

CROSS-BORDER SURROGACY ARRANGEMENTS AND THE RIGHT TO KNOW ONE'S ORIGINS: TOWARDS AN INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF CHILDREN'S RIGHTS?

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Abstract: Surrogacy raises complex international legal challenges, particularly regarding the right of individuals born through such arrangements to know their origins and the conditions required to ensure its effective realization in practice. This article adopts a doctrinal and jurisprudential approach, conceptualizing this right as a core element of identity and human dignity. It examines recent developments within the Hague Conference on Private International Law (HCCH) and the International Social Service (ISS), including the Verona Principles. It argues that existing frameworks remain insufficient and calls for coherent international standards ensuring effective access to origin-related information as a necessary precondition for exercising this right.

Keywords: Identity, Children's rights, Right to know one's origins, Cross-border surrogacy, Human dignity, Access to information.

SUMMARY: 1. INTRODUCTION. 2. METHODOLOGY. 3. APPROACH TO THE RIGHT TO IDENTITY AND THE RIGHT TO KNOW ONE'S ORIGINS. 4. IDENTITY AND ACCESS TO ORIGINS IN THE FRAMEWORK OF CROSS-BORDER SURROGACY ARRANGEMENTS. 4.1. The dissociation between gestation and legal parentage and the plurality of actors involved in the procreative process. 4.2. The international dimension of surrogacy arrangements and the absence of international or harmonized registries or other mechanisms for the systematic recording and preservation of such information. 5. PROPOSALS FROM AN INTERNATIONAL PERSPECTIVE. RECENT DEVELOPMENTS AND ONGOING DEBATES. 5.1. Project on parentage and surrogacy of the Hague Conference on Private International Law (HCCH). 5.2. Proposal by the International Social Service (ISS): Verona principles. 5.3. Interim assessment. 6. FINAL REMARKS. REFERENCES.

1. INTRODUCTION

Surrogacy illustrates the profound tension between reproductive autonomy, contractual freedom, and the fundamental rights of children (García Rubio & Herrero Oviedo, 2017, pp.87-88). The existence of this practice is closely linked to scientific advancements in assisted reproduction, the inexorable desire to procreate on the part of individuals who resort to these techniques, and the increasing commodification¹ of human reproduction (Trimmings and Beaumont, 2013, pp. 439-442; González López, 2021,

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¹ We cannot overlook the role played by intermediary or provider agencies, whose business continues to expand. These entities transform the desires and aspirations of individuals to become parents into a lucrative commercial enterprise, operating under the protection of permissive legal frameworks and relying on women in precarious or vulnerable conditions. In doing so, they create yet another modality of reproductive tourism (cross-border surrogacy), commodifying motherhood with total disregard for human rights.

pp. 1111, 11121; Delicado-Moratalla, 2021, p. 48). While expert opinion remains deeply divided² and legal systems abroad adopt divergent approaches, ranging from permissive regulation to strict prohibition, with no international consensus having yet been reached (Trimmings and Beaumont, 2013, p. 443; Jadvá et al., 2021, pp. 93, 101; HCCH, 2022), the reality is that, in cross-border contexts, this fragmentation generates complex legal situations in which children born through surrogacy arrangements are brought to the State of residence of the intended parents, who then seek recognition of legal parentage established abroad (Buchstätter, 2024, pp. 3, 8).

However, depending on the legal treatment afforded to surrogacy by the receiving State, the recognition of legal parentage may be denied altogether. In such cases, children may be placed in situations of legal uncertainty, exposing them to potential violations of their fundamental rights (HCCH, 2022; United Nations, 2019; UNICEF, 2022).

These situations may affect, *inter alia*, the child's nationality, legal identity, and access to care, as well as the enforceability of parental responsibilities. Furthermore, children born in this context may face additional violations of their human rights, including risks affecting the effective protection of their dignity, identity, health, and protection from exploitation (HCCH, 2022; United Nations, 2019; Tobin, 2014, pp. 317-318, 326).

In this context, increasing attention has been paid in recent years to one specific dimension of children's rights: the right to know one's origins, as recognized in international human rights law, and the extent to which this right requires effective access to origin-related information in order to be effectively exercised (Dambach & Cantwell, 2024, pp. 108-110; O'Callaghan, 2021, pp. 3-5).

This article focuses precisely on this gap. It examines the extent to which individuals born through international surrogacy arrangements are able to access information concerning their biological origins, and whether existing legal frameworks adequately protect this right. In doing so, the article addresses the following research question: to what extent is the right to know one's origins effectively guaranteed in the context of international surrogacy arrangements, and what conditions are required to ensure its realization in practice?

The analysis proceeds from the premise that the right to know one's origins constitutes a fundamental component of personal identity and human dignity, closely linked to the rights enshrined in Articles 7 and 8 of the Convention on the Rights of the Child and in Article 8 of the European Convention on Human Rights (Tobin & Todres,

² From a bioethical perspective, Casado, M & Navarro-Michel, M. (2019, p.47) identify four prevailing models or schools of thought concerning the practice of surrogacy: the neoliberal model, which holds that a woman has full autonomy over her body and may dispose of it in exchange for payment as she would with any other personal asset; the moderate model, which affirms a woman's freedom to altruistically and without compensation allow others to become parents; the prohibitionist model, which advocates for an outright ban on the practice; and finally, the model based not on prohibition but on the declaration of nullity of the surrogacy contract, as is the case in Spain.

2019, pp. 281-305; Bou-Sfia, 2024, pp. 8, 12-13). However, the specific characteristics of surrogacy—including the dissociation between gestation and legal parentage in gestational surrogacy (Carlotto, 2021, pp. 106, 109), the involvement of multiple actors, and the cross-border dimension of many arrangements, create structural obstacles to the effective realization of this right.

In this regard, the article seeks to identify the limitations and tensions that arise between the rights of the child and the interests of other actors involved in the surrogacy process. Particular attention is given to emerging international initiatives, such as the work of the Hague Conference on Private International Law and the Verona Principles developed by the International Social Service (HCCH, 2022; International Social Service, 2021).

Ultimately, this article argues that the right to know one's origins must be recognized as a central element of any future international legal framework on surrogacy. Without effective guarantees ensuring access to identity-related information, the protection of children's rights in this context remains incomplete.

2. METHODOLOGY

This article adopts a qualitative legal research methodology based on doctrinal and jurisprudential analysis. It examines the right to identity and the right to know one's origins within the framework of international human rights law, with particular attention to their application in the context of international surrogacy arrangements.

The study is grounded in a systematic analysis of key international legal instruments, including the Convention on the Rights of the Child and the European Convention on Human Rights as well as relevant soft law and emerging standards developed by the Hague Conference on Private International Law (HCCH, 2022) and the Verona Principles (International Social Service, 2021). These sources are examined in order to identify the normative foundations and evolving content of the right to access one's origins.

In addition, the article incorporates a jurisprudential analysis of the case law of the European Court of Human Rights (ECtHR), in order to assess how the right to identity and access to personal origins has been interpreted and applied in practice, particularly in situations involving assisted reproduction and surrogacy.

Finally, the article incorporates a critical perspective, supported by recent academic literature and institutional reports, with the aim of evaluating the limitations of existing frameworks and proposing avenues for the development of more coherent, child-centered international standards.

3. APPROACH TO THE RIGHT TO IDENTITY AND THE RIGHT TO KNOW ONE'S ORIGINS

Personal identity has been widely conceptualized as a complex and multidimensional construct encompassing biological, psychological and social dimensions (Fernández

Sessarego, 1992, pp. 12-13). From this perspective, identity is not a static or univocal concept, but rather a dynamic process shaped by multiple interrelated factors that allow individuals to define themselves and be recognized as distinct persons.

The right to identity has progressively been recognized as a fundamental human right within international human rights law. This right is protected, in particular, under Articles 7 and 8 of the Convention on the Rights of the Child, which guarantee the child's right to know and preserve elements of their identity, including family relations, as well as under Article 8 of the European Convention on Human Rights, where identity has been interpreted as forming part of private life (Tobin & Todres, 2019, pp. 282-284; Bou-Sfia, 2024, pp. 8-9).

Among the various elements that shape individual identity, there is one that is fundamental and inherent to the very concept of identity itself: biological origin. This element enables a person to be distinct from all others and constitutes a core dimension of personal identity (Valdivia Gómez, 2019, pp. 590-591; Ortega Puente, 2023, pp. 19-34). Biological origin constitutes an important dimension of identity, particularly insofar as genetic information contributes to understanding human uniqueness and ancestry (Wailoo et al., 2012; pp. 1-2; Relethford & Bolnick, 2018, pp. 2-3, 13). Moreover, identity cannot be reduced to genetic origins alone, but must be conceived as a dynamic and relational construct, encompassing social, lived and experiential dimensions of the self (Wells-Greco, 2025, pp. 111-114).

That said, the term biological origin, in contemporary reproductive contexts, particularly in surrogacy arrangements, requires further clarification and cannot be understood in a unitary manner. Unlike traditional paradigms of filiation, where genetic, gestational, and social parenthood typically coincide, surrogacy entails a dissociation of these elements.³ This distinction becomes particularly significant, as the gestational surrogate may have no genetic connection to the child but nonetheless plays a central role in the process of bringing the child into existence (Mulligan, 2020, p. 20; Dambach & Cantwell, 2024, pp. 112-113). This dissociation challenges traditional legal assumptions about identity and parentage and calls for a more nuanced understanding of origin.

Professional guidelines on assisted reproduction have increasingly emphasized the importance of providing origin-related information in contexts involving reproductive donation (ESHRE, 2022).

In order to construct a coherent sense of self, individuals must be able to access meaningful information about their own existence. This information undoubtedly includes data relating to their genetic and gestational origins, such as the identity of the persons involved in their conception and birth, as well as the circumstances of their birth. Such

³ It is therefore necessary to distinguish between different dimensions of origin: genetic origin, referring to the individuals who provide the gametes; gestational or biological origin, relating to the person who carries and gives birth to the child; and social or intentional parenthood, associated with the intended parents.

information forms part of the individual's life history and, as such, belongs to them. From a psychological perspective, access to this information has been identified as a fundamental human need linked to identity formation, especially during childhood and adolescence (Grotevant et al., 2017, pp. 1-4, 10; Golombok, 2020, pp. 111-113). These studies consistently show that individuals seek, often from an early age, to understand who they are, and that this process requires access to a truthful and coherent personal narrative, free from omissions or distortions.

From a legal perspective, beyond its anthropological and psychological dimensions, the right to know one's origins has progressively acquired clear legal recognition within international human rights law (O'Callaghan, 2021, pp. 3-5). It is now widely understood as an integral component of the right to identity and, consequently, as a right intrinsically connected to human dignity.

The concealment of, or barriers to accessing, information regarding one's own origins, including legal obstacles, significantly hampers the development of personal identity. This limitation becomes particularly acute in the case of minors, for whom access to origin-related information is especially critical (Dambach & Cantwell, 2024, pp. 115, 124; Tobin & Todres, 2019, p. 294; Wells-Greco, 2025, pp. 116, 123). Childhood and adolescence are stages during which interest in one's origins may be particularly intense, and the concealment or distortion of such information may have a profound and enduring impact on a person's development and life, as well as on their descendants.

In light of the central role that origin-related information plays in the construction of identity, it is necessary to clarify the content and scope of the right to know one's origins. As regards its content this right must be understood in a broad sense, encompassing not only the possibility of being informed but also the effective ability to obtain relevant information. It does not only encompass medical data but extends to all available information concerning the circumstances of conception and birth, including information about genetic parents, gestational persons,⁴ and, where relevant, third-party donors (O'Callaghan, 2021, p. 7; Indekeu, 2024, p. 93-94). This broader understanding is particularly relevant in contexts where procreation involves multiple actors, as is the case in assisted reproduction and surrogacy.

Furthermore, it must be borne in mind that the scope and exercise of this right should, to a significant extent, take into account the will and interests of the individual concerned. Accordingly, the right holder must be entitled, considering their evolving capacities, to decide whether, when, and to what extent they wish to access such information.

From a normative perspective, this right finds its primary basis in the Convention on the Rights of the Child. Articles 7 and 8 establish that the child has, as far as possible,

⁴ Against this backdrop, while surrogacy practices predominantly involve women and raise significant concerns regarding gender-based inequalities and the potential commodification of the female body, this article adopts the term "gestational person" in order to reflect the diversity of reproductive experiences and ensure conceptual inclusivity.

the right to know and preserve elements of their identity, including family relations. These provisions have been increasingly interpreted as encompassing access to origin-related information, particularly where such information is necessary to ensure the development of personal identity (Bou-Sfia, 2024, pp. 22-23, 30; Tobin & Todres, 2019, pp. 289, 291). In this regard, the Committee on the Rights of the Child has emphasized the importance of preserving the child's identity and has recognized that elements of identity must be taken into account when determining the best interests of the child (Committee on the Rights of the Child, 2013).

Similarly, within the framework of the Council of Europe, access to information concerning one's origins has been articulated through the case law of the European Court of Human Rights under Article 8 of the European Convention on Human Rights, which protects the right to respect for private and family life. As reflected in its resolutions, the Court has addressed questions relating to access to origins primarily through jurisprudence concerning filiation, secret childbirth and surrogacy, from which general principles applicable to this field may be derived. These cases confirm that issues relating to origins fall within the scope of private life and require a fair balance between the competing interests involved, including those of the child, the legal parents, the biological progenitors or donors, and the general interest in legal certainty and the stability of family relationships.

The ECtHR's earlier jurisprudence had already established that individuals have a vital interest, protected by the Convention, in obtaining the information necessary to understand their childhood and early development. In *Gaskin v. the United Kingdom*⁵ the Court held that such information falls within the scope of Article 8, while making clear that this interest does not give rise to an absolute right and must be balanced against legitimate interests, such as confidentiality. This line of jurisprudence was subsequently refined in cases concerning parentage. In *Mikulić v. Croatia*⁶ the Court held that individuals have a vital interest in receiving the information necessary to uncover the truth about an important aspect of their personal identity, and found that prolonged uncertainty concerning paternity may constitute a violation of Article 8. This approach was further reinforced in *Jäggi v. Switzerland*⁷ where the ECtHR held that the impossibility of establishing biological parentage through DNA testing may violate Article 8. In *Godelli v. Italy*⁸ the ECtHR found that absolute barriers to accessing origin-related information are incompatible with Article 8, as they fail to strike a fair balance between the competing interests involved. This approach has been reaffirmed in more recent case law. In *Mitrevska v. North Macedonia*,⁹ the ECtHR confirmed that absolute barriers preventing access to information concerning one's biological origins are incompatible with Article 8, thereby consolidating its earlier jurisprudence.

The ECtHR has also addressed issues relating to identity and parentage in specific cases within the field of surrogacy, which will be examined in the following section.

⁵ *Gaskin v. United Kingdom*, No. 10454/83, 7 July 1989. ECLI:CE:ECHR:1989:0707JUD001045483.

⁶ *Mikulić v. Croatia*, No. 53176/99, 7 February 2002. ECLI:CE:ECHR:2002:0207JUD005317699.

⁷ *Jäggi v. Switzerland*, No. 58757/00, 13 July 2006. ECLI:CE:ECHR:2006:0713JUD005875700.

⁸ *Godelli v. Italy*, No. 33783/09, 25 September 2012. ECLI:CE:ECHR:2012:0925JUD00337830.

⁹ *Mitrevska v. North Macedonia*, No. 20949/21, 14 May 2024. ECLI:CE:ECHR:2024:0514JUD002094921.

4. IDENTITY AND ACCESS TO ORIGINS IN THE FRAMEWORK OF CROSS-BORDER SURROGACY ARRANGEMENTS

Disregarding any of the elements concomitant with a person's birth cannot be left solely to private discretion, given the implications such decisions have for the rights of the child and the other parties involved (Comité de Bioética de España, 2017). Consequently, individuals should, in principle, have access to information concerning the persons involved in their conception, including in cases of surrogacy (Dambach & Cantwell, 2024, pp. 122-124).

In this regard, international human rights bodies have increasingly emphasized that children born through surrogacy arrangements must be treated as full rights-holders, irrespective of the legal status of the practice in a given State. Accordingly, all children are entitled to the rights enshrined in the Convention on the Rights of the Child without discrimination, including the right to identity and access to origins (UNICEF, 2022). This position has also been reinforced in reports of the UN Special Rapporteur on the sale and sexual exploitation of children, which underline that States retain positive obligations towards children born through surrogacy arrangements, regardless of the legal status of such practices (United Nations, 2019).

Thus, regardless of whether a State permits or prohibits surrogacy, it remains under a positive obligation to ensure the effective protection of the rights of children born through such arrangements, in accordance with its obligations under international human rights law. In the specific context of surrogacy, the ECtHR's case law highlights the importance attributed to the biological link in the formation of identity, without treating it as an exclusively determinative factor. In *Mennesson v. France*¹⁰ and *Labassee v. France*;¹¹ it held that the refusal to recognize, under domestic law, a parent-child relationship lawfully established abroad undermined the children's identity and violated Article 8. The ECtHR emphasized that the legal parent-child relationship constitutes an essential facet of a person's identity and that, in such circumstances, the margin of appreciation afforded to States is reduced. This approach was further clarified in the Court's Advisory Opinion of 2019, delivered under Protocol No. 16, which specifically addressed the recognition of parentage in the context of international surrogacy. The ECtHR held that the child's right to respect for private life requires that domestic law provide a possibility of recognition of parentage with the intended mother, while leaving States a margin of appreciation as to the means of achieving such recognition, including adoption (European Court of Human Rights, 2019).

Conversely, in *Paradiso and Campanelli v. Italy*,¹² where no biological link existed between the child and the intended parents, the ECtHR adopted a more deferential approach, attaching particular weight to the absence of a genetic connection in its assessment of the existence of family life and the scope of State obligations. However, this approach has

¹⁰ *Mennesson v. France*, No. 65192/11, 26 June 2014. ECLI:CE:ECHR:2014:0626JUD006519211.

¹¹ *Labassee v. France*, No. 65941/11, 26 June 2014. ECLI:CE:ECHR:2014:0626JUD006594111.

¹² *Paradiso and Campanelli v. Italy*, No. 25358/12, 24 January 2017. ECLI:CE:ECHR:2017:0124JUD002535812.

been criticized for implicitly privileging biological ties over other forms of parent–child relationships, thereby risking a reductive understanding of identity (Farnós Amorós, 2017, p. 237). Subsequent case law, including *Foulon and Bouvet v. France*,¹³ *Valdís Fjölnisdóttir and Others v. Iceland*¹⁴ and *A. L. v. France*¹⁵ has not fundamentally altered this approach but has confirmed and refined the principles established in *Mennesson* and *Paradiso*.

Notwithstanding this legal framework, ensuring effective access to information concerning one's origins in the context of surrogacy presents significant practical and structural challenges. Empirical studies suggest that disclosure practices vary and cannot be assumed in all cases that intended parents will inform the child of the circumstances of their birth (Readings et al., 2011, pp. 487, 493; Golombok, 2020, pp. 113-114). Even where such disclosure occurs, access to identifying information concerning the persons involved in the surrogacy arrangement is often severely limited due to the private and contractual nature of the practice, which frequently includes clauses aimed at preventing any future relationship between the child and the third parties involved. This may result, in effect, in the erasure of the individual's origins, with potential implications extending beyond the individual to their descendants, particularly in cross-border surrogacy arrangements, where multiple legal and practical barriers further hinder access to origin-related information (O'Callaghan, 2021, pp. 15-17).

This situation gives rise to a fundamental tension between competing rights and interests. On the one hand, the child's right to know their biological origins constitutes a core element of their identity. On the other hand, the realization of this right depends on access to information, which may conflict with the privacy and autonomy of other actors involved in the reproductive process, including gamete donors, gestational persons, and intended parents. The resolution of this tension requires a careful balancing exercise in which the best interests of the child must be treated as a primary consideration. At the same time, as contemporary family structures increasingly challenge traditional assumptions linking parentage exclusively to biological ties, this balancing exercise calls for a more nuanced understanding of identity and family relationships (Herring, 2023; p. 422-439; Tobin, 2014, pp. 327-329).

Multiple factors contribute to and reinforce the difficulty of accessing origin-related information in cases of international surrogacy (Casado & Navarro-Michel, 2019, p. 46). These include in particular, the dissociation between gestation and legal parentage, the cross-border nature of the arrangements, the absence of international consensus, and the lack of centralized or harmonized mechanisms for recording relevant information (Casado & Navarro-Michel, 2019, p. 46; Wade, 2025, pp. 152).

Furthermore, the degree of access to information concerning the gestational person or the surrogacy arrangement largely depends on the legal framework of the State in which the practice takes place (Moreno Beltrán, 2018, p. 199). In this regard, international organizations have emphasized the need to establish mechanisms aimed at preserving such

¹³ *Foulon and Bouvet v. France*, No. 10410/14, 21 July 2016. ECLI:CE:ECHR:2016:0721JUD000906314.

¹⁴ *Valdís Fjölnisdóttir and Others v. Iceland*, No. 71552/17, 18 May 2021. ECLI:CE:ECHR:2021:0518JUD007155217.

¹⁵ *A. L. v. France*, No. 13344/20, 7 April 2022. ECLI:CE:ECHR:2022:0407JUD001334420.

information. In this regard, UNICEF has highlighted the need to strengthen systems for recording and preserving identity-related information in order to safeguard the rights of children born through surrogacy arrangements, while also drawing attention to the risks associated with cross-border practices involving jurisdictions where surrogacy is prohibited.

These interrelated factors will be examined in the following subsections.

4.1. The dissociation between gestation and legal parentage and the plurality of actors involved in the procreative process

In most cases, the person who carries and gives birth to the child does not coincide with the genetic parent, thereby departing from the traditional principle *mater semper certa est*. This results in a dissociation between gestation and legal parentage, as well as a fragmentation of elements that were traditionally inseparable, namely the genetic, gestational, legal and intentional dimensions of parenthood (Carlotto, 2021, pp. 109-110).

Given the plurality of individuals involved, access to information concerning one's origins becomes significantly more complex. The person born is placed in the care of the intended parents, who may or may not share a genetic link with the child. Depending on the applicable legal framework, the existence of a genetic link with the intended father may allow for the establishment of biological paternity. However, in situations where no such link exists, particularly where third-party reproductive material has been used, the determination of parentage becomes more uncertain and legally complex.

As regards the intended mother, in legal systems where the principle *mater semper certa est* is strictly applied, she is not recognized as the legal mother, even where she has contributed her own genetic material, since she is not the woman who gave birth to the child.

This dissociation may hinder the person's ability to access accurate and complete information about their origins, particularly in the absence of appropriate mechanisms for recording and preserving such information.

4.2. The international dimension of surrogacy arrangements and the absence of international or harmonized registries or other mechanisms for the systematic recording and preservation of such information

As previously noted, individuals born through international surrogacy arrangements may be entirely unaware of the circumstances of their birth. These arrangements are typically governed by foreign legal systems, often reflecting values and regulatory approaches that differ significantly from those of the State in which the child will reside.

Moreover, the structure of surrogacy arrangements frequently presupposes the absence of any ongoing relationship between the gestational person and the child following birth. Combined with the diversity of national legal frameworks and the lack of international consensus on the matter (Pjetri, 2025, p. 665), this contributes to a situation in which access to origin-related information is neither guaranteed nor systematically regulated.

The absence of international or harmonized mechanisms for recording such information further exacerbates these difficulties. Information concerning the surrogacy arrangement often remains confined to the private sphere, beyond effective State oversight. As a result, the preservation and accessibility of information relating to the child's origins cannot be ensured.

Despite these challenges, international surrogacy continues to expand, prompting increasing attention from international organizations and expert bodies. In this context, calls have intensified for the development of international standards aimed at safeguarding the rights of children born through such arrangements (UNICEF, 2022). However, these initiatives remain contested, as they may be perceived as implicitly legitimizing surrogacy as a legal institution. These debates will be examined in the following section.

5. PROPOSALS FROM AN INTERNATIONAL PERSPECTIVE. RECENT DEVELOPMENTS AND ONGOING DEBATES

Given the challenges identified in the previous section, it becomes evident that the protection of the child's right to know their origins in the context of international surrogacy cannot be effectively ensured solely through domestic legal frameworks. In particular, ensuring access to origin-related information emerges as a key condition for the effective realization of this right. The cross-border nature of these arrangements and the plurality of actors involved require coordinated responses at the international level.

At the international level, certain initiatives have emerged seeking to address these issues. Although differing in legal nature, scope and normative ambition, they share a common concern: the need to protect children born through surrogacy arrangements as rights-holders, irrespective of the legal status of the practice in a given State (Storror, 2018, p. 53; Horsey, 2024, p. 11). At the same time, these initiatives reveal an important limitation. While increasing attention has been devoted to problems of legal parentage and cross-border recognition, comparatively less normative development has taken place with regard to the child's right to the conditions required to ensure effective access to information necessary for the realization of the child's right to know their genetic and gestational origins.

This section examines, first, the work undertaken within the framework of the Hague Conference on Private International Law (HCCH), and, second, the proposal developed by the International Social Service (ISS) through the Verona Principles, both of which are analyzed from the perspective of the right to access one's origins.

5.1. Project on parentage and surrogacy of the Hague Conference on Private International Law (HCCH)

Following a series of expert meetings held between 2016 and 2022, the Hague Conference on Private International Law (HCCH) published in November 2022 its *Final Report of the Experts' Group on the Parentage / Surrogacy Project*. The Experts' Group concluded that further work by the HCCH was both desirable and urgently needed, recommending the development of one or more binding private international law

instruments on legal parentage in order to address the legal uncertainty affecting children in cross-border situations.

Subsequently, in March 2023, the Council on General Affairs and Policy (CGAP) established a Working Group to continue work on private international law matters relating to legal parentage, including parentage arising from international surrogacy arrangements. This Working Group held successive meetings between 2023 and 2025, focusing on the possible development of a future instrument on the recognition of legal parentage, as reflected in the working documents and reports of the HCCH Permanent Bureau (HCCH, 2023; HCCH, 2025).

From the perspective of the present analysis, the 2022 Final Report is particularly relevant in that it expressly identifies the issue of the child's origins as one of the elements to be considered in any future instrument. The Report refers to the child's origins in broad terms, encompassing the collection, preservation, and access through appropriate mechanisms ensuring the availability of information relating to the gestational person, any gamete donor(s), the intended parent(s), the child's gestational history and the medical history of the child's genetic parents.

The Report also notes that some experts referred to States' obligations to preserve and facilitate access to such information, drawing on Article 30 of the 1993 Hague Convention on Intercountry Adoption, as well as Articles 7 and 8 of the Convention on the Rights of the Child. This is particularly significant, as it situates the discussion of surrogacy within a broader child-rights framework.

However, despite this acknowledgment, in March 2026 the CGAP decided not to advance to a Special Commission to draft a possible Convention at this stage, with the understanding that this issue may be revisited at a later stage. The project was thus effectively concluded at this stage, with the CGAP mandating the Permanent Bureau to monitor legal and practical developments and report back at its 2028 meeting.

5.2. Proposal by the International Social Service (ISS): Verona principles

The International Social Service (ISS) published in 2021 the *Principles for the Protection of the Rights of the Child Born Through Surrogacy* (Verona Principles). The document is conceived as a set of guiding principles intended to inspire and inform legislative, policy and practical reforms aimed at protecting the rights of children born through surrogacy.

The ISS expressly clarifies that the principles should not be interpreted as encouraging or promoting surrogacy arrangements (ISS, 2025). Rather, they are grounded in the premise that, wherever surrogacy occurs, States must ensure the effective protection of the rights of the child.

This initiative is particularly noteworthy because it not only recognizes but systematically develops, in a comprehensive and detailed manner, the child's right to access their origins. The Principles define "identifying information" broadly as information

concerning the child's genetic, gestational, social and legal origins. This understanding is reflected throughout the document and is explicitly linked to human dignity and the right to identity.

Principle 2 establishes that the child is an independent rights-holder, affirming that "all human beings are born free and equal in dignity and rights" and that "throughout their lives, every child is an independent rights holder in their own capacity". Principle 1, dedicated to human dignity, establishes that all legal regulation of surrogacy must be consistent with fundamental human rights and that all children, irrespective of the circumstances of their birth, possess inherent and equal human dignity.

Particularly significant is Principle 11, which develops in detail the right to access one's origins. It provides that States have a duty to ensure that every child born through surrogacy has the opportunity to access information concerning their identity, including genetic and gestational origins, including at a later stage in life. It also provides that surrogacy arrangements should involve gestational persons and providers of reproductive material who supply verified and accurate identifying information, and that such information must be preserved and made accessible.

The Principles further emphasize the need to establish mechanisms to ensure the collection, preservation and long-term storage of identity-related information. They call for the creation of registries and other mechanisms, including national records, aimed at ensuring the collection, preservation and accessibility of identity-related information, as well as for the regulation of intermediaries, who must be required to collect, retain and disclose relevant information. In addition, they underline the importance of international cooperation in order to facilitate access to such information in cross-border situations.

In this respect, the Verona Principles go beyond other international initiatives by not only recognizing access to origins as a core element of identity, but also by proposing concrete mechanisms aimed at ensuring its effective protection. However, their non-binding nature constitutes an important limitation. Their implementation depends on the willingness and capacity of States to incorporate these standards into domestic legal frameworks, which remains uncertain.

Recent work has continued to reinforce this approach. In 2025, the ISS published a report on legal trends in surrogacy, which reiterates the need for coordinated international responses that address not only issues of legal parentage, but also the long-term protection of the rights of children, including access to origin-related information.

5.3. Interim assessment

Taken together, these developments reveal both progress and limitation. The HCCH process has advanced the discussion on legal parentage and cross-border recognition and has expressly acknowledged the relevance of origins, though this acknowledgment remained secondary to the primary objective of establishing rules on the recognition of legal parentage, an objective which, moreover, was ultimately not achieved, reflecting the profound complexity of the matter and the lack of international consensus. The Verona

Principles, in turn, provide a more comprehensive and child-centered framework in which access to origins is treated as a core component of identity and human dignity.

However, important normative gaps persist. Existing initiatives continue to focus predominantly on the recognition of legal parentage, while the child's right to access their genetic and gestational origins remains comparatively underdeveloped, particularly in terms of the mechanisms required to ensure its effective realization. As a result, current approaches risk addressing the formal dimensions of legal parentage without adequately safeguarding the substantive dimensions of identity.

6. FINAL REMARKS

The international regulation of surrogacy reveals critical tensions between reproductive autonomy, contractual freedom, and the fundamental rights of children. Among these, the right to know one's origins emerges as a core component of personal identity, deeply enshrined in international human rights law, including Articles 7 and 8 of the Convention on the Rights of the Child and the case law of the European Court of Human Rights.

In the context of gestational surrogacy arrangements, particularly those of a cross-border nature, the effective realization of this right is frequently undermined by legal opacity, private contractual clauses, and the absence of accessible registries or other mechanisms ensuring the preservation and accessibility of origin-related information. The dissociation between the gestational, genetic, legal, and social dimensions of parenthood gives rise to a fragmentation of the traditionally unified concept of parenthood, thereby challenging established paradigms of filiation and identity. In this sense, current legal frameworks tend to address questions of parentage while leaving insufficiently developed the mechanisms required to ensure effective access to such information.

Children born through surrogacy are not objects of contractual exchange nor mere projections of adult desires. They are autonomous rights-holders whose dignity, personal integrity, and identity must be fully respected and protected. The concealment or suppression of information concerning a person's gestational and genetic origins constitutes a serious interference with the effective exercise of their fundamental rights and raises significant concerns in terms of transparency and accountability in reproductive practices, particularly within democratic legal systems. Accordingly, the right to know one's origins should not be understood merely as a symbolic or declaratory entitlement, but as a right requiring effective and enforceable guarantees.

From a human rights-based perspective, the reproductive body must not be subject to commodification or instrumentalization, as doing so perpetuates structural inequalities and gender-based exploitation. At the same time, the regulation of surrogacy must be assessed primarily through the lens of the child's rights, as consistently emphasized in international standards. Consequently, any legal framework regulating surrogacy that fails to prioritize the rights of the child, among them, the right to know one's origins and the corresponding guarantees of access to origin-related information, is ethically untenable and legally inadequate. This requires the recognition of positive obligations on States,

including the duty to ensure the collection, preservation, and long-term accessibility of identity-related information over time.

It is therefore imperative that any future international instrument addressing surrogacy, whether within the framework of the Hague Conference on Private International Law or building on proposals such as the Verona Principles, must move beyond the exclusive focus on legal parentage and cross-border recognition, and explicitly enshrine the right to access one's origins as a binding legal standard, rather than leaving it to the discretion of commissioning adults or private intermediaries.

The time has come to reframe the debate: from the permissibility of surrogacy practices to the enforceability of children's rights. Ensuring effective access to origin-related information as a condition for the realization of the right to know one's origins is not a matter of privilege, but one of justice and legal coherence. A legal framework that recognizes parentage while denying access to origins ultimately protects formal legal status at the expense of personal identity. It is a fundamental requirement grounded in human dignity, essential for personal development, and central to intergenerational responsibility.

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