

<b>Title</b>	<b>Working Group on Parentage / Surrogacy: Report of the first meeting (from 13 to 17 November 2023)</b>
<b>Document</b>	<b>Prel. Doc. No 1 of November 2023</b>
<b>Author</b>	Working Group on Parentage / Surrogacy Chair of the Working Group on Parentage / Surrogacy
<b>Agenda Item</b>	Item II.1
<b>Mandate(s)</b>	C&D Nos 3 to 8 of CGAP 2023
<b>Objective</b>	To report on the first meeting of the Working Group and to present the recommendations of the Working Group following its first meeting
<b>Action to be Taken</b>	<div>For Decision <input type="checkbox"/></div> <div>For Approval <input type="checkbox"/></div> <div>For Discussion <input type="checkbox"/></div> <div>For Action / Completion <input type="checkbox"/></div> <div>For Information <input checked="" type="checkbox"/></div>
<b>Annexes</b>	<p>Annex I: <i>Aide-mémoire</i> of the first meeting of the Working Group on Parentage / Surrogacy prepared by the Chair</p> <p>Annex II: List of participants of the first meeting of the Working Group on Parentage / Surrogacy</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 CGAP 2021</li> <li>- Prel. Doc. No 2A of July 2021, Prel. Doc. No 2B of November 2021 and C&amp;D Nos 5-6 of CGAP 2022</li> <li>- Prel. Doc. No 1 of November 2022 and C&amp;D No 3-8 of CGAP 2023</li> </ul>

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# Working Group on Parentage / Surrogacy: Report of the first meeting (from 13 to 17 November 2023)

## I. Introduction

- 1 From 13 to 17 November 2023, the Working Group (WG) on Parentage / Surrogacy met for the first time. The meeting was held in person at the offices of the Permanent Bureau in The Hague, with the possibility for online participation. The meeting was attended by 54 participants in total. The participants represented 49 delegates from 30 Members, 29 States from various regions and one Member Regional Economic Integration Organisation, and five participants from three Observer organisations. Several staff members of the Permanent Bureau (PB) of the HCCH also attended the meeting. The list of participants is included as an Annex (II).
- 2 At its 2023 meeting the Council on General Affairs and Policy (CGAP) mandated the establishment of a Working Group (WG) on private international law matters related to legal parentage generally, including legal parentage resulting from an international surrogacy arrangement. In addition, CGAP mandated:
  - “5. a. the Working Group first to explore provisions for, if possible, one new instrument on these matters, to further inform CGAP on policy considerations in relation to the scope and content of such instrument, including on the feasibility of reaching consensus. The Working Group could later explore the possibility of two instruments, if necessary;
  - b. the Working Group to proceed on the basis that the aim of any new instrument would be to provide greater predictability, certainty and continuity of legal parentage in international situations for all persons concerned, taking into account their human rights, including, for children, those enshrined in the *United Nations Convention on the Rights of the Child* (UNCRC) and in particular their right that their best interests be a primary consideration in all actions taken concerning them;
  - c. the Working Group to draw on the ideas and assessments in the Final Report of the Experts’ Group, recognising that a number of elements and approaches identified could feature either on their own or in a combined way;
  - d. the PB to make arrangements for a maximum of two meetings within Financial Year (FY) 2023-2024, including at least one meeting before the next meeting of CGAP, with a preference for hosting in-person meetings (with the possibility for online participation).
- 6 The Working Group will update CGAP at its 2024 meeting.
- 7 CGAP encouraged Members to designate delegates who can speak to the policy views of their State.
- 8 CGAP reiterated that any work by the HCCH in relation to surrogacy arrangements should not be understood as supporting or opposing surrogacy.”
- 3 The *Aide-mémoire* of the Chair of the WG in Annex I provides an overview of the main points of discussion at the Group’s first meeting.

## II. Proposal for CGAP

4 The WG invites CGAP to take note of the *Aide-mémoire* prepared by the Chair.

5 Based on the foregoing, the PB proposes the following Conclusion and Decision:

CGAP took note of the *Aide-mémoire* of the Chair and welcomed the progress made by the WG. To further develop provisions for a draft instrument, CGAP invited the PB to convene two further meetings within Financial Year 2024-2025, possibly in the second half of 2024 and in early 2025, in addition to the April 2024 meeting, with intersessional work as required. The meetings of the WG should preferably be held in person and intersessional work should take place online.

## **ANNEXES**

## Annex I

### *Aide-mémoire* **of the first meeting of the Working Group on Parentage / Surrogacy prepared by the Chair**

- 1 This *Aide-mémoire* provides an overview of the main points of discussion at the first meeting of the Working Group (WG) held from 13 to 17 November 2023, under the chairmanship of Professor Michael Hellner (Sweden).
- 2 The Chair of the Experts' Group (EG), Ms Joëlle Schickel-Küng (Switzerland), presented an overview of the work of that Group. The WG expressed its gratitude to the Chair of the EG.
- 3 The WG recalled the mandate of the Council on General Affairs and Policy (CGAP) first to explore draft provisions for one new instrument, and that the Group was to proceed on the basis that the "aim of any new instrument would be to provide greater predictability, certainty and continuity of legal parentage in international situations for all persons concerned, taking into account their human rights, including, for children, those enshrined in the *United Nations Convention on the Rights of the Child* (UNCRC) and in particular their right that their best interests be a primary consideration in all actions taken concerning them".<sup>1</sup> The Group underlined the desirability of rules that would achieve this aim. The Group also noted the fact that surrogacy is permitted and regulated in some States, prohibited in other States, and unregulated in yet others.
- 4 Participants provided updates on new key legal developments in their States. The participant representing the European Union presented the recent Proposal of the European Commission for a *Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood*.
- 5 Participants highlighted their responses to the questionnaire which had been circulated by the Permanent Bureau (PB) ahead of the first meeting of the WG. Participants also outlined their expectations for the WG.

#### **A. Rules for legal parentage established by a judicial decision**

- 6 The Group commenced its consideration of draft provisions for one new instrument by focusing on possible rules on the recognition of judicial decisions, and in particular to what extent they could be applied to different scenarios of establishment, contestation and / or termination of legal parentage. The Group used as its basis for this discussion draft provisions which were prepared for the seventh meeting of the EG.
- 7 The scenarios that the Group considered included conventional legal parentage cases, domestic adoption, domestic surrogacy, international surrogacy, multiple legal parents, and assisted reproductive techniques involving or not involving a third party.
- 8 The Group considered the content of possible rules for each of these scenarios, including indirect grounds of jurisdiction, grounds for refusal of recognition, and conditions for recognition.
- 9 The Group had a fruitful discussion identifying the extent to which the same or different rules on recognition of judicial decisions might be necessary for the different scenarios.
- 10 The Group agreed that for many scenarios, the same indirect grounds of jurisdiction and grounds for refusal of recognition could be appropriate, subject to further consideration. However, the Group

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<sup>1</sup> 2023 CGAP, C&D No 5a.

identified other scenarios, such as for legal parentage established as a result of a surrogacy arrangement, that may require some specific rules. It was also highlighted that mechanisms, such as declarations to achieve flexibility in the application of any instrument, might be attractive to some States in light of the divergent laws in the area of legal parentage.

- 11 The Group noted the different types of decisions (often judicial) and of competent authorities that deal with legal parentage, and that terms such as “decision” and “authority” or “court” in any instrument would require autonomous definitions.
- 12 The Group also discussed the possible inclusion of rules on partial recognition and incidental questions; requests for decision of recognition or non-recognition; the requested State being bound by the findings of fact on jurisdiction by the State of origin; the legal effects of recognition, in particular in relation to domestic adoption; and the enforceability of determination of costs.

#### **B. Rules for legal parentage recorded in a public document**

- 13 The Group had a useful discussion on the desirability and feasibility of including rules on public documents concerning legal parentage. A number of options for rules were considered.
- 14 It was noted that rules requiring States to give greater effects to foreign public documents than to their own equivalents would pose feasibility challenges.
- 15 The possible connection of uniform rules on applicable law to rules on public documents was discussed. The Group agreed to continue the discussion in its future work, as well as considering other options (e.g., international certificate on legal parentage).

#### **C. Future work**

- 16 The Group will meet for its second meeting in April 2024.
- 17 In preparation for its next meeting, the Group decided that the draft rules on recognition of judicial decisions should be updated to reflect its discussion and inform its future work. It was decided that a subgroup would work intersessionally on such draft rules.
- 18 Given the progress made, the WG recommends that CGAP approve the continuation of the Group’s work, including two further meetings within Financial Year 2024-2025, possibly in the second half of 2024 and in early 2025, in addition to the April 2024 meeting, with intersessional work as required. The meetings of the WG should preferably be held in person and intersessional work should take place online.

## Annex II

### List of participants of the first meeting of the Working Group on Parentage / Surrogacy

	<i>Representing</i>	<i>Online :O On-site :S</i>	<i>Surname</i>	<i>First name</i>	<i>Job Title</i>	<i>Organisation</i>
Members	Argentina	O	Rubaja	Nieve	Legal Adviser, Ministry of Foreign Affairs; Professor in Private International Family Law	University of Buenos Aires
	Armenia	O	Sourouzian	Aram	Legal Expert, International Legal Cooperation Department	Ministry of Justice
	Belgium	O	Bruyninckx	Margot	Legal Adviser Family Law	Service Public Fédéral de la Justice
		O	Verbeemen	Kim	Attachée, Juriste	Service Public Fédéral de la Justice
		O	Hanson	Laura	Legal Expert	Service Public Fédéral de la Justice
	Brazil	S	Froeder Dittrich	Lalisa	Chief of the Unit for International Child Support	National Secretariat of Justice, Ministry of Justice and Public Security
	Canada	S	Jacques	Emmanuelle	Counsel	Department of Justice Canada
	China	O	Wu	Qiong	Deputy Division Director, Department of Treaty and Law	Ministry of Foreign Affairs



<b>Members</b>		S	Gan	Yong	Professor of Law	Wuhan University School of Law
		O	Yuen	Cheuk Lun (Eric)	Treaties & Law, International Law Division	Hong Kong SAR Department of Justice
		O	Zhu	Lin	Senior Officer	Macau SAR Legal Affairs Bureau
	<b>Cyprus</b>	O	Constantinou	Marialena	Counsel of the Republic A'	
		O	Koumi	Theano	Counsel	Law Office of the Republic
		O	Psoma	Chrysovalando	Counsel	Law Office of the Republic
	<b>Czech Republic</b>	S	Miltner	Aneta	Legal Expert	Ministry of Justice
		O	Kadlecová	Martina	Head of International Private Law Unit, International Department for Civil Matters	Ministry of Justice
		O	Vostalova Grüter	Alena	Lawyer	Ministry of Justice
	<b>Dominican Republic</b>	O	Cubilete	Tigidis	First Secretary	Embassy of the Dominican Republic

Members	El Salvador	S	Marroquín Martínez	Alex David	Chair of the Civil Chamber of the Supreme Court of Justice	Court of First Instance for Children and Adolescents of San Salvador
		S	Liévano Paz	Josué	Counsellor	Embassy of the Republic of El Salvador
		O	Rosales Cruz	Fátima Raquel	Specialized Procurator for Children and Adolescents	Attorney General's Office
	European Union	S	Vilar-Badia	Maria	Legislative Officer	European Commission
		O	De Luca	Patrizia	Senior Expert	European Commission
	France	S	Fauchard	Estelle	Rédactrice	Ministère de la Justice
		O	Neel	Célia	Juriste	Ministère de la Justice
	Germany	S	Janzen	Ulrike	Head of the Unit for Private International Law	Federal Ministry of Justice
	Greece	O	Metallinos	Alexandros	Member of the Greek National Authority of Assisted Reproduction	Greek National Authority of Assisted Reproduction
	India	S	Rangaswamy	Mythili	Legal Officer at Legal and Treaty Division	Ministry of External Affairs

Members		O	Khoda	Richa	Joint Secretary, Department of Health Research	Ministry of Health and Family Welfare
	Ireland	S	O’Keeffe	Tracy	Principal Officer   Civil Justice Legislation	Department of Justice and Equality
		O	Keegan	Edward	Assistant Principal Officer, Bioethics Unit	Department of Health and Children
		O	Keogh	Karyn	Assistant Principal Officer, Adoption Policy Unit, Department of Children, Equality, Disability, Int	Department of Health and Children
	Israel	O	Baron	Miriam	Senior Legal Counsel	Ministry of Justice
	Italy	O	Bilotti	Emanuele	Professor of Private Law	European University of Rome
	Japan	S	Nishitani	Yuko	Professor of International Private and Business Law	Kyoto University
		O	Miyazaki	Fumiyasu	Attorney, International Affairs Division, Minister's Secretariat, Ministry of Justice	Ministry of Justice
		O	Ishikawa	Maiko	Attorney, Civil Affairs Bureau	Ministry of Justice
	Mexico	O	Albornoz	María Mercedes	Professor of Private International Law; External Adviser on PIL	Ministry of Foreign Affairs; Centro de Investigación y Docencia Económicas (CIDE)

<b>Members</b>		O	Álvarez Rendón	Martha Angélica	Director of Private International Law	Ministry of Foreign Affairs Mexico
	<b>Netherlands</b>	S	Hoeven	Just	Coordinating legislative counsel Family Law	Ministry of Justice and Security
		O	Gelauff	Maril	Senior Legislative Counsel Family Law	Ministry of Justice and Security
		O	Volkers	Bregje	Senior Policy Officer Family Law	Ministry of Justice and Security
	<b>Philippines</b>	O	Aguiling- Pangalangan	Elizabeth	Professor of Private International Law	Embassy of the Philippines
	<b>Russian Federation</b>	S	Shvets	Elena	Head of Section of the Legal Department	Ministry of Foreign Affairs
	<b>South Africa</b>	S	Ozah	Ronaldah Lerato Karabo	Director, Centre for Child Law, Faculty of Law	Centre for Child Law
		O	Khesa	Mosiwa	Principal Family Advocate: Limpopo	Department of Justice and Constitutional Development
		O	Du Plooy	Marne	Acting Principal Family Advocate: Free State	Department of Justice and Constitutional Development
	<b>Spain</b>	O	González Beilfuss	Cristina	Professor in Private International Law	University of Barcelona

<b>Members</b>	<b>Sweden</b>	S	Hellner (Chair of the WG)	Michael	Professor of Private International Law	Stockholm University
	<b>Switzerland</b>	S	Schickel-Küng	Joëlle	Co-chef de l'Unité droit international privé	Federal Office of Justice
	<b>Ukraine</b>	O	Ruda	Lyudmyla	Deputy Head of the Department on International Legal Assistance	Ministry of Justice
	<b>United Kingdom</b>	S	Wright	Andrea	Senior Legal Adviser	Ministry of Justice
	<b>United States of America</b>	S	Vogel	Lisa	Attorney Adviser	U.S. Department of State
		O	Prosser	Sarah	Assistant Legal Adviser for PIL	U.S. Department of State
<b>Observers IGO</b>	<b>United Nations Children's Fund (UNICEF)</b>	O	Di Martino	Kirsten	Senior Child Protection Adviser, Programme Division	United Nations Children's Fund (UNICEF)
		O	Agcaoili	Grace	Child Protection Specialist	United Nations Children's Fund (UNICEF)
<b>Observers INGO</b>	<b>International Academy of Family Lawyers (IAFL)</b>	O / S	Kelsey	Rachael	President of the IAFL	SKO Family Law Specialists

Observers INGO		O / S	Dally	Jemma	Fellow, IAFL	Goodman Ray Solicitors
	International Social Service (ISS)	O	Alloero	Carlotta	Child Protection Lawyer	ISS
HCCH	Permanent Bureau	S	Martínez-Mora	Laura	Secretary (Lawyer)	HCCH
		S	Page	Capucine	Legal Officer	HCCH
		S	Wells-Greco	Michael	Lawyer	HCCH
		S	Prénas	Mathilde	Senior Administrative Assistant	HCCH
		S	Hawkins	Stuart	Website / IT Officer	HCCH
		S	Mohammadi	Sayeh	Intern	HCCH
		O	Genis	Leoné	Intern	HCCH