

**REPORT OF THE FEBRUARY 2016 MEETING OF THE
EXPERTS' GROUP ON PARENTAGE / SURROGACY**

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**RAPPORT DE LA RÉUNION DE FÉVRIER 2016 DU
GROUPE D'EXPERTS RELATIF AU PROJET
FILIACTION / MATERNITÉ DE SUBSTITUTION**

*Preliminary Document No 3 of February 2016 for the attention
of the Council of March 2016 on General Affairs and Policy of the Conference*

*Document préliminaire No 3 de février 2016 à l'attention
du Conseil de mars 2016 sur les affaires générales et la politique de la Conférence*

Introduction

1. From 15 to 18 February 2016, the Experts' Group on Parentage / Surrogacy ("the Group") met in The Hague. The meeting was attended by 21 experts, 3 observers and members of the Permanent Bureau. The experts represented 21 States from all regions, including some States of origin as well as some receiving States in relation to international surrogacy arrangements ("ISAs"). The composition of the Group is included as Annex A.

2. The mandate of the Group is to explore the feasibility of advancing work on the private international law issues surrounding the status of children, including issues arising from ISAs. The Group was asked to first consider the private international law rules regarding the legal status of children in cross-border situations, including those born of ISAs.¹

3. The meeting took place against the background of existing regional and international treaties and obligations, such as, for example, the *United Nations Convention on the Rights of the Child*.

Report on the discussion at the meeting

4. The Group began its work by discussing specific case examples. The discussion revealed significant diversity in national approaches. The Group recognised that the absence of uniform private international law rules or approaches with respect to the establishment and contestation of parentage can lead to conflicting legal statuses across borders and can create significant problems for children and families, e.g., uncertain paternity or maternity, limping parental statuses, uncertain identity of the child, immigration problems, uncertain nationality or statelessness of the child, abandonment including the lack of maintenance. The Group recognised that common solutions are needed to address these problems.

5. The Group recognised that children's legal parentage is an issue of international concern and it is the gateway through which many of the obligations owed by adults to children flow. It is a legal status from which children derive many important rights (e.g., identity, nationality, maintenance, inheritance). It was noted that the topic of private international law rules on parentage has not been included in existing Hague Conventions so far.

6. With respect to private international law rules, the Group examined the diverse approaches that States have with respect to rules on jurisdiction, applicable law, and recognition in the context of legal parentage including assisted reproductive technologies ("ART") and ISAs.

7. Regarding ART and ISAs, the Group noted that a majority of States do not have specific private international law rules and, as a result, apply in such cases their general private international law rules.

8. Regarding jurisdiction, the Group noted that issues can arise in the context of legal parentage being established by or arising from: (1) birth registration; (2) voluntary acknowledgment of legal parentage; or (3) judicial proceedings. Issues can also arise in the context of the contestation of legal parentage.

9. The experts reported that in their experience they had not encountered significant jurisdiction issues as a stand-alone topic. The Group was of the view that it would be useful to have further discussions, in particular, on the feasibility of indirect jurisdiction rules.

10. Regarding applicable law, the Group acknowledged that there is a split between those States whose private international law rules point to the application of internal substantive law (*lex fori*) and those whose private international law rules may also lead to the application of foreign law. The Group considered the merits of each approach.

11. The Group thought further consideration of uniform applicable law rules was needed and was of the view that it would be useful to have further discussions on the feasibility of unifying the connecting factors that States use for the purpose of determining which law to apply.

¹ See Conclusions and Recommendations of the Council on General Affairs and Policy of the Hague Conference of 24-26 March 2015, para. 5.

12. Regarding recognition, the Group acknowledged the diversity of approaches of States with respect to the recognition of foreign public documents such as birth certificates or voluntary acknowledgements of parentage, and noted that there is more congruity of practice with respect to the recognition of foreign judicial decisions.

13. The Group was of the view that it would be useful to have further discussions on the feasibility of unifying the rules on the recognition of foreign public acts and judicial decisions on parentage, taking into account public policy concerns, including those stipulated in domestic law.

14. The Group noted the potential benefits of channels of co-operation between State authorities as a means of alleviating the significant problems aforementioned.

15. The Group noted that surrogacy arrangements are prohibited in some States, permitted in other States and unregulated in others. The Group recognised concerns at the international level regarding the public policy considerations of all those involved with surrogacy arrangements, including, for example, the uncertain legal status of children and the potential for exploitation of women, including surrogate mothers.

Conclusions and recommendations as to future work

16. The Group determined that, owing to the complexity of the subject and the diversity of approaches by States to these matters, definitive conclusions could not be reached at the meeting as to the feasibility of a possible work product in this area and its type or scope. The Group was of the view that work should continue and at this stage consideration of the feasibility should focus primarily on recognition. The Group therefore recommends to Council that the Group's mandate be continued. In this regard, the Group also recommends that Council directs the Permanent Bureau to undertake the necessary work with a view to preparing a next meeting of the Group and allocate resources accordingly.²

² "2016 Background Note for the meeting of the Experts' Group on the Parentage / Surrogacy Project", drawn up by the Permanent Bureau of the Hague Conference on Private International Law, January 2016, para. 70.

PARENTAGE / SURROGACY PROJECT

List of participants

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