INTERNATIONAL COURT OF JUSTICE

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Press Release

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Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland)

Case removed from the Court's List at the request of Belgium

THE HAGUE, 12 April 2011. Further to a request to such effect from the Kingdom of Belgium, by Order dated 5 April 2011, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, has removed from its General List the case concerning Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Belgium v. Switzerland).

It is recalled that on 21 December 2009, the Kingdom of Belgium instituted proceedings 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 . . ., as well as the application of the rules of general international law governing the exercise of State authority, in particular in judicial matters[, and] relat[ing] to the decision by Swiss courts not to recognize a judgment of the Belgian courts and not to stay proceedings which were later initiated in Switzerland on the subject of the same dispute".

By letter dated 21 March 2011 and received in the Registry the same day by facsimile, the Agent of Belgium, referring to Article 89 of the Rules of Court, informed the Court that his Government "in concert with the Commission of the European Union, considers that it can discontinue the proceedings instituted [by Belgium] against Switzerland" and requested the Court "to make an order recording Belgium's discontinuance of the proceedings and directing that the case be removed" from the Court's General List.

In his letter, the Agent cited as the reason for the Belgian Government's request to discontinue the proceedings the Preliminary Objections raised in the case by Switzerland on 18 February 2011, following the filing of Belgium's Memorial on 23 November 2010. In the letter, the Belgian Government explains in particular that it has taken note of the fact that in paragraph 85 of its Preliminary Objections, "Switzerland states . . . that the reference by the [Swiss] Federal Supreme Court in its 30 September 2008 judgment to the 'non-recognizability' of a future Belgian judgment does not have the force of res judicata and does not bind either the lower cantonal courts or the Federal Supreme Court itself, and that there is therefore nothing to prevent a Belgian judgment, once handed down, from being recognized in Switzerland in accordance with the applicable treaty provision".

A copy of the letter from the Agent of Belgium was immediately communicated to the Agent of the Swiss Confederation, who was informed that the time-limit provided for in Article 89, paragraph 2, of the Rules of Court, within which Switzerland might state whether it opposed the discontinuance of the proceedings, had been fixed as Monday 28 March 2011.

Since, within the time-limit thus fixed, the Swiss Confederation did not oppose the said discontinuance, the Court, placing on record the discontinuance by the Kingdom of Belgium of the proceedings, ordered that the case be removed from the List on 5 April 2011.

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History of the proceedings

In its Application of 21 December 2009, Belgium stated that the dispute before the Court "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 national airline now in bankruptcy". The Swiss shareholders concerned were SAirGroup (formerly Swissair) and its subsidiary SAirLines; the Belgian shareholders were the Belgian State and three companies in which it holds shares.

The Applicant recalled that "[i]n 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 the exclusive jurisdiction of the Brussels courts in the event of dispute and for the application of Belgian law".

Belgium explained in its Application that, "[o]n 3 July 2001, the Belgian shareholders, believing that the Swiss shareholders had breached their contractual commitments and non-contractual duties, thereby causing injury to 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 misconduct on the part of the Swiss shareholders but rejected the Belgian shareholders' claims for damages". 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 remained pending before that court. Belgium stated that 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 had sought to declare their debt claims against them. It asserted, however, that the Swiss courts, including in particular the Federal Supreme Court, had 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 the Applicant, these refusals violated various provisions of the Lugano Convention and "the rules of general international law governing the exercise by States of their authority, in particular in judicial matters".

To found the jurisdiction of the Court, Belgium cited in its Application 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). The Applicant noted that there was no dispute resolution clause in the Lugano Convention placing conditions on recourse to the ICJ and that the Court of Justice of the European Communities was without jurisdiction in the area.

At the end of its Application, Belgium requested the Court to adjudge and declare that:

"(1) the Court has jurisdiction to entertain the dispute between the Kingdom of Belgium and the Swiss Confederation 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 judicial matters;

(2) Belgium's claim is admissible;

(3) Switzerland, by virtue of the decision of its courts to hold that the future judgment in Belgium on the contractual and non-contractual liability of SAirGroup and SAirLines to the Belgian State and to 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, in particular: Articles 1, second paragraph, provision (2); 16 (5); 26, first paragraph; and 28, thereof;

(4) 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 liquidation estates (masses) of SAirGroup and SAirLines, companies in debt-restructuring liquidation (liquidation concordataire), specifically on the ground that the future judgment 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, in particular in judicial matters, must be exercised reasonably;

(5) 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 liquidation estates of SAirGroup and SAirLines, companies in debt-restructuring liquidation, 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, in particular: Articles 1, second paragraph, provision (2); 17; 21; and 22, thereof; as well as Article 1 of Protocol No. 2 on the uniform interpretation of the Lugano Convention;

(6) Switzerland's international responsibility has been engaged;

(7) Switzerland shall take all appropriate steps to enable the judgment 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;

(8) Switzerland shall 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 liquidation estates of SAirGroup and SAirLines, companies in

> debt-restructuring liquidation, 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".

By Order of 4 February 2010, the Court fixed 23 August 2010 as the time-limit for the filing of a Memorial by Belgium and 25 April 2011 as the time-limit for the filing of a Counter-Memorial by Switzerland.

By Order of 10 August 2010, the President, at the Belgian Government's request and after having ascertained the views of the Government of the Swiss Confederation, extended the time-limits for the filing of the Kingdom of Belgium's Memorial and the Swiss Confederation's Counter-Memorial to 23 November 2010 and 24 October 2011, respectively. The Memorial was filed within the time-limit thus prescribed; on 18 February 2011, the Swiss Confederation raised preliminary objections in the case in respect of the jurisdiction of the Court and the admissibility of the Application.

The full text of the Order will be available shortly on the Court's website (www.icj-cij.org).

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