


Second Issue of 2009's Journal du Droit International

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

The author of the first is Anne-Sylvie Courdier-Cuisinier, who lectures at the University of Burgundy. This is a study of Assignment of Contracts in Private International Law (*La cession conventionnelle de contrat en matière internationale*). The English abstract reads:

Assignment of contract is a current circulation mode of contract. The actual study is suggesting to make an international state of place of this three-persons legal operation which focuses on two main topics : the determination of the international dimension of the assignment of contract and its effects. For this purpose, on one hand the studies deals with the international right rules aimed at the assignment of rights without any specific rules regarding assignment of contract. On the other hand, the article deals mainly on the UNIDROIT principles of commercial contracts and principles of European contract law, both dealing with this type of assignment.

The second article explores whether U.S. class actions could be recognized in France (*Les "class actions" américaines et leur éventuelle reconnaissance en France*). The authors are Jacques Lemontey, the former president of the chamber of the *Cour de cassation* specialised in private international law matters, and Nicolas Michon, a French lawyer.

While there has been some public discussion in France regarding whether a US style class action mechanism should be adopted, the increasing number of US class actions purporting to bind French class members has gone largely unnoticed, yet it raises a number of serious legal issues.

Indeed, US style class actions are based upon a utilitarian economic and legal model alien to the French one, and which raises very significant issues, chief among which the conflict of interests between the lawyer for the class and class

members – issues which various attempts at reform have not been able to solve.

In the authors' opinion, it is therefore clear that a French court would not recognize the preclusive effect of a US class action judgment or settlement over a claim made by French Absent Class Members, as this would offend French conceptions of due process and individual freedom (notably the freedom to bring, or refrain from bringing, a claim) as established inter alia by the French Conseil constitutionnel and the cour d'appel de Paris.

Finally, another article discusses alternative modes of dispute resolution in the context of the return of cultural goods (*Le renouveau des restitutions de biens culturels : les modes alternatifs de règlement des litiges*). Authors are French scholar Marie Cornu (Poitiers) and Swiss Professor Marc André Renold (Geneva).

The alternative methods of dispute resolution in cultural heritage matters are an important resource enabling to deal with the issues relating to the return, restitution and repatriation of cultural goods. The purpose of this article is to analyse the situations which can lead to the use of such methods rather than the classical judicial means and to examine problems which might arise.

The article is divided in two parts. The first part deals with the actors as well as with current methods used for the restitution and the return of cultural goods. The second part of the article underlines the type of goods which can be subject to alternative dispute resolutions and proposes a list of the substantive solutions, often original, which have been proposed in practice.

The alternative methods of dispute resolution enables to take into consideration of non legal elements, sometimes of emotional nature or linked to « doing the right thing », which can help the parties to find a way leading to a consensus.

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