



Original Article

# Legal Regulation of Cross-border Surrogacy: A Comparison Based on China, Vietnam, and Russia

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Received 15 December 2021

Revised 12 March 2022; Accepted 20 March 2022

**Abstract:** In the era of advanced medical technology and frequent international exchanges, reproductive tourism is on the rise, the problems it poses have attracted the attention of countries. Taking China, Vietnam, and Russia as research samples, the article points out the differences laws on surrogacy create opportunities for intending parents to circumvent domestic law. The recognition of parental rights of prospective parents, according to the best interests of children, makes it even less worrying. From the perspective of fundamental rights, the article argues that surrogacy is the only means of realizing reproduction for people suffering from uterine diseases. 'External tolerance' will intensify the conflicts between the rich and the poor and lead to high costs of unidentified evidence collection. That is why prior supervision is necessary. The author proposes that legislation should explicitly allow limited surrogacy and regulate the conditions and parenthood so that it can apply under control. At the international level, China, Vietnam, and Russia face the common problem of surrogate children's rights. Based on the accumulation of multilateral or bilateral treaties, they should actively participate in and promote the process of global conventions based on common concerns while paying attention to the progress of HCCH.

**Keywords:** Cross-border surrogacy; confirmation of surrogate parenthood; reproductive rights; prior supervision; international collaboration.

## 1. Introduction

With the application of assisted reproductive technology (ART), the phenomenon of procreation through the use of another woman's

uterus has emerged, which is called surrogacy. The Committee of Inquiry into Human Fertilisation and Embryology defines it as a practice in which a woman conceives a baby for another person as offspring after birth[1]. The

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<https://doi.org/10.25073/2588-1167/vnuls.4418>

woman who gives birth to the baby is a surrogate mother. People who entrust the surrogate mother to procreate are intending parents, also called commissioning parents or prospective parents. Due to the diverse cultural, political, and social environments in different countries, there are several positions on surrogacy: prohibiting, approving altruistic or commercial surrogacy under certain conditions, and leaving a gap in legislation. The development of globalization, changing family patterns, and sexual minority unions have prompted intending parents to seek surrogates to get a baby in countries where it is legal, the phenomenon known as reproductive tourism.

There has been no international consensus on determining parentage in cases where the genetic mother is different from the birthing mother. However, regardless of whether surrogacy is legal, we face the issue of determining the legal status of surrogate children who have already been born, which affects their nationality, custody, and inheritance. In 2010, the Permanent Bureau of the Hague Conference on Private International Law (HCCH) established the Parentage/Surrogacy Project to research private international law and child protection issues arising from cross-border surrogacy, with plans to submit a final study in 2023[2]. The legal issues of surrogacy have been discussed by scholars in various countries, mainly focusing on whether surrogacy should be allowed, how to determine surrogate parenthood, and the content of best interests of children. Nevertheless, these researches are separate. Scholars in favor of surrogacy argue that it is a new form of labor to realize women's economic rights [3], which can also meet the reproductive needs of special populations and ease the aging process [4]. Those who oppose surrogacy argue that it exploits women [5] and violates ethics and reproductive obligations' fair distribution [6]. Meanwhile, the discussion on parentage revolves around *mater semper certa est*, genetic relationship, best interests of children, and mutual consent, without explaining whether surrogacy should be allowed. This article argues that, by contrast, because of the impact of

identification of surrogate parentage on the stipulation of surrogacy, it is necessary to conduct a comprehensive study to identify practical problems and causes, thereby finding solutions for them.

## **2. Practical Disorders: Ineffective Prohibition of Surrogacy and Unstable Validity of Surrogate Parenthood**

Although some countries, such as China, Vietnam, Germany, France, and the United Kingdom, have prohibited surrogacy (commercial surrogacy), many children are still born through cross-border or illegal surrogacy and live in the country with commissioning parents. Prohibitive domestic rules do not play an effectual regulatory role, mainly because the Contracting Party complies with the Convention on the Rights of the Child (CRC). The 44th General Assembly of the United Nations adopted CRC on November 20, 1989, which established the principle of best interests of children as the primary consideration in all actions concerning children in Article 3. It stipulated the right of children to know their parents and acquire a nationality, a name, and family relations in Articles 7 and 8. Therefore, protecting the child's right is an international law obligation that the parties of CRC should undertake. The vast majority of countries have accession to and ratified the Convention, including China, Vietnam, and Russia. Considering the willingness of commissioning parents to raise the child and the property condition, it is often more beneficial to protect the interests of the surrogate child by living with them. Thus, although a country prohibits citizens from having children through surrogacy, when they have done and brought the child back, the government is compelled to recognize parentage between them by CRC. In other words, the legal consequences of surrogacy, namely the status of the surrogate child, will be confirmed even though the law makes surrogacy illegal. In this way, people with reproductive demand will still seek cross-border surrogacy to get a baby.

Intending parents choose to cross the border to circumvent prohibitive domestic laws to obtain official parent-child relationship certification. Then they will bring the child back home. There are two main ways surrogate parenthood can be valid in the domestic territory, including methods of 'choice of law' and 'recognition' [7]. The first method is for domestic courts to apply the governing law where surrogacy is permitted through the guidance of conflict rules, thereby confirming the validity of the surrogacy agreement and parentage. Nevertheless, *lex personalis* usually refers to the law of habitual residence, which is generally reflected as the forum law that prohibits or restricts surrogacy. The second approach recognizes the foreign judgment or notarial documents to validate the parentage. It does not examine the surrogacy agreement but only considers whether to acknowledge the foreign document. Generally speaking, both methods require that the consequence of applying foreign laws or recognizing foreign judgments do not conflict with the public order, but surrogacy seems done. As a result, the state of commissioning parents refuses to accept the validity of the surrogacy agreement and reexamine parenthood by *lex fori*, resulting in instability in the identity of legal parents. It poses a potential risk to protecting children's rights.

### **3. Reasons for Practical Disorders: Conflict between Rules under Different Surrogacy Positions**

As mentioned above, cross-border surrogacy arises because the commissioning parents choose to circumvent the prohibitive laws of their countries. The unstable validity of surrogate parentage arises because countries apply diverse regulations based on their respective interests. There is a collective premise that different legislations of surrogacy exist between nations. China, Vietnam, and Russia all belong to civil law. By sorting out the legislative history and typical surrogacy practices, the article summarizes the development and

differences between the three countries on two issues of whether surrogacy is allowed and how to identify the parentage. In the end, it finds some problems.

#### *3.1. China: Surrogacy is Illegal, and Parenthood is Determined Based on Genetic Linkage, Willingness to Raise, and the Best Interests of Children*

China has always had a negative attitude toward surrogacy. Only two departmental regulations stipulated surrogacy, Measures on Administration of Assistant Human Reproduction Technology promulgated in 2001 [8], and Ethical Principles for Assisted Human Reproductive Technology and Human Sperm Banking revised in 2003 [9]. However, due to the low efficacy hierarchy of the departmental regulations, the implementation has not been satisfactory. Firstly, in China's legal system, the rank of departmental regulations is below laws and administrative rules. According to Article 80 of the Legislation Law of the People's Republic of China, without any basis in laws or the administrative regulations, decisions, and orders of the State Council, departmental regulations shall not set out any requirements that impair the rights or increase the obligations of citizens, legal persons, and other organizations. Therefore, the two departmental regulations can only bind medical personnel within the department's management instead of ordinary citizens. Second, although the departmental regulations prohibit medical personnel from implementing surrogacy, the maximum penalty is only 30,000 yuan [8], which is hugely more minor than the profits, so it does not have a deterrent effect.

In addition, although the Civil Code of the People's Republic of China does not directly regulate surrogacy, Article 1009 stipulates that medical and scientific research activities related to human genes and human embryos shall obey the laws and regulations without endangering human health, violating ethics and morality, or damaging public interests. Meanwhile, according to Article 39 of Interpretation (I) of the Supreme People's Court on the Application of

the 'Marriage and Family' Book of Civil Code, one essential basis for confirming parentage in China is the genetic links by parentage test. Therefore, in China's judicial practice, the validity of the surrogacy agreement is confirmed separately from the determination of parenthood. The former is always considered invalid due to public interests, while the latter will be reaffirmed [10].

The most typical case was the first surrogate child custody dispute in China in 2016 [11], in which the commissioning parents Luo A and Chen B obtained children Luo C and Luo D through surrogacy, who has the genetic link to Luo A. C and D have grandparents named Luo E and Xie F. After A died due to illness, B and the grandparents had a dispute over the custody of children. Shanghai No. 1 Intermediate People's Court declared the nullity of the surrogacy agreement. They held that a legal mother's identity is traditionally based on delivery, and her spouse is the legal father. When there is no spouse, the genetic linkage will come into play. In surrogacy, the part of pregnancy and delivery is transferred from the intending mother to the surrogate mother, departing from *mater semper certa est*. Thus Chinese law cannot permit it. However, regardless of the denial and condemnation of illegal surrogacy, children are

innocent. No matter the manner of birth, children should obtain legal protection. In this case, the legal mother of C and D should be the surrogate mother according to delivery, but the court can not ascertain who the woman is. According to genetics, their legal father is A. While A's wife (B) has willing and facts to foster C and D, we can conclude that a step-parent-child relationship has formed between them. Based on the best interests of children, taking into account custody capacity, the requirement of children's living environment and emotions, and the integrity of the family, the court ultimately determined that C and D are children born out of wedlock, B (the intending mother) is the stepmother of C and D, who has custody of them.

The standard of determination of parenthood, in this case, can be summarized in Figure 1. Although the final judgment was in the children's best interests, it severed the roles of legal father and mother. Even though the children have the same legal status as other children born in wedlock, the implication of 'born out of wedlock' may negatively impact the life of a surrogate child. Overall, the main problem of surrogacy in China is the lack of clear legal regulations, which results in surrogacy being out of control and parenthood relying on judicial discretion.

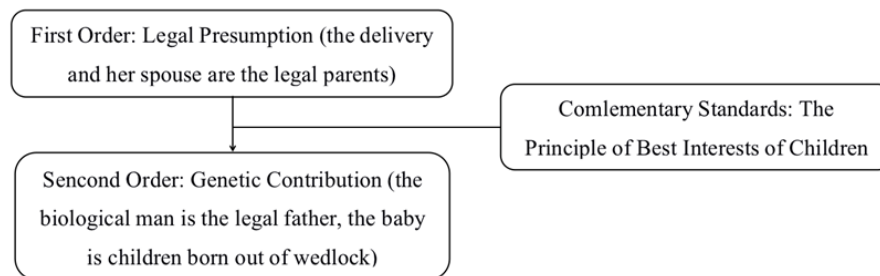


Figure 1. Criteria for Determining Surrogate Parentage by Shanghai No. 1 Intermediate People's Court.

### 3.2. Vietnam: Common Willingness Criteria in Restricted Altruistic Surrogacy

In Vietnam, the constitution and laws enacted by the National Assembly are of the highest legal status, and legal documents or

decrees issued by the Vietnamese government are less effective [12]. Due to the complicated process of legislation and amendment, the government can issue decrees to fill the legal gap in certain areas that need regulation. To evaluate the development of ART and seek alternative

supervision, the Vietnamese government issued Decree No. 12/2003/ND-CP in 2003. Surrogacy was prohibited. A woman with uterine diseases could not obtain a child genetically linked to her or her spouse. Individuals or organizations illegally involved in surrogacy may be punished by law. It is important to note that surrogacy was not a crime, and those involved in surrogacy arrangements would undertake civilly liable to pay a fine of a certain amount. Thus, fixed penalties do not reduce surrogacy because of the profitability.

In 2015, the National Assembly passed the revised Law on Family and Marriage, ending a decade-long ban on surrogacy and allowing gestational surrogacy within families based on altruism. The law establishes strict restrictions. Intending parents should be a married couple. The competent health organization has issued a certificate that even with ART, the wife would not be able to carry a pregnancy and give birth. The surrogate mother must be a close relative of the same lineage of the intending parents, who has had at least one child and is the first to be a surrogate mother, of appropriate childbearing age, and has a fertility certificate by the medical institution. If she has married, she must have the husband's written consent. Both participants have undergone clinical, legal, and psychological counseling. After the child's birth, commissioning parents will assume sole parental responsibility, and the surrogate mother (and her husband, if she is married) will be relieved of it [13]. These rules allow the court to quickly determine the legal parents in a dispute between the parties, thus protecting the child's best interests.

After just two days of legalization, authorities received 100 applications for surrogacy, reflecting the massive demand in Vietnam [14]. However, the revised law remains problematic, as the implementation of Vietnam's two-child policy since 1988 has reduced the number of family members, ultimately making it difficult for some couples to find surrogate mothers who are close relatives. In January 2016, the first surrogate mother was 46 years

old, delivered successfully through an altruistic surrogate. The law's restrictions on close relatives may raise another concern, namely that women in a disadvantaged position in the family may be pressured to submit to the wishes of a more powerful but infertile couple. At the same time, the line between altruistic and commercial surrogacy remains blurred by the lack of criteria for altruism. In surrogacy, even if the intending parents do not provide monetary compensation to the surrogate mother, they will give some valuable items based on reciprocity. Moreover, because of the stringent conditions for altruistic surrogacy, commercial surrogacy remains popular in Vietnam privately, where surrogacy agencies help clients find surrogate mothers by falsifying documentation of kinship [15]. Thus, the surrogacy provisions in the Law on Family and Marriage may not achieve the lawmakers' original purpose.

### *3.3. Russia: Common Willingness Criteria in Conditional Commercial Surrogacy*

Compared to China and Vietnam, Russia is more open on the issue of surrogacy and has been allowing commercial surrogacy since 1995. Initially, there were only medical guidelines to guide surrogates. Until 2011, the Federal Law of the Russian Federation No.323 passed, stipulating commercial surrogacy conditions. The client should be an infertile patient with medical reasons. The surrogate mother must be a woman between 20 and 35, have at least one healthy child, a medical report confirming her health status, and have expressed informed and voluntary consent to medical interventions in writing. If the woman has married, her spouse also needs to sign consent. The embryos implanted in the surrogate mother must not contain her genetic material, i.e., only gestational surrogacy is permitted. Also, all potential parents must undergo psychological screening, drug testing, and expert interviews [16]. If someone fails to pass one of the conditions, the clinic will refuse to provide surrogacy services. In addition, as of January 1, 2021, the latest family law amendments require

that ART use the gametes of at least one prospective parent, meaning that one of the commissioning parents needs to have a genetic link to the surrogate child [19]. In the process, clinics that provide surrogacy services or organizations that provide legal support are regulators. They will regulate the behavior between the parties to reduce potential conflicts or violations of the law [18].

Regarding the parent-child relationship, only with the surrogate mother's consent can intending parents register as parents on the birth certificate. Once registered, the surrogate mother has no right to contest parental rights [19]. As can be seen, the first criterion for determining surrogate parenthood in Russia is still the

principle of *mater semper certa est*. After birth, the surrogate mother has legal custody of the child, and to fulfill her contractual obligations, she must sign a formal renunciation of parental rights immediately. Heretofore, she has rights as the legal mother over the child (Figure 2). Suppose intending parents relinquish their parental rights of the child and the surrogate mother refuses to exercise her rights as the first-order guardian, the surrogate child will be placed in an orphanage. In this case, a surrogate without a genetic link with the surrogate child, we can suspect that her decision may be arbitrary [18]. Therefore, the legal parentage is unreasonable and may violate the fundamental rights of surrogate children.

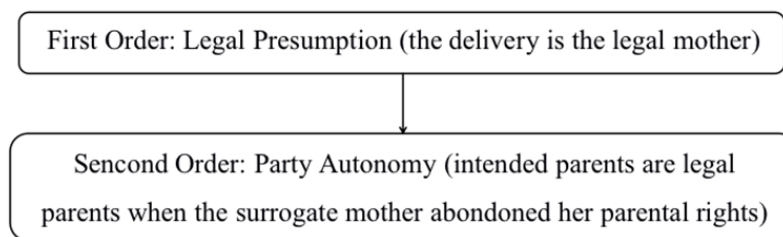


Figure 2. Russian Surrogate Parentage Regulations.

The cost of surrogacy in Russia is low compared to the United States. After India, Nepal, and Thailand restricted cross-border surrogacy, an increasing number of foreign commissioning parents are entering Russia, mainly from China [17]. At the end of 2019, a criminal case arising from discovering the body of a child born through surrogacy in an apartment in Okinzovo, Moscow Region, led to extreme protests from Russian citizens. In January 2021, the Russian State Duma deputies drafted a bill stipulating that one or both commissioning parents should be Russian citizens to ban reproductive tourism. Subsequently, in October 2021, the Russian

Federation government adopted the draft law and planned to finalize it before its first consideration by the State Duma [20]. Deputy Chairman of the State Duma Tolstoy Petr Olegovich said that many foreigners see Russia as a factory producing children. Every year, thousands of foreigners come to Russia alone and leave with newborn babies whose fate the Russian government cannot trace. So the purpose of this draft is to prevent the 'export' of surrogacy children [21]. It is foreseeable that after the draft is officially considered, surrogacy services in Russia will be available only to Russians.

Table 1. Comparison of China, Vietnam and Russia on surrogacy and parentage determination.

Country	Surrogacy position	Determination of surrogate parenthood	Defects
China	Medical personnel must not implement surrogacy techniques. Medical and scientific activities related to human embryos must not endanger human health, violate ethics and morality, or harm public interests.	Rules of confirming ordinary parentage adopt the 'genetic link' while there are no specific surrogate parentage provisions. The court usually combines delivery, children's best interests, and gene association to determine intending parents as legal parents.	The lack of legislation leads to no regulation of surrogacy. And judicial discretion may fragment the roles of parents and make the relationship unstable.
Vietnam	Vietnam permits altruistic surrogacy within the family under legal conditions.	The legal parents are commissioning parents from the birth of the surrogate child.	Conditions are stringent, so some couples with reproductive diseases can still not obtain children through a surrogate. Meanwhile, it is ambiguous between altruistic and commercial surrogacy in practice. Inadequate authorities' regulation has led some agencies to falsify certificates of consanguinity for commercial surrogacy. It may not be in the child's best interest to make the surrogate the first legal mother of the surrogate child.
Russia	Commercial surrogacy under legal conditions is allowed.	The commissioning parents will get custody after the surrogate mother signs a document renouncing parental rights.	Tolerance for reproductive tourism may fail to protect the rights of surrogate children born in Russia (this may change with the new bill's passage).

From the above comparison of the legal regime of surrogacy (summarized in Table 1), we can find that Vietnam has moved from an initial total ban to allowing altruistic surrogacy within legal limits. This shift seems to be seen as a compromise to balance the conflicting interests of social order and individual rights. On the other hand, Russia has begun to restrict reproductive

tourism based on the protection of surrogate children. Although China does not explicitly regulate surrogacy in the legislation, the meager fertility rate and the adverse effects of the one-child policy are forcing the authorities to take action. There are significant differences in determining surrogate parentage, but the three countries all reflect the intent to protect

children's rights. Although the implementation exists unsatisfactory, the countries are becoming aware of the seriousness of these issues.

#### **4. Solutions: Domestic Regulation and International Collaboration**

Cross-border surrogacy is booming, leaving countries that prohibit commercial surrogacy with a dilemma. For one thing, prohibitive domestic laws are ineffective in preventing commercial surrogacy, and the desire of the commissioning parents to have a child seems to be more significant than the obstacles set up by authorities. For another thing, the state is aware that its citizens practice surrogacy in other jurisdictions. After taking the surrogate children back, the administration has to conduct an ex post facto review of the surrogacy agreement or related documents completed in another country. Eventually, they will recognize the parentage based on the best interests of children, which is not an acceptable compromise. Thus, these countries are at an impasse, not only in not effectively banning surrogacy but also in regulating it [22]. To resolve this awkward situation, the author argues the legitimacy of surrogacy for people with uterine diseases and puts forward some suggestions from the domestic and international levels.

##### *4.1. Position: Legalization of Surrogacy for People with Uterine Fertility Diseases*

Reproductive right is a fundamental right that derives from the nature of humans and society, which is directly related to human survival, development, and status of the subject, undeniable, and generally accepted by the international community [23]. The 1st International Conference on Human Rights held in 1968 established the fundamental human right of women to decide on the number and interval of fertility responsibly. Then, the 1st International Conference on Population and Development adopted The World Population Plan of Action in 1974, stating that parents have

the right to reproduce. Mexico City Declaration on Population and Development in 1984 and the International Conference on Population and Development Programme of Action in 1994 extended reproductive rights to all couples and individuals. As a fundamental human right, procreation rights should not be infringed. However, its exercise may be subject to some restrictions, mainly in two cases. The first stems from public purposes, and the second is that its exercise should not infringe on others' fundamental rights. It is important to note that these restrictions must state in the Constitution and maintained within a necessary sphere.

Surrogacy is the method of realizing reproduction rights for people with uterine diseases to get a genetically linked child (next referred to as "limited surrogacy"). In reality, not all people are born with perfect fertility. Although ART can assist human reproduction, it is still unable to solve the problem that someone cannot conceive embryos or bring them to a viable state due to the absence or defect of the uterus. Surrogacy is the only means for such people to realize their fertility rights. At the same time, limited surrogacy does not fall into the restriction of fundamental rights harming public interests or others' rights. The reasons opposing surrogacy are the exploitation of surrogates, the trafficking of children, and violations of ethics. This article responds to each of them here.

At first, in limited surrogacy, where the client cannot bear children, surrogate mothers play the sacred role of conceiving and delivering the baby. Based on the strong desire to get descendant, prospective parents will treat the surrogate amicably. Subsequently, surrogacy, as a medical treatment, transfers the process of pregnancy and delivery from the intending mother to the surrogate mother due to uterine impediment. The surrogate child has a genetic link to the client, so there is no trafficking of children. Furthermore, limited surrogacy does not involve the sale of organs (wombs). The donation of organs, bone marrow, and blood to a patient is typical in real life, which can be accomplished quickly. Surrogacy is the same in that it uses a component of another person's body



(the healthy womb of a surrogate mother) to help a person with a disease (fertility defect) to achieve some functions (reproduction). The difference is that the 'result' of surrogacy is a baby that can separate from the mother, so no organ transplant is necessary. Surrogacy is a humanitarian act of reciprocity, not a sale of the womb. In this instance, it would be reasonable for a surrogate mother to receive compensation in appreciation of her contribution. Therefore, reproductive rights as a fundamental right justify the legalization of surrogacy, at least in limited. Whether surrogacy is altruistic or commercial, the author demonstrates that limited surrogacy should be legal.

#### *4.2. Domestic level: Prior Supervision instead of Ex Post Review*

Regarding the different rules on surrogacy, Guido Pennings has argued that two levels of tolerance are significant on reproductive tourism, including internal tolerance and external tolerance. Internal tolerance allows citizens to break the law by stating that the offender will not be punished under certain conditions. External tolerance enables citizens to escape the law by 'traveling' outside the territory without being punished or prevented. Internal tolerance creates a sense of legal insecurity for citizens, while external tolerance gives a clear message about what is allowed by the state. Through such external tolerance, certain norms are applied domestically according to the majority's will, while minorities can act outside in their way. This tolerance is a kind of respect of minimum moral autonomy, which can prevent positive conflicts with endangering social peace. Back to the topic, reproductive tourism is a pragmatic solution of surrogacy, which can combine the system applied by the majority with a degree of personal freedom of the minority. That means the state should at least refrain from taking active measures to prevent citizens from seeking surrogacy in other countries, such as restricting the freedom of movement and criminal charges against them [24]. Similarly, some scholars suggested that we can regard the

use of legal differences by commissioning parents for cross-border surrogacy as a 'deliberate safety valve' for authority to reduce the pressure for legal reform [22].

The paper disagrees with the view. It is an irresponsible attempt to throw controversial matters into a foreign legal system for resolution, a manifestation of lazy administration, and a disguised encouragement for citizens to circumvent domestic laws. Most importantly, this approach cannot achieve the desired results. On the one hand, the ability of individuals to act abroad often relates to property status. In the case of reproductive tourism, only the wealthy can pay for cross-border surrogacy with ease. Due to the gap between rich and poor, the 'deliberate safety valve' may be an available exit just for the wealthy, intensifying society's contradictions. Meanwhile, the property will flow into the revenue of other countries.

On the other hand, these countries do not avoid being involved in the vortex of judging. We cannot ignore the fact that the purpose of commissioning parents seeking cross-border surrogacy is to obtain a child in their custody and to live with them. Therefore, once a dispute arises between the surrogacy parties, the homeland of prospective parents still has to spend administrative or judicial costs to resolve the issues of nationality, custody, and inheritance of the surrogate child under the background of lacking supervision of the surrogacy process. Since surrogacy took place abroad, investigations can only rely on the cooperation of the surrogacy country or surrogacy parties and participants. Because of the consideration of judicial reciprocity, public order, and personal interests, it is uncertain whether the home country can obtain accurate information. At the same time, given the best interests of children, we cannot determine surrogacy as a crime. Otherwise, the birth of the surrogate child will be overshadowed by 'crime'. The parents will become criminals, even imprisoned because of their birth, seriously affecting their growth. Once the authority instead criminal measures of high fines or other civil liabilities, commissioning parents with

financial conditions continue to choose surrogacy while agents will go on to take the risk under the drive for profit. It seems that surrogacy can never be banned.

In this case, the introduction of a third approach-bringing forward passive *ex post* review to active prior regulation-seems to be the inevitable and more reasonable choice, both in terms of the justifiability for limited surrogacy and the cost of regulation. We need to know that laws not only have the evaluation and punishment function and can prevent and regulate actions. The boom in cross-border surrogacy demonstrates the limited effect of prohibiting rules. Rather than being forced into a burdensome evaluation after surrogacy, facing refusal of foreign assistance and false information by parties, we can choose to regulate surrogacy proactively. Such a proposal does not mean that we must introduce a surrogacy market in the country, but rather construct a system consistent with our moral beliefs but transparent and accessible to avoid intending parents to act surreptitiously outside of regulation.

The author believes that, as a *Pays du Droit Ecrit*, the solution of surrogacy should not rely on the judiciary's discretion but legislation to clarify the position of surrogacy and the criteria for determining surrogate paternity. Specifically, the law should first explain that limited surrogacy is allowed under the supervision of official agencies, with legal parents listed on the birth certificate. Surrogacy conditions and parenthood may combine the advantages of Russia and Vietnam regulations.

We can limit surrogate parents to legal couples with uterine disabilities, one of whom should provide the gamete. The surrogate mother should be a woman of suitable childbearing age (which can reference the legal marriage age), of healthy fertility (as certified by the official medical institution), has already given birth to a child. If she has married, she needs to provide the written consent of her husband. Before implementing surrogacy, the parties shall apply to the authority with supporting documents and prepare an agreement after approval. It should include the parties' basic information, the

surrogate paternity, and the remuneration of the surrogate mother (commercial or altruistic).

In order to guide the standardization of agreements, the country can issue model provisions including mandatory provisions to protect the rights of the vulnerable, for instance, no selection of gender of the baby; legal parents intend parents unless it is against the best interests of children; after birth, legal parents must raise the child regardless of what health condition and gender is; the surrogate mother has the right to be fully informed and consent to any issues in the surrogacy process, choose to accept or refuse medical measures for health reasons.

In addition, all potential parents must undergo psychological examinations, drug testing, and expert interviews. When all the procedures have been completed, official medical institutions will perform surrogacy. Only gestational surrogacy can be allowed. After the birth of the surrogate child, authorities will register the intending parents following the agreement. Also, to avoid the retroactive dilemma of 'exporting' surrogate children like Russia, the government could consider limiting one commissioning parent to its citizens.

It should be clear that although the author has attempted to propose a holistic and more feasible approach to regulate, the reform of a legal system is usually slow and cautious. In legal revision, it is still necessary to consider the unique national conditions and the interface between surrogacy rules and other rules, especially family law. By combining prevention, supervision, and punishment processes, the potential surrogacy disputes will reduce, and parties' expected rights can get protection considerably.

#### 4.3. International level: Facilitate Multilateral and Global Cooperation

Given the complexity of cross-border surrogacy, it is impossible to translate domestic rules into international norms directly. With the core objectives of avoiding 'lame' surrogacy parentage and performing international surrogacy agreements that respect human rights,

HCCH suggests that we must develop an international convention to regulate cross-border commercial surrogacy and focus on the recognition of surrogate parentage [25]. Concerning the contents of the convention, some scholars believe that we should introduce a pre-vetting mechanism for surrogacy agreements. Authorities of habitual residence of intending parents examine clients and the surrogacy arrangement. In contrast, officers of the birthplace of surrogate children ensure the surrogacy mother is fully informed, consents to the surrogacy arrangement, and get adequately compensated [26]. Although this mechanism considers surrogate children's status and parties' rights, it presupposes uniform national rules on surrogacy, ignores countries that prohibit commercial surrogacy, and runs counter to the surrogacy economy of states that allow surrogacy [27]. So it is not feasible.

There is no doubt about the significant differences in the perception and regulation of surrogacy across countries. We also need to find that there are still consistent concerns about surrogacy, namely the parental responsibility of surrogate children and the protection of the rights of vulnerable groups (surrogate children, surrogate mothers). Even prohibit surrogacy countries recognize the parentage based on the best interests of children and condemn the behavior of abandoning children born from surrogacy. No government denies the protection of rights of surrogate participants, especially the right to know and consent of surrogate mothers. Thus, we should be clear that international cooperation is not an attempt to harmonize the surrogacy positions but rather a commitment to reach a consensus on common concerns. Owing to the sensitivity of issues related to marriage and family, the balance of individual rights and social interests leads to different public interests. Once the convention passes and gets approval, the parties will fulfill obligations. In order to protect public order, countries may refuse to join it, leading to a delay in reaching a global convention.

With the prevalence of cross-border surrogacy, states can sign multilateral or bilateral agreements to respond to the actual demand at this stage. On one side, multilateral or bilateral treaties have fewer contracting parties than the global convention. So it is easier to negotiate and enter into force with less prominent contradictory interests. In addition, after signing the agreement, it is possible to get a consensus to amend it promptly according to the latest national policies or particular circumstances, which provides greater flexibility in both content and procedures. Taking China, Vietnam, and Russia as examples, although the three countries have different positions on surrogacy, they all face the problem of surrogate children's rights protection due to the uncertainty of parenthood. Russia is the major surrogate mother country, China and Vietnam are commissioning countries. They are all parties of CRC, so they can consult on issues of identifying legal parents according to the best interests of children and ensuring the maintenance of surrogate children to conclude a treaty. It can also promote the development of domestic laws by accumulating regulatory practices for cross-border surrogacy.

At the same time, when countries realize the third way (regulation) to control surrogacy, there is also a possibility of reaching a consensus on supervision cooperation of cross-border surrogacy. It will maximize the likelihood of making surrogacy occur under the jurisdiction to fulfill its function in a better way. But we should realize that the common purpose of the international community is to reach a convention to achieve global protection for surrogate children and mothers. As regional cooperation accumulates and a more considerable consensus has reached, countries should actively participate and promote the conclusion of a global convention with their attention to the progress of HCCH.

## 5. Conclusion

Reproductive tourism has led to the unsatisfactory implementation of prohibitions and produced some problems, such as the unstable validity of surrogate parentage and the lack of solid protection of the rights of vulnerable groups. Examining the legislative and practical trends in China, Vietnam, and Russia, the article finds that citizens of countries where surrogacy is banned (China) or commercial surrogacy is forbidden (Vietnam) are unable to meet their reproductive needs, resulting in the proliferation of illegal surrogacy. As a result, the state cannot regulate the process of illegal surrogacy. The principle of the best interests of children has led to the practical recognition of parental rights of commissioning parents. Russia, which allows commercial surrogacy under legal conditions, is beginning to face the problem of losing control over the protection of surrogate children and plans to pass a bill banning reproductive tourism at home. The author criticizes the opinion of 'external tolerance' that throws controversial surrogacy into foreign legal systems irresponsibly and suggests that surrogacy is the only way for a person with uterine diseases to realize reproductive rights, to obtain a child genetically linked to herself or her spouse. Based on this position, the paper makes recommendations in domestic and international ways. At the household, it can prevent surrogacy disputes, protect the parties' rights, and save administrative costs by advancing review before surrogacy agreements take effect. At the international level, the realities arising from cross-border surrogacy require international cooperation. In the short term, countries should join hands with the 'interacting' nations to engage in regional and bilateral treaties to resolve urgent matters. In the long view, it is still the common goal for the international community to develop conventions to unify the recognition of surrogate parenthood and protection of children and women with the negotiation of common concerns.

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