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Prologue

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Issue 23.3 of the *Florida Journal of International Law* brings together an exciting variety of articles—ranging from issues of human rights and laws of war,[1] to comparative international law in the areas of contracts and family law—written by an accomplished group of scholars. First, Daphné Richemond-Barak's[2] "Applicability and Application of the Laws of War to Modern Conflicts," analyzes how principles governing inter-state wars could be applied to conflicts involving non-state actors, whether they are members of guerilla groups, terrorist organizations, or even private military contractors. Richemond-Barak's inquiry begins with the question of whether the laws of war apply at all in "asymmetrical conflicts" because conflicts revolving around non-state actors "challenge a fundamental assumption of the laws of war: reciprocity, or the expectation that other parties to the conflict will respect similar legal and behavioral norms." Richemond-Barak takes the position that "most of international humanitarian law is binding in most conflicts on most actors (whether or not the parties behave reciprocally)." However, she notes one exception: Richemond-Barak argues that the "only situation in which a

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1. *See generally* Emmanuel Gross, *The Laws of War Waged Between Democratic States and Terrorist Organizations: Real or Illusive?* 15 FLA. J. INT'L L. 389 (2003); Johan D. van der Vyer, *Legal Ramifications of the War in Gaza*, 21 FLA. J. INT'L L. 403 (2009).

2. Daphné Richemond-Barak teaches at the Radzyner School of Law at the IDC, Herzliya. She holds a *Maitrise* from Université Panthéon-Assas (Paris II), a *Diploma in Legal Studies* from Oxford University (Hertford College), an LL.M. from Yale Law School, and a Ph.D. from Tel Aviv University. Prior to joining the IDC, she served as a clerk at the International Court of Justice and worked as an attorney in the New York office of Cleary Gottlieb Steen & Hamilton LLP.

state may not be bound by all of humanitarian law is when, in an international armed conflict, an opposing nonstate party repeatedly violates international humanitarian law." Nevertheless, Richemond-Barak acknowledges that "even when the applicability of the laws of war is established," the legitimacy of their applicability to actors "who do not fit easily within the civilian/combatant divide" remains problematic. Consequently, she argues for "a more expansive and dynamic interpretation of the notion of 'combatant,'" which includes religious, historical, and legal traditions. For Richemond-Barak, such a "broader" understanding of what a "combatant" is "would clarify the legal regime applicable to nonstate actors and enhance the protection of civilian populations in modern conflicts."

Second, Alan Reed's[3] "The Rome I Regulation and Reapprochement of Anglo-American Choice of Law in Contract: A Heralded Triumph of Pragmatism Over Theory" aims to "provide a novel and distinctive deconstruction of the modernising reforms contained in the Rome I Regulation which became effective in English law from December 17, 2009." In brief, Reed notes that there is a "significant degree of replication" in terms of "applicable law selection in contract on both sides of the Atlantic." Thus, there is "a consensus in broad methodological perspectives between the Second Restatement and new Rome I Regulation in terms of the general specific presumptions that are adopted to promulgate certainty, predictability and ease of application" which serve to "protect legitimate party expectations." These prescribed rules may be "supplanted" in limited situations to enable "beneficial flexible displacement, to protect commercial efficiency, locali[z]e the central gravity of a contract, and consequentially prevent unfairness, inappropriate outcome resolution and capricious injustice." Ultimately, Reed argues that "pragmatism has prevailed over functional choice of law principles in contract" because "party autonomy now reigns supreme and imputed choice is heavily dependent on addressing the factual 'centre of gravity' of the contract."

Third, Robert Rains'[4] "A Prenup for Prince William and Kate? England Inches Toward Twentieth Century Law of Antenuptial Agreements; How Shall It Enter the Twenty-first?" begins with an allusion to the extremely popular royal wedding between the newly

3. Alan Reed is currently Professor of Criminal and Private International Law at Sunderland University and has previously lectured at Cambridge University and Leeds University. He graduated from Trinity College, Cambridge University with a First Class Honours Degree in Law (1988) and was awarded the Dr. Lancey Prize and Holland Scholarship to facilitate study in the United States. Professor Reed completed an LLM (Comparative Law) at the University of Virginia and also became a Solicitor of the High Court of England and Wales.

4. Robert Rains is Professor of Law and Co-Director of the Family Law Clinic at the Pennsylvania State University Dickinson School of Law.

married Duke and Duchess of Cambridge as the popular cultural backdrop on the state of English law in relation to prenuptial agreements, which, in Rains' view, is "uncertain." Legal scholars had hoped that the relatively new U.K. Supreme Court would bring "clarity and predictability to the law with its decision in the *Radmacher* case."[5] Indeed, the *Radmacher* decision, handed down in October 2010, reversed prior precedent that pre-nuptial agreements are contrary to public policy, but "left many basic issues for Parliament to address and resolve." Rains' article aims to do the following: (1) "provide background information on the American law of prenuptial agreements as it has evolved since the groundbreaking 1970 Florida Supreme Court decision in *Posner*;"[6] (2) "explain the English case law and statutory law leading up to *Radmacher*;" (3) "examine the *Radmacher* case and its limitations," and finally; (4) "provide suggestions for statutory changes to the Matrimonial Causes Act 1973, which could provide greater certainty to marrying couples wishing to settle their financial arrangements, as long as certain safeguards are scrupulously observed."

Finally, Jennifer Allen,[7] awardee of the *Florida Journal of International Law*'s Best Case Comment in Fall 2011, writes a thought-provoking piece entitled: "*ACLU v. United States Department of Defense*: Substantive Difference = Substantial Deference." Here, in a case involving important domestic and international political issues, FOIA requesters, the ACLU, sought to obtain records relating to the Government's conduct underlying its stated policy and reported triumphs in relation to the Global War on Terror. As Allen notes, "the Government had previously trumpeted the importance of the capture of the 14 'high value detainees' and intelligence subsequently gained from them." Thus, Allen observes that the case marks "a further retreat from the goals of FOIA, in that the [FOIA] Act was initially envisioned to promote transparency in government." For Allen, the holding demonstrates that the DC Circuit's jurisprudence regarding Government invocations of its state secrets privilege strengthens the Government's ability to shield information from public scrutiny under the classification exemptions contained in the Act.[8] Allen concludes with a witty pun that explains her title: "Regarding compelled disclosure in the face of a validly claimed FOIA exemption, the Government's assertion

5. Radmacher v. Radmacher, [2010] UKSC 42.

6. Posner v. Posner, 233 So. 2d 381 (Fla. 1970).

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8. For an article similarly critical of governmental non-disclosure in relation to torture and terrorism, see generally Kate Kovarovic, *Our "Jack Bauer" Culture: Eliminating the Ticking Time Bomb Exception to Torture*, 22 FLA. J. INT'L L. 251 (2010).

of substantial differences in the information sought and that, which had previously been released, resulted in substantial deference to the Government's affidavit."