

Work on possible future Private International Law instruments on legal parentage (incl. legal parentage established as a result of an international surrogacy arrangement) is making progress

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The sixth meeting of the Experts' Group on Parentage / Surrogacy took place in late October & early November 2019 in The Hague, the Netherlands, and focused on proposing provisions for developing two HCCH instruments:

- a general private international law instrument (*i.e.* a Convention) on the recognition of foreign judicial decisions on legal parentage; and
- a separate protocol on the recognition of foreign judicial decisions on legal parentage rendered as a result of an international surrogacy arrangement.

As indicated in the HCCH news item, the Experts' Group also discussed the feasibility of making provisions in relation to applicable law rules and public documents.

At the outset, experts underlined "the pressing need for common internationally-agreed solutions to avoid limping legal parentage. The aim of any future instrument would be to provide predictability, certainty and continuity of legal parentage in international situations for all individual concerned, taking into account their rights, the *United Nations Convention on the Rights of the Child* and in particular the best interests of the child."

In relation to the recognition of judgments under the Convention, the Group studied both *indirect grounds of jurisdiction* (such as the child's habitual residence) and *grounds for refusal of recognition* (such as public policy and

providing the child with an opportunity to be heard, which seems to me of paramount importance). Due to the fact that in the majority of cases legal parentage is not established by a judgment, other *Private International Law techniques* such as applicable law were also studied. In addition, the presumption of validity of legal parentage recorded in a public instrument issued by a designated competent authority was also considered by the experts. A comprehensive PIL instrument was also discussed.

Furthermore, to facilitate the recognition by operation of law of foreign judgments on legal parentage in international surrogacy arrangements, the Group considered possible criteria (*i.e.* minimum standards or safeguards to protect the rights and welfare of the parties involved, in particular the best interests of the child) that would need to be met. The Group also “discussed the possibility of certification (for example, by way of a model form) to verify that conditions under the Protocol have been met.”

Given the controversial nature of international surrogacy arrangements, the Group stressed that *any future protocol on this issue should not be understood as supporting or opposing surrogacy*. The question of course remains whether States would be willing to join such an instrument and whether the international act of consenting to be bound by such an instrument on the international plane would signal a positive or negative approach to surrogacy arrangements by a specific State (and possibly result in a potential imbalance between national and international surrogacy arrangements *i.e.* the former being refused effect and the latter being recognised). The issue of domestic surrogacy arrangements still needs to be explored further by the Group (see para No 26 of the Report).

Moreover, an important feature of the work is the future relationship between the two draft instruments. In this regard, the Group noted that “In principle, the Group favoured an approach whereby States could choose to become a party to both instruments or only one of them. Some Experts proposed that consideration be given to possible mechanisms to serve as a bridge between the two instruments. Experts agreed that, at this time, the Group should continue its work by considering the draft instruments in parallel.”

The proposal is that the Group continues its work on these issues and that it reports to the governance body of the Hague Conference (HCCH) in **March 2022** so that this body can make a final decision on whether to proceed with this

project.

The Report of the Experts' Group is available [here](#).

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