



# MOCK CASE

## 2017

*Based on the Willem C. Vis International Commercial Arbitration Moot<sup>1</sup>*

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<sup>1</sup> Based on the 19th, 20st and 22nd Willem C. Vis Moot Cases.

Certain attachments mentioned in the case are not provided for the purposes of IASC-Mexico problem. Those attachments have been marked with a “\*”).

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*Horace Fasttrack*  
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3 March 2017

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 pursuant to the 2017 Rules of Arbitration of the International Chamber of Commerce, Articles 4. A copy of the Power of Attorney authorizing me to represent Vulcan Coltan Ltd in this arbitration is also enclosed.

The advance payments of US\$ 3,000 for administrative expenses (Article 4(4)(b) ICC Arbitration Rules and Article 1(1) of Appendix III) 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.

Sincerely yours,

Horace Fasttrack

Attachments:  
Request for Arbitration with Exhibits  
Power of Attorney\*  
CV of Dr Arbitrator One\*  
Proof of Payment of Advances\*

*Horace Fasttrack*  
Advocate at the Court  
14 Capital Boulevard, Oceanside, Equatoriana  
Tel. (0) 214 77 32 Telefax (0) 214 77 33 [fasttrack@host.eq](mailto:fasttrack@host.eq)

3 March 2017

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 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 pentoxide, iron and magnesium (manganese) salt. Its color 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. 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.
5. On 8 September 2016 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. CLAIMANT was keen on buying coltan with a minimum grade of 30% of tantalum pentoxide (TA2O5) to comply with two supply contracts, each of 50 metric tons coltan, it had previously subscribed with two of its most important clients: Romulus S.L. ["**Romulus**"] and Remus S.A. ["**Remus**"]. CLAIMANT's clients are two high-tech companies which require a high grade product for the development of state-of-the-art electronics and software.
6. The proposal was for CLAIMANT to buy the coltan with the same payment and delivery conditions that Global Minerals had been enjoying so far. RESPONDENT agreed to sell 100 metric tons of coltan to CLAIMANT, and the parties signed the contract on 15 September 2016 [the "**Contract**"].
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 15 November 2016.

#### **Art 3: Quantity & Quality & Price**

*Quality:* TA2O5 30-40%  
NB2O5 20-30%  
Non-radioactive

*Quantity:* 100 metric tons

*Price:* US\$45 per kilogram

#### **Art 4: Payment & Delivery**

Payment of the price and delivery of goods shall be made in two different installments.

By no later than 14 days after the Buyer has received the **First Notice of Transport** from the Seller for 50 metric tons coltan, the Buyer shall make an initial payment of US\$ 2,250,000 (the "**First Payment**") at the bank account designated in the First Notice of Transport. Within 30 days after the First Payment, the Seller shall deliver the first 50 metric tons of coltan (the "**First Installment**").

By no later than 15 days after the delivery of the First Installment, the Seller shall issue the **Second Notice of Transport** for 50 metric tons coltan. The Buyer shall make the second payment of US\$ 2,250,000 within 14 days of receipt of the Second Notice of Transport (the "**Second Payment**"). Within 30 days after the Second Payment, the Seller shall deliver the remaining 50 metric tons of coltan (the "**Second Installment**").

## **Art 5: Shipment**

CIF (INCOTERMS 2010), Oceanside, Equatoriana, not later than 30 days after payment.

## **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 shall be English. The contract, including this clause, shall be governed by the law of Danubia.

8. CLAIMANT received the First Notice of Transport (Exhibit C 2) on 23 October 2016, and accordingly, on 4 November 2016 CLAIMANT made the First Payment pursuant to Article 4 of the Contract (Exhibit C 3).
9. On 27 November 2016 RESPONDENT's shipping of the first 50 metric tons of coltan reached the port of Oceanside. To CLAIMANT's surprise, the coltan delivered was of a much lower quality than agreed by the parties in the Contract. The content of tantalum pentoxide (TA2O5) in the ore delivered was lower than 20%. It was essential for CLAIMANT to receive the 100 metric tons of coltan with the quality specifications originally agreed in the Contract, *i.e.* TA2O5 30-40%. CLAIMANT had already entered into two other agreements with two of its usual customers to supply coltan with high tantalum content.
10. Therefore, on 1 December 2016 CLAIMANT sent RESPONDENT a notice of lack of conformity of the goods and avoided the Contract (Exhibit C 4).
11. The next day RESPONDENT answered to CLAIMANT's notice rejecting CLAIMANT's allegation that the coltan was of an inferior quality than stipulated in the Contract and rejecting CLAIMANT's avoidance of the Contract. It additionally sent the Second Notice of Transport demanding payment of the Second Installment (Exhibit C 5).
12. In view of RESPONDENT's breach of its obligations under the Contract, CLAIMANT was forced to present this Request for Arbitration to seek damages arising out of such breach.

## **Legal Evaluation**

13. 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 15 September 2016 (Exhibit C 1).
14. The Contract is governed by the law of Danubia pursuant to its Article 20. 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.
15. CLAIMANT and RESPONDENT concluded this Contract for the sale and purchase of 100 metric tons of coltan TA2O5 30-40%. CLAIMANT has fulfilled to date all the requirements under that Contract. RESPONDENT, however, failed to perform its obligation to deliver the coltan with the specified quality. Since RESPONDENT'S behavior amounts to a fundamental breach of the Contract, CLAIMANT is entitled to avoid the Contract and to seek damages resulting from RESPONDENT's unlawful conduct (Article 25, Article 35(2), Article 49 and Article 74 CISG).

16. In the present case compensation is justified. CLAIMANT has been successful in establishing business relationships in Equatoriana and has already concluded binding contracts with its customers for at least 100 metric tons of conflict free coltan TA205 30-40%. In light of RESPONDENT's refusal to supply the agreed goods, CLAIMANT faces considerable damages claims brought by its customers and its reputation in the market has been seriously damaged.

### **Statement of Relief Sought**

17. In consequence CLAIMANT requests the arbitral tribunal to
- 1) Declare that RESPONDENT committed a fundamental breach of the Contract by failing to supply the First Installment of coltan with a content of tantalum pentoxide (TA205) in between 30-40% as set forth in Article 3 of the Contract;
  - 2) Declare that CLAIMANT rightfully avoided the Contract on 1 December 2016;
  - 3) Order RESPONDENT to compensate CLAIMANT for all damages it has incurred due to the RESPONDENT's fundamental breach of the Contract;
  - 4) Order RESPONDENT to bear CLAIMANT's costs arising out of this arbitration.

Horace Fasttrack

Enclosures: Exhibits C 1 to C 5.

**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 15 November 2016.

**Art 3: Quantity & Quality & Price**

*Quality:* TA205 30-40%

NB205 20-30%

Non-radioactive

*Quantity:* 100 metric tons

*Price:* US\$45 per kilogram

**Art 4: Payment & Delivery**

Payment of the price and delivery of goods shall be made in two different installments.

By no later than 14 days after the Buyer has received the **First Notice of Transport** from the Seller for 50 metric tons coltan, the Buyer shall make an initial payment of US\$ 2,250,000 (the "**First Payment**") at the bank account designated in the First Notice of Transport. Within 30 days after the First Payment, the Seller shall deliver the first 50 metric tons of coltan (the "**First Installment**").

By no later than 15 days after the delivery of the First Installment, the Seller shall issue the **Second Notice of Transport** for 50 metric tons coltan. The Buyer shall make the second payment of US\$ 2,250,000 within 14 days of receipt of the Second Notice of Transport (the "**Second Payment**"). Within 30 days after the Second Payment, the Seller shall deliver the remaining 50 metric tons of coltan (the "**Second Installment**").

**Art 5: Shipment**

CIF (INCOTERMS 2010), Oceanside, Equatoriana, not later than 30 days after payment.

**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 shall be English. The contract, including this clause, shall be governed by the law of Danubia.

For the Buyer:



Mr. Ben Summer  
(14.09.2016)

For the Seller



Mr. Willem Winter  
(15.09.2016)

Endorsed for Global Minerals



Mr. Theo Storm  
(15.09.2016)



## EXHIBIT C 2

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

23 October 2016

To: [ben.summer@vulcancoltan.com](mailto:ben.summer@vulcancoltan.com)  
Cc: [theo.storm@globalminerals.com](mailto:theo.storm@globalminerals.com)  
Subject: First 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 First Installment, *i.e.* the first 50 metric tons of coltan, earlier than anticipated.

Enclosed you will find the First Notice of Transport. We are looking forward to receiving the First Payment at your earliest convenience to be able to authorize shipment.

Yours sincerely

Willem Winter

Attachments:

- First Notice of Transport\*

### EXHIBIT C 3

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

4 November 2016

To: [willem.winter@mediterraneomining.bs.med](mailto:willem.winter@mediterraneomining.bs.med)  
Cc: [ben.summer@vulcancoltan.com](mailto:ben.summer@vulcancoltan.com)  
Subject: First Payment

Dear Mr. Winter

We are delighted that the first batch of coltan has become available earlier than expected.

As agreed upon in the Contract of 15 September 2016, a transfer of US\$ 2,250,000 for the First Installment consisting of 50 metric tons of coltan has been made today by Vulcan Mineral's on the bank account provided for in the First Notice of Transport. Payment should reach its destination by Friday.

Yours sincerely

Theo Storm



**Global Minerals Ltd**  
Excavation Place 5  
Hansetown  
Ruritania  
Tel: + 587 4 587128

## EXHIBIT C 4



**Mediterrano Mining**  
5-6 Mineral Street  
Capital City  
Mediterraneo

1 December 2016

### BY COURIER

Mr. Ben Summer  
Vulcan Coltan Ltd  
21 Magma Street  
Oceanside  
Equatoriana

Dear Mr. Summer

The First Installment of 50 metric tons of coltan which we received on Friday, 27 November did not conform to the specified quality of 30% to 40% content of tantalum pentoxide (TA205). The tests carried out in our laboratories conclude that the ore delivered does not contain more than 20% TA205 per kilogram.

The coltan delivered is not fit for resale in the electronics and software components market. Vulcan had already committed with two of its most important clients for the delivery of that high quality coltan. However, due to Mediterraneo's serious breach of the Contract, Vulcan will not be able to meet the deadlines agreed upon with its downstream clients, and will therefore be exposed to damages claims.

As a result we are hereby avoiding the Contract of 15 September 2016 between Vulcan Coltan Ltd and Mediterraneo Mining SOE. Please, make the necessary arrangements for the reimbursement of the First Payment and the return of the 50 kg of coltan.

We reserve our rights in all respects to all remedies available to us.

Yours sincerely

Willem Winter

## EXHIBIT C 5

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

2 December 2016

To: [ben.summer@vulcancoltan.com](mailto:ben.summer@vulcancoltan.com)  
Cc: [theo.storm@globalminerals.com](mailto:theo.storm@globalminerals.com)  
Subject: First Notice of Transport

Dear Mr. Summer

We are surprised by your email of 1 December 2016. It is very unlikely that a mistake in the shipment order was made on our part. In Mediterraneo Mining we follow a thorough protocol to supervise and control every step of the shipment process, from the issuance of the Notice of Transport to the carriage of the relevant goods. This notwithstanding, we can offer to send you two of our geologists in the following days to carry on our own testing on samples of the First Shipment. If we verify that the content of tantalum pentoxide in that shipment is inferior to 30%, we can immediately order a new shipment.

In any case, we do not agree that we have breached the Contract. We regret this unfortunate situation, but we trust that Vulcan and Global Minerals will act in good faith and fulfill their obligations under the Contract.

Accordingly, we are forwarding now the Second Notice of Transport (enclosed) related to the Second Shipment, and we expect the Second Payment within the next 14 days.

We look forward to hearing from you.

Yours sincerely

Willem Winter

Attachments:

- Second Notice of Transport\*

4 March 2017

**22000/AC**

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

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

*By Email: [fasttrack@host.eq](mailto: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 – REQUEST FOR ARBITRATION ("REQUEST")**

### **1) Request**

The Secretariat notifies Mediterraneo Mining SOE that on 15 September 2016, 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 3 March 2017.

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 37(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 38(5)).

### **II - 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 the arbitration.

#### **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](mailto:adr@iccwbo.org) or [www.iccadr.org](http://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](http://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\*  
           - Request for Arbitration with documents annexed thereto\*  
           - Note to the Parties in Proceedings under the 2017 Rules\*  
           - Note on Administrative Issues\*  
           - ICC Rules of Arbitration (*see also* [www.iccarbitration.org](http://www.iccarbitration.org))\*  
           - ICC Dispute Resolution Brochure (*see also* [www.iccarbitration.org](http://www.iccarbitration.org))\*  
           - Financial Table\*  
           - Payment Request for the provisional advance\*

(The Notes are available on the ICC electronic Dispute Resolution Library at:  
<http://www.iccdri.com/practicenotes.aspx>.)

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

1 April 2017

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, 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. 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.
2. Following the news that a new large deposit of coltan had been discovered in the mountains of Valenzuela and the immediate decrease on the price of raw coltan of US\$10 per kilogram,



CLAIMANT looked for an escape out of the Contract. CLAIMANT's allegations as to the quality of coltan supplied by RESPONDENT is a mere excuse to try to discharge CLAIMANT's obligations under the Contract, most likely to re-purchase the 100 meters of coltan from another supplier and at an inferior price.

### **Nomination of Arbitrator and Jurisdiction of Arbitral Tribunal**

3. 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**

4. RESPONDENT, Mediterraneo Mining SOE, 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, Mediterraneo extracts copper and gold. It has a world-wide reputation for its high-quality coltan from conflict free coltan mines.
5. CLAIMANT's parent company, Global Minerals Ltd, as well as other companies belonging to the Global Minerals Group, 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 counterparty about the changes made.
6. Back in 2013, MEDITERRANEO had quite an unpleasant experience when in one of its deals with Global Minerals, the latter put the subsidiary it had used for that transaction into bankruptcy to avoid its payment obligations towards MEDITERRANEO. 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 MEDITERRANEO 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.
7. On 8 September 2016, 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).
8. 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. During the negotiations a number of options were discussed and RESPONDENT made an offer for the delivery of 100 metric tons at the price of US\$45 per kg. CLAIMANT required that the delivery was divided in two

installments, which were to take place in any case before the end of 2016 CIF to CLAIMANT's premises.

9. In the end an agreement was reached that Global Minerals would sign the contract to endorse it. The signing took place on 15 September 2016 and RESPONDENT received the copies of the contract from Global Minerals.
10. On 23 October 2016 RESPONDENT sent the First Notice of Transport to both CLAIMANT and Global Minerals.
11. After CLAIMANT made the First Payment on 4 November 2016, RESPONDENT made the arrangements for the delivery of the First Installment, i.e. the first 50 metric tons of coltan, which reached Oceanside by 27 November 2016. The delivery was timely and the coltan delivered had a content of TA2O5 in between 32-36%, within the quality range specified in the Contract.
12. On 6 November 2016 all market participants were caught by surprise when the press released information relating to the discovery of the largest deposit of coltan located in the region of Valenzuela. A newly formed junior mining company – Magma Inc. – who had been carrying out exploration and drilling activities in that area for over two years, had finally published a feasibility study which revealed the discovery of an unprecedented quantity of reserves and resources of coltan. The market immediately reacted to the outcome of Magma's results: its shares rapidly increased by 17 % throughout the following week, and the price of raw coltan abruptly decreased by nearly 20%.
13. On 1 December 2016, RESPONDENT then received an email from Global Minerals in which it claimed that the goods were not in conformity with the quality specifications set forth in the Contract, and therefore, the Contract was avoided. CLAIMANT further asked MEDITERRANEO to reimburse the First Payment and to arrange for the return of the rejected goods.
14. RESPONDENT was outraged by CLAIMANT's attempt to use the quality as a pretext to walk away from its obligations under the Contract. Presumably, CLAIMANT is trying to secure another contract with another supplier and for the same quantities of coltan at a more favorable price, given the market conditions resulting from the discovery of a new deposit of coltan in Valenzuela. RESPONDENT accordingly rejected CLAIMANT's wrongful termination of the Contract, and insisted on performance by issuing the Second Notice of Transport, and requiring the realization of the Second Payment (Exhibit C 5).
15. No answer was received from CLAIMANT. Instead a notice from the ICC informing of CLAIMANT's Request for Arbitration seeking damages for alleged breach of RESPONDENT's obligations under the Contract.
16. That showed RESPONDENT that CLAIMANT and its parent company had no intention to fulfill its obligations under the Contract. Therefore, in this Counterclaim, RESPONDENT requests the Tribunal to order CLAIMANT performance of the Contract of 15 September 2016.

## **Legal Evaluation**

### **Joinder of Global Minerals**

17. RESPONDENT requests that Global Minerals is to be joined to this arbitration as an Additional Party.
18. 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 15 September 2016. RESPONDENT wanted to avoid ending up with claims against CLAIMANT which were non-enforceable because of the latter's insolvency.
19. The arbitral tribunal has jurisdiction over Global Minerals by virtue of the arbitration clause in the contract concluded by RESPONDENT on 15 September 2016 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. 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.
20. 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**

21. Under the contract CLAIMANT and Global Minerals were obliged to make the Second Payment upon delivery of the Second Notice of Transport, in order for RESPONDENT to ship the Second Installment of 50 metric tons of coltan.
22. Contrary to CLAIMANT's allegations, the first 50 metric tons of coltan delivered in the First Installment are in conformity with the quality specifications of the Contract. RESPONDENT will provide an expert report which evidences that the coltan supplied to CLAIMANT contained in between 32-36% TA205.
23. CLAIMANT's failure to pay the Second Installment amounts to a fundamental breach of contract (Articles 54 CISG) which entitled RESPONDENT to request payment of the price and that CLAIMANT takes the goods delivered, or alternatively to pay damages for any loss, including lost profits that RESPONDENT would have realized had the Contract been performed.

## **Damages Claim**

24. If the Contract is not performed, it is highly probable that because of the recent discovery of a large deposit of coltan, RESPONDENT will only be able to sell the coltan rejected by CLAIMANT at a lower price in the future.
25. RESPONDENT will present an actual calculation of the damages it incurred as a consequence of CLAIMANT's wrongful termination of the Contract. Up to now RESPONDENT has incurred in storage costs of the 50 metric tons coltan corresponding to the Second Installment, missing liquidity and interests for lack of payment of the Second Payment, among other costs, all of which can be assumed to be part of the loss incurred by RESPONDENT.

## **Statement of Relief Sought**

26. In light of this RESPONDENT requests the Arbitral Tribunal
  1. to reject all claims raised by CLAIMANT;
  2. to declare that it has jurisdiction over Global Minerals;
  3. to order CLAIMANT and/or Global Minerals to make the Second Payment under the Contract and order it to take the delivery of the Second Installment.
  4. In the alternative to prayer n° 3,
    1. To declare that CLAIMANT breached its obligations under the Contract; and
    2. To order CLAIMANT and/or Global Minerals to pay damages, presently unquantified but expected to exceed US\$ 5,000,000.
  5. To order CLAIMANT and/or Global Minerals to pay RESPONDENT's costs incurred in this arbitration.

Joseph Langweiler

## **Annexes**

Exhibit R 1: Witness Statement of Mr. Winter

Exhibit R 2: Article from the *Belle Époque*

## 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 six 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 early September 2016, 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 8 September 2016 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 beginning of 2016 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 great quantity 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 14 days after delivery. That was the most favorable payment condition we had agreed with Global Minerals in the past.

7. I made clear that 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 that Global Minerals – 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.

Willem Winter

Oceanside, 30 March 2017

6 November 2016


*Belle Époque*

At Home

World News

Children's Corner

Home &amp; Garden

Sport

TV Guide

Celebrity Round Up

Pets &amp; You

## ***The Largest Coltan Discovery in the last Decade***

In the morning of 5 November 2016 Jeff Goldman, CEO of Magma Inc. informed the press of the successful results of the drilling and geothermic exploration of the *Incredible* mountains in Valenzuela which has been carried out by the junior mining company for the last two years.

The company has issued a Feasibility Study which estimates a total of 70.000 ounces of mineral reserves and resources of coltan with a high grade of tantalum pentoxide – the key component for production of electronic devices.

Magma Inc.'s CEO informed that the company will go public in order to secure the necessary funds to begin with the exploitation phase of the mine as soon as possible.

Linda Johnson, chief financial analyst at Blossomberg, informed *Belle Époque* about the impact of the discovery of this large deposit of coltan on the market. According to Ms. Johnson, prices of raw coltan are expected to decrease in between by 10% and 15% in the next two years.

The discovery also implies an economic boost for the *Incredible* region in Valenzuela, which will witness the development of mining industry and other related activities in the following decade. The government of Valenzuela has also expressed its satisfaction with the news, in light of the substantial royalties the mining activity will generate in the years to come.

14 April 2017

**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](mailto:fasttrack@host.eq)*

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

*By Email: [Langweiler@lawyer.me](mailto:Langweiler@lawyer.me)*

Global Minerals Ltd  
Excavation Place 5  
Hansetown  
Ruritania

*By FedEx*

Dear Sirs,

The Secretariat acknowledges receipt of six copies of Respondent's Answer, Counterclaims and Request for Joinder dated 14 April 2017.

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 14 April 2017, 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 six 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 38(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](mailto:adr@iccwbo.org) or [www.iccadr.org](http://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](http://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 2017 Rules\*  
          - Note on Administrative Issues\*  
          - ICC Rules of Arbitration (*see also* [www.iccarbitration.org](http://www.iccarbitration.org))\*  
          - ICC Dispute Resolution Brochure (*see also* [www.iccarbitration.org](http://www.iccarbitration.org))\*

*(The Notes are available on the ICC electronic Dispute Resolution Library at:  
<http://www.iccdri.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](mailto:fasttrack@host.eq)

10 May 2017

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 RESPONDENT has in its Answer 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.

### Statement of Facts

4. In the first quarter of 2016 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 conducted 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.
5. 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

6. 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.
7. 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.
8. RESPONDENT's counterclaim is completely without merit.

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

11 May 2017

**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](mailto:fasttrack@host.eq)*

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

*By Email: [Langweiler@lawyer.me](mailto:Langweiler@lawyer.me)*

Dear Sirs,

The Secretariat acknowledges receipt of the Reply to the Counterclaim and Answer to the Request for Joinder dated 10 May 2017, 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 20 May 2017\*.

**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\*

11 May 2017

**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](mailto:fasttrack@host.eq)

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

By Email: [Langweiler@lawyer.me](mailto: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



**2017 RULES - ICC ARBITRATOR STATEMENT ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE**

**Family Name(s):** One

**Given Name(s):** Arbitrator

Please tick all relevant boxes.

**(i). 1. ACCEPTANCE**

**Acceptance**

☒ **I agree** to serve as arbitrator under and in accordance with the 2017 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.)

**(ii). 2. AVAILABILITY**

☒ **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: May 15-19, 2017

**(iii). 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.

☒ **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:** 11 May 2017

**Signature:** [signature of Dr. One]

**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.

**2017 RULES - ICC ARBITRATOR STATEMENT ACCEPTANCE,  
AVAILABILITY, IMPARTIALITY AND INDEPENDENCE**

**Family Name(s):** Dos

**Given Name(s):** Arbitrator

Please tick all relevant boxes.

**(iv). 1. ACCEPTANCE**

**Acceptance**

☒ **I agree** to serve as arbitrator under and in accordance with the 2017 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.)

**(v). 2. AVAILABILITY**

☒ **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: May 15-19, 2017

**(vi). 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.

☒ **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:** 11 May 2017

**Signature:** [signature of Ms. Dos]

**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.



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

13 May 2017

**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](mailto:hadh@gmail.com)

Dr. Arbitrator One  
1045 City Boulevard  
Oceanside, Equatoriana

By FedEx & email [arbone@one.com](mailto:arbone@one.com)

Ms. Dos  
45 City Town  
Seeshore  
Mediterraneo

By FedEx & email [dosd@gmail.com](mailto:dosd@gmail.com)

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

By Email: [fasttrack@host.eq](mailto:fasttrack@host.eq)

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

By Email: [Langweiler@lawyer.me](mailto:Langweiler@lawyer.me)

Dear Madame and Sirs,

The Secretariat draws your attention to the following:

**I – DECISIONS BY THE COURT**

On 12 May 2017, 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 37(2)/37(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 37 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 37), 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 Notes are available on the ICC electronic Dispute Resolution Library at:  
<http://www.iccdri.com/practicenotes.aspx>.)



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

CASE N° 22000/AC

**2017 RULES - ICC ARBITRATOR STATEMENT ACCEPTANCE, AVAILABILITY, IMPARTIALITY AND INDEPENDENCE**

**Family Name(s): Haddock**

**Given Name(s): Henry**

Please tick all relevant boxes.

**(vii). 1. ACCEPTANCE**

**Acceptance**

☒ **I agree** to serve as arbitrator under and in accordance with the 2017 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.)

**(viii). 2. AVAILABILITY**

☒ **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: May 15-19, 2017

**(ix). 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.

☒ **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:** 11 May 2017

**Signature:** [signature of Mr. Haddock]

**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.

International Court of Arbitration of the  
International Chamber of Commerce  
Case No. 22000/AC

between

**Vulcan Coltan Ltd**  
(Equatoriana)

*Claimant*

and

**Global Minerals Ltd**  
(Ruritania)

*Additional Party*

v.

**Mediterraneo Mining SOE**  
(Mediterraneo)

*Respondent*

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**PROCEDURAL ORDER N° 1**  
**Procedural Timetable and Conduct of the  
Arbitration**

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The Arbitral Tribunal

Henry Haddock (President)  
Arbitrator One (Co-arbitrator)  
Arbitrator Dos (Co-arbitrator)

15 May 2017

## **Whereas**

1. This arbitration arises between Vulcan Coltan Ltd [**“Claimant”**] and Mediterraneo Mining SOE [**“Respondent”**]. Claimant and Respondent will be jointly referred to as the **“Parties”**.
2. This first Procedural Order [**“PO”**] sets out the procedural rules which shall apply to this arbitration, in addition to those set out in the Rules of Arbitration of the International Chamber of Commerce in force as from 1 March 2017 [**“ICC Rules”**].
3. These rules have been discussed between the Parties and the Arbitral Tribunal at the initial procedural conference held on 14 May 2017.
4. The following PO incorporates all issues on which agreement was reached and where agreement was not possible, the Tribunal’s decision:

### **Procedural Order No. 1**

#### **A. Terms of Reference**

5. At the initial procedural conference the Arbitral Tribunal and the Parties discussed, agreed and signed the Terms of Reference.

#### **B. Procedural Timetable**

6. The arbitration shall proceed in accordance with the Procedural Timetable attached hereto as Annex I, except if the Tribunal, at the reasonable request of any Party or on its own initiative, decides that, for good cause, this Procedural Timetable has to be amended.

#### **C. Written Submissions**

7. The Parties have agreed to have two rounds of written submissions:
  - Claimant will file a Statement of Claim;
  - Respondent will file a Statement of Defence;
  - Claimant will file a Statement of Reply;
  - Respondent will file a Statement of Rejoinder.
8. In their submissions the Parties shall set forth the facts, the legal argumentation and the relief sought, they shall include as attachments all documents in their possession, custody or control on which they wish to rely, and shall identify fact and expert witnesses each Party wishes to present.

#### D. Request for Documents

9. Each Party may request the other Party to produce any document which is relevant and material for solving the dispute and is in the possession, power, custody or control of the other Party [**“Document”**]. The Parties shall use a *Redfern Schedule* format.
10. The Tribunal will decide on each request for document production after giving the opportunity to the counterparty to comment on them.
11. Documents to be produced shall only be delivered to the counterparty and not be copied to the Tribunal. The Party in receipt of such Document may submit any such Documents as evidence in its subsequent Written Submission, if it so wishes.
12. In addition, the Tribunal may of its own motion order a Party to produce documents at any time.
13. 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.

#### E. Additional Party

14. The Parties agreed that 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. Such agreement was made 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.

#### F. Applicable law

15. The Tribunal and the Parties are aware that Danubia has adopted the UNCITRAL Model Law on International Commercial Arbitration with the 2006-amendments [the **“Model Law”**]. Danubia has adopted Option I of Article 7 of the Model Law. The Model Law with Option I is also the arbitration law of the other jurisdictions concerned.
16. It is undisputed between the Parties that Equatoria, Mediterraneo, Ruritania and Danubia are Contracting States of the CISG.
17. 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 Article 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.

G. Assumptions agreed between the Parties

18. Claimant, Respondent and the Additional Party agreed on the followings assumptions:
19. Vulcan and Global Minerals: Vulcan was set up in January 2016 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 early September 2016, prior to entering into the Contract. 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.
20. Article 4 of the Contract: The article was developed jointly by Mr. Winter, Mr. Storm and Mr. Summer during their negotiations on 8 September 2016. 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 an “endorsement” by Global Minerals without discussing in detail what this “endorsement” meant. This term is not defined in either Danubian law or any other law that may be applicable in this arbitration. The term “endorsement” had been suggested by Mr. Storm and had never been used before in previous contracts.
21. Danubian Law – Group of companies doctrine: There have been no decisions by the Danubian courts on the doctrine so far. The Danubian Supreme Court, however, always emphasizes that arbitration is based on consent. 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.
22. Doctrine of Good Faith: 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, no decisions which deal with good faith in relation to arbitration agreements and arbitral proceedings have been rendered.

For the Arbitral Tribunal  
Henry Haddock  
President of the Tribunal

15 May 2017

**ICC Case No. 22000/AC: Vulcan Coltan Ltd and Global Minerals Ltd v. Mediterraneo Mining SOE**

**Procedural Order No. 1 – Annex I**

**Procedural Timetable**

	<b>Procedural action</b>	<b>Party required to act</b>	<b>Deadline</b>
<b>Hearing on Procedural Issues</b>			
	Hearing on Procedural Issues	All	July 24, 2017
	Decision on Procedural Issues	Tribunal	September 1, 2017
<b>First Submissions</b>			
	Statement of Claim	Claimants	September 30, 2017
	Statement of Defence	Respondent	October 30, 2017
<b>Document Production</b>			
	Request Document Production	Both Parties	December 2, 2017
	Response Document Production	Both Parties	December 9, 2017
	Decision on Document Production	Tribunal	December 16, 2017
	Production of Documents	Both Parties	December 20, 2017
	Statement of Reply	Claimants	January 30, 2017
	Statement of Rejoinder	Respondent	March 6, 2017
	Notification of witnesses to be called to the Hearing	Both Parties	April 28, 2017
	Final Hearing	All	May 15-19, 2017
	Post-Hearing Submissions	Both Parties	The Tribunal will determine at the end of the Hearing if Post-Hearing Submissions are necessary
	Statement on costs	Both Parties	The Tribunal will determine at the end of the Hearing the date for the Parties to submit the statement of costs

Date: 15 May 2017

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

20 June 2017

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*  
Challenge to Dr. Elisabeth Mercado as member of Vulcan Team

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

1. On 14 June 2017 we have been notified by Mr. Horace Fasttrack that Dr. Elisabeth Mercado has been added to the team of counsel representing Vulcan. We challenge her participation on the Vulcan legal team and request the tribunal to rule that she should cease all activities in this arbitration. If the challenge to Dr. Mercado is not accepted by the Tribunal, we reserve our right to challenge Professor Haddock for the reasons that will be evident.

2. It is important to begin with the position of Professor Haddock. As is known to the entire tribunal, he is the Schlechtriem Professor of International Trade Law (ITL) at Danubia National University. At Danubia National University, the ITL faculty covers (*inter alia*) Sales Law (including CISG) and International Commercial Arbitration. Professor Haddock is a world-renowned specialist in trade law but arbitration, *per se*, is not his focus. He sits on the Management Committee of the ITL Faculty and thereby is responsible with the other members of the Committee for all ITL activities, including arbitration. Although he is not a specialist in arbitration, he sits as arbitrator in investor-state arbitrations including ICSID as well as in WTO arbitrations and occasionally in commercial disputes. It is because of this broad experience that

he was designated as the presiding arbitrator in this arbitration by the joint agreement of the two parties.

3. Since 2010 Dr. Mercado is a Visiting Lecturer at Danubia National University, teaching the International Commercial Arbitration courses. She secured her Visiting Lectureship following a public application process of which she had been unaware until she received a telephone call from someone who introduced herself as the Professor Haddock's assistant and said she was calling on his behalf. Dr. Mercado was shortlisted along with one other and was selected after interview by a panel of three, chaired by Professor Haddock.

4. She delivers approximately 50% of the arbitration lectures, the remaining 50% being delivered by members of the Faculty's full-time staff. She is paid per lecture and is not salaried but is treated as a third party service supplier for payment and tax purposes. The Tax Authorities have accepted this and no issue arises as to her employment status.

5. In the past, Dr. Mercado had spent time as General Counsel in a large international trading company. As a consequence, in addition to her arbitration lectures she delivers lectures to the ITL Faculty as part of Professor Haddock course on international trade, focusing on the "real world" of international commerce as opposed to the black-letter law. As a consequence, Dr. Mercado has occasional contact with Professor Haddock, but the majority of her contact is with the ITL Faculty's full-time staff, particularly the several Course Directors. Face-to-face, she calls him "Henry" but in company normally adopts the more formal "Professor".

6. Dr. Mercado is very good with children and is on first name terms with the Professor's four, aged between 10 and 20. Since October 2010 she is godmother to the youngest of the Professor's children. She is also on first name terms with his wife. The two women occasionally meet in the city for lunch or a coffee.

7. Between 2011 and 2016 Dr. Mercado has appeared as Counsel before Professor Haddock in three previous arbitrations. In the first two, Dr. Mercado's client was successful with a unanimous tribunal. In the third case, Dr. Mercado's client was unsuccessful on a majority decision with Professor Haddock issuing a Dissenting Opinion in her client's favor. In none of the three cases were Dr. Mercado's client's opponents aware of the connections between Dr. Mercado and Professor Haddock. Therefore, no question of a challenge ever arose. By that time Dr. Mercado had regular contact with the Professor's Haddock wife, since their friendship had begun soon after Dr. Mercado had been appointed as Visiting Lecturer.

8. We bring to your attention that nor the Code of Ethics of Dr. Mercado's Bar Association, neither the relevant rules in Danubia that discuss conflicts of interest in arbitration address the facts of this case. Nevertheless, the relationship between Dr. Mercado and Professor Haddock is so close that the tribunal should rule that Dr. Mercado should withdraw from the legal team representing Vulcan. To repeat paragraph 1, above, if the challenge to Dr. Mercado is not accepted by the tribunal, we reserve our right to challenge Professor Haddock as arbitrator in this case.

Relief Requested

The respondent requests the tribunal to:

1. Decide that Dr. Elisabeth Mercado shall terminate her role in the legal team representing Vulcan.

*[Signed]* Joseph Langweiler

International Court of Arbitration of the  
International Chamber of Commerce  
Case No. 22000/AC

between

**Vulcan Coltan Ltd**  
(Equatoriana)

*Claimant*

and

**Global Minerals Ltd**  
(Ruritania)

*Additional Party*

v.

**Mediterraneo Mining SOE**  
(Mediterraneo)

*Respondent*

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**PROCEDURAL ORDER N° 2**

**Hearing on Procedural Issues**

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The Arbitral Tribunal

Henry Haddock (President)  
Arbitrator One (Co-arbitrator)  
Arbitrator Dos (Co-arbitrator)

21 June 2017

## **Whereas**

1. On 21 June 2017 the Tribunal held a conference call with the Parties to discuss several procedural issues which have arisen in the course of this arbitral proceeding.

### **Procedural Order No. 2**

#### **1. Request for joinder**

2. On April 1, 2017 Mediterraneo filed a request for joinder requesting the Tribunal to declare that it has jurisdiction over Global Minerals.
3. The Tribunal and the Parties agreed to hold a hearing to address this issue [the “**Hearing**”].

#### **2. Admissibility of Mr. Winter’s witness statement**

4. Mr. Fasttrack said that he would like Mr. Willem Winter – former general sales manager of Respondent – to appear at an oral hearing before the Tribunal in order to question him in regard to his witness statement. Mr. Langweiler replied that it would not be possible: Mr. Winter had left the employ of Mediterraneo Mining SOE. Since 10 April 2017 Mr. Winter has been working for Romulus S.L. after a 13 years long employment in Mediterraneo Mining SOE.
5. Mr. Langweiler said that Mr. Winter told him that his new employer did not wish him to be involved in any further matters concerning Mediterraneo Mining SOE and specifically told him not to appear before this Tribunal if he was called to testify. Mr. Langweiler further said that he had told this to Mr. Fasttrack and said that he would be pleased if Mr. Fasttrack were to contact Mr. Winter and urge him to come, but that Mr. Fasttrack had refused to do it saying that it would be Mr. Langweiler’s responsibility to bring him to the hearing. Mr. Fasttrack confirmed that he had said this.
6. Given that Mr. Winter would not be available for examination, Mr. Fasttrack requested the Tribunal to exclude Mr. Winter’s witness statement. Mr. Langweiler said that under the circumstances where it would not be possible for him to cause Mr. Winter to come to the hearing, the Tribunal should consider the witness statement despite his absence.
7. The Tribunal considered that, up to this point, it is not clear the reason why the management of Romulus S.L is urging Mr. Winter not to appear at the Hearing or whether it is merely the company’s general policy to avoid any involvement in third party actions. The Tribunal also understands that Mr. Winter is now the head sales manager at Romulus S.L and has a very tight timetable, which might be the reason why he is not available at the time of the hearing.
8. The Parties agree on the fact that the courts of Danubia would have no jurisdiction to order a witness located in another country to appear at a hearing of an arbitral tribunal. Mediterraneo law provides for court ordered production of documents for use in an arbitral proceeding but does not provide for the mandatory appearance of a witness to testify in an arbitral proceeding either in person or by video link.

9. Moreover, there is no statutory provision concerning the use of witness statements in the laws of the concerned countries. In Danubia witness statements are not used at all in court proceedings at all, but they have occasionally been used in arbitral proceedings.
10. The Tribunal rules that this issue should be argued before the full Tribunal during the Hearing.

### **3. Challenge of Dr. Mercado**

11. On 20 June 2017 Respondent challenged Dr. Elisabeth Mercado from the legal team of Vulcan [the “**Challenge**”].
12. On the conference call on 21 June 2017, Claimant averred that Mr. Fasttrack engaged Dr. Mercado as part of the team representing Vulcan because of her expertise in arbitration, and that no other motivation was behind her designation. Respondent on the contrary sustains that Claimant’s designation of Dr. Mercado as counsel responds to its intention of obtaining a favorable ruling in this case, as a consequence of Dr. Mercado’s relationship with the President of the Tribunal.
13. Regarding Dr. Mercado’s designation as Visiting Lectureship at Danubia National University, Claimant pointed out that although there had been a number of applications for the position, the designation committee wished for additional applications. And Dr. Mercado was one of several individuals contacted, because she had lectured at several universities on international commercial law and international arbitration and was highly regarded in the field.
14. Respondent also added that the President – Professor Haddock – learned that Dr. Mercado had been added to the Claimant’s legal team on 20 June 2017 when he received Respondent’s Challenge, and since then, he has not filed any additional statement of independence and impartiality to the one already submitted at the outset of the arbitration.
15. Respondent requests the Tribunal to decide that Dr. Elisabeth Mercado shall terminate her role in the legal team representing Vulcan. Claimant objects the exclusion for Dr. Mercado from the proceedings and requests the Tribunal to dismiss Respondent’s petition.
16. The Tribunal rules that this issue should be argued before the full Tribunal during the Hearing.

\* \* \*

17. In light of the number and nature of the outstanding procedural issues raised by the Parties, the Tribunal and the Parties agreed to hold the Hearing. After the Hearing the Tribunal will adopt a decision on each of the procedural issues.
18. The Hearing shall take place on the 24 June 2017 at the Court of Arbitration of the Official Chamber of Commerce and Industry of Madrid.
19. Counsel should address the following issues:



- (i). Whether the Arbitral Tribunal has jurisdiction over Global Minerals Ltd;
  - (ii). Whether the Arbitral Tribunal should consider Mr. Winter's witness statement although the witness is not available for examination at an oral hearing;
  - (iii). Whether the Arbitral Tribunal should exclude Dr. Elisabeth Mercado, member of the legal team of Vulcan, from the proceedings.
20. Claimant's and Respondent's claim and counterclaim and their respective claim for damages will be addressed at a later stage of the arbitration. The same applies to the question of costs. These issues **should not be dealt with** by the Parties at the Hearing.

For the Arbitral Tribunal

Henry Haddock  
President of the Tribunal