Fourth Issue of 2009's Journal du Droit International

The fourth issue of French *Journal du Droit International* (also known as *Clunet*) has just been released. It contains two articles dealing with conflict issues.

The first is authored by professor Sylvette Guillemard (Laval, Canada) and Mr. Jacob Stone. It discusses decisions of the Supreme court of Canadian on international jurisdiction (*La Cour suprême du Canada et la compétence internationale des tribunaux*). The English abstract reads:

> *Over the past twenty years, questions concerning the recognition of « foreign » judgements have been raised in several appeals to the Supreme Court of Canada in cases originating from both the common law provinces and the civil law province of Québec. The authors of this article examine the ensuing jurisprudential monument erected by the Court in four key decisions in an effort to solidify the issue. The authors posit that the initial decisions of the Court respond well to queries regarding the notion comity, the constitutionality of criteria for recognition and the compatibility of these criteria with the two Canadian legal traditions. The authors submit, however, that certain opinions featured in subsequent rulings are at best non-committal and, at worst, discouraging.*

In the second article, Tunisian professor Lofty Chedly discusses the recognition of arbitral awards nullified in their country of origin and stresses the inconsistency of Tunisian law (*L'exécution des sentences internationales annulées dans leur pays d'origine : cohérences en droit comparé et incohérence du droit tunisien*).

> *The issue of enforcement of annulled arbitral awards in their country of origin refers, beyond the legal technique, to the philosophy of international arbitration. A first conception of this arbitration depicts it as legally integrated to the legal system where seats of arbitration tribunal. The international arbitrator would, consequently, have a State lex fori, and it becomes coherent if we are a supporter of the conception according to which an award, even international, that is annulled at the seat of arbitration is totally annihilated and*

cannot be enforced elsewhere. To this territorial and localised conception of international arbitration is progressively substituted a delocalised, or openly transnational conception. According to this conception, international arbitration is not endowed with a state lex fori, and the place of arbitration has a mere role of a geographical localisation, rather than a legal role. This conception allows certain autonomy to the award in relation to the seat of arbitration, which justifies the survival of the award to the annulment at the seat, and makes it possible to grant to it the exequatur elsewhere.

By refusing to grant exequatur to arbitral awards annulled in their country of origin, the Tunisian arbitration Code seems, at first sight, to lean to the first arbitration conception. But, through the close examination of the Tunisian arbitration Code of 1993, as well as the international Conventions signed by the Tunisian State, we cannot come up to the conclusion that the Tunisian Law adopts one of the theses in presence…its multiple inspiration sources, renders it, in our opinion, incoherent, and conduces to
conflicts of texts, even more, to conflicts of coherences, not readily soluble.

Articles of the *Journal* are available online for lexisnexis suscribers.