

EXHIBIT A

PROCEDURAL ORDER NO. 3

ICC Arbitration 22236/AY

ETRAK INSAAT TAAHUT VE TICARET ANONIM SIRKETI (“Claimant”)

v.

THE STATE OF LIBYA (“Respondent”)

PROCEDURAL ORDER NO. 3

DECISION ON CLAIMANT’S REQUEST FOR INTERIM MEASURES

9 November 2017

Arbitral Tribunal

Prof. Dr. Kaj Hobér, President

Ms. Jean Kalicki, Arbitrator

Mr. John Townsend, Arbitrator

Administrative Secretary to the Tribunal

Mr. Joel Dahlquist Cullborg

TABLE OF CONTENTS

I. BACKGROUND	3
II. THE PARTIES' POSITIONS	4
A. Claimant's Position	4
B. Respondent's Position	4
III. THE REQUESTED INTERIM MEASURES.....	5
IV. THE TRIBUNAL'S ANALYSIS	5
V. DECISION	6

I. Background

1. On 29 August 2016 Etrak Insaat Taahut Ve Ticaret Anonim Sirketi ("Claimant"), a joint stock company organized under the laws of the Republic of Turkey, requested arbitration against the State of Libya ("Respondent"). In its Request for Arbitration, Claimant relied on Article 8 of the Turkey-Libya BIT ("BIT"), which provides that a dispute may be submitted for arbitration to "the Court of Arbitration of the Paris International Chamber of Commerce". Claimant argued that Respondent had violated several provisions of the BIT, as well as certain contractual rights.
2. Following correspondence between the Parties and the ICC Secretariat, the Arbitral Tribunal ("Tribunal") was constituted as follows:

On 14 December 2016 Mr. John M. Townsend was confirmed as co-arbitrator by the Secretary General, upon nomination by Claimant.

On 14 December 2016 Ms. Jean E. Kalicki was confirmed as co-arbitrator by the Secretary General, upon nomination by Respondent.

On 19 January 2017 Prof. Dr. Kaj Hobér was confirmed as president of the Tribunal by the ICC Secretary General, upon joint nomination by the co-arbitrators.
3. Following several extensions, on 19 January 2017 the Secretariat received an Answer to the Request for Arbitration filed by Respondent ("Answer").
4. On 27 February 2017 the Tribunal conducted a case management conference via telephone with the Parties. Following the case management conference, the Parties exchanged written submissions on the appropriate time plan for the proceedings.
5. On 21 March 2017 the Parties and the Tribunal signed the Terms of Reference. The Terms of Reference include, among other things, a summary of the Parties' positions as developed to that point, as well as the Parties' consent to appoint Mr. Joel Dahlquist Cullborg as Administrative Secretary to the Tribunal.
6. On 15 May 2017 the Tribunal issued Procedural Order No. 1, incorporating the agreed upon procedural timetable, as well as a number of procedural directions to the Parties.
7. In accordance with the procedural timetable, on 5 June 2017 the Claimant submitted its Statement of Claim.
8. On 9 October 2017 Claimant submitted a Request for Interim Measures ("Request for Interim Measures"). The Request for Interim Measures was amended on 10 October 2017.
9. On 11 October 2017 the Tribunal invited Respondent to reply to the Request for Interim Measures by 23 October 2017.
10. On 24 October 2017 Respondent submitted its Objection to Request for Interim Measures ("Objection").
11. On 25 October 2017 the Tribunal invited Claimant to provide comments on the Objection by 30 October 2017.
12. On 30 October 2017 Claimant submitted its Reply to Objection to Request for Interim Measures ("Reply").

II. The Parties' Positions

A. Claimant's Position

13. Claimant's Request is brought in response to actions taken by Respondent in a Libyan court. According to Claimant, Respondent has recently pursued appellate action in a Libyan court regarding issues that affect the procedure before this Tribunal ("the Appeal"). In Claimant's view, the purpose of the Appeal is to undermine this arbitration, aggravate the on-going dispute and obtain a negative, improper court decision in Libya.
14. The appealed judgment was rendered by the Beida Court of First Instance on 29 October 2012 ("the Court Decision"). In the Court Decision, Libya was ordered to pay Claimant LD 1,907,360.23 plus interest, at the rate of 7.5% running from 18 January 1991, plus LD 1,000,000 in additional damages.
15. Subsequent to the Court Decision, Claimant and Respondent concluded an agreement ("the Settlement Agreement") in which Respondent agreed to withdraw any appeal of the Court Decision, and to pay Claimant a discounted amount of damages. Respondent has not yet paid these damages.
16. Claimant was surprised to learn from correspondence in this arbitration that an appeal of the Court Decision is still on-going in the Beida Court of Appeal. Several procedural steps have already been taken in the Appeal without Claimant having been made aware thereof.
17. In Claimant's view, the Tribunal is the proper forum for resolving the dispute between the Parties, including over the validity of the Settlement Agreement. Claimant argues that the Appeal is a direct violation of Settlement Agreement, in which Respondent undertook not to pursue any appeal of the Court Decision.
18. Both the Court Decision and the Settlement Agreement form the basis of some of Claimant's claims in this arbitration. By engaging in the Appeal, Claimant asserts that Respondent is impugning the integrity of these proceedings, aggravating the on-going dispute and seeking to subject Claimant to unfair and illegal court proceedings in Libya.
19. Even if Claimant deemed the Appeal to be appropriate, it could not appear before the Beida Court of Appeal due to on-going security concerns and the difficulty of obtaining representation. Claimant would have to appear at great monetary and, possibly, physical cost.

B. Respondent's Position

20. The Appeal flows from a claim brought by Claimant in Libyan courts, which led to the Court Decision. The Appeal is currently pending in the Beida Court of Appeal, having been transferred there from the now-abandoned Green Mountain Court of Appeal. It is this court, and not the Tribunal, which in Respondent's view is the proper forum for Claimant's objections as to the merits of the purported Settlement Agreement. Consequently, Claimant's arguments are better presented to this court.
21. There is no risk to the integrity of this arbitration from the parallel appellate proceedings in Libya or from Respondent pursuing those proceedings. Claimant considers it has a right, based on the Settlement Agreement, to require that the Appeal be abandoned.

Respondent disagrees, but that does not mean that either Party is acting in bad faith or attacking the integrity of these proceedings.

22. Contrary to Claimant's assertions, Respondent asserts that Claimant has been aware of the Appeal for at least nine months, but has still not taken any steps to participate in the court proceedings. Respondent states that it told Claimant about the on-going Appeal in its Answer in January 2017.
23. Claimant faces no risk of irreparable or serious harm, no challenge to any right and no "unjust and impossible choice" as alleged: the only choice facing Claimant is one that Claimant now wants to avoid, flowing from the fact that it initiated both the Libyan court proceedings and this arbitration.
24. Although Respondent is of course aware of the security situation, Respondent points out that Claimant – on its own case and evidence – was incorporated solely to do business in Libya. In the past, Claimant has been able to engage local lawyers, including when it initiated the court proceedings in 2012. There is no suggestion that Beida is less safe or that fewer lawyers are available today than when Claimant initiated these proceedings; on the contrary, matters in the region have improved since 2012.

III. The Requested Interim Measures

25. In its Request, Claimant asks that the Tribunal order Respondent:
 - a. To suspend the Appeal pending the final award of this Tribunal; or
 - b. Alternatively, to request a stay from the Libyan court of its actions pending the final award of this Tribunal;
 - c. To refrain from any other recourse to Libyan court of the issues in this case until such time as the Tribunal renders its final award; and
 - d. To refrain from any further aggravation of this dispute.
26. In its Reply, Respondent requests that the Tribunal dismiss Claimant's application and award Respondent all costs incurred in relation to Claimant's Request.

IV. The Tribunal's Analysis

27. Both parties have in their submissions assumed that the Tribunal has *prima facie* jurisdiction to order the measures requested by Claimant. Based thereon, and on the facts and arguments presented by the Parties, the Tribunal finds that it has *prima facie* jurisdiction to order such measures. Furthermore, it seems to be common ground between the Parties that, as a matter of principle under the applicable Swiss arbitration law, the Tribunal has the authority to issue interim orders to protect the integrity of this arbitration, including orders addressed to sovereign states. The Tribunal agrees. The Parties differ, however, as to the appropriate exercise of this authority in this arbitration.
28. At this stage, the Tribunal takes no position with respect to the disputed facts in this arbitration. No part of this decision constitutes a finding by the Tribunal with respect to facts argued so far by the Parties.

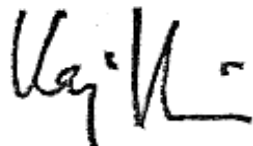
29. The Tribunal has been provided with limited evidence on the exact scope of the on-going Appeal in the Beida Court of Appeal. Given this limitation, the Tribunal is unable to determine with certainty what relevance the Appeal has for this arbitration.
30. Provided that the Tribunal finds it has jurisdiction over the claims brought in this arbitration, those claims concern alleged breaches of the BIT. While the dispute over the validity of the Settlement Agreement (assuming that this question is indeed part of the Appeal) may form part of the factual matrix in this arbitration, based on what the Parties have contended so far, this issue does not seem to be what the Tribunal has primarily been asked to determine.
31. Irrespective of the outcome of the Appeal, the Tribunal is not convinced that it threatens the integrity of this arbitration. The treatment of Claimant by Respondent's court system is part of the alleged breaches of the BIT. These claims are framed by Claimant as a denial of justice in violation of the fair and equitable treatment standard in the BIT.¹ Since Claimant is alleging denial of justice on behalf of Libya with respect to the Settlement Agreement, it is reasonable to let Libyan court system run its course. Moreover, the possibility of additional findings in the Appeal regarding issues of fact or Libyan law does not imperil this Tribunal's ability independently to decide the issues before it. In due course the Parties can be heard, and the Tribunal will independently consider, what if any, weight to give in this case to any such findings.
32. The Tribunal does not see any reason why this arbitration will not move forward as planned.
33. The Tribunal is concerned, however, by the Claimant's statements that it has not been provided with copies of the papers filed with the Court of Appeal. Respondent is directed to provide Claimant with a full set of all pleadings and other documents submitted by Respondent to the Court of Appeal in connection with the Appeal.

V. Decision

34. The Tribunal hereby denies the Claimant's Request for Interim Measures.
35. The Tribunal reserves its decision on costs in connection with the Request to a later stage of this arbitration.

Place of arbitration: Geneva, Switzerland

Signed on behalf of the Arbitral Tribunal



Kaj Hobér
President
Date: 9 November 2017

¹ Statement of Claim, 5 June 2017, para. 151.