INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands
Tel.: +31 (0)70 302 2323 Fax: +31 (0)70 364 9928
Website: www.icj-cij.org

Press Release
Unofficial

No 2009/36
22 December 2009

Belgium initiates proceedings against Switzerland in respect of a dispute concerning the interpretation and application of the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters

THE HAGUE, 22 December 2009. The Kingdom of Belgium initiated proceedings yesterday before the International Court of Justice (ICJ) against the Swiss Confederation in respect of a dispute concerning:

> "the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters . . ., and the application of the rules of general international law that govern the exercise of State authority, in particular in the judicial domain, [and relating to] the decision by Swiss courts not to recognize a decision by Belgian courts and not to stay proceedings later initiated in Switzerland on the subject of the same dispute".

In its Application Belgium states that the dispute in question "has arisen out of the pursuit of parallel judicial proceedings in Belgium and Switzerland" in respect of the civil and commercial dispute between the "main shareholders in Sabena, the former Belgian airline now in bankruptcy". The Swiss shareholders in question are SAirGroup (formerly Swissair) and its subsidiary SAirLines; the Belgian shareholders are the Belgian State and three companies in which it holds the shares.

The Applicant affirms that "in connection with the Swiss companies' acquisition of equity in Sabena in 1995 and with their partnership with the Belgian shareholders, contracts were entered into, between 1995 and 2001, for among other things the financing and joint management of Sabena" and that this set of contracts "provided for exclusive jurisdiction on the part of the Brussels courts in the event of dispute and for the application of Belgian law".

Belgium states in its Application that, "on 3 July 2001, taking the position that the Swiss shareholders had breached their contractual commitments and non-contractual duties, causing [the Belgian shareholders] injury", the Belgian shareholders sued the Swiss shareholders in the commercial court of Brussels, seeking damages to compensate for the lost investments and for the expenses incurred "as a result of the defaults by the Swiss shareholders". After finding jurisdiction in the matter, that court "found various instances of wrongdoing on the part of the Swiss shareholders but rejected the claims for damages brought by the Belgian shareholders". Both Parties appealed against this decision to the Court of Appeal of Brussels, which in 2005 by partial judgment upheld the Belgian courts' jurisdiction over the dispute on the basis of the Lugano Convention. The proceedings on the merits are pending before that court and the case will be pleaded there in February and May 2010.

In various proceedings concerning the application for a debt-restructuring moratorium (*sursis concordataire*) submitted by the Swiss companies to the Zurich courts, the Belgian shareholders sought to declare their debt claims against them. It is asserted that the Swiss courts, including in particular the Federal Supreme Court, have however refused to recognize the future Belgian decisions on the civil liability of the Swiss shareholders or to stay their proceedings pending the outcome of the Belgian proceedings. According to Belgium, these refusals violate various provisions of the Lugano Convention and "the rules of general international law that govern the exercise of State authority, in particular in the judicial domain".

The Applicant states that its Ambassador to the Swiss Confederation informed the Swiss Minister for Foreign Affairs on 29 June 2009 of Belgium's intention to refer the dispute to the International Court of Justice. On 26 November 2009 Belgium's embassy in Berne confirmed this intention by note verbale, asking to be informed of the Swiss authorities' position on such a procedure.

To found the jurisdiction of the Court, Belgium cites solely the unilateral declarations recognizing the compulsory jurisdiction of the ICJ made by the Parties pursuant to Article 36, paragraph 2, of the Statute of the Court, on 17 June 1958 (Belgium) and 28 July 1948 (Switzerland), and still in effect. The Applicant notes that the Lugano Convention "contains no dispute settlement clause" placing conditions on recourse to the ICJ and that the Court of Justice of the European Communities "is without jurisdiction in the area".

Concluding its Application, Belgium requests the Court to adjudge and declare that:

— "the Court has jurisdiction to entertain the dispute between [Belgium and Switzerland] concerning the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, and of the rules of general international law governing the exercise by States of their authority, in particular in the judicial domain;

— Belgium's claim is admissible;

— Switzerland, by virtue of the decision of its courts to hold that the future decision in Belgium on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) will not be recognized in Switzerland in the SAirGroup and SAirLines debt-scheduling proceedings, is breaching the Lugano Convention, and in particular Articles 1, second paragraph, provision (2); 16 (5); 26, first paragraph; and 28;

— Switzerland, by refusing to stay the proceedings pursuant to its municipal law in the disputes between, on the one hand, the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) and, on the other, the estates (*masses*) of SAirGroup and SAirLines, companies in debt-restructuring liquidation (*liquidation concordataire*), specifically on the ground that the future decision in Belgium on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) will not be recognized in Switzerland in the SAirGroup and SAirLines debt-scheduling proceedings, is breaching the rule of general international law that all State authority, especially in the judicial domain, must be exercised reasonably;

— Switzerland, by virtue of the refusal by its judicial authorities to stay the proceedings in the disputes between, on the one hand, the Belgian State and

Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) and, on the other, the estates (*masses*) of SAirGroup and SAirLines, companies in debt-restructuring liquidation (*liquidation concordataire*), pending the conclusion of the proceedings currently taking place in the Belgian courts concerning the contractual and non-contractual liability of SAirGroup and SAirLines to the first-cited parties, is violating the Lugano Convention, and in particular Articles 1, second paragraph, provision (2); 17; 21; and 22; as well as Article 1 of Protocol No. 2 on the uniform interpretation of the Lugano Convention;

— Switzerland's international responsibility has been engaged;

— Switzerland must take all appropriate steps to enable the decision by the Belgian courts on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) to be recognized in Switzerland in accordance with the Lugano Convention for purposes of the debt-scheduling proceedings for SAirLines and SAirGroup;

— Switzerland must take all appropriate steps to ensure that the Swiss courts stay their proceedings in the disputes between, on the one hand, the Belgian State and Zephyr-Fin, S.F.P. and S.F.I. (since merged, having become SFPI) and, on the other, the estates (*masses*) of SAirGroup and SAirLines, companies in debt-restructuring liquidation (*liquidation concordataire*), pending the conclusion of the proceedings currently taking place in the Belgian courts concerning the contractual and non-contractual liability of SAirGroup and SAirLines to the first-cited parties."

Belgium further requests that the case be heard by a chamber of the Court, in accordance with Article 26, paragraphs 2 and 3, of the Statute of the Court and with Article 17, paragraph 1, of the Rules of Court. Lastly, the Applicant reserves the right to ask the Court to indicate provisional measures, "depending on further developments in the proceedings now pending in Switzerland and Belgium".

The complete text of Belgium's Application will soon be available on the Court's website (www.icj-cij.org).

Information Department:

Mr. Andrey Poskakukhin, First Secretary of the Court, Head of Department (+31 (0)70 302 2336)
Messrs. Boris Heim and Maxime Schouppe, Information Officers (+31 (0)70 302 2337)
Ms Joanne Moore, Associate Information Officer (+31 (0)70 302 2394)
Ms Barbara Dalsbaek, Administrative Assistant (+31 (0) 70 302 2396)