Second Issue of 2012's Journal du Droit International

The second issue of French *Journal du droit international* (*Clunet*) for 2012 was just released. It contains four articles and several casenotes. A table of content is accessible here.

In the first article, Thomas Clay, who is a professor at Versailles Saint Quentin University, offers a survey of the French law on arbitration *(« Liberté, Égalité, Efficacité » : La devise du nouveau droit français de l'arbitrage – Commentaire article par article*). 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 This has been achieved by different means : by rewriting certain unclear or outdated sections, by implementing case law-developed solutions already being applied in arbitral proceedings and, finally, by promoting new (sometimes avantgardist)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, Olivier Cachard, who is a professor of law at the university of Nancy, present the recently adopted Rotterdam Rules (*La Convention des Nations Unies sur le contrat de transport international de marchandises effectué entièrement ou partiellement par mer (Règles de Rotterdam)*).

> *The Rotterdam Rules, that were signed on 23th september 2009, were recently ratified by the Kingdom of Spain, while the maritime community is now expecting the ratification by the United States of America. The purpose of this Convention is to address the new realities of transportation by sea, going further than the antique Hague Rules. The scope of the Convention is larger, encompassing door-to-door transportation. Although the Convention dedicates substantial provisions to transportation documents, it is not limited to contracts where a bill of lading is issued. The new uniform regime is built on the traditional case law, but takes into consideration containers and tends to establish a new balance between carriers and shippers. The provisions dedicated to jurisdiction and arbitration deserve more criticism and fortunately are under a opt in regime.*

In the third 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 . – Deuxième partie : La comity dans l'histoire du droit international privé*). The English abstract reads:

> *In a series of two articles, published in the previous and the current issue of the Clunet, the authors provide an account of the emergence and development of comity in the history of private international law. In the previous article, the authors have reviewed the forces that led to strict territoriality in the 17th century and how comity became needed to mitigate it. In the current article, the authors discuss the historical development of the concept of comity in the context of the history of private international law generally. An examination of five issues that marked the history of comity seems to allow a global yet fragmented understanding of the concept: the idea of a natural or universal law of conflicts ; the theoretical building blocks of the modern interstate system; the normative character of a concept created specifically to avoid constraining sovereigns ; reciprocity as a principle of international collaboration; and the international dimension of private international law. The most critical finding of*

the study is this: the history of the comity principle negates the ideas that the very nature of comity requires bilateral reciprocity and that it is a strictly discretionary and internal principle.

Valérie Parisot, who lectures at the university of Rouen, discusses the implications of recent cases of the ECJ on choice of law in employment contracts (*Vers une cohérence verticale des textes communautaires en droit du travail ? Réflexion autour des arrêts* Heiko Koelzsch *et* Jan Voogsgeerd *de la Cour de justice*).

The multiplicity of Community legal provisions leads quite naturally to think about their coherence, especially as far as a uniform interpretation of common terminologies is at stake. Two recent judgments of the European Court of justice deal precisely with this matter. They decide that the ECJ's case-law regarding the interpretation of the connecting factors of Article 5 (1) of the Brussels Convention of 27 September 1968 that are used to determine jurisdiction in matters relating to individual contracts of employment remains relevant to analyze the connecting factors of Article 6 (2) of the Rome Convention of 19 June 1980 and of Article 8 (2) of the Rome Regulation of 17 June 2008, concerning the law applicable to these contracts.

Article 6 (2) (a) of the Rome Convention must therefore be understood as meaning that, in a situation in which an employee carries out his activities in more than one Contracting State, the country in which the employee habitually carries out his work in performance of the contract, within the meaning of that provision, is that in which or from which, in the light of all the factors which characterize that activity, the employee performs the essential part of his obligations towards his employer (Heiko Koelzsch and Jan Voogsgeerd cases). Furthermore, article 6 (2) (b) of the Rome Convention, which makes subsidiary reference to the concept of "the place of business through which the employee was engaged" must be understood as referring exclusively to the place of business which engaged the employee and not to that with which the employee is connected by his actual employment. The possession of legal personality does not constitute a requirement which must be fulfilled by the place of business of the employer within the meaning of that provision. Finally, the place of business of an undertaking other than that which is formally referred to as the employer, with which that undertaking has connections, may be classified as a « place of

business » according to the same provision, if there are objective factors enabling an actual situation to be established which differs from that which appears from the terms of the contract, and even though the authority of the employer has not been formally transferred to that other undertaking (Jan Voogsgeerd case).