

Title	Report of the Experts' Group on the Parentage / Surrogacy Project (meeting from 12 to 16 October 2020)
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Author	Experts' Group on the Parentage / Surrogacy Project Chair of the Experts' Group on the Parentage / Surrogacy Project
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Objective	To report on the seventh meeting of the Experts' Group
Action to be Taken	For Decision <input type="checkbox"/> For Approval <input type="checkbox"/> For Discussion <input type="checkbox"/> For Action/Completion <input type="checkbox"/> For Information <input checked="" type="checkbox"/>
Annexes	Annex I: <i>Aide-mémoire</i> of the meeting of the Experts' Group on the Parentage / Surrogacy Project prepared by the Chair Annex II: List of participants of the seventh meeting of the Experts' Group on the Parentage / Surrogacy Project
Related Documents	<ul style="list-style-type: none"> - Prel. Docs Nos 3A of February 2015, 3B and 3C of March 2014 and C&R No 5 of CGAP 2015 - Prel. Doc. No 3 of February 2016 and C&R No 15 of CGAP 2016 - Prel. Doc. No 2 of February 2017 and C&R Nos 8-10 of CGAP 2017 - Prel. Doc. No 2 of February 2018 and C&R Nos 6-7 of CGAP 2018 - Prel. Docs Nos 2A of October 2018, 2B of February 2019 and C&R Nos 7-12 of CGAP 2019 - Prel. Doc. No 2 of November 2019 and C&R Nos 5-9 of CGAP 2020

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I. Introduction

- 1 From 12 to 16 October 2020, the Experts' Group on the Parentage / Surrogacy Project met via videoconference. This seventh meeting of the Group was attended by 36 Experts, 3 Observers and members of the Permanent Bureau of the HCCH. The Experts represented 22 Member States from various regions. The list of participants is included as Annex II.
- 2 At its 2019 meeting, the Council on General Affairs and Policy (CGAP) endorsed the continuation of the work of the Experts' Group and requested that a short update on progress be provided at the 2021 CGAP meeting and a full report be provided at the 2022 CGAP meeting.
- 3 The *Aide-mémoire* of the Chair in Annex I provides a short overview of the main points of discussion at the seventh meeting of the Experts' Group.

II. Conclusions and Recommendations

- 4 The Experts' Group invites CGAP to take note of the *Aide-mémoire* contained in Annex I prepared by the Chair based on the deliberations during the Experts' Group meeting.

ANNEXES

Annex I

Aide-mémoire **of the meeting of the Experts' Group on the Parentage / Surrogacy Project prepared by the Chair**

- 1 This *Aide-mémoire* provides a short overview of the main points of the discussion at the seventh meeting of the Experts' Group.
- 2 The Experts' Group discussion focused on potential provisions for inclusion in both a possible future general private international law instrument on legal parentage (the Convention) and a separate possible future protocol with private international law rules on legal parentage established as a result of an international surrogacy arrangement (the Protocol).
- 3 The Experts' Group discussed tentative draft applicable law rules for the Convention. The Group discussed the following mechanism:
 - the same applicable law rule regardless of the method and timing of establishment of legal parentage;
 - the use of the State of birth as the main objective connecting factor;
 - in cases where neither of the parents are habitually resident in the State of birth, an alternative connecting factor which would lead to the application of the law of the habitual residence of the person who gave birth; and
 - by way of an exception, the application of the law of the State of habitual residence of the child, if legal parentage is established by an act or by a judgment after the child's birth, and if it would benefit the child.
- 4 Experts also discussed possible tentative provisions for a Chapter on legal parentage recorded in a public document. In particular, they discussed the following points:
 - how such a Chapter would complement uniform applicable law rules and a rule of recognition of judgments on legal parentage provided for in the Convention and whether the compliance with such rules would need to be verified in every case or only in case of doubt;
 - whether the legal parentage recorded in a public document issued in the State of origin should be given the same effect cross-border or whether, for the purpose of the Convention, the legal parentage should be presumed to have been validly established until the contrary is established; and
 - how an optional certificate on legal parentage could facilitate the acceptance of the legal parentage recorded in a public document.
- 5 The feasibility of providing for uniform applicable rules and rules on the acceptance of legal parentage recorded in a public document was discussed, and would need to be the subject of further discussion.
- 6 In addition, with respect to the Convention, the Experts' Group noted the need to further discuss a number of matters, including:
 - the effects of legal parentage when established by operation of law or by an act, particularly nationality; and
 - the possible inclusion or exclusion of legal parentage established as a result of domestic adoptions.
- 7 The Experts' Group then turned to discuss draft provisions for a Protocol addressing the legal parentage established as a result of an international surrogacy agreement (ISA).

- 8 The Experts' Group discussed two possible mechanisms in order to broaden the scope of the Protocol to include legal parentage established as a result of an ISA by any method, and not only by a judgment:
- an approach where legal parentage would be recognised, based on a certification process, independently of the method by which it was established (a "recognition approach"); and
 - a more "traditional private international law" approach based on the provisions presented in the Convention which would apply different rules depending on how legal parentage was established.
- 9 The Experts' Group discussed possible safeguards and whether they should be framed as conditions for recognition or as general obligations. The Group also discussed different approaches on how and when the compliance with safeguards could be verified, including:
- an *a posteriori* approach, whereby the verification would be carried out after the child is born;
 - an *a priori* approach, whereby a cooperation mechanism would aim to ensure compliance with relevant safeguards throughout the arrangement, that is, before the child's conception, during pregnancy and after the child's birth;
 - the possibility of combining both approaches under distinct Chapters of a Protocol and the possibility for States to have an opt-in or opt-out mechanism;
 - the level of detail of the possible safeguards; and
 - the possibility of a certification mechanism to verify that the conditions under the Protocol had been met and therefore facilitate recognition of the legal parentage.
- 10 The feasibility of each approach was discussed, and would need to be the subject of further discussion.
- 11 With respect to the Protocol, the Experts' Group noted the need to further discuss a number of matters, including how to deal with situations of legal parentage which may fall outside the scope of the Protocol due to the non-compliance of certain conditions set out therein.
- 12 Generally, the Experts' Group noted the need to further discuss the possible inclusion or exclusion of legal parentage established as a result of domestic surrogacy arrangements in either of the instruments.
- 13 Going forward, the Experts' Group will focus its work on addressing the critical points where consensus on feasibility has not yet been achieved. For this purpose, the Experts' Group will continue to carry out intersessional work, will convene a short online meeting prior to the CGAP 2021 meeting, and a further (in-person) meeting before reporting to CGAP in 2022.

Annex II

List of participants of the seventh meeting of the Experts' Group on the Parentage / Surrogacy Project

Members	Argentina	Nieve	Rubaja	Legal Adviser, Ministry of Foreign Affairs; Professor in Private International Family Law	University of Buenos Aires
	Australia	John	Pascoe, AC CVO	Former Chief Justice, Chief Justice's Chambers	Family Court of Australia
	Brazil	Lalisa	Froeder Dittrich	Specialist in Public Policy & Government Management, Asset Recovery and International Legal Cooperation	Ministry of Justice and Public Security
	Canada	Marie	Riendeau	Counsel, Constitutional, Administrative and International Law Section	Department of Justice Canada
	China	Yingying	Wu	Professor of Law	China University of Political Science and Law
	France	Sophie	Potentier-Rios	Rédactrice, Bureau du droit des personnes et de la famille (C1), diplômée notaire, docteur en droit, direction des Affaires civiles et du Sceau	Ministère de la Justice
	Germany	Ulrike	Janzen	Head of the Unit for Private International Law	<i>Bundesministerium der Justiz und für Verbraucherschutz</i>
		Barbara	Henneberger	Legal Officer, Unit for Private International Law	<i>Bundesministerium der Justiz und für Verbraucherschutz</i>
	India	Geeta	Narayan	Joint Secretary, Department of Health Research	Ministry of Health and Family Welfare
		K. C.	Sowmya	Senior Legal Officer (Gr. I), Legal & Treaties Division	Ministry of External Affairs
	Israel	Jacob	Friedberg	Senior Legal Counsel, Office of Legal Counsel and Legislative Affairs	Ministry of Justice
	Italy	Laura	Carpaneto	Associate Professor of European Law; Member, International Association of Child Law Researchers (IACLaR)	University of Genoa

	Japan	Yuko	Nishitani	Professor of Private International Law	Kyoto University
	Mexico	María Mercedes	Albornoz	External Adviser on Private International Law to the Office of the Legal Adviser, Ministry of Foreign Affairs; Professor	<i>Centro de Investigación y Docencia Económicas, A.C. (CIDE)</i>
		Alejandro	León-Vargas	Second Secretary, Legal Adviser	Embassy of the United Mexican States
	Netherlands	<i>Unable to attend / excusé</i>			
	New Zealand	Margareth	Casey, QC	Barrister	Private Practice
	Philippines	Elizabeth	Aguiling-Pangalangan	Professor of Private International Law; Director, Institute of Human Rights	University of the Philippines
	Russian Federation	Olga	Khazova	Associate Professor	The Moscow School of Social and Economic Sciences
	South Africa	Ronaldah Lerato Karabo	Ozah	Attorney; Director, Centre for Child Law, Faculty of Law	University of Pretoria
	Spain	Cristina	Gonzalez Beilfuss	Professor in Private International Law, Faculty of Law	University of Barcelona
	Sweden	Michael	Hellner	Professor of Private International Law	Stockholm University
	Switzerland	Joëlle	Schickel-Küng	Co-Head of the Private International Law Unit (Chair of the Seventh meeting of the Experts' Group)	Federal Office of Justice
	Ukraine	Lyudmyla	Ruda	Deputy Head of the Department on International Legal Assistance; Head of the Division on Conclusion	Ministry of Justice
	United Kingdom	Eral	Knight	Head of the European and Private International Law Team	Ministry of Justice
		Andrea	Wright	Senior Legal Advisor, European Union Civil Law & Private International Law Team	Ministry of Justice
	United States of America	Lisa	Vogel	Attorney Adviser, Office of the Legal Adviser	U.S. Department of State

Observers IGO	UNICEF	Kirsten	Di Martino	Senior Child Protection Adviser, Programme Division	United Nations Children's Fund (UNICEF)
Observers NGO	IAFL	Rachael	Kelsey	Director, Secretary to the IAFL; SKO Family Law Specialists	International Academy of Family Lawyers (IAFL)
	ISS	Mia	Dambach	Director International Reference Centre (ISS / IRC); Coordinator Advocacy and Policy Development	International Social Service (ISS)
HCCH	Permanent Bureau	Christophe	Bernasconi	Secretary General	HCCH
		Laura	Martínez-Mora	Secretary	HCCH
		Capucine	Page	Legal Officer	HCCH
		Hannah	Baker	Consultant to the Permanent Bureau	HCCH
		Michael	Wells-Greco	Consultant to the Permanent Bureau	HCCH
		Soojin	Cho	Judge on Secondment at the Permanent Bureau	HCCH
		Jessica	Valentine	Intern	HCCH
		Olivia	West	Intern	HCCH
		Mathilde	Pré纳斯	Senior Administrative Assistant	HCCH