

## INTERNATIONAL SURROGACY AND STATELESS CHILDREN: ARTICLE 7 UNCRC AND THE HARMFUL EFFECTS OF STATELESSNESS

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### **Abstract**

This article examines statelessness resulting from international surrogacy arrangements by exploring whether there is protection afforded under international law and the overall consequences of statelessness for surrogate-born children. The aim of this contribution is to shed light on the statelessness problem in view of recent developments in the field. In particular, for an updated and holistic approach to surrogacy and statelessness, this contribution advocates for the United Nations Convention on the Rights of the Child 1989 (UNCRC) to be read in conjunction with the recently established Verona Principles. These Principles are specifically designed for international surrogacy, able to complement the existing UN protection, and it is argued that a combined reading of the UNCRC and the Verona Principles provides stronger protection of children's rights. In addition, this contribution aspires to bridge the gap between legal and other consequences of statelessness, with the latter often overlooked in the context of surrogate-born children.

To explore the above, this article first addresses the phenomenon of statelessness for children born through international surrogacy via an examination of conflicting laws and international surrogacy cases. The article then discusses how this state of affairs infringes the rights of the surrogate-born children, and in particular the right to acquire a nationality (Article 7 UNCRC). It is also submitted that, for surrogacy, Article 7 UNCRC should be read in conjunction with the recently established Verona Principles for a more holistic protection. Finally, this article examines the harmful effects that result from the surrogate-born children's statelessness, advocating for a more comprehensive approach that goes beyond the strictly legal consequences of statelessness.

**Keywords:** surrogacy; statelessness; UNCRC; nationality; citizenship; cross-border assisted reproduction.

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<sup>1</sup> I would like to thank the editors, Maria Federica Moscati and Michael Palmer, and the anonymous reviewer for their helpful comments on an earlier draft. Any errors are my own.

## [A] INTRODUCTION

Surrogacy is an agreement whereby a woman (surrogate) gestates and gives birth to a child for someone else to raise, the intended parent(s) (IPs). It is often the case that IPs travel from their home country to another jurisdiction to access surrogacy services. This has resulted in the phenomenon of international (or cross-border) surrogacy. There are, however, hidden dangers lurking behind international surrogacy. One such danger is that surrogate-born children may become stateless due to, for example, conflicting laws on conferring nationality between the IPs' state of origin and the jurisdiction where the children are born. A question arises as to whether children are afforded any protection to avoid such occurrences by relying on international law, and what are the overall consequences of statelessness for surrogate-born children.

The aim of this article is to shed light on the statelessness problem in view of recent developments in the field. In particular, for an updated and holistic approach to surrogacy and statelessness, this contribution advocates for the United Nations Convention on the Rights of the Child (UNCRC) to be read in conjunction with the recently established Verona Principles.<sup>2</sup> These are Principles specifically designed for international surrogacy, with their protection covering aspects in addition to those covered by the existing UN protection. It is argued, therefore, that a combined reading provides stronger protection of children's rights. In addition, this contribution aspires to bridge the gap between legal and other consequences of statelessness, with the latter often overlooked in the context of surrogate-born children.

Accordingly, this article first addresses the phenomenon of statelessness for children born through international surrogacy. Conflicting laws, refusal to grant nationality and international surrogacy cases are covered in this first part. The article then discusses how statelessness infringes the rights of surrogate-born children in light of Article 7 UNCRC, the right to acquire a nationality,<sup>3</sup> read jointly with the Verona Principles. It should be noted that the terms "nationality" and "citizenship" are used interchangeably here to refer to the legal relation between an individual

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<sup>2</sup> International Social Service. "[Principles for the Protection of the Rights of the Child Born through Surrogacy](#)" (Verona Principles), May 2021.

<sup>3</sup> Article 7 UNCRC: "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

and a state (Vink & de Groot 2010: 1).<sup>4</sup> Finally, this article examines the harmful effects that result from surrogate-born children's statelessness, advocating for a more comprehensive approach that goes beyond the strictly legal consequences of statelessness.

## [B] STATELESSNESS OF SURROGATE-BORN CHILDREN

Statelessness can be broadly defined as the lack of enjoyment of “various rights and entitlements guaranteed by states to their nationals, including the right lawfully to reside somewhere on the earth's surface”, a definition which includes both *de jure* and *de facto* stateless people (Gibney 2014: 47). The danger of statelessness for children born through international surrogacy arrangements mainly arises due to two issues: first, conflicting laws of conferring nationality and parenthood between the IPs' state of origin and the jurisdiction where the children are born; second, in states where surrogacy is unlawful, the unwillingness of national authorities to recognize the IPs' legal parenthood established through international surrogacy, which then severs the child's link to nationality (Ní Ghráinne & McMahon 2017: 327-328). The two issues are intertwined, and this section showcases the predicament of statelessness through addressing both problems, each followed by an example of statelessness case law.

Starting with conflicting laws, it is important to understand the main ways of acquiring citizenship. Given the focus on surrogate-born children and the fact that the great majority of people in the world acquire citizenship at birth (Shachar 2009: 21), this article will engage with birthright citizenship only, as opposed to other means of acquiring citizenship (eg naturalization). Birthright citizenship is conferred (to children) in two ways: a child acquires the nationality of the state in whose territory they are born (*jus soli*), or the nationality of their parents based on “blood” ties (*jus sanguinis*) (Weil 2001: 17). However, most states operate a system which combines both approaches to a lesser or greater extent (de Groot & Vonk 2018).

One issue that can arise for international surrogacy is that the state where the child is born (hereinafter state of birth) might not confer nationality solely based on *jus soli*, which, if so, would make surrogate-born children ineligible for their state of birth's nationality. Unfortunately,

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<sup>4</sup> While the terms “nationality” and “citizenship” can have different connotations (von Rütte 2022: 11-13), given their close relationship and this article's focus on the content of human rights protection rather than the label, it is considered unnecessary and unhelpful to distinguish between the two (Edwards 2014: 14).

this is not uncommon in places that are international hubs of surrogacy.<sup>5</sup> The only hope for these children not to become stateless is conferral by *jus sanguinis*, acquiring the nationality of their legal parents. The focus, thus, turns to the assignment of legal parenthood. Who is the legal parent, and does the legal parent's state confer nationality based on *jus sanguinis*? If the legal parent's state of origin does not award nationality based on *jus sanguinis*, then the child will be stateless. However, a more common problem is when the legal parents' state of origin offers *jus sanguinis* conferral, but the child's state of birth deems the IPs to be the legal parents, while the IPs' state deems the surrogate to be the legal mother.

To better understand the above, it is important to bear in mind that laws on legal parenthood vary vastly, particularly in terms of surrogacy arrangements. As addressed later in this article, there is no international agreement on the rules of conferring legal parenthood and recent attempts to reach international agreement on cross-border parenthood recognition are yet to come to fruition (The Parentage/Surrogacy Project, HCCH).<sup>6</sup> Some states focus on genetics or legal presumptions to establish legal parenthood (Tesfaye 2022: 4), while others may rely on intention (Igareda González 2020: 917).<sup>7</sup> Therefore, legal parenthood can be established differently in the state of birth and the IPs' state. A common reason why IPs choose to go abroad is that in many states, hubs of international surrogacy, IPs can acquire legal parenthood from birth, and the surrogate is not considered the mother of the surrogate-born child (Horsey 2018: 39). Nonetheless, given the absence of cross-border recognition, the IPs' state does not recognize legal parenthood as established abroad, imposing their own legal rules of awarding parenthood, even if birth occurs abroad. A common way of establishing legal motherhood across the world is the rule that the woman giving birth to the child is the legal mother (Schwenzer 2007: 3), also known as the Roman law principle *mater semper certa est*. This can mean that, in the eyes of the IPs' state, the child's legal mother is the surrogate, and IPs might need a domestic court order to transfer legal parenthood.<sup>8</sup> Until such transfer of legal parenthood occurs, the child is not eligible for the IPs' nationality, but at the same time they may

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<sup>5</sup> Some examples include Ukraine and Russia (Kozyr 2007) and Greece (Tsitselikis 2007).

<sup>6</sup> See Hague Conference on Private International Law, [Parentage/Surrogacy Project](#).

<sup>7</sup> An example of the former is the United Kingdom (UK), and an example of the latter is Greece (Igareda González 2020: 917).

<sup>8</sup> This happens in the UK, where surrogacy is lawful, but the legal parents of the surrogate-born child are the surrogate and her partner, if any: Human Fertilisation and Embryology Act 2008, sections 54-54A.

not be eligible for the surrogate's nationality, as the state of birth does not recognize a parental link between the surrogate and the child.

An example of how conflicting laws can lead to statelessness is the (in)famous case of Baby Manji (*Yamada v Union of India* 2008). This is a case of a surrogacy arrangement in India commissioned by a Japanese couple, using the intended father's sperm and an egg donor. On the one hand, according to India's laws, nationality is acquired through *jus sanguinis* and not *jus soli*; however, the surrogate was not the mother of the child and, therefore, the child was not eligible for Indian citizenship (de Alcantara 2010: 421). On the other hand, Japan follows the *mater semper certa est* principle and fatherhood is established through presumptions or acknowledgment of paternity (de Alcantara 2010: 419-421), while there are no rules on conferring or transferring legal parenthood on the basis of surrogacy (Spaulding 2021). Given that the intended father was not married to the Indian surrogate, he had no means of establishing his legal fatherhood. The matter was further complicated by the relationship breakdown and divorce of the IPs before the child was born, with only the intended father wishing to raise the child. As a result, adoption was not an option, as India strictly prohibited single-father adoption (Mohapatra 2012: 419). In the absence of any legal ties between Baby Manji and her father, she was not eligible for Japanese nationality, as Japan confers citizenship based on *jus sanguinis* (de Alcantara 2010: 421). The conflict of laws in this case meant that Baby Manji was stateless and remained "trapped" in India. It was not possible for her father to take her with him to Japan until Indian authorities issued a certificate of statelessness for the child and Japan issued a humanitarian visa to allow Baby Manji entry to the state (Wolf 2014: 474-475). It remains unclear whether upon arrival in Japan Baby Manji was granted Japanese citizenship (Wolf 2014: 475). This raises concerns about the protection of Baby Manji's rights and is criticized in the next section of this article.

A second issue that can give rise to statelessness is the refusal of authorities to recognize the IPs' legal parenthood as established abroad through surrogacy. This is again related to conferral of nationality and legal parenthood, but the additional obstacle in these cases is the authorities' outright refusal to recognize legal parenthood, which goes beyond conflict of laws. IPs from states where surrogacy is unlawful are driven abroad to undertake surrogacy, and authorities treat their international surrogacy as an attempt to circumvent domestic law. This can lead to the child's statelessness where the state of birth does not confer citizenship based on *jus soli*, while the refusal to recognize the IPs' legal parenthood severs the children's link to the nationality of the

IPs' state via *jus sanguinis*. While in the first scenario described above, the legal framework did not accommodate for the recognition of the IPs' legal parenthood, the difference in this case is that there is a possibility in domestic law to recognize legal parenthood, but the IPs' state refuses to do so, which can consequently hinder travel of the children to the IPs' state.

An example of this is *D and others v Belgium* (2014). IPs from Belgium went to Ukraine to undertake surrogacy there, using the intended father's sperm and a donated egg. In Ukraine, nationality is passed from the parents to children via *jus sanguinis*, but according to domestic law, the IPs are the legal parents, and not the Ukrainian surrogate (Kirshner 2015: 85). By contrast, in Belgium, the authorities refused initially to recognize the legal parenthood established abroad, given the involvement of a surrogacy arrangement, even though it was possible to establish the legal fatherhood via genetic fatherhood (*D and Others v Belgium* 2014, paragraphs 4-18). Eventually, the Belgian authorities issued a laissez-passer, but the initial refusal led to four months of statelessness. In the meantime, the IPs' permission to remain in Ukraine expired, which meant that the IPs had to be separated from their child, just like in the *Baby Manji* case. The IPs had to entrust their child to someone they barely knew, fearing that their child would be deemed abandoned and placed in an orphanage (*D and Others v Belgium* 2014, paragraph 44).

The above considerations showcase the ways in which international surrogacy can lead to a child's statelessness, while the examples given aimed to demonstrate the dimension and scale of the problem. A question then arises as to whether children are afforded any protection to avoid such occurrences by relying on international law.

## [C] ARTICLE 7 UNCRC AND THE RIGHT TO ACQUIRE NATIONALITY

It is believed that nationality is not in principle an issue for international law to regulate (Foster & Lambert 2019: 53). Nonetheless, the lack of nationality has not escaped international review, not least because of the devastating effects of statelessness, as addressed later in this article. Therefore, there is currently an international legal framework specifically designed for the protection of stateless people, comprising two Conventions: the Convention relating to the Status of Stateless Persons 1954 and the Convention on the Reduction of Statelessness 1961.<sup>9</sup>

<sup>9</sup> There are also regional Conventions, such as the European Convention on Nationality 1997.

While these UN Conventions do not apply exclusively to children, they do demonstrate efforts to eradicate statelessness in general. However, only a small number of states have ratified these Conventions,<sup>10</sup> and it has been observed that adopting the Convention on the Reduction of Statelessness 1961, for example, “has had limited to no effect” (Stein 2016: 600).

In view of the above observations, and given the focus on children’s statelessness, this article proceeds by outlining the potential protections offered by the UNCRC for children who are threatened with statelessness through international surrogacy. For children, the UNCRC has been described as the “single most significant expression of children’s rights in a global context” (George & Ors 2023: 568) with its innovation found in providing a binding legal framework that includes both welfare and agency rights (Harcourt & Hägglund 2013: 287). It is also the most widely ratified human rights treaty (Kilkelly & Lundy 2006: 331), and, therefore, it is used in this article because of its geographical scope, the almost universality of its application. The UNCRC framework is also chosen over potential private international law instruments, particularly due to the slim likelihood of such agreements being reached (Ní Ghráinne & McMahon 2017: 339). This is evidenced by the Parentage/Surrogacy Project of HCCH, which since 2011 has attempted to convene an international agreement on recognition of cross-border parenthood, with an optional protocol on surrogacy. As recently observed, there are different approaches to legal parenthood and the relevant public policy matters, with little consensus or compromise on surrogacy among states (Horsey 2024: 6).

The above demonstrate that the UNCRC is preferable to other frameworks. Nonetheless, it is not suggested that the UNCRC should operate in isolation from other (soft or hard law) instruments. As elaborated below, this article advocates for the UNCRC to be read in conjunction with the (soft law) Verona Principles and their guidance on statelessness for surrogate-born children, which were supported by the UN Committee on the Rights of the Child.

There are different Articles of the UNCRC enshrining rights relevant to children’s statelessness. For example, Article 2 aims to combat discrimination by requiring states to uphold the children’s Convention rights without discrimination of any kind, explicitly mentioning discrimination based on birth or other status. Of particular importance here, however, is the Article directly addressing the issue of

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<sup>10</sup> 83 states have ratified the 1954 Convention and 61 states have ratified the 1961 Convention: see [UN Conventions on Statelessness](#).

statelessness—Article 7 UNCRC.<sup>11</sup> Article 7 requires that, among other rights, children have the right to acquire a nationality, and states shall ensure the implementation of these rights, *in particular where the child would otherwise be stateless*. It has been suggested, however, that this right does not warrant a right to a certain nationality, nor does it clarify which nationality is to be obtained (Stein 2016: 604). Also, given that Article 7(2) mentions explicitly that the implementation of the rights in Article 7(1) must be ensured in accordance with national laws, this questions whether it imposes positive obligations on states (Ziemele 2007: 24). To better understand this right, recourse is needed to the interpretative guidance provided by the UN Committee on the Rights of the Child (the Committee).

The UNCRC established the Committee to monitor states' compliance with the Convention (Article 43 UNCRC). Very importantly, the Committee can issue general comments to provide guidance on the content of the UNCRC (UNCRC Committee, Rules of Procedure 2015: Rule 77), and it can receive individual communications (complaints) brought against states for an alleged violation of Convention rights (Article 5 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure). These represent a useful tool to understand and interpret the Convention, which can shed light on the potential protection of surrogate-born children from statelessness. While the Committee has yet to address the issue of surrogacy and statelessness, existing interpretation can serve to gain a broader understanding of what is required of states. For example, in terms of Article 2 UNCRC, the Committee has prompted states not to discriminate against children who are born under conditions “that deviate from traditional values” (Wade 2017: 114). This is significant, as “elements of discrimination and inequality are common to all forms of statelessness” (Blitz & Lynch 2011: 5).

More directly on statelessness, in a Joint General Comment with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee has interpreted Article 7 UNCRC as follows:

While States are not obliged to grant their nationality to every child born in their territory, they are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he or she is born. A key measure is the conferral of nationality to a child born on the

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<sup>11</sup> However, while focus is placed on Article 7 UNCRC, the rights under this Convention are interdependent, and, particularly, Article 2 on non-discrimination and Article 3 on the best interests of the child are briefly mentioned.



territory of the State, at birth or as early as possible after birth, if the child would otherwise be stateless (UN Doc CMW/C/GC/4-CRC/C/GC/23 2017: paragraph 24).

Similar guidance on statelessness provided by the UN Refugee Agency (UNHCR) highlights as well that Article 3 (best interests of the child being a primary consideration) and Article 7 UNCRC dictate that a child must not be left stateless for an extended period of time; instead, a child must acquire a nationality at birth or as soon as possible after birth, with the obligation imposed not only on the state of birth, “but to all countries with which a child has a relevant link, such as through parentage or residence” (UN Doc HCR/GS/12/04 2012: paragraph 11). While this is guidance provided by the UNHCR and not the Committee, it nonetheless sheds light on the interpretation of Article 7 UNCRC.

Article 7’s focus on preventing statelessness was further clarified by the Committee in the recent case of *MKAH v Switzerland* (2019). In *MKAH*, a child and his mother—the mother being of Syrian nationality—applied for asylum in Switzerland by first entering Europe through Bulgaria, where there was evidence that they were ill-treated. Upon applying for asylum, it became clear that MKAH was stateless. The Swiss authorities wished to return the child and mother to Bulgaria. However, the Committee highlighted that states need to take proactive measures to secure that the right to nationality under Article 7 can be exercised (Cabral 2022: 297). In this case, Switzerland had not taken the necessary measures to check whether MKAH would be able to acquire a nationality in Bulgaria. However, Article 7 entails positive action to implement the right to acquire a nationality and, therefore, returning MKAH to Bulgaria would infringe his rights.

Applying this to the context of surrogacy, surrogate-born children should not be discriminated against because their circumstances of birth deviate from “traditional values”. Both the state of birth and the IPs’ state should place safeguards to prevent the surrogate-born child’s statelessness under Article 7 UNCRC. In addition, they are required to adopt appropriate measures, both domestically and in cooperation with the other state, to ensure surrogate-born children acquire a nationality at birth or as soon as possible after birth. Therefore, practices seen in the previous section of this article infringe the right of children to acquire a nationality. The lack of proper cooperation between India and Japan, both state parties to the UNCRC, and the eventual statelessness of Baby Manji exemplifies this failure.

Such an approach to statelessness and surrogacy is in agreement with the findings of the Special Rapporteur on the sale and sexual exploitation of children. In 2018, the Special Rapporteur de Boer-Buquicchio emphasized that the state of birth and the IPs' state should work cooperatively and are both responsible for preventing statelessness (A/HRC/37/60). Furthermore, in 2019, she reminded states that they should adopt, both domestically and in cooperation with other states, measures to ensure that every child has a nationality upon birth, and that states are required to prevent statelessness as part of the child's right to identity (A/74/162: 30). This echoed the Human Rights Committee findings (General Comment No 17: Article 24).

Similarly, Principle 13 of the Verona Principles specifically addresses the problem of statelessness for surrogate-born children, urging states to prevent statelessness as part of a child's right to acquire a nationality, which is also part of the child's right to identity, reminding states that the application of nationality laws by states should be done without discrimination "related to circumstances of birth, including surrogacy" (Principles 13.1-13.2). In addition, the Verona Principles indicate that states should also grant without delay the necessary documents for the child to either remain in the state of birth or travel abroad (Principle 13.8). This article submits that Article 7 UNCRC should be read in conjunction with these recently established Verona Principles to ensure an updated and holistic approach to the protection of surrogate-born children from statelessness. The Verona Principles, specifically designed for international surrogacy, complement Article 7 by going beyond the Special Rapporteur's findings (described in the preceding paragraph). An illustration of the benefits of such interpretation is found when considering the Belgian example used above, which resulted in four months of statelessness for the child involved, left behind in Ukraine, without the parents. Given the eventual acquisition of nationality, the current application of Article 7 would not entail a violation; however, when read together with the Verona Principles, under Principle 13.8, the delay to grant the necessary documentation for the child to travel or lawfully remain in Ukraine would be unacceptable.

Notwithstanding the seeming consensus on the application of Article 7 to surrogacy, a major issue with upholding UNCRC rights is the lack of enforcement mechanisms. Described as incredibly weak, the main mechanism for state accountability within the UNCRC is reporting to the Committee every five years, with procedural delays meaning it might take even longer (Vandergrift 2004: 551). The weakness of the UNCRC is evidenced by the fact that it is usually ignored in surrogacy cases,

as Article 7 UNCRC was not discussed either in the *Baby Manji* case or the Belgian case. Studies have shown that children's rights are better protected in states where the UNCRC has been given legal status in a systematic way, supported by necessary procedures to monitor and enforce its implementation (Lundy & Ors 2013: 461). Therefore, for the systematic protection of UNCRC rights, states are urged to reinforce their domestic mechanisms of monitoring and enforcement of the Convention.

Bearing in mind the above, so far, this article has considered the way in which statelessness is generated in the context of international surrogacy and the available protection offered by international law through the right to acquire a nationality, safeguarded particularly by Article 7 UNCRC and complemented by the Verona Principles. Notwithstanding the lack of UN enforcement mechanisms, this article endorses the protection of surrogate-born children under Article 7 UNCRC in light of the harmful effects of statelessness, which are addressed next.

## [D] HARMFUL EFFECTS OF STATELESSNESS

Stateless people have been compared to “a vessel on the open sea, not sailing under any flag”, or called a “flotsam, *res nullius*” (Weis 1954: 193). The severe impact of statelessness on individuals has long been acknowledged by international human rights bodies (eg Human Rights Council, Resolution No 32/5: paragraph 16). This section addresses first the harmful effects of statelessness both in strict legal terms, but also explores the wider consequences that arise from such a lack of legal protection. The wider effects of statelessness on surrogate-born children are often overlooked, therefore this article ultimately advocates for a more comprehensive approach that goes beyond the strictly legal consequences of statelessness for surrogacy.

Starting with the legal consequences arising from statelessness, nationality is the means through which persons enjoy protection under international law, but it also entails physical entry to the state of nationality, alongside the enjoyment of certain economic, political and social rights (Foster & Lambert 2019: 53-54). Stateless individuals are deprived of these protections. Examples of vital entitlements that stateless persons are devoid of include acquiring a passport, the right to vote, and access to education and healthcare (Wade 2017: 128). The exclusion of stateless individuals from key benefits has been divided into three categories: privileges, security and voice (Gibney 2014: 51). According to Gibney, privileges are associated with access to public goods (housing, healthcare, education, etc), public service positions, which is

directly related to the potential for social advancement, and the right to own different forms of property. Security is principally associated with the security of residence in the state and diplomatic protection abroad, while voice is associated with the right to elect and be elected, and more generally participate in debates within the state as an equal member of the community.

The above evidence the intertwining nature of the consequences of statelessness beyond the strictly legal, as they have further implications for the individual within society. Political exclusion has been particularly emphasized, drawing on the seminal work of Arendt on stateless people, where “fundamental deprivation is manifested first and above all in the deprivation of a place in the world which makes opinion significant and actions effective” (Arendt 1968: 296). In relation to children, this can be understood through their position within society. For example, Wells-Greco argues that the UNCRC requires a broader approach, which entails, among other things, “full respect for and implementation of the rights of every child” to enable children to lead an individual life within a society through active and constructive participation, which would further “acknowledge the child’s growing autonomy and identity” (Wells-Greco 2015: 449). Thus, integration within society is understood in broader terms, which accords with the above findings of Article 7 UNCRC directly impacting on the identity of children and their integration within society. The correlation between the child’s identity and their right to acquire a nationality have been highlighted by both the Special Rapporteur and the Verona Principles, as elaborated above.

While for surrogate-born children, as seen through examples in the second section of this article, the immediate visible legal consequences concentrate on lack of nationality in relation to travel and recognition of legal parenthood on birth and shortly afterwards, discussion of these broader consequences is still significant. It has been argued that surrogate-born children have not been left permanently stateless, as states have provided remedies to ensure children can travel with the IPs and therefore do not remain stateless (Wells-Greco 2015: 450). Nonetheless, the legal limbo in which surrogate-born children are placed impacts “the political relationship between citizen and polity” (Levy 2022: 137). Some IPs might choose to “stay under the radar” and not attempt to regularize the child’s status (Wells-Greco 2015: 261), which would leave those children exposed to a variety of harmful effects beyond the ability to travel to the IPs’ state, as explored above.

Having said that, this article does not underestimate the intersectional vulnerabilities of stateless children (eg Menz 2016) and stateless individuals more generally. Crossing borders to access surrogacy is not an option available to everyone, and IPs are usually from relatively privileged socio-economic backgrounds, given the “complex legal, psychological, social and *financial challenges*” of international surrogacy (Hammarberg & Ors 2015: 690, emphasis added). This could place surrogate-born children in a more privileged position compared to other stateless children, whose parents might not have the choice or freedom of movement. However, intersectional vulnerabilities are possible for surrogate-born children too, for example for children of rainbow families (McGee 2020: 80; Cook 2023: 298). Furthermore, the impact of statelessness on surrogate-born children is not less significant; instead, as seen in the *Baby Manji* case, recourse to international surrogacy did not necessarily translate into eventually acquiring a nationality. Therefore, the wider consequences of statelessness should not be overlooked for surrogate-born children, as this broader understanding of statelessness places them on a similar footing with other stateless children and individuals, who, for different reasons, might find themselves excluded from acquiring a nationality and, thus, further excluded from fully participating in society.

## [E] CONCLUSION

This article explored statelessness resulting from international surrogacy arrangements by first addressing the main causes of statelessness for children born through international surrogacy. Conflicting laws, refusal to grant nationality and international surrogacy case law were examined to demonstrate the scale of the problem. Given the dimension of statelessness, the potential legal protection of surrogate-born children was considered under Article 7 UNCRC—the right to acquire a nationality. Based on a broader consensus of the meaning of Article 7 by the Committee and other international standards, it was submitted that states are required to take positive steps to prevent statelessness. In the context of surrogacy, both the state of birth and the IPs’ state of origin should cooperate to prevent statelessness and not discriminate against surrogate-born children based on the circumstances of their birth. Furthermore, this article submitted that Article 7 should be read in conjunction with the Verona Principles so that the delay in issuing the relevant documentation to either enable travel or the lawful stay of the surrogate-born child would be condoned.

Notwithstanding the UNCRC’s lack of enforcement mechanisms, the harmful effects that result from statelessness are severe and touch upon different aspects of a person’s life. They range from the exclusion

from public goods to the exclusion from political life. For surrogate-born children, emphasis is placed on the exclusion from acquiring a passport and public goods. Nonetheless, this article advocated for a more comprehensive approach that goes beyond the strictly legal consequences of statelessness for surrogate-born children, bearing particularly in mind the identity of children and their integration within society.

To conclude, in an attempt to address the question identified at the introduction of this article, as to whether children are afforded any protection against statelessness by relying on international law, and the overall consequences of statelessness for surrogate-born children, the following thoughts are worth highlighting. In light of the broader consequences of statelessness for surrogate-born children, states should cooperate to eliminate and prevent the statelessness of these children notwithstanding any conflict of laws and the (un)lawfulness of surrogacy. This is required both by the constraints placed on states to prevent statelessness (Foster & Lambert 2019) and the harmful effects of statelessness itself.

### **About the author**

**Dr Marianna Iliadou** is a Lecturer in Law at the University of Sussex. Her principal areas of research include healthcare law, human rights and, more particularly, reproductive rights. Titled ‘Surrogacy and the European Convention on Human Rights’, her PhD thesis examined the potential violation of the right to respect for private and family life by contracting states that impose a blanket ban on surrogacy. Beyond the framework of the European Convention on Human Rights, Marianna’s research focuses on international surrogacy and the legal protection available to the relevant stakeholders (ie children, IPs, surrogates).

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