Fourth Issue of 2011's Journal du Droit International

The fourth issue of French *Journal du droit international* (*Clunet*) for 2011 was just released. It contains five articles and several casenotes. A table of content is accessible here.

Four articles explore private international law issues.

In the first one, Jonathan Mattout, who practices at the Paris office of Herbert Smith, wonders whether the English Bribery Act is a danger for French businesses (*Le Bribery Act ou les choix de la loi britannique en matière de lutte contre la corruption.- Un danger pour les entreprises françaises ?*). The English abstract reads:

> *The entry into force of the UK Bribery Act is an important step forward in the fight against corruption. This demanding legislation allows the UK to meet its international commitments. It requires all relevant commercial organisations carrying on a business in the UK to have in place adequate procedures designed to prevent bribery or face a serious risk of criminal prosecution. The Act reaches out beyond the UK and gives a new role to compliance, which will inevitably lead foreign businesses trading in the UK to adapt to its requirements. It is likely that this new legislation will inspire similar changes in France.*

In the second article, Thomas Schultz, who lectures at the University of Geneva, and David Holloway, who is barrister at Number 5 Chambers in London, provide an account of the emergence and development of comity in the history of private international law(*Retour sur la comity . – Première partie : Les origines de la comity au carrefour du droit international privé et du droit international public*). The English abstract reads:

> *In a series of two articles, to be published in the present and the next issue of the Clunet, the authors provide an account of the emergence and development of comity in the history of private international law, discussing where comity came from, how it developed and what purposes it was initially meant to fulfil.*

The purpose of such recalling of comity is to provide a historical background and conceptual starting point for the increasing current attempts to rely again on the comity doctrine in court decisions and private and public international law scholarship. In the current article, we review the forces that led to strict territoriality in the 17th century and how comity became needed to mitigate it. We will see how regulatory overlaps contributed to making the Thirty Years War inevitable and will discuss the subsequent efforts to do away with such regulatory overlaps through territorial sovereignty, whose radicalism made comity necessary to accommodate the transnationalism of commerce and societies. In the second article, we will present the early history of the concept of comity in the context of the history of private international law generally. We will focus on the evolution of the use of comity through the great stages of its history. We will thus embark on a voyage from Rome and the ius gentium, to Perugia with Bartolus de Saxoferrato, to Holland and the Voets, to Berlin and Prussia with Savigny, to the United States with Joseph Story, and to the UK with Mansfield, Westlake and Dicey.

Valerie Pironon, who is a professor of law at Nantes University, is the author of the third article which discusses the method of focalisation of torts and contracts in e-commerce after recent cases of the European Court of Justice and the French Supreme Court for private and criminal matters (*Dits et non-dits sur la méthode de la focalisation dans le contentieux – contractuel et délictuel – du commerce électronique . – (À propos de trois arrêts : CJUE, 7 déc. 2010, aff. C-585/08, Peter Pammer c/ Reederei Karl Schlüter GmbH & Co. KG et C-144/09, Hotel Alpenhof GesmbH c/ Oliver Heller. – Cass. com., 7 déc. 2010, n° 09-16.811, Sté eBay Inc. et a. c/ SA Louis Vuitton Malletier. – Cass. com., 29 mars 2011, n° 10-12.272, Sté eBay Europe et a. c/ SARL Maceo et a*).

In recent case law, our highest jurisdictions seem to use the method of the focus to identify the competent judge in the disputes of the e-commerce : the European Court of Justice in B2C conflicts, the commercial chamber of the Cour de cassation in two recent eBay affairs. A comparison of these decisions shows however certain ambiguities relating to the method employed, in particular its subjective dimension. Some gaps concerning the probationary status of the listed indications remain also to be fulfilled.

Finally, Eric Loquin discusses in the last article an important French case of 2010 ruling on the arbitrability of international administrative contracts (*Retour dépassionné sur l'arrêt INSERM c/ Fondation Letten F. Saugstad . – (Tribunal des conflits, 17 mai 2010)*). No English abstract is provided.