EXHIBIT A3

INTERNATIONAL COURT OF ARBITRATION OF
THE INTERNATIONAL CHAMBER OF COMMERCE

ETRAK İNŞAAT TAAHHÜT VE TICARET ANONIM ŞIRKETI
Claimant

v.

STATE OF LIBYA
Respondent

ICC Case No:

Request for Arbitration

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August 29, 2016

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I. INTRODUCTION

1. Etrak İnşaat Taahhüt ve Ticaret Anonim Şirketi ("Etrak" or "Claimant") files this Request for Arbitration ("Request") against the State of Libya ("Libya" or "Respondent").

2. Claimant brings this dispute pursuant to the Agreement between the Republic of Turkey and the Great Socialist People's Libyan Arab Jamahiriya[1] on the Reciprocal Promotion and Protection of Investments dated 25 November 2009 (the "Treaty" or the "Turkey-Libya BIT"). [2]

3. The dispute concerns Respondent's failure to comply with a court decision in Claimant's favor rendered the Bayda Civil Court of First Instance (the "Court Decision") on 29 October 29 2012.[3] This dispute also arises from Respondent's failure to comply with the Settlement Agreement subsequently entered into by Claimant and Respondent (collectively, the "Parties") on December 9, 2013 (the "Settlement Agreement").[4]

4. Article 8 of the Treaty provides for ICC arbitration:

> *the dispute can be submitted, as the investor may choose, to the competent court of the Contracting Party in whose territory the investment has been made or to international arbitration under:*
> *(...)*
> *(c) the Court of Arbitration of the Paris International Chamber of Commerce*.

5. Accordingly, Claimant files this Request pursuant to Article 4 of the 2012 Rules of Arbitration of the International Chamber of Commerce (the "ICC Rules"). Claimant submits this Request without prejudice to its right to set out its claim in full at the appropriate time during this Arbitration.

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[1] The country formerly known as the Great Socialist People's Libyan Arab Jamahiriya is now known as the State of Libya.
[2] The Turkey-Libya BIT is attached hereto as **Exh. CL-1**.
[3] *See* **Exh. C-1**, *Etrak İnşaat Taahhüt ve Ticaret Anonim Şirketi v. Prime Minister, National Congress Chairman, Ministry of Finance and Chairman of the Libyan Central Bank*, Bayda Civil Court of First Instance Decision.
[4] *See* **Exh. C-2**, Agreement on the Enforcement of Court Ruling, dated 9 December 2013 concluded between the Undersecretary, Ministry of Finance and Etrak Construction Company of Turkey.

II. PRELIMINARY MATTERS

A. Parties to the Arbitration

i. Claimant

6. Claimant is an *Anonim Şirket* – or joint stock company – organized under the laws of the Republic of Turkey. Its address is Kadıköy Fikirtepe Kasrıali Cad. Kömbe Apt. No.13/1.

7. Claimant is represented by Jones Swanson, Huddell & Garrison, L.L.C., Fishman Haygood L.L.P. and Kabine Law Office. Claimant requests that notifications intended for Claimant be sent to the following addresses:

Jones, Swanson, Huddell & Garrison, LLC

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ii. Respondent

8. Respondent is the State of Libya. Respondent's addresses are as follows:

The Honorable Fayez Al Sarraj
Prime Minister of the State of Libya
Tripoli
State of Libya

Litigation Department Foreign Disputes Committee
To the attention of: Abdel Rahman Mohamed Shamileh
Director of the Litigation Department
Tripoli, Essidi Street
Courts Complex 3rd Floor
State of Libya

Ambassador Ibrahim O. A. Dabbashi
Permanent Representative of Libya to the United Nations
Permanent Mission of Libya of the United Nations
309-315 East 48th Street
New York, New York 10017
United States of America

Ambassador Alshiabani Mansour Abuhamoud
Embassy of Libya to the Republic of France
6-8 rue Chasseloup-Laubat
75015, Paris
France

III. SUMMARY OF FACTS

9. Etrak is a family-owned company that was founded in Istanbul, Turkey in 1978.[5] The Günay family, which started the company, has been active in the construction sector since 1969. The family patriarch, Mehmet Hikmet Günay, established Etrak as a special purpose company so that he could participate in various public works projects in Libya. At the time, Libya was investing in its infrastructure and Etrak, like many Turkish companies, was hired to construct several of these projects.

10. By 1980, Etrak, which had been one of the first Turkish companies to go to Libya, had been chosen to construct numerous projects in Libya and had concluded several public works contracts with various Libyan authorities, including various municipalities in Libya.[6]

11. There is no dispute between the Parties regarding Etrak's performance of these contracts. Indeed, Respondent has affirmed and repeatedly reaffirmed over the course of the last 25 years both that Etrak fulfilled its obligations and that Libya never fully paid Etrak for its work.[7] This refusal to pay left Etrak without sufficient resources and caused it to cease operations more than 20 years ago.

12. Rather, the existing dispute between the Parties concerns the non-performance by Respondent of the Court Decision and the subsequent Settlement Agreement. In the 2012 Court Decision, the Libyan Court found that Libya was liable for and should pay Etrak for its receivables dating back to 1991. Specifically, the Libyan Court held that Respondent owed to Claimant (i) LD 1.907.360,23 plus interest running from January 18, 1991 and (ii) LD 1.000.000 to cover other losses of Claimant.[8] Claimant had been trying to collect these amounts for decades and, with the Court Decision, it hoped to finally obtain relief.

13. Following the Court Decision, Respondent's authorities approached Claimant to negotiate the issue of the enforcement of the judgment.[9] Claimant welcomed this offer in good faith and the Parties ultimately reached an agreement on 9 December 2013.[10] Under this Settlement

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[5] The name "Etrak" means "Turks" in Arabic.

[6] *See* **Exh. C-3**, Minutes of the 45th Meeting on the results of the Committee formed for Audit and Review of Outstanding Liabilities of the State's Treasury ("Committee Minutes"), pp. 4-7.

[7] *Id.,* p. 1; **Exh. C-1**, Court Decision; **Exh. C-2**, Settlement Agreement; **Exh. C-3,** Committee Minutes; **Exh. C-4**, Letter from Fattalah Avad Bin Hayal, Director for Legal Proceedings, Derna Directorate, to Deputy Minister, Directorate of Legal Proceeding, dated 7 May 2013 ("Internal Letter dated 7 May 2013").

[8] **Exh. C-1**, Court Decision, pp. 6-7.

[9] It can be inferred from the internal correspondence of Respondent, see **Exh. C-4**, Internal Letter dated 7 May 2013, and **Exh. C-5**, Letter from Bashir Ali Elaktari, Deputy Minister, State Legal Proceedings, Ministry of Justice, to Deputy Minister, Ministry of Finance, dated 29 July 2013 ("Internal Letter dated 29 July 2013").

[10] *See* **Exh. C-2**, Settlement Agreement.

Agreement, Claimant waived 10% of the principal debt and application of the interest for the year following the Libyan revolution.[11] Libya agreed to withdraw its appeal and to make the payment in two installments. The Agreement reads, in pertinent part:

> [Libya] *shall pay the agreed sum after the waiver, a total of LD 5,420,308.707 (Five Million Four Hundred Twenty Thousand Three Hundred Eight Libyan Dinars and 707 Dirhams) in favor of the Second Party in two installments, to the account specified by the Second Party, as follows:*
>
> *- First payment – a sum of LD 2,710,154.354 (Two Million Seven Hundred Ten Thousand One Hundred Fifty Four Libyan Dinars and 354 Dirhams), payable by no later than the end of the first quarter of 2014G.*
>
> *- Second payment – a sum of LD 2,710,154.354 (Two Million Seven Hundred Ten Thousand One Hundred Fifty Four Libyan Dinars and 354 Dirhams), payable by no later than the end of the first half of the coming year, 2014G.*[12]

14. Yet, to date Respondent has made no effort to pay, much less has it actually paid, the amounts due under the Agreement, and in doing so, it has not only ignored the Settlement Agreement but also violated the decision of its own Court. Respondent's disavowals of the Court Decision and the Settlement Agreement are in turn violations of Libya's obligations under the Treaty, customary international law and Libyan law. It is these violations and the dispute arising from them that Claimant now brings before this Tribunal.

IV. JURISDICTION

A. The Parties Consented to ICC Jurisdiction

15. In Article 8 of the Treaty, Respondent consents to arbitrate investment disputes. This Article provides, in relevant part, that if these disputes:

> *2. … cannot be settled in this way within ninety (90) days following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to the competent court of the Contracting Party in whose territory the investment has been made or to international arbitration under:*
>
> *(a) the International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention*

[11] *Id.,* Art. (2).
[12] *Id.,* Art. (3).

> *on Settlement of Investment Disputes Between States and Nationals of other States", in case both Contracting Parties become signatories of this Convention,*
>
> *(b) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).*
>
> *(c) the Court of Arbitration of the Paris International Chamber of Commerce.*[13]

16. The Treaty entered into force on 22 April 2011 and Respondent's consent became effective on that date. With this Request for Arbitration, Claimant elects to submit this dispute to arbitration under the ICC Rules as provided in Article 8(2)(c) of the Treaty and the Parties' consent to arbitration is therefore perfected.

B. There Is a Dispute Between the Parties

17. Article 8(1) of the Treaty provides for the arbitration of "[d]isputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with his investment . . ."[14]

18. Though the term "dispute" is not defined in the Treaty, a "dispute" is recognized to be a "disagreement on a point of law or fact, a conflict of legal views or of interests between two persons."[15] The dispute at issue in this Arbitration arises from Respondent's failure to comply with either the Court Decision or the Settlement Agreement and the resulting violations of international and Libyan law. The dispute between the Parties, as is set out in this Request, thus arises from Libya's breaches of its obligations under the Treaty, customary international law, the Court Decision, the Settlement Agreement and Libyan law.

C. The Dispute Is Between an Investor of a Contracting Party and a Contracting Party (Ratione Personae Jurisdiction)

19. The Treaty's definition of "investor" includes "corporations, firms or business associations incorporated or constituted under the law in force of either of the Contracting Parties and having their headquarters in the territory of that Contracting Party[.]"[16]

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[13] **Exh. CL-1**, Turkey-Libya BIT, Art. 8(2).
[14] *Id.,* Art. 8(1).
[15] *See*, *e.g.*, **Exh. CL-2**, *The Mavrommatis Palestine Concessions*, P.C.I.J. Series A — No2, Collection of Judgments dated 30 August 1924, p. 11.
[16] **Exh. CL-1**, Turkey-Libya BIT, Art. 1(1)(b).

20. Claimant is an "Anonim Şirket" incorporated in the Republic of Turkey and under the laws of the Republic of Turkey and is accordingly an investor as defined in Article 1(1)(b) of the Treaty.

21. Respondent is the Libyan State and thus a party to the Treaty.

D. The Dispute Is Within the Subject-Matter Jurisdiction of the Tribunal (Ratione Materiae Jurisdiction)

i. The Dispute Concerns Investments

22. Article 1(2) of the Treaty defines the term "investment" as:

> *. . . every kind of asset in particular, but not exclusively:*
>
> *(a) shares, stocks or any other form of participation in companies,*
>
> *(b) returns reinvested, claims to money or any other rights having financial value related to an investment,*
>
> (c) *moveable and immovable property, as well as any other rights as mortgages, liens pledges and any other similar rights related to investments as defined in conformity with the laws and regulations of the Contracting Party in whose territory the property is situated*.[17]

23. The Treaty's definition of "investments" includes "returns reinvested, claims to money or any other rights having financial value related to an investment."[18] The Court Decision and the Settlement Agreement are assets that provide Claimant with rights having financial value, and they are related to Claimant's initial investments in large-scale construction and infrastructure projects in Libya. The Court Decision and Settlement Agreement, therefore, clearly fall within the Treaty's definition of "investments." The dispute before this Tribunal solely concerns these investments.

24. Accordingly, since: (1) the Treaty has an expansive definition of what qualifies as an "investment;" and (2) the nature of Claimant's investment activities are explicitly referred to as "investments" in the Treaty's non-exhaustive list of what qualifies as an "investment," there can be no question that Claimant's entitlements to rights under the Court Decision and Settlement agreement are "investments" for the purposes of the Treaty.

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[17] **Exh. CL-1,** Turkey-Libya BIT, Art. 1(2).
[18] *Id.,* Art. 1(2)(b).

ii. This Tribunal Has Jurisdiction Over Disputes Arising from the Treaty

25. Claimant submits that Respondent has violated its obligation to provide fair and equitable treatment, including its obligations not to deny justice[19] and not to expropriate investors' assets without compensation.[20] Claimant's claims for these violations are based on the protections provided for in the Treaty. Accordingly, this Tribunal has jurisdiction over these claims.

iii. Jurisdiction Under the Treaty Extends to Contractual Claims

26. Article 3 of the Treaty contains a two-part most favored nation (or "MFN") clause, which provides:

> 2. *Neither Contracting Party shall in its territory subject investments or returns of investors of other Contracting Party to treatment less favorable that that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is the most favorable.*
>
> 3. *Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards management, use, enjoyment or disposal of their investments to treatment less favorable than that which it accords to its own investors or to investors of any third State, whichever is the most favorable.*[21]

27. This clause clearly allows for the importation of provisions from other bilateral investment treaties to which Libya is a party if those provisions afford more investment protection than the base Treaty, *i.e.,* the Turkey-Libya BIT.

28. The Agreement between the Republic of Austria and the Great Socialist People's Libyan Arab Jamahiriya for the Promotion and Protection of Investments (the "Austria-Libya BIT") includes an "umbrella" clause which provides that:

> *Each Contracting party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party.*[22]

29. This clause provides greater investment protection than that afforded to Turkish investors under the Turkey-Libya BIT as it imposes a specific duty on Libya to observe all contractual obligations and other specific

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[19] **Exh. CL-1**, Turkey-Libya BIT, Art. 2(2).
[20] *Id.*, Art. 4.
[21] *Id.,* Art. 3(2) and (3).
[22] **Exh. CL-3**, Austria-Libya BIT, Art. 8(1).

commitments entered into by it through legislation or otherwise. By virtue of the MFN clause in the Turkey-Libya BIT, Turkish investors, such as Claimant, must be afforded the same protection offered to Austrian investors. Respondent is thus obligated to observe its contractual or other specific commitments with regard to Claimant's investment.

iv. Article 8 Provides for Arbitration of Any Dispute in Connection with the Investment, Including Contractual Disputes

30. Article 8 of the Treaty defines its subject matter jurisdiction by making reference to the *"Disputes between one of the Contracting Parties and an investor of the other Contracting Party in connection with his investment*[.]*"*[23] The scope of jurisdiction of a tribunal constituted under Article 8 is thus not limited to disputes arising under the Treaty or international law, but rather also extends to contract disputes.[24]

E. This Tribunal Has Ratione Temporis Jurisdiction

31. The Treaty became effective on 22 April 2011. As provided in Article 10 of the Treaty, the dispute resolution provisions contained in Article 8 apply to any dispute that arose after the Treaty's effective date regardless of the date of the underlying investment.[25]

32. Claimant initiated its court case in 2012, the Court rendered its decision on 29 October 29 2012,[26] and the Settlement Agreement was signed on 9 December 2013.[27] Therefore, this dispute, which arises wholly out of Respondent's failure to comply with the Court Decision and the Settlement Agreement, arose after the effective date of the Treaty and this dispute is within this Tribunal's *ratione temporis* jurisdiction.

F. Claimant Requested Consultations with Respondent

33. Article 8 of the Treaty requires that, prior to initiating an arbitration, an investor must give the respondent written notification of the dispute, including detailed information, "endeavour[ing] to settle these disputes by consultations and negotiations in good faith," and must wait during the prescribed 90-day "cooling-off period."[28]

34. On 15 April 2016, Claimant sent a letter notifying Respondent of this dispute and seeking an amicable resolution thereof to Abdurrazaq

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[23] **Exh. CL-1**, Turkey-Libya BIT, Art. 8(1).
[24] For a similar interpretation *See, e.g.,* **Exh. CL-4**, *SGS Société Générale de Surveillance S.A. v. Republic of the Philippines,* ICSID Case No. ARB/02/6, Decision of the Tribunal on Objections to Jurisdiction, dated 29 January 2004, ¶¶ 130-135.
[25] **Exh. CL-1**, Turkey-Libya BIT, Art. 10.
[26] **Exh. C-1**, Court Decision.
[27] **Exh. C-2**, Settlement Agreement.
[28] *See* **Exh. CL-1**, Turkey-Libya BIT, Art. 8(1) and (2).

Mukhtar Ahmed Abdulgader, Ambassador of the State of Libya to the Republic of Turkey, with copies to: Abdullah Al-Thani, Prime Minister of the State of Libya; Minister Kamal Al-Hassi, Minister of Finance and Planning of the State of Libya; Mohamed Al-Dairi, Minister of Foreign Affairs of the State of Libya; Ambassador Ibrahim O. A. Dabbashi, Permanent Representative of the State of Libya to the United Nations; Abdul Mohsen R. Ghoneim, Consul General of the State of Libya to Istanbul, Republic of Turkey; Wafa M.T. Bughaighis, Chargé d'affaires of the State of Libya to the United States of America and Alshiabani Mansour Abuhamoud, Ambassador of the State of Libya to France.[29]

35. The letter clearly sets out the current dispute, the basis for Claimant's request for compensation and states that "[i]n a sincere, good faith effort to resolve this dispute through negotiations and pursuant to Article 8 of the Agreement, Etrak respectfully requests that the duly authorized representatives of Libya meet at the earliest opportunity with representatives of Etrak to engage in consultations and negotiations with the aim of settling the Dispute."[30] The letter further states that "Etrak reserves its right to amend and further develop the basis of its claims in the event that the negotiations do not result in an amicable settlement and the Dispute is submitted to international arbitration."[31]

36. Notice was undeniably served on Respondent's representatives in April 2016 when its representatives received Etrak's letter notifying Libya of this dispute under the Treaty.[32] More than 90 days have passed since all recipients received this letter and Respondent has not answered Claimant's request for amicable negotiations of this dispute. The cooling off period provided for in the Treaty has therefore elapsed, Claimant has fulfilled its obligations under Article 8 and this dispute is ripe for arbitration.

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[29] **Exh. C-6**, Notice of Dispute dated 15 April 2016 ("Notice of Dispute"). On 22 April 2016, Claimant sent an identical letter to The Honorable Fayez Al Sarraj, Prime Minister of the State of Libya, with copies to Abdel Rahman Mohamed Shamileh, Director of the Litigation Department, Foreign Disputes Committee, State of Libya and Saddek Omar Elkaber, Governor of Central Bank of Libya. *See* **Exh. C-7**.

[30] [30] **Exh. C-6**, Notice of Dispute.

[31] *Id.*

[32] *See* **Exh. C-8**, Delivery documents received by DHL showing the Letter addressed to Embassy of Libya to the USA delivered on 19 April 2016; Letter addressed to Permanent Representative of Libya to the UN delivered on 18 April 2016; Letter addressed to Libyan Embassy in France delivered on 18 April 2016; Letter addressed to Libyan Embassy in Turkey delivered on 18 April 2016; Letter addressed to Director of Foreign Disputes Committee in Tripoli, Libya delivered on 02 May 2016; Letter addressed to Consulate General of Libya in Istanbul, Turkey delivered on 18 April 2016; Letter addressed to Governor of the Central Bank of Libya delivered on 27 April 2016; Letter addressed to Minister of Finance and Planning of Libya delivered on 19 April 2016; Letter addressed to Abdullah al-Thani delivered on 19 April 2016; Letter addressed to Minister of Foreign Affairs of Libya delivered on 19 April 2016; Letter addressed to Fayez al-Sarraj delivered on 02 May 2016.

V. COMPOSITION OF THE TRIBUNAL AND OTHER RELATED MATTERS

A. Number of Arbitrators

37. The Treaty's dispute resolution clause does not specify the number of arbitrators that should be appointed. Given the magnitude and nature of the dispute, and especially the fact that the dispute is brought pursuant to a bilateral investment treaty, Claimant submits that any disputes between the Parties should be resolved by a tribunal comprised of three arbitrators pursuant to Article 12(2) of the ICC Rules.

38. Anticipating such a determination, Claimant nominates as its party-appointed arbitrator John M. Townsend. Mr. Townsend's contact details are as follows:

John M. Townsend
Hughes Hubbard & Reed LLP
1775 I Street, N.W. Suite 600
Washington, D.C. 20006-2401
United States of America
E-mail: john.townsend@hugheshubbard.com
Telephone: +1 (202) 721-4640

B. Place of Arbitration

39. Article 8 of the Treaty is silent as to the place of ICC Arbitration. Claimant submits that the place of arbitration should be Geneva, Switzerland because: (1) Geneva is a preferred venue for arbitration; (2) Swiss procedural law governing international arbitration is highly developed and (3) the Swiss judiciary is knowledgeable and has the necessary expertise in international arbitration.

C. Language of Arbitration

40. The Treaty's dispute resolution clause does not specify the language of arbitration. Considering the international nature of the dispute and Article 20 of the ICC Rules, Claimant submits that English should be the language of the arbitration.

VI. APPLICABLE LAW

41. The relevant investment treaties between Turkey and Libya, customary international law, and the relevant rules of Libyan law form the law applicable to this dispute.

42. The Treaty has been applicable since its effective date: 22 April 2011. The rules of other treaties, including but not limited to the Austria-Libya

BIT, are also part of the applicable law by virtue of the Most Favored Nation clause of the Treaty.

VII. SUBSTANTIVE CLAIMS

A. Background Facts

43. For more than 25 years, Etrak has been continuously but unsuccessfully trying to collect receivables from Respondent. The existence of these receivables is not disputed. The fact that Claimant completed its obligations and is owed the receivables is not disputed. Indeed, as discussed below, Respondent has affirmed and re-affirmed the existence of this debt to Etrak no less than three times by three different state entities.

44. Etrak, like many other Turkish contractors, was unsuccessful in its efforts to collect its receivables under the payment terms of its contracts. In recognition of the sheer volume of Turkish contractors that had gone unpaid by Libya, the governments of Turkey and Libya entered into a Protocol regarding numerous unpaid receivables owed by Libya to Turkish companies in 1994.[33] In this Protocol, Respondent recognized its outside liabilities and agreed to fulfill its payment obligations to Etrak and the other contractors starting from January 1995.[34] However, Respondent never complied with this Protocol.

45. Claimant nevertheless continued to doggedly pursue its receivables and in 2005 applied to the Libyan Treasury for payment thereof. This attempt, too, was unsuccessful.

46. In 2007, the Ministry of Finance, recognizing Libya's liability to Etrak and the other contractors for a second time, established a committee for the Audit and Review of Outstanding Liabilities of the State's Treasury (the "Committee") to audit the debts of foreign companies such as Etrak.[35] The Committee audited Etrak's debts and even after including some amounts which should not have been included, nevertheless found that Libya was indebted to Etrak and concluded on 17 December 2008 as follows:

> *It is the opinion of the Committee to take necessary action to pay the value of the indebtedness amounting to LD 1,721,389.823 (One Million Seven Hundred Twenty One Thousand Three Hundred Eighty Nine Libyan Dinars and 823 Dirhams), subject to recognized accounting practices, and subject to acknowledgment by the Treasury Department that*

[33] **Exh. C-9**, Intergovernmental Protocol produced in the 18th Period of Turkey-Libya Joint Economic Commission Meeting held in Tripoli between 18-22 December 1994 ("Intergovernmental Protocol").
[34] *Id.,* II (1).
[35] *See* **Exh. C-3**, Committee Minutes, p. 3.

> *this indebtedness was not previously settled and disbursed either by agreements, or by direct debit, and that there are no outstanding obligations to other service departments.*[36]

47. Nevertheless, even after establishing the Committee and confirming the existence and amount of receivables owed to Claimant, once again Respondent failed to perform its obligations and pay the amounts owed.

48. Finally, in 2012, Claimant decided to seek justice from the Libyan domestic courts and initiated an action against the Libyan authorities, primarily on the basis of the report prepared by the Committee.[37] The Court, recognizing Libya's liability toward Etrak for a third time, found in favor of Claimant and held that it was entitled to unpaid receivables, guarantees, lost profits and damages, interest, and taxes and court fees. [38] The Court then ordered Respondent to pay Etrak 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.[39] The court fixed the currency exchange rate at 1 LD = 3.34 USD.[40]

49. In May 2013, Respondent's Director of Legal Proceedings recognized that there was no chance of a successful appeal of the Court Decision and informed the General Director of Legal Proceedings in Tripoli that:

> *It is our opinion that although the ruling was issued in absentia against the Libyan Government, the basis of the ruling is valid and supported, whereas the ruling states that the government department was in breach of a contractual obligation, namely delay in payment of the contractual entitlements of the company, as shown in the documents issued by it and attached therewith, for a period in excess of ten years. This was taken as basis for the court ruling to pay the outstanding principle amount plus compensation.*
>
> *Whereas the Branch was served notice of the ruling and had resolved to appeal it in the Civil Circuit at Jabal Alakhdar Court of Appeals, the Company is likely to win the case for lack of serious cause to rescind or amend the ruling of the Court of First Instance.*
>
> *Therefore, we recommend to refer the matter to the Undersecretary of the Ministry of Finance to approve settlement with the company and pay its contractual*

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[36] *Id.,* p. 10.
[37] In addition to the Committee Minutes, an additional receivable arising from Contract numbered 5/1986 formed part of the claim. *See* **Exh. C-1**, Court Decision, p. 4.
[38] *See* **Exh. C-1**, Court Decision
[39] *Id.,* p. 7,
[40] This rate reflects that in the Intergovernmental Protocol. *See* **Exh. C-9**, Intergovernmental Protocol, p. 3.

> *obligations. This matter is referred to you for action, which is within your jurisdiction.*[41]

50. Thus, in the spring of 2013, the Ministry of Finance approached Etrak and initiated settlement negotiations verbally.[42] Despite the fact that Etrak considered the deductions made by the court excessive, in order to settle the matter expeditiously and hoping to finally be paid for work it completed more than two decades prior, Etrak agreed to Libya's negotiation request. As a result of these negotiations the Parties entered into the Settlement Agreement on 9 December 2013.[43]

51. Under the Settlement Agreement, Respondent agreed to make payments in two installments. The first installment in the amount of LD 2.710,154.354 was to be paid in March 2014 and the second installment in the amount of LD 2,710,154.354 was to be paid in June 2014.[44]

52. Respondent failed to pay either installment, in complete disregard of both the Court Decision and the Settlement Agreement. Through personal visits by Mr. Ziya Günay to the Treasury Department and via numerous letters, Claimant has repeatedly requested that Respondent make payment.[45] However, these attempts have proved futile and the amounts due to Claimant remain entirely unpaid.

B. Respondent Violated Obligations Not to Expropriate Claimant's Investments without Compensation

53. Respondent has an obligation, under the Treaty and customary international law, not to expropriate Claimant's investments without providing adequate, prompt compensation.

54. Article 4 of the Treaty provides:

> *1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effects except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article 3 of this Agreement.*

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[41] **Exh. C-4**, Internal Letter dated 7 May 2013.
[42] *See* **Exh. C-10**, Letter from the Deputy Minister of Finance to the Director of Legal Proceedings, Ministry of Justice, dated 9 October 2013 (forwarding draft of Settlement Agreement and requesting approval of same).
[43] **Exh. C-2**, Settlement Agreement.
[44] **Exh. C-2**, Settlement Agreement.
[45] *See* **Exh. C-11**, Letter from Halit Ziya Günay to Ministry of Finance, dated 01 November 2015; **Exh. C-12**, Letter from Halit Ziya Günay to Legal Department of Ministry of Finance, dated 06 December 2015; **Exh. C-13**, Letter from Ziya Günay to Legal Department, Ministry of Finance, dated 20 December 2014.

> *2. Compensation shall be equivalent to the market value of the expropriated investment before the expropriatory action was taken or become known. Compensation shall be paid without delay and be freely transferable as described in paragraph 2 Article 6.*
>
> *3. In the event that payment of compensation is delayed it shall carry an interest at a rate to be agreed upon by both parties unless such rate is prescribed by law from the date of expropriation until the date of payment.*[46]

55. Claimant's receivables under the Court Decision and the Settlement Agreement constitute "*claims to money*" or "*a right having financial value related to Claimant's greater investment,"* and as such are investments under the Treaty. As will be proven during this Arbitration, Respondent has expropriated those investments.

56. Respondent has not complied with the Court Decision. Rather than pay the sums owed, it induced Claimant to enter into the Settlement Agreement and then failed to perform its obligations under that Agreement. This failure to comply with the terms of the Court Decision by payment or settlement amounts to an expropriation of Claimant's investment in the Court Decision.

57. Alternatively, should the Tribunal find that Libya complied with the Court Decision by the mere fact of entering into the Settlement Agreement, and Claimant respectfully submits that the Tribunal should not do so, Libya's breach the Settlement Agreement itself is an expropriation of Claimant's investment in the Settlement Agreement.

C. Respondent Violated Its Obligation to Provide Fair and Equitable Treatment

58. Respondent has an obligation to provide fair and equitable treatment under the Treaty and to provide the equivalent form of protection under customary international law.

59. Article 2(2) of the Treaty provides:

> *Investments of investors of each Contracting Party shall at all times be accorded **fair and equitable treatment** and shall enjoy full protection in the territory of the other Contracting Party.*[47]

60. Under the principle of fair and equitable treatment, the host State must respect the legitimate expectations of the investor and comply with the

[46] **Exh. CL-1**, Turkey-Libya BIT, Art. 4.
[47] **Exh. CL-1**, Turkey-Libya BIT, Art. 2(2) (emphasis added).

principles of due process in its administrative decision-making.[48] The host State must act in a consistent manner, free from ambiguity, and with transparency.[49] The acts of the host State must not be arbitrary and discriminatory.[50] And finally, governmental prerogative must be used in a reasonable manner so as not to undermine the basic expectations of the investor. As summarized by one distinguished Tribunal:

> *… the fair and equitable standard consists of the host State's consistent and transparent behavior, free of ambiguity that involves the obligation to grant and maintain a stable and predictable legal framework necessary to fulfill the justified expectations of the foreign investor.*[51]

61. Moreover, under the principle of fair and equitable treatment, the host State is under an obligation not to deny justice and to ensure the proper administration of justice towards foreigners.[52] This entails an obligation to maintain and make available to foreign investors a fair and effective system of justice from the beginning of the judicial process to the execution of the final judgment obtained by the foreign investor and beyond.[53]

> *The concepts of "due process" and "denial of justice" are closely linked. A failure to allow a party due process will often result in a denial of justice. The United States Model BIT of 2004 states that FET includes "the obligation not to deny justice…in accordance with the principles of due process…." The Claimants have addressed the two concepts simultaneously in their submissions.*[54]

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[48] *See* **Exh. CL-5**, *Técnicas Medioambientales Tecmed, S.A. v. The United Mexican States*, ICSID Case No. ARB (AF)/00/2, Award dated 29 May 2003, ¶ 154.
[49] *See id.*
[50] **Exh. CL-6**, *In the Proceedings of Noble Ventures, Inc. and Romania*, ICSID Case No. ARB/01/11, Award dated 12 October 2005, ¶ 182.
[51] **Exh. CL-7**, *In the Proceedings of LG&E Capital Corp. and LG&E International Inc. v. Argentine Republic*, ICSID Case No. ARB/02/1, Decision on Liability dated 3 October 2006, ¶ 131.
[52] *See* **Exh. CL-8**, *Jan Oostergetel and Theodora Laurentius v. The Slovak Republic,* UNCITRAL Final Award dated 23 April 2012, ¶ 272 ("Although the BIT does not specifically refer to the concept of denial of justice, the Tribunal, in line with other tribunals and established doctrine, considers it to be comprised in the FET standard."); **Exh. CL-9**, *Rupert Binder v. Czech Republic*, UNCITRAL, Final Award (Redacted) dated 15 July 2011, ¶ 448 ("If the courts are unable to give effect to the law in an impartial and fair manner, the investor may find himself in a situation of denial of justice which is clearly incompatible with the notion of fair and equitable treatment.").
[53] **Exh. CL-10**, Jan Paulsson, DENIAL OF JUSTICE IN INTERNATIONAL LAW, Cambridge University Press, 2005, pp. 168-170 and p. 169 ("It is essential that the duty is understood as extending beyond the formal judicial order of execution; that may be only the beginning of the judgment creditor's travails.").
[54] **Exh. CL-11**, *In the Proceeding Between Waguih Elie George Siag & Clorinda Vecchi and Arab Republic of Egypt*, ICSID Case No. ARB/05/15, Award dated 1 June 2009, ¶ 452.

62. Respondent continuously failed to make the payments to Claimant, even after these obligations were approved by the Minutes of the 45th Meeting on the results of the Committee.[55] Claimant then sought relief in the Bayda Court of First Instance on 29 October 2012,[56] and following a decision in its favor, agreed to a settlement with the Ministry of Finance on 9 December 2013.[57] At each step, Claimant refrained from taking any steps to request enforcement measures against Respondent with the hope that Respondent would act in accordance with the decisions and finding of its own court or ministries. It never did so, and by failing to adhere to the determinations of its own court and ministries, Respondent failed to act transparently, acted against due process, acted arbitrarily and frustrated Claimant's legitimate expectations, all in violation of its obligation to provide fair and equitable treatment.

63. More importantly, Respondent's failure to comply with the Court Decision violates its obligation not to deny justice to Claimant. It is even more striking that Respondent has done so despite the effective adjudication by its own judiciary. Considering that the decision given by the Bayda Court is unequivocal and that the Ministry of Finance has acknowledged the content of the decision by entering into a settlement agreement verifying the decision,[58] there is no reasonable ground on which Respondent may delay the execution of the Court Decision. These acts have violated Respondent's obligation not to deny justice to investors, and as such constitute yet another violation of Respondent's fair and equitable treatment obligation.

D. Respondent Failed to Observe All Obligations that It Entered into with Respect to Claimant's Investments

64. Respondent must observe all obligations it has entered into with respect to an investment. This obligation is contained in Article 8(1) of the Austria-Libya BIT which applies to this dispute by the MFN clause of the Turkey-Libya BIT.[59]

65. Article 8(1) of the Austria-Libya BIT provides:

> *Each Contracting party shall observe any obligation it may have entered into with regard to specific investment by investors of the other Contracting Party.*[60]

66. This provision extends to contractual obligations; therefore, a breach of a contractual obligation owed to an investor also constitutes a breach of the Turkey-Libya BIT.

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[55] **Exh. C-3**, Committee Minutes, p. 11.
[56] **Exh. C-1**, Court Decision, pp. 6-7.
[57] **Exh. C-2**, Settlement Agreement, Preamble and Article (1).
[58] **Exh. C-2**, Settlement Agreement.
[59] *See* **Exh. CL-3**, Austria-Libya BIT, Art. 8(1); **Exh. CL-1**, Turkey-Libya BIT, Art. 3(1) and (2).
[60] **Exh. CL-3**, Austria-Libya BIT, Art. 8(1).

67. Respondent violated this obligation by failing to comply with the Court Decision. This Decision clearly created a specific obligation in favor of Claimant arising from its investment. Respondent's subsequent non-performance of the Settlement Agreement is a further violation of this obligation.

68. Indeed, the Settlement Agreement appears to have been little more than an attempt by Respondent to escape its obligations under the Court Decision and as such does not appear to have been entered into in good faith by Respondent. Respondent has not paid a single dirhem of the compensation it was ordered to pay by its own Court. Had Respondent entered into and performed its obligations under the Settlement Agreement in good faith, that could have constituted compliance with the Court Decision, and this dispute would not now be before this Tribunal. However, Respondent has not complied with the Court Decision, and by failing to do so, has breached not only the obligations contained in the Decision itself but also in the Treaty.

69. Alternatively, should the Tribunal find that the Settlement Agreement obviates the obligations owed by Respondent to Claimant in the Court Decision, Respondent has nevertheless breached its obligations owed to Claimant under the Settlement Agreement.

70. The Settlement Agreement includes a specific commitment entered into by the Ministry of Finance[61] to pay the settlement amount. This is clearly an obligation within the meaning of Article 8(1), and as such, Respondent's failure to comply with it constitutes a breach of the Treaty.

E. Respondent Breached Its Contractual Obligations

71. As explained above in paragraph 30 above, all disputes in connection with an investment may be brought before a treaty tribunal established under the Treaty. The broad dispute resolution clause in the Treaty allows purely contractual claims to be arbitrated by the treaty tribunal. Therefore, Claimant invokes all violations of the Settlement Agreement summarized in paragraphs 67 to 70 not only as breaches of the umbrella

[61] **Exh. C-2**, Settlement Agreement, Art. (3); **Exh. CL-12**. *See also* Draft Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission on the Work of its Fifty-third Session, UN GAOR, 56th Session, Supp. No. 19, at 43, UN Doc A/56/10(2001), ("ARSIWA"), Art. 4 and Commentary to Art. 4 (Conduct of organs of a State) in general, and paragraph 6 more particularly (explaining that "the reference to a State organ in article 4 is intended in the most general sense" and "extends to organs of government of whatever kind or classification, exercising whatever functions, and at whatever level in the hierarchy…"); **Exh. CL-13**, *In the Proceeding Between Azurix Corp. and Argentine Republic*, ICSID Case No. ARB/01/12, Award dated 14 July 2006, ¶ 50 ("The responsibility of States for acts of its organs and political subdivisions is well accepted under international law. The Draft Articles, as pointed out by the Claimant, are the best evidence of such acceptance and as such have been often referred to by international arbitral tribunals in investor-State arbitration.")

clause – *i.e.*, as treaty claims – but also as contractual claims, as breaches of the Settlement Agreement itself.

VIII. MORAL DAMAGES

72. Under international law, it is an established principle that a State responsible for violations of international law "is under an obligation to make full reparation for the injury caused by the internationally wrongful act."[62] The injury to be repaired includes "any damage, whether material or moral[.]"[63] Consequently, in line with this principle, numerous arbitral tribunals have recognized that moral damages can be awarded in cases where the State's conduct is particularly egregious and have awarded such damages.[64]

73. Libya's conduct of affirming, but refusing to pay, debts it owed to Etrak over a 25 year period rises to the level of conduct that warrants the awarding of moral damages. In particular, Respondent has repeatedly acknowledged that Claimant performed its obligations, acknowledged that Respondent owes Claimant for its receivables and promised to pay Respondent, yet failed to do so. This long history culminated in Libya's inducement of Etrak to sign a Settlement Agreement which Libya apparently had no intention of performing.

74. These failings caused Claimant to suffer moral damages in the form of severe economic distress that ultimately rendered it unable to obtain credit or to continue operating. This in turn led to a loss of Claimant's reputation and good will. Moreover, Claimant's shareholders and executives suffered the stress and anxiety associated with the more than 25 years of struggle they have had to endure in their effort to collect sums Libya has repeatedly acknowledged it owes to Claimant.

IX. QUANTUM

75. As a result of Respondent's breaches of the Treaty, customary international law, the Court Decision, the Settlement Agreement and Libyan law, Claimant has suffered, and continues to suffer, losses that are no less than USD 22,593,445. In addition, Claimant has and continues to suffer, no less than USD 3,000,000 in moral damages.

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[62] **Exh. CL-12**, ARSIWA, Art. 31(1).
[63] *Id.,* Art. 31(2).
[64] **Exh. CL-14**, *Desert Line Projects LLC v. The Republic of Yemen*, ICSID Case No. ARB/05/17, Award dated 6 February 2008, ¶¶ 289-291; **Exh. CL-15**, *In the Arbitral Proceeding Between Mohamed Abdulmohsen Al-Kharafi & Sons Co. and The Government of the State of Libya, The Ministry of Economy in the State of Libya, The General Authority for Investment Promotion and Protection Affairs, Ministry of Finance in Libya and The Libyan Investment Authority*, Final Arbitral Award dated 22 March 2013, pp. 369-370 and 385.

X. CLAIMS FOR RELIEF

76. Respondent's violations of the Treaty, customary international law, the Court Decision, the Settlement Agreement and Libyan law have caused significant damages to Claimant. Respondent is obliged to provide Claimant with full compensation for these damages.

77. Claimant, accordingly, requests that the Arbitral Tribunal grant the following relief in favor of Claimant:

a. Find and declare that Respondent has violated its obligations under the Treaty and customary international law as a result of non-compliance with the Court Decision and/or the Settlement Agreement;

b. Alternatively, find and declare that Respondent has violated its specific obligations contained in the Court Decision or the Settlement Agreement, and thus the so-called umbrella clause obligation under the Treaty by virtue of the MFN clause thereof;

c. Alternatively, find and declare, as a matter of contract, that Respondent has violated its obligations contained in the Settlement Agreement itself;

d. Award compensation to Claimant for its damages, currently estimated to be no less than USD 22,593,445, resulting from the non-performance of the Court Decision in line with the finding and declaration of violation as per "a" or "b" above;

e. Alternatively, award compensation of no less than USD 20,561,280 as a result of Respondent's non-performance of the Settlement Agreement *per se* in line with the finding and declaration of violation as per "a," or "b," or "c" above;

f. Award moral damages to Claimant in an amount no less than USD 3,000,000;

g. Award Claimant all costs and fees incurred in connection with this Arbitration;

h. Award Claimant pre-award and post-award interest at a rate to be compounded and fixed by the Arbitral Tribunal; and

i. Award Claimant any other relief to which it may be entitled in law or equity.

XI. RESERVATION OF RIGHTS AND FUTURE SUBMISSIONS

78. Claimant expressly reserves all of its rights under the Treaty and the Settlement Agreement and all other rights that it has or may have under law, equity and otherwise.

79. Claimant also hereby expressly reserves the right to further amend, supplement and augment its claims and to submit such further pleadings, arguments, exhibits and evidentiary materials as may be appropriate, including but not limited to witness statements, expert witness statements and studies, and oral testimony, as Claimant may in its judgment, deem appropriate or as may be required to respond to any claim, allegation or defense that may be advanced by Respondent.

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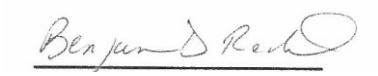

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For and on Behalf of Etrak Taahhüt ve Ticaret Anonim Şirketi