



# 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

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*Horace Fasttrack*

Advocate at the Court  
Oceanside, Equatoriana

14 Capital Boulevard,

Tel. (0) 214 77 32 Telefax (0)  
214 77 33 [fasttrack@host.eq](mailto: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

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

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*Horace Fasttrack*  
Advocate at the Court  
Equatoriana

14 Capital Boulevard, Oceanside,

Tel. (0) 214 77 32 Telefax (0) 214 77 33  
[fasttrack@host.eq](mailto: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:* TA205 30-40%  
NB205 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 on Wednesday, 25 June 2014 from RESPONDENT by email. 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 (**Exhibit C 2**).
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 3**). 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 4**). 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 1 US \$/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 5**).

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 6**).
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 7**) over US\$ 1,350,000 by 24 hours courier on 8 July 2014 (Time of pick up: 9.00 RST; Time delivered: 19.05 RST) 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, 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.

#### **Statement of Relief Sought**

17. 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;

Horace Fasttrack

**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:* TA205 30-40%  
NB205 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:



Mr. Ben Summer  
(27.03.2014)

For the seller



Mr. Willem Winter  
(28.03.2014)

Endorsed for Global Minerals



Mr Theo Storm  
(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](mailto:ben.summer@vulcancoltan.com)

Cc: [theo.storm@globalminerals.com](mailto: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



### RST TRADEBANK

Bank Arcade 3  
Hanstown  
RURITANIA

### RST Trade Bank Ltd Ruritania

<u>Beneficiary</u>		<u>Applicant</u>
Mediterraneo Mining SOE		Global Minerals Ltd.
5-6 Mineral Street		Excavation Place 5
Capital City		Hanstown
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, Hanstown, 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 5**

[theo.storm@globalminerals.com](mailto:theo.storm@globalminerals.com)

Saturday, 5 July 2014 7.30am RST

To: [willem.winter@mediterraneomining.bs.med](mailto:willem.winter@mediterraneomining.bs.med)

Cc: [ben.summer@vulcancoltan.com](mailto: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 6



**Mediterraneo 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 7



### RST Trade Bank Ltd Ruritania

<b><u>Beneficiary</u></b>		<b><u>Applicant</u></b>
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

*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

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

## **Introduction**

1. 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. 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. 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.
8. 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 became insolvent. 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.
9. On 25 June 2014 RESPONDENT sent the Notice of Transport to both CLAIMANT and Global Minerals. In its cover mail (**Exhibit C 2**) 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.
10. 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.

11. 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.
12. 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 R  thli, 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.
13. 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.
14. 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 5**). 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.
15. 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.
16. 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.



17. 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 RST. 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.
18. 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 3**), though that would not have been necessary in light of the earlier termination.

### **Rejection of Claims raised by CLAIMANT**

19. 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. Rütli 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 Claimant, RESPONDENT's silence would not have been sufficient to bring a contract into existence. Pursuant to Art. 18CISG 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.
20. 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.
21. 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.
22. 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.
23. 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.

24. 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.
25. 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.

### **Statement of Relief Sought**

In light of this RESPONDENT requests the Arbitral Tribunal to reject all claims raised by CLAIMANT;

## **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.

## **EXHIBIT R 2**

### **Witness Statement Ms Ludmilla Masrov**

1. My name is Ludmilla Masrov, born 9 July 2001. 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 unacceptable. 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 Rütthli, 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.

**EXHIBIT R 3**



**Mediterraneo 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

Willem Winter

**Requirements:**

1. You are required to address the following issues:

Has Respondent rightfully avoided the contract of 28 March 2014 by its declarations of avoidance of contract?

2. Based on the case above, you are supposed to be a counsel of Claimant or Respondent (either you would like to choose) and then write a brief memorandum and make oral rebuttal (5-10 minutes) during the interview.