

Is there a need for international conventions on legal parentage (incl. international surrogacy arrangements)?

The Experts' Group on Parentage / Surrogacy of the Hague Conference on Private International Law (HCCH) has answered in the affirmative.

At its fifth meeting earlier this year, the Experts' Group agreed that it would be feasible to develop both:

- a general private international law instrument on the recognition of foreign judicial decisions on legal parentage; and
- a separate protocol on the recognition of foreign judicial decisions on legal parentage arising from international surrogacy arrangements (abbreviated as "ISA").

As announced on the HCCH website, the Experts' Group will recommend to the governance body of the HCCH (*i.e.* Council on General Affairs and Policy) during its meeting in March 2019 that "work continue with a view to preparing proposals for inclusion in future instruments relating to the recognition of judicial decisions." The Council will have the last word.

In my opinion, there are many reasons for drafting two separate instruments, which may range from legal to political as these are very sensitive topics. One that particularly struck me relates to the indirect grounds of jurisdiction when considering the recognition of such decisions:

"Most Experts concluded that the indirect grounds previously identified in the context of general legal parentage would not work in ISA cases, and instead supported the **State of birth of the child as the primary connecting factor in an ISA case** as this would provide certainty and predictability. A qualifier to that connecting factor (such as the habitual residence of the person giving birth to the child) might be necessary to guarantee sufficient proximity, as well as to prevent and combat trafficking of persons and law evasion." See also para 25 of the

Report.

Please note that these instruments would deal with the *recognition* and not with the enforcement of foreign judicial decisions given the nature of decisions on legal parentage. See in contrast my previous post on the HCCH draft Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

The HCCH news item is available [here](#).

The full report is available [here](#).