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Nationality of Children Born Through Surrogacy Abroad: A Conflict of Laws Perspective

جنسية الأطفال المولودين عبر الأم البديلة في الخارج منظور في تنازع القوانين

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مجلـة البحـوث الفقهيــة والقانونيــة
مجلة علمية عالمية متخصصة ومُحكمة
من السادة أعضاء اللجنة العلمية الدائمة والقارئة
في كافة التخصصات والأقسام العلمية بجامعة الأزهر

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المجلة حاصلة على تقييم ٨ من المكتبة الرقمية لجامعة الأزهر

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جامعة الأزهر، كلية الشريعة و القانون، دمنهور، مصر

تحية طيبة وبعد،،،

يسر **معامل التأثير والاستشهادات المرجعية للمجلات العلمية العربية (ارسيف – ARCIF)**، أحد مبادرات قاعدة بيانات "**معرفة**" للإنتاج والمحتوى العلمي، إعلامكم بأنه قد **أطلق التقرير السنوي التاسع للمجلات للعام 2024.**

يخضع معامل التأثير "ارسيف Arcif" لإشراف "مجلس الإشراف والتنسيق" الذي يتكون من ممثلين لعدة جهات عربية ودولية: (مكتب اليونيسكو الإقليمي للتربية في الدول العربية ببيروت، لجنة الأمم المتحدة لغرب آسيا (الإسكوا)، مكتبة الاسكندرية، قاعدة بيانات معرفة). بالإضافة للجنة علمية من خبراء وأكاديميين ذوي سمعة علمية رائدة من عدة دول عربية وبريطانيا.

ومن الجدير بالذكر بأن معامل "**ارسيف Arcif**" قام بالعمل على فحص ودراسة بيانات ما يزيد عن (**5000**) عنوان مجلة عربية علمية أو بحثية في مختلف التخصصات، والصادرة عن أكثر من (**1500**) هيئة علمية أو بحثية في العالم العربي. ونجح منها (**1201**) مجلة علمية فقط لتكون معتمدة ضمن المعايير العالمية لمعامل "**ارسيف Arcif**" في تقرير **عام 2024.**

ويسرنا تهنئتكم وإعلامكم بأن **مجلة البحوث الفقهية و القانونية** الصادرة عن **جامعة الأزهر، كلية الشريعة و القانون، دمنهور، مصر، قد نجحت في تحقيق معايير اعتماد معامل "ارسيف Arcif"** المتوافقة مع المعايير العالمية، والتي يبلغ عددها (**32**) **معياراً**، وللاطلاع على هذه المعايير يمكنكم الدخول إلى الرابط التالي: http://e-marefa.net/arcif/criteria/

وكان **معامل "ارسيف Arcif" العام** لمجلتكم لسنة 2024 (**0.3827**). ونهنئكم بحصول المجلة على:

- **المرتبة الأولى في تخصص الدراسات الإسلامية من إجمالي عدد المجلات (103)** على المستوى العربي، مع العلم أن **متوسط معامل "ارسيف" لهذا التخصص** كان (**0.082**). كما صُنفت مجلتكم في هذا التخصص ضمن الفئة (**Q1**) وهي الفئة العليا .
- كما صُنفت مجلتكم في **تخصص القانون** من **إجمالي عدد المجلات (114)** على المستوى العربي ضمن الفئة (**Q2**) وهي الفئة الوسطى المرتفعة ، مع العلم أن **متوسط معامل "ارسيف" لهذا التخصص** كان (**0.24**).

راجين العلم أن حصول أي مجلة ما على مرتبة ضمن الأعلى (10) مجلات في **تقرير معامل "ارسيف" لعام 2024** في أي تخصص، **لا يعني حصول** المجلة بشكل تلقائي على تصنيف مرتفع كتصنيف فئة Q1 أو Q2، حيث يرتبط ذلك بإجمالي قيمة النقاط التي حصلت عليها من **المعايير الخمسة المعتمدة لتصنيف مجلات تقرير "ارسيف" (للعام 2024) إلى فئات في مختلف التخصصات**، ويمكن الاطلاع على هذه المعايير الخمسة من خلال الدخول إلى الرابط: http://e-marefa.net/arcif/

وبإمكانكم الإعلان عن هذه النتيجة سواء على موقعكم الإلكتروني، أو على مواقع التواصل الاجتماعي، وكذلك الإشارة في النسخة الورقية لمجلتكم إلى معامل "**ارسيف Arcif**" الخاص بمجلتكم.

ختاماً، في حال رغبتكم الحصول على شهادة رسمية إلكترونية خاصة بنجاحكم في معامل "**ارسيف**"، نرجو التواصل معنا مشكورين.

وتفضلوا بقبول فائق الاحترام والتقدير

أ.د. سامي الخزندار

رئيس مبادرة معامل التأثير

" ارسيف Arcif"

Nationality of Children Born Through Surrogacy Abroad: A Conflict of Laws Perspective

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Nationality of Children Born Through Surrogacy Abroad: A Conflict of Laws Perspective

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Abstract:

This research addresses the legal challenges surrounding the nationality of children born through surrogacy arrangements abroad, within the framework of private international law. The increasing prevalence of cross-border surrogacy has given rise to significant legal uncertainty, particularly regarding the recognition of parentage and the transmission of nationality. The study highlights the risk of statelessness when states refuse to recognize surrogacy or the intended parental relationship, leaving children without legal identity or protection. A comparative analysis is conducted between Egypt, where surrogacy is implicitly prohibited on religious and ethical grounds; France, where surrogacy is categorically banned, and ordre public objections often prevent recognition of foreign arrangements; and Canada, where altruistic surrogacy is permitted under a regulated framework, ensuring recognition of parentage and conferral of citizenship. Drawing on international human rights law, comparative family law, and private international law doctrines, the research proposes legislative and judicial solutions aimed at balancing national sovereignty with the best interests of the child, particularly their rights to nationality, identity, and family life.

Keywords: Surrogacy; Conflict of Laws; Nationality; Statelessness; Child's Rights; Private International Law.

جنسية الأطفال المولودين عبر الأم البديلة في الخارج :منظور في تنازع القوانين

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ملخص البحث:

يتناول هذا البحث الإشكالية القانونية المتعلقة بجنسية الأطفال المولودين عبر ترتيبات الأم البديلة خارج الحدود الوطنية، في ظل اختلاف النظم القانونية وتباين المواقف التشريعية تجاه عمليات الحمل البديل .فقد أدى انتشار هذه الممارسة إلى نشوء تحديات قانونية عميقة، أبرزها احتمالية حرمان الطفل من حقه في الجنسية أو تأخير الاعتراف بهويته القانونية، مما قد يفضي إلى حالات انعدام الجنسية .يعرض البحث دراسة مقارنة بين مصر، حيث يُنظر إلى الحمل البديل باعتباره غير مشروع استنادًا إلى اعتبارات دينية وأخلاقية؛ وفرنسا، التي تحظر جميع أشكال الحمل البديل وتستند إلى النظام العام في رفض الاعتراف بالترتيبات الأجنبية؛ وكندا، التي تسمح بالحمل البديل غير التجاري وتضع أطرًا قانونية للاعتراف بالأبوة ومنح الجنسية .كما يستند البحث إلى مبادئ القانون الدولي لحقوق الإنسان وقواعد القانون الدولي الخاص، لاقتراح حلول توازن بين سيادة الدول وضرورة حماية مصلحة الطفل الفضلى، لاسيما حقه في الهوية والجنسية والحياة الأسرية.

الكلمات المفتاحية: الأم البديلة؛ تنازع القوانين؛ الجنسية؛ انعدام الجنسية؛ حقوق الطفل؛ القانون الدولي الخاص.

Introduction

The use of surrogacy as a form of assisted reproduction has expanded rapidly in recent decades, evolving from a rare medical practice into a transnational industry fraught with legal, ethical, and political complexities. Among the most contentious issues in this context is the legal nationality of children born through surrogacy arrangements conducted abroad—particularly when the surrogate mother, the child, and the intended parents are situated in different legal jurisdictions.(1)

While surrogacy offers a solution to infertility and enables parenthood for same-sex couples, it raises significant legal challenges when practiced across borders. Chief among these is the risk that the child's access to nationality and legal identity may be delayed or denied altogether, especially when one or more states refuse to recognize the surrogacy arrangement or the intended parental relationship(2). In extreme cases, this can result in children being born stateless—deprived of citizenship and, consequently, of basic rights and protections.(3)

- The legal complexity of this issue arises from several interrelated factors:
- Divergent national laws regarding surrogacy and family formation;

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(1) Cahn, N., & Carbone, J. (2020). Surrogacy, parentage, and the state. George Washington Law Review, 88, 785–786.

(2) Fenton-Glynn, C. (2017). Children's rights and cross-border surrogacy: The need for international regulation. Journal of Law and the Biosciences, 4(2), 398.

(3) Permanent Bureau of the Hague Conference on Private International Law. (2012, March). A preliminary report on the issues arising from international surrogacy arrangements. https://assets.hcch.net/upload/wop/gap2012pd10e.pdf

- Conflicting rules governing the acquisition of nationality, whether by descent or by place of birth;
- The invocation of public policy exceptions by certain states to deny recognition of surrogacy arrangements made abroad.(4)

In this legal vacuum, intended parents—particularly when returning to a country where surrogacy is banned or unregulated—often face significant challenges in having their legal parentage recognized or in registering the child's birth in their home country.(5)

These difficulties result not only in personal distress but also in widespread legal uncertainty, affecting thousands of children born through surrogacy each year.

This research paper addresses the following central question:

How should the nationality of children born through surrogacy abroad be determined when legal systems conflict?

To answer this question, the paper adopts a comparative legal approach by examining the laws and practices of three jurisdictions:

- Egypt, where surrogacy is not expressly legislated but is implicitly prohibited based on religious and ethical considerations;
- France, where all forms of surrogacy are banned, and public policy objections often prevent the recognition of foreign surrogacy arrangements;

(4) Trimmings, K., & Beaumont, P. (2013). International surrogacy arrangements: Legal regulation at the international level. Oxford: Hart Publishing.

(5) United Nations High Commissioner for Refugees (UNHCR). (2012, December). Guidelines on statelessness No. 4: Ensuring every child's right to acquire a nationality. https://www.refworld.org/docid/50d460c72.html

- Canada, where altruistic surrogacy is permitted and legal frameworks exist to recognize intended parentage and confer citizenship on children born abroad.

This paper draws upon international human rights principles, comparative family law, and private international law doctrines—including conflict of laws, *order public*, and the recognition of foreign judgments. Its ultimate aim is to propose legal solutions that balance the need to respect national sovereignty with the imperative to protect the best interests of the child, particularly their rights to identity, nationality, and family life.

The study is structured into three chapters:

- **Chapter One** explores the legal nature of surrogacy and how it is classified across different jurisdictions.
- **Chapter Two** examines the legal rules governing nationality and parentage in cross-border conflict of laws scenarios.
- **Chapter Three** proposes potential pathways toward legal harmonization—through both legislative reform and judicial practice—with a focus on safeguarding the rights of children born through international surrogacy arrangements.

Chapter One: The Legal Nature of Surrogacy and Its International Dimensions

Section 1: Definition and Legal Typology of Surrogacy

Surrogacy is generally defined as a contractual arrangement in which a woman (the surrogate) agrees to carry and give birth to a child on behalf of another person or couple (the intended parents), with the understanding that parental rights will be transferred after the child's birth.[6] This process may involve either the surrogate's own egg or an embryo created using the gametes of the intended parents or third-party donors.

Surrogacy arrangements raise a fundamental difficulty in determining the legal mother of the child, a question that has immediate and far-reaching consequences for the attribution of nationality.[7] The legal, ethical, and social dimensions of surrogacy vary significantly across jurisdictions, and its increasing prevalence in cross-border contexts has rendered it a critical issue in private international law.

Two primary forms of surrogacy are recognized in legal and medical literature:

1. **Traditional Surrogacy**

In traditional surrogacy, the surrogate uses her own egg and is therefore genetically related to the child. Fertilization is typically achieved through artificial insemination using the sperm of the

[6]) Sonia Allan, Donor Conception, Secrecy and the Search for Information, Journal of Law and Medicine 19, no. 4 (2012): 631.

[7]) Mahmoud Lotfy Mahmoud Abdelaziz, "Jinsiyyat Atfal al-Haml li-Hasab al-Ghayr" [Nationality of Children Born Through Surrogacy], Al-Majalla al-Qanouniya (The Legal Journal), Faculty of Law, Ain Shams University, no. 122 (2020), 181–182.

intended father or a donor[8].Because the surrogate is both the birth mother and the biological mother, this form of surrogacy raises more complex legal and emotional issues, particularly in relation to custody disputes and the determination of legal parentage.[9]

2. **Gestational Surrogacy**

In gestational surrogacy, the surrogate has no genetic connection to the child. The embryo is created through in vitro fertilization (IVF) using the egg and sperm of the intended parents or donors and is implanted in the surrogate's uterus.[10] This form of surrogacy is more widely accepted in contemporary legislation because it distinctly separates gestation from genetic parenthood, thereby reducing legal ambiguity regarding parental rights.[11]

From a legal standpoint, surrogacy arrangements can also be classified based on the nature of compensation involved:

- **Altruistic Surrogacy**: In altruistic arrangements, the surrogate does not receive financial compensation beyond reimbursement for medical, legal, and pregnancy-related expenses. This model is often the only form permitted in countries such as Canada, the United Kingdom, and Australia.[12]

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(8) Jackson, E. (2019). Medical law: Text, cases, and materials (5th ed.). Oxford: Oxford University Press.

(9) Kalantry, S. (2014). India's reproductive assembly line. Harvard Journal of International Law, 36(1), 94.

(10) Markens, S. (2007). Surrogate motherhood and the politics of reproduction. Berkeley: University of California Press.

(11) Scott, E. S. (2009). Surrogacy and the politics of commodification. Law and Contemporary Problems, 72(3), 112.

(12) Trimmings, K., & Beaumont, P. (2013). International surrogacy arrangements: Legal regulation at the international level. Oxford: Hart Publishing.

- **Commercial Surrogacy**: By contrast, commercial surrogacy involves the payment of a fee to the surrogate that exceeds reasonable expenses. This model has historically been practiced in jurisdictions such as India, Ukraine, and certain U.S. states, although many of these regions have recently enacted stricter regulations or outright bans.(13)

This typological distinction is not merely theoretical; it significantly influences the legal enforceability of surrogacy contracts, the recognition of intended parentage, and the child's legal status—including the acquisition of nationality. In international cases, the country where the surrogacy occurs may legally permit and recognize the arrangement, while the intended parents' home country may prohibit surrogacy entirely or refuse to acknowledge the resulting parental relationship(14).Such legal inconsistencies frequently give rise to complex conflicts of laws, leaving children in limbo—without a clear legal identity or recognized nationality.

Section 2: Legal Regulation of Surrogacy in Egypt, France, and Canada

Surrogacy remains one of the most legally fragmented areas of family law, with national approaches varying from outright prohibition to partial acceptance under stringent regulations. This section examines the legal framework—or lack thereof—governing surrogacy in Egypt, France, and Canada, highlighting the diversity of legal treatments and the resulting complications in cross-border surrogacy cases.

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(13) Hague Conference on Private International Law. (2012, March). A preliminary report on the issues arising from international surrogacy arrangements (p. 10). https://assets.hcch.net/upload/wop/gap2012pd10e.pdf

(14)

1. **Egypt: Legal Silence and Religious Prohibition**

Egypt does not have a specific legislative framework addressing surrogacy. Neither the Egyptian Civil Code nor the Personal Status Laws contain provisions that define, regulate, or permit surrogacy arrangements. However, prevailing religious and moral principles, particularly those rooted in Islamic jurisprudence, strongly influence the legal and judicial stance on the issue.[1](15)

In Islamic law, the concept of "mixing of lineages" (*ikhtilat ansab*) is strictly prohibited. This is especially relevant when the surrogate is not married to the genetic father or when third-party gametes are used in the process.[2] (16)Consequently, surrogacy is generally viewed as both religiously and ethically unacceptable. The Egyptian Dar al-Ifta (the official Islamic authority) has issued multiple fatwas prohibiting surrogacy, declaring it incompatible with Sharia(17).

While these fatwas are not legally binding, they exert considerable influence on court interpretations and public policy in Egypt.

Consequently, any surrogacy agreement—whether domestic or international—may be declared void for violating public order and religious morality(18). Egyptian authorities are also hesitant to register children born abroad through surrogacy, especially when the birth certificate lists two parents without a gestational

(15) Ahmed M. El Ashry, "Bioethics and Islamic Jurisprudence: Surrogacy in Egypt," Journal of Law and Religion 31, no. 3 (2016): 420–425.
(16) Mohamed El-Gamal, "Assisted Reproduction in Islamic Law," Islamic Horizons 38, no. 4 (2009): 16.
(17) Dar al-Ifta al-Misriyyah, "Fatwa No. 2427: The Ruling on Surrogacy," 2009, https://www.dar-alifta.org.
(18) Katarina Trimmings and Paul Beaumont, International Surrogacy Arrangements: Legal Regulation at the International Level (Oxford: Hart Publishing, 2013), 187.

connection.[19] This creates significant challenges for Egyptian nationals returning from abroad with children born through surrogacy, including difficulties in obtaining birth registration, parental recognition, and Egyptian nationality.

2. **France: Prohibition Based on Public Policy**

France maintains a categorical ban on all forms of surrogacy, grounded in its Civil Code and constitutional principles. Under Article 16-7 of the French Civil Code, surrogacy contracts are considered null and void because they violate the principle of human dignity and the prohibition on the commercialization of the human body. [20]French courts have consistently refused to recognize parentage based on surrogacy arrangements conducted abroad, invoking *ordre public* (public policy) to reject foreign birth certificates that list the intended parents instead of the surrogate.[21]

However, this stance has been partially challenged by the European Court of Human Rights (ECtHR). In the cases of *Mennesson v. France* and *Labassee v. France*, the Court ruled that France's refusal to recognize the paternity of children born via lawful surrogacy abroad violated the children's right to respect for their private life under Article 8 of the European Convention on Human Rights.[22]

In response, the French state has begun permitting the transcription of foreign birth certificates in limited cases, particularly where the biological link to the father is established.

(19) Claire Fenton-Glynn, Children and the European Court of Human Rights (Oxford: Oxford University Press, 2021), 135.
(20) Code civil [C. civ.] [Civil Code] art. 16-7 (Fr.).
(21) C. Cass. 1e civ., June 6, 2012, Bull. civ. I, No. 499
(22) ECtHR, Mennesson v. France, App No. 65192/11 (2014); Labassee v. France, App No. 65941/11 (2014).

[23]However, recognition of the intended mother remains a significant legal obstacle, as she is neither biologically related to the child nor the gestational carrier. Despite the ECtHR rulings, France continues to resist full recognition of foreign surrogacy arrangements.

Canada: Altruistic Surrogacy Under Federal and Provincial Regulation

Canada permits altruistic surrogacy under the *Assisted Human Reproduction Act* (2004), which prohibits commercial surrogacy and criminalizes payments to surrogates beyond approved expenses. [24]However, the law allows intended parents to enter into written agreements with surrogates, and parental recognition is governed by provincial family laws[25]. In provinces such as Ontario and British Columbia, courts frequently issue pre-birth or post-birth parentage orders, even for non-genetic intended mothers.[26]

Importantly, Canada has established legal pathways for conferring citizenship by descent to children born abroad through surrogacy. The *Citizenship Act* allows the child to acquire Canadian nationality if at least one of the intended parents is a citizen at the time of the child's birth and a genetic link is proven.[27]The federal government recognizes surrogacy arrangements performed abroad, provided that the documentation is valid and genetic or legal parentage is established through reliable evidence.

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(23) Fenton-Glynn, Children and the European Court of Human Rights, 154–158.

(24) Assisted Human Reproduction Act, S.C. 2004, c. 2 (Can.).

(25) Vanessa Gruben and Alana Cattapan, "Canada's Evolving Approach to Surrogacy Law," Canadian Bar Review 95 (2017): 301.

(26) Fiona Kelly, "Parentage Law in Canada: New Pathways to Legal Parenthood," International Journal of Law, Policy and the Family 30, no. 1 (2016): 19–22.

(27) Government of Canada, Citizenship Act, R.S.C., 1985, c. C-29, sec. 3.

Canada's regulatory model effectively combines federal restrictions on commercialization with flexible provincial mechanisms for establishing parentage. This approach is increasingly viewed as a model jurisdiction, balancing ethical concerns with legal certainty in surrogacy arrangements, both domestic and transnational.(28)

Section 3: Cross-Border Surrogacy and Conflict of Laws Challenges

Surrogacy across borders—often referred to as transnational or international surrogacy—presents significant challenges for legal systems due to the involvement of multiple jurisdictions with divergent legal principles. These challenges are central to private international law, where conflicts of laws, jurisdictional disputes, and public policy exceptions intersect. This is especially problematic when determining issues such as parentage, nationality, and the legal identity of the child.(29)

1. Diverging Legal Standards and Recognition Problems

In a typical transnational surrogacy case, the intended parents reside in one country, the surrogate in another, and the child is born in yet a third legal system. Each of these jurisdictions may hold radically different positions regarding the validity of surrogacy contracts, the determination of parentage, and the acquisition of nationality.[2](30)

(28) Trimmings and Beaumont, International Surrogacy Arrangements, 242

(29) Katarina Trimmings, "International Surrogacy and the Conflict of Laws," in International Surrogacy Arrangements: Legal Regulation at the International Level, ed. Trimmings and Beaumont (Oxford: Hart Publishing, 2013), 10.

(30) Claire Fenton-Glynn, "Nationality and the Best Interests of the Child in Cross-Border Surrogacy," Cambridge Law Journal 75, no.

For instance, a country where surrogacy is permitted (such as Canada or Ukraine) may issue a birth certificate listing the intended parents as the legal parents. However, another country where surrogacy is prohibited (such as France or Germany) may refuse to recognize that parentage under the principle of *ordre public*, thereby creating a legal vacuum for the child.(31)

This legal inconsistency often results in the denial of birth registration, nationality, passports, and legal parenthood, particularly when neither country takes full responsibility for the child's legal identity.(32)

2. **Statelessness and Legal Limbo**

   One of the most serious consequences of uncoordinated laws in transnational surrogacy is the risk of statelessness. Children born through surrogacy abroad may be denied nationality by both the country of birth and the country of intended parentage due to several factors:

- **Non-recognition of surrogacy**
- **Inability to establish a genetic or gestational link**
- **Refusal to register the birth certificate issued abroad**

Statelessness represents a violation of the child's right to a nationality at birth, as enshrined in international legal instruments such as the 1954 and 1961 Statelessness Conventions and the Convention on the Rights of the Child (CRC). (33)Despite these protections, many national authorities often prioritize public policy

(31) (2016): 528. 3. ECtHR, Mennesson v. France, App No. 65192/11 (2014).

(32) . Naomi Cahn, "The New Kinship," Georgetown Law Journal 100 (2011): 370.

(33) United Nations, Convention on the Rights of the Child, art. 7; United Nations, 1961 Convention on the Reduction of Statelessness, art. 1.

considerations over the child's rights, leaving families in protracted legal limbo(34)

3. Jurisdictional Uncertainty and Enforcement Issues

Jurisdictional conflicts significantly complicate transnational surrogacy cases. Courts may be reluctant to assert jurisdiction over disputes involving foreign surrogacy contracts or foreign-born children, particularly when the surrogacy arrangement involves a complex mix of legal systems. Even when a court issues a parentage or nationality order, enforcing that decision across borders remains difficult, especially if the other state invokes public policy exceptions.(35)

For example, in the **Mennesson v. France** case, the European Court of Human Rights (ECtHR) ruled that denying legal recognition of parentage violates the child's right to identity. However, the enforcement of this ruling still depends on whether domestic authorities accept foreign judgments or birth certificates. (36)The lack of mutual recognition mechanisms between countries further contributes to fragmented legal identities. In such cases, children may be recognized as citizens or as the children of certain parents in one country but not in another, leaving them in a state of legal uncertainty.

4. Lack of International Consensus and Coordination

Unlike other areas of family law—such as adoption or child abduction—there is no binding international convention governing surrogacy or the nationality of children born through such arrangements. While the Hague Conference on Private

(34) UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality, 2012, https://www.refworld.org/docid/50d460c72.html.

(35) Paul Beaumont, "Recognition of Parentage and Nationality in Cross-Border Surrogacy Cases," Journal of Private International Law 16, no. 1 (2020): 1–3.

(36) Fenton-Glynn, Children and the European Court of Human Rights, 158.

International Law (HCCH) has recognized this gap, it remains in the exploratory phase of proposing uniform standards for transnational surrogacy arrangements.(37)

In the absence of international consensus or a coordinated legal framework, countries are left to address these complex issues unilaterally. This leads to significant unpredictability and inequality, as different jurisdictions apply vastly different standards. The resulting legal uncertainty undermines the protection of children's rights, particularly their right to nationality and a legally recognized family life, leaving families and children vulnerable to inconsistent legal treatment across borders.

(37) HCCH, "Parentage / Surrogacy – Mandate 2015," https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy

Chapter Two: Nationality and Parentage under Conflict of Laws

Section 1: Principles of Nationality in Comparative Legal Systems

Nationality is a fundamental legal status that establishes the bond between an individual and a state.[1] [(38)]It serves as the legal foundation for the exercise of civil, political, and social rights, including the right to residence, healthcare, education, and diplomatic protection abroad.[2] [(39)]For children born through international surrogacy, acquiring a clear and secure nationality is crucial to ensure their access to legal identity and fundamental protections under both domestic and international law.[(40)]

States determine nationality based on different legal principles, the most common being jus soli (right of the soil) and jus sanguinis (right of blood).[(41)]

1. Jus Soli and Its Limitations

Under jus soli, nationality is acquired by virtue of birth within the territory of a state. This principle is commonly found in common law countries such as the United States and Canada. [(42)] However, even in such countries, the application of jus soli may be

(38) Paul Weis, Nationality and Statelessness in International Law, 2nd ed. (Leiden: Brill Nijhoff, 1979), 4.

(39) Alice Edwards, "The Meaning of Nationality in International Law in an Era of Human Rights," in Nationality and Statelessness under International Law, ed. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014), 11–12.

(40) UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality, 2012, 2.

(41) Weis, Nationality and Statelessness, 93.

(42) Patrick Weil, "Access to Citizenship: A Comparison of Twenty-Five Nationality Laws," in Citizenship Today: Global Perspectives and Practices, ed. T. Alexander Aleinikoff and Douglas Klusmeyer (Washington, D.C.: Carnegie Endowment for International Peace, 2001), 20.

limited for children born to foreign nationals, especially in the context of surrogacy. [43]For example, some jurisdictions require that at least one legal or genetic parent be a national for the child to acquire citizenship, even if born on the territory. [44]

Moreover, countries such as India, Ukraine, or Georgia—popular destinations for commercial surrogacy—often do not apply automatic jus soli. This creates legal complications when children are born in such countries to foreign intended parents and are not granted citizenship at birth.[45]

2. Jus Sanguinis and Recognition of Parentage

Under jus sanguinis, a child acquires nationality based on the nationality of one or both parents. This principle is predominant in civil law countries such as France, Germany, and Egypt[46].However, the application of jus sanguinis in surrogacy cases hinges on the recognition of parentage. If a country does not legally recognize the intended parents as the child's parents—due to public policy objections or lack of genetic connection—it may refuse to grant the child nationality.[47]

This creates a paradox: even when a child is genetically related to a national of the state, the child may be denied citizenship because of the non-recognition of the surrogacy arrangement that

(43) Jacqueline Stevens, "Reproducing the State," Harvard Journal of Law & Gender 30 (2007): 389–390.

(44) Naomi Cahn and June Carbone, "Surrogacy and Citizenship in the Modern Family," Yale Journal of Law and Feminism 29, no. 2 (2018): 285

(45). Sital Kalantry, "India's Reproductive Tourism Industry," Law and Ethics of Human Rights 9, no. 1 (2015): 50–52.

(46) Olivier Vonk, Dual Nationality in the European Union: A Study on Changing Norms in Public and Private International Law and in the Municipal Laws of Four EU Member States (Leiden: Brill, 2012), 41

(47). Fenton-Glynn, Children and the European Court of Human Rights, 137.

led to the child's birth.[11] [48]In such cases, children risk becoming stateless, despite having biological links to the intended parents.

3. . International Obligations on the Right to Nationality

International human rights law obliges states to ensure that every child has the right to acquire a nationality. Article 7 of the Convention on the Rights of the Child (CRC) requires states to register children at birth and guarantee their right to a nationality, particularly to avoid statelessness. [49] Similar provisions are found in the 1961 Convention on the Reduction of Statelessness and regional human rights instruments.[50]

Despite these obligations, many states continue to enforce restrictive nationality laws or fail to adapt their frameworks to address the unique challenges posed by surrogacy.[51]

Courts and policymakers often prioritize sovereignty and domestic moral standards over the best interests of the child.

Section 2: Determining Legal Parentage in Surrogacy Cases

In the context of surrogacy, the acquisition of nationality by the child often depends on whether the intended parents are recognized as the legal parents under the law of the state whose nationality is sought. [52]

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(48) Beaumont, "Recognition of Parentage and Nationality in Cross-Border Surrogacy Cases," 9.

(49) United Nations, Convention on the Rights of the Child, art. 7.

(50) UN, 1961 Convention on the Reduction of Statelessness, arts. 1–3. Edwards and van Waas, Nationality and Statelessness, 198–199.

(51) Katarina Trimmings and Paul Beaumont, International Surrogacy Arrangements (Oxford: Hart Publishing, 2013), 155.

(52) Paul Beaumont, "Recognition of Parentage and Nationality in Cross-Border Surrogacy Cases," Journal of Private International Law 16, no. 1 (2020): 3.

Thus, the determination of legal parentage becomes a central issue, particularly in cross-border arrangements involving countries with conflicting public policy approaches toward surrogacy.(53)

Legal systems vary widely in how they determine parentage in cases of assisted reproduction. Some jurisdictions prioritize genetic links, others emphasize gestational connection, and some recognize intent-based parenthood, especially where a surrogacy agreement is signed and executed in compliance with the law.3(54)

Legal Definitions of Motherhood and Fatherhood In many civil law countries, the gestational mother is legally presumed to be the mother of the child, regardless of genetic contribution. For example, under French law, Article 311-25 of the Civil Code states that the woman who gives birth to the child is the legal mother, and this presumption applies even in gestational surrogacy arrangements(55).

The intended mother, even if genetically linked to the child, is not automatically recognized unless she adopts the child post-birth. (56)The father may be recognized if he is the biological parent and his paternity is acknowledged under civil law rules.(57) This model creates serious hurdles in recognizing dual parentage in surrogacy, especially when both intended parents seek to be legally registered from birth.

(53) Amel Alghrani, "The Legal and Ethical Implications of Surrogacy," Medical Law Review 20, no. 2 (2012): 258.
(54) Code civil [C. civ.] [Civil Code] art. 311-25 (Fr.).
(55) ECtHR, Mennesson v. France, App No. 65192/11 (2014).
(56) Claire Fenton-Glynn, Children and the European Court of Human Rights (Oxford: Oxford University Press, 2021), 138.
(57) Naomi Cahn and June Carbone, "Surrogacy and the Modern Family," Yale Journal of Law and Feminism 29, no. 2 (2018): 295–297.

1. Recognition of Intent-Based Parenthood

In contrast, some common law jurisdictions—such as certain U.S. states and Canada—increasingly recognize intent-based parenthood, particularly when the intended parents have initiated the surrogacy process and signed a written agreement with the surrogate. (58) Courts in provinces like Ontario allow for pre-birth or post-birth declarations of parentage that reflect the parties' intentions rather than purely biological or gestational links. (59)

This model aligns more closely with the reality of modern families formed through assisted reproduction, where the genetic or gestational contribution may not fully capture the emotional, social, or legal relationship between the child and the intended parents (60)

It also facilitates faster registration and the ability to apply for nationality documents without needing adoption proceedings.

2. Challenges of Cross-Border Parentage Recognition

Problems arise when parentage legally established in one country is not recognized in another. For example, a birth certificate issued in Ukraine or the United States that lists both intended parents—neither of whom is the gestational mother—may be rejected by authorities in France, Germany, or Italy, where such recognition violates public policy.(61)

In *Paradiso and Campanelli v. Italy*, the European Court of Human Rights upheld Italy's decision to remove a child from intended parents due to lack of a biological or legal link under

(58) Fiona Kelly, "Reforming Canadian Parentage Law: The Case for Intent-Based Parenthood," Canadian Journal of Family Law 34 (2019): 82–83.
(59) Susan Golombok, Modern Families: Parents and Children in New Family Forms (Cambridge: Cambridge University Press, 2015), 68.
(60) Trimmings and Beaumont, International Surrogacy Arrangements, 164.
(61) ECtHR, Paradiso and Campanelli v. Italy, App No. 25358/12 (2017).

Italian law, despite a valid surrogacy arrangement and parentage established abroad(62)

This highlights the fragility of cross-border parentage determinations, even within the human rights framework.

Furthermore, such refusals may affect the child's ability to acquire nationality from the intended parents' state, especially if parentage is a prerequisite for transmitting citizenship under jus sanguinis rules (63)

Without clear legal parentage, the child's claim to citizenship remains contested or delayed.

3. Toward Harmonized Approaches to Parentage

Some legal scholars and international bodies have called for the development of a unified standard for the recognition of legal parentage in international surrogacy. (64)The Hague Conference on Private International Law has explored possible conventions or guidelines for this purpose, aiming to reduce legal uncertainty and promote the best interests of the child. (65)

Efforts to harmonize rules on parentage would benefit not only children and intended parents but also courts, immigration authorities, and civil registries, which often struggle with inconsistent documentation and unfamiliar legal concepts. Until such harmonization is achieved, parentage will remain a key legal battleground in international surrogacy disputes.

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(62) Fenton-Glynn, Children and the European Court of Human Rights, 141

(63) Laura van Waas and Alice Edwards, Nationality and Statelessness under International Law (Cambridge: Cambridge University Press, 2014), 202.

(64) Hague Conference on Private International Law, "Parentage / Surrogacy Project: Mandate 2015," https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy

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Section 3: Risk of Statelessness in International Surrogacy

One of the gravest legal consequences of international surrogacy arrangements is the risk that children born through these agreements may become stateless—that is, without any nationality recognized by a state.[1] [(66)]Statelessness not only deprives children of fundamental rights but also places them in vulnerable situations where they lack access to education, healthcare, legal identity, and protection from exploitation or trafficking. [(67)]

1. How Surrogacy Can Lead to Statelessness

Children born through international surrogacy may become stateless due to conflicts between the laws of the country of birth and the country of the intended parents. These conflicts often arise when:

The country of birth does not confer nationality by jus soli, or restricts it to children of nationals or legal residents;

The intended parents' home country does not recognize the surrogacy arrangement or the legal parentage of the intended parents, thereby preventing the transmission of nationality under jus sanguinis;

The birth certificate issued abroad is rejected or not transcribed into the national civil registry;

Bureaucratic delays or inconsistencies in interpreting nationality law prevent timely registration.[(68)]

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(66) UNHCR, Global Action Plan to End Statelessness 2014–2024, 6, https://www.unhcr.org/ibelong.

(67) Fenton-Glynn, Children and the European Court of Human Rights, 145–147.

(68) Paul Beaumont, "International Child Law and Surrogacy: Nationality and Identity," International Family Law Journal 3 (2020): 121.

The absence of harmonized international standards means that even well-documented surrogacy arrangements may leave the child in legal limbo. In such cases, the child is effectively unclaimed by any state and cannot benefit from diplomatic protection or access essential services. (69)

2. **International Legal Frameworks on the Right to a Nationality**

Statelessness is addressed in several core international treaties. Article 7 of the Convention on the Rights of the Child (CRC) guarantees every child's right to be registered immediately after birth and to acquire a nationality. (70)

The 1961 Convention on the Reduction of Statelessness further obliges states to grant nationality to children born on their territory who would otherwise be stateless. (71) These instruments establish the principle that avoiding statelessness must take precedence over restrictive national policies.

Despite these obligations, implementation remains inconsistent. Many states prioritize sovereignty and public policy objections to surrogacy over the child's fundamental right to legal identity. (72)

National authorities may claim that the intended parents are not legally recognized or that the birth certificate is invalid due to its surrogacy origin, thereby denying nationality.

3. Case Studies and Jurisprudence

(69) United Nations, Convention on the Rights of the Child, art. 7.
(70) United Nations, 1961 Convention on the Reduction of Statelessness, art. 1.
(71) Edwards and van Waas, Nationality and Statelessness under International Law, 214–215.
(72) ECtHR, Mennesson v. France, App No. 65192/11 (2014).

The risk of statelessness is not hypothetical—it has materialized in numerous real-life cases. In the *Mennesson v. France* case, French authorities refused to register the birth of twin girls born in California through surrogacy to French parents.(73)

Although the children held U.S. nationality, they were effectively stateless under French law, denied identity documents and access to full legal recognition in their parents' country.(74)

In another case, *Paradiso and Campanelli v. Italy*, the child born through surrogacy in Russia was removed from the intended Italian parents by social services because the child had no biological link to them and was not legally recognized under Italian law.(75)

The child was ultimately placed in state care, and the lack of clear nationality or family bond led to the complete severance of the parent-child relationship. (76)

These examples illustrate how state-centric legal interpretations can conflict with international child rights standards, producing outcomes where children suffer the consequences of legal inconsistencies and political resistance to surrogacy.

(73) Fenton-Glynn, "Nationality and the Best Interests of the Child in Cross-Border Surrogacy," Cambridge Law Journal 75, no. 3 (2016): 530.
(74) ECtHR, Paradiso and Campanelli v. Italy, App No. 25358/12 (2017).
(75) Beaumont, "Recognition of Parentage," 10.
(76) UNHCR, Guidelines on Statelessness No. 4, 2012.

Chapter Three: Legal and Policy Solutions for Protecting the Nationality of Children Born Through International Surrogacy

Section 1: Legislative Reform at the National Level

The first and most immediate step toward ensuring that children born through international surrogacy are not rendered stateless lies in reforming national legislation. While international conventions provide guiding principles, it is domestic law that determines how nationality and parentage are acquired in practice.[1] (77)Therefore, states must revise their civil codes, nationality laws, and family law frameworks to reflect the realities of surrogacy and comply with their international obligations to protect children's rights.

Clarifying Nationality Laws in Relation to Surrogacy

Many nationality laws remain silent or ambiguous when it comes to surrogacy-born children, especially in cross-border contexts. This legal gap allows administrative discretion, which often results in inconsistent or discriminatory decisions. (78)

States should amend their nationality laws to explicitly address the situation of children born through surrogacy abroad, specifying conditions under which nationality will be granted—even if the birth was the result of an unrecognized surrogacy agreement(79).

For example, legislation could require proof of a genetic link to a national parent, a foreign judgment of parentage, or a

(77) Alice Edwards and Laura van Waas, eds., Nationality and Statelessness under International Law (Cambridge: Cambridge University Press, 2014), 15.

(78) Paul Beaumont, "Recognition of Parentage and Nationality in Cross-Border Surrogacy Cases," Journal of Private International Law 16, no. 1 (2020): 5.

(79) UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality, 2012, 8.

registered surrogacy agreement from a jurisdiction where such practices are legal. This would create clear standards for both authorities and families and reduce the likelihood of arbitrary denials.

2. Facilitating Recognition of Foreign Birth Certificates

One of the main legal obstacles for surrogacy-born children is the non-recognition of foreign-issued birth certificates, especially when they name intended parents who are not the gestational mother. (80) This is often justified by reference to the public policy exception, which allows states to refuse recognition of acts that violate fundamental domestic values. (81)

However, the use of this exception must be narrowly tailored. Legislators should introduce rules allowing civil registries and family courts to accept foreign birth certificates or court decisions where at least one parent is a national, unless doing so would clearly violate constitutional principles.(82)

This approach would balance the state's sovereign interest with the child's right to a legal identity.

Section 2: The Role of International Law and Judicial Dialogue

While legislative reform at the national level is essential, it must be complemented by international legal standards and transnational judicial cooperation. The fragmented nature of surrogacy regulation across jurisdictions necessitates a global approach to ensure that children's rights are protected regardless of where they are born or who their parents are. (83)

(80) ECtHR, Mennesson v. France, App No. 65192/11 (2014).
(81) Katarina Trimmings and Paul Beaumont, International Surrogacy Arrangements (Oxford: Hart Publishing, 2013), 167.
(82) Claire Fenton-Glynn, Children and the European Court of Human Rights (Oxford: Oxford University Press, 2021), 162.
(83) United Nations, Convention on the Rights of the Child, art. 3.

1. International Human Rights Frameworks

Several key human rights instruments affirm the child's right to nationality and legal identity:

- Article 7 of the Convention on the Rights of the Child (CRC) requires states to ensure every child's right to be registered at birth and acquire a nationality; (84)
- The 1961 Convention on the Reduction of Statelessness obliges states to grant nationality to stateless children born on their territory; (85)
- The Universal Declaration of Human Rights, Article 15, affirms that everyone has the right to a nationality. (86)

These instruments provide a strong legal foundation for advocating reforms in both domestic and international law to prevent the arbitrary denial of nationality to children born through surrogacy. However, their effectiveness depends on incorporation into national legislation and their consistent interpretation by domestic courts. (87)

2. Jurisprudence from International and Regional Courts

Judicial bodies such as the European Court of Human Rights (ECtHR) have played a pivotal role in shaping the debate on surrogacy and children's rights. In Mennesson v. France and Labassee v. France, the ECtHR found that refusing to recognize parentage established through lawful surrogacy abroad violated the

(84) UNHCR, Global Action Plan to End Statelessness 2014–2024, Goal 1.
(85) Alice Edwards and Laura van Waas, Nationality and Statelessness under International Law (Cambridge: Cambridge University Press, 2014), 22
(86) United Nations, Convention on the Rights of the Child, art. 7.
(87) United Nations, 1961 Convention on the Reduction of Statelessness, art. 1

children's right to respect for private life under Article 8 of the European Convention. (88)

While these rulings did not compel France to legalize surrogacy, they established a minimum obligation to recognize parent-child relationships where they are lawfully and clearly established abroad. (89) This form of judicial dialogue has prompted reforms in civil registration and parentage recognition, even in jurisdictions that formally oppose surrogacy. (90)

Moreover, in Paradiso and Campanelli v. Italy, the ECtHR acknowledged the impact of nationality and identity loss on the child's development and family life, even though it ultimately upheld the Italian state's decision.

These decisions reflect a growing consensus that children's rights must be prioritized, even when states object to the practice of surrogacy on moral or legal grounds.

3. Toward a Global Framework: The Hague Conference's Role

The Hague Conference on Private International Law (HCCH) has initiated exploratory work toward a possible multilateral instrument on parentage and surrogacy. (91)

The goal is to create guidelines or a binding convention that would:

- Facilitate the mutual recognition of parentage and birth certificates;

(88) United Nations, Universal Declaration of Human Rights, art. 15.
(89) Paul Beaumont, "Recognition of Parentage and Nationality in Cross-Border Surrogacy Cases," Journal of Private International Law 16, no. 1 (2020): 9.
(90) ECtHR, Mennesson v. France, App No. 65192/11 (2014); Labassee v. France, App No. 65941/11 (2014).
(91) Katarina Trimmings and Paul Beaumont, International Surrogacy Arrangements (Oxford: Hart Publishing, 2013), 245.

- Promote legal certainty and cooperation between states;
- Protect the best interests of children born through international surrogacy. (92)

Such an instrument would follow the model of existing Hague Conventions on intercountry adoption and child abduction, which have succeeded in harmonizing family law practices across borders. While political sensitivities around surrogacy remain high, a soft-law instrument—such as a guide or model law—could serve as an intermediate step. (93)

4. Encouraging Judicial Dialogue and Transnational Cooperation

Judicial dialogue—where national courts engage with international legal principles and foreign jurisprudence—is key to gradually harmonizing interpretations. Courts in Canada, Germany, and the United Kingdom have increasingly cited decisions from international bodies or foreign counterparts in surrogacy-related nationality and parentage cases. (94)

Such cross-border referencing encourages convergence in legal reasoning and fosters mutual respect between jurisdictions. It also signals to lawmakers the need for responsive legal frameworks and improves the legal landscape for families navigating multiple legal systems.

(92) ECtHR, Paradiso and Campanelli v. Italy, App No. 25358/12 (2017).
(93) Laura van Waas, Nationality Matters: Statelessness under International Law (Antwerp: Intersentia, 2008), 117.
(94) Hague Conference on Private International Law, "Parentage / Surrogacy – Mandate 2015," https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy.

Section 3: Policy Recommendations and Future Directions

Given the legal fragmentation and human rights concerns associated with international surrogacy, especially regarding the nationality of children, it is essential to chart a path forward. This section offers pragmatic and human-rights-based recommendations that address legal uncertainty while respecting national sovereignty and the diversity of moral and cultural positions on surrogacy.

1. Establishing Clear Domestic Procedures for Recognition of Surrogacy-Born Children

States should develop transparent administrative mechanisms to register children born through surrogacy abroad. This includes:

- **Standardized forms and documentation requirements;**
- **Timely procedures for verifying biological or legal parentage;**
- **Recognition of foreign parentage judgments or birth certificates under specified conditions**. (95)

Such procedures would reduce bureaucratic delays and protect children from being trapped in legal limbo without nationality or legal recognition.

2. Creating Safeguards against Statelessness

States must treat the avoidance of statelessness as a primary legal objective, even in the absence of legal recognition of surrogacy.[2] (96)This could be achieved by:

(95) Claire Fenton-Glynn, Children and the European Court of Human Rights (Oxford: Oxford University Press, 2021), 165–167.

(96) UNHCR, Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality, 2012, 3.

- **Granting nationality based on presumed descent when the intended parent is a national;**
- **Issuing temporary identity documents until parentage is legally clarified;**
- Allowing conditional nationality subject to later verification. (97)

These interim measures would ensure that children are not denied access to education, healthcare, or freedom of movement while legal proceedings are underway.

3. Developing Regional and Bilateral Agreements

In the absence of a binding international treaty on surrogacy, countries could enter into bilateral or regional agreements to:

- **Facilitate recognition of surrogacy-based parentage;**
- **Harmonize documentation and procedures;**
- **Respect mutual sovereignty while safeguarding children's rights.** (98)

Such agreements may be particularly effective between countries with frequent cross-border surrogacy arrangements, such as between European states or between North America and South Asia.

4. Promoting Public Awareness and Professional Training

Legal uncertainty often arises from a lack of awareness or training among civil registry officials, immigration officers, and family court judges. Governments and NGOs should:

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(97) Paul Beaumont, "Recognition of Parentage and Nationality in Cross-Border Surrogacy Cases," Journal of Private International Law 16, no. 1 (2020): 12–13.

(98) Katarina Trimmings and Paul Beaumont, International Surrogacy Arrangements (Oxford: Hart Publishing, 2013), 259.

- **Provide training on the legal and human rights dimensions of international surrogacy;**
- **Develop ethical guidelines for consulates and embassies in dealing with surrogacy cases abroad;**
- Promote public understanding of the rights of children born through assisted reproduction.(99)

This will reduce discretionary decisions based on personal bias and foster a more consistent application of the law.

5. Supporting International Standard-Setting Efforts

States should actively participate in the work of the Hague Conference on Private International Law and other international forums to develop soft-law instruments—such as model laws, principles, or good practices—relating to the recognition of parentage and nationality in surrogacy contexts. (100)

This approach allows for gradual convergence without imposing uniformity and respects diverse legal cultures while advancing the best interests of the child.

Conclusion of Section

A coordinated and child-centered approach to surrogacy-born nationality is not only a legal necessity—it is a moral imperative. By combining legislative clarity, administrative efficiency, and international cooperation, the global community can ensure that no child is left without a country simply because they were born through surrogacy.

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(99) Fiona Kelly, "From Contract to Parenthood: International Surrogacy, Legal Parenthood and the Best Interests of the Child," Canadian Bar Review 96 (2018): 14.

(100) HCCH, "Parentage / Surrogacy – Mandate 2015," https://www.hcch.net/en/projects/legislative-projects/parentage-surrogacy.

Conclusion and Final Recommendations

The question of nationality for children born through international surrogacy arrangements stands at the intersection of private international law, human rights, and ethical considerations. As surrogacy becomes more common across borders, the absence of harmonized legal frameworks continues to endanger the legal identity of thousands of children worldwide.

This research has shown that:

- Nationality laws, grounded in jus soli and jus sanguinis, are often ill-equipped to accommodate the complexities of assisted reproduction.
- The recognition of legal parentage varies significantly across jurisdictions, creating barriers to citizenship transmission.
- Public policy exceptions are frequently used to justify the refusal of foreign birth certificates and court judgments, often without sufficient regard for the best interests of the child.
- In the most severe cases, these legal inconsistencies result in statelessness, depriving children of basic rights and protections.

Yet, legal and policy solutions are within reach. States have the power—and arguably the obligation—to adapt their laws and practices to uphold children's rights in the face of changing reproductive realities.

Final Recommendations

1. **Domestic Legal Reform**: States should revise their nationality laws and family codes to include specific provisions addressing children born through surrogacy abroad, ensuring clear pathways to citizenship and legal parentage.
2. **Recognition of Foreign Acts**: Mechanisms must be established to recognize foreign birth certificates and judgments of parentage, particularly where at least one intended parent is a national and the arrangement is not contrary to fundamental principles of law.
3. **Prioritization of Children's Rights**: The best interests of the child must guide all decisions related to nationality and identity, in line with Article 3 of the CRC. Nationality should never be denied solely because of the method of the child's conception or birth.
4. **International Dialogue and Cooperation**: States should engage in regional and global initiatives to develop common standards, such as those being explored by the Hague Conference on Private International Law.
5. **Safeguards against Statelessness**: Temporary or conditional nationality should be granted in doubtful cases to ensure that no child remains without legal status during legal or administrative review.
6. **Education and Capacity Building**: Judicial authorities, civil registries, consular officers, and immigration agencies should be trained to understand the legal, ethical, and human rights dimensions of international surrogacy.

By adopting these recommendations, states and international organizations can ensure that the rights of children born through surrogacy are protected and that they are not left vulnerable to statelessness or denial of nationality. This approach would foster greater consistency, fairness, and respect for human rights across jurisdictions.

In sum, international surrogacy presents profound legal challenges, but it also offers an opportunity: to reaffirm a commitment to the fundamental rights of children, to improve legal coherence in a globalized world, and to ensure that every child—regardless of the circumstances of birth—has the right to belong. Addressing these challenges with a child-centered approach will not only safeguard the dignity and rights of children born through surrogacy but will also contribute to building a more just and consistent international legal framework.

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3. Permanent Bureau of the Hague Conference on Private International Law. "A Preliminary Report on the Issues Arising from International Surrogacy Arrangements." *Hague Conference on Private International Law*, Mar. 2012, https://assets.hcch.net/upload/wop/gap2012pd10e.pdf.
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