equatoriana
- Packing List: 30 metric tons Coltan
- Examination Certificate

Last day of Shipping 15 November, 2014
Partial Shipment allowed

This Irrevocable Letter of Credit shall be valid until 15 December, 2014.

All drafts drawn under this credit must state: "Drawn under the Trade Bank, Irrevocable Letter of Credit No. 160/2014 dated 8 July, 2014." The original Irrevocable Letter of Credit must be presented with any drawing so that drawing can be endorsed on the reverse thereof.

Except so far as otherwise expressly stated, this Irrevocable Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Brochure No. 600 (UCP 600)"

Sincerely,

BY: ___[Signature]_____

TITLE: ___**Head of Trade Finance**_____

EXHIBIT C 9

RECEIPT

F R Courier Service
26 Fastlane, Hansetown, Ruritania
DDI +243 6 375 192
Email: courier@ruritania.com

Addressee:	Mediterraneo Mining SOE 5-6 Mineral Street Capital City Mediterraneo		**Date:** 8 July 2014 **Time of pick up:** 9.00 RST **Time delivered:** 19.05 RST
Sender:	Tradebank Bank Arcade 3 Hansetown RURITANIA		**Telephone of Addressee** + 214 77 32 45 76

Item to be delivered: document

Instructions: signature required, time of delivery to be noted

Signature:

Winter

Willem Winter

EXHIBIT C 10

Receipt: fax number + 214 77 32 45 75, operation normal, 17.42 h RST

Fax

Fax number: + 214 77 32 45 75

Date:	8 July 2014
Send To:	Mediterraneo Mining SOE
Attention:	Mr Willem Winter
Office Location:	5-6 Mineral Street , Capital City, Mediterraneo
From:	Theo Storm, Global Minerals Ltd
Office Location:	Excavation Place 5, Hansetown, Ruritania
Phone Number:	+ 587 4 587128

Total Pages Including Cover: 2

Urgent [x] Reply ASAP [X] Please Comment [ ] Please Review [ ] For Your Information [ ]

Dear Mr Winter

Please find attached a copy of the Letter of Credit issued by RST Trade Bank Ltd over US$ 1,350,000. We trust that you will be satisfied. Vulcan Coltan Ltd is awaiting the shipment of at least 30 metric tons of coltan in accordance with the contract of 28 March 2014.

The issuance of this additional Letter of Credit is merely a precautionary measure. Vulcan Coltan still maintains to be entitled to a delivery of 100 metric tons as per the amendment of 27 June 2014.

For that reason we are keeping the first letter of credit open and request you to deliver 100 metric tons of coltan to Vulcan Coltan as agreed in the amendment. We are determined to enforce our rights in arbitration and ask you to give us an assurance that you refrain in the meantime from any actions, in particular disposing of sufficient quantities of coltan which could prevent you from complying with your contractual obligations

Theo Storm

Horace Fasttrack
Advocate at the Court
Equatoriana

14 Capital Boulevard, Oceanside,

Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

11 July 2014

By courier
The Secretariat of the International Court of Arbitration
International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris
France

Vulcan Coltan Ltd v Mediterraneo Mining SOE

Application for Emergency Measures
Pursuant Art. 29 ICC- Arbitration Rules

Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

- CLAIMANT–

Represented in this proceedings by Horace Fasttrack

Mediterraneo Mining SOE
5-6 Mineral Street
Capital City
Mediterraneo

- RESPONDENT -

Statement of Facts

[Paras 1 – 16 identical to the Statement of Facts in the Request for Arbitration]

Legal Evaluation

17. The Parties have included into their contract dated 28 March 2014 an ICC Arbitration Clause which also governs the amendment of the contract made by the fax of 27 June 2014. Consequently, the Emergency Arbitrator has the jurisdiction and the power to issue the order requested.

18. The requirements for issuing the requested order are determined by Art. 29 ICC Arbitration Rules and by international arbitration practice. Pursuant to these standards interim relief should be granted if the applicant has a good arguable case on the merits and, without the measure, irreparable harm would be threatened.

19. Both requirements are fulfilled in the present case. Claimant has a claim against Respondent for the delivery of 100 metric tons of coltan from the contract undoubtedly concluded by the Parties on 28 March 2014 and then amended by Claimant's fax of 27 June 2014 which has not been rejected by Respondent and must therefore be deemed accepted.

20. The avoidance of the contract declared by Respondent is not effective. It obviously merely constitutes an opportunistic attempt, albeit unsuccessful, to take advantage of the changing market situation. Due to an anticipated higher demand and the unstable political situation in Xanadu, the world biggest producer of conflict free coltan, prices have been rising considerably.

21. In case the situation in Xanadu deteriorates any further affecting the production of coltan, there will be a considerable shortage of conflict free coltan on the market. Without Respondent's coltan, Claimant would not be able to fulfill its existing contractual commitments to its customers. The resulting loss of reputation may be fatal to a young company such as Claimant in a difficult market. Consequently, Respondent should be prevented from disposing of the coltan originally reserved for Claimant. According to Claimant's information Respondent has not yet entered into any contracts with other customers which could be affected by such an order. The remaining negative effects for Respondent, if the order granted is later lifted, can be compensated by payment of damages.

Statement of Measures Requested

22. In light of this CLAIMANT requests the Emergency Arbitrator to

1) a) order RESPONDENT to refrain from disposing of any of the 100 metric tons of coltan which are needed to fulfil the contract with CLAIMANT in line with the provisions of the contract as amended by Global Minerals' fax of 27 June 2014;

in the alternative to

b) order RESPONDENT from disposing of any of the 30 metric tons of coltan which are needed to fulfil the contract with CLAIMANT in line with the provisions of the contract concluded between CLAIMANT and RESPONDET on 28 March 2014

2) order RESPONDENT to reimburse CLAIMANT the amount of US$ 40,000 paid to the ICC for the Emergency Arbitrator Proceedings.

Horace Fasttrack

Enclosures: Exhibits C 1 – C 10

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

11 July 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo)

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Dear Sir,

Further to your correspondence dated 11 July 2014, the Secretariat of the International Court of Arbitration of the International Chamber of Commerce ("Secretariat") draws your attention to the following:

I – EMERGENCY ARBITRATOR PROCEEDINGS ("APPLICATION")

The Secretariat acknowledges receipt of your Application for Emergency Measures ("Application") dated 11 July 2014. Your Application was received today.

You have included the Request for Arbitration which was also received today in compliance with Article 1(6) of Appendix V to the Rules (Emergency Arbitrator Rules).

We acknowledge receipt of your payment of US$ 40 000, US$ 5 000 of which is non-refundable (Article 7(5) of Appendix V).

II – REQUEST FOR ARBITRATION ("REQUEST")

The Secretariat also acknowledges receipt of your Request for Arbitration ("Request") dated 11 July 2014. Your Request was received today. Pursuant to Article 4(2) of the ICC Rules of Arbitration in force as from 1 January 2012 ("Rules"), this arbitration commenced on 11 July 2014.

We acknowledge receipt of the US$ 3 000 non-refundable filing fee which will be credited towards the provisional advance.

III - GENERAL INFORMATION

1) Caption

The caption and the reference of this case are indicated above. Please ensure that the caption is accurate and include the reference 22000/AC in all future correspondence in both the arbitration and the Emergency Arbitrator Proceedings.

2) Reference to the Rules

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

3) Your Case Management Team

Mr Counsel .....(direct dial number: +33 1 49 53 00 01)
Ms Deputy Counsel .....(direct dial number: +33 1 49 53 00 02)
Mr Deputy Counsel.....(direct dial number: +33 1 49 53 00 03)
Ms Deputy Counsel .....(direct dial number: +33 1 49 53 00 04)
Ms Assistant .....(direct dial number: +33 1 49 53 00 05)
Ms Assistant .....(direct dial number: +33 1 49 53 00 06)
Mr Assistant.....(direct dial number: +33 1 49 53 00 07)
Fax number .....+33 1 49 53 00 10
Email address .....ica100@iccwbo.org

Your case management team will write to you concerning the notification of the Application and of the Request, as well as other relevant information.

Finally, please find enclosed a note that highlights certain key features of ICC arbitration, as well as a Note on Administrative Issues. We invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,

Secretary General
ICC International Court of Arbitration

encl.
- Note on ICC Emergency Arbitrator Proceedings
- Note to the Parties in Proceedings under the 2012 Rules
- Note on Administrative Issues
- ICC Rules of Arbitration *(see also www.iccarbitration.org)*
- ICC Dispute Resolution Brochure *(see also www.iccarbitration.org)*

(The attachments are not provided for the purposes of the Vis Moot problem)
(The Notes are available on the ICC electronic Dispute Resolution Library at: http://www.iccdrl.com/practicenotes.aspx.)

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

11 July 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo)

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Mediterraneo Mining SOE
5-6 Mineral Street
Capital City
Mediterraneo

ByFedEx

Dear Sirs,

The Secretariat of the International Court of Arbitration of the International Chamber of Commerce ("Secretariat") draws your attention to the following:

I – APPLICATION FOR EMERGENCY MEASURES ("APPLICATION")

1) Application

The Secretariat notifies Mediterraneo Mining SOE that, on 11 July 2014, it received an Application for Emergency Measures ("Application") from Vulcan Coltan Ltd ("Applicant") represented by Mr Horace Fasttrack, that names it as Responding Party.

2) Article 1(5) of Appendix V to the ICC Rules of Arbitration

On the basis of the information contained in the Application, the President of the International Court of Arbitration of the International Chamber of Commerce ("President") considers that the Emergency Arbitrator Provisions contained in the ICC Rules of Arbitration ("Rules") apply with reference to Articles 29(5) and 29(6) of the Rules.

Accordingly, we enclose a copy of the Application and the documents annexed thereto (Article 1(5) of Appendix V to the Rules).

3) Appointment of the Emergency Arbitrator

The President will appoint an Emergency Arbitrator within as short a time as possible, normally within two days from our receipt of the Application (Article 2(1) of Appendix V).

Every arbitrator must be and remain independent and impartial of the parties. Before being appointed, we will require the Emergency Arbitrator to sign a Statement of Acceptance, Availability, Impartiality and Independence.

The Emergency Arbitrator shall render an Order no later than 15 days from the day on which the file was transmitted to the Emergency Arbitrator (Article 6(4) of Appendix V).

4) Place of Emergency Arbitrator proceedings

As the arbitration agreement provides for Vindobona as the place of arbitration, Vindobona shall be the place of the Emergency Arbitrator Proceedings (Article 4(1) of Appendix V).

5) Language

The arbitration agreement provides for English as the language of arbitration.

II – REQUEST FOR ARBITRATION ("REQUEST")

1) Request

The Secretariat notifies Mediterraneo Mining SOE that on 11 July 2014, it received a Request for Arbitration ("Request") from Vulcan Coltan Ltd ("Claimant') represented by Mr Horace Fasttrack, that names it as Respondent.

Pursuant to Article 4(2) of the ICC Rules of Arbitration ("Rules"), this arbitration commenced on 11 July 2014.

We enclose a copy of the Request and the documents annexed thereto (Article 4(5)).

2) Answer to the Request

Respondent's Answer to the Request ("Answer") is due within **30 days** from the day following receipt of this correspondence (Article 5(1)).

Please send us **5** copies of the Answer, together with an electronic version.

Respondent may apply for an extension of time for submitting its Answer by nominating an arbitrator (Article 5(2)). Such information will enable the International Court of Arbitration of the International Chamber of Commerce ("Court") to take steps towards the constitution of the arbitral tribunal.

If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration will proceed notwithstanding such refusal or failure (Article 6(8)).

3) Joinder of Additional Parties

No Additional Party may be joined to this arbitration after the confirmation or appointment of any arbitrator, unless all parties including the Additional Party otherwise agree (Article 7(1)). Therefore, if Respondent intends to join an Additional Party and seeks an extension of time for submitting its Answer, it must inform us in its request for such extension.

4) Constitution of the Arbitral Tribunal

The arbitration agreement provides for three arbitrators. Claimant has nominated Dr Arbitrator One as co-arbitrator.

Respondent is required to nominate a co-arbitrator in its Answer or in any request for an extension of time for submitting its Answer (Article 12(4)). If it fails to nominate an arbitrator within **30 days** from the day following its receipt of this correspondence, the Court will appoint a co-arbitrator on its behalf (Article 12(4)).

The Court will appoint the president, unless the parties agree upon another procedure (*e.g.* the co-arbitrators nominating the president) (Article 12(5)).

5) Place of Arbitration

The arbitration agreement provides for Vindobona as the place of arbitration.

6) Language

The arbitration agreement provides for English as the language of arbitration.

7) Provisional Advance

The Secretary General fixed a provisional advance of US$ 80 000 to cover the costs of arbitration until the Terms of Reference are established (Article 36(1)), based on an amount in dispute quantified at US$ 4 500 000 and three arbitrators.

8) Efficient Conduct of the Arbitration

The Rules require the parties and the arbitral tribunal to make every effort to conduct the arbitration in an expeditious and cost-effective manner having regard to the complexity and value of the dispute (Article 22(1)).

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner (Article 37(5)).

III - GENERAL INFORMATION

1) Caption

The caption and the reference of this case are indicated above. Please ensure that the caption is accurate and include the reference 22000/AC in all future correspondence in both the arbitration and the Emergency Arbitrator Proceedings.

2) Reference to the Rules

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

3) Communications with the Secretariat

Please provide your fax number and/or email address as we may transmit notifications and communications by fax and/or email.

4) Amicable Settlement

Parties are free to settle their dispute amicably at any time during an arbitration. The parties may wish to consider conducting an amicable dispute resolution procedure pursuant to the ICC Mediation Rules, which, in addition to mediation, also allow for the use of other amicable settlement procedures. ICC can assist the parties in finding a suitable mediator. Further information is available from the ICC International Centre for ADR at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

5) Your Case Management Team

Mr Counsel .....(direct dial number: +33 1 49 53 00 01)
Ms Deputy Counsel .....(direct dial number: +33 1 49 53 00 02)
Mr Deputy Counsel.....(direct dial number: +33 1 49 53 00 03)
Ms Deputy Counsel .....(direct dial number: +33 1 49 53 00 04)
Ms Assistant .....(direct dial number: +33 1 49 53 00 05)
Ms Assistant .....(direct dial number: +33 1 49 53 00 06)
Mr Assistant.....(direct dial number: +33 1 49 53 00 07)

Fax number .....+33 1 49 53 00 10
Email address .....ica100@iccwbo.org

While maintaining strict neutrality, the Secretariat is at the parties' disposal regarding any questions they may have concerning the application of the Rules.

Finally, please find enclosed a note that highlights certain key features of ICC arbitration, as well as a Note on Administrative Issues. We invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration

encl.
- Application with documents annexed thereto
- Note on ICC Emergency Arbitrator Proceedings
- Request for Arbitration with documents annexed thereto
- Note to the Parties in Proceedings under the 2012 Rules
- Note on Administrative Issues
- ICC Rules of Arbitration *(see also www.iccarbitration.org)*
- ICC Dispute Resolution Brochure *(see also www.iccarbitration.org)*
- Financial Table
- Payment Request for the provisional advance

(The attachments are not provided for the purposes of the Vis Moot problem)
(The Notes are available on the ICC electronic Dispute Resolution Library at: http://www.iccdrl.com/practicenotes.aspx.)

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

12 July 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo)

Ms Chin Hu
Vindobona
Danubia

By FedEx & Email: chinhu@vino.db

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Mr Joseph Langweiler
Advocate at the Court
75 Court Street Capital City
Mediterraneo

By Email: Langweiler@lawyer.me

Dear Madame and Sirs,

Today, the President of the International Court of Arbitration of the International Chamber of Commerce ("President") appointed Ms Chin Hu as Emergency Arbitrator (Article 2(1) of Appendix V to the Rules).

We enclose for the information of the parties a copy of the Statement of Acceptance, Availability, Impartiality and Independence ("Statement"), and the *curriculum vitae* of Ms Hu.

We transmit the file to Ms Hu (Article 2(3) of Appendix V) and enclose a Note on the Emergency Arbitrator Proceedings.

Time Limit for the Order

The Emergency Arbitrator must render an Order no later than 15 days from today.

The President may extend this time limit pursuant to a reasoned request from the Emergency Arbitrator or on his own initiative (Article 6(4) of Appendix V).

To assist the Emergency Arbitrator in drafting the Order, we enclose the Emergency Arbitrator Order Checklist.

In the Order (Article 29(2)), the Emergency Arbitrator must, among other things, determine whether the Application is admissible, and whether she has jurisdiction to order Emergency Measures (Article 6(2) of Appendix V).

Costs of the Emergency Arbitrator Proceedings

The Applicant paid US$ 40 000 on 11 July 2014, consisting of US$ 10 000 for the ICC administrative expenses and US$ 30 000 for the Emergency Arbitrator's fees and expenses (Article 7(1) of Appendix V).

The President may increase the Emergency Arbitrator's fees or the ICC administrative expenses at any time during the proceedings, taking into account the nature of the case, and the amount of work performed by the Emergency Arbitrator, the Court, the President and the Secretariat (Article 7(2) of Appendix V).

If the party which submitted the Application fails to pay the increased costs within the time limit fixed by the Secretariat, the Application shall be considered as withdrawn (Article 7(2) of Appendix V).

Correspondence

As from now, the parties and the Emergency Arbitrator should correspond directly and send copies of their correspondence to the Secretariat.

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration

encl. - List of Documents
- Documents mentioned therein (*for the Emergency Arbitrator only*)
- Note on Emergency Arbitrator Proceedings (*for the Emergency Arbitrator only*)
- Emergency Arbitrator Order Checklist (*for the Emergency Arbitrator only*)

Statement of Acceptance, Availability, Impartiality and Independence and *curriculum vitae* of Ms Chin Hu *(for the parties only)*

(The attachments are not provided for the purposes of the Vis Moot problem except the Statement of Ms HU)
(The Notes are available on the ICC electronic Dispute Resolution Library at: http://www.iccdrl.com/practicenotes.aspx.)

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

CASE N° 22000/AC

ICC EMERGENCY ARBITRATOR STATEMENT of ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

Family Name(s): **HU** **Given Name(s):** **Chin**

Please tick all relevant boxes.

1. ACCEPTANCE

Acceptance

[X] **I agree** to serve as emergency arbitrator under and in accordance with the 2012 ICC Rules of Arbitration ("**Rules**"). I am aware that (i) other candidates may have been contacted by the ICC to serve as emergency arbitrator in this case and (ii) the urgency of the proceedings may require the ICC to appoint another candidate before receiving my response. I confirm that I am familiar with the Rules, in particular Article 29 and Appendix V. I accept that my remuneration will be in accordance with Article 7 of Appendix V.

Non-Acceptance

[ ] **I decline** to serve as emergency arbitrator in this case. *(If you tick here, simply date and sign the form without completing any other sections.)*

2. AVAILABILITY

[X] **I confirm,** on the basis of the information presently available to me, that I can devote the time necessary to conduct this emergency arbitrator proceeding diligently, efficiently and in accordance with the time limit in Article 6(4) of Appendix V to the Rules, subject to any extensions granted by the President. I understand that it is important to complete these proceedings as promptly as reasonably practicable. Furthermore, I am not aware of any commitments which might preclude me from completing the emergency arbitrator proceeding on time, or from devoting to them the attention that they require.

3. INDEPENDENCE and IMPARTIALITY

(Tick one box and provide details below and/or, if necessary, on a separate sheet)

In deciding which box to tick, you should take into account, having regard to Article 2(4) of Appendix V to the Rules, whether there exists any past or present relationship, direct or indirect, between you and any of the parties to this emergency arbitrator proceeding, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

[X] **Nothing to disclose**: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties to this emergency arbitrator proceeding and no circumstances that could give rise to reasonable doubts as to my impartiality.

[ ] **Acceptance with disclosure**: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties to this emergency arbitrator proceeding or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: 12 July 2014 Signature: [signature of Ms HU]

Disclaimer: The information requested in this form will be considered by the ICC for its Dispute Resolution Services, and will be stored in case management database systems. Pursuant to the French Law on "Informatique et Libertés" of 6 January 1978, particularly Articles 32 and 40, you may access this information and ask for rectification by writing to the Court's Secretariat.

Ms Chin Hu, Esq.
Kirchplatz 14
Tudor
Danubia

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Mr Joseph Langweiler
Advocate at the Court
75 Court Street Capital City
Mediterraneo

By Email: Langweiler@lawyer.me

26 July 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo)

Dear Sirs,

Please find attached my order in the above referenced Emergency Arbitrator Proceedings.

I thank you for your cooperation in the conduct of the proceedings.

Yours sincerely

Ms Chin Hu

Order of the Emergency Arbitrator

Ms Chin Hu

in the proceedings between
Vulcan Coltan Ltd vs Mediterraneo Mining SOE

1. On 28 March 2014 Vulcan Coltan Ltd, the Claimant in the main arbitration ("Claimant") and Mediterraneo Mining SOE, the Respondent in the main arbitration ("Respondent") entered into a contract for the delivery of coltan by Respondent. Payment was to be effected by a letter of credit which had to be provided within 14 days after a so called Notice of Transport had been given.

2. Claimant initially intended to buy 100 metric tons of coltan. In the end the contract only provided for the delivery of 30 metric tons. While the exact ground for that limitation is in dispute between the Parties, it is uncontested that during the negotiations Respondent stated several times that it would be at least difficult for it to provide the amount originally requested within the time frame anticipated due to existing commitments to other customers.

3. Coltan is a crucial element for a number of applications in the electronic industry and the market is highly volatile. Several of the major coltan mines are located in politically unstable areas. Consequently, so called conflict free coltan is a sparse resource. Respondent is the second largest producer in the world of such conflict free coltan, the largest producer being mines in Xanadu.

4. On 25 June 2014 Respondent gave the required Notice of Transport. At the same time it informed Claimant that due to the insolvency of another customer an additional quantity of 150 metric tons had become available. By fax of 27 June 2014 Claimant offered to buy the originally requested amount of 100 metric tons at conditions which had previously been offered by Respondent during the negotiations. Respondent did not respond to that offer. Claimant understood this reaction as an acceptance. As a consequence, on 4 July 2014 Claimant provided a letter of credit which was in compliance with the purportedly changed order. By a voicemail message of the same day Respondent complained that the letter of credit did not conform to the provisions of the original contract, which, in its view, had not been modified. Respondent asked Claimant to provide immediately a new letter of credit complying with the requirements of the original contract. Claimant answered the next day that in its view the original contract had been amended and that it expected delivery of the 100 metric tons under the allegedly amended contract. As a consequence, on 7 July Respondent declared avoidance of the contract. Another letter of credit provided by the Claimant on 8 July 2014 which was in compliance with the original contract was rejected by Respondent as belated on 9 July 2014.

5. Around the time of the purportedly amended order the political situation in Xanadu, the main producer of the conflict free coltan, started to deteriorate with the withdrawal of one of the main parties from the government. The uncertainty resulting therefrom had already led to a considerable fluctuation in the price of coltan. Immediately after the breakdown several of the major users of coltan had approached Respondent to enquire about future deliveries in case the situation in Xanadu should deteriorate. Should the production in Xanadu become interrupted, there would no longer be a sufficient supply of conflict free coltan.

6. In light of this development Claimant initiated arbitration proceedings against Respondent on the 11 July 2014. In addition it requested the appointment of an Emergency Arbitrator

to preserve the status quo and to order Respondent not to sell the existing quantities of coltan to any other customer.

7. Respondent objected to that request and contested the jurisdiction of the Emergency Arbitrator. In its view the provision in Article 21 of the contract excluded the right to apply to the ICC for the appointment of an Emergency Arbitrator. Furthermore, Respondent did not consider the measures requested to be justified.

8. On 12 July 2014 the ICC appointed Ms Chin Hu as Emergency Arbitrator. Both parties made it clear from the beginning that they were interested in a quick decision by the Emergency Arbitrator and would not take any steps which could frustrate her decision They agreed on short time limits for the submissions, limited the number of pages and allowed the emergency arbitrator to restrict the reasoning of her order to the bare minimum. In line with the agreement reached the parties exchanged their submissions by 20 July 2014 and commented two days later on the respective submission of the other party.

Legal Evaluation

9. The Emergency Arbitrator notes that the contract containing the arbitration agreement has been signed by both the Applicant and the Responding party on 28 March 2014, that is, after 1 January 2012. Furthermore, the Responding party does not challenge the existence, validity or scope of the arbitration agreement nor the applicability of Emergency Arbitrator provisions except for what concerns the limitation included in Article 29(6)(c) of the ICC Rules of Arbitration ("Rules"). In that respect, the Emergency Arbitrator considers that she is not prevented by Article 21 of the contract to hear the interim disputes. Article 21 merely regulating which court had jurisdiction to render interim measures. Article 21's purpose is not to exclude any form of interim relief by the Arbitral Tribunal or via any other intra-arbitration mechanism. Consequently, it was not intended to exclude applications to the Emergency Arbitrator. Accordingly, the Emergency Arbitrator has jurisdiction to decide on the Application for Emergency Measures.

10. Furthermore, Article 29(1) of the Rules provides that a party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal may make an application for such measures. In this case, no arbitral tribunal has yet been constituted and the Applicant has demonstrated urgency sufficient to satisfy the Emergency Arbitrator that the Application is admissible pursuant to Article 29(1) of the Rules. It has been established by the Applicant in its submission that Respondent is in the process of negotiating with other customers. As one of the customers, who is heavily dependent on delivery from Xanadu is looking for a delivery at the beginning of August, it is very likely that the delivery would have taken place before the Arbitral Tribunal is established and has had time to deal with the matter.

11. Contrary to Respondent's submission, the substantive requirements for granting such interim relief are equally met. Claimant has a good arguable case on the merits and the decision on the merits would be frustrated if the required measures were not ordered. These are the internationally accepted principles of arbitral interim relief which are also the basis for Art. 17 A of the Danubian Arbitration law which is a verbatim adoption of the provision in the 2006 version of the UNCITRAL Model Law.

12. Claimant has a good arguable case that a valid contract for the delivery of 100 metric tons existed. In light of the long lasting business relationship with Global Minerals Claimant could expect Respondent to inform it should it not be willing to accept any longer an offer

previously made. Consequently, there is a good arguable case that Respondent's silence is interpreted as an acceptance of Claimant's offer to increase the quantities to be delivered.

13. In light of the still uncertain situation in Xanadu irreparable harm to Claimant could result from a disposal of the existing quantities of coltan by Respondent. Should the production of coltan in Xanadu become interrupted, Claimant would be unable to fulfill its contractual obligations towards its customers should it not receive the coltan from Respondent. The resulting damage to Claimant's reputation can in case of a young company determine its fate.

14. By contrast the only loss which may result for Respondent from the order requested is that it can presently not enter into additional better remunerated contracts. Such a loss may well be remedied by the payment of damages.

15. According to Article 7(4) Appendix V of the Emergency Arbitrator Rules, the costs of the Emergency Arbitrator Proceedings include the ICC administrative expenses, the Emergency Arbitrator's fees and expenses and the reasonable legal and other costs incurred by the parties for the Emergency Arbitrator Proceedings. Pursuant to Article 7(3) Appendix V of the Emergency Arbitrator Rules, the Emergency Arbitrator must fix these costs and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

16. The parties have not requested a decision regarding the legal and other costs they have incurred. Regarding the Emergency Arbitrator fees and the ICC administrative expenses, these are fixed in the amount of US$ 40 000 which comprises the amounts of US$ 10 000 and US$ 30 000 provided for at Article 7(1) Appendix V of the Emergency Arbitrator Rules. The Emergency Arbitrator finds that applying the principle that costs follow the event – which is a recognized and commonly used principle in international arbitration – is appropriate in light of the circumstances of the case and the decision on the Application as described above. Accordingly, Responding party shall bear the costs of the proceedings which amount to US$ 40 000. Responding party shall thus reimburse the Applicant for the amount of US$ 40 000 that it paid.

In light of these considerations the following order is issued:

1. The Application is admissible pursuant to Article 29(1) of the Rules and the Emergency Arbitrator has jurisdiction to order the emergency measures sought by the Applicant.
2. Responding party is to refrain from disposing of any of the 100 metric tons of coltan which are needed to fulfil the contract with Claimant in line with the provisions of the contract as amended by Global Minerals' fax of 27 June 2014
3. Responding party shall bear the costs of the Emergency Arbitrator proceedings and shall consequently reimburse the Applicant the amount of US$ 40 000.

Vindobona, 26 July 2014

Ms Chin Hu

26 July 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo)

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Mr Joseph Langweiler
Advocate at the Court
75 Court Street Capital City
Mediterraneo

By Email: Langweiler@lawyer.me

Dear Sirs,

The Emergency Arbitrator has sent today the Order to the parties.

The Order shall cease to be binding on the parties upon (Article 6(6) of Appendix V):

- the arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise,
- the withdrawal of all claims, or
- the termination of the arbitration before the rendering of a final award.

Upon a reasoned request prior to the transmission of the file to the arbitral tribunal, the Emergency Arbitrator may modify, terminate or annul the Order (Article 6(8) of Appendix V).

Costs of the Emergency Arbitrator Proceedings

The Order fixed the costs of the Emergency Arbitrator Proceedings as follows (Article 7(3) Appendix V):

- ICC administrative expenses:	US$ 10 000
- Emergency Arbitrator's fees and expenses:	US$ 30 000
- Total:	US$ 40 000

Such costs are covered by the payment made by the Applicant.

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration

c.c. Emergency Arbitrator

Joseph Langweiler
Advocate at the Court

75 Court Street Capital City, Mediterraneo,
Tel. (0) 146-9845 Telefax (0) 146-9850,
Langweiler@lawyer.me

8 August 2014

By courier
The Secretariat of the International Court of Arbitration
International Chamber of Commerce
38 Cours Albert 1er
75008 Paris
France

Vulcan Coltan Ltd v Mediterraneo Mining SOE
Answer to Request for Arbitration
Counterclaims
Request for Joinder
Pursuant to Articles 5 and 7 ICC- Arbitration Rules

Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

- CLAIMANT–

Represented in this arbitration by Horace Fasttrack

Mediterraneo Mining SOE
5-6 Mineral Street
Capital City
Mediterraneo

- RESPONDENT –

Represented in this arbitration by Joseph Langweiler

Global Minerals Ltd
Excavation Place 5
Hansetown
Ruritania

- Additional Party to be joined-

Introduction

1. In its Request for Arbitration, as well as in its submissions in the proceedings before the Emergency Arbitrator, CLAIMANT gave a largely distorted picture of the contractual relationships and the negotiations between the Parties. Neither was the business relationship between RESPONDENT on the one side and companies from the Global Minerals Group on the other side as smooth as alleged by CLAIMANT nor did CLAIMANT want to do RESPONDENT a favor in enlarging its offer. Contrary to the impression CLAIMANT has tried to create, it was not RESPONDENT but CLAIMANT who wanted to maximize its profits and therefore behaved in an opportunistic way. CLAIMANT tried to use insider information and speculated on market developments and appears to have been surprised when its speculations turned against it.

Nomination of Arbitrator and Jurisdiction of Arbitral Tribunal

2. RESPONDENT nominates as its arbitrator in this case Ms. Dos. It recognizes the jurisdiction of the arbitral tribunal. RESPONDENT agrees that the ICC appoints the president of the arbitral tribunal and suggests that the president be a Danubian national.

Statement of Facts

3. RESPONDENT, Mediterraneo Mining SOE ("RESPONDENT"), is a state-owned enterprise based in Mediterraneo. It operates all the mines in Mediterraneo including the country's only coltan mine. In addition to coltan RESPONDENT extracts copper and gold. It has a world-wide reputation for its high-quality coltan from conflict free coltan mines.

4. CLAIMANT's parent company, Global Minerals Ltd, as well as other companies belonging to the Global Minerals Group of Companies, have been fairly regular customers of RESPONDENT for coltan as well as for other minerals. Contrary to CLAIMANT's representations, this relationship has not been problem free. There had on several occasions been last minute requests for changes of ports of destinations, packing requirements or other contractual obligations. RESPONDENT normally tried to accommodate these requests and if possible acted accordingly informing its counterparties then about the changes made.

5. Consequently, RESPONDENT was shocked and outraged when in one of these deals Global Minerals put the subsidiary used into bankruptcy to avoid its payment obligations. Only after lengthy negotiations and in return for improved delivery and payment conditions was Global Minerals in the end willing to pay at least 90% of the price of that transaction. In light of that experience RESPONDENT insisted from then on always that Global Minerals either became a direct party to the deal or at least provided sufficient security for the payment obligations. Only in very few deals, when RESPONDENT was about to reach the limit of its storage capacity, did RESPONDENT not insist on any direct involvement of Global Minerals.

6. On 23 March 2014, Mr Storm, the Chief Operating Officer of Global Minerals, and Mr Summer, the Chief Operating Officer of CLAIMANT, approached Mr Winter, the general sales manager of RESPONDENT, to enquire about a delivery of 100 metric tons of coltan to CLAIMANT. The original proposal was that CLAIMANT would buy the goods and get the same payment and delivery conditions as Global Minerals (Witness Statement by Mr Winter, Exhibit R 1).

7. RESPONDENT was aware that CLAIMANT was a newly formed subsidiary of Global Minerals for the very difficult and competitive Equatorianian market and that it had very few assets apart from the office it had rented. In light of both that and the previous experience RESPONDENT made it clear from the beginning that Global Minerals would have to become a party to the contract or at least guarantee the fulfillment of the payment obligations. In the ensuing negotiations several models were discussed. In the end an agreement was reached that Global Minerals would not only ensure payment by a Letter of Credit but also sign the contract to endorse it. The signing took place on 28 March 2014 and RESPONDENT received the copies of the contract from Global Minerals.

8. During the negotiations a number of other options were discussed and RESPONDENT made an offer for the delivery of 100 metric tons at the price of US$45 per kg to be delivered in several installments before the end of 2014 CIP to CLAIMANT's premises. The offer was not accepted as CLAIMANT and Global Minerals requested a better price for the higher quantity. At the time of the negotiations RESPONDENT had, however, already problems in delivering the finally agreed 30 metric tons within the agreed time. RESPONDENT had, therefore,

asked for an unusually long window for the giving of the Notice of Transport. Consequently, any further quantities, even if delivered before the end of 2014, would have required additional efforts by RESPONDENT. The costs involved with these extra efforts made any price reduction impossible and even the price offered was already meant to be a price to start a long lasting relationship.

9. In addition to the clauses cited by CLAIMANT the contract contained the following clause concerning interim relief.

> ***Art 21 Provisional measures***
> The courts at the place of business of the party against which provisional measures are sought shall have exclusive jurisdiction to grant such measures

10. The clause had originally been suggested by Global Minerals in another contract in 2010. Since then it had been part of all contracts concluded with companies from the Global Minerals Group of Companies. RESPONDENT always understood it to be intended to limit all types of interim relief to that available from the courts at the respective parties' place of business. These courts are the only instance which can grant efficient interim relief.

11. In early May, another of RESPONDENT's customer became insolvent after it had contracted inter alia for a delivery of 150 metric tons of coltan in early July. On 21 June 2014 the insolvency administrator informed RESPONDENT that it would rescind the contract. Consequently, RESPONDENT was now in the fortunate position of being able to deliver the coltan earlier than anticipated to CLAIMANT, who had during the discussion always expressed its interest in early delivery.

12. On 25 June 2014 RESPONDENT sent the Notice of Transport to both CLAIMANT and Global Minerals. In its cover mail (Exhibit C 4) RESPONDENT informed CLAIMANT and Global Minerals about the insolvency of the other customer and the additional quantities now available. That was primarily done to explain why RESPONDENT could now deliver much earlier than originally anticipated. During the contract negotiations RESPONDENT had indicated that, due to other commitments, it would most likely only be able to declare its readiness to transport shortly before the end of August.

13. At the same time the information about the additional quantities available put CLAIMANT and Global Minerals into the position of investigating whether they could use them and of approaching RESPONDENT for further discussions.

14. No request for any such further discussions of a new contract was received by RESPONDENT. Instead, Mr Winter was approached by one of RESPONDENT's subsidiaries to help it with a problem it had with Iron Unlimited, another company of the Global Minerals Group. Due to a mix up of papers on the side of RESPONDENT's subsidiary the copper delivered under the controversial contract had a different origin than agreed. In practice, that had no effect on its usability. Irrespective of that Iron Unlimited was trying to use the origin issue as a formal pretext to get out of a contract which had turned out to be unfavorable.

15. On 27 June 2014, at 20.05h, RESPONDENT then received a fax from Global Minerals in which the latter unilaterally tried to amend the old contract. Global Minerals suggested not only increasing the amount to be delivered to 100 metric tons but also changing the delivery conditions. Since the fax had arrived outside RESPONDENT's business hours, it only read it on the following Monday. By that time the information that the Government in Xanadu had to step down had become public knowledge. CLAIMANT had most likely had that key information already had on Friday evening and was trying to use it to its advantage.

Given both the long civil war in Xanadu, which had only ended 10 years ago, and the still existing tensions between the various ethnic groups in the country, it could not be excluded that in the wake of the Government's dissolution those tensions would rekindle. That could have seriously affected the production of coltan, in particular the production of conflict free coltan. Thus, with the announcement of the crisis, the market started to react nervously and it was very likely that the prices of coltan would rise considerably.

16. It could not have come as a surprise to CLAIMANT that once the information about the development in Xanadu was public, RESPONDENT was not interested in the former's offer and never accepted it. That was also communicated from Mr Winter's assistant, Ms Ludmilla Masrov, to Mr. Max Rüthli, a sales manager at Claimant (Exhibit R 2). While RESPONDENT would have been able to deliver the quantity requested the offer was by far too low and RESPONDENT wanted to keep its free quantities of coltan to be able to react to the new situation. One of RESPONDENT's major long term customers was also dependent on deliveries from Xanadu.

17. RESPONDENT was outraged by CLAIMANT's attempt to take advantage of its insider information. Contrary to CLAIMANT's allegation the increased offer was not triggered by its wish to do RESPONDENT a favor. It seems much more likely that CLAIMANT had insider information about the Xanadu crisis and tried to use it for its benefit. The brother of Mr Storm is the local Ambassador for Ruritania in Xanadu. The attached report from the Xanadu Chronical (Exhibit R 3) shows that the Ambassador had been informed on Friday 27 June 2014 by one of the junior ministers about the planned walk out from the Government of that minister's party.

18. On 4 July 2014 at 15:00 MST the RESPONDENT received a Letter of Credit issued by the RST Trade Bank, Ruritania, first by fax and then by courier. The Letter of Credit was issued for US $4,500,000 relating to 100 metric tons of coltan.

19. Notwithstanding the fact that the issue of a non-conforming Letter of Credit constituted a fundamental breach of contract entitling RESPONDENT to avoid it, Mr Winter immediately tried to call Mr Summer to complain about the non-conforming letter. Mr Summer was in a meeting and was unable to answer the phone. Mr Winter left a message complaining about the non-conforming Letter of Credit and asking for the correct Letter of Credit to be provided immediately. In reply to this goodwill gesture, made in light of the existing business relationship and to facilitate settlement of the dispute for Iron Unlimited, Mr Winter merely received the e-mail by Mr Storm, already submitted as Exhibit C 6. In that e-mail Mr Storm merely alleged that the Letter of Credit provided was in line with – what he called - the changed contract, i.e. his fax of 27 June 2014, and requested delivery of 100 metric tons within the time agreed.

20. That showed RESPONDENT that CLAIMANT and its parent company had no intention to settle the various disputes amicably. Therefore, by letter of 7 July 2014 – delivered by special courier – Mr Winter on behalf of RESPONDENT declared the contract avoided.

21. RESPONDENT was considerably surprised when, in response to its declaration of avoidance it received a second Letter of Credit. This time the Letter of Credit largely complied with what had been provided in the contract though not completely. The accompanying letter stated that this new letter was merely sent as a precautionary measure and that CLAIMANT still considered that the original contract of 28 March 2014 had been amended by the fax of 27 June 2014 and RESPONDENT's silence in response to it.

22. What is significant is that this Letter of Credit had probably been sent at the time of the first news about the rising tensions in Xanadu which resulted in an immediate increase of the price for conflict free coltan of 93ct per kg.

23. A copy of the Letter of Credit arrived by fax from CLAIMANT on 22.42h on 8 July 2014. That is outside RESPONDENT's ordinary hours of business which last from 8.00 until 20:00h MST. Also Mr Winter, who was still in the office due to the turmoil created by the news from Xanadu, did not become aware of the arrival of the fax since his office was in another part of the building. Thus, the fax was only discovered at the start of business the next morning.

24. By that time Mr Winter had already received the original of the Letter of Credit. It had been delivered via special courier 5min after midnight to the night porter, who called Mr Winter to confirm receipt. The second Letter of Credit was issued by RST Trade Bank for US$ 1,350,000 and was much closer to the requirements under the contract with the exception of the additionally required invoice. In the present case, however, RESPONDENT had already avoided the contract before that Letter of Credit had been issued. Furthermore, that Letter of Credit had not arrived in time which in itself constituted a fundamental breach of contract entitling RESPONDENT to avoid the contract. RESPONDENT made that clear to CLAIMANT in a letter of 9 July 2014. As a merely precautionary measure Mr Winter in that letter declared once more the avoidance of the contract (Exhibit R 4), though that would not have been necessary in light of the earlier termination.

Legal Evaluation

Joinder of Global Minerals

25. RESPONDENT requests that Global Minerals is to be joined to this arbitration as an Additional Party.

26. That joinder is necessary to ensure that RESPONDENT'S counterclaim and its claim for costs are not frustrated in the event that it is successful. CLAIMANT is a special purpose vehicle, without any substantial assets, created by Global Minerals to enter the difficult Equatorianian market. One of the purposes of creating CLAIMANT was to shield Global Minerals from liability should CLAIMANT not be successful in that market and should damage claims arise from those activities. In such a case it seems very likely that Global Minerals would simply allow CLAIMANT to become insolvent as it has done in the past with another subsidiary. That is exactly the reason why RESPONDENT insisted on the inclusion of Global Minerals into the original contract of 28 March 2014. RESPONDENT wanted to avoid ending up with claims against CLAIMANT which were non-enforceable because of the latter's insolvency.

27. The arbitral tribunal has jurisdiction over Global Minerals by virtue of the arbitration clause in the contract concluded by RESPONDENT on 28 March 2014 with both CLAIMANT and Global Minerals. RESPONDENT always made it clear that it would not sell the originally requested amount to CLAIMANT due to its limited financial resources. Instead it required the involvement of the Global Minerals and both signed on the last page of the contract. Moreover, Global Minerals as the parent company was heavily involved in the negotiation and fulfilment of the contract. In particular it ensured the opening of the required letter of credit. Thus, even if the Tribunal were to come to the conclusion that Global Minerals was not a proper party to the contract it would be bound by virtue of the group of company doctrine.

28. Last but not least Global Minerals is also prevented by considerations of good faith to contest the jurisdiction of the arbitral tribunal. It always created the impression that it

would stand behind the contract, inducing RESPONDENT to sign it. Consequently, it can now not walk away from the consequences associated with the contract, when they are determined in an arbitration in accordance with the contract's arbitration clause.

Rejection of Claims raised by CLAIMANT

29. Under the contract CLAIMANT and Global Minerals were obliged to provide a Letter of Credit in line with the provisions as set out in the contract of 28 March 2014. That contract has never been validly amended. RESPONDENT never consented to CLAIMANT's offer to enlarge the quantity to be delivered under the contract and to amend the delivery terms. To the contrary, as it could now be established by the witness statement of Ms Masrov after her return from holidays, CLAIMANT in the person of its sale manager Mr. Rüthli was actually informed about the non-acceptability of the offer and its rejection. Furthermore, even if that had not been the case, contrary to the belief of the Emergency Arbitration, RESPONDENT's silence would not have been sufficient to bring a contract into existence. Pursuant to Art. 18 CISG silence does not constitute an acceptance. Contrary to CLAIMANT's allegations, there was also no practice established between the Parties that Respondent would answer immediately if it wanted to reject a change offer. The cases CLAIMANT refers to – with one exception - all concern requests for changes by Global Minerals which RESPONDENT could in the end accommodate and where it informed Global Minerals of its ability to do so. Thus, if at all, this practice would be in favor of RESPONDENT.

30. CLAIMANT'S failure to issue the required and correct letter of credit does amount to a fundamental breach of contract (Articles 64, 25, 54 CISG) which entitled RESPONDENT to terminate the contract.

31. Neither of the Letter of Credits provided by Global Minerals conformed to the contractual requirements. In transactions involving commodities, in particular in volatile markets, any deviation from the contract in relation to the documents provided constitutes a fundamental breach.

32. The first Letter of Credit did not bear any relation to the contract concluded on 28 March 2014. It was for a larger amount of coltan than agreed upon in the contract between the parties and contained different delivery terms. There has been no amendment of the contract. RESPONDENT never accepted CLAIMANT's amended proposal and, under the CISG, silence does not constitute an acceptance, as is explicitly stated in Article 18 CISG.

33. The second Letter of Credit was received too late: by the time of receipt RESPONDENT had validly avoided the contract. By sending the first Letter of Credit CLAIMANT and Global Minerals had exercised their right to determine the exact date of performance within the period given. From that time onwards the time for performance was fixed and all subsequent performance was out of time.

34. Even if the Tribunal should reach a different conclusion, which we do not expect, the second Letter of Credit was sent belatedly. It only arrived at RESPONDENT'S premises on 9 July 2014 and not as required on 8 July 2014. The fax was sent outside RESPONDENT's the ordinary business hours and was only discovered on 9 July 2014. Therefore, it cannot be considered to have arrived in time. It is not the time of sending but the time of receipt which is relevant in this regard. Consequently, it is also not the time zone of the party performing the contract which is relevant, i.e. RST applicable in Ruritania and Equatoriana, but the zone where the obligation is to be performed, i.e. MST relevant in Mediterraneo, which is five hours ahead.
35. Moreover, the Letter of Credit required for its drawing the presentation of a commercial invoice which was not listed as a document to be presented in the first letter of credit.

Lifting of the order of the emergency arbitrators

36. The order of the emergency arbitrator Ms Chin Hu of 26 July 2014 must be lifted. The Parties agreed in their contract of 28 March 2014 in clause 21 that interim relief would only be available from the state courts. Thus Ms. Hu already lacked jurisdiction from the beginning.

37. Furthermore, the substantive requirements for the granting of interim relief were not met. Neither had Claimant a good arguable case on the merits nor was irreparable harm imminent. Contrary to the view taken by the Emergency Arbitrator, it has now been established that the contract has never been validly amended. Thus, there had never been any basis for the order to maintain at least 100 metric tons of coltan. At best there had been a contract for 30 metric tons. That contract had, however, been validly avoided by RESPONDENT due to CLAIMANT's fundamental breach of contract. Consequently, there was also no good arguable case for an order to maintain at least 30 metric tons.

Damage Claim

38. The order made by the Emergency Arbitrator prevents RESPONDENT from disposing of the coltan presently stocked at its warehouse. Since the order was rendered the price has risen considerably and there have been numerous requests by long term customers of RESPONDENT for additional quantities of coltan. RESPONDENT could, however, not accept a single one due to the order made by the Emergency Arbitrator. It is highly probable that because of positive developments in Xanadu, RESPONDENT will only be able to sell the coltan at a lower price in the future. Once the unjustified order is lifted, RESPONDENT will present an actual calculation of the damages it incurred as a consequence of that measure. In light of the present developments, the storage costs incurred and the missing liquidity, it can be assumed that the loss incurred by the unjustified measure will be at least US$ 1,000,000.

39. In addition, RESPONDENT had been ordered to pay the costs for the emergency arbitration procedure in the amount of US$ 40,000. The decision on costs was not justified so that RESPONDENT wants to be reimbursed for the amount paid.

Statement of Relief Sought

In light of this RESPONDENT requests the Arbitral Tribunal

1. to reject all claims raised by CLAIMANT;
2. to lift the measure of the emergency arbitrator Ms Chin Hu of 26 July 2014;
3. to declare that it has jurisdiction over Global Minerals;
4. to order CLAIMANT and/or Global Minerals to pay damages, presently unquantified but expected to exceed US$ 1,000,000 resulting from the unjustified order of the emergency arbitrator Ms Chin Hu;
5. to order CLAIMANT and Global Minerals to pay RESPONDENT's costs incurred in this arbitration and in the Emergency Arbitrator proceedings.

Annexes
Exhibit R 1: Witness Statement of Mr Winter
Exhibit R 2: Witness Statement of Ms Masrov
Exhibit R 3: Article from the Xanadu Chronicle
Exhibit R 4: Letter of 9 July 2014

EXHIBIT R 1

Witness Statement Mr Willem Winter

1. My name is Willem Winter, born 25 August 1956. I am an economist by training and have worked now for 13 years for Mediterraneo Mining SOE, the last 7 as the General Sales Manager. I am responsible for the general organization of the sales department at Mediterraneo Mining (which consists of 6 employees) and for the relationship with our major customers. Furthermore, I have to approve all contracts which deviate from the "standard" normally applied. In these cases I am often also the principal negotiator.

2. In mid-March 2014, I received a phone call from Theo Storm, the COO of Global Minerals. He wanted to meet and to discuss a new coltan deal with me. We agreed to meet on the 23 March 2014 for lunch. As announced Mr Storm was accompanied by his colleague Mr Ben Summer. He is the COO of Vulcan Coltan, a newly formed subsidiary of Global Minerals from Equatoriana with basically no assets. In preparation for the meeting I had done some background research about Vulcan Coltan. It appeared that Vulcan Coltan had been established at the end of 2013 by Global Minerals to coordinate its activities in the difficult and competitive market of Equatoriana. That was confirmed by Mr Storm and Mr Summer at the meeting.

3. What Mr Storm had announced in the telephone conversation as a "closer cooperation for the benefit of all parties involved" turned out to be an interest by them in purchasing greater quantities of coltan for the Equatorianian market. The original proposal was that Vulcan Coltan would be the buyer and acquire 100 metric tons on the same delivery and payment conditions we gave to Global Minerals.

4. These fairly flexible and favorable delivery and payment conditions had been agreed as a part of a settlement concluded in 2010. At that time one of the subsidiaries of Global Minerals had become insolvent and had defaulted on paying for minerals delivered. The contract in question had originally been concluded with Global Minerals and had then – at the request of Global Minerals – "formally" been transferred to the subsidiary. Consequently, we insisted on payment by Global Minerals and threatened to refuse any further deliveries. Only after tough negotiations was a settlement reached. The incident seriously undermined our trust in the Global Minerals Group.

5. In the end, Global Minerals agreed to pay 90 % of the purchase price. In return we shifted our "standard" delivery terms – relevant for the price calculation - from f- to c-clauses adding only 70% of the normal transport price to the price for the goods. We could make that offer as the state owned shipping line has liner services to most of the ports to which we would have to ship the minerals. Furthermore, deviating from the prevailing practice in the mineral industry which insists on payment by letter of credit, we offered Global Minerals from 2010 onwards different modes of payment. They varied as to the time and the form of payment and the discounts associated with each mode. In some cases Global Minerals or its subsidiaries even paid up front and in cash. For deals which exceeded one million US dollars we always required some form of security either a letter of credit for at least part of the shipment or a partial down-payment. This security normally required some negotiations but, since we were fairly flexible as to the form of security, in the end we always reached an agreement.

6. That is also what happened in this case. Mr Storm and Mr Summer originally suggested that Vulcan Coltan would purchase 100 metric tons of Coltan to be paid against open account 7 days after delivery. That was the most favorable payment condition we had

agreed with Global Minerals in the past. It had, however, only been applied to smaller quantities and for delivery into certain countries.

7. I made clear that this offer was unacceptable to us. The open account payment mode would only be offered to Global Minerals as a contracting party and that for the size of the deal originally we needed some sort of security. In the end we agreed on a much smaller amount and that Global Minerals – in return for a price reduction of 0,5 % would sign the contract and thereby "endorse" the deal. For me it was clear that they would thereby become a party to the contract or at least a "quasi"-party responsible for the payment. In the end the exact legal status of Global Minerals was of limited concern to me, since our payment claim was largely secured by a letter of credit to be provided by Global Minerals' bank. Originally we requested a confirmed letter of credit, with the confirmation of a bank in Mediterraneo. Since the state owned shipping company has an office in Ruritania, in the end, we accepted a non-confirmed letter of credit from a Ruritanian bank.

8. At a certain point in time during the negotiations we made an offer which is largely identical to that made by Global Minerals on 27 June 2014. It was, however, not accepted by Global Minerals. According to my recollection they wanted a price reduction for the larger quantity which we were not willing to give. At the time we could not guarantee to have these quantities available without some extra efforts which would have to be priced for. Since March 2014 the shipping costs have also increased a little bit, i.e. by around 1.000 USD, so that they could not expect us to accept their offer.

9. As their offer of 27 June 2014 (a Friday) reached us outside of our business hours we only read it on Monday morning. By that time the news was out that the Government in Xanadu had stepped down, which Global Minerals probably knew already before the weekend. That explains at least the two messages of Friday evening which had been left on my voicemail from Mr Storm and Mr Summer who wanted to discuss the deal with me. Since I had left my mobile in the office and was at a wedding that weekend I only heard the messages on Monday morning. It seemed that the Global Minerals Group was trying, yet again, to use insider information to its advantage. In light of that behavior and since it was obvious that – in light of the new developments the offer would be unacceptable - I saw no reason to call them to formally reject their offer. In addition, the Government breakdown in Xanadu had created a considerable uncertainty in the market as to the future availability of conflict free coltan. As a consequence I had had a very hectic week with calls from all our major customers who wanted to discuss possible fallback scenarios should the tensions between the various groups in Xanadu be resurrected. Xanadu was at the time the largest producer of coltan supplying 28% of the world market for conflict free coltan.

10. During that week I hardly ever left the office before midnight. That is also the reason why I was able to receive the second letter of credit. The night porter called me at 5 minutes past midnight on 9 July to inform me that a special courier wanted to deliver a Letter of Credit. I confirmed receipt of this Letter of Credit which came from Trade Bank, Ruritania.

Willem Winter Oceanside, 2 August 2014

EXHIBIT R 2

Witness Statement Ms Ludmilla Masrov

1. My name is Ludmilla Masrov, born 9 July 1981. I am an economist by training and have worked the last four years for Mediterraneo Mining SOE, as the assistant of the General Sales Manager.

2. During the whole month of July I have been on an extended holiday trip through Asia, which has long been planned and was my first real holiday since I have started to work for Mediterraneo Mining SOE. Therefore, I remember the events on 30 June very well as it was my last day of work. Due to the events in Xanadu it was a frantic day and for some time it even looked as if I might had to cancel my holiday. There have been numerous meetings over the whole day concerning the events in Xanadu and the possible consequences. We were in the lucky position that we had a considerable amount of coltan available due to the insolvency of a customer and it seemed very likely that the price for conflict free coltan would rise considerably.

3. Furthermore, we had scheduled already the week before a meeting to deal with the rejection of a larger charge of copper by one of the subsidiaries of Global Minerals. Due to a mix up of documents the subsidiary had refused to take delivery of the copper which had a different origin than agreed under the contract. In our view that was a mere formality but our business partner tried to use that as a pretext to walk away from the contract as the price had developed against them. I remember very well that Mr Winter was furious when he reported about the allegedly "friendly" offer by Claimant to take some of our available coltan from the Friday before. He was sure that Claimant merely wanted to take advantage of its insider knowledge about the events in Xanadu. He was certain that Mr Storm had privileged information from his brother who was the ambassador of Ruritania in Xanadu. He left no doubt that the offer was obviously inacceptable. We wanted to use that opportunity to make it clear to "our friends from the Global Mineral Group" that without a major change in their business attitude towards a more cooperative behavior we would no longer be interested in doing business with them at all in the future.

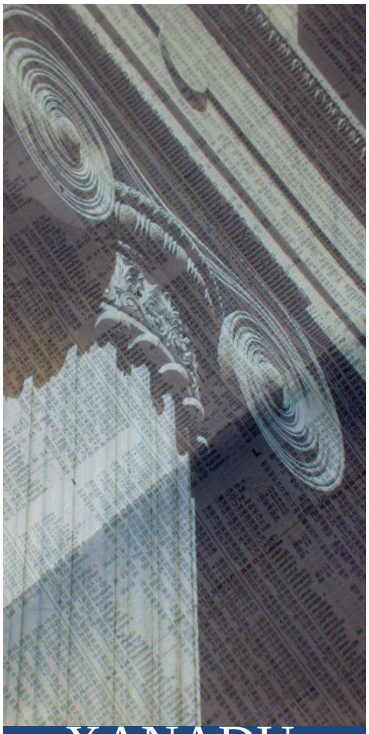
4. I do not know whether he finally did so since I left on the 1 July for my holidays after having worked the whole night. From the airport I called Mr. Max Rüthli, who was working for Claimant as a sales manager. When I started with Mediterraneo Mining SOE he had been the personal assistant to Mr Storm. During the lengthy discussions about the settlement in 2010 we became friends and have been in loose contact ever since. My original plan was to meet up with him in Asia for several days and we had to agree details. I told him, how their offer was received and that it was clearly unacceptable for us. He had little time since he was on his way to a meeting with the head of human resources. He had applied for a promotion and was hoping that details would be discussed.

5. It later turned out that the meeting was not about a promotion but that he was dismissed from the company. As a consequence, we could not meet in Asia. I do not know whether he told Mr Summer or Mr Storm about our discussion but I had left no doubt that we would not accept that offer.

Ludmilla Masrov Oceanside, 6 August 2014

EXHIBIT R 3

1 August 2014



XANADU CHRONICLE

- At Home
- World News
- Children's Corner
- Home & Garden
- Sport
- TV Guide
- Celebrity Round Up
- Pets & You

GOVERNMENT CRISIS IN XANADU

In the morning of 29 June 2014 the Deputy Prime Minister of Xanadu informed the press that his party would leave the Government of Xanadu. In his view the central Government was "not willing to really address and remedy the pressing question of a more equal distribution of Xanadu's water resources".

In a final effort to find a consensual solution to the problems the different parties forming the Government met for a meeting at lunchtime on 28 June 2014 which lasted for 14 hours until 2.00 am, 29 June 2014, when the Deputy Prime Minister informed the press. In an interview Mr Storm, the Ambassador of Ruritania, told the press that he had been informed by a junior minister in the morning of 27 June that the Deputy Prime Minister had decided to leave the Government if the problem were not to be solved along the lines of his proposal. That uncompromising position came as a surprise to most of the political observers. The prevailing impression had been that the Government was on a good path resolving the difficult problem which had led to a year long civil war a little bit than ten years ago. Mr Storm informed the Chronicle that he had tried to talk to both sides the whole day of Friday to find a way out of this impasse. He had, however, already at lunch-time reported home to his Government that a settlement seemed to be unlikely at present.

EXHIBIT R 4

Mediterrano Mining
5-6 Mineral Street
Capital City
Mediterraneo

9 July 2014

BY EMAIL AND COURIER
Mr Ben Summer
Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

Dear Mr Summer

To our great surprise we received this morning, shortly after Midnight, another Letter of Credit by RST Trade Bank for 1,350.000 US$. It was apparently meant to fulfill your contractual obligations under the contract of 28 March 2014 which originally existed between Vulcan Coltan Ltd and Mediterraneo Mining SOE.

We terminated this contract, however, with letter of 7 July 2014 and herewith return the second letter of credit. As you may have gathered already from the termination of the contract in our previous letter we are no longer willing to tolerate the continued efforts of the companies belonging to the Global Minerals Group to outwit their business partners by either taking advantage of privileged information or relying on formalities.

To be absolutely clear and to avoid any misunderstandings: we are not accepting the second Letter of Credit as performance since there was no longer any contract to be performed.

Furthermore, the time limit to provide us with the required Letter of Credit expired on 8 July. The Letter of Credit was, however, only delivered to us after midnight, on 9 June at 0.05 MST. If I had not been in the office during that night, the Letter of Credit would have only reached me this morning at the earliest. That happened to the fax you send us last night. It arrived at 22.42 MST, well outside our business hours. Consequently, it was only discovered this morning by the secretaries and then transmitted to me.

Moreover, unlike the first Letter of Credit the new Letter of Credit now requires as an additional document a commercial invoice. You are well aware that these two deviations – irrespective of the previous termination – would by themselves already constitute a fundamental breach of contract. As a purely "precautionary measure" – to use your words – we herewith declare the contract once more terminated for a fundamental breach of contract.

Yours sincerely
Winter
Willem Winter

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8 August 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo) **vs/** Global Minerals Ltd (Ruritania)

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By FedEx & Email: fasttrack@host.eq

Mr Joseph Langweiler
Advocate at the Court
75 Court Street Capital City
Mediterraneo

By Email: Langweiler@lawyer.me

Global Minerals Ltd
Excavation Place 5
Hansetown
Ruritania

By FedEx

Dear Sirs,

The Secretariat acknowledges receipt of 6 copies of Respondent's Answer, Counterclaims and Request for Joinder dated 8 August 2014.

We also acknowledge receipt of the US$ 3 000 non-refundable filing fee paid by Respondent for the Request for Joinder, which will be credited towards its share of the advance on costs.

I - REQUEST FOR JOINDER ("JOINDER")

1) Joinder

The Secretariat notifies Global Minerals Ltd that, on 8 August 2014, it received a Request for Joinder ("Joinder") from Mediterraneo Mining SOE represented by Mr Joseph Langweiler, that names it as Additional Party to this arbitration.

Pursuant to Article 4(2) of the ICC Rules of Arbitration ("Rules"), this arbitration commenced against the Additional Party on 8 August 2014.

We enclose a copy of the Joinder, the documents annexed (Article 7(3)) thereto, and a copy of the file.

2) Caption

Please comment on the caption which should be used, in the Answer to the Request for Joinder or any request for an extension of time for submitting your Answer. Failing receipt of comments from all parties, the caption will be the following:

Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo) **vs/** Global Minerals Ltd (Ruritania)

3) Answer to the Joinder

The Additional Party's Answer to the Joinder is due within **30 days** from the day following receipt of this correspondence (Article 7(4)).

Please send us **6** copies of your Answer, together with an electronic version.

The Additional Party may apply for an extension of time for submitting its Answer to the Joinder by nominating an arbitrator (Articles 7(4) and 5(2)). Such information will enable the Court to take steps towards the constitution of the arbitral tribunal.

If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration will proceed notwithstanding such refusal or failure (Article 6(8)).

Once we have received the Answer to the Joinder, we will send it to all parties and provide them with an opportunity to comment.

4) Joinder of Additional Parties

No Additional Party may be joined to this arbitration after the confirmation or appointment of any arbitrator, unless all parties including the Additional Party otherwise agree (Article 7(1)). Therefore, if the Additional Party intends to join an Additional Party and seeks an extension of time for submitting its Answer, please inform us in the request for such extension.

5) Reference to the Rules

In all future correspondence, any capitalised term not otherwise defined will have the meaning ascribed to it in the Rules and references to Articles of the Rules generally will appear as: "(Article ***)".

6) Place of Arbitration

The arbitration agreement provides for Vindobona as the place of arbitration.

7) Language

The arbitration agreement provides for English as the language of arbitration.

8) Efficient Conduct of the Arbitration

The Rules require the parties and the arbitral tribunal to make every effort to conduct the arbitration in an expeditious and cost-effective manner having regard to the complexity and value to the dispute (Article 22(1)).

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost effective manner (Article 37(5)).

9) Communications with the Secretariat

Please provide your fax number and/or email address as we may transmit notifications and communications by fax and/or email.

10) Amicable Settlement

Parties are free to settle their dispute amicably at any time during an arbitration. The parties may wish to consider conducting an amicable dispute resolution procedure pursuant to the ICC Mediation Rules, which, in addition to mediation, also allow for the use of other amicable settlement procedures. ICC can assist the parties in finding a suitable mediator. Further information is available from the ICC International Centre for ADR at +33 1 49 53 30 53 or adr@iccwbo.org or www.iccadr.org.

II - ANSWER AND COUNTERCLAIMS ("ANSWER")

1) Answer

A copy of Respondent's Answer and Counterclaims is enclosed for Claimant and for the Additional Party (Article 5(4)).

Claimant's Reply is due within **30 days** from the day following its receipt of this correspondence (Article 5(6)).

2) Representation by Counsel

We understand that Respondent is represented by Mr Joseph Langweiler in Mediterraneo. Accordingly, all future correspondence addressed to Respondent will be sent solely to Mr Langweiler.

3) Amount in Dispute

The amount in dispute is now estimated at US$ 5 500 000 (*i.e.* US$ 4 500 000 for the principal claims and US$ 1 000 000 for the counterclaims).

III - CONSTITUTION OF THE ARBITRAL TRIBUNAL

The arbitration agreement provides for three arbitrators. Claimant and Respondent have respectively nominated Dr Arbitrator One and Ms Dos as co-arbitrators.

Where an Additional Party has been joined, and where the dispute is to be referred to three arbitrators, the Additional Party may, jointly with Claimant or with Respondent, nominate a co-arbitrator for confirmation (Article 12(7)).

In the absence of a joint nomination (Articles 12(6) or 12(7)) and where all parties fail to agree to a method for constituting the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and designate one of them to act as president (Article 12(8)).

The Court will appoint the president, unless the parties agree upon another procedure (*e.g.*, the co-arbitrators nominating the president) (Article 12(5)).

IV - GENERAL INFORMATION

a) Provisional Advance

As the provisional advance has been fully paid, we will transmit the file to the arbitral tribunal, once constituted (Article 16).

b) Your Case Management Team

Mr Counsel .....(direct dial number: +33 1 49 53 00 01)
Ms Deputy Counsel .....(direct dial number: +33 1 49 53 00 02)
Mr Deputy Counsel.....(direct dial number: +33 1 49 53 00 03)
Ms Deputy Counsel .....(direct dial number: +33 1 49 53 00 04)
Ms Assistant .....(direct dial number: +33 1 49 53 00 05)
Ms Assistant .....(direct dial number: +33 1 49 53 00 06)
Mr Assistant.....(direct dial number: +33 1 49 53 00 07)
Fax number .....+33 1 49 53 00 10
Email address .....ica100@iccwbo.org

Finally, please find enclosed a note that highlights certain key features of ICC arbitration, as well as a Note on Administrative Issues. We invite you to visit our website at www.iccarbitration.org to learn more about our Dispute Resolution services.

While maintaining strict neutrality, the Secretariat is at the parties' disposal regarding any questions they may have concerning the application of the Rules.

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration

encl.
- Request for Arbitration with documents annexed thereto
- Respondent's Answer and counterclaims
- Request for Joinder with documents annexed thereto
- Financial Table
- Note to the Parties in Proceedings under the 2012 Rules
- Note on Administrative Issues
- ICC Rules of Arbitration *(see also www.iccarbitration.org)*
- ICC Dispute Resolution Brochure *(see also www.iccarbitration.org)*

(The attachments are not provided for the purposes of the Vis Moot problem)
(The Notes are available on the ICC electronic Dispute Resolution Library at: http://www.iccdrl.com/practicenotes.aspx.)

Horace Fasttrack
Advocate at the Court

14 Capital Boulevard Oceanside, Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

8 September 2014

By courier
The Secretariat of the International Court of Arbitration
International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris
France

Vulcan Coltan Ltd and Global Minerals Ltd. v Mediterraneo Mining SOE
Reply to the Counterclaim
Answer to Request for Joinder
Pursuant to Articles 5(6) and 7(4) ICC- Arbitration Rules

Vulcan Coltan Ltd
21 Magma Street
Oceanside
Equatoriana

- CLAIMANT-

Global Minerals Ltd
Excavation Place 5
Hansetown
Ruritania

- ADDITIONAL PARTY -

Both represented in this arbitration by Horace Fasttrack

Mediterraneo Mining SOE
5-6 Mineral Street
Capital City
Mediterraneo

- RESPONDENT -

Introduction

1. Following CLAIMANT's Request for Arbitration of 11 July 2014 and the decision of the Emergency Arbitrator on 26 July 2014 RESPONDENT has in its Answer of 8 August 2014 raised a counterclaim against Claimant and the Additional Party, the joinder of which it requested.

2. Global Minerals joins Vulcan Coltan in nominating Dr Arbitrator One as co-arbitrator, without prejudice to its jurisdictional objections. Global Minerals also agrees with

Claimant and Respondent to entrust the ICC International Court of Arbitration with the appointment of a Danubian national to act as president of the arbitral tribunal.

3. Respondent's request for joinder is based on a misunderstanding of the factual background and the fundamental legal principles, in particular that of party autonomy.

4. Without admitting that RESPONDENT ever rejected CLAIMANT's offer, as alleged in RESPONDENT's last submission, CLAIMANT, as a sign of goodwill, does not pursue its claim for an order for 100 metric tons (claim 1a) any further. Instead it reduces it claims to an order for the delivery of 30 metric tons as originally agreed in the contract and requested as claim 1b. Also the order of the Emergency Arbitrator may be changed accordingly.

Statement of Facts

5. In the second half of 2013 Global Minerals, the Additional Party, decided to undertake another attempt to enter the highly competitive and difficult Equatorianian market. To avoid repercussions of an eventual failure on its other business activities, in particular on its reputation, Global Minerals decided to set up a new and largely independent company, i.e. Vulcan Coltan Ltd., the Claimant. The intention was to keep CLAIMANT's business, wherever possible, completely separate from that of Global Minerals. There had been an internal decision that all business with relation to Equatoriana should be conduct by CLAIMANT. In light of the relatively newness of CLAIMANT to the market, it could not be excluded that counterparties would require additional securities. In such cases, Global Mineral would provide the required financial securities without, however, becoming party to the underlying contracts.

6. That is exactly what happened during the negotiation with RESPONDENT. Given the long lasting business relationship of Global Minerals with RESPONDENT, Mr Storm introduced his colleague from CLAIMANT, Mr Summer, to Mr Winter, the responsible person at RESPONDENT. The first offer made foresaw no involvement of Global Minerals in the contractual relationship at all. Only when RESPONDENT insisted on financial securities, Global Minerals endorsed the contract, to avoid an expensive outside guarantee. Global Minerals had, however, never intended to become a party to the contract by that endorsement. A proposal by RESPONDENT to list Global Minerals in Article 1 of the contract as an additional buyer was explicitly rejected.

Legal Evaluation

7. It follows from the above that Global Minerals never became a party to the contract or its arbitration agreement. Therefore the Tribunal lacks jurisdiction over Global Minerals. The Arbitral Tribunal can also not rely on the so called Groups of Companies doctrine. Already the content of that doctrine is highly controversial. For that reason it is clearly not recognized by the law of Danubia which governs the contract as well as the arbitration agreement. In so far it is irrelevant that a court in Ruritania has explicitly endorsed obiter dicta the "doctrine of groups of company as set out in the Dow Chemical Award" (High Court of Ruritania – 8 April 2009). Furthermore, the requirements of the doctrine would not be met. It was always clear that only CLAIMANT, but not Global Minerals, would become a party to the contract and the arbitration agreement.

8. Equally, good faith considerations cannot justify preventing Global Minerals from invoking the absence of an arbitration agreement. Again, with the exception of Ruritania, none of the jurisdictions involved has a developed doctrine of good faith which would justify such a finding. Given that party autonomy is an internationally recognized principle of

arbitration the very general reference to the good faith principle in international arbitration is definitively not sufficient to justify the joining of Global Minerals to the arbitration proceedings. Moreover, while Ruritanian contract law contains a general reference to good faith, a verbatim adoption of Article 1.7 UNIDROIT Principles 2014, there have been no reported cases from Ruritania yet which have extended good faith to the scope of the arbitration agreement.

9. RESPONDENT's counterclaim is completely without merit. At the time when the order was issued the Emergency Arbitrator was entitled to do so. Ms Hu had jurisdiction under the ICC Rules and RESPONDENT had not even pleaded, let alone offered any proof, that CLAIMANT had been informed about the alleged rejection of its offer. Consequently, at the time of rendering the requirements for making the order were clearly met. That deprives RESPONDENT's damage claim of any basis.

10. To avoid any unnecessary costs all Parties involved in this arbitration have agreed in a telephone conference of 25 August 2014 that the question of damages should only be addressed if the Arbitral Tribunal finds that the order has been rendered without justification. Furthermore, Respondent has consented to CLAIMANT's goodwill changes in the request for relief.

In light of the foregoing, the Arbitral Tribunal is requested to

1) Declare that it has no jurisdiction over Global Minerals Ltd
2) Reject Respondent's Counterclaim
3) Order Respondent to bear the costs of this arbitration.

Horace Fasttrack
Advocate at the Court

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

8 September 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo) **vs/** Global Minerals Ltd (Ruritania)

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Mr Joseph Langweiler
Advocate at the Court
75 Court Street Capital City
Mediterraneo

By Email: Langweiler@lawyer.me

Dear Sirs,

The Secretariat acknowledges receipt of the Reply to the Counterclaim and Answer to the Request for Joinder dated 8 September 2014, a copy of which is enclosed (Articles 7(4) and 5(4).

Representation by Counsel

We understand that the Additional Party is represented by the same counsel as Claimant. Accordingly, all future correspondence addressed to such parties will be sent solely to Mr Horace Fasttrack.

Constitution of the Arbitral Tribunal

The Additional Party has joined Claimant in nominating Dr Arbitrator One as co-arbitrator, without prejudice to its jurisdictional objections.

We will invite the prospective co-arbitrators to complete a Statement of Acceptance, Availability, Impartiality and Independence, which we will send to all parties.

Furthermore, we note that the parties have agreed that the Court appoints a Danubian national as president of the arbitral tribunal.

Article 6(3) of the Rules

The Additional Party raises a plea pursuant to Article 6(3) of the Rules. The Secretary General has referred the matter to the Court for its decision (Article 6(4)). Accordingly, the Court will examine whether and to what extent this matter will proceed (Article 6(4)). We invite your comments by **12 September 2014**.

Amount in Dispute

The amount in dispute is estimated at US$ 2 350 000 (*i.e.* US$ 1 350 000 for the principal claims and US$ 1 000 000 for the counterclaims).

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration
encl. - Answer to Counterclaim and Request for Joinder
- Financial Table
(The attachments are not provided for the purposes of the Vis Moot problem)

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

15 September 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo) **vs/** Global Minerals Ltd (Ruritania)

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Mr Joseph Langweiler
Advocate at the Court
75 Court Street Capital City
Mediterraneo

By Email: Langweiler@lawyer.me

Global Minerals Ltd
Excavation Place 5
Hansetown
Ruritania

By FedEx

Dear Sirs,

The Secretariat encloses a copy of the Statement of Acceptance, Availability, Impartiality and Independence ("Statement"), as well as the *curriculum vitae* of:

- Dr Arbitrator One jointly nominated by Claimant and the Additional Party as co-arbitrator, and

- Ms Dos nominated by Respondent as co-arbitrator.

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration

encl. Statements and *Curriculum Vitae* of Dr Arbitrator One and of Ms Dos

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

CASE N° 22000/AC

2012 RULES - ICC ARBITRATOR STATEMENT ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

Family Name(s): **One** **Given Name(s):** **Arbitrator**

Please tick all relevant boxes.

1. ACCEPTANCE

Acceptance

[X] **I agree** to serve as arbitrator under and in accordance with the 2012 ICC Rules of Arbitration ("**Rules**"). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by the ICC Court (Article 2(4) of Appendix III to the Rules).

Non-Acceptance

[ ] **I decline** to serve as arbitrator in this case. *(If you tick here, simply date and sign the form without completing any other sections.)*

2. AVAILABILITY

[X] **I confirm,** on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules, subject to any extensions granted by the Court pursuant to Articles 23(2) and 30 of the Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that the ICC Court will consider the duration and conduct of the proceedings when fixing my fees (Article 2(2) of Appendix III to the Rules). My current professional engagements are as below for the information of the ICC Court and the parties.

Principal professional activity: Lawyer *(e.g. lawyer, arbitrator, academic)*:

Number of currently pending cases in which I am involved *(i.e. arbitrations and activities pending now, not previous experience; additional details you wish to make known to the ICC Court and to the parties in relation to these matters can be provided on a separate sheet):*

	As tribunal chair / sole arbitrator	As co-arbitrator	As counsel
Arbitrations	1	5	3
Court litigation	*Not applicable*	*Not applicable*	

Furthermore, I am aware of commitments which might preclude me from devoting time to this arbitration during the following periods (*please provide details regarding such periods below or on a separate sheet*):

Hearing dates scheduled: 7-13 March 2015 and 8 June 2015

3. INDEPENDENCE and IMPARTIALITY *(Tick one box and provide details below and/or, if necessary, on a separate sheet)*

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

[X] **Nothing to disclose**: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

[ ] **Acceptance with disclosure**: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: 14 September 2014 Signature: [signature of Dr One]

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

CASE N° 22000/AC

2012 RULES - ICC ARBITRATOR STATEMENT ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

Family Name(s): **Dos** **Given Name(s):**

Please tick all relevant boxes.

1. ACCEPTANCE

Acceptance

[X] **I agree** to serve as arbitrator under and in accordance with the 2012 ICC Rules of Arbitration ("**Rules**"). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by the ICC Court (Article 2(4) of Appendix III to the Rules).

Non-Acceptance

[ ] **I decline** to serve as arbitrator in this case. *(If you tick here, simply date and sign the form without completing any other sections.)*

2. AVAILABILITY

[X] **I confirm,** on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules, subject to any extensions granted by the Court pursuant to Articles 23(2) and 30 of the Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that the ICC Court will consider the duration and conduct of the proceedings when fixing my fees (Article 2(2) of Appendix III to the Rules). My current professional engagements are as below for the information of the ICC Court and the parties.

Principal professional activity: Lawyer *(e.g. lawyer, arbitrator, academic)*:

Number of currently pending cases in which I am involved *(i.e. arbitrations and activities pending now, not previous experience; additional details you wish to make known to the ICC Court and to the parties in relation to these matters can be provided on a separate sheet):*

	As tribunal chair / sole arbitrator	As co-arbitrator	As counsel
Arbitrations	3	2	4
Court litigation	*Not applicable*	*Not applicable*	

Furthermore, I am aware of commitments which might preclude me from devoting time to this arbitration during the following periods (*please provide details regarding such periods below or on a separate sheet*):

Hearing dates scheduled: 13 January, 8-15 May, 18-19 July and 20 August 2015

3. INDEPENDENCE and IMPARTIALITY *(Tick one box and provide details below and/or, if necessary, on a separate sheet)*

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

[X] **Nothing to disclose**: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

[ ] **Acceptance with disclosure**: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: 14 September 2014 Signature: [signature of Ms Dos]

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

18 September 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo) **vs/** Global Minerals Ltd (Ruritania)

Mr Henry Haddock
40 Floral Road
Tudor
Ruritania

By FedEx& email hadh@gmail.com

Dr Arbitrator One
1045 City Boulevard
Oceanside, Equatoriana

By FedEx & email arbone@one.com

Ms Dos
45 City Town
Seeshore
Mediterraneo

By FedEx & email dosd@gmail.com

Mr Horace Fasttrack
Advocate at the Court
14 Capital Boulevard
Oceanside, Equatoriana

By Email: fasttrack@host.eq

Mr Joseph Langweiler
Advocate at the Court
75 Court Street Capital City
Mediterraneo

By Email: Langweiler@lawyer.me

Dear Madame and Sirs,

The Secretariat draws your attention to the following:

I – DECISIONS BY THE COURT

On 18 September 2014, the Court:

- decided that this arbitration will proceed with respect to the Additional Party (Article 6(4));

- confirmed Dr Arbitrator One as co-arbitrator upon Claimant's and the Additional Party's joint nomination (Articles 12(7) and 13(1));

- confirmed Ms Dos as co-arbitrator upon Respondent's nomination (Article 13(1));

- appointed Mr Henry Haddock as president of the arbitral tribunal upon the Danubian National Committee's proposal (Article 13(3)).

- fixed the advance on costs at US$ 240 000, subject to later readjustments (Article 36(2)/36(4)).

Enclosed for your information, are a copy of the *curriculum vitae,* of Mr Haddock and his Statement of Acceptance, Availability, Impartiality and Independence.

II - ADVANCE ON COSTS

The advance on costs is intended to cover the arbitral tribunal's fees and expenses, as well as the ICC administrative expenses (Article 36 and Article 1(4) of Appendix III to the Rules).

The Court fixed an advance on costs based on an amount in dispute which is now estimated at US$ 2 350 000, and three Arbitrators. Depending on the evolution of the arbitration, the Court may readjust the advance on costs.

The parties are invited to pay the advance on costs as follows (Article 36), within **30 days** from the day following receipt of this correspondence:

Claimants	US$ 12 550 (US$ 92 550 less US$ 80 000 already paid)
Respondent	US$ 120 000
Additional Party	US$ 27 450

III – TRANSMISSION OF THE FILE TO THE ARBITRAL TRIBUNAL

As the provisional advance has been fully paid, we are transmitting the file to the arbitral tribunal today (Article 16).

1) Efficient Conduct of the Arbitration

The arbitral tribunal and the parties must make every effort to conduct the arbitration in an expeditious and cost effective manner, having regard to the complexity and value of the dispute (Article 22(1)). We draw your attention to Appendix IV of the Rules, which contains suggested case management techniques.

We enclose a Note to the Arbitral Tribunal on the Conduct of Arbitration which sets forth the time limits under the Rules that you must observe and relevant information concerning the conduct of the proceedings.

2) Jurisdiction

The Court, being *prima facie* satisfied that an arbitration agreement under the Rules may exist, decided that this arbitration will proceed with respect to the Additional Party (Article 6(4)). You must decide on your own jurisdiction (Article 6(5)).

3) Communications

As from now, the parties should correspond directly with the arbitral tribunal and send copies of their correspondence to the other parties and to us. Please provide us with copies of all your correspondence with the parties in electronic form only.

Yours faithfully,
Counsel
Secretariat of the ICC International Court of Arbitration

encl.
- List of Documents and documents mentioned therein
- Case Information
- Financial Table
- Payment Request
- Note to the Arbitral Tribunal on the Conduct of Arbitration
- Note on Administrative Issues
- ICC Award Checklist
- *Curriculum vitae* of fellow arbitrators

(The attachments are not provided for the purposes of the Vis Moot problem)
(The Notes are available on the ICC electronic Dispute Resolution Library at: http://www.iccdrl.com/practicenotes.aspx.)

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CASE N° 22000/AC

2012 RULES - ICC ARBITRATOR STATEMENT ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

Family Name(s): **Haddock** **Given Name(s):** **Henry**

Please tick all relevant boxes.

1. ACCEPTANCE

Acceptance

[X] **I agree** to serve as arbitrator under and in accordance with the 2012 ICC Rules of Arbitration ("**Rules**"). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by the ICC Court (Article 2(4) of Appendix III to the Rules).

Non-Acceptance

[ ] **I decline** to serve as arbitrator in this case. *(If you tick here, simply date and sign the form without completing any other sections.)*

2. AVAILABILITY

[X] **I confirm,** on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules, subject to any extensions granted by the Court pursuant to Articles 23(2) and 30 of the Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that the ICC Court will consider the duration and conduct of the proceedings when fixing my fees (Article 2(2) of Appendix III to the Rules). My current professional engagements are as below for the information of the ICC Court and the parties.

Principal professional activity: Lawyer *(e.g. lawyer, arbitrator, academic)*:

Number of currently pending cases in which I am involved *(i.e. arbitrations and activities pending now, not previous experience; additional details you wish to make known to the ICC Court and to the parties in relation to these matters can be provided on a separate sheet):*

	As tribunal chair / sole arbitrator	As co-arbitrator	As counsel
Arbitrations	2	5	
Court litigation	*Not applicable*	*Not applicable*	

Furthermore, I am aware of commitments which might preclude me from devoting time to this arbitration during the following periods (*please provide details regarding such periods below or on a separate sheet*):

Hearing dates scheduled: 18-31 May 2015

3. INDEPENDENCE and IMPARTIALITY *(Tick one box and provide details below and/or, if necessary, on a separate sheet)*

In deciding which box to tick, you should take into account, having regard to Article 11(2) of the Rules, whether there exists any past or present relationship, direct or indirect, between you and any of the parties, their related entities or their lawyers or other representatives, whether financial, professional or of any other kind. Any doubt must be resolved in favour of disclosure. Any disclosure should be complete and specific, identifying *inter alia* relevant dates (both start and end dates), financial arrangements, details of companies and individuals, and all other relevant information.

[X] **Nothing to disclose**: I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

[ ] **Acceptance with disclosure**: I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality, I draw attention to the matters below and/or on the attached sheet.

Date: 17 September 2014 Signature: [signature of Mr Haddock]

From Mr. Henry Haddock
40 Floral Road,
Vindobona, Danubia

To: Horace Fasttrack
14 Capital Boulevard
Oceanside, Equatoriana

Joseph Langweiler
75 Court Street
Capital City, Mediterraneo

Vindobona, 3 October 2014

ICC Case: 22000/AC - Vulcan Coltan Ltd (Equatoriana) vs/ Mediterraneo Mining SOE (Mediterraneo) vs/ Global Minerals Ltd (Ruritania)

Dear Colleagues,

Please find enclosed Procedural Order No 1 in the above referenced arbitration proceedings.

Both Parties are requested to comply with the orders made and the Arbitral Tribunal reserves the right to draw negative inferences from any non-compliance with Procedural Order No 1.

The signed Terms of Reference have been forwarded to the ICC.

Yours sincerely,

(signed)
Henry Haddock
President of the Arbitral Tribunal

Encl. : Procedural Order 1

ICC Arbitration

Procedural Order No 1

3 October 2014

1. After its constitution and receipt of the file from the ICC, the Arbitral Tribunal invited the Parties to attend a Terms of Reference Meeting on 2 October 2014. At that meeting the Arbitral Tribunal and the Parties discussed, agreed, and signed the Terms of Reference.

2. The Arbitral Tribunal discussed with the Parties the consequences of the changes of the prayers to relief made by CLAIMANT. It is common ground between the Parties

- that the arbitration shall be based on the assumption that the original contract of 28 March 2014 was not amended on 27 June 2014 but governed the Parties' relationship when CLAIMANT provided the first Letter of Credit on 4 July 2014;
- that the order by the Emergency Arbitrator is rescinded in so far as it orders RESPONDENT not to dispose of a quantity of coltan going beyond 30 metric tons.

3. Furthermore, the Arbitral Tribunal discussed with the Parties the various options in structuring the arbitral proceedings in a cost and time-efficient manner, taking into account the objections by Global Minerals, i.e. the Additional Party, to the jurisdiction of the Arbitral Tribunal. In light of this discussion the Arbitral Tribunal has decided to limit the first part of the arbitration to the following issues:

- The Arbitral Tribunal's jurisdiction over Global Minerals (Additional Party);
- The claim for performance raised by Vulcan Coltan Ltd, the Claimant (Claim 1b);
- Respondent's claim to lift the order made by the Emergency Arbitrator.

4. In contrast, Claimant's damage claim (Claim 2) and the merits of Respondent's counterclaim, i.e. an order for the compensation of damages incurred by compliance with Emergency Arbitrator's order, will not form part of the first phase of the arbitration. In the event that the Arbitral Tribunal rescinds the order made by the Emergency Arbitrator, the remaining issues in dispute, as defined in the Terms of Reference pursuant to Art. 23 (1)(d) ICC-Arbitration Rule (Claimant's damage claim; the merits of Respondent's counterclaim for the damages incurred due to the order of the Emergency Arbitrator), will be addressed in the second phase of the arbitration. The same applies to the question of costs. These issues **should not be dealt with** in the Parties' submissions in the first part of the arbitration.

5. In light of these considerations the Arbitral Tribunal makes the following orders:

(1) In their next submissions and at the Oral Hearing in Danubia (Hong Kong) the Parties are required to address the following issues:

a. Has Respondent rightfully avoided the contract of 28 March 2014 by its declarations of avoidance of
   i. 7 July 2014 or
   ii. 9 July 2014 ?

b. Should the Arbitral Tribunal lift the remaining part of the order made by the Emergency Arbitrator against Respondent on 26 July 2014?
c. Does the Arbitral Tribunal have jurisdiction over the Additional Party, i.e. Global Minerals?

The Parties are free to decide in which order they address the various issues. **No further** questions going to the merits of the claims should be addressed.

(2) For their submissions the following Procedural Timetable applies:

a. Claimant's Submission: not later than 11 December 2014
b. Respondent's Submission: no later than 22 January 2015

(3)The submissions are to be made in accordance with the Rules of the Moot agreed upon at the Terms of Reference meeting. Consequently, concerning the jurisdictional issues in No. (1)(c), the Parties will base their submissions on the assumption that the place of arbitration for this arbitration - should the Arbitral Tribunal have jurisdiction - is in Vindobona, Danubia. Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006-amendments. Furthermore, it is undisputed between the Parties that Equatoriana, Mediterraneo, Ruritania and Danubia are Contracting States of the CISG.

(4) In case the Parties need further information Requests for Clarification must be made not later than 23 October 2014. The procedure for submitting Requests for Clarification will be advised by the Parties (Teams) electronic accounts.

6. All Parties are invited to attend the Oral Hearing Scheduled for 27 March - 2 April 2015 in Vindobona, Danubia (Hong Kong 15 – 22 March 2015). The details concerning the timing and the venue will be provided in due course.

For the Arbitral Tribunal

Henry Haddock
President of the Tribunal

INTERNATIONAL COURT OF ARBITRATION® | INTERNATIONAL CENTRE FOR ADR | LEADING DISPUTE RESOLUTION WORLDWIDE

9 October 2014

22000/AC
Vulcan Coltan Ltd (Equatoriana) **vs/** Mediterraneo Mining SOE (Mediterraneo) **vs/** Global Minerals Ltd (Ruritania)

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Dear Madame and Sirs,

The Secretariat transmitted the Terms of Reference signed by the parties and the arbitral tribunal on 3 October 2014 to the Court at its session of 9 October 2014 (Article 23(2)).

Case Management Conference

The case management conference took place on 3 October 2014 (Article 24(1)).

Procedural Timetable

The Secretariat transmitted the procedural timetable to the International Court of Arbitration of the International Chamber of Commerce at the same session (Article 24(2)). Any subsequent modifications of the procedural timetable must be communicated to the Court and the parties.

Time Limit for Rendering the Final Award

The Court fixed 31 July 2015 as time limit for the final award based upon the procedural timetable (Article 30(1)). The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so (Article 30(2)).

The Court expects arbitral tribunals to submit draft awards within three months after the last hearing concerning matters to be decided in such award or the filing of the last authorised submission concerning such matters, whichever is later.

Yours faithfully,

Counsel
Secretariat of the ICC International Court of Arbitration

ICC Arbitration 22000/AC
Procedural Order No 2
29 October 2014

1. Following its Procedural Order No 1, the Arbitral Tribunal received numerous requests of clarifications. Taking into account those requests which were submitted in accordance with Procedural Order No 1 and the Rules of the Moot, the Arbitral Tribunal issues the following clarifications and corrections.

2. The Parties informed the Arbitral Tribunal at the case management conference about an agreement they had reached following Respondent's Request for Joinder to keep the costs of this arbitration low. According to this agreement, Claimant and Global Minerals would both be represented by Mr Fasttrack and would make joint submissions and presentations in the further conduct of the arbitration. That includes the Answer to the Counterclaim and to the Request for Joinder on 8 September, the submission which is now referred to as "Claimant's submission" in Procedural Order No 1 (due on 11 December 2014) and the presentation at the oral hearing in Vienna/Hong Kong. The Parties agreed that this is done solely for purposes of facilitating the proceedings and keeping the costs low. No inferences can be drawn from such a behavior for the arguments in relation to joinder or contract conclusion. In particular, does it not contain any admission by Claimant or Global Minerals that during the conclusion of the contract and/or its implementation Claimant acted for Global Minerals or *vice versa* or that they can be treated as one company.

3. The issues to be addressed in the submissions of the first part of the arbitration are only those set out in para. 5 (1) of PO 1.

4. Allegations of facts made by the Parties in their submissions can be considered to be correct and precise unless the opposite is proven by the documents submitted as exhibits. The information contained in these contemporaneous documents prevails in case of divergence. Speculations as to the motivation for a certain behavior of the other party should be treated as speculations though the underlying facts can be assumed to be true.

5. Claimant's partial withdrawal of its claim in the Answer to the Counterclaim was primarily due to the fact that in light of the information in Ms Masrovs' witness statement, Mr Fasttrack considered the chance for success for that part of the claim very low.

6. All documents in the file have the necessary signature of a person who was authorized to act and comply with the applicable form requirements.

What is the exact legal relationship between Vulcan Coltan Ltd and Global Minerals Ltd?
7. Vulcan was set up in December 2013 as a separate legal entity registered in the country of Equatoriana by Global Minerals and is a 100% subsidiary of Global Minerals. Vulcan has its own assets, keeps its own books and has its own personnel, which has in part consists of former employees of Global Minerals. At Global Minerals, Mr Storm is responsible for Vulcan. He has introduced Mr Summer, who had previously been one of his assistants, to all his contacts in the industry. On several occasions Mr Storm has also participated in negotiating the initial contracts with suppliers and customers for the Equatorianian market. In these negotiations, Mr Storm always insisted that Vulcan would become the sole party to the contract while Global Minerals would provide the necessary securities if the other side insisted on those. Mr Storm has no official function in Vulcan and also no authority to act for Vulcan. Irrespective of that Mr Summer regularly seeks his advice and discusses matters with him. That is what happened on 25 June and on 4 July 2014. In both cases, it was agreed that Mr Storm would contact Mr Winter, given that they knew each other much better. The content of the respective e-mails were discussed with and approved by Mr Summer.

What is the content of applicable laws from Ruritania and/or Equitoriana as to liability of a corporate parent?
8. In the absence of special circumstances or specific contractual provisions, both laws respect the separate legal nature of the subsidiary. Special circumstances have been found to exist in cases of fraud. In the three decided cases, the separate entities had been set up with the only goal of shielding the parent companies from the financial consequences of fraudulent behaviour of the subsidiaries to the benefit of the parent companies.

What assets does Vulcan have, where are they located and what is their value?
9. Vulcan has been founded in December 2013 with the minimum capital of USD 20.000. It has rented office space in Oceanside and has a line of credit of USD 5 million with a bank in Equatoriana which is guaranteed by its parent company. At the time of contracting with Respondent, Vulcan had already entered into several other contracts with customers and suppliers of other minerals. The proceeds from these contracts were most likely sufficient to ultimately cover the greater part of Vulcan's costs for 2014 but up to the point of contracting Vulcan was using its credit line.

Was the 28 March 2014 coltan purchase contract drafted based on either the Claimant's or Respondent's standard terms?
10. The contract is based on a model which is used – with minor adaptation – in all contracts between Respondent and companies belonging to the Global Minerals Group for the purchase of coltan. The arbitration clause in Article 20 in its present form has been in those contracts since the beginning of 2010. Who originally suggested it or the various other clauses is not known, with the exception of Article 21.

Where and when did the parties sign the contract?
11. The main issues of the contract were agreed at the meeting on the 23 March 2014. The remainder was agreed on in a telephone conference on 27 March 2014. Mr Storm and Mr Summer who were at the time both in the offices of Claimant in Equatoriana signed the contract and faxed it on 27 March 2014, 15:35 RST to Mr Winter who signed it the next day upon arrival in the office and resent one signed copy.

Which party proposed Article 4 of the contract?
12. The article was developed jointly by Mr Winter, Mr Storm and Mr Summer during their negotiations on 23 March 2014. The issue of providing sufficient security for payment to Respondent at minimal costs has been one of the major points of the negotiations. The solutions discussed included inter alia the provision of a guarantee or a stand-by Letter of Credit by a bank or of a parent guarantee by Global Minerals. In the end the parties agreed on the solution of a commercial Letter of Credit by a first class bank of Ruritania bank plus an "endorsement" by Global Minerals without discussing in detail what this "endorsement" meant. The term "endorsement" had been suggested by Mr Storm and had never been used before in previous contracts. The deadline of "not later than fourteen days" after receipt of the Notice of Transport for providing the letter of credit was taken from one of the previous contracts. Who had suggested it there is not known.

What was the purpose of inclusion of Article 21 in the contract between Mediterraneo Mining SOE and Global Minerals Ltd in 2010?
13. The insolvency of Global Minerals' subsidiary Precious Minerals in 2010 had been triggered by the breach of a supply agreement by another supplier which had led to considerable damage claims against Precious Minerals by its own customers. Precious Minerals had tried to prevent that breach and to ensure delivery by that supplier by means of interim relief but had failed. That was in part due to a controversy regarding which court had jurisdiction to issue such measures. As a consequence, the law firm which had represented Precious Minerals at that time

had suggested to regulate jurisdiction for interim relief in future contracts to ensure that efficient interim relief can be obtained without any discussion about the jurisdiction of the courts. This information had been passed to Mediterraneo Mining in the discussions following the insolvency of Precious Minerals and leading to the settlement in 2010. That general information was not questioned by Mediterraneo Mining at the time and there had been no discussion about the content, the purpose or the inclusion of the clause in further contracts. Thus far, there has been no request for interim relief to the state courts in any of the contracts where the clause was used.

Were the parties aware of the 2012 amendments to the ICC Rules in March 2014?
14. Yes

Was there any provision under the contract which says that the contract can be amended only in writing?
15. There is no written clause in the contract to that effect..

Did the contract of 28 March 2014 specify the documents to be provided for payment under the letter of credit any further?
16. No, that was forgotten. In most of the previous contracts between companies from the Global Minerals Group and Respondent, which required payment by a letter of credit, the following documents were requested: Commercial Invoice, Transport Documents, Packing List, Examination Certificate. In some contracts, there was no express requirement of a commercial invoice. It is, however, undisputed that Respondent always prepared a commercial invoice for the goods which was sent with to other papers to the respective counterparty.

Are there any provisions in the contract that impose direct obligations on Global Minerals?
17. No. The provision that a letter of credit was to be issued by "a first class bank of Ruritania" was, however, included on the understanding that most likely the letter of credit would be arranged by Global Minerals with its standard bank, the RST Trade Bank Ltd.

Did the Parties stipulate in their Contract that "time is of the essence"?
18. No. Given that coltan is a mineral with a highly volatile price and most transactions are heavily document based and involve payment via letter of credit generally a strict compliance with the contractual provisions is required, as in other areas of commodity trade.

Have there been any further disputes between companies belonging to the Claimant or the Respondent side apart from the two disputes mentioned?
19. There have been no further disputes between the companies belonging to either side and neither of the two disputes has so far resulted in arbitration or court proceedings. The insolvency of Global Minerals' subsidiary Precious Minerals, referred to in the Answer to the Request for Arbitration in paras 5 and 26, as well as in the witness statement of Ms Masrov para. 4, at the beginning of 2010 led to lengthy discussion which finally resulted in a settlement in 2010. In that settlement, Global Minerals which – upon its own request – had been replaced as a party to that contract by Precious Minerals two month before the insolvency, agreed to pay 90% of the price in return for better delivery and payment terms in future contracts.
The dispute of Respondent's subsidiary with Iron Unlimited is not yet resolved but the parties are still in negotiations.

Which clause prevailed in deals between RESPONDENT (and its subsidiaries) and Global Minerals (and its subsidiaries) after they changed the standard delivery terms to C clauses?
20. There is no prevailing practice. The clause selected was always dependent on the specific circumstances of the case, in particular whether the goods were delivered containerised or not

and whether Respondent or any other closely related company had an office in that country. That may also be the explanation why Respondent's employee overlooked that he mistakenly ticked the wrong box on the Notice of Transport.

How specific was the message left by Mr Winter on Mr Summer's voicemail on 4 July 2014?
21. Mr Winter merely stated that the "letter of credit provided is clearly not in conformity with what we have agreed. Please provide a new conforming letter immediately, at the latest by Monday morning our time. Otherwise we will terminate the contract".

Do the parties have an established practice concerning the counting of days up to a deadline?
22. No. In the previous relationships between companies from the Global Minerals group and Respondent, the deadlines never became relevant. The issue of calculating deadlines or the relevant time zones was not discussed during the contract negotiations.

Were the Parties aware of each other's business hours and about the time difference?
23. Yes and Respondent was also aware from previous dealings that the trade finance section of RST Trade Bank worked also on Saturday mornings. Ruritanian Standard Time (RST) is relevant in Ruritania and Equatoriana while for Mediterraneo and Xanadu Mediterranean Standard Time is relevant.

At what time was the Notice of Transport sent?
24. Respondent sent the Notice of Transport via fax at 08:45 MST.

Was there any involvement of a bank in Mediterraneo as an advising bank?
25. No. The parties agreed to deviate from the normal procedure that there would be an advising bank involved. The suggestion came from Mr Storm and was accepted by Mr Winter. In light of the long business relationship, Respondent had with companies from the Global Minerals group he had no objections to Mr Storm's suggestion that RST Trade Bank would send the letter of credit directly to Respondent without using an advising bank. Mr Winter did not question Mr Storm's statement that this would "facilitate the issuance of an L/C" for Claimant respectively Global Minerals.

Has Ms Masrov informed Mr Rüthli as stated and was he involved in the negotiations and conclusion of the contract ?
26. The information given by Ms Masrov is correct but over the shock of being fired, Mr Rüthli had forgotten to inform Mr Summer about it. He was not involved in the negotiations and conclusion of the contract but was internally at Claimant's side the person responsible for the contract. That had, however, not been communicated to Respondent.

When exactly did the courier arrive at the office of Respondent?
27. The courier arrived at the office at 00:05 MST on 9 July 2014. While the actual hand over to Mr Winter occurred few minutes later the documents show the time of arrival at Respondent's office. There was no unforeseen delay in the delivery. Actually, the courier had been half an hour faster than anticipated.

To which "news about rising tensions in Xanadu" does Respondent refer in para. 22 of its Answer to Request for Arbitration?
28. After the breakdown of the government in Xanadu, the tension had risen and there had been numerous small incidents. In general, however, all sides involved had tried to calm their supporters as they were still trying to negotiate a solution to the crisis. On the evening of 7 July 2014, the first major demonstration by the opposition ended in violence when the supporters of

the opposition party were attacked by supporters of the former government. Three people were killed and more than hundred were seriously wounded.

Would coltan from Xanadu no longer be qualified as conflict free if the tensions aggravate?
29. In that case it is very likely that the proceeds from the coltan trade would play a major role in financing the opposition party.

How did the price of coltan develop and to what extent will it be influenced by the developments in Xanadu?
30. The price of coltan in March 2014 was between US$ 45 and 50 per kilogram and has been fairly stable until the government in Xanadu broke down. Since then the market reacted very nervously. Directly after the news came out, the price in the quotations increased during the first two hours by up to US$ 5 per kilogram but came back to around US$ 45.50 – 50.50 by the end of the first day. When the first people got killed in Xanadu on the 7 July 2014, the price went up again by 93ct but came down to the US$ 46 – 51 when the situation calmed down
When the first news about the game console leaked on 4 July 2014, the price went up by nearly US$ 1. There had not been any further price increases as on 6 July 2014, the game producer announced that due to problems with the innovative technique used the commercial launch of the game console would not happen before summer 2015. In addition, there was a rumour that due to the use of the innovative technique the increase in the demand for coltan would be much smaller than originally anticipated.
It is to be assumed that the uncertainty, in particular in relation to Xanadu, persists until after the hearing in Vienna/Hong Kong and the prices fluctuate by up to US$ 5 depending on the incident. In the event Xanadu will no longer be able to deliver conflict free coltan, the prices for conflict free coltan will probably double and it is very likely that there will not be sufficient coltan available on the market to honour all contractual obligations incurred by the traders.

Did Respondent have knowledge about the announcement of the new game console?
31. Respondent had been contacted by one of its main customers who wanted a quote for a very large amount of coltan shortly before the information about the new game console leaked. It was known that this customer is one of the major suppliers to the game console producer. Consequently, following the request, Respondent searched the internet for any news concerning the game console producer.

Did Respondent challenge the jurisdiction of the Emergency Arbitrator in the proceedings for emergency measures and what were its other arguments?
32. Respondent challenged the jurisdiction of the Emergency Arbitrator by invoking Article 21 of the contract within 2 days. At the same time Respondent made clear that it would be interested in a fast decision concerning this challenge and – if not successful – whether the order would be granted. To avoid possible conflicts with an order made – if any – Respondent would refrain from concluding any binding agreement for the existing 100t of coltan until 1 August 2014. Concerning the merits of the application, Respondent argued that Claimant had no arguable case, which in the view of both parties would be the relevant standard, if the Emergency Arbitrator had jurisdiction. The argument was largely identical to the one made in the main proceedings, i.e. that Claimant had not any claim for delivery since Respondent had avoided the contract for breach of contract with. There was no discussion about the issue of specific performance since the law of all jurisdictions involved allow for orders of specific performance, as do all other laws which could possibly be relevant. At the time Respondent made its submission, the contact between Ms Masrov and Mr Rüthli was not known and consequently not presented to the Emergency Arbitrator.

What evidence did the Claimant provide to the Emergency Arbitrator to prove that the Respondent is in the process of negotiating with other customers, in particular, with customers dependent on delivery from Xanadu?
33. The existence of negotiations had been alleged in a witness statement by Mr Summer, which Claimant had attached to its submission of 20 July 2014, and had not been contested by Respondent.

Did Claimant conclude the contracts for the sale of 30t of coltan with its customers after or before the contract of 28 March 2014 and when was the coltan to be delivered?
34. The contracts were concluded in April and May 2014. The coltan was to be delivered in May 2015. Since early summer 2014, the demand for coltan has increased considerably. Due to the uncertain situation in Xanadu many of market participants have tried to hedge their obligation or engaged in long term supply contracts. It is, however, very likely that in case the situation in Xanadu deteriorates, there will be not sufficient "conflict free" coltan available to fulfil all contracts. As Claimant is a new player on the market without any long lasting supply relationships it is very likely that Claimant would have serious problems getting the coltan somewhere else.
In light of these problems Respondent has declared that it intends to comply with the order of the emergency arbitrator in relation to 30 metric tons until the decision of the tribunal. Concerning the remaining 70 metric tons an agreement has been reached with Claimant that they could be sold to other customers.

Is Oceanside a port or does it merely refer to a region, county or city in Equatoriana?
35. Oceanside is the major port of Equatoriana, located in the city of the same name.

How distant is 21 Magma Street, Oceanside, Equatoriana from the Port of Oceanside?
36. It is 26 km away from the port. Transport would have to be done by road and would cost between USD 800 and 1000.

Are Equatoriana and Mediterraneo geographically separated by sea?
37. Yes, and irrespective of any confusion as to the INCOTERM applicable it is uncontroversial between the parties that the coltan would be shipped from a port in Mediterraneo to the port of Oceanside.

Can Respondent raise any other arguments than the Group of Companies doctrine or the principle of good faith to justify the joinder?
38. The Terms of Reference agreed by the Parties provide in the list of issues pursuant to Art. 23 (1)(d) ICC Arbitration Rules:
"Whether the arbitral tribunal has jurisdiction over Global Minerals by virtue of the doctrines of Group of Companies or Good Faith."

Did Claimant admit that 8 July 2014 was the deadline for establishing a Letter of Credit, per para. 15, page 5 of the record?
39. During the discussions of the Terms of Reference Claimant made clear that in its view the deadline expired only on 9 July 2014. Para. 15 was merely intended to show that even if one were to follow Respondent's view the second letter of credit would have been issued in time, should the tribunal not consider the first letter of credit to be sufficient.

Is Mr Haddock a Danubian national and where does he live?
40. Mr Haddock is a Danubian national and lives as 40 Floral Road, Vindabona Danubia as indicated on his letter to the Parties of 3 October 2014.

Has Danubia adopted OPTION I or OPTION II of Article 7 of UNCITRAL Model Law 2006-amendments? What is the arbitration law of the other jurisdictions concerned?

41. Danubia has adopted Option I of Article 7. The Model Law in its 2006 version with Option I is also the arbitration law of the other jurisdictions concerned.

Are Danubia, Equatoriana, Mediterraneo and Ruritania common law or civil law countries?

42. Danubia and Mediterraneo are civil law countries, Equatoriana and Ruritania are common law countries.

All of them are Contracting States to the New York Convention and to the CISG and have declared no reservations. None of them has signed or ratified the UNIDROIT Convention on Agency in the International Sale of Goods of 1983. Equally, they have not signed or ratified the UNCITRAL E-commerce Convention or have other specific laws that are relevant to identifying when electronic communications are received.

What is the contract law of Danubia?

43. The Contract Law of Danubia, is - for all parts which may be relevant for the case - a verbatim adoption the UNIDROIT Principles 2010. The only exception is that not all parts of Article 1 of the UNIDROIT Principles have been adopted as such. The decision not to implement Article 1 as a whole but only to include Art. 1.12 as a separate provision, was not driven by substantive considerations, i.e. that there was a general disagreement with the principles set out. The sole reason for not implementing Article 1 as such was its conflict with the legislative tradition of Danubia, where statutes do not set out the general principles on which they are based.

Are there any rules for calculating time limits in the laws of Danubia, Equatoriana or Mediterraneo?

44. The rules in Equatoriana and Mediterraneo for calculating deadlines differ. While in Equatoriana the period start to run the day after the triggering event, in Mediterraneo the day of the occurrence of a triggering event is counted in. The Danubian general law of contract is silent on the issue. It does not contain any rules on calculating time limits beyond the adoption of Art. 1.12 UNIDROIT Principles.

Is there any provision in the law of Danubia that defines the term "endorsement"?

45. There is no such definition either in Danubian law or the law of any of the other jurisdictions involved.

Have there been any decisions in Danubia explicitly rejecting the Group of Companies doctrine or on which basis does Claimant allege that the doctrine is "clearly not recognised by the law of Danubia"?

46. There have been no decisions by the Danubian courts on the doctrine so far. The Danubian Supreme Court, however, always emphasises that arbitration is based on consent. On that basis, several authors have concluded in comments to the Dow Chemical case that "Danubian courts will most likely not follow the doctrine". There are not further statements available.

Equally there are no decisions in Equatoriana or Mediterraneo which had to address the doctrine of Group of Companies.

Does the doctrine of Good Faith exist in any of the other jurisdictions but Ruritania?

47. Unlike in Ruritania, there is no statutory provision regulating good faith in any of the other jurisdictions concerned. The courts have on occasions relied on good faith arguments, but a general principle that parties must always act in good faith with a list of resulting duties has not been developed. In particular, are there no decisions which deal with good faith in relation to arbitration agreements and arbitral proceedings.

Are there any national laws in Ruritania, Mediterraneo, Danubia, or Equitoriana, usages or practices between the parties that would override any provisions of the UCP 600?
48. No and none of the countries involved is a party to the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit.

Are there any provisions in Mediterraneo's public, companies' or arbitration law concerning state owned companies which are relevant to the analysis of the case?
49. No

Are there any corrections to be made by the Parties to their submissions?
50. Yes. They are included in the corrected complete file and are as follows

Corrections by the Claimant

a. In para. 21 line 5 of the Request for arbitration, it should be coltan instead of coltran.
b. In para. 8 line 8 of the Answer to Counterclaim and Joinder, the reference should be to the UNIDROIT Principles 2010.

Corrections by Respondent

a. On page 33, the old address of the ICC should be replaced by its current address , i.e. 33-43 avenue du Président Wilson, 75116 Paris, France
b. On page 35 in para 11 line 2, there is one superfluous became insolvent.
c. On page 35 in para 12 line 2, the cover mail is contained Exhibit C 3.
d. On page 35 in para 14 line 4, it should state "side of RESPONDENT's subsidiary".
e. On page 35 in para 15 line 7, there is one superfluous had.
f. On page 37 in para 23 line 2, the ordinary hours of business last from "8.00 until 20.00h MST" and not RST.
g. On page 42 in para 1 line 1, the age given for Ludmilla Masrov is wrong. She was born on 9 July 1981.

Corrections by the Emergency Arbitrator

a. In para 4 line 3 of the decision, the date of the fax is 27 June 2014.
b. In para 4 line 8 of the decision, the complaint by Respondent was not "by a letter of the same day" but by "a message on the voicemail".

Corrections by the Arbitral Tribunal

a. The reference in PO No 1 in para. 5(3) should be to claim No. 1(c) and not the non-existing No. 1(d).
b. The invitation to attend the hearing in Vienna/Hong Kong in para. 6 extends to "all Parties".

For the Arbitral Tribunal

Henry Haddock
President of the Tribunal