Third issue of 2012's Journal du Droit International

The third issue of French *Journal du droit international* (*Clunet*) for 2012 was just released. It contains two articles addressing issues of private international law and several casenotes. A full table of content is (or will soon be) accessible here.

The first article is the second part of the survey of the French law on arbitration *(« Liberté, Égalité, Efficacité » : La devise du nouveau droit français de l'arbitrage – Commentaire article par article*) offered by Thomas Clay (Versailles Saint Quentin University). The first part was published in the previous issue of the *Journal*. The English abstract reads:

> *It was the long-awaited reform. The arbitration regulation has just been amended and modernized, more than thirty years after the previous regime came into force. This has been achieved by different means : by rewriting certain unclear or outdated sections, by implementing case law-developed solutions already being applied in arbitral proceedings and, finally, by promoting new (sometimes avantgardist) solutions. All the above has resulted in the enactement of a real new Arbitration act.*
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> *Therefore, an article-by-article review seems to be a suitable form for an accurate and comprehensive study. This study consists of a comparison between the replaced articles and the new ones, a an analysis of the first commentaries on the reform and an interpretation of the case law following the enactment of the new regulation.*
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> *The proposed analysis also evidences the main principles governing the new French law of arbitration. Surprisingly they are in fact rooted in the foundations, not only of private law, but also on the principles of our Republic since they apply (almost perfectly), our Republican maxim, except that brotherhood is substituted by efficiency (the later being more representative).*
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> *In conclusion, it is without any doubt a successful text and the long wait was worth it. However it is useful to explain the circumstances of its endless development, which has experienced many disruptions. The article below starts*

by describing such circumstances.

In the second article, David Sindres, who lectures at Paris I Pantheon Sorbonne University, wonders whether the public policy exception triggered by the proximity of the dispute with the forum is in decline (*Vers la disparition de l'ordre public de proximité ?*).

Is international public policy based upon proximity disappearing from the French legal landscape ? One may have this feeling in the wake of two recent evolutions of positive law. The first one stems from the adoption of the « Rome III » regulation on the law applicable to divorce and legal separation, whose article 10 condemns, without any requirement of proximity, laws which do not grant one of the spouses equal access to divorce or legal separation on grounds of their sex. The second one results from a decision rendered by the French Cour de cassation on October 26, 2011, which opposed international public policy to Ivorian Law insofar as it deprived a child from the right to establish his filiation with his alleged father : once again, the exclusion of foreign law based upon international public policy was not justified by the links between the situation and the French legal order. These two solutions take the opposite view of previous decisions by the Cour de cassation, which had subordinated the intervention of international public policy to the links between the situation and the French legal order in cases purporting to unilateral repudiations and the establishment of filiation.

This decline of international public policy based upon proximity echoes the criticism that this mechanism has drawn from several authors. At the stage of the creation of the situation within the forum, it presents the risk of weakening international public policy. As for the refusal to recognize situations which were created abroad, based upon their links with the French legal order, it proves discriminatory. Under these circumstances a better solution would be to return to the classical distinction between full and attenuated international public policy, which achieves a satisfactory compromise between two objectives of private international law : the protection of the fundamental values of the forum and the respect granted to vested rights.