

<b>Title</b>	<b>Report of the Experts' Group on the Parentage / Surrogacy Project (meeting from 5 to 9 July 2021)</b>
<b>Document</b>	<b>Prel. Doc. No 2A of July 2021</b>
<b>Author</b>	Experts' Group on the Parentage / Surrogacy Project Chair of the Experts' Group on the Parentage / Surrogacy Project
<b>Agenda Item</b>	TBD
<b>Mandate(s)</b>	C&D Nos 5 and 6 of CGAP 2021
<b>Objective</b>	To report on the ninth meeting of the Experts' Group
<b>Action to be Taken</b>	<div>For Action <input type="checkbox"/></div> <div>For Approval <input type="checkbox"/></div> <div>For Decision <input type="checkbox"/></div> <div>For Information <input checked="" type="checkbox"/></div>
<b>Annexes</b>	<p>Annex I: <i>Aide-mémoire</i> of the ninth meeting of the Experts' Group on the Parentage / Surrogacy Project prepared by the Chair</p> <p>Annex II: List of participants of the ninth meeting of the Experts' Group on the Parentage / Surrogacy Project</p>
<b>Related Documents</b>	<ul style="list-style-type: none"> <li>- Prel. Docs Nos 3A of February 2015, 3B and 3C of March 2014 and C&amp;R No 5 of CGAP 2015</li> <li>- Prel. Doc. No 3 of February 2016 and C&amp;R No 15 of CGAP 2016</li> <li>- Prel. Doc. No 2 of February 2017 and C&amp;R Nos 8-10 of CGAP 2017</li> <li>- Prel. Doc. No 2 of February 2018 and C&amp;R Nos 6-7 of CGAP 2018</li> <li>- Prel. Docs Nos 2A of October 2018, 2B of February 2019 and C&amp;R Nos 7-12 of CGAP 2019</li> <li>- Prel. Doc. No 2 of November 2019 and C&amp;R Nos 5-9 of CGAP 2020</li> <li>- Prel. Doc No 2A of October 2020, Prel. Doc. No 2B of February 2021 and C&amp;D Nos 5-6 of CGAP2021</li> </ul>

## **Report of the Experts' Group on the Parentage / Surrogacy Project (meeting from 5 to 9 July 2021)**

### **I. Introduction**

- 1 From 5 to 9 July 2021, the Experts' Group on the Parentage / Surrogacy Project met via videoconference. This ninth meeting of the Experts' Group was attended by 33 experts representing 22 Member States from various regions, one Regional Economic Integration Organisation and three Observers and members of the Permanent Bureau (PB) of the HCCH. The list of participants is included as an Annex (II).
- 2 At its 2021 meeting, the Council on General Affairs and Policy (CGAP) endorsed the recommendation of the Group to extend its mandate by one year, to allow submission of its final report to CGAP at its 2023 meeting. This aims at allowing the Group to have at least one in-person meeting, as well as to continue intersessional work and convene several short online meetings.<sup>1</sup> This is the first short online meeting of the Group. The next online meeting is planned for November 2021.
- 3 The *Aide-mémoire* of the Chair in Annex I provides an overview of the main points of discussion at the ninth meeting of the Experts' Group.

### **II. Conclusions and Recommendations**

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

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<sup>1</sup> C&R No 5 of CGAP 2021.

## **ANNEXES**

## Annex I

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

- 1 This *Aide-mémoire* provides an overview of the main points of the discussion at the ninth meeting of the Experts' Group.
- 2 The Experts' Group discussion focused on the scope of the possible draft Convention on legal parentage (draft Convention) and the scope of the possible draft Protocol on legal parentage established as a result of an (international) surrogacy arrangement (draft Protocol). The Group discussed, in particular, the desirability and feasibility of including:
  - domestic adoptions in the scope of the draft Convention;
  - legal parentage established as a result of domestic surrogacy arrangements in the scope of the draft Convention or draft Protocol; and
  - domestic adoptions in the context of a (domestic / international) surrogacy arrangement in the scope of the draft Convention or draft Protocol.
- 3 With regard to **domestic adoptions**, the Experts' Group discussed the following aspects:
  - a possible definition of "adoption" and of "domestic adoption" and the need to ensure that if domestic adoptions are included within the scope of the draft Convention, only adoptions which create a permanent legal parent-child relationship be recognised;
  - whether the rules in the draft Convention (*i.e.*, on the recognition of judicial decisions and possible uniform applicable law) would be appropriate for domestic adoptions and / or whether different or additional rules would be necessary;
  - whether safeguards framed as conditions for recognition and / or grounds for non-recognition (or other) of domestic adoptions would be necessary and, if so, how they should be verified;
  - whether domestic adoptions finalised by means other than a judicial decision (*e.g.*, an administrative decision) should also fall under the scope of the draft Convention; and
  - whether the legal effects of domestic adoptions should be addressed, in particular with regard to domestic adoptions that do or do not terminate the pre-existing legal parent-child relationship in the State where they were made.
- 4 The Group discussed these aspects in light of the importance of not undermining the HCCH 1993 Intercountry Adoption Convention, as emphasised by CGAP at its 2019 meeting.<sup>2</sup> It also discussed how concerns in relation to illicit practices and / or abuses and illegal domestic adoptions could be addressed.
- 5 With regard to **legal parentage established as a result of domestic surrogacy arrangements**, the Experts' Group discussed the following aspects:
  - a possible definition of "domestic surrogacy arrangement";
  - whether the rules in the draft Convention (*i.e.*, on the recognition of judicial decisions and possible uniform applicable law) and in the draft Protocol (*i.e.*, on the recognition of legal parentage established as a result of an international surrogacy arrangement) would be appropriate for legal parentage established as a result of domestic surrogacy arrangements and / or whether different or additional rules would be necessary; and

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<sup>2</sup> C&R No 11 of CGAP 2019.

- under which instrument (*i.e.*, the draft Convention or the draft Protocol) legal parentage established as a result of domestic surrogacy arrangements should be included.
- 6 With regard to **domestic adoptions in the context of a (domestic / international) surrogacy arrangement**, the Experts' Group discussed whether these should be treated as:
- a domestic adoption; or
  - as a special category of legal parentage established following a surrogacy arrangement.
- 7 The Experts' Group discussed under which instrument (*i.e.*, the draft Convention or the draft Protocol) domestic adoptions in the context of a (domestic / international) surrogacy arrangement should be included.
- 8 The Group discussed these matters of scope mindful of the need to ensure coherence and coordination between both instruments to ensure that the provisions and guarantees of one instrument are not undermined by the other instrument.
- 9 The desirability and feasibility of including these three types of legal parentage within the scope of the draft Convention or the draft Protocol was discussed, and the Experts' Group's conclusions will be presented in its final report.
- 10 The Group also discussed whether the draft Convention should include rules dealing with the legal effects flowing from the recognition of legal parentage (*i.e.*, whether the draft Convention should be silent on the legal effects, whether it should specify that legal effects should be left to the law of the requested State or whether it should provide for minimal effects).
- 11 Finally, the Experts' Group started discussions on the form and content of the final report it will present at the 2023 CGAP meeting. It agreed that work on the report should begin as soon as possible.
- 12 The Experts' Group will meet in November 2021, to finalise the discussion on public documents in the context of legal parentage and to discuss the draft Protocol. The Group will meet again in 2022 in order to finalise its final report that it will present at the 2023 CGAP meeting.

## Annex II

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

	<i>Representing</i>	<i>Surname</i>	<i>First Name</i>	<i>Job Title</i>	<i>Organisation</i>
Members	<b>Argentina</b>	Rubaja	Nieve	Legal Adviser, Ministry of Foreign Affairs; Professor in Private International Family Law	University of Buenos Aires
	<b>Australia</b>	Pascoe, AC CVO	John	Former Chief Justice, Chief Justice's Chambers	Family Court of Australia, Chief Justice's Chambers
	<b>Brazil</b>	Froeder Dittrich	Lalisa	Specialist in Public Policy and Government Management, Asset Recovery and International Legal Cooperation	National Secretariat of Justice, Ministry of Justice and Public Security
	<b>Canada</b>	Riendeau	Marie	Counsel, Constitutional, Administrative and International Law Section	Department of Justice Canada
		Jacques	Emmanuelle	Counsel, Constitutional, Administrative and International Law Section	Department of Justice Canada
	<b>China</b>	Zhu	Rongzheng	Staff, Department of Consular Affairs	Ministry of Foreign Affairs
	<b>European Union</b>	Vilar-Badia	Maria	Legislative Officer	European Commission
		Vysoka	Lenka	Legal and Policy Officer	European Commission
	<b>France</b>	Potentier-Rios	Sophie	Rédactrice au Bureau du droit des personnes et de la famille	Ministère de la Justice
	<b>Germany</b>	Janzen	Ulrike	Head of the Unit for Private International Law	Federal Ministry of Justice and Consumer Protection

	Henneberger	Barbara	Legal Officer, Unit for Private International Law	Federal Ministry of Justice and Consumer Protection
India	Narayan	Geeta	Joint Secretary, Department of Health Research	Ministry of Health and Family Welfare India
Israel	Friedberg	Jacob	Senior Legal Counsel, Office of Legal Counsel and Legislative Affairs	Ministry of Justice
Italy	Carpaneto	Laura	Associate Professor of European Law; Member, International Association of Child Law Researchers (IACLaR)	University of Genoa
Japan	Nishitani	Yuko	Professor of Private International Law	Kyoto University
Mexico	Albornoz	María Mercedes	External Adviser on PIL to the Office of the Legal Adviser, Ministry of Foreign Affairs; Professor	Centro de Investigación y Docencia Económicas, A.C. (CIDE)
	Pérez Galeana	Patricia	First Secretary	Embassy of the United Mexican States
Netherlands	Rutten	Susan	Professor on Islamic Family Law in European context and Associate Professor of PIL	University of Maastricht
New Zealand	Casey, QC	Margaret	Barrister	Margaret Casey, QC, Private Practice
Philippines	Aguiling-Pangalangan	Elizabeth	Professor of Private International Law; Director, Institute of Human Rights	University of the Philippines
Russian Federation	Khazova	Olga	Leading Legal Scholar	The Private Law Research Centre named after S.S. Alekseev (Moscow), Department of Family Legislation and Legislation on Inheritance
South Africa	Ozah	Ronaldah Lerato Karabo	Attorney; Director, Centre for Child Law, Faculty of Law	University of Pretoria
Spain	González Beilfuss	Cristina	Professor in Private International Law, Faculty of Law	University of Barcelona

	<b>Switzerland</b>	Schickel-Küng	Joëlle	Co-Head of the Private International Law Unit (Chair of the ninth meeting of the Experts' Group)	Federal Office of Justice
	<b>Ukraine</b>	Ruda	Lyudmyla	Deputy Head of the Department on International Legal Assistance – Head of the Division on Conclusion	Ministry of Justice
	<b>United Kingdom</b>	Knight	Eral	Head of EU/International PIL Negotiations & Strategy	Ministry of Justice
		Wright	Andrea	Senior Legal Advisor, European Union Civil Law & Private International Law Team	Ministry of Justice
	<b>United States of America</b>	Vogel	Lisa	Attorney Adviser, US Department of State, Office of the Legal Adviser	U.S. Department of State
Observers - IGO	<b>United Nations Children's Fund (UNICEF)</b>	Raman	Vijaya Ratnam	Justice Specialist	United Nations Children's Fund (UNICEF)
Observers - NGO	<b>International Academy of Family Lawyers (IAFL)</b>	Kelsey	Rachael	President, European Chapter International Academy of Family Lawyers	SKO Family Law Specialists
		Dally	Jemma	Lawyer, Partner	Goodman Ray Solicitors
	<b>International Social Service (ISS)</b>	Wöllenstein-Tripathi	Jeannette	Children's Rights Specialist and IRC Coordinator	International Social Service (ISS)
		Alloero	Carlotta	Child Protection Lawyer	International Social Service (ISS)
HCCH	<b>Permanent Bureau</b>	Martinez-Mora	Laura	Secretary	HCCH



	Page	Capucine	Legal Officer	HCCH
	Baker	Hannah	Consultant to the Permanent Bureau	HCCH
	Wells-Greco	Michael	Consultant to the Permanent Bureau	HCCH
	Cho	Soojin	Judge on Secondment at the Permanent Bureau	HCCH
	Borisova	Betina	Intern HCCH	HCCH
	Prénas	Mathilde	Senior Administrative Assistant	HCCH