(Aldershot, Ashgate 2005) pp. 11-149; and T. Ruys, *'Armed Attack' and Article 51 of the UN Charter* (Cambridge, Cambridge University Press 2010) pp. 250-367.

6. For a detailed appraisal of this aspect of the debate, see O. Corten, *The Law Against War: The Prohibition on the Use of Force in Contemporary International Law* (Oxford, Hart Publishing 2010) pp. 407-416.

7. *Military and Paramilitary Activities in and Against Nicaragua* (*Nicaragua* v. *United States of America*), merits, *ICJ Rep.* (1986) p. 14, dissenting opinion of Judge Schwebel at para. 173.

8. For example, in his assessment of pre-emptive action in relation to Operation Iraqi Freedom, Pierson continually refers to the 'the right of anticipatory self-defence', indicating its distinct conception: C. Pierson, 'Preemptive Self-Defense in an Age of Weapons of Mass Destruction: Operation Iraqi Freedom', 33 *Denver Journal of International Law and Policy* (2004-2005) p. 150.

9. See, for example, the positions taken by states with regard to the *Mayaguez* incident in 1975 (*New York Times*, 16 May 1975, p. 15); the reaction of the United States to Israel's extraction of its nationals from Entebbe airport in 1976 (UN Doc. S/PV.1941, p. 8); the criticism by Zimbabwe of the United States invasion of Grenada in 1983 (UN Doc. S/PV.2491, p. 5); and the steps taken by South Korea following its naval clash with the North in 2002 ('The Naval Clash on the Yellow Sea on 29 June between South and North Korea: The Situation and ROK's Position', 1 July 2002, press release of the Ministry of National Defence of the Republic of Korea, available at <www.globalsecurity.org/wmd/library/news/rok/2002/0020704-naval.htm>).

10. *Nicaragua*, merits, *supra* n. 7, para. 237.

11. Where the United States put forward the dual claim that action was taken '[i]n response to these attacks [of 11 September 2001]' and also was 'designed to prevent and deter further attacks on the United States'. See UN Doc. S/2001/946.

12. J.A. Green, *The International Court of Justice and Self-Defence in International Law* (Oxford, Hart Publishing 2009) pp. 129-146.

13. The International Court of Justice has explicitly refused to pronounce on the question on the basis that it has not been at issue before it, see *Nicaragua*, merits, *supra* n. 7, paras. 35 and 194; and *Armed Activities on the Territory of the Congo* (*Democratic Republic of the Congo* v. *Uganda*), merits, *ICJ Rep.* (2005) p. 168 at para. 143.

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While a number of important studies have been published on the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (the Child Abduction Convention, or: the Convention), Katarina Trimmings' book offers a pioneering study on the additions to the Convention for child abductions within the European Union created by Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (the Brussels II bis Regulation, or: Brussels II bis). The Brussels II bis Regulation – drawing inspiration from the 1996 Hague Child Protection Convention – reinforces the Child Abduction Convention in several respects. The Regulation underlines the primary role of the authorities of the child's habitual residence in deciding upon any measures to protect the child in the long term, in particular regarding the custody of the child; it also defines the moment when, if the child is not returned, jurisdiction transfers to the state of refuge. Moreover, it provides for the recognition and enforce-

ment of judgments relating to parental responsibility. However, in a further step, the Regulation not only reinforces but also *modifies* the way in which the Abduction Convention's return mechanism operates in intra-EU cases. It is this latter aspect of the Regulation that lies at the centre of this study, which grew out of the author's thesis presented to the University of Aberdeen in 2010.

The three principal questions addressed by the book are the following: (1) Was the tightening of the Convention's return mechanism by the Brussels II bis Regulation justified, in terms of the reasons stated and the principles and methods which were supposed to guide the drafting process? (2) Have the child abduction provisions of the Regulation operated effectively in practice? And, in particular, (3) what has been the effect of the obligation to hear the child in return proceedings?

(1) It was a French initiative which led to the involvement of the EU in the matter of international child abduction. In fact, France was dissatisfied with the application of the Abduction Convention by Germany (a fact that remains somewhat underexposed in the book). This had become a hot political topic, and France was, at that time, able to use its influence to persuade the EU to enlarge the existing Brussels II Regulation with provisions aimed at reducing the use of the 'grave risk exception' to the return obligation established by the Convention. According to Article 13(1) b) of the Convention a child should not be returned to the state of his/her habitual residence if '…there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation'. France and its allies succeeded in having provisions included in the Regulation, Article 11(6)-(8) and Article 42, enabling the courts of the habitual residence of the child to trump a refusal to return the child decided by the authorities of the member state of refuge based on Article 13(1) b).

The stated reason for this trumping mechanism was 'problems encountered in practice with Article 13(1) b), whose application is allegedly prone to abuse'. This claim was justified by a reference to a statistical survey on the practical operation of the Child Abduction Convention carried out under the auspices of the Hague Conference in 1999. Although this research did reveal a higher refusal rate for Germany than for France, it certainly did not support, as the author convincingly demonstrates, the overall assertion that Article 13(1) b) was being overused. Moreover, as she points out in chapter 4, four meetings of Special Commissions of the Hague Conference held between 1989 and 2001 to review the practical operation of the Convention, and a whole series of other conferences and judicial seminars organised between 2000 and 2002 devoted to the practice of the Convention, had all concluded that the return mechanism was being strictly applied. Indeed, there were already voices suggesting that its application might sometimes be too strict, and that occasionally children were returned in genuine cases of grave risk. But the political pressure in the context of Brussels II bis was such that these conclusions were ignored and no empirical research was carried out to establish a sound factual basis for the Regulation.

Chapter 2 presents a vivid account of the development of the Brussels II bis initiative and the heated negotiations that resulted in the text adopted in November 2003. Chapter 3 analyses in detail how the legislative process disregarded the proclaimed principles of

good drafting, in particular of subsidiarity – including in its 'upward' application (i.e., whether action could be better taken at the global, rather than the European, level) – and of proportionality, and how criteria for consultation and expertise were not applied. This chapter offers both an instructive overview of the theoretical framework for good EU law-making and a sobering account of how, in this particular case, legislative principles fell victim to political preoccupations!

(2) The Regulation's return mechanism having become a reality nonetheless, it became important to examine how it worked in practice. The second part of the book presents the results of an extensive statistical study and a comprehensive analysis thereof. Katarina Trimmings had the excellent idea of undertaking a follow-up study on the research she had done with Professor Nigel Lowe of Cardiff University on the global operation of the Child Abduction Convention in 2003. Her study conducted in 2005-2006, the year following the entry into force of Brussels II bis, focused on child abductions within the EU. She was able to compare her findings with the results on the operation of the Convention among EU countries, extracted both from the earlier 2003 study and from a later global study, again carried out by Professor Lowe, for the year 2008, which permitted her to draw some conclusions on developments and trends beyond the 2005-2006 outcomes.

Chapter 5 offers a very accessible presentation of the statistical outcomes of this comparative research. Of general significance are the author's findings of a continuing upward trend in the number of intra-EU abductions, the fact that mothers accounted for over 70 % of all alleged abductors, and that more than half of them were 'going home', although this percentage appeared to go down.

The 2005/2006 survey revealed a marked decrease in the use of Article 13(1) b), which, on the face of it, suggested that the Regulation had indeed been successful in reducing the use of the grave risk exception, although it also provided some evidence of the avoidance of this exception by the use of other defences under the Convention. Paradoxically, however, the 2008 research displayed a noticeable *increase* in the use of the grave risk exception. The 2005/2006 survey, confirmed by the 2008 research, moreover, showed that Member States were largely unable to comply with the six-week timing rule (Art. 11(2) of the Convention, reinforced by Art. 11(3) of Brussels II bis). Finally, the survey revealed that the 'new' EU Members had greater difficulty than the 'old' EU Members in applying both the Convention and the Regulation in terms of timing and outcomes.

Chapter 6 explores in more depth the 'points of concern' indicated by the statistical survey. As the empirical 2005/2006 and 2008 surveys yielded opposing results, the study could not confirm a clear trend towards a decrease in the use of Article 13(1) b) under Brussels II bis. The analysis therefore focuses on Article 11(4), according to which, in any event, 'a court cannot refuse to return a child on the basis of Art 13 (1) b) … if it is established that adequate arrangements have been made to secure the protection of the child after his or her return'. The author identifies a number of deficiencies of this provision, including a lack of consideration being given to the safety of the returning parent – a growing concern given the trend towards an increased proportion of taking mothers – and the inefficiency of promises of security (undertakings) by the left-behind parent. This is fol-

lowed by several suggestions for the amendment of Article 11(4). In addition, the author's explanations for the finding that new EU Members tend to be less effective in operating Brussels II bis and the Convention than old Members are very interesting. Her account of the underlying causes of this is based on in-depth interviews with the Central Authorities in charge of the operation of the two instruments in the Czech Republic and Slovakia. Her findings include that a lack of concentration of jurisdiction, of resources, know-how and training, and ideological resistance against ordering the return of nationals to foreign countries were major obstacles to the effective operation of both instruments.

(3) Despite her criticism of the Regulation the author also has praise for Brussels II bis. Chapter 7, on the added value of the Regulation, describes in particular the more child-centred approach which has resulted from the obligation to hear the child introduced by Article 11(2) of the Regulation. A review of recent case law in England and Wales shows that this obligation has become of universal application and has even been declared applicable beyond the Regulation to all Convention proceedings. Brussels II bis has also reinforced the trend of lowering the minimum age for hearing the child, in contrast with current tendencies outside Europe where children are generally heard only in those cases where the defence of the child's objections has been raised.

Katarina Trimmings deserves great credit for initiating and successfully completing a highly original research project. She is careful in assessing the outcomes of her survey and the comparison with the previous and subsequent research, separating her own views, which are sometimes quite firm, from the data. As she points out, where the statistical data is inconclusive, for example regarding the question of whether the Regulation has led to an increase or a decrease in the use of the 'grave risk' exception, this should be a reason to continue the research. It is quite obvious that there is a need for continued systematic empirical work in this area which is so emotive and prone to political debate.

Her recommendations for amendments to the Regulation (chapter 8) are well reasoned and should be taken seriously on the occasion of the next revision of the Regulation. These recommendations relate, in particular, to Article 11(4) and concern upon whom the burden of proof should be placed to establish that adequate arrangements have been made in the state of habitual residence to secure the protection of the child after his/her return, the need to secure the safety not only of the child but also of the taking parent, the enforcement of undertakings, and the role of the Central Authorities in facilitating the safe return of the child. As she points out, several of these recommendations also concern the operation of the Child Abduction Convention (a revision of the Convention in the near future being unlikely, expert groups of the Hague Conference have been established which are working on a Guide to Good Practice on the interpretation and application of Art. 13(1) b), and studying the recognition and enforcement of foreign civil protection orders, among other matters).

It is tempting to reflect on a possible further recommendation aimed at revoking the trumping mechanism of Article 11(6)-(8) and Article 42 of the Regulation. Katarina Trimmings' study offers strong arguments for such an amendment. In fact, in light of the important paradigm shifts regarding the sociological patterns of child abduction illustrated

by the statistical findings (chapter 5) and their analysis (chapter 6), and the current political situation in the EU, it is almost inconceivable that this trumping system would have been introduced today. Also, the mechanism – based as it is on a lack of mutual confidence – does not fit well in a Regulation which otherwise hinges on (the need for) mutual trust. The recent case law of the European Court of Justice on the trumping system, tipping the balance even further towards the courts of the state of habitual residence, raises questions about the protection of the taking parent and the child. Without the trumping system, and by including Katarina Trimmings' recommendations, the Regulation's value as an instrument for the intra-EU reinforcement of the global Child Abduction Convention, in addition to its importance as the leading EU instrument in matrimonial matters, would be even more useful!

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