# Private International Law Dispute before the ICJ (Belgium v. Switzerland on the Interpretation and Application of the Lugano Convention)

The increasing intertwining between private international law and public international law has been once again and very recently proved. The International Court of Justice will indeed be the theatre of a promising interesting debate between Belgium and Switzerland in respect of the Lugano Convention.

On 21 December 2009, Belgium initiated 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 (see the Press Release).

The dispute has arisen out of the pursuit of parallel judicial proceedings in Belgium and Switzerland concerning the alleged misconduct of the Swiss shareholders in Sabena, the former Belgian airline now in bankruptcy. The Swiss shareholders SAirgroup (formerly Swissair) and its subsidiary SAirLines, also now in bankruptcy, and the Belgian shareholders (the Belgian State and three companies directly or indirectly hold by the Belgian State) in Sabena entered into different contracts between 1995 and 2001 for among other things the financing and joint management of Sabena. These contracts provided for the exclusive jurisdiction of the Brussels courts and for the application of Belgian Law.

Proceedings were first initiated by the Belgian Shareholders before the Brussels courts for contractual liability and tort. The Brussels Court found its jurisdiction on the basis of art. 17 and 5(3) of the Lugano Convention but rejected the claims for damages brought by the Belgian shareholders. The Court of Appeal of Brussels by a partial judgment upheld the Belgian court's jurisdiction over the dispute. The proceedings on the merits are still pending before that court.

In the mean time, the Swiss shareholders (Swissair and its subsidiary) submitted

to the Zurich courts an application for a debt-restructuring moratorium, which ended in the bankruptcy of the Swiss shareholders. The Belgian shareholders sought to declare their debt claims (whose existence and amount depended on the proceedings before the Brussels court) against them in these proceedings.

In a decision rendered on 30 September 2008, the Swiss Federal Court rejected the application of the Lugano Convention on this matter and declined to stay its proceedings on the basis that the Swiss courts had exclusive jurisdiction because of the territoriality principle and the procedural nature of the dispute. According to Belgium, the refusal by the Swiss Courts and more particularly the Federal Supreme Court to apply the Lugano Convention and consequently the refusal to recognize the future Belgian decision and to stay their proceedings, 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".

It is worth noticing that according to Belgium, the Lugano convention does not provide for a dispute settlement mechanism and the standing committee established by the protocol 2 on the uniform interpretation of the convention does not have jurisdiction in this matter. In its application (§48), Belgium submits also that the European Court of Justice does not have jurisdiction since the "new Lugano Convention", for which the European commission has exclusive jurisdiction, is not applicable.