INTERNATIONAL COURT OF JUSTICE

KINGDOM OF BELGIUM *v.* SWISS CONFEDERATION

APPLICATION INSTITUTING PROCEEDINGS

[Translation by the Registry]

1. The Kingdom of Belgium ("Belgium") has the honour to seise the Court by means of the present Application of a dispute between Belgium and the Swiss Confederation ("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 (the "Lugano Convention"), as well as the application of the rules of general international law governing the exercise of State authority, in particular in judicial matters.

2. The dispute relates 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.

3. After setting out the facts and the subject of the dispute (I), Belgium will state the legal grounds on which its Application is based (II), the basis for the Court's jurisdiction (III), and the claim it is putting before the Court (IV).

I. STATEMENT OF FACTS AND SUBJECT OF THE DISPUTE

A. Facts

4. The dispute referred to the Court by means of the present Application has arisen out of the pursuit of parallel judicial proceedings in Belgium and Switzerland in respect of a civil and commercial conflict.

5. The conflict is between the main shareholders in Sabena, the former Belgian national airline now in bankruptcy: namely, on the one hand, Swissair (subsequently renamed SAirGroup) and its subsidiary SAirLines (the "Swiss shareholders" or the "Swiss companies") and, on the other, the Belgian State and three Belgian companies in which it directly or indirectly holds all of the shares, i.e., S.F.P. and S.F.I., since merged to become SFPI, and Zephyr-Fin (the "Belgian shareholders").

6. 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. 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.

1. Proceedings in Belgium

7. On 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 on the basis of contractual and non-contractual liability (the "Belgian proceedings"). In that suit the Belgian shareholders claimed damages to compensate for, among other things, the amount lost on investments made on the basis of representations by the Swiss shareholders and for the expenses incurred by the Belgian shareholders as a result of the defaults by the Swiss shareholders. On 2 November 2001, a second action, supplementing the first, was filed; it was later joined with the 3 July 2001 suit.

8. After submitting an application for a debt-restructuring moratorium *(sursis concordataire)* to the District Court *(Tribunal d'arrondissement)* of Zurich, the Swiss companies carried on in the Belgian proceedings, being represented therein by the organs competent to do so under the Swiss law governing debt-restructuring agreements; those organs are now the companies' liquidators.

9. On 20 November 2003, the Commercial Court of Brussels found jurisdiction in the actions in contract and non-contractual liability on the basis of Articles 17 and 5 (3) of the Lugano Convention; these provide, respectively, in matters relating to a contract for the exclusive jurisdiction of the courts chosen by the parties in the contract, and in matters of non-contractual liability for the jurisdiction of the courts for the place where the harmful event occurred. On the merits, the court, applying Belgian law, found various instances of misconduct on the part of the Swiss shareholders but rejected the Belgian shareholders' claims for damages. Both the Belgian and Swiss shareholders appealed against the decision to the Court of Appeal of Brussels.

10. By partial judgment of 19 May 2005, the Court of Appeal of Brussels upheld the Belgian courts' jurisdiction over the dispute on the basis of the Lugano Convention. The proceedings on the merits are now pending in that court, where the case has been set for oral argument on 8, 10 and 11 February and 19 and 20 May 2010.

2. Proceedings in Switzerland

11. On 4 October 2001, the Swiss companies submitted an application for a debt-restructuring moratorium to the District Court of Zurich, as a result of which they have been placed in liquidation.

12. On 30 January 2002, the Belgian shareholders gave notice in the Swiss debt-restructuring proceedings of the debts owed to them by the Swiss companies. Thus, like the Swiss companies' other creditors, they sought to have their debt claims entered on the schedule of claims *(état de collocation)*, that is to say, the list drawn up by the liquidators of the persons entitled to share in the liquidation proceeds. The claims thus declared by the Belgian shareholders are those arising out of the Swiss companies' contractual and non-contractual liability in respect of which the Belgian shareholders had earlier brought an action in the Belgian courts.

13. By orders of 18 July 2006 (in respect of SAirLines) and 10 October 2006 (in respect of SAirGroup) and without awaiting the conclusion of the Belgian proceedings, the liquidators of the Swiss companies rejected all the debt claims submitted by the Belgian shareholders in Sabena.

14. The Belgian shareholders then brought two separate actions in Switzerland to safeguard their rights, specifically, to ensure that the claims they had declared in the debt-restructuring proceedings of the Swiss companies, claims stemming from the companies' liability in respect of which proceedings were pending in Belgium, would be recognized in the apportionment of the Swiss companies' assets.

15. First, on 31 July 2006, the Belgian shareholders lodged an administrative "complaint" against SAirLines' Swiss liquidators, seeking, *inter alia*, to have the proceedings in Switzerland stayed, pending the outcome of the Belgian proceedings, on the basis of Article 21 of the Lugano Convention, which provides that, where proceedings involving the same cause of action and between the same parties are brought in the courts of two States, any court other than the court first seised shall decline jurisdiction in favour of the court first seised where the latter has found

jurisdiction. This action was rejected by the cantonal courts and then by the Swiss Federal Supreme Court *(Tribunal fédéral)* (decision of 23 April 2007).

16. Second, on 8 August 2006, the Belgian shareholders brought an action contesting the SAirLines schedule of claims, seeking to have their debt claims entered on it. They again sought a preliminary stay, pursuant to Article 21 of the Lugano Convention, of the Swiss proceedings to include their claims on the schedule of claims until conclusion of the Belgian proceedings in respect of the Swiss companies' contractual and non-contractual liability.

17. The substantive arguments asserted by the Belgian shareholders in support of their action contesting the schedule of claims fell exclusively within the scope of the Belgian law of civil liability, not the law of bankruptcy.

18. In a judgment of 29 September 2006, the District Court of Zurich, ruling at trial, considered that the action challenging the schedule of claims was made up of two components. The first fell under the law of enforcement strictly speaking and gave rise to application of Article 16 (5) of the Lugano Convention, providing that, in proceedings concerned with the enforcement of judgments, exclusive jurisdiction lies with the courts of the place where the judgment has been or is to be enforced. The other concerned ascertaining the existence of the Belgian shareholders' debt claims; for this, the classic jurisdictional rules under the Convention (in particular, Articles 17 and 5 (3)) applied. The court concluded that the actions brought in Belgium and Switzerland did not fall under Article 21, on *lis pendens*, of the Lugano Convention but were related actions within the meaning of Article 22 of the Lugano Convention, pursuant to which the proceedings should be stayed pending completion of the Belgian proceedings.

19. By judgment of 2 March 2007, the Court of Appeal *(Tribunal supérieur)* of Zurich rejected the Swiss liquidators' appeal against this judgment, holding that the Lugano Convention did not apply because the action contesting the schedule of claims fell under the heading *"bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings"*, excluded from the ambit of the Convention by Article 1, second paragraph, provision (2), thereof. The court did however continue the stay of proceedings on the basis of a provision of Swiss municipal law. The appeal to the Court of Cassation of Zurich against this decision was rejected by judgment of 15 November 2007.

20. On 7 January 2008, the liquidators of SAirLines brought an appeal *(recours civil)* in the Swiss Federal Supreme Court based on various provisions of the federal law of Switzerland. By judgment of 30 September 2008, the Federal Supreme Court, ruling at last instance pursuant to the appeal, quashed the Zurich Court of Appeal judgment and the Zurich Court of Cassation judgment and lifted the stay of the debt-scheduling proceedings. The Federal Supreme Court took note of the Zurich Court of Appeal judgment in which it had been decided that the debt-scheduling proceedings did not fall within the scope of application of the Lugano Convention. The Federal Supreme Court then considered whether the proceedings should be stayed pursuant to Swiss municipal law. In that connection the Federal Supreme Court considered whether the Belgian judgment could be recognized in Switzerland pursuant to the Lugano Convention, which would justify the stay under Swiss municipal law. The court decided that such was not the case, since, in view of the Lugano Convention, it followed from the territoriality principle that Swiss courts had exclusive jurisdiction owing to the procedural or enforcement nature of the challenge.

21. As a result of this judgment by the Federal Supreme Court, the Belgian shareholders are required, in order to preserve their rights, to argue the same issues of contractual and non-contractual liability under Belgian law in the District Court of Zurich as those being addressed in the proceedings pending in Belgium.

22. A similar process occurred in respect of debt claims held by the Belgian shareholders against the other Swiss company, SAirGroup. In these proceedings, the Belgian shareholders had likewise filed an administrative complaint on 23 October 2006. The District Court of Zurich ordered a stay pending the decision in the SAirLines case. Further to the Federal Supreme Court's 23 April 2007 decision concerning SAirLines, the Belgian shareholders withdrew their complaint concerning SAirGroup. The Belgian shareholders also brought an action on 31 October 2006 challenging SAirGroup's schedule of claims. The District Court of Zurich ordered a stay pending the decision in the SAirLines case. Following the 30 September 2008 judgment by the Federal Supreme Court, the Belgian shareholders are required to argue in the District Court the issues of SAirGroup's contractual and non-contractual liability that are already pending in the Court of Appeal of Brussels. By order of 11 May 2009, the court joined the case involving SAirLines with that involving SAirGroup.

23. On 29 June 2009, the Ambassador of Belgium to the Swiss Confederation informed the Minister for Foreign Affairs of the Swiss Confederation of Belgium's intention to refer a dispute concerning the interpretation and application of the Lugano Convention to the International Court of Justice. On 26 November 2009, Belgium's Ambassador delivered to the Swiss Ministry of Foreign Affairs a note verbale reading as follows:

> "Belgium considers that the Federal Supreme Court was mistaken in holding, in its judgment of 30 September 2008, that the future decisions of the Belgian courts on the civil liability of SAirGroup and SAirLines to, in particular, the Belgian State, SFPI and Zephyr-Fin will not be recognized in Switzerland in the debt-scheduling proceedings for those Swiss companies, and was further mistaken in refusing to grant Belgium's request for a stay of proceedings pending the above-mentioned decisions by the Belgian courts.
>
> Belgium disagrees with the interpretation and application thus made of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters. Belgium further considers that, in refusing to stay the proceedings on the basis of Swiss municipal law on the ground that the Belgian courts' decision on the civil liability of SAirLines and SAirGroup will not be recognized in the Swiss debt-scheduling proceedings, Switzerland is breaching its international obligations to Belgium.
>
> Belgium therefore intends to seise the International Court of Justice, by means of an application, of the dispute thus existing between it and Switzerland.
>
> So that this dispute can be settled as quickly as possible in the joint interest of the two countries, Belgium envisages asking the Court to form a chamber to deal with this case.
>
> The Embassy of the Kingdom of Belgium would appreciate being informed of the Swiss authorities' position on this approach, which is prompted by the desire to see due account taken of all legitimate interests of the parties in this case.

The Embassy of the Kingdom of Belgium avails itself of this opportunity to reiterate the high esteem in which Belgium holds the institutions of the Swiss Confederation and its desire for this action to contribute to strengthening judicial co-operation between our two countries."

B. Subject of the dispute

24. As shown by the facts recounted above, the Swiss court has refused to grant the request by Belgium and the other Belgian shareholders for a stay pending the conclusion of the Belgian proceedings to determine the Swiss companies' contractual and non-contractual liability to the Belgian shareholders, taking the view that, *inter alia*:

— first, in light of the Lugano Convention, the judgments by the Belgian courts could not be recognized in Switzerland for purposes of the debt-scheduling proceedings;

— second, because, in particular, the future Belgian judgments would not be recognized in Switzerland, there was no cause under Swiss municipal law to stay the proceedings on the issue of the Swiss shareholders' civil liability pending the Belgian judgment to be handed down;

— third, the provisions of the Lugano Convention aimed at preventing parallel proceedings and conflicting judgments did not apply in the present case, on the ground that the action contesting the schedule of claims brought before the Swiss courts did not fall within the scope of the Convention.

25. Firstly, Belgium considers that the Swiss court is mistaken in refusing to recognize the future Belgian judgments on the civil liability of the Swiss shareholders. This refusal is a contravention of the Lugano Convention. Secondly, Belgium considers that the Swiss court is mistaken in refusing to stay its proceedings pending the outcome of the Belgian proceedings. The refusal of a stay pursuant to Swiss municipal law on the ground that the future Belgian judgment will not be recognized in Switzerland, notwithstanding Switzerland's obligation under the Lugano Convention to allow recognition of that judgment, is a breach of the rules of general international law governing the exercise by States of their authority, in particular in judicial matters, according to which State authority of any kind must be exercised reasonably; and the refusal is also contrary to the Lugano Convention, which places Switzerland under an obligation to stay the proceedings in the circumstances of the present case.

26. A dispute therefore exists between Switzerland and Belgium concerning the interpretation and application of the Lugano Convention and of the rules of general international law governing the exercise by States of their authority, in particular in judicial matters.

II. LEGAL GROUNDS

27. Switzerland's breaches of its international obligations to Belgium all relate, directly or indirectly, to the Lugano Convention. This Convention, which was signed on 16 September 1988 and to which Switzerland and Belgium are parties, is binding on the Member States of the European Union and certain States in the European Free Trade Association (EFTA). As noted in the preamble, the Convention was concluded further to the desire expressed by the EFTA States for a system to resolve conflicts of jurisdiction identical to that created by the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters (the "Brussels Convention"). Like the Brussels Convention, the Lugano Convention is

aimed at strengthening judicial co-operation between the States parties and facilitating recognition and enforcement of court judgments.

28. The Lugano Convention is accompanied by a "Protocol No. 2, on the uniform interpretation of the Convention" (hereinafter "Protocol No. 2"), which forms an integral part of the Convention (Article 65 of the Convention). According to its preamble, the Protocol was adopted in awareness of the rulings delivered by the Court of Justice of the European Communities on the interpretation of the Brussels Convention up to the time of signature of the Lugano Convention. Article 1 of Protocol No. 2 provides that the courts of each Contracting State shall, when applying and interpreting the provisions of the Lugano Convention, pay due account to the principles laid down by any relevant decision delivered by courts of the other Contracting States.

29. Switzerland's breaches of its international obligations relating to the Lugano Convention fall into three main categories.

1. Non-recognition of the future Belgian judgment

30. First, Switzerland is violating the provisions of the Lugano Convention on the recognition and enforcement of judgments. The Federal Supreme Court acknowledged that, in order to determine whether a stay should be granted under Swiss municipal law, it was necessary to consider whether, under the Lugano Convention, the decisions of the Belgian courts (specifically, the future judgment of the Court of Appeal of Brussels) could be recognized in the Swiss debt-scheduling proceedings.

31. As shown by its decision of 23 April 2007 on the administrative complaint filed by the Belgian shareholders, to which its decision of 30 September 2008 refers, the Federal Supreme Court did not decide the issue whether the action challenging the schedule of claims is excluded from the ambit of the Lugano Convention by Article 1, second paragraph, provision (2), of the Convention or whether it lies within the exclusive jurisdiction of the Swiss courts pursuant to Article 16 (5) of the Convention. It held that in any event, under the territoriality principle, the Swiss courts' international jurisdiction was exclusive, owing to the procedural or enforcement nature of the challenge. In the view of the Swiss court, the future Belgian judgments would therefore not be recognized pursuant to the Convention. However, Article 26 of the Convention provides that a judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required and that, if the outcome of proceedings in a court of a Contracting State depends on the determination of an incidental question of recognition, that court shall have jurisdiction over that question.

32. Switzerland thus commits a two-fold breach of the Lugano Convention.

33. First, the Lugano Convention provisions on recognition of foreign judgments cannot be set aside on the ground that the Swiss proceedings for disputing the schedule of claims fall under the heading of bankruptcy proceedings within the meaning of Article 1, second paragraph, provision (2), of the Convention. The nature of proceedings pending in the requested State, Switzerland in this case, has no impact on application of the Lugano Convention provisions on recognition of foreign judgments. All that matters is the nature of the judgments whose recognition is sought, namely, the Belgian judgments. This must be determined by means of an independent interpretation of the Lugano Convention, not one based on the particularities of the procedural law of the requested State. In the present case the Belgian judgments lie completely outside the area of

bankruptcy. They therefore cannot be deemed to be excluded from the ambit of Article 26 by Article 1, second paragraph, provision (2), of the Convention.

34. Next, Article 16 (5) of the Lugano Convention provides no basis for Switzerland to refuse to recognize the judgments to come in the Belgian proceedings. True, Article 16 (5) does state that, in proceedings concerned with the enforcement of judgments, the courts of the Contracting State in which the judgment has been or is to be enforced have exclusive jurisdiction, regardless of domicile. And Article 28, first paragraph, of the Convention does allow for non-recognition of foreign judgments handed down in violation of, *inter alia*, the exclusive jurisdiction established in Article 16 (5). But the judgments to be rendered in the Belgian proceedings in no way infringe Switzerland's exclusive jurisdiction in respect of enforcement of judgments. The proceedings under way in the Belgian courts are not about enforcing judgments but about the substance of the dispute between the parties, namely, the contractual and non-contractual liability of the Swiss shareholders, which lies within the Belgian courts' jurisdiction pursuant to Articles 17 and 5 (3) of the Convention.

35. Switzerland is thus in breach of the Lugano Convention, in particular: Articles 1, second paragraph, provision (2); 16 (5); 26, first paragraph; and 28, first paragraph, thereof.

2. Refusal to stay the proceedings pursuant to Swiss municipal law

36. After denying the applicability of the Lugano Convention provisions governing parallel proceedings, the Federal Supreme Court considered whether the proceedings should be stayed, pending conclusion of the Belgian proceedings, pursuant to Swiss municipal law. On this point it was claimed in the appeal to the Federal Supreme Court that the stay until completion of the Belgian proceedings ordered by the Court of Appeal and upheld by the Court of Cassation would cause unjustified delay in the debt-scheduling proceedings, which under Swiss law should in principle be expedited.

37. In this connection the Federal Supreme Court considered that the Belgian judgment could not be recognized in Switzerland and, as such, could not be decisive in respect of staying the debt-scheduling proceedings (decision of 30 September 2008, para. 3.3.4). But, under the Lugano Convention, Switzerland must allow recognition of the Belgian judgment to come (see paras. 30 to 35, above). Thus, the Federal Supreme Court arrived at its conclusion by reasoning in contravention of the Lugano Convention.

38. In so doing, the Swiss court is violating the rule of international law providing that the exercise of any State authority, in particular in judicial matters, is subject to observance of the rule of reason. Specifically, this bars any exercise of State authority on grounds conflicting with the obligations of the State in question under an international convention, as is the case here.

39. Accordingly, in deciding that the proceedings should not be stayed pursuant to its municipal law, Switzerland is violating its international obligations to Belgium.

3. Refusal to stay the proceedings pursuant to the Lugano Convention

40. The third violation lies in the decision by the Swiss court not to apply Articles 21 and 22 of the Lugano Convention, which give precedence to the court first seised of the dispute in instances of parallel proceedings in two different States.

41. In deciding that these provisions did not apply, the Swiss court relied on an analysis of characteristic features of the Swiss debt-scheduling procedure. The court concluded in substance from this that the basis of a claim in civil liability brought in debt-restructuring proceedings fell under the heading "bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings", which are excluded from the scope of the Lugano Convention by Article 1, second paragraph, provision (2), thereof. However, all civil or commercial actions based on the general rules of the law of liability are within the scope of application of the Convention. The exclusion of bankruptcy matters extends only to those claims whose legal foundation is based on the law of bankruptcy. This has been confirmed by the Court of Justice of the European Communities, specifically in its *Gourdain* judgment (CJEC, 22 February 1979, case 133/78, *ECR*, p. 733), a judgment predating the Lugano Convention and therefore covered by Protocol No. 2 (see para. 28 above). Accordingly, a cause of action in contractual and non-contractual liability falls within the scope of application of the Convention, whether it arises independently of proceedings in bankruptcy or at the time of or as part of such proceedings. In the present case, the Belgian shareholders' claim is based on the contractual and non-contractual liability of the Swiss shareholders (see para. 17 above). It is the main, essential subject of the proceedings for allowing debt claims. Its legal foundation therefore is not in the law of bankruptcy but in the law of liability. The Lugano Convention should therefore be applied to it. Accordingly, Switzerland is violating Article 1, second paragraph, provision (2), of the Convention.

42. In ruling as it has, the Swiss court is also violating Article 21 of the Convention, on *lis pendens*, which, where parallel proceedings have been brought in the courts of different States parties, requires any court other than the court first seised to stay its proceedings of its own motion. This article must be interpreted independently and applies even in the absence of strict identity between the two actions, so long as they concern the same legal relationship and have the same objective (identity of cause of action). Once again, this follows from case law of the Court of Justice of the European Communities that predates the Lugano Convention and is therefore covered by Protocol No. 2 (CJEC, *Gubisch*, 8 December 1987, case 144/86, *ECR*, p. 4861). In the present case, the actions in the Belgian and Swiss courts meet the criteria laid down in Article 21 of the Convention, since they involve the same parties, the same facts and the same contractual legal relationship and have the same objective in respect of determining the Swiss shareholders' civil liability. The Swiss court, seised later, is thus required by the Convention to stay its proceedings on the disputed question. Switzerland is therefore violating Article 21 of the Convention.

43. Moreover, the Swiss court was also mistaken in holding, after having found that the actions were related, that this did not justify a stay of its proceedings. While Article 22 of the Lugano Convention does provide for discretion on the part of the court in instances of related (rather than identical) actions, this discretion cannot be exercised arbitrarily. Reasonable account must be taken of a number of considerations, such as the risk of conflicting judgments, the stages reached in the related actions, and the closeness of the different courts to the facts. In the present case, all of these considerations should have led the Swiss court to order a stay in favour of the Belgian courts.

44. The Swiss court is thus violating the Lugano Convention, in particular: Articles 1, second paragraph, provision (2); 17; 21 and 22, thereof; and Protocol No. 2 on the uniform interpretation of the Convention.

III. JURISDICTION OF THE COURT

45. Belgium is a Member of the United Nations and, as such, has been a party to the Statute of the Court since 27 December 1945. Switzerland has been a party to the Statute of the Court since 28 July 1948.

46. Acting pursuant to Article 36, paragraph 2, of the Statute, Belgium declared on 3 April 1958 that it recognized the compulsory jurisdiction of the Court; the instrument of ratification was deposited on 17 June 1958. Switzerland declared on 6 July 1948 that it recognized the compulsory jurisdiction of the Court; that declaration took effect on 28 July 1948. The declarations were made without reservation, both in Belgium's case and Switzerland's, and have not been terminated.

47. There is no dispute resolution clause in the Lugano Convention. The Standing Committee established in Article 3 of Protocol No. 2 to the Convention has no dispute-settlement jurisdiction placing conditions on recourse to the International Court of Justice.

48. The Court of Justice of the European Communities is without jurisdiction in the area. The "new Lugano Convention" on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed on 30 October 2007 by certain EFTA Member States, including Switzerland, and the European Community, whose exclusive competence to sign was recognized by the Court of Justice of the European Communities in its opinion 1/03 of 7 February 2006, does not apply to the present case.

49. Belgium is therefore entitled under Article 36, paragraph 2 *(a)* and *(b)*, of the Statute of the Court to seise the Court of the dispute between Belgium and Switzerland concerning the interpretation and application of the Lugano Convention and general international law.

IV. BELGIUM'S CLAIM

50. Belgium respectfully requests the Court to adjudge and declare that:

— 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;

— Belgium's claim is admissible;

— 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;

— 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;

— 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;

— Switzerland's international responsibility has been engaged;

— 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;

— 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.

51. Belgium reserves the right to amend and supplement the terms of the present Application.

52. In accordance with Article 26, paragraphs 2 and 3, of the Statute of the Court and Article 17, paragraph 1, of the Rules of Court, Belgium requests that the present case be heard by a chamber of the Court.

53. In accordance with Article 31, paragraph 3, of the Statute and Article 35 of the Rules of Court, Belgium reserves the right to choose a judge *ad hoc*.

54. In accordance with Article 41 of the Statute and Article 73 of the Rules of Court, Belgium reserves the right to ask the Court to indicate provisional measures, depending on further developments in the proceedings now pending in Switzerland and Belgium.

(Signed) Paul RIETJENS,
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Federal Public Service for Foreign Affairs,
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Agent of the Government of
the Kingdom of Belgium.