First Issue of 2009's Journal du Droit International

The first issue of French *Journal du Droit International* (also known as *Clunet*) will shortly be released. It contains several articles dealing with conflict issues.

The topic of the first two is the 2008 Rome I Regulation on the law governing contractual obligations. First, Hughes Kenfack, a professor at Toulouse University, wonders whether the Regulation will function like a steady vessel or will be unable to avoid the reefs (*Le règlement Rome I, navire stable aux instruments efficaces de navigation ?*). The English abstact reads:

> *The Regulation on the Law Applicable to Contractual Obligations (« Rome I ») was adopted after five years of preparatory work. It supersedes the Rome Convention for contracts concluded after the 17th of September 2009, and works harmoniously within a framework of other Regulations including « Brussels I » and « Rome II ». Its purpose is to reinforce predictability and security in legal solutions to disputes while safeguarding a measure of flexibility. While upholding certain solutions imposed by the Rome Convention, the new text introduces some well met changes, notably regarding the determination of the applicable law in the absence of choice by the parties. The outcome will now be more predictable for most international commercial contracts.*
> *In the main, as a metaphor in the maritime field, the « Rome I » Regulation functions like a steady vessel with effective instruments of navigation. With the guiding light of the Court of justice of the European Communities, it should allow to avoid the reefs and lead to safe harbour.*

In the second article, Stephanie Francq, a professor of law at the Catholic University of Louvain (Belgium), presents the changes introduced by the new legislation (*Le Règlement Rome I. De quelques changements…*). The abstract reads:

> *EU Regulation n° 593/2008 (« Rome I ») harmonises conflicts-of-law rules in the area of contract law. The Regulation, which replaces the Rome Convention,*

applies to contracts entered into as from December 17, 2009. This article analyses in details the main changes brought about by the Regulation and reflects on the consequences of its adoption at EU level. In turn, it inquires into the existence of a logical and theoretical underpinning for the new rules. Finally, it highlights the particular influence exercised by certain Member States in the process leading to the adoption of the Regulation because of their opt-out from title IV of the EC Treaty.

The third article is a short report by Hélène Péroz (Caen University) on Certifying Authorities for European Enforcement Orders after a recent French Decree (*Les autorités certificatrices de titre exécutoire européen. A propos du Décret n°2008-484 du 22 mai 2008*). Here is the English abstract:

Decree n° 2008-484 regarding proceedings before the French Cour de cassation amends the list of authorities in charge of certifying European Enforcement Orders. French notarial acts will from now on be certified by the notary keeping the original document.
Decisions will also henceforward be certified by the chief registrar of the Court, choice which seems in contradiction with Regulation (EC) N° 805/2004 the decree is supposed to implement and therefore contrary to law.

Finally, the Journal offers two articles on international commercial law.

The first is the written version of the Lalive Lecture that Pierre Mayer, a professor of law at Paris I University and a partner at Dechert, gave in Geneva on Contract Claims and Jurisdiction Clauses in Investment Treaties (Contract Claims *et clauses juridictionnelles des traités relatif à la protection des investissements*).

The drafting of the dispute resolution clause contained within most investment treaties varies from one treaty to another. Certain clauses limit the offer of arbitral jurisdiction (addressed by each State party to the investors of the other State parties) to claims based on a breach of the substantive clauses of the treaty (treaty claims). Other clauses are drafted in more general terms, but arbitral tribunals limit their scope and exclude, here as well, claims based on a breach of the investment contract (contract claims). In these two cases, requests of the investors which are based on the same facts and seek the same relief – compensation for the loss suffered due to the host state – have to be

therefore submitted to different tribunals, which results in injustice and contradictions. No theoretical argument, based in particular on the alleged necessity to distinguish between State legal order and international legal order, justifies such an unacceptable result in practice.

The second is the second part of a piece on The New International Oil Exploration and Sharing Agreements in Libya (the first part was published in the first issue of the 2008 volume of the Journal) by professor de Vareilles-Sommières and attorney Anwar Fekini.

Concluding the previously undertaken study on the legal regime of the exploration and production sharing agreements (EPSAs) entered into by the Libyan National Oil Company with foreign oil companies since 2005 (cf. JDI 2008, p. 3 for its first part), this second part of the article focuses on te rights and obligations deriving from the EPSA. A distinction has to be made between the main contract regarding the exploration or production on the one hand, and auxiliary legal acts such as the Bid Package or other agreements which are annexes to the EPSA like the letter of guarantee, the Shareholders agreement and the Joint operating agreement, on the other hand. The EPSA in itself appears to be a sui generis agreement, neither a concession, nor a works contract, from which derive a number of obligations (payment of bonus, setting up of managing bodies, lifting of oil portion by each party…), as well as a number of rights including a right of property over the oil produced. The article then considers, in order to assess their legal consequences, the four possible occurrences looming for better or worse over the EPSA (commercial discovery, breach of contract, change of circumstances, differences between parties). Regarding auxiliary legal acts, emphasis is lain on coordinating each of them with the main contract and on sorting out problems this coordination is likely to raise.